

City of Capitola Agenda

Mayor: Dennis Norton
Vice Mayor: Ed Bottorff
Council Members: Jacques Bertrand
Stephanie Harlan
Michael Termini
Treasurer: Christine McBroom



REVISED

CAPITOLA CITY COUNCIL REGULAR MEETING

THURSDAY, MARCH 12, 2015

**CITY HALL COUNCIL CHAMBERS
420 CAPITOLA AVENUE, CAPITOLA, CA 95010**

**CLOSED SESSION – 6:15 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 City Council's Open Session Meeting.

CONFERENCE WITH LABOR NEGOTIATOR (Govt. Code §54957.6)

Negotiator: Jamie Goldstein, City Manager

Employee Organizations: (1) Association of Capitola Employees; (2) Capitola Police Captains, (3) Capitola Police Officers Association, (4) Confidential Employees; and (5) Mid-Management Group

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 Stephanie Harlan, Ed Bottorff, Jacques Bertrand, Michael Termini, and Mayor Dennis Norton

2. PRESENTATIONS

- A. Certificate of Appreciation to Maddie Marlatt for her term on the Commission on the Environment.
- B. Appreciation plaques to Police Volunteers Diana Cunningham, Mike Banks, and Gayle Brock.
- C. Presentation by United Way regarding the Healthy School Food Environment Project.

3. REPORT ON CLOSED SESSION

4. ADDITIONAL MATERIALS

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

- A. 10.A.
DETAILS:
Public Communications.
- B. 10.C.
DETAILS:
Public Communication.

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

CAPITOLA CITY COUNCIL REGULAR MEETING - Thursday, March 12, 2015

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 approving the amended February 11, 2015, Regular City Council Minutes (continued from the February 26, 2015, Regular City Council meeting); February 25, 2015, City Council/Successor Agency Special Joint Budget Study Session Minutes; and the February 26, 2015, Regular City Council Minutes.
RECOMMENDED ACTION:
Approve Minutes.
- B. Receive the March 5, 2015, Regular Planning Commission Meeting Action Minutes.
RECOMMENDED ACTION:
Receive Minutes.
- C. Consider approving an Amendment to the Monterey Bay Self-Insurance Authority/Alternate Joint Powers Agreement.
RECOMMENDED ACTION:
Approve Amendment.
- D. Consider awarding a contract to MV Transportation for operation of the 2015 Beach Shuttle Service for the 2015 summer shuttle bus service.
RECOMMENDED ACTION:
Approve contract.
- E. Consider approving the selection of Kimley-Horn and Associates and Nichols Consulting Engineers for on-call Capital Improvement Project Design and Implementation Services.
RECOMMENDED ACTION:
Approve Kimley-Horn and Associates, and Nichols Consulting Engineers contracts.

10. GENERAL GOVERNMENT / PUBLIC HEARINGS

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

- A. Consider rescinding Resolution No. 3954 establishing parking time limits within Designated Parking Meter Zones by increasing Zone A(1) Village Area from 2 hours to 3 hours.
RECOMMENDED ACTION:
None.
- B. Consider adopting an Administrative Policy to provide a process for the issuance of Surf School Permits.
RECOMMENDED ACTION:
Approve the proposed Policy.

CAPITOLA CITY COUNCIL REGULAR MEETING - Thursday, March 12, 2015

- C. Zoning Code Update – Issues and Options White Paper Presentation.
RECOMMENDED ACTION:
Accept Report.
- D. Introduction of an Ordinance amending Chapter 17.03 (Zoning) of the Capitola Municipal Code to add definitions for Transitional and Supportive Housing as required by State law.
RECOMMENDED ACTION:
Introduce Ordinance.
- E. Introduction of an Ordinance amending Section 2.04.140 of the Capitola Municipal Code regarding Council Members placing an item on the City Council agenda.
RECOMMENDED ACTION:
Introduce Ordinance.

11. ADJOURNMENT

Adjourn to the next Regular Meeting of the City Council on Thursday, March 26, 2015, at 7:00 PM, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

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 Capitola 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, on the Monday prior to the Thursday 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.

City of Capitola

Certificate of Appreciation

to

MADDIE MARLATT

for Service as an Ex-Officio Student Member on the

Commission on the Environment

from January 2013 through December 2014



Dennis Norton, Mayor

Signed and sealed this 12th day of March, 2015



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From: Capitola Wharf and Village Business Improvement Association

To: Capitola City Council

Date: March 10, 2015

MAR 10 2015
CITY OF CAPITOLA
CITY CLERK

Subject: Recommendation regarding parking meter time limits in Capitola Village

Council Members:

The CWVBIA supports the recommendation of the Capitola Traffic and Parking Commission unanimously approved by their membership on November 20, 2013.

Specifically we support the following rationale **NOT** to increase Village parking limits:

- The current limitations encourage parkers to utilize the upper and lower parking lots (Pac Cove). Ultimately greater use of these lots (or the future parking garage):
 - Reduces traffic congestion in the Village
 - Greater use of the long-term parking facilities and shuttle service
 - ♣ Aids in justifying the cost of these facilities
 - ♣ Allows visitors an attractive alternative for longer stays in the Village.
 - ♣ Shows Capitola to be more visitor friendly with a lower cost of parking for longer stays
- The turnover with the current two hour limitations increase the availability of spaces for:
 - Residents of the Village with Parking Permits to find a space.
 - Provides true short-term parkers better assurance of finding a space.
- The merchants do not believe an extension of the time limits will increase customer activity; in fact greater use of the Pac Cove lots will attract more customers & visitors to Capitola.
- Surrounding cities maintain two-hour limits and in many cases the parking is free.

- The current two-hour limitation has been in place for many years and functioning well, there is no logistical or economic reason to change it.
- Village residents are well represented on the Traffic and Parking Commission, therefore the T&PC recommendation represents a broad view of parking in the Village.

For the above reasons the CWVBIA strongly support the Traffic and Parking Commissions recommendation **NOT** to increase the parking time limitations in the Village of Capitola.

Respective submitted. CWVBIA.

Sneddon, Su (ssneddon@ci.capitola.ca.us)

From: Kathleen DeFrancesco [kathleen_defrancesco@hotmail.com]
Sent: Thursday, March 12, 2015 4:37 PM
To: City Council
Subject: [?? Probable Spam] 3 Hour Parking

Greetings Capitola City Council... I am writing to you with the hope that you all will approve the pending increase in downtown parking from the current 2 hours to 3 hours. As a mother of four, three of which are Jr. Guards, an increase in parking would be very helpful for mothers like me who enjoy going to lunch with friends and shopping downtown while my kids are otherwise engaged. There have been many times where I have been at lunch and have to leave quickly to move my car, and as you all are well aware, the parking is so impossible that I usually just end up leaving altogether rather than spend more time searching for the impossible. I believe a longer time would also reduce people driving around looking for a spot and jamming up the downtown further. I hope that you will seriously consider this and vote yes, if not just seasonally.

On another note, I would like to bring up another point that my many friends and young people in this area talk about CONSTANTLY:

This is the extreme lack of decent restaurants and shopping in this area!! Please, please, please take a few moments and write me back on why we have no family friendly restaurants in this area besides pizza!!!! I can think of at least 10 restaurants that would be a perfect fit for the location where Marie Calendars was and seeing the location empty year after year is infuriating. California Pizza Kitchen, Smashburger, 5 Guys, PF Changs, Cheesecake Factory, a brewery???????? I could go on and on. It is so frustrating to feel that we all have to go "over the hill" for decent food and shopping. It is actually sad how much time and money I spend there being that there is nothing in this county. Our mall is a disgrace, frankly an embarrassment and the potential is there, believe me. This area is full of young families looking for other options besides Chilis. I get so tired of hearing about how we need more tax dollars and for people to "shop local" yet our mall looks like it has not changed in the last 30 years and we are in need of so many stores. Shop Local? I would if I could!!!!!! To be honest, there are only a few stores in Capitola I actually shop in as the downtown as a whole needs a massive upgrade. It is time, Capitola City Council. Please know that you are flushing local tax dollars down the toilet with people like me constantly resorting to going over the hill for a decent meal and a few nice stores.

Very Sincerely,
Kathleen DeFrancesco

Sent from my iPhone

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Sneddon, Su (ssneddon@ci.capitola.ca.us)

From: Molly Ording [mollyording@yahoo.com]
Sent: Monday, March 09, 2015 7:48 PM
To: City Council
Subject: CHANGE IN PARKING LIMIT FROM 2 HOURS TO 3 HOURS!

Greetings Capitola City Council Members!

March 9, 2015

I am writing you, again, as both a resident and as a member of the Capitola Parking & Traffic Commission, to comment on the proposal to increase meter time limits from 2 hours to 3!

As a resident, **I am absolutely in favor of changing the time to a 3 hour limit** to reduce the noise, auto emissions, pollution and resultant village congestion from the constant need for beach-goers, shoppers and diners to move their cars around...especially in our "off-season" from October through April (excluding December) or the non-shuttle months. Although I am aware some merchants are opposed to this change and have been *since forever*, I have recently spoken with several other merchants *who are not all all opposed* to this change and would, in fact welcome it! I also know from many conversations with many other locals (my daughter and her many friends among them, as well as many friends who live outside of Capitola) that many, many of them would definitely be far more inclined to shop and dine in Capitola if there were not those 2 hour limits...again, *especially* in the off-season!

I recall the Traffic and Parking Commission voting on this issue some time ago. The point was strongly made by two Commissioners that if we voted to increase the time limits it would potentially negatively impact their businesses' bottom lines! Due to the respect and affection for these members, I recall the Commission sort of "demurring" to this point. However, I feel now that I am more informed and have had more time to consider the benefits of a longer meter time and, after speaking with larger number of visitors, merchants, other locals and residents about it, that you should make a decision...or we...as the T & PC should definitely re-visit this issue! I think the issue keeps coming up because it has so much merit! I also want to add that one of the many selling points to the T & PC for our pay-by-space stations was the ease and ability to change rates and limits of stays! *I hope* this is the case!

A few related proposals might be 1) to change time limit from 2 hours to 3 hours seasonally.

2) charge \$1.50 per hour for first two hours and \$2.50 for 3rd hour.

3) change limit from 2 to 3 hours and then quantitatively evaluate the results after one full season.

Thanks, as always, for your attention. With much appreciation for all the work you do...

MOLLY ORDING
 218 Monterey Avenue
 Capitola, Ca. 95010

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Sneddon, Su (ssneddon@ci.capitola.ca.us)

From: Edward Newman [edward@capitolalawfirm.com]
Sent: Monday, March 09, 2015 5:53 AM
To: City Council
Cc: PLANNING COMMISSION; Grunow, Rich (rgrunow@ci.capitola.ca.us)
Subject: Possible Spam Zoning Code Update

Council Members,

Item 10C on your March 12, 2015 agenda scheduled as a public hearing is a report on a proposed revised Capitola Zoning Code. There is no dispute that an overhaul of our zoning code is in order, and that it is a big job. A revised zoning code was originally part of the general plan process, but was later separated out. The staff has identified 18 issues for discussion, some of which are quite complicated and possibly controversial. The proposed timeline allows 6 months for Planning Commission and City Council review. On March 5, 2015 the Planning Commission discussed the process, and it was generally thought that 3 to 4 issue per hearing date would be realistic, which means we would need 5 or 6 such hearings in all. These will involve public input and guidance from both City staff and from Ben Noble, the City zoning code consultant.

Planning Commissioners deal with the zoning code regularly, so their input would seem to be appropriate. In the end the City Council of course is responsible for enacting ordinances. Given the nature of the issues, I expect that the City Council will want to and should consider each of them independently. My query for you now is whether it is most efficient and cost-effective to have 4-6 public hearings before the Planning Commission, and then to repeat the same process before the City Council. As Planning Commissioners we are ready to move ahead with the hearings, but there may be better alternatives for obtaining Planning Commission input and a City Council decision on the 18 issues.

Edward W. Newman
331 Capitola Ave., Suite K
Capitola, CA 95010
831-476-6622 – voice
831-476-1422 – fax
Edward@capitolalawfirm.com

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CITY COUNCIL AGENDA REPORT

MEETING OF MARCH 12, 2015

FROM: OFFICE OF THE CITY CLERK

SUBJECT: AMENDED FEBRUARY 11, 2015, REGULAR CITY COUNCIL MINUTES;
FEBRUARY 25, 2015, CITY COUNCIL/SUCCESSOR AGENCY SPECIAL
JOINT BUDGET STUDY SESSION MINUTES; AND FEBRUARY 26, 2015,
REGULAR CITY COUNCIL MINUTES.

RECOMMENDED ACTION: Approve the subject minutes as submitted.

DISCUSSION: Attached for City Council review and approval are the minutes of the subject meeting.

ATTACHMENTS:

1. Amended February 11, 2015, Regular City Council Minutes (*continued from the February 26, 2015, Regular City Council meeting*);
2. February 25, 2015, City Council/Successor Agency Special Joint Budget Study Session Minutes;
3. February 26, 2015, Regular City Council Minutes.

Report Prepared By: Susan Sneddon, CMC
City Clerk

Reviewed and Forwarded
By City Manager: 

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AMENDED
CAPITOLA CITY COUNCIL
REGULAR MEETING MINUTES
WEDNESDAY, FEBRUARY 11, 2015

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

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

Council Members Stephanie Harlan, Ed Bottorff, Jacques Bertrand, Michael Termini, and Mayor Dennis Norton

2. PRESENTATIONS

A. Introduction of newly appointed Police Sergeant Marquis Booth.

3. REPORT ON CLOSED SESSION

4. ADDITIONAL MATERIALS

5. ADDITIONS AND DELETIONS TO AGENDA

6. PUBLIC COMMENTS

Darrel Johnson and Jane Schwickerath, Seniors Council of Santa Cruz and San Benito Counties (Seniors Council) Board Member, thanked the City Council for their support, and reviewed current Seniors Council projects.

Molly Ording, Capitola Village Residents Association, announced Neighbor Night on March 23rd which includes dinner.

7. CITY COUNCIL / CITY TREASURER / STAFF COMMENTS

City Treasurer McBroom reviewed the uses for Measure O funds.

8. CONSENT CALENDAR

Council Member Bertrand requested that **Item 8.B.** be continued to the next City Council meeting.

A. Receive the February 5, 2015, Regular Planning Commission Meeting Action Minutes.

B. Receive the California Public Employees Retirement System Annual Actuarial Valuation Reports as of June 30, 2014. [630-10]

ACTION **Motion made by Council Member Termini, seconded by Council Member Bertrand, to approve Item 8.A., and to continue Item 8.B. to the next regular City Council meeting. The motion was passed unanimously.**

9. GENERAL GOVERNMENT / PUBLIC HEARINGS

A. Consider a citizen request for a Skate Park at Monterey Park. [1040-20]

Marie Martorella and Trica Proctor, proponents for the proposed skate park at Monterey Park, provided a presentation regarding the proposed skate park at Monterey Park.

Lisa Steingrube, provided a presentation and opposition to the proposed skate park at Monterey Park.

AMENDED CAPITOLA CITY COUNCIL MEETING MINUTES, February 11, 2015

The following local residents provided their support for the proposed Skate Park at Monterey Park:

- Terry Campion
- Norena Munn
- Matt Arthur
- Richard Novak
- Andrew Cannon
- Kevin Frank
- Sean and Tessa Tutman
- Mark Conley
- Antoinette Costa
- Bruce Arthur
- Jeff Kendall
- Tim Crawley
- Joe Miller
- Brett Presley
- Amy Breed
- Marty Proctor
- Shane Pearlman
- John Milbridge
- Neil Johnson

The following local residents provided their opposition for the proposed Skate Park at Monterey Park:

- Denya Harris
- Al Globus
- Trevor Bryce
- Lisa Steingrube
- Dr. Frances Frome
- Chris Bowman
- Terry Tetter
- Dan Steingrube
- Elizabeth Russell
- Dominique Bertrand
- Heidi Wagner
- Dawn Morrow
- Paula Malet
- Don Sanders
- Harry Gai
- Sandy Erickson
- Brett Bartle

Marie Martorella, provided a rebuttal in support for the proposed skate park at Monterey Park.

Lisa Steingrube, provided a rebuttal in opposition for the proposed skate park at Monterey Park.

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Council Member Termini stated that it is his understanding that a majority of the people residing adjacent to Monterey Park are opposed to the proposed skate park. He stated that all costs for the proposed skate park at Monterey Park should be paid for by the applicant if a development agreement is approved by the Council. These costs include staff time and soft costs (Environmental Impact Report and CEQA Report).

City Manager Goldstein confirmed that the action this evening is for the Council to consider providing direction to the proponents as to whether they want to invest funds to initiate the public review and development agreement process.

City Council took a five-minute break.

ACTION

Motion made by Council Member Bottorff, seconded by Council Member Termini, provided authorization to proceed with the proposal of a skate park at Monterey Park which would require further development of the plans to allow for environment review and project permitting; obtain public input, and pay processing soft costs. The motion carried with the following roll call vote: AYES: Council Members Bottorff, Termini, and Mayor Norton. NOES: Council Members Bertrand and Harlan. ABSENT: None. ABSTAIN: None

10. ADJOURNMENT

At 10:28 PM Mayor Norton adjourned the meeting to the Special Budget Study Session of the City Council and the Successor Agency to be held on Wednesday, February 25, 2014, at 6:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

ATTEST:

Dennis Norton, Mayor

_____, CMC
Susan Sneddon, City Clerk

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**CAPITOLA CITY COUNCIL/SUCCESSOR AGENCY
TO THE FORMER REDEVELOPMENT AGENCY
SPECIAL JOINT BUDGET STUDY SESSION MINUTES**

WEDNESDAY, FEBRUARY 25, 2015

**CLOSED SESSION - 5:30 PM
CITY MANAGER'S OFFICE**

CALL TO ORDER

Mayor Norton called the meeting to order at 6:15 p.m. and announced the items to be discussed in Closed Session, as follows:

CONFERENCE WITH LABOR NEGOTIATOR (Govt. Code §54957.6)

Negotiator: Jamie Goldstein, City Manager

Employee Organizations: (1) Association of Capitola Employees; (2) Capitola Police Captains, (3) Capitola Police Officers Association, (4) Confidential Employees; and (5) Mid-Management Group.

Mayor Norton noted that there was no one in the audience; therefore, the City Council recessed at 5:30 PM to the City Manager's Office.

SPECIAL JOINT BUDGET STUDY SESSION - 6:00 PM

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

Council Members Stephanie Harlan, Ed Bottorff, Jacques Bertrand, Michael Termini and Mayor/Chair Dennis Norton.

2. PRESENTATION

A Introduction of the City's new Senior Accountant, Mark Sullivan.

Mr. Sullivan was introduced.

3. REPORT ON CLOSED SESSION

City Manager Goldstein stated that the City Council met with City Manager Goldstein, Assistant to the City Manager Laurent, and Allyson Hauck regarding labor negotiations for the following employee organizations: (1) Association of Capitola Employees; (2) Capitola Police Captains, (3) Capitola Police Officers Association, (4) Confidential Employees; and (5) Mid-Management Group. There was no reportable action.

4. ADDITIONAL MATERIALS (None provided)

5. PUBLIC COMMENT (None provided)

6. CITY COUNCIL / CITY TREASURER / STAFF COMMENTS

City Manager Goldstein introduced Interim Finance Director Sandhu.

Mayor Norton stated that on February 26th the La Selva Beach Trestle Completion Ceremony to be held at 10:30 AM.

Item #: 9.A. Attach 2.pdf

**FEBRUARY 23, 2015 CAPITOLA CITY COUNCIL/SUCCESSOR AGENCY
BUDGET STUDY SESSION MINUTES**

Council Member Harlan stated that the Capitola Historical Museum will have a soft opening for museum volunteers on February 28th from 10 AM - 12 (Noon). The museum display will be open to the public on March 21st.

7. CONSENT CALENDAR

- A. Quarterly Financial Reports – Second Quarter Budget Report and First Quarter Sales Tax Report. [330-70/390-70]

ACTION Motion made by Council Member Termini, seconded by Council Member Bottorff, to receive the Quarterly Financial Reports – Second Quarter Budget Report and First Quarter Sales Tax Report. The motion was passed unanimously.

8. GENERAL GOVERNMENT / PUBLIC HEARINGS

- A. Receive Mid-Year 2014/2015 Fiscal Year Budget Financial Report, and consider budget amendments. [330-05/330-10/780-30]

ACTION Motion made by Council Member Termini, seconded by Council Member Harlan, to approve staff recommendation regarding the Mid-Year 2014/2015 Fiscal Year Budget Financial Report, and to approve the budget amendments. The motion was passed unanimously.

- B. Receive the California Public Employees Retirement System Annual Actuarial Valuation Reports as of June 30, 2014. (This agenda item was continued from the February 11, 2015, City Council meeting.) [630-10]

ACTION Motion made by Council Member Termini, seconded by Council Member Bertrand, to receive the California Public Employees Retirement System Annual Actuarial Valuation Reports as of June 30, 2014. The motion was passed unanimously.

- C. Review of prior year's Budget Principles and determination of the Budget Principles for the 2014/2015 Fiscal Year. [330-05/780-30]

ACTION Motion made by Council Member Norton, seconded by Council Member Bottorff, to update the prior year's Budget Principles and consider adding the following Budget Principles for Fiscal Year 2015/2016 to serve as a guide in staff's preparation of the draft annual budget:

- **Maintain and support high quality City staffing;**
- **Install bathrooms at Monterey Park;**
- **Consider mechanisms to develop American Disability Act (ADA) improvements;**
- **Consider options to improve Capitola Wharf, including remodeling the wharf restrooms;**
- **Consider local funding mechanism for affordable housing;**
- **Work with Santa Cruz Metropolitan Transit District to improve City bus services;**
- **Capitola Junior Lifeguard training programs;**
- **Re-establish the Economic Development Committee;**
- **Develop a City public outreach template.**

The motion was passed unanimously.

9. ADJOURNMENT

Mayor Norton adjourned the special meeting at 7:00 p.m. to the next Regular Meeting of the City Council to be held on Thursday, February 26, 2015, at 7:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

ATTEST:

Dennis Norton, Mayor

_____, CMC
Susan Sneddon, City Clerk

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**CAPITOLA CITY COUNCIL
REGULAR MEETING MINUTES
THURSDAY, FEBRUARY 26, 2015 - 7:00 PM**

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

Council Members Stephanie Harlan, Ed Bottorff, Jacques Bertrand, Michael Termini, and Mayor Dennis Norton

2. PRESENTATIONS

A. Certificate of Appreciation to Mick Routh for his terms on the Planning Commission. [120-40/7405-50]

Certificate of Appreciation was received.

B. Certificate of Appreciation to Elisabeth Russell for her terms on the Commission on the Environment. [120-40/430-05]

Certificate of Appreciation was received.

3. ADDITIONAL MATERIALS

City Manager stated that the following additional material was received after publishing this agenda packet:

- Communication from Niels Kisling regarding Historical Museum Board applicant Kristen Peterson (**Item 7.A.**);
- Communication from Ron Burke and Molly Ording regarding the Traffic and Parking Commission mission (**Item 9.C.**);
- Communication from Debbie Carson regarding establishing time limits for the submission of a complete project application by the proponents of the Monterey Park Skate Park (**Item 9.F.**).

4. ADDITIONS AND DELETIONS TO AGENDA

Mayor Norton stated that General Government (**Items 9.A., 9.B., 9.C., 9.D., and 9.E.**) will be addressed prior to Boards, Commissions and Committees Appointments (**Item 7.A.**); and the Consent Calendar items (**Items 8.A. and 8.B.**).

5. PUBLIC COMMENTS

Marie Martorella and Trica Proctor, proponents for the proposed skate park at Monterey Park, thanked the Council for their authorization to proceed with the proposal of a skate park at Monterey Park.

6. CITY COUNCIL / CITY TREASURER / STAFF COMMENTS

Council Member Termini announced the recipients of the 2015 Capitola-Soquel Chamber of Commerce Award.

Council Member Harlan stated that the Capitola Historical Museum will have a soft opening for museum volunteers on February 28th from 10 AM - 12 (Noon). The museum display will be open to the public on March 21st.

9. GENERAL GOVERNMENT / PUBLIC HEARINGS

A. Approve a modification to a general event permit for a fireworks show by the Monte Foundation in the City of Capitola. [485-10/1050-70]

Marc Monte, Monte Foundation, suggested that a fireworks barge be constructed and requested that the City consider storing it. He also suggested asking the Business Improvement Area Advisory Committee (BIA) to help advertise the fireworks show.

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Willie Case, Wharf House Restaurant Owner, complimented Monte Foundation for their fund raising events. He stated that the proposed date of the event would financially affect wharf businesses. He requested that the City Council compensate the Wharf House Restaurant and the Bait & Tackle Shop business for their loss of income on the weekend of the event.

Frank Ealy, Capitola Boat & Bait, complimented Monte Foundation for their fund raising events; however it causes his business to lose income.

ACTION

Motion made by Council Member Termini, seconded by Council Member Harlan, to authorize the City Manager to issue a special event permit for the Monte Foundation Fireworks Show for Sunday, October 11, 2015; and to forgive both the Wharf House Restaurant and the Bait & Tackle Shop rent for one month due to their loss of income caused by the wharf closure for the fireworks show. The motion was passed unanimously.

- B. Presentation regarding the Santa Cruz Metropolitan Transit District provided by Alex Clifford, CEO. [1170-10]

Alex Clifford, Santa Cruz Metropolitan Transit District CEO introduced the following Santa Cruz Metropolitan Transit District staff who provided comments regarding the presentation:

- Angela Aitken, Santa Cruz Metropolitan Transit District Finance Manager.
- Erich Friedrich, Santa Cruz Metropolitan Transit District Senior Transit Planner.
- April Warnock, Santa Cruz Metropolitan Transit District Paratransit Superintendent.

Ray Cancino, Community Bridges CEO, commented on the increasing Santa Cruz Metropolitan Transit District fares, and he mentioned various ways to help offset rising costs for services.

- C. Report regarding the Traffic and Parking Commission mission. [470-60]

Steve Piercy, New Brighton School Bike Club Volunteer Coordinator, suggested that those who walk or bicycle regularly be represented on the Traffic and Parking Commission.

Carin Hanna, local business owner, provided comments regarding the composition of the Traffic and Parking Commission. She suggested that the Council consider adding another Village Business Owner to the Commission; and that the Commission's mission focuses primarily on Village parking and traffic.

Nels Westman, Traffic and Parking Commission Chair, requested clarification on issues that the City Council may have regarding Traffic and Parking Commission.

ACTION

Motion made by Council Member Bertrand, seconded by Council Member Termini, directing the Traffic and Parking Commission (Commission) Chairman to discuss the Commission's mission and work plan at the Commission's next meeting, and return to the City Council with a report. The motion was passed unanimously.

CAPITOLA CITY COUNCIL MEETING MINUTES - February 26, 2015

12575

- D. 835 BAY AVENUE #15-011 APN: 035-011-03, 035-381-01
 Extension request for a Conditional Use Permit for the temporary display of a model manufactured home and monument sign permit for the manufactured home sales business (Ideal Homes) with the addition of temporary storage of vehicles for the Toyota Dealership in the CC (Community Commercial) Zoning District. Environmental Determination: Categorical Exemption.
 Property Owner: Redtree Properties, owner/filed: 1/22/15.
 Representative: John Barss, Ideal Homes; Gary Shipman, Toyota [730-10]

ACTION **Motion made by Council Member Bottorff, seconded by Council Member Bertrand, to approve an extension request for a Conditional Use Permit for the temporary display of a model manufactured home and monument sign permit for the manufactured home sales business (Ideal Homes) with the addition of temporary storage of vehicles for the Toyota Dealership in the CC (Community Commercial) Zoning District located at 835 Bay Avenue; APN: 035-011-03 and 035-381-01; and the area between the road and the parking lot shall be visually improved as a condition of the extension subject to approval by the Community Development staff. The motion was passed unanimously.**

- E. Consideration of Esplanade Park water use plan. [1160-10]
 Richard Lippi, 620 Monterey Avenue, suggested not replacing the lawn in high use areas.
 Trica Proctor, suggested cement benches be installed at Esplanade Park and also incorporate a community art project.

ACTION **Motion made by Council Member Bottorff, seconded by Council Member Bertrand, to replant and maintain the lawn areas at Esplanade Park; to discontinue watering both lawn areas as indicated at Monterey Park, and Jade Street Park with the exception of continued watering at the front entrance of the Community Center; to landscape the area indicated at Noble Gulch Park with drought tolerate plants. The motion was passed unanimously.**

- F. Consideration of establishing time limits for the submission of a complete project application by the proponents of the Monterey Park Skate Park. [1040-20]
 Elisabeth Russell, local resident, stated that she does not support the proposed skate park at Monterey Park. She asked the City Council to consider a Parks and Recreation Strategic Plan process that would create sustainable parks, recreation facilities and services.
 Richard Lippi, 620 Monterey Avenue, stated concerns regarding residents living near Monterey Park not receiving sufficient notice about the proposed skate park at Monterey Park.
 Dan Stiger, local resident, stated concerns regarding impacts to the community with adding a skate park at Monterey Park.

ACTION **Motion made by Council Member Termini, seconded by Council Member Bertrand, establishing a 90-day time limit for the submission of a complete project application by the proponents of the Monterey Park Skate Park. The motion carried with the following vote: AYES: Council Members Bottorff, Bertrand, Termini, and Mayor Norton. NOES: Council Members Harlan. ABSENT: None. ABSTAIN: None.**

12576 CAPITOLA CITY COUNCIL MEETING MINUTES - February 26, 2015

7. **BOARDS, COMMISSIONS AND COMMITTEES APPOINTMENTS**

- A. Review City Council appointments/reappointments to the City's Commission on the Environment, Traffic and Parking Commission, and the Historical Museum Board. [110-10].

ACTION Motion made by Council Member Termini, seconded by Council Member Bottorff, to approve the Capitola Historical Museum Board recommendation and appoint Kristen Petersen to fill a vacancy on the Capitola Historical Museum Board with a term ending June 2015. The motion was passed unanimously.

Council Member Harlan's appointment to the City's Commission on the Environment and the Traffic and Parking Committee will be continued to a future City Council meeting.

8. **CONSENT CALENDAR**

- A. Consider approving the January 8, 2015; January 22, 2015; and February 11, 2015, Regular City Council Meeting Minutes; and the January 29, 2015, Special City Council Workshop Meeting Minutes.
- B. Approval of City Check Register Reports dated January 16, 2015; January 23, 2015; January 30, 2015; February 6, 2015; and February 13, 2015. [300-10]

Richard Lippi, 620 Monterey Avenue, requested that Item 8.A. be pulled for discussion. He requested that the minutes of the February 11, 2015, Regular City Council meeting, include discussions regarding the costs incurred by the City for the proposed skate park at Monterey Park be paid for by the applicant, and Council Member Termini's comment regarding a large percentage of the neighbors adjacent to Monterey Park area being opposed to the project.

Council Member Bertrand requested that Item 8.B. be pulled for discussion regarding Check No. 79682 (County Settlement, Drain Pipe matter) of the City Check Register Reports.

City Manager Goldstein stated that the payment regarding the County Settlement Drain Pipe matter was to close out litigation costs regarding the Noble Gulch pipe failure that occurred in 2012.

ACTION Motion made by Council Member Termini, seconded by Council Member Bottorff, to approve the Consent Calendar Item 8.A. (as amended) and Item 8.B. were approved. The motion was passed unanimously.

10. **ADJOURNMENT**

At 9:40 PM Mayor Norton adjourned the meeting to the next Regular Meeting of the City Council to be held on Thursday, March 12, 2015, at 7:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

Dennis Norton, Mayor

ATTEST:

_____, CMC
Susan Sneddon, City Clerk



**ACTION SUMMARY MINUTES
CAPITOLA PLANNING COMMISSION
THURSDAY, MARCH 5, 2015
7 P.M. CITY COUNCIL CHAMBERS**

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

Commissioners: Ron Graves, Ed Newman, Linda Smith, Gayle Ortiz and TJ Welch

2. ORAL COMMUNICATIONS

- A. Additions and Deletions to Agenda
- B. Public Comment
- C. Commission Comment
- D. Staff Comments

3. APPROVAL OF MINUTES

- A. February 5, 2015, Draft Planning Commission Minutes

ACTION: Approved 3-0, 2 abstentions

4. CONSENT CALENDAR

- A. **Ordinance amending municipal code Chapter 17.03 to define supportive housing and transitional housing as required by state law.**

This project will require an amendment to the Local Coastal Plan.

Environmental Determination: Exempt

Applicant: City of Capitola

ACTION: Recommended for City Council approval 4-1

- B. **113 Oakland Ave #15-004 APN: 036-132-01**

Design Permit and Conditional Use Permit for an alteration on the rear elevation of a historic single-family home and new detached garage located in the R-1 (Single-Family Residential) Zoning District.

This project is in the Coastal Zone and requires a Coastal Development Permit, which is appealable to the California Coastal Commission after all possible appeals are exhausted through the City.

Environmental Determination: Categorical Exemption

Property Owner: Julie and Matt Haniger

Representative: Dennis Norton, filed 1/20/2015

ACTION: Approved 4-1

C. 4850 Opal Street #15-006 APN: 034-065-19

Design Permit for a rear addition to an existing single family residence located in the R-1 (Single Family Residential) Zoning District.

This project is in the Coastal Zone but is exempt from Coastal Development Permit.

Environmental Determination: Categorical Exemption

Property Owner: Dennis Leong

Representative: Linda Butler, filed: 1/20/15

ACTION: Approved 5-0

5. PUBLIC HEARINGS

A. 231 Esplanade #15-013 APN: 035-211-01

Sign Permit for two new wall signs and two menu signs at Margaritaville located at 231 Esplanade in the CV (Central Village) Zoning District.

This project is in the Coastal Zone but is exempt from a Coastal Development Permit.

Environmental Determination: Categorical Exemption

Property Owner: Steve Yates

Representative: Sarah Orr, filed: 1/26/15

ACTION: Approved 5-0

B. 4200 Auto Plaza Drive #15-020 APN: 034-141-30 and 31

Sign Permit Application for one additional internally illuminated wall sign at the Toyota car dealership in the CC (Community Commercial) Zoning District.

This property is not located in the Coastal Zone.

Environmental Determination: Categorical Exemption

Property Owner: Charles Canfield, filed 1/24/2015

Representative: Bob Fischer

ACTION: Approved 5-0

C. Zoning Title 17 Update – Issues and Options White Paper

Preliminary consideration of a comprehensive update to Title 17, Zoning, of the City of Capitola Municipal Code. An Issues and Options white paper will be distributed to the Planning Commission for initial discussion/review of Issues 1-4 at the April 2, 2015, meeting. The Issues and Options white paper outlines existing issues in the zoning code along with options to address each issue.

This project will require an update to the Local Coastal Plan.

Environmental Determination: To be determined

Staff: Katie Cattan, Senior Planner

Consultant: Ben Noble

ACTION: None

6. DIRECTOR'S REPORT

7. COMMISSION COMMUNICATIONS

8. ADJOURNMENT

Adjourned at 8:37 p.m. to the regular meeting of the Planning Commission to be held on Thursday, April 2, 2015, at 7 p.m. in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.



CITY COUNCIL AGENDA REPORT

MEETING OF MARCH 12, 2015

FROM: DEPARTMENT OF CITY MANAGER

SUBJECT: AMENDED AND RESTATED JOINT POWERS AGREEMENT WITH
MONTEREY BAY AREA SELF INSURANCE AUTHORITY

RECOMMENDED ACTION: That Council approves the draft Resolution approving the Amended and Restated Joint Powers Agreement (JPA) relating to the Monterey Bay Area Self Insurance Authority (MBASIA).

BACKGROUND: The City is a member of the MBASIA. The City obtains workers compensation, liability, and property insurance through this joint powers authority. Changes have occurred that necessitate updating and cleaning up certain areas of the JPA agreement. An Ad Hoc Committee of the MBASIA Board of Directors was created to review the JPA agreement. The proposed Amended and Restated JPA Agreement was reviewed with MBASIA's attorney and then submitted to the entire Board which approved the changes at their February 2, 2015, meeting.

DISCUSSION: The proposed amendment would make one substantive change to the JPA, which would allow the Authority to expel any Member Agency, with or without cause, as a participant in any program or as a member of the Authority by a two-thirds vote of the Board and 90 days notice.

The Amended and Restated JPA Agreement now must be approved by the governing bodies of the member cities. At least two thirds of the ten member cities need to approve the agreement for it to become binding for all members.

FISCAL IMPACT: None

ATTACHMENT:

1. Draft Resolution
2. Amended and Restated JPA relating to the MBASIA
3. Amended JPA with track changes

Report Prepared By: Larry Laurent
Assistant to the City Manager

Reviewed and Forwarded
By City Manager:

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RESOLUTION NO. _____

**A RESOLUTION OF THE COUNCIL OF THE CITY OF CAPITOLA,
COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA,
INTENTION TO APPROVE THE AMENDED JOINT POWERS AGREEMENT,
MONTEREY BAY AREA SELF INSURANCE AUTHORITY**

WHEREAS, California Government Code Section 990.4 provides that a local public entity may self-insure, purchase insurance through an authorized carrier, or purchase insurance through a surplus line broker, or any combination of these; and

WHEREAS, California Government Code Section 990.8 provides that two or more local entities may, by joint powers agreement, provide insurance for any purpose by anyone or more of the methods specified in Government Code Section 990.4; and

WHEREAS, the City of Capitola is currently a member of a Joint Powers Agreement through Monterey Bay Area Self Insurance Authority (MBASIA); and

WHEREAS, MBASIA is restructuring its governing documents; and

WHEREAS,, for the purpose of continuing liability and workers compensation insurance coverage in MBASIA's insurance pool, and as a result of this amendment to the governing documents, the City of Capitola will execute the amended Joint Powers Agreement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CAPITOLA RESOLVES THAT:

SECTION 1. The City Council does hereby give notice of intention to approve the Joint Powers Agreement, as amended February 2, 2015, approving MBASIA's amended Joint Powers Agreement, the terms and conditions contained therein, a copy of said agreement being attached hereto as "Exhibit A" and by this reference made a part hereof; and

SECTION 2. The City Manager may execute said Joint Powers Agreement on behalf of the City of Capitola.

SECTION 3. This Resolution is effective upon its adoption.

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 12th day of March, 2015, by the following vote:

- AYES:
- NOES
- ABSENT:

Dennis Norton, Mayor

ATTEST:

Susan Sneddon, CMC

Attachments: Exhibit A
Joint Powers Agreement for Monterey Bay Area Self Insurance Authority (MBASIA)

DRAFT

**AMENDED AND RESTATED JOINT POWERS AGREEMENT
RELATING TO THE
MONTEREY BAY AREA SELF-INSURANCE AUTHORITY**

THIS AMENDED AND RESTATED JOINT POWERS AGREEMENT (the 'Agreement') is made and entered into by and among the public agencies (the "Members") organized and existing under the laws of the State of California, which are signatories to this Agreement.

RECITALS

WHEREAS, California Government Code Section 6500 *et seq.* (the "Act") provides that two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

WHEREAS, California Government Code Section 990.4 provides that a local public entity may self-insure, purchase insurance through an authorized carrier, purchase insurance through a surplus line broker, or any combination of these; and

WHEREAS, California Government Code Section 990.8 provides that two or more local entities may, by a joint powers agreement, provide insurance for any purpose by anyone or more of the methods specified in Government Code Section 990.4; and

WHEREAS, the parties to this Agreement desire to join together for the purposes set forth in Article 2 hereof, including establishing pools for self-insured losses and purchasing Excess or Re-Insurance and administrative services in connection with joint protection programs (the "Programs") for Members of the Monterey Bay Area Self-Insurance Authority, formerly known as the Monterey Bay Area Self-Insurance Fund ("Authority"); and

WHEREAS, the Members have previously executed that certain Joint Powers Agreement establishing the Monterey Bay Area Self-Insurance Fund, which the Members desire to amend and restate by this Agreement; provided that such amendment and restatement shall not affect the existence of the Authority; and

NOW, THEREFORE, the cities of Capitola, Gonzales, Greenfield, Hollister, King City, Marina, Scotts Valley, Soledad, Sand City, and Del Rey Oaks, each of them in consideration of the mutual promises and agreements hereinafter stated and the performance thereof, do hereby agree as follows:

Article 1, Definitions, The following definitions shall apply to the provisions of this agreement:

"Act" means Articles 1 through 4 (commencing with Section 6500) of Chapter 5 Division 7, Title 1 of the California Government Code, as amended or supplemented.

"Assessment" means an amount in addition to the Member's or Former Member's Contribution which the Board of Directors determines in accordance herewith and/or that a Member of Former Member owes on account of its participation in, or the financing of, a program for a given Program year.

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"Authority" shall mean the Monterey Bay Area Self-insurance Authority initially created by the original Joint Powers Agreement Relating to the Monterey Bay area Self-Insurance Fund.

"Board of Directors" or "Board" shall mean the governing body of the Authority.

"Bonds" shall mean bonds, notes or other obligations issued or incurred by the Authority in order to finance or refinance any program of Claims.

"Bylaws" means the Bylaws of the Authority adopted by the Board of Directors, as they may be amended from time to time.

"Claim" shall mean a demand made by or against a Member or Former Member which is or may be covered by one of the Programs approved by the Board of Directors.

"Contribution" means the amount determined by the Board of Directors to be the appropriate sum which a Member should pay at the commencement of or during the program year in exchange for the benefits provided by the Program, including all amounts necessary to pay claims, debt service on Bonds and all other costs or expenses of a Program.

"Director" shall mean the city manager, city administrator or appointee of a member, or an alternate appointed by a city manager.

"Duly Constituted Board Meeting" shall mean any Board of Directors meeting noticed and held in the required manner and at which a quorum was determined in accordance with the Bylaws to be present at the beginning of the meeting.

"Estimated Contribution" means the amount which the Board of Directors estimates will be the appropriate contribution for a Member's participation in a Program or a Program Year.

"Fiscal Year" shall mean that period of twelve months which is established as the fiscal year of the Authority.

"Former Member" shall mean a city or other public entity which was a signatory to the Agreement but which has withdrawn from or been involuntarily terminated from participating in the Authority.

"Insurance" shall mean that, primary, excess or reinsurance which may be purchased on behalf of the Authority and/or the Members to protect the funds of the Members or Former Members against catastrophic losses or an unusual frequency of losses during a single year in excess of the self-Insurance retention maintained by the Authority.

"Joint Protection Program" means a program offered by the Authority, separate and distinct from other Programs, wherein Members will jointly pool their losses and claims, jointly purchase Excess or Re-Insurance and administrative and other services, including claims adjusting, data processing, risk management consulting, loss prevention, legal and related services.

"Member" shall mean a signatory to this Agreement, which is qualified as a Member under the provisions of this Agreement and the Bylaws.

"Program" or "Programs" means the specific type of protection plan as set forth in the terms, conditions and exclusions of the Coverage Documents for self-insured losses, and the purchasing of Excess or Re-Insurance and administrative services.

"Program Administrator" shall mean the employee or contract service firm appointed by the Board of Directors of the Authority to administer the Authority.

"Retained Earnings", as used herein, shall mean an equity account reflecting the accumulated earnings of a Joint Protection Program.

Article 2. Purposes. This Agreement is entered into by the Members pursuant to the provisions of California Government Code Section 990, 990A, 990.8 and 6500 *et seq.* in order to provide, subject to the provisions of the Coverage Documents, economical public liability and workers' compensation coverage, or coverage for other risks which the Board of Directors may determine.

Additional purposes are to reduce the amount and frequency of losses, and to decrease the cost incurred by Members in the handling and litigation of claims. These purposes shall be accomplished through the exercise of the powers of such Members jointly in the creation of a separate entity, namely the Monterey Bay Area Self-Insurance Authority (the "Authority"), to establish and administer Programs as set forth herein and in the Bylaws.

It is also the purpose of this Agreement to provide; to the extent permitted by law; for the inclusion at a subsequent date, and subject to approval by the Board of Directors, of such additional Members organized and existing under the laws of the State of California as may desire to become parties to the Agreement and Members of the Authority.

Article 3. Parties to Agreement. Each party to this Agreement certifies that it intends to, and does contract with all other parties who are signatories to this Agreement and, in addition, with such other parties as may later be added as parties to and signatories of this Agreement pursuant to Article 18. Each party to this Agreement also certifies that the withdrawal from or cancellation of membership by any Member, pursuant to Articles 19, 20 and 21, or otherwise, shall not affect this Agreement nor such party's intent, as described above, to contract with the other remaining parties to the Agreement.

Article 4. Term of Agreement. This Agreement shall become effective as to existing Members of the Authority as set forth in Article 34 hereof. This Agreement shall continue thereafter until terminated as hereinafter provided. This Agreement shall become effective as to each new Member upon: (i) approval of its membership by the Board of Directors, (ii) the execution of this Agreement by the Member, and (iii) upon payment by the Member of its initial Contribution for a Program. Any subsequent amendments to the Agreement shall be in accordance with Article 28 of this Agreement.

Article 5. Creation of Authority. Pursuant to the Act, there is hereby created a public entity separate and apart from the parties hereto, to be known as the Monterey Bay Area Self-Insurance Authority. Pursuant to Section 6508.1 of the Act, the debts, liabilities and obligations of the Authority, including but not limited to, debts, liabilities and obligations of any of the Programs shall not constitute debts, liabilities or obligations of any party to this Agreement or to any Member or Former Member.

The Authority is not an insurer, and the coverage programs offered by the Authority do not provide insurance, but instead provide for pooled joint protection programs among the

members of the Authority. The Joint Protection Programs offered by the Authority constitute negotiated agreements among the Members which are to be interpreted according to the principles of contract law, giving full effect to the intent of the Members, acting through the Board of Directors in establishing the Programs.

Article 6. Powers of Authority.

(a) The Authority shall have all of the powers common to Members and is hereby authorized to do all acts necessary for the exercise of said common powers, including but not limited to, any or all of the following:

(1) to make and enter into contracts, including the power to accept the assignment of contracts or other obligations which relate to the purposes of the Authority, or which were entered into by a Member or Former Member prior to joining the Authority, and to make claims, acquire assets and incur liabilities;

(2) to incur debts, liabilities, or other obligations, including those which are not debts, liabilities or obligations of the Members or Former Members, or any of them;

(3) to charge and collect Contributions and Assessments from Members or Former Members for participation in Programs;

(4) to receive grants and donations of property, funds, services and other forms of assistance from persons, firms, corporations and governmental entities;

(5) to acquire, hold, lease or dispose of property, contributions and donations of property and other forms of assistance from persons, firms, corporations and governmental entities;

(6) to acquire, hold or dispose of funds, services, donations and other forms of assistance from persons, firms, corporations and governmental entities;

(7) to employ agents and employees, and/or to contract for such services;

(8) to incur long term debt, including the issuance of Bonds, notes and liabilities or other obligations to finance the Programs if seventy-five percent (75%) of the Members voting agree, and enter into agreements with respect thereto and to exercise any other powers available to the Authority under Article 2 or Article 4 of the Act;

(9) to enter into agreements for the creation of separate public entities and agencies pursuant to the Act;

(10) to sue and be sued in its own name;

(11) to exercise all powers and perform all acts as otherwise provided for in the Bylaws.

(b) Said powers shall be exercised pursuant to the terms hereof, in the manner provided by law and in accordance with Section 6509 of the Act. The foregoing powers shall be subject to the restrictions upon the manner of exercising such powers pertaining to the Member or Former Member designated in the Bylaws.

Article 7. Board of Directors. Subject to the limitations of this Agreement and the laws of the State of California, the powers of this Authority shall be vested in and exercised by, and its property controlled and its affairs conducted by, the Board of the Authority, which is hereby established and designated as the agency to administer this Agreement pursuant to Section 6506 of the Act. The powers of the Authority shall be exercised through the Board of Directors, who may, from time to time, adopt and modify Bylaws and other rules and regulations for that purpose and for the conduct of its meetings as it may deem proper. The officers of the Board shall be set forth in the Bylaws.

The Board of Directors shall be composed of a Director from each Member that has executed the Agreement and is participating in a Joint Protection Program. Each director on the Board shall have one vote. Each director on the Board shall serve as set forth in the Bylaws.

Article 8. Compliance with the Brown Act. All meetings of the Board, including, without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, California Government Code Section 54950 *et seq.*

Article 9. Powers of the Board of Directors. The Board of Directors Shall have such powers and functions as provided for pursuant to this Agreement and the Bylaws and such additional powers as necessary or appropriate to fulfill the purposes of this Agreement and the Bylaws, including, but not limited to, the following:

- (a) to exercise all powers to conduct all business of the Authority;
- (b) to determine details of and select the Program or Programs to be offered, from time to time, by the Authority;
- (c) to determine and select all insurance, including Excess or Re-Insurance, necessary to carry out the programs of the Authority;
- (d) to contract for, develop or provide through its own employees various services for the Authority;
- (e) to prepare or cause to be prepared the operating budget of the Authority for each fiscal year;
- (f) to receive and act upon reports of committees and from the Chief Executive Officer;
- (g) to appoint staff, including a Program Administrator, and employ such persons as the Board of Directors deems necessary for the administration of this Authority;
- (h) to direct, subject to the terms and conditions of the Coverage Documents, the payment, adjustment, and defense of all claims Involving a Member during their period of membership in and coverage under a Program;
- (i) to fix and collect from time to time Contributions and Assessments for participation in the Programs;
- (j) to expend funds of the Authority for the purpose of carrying out the provisions of the Agreement and the Bylaws as they now exist or may be hereafter amended;

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(k) to purchase excess insurance, liability insurance, stop loss insurance, officers and directors liability insurance, and such other insurance as the Authority may deem necessary or proper to protect the Program, employees of the Authority and employees of the Members;

(l) to defend, pay, compromise, adjust and settle all claims as provided for in the Coverage Documents;

(m) to obtain a fidelity bond in such amount as the Board of Directors may determine for any person or persons who have charge of or the authority to expend funds for the Authority;

(n) to establish policies and procedures for the operation of the Authority and the Programs;

(o) to engage, retain, and discharge agents, representatives, firms, or other organizations as the Board of Directors deems necessary for the administration of the Authority;

(p) to enter into any and all contracts or agreements necessary or appropriate to carry out the purposes and actions of the Authority;

(q) to acquire, hold, lease, manage and dispose of, as provided by law, any and all property necessary or appropriate to carry out the purposes and functions of the Authority;

(r) to transact any other business which is within the powers of the Board of Directors;

(s) to invest funds on hand in a manner authorized by law, the Agreement and the Bylaws;

(t) to incur indebtedness for the Authority or provide for the issuance of Bonds, and to establish the terms and conditions of such indebtedness;

(u) to provide financial administration, claims management services, legal representations, safety engineering, annual audits, actuarial services, and other services necessary or proper to carry out the purposes of the Authority either through its own employees or contracts with one or more third parties;

(v) to exercise general supervisory and policy control over the Program Administrator;

(w) to establish committees and sub-committees as it deems necessary to best serve the interests of the Authority;

(x) to take such actions as may be necessary to enforce this Agreement against any Member; and

(y) to have such other powers and functions as are provided for pursuant to the Act, this Agreement or necessary or appropriate to fulfill the purpose of this Agreement and the Bylaws.

Article 10. Committees of the Board. Committees established by the Board shall be standing or special. Each committee shall exercise such power and carry out such

functions as are designated by this Agreement or the Bylaws or as delegated to it by the Board or an Executive Committee. Except as otherwise provided by the Board, or these Bylaws, such committees shall be advisory only and subject to the control of the Board or an Executive Committee, Whichever appoints them. Except as may otherwise be provided by the Board, or by these Bylaws, any expenditure of funds by a committee shall require prior approval by the Board.

Article 11. Officers of the Authority. The officers of the Authority shall be as set forth in the Bylaws. The Board may elect or authorize the appointment of such other officers than those described in the Bylaws as the business of the Authority may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in this Agreement, or as the Board, from time to time, may authorize or determine.

Any officer may be removed, either with or without cause, by a majority of the Directors of the Board at any regular or special meeting of the Board. Should a vacancy occur in any office as a result of death, resignation, removal, disqualification or any other case, the Board may delegate the powers and duties of such office to any officers or to any Members of the Board until such time as a successor for said office has been appointed.

Article 12. Extension of Agreement. The provisions of this agreement may be extended to incorporate "pooling" of other forms of insurance, including fire insurance and liability insurance, under such conditions as are stated in an appropriate addendum to this agreement, provided each agency participating herein consents in writing to such increased or additional purpose and power.

Article 13. Provision for Bylaws. The Board shall promulgate Bylaws to govern the day-to-day operations of the Authority. The Board may amend the Bylaws from time to time as it deems necessary, and as provided in the Bylaws. Each Member shall receive a copy of any Bylaws and agrees to be bound by and to comply with all of the terms and conditions of the Bylaws as they exist or as they may be modified. The Bylaws shall be consistent with the terms of this agreement. In the event any provision of the Bylaws conflicts with a provision of this Agreement, the provision contained in this Agreement shall control.

Article 14. Coverage Programs.

(a) The Authority shall maintain such types and levels of coverage for Programs as determined by the Board of Directors, Such coverage may provide for binding arbitration before an independent arbitration panel of any disputes concerning coverage between the Authority and a Member.

(b) The coverage afforded under one or more Programs may include protection for general liability, auto liability, property, boiler and machinery, public officials errors and omissions, employment practices, employee benefits liability coverage, employee dishonesty coverage, and workers' compensation, as well as coverage for other risks which the Board of Directors may determine to be advisable. More than one type of coverage may be afforded under a single Program.

(c) The Board of Directors may arrange for group policies to be issued for Members, their board members and employees interested in obtaining additional coverage, at an appropriate additional cost to those participating Members.

(d) The Board of Directors may arrange for the purchase of Insurance. The Authority Shall not be liable to any Member or to any other person or organization if such excess or re-insurance policies are terminated, canceled or non-renewed without prior notice to one or more Members, or if there is a reduction in the type of coverage afforded under a program by reason of any change in coverage in a succeeding excess or reinsurance policy, even if such reduction occurs without prior notice to one or more Members. If insurance limits purchased are insufficient for the settlement of a claim or a judgment, the amount in excess of the covered amount is the responsibility of the member.

Article 15, Accounts and Records,

(a) **Annual Budget.** The Authority shall, pursuant to the Bylaws, annually adopt an operating budget, including budgets for each Joint Protection Program.

(b) **Funds and Accounts.** The Authority shall establish and maintain such funds and accounts as determined by the Board of Directors to be necessary or advisable and as may be required by generally accepted accounting principles, including separate funds and accounts for each Program, including Joint Protection Programs. Books and records of the Authority shall be open to any inspection at all reasonable times by authorized representatives of Members, or as otherwise required by law.

(c) **Investments.** Subject to the applicable provisions of any indenture, trust agreement, or resolution relating to the issuance of Bonds and providing for the investment of monies held thereunder, the Authority shall have the power to invest any money in the treasury that is not required for the immediate necessities of the Authority, as the Board determines is advisable, in the same manner as local agencies pursuant to California Government Code Sections 53601 *at seq.* (as such provisions may be amended or supplemented).

(d) **No Commingling.** The various funds, reserves and accounts of each Program shall not be commingled and shall be accounted for separately; provided, however, that administration and overhead expenses of the Authority not related to a specific Program or Programs may be fairly and equitably allocated among Programs as determined by the Board of Directors. Investments and cash accounts may be combined for administrative convenience, but a separate accounting shall be made for balances of individual funds and Program revenues and expenses.

(e) **Annual Audit.** The Board shall provide for a certified, annual audit of the accounts and records of the Authority.

Article 16. Services Provided by the Authority. The Authority may provide, at the sole discretion of the Board of Directors, the following services in connection with this Agreement:

(a) to provide or procure coverage, including but not limited to self-insurance funds and commercial insurance, as well as excess coverage, re-insurance and umbrella insurance, by negotiation or bid, and purchase;

(b) to assist Members in obtaining insurance coverage for risks not included within the coverage of the Authority;

- (c) to assist risk managers with the implementation of risk management functions as it relates to risks covered by the Programs in which the Member participates;
- (d) to provide loss prevention and safety consulting services to Members;
- (e) to provide claims adjusting and subrogation services for Claims covered by the Programs;
- (f) to provide loss analysis and control by the use of statistical analysis, data process, and record and file keeping services, in order to identify high exposure operations and to evaluate proper levels of self-retention and deductibles;
- (g) to review Member contracts to determine sufficiency of indemnity and insurance provisions when requested;
- (h) to conduct risk management audits relating to the participation of Members in the Programs; and
- (i) to provide such other services as deemed appropriate by the Board of Directors

Article 17. Duties and Responsibilities of Members. Members or Former Members shall have the following duties and responsibilities, which shall survive the withdrawal from, or involuntary termination of participation in, this Agreement:

- (a) Each Member shall designate a person to be responsible for the risk management function within that Member and to serve as a liaison between the Member and the Authority as to risk management.
- (b) Each Member shall maintain an active safety officer and/or committee, and shall consider all recommendations of the Authority concerning unsafe practices and/or hazard mitigation.
- (c) Each Member shall maintain its own set of records, including a loss log, in all categories of risk covered by each Program in which it participates to insure accuracy of the Authority's loss reporting system, unless it is no longer deemed necessary by the Board of Directors,
- (d) Each Member shall pay its Contribution, and any adjustments thereto, and any Assessments within the specified period set forth in the invoice, or as otherwise may be set forth herein or in the Bylaws. After withdrawal or termination, each Former Member or its successor shall pay promptly to the Authority its share of any additional Contribution, adjustments or Assessments, if any, as required of it by the Board of Directors under Article 22 or 23 of this Agreement or the Bylaws.
- (e) Each Member or Former Member shall provide the Authority with such, other information or assistance as may be necessary for the Authority to carry out the Programs under this Agreement in which the Member or Former Member participates or has participated.

(f) Each Member or Former Member shall in any and all ways cooperate with and assist the Authority and any insurer of the Authority, in all matters relating to this Agreement and covered claims.

(g) Each Member or Former Member will comply with all Bylaws, rules and regulations adopted by the Board of Directors.

Article 18. New Members. The Authority shall allow entry into its Programs of new Members only upon approval of the Board, with any conditions or limitations as the Board, deems appropriate.

Article 19. Voluntary Withdrawal of a Member.

Subject to Article 20, any member may voluntarily withdraw from the Authority if that Member has participated in the Authority for a minimum of three full Program years, and the Member's governing board gives notice to the Board of Directors of the Authority no later than March 1st of the preceding fiscal year of the Member's intent to withdraw from the Authority,

If withdrawal is permitted as set forth above, the Member's participation in the Authority shall terminate at the end of the fiscal year in which notice was given, provided, however, that any Member desiring to leave the Authority shall remain liable for all expenses in excess of Contribution until Claims of the withdrawing Member are settled and obligations to claimants met, the Member formally withdraws from the Authority, and the Member acknowledges that it has no interest in any of the assets of the Authority.

If additional funds are required to settle Claims or obligations of the terminating Member the Board may declare and collect the Assessments or Contributions necessary from the Member. After all Claims and obligations of the terminating Member are met the Board shall determine if any refund of Assessment or Contribution is due and refund such amount.

Article 20. Worker's Compensation Program Financing Requirements

Each Member acknowledges that the Authority intends to issue, during calendar year 2004, Bonds in order to fund reserves that the Authority has determined are currently inadequate for the Claims to be paid by the Authority with respect to its worker's compensation program incurred prior to June 30, 2003, and that the debt service on such Bonds will be payable primarily from a portion of the annual worker's compensation Contributions paid by each Member for the Claims incurred prior to June 30, 2003, Accordingly, each Member agrees and acknowledges that, so long as any such Bonds are outstanding or any other amounts remain owing with respect thereto, (i) that it will not withdraw from the Authority (and any attempted withdrawal will be null and void), (ii) that it will obtain its worker's compensation insurance coverage solely through the Authority or in connection with the Authority (except for any self-funded retention and any excess worker's compensation coverage), (iii) that a portion of the worker's compensation Assessments and Contributions charged to the Member will be used to pay debt service on such Bonds, or to provide for costs, expenses, reserves or debt service coverage with respect to such Bonds in an amount as may be required by the documents pursuant which such Bonds are issued, (iv) that the amount of Assessments and Contributions which may be due include all amounts necessary to pay debt service and related costs with respect to any Bonds, as set forth in clause (iii) above, including additional amounts which may become due from time to time as the result of a default by another Member or Former Member, (v) that it will pay, as required

by the bond or note documentation, all of the Assessments and Contributions due to the Authority, (vi) that the Assessments and Contributions will be payable from any source of available funds of the Member, including amounts on deposit in the general fund of the Member, and (vii) that each Member will take such action as may be necessary to include all Assessments and Contributions due in each of its approved budgets, and to amend such budget if necessary to include any Assessment and Contribution amount not included in its original budget, for so long as it remains, a Member of the Authority and to make the necessary appropriations for all such Assessments and Contributions. Notwithstanding the foregoing, if the documentation relating to the Bonds allows for the early retirement of the Bonds, a Member may withdraw from the Authority and have no liability with respect to any future Assessments or Contributions if it prepays its obligations with respect to such Bonds, as such obligations are set forth in the applicable Bond documentation.

Article 21. Involuntary Termination

(a) Notwithstanding the provisions of Article 20 and 21, the Authority Shall have the right to involuntarily terminate any Member's participation in any Program, or terminate membership in the Authority if a Member breaches any duty or responsibility pursuant to Article 17 imposed on Members to this Agreement.

(b) The Authority may expel any Member Agency, with or without cause, as a participant in any program or as a member of the Authority by a two-thirds vote of the Board and 90 days notice.

(c) Notwithstanding any other provisions of this Agreement, the participation of any Member of the Authority, including participation in any of the Authority's Programs, may be involuntarily terminated at the discretion of the Board of Directors whenever such Member is dissolved, consolidated, merged or annexed. A reasonable time shall be afforded, in the discretion of the Board of Directors, to place coverage elsewhere. Any such involuntary termination shall not relieve the Member or Former Member of its responsibilities as provided for in Articles 19, 20 and 23.

(d) Any involuntary termination occurring during any period that Bonds, are outstanding shall be subject to the requirement that the obligations of the Member being terminated with respect to such Bonds, are prepaid, either by such Member or by the Authority.

Article 22. Effect of Withdrawal or Involuntary Termination. The withdrawal from or involuntary termination of any Member from this Agreement shall not terminate this Agreement, and such Member, by withdrawing or being involuntarily terminated, shall not be entitled to payment, return or refund of any Contribution, prior Assessment, prior consideration, or other property paid, or donated by the Member to the Authority, or to any return of any loss reserve contribution, or to any distribution of assets (except payment of any Retained Earnings, as set forth in the following paragraph). If a Member or Former Member withdraws or is involuntarily terminated from a program with a negative Net Position, the Member or Former Member will not receive any distribution of assets from either program.

The withdrawal from or involuntary termination of any Member after the effective date of any Program shall not terminate its responsibility to pay its unpaid Contribution adjustments, or Assessments to such Program. The Board of Directors shall determine the final amount due from the Member or Former Member or credits to the Member or Former Member for the period of its participation. Such determination shall not be made until all

Claims, or other unpaid liabilities, have been finally resolved. In connection with this determination, the Board of Directors may exercise similar powers to those provided for in Article 23(b) of this Agreement. Upon such withdrawal from or cancellation of participation in any Program by any Member, said Member shall be entitled to receive its pro rata share of any Retained Earnings applicable to the time of its participation even though such Retained Earnings are declared by the Board of Directors after the date of said Member withdraws or is involuntarily terminated.

Article 23. Termination and Distribution; Assignment.

(a) if no Bonds remain outstanding, this Agreement may be terminated any time with the written consent of two-thirds of the voting Members; provided, however, that this Agreement and the Authority shall continue to exist for the purpose of disposing of all Claims, distribution of net assets and all other functions necessary to wind up the affairs of the Authority.

(b) The Board of Directors is vested with all powers of the Authority for the purpose of winding up and dissolving the business affairs of the Authority. These powers shall include the power to require Members or Former Members, including those which were signatory hereto at the time the subject Claims arose or was/were incurred, to pay any Assessment or Contribution in accordance with loss allocation formulas for final disposition of all Claims and losses covered by this Agreement or the Bylaws. A Member or Former Member's Assessment or Contribution shall be determined as set forth by the Board or the applicable Coverage Documents.

(c) Upon termination of a Program, all net assets of such Program shall be distributed only among the Members that are participating in such Program at the time of termination, in accordance with the proportionate to their cash payments (including Contributions, adjustments, Assessments and other property at market value when received) made during the term of this Agreement for such Program. The Board of Directors shall determine such distribution within six (6) months after disposal of the last pending Claim or loss covered by such Program.

(d) Upon termination of this Agreement all net assets of the Authority shall be distributed only among the Members in good standing at the time of such termination in accordance with and proportionate to their cash contributions and property at market value when received. The Board of Directors shall determine such distribution within six (6) months after disposal of the last pending Claim or loss covered by this Agreement.

(e) In lieu of terminating this Agreement, the Board, With the written consent of two-thirds of the voting Members, may elect to assign and transfer all of the Authority's rights, assets, liabilities and obligations to a successor joint powers authority created under the Act.

Article 24. Enforcement. The Authority is hereby granted authority to enforce this Agreement. In the event action is instituted to enforce the terms of this Agreement, the Bylaws and/or any policies and/or procedures of the Board of Directors and the non-defaulting party(s) should employ attorneys or incur other expenses for the collection of monies or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party(s) herein contained, the defaulting party agrees that it will on demand therefore pay to the non-defaulting party(s) the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party(s).

Article 25. Non-liability of Directors, Officers and Employees. The Board of Directors, and the officers and employees of the Authority, including former directors, officers and employees, shall not be liable to the Authority, to any Member or Former Member, or to any other person, for actual or alleged breach of duty, mistake of judgment, neglect, error, misstatement, misleading statement, or any other act or omission in the performance of their duties hereunder; for any action taken or omitted by any employee or independent contractor; for loss incurred through the investment or failure to invest funds; or for loss attributable to any failure or omission to procure or maintain insurance; except in the event of fraud, gross negligence, or intentional misconduct of such director, officer or employee. No director, officer or employee, including former directors, officers and employees, shall be liable for any action taken or omitted by any other director, officer or employee. The Authority shall defend and shall indemnify and hold harmless its directors, officers and employees, from any and all claims, demands, causes of action, and damages arising out of their performance of their duties as such directors, officers or employees of the Authority except in the event of fraud, gross negligence, corruption, malice or intentional misconduct, and the funds of the Authority shall be used for such purpose. The Authority may purchase conventional insurance to protect the Authority, and its participating Members or Former Members, against any such acts or omissions by its directors, officers and employees, including former directors, officers and employees.

Article 26. Indemnification and Release. Each Member shall and hereby agrees to indemnify and save the Authority and all other Members harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of any breach or default on the part of such Member in the performance of any of its obligations under this Agreement, or any act or negligence of such Member or any of its agents, contractors, servants, employees or licensees with respect to the coverage provided such Member. No indemnification is made under this section or elsewhere in this Agreement by the Authority or its officers, agents, employee successors or assigns.

Article 27. Notices. Notices to Members or Former Members hereunder shall be sufficient if delivered to the principal office of the respective Member or Former Member.

Article 28. Amendment. This Agreement may be amended at any time by a two-thirds vote of the Members. The Bylaws may be amended as provided therein. Upon the effective date of any validly approved amendment to this Agreement, such amendment shall be binding on all Members.

Article 29. Prohibition Against Assignment. No person or organization shall be entitled to assert the rights, either direct or derivative, of any Member or Former Member under any coverage agreement or memorandum. No Member or Former Member may assign any right, claim or interest it may have under this Agreement, and no creditor, assignee or third party beneficiary of any Member or Former Member shall have any right, claim or title or any part, share, interest, fund, contribution or asset of the Authority.

Article 30. Agreement Complete. The foregoing constitutes the full and executed Agreement of the parties. There are no oral understandings or agreements not set forth in writing herein. This Agreement supersedes and replaces all previous agreements..

Article 31. Counterparts. This Agreement may be executed in one or more counterparts and shall be as fully effective as fully effective as though executed in one document.

Article 32. California law. This Agreement shall be governed by the laws of the State of California.

Article 33. Severability. Should any part, term or provision of this Agreement be determined by any court of competent jurisdiction to be illegal or in conflict with any law of the State of California or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

Article 34. Effective Date. This Agreement shall become effective as to existing Members of the Authority on the date on which at least two-thirds of such Members have executed this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by authorized officials on the date indicated below:

Acknowledgment:

Date: [Click here to enter a date.](#)

Your Name, Title
City of [Choose an item.](#)

I hereby certify this amended and Restated Joint Powers Agreement has also received the required approval of not less than two-thirds of the Member entities then parties to the Joint Powers Agreement.

Date: _____

Michael Simmons, Program Administrator
MONTEREY BAY AREA SELF-INSURANCE AUTHORITY

**AMENDED AND RESTATED JOINT POWERS AGREEMENT
RELATING TO THE
MONTEREY BAY AREA SELF-INSURANCE AUTHORITY**

THIS AMENDED AND RESTATED JOINT POWERS AGREEMENT (the 'Agreement) is made and entered into by and among the public agencies (the "Members") organized and existing under the laws of the State of California, which are signatories to this Agreement.

RECITALS

WHEREAS, California Government Code Section 6500 *et seq.* (the "Act") provides that two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

WHEREAS, California Government Code Section 990.4 provides that a local public entity may self-insure, purchase insurance through an authorized carrier, purchase insurance through a surplus line broker, or any combination of these; and

WHEREAS, California Government Code Section 990.8 provides that two or more local entities may, by a joint powers agreement, provide insurance for any purpose by anyone or more of the methods specified in Government Code Section 990.4; and

WHEREAS, the parties to this Agreement desire to join together for the purposes set forth in Article 2 hereof, including establishing pools for self-insured losses and purchasing Excess or Re-Insurance and administrative services in connection with joint protection programs (the "Programs") for Members of the Monterey Bay Area Self-Insurance Authority, formerly known as the Monterey Bay Area Self-Insurance Fund ("Authority"); and

WHEREAS, the Members have previously executed that certain Joint Powers Agreement establishing the Monterey Bay Area Self-Insurance Fund, which the Members desire to amend and restate by this Agreement; provided that such amendment and restatement shall not affect the existence of the Authority; and

~~**WHEREAS**, the City of Seaside, one of the member public entities of the Joint Powers Agreement establishing the Monterey Bay Area Self-Insurance Fund has complied with all previous terms and provisions of the then existing agreement and has withdrawn its membership in that Joint Powers Agreement;~~

NOW, THEREFORE, the cities of Capitola, Gonzales, Greenfield, Hollister, King City, Marina, Scotts Valley, Soledad, Sand City, and Del Rey Oaks, each of them in consideration of the mutual promises and agreements hereinafter stated and the performance thereof, do hereby agree as follows:

Article 1, Definitions, The following definitions shall apply to the provisions of this agreement:

"Act" means Articles 1 through 4 (commencing with Section 6500) of Chapter 5 Division 7, Title 1 of the California Government Code, as amended or supplemented.

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"Assessment" means an amount in addition to the Member's or Former Member's Contribution which the Board of Directors determines in accordance herewith and/or that a Member or Former Member owes on account of its participation in, or the financing of, a program for a given Program year.

"Authority" shall mean the Monterey Bay Area Self-insurance Authority initially created by the original Joint Powers Agreement Relating to the Monterey Bay area Self-Insurance Fund.

"Board of Directors" or "Board" shall mean the governing body of the Authority.

"Bonds" shall mean bonds, notes or other obligations issued or incurred by the Authority in order to finance or refinance any program of Claims.

"Bylaws" means the Bylaws of the Authority adopted by the Board of Directors, as they may be amended from time to time.

~~"Chief Executive Officer" shall mean that employee or officer of the Authority or of a Member who is so appointed by the Board of Directors.~~

"Claim" shall mean a demand made by or against a Member or Former Member which is or may be covered by one of the Programs approved by the Board of Directors.

"Contribution" means the amount determined by the Board of Directors to be the appropriate sum which a Member should pay at the commencement of or during the program year in exchange for the benefits provided by the Program, including all amounts necessary to pay claims, debt service on Bonds and all other costs or expenses of a Program.

~~"Director" shall mean the city manager or chief executive officer appointee of a member, or an alternate appointed by a city manager or chief executive officer.~~

"Duly Constituted Board Meeting" shall mean any Board of Directors meeting noticed and held in the required manner and at which a quorum was determined in accordance with the Bylaws to be present at the beginning of the meeting.

"Estimated Contribution" means the amount which the Board of Directors estimates will be the appropriate contribution for a Member's participation in a Program or a Program Year.

~~"Excess Insurance or Re-Insurance" shall mean that insurance which may be purchased on behalf of the Authority and/or the Members to protect the funds of the Members or Former Members against catastrophic losses or an unusual frequency of losses during a single year in excess of the self-insurance retention maintained by the Authority.~~

"Fiscal Year" shall mean that period of twelve months which is established as the fiscal year of the Authority.

"Former Member" shall mean a city or other public entity which was a signatory to the Agreement but which has withdrawn from or been involuntarily terminated from participating in the Authority.

"Insurance" shall mean that, primary, excess or reinsurance which may be purchased on behalf of the Authority and/or the Members to protect the funds of the

Members or Former Members against catastrophic losses or an unusual frequency of losses during a single year in excess of the self-insurance retention maintained by the Authority.

"Joint Protection Program" means a Program offered by the Authority, separate and distinct from other Programs, wherein Members will jointly pool their losses and claims, jointly purchase Excess or Re-Insurance and administrative and other services, including claims adjusting, data processing, risk management consulting, loss prevention, legal and related services.

"Member" shall mean a signatory to this Agreement, which is qualified as a Member under the provisions of this Agreement and the Bylaws.

"Program" or "Programs" means the specific type of protection plan as set forth in the terms, conditions and exclusions of the Coverage Documents for self-insured losses, and the purchasing of Excess or Re-Insurance and administrative services.

"Program Administrator" shall mean the employee or contract service firm appointed by the Board of Directors of the Authority to administer the Authority.

"Retained Earnings", as used herein, shall mean an equity account reflecting the accumulated earnings of a Joint Protection Program.

Article 2. Purposes. This Agreement is entered into by the Members pursuant to the provisions of California Government Code Section 990, 990A, 990.8 and 6500 *et seq.* in order to provide, subject to the provisions of the Coverage Documents, economical public liability and workers' compensation coverage, or coverage for other risks which the Board of Directors may determine.

Additional purposes are to reduce the amount and frequency of losses, and to decrease the cost incurred by Members in the handling and litigation of claims. These purposes shall be accomplished through the exercise of the powers of such Members jointly in the creation of a separate entity, namely the Monterey Bay Area Self-Insurance Authority (the "Authority"), to establish and administer Programs as set forth herein and in the Bylaws.

It is also the purpose of this Agreement to provide; to the extent permitted by law; for the inclusion at a subsequent date, and subject to approval by the Board of Directors, of such additional Members organized and existing under the laws of the State of California as may desire to become parties to the Agreement and Members of the Authority.

Article 3. Parties to Agreement. Each party to this Agreement certifies that it intends to, and does contract with all other parties who are signatories to this Agreement and, in addition, with such other parties as may later be added as parties to and signatories of this Agreement pursuant to Article 18. Each party to this Agreement also certifies that the withdrawal from or cancellation of membership by any Member, pursuant to Articles 19, 20 and 21, or otherwise, shall not affect this Agreement nor such party's intent, as described above, to contract with the other remaining parties to the Agreement.

Article 4. Term of Agreement. This Agreement shall become effective as to existing Members of the Authority as set forth in Article 34 hereof. This Agreement shall continue thereafter until terminated as hereinafter provided. This Agreement shall become

effective as to each new Member upon: (i) approval of its membership by the Board of Directors, (ii) the execution of this Agreement by the Member, and (iii) upon payment by the Member of its initial Contribution for a Program. Any subsequent amendments to the Agreement shall be in accordance with Article 28 of this Agreement.

Article 5. Creation of Authority. Pursuant to the Act, there is hereby created a public entity separate and apart from the parties hereto, to be known as the Monterey Bay Area Self-Insurance Authority. Pursuant to Section 6508.1 of the Act, the debts, liabilities and obligations of the Authority, including but not limited to, debts, liabilities and obligations of any of the Programs shall not constitute debts, liabilities or obligations of any party to this Agreement or to any Member or Former Member.

The Authority is not an insurer, and the coverage programs offered by the Authority do not provide insurance, but instead provide for pooled joint protection programs among the members of the Authority. The Joint Protection Programs offered by the Authority constitute negotiated agreements among the Members which are to be interpreted according to the principles of contract law, giving full effect to the intent of the Members, acting through the Board of Directors in establishing the Programs.

Article 6. Powers of Authority.

(a) The Authority shall have all of the powers common to Members and is hereby authorized to do all acts necessary for the exercise of said common powers, including but not limited to, any or all of the following:

(1) to make and enter into contracts, including the power to accept the assignment of contracts or other obligations which relate to the purposes of the Authority, or which were entered into by a Member or Former Member prior to joining the Authority, and to make claims, acquire assets and incur liabilities;

(2) to incur debts, liabilities, or other obligations, including those which are not debts, liabilities or obligations of the Members or Former Members, or any of them;

(3) to charge and collect Contributions and Assessments from Members or Former Members for participation in Programs;

(4) to receive grants and donations of property, funds, services and other forms of assistance from persons, firms, corporations and governmental entities;

(5) to acquire, hold, lease or dispose of property, contributions and donations of property and other forms of assistance from persons, firms, corporations and governmental entities;

(6) to acquire, hold or dispose of funds, services, donations and other forms of assistance from persons, firms, corporations and governmental entities;

(7) to employ agents and employees, and/or to contract for such services;

(8) to incur long term debt, including the issuance of Bonds, notes and liabilities or other obligations to finance the Programs if seventy-five percent (75%) of the Members voting agree, and enter into agreements with respect thereto and to exercise any other powers available to the Authority under Article 2 or Article 4 of the Act;

(9) to enter into agreements for the creation of separate public entities and agencies pursuant to the Act;

(10) to sue and be sued in its own name;

(11) to exercise all powers and perform all acts as otherwise provided for in the Bylaws.

(b) Said powers shall be exercised pursuant to the terms hereof, in the manner provided by law and in accordance with Section 6509 of the Act. The foregoing powers shall be subject to the restrictions upon the manner of exercising such powers pertaining to the Member or Former Member designated in the Bylaws.

Article 7. Board of Directors. Subject to the limitations of this Agreement and the laws of the State of California, the powers of this Authority shall be vested in and exercised by, and its property controlled and its affairs conducted by, the Board of the Authority, which is hereby established and designated as the agency to administer this Agreement pursuant to Section 6506 of the Act. The powers of the Authority shall be exercised through the Board of Directors, who may, from time to time, adopt and modify Bylaws and other rules and regulations for that purpose and for the conduct of its meetings as it may deem proper. The officers of the Board shall be set forth in the Bylaws.

The Board of Directors shall be composed of a Director from each Member that has executed the Agreement and is participating in a Joint Protection Program. Each director on the Board shall have one vote. Each director on the Board shall serve as set forth in the Bylaws.

Article 8. Compliance with the Brown Act. All meetings of the Board, including, without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, California Government Code Section 54950 *et seq.*

Article 9. Powers of the Board of Directors. The Board of Directors Shall have such powers and functions as provided for pursuant to this Agreement and the Bylaws and such additional powers as necessary or appropriate to fulfill the purposes of this Agreement and the Bylaws, including, but not limited to, the following:

(a) to exercise all powers to conduct all business of the Authority;

(b) to determine details of and select the Program or Programs to be offered, from time to time, by the Authority;

(c) to determine and select all insurance, including Excess or Re-Insurance, necessary to carry out the programs of the Authority;

(d) to contract for, develop or provide through its own employees various services for the Authority;

(e) to prepare or cause to be prepared the operating budget of the Authority for each fiscal year;

(f) to receive and act upon reports of committees and from the Chief Executive Officer;

(g) to appoint staff, including a ~~Chief Executive Officer~~ Program Administrator, and employ such persons as the Board of Directors deems necessary for the administration of this Authority;

(h) to direct, subject to the terms and conditions of the Coverage Documents, the payment, adjustment, and defense of all claims involving a Member during their period of membership in and coverage under a Program;

(i) to fix and collect from time to time Contributions and Assessments for participation in the Programs;

(j) to expend funds of the Authority for the purpose of carrying out the provisions of the Agreement and the Bylaws as they now exist or may be hereafter amended;

(k) to purchase excess insurance, liability insurance, stop loss insurance, officers and directors liability insurance, and such other insurance as the Authority may deem necessary or proper to protect the Program, employees of the Authority and employees of the Members;

(l) to defend, pay, compromise, adjust and settle all claims as provided for in the Coverage Documents;

(m) to obtain a fidelity bond in such amount as the Board of Directors may determine for any person or persons who have charge of or the authority to expend funds for the Authority;

(n) to establish policies and procedures for the operation of the Authority and the Programs;

(o) to engage, retain, and discharge agents, representatives, firms, or other organizations as the Board of Directors deems necessary for the administration of the Authority;

(p) to enter into any and all contracts or agreements necessary or appropriate to carry out the purposes and actions of the Authority;

(q) to acquire, hold, lease, manage and dispose of, as provided by law, any and all property necessary or appropriate to carry out the purposes and functions of the Authority;

(r) to transact any other business which is within the powers of the Board of Directors;

(s) to invest funds on hand in a manner authorized by law, the Agreement and the Bylaws;

(t) to incur indebtedness for the Authority or provide for the issuance of Bonds, and to establish the terms and conditions of such indebtedness;

(u) to provide financial administration, claims management services, legal representations, safety engineering, annual audits, actuarial services, and other services necessary or proper to carry out the purposes of the Authority either through its own employees or contracts with one or more third parties;

(v) to exercise general supervisory and policy control over the ~~Chief Executive Officer~~ Program Administrator;

(w) to establish committees and sub-committees as it deems necessary to best serve the interests of the Authority;

(x) to take such actions as may be necessary to enforce this Agreement against any Member; and

(y) to have such other powers and functions as are provided for pursuant to the Act, this Agreement or necessary or appropriate to fulfill the purpose of this Agreement and the Bylaws.

Article 10. Committees of the Board. Committees established by the Board shall be standing or special. Each committee shall exercise such power and carry out such functions as are designated by this Agreement or the Bylaws or as delegated to it by the Board or an Executive Committee. Except as otherwise provided by the Board, or these Bylaws, such committees shall be advisory only and subject to the control of the Board or an Executive Committee, whichever appoints them. Except as may otherwise be provided by the Board, or by these Bylaws, any expenditure of funds by a committee shall require prior approval by the Board.

Article 11. Officers of the Authority. The officers of the Authority shall be as set forth in the Bylaws. The Board may elect or authorize the appointment of such other officers than those described in the Bylaws as the business of the Authority may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in this Agreement, or as the Board, from time to time, may authorize or determine.

Any officer may be removed, either with or without cause, by a majority of the Directors of the Board at any regular or special meeting of the Board. Should a vacancy occur in any office as a result of death, resignation, removal, disqualification or any other case, the Board may delegate the powers and duties of such office to any officers or to any Members of the Board until such time as a successor for said office has been appointed.

Article 12. Extension of Agreement. The provisions of this agreement may be extended to incorporate "pooling" of other forms of insurance, including fire insurance and liability insurance, under such conditions as are stated in an appropriate addendum to this agreement, provided each agency participating herein consents in writing to such increased or additional purpose and power.

Article 13. Provision for Bylaws. The Board shall promulgate Bylaws to govern the day-to-day operations of the Authority. The Board may amend the Bylaws from time to time as it deems necessary, and as provided in the Bylaws. Each Member shall receive a copy of any Bylaws and agrees to be bound by and to comply with all of the terms and conditions of the Bylaws as they exist or as they may be modified. The Bylaws shall be consistent with the terms of this agreement. In the event any provision of the Bylaws conflicts with a provision of this Agreement, the provision contained in this Agreement shall control.

Article 14. Coverage Programs.

(a) The Authority shall maintain such types and levels of coverage for Programs as determined by the Board of Directors. Such coverage may provide for binding arbitration before an independent arbitration panel of any disputes concerning coverage between the Authority and a Member.

(b) The coverage afforded under one or more Programs may include protection for general liability, auto liability, property, boiler and machinery, public officials errors and omissions, employment practices, employee benefits liability coverage, employee dishonesty coverage, ~~public officials personal liability coverage~~ and workers' compensation, as well as coverage for other risks which the Board of Directors may determine to be advisable. More than one type of coverage may be afforded under a single Program.

(c) The Board of Directors may arrange for group policies to be issued for Members, their board members and employees interested in obtaining additional coverage, at an appropriate additional cost to those participating Members.

(d) The Board of Directors may arrange for the purchase of ~~Excess or Re-~~ Insurance. The Authority shall not be liable to any Member or to any other person or organization if such excess or re-insurance policies are terminated, canceled or non-renewed without prior notice to one or more Members, or if there is a reduction in the type of coverage afforded under a program by reason of any change in coverage in a succeeding excess or reinsurance policy, even if such reduction occurs without prior notice to one or more Members. If insurance limits purchased are insufficient for the settlement of a claim or a judgment, the amount in excess of the recoverable amount covered amount is the responsibility of the member.

Article 15, Accounts and Records,

(a) **Annual Budget.** The Authority shall, pursuant to the Bylaws, annually adopt an operating budget, including budgets for each Joint Protection Program.

(b) **Funds and Accounts.** The Authority shall establish and maintain such funds and accounts as determined by the Board of Directors to be necessary or advisable and as may be required by generally accepted accounting principles, including separate funds and accounts for each Program, including Joint Protection Programs. Books and records of the Authority shall be open to any inspection at all reasonable times by authorized representatives of Members, or as otherwise required by law.

(c) **Investments.** Subject to the applicable provisions of any indenture, trust agreement, or resolution relating to the issuance of Bonds and providing for the investment of monies held there under, the Authority shall have the power to invest any money in the treasury that is not required for the immediate necessities of the Authority, as the Board determines is advisable, in the same manner as local agencies pursuant to California Government Code Sections 536 01 *at seq.* (as such provisions may be amended or supplemented).

(d) **No Commingling.** The various funds, reserves and accounts of each Program shall not be commingled and shall be accounted for separately; provided, however, that administration and overhead expenses of the Authority not related to a specific Program or Programs may be fairly and equitably allocated among Programs as determined by the Board of Directors. Investments and cash accounts may be combined for administrative convenience, but a separate accounting shall be made for balances of individual funds and Program revenues and expenses.

(e) **Annual Audit.** The Board shall provide for a certified, annual audit of the accounts and records of the Authority.

Article 16. Services Provided by the Authority. The Authority may provide, at the sole discretion of the Board of Directors, the following services in connection with this Agreement:

(a) to provide or procure coverage, including but not limited to self-insurance funds and commercial insurance, as well as excess coverage, re-insurance and umbrella insurance, by negotiation or bid, and purchase;

(b) to assist Members in obtaining insurance coverage for risks not included within the coverage of the Authority;

(c) to assist risk managers with the implementation of risk management functions as it relates to risks covered by the Programs in which the Member participates;

(d) to provide loss prevention and safety consulting services to Members;

(e) to provide claims adjusting and subrogation services for Claims covered by the Programs;

(f) to provide loss analysis and control by the use of statistical analysis, data process, and record and file keeping services, in order to identify high exposure operations and to evaluate proper levels of self-retention and deductibles;

(g) to review Member contracts to determine sufficiency of indemnity and insurance provisions when requested;

(h) to conduct risk management audits relating to the participation of Members in the Programs; and

(i) to provide such other services as deemed appropriate by the Board of Directors

Article 17. Duties and Responsibilities of Members. Members or Former Members shall have the following duties and responsibilities, which shall survive the withdrawal from, or involuntary termination of participation in, this Agreement:

(a) Each Member shall designate a person to be responsible for the risk management function within that Member and to serve as a liaison between the Member and the Authority as to risk management.

(b) Each Member shall maintain an active safety officer and/or committee, and shall consider all recommendations of the Authority concerning unsafe practices and/or hazard mitigation.

(c) Each Member shall maintain its own set of records, including a loss log, in all categories of risk covered by each Program in which it participates to insure accuracy of the Authority's loss reporting system, unless it is no longer deemed necessary by the Board of Directors,

(d) Each Member shall pay its Contribution, and any adjustments thereto, and any Assessments within the specified period set forth in the invoice, or as otherwise may be set forth herein or in the Bylaws. After withdrawal or termination, each Former Member or its successor shall pay promptly to the Authority its share of any additional Contribution, adjustments or Assessments, if any, as required of it by the Board of Directors under Article 22 or 23 of this Agreement or the Bylaws.

(e) Each Member or Former Member shall provide the Authority with such, other information or assistance as may be necessary for the Authority to carry out the Programs under this Agreement in which the Member or Former Member participates or has participated.

(f) Each Member or Former Member shall in any and all ways cooperate with and assist the Authority and any insurer of the Authority, in all matters relating to this Agreement and covered claims.

(g) Each Member or Former Member will comply with all Bylaws, rules and regulations adopted by the Board of Directors.

Article 18. New Members. The Authority shall allow entry into its Programs of new Members only upon approval of the Board, with any conditions or limitations as the Board, deems appropriate.

Article 19. Voluntary Withdrawal of a Member.

Subject to Article 20, any member may voluntarily withdraw from the Authority if that Member has participated in the Authority for a minimum of three full Program years, and the Member's governing board gives notice to the Board of Directors of the Authority no later than March 1st of the preceding fiscal year of the Member's intent to withdraw from the Authority,

If withdrawal is permitted as set forth above, the Member's participation in the Authority shall terminate at the end of the fiscal year in which notice was given, provided, however, that any Member desiring to leave the Authority shall remain liable for all expenses in excess of Contribution until Claims of the withdrawing Member are settled and obligations to claimants met, the Member formally withdraws from the Authority, and the Member acknowledges that it has no interest in any of the assets of the Authority.

If additional funds are required to settle Claims or obligations of the terminating Member the Board may declare and collect the Assessments or Contributions necessary from the Member. After all Claims and obligations of the terminating Member are met the Board shall determine if any refund of Assessment or Contribution is due and refund such amount.

Article 20. Worker's Compensation Program Financing Requirements

Each Member acknowledges that the Authority intends to issue, during calendar year 2004, Bonds in order to fund reserves that the Authority has determined are currently inadequate for the Claims to be paid by the Authority with respect to its worker's compensation program incurred prior to June 30, 2003, and that the debt service on such Bonds will be payable primarily from a portion of the annual worker's compensation Contributions paid by each Member for the Claims incurred prior to June 30, 2003,

Accordingly, each Member agrees and acknowledges that, so long as any such Bonds are outstanding or any other amounts remain owing with respect thereto, (i) that it will not withdraw from the Authority (and any attempted withdrawal will be null and void), (ii) that it will obtain its worker's compensation insurance coverage solely through the Authority or in connection with the Authority (except for any self-funded retention and any excess worker's compensation coverage), (iii) that a portion of the worker's compensation Assessments and Contributions charged to the Member will be used to pay debt service on such Bonds, or to provide for costs, expenses, reserves or debt service coverage with respect to such Bonds in an amount as may be required by the documents pursuant which such Bonds are issued, (iv) that the amount of Assessments and Contributions which may be due include all amounts necessary to pay debt service and related costs with respect to any Bonds, as set forth in clause (iii) above, including additional amounts which may become due from time to time as the result of a default by another Member or Former Member, (v) that it will pay, as required by the bond or note documentation, all of the Assessments and Contributions due to the Authority, (vi) that the Assessments and Contributions will be payable from any source of available funds of the Member, including amounts on deposit in the general fund of the Member, and (vii) that each Member will take such action as may be necessary to include all Assessments and Contributions due in each of its approved budgets, and to amend such budget if necessary to include any Assessment and Contribution amount not included in its original budget, for so long as it remains, a Member of the Authority and to make the necessary appropriations for all such Assessments and Contributions. Notwithstanding the foregoing, if the documentation relating to the Bonds allows for the early retirement of the Bonds, a Member may withdraw from the Authority and have no liability with respect to any future Assessments or Contributions if it prepaies its obligations with respect to such Bonds, as such obligations are set forth in the applicable Bond documentation.

Article 21. Involuntary Termination

(a) Notwithstanding the provisions of Article 20 and 21, the Authority shall have the right to involuntarily terminate any Member's participation in any Program, or terminate membership in the Authority if a Member breaches any duty or responsibility pursuant to Article 17 imposed on Members to this Agreement.

(a)(b) The Authority may expel any Member Agency, with or without cause, as a participant in any program or as a member of the Authority by a two-thirds vote of the Board and 90 days notice.

(b)(c) Notwithstanding any other provisions of this Agreement, the participation of any Member of the Authority, including participation in any of the Authority's Programs, may be involuntarily terminated at the discretion of the Board of Directors whenever such Member is dissolved, consolidated, merged or annexed. A reasonable time shall be afforded, in the discretion of the Board of Directors, to place coverage elsewhere. Any such involuntary termination shall not relieve the Member or Former Member of its responsibilities as provided for in Articles 19, 20 and 23.

(e)(d) Any involuntary termination occurring during any period that Bonds, are outstanding shall be subject to the requirement that the obligations of the Member being terminated with respect to such Bonds, are prepaid, either by such Member or by the Authority.

Article 22. Effect of Withdrawal or Involuntary Termination. The withdrawal from or involuntary termination of any Member from this Agreement shall not terminate this Agreement, and such Member, by withdrawing or being involuntarily terminated, shall not be

entitled to payment, return or refund of any Contribution, prior Assessment, prior consideration, or other property paid, or donated by the Member to the Authority, or to any return of any loss reserve contribution, or to any distribution of assets (except payment of any Retained Earnings, as set forth in the following paragraph). If a Member or Former Member withdraws or is involuntary terminated from a program with a negative Net Position, the Member or Former Member will not receive any distribution of assets from either program.

The withdrawal from or involuntary termination of any Member after the effective date of any Program shall not terminate its responsibility to pay its unpaid Contribution adjustments, or Assessments to such Program. The Board of Directors shall determine the final amount due from the Member or Former Member or credits to the Member or Former Member for the period of its participation. Such determination shall not be made until all Claims, or other unpaid liabilities, have been finally resolved. In connection with this determination, the Board of Directors may exercise similar powers to those provided for in Article 23(b) of this Agreement. Upon such withdrawal from or cancellation of participation in any Program by any Member, said Member shall be entitled to receive its pro rata share of any Retained Earnings applicable to the time of its participation even though such Retained Earnings are declared by the Board of Directors after the date of said Member withdraws or is involuntarily terminated.

Article 23. Termination and Distribution; Assignment.

(a) if no Bonds remain outstanding, this Agreement may be terminated any time with the written consent of two-thirds of the voting Members; provided, however, that this Agreement and the Authority shall continue to exist for the purpose of disposing of all Claims, distribution of net assets and all other functions necessary to wind up the affairs of the Authority.

(b) The Board of Directors is vested with all powers of the Authority for the purpose of winding up and dissolving the business affairs of the Authority. These powers shall include the power to require Members or Former Members, including those which were signatory hereto at the time the subject Claims arose or was/were incurred, to pay any Assessment or Contribution in accordance with loss allocation formulas for final disposition of all Claims and losses covered by this Agreement or the Bylaws. A Member or Former Member's Assessment or Contribution shall be determined as set forth by the Board or the applicable Coverage Documents.

(c) Upon termination of a Program, all net assets of such Program shall be distributed only among the Members that are participating in such Program at the time of termination, in accordance with the proportionate to their cash payments (including Contributions, adjustments, Assessments and other property at market value when received) made during the term of this Agreement for such Program. The Board of Directors shall determine such distribution within six (6) months after disposal of the last pending Claim or loss covered by such Program.

(d) Upon termination of this Agreement all net assets of the Authority shall be distributed only among the Members in good standing at the time of such termination in accordance with and proportionate to their cash contributions and property at market value when received. The Board of Directors shall determine such distribution within six (6) months after disposal of the last pending Claim or loss covered by this Agreement.

(e) In lieu of terminating this Agreement, the Board, With the written consent of two-thirds of the voting Members, may elect to assign and transfer all of the Authority's

rights, assets, liabilities and obligations to a successor joint powers authority created under the Act.

Article 24. Enforcement. The Authority is hereby granted authority to enforce this Agreement. In the event action is instituted to enforce the terms of this Agreement, the Bylaws and/or any policies and/or procedures of the Board of Directors and the non-defaulting party(s) should employ attorneys or incur other expenses for the collection of monies or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party(s) herein contained, the defaulting party agrees that it will on demand therefore pay to the non-defaulting party(s) the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party(s).

Article 25. Non-liability of Directors, Officers and Employees. The Board of Directors, and the officers and employees of the Authority, including former directors, officers and employees, shall not be liable to the Authority, to any Member or Former Member, or to any other person, for actual or alleged breach of duty, mistake of judgment, neglect, error, misstatement, misleading statement, or any other act or omission in the performance of their duties hereunder; for any action taken or omitted by any employee or independent contractor; for loss incurred through the investment or failure to invest funds; or for loss attributable to any failure or omission to procure or maintain insurance; except in the event of fraud, gross negligence, or intentional misconduct of such director, officer or employee. No director, officer or employee, including former directors, officers and employees, shall be liable for any action taken or omitted by any other director, officer or employee. The Authority shall defend and shall indemnify and hold harmless its directors, officers and employees, from any and all claims, demands, causes of action, and damages arising out of their performance of their duties as such directors, officers or employees of the Authority except in the event of fraud, gross negligence, corruption, malice or intentional misconduct, and the funds of the Authority shall be used for such purpose. The Authority may purchase conventional insurance to protect the Authority, and its participating Members or Former Members, against any such acts or omissions by its directors, officers and employees, including former directors, officers and employees.

Article 26. Indemnification and Release. Each Member shall and hereby agrees to indemnify and save the Authority and all other Members harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of any breach or default on the part of such Member in the performance of any of its obligations under this Agreement, or any act or negligence of such Member or any of its agents, contractors, servants, employees or licensees with respect to the coverage provided such Member. No indemnification is made under this section or elsewhere in this Agreement by the Authority or its officers, agents, employee successors or assigns.

Article 27. Notices. Notices to Members or Former Members hereunder shall be sufficient if delivered to the principal office of the respective Member or Former Member.

Article 28. Amendment. This Agreement may be amended at any time by a two-thirds vote of the Members. The Bylaws may be amended as provided therein. Upon the effective date of any validly approved amendment to this Agreement, such amendment shall be binding on all Members.

Article 29. Prohibition Against Assignment. No person or organization shall be entitled to assert the rights, either direct or derivative, of any Member or Former Member under any coverage agreement or memorandum. No Member or Former Member may assign any right, claim or interest it may have under this Agreement, and no creditor,

assignee or third party beneficiary of any Member or Former Member shall have any right, claim or title or any part, share, interest, fund, contribution or asset of the Authority.

Article 30. Agreement Complete. The foregoing constitutes the full and executed Agreement of the parties. There are no oral understandings or agreements not set forth in writing herein. This Agreement supersedes and replaces all previous agreements..

Article 31. Counterparts. This Agreement may be executed in one or more counterparts and shall be as fully effective as if fully effective as though executed in one document.

Article 32. California law. This Agreement shall be governed by the laws of the State of California.

Article 33. Severability. Should any part, term or provision of this Agreement be determined by any court of competent jurisdiction to be illegal or in conflict with any law of the State of California or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

Article 34. Effective Date. This Agreement shall become effective as to existing Members of the Authority on the date on which at least two-thirds of such Members have executed this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by authorized officials on the date indicated below:

Acknowledgment:

Date: _____

Name, Chair – Board of Directors
MONTEREY BAY AREA SELF-INSURANCE AUTHORITY

I hereby certify this amended and Restated Joint Powers Agreement has also received the required approval of not less than two-thirds of the Member entities then parties to the Joint Powers Agreement.

Date: _____

Name, Chief Executive Officer/Program Administrator
MONTEREY BAY AREA SELF-INSURANCE AUTHORITY



CITY COUNCIL AGENDA REPORT

MEETING OF MARCH 12, 2015

FROM: DEPARTMENT OF PUBLIC WORKS

SUBJECT: CAPITOLA BEACH SHUTTLE
AWARD OF CONTRACT TO MV TRANSPORTATION
FOR 2015 SUMMER SHUTTLE BUS SERVICE

RECOMMENDED ACTION: Award a contract to MV Transportation for operation of the 2015 Beach Shuttle Service at an hourly rate of \$59.96 for an estimated annual cost of \$23,385, with an option to renew the contract annually for up to a total of five years upon mutual consent of both parties. Annual renewals will include an CPI adjustment in the hourly rate.

BACKGROUND: On January 23, 2015, the City issued a request for proposals for the operation of the City's summer shuttle program. On February 18, 2015 the City received one proposal from MV Transportation who has been the shuttle operator since 2004.

DISCUSSION: The proposal from MV Transportation includes a fee proposal that starts with an hourly fee of \$59.96 for the first year and increases by the CPI each year. The starting rate under this proposal actually represents a ~1% decrease from last year's rate of \$61.55 per hour.

MV Transportation has been an excellent contractor for the City over the past ten years. They have operated the beach shuttle and were instrumental in assisting the City in implementing the citywide shuttle program in 2005. MV Transportation has proven to be very reliable and flexible in helping the City operate the shuttle program.

FISCAL IMPACT: The Public Works Streets contract services budget includes an annual appropriation of \$30,000 which covers this contract. It is anticipated that this level of funding will be sufficient in 2015-2016.

ATTACHMENT:

1. Proposal from MV Transportation dated February 18, 2015.

Report Prepared By: Steven Jesberg
Public Works Director

Reviewed and Forwarded
By City Manager: 

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PROPOSAL TO

City of Capitola

FOR

Summer Shuttle Bus Service Operations

Dated: February 18th, 2015

SUBMITTED TO:

City of Capitola
Steven E. Jesberg, Public Works Director
420 Capitola Avenue
Capitola, CA 95010
Telephone: 831.475.7300

SUBMITTED BY:

MV Transportation, Inc.
*and all subsidiaries, joint ventures,
partnerships and affiliates*
5910 N. Central Expy., Suite 1145
Dallas, TX 75206
Telephone: 972.391.4600

MV Transportation, Inc. is a federal contractor or subcontractor which complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60; 29 U.S.C. Section 793 and the applicable regulations contained in 41 C.F.R. Part 60-741; 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250 and/or 60-300; and 29 CFR Part 471, Appendix A. MV is an Equal Employment Opportunity/Affirmative Action Employer.



February 16, 2015

Steven E. Jesberg
City of Capitola
420 Capitola Ave.
Capitola, CA, 95010

Dear Mr. Jesberg:

MV Transportation, Inc. and all subsidiaries, joint ventures, partnerships and affiliates, (or "MV") greatly appreciates the opportunity to submit its proposal in response to the City of Capitola's Request for Proposal for 2015 Summer Shuttle Bus Service Operations in the City of Capitola. I am hopeful that MV's demonstrated breadth of experience and tenure in the City of Capitola offers assurance that it is a stable and qualified partner.

As required, MV's proposed operating plan is contained herein. This plan follows MV's guiding management philosophy that service quality need not have a direct relationship to operating cost; rather it is created from a positive work environment that supports proactive employee relations and professional development.

I am your primary contact for this procurement and I am authorized to make representations for MV Transportation, Inc., to include all its subsidiaries, joint ventures, partnerships, and affiliates (the bidding entity). I can be reached any time of day at 707.474.7784 (phone) or cristina.russell@mvtransit.com (email). Additionally, Mr. Joe Escobedo will serve as your secondary contact; he can be reached any time of day at 623.340.3209 (phone) or joe.escobedo@mvtransit.com (email). Please direct all correspondence related to this and all future procurements to MV's bid office located at 479 Mason Street, Ste. 221 Vacaville, CA 95688.

Thank you for your consideration; I encourage you to select MV Transportation as your partner for the provision of the Summer Shuttle Bus Service Operations. We look forward to working with you throughout this procurement.

Sincerely,



Cristina Russell
Vice President

Unconditional Satisfaction Guaranteed Warranty



MV Transportation is pleased to provide the following unconditional warranty to the City of Capitola. In the event MV is selected to provide services pursuant to the City Request for Proposal for Summer Shuttle Bus Service Operations, in addition to any contractual warranties and remedies that the City is entitled to under the contract, MV will warrant its service as follows:

In the event the City is dissatisfied with MV's service for any reason during the term of the contract, the City may terminate the contract. In the event the contract is so terminated, MV will refund to the City any and all profits made by MV resulting from this contract, during the final 12 months during the period prior to the termination.



420 CAPITOLA AVENUE
CAPITOLA, CALIFORNIA 95010
TELEPHONE (831) 475-7300
FAX (831) 479-8879

November 7, 2011

Mr. Tony Mercado
MV Transportation
555 Tully Rd
San Jose, CA 95111

Subject: Capitola Beach Shuttle
2012 Operations

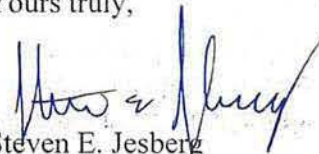
Dear Mr. Mercado:

This letter will confirm the City of Capitola's intention to retain MV Transportation for the Capitola Beach Shuttle operation for 2012. The operation of the beach shuttle is a key city service provided to both residents and visitors to the Village during the summer months.

MV Transportation has provided excellent services in operating the beach shuttle for the past seven seasons. In particular, driver Rudy Contreras continues to be dependable, cordial, and a pleasure to work with. Rudy has been an excellent on the job manager of the program and has seamlessly adjusted routes as needed for the City's festivals. We consistently receive comments about all of your driver's professionalism and courtesy.

The City of Capitola appreciates working with Rudy and MV Transportation, and hopes to continue this partnership for not only 2012, but at least the remainder of our existing contract. Please contact me should you have any questions regarding this letter or recommendations on the beach shuttle program.

Yours truly,



Steven E. Jesberg
Public Works Director



420 CAPITOLA AVENUE
CAPITOLA, CALIFORNIA 95010
TELEPHONE (831) 475-7300
FAX (831) 479-8879

October 12, 2012

Mr. Tony Mercado
MV Transportation
705 Tully Rd
San Jose, CA 95111

Subject: Capitola Beach Shuttle
2013 Operations

Dear Mr. Mercado:

This letter will confirm the City of Capitola's intention to retain MV Transportation for the Capitola Beach Shuttle operation for 2013. The operation of the beach shuttle is a key city service provided to both residents and visitors to the Village during the summer months.

MV Transportation has provided excellent services in operating the beach shuttle for the past eight seasons. In particular, driver Rudy Contreras continues to be an excellent manager of the program.

As I mentioned to you in our phone conversation, the City is in the process of developing a new public parking lot that when completed will become the shuttle parking lot. This new parking lot will be adjacent City Hall and will shorten the circuit considerably. We will be in contact with Rudy about these changes as next season nears.

The City of Capitola appreciates working with Rudy and MV Transportation, and looks forward to the 2013 season. Please contact me should you have any questions regarding this letter or recommendations on the beach shuttle program.

Yours truly,

A handwritten signature in blue ink, appearing to read "Steven E. Jesberg", written over a white background.

Steven E. Jesberg
Public Works Director


cc: Shuttle Contract File

NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER

State of California)
City of Capitola) ss.
County of Santa Cruz)

Amy Barry being first duly sworn, deposes and (Bidder's Name)
says that he or she is SVP
(Title)
of MV Transportation, Inc. the party making the
(Company)

foregoing bid, that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.



(Signature of Bidder)



Proposal to the City of Capitola for Summer Shuttle Bus Service Operations

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Proposal to the City of Capitola for Summer Shuttle Bus Service Operations

1. Company Details

Since 2004, MV Transportation, Inc. has provided exceptional care of passengers who ride the City of Capitola Summer Shuttle Bus Services. Transporting locals and visitors along the City and beach routes, the shuttle is an integral part of weekend festivities. Located on the West Coast between San Jose and Monterey Bay, Capitola offers a diverse variety of restaurants, shops, and entertainment, and is well-known for its dynamic beachfront.



MV has a unique understanding of this project, and works each season to ensure that services remain safe, courteous, and cost efficient. For the 2015 season, MV will continue to provide a tenured vehicle operator who is supported by a knowledgeable general manager and regional support team.

Exceptional Project Operations Manager

Throughout its 11 year partnership with the City, MV has worked to adapt services to meet passenger increases and the evolving service needs of the City's festivals and entertainment. Key to its ability to successfully manage route has been the exceptional service delivery of Mr. Rudy Contreras, project operations manager. His commitment to the passengers of the shuttle bus is evident in the commendations and comments that the City receives, praising him for his professionalism and courtesy.

Mr. Contreras has been a member of MV's team for 17 years, and a fixture in the City's service for more than a decade. Rudy is eager to once again manage the Summer Shuttle Bus Services during the 2015 season. His dedication to safety, combined with the use of the DriveCam video surveillance system on the shuttle, has resulted in zero accidents throughout MV's tenure.

Mr. Contreras works closely with the Capitola Soquel Chamber of Commerce to provide a shuttle that meets the evolving service demands for transportation to the Begonia Festival and Capitol Art & Wine Festival.

Experienced General Manager

Mr. Tony Mercado, MV's proposed general manager, brings 17 years of transit experience to the City, including direct knowledge of the service area and shuttle operation. Since the start of his transportation career as a dispatcher, Tony's management skills have grown





Proposal to the City of Capitola for Summer Shuttle Bus Service Operations

extensively and he has become a successful leader who now oversees a team of more than 100 employees. Over the past 15 years with MV, Tony has proven himself to be a stable, reliable team leader who understands the importance of cultivating a strong working partnership with client staff. He will provide ongoing support to Mr. Contreras throughout the 2015 season and beyond. Tony currently serves as MV's general manager for its San Jose location. Mr. Mercado has gained the majority of his management experience here, where MV provides fixed route, dial-a-ride, commuter, shuttle, and charter services. Tony is responsible for a team of 105 who provide service through the use of 90 vehicles.

Quality Regional Resources

MV is the largest private contractor in the State of California and has a large concentration of locations within the San Francisco Bay Area. With contracts in San Jose, San Leandro, San Francisco, San Carlos, Union City, Fremont, Hayward, and Livermore, MV has a significant presence around the Capitola service area.

MV views its relationship with the City as a collaborative effort to provide services that meet the transportation needs of the visitors and residents of Capitola. This effort will be facilitated by Mr. Contreras and Mr. Mercado, and backed by a strong regional team.

Mr. John Murphy, regional vice president, brings 46 years of transportation management experience to the City. John's understanding of this service area comes from his extensive transit background and 25 years of public transportation management in the Bay Area.

1.1. History

The MV Story – an American Success

MV Transportation, Inc. was founded in 1975, in the San Francisco Bay. The owners and original founders, Feysan and Alex Lodde, formed an agreement with the City of San Francisco to provide transportation to persons with disabilities.

The Loddess acquired three vans and pioneered transportation of persons with disabilities in the Bay Area 15 years in advance of the historic passing of the American with Disabilities Act into law in 1990. Over the next two decades the company grew from a local company to a national multimodal transportation provider. In total, MV Transportation, Inc. and its subsidiaries have been providing transportation services for 58 years.

"MV is a true American success story. Through dedication to our passengers, our clients and our employees, MV has grown to be the largest United States-owned transportation management company in the nation. Our people and our dedication to serve truly make us different." – Feysan Lodde, Founder





Proposal to the City of Capitola for Summer Shuttle Bus Service Operations

Today, the company remains the nation's largest American-owned passenger transportation company. The MV name represents MV Transportation, Inc. and its affiliates, which include MV Public Transportation, Inc., MV Contract Transportation, Inc.; MVT Canadian Bus, Inc.; and Reliant Transportation, Inc.

Company Size and Statistics (As of January 2015)

Number of Employees:	18,389
Number of Vehicles:	10,286
2013 Revenues (000s):	\$1,013,817
Number of Contracts:	235
Number of Locations:	154 (29 states and Washington D.C.; 3 Canadian Provinces; and Eastern Province, Saudi Arabia)

Success and Accolades

MV has been recognized by industry associations, community organizations, and businesses across the U.S. for its successful operations. In recent years, the company has been recognized for its part in the development of local minority owned, women owned, and small businesses.

In the fall of 2013, its customer, the Greater Orlando Aviation Authority, recognized MV as the 2013 Small Business Advocate of the Year. This honor recognizes MV's commitment to promoting small businesses.

In Houston, Texas, MV is actively involved as a mentor for the Interagency Guiding Protégés to Success Program (IGPS). This joint venture of the Metropolitan Transit Authority of Harris County (METRO), the City of Houston, the Houston Independent School District, and the Port of Houston Authority builds meaningful relationships between established companies like MV and local small businesses, as well as minority owned and women owned businesses.

In 2007, the Conference of Minority Transportation Officials (COMTO) selected MV as the Corporate Citizen of the Year. MV also received the prestigious MSVP Quality Excellence Award for the Microsoft Corporation for its shuttle work in Redmond, Washington. Additionally, Inc. Magazine featured MV in its List of America's Fastest Growing Companies, and Black Enterprise Magazine B.E. included MV in its 100 list for eight consecutive years.





Proposal to the City of Capitola for Summer Shuttle Bus Service Operations

Customer Profile

MV and its affiliates contract with cities, counties, special-purpose districts (both chartered and governmental), federal agencies, as well as private companies to provide customer-focused passenger transportation services. The company's history of satisfied customers and solid financial backing demonstrates its reliability and stability as a strong corporate partner. Further, the organization's dedication to serving the transportation needs of individual communities is evident in its operations and manifests in a myriad of functional approaches that promote customer care, leverage new technologies, recognize best practices, and control operating costs.

While each of MV's customers differ in size, service mode, scope, fleet composition, and operating environment, each trust MV to provide safe, reliable, professional transit service. Those customers with operations most similar to those of the City are listed as references.

1.2. Experience

MV offers effective solutions in passenger transportation to cities, counties, transit agencies and private companies. Its breadth of experience encompasses fixed route, flex route, shuttle service, commuter service, as well as disabled transportation/paratransit, demand response, brokerage and call center service, and non-emergency Medicaid transportation (NEMT/NET). Most of MV's operations include the provision of ancillary services, including bus maintenance, trip reservations and scheduling/call center, operator training, transit technology and support, facility management and maintenance, among many other services common to transit contracts.

Fixed Route, Flex Route, and Shuttle

MV operates more than 140 contracts in North America that have either fixed route, flex route, commuter bus, and/or shuttle components. Its scope of operations comprise Fairfax County's CONNECTOR service, Orange County Transit Authority's (OCTA) Express Bus and Stationlink services, and the RTC of Southern Nevada's Fixed Route services in Las Vegas, Nevada. Within the Southern California/greater Los Angeles Metropolitan area alone, MV operates more than 700 fixed route transit buses, and provides more service than any other contractor on behalf of the Los Angeles Department of Transportation (LADOT).





Proposal to the City of Capitola for Summer Shuttle Bus Service Operations

Fleet Maintenance

Approximately 80 percent of MV's contracts, and nearly all contracts where MV operates more than 50 buses, require that the company manage and maintain its fleet maintenance operations. The company's maintenance program, developed based on industry best practices, in conjunction with MV's skilled maintenance professionals continue to protect and extend the life of the transit fleets the company operates.

The City can be confident that the shuttle provided for these services will be properly maintained and ready to provide safe service throughout the 2015 season.

Seasonal Transportation

In addition to the City of Capitola Summer Shuttle Bus Services, MV operates a number of seasonal services, including a summer trolley service for the City of Morro Bay, summer shuttle service for Monterey Salinas Transit, and summer trolley services and intercity rail service in Cape Cod, Mass.

1.3. Operation of Similar Shuttle Programs

MV has provided a full description of the following similar shuttle programs in section 5. *References:*

- West Marin Stagecoach and Muir Woods Shuttle, Marin Transit (Marin, CA)
- Sequoia National Park Shuttle, Visalia Transit System (Visalia, CA)
- Golden Gate Park Shuttle (San Francisco, CA)





Proposal to the City of Capitola for Summer Shuttle Bus Service Operations

2. Project Management

2.1. MV's Capitola Team

Mr. Rudy Contreras, Project Operations Manager

Mr. Rudy Contreras has served as MV's project operations manager for the Summer Shuttle Bus Service since 2004. He has been responsible for safe, passenger focused transportation throughout his tenure with MV, and has become a well-know and friendly presence on the Capitola Summer Shuttle Bus Service.



After more than a decade as the lead for this project, Mr. Contreras has become well-loved throughout the Capitola community. Local vendors, shop owners and passengers have come to know and rely on Rudy to provide excellent transportation during the busy summer months in Capitola.

Currently, Mr. Contreras serves as safety trainer in MV's San Jose operation. Rudy has been in this role since 2010 and maintains oversight of all training and safety functions. He also served as a route supervisor from 2002 to 2010 where he was responsible for the monitoring and mentoring of all vehicle operators.

Beginning his career as an operator, Rudy knows the challenges an operator faces daily and this experience provides him insight into the ongoing operator training that must focus on best practices, quality customer service, and compliance with established policies.

Tony Mercado, General Manager

Mr. Jose "Tony" Mercado brings 16 years of transportation experience to the City. He started his transportation career as a dispatcher, giving him insight into passenger needs and the requirements of a successful service.

Tony currently serves as MV's general manager for its San Jose location. Mr. Mercado has gained the majority of his management experience here, where MV provides fixed route, dial-a-ride, commuter, shuttle, and charter services. Tony is responsible for a team of 105 who provide service through the use of 90 vehicles.





Proposal to the City of Capitola for Summer Shuttle Bus Service Operations

Prior to serving as MV's general manager in San Jose, Tony worked in the same role for the County Express Services for more than 4 years in San Benito, where he had complete oversight and responsibility of the operation and team of 20.

Tony started with MV more than 10 years ago as an operations manager at MV's San Leandro operation. In this role he held full responsibility for a fleet of 54 vehicles and a team of 70 employees who provided service for the Elderly and Disabled Regional Center. In 2001, he took on the role of general manager for MV's City of Tracy contract.



Tony has completed the Pepperdine Transit Management course, and is certified in Customer Service Training and FTA Drug and Alcohol Training. He will be available to Mr. Contreras and City staff during the weekend via mobile phone.

2.2. Office and Dispatch Location

Mr. Mercado's office, as well as MV's dispatch operation, is located at 705 Tully Road in San Jose, Calif. Mr. Mercado will be available to Mr. Contreras and to the City of Capitola staff via mobile phone.





Proposal to the City of Capitola for Summer Shuttle Bus Service Operations

3. Fee Proposal

Please see MV's Fee Proposal following this section.



CITY OF CAPITOLA
SANTA CRUZ COUNTY, CALIFORNIA

BID PROPOSAL

FOR

2015 SUMMER SHUTTLE BUS SERVICE OPERATIONS

The undersigned, as bidder, declares that all the contract documents herein contained have been thoroughly examined, that this bid proposal is made without collusion with any other person, firm or corporation and that all laws and ordinances relating to the interest of public officers in this contract have been complied with in every respect.

Bidder proposes and agrees, if this bid proposal is accepted, that Bidder will contract with the City of Capitola, Santa Cruz County, California, as per the terms of the attached Specifications and Agreement, to furnish all materials, to provide all labor, and to service in conformity with the specifications and drawings and other contract provisions herein contained or reasonably implied thereby or as necessary to complete the work in the manner and within the time named herein and according to the requirements and to the reasonable satisfaction of the Director of Public Works; to indemnify the City against any loss or damage arising from any act of the undersigned as Contractors; and that Bidder will take in full payment therefore an amount computed by the Director of Public Works and based upon the unit prices as set forth in this bid proposal.

It is understood that the quantities set forth herein are approximate only and are for the purpose of comparing bids.

The amount to be paid the Contractor shall be the amount of work bid below, multiplied by the unit prices set forth as follows:

Item	Description	Unit	Quantity	Unit Price	Total Price
1	Summer Beach Shuttle Weekends & Holidays Only	Hours	390	\$ 59.96	\$ 23,385.10

TOTAL BID PRICE \$ 23,385.10

TOTAL IN WORDS Twenty three thousand three hundred eighty five dollars and ten cents.

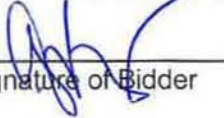
COMPANY NAME MV Transportation, Inc.

The City will award the contract to the lowest responsible bidder for each bid item shown above that complies with the instructions in the Request for Proposals and contract documents. The City reserves the right to award separate contracts for the bid items listed above based on prices listed, to disqualify all bids and award no contract. The City also reserves the right to negotiate a reduced price with any bidder. Any reduced price resulting from such negotiation shall be offered to the lowest bidder who will be given the right to accept this fee. The lowest bidder will be determined separately for each service bid and will be based on the Total Price indicated in the bid. In the event that the product of a unit price and the quantity does not equal the extended amount quoted, the unit price shall govern and the corrected product of the unit price and the estimated quantity shall be deemed to be the amount bid.

The undersigned agrees, if this bid proposal is accepted by the City Council and if a contract for performance of the work is entered into by and between the City of Capitola and the undersigned, to plan the work and prosecute it with such diligence that all of the work shall be completed.

The undersigned further agrees that if this bid proposal is accepted, to sign the agreement within TWENTY (20) calendar days after the award of the contract.

Dated this 16th day of February, 2015



Signature of Bidder

Amy Barry, SVP

Printed Name of Bidder

5910 N. Central Expressway, Suite 1145

Bidder's Address

Dallas, TX 75206

City, State, Zip Code

707.474.7784

Bidder's Telephone No.



4. **Proof of Insurance**

MV will provide insurance of the types and levels required by the City of Capitola. Please see MV's evidence of insurance certificate following our proposal.





Proposal to the City of Capitola for Summer Shuttle Bus Service Operations

5. References

Service Name	Contact	Contact Information
West Marin Stagecoach and Muir Woods Shuttle, Marin Transit (Marin, CA)	Amy Van Doren	(415) 226-0859
Sequoia National Park Shuttle, Visalia Transit System (Visalia, CA)	Monty Cox	(559) 713-4100
Golden Gate Park Shuttle (San Francisco, CA)	Sean McFadden	(415) 831-2779

Please see a full description of these services on the City provided Statement of Experience of Bidder form following this section.



West Marin Stagecoach and Muir Woods Shuttle, Marin Transit (Marin, CA)

MV operates fixed route, shuttle, and student transportation services for Marin Transit.

MV has operated the West Marin Stagecoach service since 2006. This fixed route service was created to connect passengers in remote Western Marin with access to the Greater Bay Area, including connections with Golden Gate Transit and other local transit services. The service operates seven days a week on three routes through mountain and coastal roads.



MV worked closely with Marin Transit to redesign and enhance service to better serve the riding public, which resulted in the receipt of the California Transit Association (CTA)'s Transit Excellence Award in 2012.

With the award of a second contract term for the Stagecoach in 2012, MV also assumed operation and management of the Muir Woods Shuttle. Operating seasonally from May through October and for short periods during the winter holiday season each year, the shuttle provides direct transportation from the local ferry, bus terminal, and park and ride lot to the park. This service reduces park traffic congestion and parking needs while decreasing the environmental impact of individual vehicles.

In 2013, MV began operating supplemental school service serving 11 elementary, middle, and high schools in Marin County.

MV operates and maintains a fleet of 17 vehicles for these services. Dispatchers use the Syncromatics system and mobile data terminals to monitor service throughout the day.

Please contact Amy Van Doren, Director of Operations at 415.226.0859 and avandoren@co.marin.ca.us as a reference for this contract.

Sequoia National Park Shuttle, Visalia Transit System (Visalia, CA)

In 2007, MV began providing visitor transportation services to the Sequoia and Kings Canyon National Park (SEKI). The Sequoia shuttle service operates seasonally from Memorial Day through Labor Day, and for short periods during the winter holiday season. During these seasons, this service transports park visitors seven days a week on four routes in the Sequoia



National Park area. MV also provides an advance-reservation shuttle service to the park from nearby Visalia. Both services minimize traffic congestion and parking needs within the park while providing a convenient transportation option to park visitors.

MV provides operations, dispatching, and maintenance of a 22-vehicle mixed fleet composed of diesel, hybrid, and gasoline buses and cutaways.

All operators for this service receive specialized training in how to operate the buses and cutaways in the unique mountain terrain of the national park. They also receive training from the National Park Service in wildlife safety and National Park rules and regulations.

This service provides the unique challenge of a complete service startup at the beginning of each new season. MV has successfully completed this startup on time every year it has operated the service.

The Sequoia Shuttle service was the recipient of APTA's 2009 Small System Excellence Award.

Please contact Monty Cox, Transit Manager at 559.713.4100 and mcox@ci.visalia.ca.us as a reference for this contract.

Golden Gate Park Shuttle (San Francisco, CA)

MV has operated the San Francisco Recreation and Parks Department's free Golden Gate Park Shuttle since February 2012. Shuttle services are offered on holidays and each weekend day, and help to alleviate the congestion caused by large numbers of visitors parking in Golden Gate Park.



Operating out of MV's existing Half Moon Bay location, the company provides two Ford cutaway vehicles that travel more than 10,000 miles annually. Shuttles run every 15 to 20 minutes, and operate from 9 a.m. to 6 p.m.

The Golden Gate Park Shuttle offers stops at the Conservatory of Flowers, de Young Museum, California Academy of Sciences, McLaren Lodge, the National AIDS Memorial Grove, Koret Children's Quarter Playground, and Stow Lake.

Please contact Sean McFadden, Principal Administrative Analyst at 415.831.2779 and sean.mcfadden@sfgov.org as a reference for this contract.

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CITY COUNCIL AGENDA REPORT

MEETING OF MARCH 12, 2015

FROM: PUBLIC WORKS DEPARTMENT

SUBJECT: APPROVAL THE SELECTION OF KIMLEY-HORN AND ASSOCIATES AND NICHOLS CONSULTING ENGINEERS FOR ON-CALL CAPITAL IMPROVEMENT PROJECT DESIGN AND IMPLEMENTATION SERVICES

RECOMMENDED ACTION: Approve the selection of the following consulting engineers to provide on-call engineering design services for implementation of the City's Capital Improvement Program.

1. Kimley-Horn and Associates in the amount not to exceed \$200,000 for fiscal year 2014/15 for civil and transportation projects; and
2. Nichols Consulting Engineers in the amount not to exceed \$150,000 for fiscal year 2014/15 for pavement management program projects.

BACKGROUND: Completion of the City's Capital Improvement Program (CIP) requires engineering design services to support the planning, design, and construction of the projects. The proposed on-call contracts with Kimley-Horn and Associates and Nichols Consulting Engineers would provide the City with the necessary expertise to complete the projects on a timely basis. The selection of these two firms would run through Fiscal Year 2019/2020 with annual contract amounts approved through the CIP process. The proposed not-to-exceed amounts are based on the engineering required for the current year projects included in the adopted CIP.

Under on-call contracts, consultants are not entitled to any specified amount of work or compensation. When the City desires design services, staff would issue a task order to the consultant and would negotiate scope and cost. Task orders exceeding \$25,000 that are not included in the approved in amount approve in the annual CIP program would require City Council approval.

DISCUSSION: Staff issued a request for qualifications for engineering firms in November 2014. Six firms submitted statements of qualifications. Four firms were invited for interviews which were completed in February 2015.


After a careful review of each firm's qualifications, proposals, and presentations, staff is recommending awarding the contracts detailed above. Kimley-Horn and Associates has assigned a team of highly qualified engineers with expertise in civil and transportation projects and will immediately begin work on the ADA improvements on the Rispin/Peery property, the rail pathway from Beach and Village Lot 1 to Monterey Avenue, and the roundabout at Capitola Avenue and Bay Avenue. Nichols Consulting is a leading firm on the implementation of pavement management programs and has recently done work for both the City and County of Santa Cruz. They will immediately start work on paving projects for Park Avenue, Rosedale Avenue, Carl Lane, Alma Lane and Rosedale Circle.

FISCAL IMPACT: The proposed not to exceed amounts for both contracts are for fiscal year 2014/15 with funding available in the individual CIP project funds. Individual task orders will be issued for each project.

ATTACHMENTS:

1. Statement of Qualifications and Draft Professional Services Contract for Kimley-Horn and Associates.
2. Statement of Qualifications and Draft Professional Services Contract for Nichols Consulting Engineers.

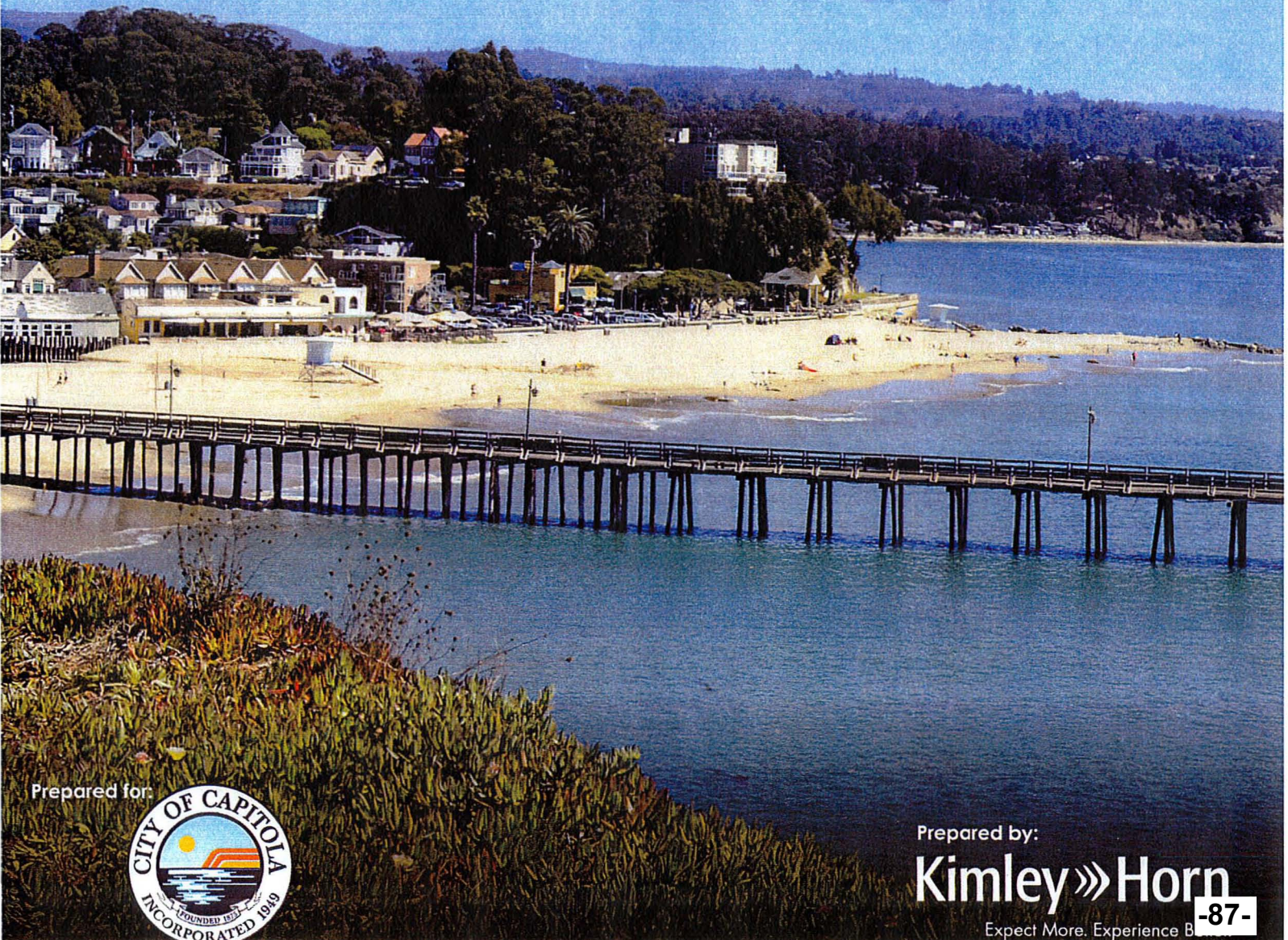
Report Prepared By: Steven Jesberg
Public Works Director

Reviewed and Forwarded
By City Manager: 

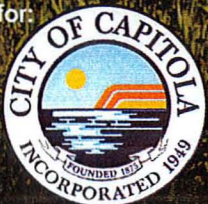
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Proposal to Provide
**Five-Year Capital
Improvement Program**
2014/15 – 2018/19



Prepared for:



Prepared by:

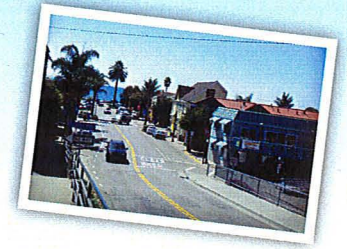
Kimley»Horn

Expect More. Experience Better.



Proposal to Provide
**Five-Year Capital
Improvement
Program**

2014/15 – 2018/19



October 1, 2014

Mr. Steven E. Jesberg
Public Works Director
420 Capitola Avenue, Capitola, CA 95010

100 West San Fernando Street
Suite 250
San Jose, California
95113
TEL 669 800 4130

RE: Statement of Qualifications - Proposed Five Year Capital Improvement Program (CIP)

Dear Mr. Jesberg:

The beautiful City of Capitola offers a multitude of amenities and is a popular tourist destination. Considered to be the first beach resort established on the west coast, Capitola faces challenges such as aging infrastructure, increased demand for services, and greater stress on services already in place.

To meet these challenges, the City needs a consulting team that can be “an extension of staff” and respond quickly to your varying project needs. Kimley-Horn is that team. Our handpicked team of experts will be a “one-stop-shop” to provide staff support, architectural, civil, traffic, stormwater, scheduling and inspection requirements, disability and access issues, construction management, project budgets and more.

Professionals You Can Count On

When you select a consultant for your project, you are really selecting the people that will provide the right combination of relevant experience, technical competence, passion for the project, and superior skill in successful project delivery with an eye for quality and detail. The team members and firms we have assembled for this project fit these requirements perfectly. They are seasoned engineering professionals with highly successful track records in completing projects for municipal agencies. Our team leadership— Project Manager, Frederik Venter, P.E., and your day-to-day Project Engineer, Kyle Childers, P.E., bring years of experience on similar projects to what is proposed for the City of Capitola. They will be supported by an experienced team that has extensive experience working together on previous projects.

Complete and Experienced Team

Our team will provide a seamless integration of engineers, planners, and environmental specialists throughout this contract for implementation of your 5-year CIP program. This means effective peer review, quality control, variety of experience, and value engineering that will allow our team to identify and implement the best project approaches for the City.

Simply a Better Experience

Kimley-Horn and our project team are excited to serve the City of Capitola. We are focused on providing exceptional service and solutions, with a personal touch that you won't experience with other firms. Our clients tell us that *working with Kimley-Horn is simply a better experience*. We have included references on similar contracts and projects as listed in the CIP. Should you have any questions about our statement of qualifications, please contact me directly at 408-340-8542 or frederik.venter@kimley-horn.com.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

Frederik J. Venter, P.E.
Project Manager



Proposal to Provide Five-Year Capital Improvement Program

2014/15 – 2018/19



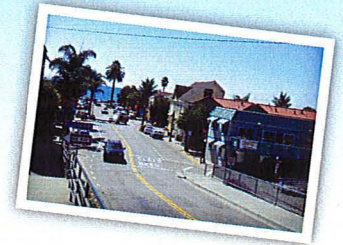
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Proposal to Provide
**Five-Year Capital
Improvement
Program**
2014/15 – 2018/19



Firm Overview

Kimley-Horn is a nationally recognized, multidisciplinary engineering and planning consulting firm—positioned on the leading edge of emerging technologies in transportation improvements. Established in 1967, Kimley-Horn has become a leading consultant in roadway design, traffic engineering, corridor studies, transportation impact assessments, transit system planning, design, and alternatives analysis; transportation demand management programs, and regional and statewide transportation systems.

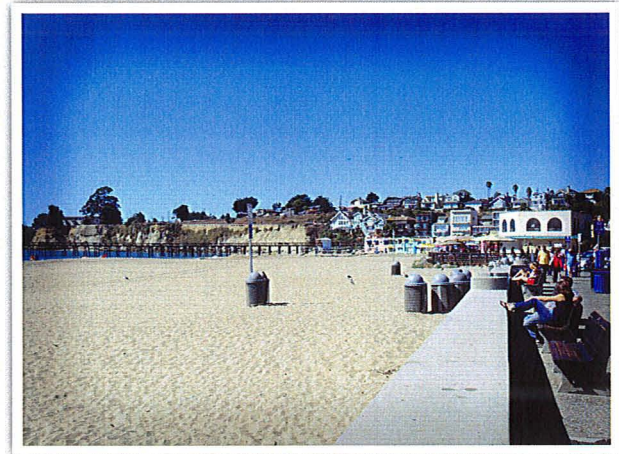
We currently serve nearly 100 public agencies in California and have extensive experience serving other governmental agencies—such as Caltrans—throughout the state.

After almost five decades of growth, we have not forgotten our founding principle: To provide our clients with quality engineering and comprehensive planning services. At Kimley-Horn, we go about achieving this objective through our extensive professional resources and our consistent attention to quality. Our approach is simple but well thought-out—we commit resources as needed, establish a pragmatic project schedule, reach key decisions by consensus, develop realistic analyses and defensible recommendations; and deliver quality technical submittals. **Seeing ourselves as a “partner” in the process—rather than a “consultant”—we have a vested interest in a successful outcome as an extension of your staff. Kimley-Horn takes pride in a job well done.**

With more than 250 engineers, planners, designers, technicians, and support staff in our 14 California offices, we have more than enough in-house resources to be immediately responsive to your needs. **Should there be a need for additional experienced staff to meet a critical deadline, we have more than 2,200 experienced professionals and technicians, firmwide, at your disposal.**

Approach to Project Delivery

Kimley-Horn’s approach to delivering successful CIP projects is based on years of experience working on capital projects in San Diego County and in National City. Kimley-Horn’s philosophy in providing first-rate professional engineering services is based on client service and technical expertise. Kimley-Horn is committed to helping the City achieve its project goals and objectives. Much



of our success is directly related to our consistent delivery of high quality, timely services. We take great pride in the fact that approximately 80 percent of our services are for repeat clients—evidence of our commitment to on-time, on-budget project delivery. The Kimley-Horn strategy for a successful design project includes the following key elements:

Design Considerations. Our experience in executing on-call design tasks has resulted in an understanding of typical design considerations that help meet project goals and promote success. Due to our familiarity and past partnership with the City, we have specific experience meeting and understanding the City’s objectives.

Detailed Scope of Work. We tailor each project’s scope of work specifically to the needs of the individual project and the needs of the City. Our familiarity with local standards and regulatory agencies helps us determine what will be necessary to assist the City with certain task orders.

Communication. Communication between our team and the City is critical to thoroughly understanding your vision and implementing the innovative and cost-effective solutions that our team is known for. Effective communication begins with listening to your ideas about the goals and concerns of this contract. Making certain that our team and your staff are on the same page throughout the course of each task will help avoid or mitigate potential problems or issues that might arise.



Proposal to Provide
**Five-Year Capital
 Improvement
 Program**

2014/15 – 2018/19



Schedule Control. Schedule control begins with obtaining a clear understanding of the scope of work and budget, and the subsequent preparation of a detailed schedule that includes both milestone completion dates for interim deliverables and the overall task. Kimley-Horn's Management Information System (MIS) tracks both effort and performance by recording time spent and percent of projects completed.

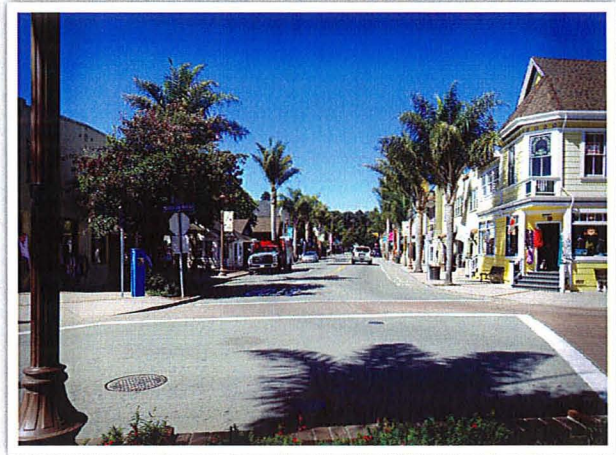
Cost Control. Cost control is achieved through two independent processing systems integrated into the MIS, providing a complete financial and reporting overview of each individual task, as well as the entire project. This level of tracking controls task budgets, allowing us to keep our clients fully informed of all administrative aspects of each task.

QC/QA. Kimley-Horn has aggressively pursued a commitment to quality for every task, deliverable, and service provided by the firm. Recognizing the importance of careful quality control, our Quality program will include the review of project documents and supporting data by our project manager and key staff who will direct individual tasks.



Solid Financial Management Makes Us Better Able to Serve You

Our accounting system is highly automated, with online time recording and on-the-spot capability for the project manager to review charges to the project and review current project status and costs. Kimley-Horn uses the CostPoint Engineering Accounting system to track labor hours and expenses for each project. Twice monthly, the Kimley-Horn MIS generates a Project Effort Report showing by task, actual effort expended and project expenses. This



internal control allows us to make, on a timely basis, adjustments that may be necessary to stay within budget and assist in maintaining the project schedule. The proven financial management tools we have in place have helped us stay at the top of the engineering consulting profession for over 47 years.

Why Select the Kimley-Horn Team?

On behalf of our local team, we are excited about the opportunity to continue our working relationship with Capitola. Our team provides:

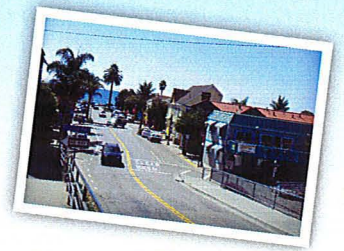
Hands-On, Dedicated Project Manager – The City can rest assured that Frederik Venter, P.E. and Kyle Childers, P.E. will be readily available, reliable, and accountable throughout all phases of each project assigned to our team.

Responsiveness, Local Knowledge, Working Relationships – The Kimley-Horn team will serve as an extension of your staff. We not only have national expertise, but we understand the local, technical, and political issues that impact your city. Trust is an important part of any relationship. Through our ongoing association with Capitola, you know that when we say we will do something, it will get done.



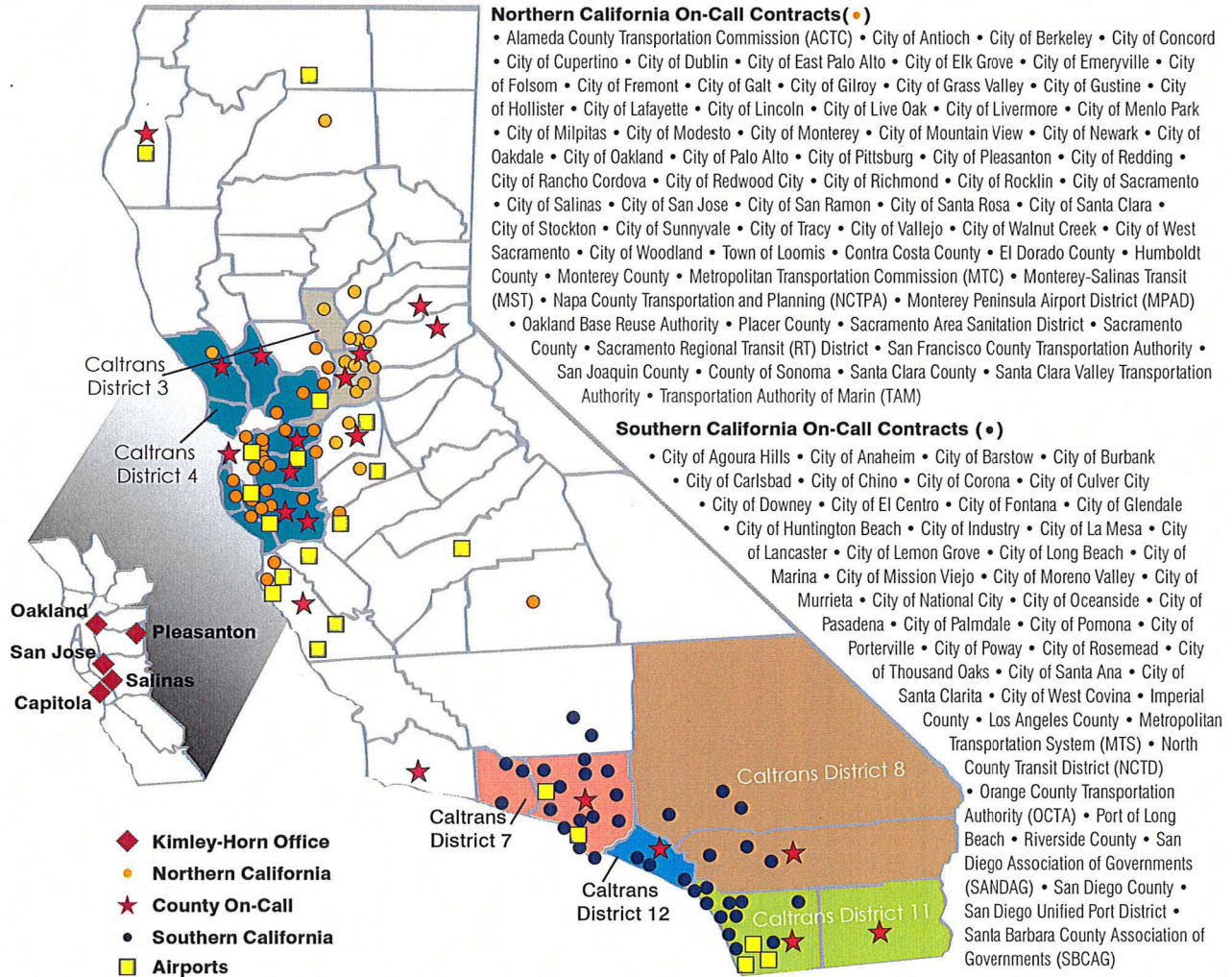
Proposal to Provide Five-Year Capital Improvement Program

2014/15 – 2018/19



Caltrans On-Call Contracts

• Statewide (includes District 3 • District 4 • District 7 • District 8 • District 11 • District 12)



On Pre-Qualified List

- City of Anaheim
- City of Brentwood
- City of Cypress
- City of El Segundo
- City of Irvine
- City of Lake Forest
- City of Long Beach
- City of Moreno Valley
- City of Newark
- City of Newport Beach

- City of San Diego
- City of San Jose
- City of Santa Ana
- Bay Area Toll Authority (BATA)
- EBMUD
- RCTC Goods Movement

Airport Contracts (■)

- Orange County
- San Diego County
- San Diego County Regional Airport Authority
- City of San Diego
- City of Salinas
- City of King City
- City of Modesto
- City of Rio Vista
- City of Hollister
- City of Firebaugh

- City of Dunsmuir
- City of Gustine
- City of Livermore
- Long Beach Airport
- Los Angeles World Airports
- Contra Costa County Airports
- Monterey County
- Humboldt County
- Boulder City, NV
- Boulder, CO



Proposal to Provide
Five-Year Capital Improvement Program
 2014/15 – 2018/19



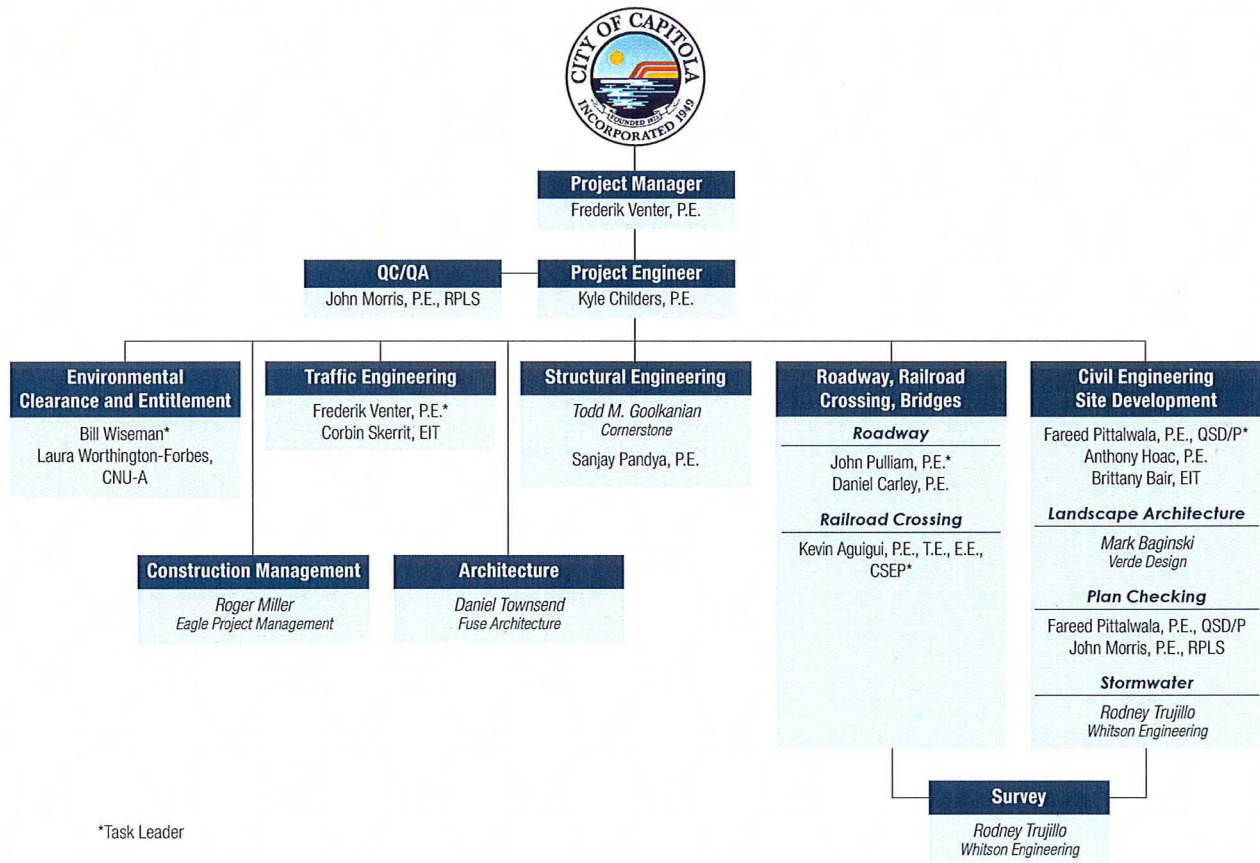
Qualifications/Availability of Key Personnel

Team Organization

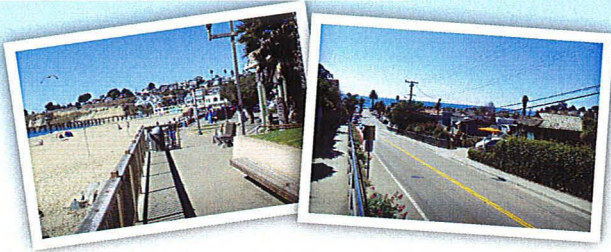
Each member of our team is committed to the successful completion of your project. The organization chart below shows our key staff and their positions, including subconsultants. If selected, this is the team that will serve you for the duration of the project. Changes in team composition will not occur without prior written approval of the City.

Team Qualifications

Kimley-Horn prides itself on being a successful consultant for local government. In fact, one of our largest practices is in the municipal arena. We have served cities and counties for many years, and are currently serving numerous cities and counties throughout Northern California. We consider ourselves to be an extension of a city's staff and are committed to the success of a city's project as if it is our own project. We are accessible for staff meetings and work sessions on short notice, and we can offer knowledge of local conditions because we are a local team. In addition, many of our staff members are former municipal engineers and planners. Our team's combined municipal



*Task Leader



Proposal to Provide
Five-Year Capital Improvement Program

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experience in design, administration, and construction phase services gives us the specific understanding of how to work with Public Works, Redevelopment Agencies, Caltrans and other regulatory agencies, elected officials, various stakeholders and the local community to negotiate support and buy-in, and effectively achieve your objectives.

Kimley-Horn and our team of subconsultant firms (the Kimley-Horn team) have completed numerous projects similar in scope to those listed in the City's RFQ for On-Call Project Support Services. We have been the prime consultant for numerous public works design projects involving:

- Civil Engineering
- Structural Engineering
- Mechanical Engineering
- Electrical Engineering
- Traffic Engineering
- Traffic Signal
- Communications & Systems Integration
- Traffic Data Collection
- Transportation Design and Planning
- Architecture
- Landscape Architecture
- ADA & Universal Design
- Utility Design & Coordination
- Land Surveying
- Geotechnical
- Environmental Engineering
- Planning & Design
- Environmental Compliance
- Project Management
- Community Outreach

Availability

The team members we have assembled for this project are highly experienced engineering, planning, and design professionals with a proven, successful track record in a variety of CIP projects. This type of work is their specialty—they will be committed to the project through its duration and successful completion. The table below is a summary of Kimley-Horn's key personnel committed to this project, demonstrating their qualifications and responsibilities and availability.

Roles and Responsibilities of our trusted Sub-consultant team

We are pleased to present our carefully selected team of highly qualified subconsultants, organized to complement Kimley-Horn's in-house personnel and provide the City with the most qualified team. Kimley-Horn is currently or has previously worked on projects with all of our subconsultants, creating a cohesive team of expert firms that function as one multidisciplinary project team. A brief summary of the firms and their specialties follows.

WHITSON ENGINEERS has focused on providing the best in governmental engineering, project management, land development, and land surveying services since its founding in 1979. Their goal is to provide accurate, responsive, value-added service to their clients. As a result, they have established positive, long-term relationships with local agencies and municipalities, permitting authorities, utility service providers, and the local community.

Category	Team Members	Project Responsibilities	Percentage Of Time
Project Manager/Traffic Engineering	Frederik Venter, P.E.	Overall Project Management, Traffic Engineering Task Leader	50%
Project Engineer	Kyle Childers, P.E.	Day-to-day contact and City Staff support	75%
QC/QA	John Morris, P.E., RPLS	Quality Control on PS&E drawings	25%
Roadway	John Pulliam, P.E.	Roadway design Engineer Task Leader	75%
Signals and Railroad Crossing	Kevin Aguigui, P.E., T.E., E.E., CSEP	Signal and RR Xing Task Leader	50%
Civil Engineering	Fareed Pittalwala, P.E., QSD/P	Land Development, Utility, Site development Task Leader	75%
Environmental Clearance	Bill Wiseman	Environment Support Leader	50%



Proposal to Provide
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They have completed a vast array of projects that are similar in scope to the services that may be required under this on-call services contract. Street, highway, roundabout, parking, bicycle facilities, pedestrian facilities, park and sports field design, land surveying, right-of-way engineering, storm drainage improvements, and sanitary sewer design are all within their areas of expertise. They have completed Caltrans PSR's and Project Reports. They also have extensive experience designing storm water infrastructure that meets the State and Regional Water Board's requirements as well as local Storm Water Development Standards. As many of their projects have used federal or state monies, they are knowledgeable about the processes and implications of public funding.

VERDE DESIGN integrates landscape architecture, civil engineering design, and construction management to serve a wide variety of client needs. This innovative approach has enabled them to complete successful projects for municipal and county agencies, parks and recreation districts, public school districts, private schools, colleges and universities. They have an extensive portfolio of successful facilities: regional, community, and neighborhood parks, as well as multi-use athletic fields, sports parks, and tennis courts. Their projects also include landscape architecture and civil engineering for surrounding areas.

The members of their staff are recognized as experts in landscape architecture, parks, and athletic facility design and construction. Because Verde Design's senior staff have worked together for many years, they've developed a rapport that allows them to seamlessly manage projects from feasibility studies, conceptual designs, and construction documents through construction management and project completion. Their quality control procedures have enabled them to meet or beat project schedules and remain well within the established project budgets.

EAGLE PROJECT MANAGEMENT, LLC was founded in 2013 after managing member Roger Miller served as Capital Projects director for the Integrated Construction Management division within WR&D Architects for nearly 10 years. Mr. Miller has extensive experience as a project and construction manager on private and public agency projects for Public School Districts, the County of Monterey, and Publicly Owned Hospitals. He has provided project management consulting services on a wide spectrum of architectural and engineering construction projects for more than 39 years. His experience includes project management, logistical coordination, resource planning and

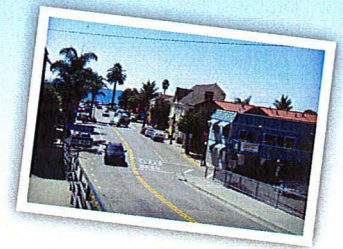
scheduling, providing cost analysis and budget management, as well as conducting site supervision during the construction phase to keep the project on schedule and within budget. In his prior position, Mr. Miller acted as a Capital Project Manager for the County of Monterey, planning and managing the execution of commercial projects for the County. Roger Miller was employed by Integrated Construction Management (ICM) from 2004-2013.

CORNERSTONE ENGINEERING, INC. Cornerstone Structural Engineering Group has been providing structural engineering design services on transportation projects to public agencies, developers, and other professional clients on a wide variety of bridge and infrastructure projects since 2004. As a registered Small Business Enterprise (SBE) with offices in Fresno and San Francisco, we have intentionally chosen to focus our Transportation practice on structural design, preferring to work with project-specific civil engineering subconsultants or local agency staff to perform the roadway design. Our senior staff members are all licensed Structural Engineers and bridge design experts trained to emphasize technical design, economy, and constructability on all of our projects. Our current growing staff of 20 includes 12 licensed PE's as well as support staff. Our extensive portfolio of work, combined with the accessibility and outstanding communication skills of our Project Managers makes us an ideal fit for your project.

FUSE ARCHITECTS, INC. is a full service architecture firm consisting of two partners, Daniel Gomez and Daniel Townsend, as well as four staff members. Our team has an extensive background in commercial and residential work and pride ourselves on creating forward thinking progressive designs. Our principles were educated at the University of Arizona College of Architecture where sustainable practices and environmental appropriateness are integral to the success of every project. The Dan's had run an architectural practice in Tucson, AZ while attending college and master planned and designed over 150 projects, ranging from custom homes to golf course communities as well as the initial planning and design for a golf club house, hotel and recreation center. Prior to starting Fuse, Daniel Gomez was one of two lead designers for the architectural firm of WareMalcomb Architects, a large commercial architectural firm headquartered in Orange County, California with 11 offices internationally. Daniel Townsend was a lead designer for the Newport Beach office of Gensler, an internationally recognized architectural design firm with offices worldwide.



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Project Experience

Kimley-Horn has a proven track record of solid, successful performance and documented client satisfaction. The projects described on the following pages reflect Kimley-Horn's capability to deliver similar services on schedule and within budget. For each project presented, quality control is consistent with Kimley-Horn best practices and our internal QC/QA initiative.

Relevant Capitola Projects:

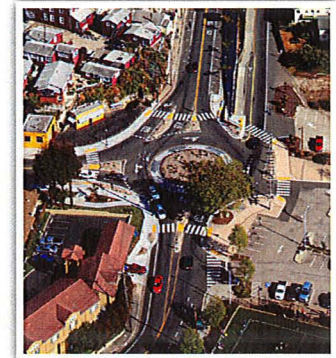
- **Rispin Mansion EIR** – Bill Wiseman
- **Pacific Cove Parking Structure Feasibility Analysis** – Bill Wiseman
- **Capitola Village Parking Study** – Frederik Venter
- **Capitola Village Parking Implementation Plan** – Frederik Venter
- **Capitola Village and Pacific Cove Traffic Circulation Analysis** – Frederik Venter
- **Capitola Avenue/ Pac Cove Lot Driveway All-Way Stop Analysis** – Frederik Venter
- **Capitola Avenue/Bay Avenue Roundabout Evaluation** – Frederik Venter



- **Parking studies: Capitola Mall, Cinelux Theaters, Yoga Fitness** – Frederik Venter
- **Traffic Operation Improvements at 41st Avenue/ Brommer Street** – Frederik Venter
- **Traffic Calming on 42nd Avenue and Reposa Avenue** – Frederik Venter
- **Safe Routes to School Study – New Brighton School** – Frederik Venter

Beach Area Roundabouts Design, Santa Cruz, CA

Kimley-Horn performed the feasibility study for two roundabouts on Pacific Street in the City of Santa Cruz, as well as the design for these high profile improvements, which have a variety of design challenges. The intersection of Pacific Avenue and Beach Street includes a two-direction bike path, hundreds of



pedestrians crossing during peak hours, an old and undocumented storm drain system, constrained right-of-way, and a railroad crossing through the roundabout. Kimley-Horn provided extensive coordination between the City, CPUC, and railroad as part of the final design. The intersection of Pacific Avenue and Center Street includes steep grades with associated ADA issues, utility pole conflicts, and relocation of a decorative arbor over the roadway.

The Pacific/Center roundabout is complete and was recognized as Monterey APWA Chapter Project of the Year. The Wharf Roundabout is schedule for construction in Fall 2014.

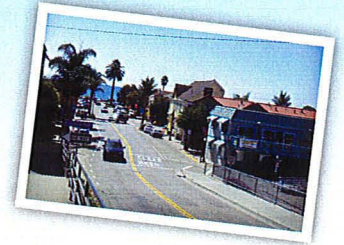
A Trusted Partner/ Strong Relationship

Design of the Wharf Roundabout at the intersection of Pacific at Beach in Santa Cruz was initially started back in 2007 as part of a 2 roundabout package. The design was not finalized due to the economic downturn and the change of ownership of the railroad crossing through the intersection. 7 years later, the Client called and wanted Kimley-Horn to complete the design within a month to meet a project construction schedule, even though the Client and Kimley-Horn project teams have changed. Kimley-Horn assembled a team of roundabout experts to complete the construction documents to meet the Client's schedule. Roundabout construction starts in September 2014 and should be completed in March 2015.



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The Bart Extension Station Campuses, San Jose, CA



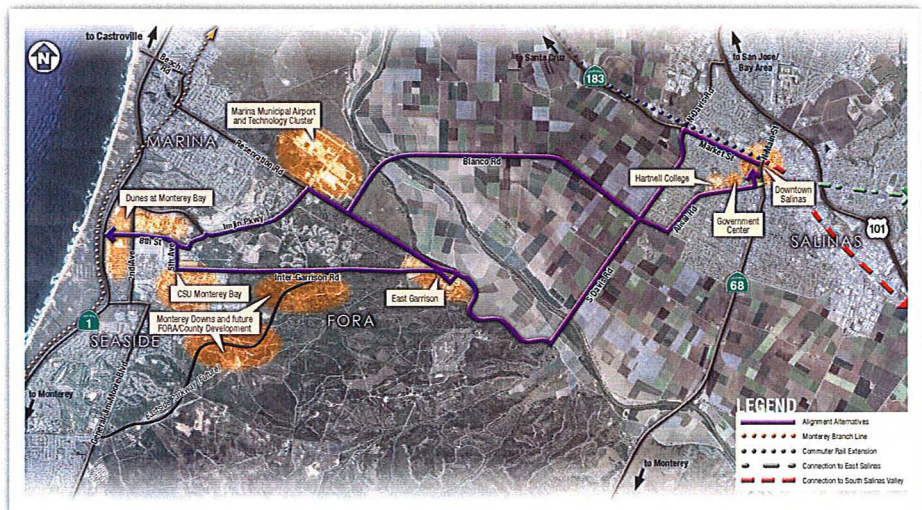
Kimley-Horn developed the planning concepts and performed preliminary engineering and final design for the transit station campuses in Milpitas and San Jose as part of the 9.9-mile extension of the BART system from Warm Springs to San Jose. Kimley-Horn's work has included the development of the site layouts, roadways, transit centers, pedestrian and bicycle flow, parking structures, and surface parking lots. The Milpitas Station is 18.6 acres and includes a 1,200-space parking garage, a 300-space surface parking lot, a 16-bay bus transit center plus layover space, pick-up/drop-off and shuttle curb space, a new roadway, and new traffic signals. The Berryessa Station is 24.7 acres and includes a six-story, two-phase parking garage, several surface parking lots, a 10-bay transit center including provisions for BRT service, dedicated on-street and off-street bicycle and pedestrian facilities, and station amenities. For both campuses, Kimley-Horn completed the full range of planning and design, including multimodal circulation, emergency access, roadway design, drainage, communication, stormwater detention, traffic signals, pedestrian and bicycle circulation, placement and design of bus stop shelters, parking garage design, and the advanced parking revenue management system. The facilities were

designed according to current BART Facility Standards and in close coordination with VTA, BART, Santa Clara County, the City of Milpitas, and the City of San Jose. Portions of the station campuses are currently under construction with service planned to begin in 2017.

Monterey-Salinas Transit, Fremont-Lighthouse BRT Design (task order from TAMC On-Call), Monterey Bay Area, CA

Kimley-Horn completed the design of a 6.75-mile BRT project in the Monterey Bay area through the communities of Monterey and Seaside. The goals of the BRT project are to increase transit ridership in the Monterey Bay area and achieve the benefits associated with reduced reliance on personal automobiles. The BRT will seek to accomplish these goals by reducing bus travel times through the corridor while increasing bus arrival frequency and improving user amenities.

Improvements included modernized, ADA-compliant bus stops, transit signal priority, and queue jump lanes. The Federal Transit Administration (FTA) determined that the project was Categorically Excluded from National Environmental Policy Act (NEPA) review in March 2009. Kimley-Horn supported MST in compliance with the California Environmental Quality Act. Services included field review of proposed improvements, preparation of an abbreviated environmental checklist, and support for the preparation of a Notice of Exemption (NOE) form.



**CITY OF CAPITOLA
PROFESSIONAL SERVICES AGREEMENT
ON-CALL ENGINEERING SERVICES
Kimley-Horn**

THIS AGREEMENT is entered into on March 12, 2015, by and between the City of Capitola, a Municipal Corporation, hereinafter called "City" and Kimley-Horn and Associates Inc., hereinafter called "Consultant".

WHEREAS, City desires certain services described in Appendix One and Consultant is capable of providing and desires to provide these services;

NOW, THEREFORE, City and Consultant for the consideration and upon the terms and conditions hereinafter specified agree as follows:

**SECTION 1
Scope of Services**

The services to be performed under this Agreement are for architectural design services in support of various municipal facility projects and further detailed in Appendix One.

**SECTION 2
Duties of Consultant**

All work performed by Consultant, or under its direction, shall be sufficient to satisfy the City's objectives for entering into this Agreement and shall be rendered in accordance with the generally accepted practices, and to the standards of, Consultant's profession.

Consultant shall not undertake any work beyond the scope of work set forth in Appendix One unless such additional work is approved in advance and in writing by City. The cost of such additional work shall be reimbursed to Consultant by City on the same basis as provided for in Section 4.

If, in the prosecution of the work, it is necessary to conduct field operations, security and safety of the job site will be the Consultant's responsibility excluding, nevertheless, the security and safety of any facility of City within the job site which is not under the Consultant's control.

Consultant shall meet with the Community Development Director, called "Director," or other City personnel, or third parties as necessary, on all matters connected with carrying out of Consultant's services described in Appendix One. Such meetings shall be held at the request of either party hereto. Review and City approval of completed work shall be obtained monthly, or at such intervals as may be mutually agreed upon, during the course of this work.

**SECTION 3
Duties of the City**

City shall make available to Consultant all data and information in the City's possession which City deems necessary to the preparation and execution of the work, and City shall actively aid and assist Consultant in obtaining such information from other agencies and individuals as necessary.

The Director may authorize a staff person to serve as his or her representative for conferring with Consultant relative to Consultant's services. The work in progress hereunder shall be reviewed from time to time by City at the discretion of City or upon the request of Consultant. If the work is satisfactory, it will

Professional Services Agreement March 12, 2015
On-Call Engineering Design Services
Kimley-Horn and Associates, Inc.
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be approved. If the work is not satisfactory, City will inform Consultant of the changes or revisions necessary to secure approval.

SECTION 4 **Fees and Payment**

Payment for the Consultant's services shall be made upon a schedule and within the limit, or limits shown, upon Appendix Two. Such payment shall be considered the full compensation for all personnel, materials, supplies, and equipment used by Consultant in carrying out the work. If Consultant is compensated on an hourly basis, Consultant shall track the number of hours Consultant, and each of Consultant's employees, has worked under this Agreement during each fiscal year (July 1 through June 30) and Consultant shall immediately notify City when the number of hours worked during any fiscal year by any of Consultant's employees reaches 900 hours. In addition each invoice submitted by Consultant to City shall specify the number of hours to date Consultant, and each of Consultant's employees, has worked under this Agreement during the current fiscal year.

SECTION 5 **Changes in Work**

City may order major changes in scope or character of the work, either decreasing or increasing the scope of Consultant's services. No changes in the Scope of Work as described in Appendix One shall be made without the City's written approval. Any change requiring compensation in excess of the sum specified in Appendix Two shall be approved in advance in writing by the City.

SECTION 6 **Time of Beginning and Schedule for Completion**

This Agreement will become effective when signed by both parties and will terminate on the earlier of:

- June 30, 2020; or
- The date either party terminates the Agreement as provided below.

Work shall begin on or about March 12, 2015.

In the event that major changes are ordered or Consultant is delayed in performance of its services by circumstances beyond its control, the City will grant Consultant a reasonable adjustment in the schedule for completion provided that to do so would not frustrate the City's objective for entering into this Agreement. Consultant must submit all claims for adjustments to City within thirty calendar days of the time of occurrence of circumstances necessitating the adjustment.

SECTION 7 **Termination**

City shall have the right to terminate this Agreement at any time upon giving ten days written notice to Consultant. Consultant may terminate this Agreement upon written notice to City should the City fail to fulfill its duties as set forth in this Agreement. In the event of termination, City shall pay the Consultant for all services performed and accepted under this Agreement up to the date of termination.

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SECTION 8 Insurance

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, or employees.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial Liability coverage (Occurrence Form CG 0001).
2. Insurance Services office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California.
4. Errors and Omissions Liability insurance appropriate to the consultant's profession.

Minimum Limits of Insurance

Consultant shall maintain limits no less than:

- | | |
|--|--|
| 1. General Liability:
(including operations,
products and completed
operations) | \$1,000,000 per occurrence and \$2,000,000 in
aggregate (including operations, for bodily injury,
personal and property damage. |
| 2. Automobile Liability: | \$1,000,000 per accident for bodily injury and
property damage. |
| 3. Errors and Omissions
Liability:
Limits | \$1,000,000 per claim and in the aggregate. |

Other Insurance Provisions

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Capitola, its officers, officials, employees and volunteers are to be covered as additional insured's as respects: liability arising out of work or operations performed by or on behalf of the Consultant or automobiles owned, leased, hired or borrowed by the Consultant.
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees

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On-Call Engineering Design Services
Kimley-Horn and Associates, Inc.
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- or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, returned receipt requested, has been given to the City.
 4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

Consultant shall furnish the City with original certificates and amendatory endorsements affecting coverage by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

SECTION 9 Indemnification

Consultant agrees to indemnify, defend, and hold harmless the City, its officers, agents and employees, from and against any and all claims, demands, actions, damages, or judgments, including associated costs of investigation and defense arising in any manner from consultant's negligence, recklessness, or willful misconduct in the performance of this agreement.

SECTION 10 Civil Rights Compliance/Equal Opportunity Assurance

Every supplier of materials and services and all consultants doing business with the City of Capitola shall be in compliance with the applicable provisions of the Americans with Disabilities Act of 1990, and shall be an equal opportunity employer as defined by Title VII of the Civil Rights Act of 1964 and including the California Fair Employment and Housing Act of 1980. As such, consultant shall not discriminate against any person on the basis of race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, age or sex with respect to hiring, application for employment, tenure or terms and conditions of employment. Consultant agrees to abide by all of the foregoing statutes and regulations.

SECTION 11 Legal Action/Attorneys' Fees

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which he or she may be entitled. The laws of the State of California shall govern all matters relating to the validity, interpretation, and effect of this Agreement and any authorized or alleged changes, the performance of any of its terms, as well as the rights and obligations of Consultant and the City.

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SECTION 12 Assignment

This Agreement shall not be assigned without first obtaining the express written consent of the Director after approval of the City Council.

SECTION 13 Amendments

This Agreement may not be amended in any respect except by way of a written instrument which expressly references and identifies this particular Agreement, which expressly states that its purpose is to amend this particular Agreement, and which is duly executed by the City and Consultant. Consultant acknowledges that no such amendment shall be effective until approved and authorized by the City Council, or an officer of the City when the City Council may from time to time empower an officer of the City to approve and authorize such amendments. No representative of the City is authorized to obligate the City to pay the cost or value of services beyond the scope of services set forth in Appendix Two. Such authority is retained solely by the City Council. Unless expressly authorized by the City Council, Consultant's compensation shall be limited to that set forth in Appendix Two.

SECTION 14 Miscellaneous Provisions

1. *Project Manager.* Director reserves the right to approve the project manager assigned by Consultant to said work. No change in assignment may occur without prior written approval of the City.
2. *Consultant Service.* Consultant is employed to render professional services only and any payments made to Consultant are compensation solely for such professional services.
3. *Licensure.* Consultant warrants that he or she has complied with any and all applicable governmental licensing requirements.
4. *Other Agreements.* This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter, and no other agreement, statement or promise related to the subject matter of this Agreement which is not contained in this Agreement shall be valid or binding.
5. *City Property.* Upon payment for the work performed, or portion thereof, all drawings, specifications, records, or other documents generated by Consultant pursuant to this Agreement are, and shall remain, the property of the City whether the project for which they are made is executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information and reference in connection with the City's use and/or occupancy of the project. The drawings, specifications, records, documents, and Consultant's other work product shall not be used by the Consultant on other projects, except by agreement in writing and with appropriate compensation to the City.
6. *Consultant's Records.* Consultant shall maintain accurate accounting records and other written documentation pertaining to the costs incurred for this project. Such records and documentation shall be kept available at Consultant's office during the period of this Agreement, and after the term of this Agreement for a period of three years from the date of the final City payment for Consultant's services.

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7. *Independent Contractor.* In the performance of its work, it is expressly understood that Consultant, including Consultant's agents, servants, employees, and subcontractors, is an independent contractor solely responsible for its acts and omissions, and Consultant shall not be considered an employee of the City for any purpose.

8. *Conflicts of Interest.* Consultant stipulates that corporately or individually, its firm, its employees and subcontractors have no financial interest in either the success or failure of any project which is, or may be, dependent on the results of the Consultant's work product prepared pursuant to this Agreement.

9. *Notices.* All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given and fully received when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed to the respective parties as follows:

CITY
CITY OF CAPITOLA
420 Capitola Avenue
Capitola, CA 95010
831-475-7300

CONSULTANT
Kimley-Horn and Associates, Inc.
100 West San Fernando St, Suite 250
San Jose, CA 95113
669-800-4130

By: _____
Benjamin Goldstein, City Manager

By: _____
Frederik Venter , PE #64621, Associate

Dated: _____

Dated: _____

Approved as to Form:

John G. Barisone, City Counsel

Item #: 9.E. Attach 1.pdf

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APPENDIX ONE Scope of Services

The Consultant shall assist with the design, planning, permitting, and construction of various municipal facility projects. The scope of services will be determined by the City on an as-needed basis and presented to the Consultant as individual task orders. The Consultant shall perform services at the discretion of the City and as generally set forth in this scope of services and as more specifically described in each task order. The City currently has one identified project which will require assistance from the selected Consultant which is described below:

Projects identified in 2014/15 Capital Improvement Program

- Monterey & Park Station Park and Pathway
- Rispin/Peery Park Improvements
- Roundabout Design at Capitola Ave and Bay Ave
- Hill Street Pedestrian Improvements

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APPENDIX TWO Fees and Payments

For the services performed, City will pay the Consultant on either a lump sum or a time and material basis as specified in individual task orders issued by the City. Payments will be made upon satisfactory completion of the services and delivery of work products as identified in each individual task order. Payments will be issued monthly as charges accrue, the sum of consultant's salary expenses and non-salary expenses.

Consultant hereby represents and warrants, based upon Consultant's independent determination of the time and labor, including overtime, which will be required to perform said services, that Consultant will provide all said services at a cost which will not exceed the maximum price set forth in this agreement, or in individual task orders, for Consultant's services. Consultant hereby assumes the risk that Consultant will perform said services within this maximum price constraint and Consultant acknowledges that its inability to do so shall not excuse completion of the services and shall not provide a basis for additional compensation.

Salary expenses include the actual direct pay of personnel assigned to the project (except for routine secretarial and account services) plus payroll taxes, insurance, sick leave, holidays, vacation, and other fringe benefits. The percentage of compensation attributable to salary expenses includes all of Consultant's indirect overhead costs and fees. For purposes of this Agreement, Consultant's salary expenses and non-salary expenses will be compensated at the rates set forth in the fee schedule attached to this appendix and in accordance with the terms set forth therein. Non-salary expenses include travel, meals and lodging while traveling, materials other than normal office supplies, reproduction and printing costs, equipment rental, computer services, service of subconsultants or subcontractors, and other identifiable job expenses. The use of Consultant's vehicles for travel shall be paid at the current Internal Revenue Service published mileage rate.

Salary payment for personnel time will be made at the rates set forth in the attached fee schedule for all time charged to the project. Normal payroll rates are for 40 hours per week. Consultant shall not charge the City for personnel overtime salary at rates higher than those set forth in the attached fee schedule without the City's prior written authorization.

In no event shall the total fee charged for the scope of work set forth in Appendix One exceed the total budget identified in the annual Capital Improvement Program approved by the City Council. For fiscal year 2014/15 this amount is \$200,000.

Payments shall be made monthly by the City, based on itemized invoices from the Consultant which list actual costs and expenses. Such payments shall be for the invoice amount. The monthly statements shall contain the following affidavit signed by a principal of the Consultant's firm:

"I hereby certify as principal of the firm of _____, that the charge of \$_____ as summarized above and shown in detail on the attachments is fair and reasonable, is in accordance with the terms of the Agreement dated _____, _____, and has not been previously paid."

**APPENDIX THREE
 BILLING RATES**



Fee Rates

Compensation

Our proposal not only includes engineering services, as requested, but also a comprehensive range of services from initial environmental planning through due diligence, entitlement, PS&E, and construction management. Any specialized services will be procured through discussion with City staff and separate request for proposals.

All overhead costs and fees are included in our billing rates below. Other direct costs are billed as outlined below. Any permitting, processing, application or development impact fees from other agencies (i.e., Caltrans, the County of Monterey, etc.) is not included in our rate sheet. All expenses for internal reproduction of documents, faxed documents, and word processing charges are included in our 2014 rates.

Schedule of Billing

Category	Hourly Rate*
Project Support	\$80.00-\$130.00
CADD Operator / Designer	\$100.00-\$110.00
Sr. CADD Operator/Designer	\$125.00-\$170.00
Analyst	\$100.00-\$140.00
Engineer / Professional	\$150.00-\$185.00
Sr. Engineer / Professional	\$235.00-\$295.00

**Rates are escalated annually on July 1st.*

Other Direct Costs: Outside Printing/Reproduction, Delivery Services/USPS, Misc. Field Equipment/Supplies, and Travel Expenses will be billed at actual Cost. Mileage will be billed at the Federal Rate.

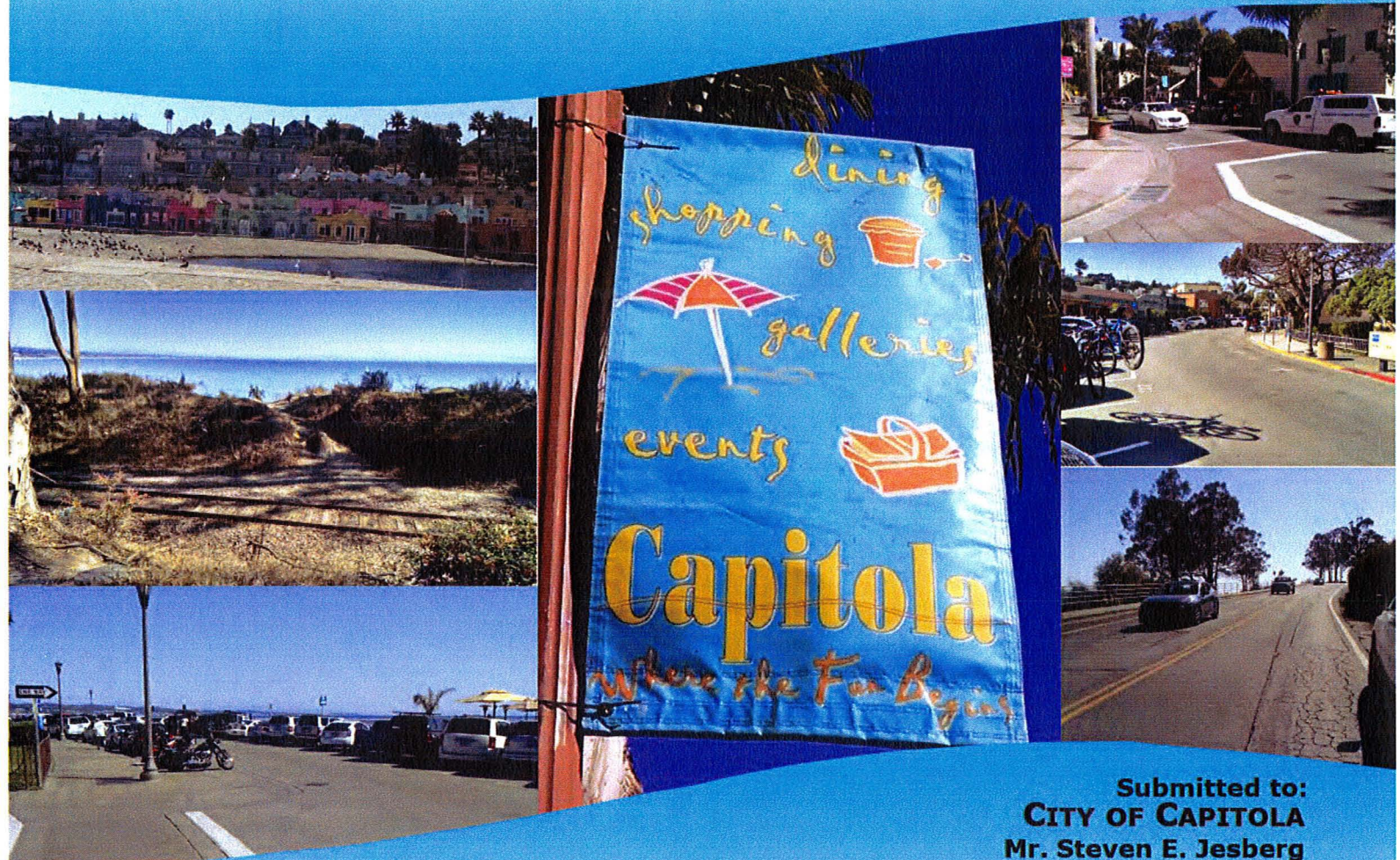
STATEMENT OF QUALIFICATIONS:



City of Capitola

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CITY OF CAPITOLA

Engineering Services - Pavement Management and Pavement Design



Submitted to:
CITY OF CAPITOLA
Mr. Steven E. Jesberg
Public Works Director
420 Capitola Avenue
Capitola, CA 95010

October 1, 2014 Proposal No. 303.04.20

Submitted by:



501 Canal Blvd., Suite I
Pt. Richmond, CA 94804
(510) 215-3620

Engineering & Environmental Services

www.ncenet.com



VIA EMAIL

October 1, 2014

NCE File #: 303.04.20

Mr. Steven Jesberg
Public Works Director
City of Capitola
Department of Public Works
420 Capitola Avenue
Capitola, CA 95010

Response to Request for Qualifications for Engineering Services dated September 11, 2014

Dear Mr. Jesberg:

Nichols Consulting Engineers, Chtd. (NCE) is very excited at the opportunity to submit our attached Statement of Qualifications (SOQ) to the City of Capitola (City) to provide pavement engineering related services, and to convey some of our ideas and ways to partner with the City to successfully deliver pavement management services, street paving and "green infrastructure" projects. During our recent meeting with you on September 22, 2014, you suggested that NCE submit this SOQ and that we focus the services proposed on **pavement management and pavement and civil design related efforts**. Pavements and related services are truly NCE's strength and expertise, and is our core business line that started NCE in 1990.

The NCE team's powerhouse is transportation projects, and in particular, street maintenance and rehabilitation projects. We believe that we have assembled the "A-Team" for design, and program management services to skillfully execute a successful program for the City. NCE possesses most of the technical skills in-house to deliver these services. We have included on our team our long term surveying teaming partner Mountain Pacific Surveys (MPS), a surveyor with extensive experience surveying many of our street resurfacing projects. MPS will provide all necessary topographic surveys, boundary surveys, construction staking, and aerial surveys if necessary.

NCE has provided pavement related services to more than 200 public agencies and has designed 100's of streets throughout California. We have successfully worked with a variety of public agencies ranging from small Town's and cities like Capitola, such as the towns of Los Gatos, Moraga, Portola Valley, to larger agencies such as Berkeley, Oakland, Fremont, and Richmond and many in between. We know and understand many of the challenges on these projects, and we can offer our unique expertise to successfully navigate these challenges and develop practical solutions that work in your community. NCE will be able to offer the City the following distinguishing qualifications:

- **Hit the ground running** – NCE's familiarity with StreetSaver enables us to quickly review the five-year plan and provide practical suggestions on taking a planning document to implementation in the fastest and most cost-effective manner as done with many other agencies.
- **Cost effectiveness** – the NCE team will work with the City to "stretch public dollars" by:
 - a. Utilizing cost effective pavement technologies such as cold in-place recycling and full depth reclamation (savings of 20 to 40% over conventional treatments);
 - b. Considering the application of rubberized cape seals on residential streets in place of more costly overlays
 - c. Designing construction plans with tight pay items and technical specifications that consider appropriate base repairs or ADA ramps;
 - d. Reducing delays to residents and businesses by selecting technologies such as faster curing microsurfacing or cold-in-place recycling.

Mr. Steven Jesberg

October 1, 2014

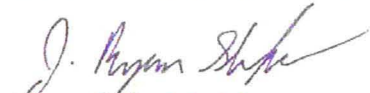
ii | Page

- **Green Technologies** – NCE can introduce, where appropriate and desired by the City, green street technologies such as using recycled tires in cape seals and asphalt concrete overlays, reducing heat island impacts through the use of light aggregate in asphalts or concrete, and reducing stormwater run-off with rain gardens concepts.
- **Public outreach** – NCE can provide assistance with flyers, letters, outreach meetings, social media to educate residents on to what to expect in terms of the look and feel of a product (i.e. cape seal) to how it will affect parking and getting access to their homes and businesses. We have recently successfully done this for the Town of Moraga and are currently assisting the City of Berkeley.
- **Environmental Permits** – Should street reconstruction disturb more than 1-acre of native soils, our in-house planners and scientists can easily handle Storm Water Pollution Prevention Plan (SWPPP) requirements and unique situations that may trigger cultural resource studies.
- **ADA Requirements** – NCE is up to date on the most recent changes from August 2013, and can provide guidance to the City on street treatments that need to be in compliance.

The NCE team is committed to developing a long and successful working relationship with the City of Capitola. If you have any questions about the contents of our Statement of Qualifications or would like any additional information, please do not hesitate to contact me at 510.215.3620 or at rshafer@ncenet.com. We look forward to hearing from you soon.

Yours truly,

Nichols Consulting Engineers, Chtd.



J. Ryan Shafer P.E., G.E.

Division Manager/Project Manager

Enclosed: One copy – NCE Capitola SOQ – VIA EMAIL



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1. Contractor Identification

Nichols Consulting Engineers, Chtd. (NCE) is pleased to present the City of Capitola with our Statement of Qualifications for On-Call Civil Engineering Services that includes a special focus on pavement management and pavement engineering and civil design services.

Principal Office Location

501 Canal Boulevard Suite I
Richmond, California 94804
(510) 215-3620

Corporate Office Location

1885 S. Arlington Avenue Suite 111
Reno, Nevada 89509
(775) 329-4955

Project Manager/Contact Person

J. Ryan Shafer, GE, PE - Division Manager
(510) 215-3620 x203 / rshafer@ncenet.com

Firm Federal Tax Identification Number

88-025-4126

NCE Organization

Our technically diverse and highly qualified staff of professionals includes engineers, scientists, planners, geologists, regulatory and permitting specialists, and field technicians. NCE takes pride in our ability to integrate diverse disciplines to deliver high quality projects that match our clients' needs. Superior customer service, responsiveness and technically sound work projects are what NCE's clients expect and receive.

NCE consistently hears from existing clients that they enjoy working with NCE because:

- NCE takes the time to get to know the agency and listen to what is needed;
- NCE is privately owned, which provides for quick decision making and the flexibility to deliver complex projects on time and within budget;
- NCE is small enough that clients regularly interact with our principals and CEO at the project level; and
- NCE has the staff resources to take on and successfully deliver large civil works and infrastructure projects.

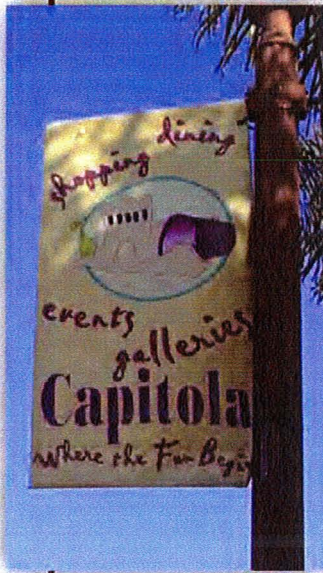
Our talented and driven management team and employees have resulted in consistent growth even during the recent economic recession. The following table identifies the firm's management team and principals and the tenure of each individual.

Name	Title	Tenure
Claude Corvino, PE GE	President & CEO	12 years
Margot Yapp, PE	Vice President	20 years
Jack Norberg, PE	Chief Engineer	10 years
Debra G. Smith, CPA	Chief Financial Officer	15 years
Kevin Smith, PE	Principal / Division Manager: Pavement Research	19 years
J. Ryan Shafer, PE GE	Associate / Division Manager: Richmond	9 years
Michael Leacox, PG CEG	Principal / Director of Environmental Services	11 years
Gregory Fasiano, PG CEM	Principal / Division Manager - California	11 years
Jason Drew, CPESC	Associate / Division Manager: South Lake Tahoe	8 years

NCE maintains five offices throughout California and Nevada. The staff assigned to this project are located in our local Richmond, California office; however, we may at times utilize experts located throughout our other offices. Our corporate office is located in Reno, Nevada.



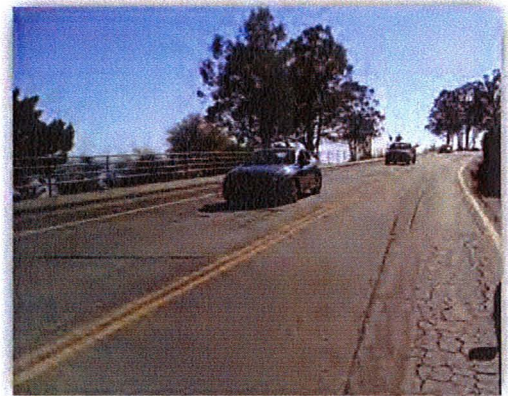
Project Understanding



NCE's understanding from the RFQ is that the City of Capitola is seeking statements of qualifications from engineering firms for design and consulting services primarily related to the planning, permitting, inter-agency coordination, grant support, design services, construction management, AutoCAD mapping services and staff support for the implementation of the City's five year capital improvement program. The City has a vibrant downtown, shopping areas, and residential communities located along a premier stretch of coastline with tourists that frequent the area and support the local economy. Integral to the health of the City and local economy is having a well serviced and maintained infrastructure defined by the City's CIP program, and one of the largest line items, is the pavement management and maintenance and rehabilitation activities associated with the City's street network. After recent discussions with the City, NCE was encouraged to submit a pavement management and pavement design focused SOQ to support the City and the CIP programming and project delivery efforts.

The City has a significant backlog of CIP projects that the City would like to design and get built, and NCE is willing and ready to support the City on these projects. As mentioned, several of the key projects play into our strengths of pavement engineering and civil design including the Park Avenue Paving from Cabrillo to McGregor and 38th Avenue from Brommer Street to Capitola Road.

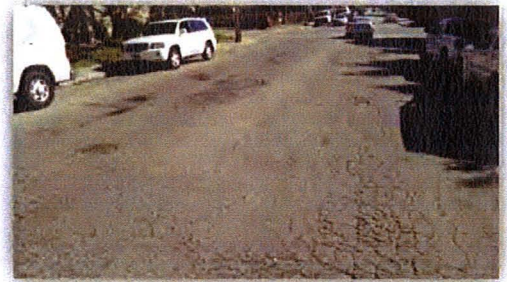
Park Avenue appears to be a key 2-lane arterial/collector street for the City with onramps to Highway 1. The pavement within this street section is old and in need of rehabilitation with significant areas of load related fatigue cracking that need to be addressed with base repairs, as shown in the photo to right. This street section, providing that coring or as-built indicate the pavement section is adequate would be good candidate for Cold-In-Place Recycling (CIR) in lieu of a conventional thick mill and overlay. This would allow the City to have traffic back onto a paved surface rather than a rough milled surface with loose grindings within several hours, which we have found in other agencies to be popular with residents. In addition this could offer up potential cost savings and the environmental benefits of a recycle in place pavement technology.



We also noted the adjacent rail line to south of Park Avenue, which we understand has been identified for future rails to trails projects, with a scenic overlook as shown in the photo to the left. NCE would be happy to assist the City with this project as well, given our bike and pedestrian experience, our in-house environmental engineers that can assist with potential contamination issues and regulatory interaction and permitting associated with a rail corridors (i.e. arsenic). NCE recently completed an identical rails-to-trails project with the City of Concord. In addition, our planners and scientists can complete biological assessments, assist with CEQA compliance, and permit negotiation and compliance with agencies such as the coastal commission, regional water board, California Department of Fish and Wildlife, and U.S. Army Corps of Engineers as needed.



The section of 38th Avenue from Brommer Street to Capitola Road is in very poor to failed condition, and essentially the asphalt concrete is at the end of its life. Given the severity and pervasive fatigue cracking the pavement section is likely very thin and may have problematic subgrade below. The general condition of the street is shown in the photo to the right. At a minimum depending on the condition and thickness of the underlying aggregate base (AB) the street should receive a deep mill to remove all of the existing failed pavement and then replaced with new hot mix asphalt (HMA). If the underlying AB is inadequate, this section of road would need to be reconstructed, potentially with Full Depth Reclamation (FDR), which would offer up cost savings, recycling, and subgrade stabilization benefits over conventional reconstruction with HMA over AB. We also understand that as part of this project the City would like to address sidewalk and curb ramp ADA compliance, with some unresolved right of way issues. The street contains numerous examples of sidewalks that are less than 4 feet due to utility poles, fire hydrants, etc. located within the sidewalk (photo below). Right of way take to widen the sidewalks might be one approach, however, in some cases as shown in the photo below with a parked vehicle, right of way does not appear to be feasible, and so a better solution might include narrowing the road to widen the sidewalk (road diet).



Strengths & Unique Qualifications

NCE has a wide variety of capabilities and we have described these capabilities in the following sections. Specifically for this RFQ: On-Call Civil Engineering Services, we offer the City of Capitola (City) the following strengths and unique qualifications:

NCE CAPABILITIES	
Pavement Reconstruction Design	Asset/Pavement Management Systems
Civil Engineering Design	Construction Documents (PS&E)
Bike & Pedestrian Path Design	ADA Retrofit Design
Construction Management / Inspection	Utility Relocation Design
Stormwater Management	Water Quality/Erosion Control
Geotechnical Engineering	Hydrology & Hydraulic Analysis
Sanitary Sewer Design	Water System Modeling & Design
Stormwater Management	Water Quality/Erosion Control
Stakeholder Facilitation/Public Outreach	Regulatory Compliance & Permitting
Watershed Planning and Wetland Delineation	GIS & Database Management
Hazardous Materials Assessments	Environmental Studies
Sustainable Design & Low Impact Development (LID)	Leadership in Energy & Environmental Design (LEED)



Description of NCE Capabilities

Staff

NCE's staff bring a wealth of experience to a wide variety of transportation infrastructure projects, including local streets and highways, airports, parking lots, and pedestrian and bicycle facilities. NCE employs a current staff of nearly seventy individuals in five offices, nearly 90% of who are engineering and technical professionals. Our staff benefits from an investment in continuous training in emerging design and construction techniques, and routinely shares its technical knowledge with others in the engineering community through the teaching of seminars and workshops and publication of articles in professional journals.

Civil Engineering

NCE's civil and pavement design engineers and technicians also have extensive experience developing plans, specifications and engineer's cost estimates (PS&E) for many City, County, and State Roadway Projects. The benefit of this experience to the City is that we thoroughly understand the cost and community impacts of our recommended pavement designs. NCE's staff pride themselves in thinking about how construction will impact a neighborhood, a busy arterial, or pedestrian traffic and access.



Our civil engineers are well versed in civil design elements that can include drainage improvements including stormwater runoff reduction, landscape and planter improvements, ADA curb ramps and sidewalks, curb and gutter, traffic striping and signs, and utility relocation. NCE develops bid sets that have tightly matched bid schedules and pay items, clear technical specifications with important modifications to Caltrans to tailor to local streets and roads, attention to the details, while not missing critical items that are commonly mis-done such as base repairs or poorly fitted ADA ramps.

We also understand the implications of utilities to street improvement and resurfacing projects, particularly those identified for reconstruction. Utilities can result in unplanned costs, delays, and street cuts in newly resurfaced streets. We communicate early with utilities, such as EBMUD, PG&E, Comcast, AT&T and look for opportunities to attend/schedule quarterly joint utility coordination meetings to make sure we understand what utility work in and potential conflicts. For example if EBMUD is planning new water mains along several street planned for resurfacing, we would flag these streets, discuss with the City, and encourage utilities to finish utility work prior to street resurfacing. For reconstruction utilities become even more important requiring accurate location of utilities alignments to prevent damage and conflicts. We often employ private utility locators such as Bess Testlabs and Cruz Brothers Utility Locators that have the capability to locate utility depths using cost saving and non-invasive techniques such as Ground Penetrating Radar (GPR) in-lieu of more invasive and expensive potholing. Shallow utilities, particularly laterals, may require the use of thinner pavement sections such as full depth HMA or may be so shallow that utility relocation/lowering is needed.

The "greening" of traditional infrastructure projects has been gaining popularity with agencies as environmental and sustainability increase in awareness and to respond to requirements in the Municipal Regional Stormwater Permit. We understand that where feasible the Cities are wanting to introduce green infrastructure as part of street resurfacing and improvement projects. Our engineers incorporate green infrastructure elements





in our designs where feasible and desired by our clients. These elements offer communities improved water quality and incorporate recycling technologies to reduce air emissions and carbon foot prints. NCE can introduce a whole host of pavement technologies that offer more green approaches to paving such as diverting thousands of tires away from landfills with rubberized cape seals and rubberized hot mix asphalt (RHMA) or ways to reduce heat island impacts with the use of materials such as light aggregate in asphalts and portland cement concrete. Low impact development and stormwater reduction are becoming more commonplace in street paving projects including permeable pavers to curb cuts with rain gardens along sidewalk planters (see photo of an NCE project in Pleasant Hill at Geary Road.)



Caltrans right-of-way intersects with the City along Highway 1. Our civil engineers will make you aware of these right-of-ways issues early, present options to deal with them, and can assist in preparing all necessary encroachment permits. We also offer the City our experience in complying with the local assistance and procedures manual on federally funded projects (E-76 documents).

NCE also has extensive experience with Caltrans Standard Plans and Specifications. NCE may recommend deviating from Caltrans Standards when, from our experience, alternative QA/QC quality control methods will achieve a successful construction project without compromising the integrity of the design. NCE recognizes that Caltrans has the resources to administer projects in a different manner than most local agencies, and we will recommend modified Standard Specifications to adapt to the abilities, needs, and budgets of municipal agencies.

Pavement Management Services

NCE is recognized for our expertise in pavement management programs as we have provided services to over 200 public agencies throughout California. We actively conduct pavement management training for the Metropolitan Transportation Commission (MTC), the Orange County Transportation Authority (OCTA), and with many other agency staff at Cities and Counties. We can assist as mentioned in the RFQ at all levels of pavement management for the City's planned five-year paving program whether it be preliminary planning, cost estimating for various pavement program alternatives, evaluation of alternative treatment technologies or determining overall strategies on how to move forward with implementation.



We find that for multi-year programs, it is helpful to visualize treatment types by year using the StreetSaver GIS module. One example is the \$25 million resurfacing program that we are currently working on for the City of Davis. We are assisting the City of Berkeley with implementing multi-year Citywide \$30 million bond funded street rehabilitation project, which also has required employing StreetSaver and GIS to lay streets out to help with planning efforts. We pay special attention to the spatial relationships and making street resurfacing programs more cost effective by grouping street sections and neighborhoods to reduce mobilization costs. In addition, we have prepared separate street resurfacing programs (seal vs. overlay and reconstruction) to avoid expensive markups from prime contractors on their subs.

Pavement Design & Analysis

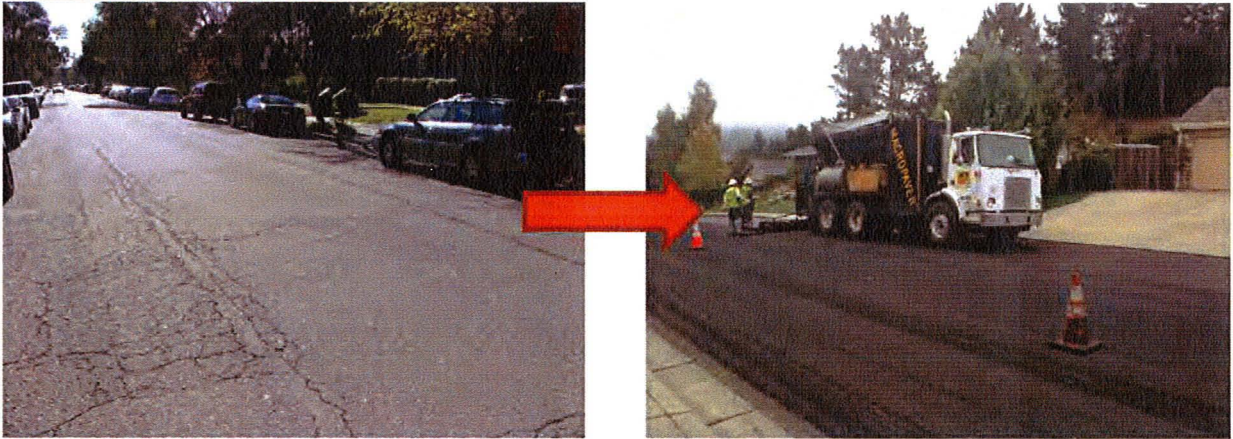
Pavement design and plans, specifications and estimates (PS&E) for street preventive maintenance, rehabilitation, and reconstruction are NCE's powerhouse, and we offer unrivaled experience and expertise with pavement treatment alternatives. We have designed hundreds of roads all throughout the Bay Area and have most recently performed these services for the Cities/Towns of Berkeley, Albany, El Cerrito, Fairfield, Fremont, San Ramon, Los Gatos, Walnut Creek,



Moraga, Mountain View, Oakley, Orinda, Pleasant Hill, Portola Valley, Richmond, San Bruno, San Mateo, and Santa Cruz as well as UC Berkeley and Santa Cruz.

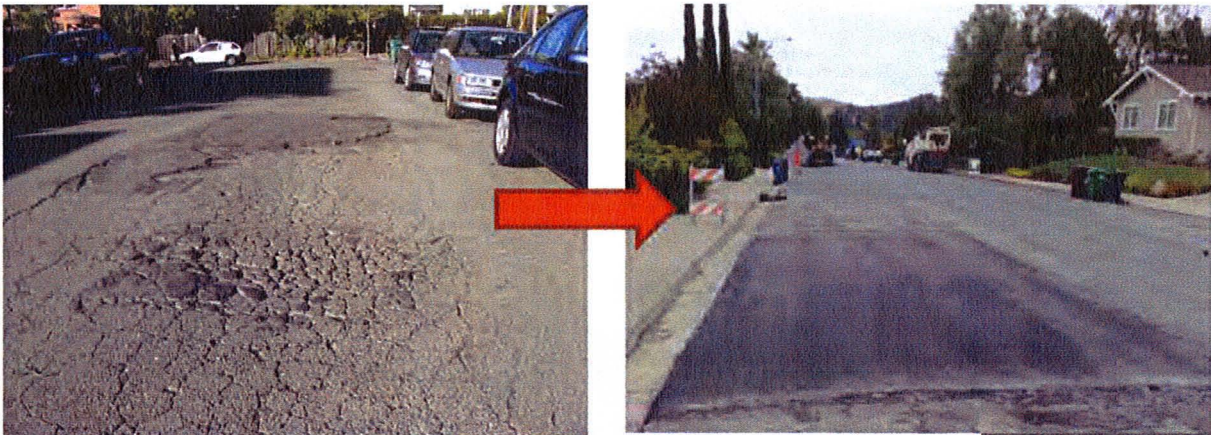
Our expertise in pavement treatment alternatives includes, but is not limited to cost saving, cutting edge, and green/sustainable paving technologies such as warm mix asphalt and in-place recycling technologies. NCE's pavement design services emphasize realistic economic solutions and pavement design procedures tailored to our client's needs.

For example, many old pavements on Capitola residential streets may be heavily weathered and raveled with load related distresses that are perfect candidates for rubberized cape seals with base repairs instead of more costly overlays. For the Town of Moraga, we recently designed a rubberized cape seal program with base repairs in-lieu of overlays allowing the Town to resurface more than 14 miles of its neighborhood streets (more than 1/3 of their neighborhood streets). One example street below from another City, which can be easily addressed with a rubberized cape seal and transformed into a street like the one depicted below.



Our civil and geotechnical engineers not only understand the types of pavements and treatment options, they also understand the significance and cost implications of proper roadway support on competent subgrade soils to limit future settlement and cracking. Pavement design begins with an accurate assessment of the existing structural adequacy. Unlike traditional civil firms who rely on core samples, we employ our pavement inspection expertise in conjunction with deflection data and materials testing to more accurately assess the engineering properties of the existing roadway.

The presence of subgrade soils that may exhibit "pumping" under vehicle loads are potentially problematic during construction and will be identified during the design process. Adaptation to site conditions also entails including revocable bid items and/or bid alternates in construction documents for mitigation measures and having appropriate construction contingencies built into the contract. Much of the structural performance of pavement begins also with good base repairs for areas with high severity fatigue cracking e.g. the street below on the left which is need of base repair such as the successful base repair depicted on the right.





KNOWLEDGE OF INNOVATIVE PAVEMENT TECHNOLOGIES

Simply offering innovative pavement technologies do not always solve the problem; rather, ensuring that they are appropriate is what makes the difference in the success of a project. There are many factors to consider including cost, performance, future maintenance, traffic, access, pavement section properties, geometric constraints, and climate including shaded areas and drip lines etc.

Capitola covers a swath of land all the way from the coast and busy downtown area through business and shopping center districts. The streets will therefore have a wide variety of pavement conditions and user needs.



The narrow and congested streets with limited space and access down in the village, as shown on the photo to the left, are quite different from the low volume and quiet residential streets, and therefore will impact the type of pavement technology employed. For example, on the busy sections in the village which serve as key access to businesses and the beach, it is critical to keep roadway repair delays to a minimum and restoring traffic flow as quickly as possible.

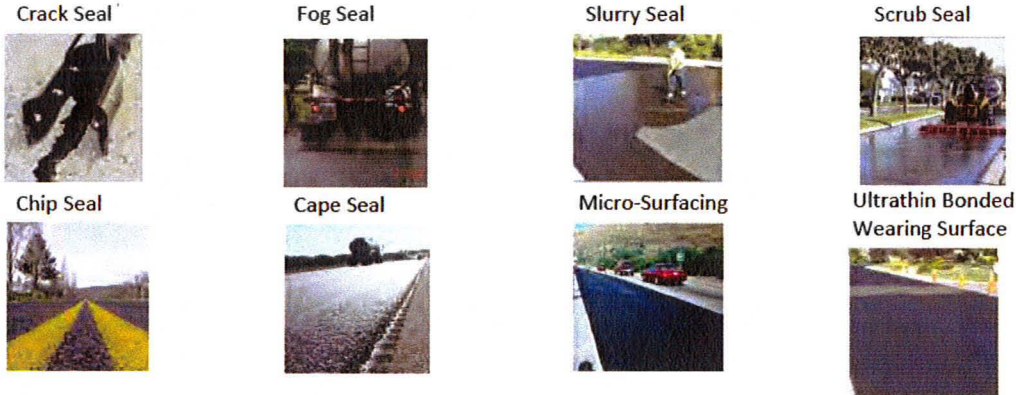
Deploying faster curing technologies such microsurfacing instead of a slurry seal should be strongly considered. Foggy and heavily shaded streets may need to consider polymers or chemical additives to give the seals and/or asphalt greater workability at lower temperatures. The fatigued section of Park Avenue should consider faster paving technologies such as Cold In-Place Recycling (CIR) to get busy on/off ramp traffic back onto a paved surface quickly rather than a conventional mill and fill.

One of the unique and key strengths NCE brings to the City is the fact that we have a pavement research division that focuses on cutting edge technologies for the Federal Highway Administration (FHWA) as well as multiple state departments of transportation. Our engineers bring the latest in research and apply them to real life pavements for cities, counties and states. Examples of research projects include:

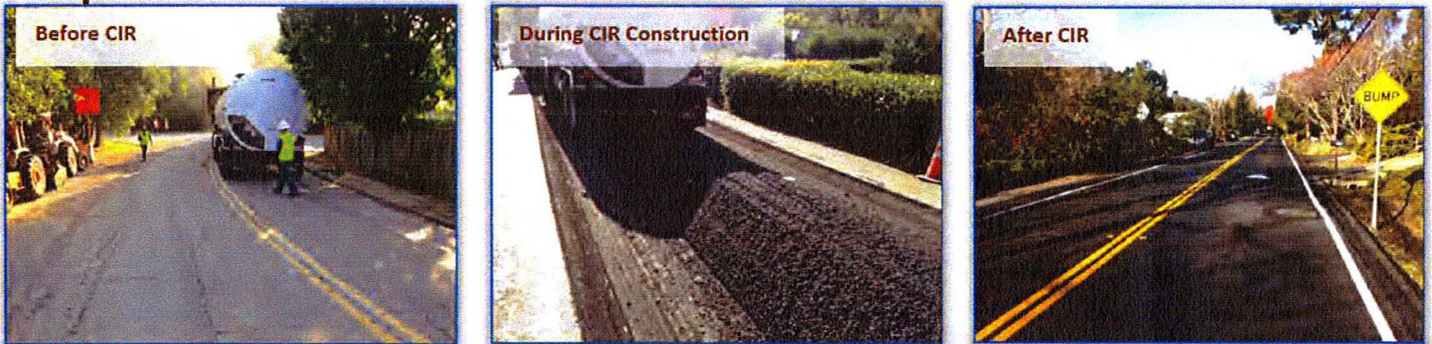
- Long Term Pavement Performance (LTPP) – for over 20 years, NCE has monitored, collected data and analyzed 800 highway test sections in the western United States for FHWA.
- Use of warm-mix asphalt technologies for state DOTs
- Development of guidelines for long-life pavements (more than 40 years)
- Assessment of alkali-silica reactivity on PCC pavements at San Francisco International Airport, and recommendations to changes to FAA specifications and design criteria.
- On LBNL panel sponsored by the California Air Resource Board (CARB) to evaluate pavement reflectivity with respect to heat island affect and its impacts to global warming in support of developing statewide climate models.
- Principal investigator for FHWA to promote sustainable pavement technologies.
- We collaborate with many Universities on sustainable infrastructure and pavements including but not limited to UC Davis, University of Washington, University of Illinois Urbana Champagne, Iowa State, Washington State, University of Montana, and North Carolina State.
- Investigator for Cal-Recycle on the use of recycle tires for infrastructure related projects.
- Principal Investigator for Arizona DOT for use of construction waste in transportation infrastructure.



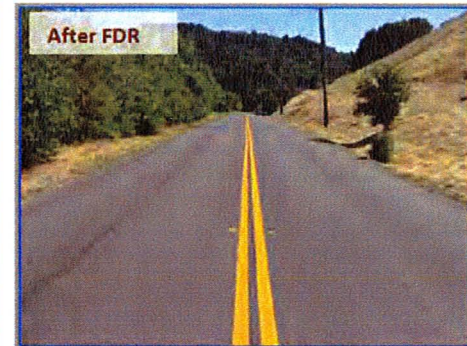
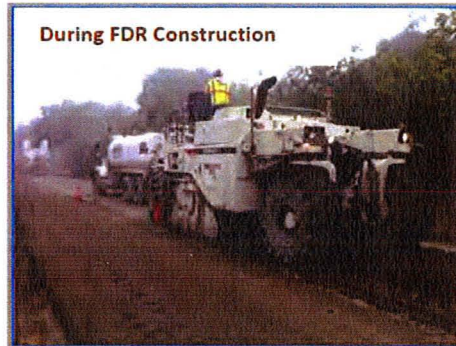
Pavement Preservation – There are numerous pavement rehabilitation techniques available today with new binders, new additives and polymers all of which may be applied in various layers to preserve pavement life. The figure below shows a range of seals and treatments that have worked successfully for NCE’s clients in California. We constantly seek to identify the most cost-efficient alternatives for cities and counties such as cold in place recycling, full depth reclamation, warm mix asphalt, terminal blend asphalt rubber binders, etc.



Cold-In-Place Recycling (CIR) - A cost-effective alternative to traditional “mill and fill” pavement treatments, with cost savings of as much as 30% achieved by the use of existing AC materials, less truck hauling and time efficiency during construction. The technology involves milling of existing asphalt concrete (AC), typically to a depth of 3 to 4 inches, pulverizing and processing AC materials to specified material size, adding emulsion, mixing, and then placing and compacted down back onto to roadway. The recycled pavement surface typically then receives a thin AC overlay (1.5 inches) as a smooth wearing course. Longer pavement sections (generally at least 500,000 square feet [sf] of pavement area) that require deeper mill and fills (typically at least 3 inches) are generally good candidates for CIR with potentially significant cost savings. This would be a very cost effective treatment alternative for the City to consider in lieu of more costly traditional thicker mill and fills.



Full Depth Reclamation (FDR) - A process that rebuilds failed AC pavements by recycling the existing roadway materials; old AC and aggregate base materials are pulverized and “mined” utilizing specialized equipment. This method recycles the materials in-situ, and can offer significant cost savings over conventional roadway reconstruction techniques. It is generally cost effective for areas as little as 25,000 sf. In addition, this method can incorporate a lime/cement mixture to address difficult subgrade soils (fat clay soils that are wet of optimum and “pump” readily under wheel loads) that are prevalent throughout Sunnyvale and which can be very problematic and costly during construction if not mitigated. Below are some photos of an FDR project in Orinda before, during, and after construction.



Special Equipment

NCE can evaluate pavement structural conditions with nondestructive testing using NCE's new truck mounted Dynatest Falling Weight Deflectometer (FWD). The FWD is a specialized tool that will support the development of a cost-effective design for the City. The in-situ conditions can be quickly evaluated to determine issues such as the extent of subgrade problems or the presence of voids/unstable soils. Pavement designs for phased or staged constructions are possible, as well as the ability to model and use new materials and technologies. This equipment is operated by our technicians who have over 15 years of experience collecting this data.



Geotechnical and Environmental Services

NCE has extensive experience with geotechnical engineering specific to this type of project. Our engineers understand the significance of proper roadway support on competent subgrade soils, to limit damaging road settlement and future cracking. Based on our field exploration; soil laboratory testing, we are able to accurately assess the engineering properties and the presence of subgrade soils that might be soft and exhibit "pumping" under vehicle loads. If required, we can develop appropriate subgrade stabilization techniques for problematic subgrade soils that might include moisture conditioning, lime treatment, geotextiles, and/or over-excavation and replacement with aggregate materials.

Our in-house environmental staff will also not overlook the importance of chemically profiling subgrade for disposal at a landfill or re-use by a "dirt" broker that may need to be removed as part of street grading, particularly on more industrial areas with histories of site contamination.

We offer a full service line from site investigation through review of plans and specifications as well as critical follow up in services during construction to ensure the intent of our geotechnical and environmental recommendations are implemented.

CEQA and Regulatory Compliance: Usually permitting is not an issue on straightforward resurfacing projects as most are exempt because they do not disturb native soils. However, disturbing more than 1-acre of native soil subgrade such as street reconstruction can trigger the Construction General Permit and new Storm Water Pollution Prevention Plan (SWPPP) requirements.

Under CEQA, roadway projects are generally categorized as negative declarations unless it affects a sensitive habitat requiring biological studies. Our in-house planners and scientists deal with permitting and regulatory agencies frequently, and can help the City with these issues should they arise.



NCE has successfully completed multiple CEQA projects throughout Northern California ranging from public agency projects to private commercial and utility projects. We are very efficient in developing CEQA documents in a timely manner including Categorical Exemptions, Negative Declarations, and Mitigated Negative Declarations.

A recent example of NCE's CEQA experience includes a roadway expansion project in the City of Concord. The City had plans to improve the intersection of Treat Blvd and Clayton Blvd, which involved adding traffic lanes to the highly congested areas. A portion of the proposed project was located adjacent to a California State Water Resources Control Board registered LUST site. The project had a potential to be a big controversy should disturbance occur to the LUST site. With diligent research and consultation with property owners, agencies, and the City of Concord, NCE developed a Mitigation Monitoring and Reporting Plan that successfully addressed any potential impacts. The public outreach efforts generated no negative feedback and the MND was successfully filed with the State Clearinghouse on schedule.

Community Outreach Experience

NCE has successfully provided clients with a variety of community outreach and stakeholder facilitation services on the organizational, programmatic, and project levels. NCE's experience includes working with agency staff, interested stakeholders, landowners, and the general public. Our staff is experienced and comfortable facilitating large public workshops or hosting one-on-one meetings with key stakeholders. Examples of the types of activities and products NCE has successfully completed include conducting public workshops, coordinating public service announcements on television and radio, designing and maintaining stakeholder databases, facilitating stakeholder interviews, preparing meeting materials, developing program and project advertisement and distributing the material, facilitating technical workgroups and public meetings, and developing high quality presentations.



NCE can assist the City in educating the public whether it is assisting with developing social media content (City website, Twitter, etc) and/or conducting town hall meetings to engage and inform the public on the conceptual design the project as well as expected construction impacts. This will include identifying when and where construction will happen, what the community needs to plan for ("Where do I park?"), and keeping the community informed of project progress both during the design and construction phases. This will allow the community to maintain connection with the project and be well informed. We recently did this on a \$2.5 million rubberized cape seal project for the Town of Moraga affecting 14-miles of their neighborhood streets, a highly visible and important project that the Town needed to deliver successfully. NCE not only did performed the civil design but lead the public outreach, which included designing lawn signs, T-shirts, and informational brochures as well as more traditional Town Hall meetings, letters, and field demonstrations.

Description of Sub-Consultant Capabilities

[Mountain Pacific Surveys](#), NCE's long standing surveying partner, will provide all necessary topographic surveys, boundary surveys, construction staking, and have the ability to perform more cost effective aerial surveys with their own planes; supervisors and support staff. ISI's depth of resources and proven performance has made our name known throughout the industry. By focusing on providing quality service, ISI has become one of the leading independent testing and inspection agencies in Northern California.

Mountain Pacific Surveys

Mountain Pacific Surveys is a professional survey services firm providing professional mapping, design surveys, right of way engineering, construction surveys, environmental surveys, and photogrammetric engineering services for the public and private sector. The firm is a member in





good standing with Operating Engineers Local 3 and Bay Counties Association, as well as Consulting Engineers and Land Surveyors of California (CELSOC).

At Mountain Pacific Surveys, the application of technical expertise and professional judgment result in superior product. Within Mountain Pacific Surveys, all work is controlled by a Principal of the firm whom is a Licensed Land Surveyor in the State of California. The Principal has hands on supervision of the field and office personnel, making all decisions required to assure project goals are achieved. This organizational structure enables the firm to maintain a large and well-organized volume of work while insuring client satisfaction.

Mountain Pacific Surveys is proud to offer clients state of the art field equipment and office facilities for the successful completion of each project. To this end, they have fully automated work processes to provide seamless integration from initial fieldwork through final product delivery. Additionally, they continually update methodologies as well as provide ongoing training to all personnel so as to insure a quality product.

NCE Key Staff Qualifications

Short professional profiles for key staff are provided below. A Project Team Organizational Chart is included on Page 18.

Mr. J. Ryan Shafer, PE, GE - Project Manager and Geotechnical Engineer - Mr. Shafer has over 15 years' experience in infrastructure and geotechnical engineering and has provided project management and civil and pavement design work on 100's of roads and streets all throughout the bay area varying in complexity from simple preventive maintenance to more complicated roadway reconstruction and utility relocation projects. Mr. Shafer has direct experience designing an extensive variety of pavement resurfacing technologies ranging from routine preventive maintenance such as slurry and cape seals to life extending and recycling treatments such as Asphalt Rubber (field blended) and PGTR (terminal blended) Chip Seals in combination with fast curing Microsurfacing. Mr. Shafer has managed and designed projects involving again more routine rehabilitation such as mill and fills and overlays with Hot Mix Asphalt (HMA), Rubberized Hot Mix Asphalt (RHMA), and Warm Mix Asphalt (WMA) to recycle in-place technologies such as Cold In-Place Recycling (CIR) and Full Depth Reclamation (FDR) in lieu of more costly conventional reconstruction methods. Mr. Shafer well versed in managing interdisciplinary teams requiring civil, pavement, geotechnical, structural, electrical, and environmental engineering as well as regulatory compliance and permitting. For example, Mr. Shafer recently managed an emergency response to the Richmond "Sinkhole" project. This project required over \$12 million in construction to design and construct a temporary bypass road up through private property, a temporary 30-foot high shored channel to restore creek flow, and the final repair and construction of a massive 24-foot concrete culvert below public streets and private property. Mr. Shafer is highly skilled at coordinating with stakeholders and operating within a City environment with extensive experience meeting and coordinating with city staff and officials, making council presentations, joint meetings with City officials including Fire and Police and City Managers, public outreach, numerous private and public stakeholders, regulatory agencies, Caltrans, funding agencies, local residence and property owners, and utilities, to mention a few. Mr. Shafer also has extensive experience with utility design, creek restoration, sidewalk and pathway design, basis for design reports, and appraisal efforts for redevelopment projects.

Mr. Jack Norberg, PE – Chief Engineer/Quality Control Manager – Mr. Norberg has over 33 years of experience in civil engineering design, construction and project management. His experience includes roadway design, bridge related civil design, pavement rehabilitation and reconstruction, storm water management systems, environmental planning, construction management, transportation facilities, municipal utilities, and site development. Mr. Norberg is experienced in analysis, design, construction, operation, and maintenance of all types of public works facilities. He has worked with numerous federal, state and local agencies and has considerable experience with project funding through a variety of federal, state and local funding programs.

Mr. Franz Haidinger, PE – Lead Civil Design Engineer - Mr. Haidinger has over 15 years' experience in environmental and civil engineering in the United States, Austria, Croatia and Central America. He has extensively worked with and alongside Mr. Shafer on numerous pavement resurfacing design projects involving a similar variety of pavement preventative maintenance and rehabilitation technologies to new and more cost effective technologies such as CIR and FDR. Franz is highly skilled at designing street resurfacing projects with careful attention to impacts to public, traffic disruptions, utility



design as well as coordination and identifying conflicts, striping, bicycle lanes, ADA compliance, reduction of stormwater run-off, drainage improvements, sidewalks and curb and gutter repair and replacement, and incorporation of green infrastructure elements. Mr. Haidinger recently completed the design of a rain garden in Pleasant Hill for Geary Road as part of a bicycle and pedestrian safety and improvement project. His project experience ranges diversely including road rehabilitation and reconstruction, design of storm drains, sanitary sewer, water lines, landfills, wetland restoration, erosion control, and constructed wetlands; preparation of construction documents and estimation of construction cost; soil remediation; Drinking Water Source Assessments (DWSAs); Storm Water Pollution Prevention Plans (SWPPPs); Underground Storage Tank (UST) removals; permitting; Operation and Maintenance (O&M) of groundwater treatment facilities and Soil Vapor Extraction (SVE) systems; and Construction Quality Assurance (CQA).

Ms. Margot Yapp, PE – Lead Pavement Management Engineer – Ms. Yapp has over 22 years of experience in the area of pavement design for roads, highways and airports. Ms. Yapp has implemented numerous Pavement Management Systems for cities, counties and other public agencies throughout California, Oregon, Nevada, Hawaii and Texas. In addition, she has worked with MTC to provide hotline support, training, and developed computer user's manuals for the software. In 2007, Ms. Yapp was honored by MTC with the 2007 Local Streets and Roads All Star Award in recognition of her leadership and outstanding contributions toward improving regional streets and roads.

Ms. Yapp has been involved in the pavement designs for state highways, city and county roads, and airfields. Pavement designs typically include the use of nondestructive testing devices such as the Dynaflect and Falling Weight Deflectometer (FWD). She is familiar with Caltrans, AASHTO, the Asphalt Institute, Federal Aviation Administration guidelines, U.S. Corps of Engineers, and mechanistic design procedures.

Thomas J. Van Dam, Ph.D., PE, FACI, LEED AP – PCC Pavement Expert – Mr. Van Dam, has over 29 years of civil engineering and materials experience. He specializes in pavement design and evaluation, materials assessment and sustainability. Major areas of expertise include airport and roadway pavement performance, concrete durability, training, and sustainable civil engineering infrastructure. Dr. Van Dam has an excellent record in both the private sector and in academia. Over the past five years he has been a Principal responsible for directing materials and sustainability groups with great success. In total, Dr. Van Dam has published over seventy five technical articles and reports and has given over 100 technical presentations on pavements, concrete materials, and sustainability.

Dr. Van Dam is a Fellow of the American Concrete Institute (ACI) where he is the current Chair of Committee 201, *Durability of Concrete*, an Associate Member of Committee 130, *Sustainable Concrete*, a Member of Committee 232, *Fly Ash and Natural Pozzolans in Concrete*, and a Member of Committee 325, *Concrete Pavements*. Dr. Van Dam is active in the Transportation Research Board (TRB) and the past Chair of the TRB Committee AFN30, *Durability of Concrete*.

Mr. Gregory L. Fasiano, PG, REA, CEM – Environmental Support and Contaminated Soil – Mr. Fasiano has more than 25 years of experience as a geologist and Project/Program Manager. Mr. Fasiano is licensed as a geologist in California and Washington. Mr. Fasiano has managed numerous projects in northern California and performed various types of environmental remediation and hydrogeologic investigations, and has been responsible for report preparation, interpretation of chemical test results, and regulatory negotiations. He has also developed and implemented appropriate remedial actions for soil and groundwater contamination, managed the construction of these systems and provided management of the operations and maintenance.

Mr. Michael J. Leacox, PG CEG – Environmental Support and Contaminated Soil – Mr. Leacox has over twenty four years' experience as an engineering and professional geologist, discipline leader, manager and technical advisor for a wide range of civil and environmental projects. Throughout his career he has managed large multidisciplinary programs and projects in northern and southern California, Nevada, Washington and Idaho. Specific projects include roadway and bridge projects, civil design of municipal facilities, pond closures, siting studies for landfills and large construction projects, borrow source investigations, and site characterization investigations for landfills. Mr. Leacox developed a working experience with the California Code of Regulations, Titles 23 and 27, and working relationships with the regulators in California, Nevada and Idaho.



Mr. John Heal – Biological Resources/Permitting - Mr. Heal is a senior scientist with over 25 years of experience in conducting and managing biological resource projects. Along with many years' experience conducting and overseeing field work, his experience includes the acquisition of permits under Sections 401 and 404 of the federal Clean Water Act and negotiated mitigation measures under the federal ESA with USFWS staff, including an informal Section 7 consultation on California red-legged frog (*Rana draytonii*). Mr. Heal has negotiated Streambed Alteration Agreements and mitigation measures with the CDFW on numerous projects. He has acquired permits from the San Francisco RWQCB and developed mitigation monitoring plans to meet those permit requirements. He also has trained both agency and construction crew members in avoidance techniques/strategies to protect water quality and many Special Status Species.

Mrs. Marcy Kamerath – Project Scientist/Environmental Permitting - Mrs. Kamerath has over 7 years of experience in water quality, permitting, watershed planning, pre-and post-construction monitoring for biological resources, GIS analysis and mapping, and NPDES program development. She recently joined NCE from U.S. EPA, where she developed TMDLs to address stormwater impairments. She assisted development of LID practices to meet TMDL requirements and local codes and ordinances. She reviewed and prepared agency decisions on TMDLs and 303(d) lists, evaluated the compliance of CWA 305(b) and 303(d) state-wide monitoring programs, and supported senior advisors at U.S. EPA to award over \$5M to grant projects. Since working for NCE, she has worked with the City of Reno, NV to update their BMP siting and LID implementation guidance for developers and property owners. She has assisted the City of Oakley, CA in meeting state and federal requirements to secure funding for public works projects. Additionally, she is involved in CASQA, and is a member of the Phase II compliance subcommittee.

Ms. Jennifer Crow, EIT – Project Engineer: Civil/Pavement Engineering - Ms. Crow has been working with NCE for over seven years and has been an active part of the Point Richmond and Sacramento teams. She has experience in pavement management, pavement and civil design, geotechnical investigations and environmental assessments. Her pavement design experience includes providing recommendations for hundreds of roads throughout northern California. She also maintains refresher courses for the 40-hour HAZWOPER training and BATC (Bay Area Training Corporation). Most recently, Miss Crow assisted AECOM with the limited geotechnical investigation on the Buchanan Bikeway Project for the City.

Mr. Jason Herberg, PE – Project Engineer: Civil Engineering – Mr. Herberg has over seven years of experience in environmental and civil engineering. His experience includes preparation of design drawings consistent with National CAD Standards and specifications consistent with CSI and CSC standards, construction costing and scheduling, roadway design and grading, soil and groundwater remediation, soils logging, and data modeling and mapping using GIS software.

Mr. Shahram Misaghi, MS EIT - Project Engineer: Pavement Engineering – Mr. Misaghi has a M.S. in Civil Engineering from the University of Texas – El Paso. His research work was on the "Impact of Truck Suspension and Road Roughness on the Load Exerted to the Pavement", part of a project funded by the New York Department of Transportation. He also developed a model for IntPave software to analyze the impact of geosynthetics on the pavement strain funded by US Army Corps of Engineers as part of a research project.

Currently, Mr. Misaghi serves as a project engineer for street projects requiring management, maintenance, rehabilitation, design, and planning. He is currently implementing or updating pavement management systems for the Counties of Santa Barbara, San Diego and Humboldt and the Cities of Albany, Los Altos, Chula Vista, Fullerton, Torrance and Walnut Creek.

Mr. Michael Esposito, Senior Technician – FWD/Coring – Mr. Esposito is currently serving in several important positions at Nichols Consulting Engineers. Since he joined NCE in September 1994, Mr. Esposito has taken on many functions essential to the company and its clients. He has supervised and conducted numerous Falling Weight Deflectometer (FWD) testing and coring projects throughout Northern Nevada and California. Also, during the past 8 years, Mr. Esposito has performed the duties of Field Operations Supervisor for the FHWA Long-Term Pavement Performance (LTPP) regional contract, responsible for hiring and training technical staff, insuring safety procedures, and scheduling road testing as much as a year in advance.

A wide range of duties are required for Mr. Esposito's position, including inspection and pre- and post-construction testing at a number of sites throughout Nevada, California, and the other Western States. Most recently, Mr. Esposito has



overseen the milling and paving operations of a settlement pond and two water retention basins, and supervised extensive performance testing on roads throughout Northern California.

Mr. Richard LaValley, Technician – FWD/Coring/Condition Surveys – Mr. LaValley has been performing Falling Weight Deflectometer (FWD) operations in all of the Western States, and is capable of verifying and analyzing FWD and Deflection data. He has been accredited by the FHWA as a Distress Rater for ten years and as a Seasonal Monitoring Technician for three years. Other duties include Transverse Profile and Distress testing and he performs downloads of Seasonal data. Mr. LaValley has vital expertise with the care and maintenance of the FWD equipment and is responsible for the vehicle and all testing equipment in the field. In the course of Distress monitoring, Mr. LaValley notes damage to roads and structures including markings and signs, and reports to appropriate agencies when attention is required. He also performed pavement materials sampling (i.e., coring) at locations across the Western U.S. Mr. LaValley's extensive experience in the field with different kinds of asphalt and concrete surfaces allows him to work independently and efficiently.

Sub-Consultant Staff Experience

Mountain Pacific Surveys

Charles M. Weakley, Principal – Survey Project Manager – Mr. Weakley is the manager in charge of all survey work undertaken by Mountain Pacific Surveys. This work is managed on a day-to-day basis by Mr. Weakley or Project Managers reporting directly to Mr. Weakley. His experiences in land surveying include construction layout of subdivision improvement and public roadways, photogrammetric control, precision as-built surveys, cadastral surveys, boundary determinations, and right-of-way calculations. Mr. Weakley is also responsible for all aspects of contract administration including contract negotiations.

Steven S. Rohlf, LSIT – Chief of Party / Survey Technician – Mr. Rohlf provides a wide range of services for Mountain Pacific Surveys. In addition to being a Chief of Party and performing field surveys, he is also well versed in AutoCAD applications and procedures. Mr. Rohlf's experience includes infrastructure improvements, industrial and residential subdivision construction as well as topographic and photogrammetric surveys.

**CITY OF CAPITOLA
PROFESSIONAL SERVICES AGREEMENT
ON-CALL ENGINEERING SERVICES
Nichols Consulting Engineers**

THIS AGREEMENT is entered into on March 12, 2015, by and between the City of Capitola, a Municipal Corporation, hereinafter called "City" and Nichols Consulting Engineers., hereinafter called "Consultant".

WHEREAS, City desires certain services described in Appendix One and Consultant is capable of providing and desires to provide these services;

NOW, THEREFORE, City and Consultant for the consideration and upon the terms and conditions hereinafter specified agree as follows:

**SECTION 1
Scope of Services**

The services to be performed under this Agreement are for architectural design services in support of various municipal facility projects and further detailed in Appendix One.

**SECTION 2
Duties of Consultant**

All work performed by Consultant, or under its direction, shall be sufficient to satisfy the City's objectives for entering into this Agreement and shall be rendered in accordance with the generally accepted practices, and to the standards of, Consultant's profession.

Consultant shall not undertake any work beyond the scope of work set forth in Appendix One unless such additional work is approved in advance and in writing by City. The cost of such additional work shall be reimbursed to Consultant by City on the same basis as provided for in Section 4.

If, in the prosecution of the work, it is necessary to conduct field operations, security and safety of the job site will be the Consultant's responsibility excluding, nevertheless, the security and safety of any facility of City within the job site which is not under the Consultant's control.

Consultant shall meet with the Community Development Director, called "Director," or other City personnel, or third parties as necessary, on all matters connected with carrying out of Consultant's services described in Appendix One. Such meetings shall be held at the request of either party hereto. Review and City approval of completed work shall be obtained monthly, or at such intervals as may be mutually agreed upon, during the course of this work.

**SECTION 3
Duties of the City**

City shall make available to Consultant all data and information in the City's possession which City deems necessary to the preparation and execution of the work, and City shall actively aid and assist Consultant in obtaining such information from other agencies and individuals as necessary.

The Director may authorize a staff person to serve as his or her representative for conferring with Consultant relative to Consultant's services. The work in progress hereunder shall be reviewed from time to time by City at the discretion of City or upon the request of Consultant. If the work is satisfactory, it will

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Nichols Consulting Engineers.
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be approved. If the work is not satisfactory, City will inform Consultant of the changes or revisions necessary to secure approval.

SECTION 4 Fees and Payment

Payment for the Consultant's services shall be made upon a schedule and within the limit, or limits shown, upon Appendix Two. Such payment shall be considered the full compensation for all personnel, materials, supplies, and equipment used by Consultant in carrying out the work. If Consultant is compensated on an hourly basis, Consultant shall track the number of hours Consultant, and each of Consultant's employees, has worked under this Agreement during each fiscal year (July 1 through June 30) and Consultant shall immediately notify City when the number of hours worked during any fiscal year by any of Consultant's employees reaches 900 hours. In addition each invoice submitted by Consultant to City shall specify the number of hours to date Consultant, and each of Consultant's employees, has worked under this Agreement during the current fiscal year.

SECTION 5 Changes in Work

City may order major changes in scope or character of the work, either decreasing or increasing the scope of Consultant's services. No changes in the Scope of Work as described in Appendix One shall be made without the City's written approval. Any change requiring compensation in excess of the sum specified in Appendix Two shall be approved in advance in writing by the City.

SECTION 6 Time of Beginning and Schedule for Completion

This Agreement will become effective when signed by both parties and will terminate on the earlier of:

- June 30, 2020; or
- The date either party terminates the Agreement as provided below.

Work shall begin on or about March 12, 2015.

In the event that major changes are ordered or Consultant is delayed in performance of its services by circumstances beyond its control, the City will grant Consultant a reasonable adjustment in the schedule for completion provided that to do so would not frustrate the City's objective for entering into this Agreement. Consultant must submit all claims for adjustments to City within thirty calendar days of the time of occurrence of circumstances necessitating the adjustment.

SECTION 7 Termination

City shall have the right to terminate this Agreement at any time upon giving ten days written notice to Consultant. Consultant may terminate this Agreement upon written notice to City should the City fail to fulfill its duties as set forth in this Agreement. In the event of termination, City shall pay the Consultant for all services performed and accepted under this Agreement up to the date of termination.

SECTION 8 Insurance

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, or employees.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial Liability coverage (Occurrence Form CG 0001).
2. Insurance Services office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California.
4. Errors and Omissions Liability insurance appropriate to the consultant's profession. Architects' and engineers' coverage shall include contractual liability (to the extent insurable).

Minimum Limits of Insurance

Consultant shall maintain limits no less than:

- | | |
|--|---|
| 1. General Liability:
(including operations, products and completed operations) | \$1,000,000 per occurrence and \$2,000,000 in aggregate (including operations, for bodily injury, personal and property damage). |
| 2. Automobile Liability: | \$1,000,000 per accident for bodily injury and property damage. |
| 3. Errors and Omissions Liability:
Limits | \$1,000,000 per claim and in the aggregate. |

Other Insurance Provisions

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Capitola, its officers, officials, employees and volunteers are to be covered as additional insured's as respects: liability arising out of work or operations performed by or on behalf of the Consultant or automobiles owned, leased, hired or borrowed by the Consultant.
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers.

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Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, returned receipt requested, has been given to the City.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

Consultant shall furnish the City with original certificates and amendatory endorsements affecting coverage by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

SECTION 9 Indemnification

Consultant agrees to indemnify, defend, and hold harmless the City, its officers, agents and employees, from and against any and all claims, demands, actions, damages, or judgments, including associated costs of investigation and defense arising in any manner from consultant's negligence, recklessness, or willful misconduct in the performance of this agreement.

SECTION 10 Civil Rights Compliance/Equal Opportunity Assurance

Every supplier of materials and services and all consultants doing business with the City of Capitola shall be in compliance with the applicable provisions of the Americans with Disabilities Act of 1990, and shall be an equal opportunity employer as defined by Title VII of the Civil Rights Act of 1964 and including the California Fair Employment and Housing Act of 1980. As such, consultant shall not discriminate against any person on the basis of race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, age or sex with respect to hiring, application for employment, tenure or terms and conditions of employment. Consultant agrees to abide by all of the foregoing statutes and regulations.

SECTION 11 Legal Action/Attorneys' Fees

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which he or she may be entitled. The laws of the State of California shall govern all matters relating to the

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validity, interpretation, and effect of this Agreement and any authorized or alleged changes, the performance of any of its terms, as well as the rights and obligations of Consultant and the City.

SECTION 12 Assignment

This Agreement shall not be assigned without first obtaining the express written consent of the Director after approval of the City Council.

SECTION 13 Amendments

This Agreement may not be amended in any respect except by way of a written instrument which expressly references and identifies this particular Agreement, which expressly states that its purpose is to amend this particular Agreement, and which is duly executed by the City and Consultant. Consultant acknowledges that no such amendment shall be effective until approved and authorized by the City Council, or an officer of the City when the City Council may from time to time empower an officer of the City to approve and authorize such amendments. No representative of the City is authorized to obligate the City to pay the cost or value of services beyond the scope of services set forth in Appendix Two. Such authority is retained solely by the City Council. Unless expressly authorized by the City Council, Consultant's compensation shall be limited to that set forth in Appendix Two.

SECTION 14 Miscellaneous Provisions

1. *Project Manager.* Director reserves the right to approve the project manager assigned by Consultant to said work. No change in assignment may occur without prior written approval of the City.
2. *Consultant Service.* Consultant is employed to render professional services only and any payments made to Consultant are compensation solely for such professional services.
3. *Licensure.* Consultant warrants that he or she has complied with any and all applicable governmental licensing requirements.
4. *Other Agreements.* This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter, and no other agreement, statement or promise related to the subject matter of this Agreement which is not contained in this Agreement shall be valid or binding.
5. *City Property.* Upon payment for the work performed, or portion thereof, all drawings, specifications, records, or other documents generated by Consultant pursuant to this Agreement are, and shall remain, the property of the City whether the project for which they are made is executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information and reference in connection with the City's use and/or occupancy of the project. The drawings, specifications, records, documents, and Consultant's other work product shall not be used by the Consultant on other projects, except by agreement in writing and with appropriate compensation to the City.
6. *Consultant's Records.* Consultant shall maintain accurate accounting records and other written documentation pertaining to the costs incurred for this project. Such records and documentation

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shall be kept available at Consultant's office during the period of this Agreement, and after the term of this Agreement for a period of three years from the date of the final City payment for Consultant's services.

7. *Independent Contractor.* In the performance of its work, it is expressly understood that Consultant, including Consultant's agents, servants, employees, and subcontractors, is an independent contractor solely responsible for its acts and omissions, and Consultant shall not be considered an employee of the City for any purpose.

8. *Conflicts of Interest.* Consultant stipulates that corporately or individually, its firm, its employees and subcontractors have no financial interest in either the success or failure of any project which is, or may be, dependent on the results of the Consultant's work product prepared pursuant to this Agreement.

9. *Notices.* All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given and fully received when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed to the respective parties as follows:

CITY
CITY OF CAPITOLA
420 Capitola Avenue
Capitola, CA 95010
831-475-7300

CONSULTANT
Nichols Consulting Engineers
501 Canal Blvd, Suite I
Point Richmond, CA 94804
510-215-3620

By: _____
Benjamin Goldstein, City Manager

By: _____
<name and title>

Dated: _____

Dated: _____

Approved as to Form:

John G. Barisone, City Counsel

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APPENDIX ONE
Scope of Services

The Consultant shall assist with the design, planning, permitting, and construction of various municipal facility projects. The scope of services will be determined by the City on an as-needed basis and presented to the Consultant as individual task orders. The Consultant shall perform services at the discretion of the City and as generally set forth in this scope of services and as more specifically described in each task order. The City currently has one identified project which will require assistance from the selected Consultant which is described below:

Pavement Management Updates and Program Implementation as detailed in the City of Capitola Capital Improvement Program

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APPENDIX TWO Fees and Payments

For the services performed, City will pay the Consultant on either a lump sum or a time and material basis as specified in individual task orders issued by the City. Payments will be made upon satisfactory completion of the services and delivery of work products as identified in each individual task order. Payments will be issued monthly as charges accrue, the sum of consultant's salary expenses and non-salary expenses.

Consultant hereby represents and warrants, based upon Consultant's independent determination of the time and labor, including overtime, which will be required to perform said services, that Consultant will provide all said services at a cost which will not exceed the maximum price set forth in this agreement, or in individual task orders, for Consultant's services. Consultant hereby assumes the risk that Consultant will perform said services within this maximum price constraint and Consultant acknowledges that its inability to do so shall not excuse completion of the services and shall not provide a basis for additional compensation.

Salary expenses include the actual direct pay of personnel assigned to the project (except for routine secretarial and account services) plus payroll taxes, insurance, sick leave, holidays, vacation, and other fringe benefits. The percentage of compensation attributable to salary expenses includes all of Consultant's indirect overhead costs and fees. For purposes of this Agreement, Consultant's salary expenses and non-salary expenses will be compensated at the rates set forth in the fee schedule attached to this appendix and in accordance with the terms set forth therein. Non-salary expenses include travel, meals and lodging while traveling, materials other than normal office supplies, reproduction and printing costs, equipment rental, computer services, service of subconsultants or subcontractors, and other identifiable job expenses. The use of Consultant's vehicles for travel shall be paid at the current Internal Revenue Service published mileage rate.

Salary payment for personnel time will be made at the rates set forth in the attached fee schedule for all time charged to the project. Normal payroll rates are for 40 hours per week. Consultant shall not charge the City for personnel overtime salary at rates higher than those set forth in the attached fee schedule without the City's prior written authorization.

In no event shall the total fee charged for the scope of work set forth in Appendix One exceed the total budget identified in the annual Capital Improvement Program approved by the City Council. For fiscal year 2014/15 this amount is \$150,000.

Payments shall be made monthly by the City, based on itemized invoices from the Consultant which list actual costs and expenses. Such payments shall be for the invoice amount. The monthly statements shall contain the following affidavit signed by a principal of the Consultant's firm:

"I hereby certify as principal of the firm of _____, that the charge of \$_____ as summarized above and shown in detail on the attachments is fair and reasonable, is in accordance with the terms of the Agreement dated _____, and has not been previously paid."

**APPENDIX THREE
 BILLING RATES**



**SCHEDULE OF CHARGES 2014
 City of Capitola**

PROFESSIONAL SERVICES

Principal.....	\$220/hour
Associate.....	\$175/hour
Senior.....	\$150/hour
Project.....	\$125/hour
Staff.....	\$110/hour

TECHNICAL SERVICES

Senior Construction Manager*.....	\$120/hour
Senior Designer.....	\$120/hour
Senior Technician/Construction Inspector*.....	\$110/hour
CAD Technician.....	\$90/hour
Senior Field Scientist.....	\$105/hour
Field Scientist.....	\$85/hour
Project Administrator.....	\$90/hour
Field/Engineering Technician.....	\$85/hour
Technical Word Processing.....	\$70/hour
Clerical.....	\$70/hour

CONTRACT LABOR

From time to time, NCE retains outside professional and technical labor on a temporary basis to meet peak workload demands. Such contract labor will be charged at regular Schedule charges.

LITIGATION SUPPORT

Expert testimony in depositions, hearings, mediations, and trials will be charged at 300% of the above rates.

EQUIPMENT

Plotter Usage.....	(separate fee schedule)
Truck.....	\$85/day
Automobile.....	IRS Standard Mileage Rate+10%
Falling Weight Deflectometer Testing.....	\$3,500/Day
Coring.....	\$4,500/Day
Environmental Equipment.....	(separate fee schedule)

OUTSIDE SERVICES

Rental of equipment not ordinarily furnished by NCE and all other costs such as special printing, photographic work, travel by common carrier, subsistence, subcontractors, etc.cost+10%

**COMMUNICATION/
 REPRODUCTION**

In-house costs for long-distance telephone, faxing, postage, printing and copying project labor charges x 5%

TERMS

Billings are payable upon presentation and are past due 30 days from invoice date. A finance charge of 1.5% per month, or the maximum amount allowable by law, will be charged on past-due accounts. NCE makes no warranty, either expressed or implied, as to its findings, recommendations, specifications, or professional advice except that they are prepared and issued in accordance with generally accepted professional practice.

* Rate will be adjusted for prevailing wages required on Public Works projects in the State of California.

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CITY COUNCIL AGENDA REPORT

MEETING OF MARCH 12, 2015

FROM: DEPARTMENT OF PUBLIC WORKS

SUBJECT: CONSIDERATION OF A RESOLUTION INCREASING THE PARKING TIME LIMIT
IN THE VILLAGE TO THREE HOURS

RECOMMENDED ACTION: None. Council should consider the draft Resolution and provide direction to staff.

BACKGROUND: The parking time limits in the parking meter zones are currently established by Resolution No. 3954 (Attachment 1). The Village time limit is set at two hours and the City Council has requested a review of the this time limit to determine if should be extended to three hours.

The reason for this review was complaints received by the City that the two hour time limit does not allow visitors time to dine, shop, and visit the area.

DISCUSSION: At the request of the City Council, the Traffic and Parking Commission reviewed and discussed this matter and has made the recommendation to retain the two hour time limit. A summary of the Commission's determination is included at Attachment 2.

A draft Resolution has been prepared and is included as Attachment 3 should the Council choose to amend the parking time limit. Implementation of the change will require reprogramming the pay stations and resigning the area. It is anticipated that this work will take 60 days to complete. Staff is recommending that if Council determines the time limits should be changed, such a change should only be done on a trial basis from May 1, 2015, through November 25, 2015, at this time. The purpose of the trial period is to determine the effects of the change without making a permanent change which may be difficult to undo in the future.

FISCAL IMPACT: The cost of reprogramming the pay stations is estimated at \$500 and can be paid from available funds in the Police Department Parking Fund. New signage throughout the Village will cost approximately \$1,300 in materials which can be paid from Public Works supply budget.

ATTACHMENTS

1. Resolution 3954
2. Traffic and Parking Commission Recommendation
3. Draft Resolution

Report Prepared By: Steven Jesberg
Public Works Director

Reviewed and Forwarded
By City Manager: 

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RESOLUTION NO. 3954

RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF CAPITOLA
ESTABLISHING PARKING TIME LIMITS
WITHIN DESIGNATED PARKING METER ZONES

WHEREAS, Capitola Municipal Code Section 10.36.290 authorizes the City Council by resolution, to limit the period of time in which a vehicle may be parked within a designated area of the street; and

WHEREAS, said parking time limits, in the Parking Meter Zones established in Capitola Municipal Code Section 10.36.055, were historically established by multiple resolutions; and

WHEREAS, in anticipation of the City conducting a comprehensive review of all the parking zones, meter rates, and time limits, it is recommended that the existing time limits be consolidated into a single resolution.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Capitola as follows:

1. All previous resolutions that established time zones in the following areas shall be superseded by this Resolution; and

2. The following time limits shall be established in the parking meter zones:

Zone A (Village Area)	2 Hours
Zone A1 (Cliff Drive Area)	4 Hours on cliff side of Cliff Drive 12 Hours on railroad side of Cliff Drive
Zone B (Pacific Cove Parking Lot)	12 Hours

3. These time limits shall not apply to all green, yellow, or white parking spaces established under Capitola Municipal Code Section 10.37.037 within these zones.

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Capitola on the 25th day of April, 2013, by the following vote:

AYES: Council Members Norton, Storey, Bottorff, Termini, and Mayor Harlan

NOES: None

ABSENT: None

ABSTAIN: None


Stephanie Harlan, Mayor

ATTEST:

 CMC
Susan Sneddon, City Clerk

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T&PC RECOMMENDATION

TO: CITY COUNCIL

FROM: TRAFFIC & PARKING COMMISSION

SUBJ: RECOMMENDATION REGARDING TIME LIMITS IN CAPITOLA VILLAGE

It is the recommendation of the Commission to not change the current 2-hour time limit in the Village at this time.

There was extensive discussion on the subject, and the Commissioners want to communicate to the Council their reasoning for this recommendation and emphasize the impact of time limits on "the big picture" of Village and PacCove parking.

With the pending construction of the 230 space lower parking lot, relocated shuttle bus service, improved directional signage and so forth, the thrust of Village parking policy should be to encourage parkers to proceed directly to and utilize the PacCove lots. This will result in reduced traffic and congestion in the Village, better utilization of PacCove and further justification of the cost to build the new lower lot. The constraint of only being able to park for two hours in the Village is a strong incentive for many parkers to use the PacCove lots. The prospect of finding three hour parking spaces will encourage parkers to make a few passes through the Village before giving up and heading to PacCove.

The current 2-hour limit has been in place for about 40 years. It was established at the request of Village merchants to insure parking turnover and improved chances for merchants' customers to find parking. Increased turnover also improves chances for holders of Village Resident Permits to find a parking space in the general vicinity of their homes.

Prior to our meeting we informally surveyed residents in and around the Village and various merchants. The BIA will likely present a recommendation to you. Frequently we found that initially a majority of responding Village residents and merchants were open to expanding time limits to 3 hours. However, typically after a discussion of the impact of less turnover many changed to retaining the current 2-hour limit.

The recommendation of the Commission relies strongly on the significant Village experience of its Commissioners in their belief that retaining the 2-hour time limit will encourage the use of the PacCove parking lots, reduce Village traffic and congestion and will prevent a disruption in the delicate balance of the parking needs of Village residents, merchants and visitors.

Approved unanimously at the November 20, 2013 Traffic and Parking Commission Meeting

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RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA BY RESCINDING
RESOLUTION NO. 3954 AND ESTABLISHING PARKING TIME LIMITS
WITHIN DESIGNATED PARKING METER ZONES**

WHEREAS, Capitola Municipal Code Section 10.36.290 authorizes the City Council by resolution, to limit the period of time in which a vehicle may be parked within a designated area of the street; and

WHEREAS, the time limits were last established by Resolution No. 3954 which was adopted in April 2013; and

WHEREAS, the City proposes a trial period where the parking time limit in the Village is moved to 3 hours.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Capitola as follows:

1. All previous resolutions that established time zones in the following areas shall be superseded by this Resolution; and

2. The following time limits shall be established in the parking meter zones:

- Zone A1 (Village Area)
 - May 1 to November 25, 2015 3 Hours
 - All other times 2 Hours
- Zone A2 (Cliff Drive Area)
 - 4 Hours on cliff side of Cliff Drive
 - 12 Hours on railroad side of Cliff Drive
- Zone B (Pacific Cove Parking Lot) 12 Hours

3. These time limits shall not apply to all green, yellow, or white parking spaces established under Capitola Municipal Code Section 10.37.037 within these zones.

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Capitola on the 12th day of March, 2015, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Dennis Norton, Mayor

ATTEST:

_____, CMC
Susan Sneddon, City Clerk

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CITY COUNCIL AGENDA REPORT

MEETING OF MARCH 12, 2015

FROM: POLICE DEPARTMENT

SUBJECT: ADMINISTRATIVE POLICY FOR THE ISSUANCE OF SURF SCHOOL PERMITS

RECOMMENDED ACTION: Consider adopting proposed Administrative Policy outlining the process for the issuance of Surf School Permits.

BACKGROUND: In 2008, the Capitola City Council adopted Chapter 9.30 of the Capitola Municipal Code to regulate Surf Schools that operate at specific beaches and surf breaks within control of the Capitola Police Department. A maximum of four Surf School Permits are issued each calendar year. The purpose of the Surf School Permits is to facilitate a safe water experience for experienced surfers, instructors, students and visitors who share the beach.

DISCUSSION: Since the adoption of the Surf School Regulations, interest has grown in obtaining a Surf School Permit. Vendors from around Santa Cruz County and local businesses frequently inquire into the availability of a Surf School Permit. In order to establish a procedure for the issuance and revocation of said permits, staff has developed an Administrative Policy as a guideline to assist with this process.

As outlined in the policy, submitted applications during the established time period will be competitively reviewed. The following criteria will be part of that review process: qualifications of the applicant, the applicant's past history of compliance with applicable regulations, the applicant's history of successfully operating a Surf School, and the City's adopted "Local Vendor Preference" policies. Permits shall be valid for one year and may be renewed with a completed application during the application period.

If at any time fewer than four Surf School Permits have been issued, the remaining permits will be issued on a first come first served basis to qualified applicants upon submission of a complete application.

FISCAL IMPACT: There are no apparent fiscal impacts.

ATTACHMENTS:

1. Draft Administrative Policy

Report Prepared By: Rudy Escalante
Chief of Police

Reviewed and Forwarded
By City Manager

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ADMINISTRATIVE POLICY

Number: _____
 Issued: _____
 Jurisdiction: City Council

SURF SCHOOL PERMITS

I. PURPOSE

The purpose of this policy is to provide a process for the annual review and issuance of surf school permits that are issued within the City limits of Capitola, implementing Capitola Municipal Code section 9.30. Surf schools that are permitted to conduct operations on Capitola beaches and surf breaks shall comply with all other applicable federal, state and local statutes and regulations including but not limited to Capitola Municipal Code Chapter [8.64](#) pertaining to water sports and equipment, Capitola Municipal Code Chapter [5.04](#) pertaining to business license taxes and applicable California Labor Code statutes governing employment including statutes governing wages, hours and worker's compensation.

II. POLICY

No surf school shall conduct operations on Capitola beaches or surf breaks without first obtaining a permit to do so from the Capitola police department. The permit shall assure compliance with the surf school regulations set forth in Section [9.30.020](#) and other requirements determined necessary to comply with public safety and local, state or federal law.

III. PROCEDURE

- A. The Capitola police department shall assess permit fees to surf schools, which shall be due and payable in full at the time of permit issuance. The amount of the fee shall be established in the City's fee schedule and shall correspond to the costs incurred by the city in regulating surf schools in accordance with this policy and providing public safety services attributable exclusively to the operation of surf schools on city beaches and surf breaks.

To the extent it is necessary for the city to employ lifeguards or other public safety personnel that would not otherwise be required but for the conduct of surf school operations on Capitola beaches and surf breaks, as part of its permit fee assessment the city may recover from those surf schools on a pro rata basis the costs it incurs employing said lifeguards or law enforcement personnel.

- B. Permit Issuance. Permits are valid for one calendar year beginning on January 1st and expiring on December 31st of the same year they were issued. The time period to submit a completed application for the upcoming permit year starts December 1 and closes at noon on December 31st. Completed and submitted applications will be reviewed by the Chief of Police who will issue no more than four permits based on a competitive assessment of the qualifications of the applicant, the applicant's past history of compliance with applicable regulations, the applicant's history of successfully operating a Surf School, and the City's adopted "Local Vendor Preference" policies. Those permits shall be valid for one year.

Item #: 10.B. Attach 1.pdf

Administrative Procedure _____

Surf School Permits

Page 2

The Police Chief's decision regarding the award of a Surf School permit may be appealed by an affected party to the City Manager. The City Manager's decision may be appealed to City Council pursuant to CMC 2.52.

If at any time fewer than four Surf School permits have been issued, the remaining permits will be issued on a first come first served basis to qualified applicants upon submission of a complete application.

C. Permit Term. Surf School permits expire on Dec. 31st of the year issued.

IV. **REVOCATION**

The City Manager shall have the right to revoke or suspend Surf School permits for: failure to comply with the terms of a Surf School permit, failure to comply with applicable laws, and/or failure to operate a Surf School. The City Manager's decision to revoke a permit may be appealed to City Council pursuant to CMC 2.52.

This policy is approved and authorized by

Jamie Goldstein
City Manager



CITY COUNCIL AGENDA REPORT

MEETING OF MARCH 12, 2015

FROM: COMMUNITY DEVELOPMENT DEPARTMENT

SUBJECT: ZONING CODE UPDATE – ISSUES AND OPTIONS WHITE PAPER

RECOMMENDED ACTION: Accept report and provide direction on review process.

BACKGROUND: The City of Capitola adopted the new General Plan on June 26, 2014. Since the adoption of the new General Plan, staff has initiated the update to the Zoning Ordinance. State law requires that the City's Zoning Ordinance and Local Coastal Plan (LCP) be consistent with the General Plan. The existing Zoning Code (Code) was written in 1975. Over the past 39 years, there have been multiple updates to the Code, but never a full overhaul of the entire Code. In August of 2014, staff began the process of updating the Zoning Ordinance.

The purpose of this report is to publicize the Issues and Options White Paper (Attachment 1) which will be reviewed by the Planning Commission and City Council over the next several months. Staff is not requesting any action from the City Council at this time; rather, the Issues and Options White Paper is being distributed in advance of upcoming work sessions to allow the public and the City Council with ample review time. The Planning Commission received the Issues and Option paper within the March 5, 2015, Agenda Packet.

PROCESS OVERVIEW: The first step to a Zoning Ordinance Update is public outreach. From August 1, 2014, through October 15, 2014, a survey was made available to the public on the City website and hardcopies were available at City Hall and the Capitola Library. The survey was completed by 150 people. During this time, staff also hosted stakeholder meetings with five focus groups. The focus groups included: a local resident group, a recent-applicant group, a commercial property owner/management group, a business owner group, and an architect/designer/planner group. The stakeholder meetings were well attended with informative, lively discussions on a wide range of issues and ideas. The results of the public survey and the stakeholder interviews were published during the November 6, 2014, Planning Commission meeting. The results are available on the City's website within the Zoning Code Update page at <http://www.cityofcapitola.org/communitydevelopment/page/zoning-code-update>.

Staff has worked closely with the City's General Plan consultant to draft the Issues and Options White Paper. The issues identified during the public outreach are the foundation of the White Paper. The report is divided into two sections: non-controversial items and items for public discussion. The non-controversial items are primarily straight-forward and technical in nature. The items for public discussion are more complex issues that require public input, discussion, and direction by the Planning Commission and City Council. The 18 larger issues are identified with an overview of the public perception and the relevant General Plan Goals and Policies. For each issue, the report presents two or more option for how the item can be addressed in the Zoning Code Update. Staff did not include recommendations on the options. During work session discussions, staff and the consultant will provide information on the strengths and weaknesses of options, as well as best planning practices.

All issues identified during public outreach have been identified in a spreadsheet included as Attachment 2. Within the spreadsheet, each issue is explained and direction is provided on how the item will be addressed. For those items addressed within the Issues and Options White Paper, the

Item #: 10.C. Staff Report.pdf

AGENDA STAFF REPORT MARCH 12, 2015
 ZONING CODE UPDATE – ISSUES AND OPTIONS WHITE PAPER

section of the document is references. This spreadsheet will be utilized throughout the process to ensure each issue is considered within the updated Code.

The next step in the process is the review of the issues and options by Planning Commission, followed by City Council review of the Commission’s recommendations. During the March 5, 2015 Planning Commission meeting, staff requested that Planning Commission provide direction on their preference for review. The Commission discussed different options from all day workshops to special evening meetings. There was a preference for limiting the discussions to 4 to 5 hours. Ultimately, the Planning Commission did not make a decision, rather requested the City Council weigh in as well so that the public process is the same for both boards, creating consistency for the public. Staff is requesting direction from the City Council on how to proceed with the review of the Issues and Option.

The public and key stakeholders will be invited to participate in the Issues and Options Workshops. The issues will be reviewed in order as sequenced in the Issues and Options Report. To assist the Planning Commission and City Council in their review of the report, a decision making matrix has been provided as Attachment 3. The matrix will be updated after each workshop to identify the direction provided by the Planning Commission.

The final recommendations will be compiled into a draft Zoning Ordinance. The final document requires Planning Commission recommendation and City Council adoption.

The final document must be authorized by the Coastal Commission for those regulations influencing areas within the Coastal Zone. Staff has begun discussions with the Coastal Commission regarding the update and will continue to work with Coastal Commission staff throughout the update process to facilitate adoption of the updated LCP. Coastal Commission review of updated local coastal plans and Zoning Ordinances takes approximately 6 to 12 months.

ZONING ORDINANCE UPDATE PROCESS

1. Stakeholder Outreach (August 2014 – October 2014)
2. Issues and Option Identification (five months)
3. Preparation of preliminary draft Zoning Ordinance (six months)
4. Planning Commission and City Council Work Sessions and Public Hearings (six months)
5. Draft Zoning Ordinance and CEQA Document (one month)
6. Adoption Hearings (two months)
7. Coastal Commission – LCP Amendment*

2014					2015												
8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	
Public Outreach																	
			Draft Issues and Options														
								Preparation of preliminary draft Zoning Ordinance									
								Planning Commission and City Council Public Work Sessions									
														CEQA			
																Adoption Hearings	

*LCP update by California Coastal Commission following local adoption.

FISCAL IMPACT: None

ATTACHMENTS

1. Issues and Options White Paper
2. Spreadsheet of Issues
3. Options Matrix

Report Prepared By: Katie Cattan
 Senior Planner

Reviewed and Forwarded
 By City Manager.





CITY OF CAPITOLA
COMMUNITY DEVELOPMENT DEPARTMENT

ZONING CODE UPDATE

ISSUES AND OPTIONS REPORT

MARCH 5, 2015

CITY OF CAPITOLA
420 CAPITOLA AVENUE
CAPITOLA, CA 95010

Introduction

This report presents options for how Capitola can address important issues in its updated Zoning Code. The report will help facilitate public discussion and summarizes input received to-date from the Planning Commission, City Council, and general public. Reviewing this input early in the process will help City staff and consultants prepare an updated zoning code that reflects the unique conditions, values, and goals in Capitola.

The report begins with a brief description of planned changes to the existing zoning code that are non-controversial and straight-forward. The second part then discusses the following 18 issues that warrant public discussion early in the zoning code update process:

Issue	Page
1. Protecting the Unique Qualities of Residential Neighborhoods	7
2. Maintaining and Enhancing the Village Character	8
3. Accommodating High-Quality Development on 41 st Avenue	10
4. Protecting Retail Vitality on 41 st Avenue	11
5. Parking: Required Number, Village Hotel, Reductions, Efficiency, and Garages	12
6. Historic Preservation	17
7. Signs: Threshold for Review and Tailored Standards	19
8. Non-Conforming Uses: Calculation of Structural Alterations, Historic Structures, and Amortization in R-1 Zone	20
9. Secondary Dwelling Units	24
10. Permits and Approvals	24
11. Architecture and Site Review: Authority of Committee, Timing of Review, and Composition of Committee	25
12. Design Permits: When Required, Review Authority, and Considerations for Approval	27
13. Planned Development	30
14. Environmental and Hazards Overlays	30
15. Visitor-Serving Uses on Depot Hill	31
16. Height: Residential Neighborhoods, Capitola Village, Hotel	32
17. Floor Area Ratio	34
18. City Council Appeal	36

For each issue, the report presents two or more options for how the issue can be addressed in the updated Zoning Code. The first option is always to make no change to the existing Zoning Code. Within the no change option, the code would be updated for clarity but there would be no modification to how the regulations are applied. Other options reflect direction in the new General Plan, ideas previously discussed in Capitola, and practices from other similar communities. During public discussion new options may be suggested – these new ideas should be considered alongside those included in this report.

How This Report was Created

This report was prepared based on substantial input from the community. In August and September 2014 staff hosted a series of stakeholder meetings with architects, developers, commercial property owners, business owners, property managers, residents, and recent applicants. At these meetings participants commented on specific issues with the existing Zoning Code and how the updated Zoning Code could be improved. City staff also received

input on the Zoning Code through an online survey. Stakeholder meeting notes and survey results are available on the City's website.

The contents of this report were also shaped by the new General Plan, and the discussion of zoning-related issues during the General Plan Update process. Many policies and actions in the General Plan call for changes to the Zoning Code. The report also reflects staff's experience administering the zoning code in Capitola, professional experience elsewhere, and input from the City's consultants on best practices from other communities.

A Note about Sustainability

Environmental sustainability is a core community value in Capitola. Reflecting this, the General Plan contains the following Guiding Principle relating to environmental resources:

Embrace environmental sustainability as a foundation for Capitola's way of life. Protect and enhance all natural resources—including the beaches, creeks, ocean, and lagoon—that contribute to Capitola's unique identity and scenic beauty. Reduce greenhouse gas emissions and prepare for the effects of global climate change, including increased flooding and coastal erosion caused by sea-level rise.

General Plan Goal OSC-1 also calls for Capitola to "promote sustainability as a foundation for Capitola's way of life."

An important component of sustainability is reduction of greenhouse gas emissions and adaptation to climate change. To address this issue, Capitola is now in the process of preparing a Climate Action Plan (CAP). While the CAP primarily aims to reduce greenhouse gas emissions, it also touches on all aspects of sustainability, including the following:

- Land Use and Community Design
- Economic Development
- Transportation
- Green Building and Energy Efficiency
- Renewable Energy
- Water and Wastewater
- Solid Waste Diversion
- Open Space and Food Systems

To achieve greenhouse gas reductions related to these topics, the CAP will call for changes to Capitola's zoning code. To avoid redundancy with the CAP project, this Issues and Options report does not repeat zoning-related measures currently under consideration for the CAP. Instead, the City will consider these measures during the CAP process and then incorporate them into the Zoning Code. The timing and schedule of the two projects allows for the City to decide on preferred zoning-related CAP measures before the drafting of the updated Zoning Code begins.

Part A. Non-Controversial Changes

Below is a summary of anticipated changes to the existing Zoning Code that are primarily non-controversial, straight-forward, and technical in nature. Opportunities for public review and input for these changes will be provided through the hearing process and workshops for the updated Zoning Ordinance. These items are not expected to be a topic of discussion during the issues and options work sessions with the Planning Commission and City Council. In addition, a comprehensive list of issues and revisions for non-controversial matters is presented in Attachment 1.

1. **Revision of Overall Organization.** The overall organization of the Zoning Ordinance will be changed, with information presented in a more intuitive manner. Similar provisions will be grouped together with related standards clearly cross-referenced. A user-friendly index to the zoning code will be added. The layout of each page will be redesigned to speed up comprehension with less text per page, logical headings, and visual diagrams. Standards will be the same across the entire Zoning Ordinance, so that the document has no contradictory information. Unnecessary repetitions of standards and regulations will be removed.
2. **Clarification of Development Standards.** The zoning code will be updated to include consistent development standards that are defined. Diagrams, illustrations, and tables will be added to the ordinance. These additions will more efficiently communicate land use regulations and development standards for each zoning district. Diagrams, illustrations, and tables will be utilized throughout the code within provisions that benefit from graphic illustration.
3. **Clarification of Process.** The Zoning Ordinance will be updated to clarify when a permit is required and the process of review.
4. **Technical Language.** Much of the existing code consists of text created for those in the legal profession or professional planners. Property owners find the code difficult to understand. Language will be substantially revised to convey the same meaning, but re-written in plain English, removing jargon to the greatest extent possible.
5. **Updated Definitions.** The existing list of definitions is incomplete and outdated. Definitions will be added to include terms that are utilized but not defined. For example, personal service establishment is listed as a use in commercial districts but not defined. Diagrams or illustrations will be added for those terms in which illustrations help define the concepts, such as height as measured on a slope. Also, the existing definitions will be updated to remove discretion in interpretation.
6. **Updated Administrative, Principally Permitted, and Conditional Land Use Lists.** Land use lists will be updated within each zone within a comprehensive table. Land uses will be categorized into principally permitted, administrative, and conditional. Land uses that do not present a conflict, are non-controversial, and compatible with the zoning district, will be identified as principally permitted uses. Land uses that are compatible with the zoning district but require specific conditions to be in compliance (home occupation) will be listed as administrative land use permits. Land uses that may require mitigation or additional oversight will be included as conditional uses. The process, considerations, findings, and conditions for administrative land use permits and conditional use permits will be updated.
7. **Protect Public Pathways and Trails.** The existing Zoning Ordinance disperses various development standards related to pathways/trails within specific environmentally sensitive areas and within design guidelines. The updated zoning ordinance will introduce

development standards for properties that have trails/pathways within or adjacent to the property.

8. **Implementation of General Plan.** The updated zoning ordinance will implement a variety of goals and polices in the recently adopted City of Capitola General Plan. This will include new standards for 41st Avenue, transition areas between commercial and residential zones, night sky regulations, and updates to zoning districts to implement the General Plan land use map. Some of these policies are discussed in Part B of this report.
9. **Revision for Legal Compliance.** The City is obligated to revise the zoning ordinance in response to California laws related to zoning issues. Examples include removal of the outdated mobile home section of code, family day care, and wireless regulations.
10. **Clarification of Coastal Section.** The coastal section of the code is very difficult to read. The section will be rewritten to ensure that the threshold for when a coastal permit is required is clarified, and what findings must be made prior to the issuance of a coastal permit. Also, the list of visitor serving uses adjacent to residential properties will be revised to prohibit development of non-compatible uses, such as carnivals and circuses.

Part B. Items for Public Discussion

Complex issues worthy of public input, discussion, and direction are discussed below. The focus of the issues and options work sessions is to discuss the issues and options and provide staff with direction for the updated Zoning Code.

For each topic, the issue is first defined, followed by possible ways the updated zoning code could be modified to address the issue.

ISSUE 1: Protecting the Unique Qualities of Residential Neighborhoods

Protecting residential neighborhoods was a key issue discussed during the General Plan Update. The General Plan contains a number of goals and policies to address this issue:

Goal LU-4 Protect and enhance the special character of residential neighborhoods.

Goal LU-5 Ensure that new residential development respects the existing scale, density, and character of neighborhoods.

Policy LU-5.1 Neighborhood Characteristics. Require new residential development to strengthen and enhance the unique qualities of the neighborhood in which it is located. Residential neighborhood boundaries are identified in Figure LU-1.

Policy LU-5.3 Mass and Scale. Ensure that the mass, scale and height of new development is compatible with existing homes within residential neighborhoods.

Policy LU-5.5 Architectural Character. Ensure that the architectural character of new development and substantial remodels complements the unique qualities of the neighborhood in which it is located and the overall coastal village character of Capitola.

Within the public survey for the zoning code update, concern for preserving neighborhood character rose to the top of the list.

Capitola's current zoning ordinance takes a one size fits all approach to all single family residential neighborhood. This does not always produce desired results or respect the existing patterns within a specific neighborhood. For instance, the development standards are the same for Cliffwood Heights and Riverview Avenue north of the trestle. Both are required to have an increase in the second story setback. Although potentially appropriate in Cliffwood Heights to ensure articulation of buildings, this regulation disrupts the flow of the streetscape on Riverview.

After the zoning code update City staff plans to prepare new residential design guidelines, as called for by the General Plan. These guidelines will document the unique characteristics of individual neighborhoods in Capitola and help ensure that new homes and remodels are compatible with these characteristics. All options described below anticipate the future adoption of these new guidelines.

Options:

1. **Maintain existing R-1 standards for all neighborhoods.** With this option the Zoning Code would retain its existing R-1 standards that apply to all residential neighborhoods. Some specific standards may be modified to better meet the needs of property owners and address neighborhood concerns. After the future preparation of residential design

guidelines, reference to these guidelines could be added to the R-1 chapter or to the findings required for approval of a Design Permit.

2. **Introduce tailored development standards for individual residential neighborhoods.**

With this option the Zoning Code would identify the various neighborhoods within Capitola and identify the character-defining attributes of each area. The zoning code would establish standards for each of the residential neighborhoods that encourage the individual attributes and patterns within a neighborhood. The neighborhoods may be delineated through different residential base zones (e.g., R-1, R-2) or through overlay zones similar to residential overlay in the Village zone. For an example of a neighborhood-specific approach to zoning regulations, see the City of Azusa and Sonoma zoning codes:

https://www.municode.com/library/ca/azusa/codes/code_of_ordinances

<http://codepublishing.com/ca/sonoma/>

3. **Allow case-by-case deviations to R-1 standards.** With this option a single set of standards would remain for the R-1 zone, but the Planning Commission could allow for deviations to these standards on a case-by-case basis. This would be a different process from a variance, with different findings required for approval. Standards subject to allowable deviation could include building height, setbacks, second story setbacks, garage and parking design, and floor area ratio. To approve, the Planning Commission would need to find that the deviation reflects the prevailing character in neighborhood and won't negatively impact adjacent properties. A maximum allowable deviation could also be established (e.g., 15 percent maximum deviation from standard), and deviations could be allowed only in certain locations. For an example of waivers to development standards, see San Carlos Zoning Code Chapter 18.33:

<http://www.codepublishing.com/CA/SanCarlos/#!/SanCarlos18/SanCarlos1833.html#18.33>

ISSUE 2: Maintaining and Enhancing the Village Character

During the General Plan Update residents emphasized the importance of maintaining and enhancing the unique Village character. Specific General Plan goals and policies include the following:

Goal LU-6 Strengthen Capitola Village as the heart of the community.

Policy LU-6.1 Village Character. Maintain the Village as a vibrant mixed use district with residences, visitor accommodations, restaurants, shops, and recreational amenities.

Policy LU-7.1 New Development Design. Require all new development to enhance the unique character of the Village.

The existing Zoning Code establishes land use regulations and development standards for the Village in Chapter 17.21 (C-V Central Village District). The C-V district chapter itself contains limited standards pertaining to building and site design. Instead, the chapter states that development standards for the C-V district are contained in the adopted Central Village Design Guidelines. This document, adopted in 1987, contains design guidelines for site planning, building design, landscaping, signs, and parking in the Village. The guidelines also address the

unique needs of the Esplanade, the residential overlay districts, and residential properties in general.

Typically, design guidelines describe in qualitative terms the desired form and character of new development. These guidelines are advisory, not mandatory, and allow for flexibility for individual projects. The Central Village Design Guidelines, in contrast, contains numerous statement of mandatory standards. For example, the Guidelines state that “structures shall be limited to one story” on the Soquel Creek side of Riverview Avenue. The use of “shall” rather than “should” statements such as this is primarily found in the guidelines for residential overlay districts, including the Six Sisters Houses, Venetian Court, Lawn Way, and Riverview Avenue.

The updated Zoning Code should consider if some of these “guidelines” for the residential overlays should be added to the Zoning Code as mandatory standards. The City should also consider if additional design standards should be added to the Zoning Code for all properties within the Village.

Options:

1. **Maintain existing standards with advisory design guidelines.** In this option, the standards of the Central Village would remain as they are today. We would clarify that the Guidelines are advisory, not mandatory.
2. **Establish new building form and character standards.** The Zoning Code could establish mandatory site and building standards to maintain and enhance the Village character. These would apply to non-residential and mixed-use development. New standards could address the following design concepts:
 - Maximum setbacks to keep buildings and their entrances close to the sidewalk.
 - Permitted treatment of setback areas (e.g., plazas and landscaping, no parking)
 - Minimum building width at street edge (defined as percentage of lot width) to maintain a continuous presence of storefronts.
 - Buildings oriented towards a public street with a primary entrance directly accessible from the sidewalk.
 - Maximum length of unarticulated/blank building walls.
 - Required storefront transparency (percentage clear glass)
 - Maximum building/storefront width (require larger buildings to be broken down into a pedestrian-scale rhythm with individual building bay widths)
 - Surface parking location (at the rear or side of buildings, not between a building and a street-facing property line).
 - Frequency and width of driveways crossing sidewalks.
 - Requirements or incentives for residential front porches.

For an example of this approach, see San Carlos Zoning Code Chapter 18.05:

<http://www.codepublishing.com/CA/SanCarlos/#!/SanCarlos18/SanCarlos1805.html#18.05>

3. **Incorporate design guidelines as standards in the Zoning Code.** Design “guidelines” for residential overlays that are expressed as mandatory “shall” statements would be incorporated into the Zoning Code as new standards. These guidelines can be found on pages 12 and 13 of the [Design Guidelines](#). Guidelines would be modified as needed to protect and enhance the design character of these areas.

4. **Remove reference to Central Village Design Guidelines.** This modification would require applicants to follow the development standards in the code without any guidance from the guidelines. The guidelines would be repealed during the zoning code update. The reference could be reintroduced after the City prepared updated design guidelines for the Village.

After completing the zoning code update, the Community Development Department intends to update the Village design guidelines as called for by the General Plan. These updated Guidelines will be consistent and integrated with zoning regulations for the Village.

ISSUE 3: Accommodating High-Quality Development on 41st Avenue

The General Plan contains the following goals for 41st Avenue and the Capitola Mall:

Goal LU-8 Support the long-term transformation of Capitola Mall into a more pedestrian-friendly commercial district with high quality architecture and outdoor amenities attractive to shoppers and families.

Goal LU-9 Encourage high quality development within the 41st Avenue corridor that creates an active and inviting public realm.

For the mall property, General Plan policies support phased redevelopment, eventual parking lot redevelopment, relocation of the metro center, new public gathering places, and a new interior street to create a more pedestrian-friendly environment. For 41st Avenue overall, General Plan policies encourage new public amenities, more entertainment uses, and improvement that create an attractive destination for shoppers. The General Plan also aims to minimize impacts to residential neighborhoods from changes along the corridor.

The zoning code update should support these goals and policies and help implement the community's vision for long-term improvements to the corridor. This could be achieved through increased parking flexibility, incentives for community benefits, and a streamlined permitting process.

Options:

1. **Maintain existing regulations.**
2. **Increase Parking Flexibility.** Existing off-street parking requirements could prevent the type of development and improvements envisioned by the General Plan. Allowing for shared parking, mixed use reductions, and a more district-based approach to parking would help to remove this barrier. Specific methods to introduce increased parking flexibility are addressed in Issue #5.
3. **Create incentives for desired improvements.** The General Plan allows for increased floor area ratio (FAR) for certain types of projects on 41st Avenue. The Zoning Code could build from this concept by offering incentives for projects that include community benefits such as new public gathering places, streetscape improvements, entertainment uses, etc. Incentives could include additional FAR, flexibility on development standards such as height and parking, and a streamlined permitting process. Allowed FAR with an incentive-based bonus would always be within the maximum established in the General Plan. As an example, the City of Berkeley has a "Green Pathway" incentive program that offers

streamlined permitting for projects that incorporate sustainability features beyond the City's minimum requirements. See Berkeley Zoning Code Chapter 23.B.34:

<http://codepublishing.com/ca/berkeley/>

The existing Planned Development provisions (Chapter 17.39) is another tool that allows deviations from development standards. This option is further discussed within Issue 13.

4. **Strengthen connection to 41st Avenue Design Guidelines.** The existing Design Guidelines for 41st Avenue are in many ways consistent with the General Plan. The updated Zoning Code could strengthen the connection to this document by requiring the Planning Commission to find proposed projects consistent with the Guidelines when approving Design Permits.
5. **Streamline Permitting Process.** The City currently requires Design Permits for new tenants in commercial zones, and a Conditional Use Permit for many types of uses. This requirement can discourage small scale and incremental improvements to properties necessary for long-term vitality. As discussed in Issue #10 and #12, the updated zoning code could streamline the permitting process for certain types of projects to encourage new investment on the corridor.

Issue 4: Protecting Retail Vitality on 41st Avenue

Within the business owner and commercial property owner stakeholder meetings, there was recurring advice to zone for what the City would like to see and where; then make it easy for the desired use to be established. Stakeholders discussed the economic strategy to locate commercial uses that collect sales tax and visitor uses which collect transient occupation taxes (TOT) along the busiest commercial corridors to maintain a healthy tax base. Currently, transient uses, such as a hotel, are treated the same as office space beyond 3,000 sf; both require a conditional use permit in the CC zone. An office with less than 3,000 sf are principally permitted. The City has seen a number of primary retail sites convert to professional and medical offices.

This issue was discussed during the General Plan Update as well, particularly regarding medical office uses in the C-C zone along 41st Avenue. In response to this concern, the following policies and actions were added to the General Plan:

Policy LU-9.4 Retail Protection. Discourage professional and medical offices in key locations that may displace retail establishments and diminish the economic vitality of the corridor.

Action LU-9.4 Retail/Office Mix. Take action to maintain an appropriate mix of retail and non-retail uses along the 41st Avenue corridor. These actions will include:

- Continuing to require a Conditional Use permit for offices, medical services, and other non-retail uses in the Regional Commercial designation.
- Amending the Zoning Code to require the Planning Commission to specifically find that a proposed non-retail use will not detract from the economic viability of the corridor.

Item #: 10.C. Attach 1.pdf

- Preparing a study to examine the optimal socio-economic mix of retail and office/professional uses on 41st Avenue.

Options:

1. **Maintain existing regulations.**
2. **Add new findings for professional and medical office uses.** The updated zoning code could include new findings required to approve office and other non-retail uses in the CC zone. For example, to approve such a use the Planning Commission would have to find that the proposed use would not detract from the economic viability of the district and/or shopping center where it is located. The applicant would be required to demonstrate to the Planning Commission's satisfaction that this finding can be made. The requirement to make this or similar findings could apply throughout the CC zone, or just in specific locations where the City wishes to maintain a high concentration of retail and personal service uses.
3. **Encourage professional and medical office uses in certain locations.** The updated zoning code could make it easier to establish professional and medical office uses in certain locations, thus discouraging these uses in prime retail areas. For example, the zoning code could allow office uses by-right in tenant spaces that do not have a visible presence from 41st Avenue, Capitola Road, or Clares Street or that are on upper floors of a building. This could be a form of "vertical zoning" to incentivize the establishment of office uses in desirable locations. The updated zoning code could also use new overlay zones to identify locations where professional and medical offices are allowed by-right without a conditional use permit. The zoning code would also establish new design and operational standards for office uses allowed by-right to ensure neighborhood compatibility.
4. **Introduce new limitations for professional and medical office uses.** Cities often use zoning regulations to limit the concentration of land uses in certain areas. For example, the City of Berkeley has a cap on the number of restaurants in its "Gourmet Ghetto" neighborhood. The purpose of this limitation is to ensure that there are a sufficient number of non-restaurant uses in the area to serve neighborhood residents. Cities also frequently limit the concentration of "problem" uses such as liquor stores, adult businesses, and pawn shops. Capitola could take a similar approach to professional and medical office uses in the C-C zone. For example, the zoning code could state that medical office is limited to 20 percent of each multi-tenant building or shopping center in certain locations. Or the zoning code could establish a total cap on the number of medical office uses or a minimum separation standard for these uses. These limitations could be absolute (cannot be exceeded under any circumstance) or the Planning Commission could allow for exceptions in special circumstances on a case-by-case basis.

ISSUE 5: Parking

Parking requirements is a complicated and controversial issue in Capitola. On one hand, residents want to ensure that new development provides adequate off-street parking to minimize spillover parking impacts on neighborhoods. On the other hand, many community members desire flexibility in parking requirements to allow for infill development that will increase economic vitality and support a more multi-modal transportation system. This tension is reflected in General Plan Policy MO-5.1, which calls for the City to "balance the need for adequate off-street parking with other community goals, such as increasing transportation choices and maintaining a high-quality design environment.

The zoning code update will need to address a number of thorny parking issues, including the number of required off-street parking spaces, Village hotel parking, and promoting parking efficiency.

A. Number of Required Parking Spaces

Zoning Code Section 17.51.130 established required number of off-street parking spaces for different land uses. Some of these parking standards are shown in the table below.

Land Use	Required Off-Street Parking Spaces
Single-Family Homes	2- 4 spaces per unit, depending on unit size
Multi-Family Units	2.5 spaces per unit
Retail	1 space per 240 sq. ft. of floor area
Restaurant	1 space per 60 sq. ft. of floor area
Office	1 space per 240 sq. ft. of floor area

It should also be noted that in the CC zone outside the coastal area, the parking standards were updated to reflect recent parking studies. The updated requirements are not as restrictive with retail and office at 1 space per 300 sf, and restaurant calculations including dining area (60/sf) and other floor area (1/300 sf). During the update, discussions included application of these standards Citywide during the zoning code update.

Community members have expressed a range of opinions on the City's existing off-street parking requirements. Some find that parking requirement inhibit new development, redevelopment, and improvements to existing properties that would benefit the community. They support reducing parking requirements in certain cases or providing more flexibility in how parking needs are met. Others believe Capitola already suffers from inadequate parking supply and reducing and modifying parking requirements will exacerbate the situation and increase spillover parking impacts on residential neighborhoods. Ultimately, the General Plan was adopted with the following Policy MO-5.3: "Consider reduced off-street parking requirements for mixed-use projects, transit-oriented development, and other projects that demonstrate a reduced demand for off-street parking."

Allowing for parking reductions is common in communities well-served by transit and/or interested in promoting infill development to utilize land resources efficiently, increase the supply of multi-family housing, and reduce reliance on the automobile. The City of Santa Cruz, for example, allows for some reductions (Section 24.12.290:

http://www.codepublishing.com/ca/santacruzcounty/html/santacruzcounty13/santacruzcounty13_10.html) and will likely further reduce/adjust on-site parking requirements along transit corridors as part of zoning code amendments to implement the City's new General Plan. Recent research shows that parking demand for mixed use development is less than for single use development. See:

http://asap.fehrandpeers.com/wp-content/uploads/2012/05/APA_PAS_May2013_GettingTripGenRight.pdf.

Any reduced parking requirement, however, needs to carefully consider potential spillover parking impacts on residential neighborhoods.

There is some evidence that Capitola's parking requirements are greater than what may be needed and what is required in other similar communities. In 2008, the City commissioned RBF Consulting to prepare a parking study for the Village. As part of their analysis, RBF evaluated the City's parking standards and compared them to other neighboring cities and standards established by the Institute of Transportation Engineers (ITE). The study concluded that the City's parking standards often exceed those of neighboring jurisdictions and ITE standards.

Options:

1. **Maintain Existing Requirements.**
2. **Modify Parking Requirements for Certain Land Uses in All Areas.** The updated Zoning Code could modify parking requirements for certain land uses in all areas of the City. For example, the parking standards in the CC zone for restaurant could be applied Citywide. Parking requirements could be modified for:
 - Restaurants, potentially reducing the parking requirement (currently 1 space/60 sf).
 - Take-out food establishments, eliminating the need for seat counting
 - Single-family homes, creating one standard regardless of size
 - Multi-family homes, allowing reduced parking requirements for small units
3. **Create Location-Based Parking Standards.** The updated Zoning Code could establish different parking requirements depending on the location. For example, parking requirements in the Village could be different from on 41st Avenue, reflecting that more people walk to destinations in the Village from their homes or lodging. This approach could apply only to certain land uses, such as restaurants, or to all land uses. Walnut Creek takes the later approach, identifying parking reduction zones subject to parking reductions for all land uses. See Walnut Creek Zoning Code Section 10-2.3.204.C:
<http://www.codepublishing.com/ca/walnutcreek/html/WalnutCreek10/WalnutCreek1002C.html>).
4. **Allow for reductions with Planning Commission approval.** The updated Zoning Code could allow for reductions in the number of required parking spaces as suggested in General Plan Policy MO-5.3. Reductions would need to be approached carefully to avoid spillover parking impacts on neighborhoods. All reductions would be approved by Planning Commission after making special findings. Possible reductions include the following:
 - **Low Demand.** The number of parking spaces could be reduced if the land use would not utilize the required number of spaces due to the nature of the specific use, as demonstrated by a parking demand study.
 - **Transportation Demand Management Plans.** The number of parking spaces could be reduced if the project applicant prepares and implements a Transportation Demand Management Plan to reduce the demand for off-street parking spaces by encouraging the use of transit, ridesharing, biking, walking, or travel outside of peak hours.
 - **Bus Stop/Transportation Facility Credit.** The number of parking spaces could be reduced for commercial or multiple-family development projects in close proximity of a bus stop.

- **Mixed-Use Projects.** A mixed-use project with commercial and residential units could reduce parking requirements for commercial and office uses.
5. **Allow for reductions By-Right.** This option is similar to Option 2, except that a project could receive a reduction by-right (without Planning Commission approval) provided that it complies with objective standards.

B. Village Hotel Parking

During the General Plan Update residents discussed ideas for a new hotel in the Village. Based on this discussion, the General Plan contains guiding principles for a new Village hotel if one is proposed on the old theatre site. General Plan Policy LU-7.5 identifies these guiding principles, including this principle relating to parking: “Parking for the hotel should be provided in a way that minimizes vehicle traffic in the Village and strengthens the Village as a pedestrian-oriented destination. This could be achieved through remote parking, shuttle services, and valet parking arrangements.” The General Plan also addresses Village parking more generally including Policy MO-6.4 which calls for the City to “maintain a balanced approach to parking in the Village that addresses the parking needs of residents, merchants, and visitors.”

The Zoning Code and LCP also require new development in the Village to provide adequate parking outside of the Village and within walking distance. The property owners of the proposed Village Hotel have expressed their desire to provide on-site parking to accommodate approximately 65-70 vehicles, with additional off-site parking for staff located in the Beach and Village Parking Lots.

The updated Zoning Code will need to address parking requirements for hotels in the Village. The existing Zoning Code requires one parking space for each guest room plus additional spaces as the Planning Commission determines necessary for the owners and employees. The Fairfield and Best Western on 41st Avenue, which provide 92 and 48 spaces respectively, comply with this requirement. The Coastal Commission will also have opinions on this issue, with the goal of maximizing public access to the Village and beach, increasing transportation alternatives serving the Village, and ameliorating existing parking shortage problems.

Options:

1. **Maintain existing parking requirements.** The general plan policy LU-7.5 guides against this option. Providing parking standards for a future hotel within the zoning update will create certainty in the requirements.
2. **Specific On-Site Parking standard for Village Hotel.** The updated Zoning Code could establish a specific on-site parking requirement for a new hotel in the Village. For example, the Zoning Code could carry forward the existing standard of 1 on-site parking space per guest room. Or, the Zoning Code could require 0.5 on-site spaces with the remaining parking need accommodated at an off-site location.
3. **Base Standard on a Parking and Traffic Study prepared for the hotel development project application.** The updated Zoning Code could state that the number of parking spaces required for the hotel will be as determined necessary by a parking and traffic study prepared for a hotel development project application. The Code could allow for a percentage of this needed parking to be accommodated off-site.

4. **Allow Planning Commission and/or City Council to establish parking standards for an individual project based on performance criteria.** Similar to Option 2, the Planning Commission or City Council could establish on-site and off-site parking requirements for a Village Hotel in response to a specific application. This requirement would reflect the findings of a parking and traffic study. In addition, the Zoning Code could contain specific findings that the City must make when establishing this requirement. The findings, or “performance criteria,” could reflect public input on Village Hotel parking and circulation obtained during the General Plan Update process. For example, the Zoning Code could state that when establishing the required parking for the Village Hotel, the City must find that:
 - The hotel is served by a combination of on-site and off-site parking.
 - Parking provided on-site is the minimum necessary for an economically viable hotel.
 - On-site parking is minimized to reduce vehicle traffic in the Village and strengthen the Village as a pedestrian-oriented destination.
 - On-site hotel parking will not result in any noticeable increase in traffic congestion in the Village.

C. Parking Efficiency

The General Plan calls for the City to “support the efficient use of land available for parking through shared parking, valet parking, parking lifts, and other similar methods.” (Policy MO-5.2). The updated Zoning Code could include provisions to implement this policy.

The Zoning Code currently allows for the City to designate two metered parking spaces in the Village for the operation of a valet parking program. (Section 17.21.140). The Zoning Code is silent on shared parking, and parking lifts, however past practice has been to consider the results of parking studies when evaluating mixed use projects and to allow the use of parking lifts for residential projects.

Options:

1. **Maintain existing regulations.**
2. **Clarify existing code to match past practice** of allowing shared use parking reductions with a parking study and lifts for residential projects
 - a. **Add New Shared Parking Provision.** The updated Zoning Code could allow multiple land uses on a single parcel or development site to use shared parking facilities when operations for the land uses are not normally conducted during the same hours, or when hours of peak use differ. Santa Cruz County allows reductions for shared parking with the preparation of a parking study demonstrating compliance with criteria required for approval. See Santa Cruz County Code Section 13.10.553: <http://www.codepublishing.com/ca/santacruzcounty/html/santacruzcounty13/santacruzcounty1310.html>.
 - b. **Add new parking lift provisions.** The updated Zoning Code could specifically allow for elevator-like mechanical system to stack parking spaces in a vertical configuration for specific land uses (e.g. residential, hotel valet, etc). Many cities are incorporating such a provision into their zoning codes to allow for a more efficient use of structured parking areas. For example, Walnut Creek allows for mechanical

lift spaces up to 20 percent of the total required spaces subject to special design standards. See Walnut Creek Zoning Code Section 10-2.3.204.D.4:

<http://www.codepublishing.com/ca/walnutcreek/html/WalnutCreek10/WalnutCreek1002C.html>)

D. Garages

Single family homes 1,500 square feet or more, must provide at least one “covered” parking space. During the stakeholder interviews staff received comments that this requirement should be revisited, allowing only garages to qualify as a covered spaces (no carports) or eliminating the covered space requirement altogether.

Options:

1. **Maintain existing regulations.**
2. **Add design standards for carports.** Continue to require at least one covered parking space for homes 1,500 square feet or more. Covered parking may be provided in a garage or carport. Design standards for carports would be added.
3. **Limit covered spaces to garages only.** Specify that a carport may not satisfy the covered parking requirement.
4. **Eliminate covered parking requirement.** Remove the requirement for covered parking spaces for single-family homes.

Issue 6: Historic Preservation

During the General Plan Update process, many residents expressed the desire to improve Capitola’s historic preservation regulations. In particular, residents identified the need to adopt and maintain a complete list of local historic resources, adopt clear standards for including properties on this list, and establish a procedure and criteria for the City to approve or deny modifications to historic resources. City staff received similar comments during the stakeholder interviews for the zoning code update.

The General Plan includes Action LU-2.3 to develop a historic preservation program to enhance and protect Capitola’s historic resources. This program, along with an updated inventory of historic resources, will be developed following completion of the zoning code update process.

At a minimum, the updated Zoning Code will include new provisions to address the issues raised during the General Plan Update and Stakeholder Interviews. Staff anticipates a new historic preservation chapter in the Zoning Code that addresses the following topics:

- A. **Procedures to identify historic resources.** Until an official historic inventory is adopted, the zoning code update will specify the required procedure for review of potentially historic resources which includes completion of a Primary Record Form to evaluate whether a structure is eligible to be included on the National Register of Historic Places, the California Register of Historic Resources, and/or the City’s Register of Historic Features.

- B. **Improve criteria to identify historic resources.** Chapter 17.87 describes the process for designating properties on the local register of historic features. To be identified as a historic feature, the potential historic feature must evidence one or more of ten identified qualities. The current qualifications are wide reaching and should be revised to more closely follow CEQA Guidelines and criteria for listing on the California Register of historic properties, as done in the City of Carmel. See Carmel Zoning Code Chapter 17.32: <http://www.codepublishing.com/ca/carmel.html>
- C. **Add Procedures and Review Criteria for projects which involve potentially significant historic resources.** Currently, a Conditional Use Permit is required for alterations to historic structures based on findings that the alteration will not be “significantly detrimental” to the structure or that denial would result in substantial hardship for the applicant. The code does not, however, include review criteria for alterations to historic structures. The code will be updated to specify that all proposals to alter historic resources shall be reviewed for compliance with the Secretary of Interior Standards. In addition, the process can be updated to include different levels of review depending on the nature of the alteration. In Carmel, there are different procedures for “minor” and “major” alterations to historic resources.
- D. **Criteria to approve demolition of a historic resource.** Zoning Codes also typically include special findings required for the approval of the demolition of a historic resource.
- E. **Incentives for historic preservation.** Possible incentives include Mills Act contracts, fee reductions, federal tax credits for commercial properties, increased flexibility for modifications to nonconformities, exceptions on development standards (see Issue 8.A Option 5), and exceptions to non-conforming standards. See Santa Cruz 24.12.445 for example of allowed variation to development standards to promote historic preservation: <http://www.codepublishing.com/ca/santacruz/>

Other options to address historic preservation in the updated Zoning Code are provided below.

Options:

1. **Establish a Historic Resources Board.** Many communities with historic resources establish a historic resources board or commission to assist with historic preservation activities. See Carmel Chapter 17.32 and Pacific Grove Section 23.76.021 :
<http://www.codepublishing.com/ca/carmelbythesea/html/carmel17/Carmel1732.html>
<http://www.codepublishing.com/CA/pacificgrove/html/PacificGrove23/PacificGrove2376.html>
The roles and responsibilities of the historic resources board vary in different communities. Common functions include determining if modifications to a historic resource are consistent with the Secretary of Interior’s Standards, advising on designation of historic features, advising on impacts to historic resources under CEQA, and advising the Planning Commission and City Council on other matters pertaining to historic preservation.
2. **Establish a new Historic Preservation Overlay Zone.** Capitola could establish a new historic preservation overlay zone to apply to existing National Register Historic Districts (Old Riverview, Rispin, Six Sisters and Lawn Way, Venetian Court.). Properties within this

overlay could be subject to special permit requirements, design standards, and incentives for preservation. See City of Monterey Section 38-75:

<http://www.codepublishing.com/ca/monterey/>

3. **Establish new enforcement and penalty provisions.** The updated Zoning Code could strengthen enforcement and penalty provisions. Pacific Grove, for example, establishing financial penalties and development limitations on structures in violation of the City's historic preservation ordinance (Pacific Grove Zoning Code Section 23.76.130).
4. **Establish new maintenance and upkeep provisions.** Capitola could include language specifically requiring adequate maintenance and upkeep of historic resources to prevent demolition by neglect. For example, see Los Gatos Zoning Code Section 29.80.315: <http://www.municode.com/services/mcsgateway.asp?sid=5&pid=11760>

ISSUE 7: SIGNS

A. Threshold for Review

The existing sign ordinance requires that the Planning Commission review all new signs unless the sign replaces an existing sign that is substantially the same or has been approved through a Master Sign Program. During meetings with commercial property owners and businesses, stakeholders expressed how the current level of review is a disincentive to businesses. The review process costs business owners approximately \$700. Stakeholders expressed a preference for a code with stricter standards subject to staff-level review, with the option of Planning Commission review if the business chose to go beyond the established standards.

Options:

1. **Maintain existing regulations.**
2. **Allow staff-level review with new standards.** Revise sign standards to include new, well-defined and well-illustrated design standards that create a framework that would allow compliant signs to be reviewed by staff and an option for Planning Commission review for signs that go beyond the established standards. In this option, new maximum limits are established. Signs can be approved administratively within an over-the-counter permit. Carmel-by-the-Sea is an example of staff-level approval of signs subject to clear standards, with the ability of the Planning Commission to approve signs that do not comply with these standards. See Carmel Zoning Code Chapter 17.40: <http://www.codepublishing.com/ca/carmel.html>.

Sign standards for Downtown Redwood City are another example of more detailed sign design standards:

<http://www.redwoodcity.org/phed/planning/precise/FINAL-DTPP/DTPP-Downloads/17%20Signage%20Regulations.pdf>

B. Tailored Standards

Commercial areas in Capitola include regional commercial, neighborhood commercial, and the central Village. The character, scale, and visibility in the different areas varies tremendously. The existing sign ordinance establishes the same criteria for signs in all commercial areas, with the exception of sidewalk signs in the Village. The sign code could be modified so that standards are tailored to the unique character and constraints of different areas in the city.

Options:

1. **Maintain existing regulations for all commercial areas.**
2. **Create tailored standards for different commercial areas.** Certain sign standards could be adjusted to address the unique issues in different commercial areas. Tailored standards could address types of permitted signs, maximum sign area, dimensions, location and placement, illumination, materials, and other issues. The Livermore Development Code, beginning in Section 4.06.160, is an example of this approach:
<http://www.codepublishing.com/ca/livermore.html>.

The general desired signage character for different districts in Capitola could be as follows:

- Village: Pedestrian oriented signs, village scale
- Neighborhood Commercial: Neighborhood-scale signs serving pedestrians and vehicles
- 41st Avenue: Larger-scale signs that are auto-oriented to support the corridor as a regional shopping destination.
- Auto Plaza Drive: Unique to the use (auto-dealers) and address visibility challenges
- Industrial Zone (Kennedy Drive): More industrial design aesthetic and flexibility of type and materials.

C. Monument Signs

The code currently allows one monument sign per building frontage with a maximum of four tenants named on a monument sign. A second monument sign is allowed for properties on a corner lot. For a large plaza such as King's Plaza on 41st Avenue, these limits are problematic. The property has over 800 linear feet of frontage on 41st Avenue and tenant visibility is challenged due to the majority of tenant spaces being setback on the lot. Under the current code, if Kings Plaza were simply divided into multiple parcels, as the Capitola Mall is, the owners would be allowed more signs simply by virtue of carving the property into multiple lots. This mechanism of regulating signs seems to offer an incentive to carve commercial property into smaller lots, which is likely contrary to the City's long term interest, particularly in the CC zoning District.

Options:

1. **Maintain existing regulations.**
2. **Create a new limit for monument signs based on linear frontage along a prime commercial street.**
3. **Create an allowance for more than 4 tenants per monument sign.**
4. **Update Master Sign Plan to clarify discretion in monument signs based on lot size, number of tenants, and commercial corridor frontage.**

Issue 8: Non-Conforming Uses

Chapter 17.72 of the existing zoning code outlines the regulations for non-conforming activities (uses) and non-conforming structures. The stakeholder groups identified room for improvement

on three items in this section: calculation of structural alterations, treatment of historic structures, and amortization of non-conforming in the R-1 zoning district.

A. Calculation of Structural Alterations

The methodology prescribed within the code for permissible structural alterations of non-conforming structures (17.72.070) was questioned during stakeholder outreach sessions. The code states:

“at the time application for a structural alteration is made, the building official shall determine the cost at prevailing contractor rates of the total work of the improvements involved, excluding permit costs, landscaping cost and architectural costs. If that cost, added to the cost or other work involving structural alterations, commenced in the preceding five years, exceeds eighty percent of the present fair market value of the structure (as it would be without any of the structural alterations), the proposed structural alterations may not be made.”

Members of the architect/planner stakeholder group expressed a desire for improved transparency in the process to determine the value of alterations. Others cited concerns with using building valuation as the basis for determining allowable alterations to non-conforming structures.

From an administration perspective, the current process of limiting alterations to non-conforming structures on a valuation basis is unclear, inefficient, and is a frequent source of disagreement between applicants and staff. Applicants often challenge estimates developed by staff which exceed 80% and submit lower estimates prepared by their contractors. There have also been circumstances where applicants receive approval to alter a non-conforming structure below the 80% valuation threshold, but then discover during construction that additional alterations are necessary which result in cumulative alterations exceeding the 80% threshold. This circumstance places staff and City decision-makers in the difficult position of either allowing a non-conforming structure to be altered beyond the 80% code limitation, or requiring the property owner to stop construction and restart the permitting process with a conforming project.

The local resident stakeholder group also expressed concerns regarding the impact this regulation has on property owners maintaining existing non-conforming and/or historic homes. The current zoning code was adopted in 1975. Many of the homes build prior to 1975 are non-conforming structures with setback, height, parking, or floor area ratios that do not comply with current development standards. The regulations do not allow homeowners to update their home beyond 80% of the current value. Stakeholders stated that this disincentivizes homeowners to reinvest into non-conforming properties and is counterintuitive to Capitola’s historic preservation goals.

Options:

1. **Maintain the existing 80 percent building valuation maximum of present fair market value.**
2. **Maintain valuation cap but allow the Planning Commission to authorize additional alterations if specific findings can be made.**
3. **Remove valuation cap for structural alterations to non-conforming structures.** In this option, all non-conforming structures could be maintained and updated, provided that the

alterations do not create a greater degree of non-conformity, or require that the alteration increased the level of conformity (but not require the new structure to eliminate all non-conforming issues). Any addition to a non-conforming structure would be required comply with all development standards of the zone.

4. **Change building valuation cap to a percentage of square footage calculation.** Under this approach, alterations to non-conforming structures would be limited based on how much of the existing structure is modified. For example, the new code could limit alterations to non-conforming structures to 80% of the existing square-footage. Using a percent of square footage approach would be easy to understand and administer and would significantly reduce disagreements over valuation calculations, while still limiting the degree of allowable modifications.
5. **Maintain the existing 80% threshold with new exception for historic resources.** In this option the 80% maximum of present fair market value would be maintained. An exception for historic structures would be added to allow historic structures to be updated. Any addition to a historic structure must comply with all development standards of the zone.

B. Non-conforming activities and structures on improved R-1 parcels.

The code includes an amortization period for non-conforming activities in the R-1 zones, in which all non-conforming activities must be discontinued on June 26, 2019 or fifty years from the date the activity first became nonconforming, whichever is later, except as follows:

1. Duplex Activity. Nonconforming duplex activities may continue indefinitely but the structures cannot be enlarged.
2. Residential Projects with More Than Two Units. Owners of parcels having more than two dwelling units which are nonconforming only because they exceed the current density standard may apply to the city council for one or more extensions of the fifty-year amortization period. The city council shall only grant an extension if able to make findings that:
 - a. in this particular situation, the appearance, condition and management of the property is such that the property is not greatly detrimental to the single-family residential character of the neighborhood in which it is located;
 - b. the extension is necessary in order to prevent a major economic loss to the property owner and to lessen deterioration;
 - c. and that all reasonable conditions have been imposed for the purpose of repairing dilapidation and bringing, or keeping, the property up to neighborhood standards.

Extensions granted under this section shall be at least fifty years from the date the application is granted.

There are two types of non-conforming uses in single-family residential neighborhoods: multi-family residential uses (more than 2 units) and non-residential uses (commercial, light industrial, etc). It is anticipated that non-residential uses in single-family zones will continue to be subject to the sunset clause; therefore, issues described below are focused on existing non-conforming multi-family uses.

Multi-Family Uses in Single-Family Zones

According to county records, there are 77 parcels with more than two dwelling units in the R-1 zoning district which are subject to the sunset clause, and must either discontinue the use by June 26, 2019 or apply for an extension subject to the findings listed above. This issue has the potential to impact many Capitola residents and multifamily property owners and could represent a costly and time intensive enforcement challenge for the City.

Any modification to the existing ordinance will have an impact on many Capitola's residents, including occupants of the multi-family dwellings and the surrounding neighbors. The multi-family dwellings that exist in the R-1 provide housing opportunities which are typically more affordable than a single-family home, so these units fill a housing need not typically available in single-family neighborhoods. The negative impacts of these dwellings include increased demand for on-street parking, incompatible hard-scape in front yards for parking in place of typical landscaping, incompatible design, and noise.

During public outreach, staff heard specific concerns from residents of the northern Jewel Box area around 45th-47th Streets about the concentration of existing non-conforming four-plexes in their neighborhoods. Although other Capitola neighborhoods, such as Depot Hill and the Upper Village, also have non-conforming multi-family uses, there does not appear to be as much concern about their continuation in these areas.

Due to specific concerns about four-plexes in the northern Jewel Box area, staff will host a public workshop to collect input on the matter prior to requesting direction from the Planning Commission. The workshop will be organized to collect information from attendees on their perception of the issue and viable options for future implementation. Staff will present an update to the Planning Commission and City Council after the public workshop.

Options:

1. **Maintain existing sunset clause and opportunity to apply for extension.**
2. **Modify regulations to allow non-conforming multi-family uses to remain throughout the City, but not intensify.** This approach could be applied citywide with appropriate findings or only to specific areas.
3. **Modify regulations to allow non-conforming multi-family uses to remain in targeted areas of the City.** Under this option, a sunset clause could be retained for areas like the northern Jewel Box neighborhood, but would be eliminated in areas where multi-family uses have had fewer compatibility issues.
4. **Rezone areas with existing non-conforming multi-family uses to a multi-family zone.** This approach could be applied citywide or only to specific areas.
5. **Create an incentive program to allow participating non-conforming property owners to retain their uses subject to providing specified public benefits.** For example, a program could be established to allow property owners to continue non-conforming multi-family uses if they provide guaranteed affordable housing, make significant investments in the structures which improve appearance and function, invest in neighborhood improvements (landscaping, parking, etc.) and/or reduce the degree of non-conformity (e.g., reduce a 4-plex to a 3-plex or a duplex).

Issue 9: Secondary Dwelling Units

Secondary dwelling units are currently allowed on 5,000 square-foot or larger lots in the R-1 zoning district. Attached secondary dwelling units and detached, 1-story secondary dwelling units may be approved through an administrative permit process, provided they comply with stated size limitations. Detached, 2-story secondary dwelling units or oversized units must be considered by the Planning Commission.

Staff has heard conflicting sentiments regarding secondary dwelling units. Many felt development of more secondary dwelling units should be encouraged because they contribute to the City's affordable housing stock and provide property owners with a much needed revenue source to afford Capitola's high real estate costs.

Conversely, others expressed concern about allowing more secondary dwelling units in single-family neighborhoods due to increased parking demands, loss of privacy, and noise.

Options:

1. **Maintain existing code allowances/limitations for secondary dwelling units.**
2. **Amend the code to encourage development of additional secondary dwelling units.** If this option is selected, the following changes could be considered:
 - a. Decrease the minimum lot size requirement for secondary dwelling units;
 - b. Increase the threshold which triggers the need for Planning Commission review;
 - c. Allow all secondary dwelling units to be approved through an administrative process;
 - d. Eliminate the current residency requirement and allow both the primary and secondary dwellings to be rented.
3. **Amend the code to encourage development of additional secondary dwelling units in specific areas of the City only.** Those areas could be chosen based on criteria which could include: availability of on-street parking, existing densities, land use adjacencies, etc.

ISSUE 10: Permits and Approvals

Capitola's zoning code currently identifies over twenty different types of permits and approvals, such as use permits, design permits, and variances. Staff expects that most of these will remain unchanged in the updated zoning code. However, there is the opportunity to simplify, clarify, and generally improve the types of permits required. In particular, using more general types of permits for a range of specific land use actions could help simplify the code for staff and applicants. There may also be the need for one or more new permits to address certain types of approvals or issues that are not addressed well in the existing zoning code.

Options:

1. **No change to existing permits.**
2. **Modify permits.** With this option staff will look for opportunities to combine, delete, and add permits in the zoning code to better meet the city's needs. Possible changes include the following:

- a) **Create a new Administrative Permit.** This new permit would be used for a wide range of existing, ministerial staff-level actions. It could be used as a general replacement for existing fence permits, temporary sign permits, approvals of temporary sidewalk/parking lot sales, and temporary storage approvals.
- b) **Create a new Minor Use Permit.** This new permit would be similar to a Conditional Use Permit except that it would be approved by Community Development Director. Notice would be mailed to neighbors prior to final action by Community Development Director and decisions could be appealed to Planning Commission. The Director could also choose to refer applications to Planning Commission for decision. A Minor Use Permit could be a good middle ground for uses that shouldn't be allowed by-right, but that also generally don't need to go the Planning Commission for a public hearing and approval, such as a home occupancy permit and transient occupancy permits.
- c) **Create a New Substantial Conformance Process.** The zoning code currently requires applicants to submit a new application if they wish to make any changes to an approved permit – even if the change is very minor in nature. Under this option, a substantial conformance process would be developed to allow administrative approval of specified minor alterations while still requiring Planning Commission consideration of more substantive changes.

The updated zoning code will contain a table summarizing all types of permits and approves and the review authority for each.

Issue 11: Architecture and Site Review

During stakeholder interviews, staff received input from various groups on their experience with Architecture and Site Review. These groups provided a wide range of feedback, addressing the roles and responsibilities of the Architecture and Site Review Committee, the composition of the Committee, the timing of application review, and the types of projects subject to review.

A. Authority of Architecture and Site Review Committee

The recent applicant stakeholder group explained that they found the process confusing due to the name of the committee. They were surprised that a project first “passed” Architecture and Site review but then was met by a Planning Commission with a different perspective on the design. The local resident stakeholder committee suggested that the board be empowered to approve or deny applications for minor additions or modifications without the need for subsequent Planning Commission approval. This perspective was shared by the architecture/planner stakeholder group as well.

Options:

1. **Maintain existing authority of Architecture and Site Committee.**
2. **Modify existing role of the Architecture and Site Committee.** Authorize the Architecture and Site Committee to approve or deny design permit applications. Thresholds may be established for the projects that require Architecture and Site Committee approval rather than Planning Commission approval. Under this approach, decisions rendered by the Committee could be appealed to the Planning Commission.
3. **Eliminate the Architecture and Site Committee.** Three of the six members of the Committee are City staff. The project planner could work with these staff members and outside experts to address project design issues without the need for a Committee hearing.

B. Timing of Design Permit Review.

Some stakeholders suggested that the Architecture and Site Review be required as a pre-design meeting. Currently, once a complete application is submitted, the application is reviewed by the Architecture and Site Committee. The Committee reviews the elevations, floor plans, materials board, and site plan during the meeting. The Committee identifies any necessary code violations or design/site planning recommendations. The applicant is given the opportunity to modify the application based on the recommendations prior to review by Planning Commission. A pre-design meeting would create the opportunity to discuss the site, surrounding built and natural environment, and identify issues and opportunities for the future design. This approach could be challenging, however, because many applicants make their first contact with City staff after they have designed their project.

Options:

1. **Maintain existing timing of Architecture and Site Review.**
2. **Repurpose the committee to be a pre-design committee.** In this option, the committee would meet with an applicant prior to accepting a formal development application. The committee would identify characteristics of the site/neighborhood to guide the future design. Staff would provide guidance on the development requirements for zoning, public works, and building.

C. Composition of Architecture and Site Committee

Currently, the Architecture and Site Committee is composed of one architect/home designer, one landscape architect, one historian, a City planner, a City public works representative, and a City building representative. The recent applicant stakeholder group found the diverse composition of the committee helpful to receive feedback from a wide range of expertise. The architect/planner stakeholder group had a different perspective and suggested the composition of the Architecture and Site committee be reconsidered to be more design-centric. They suggested the City replace the committee with a staff architect or contract architect to focus on design, site planning, and compatibility. With their credentials, an architect would also be able to assist applicants through sketching suggested revision to design issues. A second suggestion of the architect/planner stakeholder group was to replace the Architecture and Site Committee with an architectural peer review process.

Options:

1. **Maintain the existing composition of the Architecture and Site Committee.**
2. **Replace the committee with a City Architect.** Under this option, the City would contract an architect to review all development applications, provide design solutions, and make recommendations to staff and the Planning Commission. The downside of this option is that the valuable input of the historian and landscape architect would be eliminated in the review, unless those services are also separately contracted.
3. **Replace committee with an Architectural Peer review committee.** The committee could be replaced with an architectural peer review committee made up of three or more architects. The architectural peer review committee would continue to make a recommendation to the Planning Commission.

4. **Revise committee to add any of the following:** water district staff, sewer district staff, fire district staff, additional architect, and/or a citizen's representative.

ISSUE 12: Design Permits

A. When a Design Permit is Required – Commercial Uses

For all commercial zoning districts (CV, CC, CN, PO, and CR), the zoning code states that architectural and site approval is required to establish and conduct any principally permitted, accessory, and conditional use. The only exception is multi-tenant properties with an approved master use permit. All other new tenant changes must have a design permit regardless of whether or not there are proposed modifications to the exterior of the structure. Design permit are also required for modular housing, solar energy systems, and dish antenna larger than 24 inches.

Prospective business owners look to a zoning code to provide clarity in what is permitted within a zone and to identify the process to receive required permits. During stakeholder interviews, the business owner and commercial property owner groups recommended allowing permitted land uses and clarifying when a permit is required. The current code is unclear and requires interpretation. Both stakeholder groups said that requiring all tenant changes to go before Planning Commission is overly regulatory and has a negative impact on filling vacant commercial sites. Most jurisdictions allow principally permitted uses without a design permit if the new use does not require modifications to the exterior of the structure.

Options:

1. **Maintain existing thresholds for commercial design permits.**
2. **Require Design Permits only for Exterior Modifications.** With this option, a design permit would be required to establish a new use only with an exterior modification to the structure.

The City of Carmel takes this approach with its Design Review permits ([Carmel Zoning Code Section 17.58.030](#)).

3. **Require Design Permit only for Larger Projects.** Design permit thresholds could be lowered so that fewer types of commercial projects require a Design Permit. This approach could be similar to Santa Cruz, where design permits are required only for new commercial structures and exterior remodel increasing floor area by 25 percent or exceeding a specified dollar value.

See Santa Cruz Zoning Code Section Section 24.08.410:

<http://www.codepublishing.com/ca/santacruz/>

B. Design Permit Approval Authority – Commercial Uses.

Currently, the Planning Commission approves Design Permits for commercial projects. The updated Zoning Code could be modified to allow the Community Development Director to approve certain projects requiring Design Permits.

Options:

1. **Maintain existing review authority.**
2. **Delegate limited approval authority to the Director** With this option, the Director would approve more types of commercial projects requiring a Design Permit. For example, the Director could approve:
 - a. Minor repairs, changes and improvement to existing structures which use similar, compatible or upgraded quality building materials.
 - b. Additions not visible from the front façade up to a specified square-footage threshold.
 - c. Expansion of one tenant space into a second tenant space in a multi-tenant building.
 - d. Dish-type antenna greater than 24 inches as specified.
 - e. Accessory structures

C. When a Design Permit is Required – Residential Uses

Under the current zoning code, residential projects that require Planning Commission Design Permit approval include:

1. All new residential dwelling unit construction;
2. Upper floor additions;
3. First floor additions that are visible to the general public.
4. First floor additions in excess of 400 square feet and located at the rear of the property;
5. Design permits accompanied by a request for conditional use permit, variance, or minor land division;
6. All design permit applications referred by the community development director or appealed from the community development director/zoning administrator's decision.

During stakeholder interviews, groups voiced different views on the current threshold for residential design permits. One perspective agreed with the current level of review and explained that it results in high quality residential development. A different perspective thought the existing thresholds are too restrictive and that homeowners should be allowed to add onto their homes beyond 400 square feet without the additional oversight and cost to process a design permit through the Planning Commission.

It is common for cities to allow minor visible modifications to single-family homes without design review. The City of Sausalito, for example, requires Design Review for new single-family homes and additions that increase the height of the structure or add 300 square feet or more. Projects below this threshold, even if they are visible, do not require design review. See Sausalito Zoning Code Section 10.54.050: <http://www.ci.sausalito.ca.us/Modules/ShowDocument.aspx?documentid=378>.

Options:

1. **Maintain existing thresholds.**
2. **Modify threshold for residential design permits.** The threshold could be revised in multiple ways. Thresholds that could be modified to include:
 - a. Increase existing threshold (greater than 400 square feet) for additions located on the rear of a single family home

- b. Allow first story additions (unlimited) that are located on the back of an existing home and comply with all standards of the code.
- c. Allow minor additions to the front of a building that upgrade the front façade and comply with all standards of the code. Minor additions could include enclosing recessed entrances, enclosing open front porches, and installation of bay windows.

D. Design Permit Approval Authority – Residential Uses.

Currently, the Planning Commission approves Design Permits for the majority of residential uses as outlined in the previous section C. The Community Development Director/Zoning Administrator is authorized to approve applications for: first floor additions up to 400 square feet not visible to the general public; minor repairs, changes, and improvements to existing structures which use similar, compatible or upgraded quality building materials; and additional accessory structures beyond the single eighty square foot or less in size without plumbing or electrical. The updated Zoning Code could be modified to increase the authority of the Community Development Director within specified limits. For example, the Director could approve residential projects that do not increase the size of an existing structure by more than 10 percent, as is allowed in under “Track One) Design Review in Carmel. See Carmel Zoning Code section 17.58.040: <http://www.codepublishing.com/ca/carmel.html>

Options:

1. **Maintain existing review authority.**
2. **Delegate increased approval authority to the Director** With this option, the Director would approve more types of residential projects requiring a Design Permit.

E. Considerations for Design Permit Approval

Within the zoning survey, items of greatest concern in residential areas included: height, size of new homes, neighborhood character, adequate onsite parking, and sustainability (water and energy conservation). For each design permit, the Architecture and Site Committee reviews the design considerations listed in §17.63.090, including traffic circulation, safety, congestion, outdoor advertising, landscaping, site layout, architectural character, historic preservation, drainage, fire safety, advertising, etc. The local resident stakeholder group suggested placing more emphasis on design during the review.

Options:

1. **Maintain existing architecture and site considerations.**
2. **Maintain the existing architecture and site considerations with additional considerations focused on design**, including massing; height, scale and articulation, neighborhood compatibility; privacy; quality exterior materials; and submittal requirements.
3. **Update design considerations to focus on design rather than including ancillary issues.** In this option, existing ancillary issues would be removed from the criteria and the updated list would focus on design, materials, context, and compatibility. The San Carlos Zoning Code contains an example of design review criteria that focus more on aspects of project design (San Carlos Zoning Code Section 18.29.060 <http://www.codepublishing.com/ca/sancarlos/html/SanCarlos18/SanCarlos1829.html>)

Issue 13: Planned Development

Capitola's zoning code includes a Planned Development (PD) district that allows for flexibility in permitted uses and development standards on a particularly site or property. The minimum parcel size eligible for PD zoning is four acres, unless the Planning Commission and City Council finds that a smaller property is suitable due to its "unique historical character, topography, land use or landscaping features."

Development standards in each PD district are the same as most similar zoning district unless an exception is granted by the Planning Commission and City Council. Proposed Development in a PD district is subject to a two-step process requiring approval of a preliminary development plan and a general development plan. Currently the Planning Commission reviews both the preliminary and general development plans; the City Council reviews and approves on the general development plan. Establishing a PD district is a legislative act requiring City Council approval.

During stakeholder interviews local architects commented that the PD is a valuable tool to respond to unique site conditions, but that 4 acre minimum is not practical due to scarcity of large properties in Capitola. They also suggested that the City Council review the preliminary as well as general development plan.

In contrast to comments from architects, some Capitola residents have expressed concerns about planned developments and the PD district. They see the PD district as a form of "spot zoning" that allows for development in neighborhoods out of character with surrounding properties.

Options:

1. **Maintain existing regulations.**
2. **Reduce or eliminate minimum parcel size requirement.** Reduce the minimum parcel size required to establish a PD district, or eliminate the minimum parcel size requirement entirely. This option would eliminate or establish a new minimum parcel size (possibly 1 or 2 acres). It is typical for there to be some minimum size requirement, so that individual single-family lots cannot be rezoned to PD, for example.
3. **Modify approval process.** Modify the planned development review process so that the City Council reviews the preliminary development plan as well as the general development plan. This change would add an additional step in the process but would increase certainty for applicants and allow the City Council to influence project design earlier in the process.
4. **Eliminate PD.** Eliminate the PD district entirely. To deviate from standards of the applicable zoning district, an applicant would need to receive a variance, a rezone, or some other exception to development standards.

ISSUE 14: Environmental and Hazard Overlays

Overlay zones establish standards that apply to a property in addition to the standards of the base zoning district. Overlay zones are also referred to as combining districts. Capitola's zoning code contains the following overlay zones and combining districts that relate to environmental resources and hazards:

- Archaeological/Paleontological Resources (APR)
- Automatic Review (AR)

- Coastal Zone (CZ)
- Floodplain (F)
- Geological Hazards (GH)

Chapter 17.95 (Environmentally Sensitive Habitats) also functions like an overlay with unique regulations applying to specific geographic areas.

Figure 1 shows the boundaries of the floodplain, geological hazards, and automatic review overlays. Figure 2 from the LCP shows the Archaeological/Paleontological Resources (APR) and Environmentally Sensitive Habitats areas.

Options:

1. **Maintain existing overlays and clarify boundaries.** In this option all five of the existing environmental and hazard overlays would be maintained and shown on the zoning map.
2. **Modify existing overlays.** This option would modify existing overlays as described below:
 - **Archaeological/Paleontological Resources (APR).** Eliminate this overlay zone. Continue to require the preparation of an archaeological survey report and mitigation plan for any project which disturbs native soils in an area with a probability of containing archaeological resources. Continue to address issue through CEQA process.
 - **Automatic Review (AR).** Remove this overlay zone as it duplicates current process.
 - **Coastal Zone (CZ).** Maintain this overlay zone as required by State law.
 - **Floodplain (F).** Move existing Chapter 17.50 (Floodplain District) out of the zoning code and remove the floodplain overlay boundaries from the zoning map. Floodplain regulations are administered by the Building Official, not the Community Development Director, and should be located in Title 15 (Buildings and Construction), not the zoning code. The boundaries of this overlay should not be included in the zoning map, as they are based on FIRM maps which are frequently changing, particularly with rising seas.
 - **Geological Hazards (GH).** Eliminate this overlay zone and replace with citywide standards for proposed development in beach areas, bluff and cliff areas, landslides-prone areas, and steep slope areas
 - **Chapter 17.95 (Environmentally Sensitive Habitats).** Map boundaries of these areas as a new overlay zone and maintain existing regulations.
3. **Create a new, consolidated environmental/hazards overlay.** This option would merge the overlays into one new environmental/hazards overlay. The zoning code would state that proposed development within these areas could be subject to additional standards and limitations. The Coastal Zone overlay would remain as a separate overlay. This option could be combined with the creation of new citywide standards that would address geological hazards, flood hazards, sensitive habitat, and archaeological/paleontological resources.

Issue 15: Visitor-Serving Uses on Depot Hill

The El Salto and Monarch Cove Inn properties in the Escalona Gulch/Depot Hill area are currently zoned Visitor Serving (VS). The zoning code currently specifies uses allowed with a conditional use permit on these two properties. On the El Salto property visitor accommodations (e.g., hotels, inns), food service related to lodging use, and residential uses are allowed with a conditional use permit. On the Monarch Cove Inn property a broader range

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of uses is allowed, including special events (e.g., festivals, weddings), commercial recreation establishments, accessory office and retail uses, and other similar visitor-serving uses

Depot Hill residents have expressed concern about existing uses on these properties, and new visitor-serving uses that are currently allowed by the zoning code. Residents are concerned about the permitted intensity of new visitor-accommodation uses and their compatibility with the surrounding single-family neighborhood.

Options:

1. **Maintain existing permitted uses.**
2. **Modify permitted use.** With this option the VS zoning would remain on the El Salto and Monarch Cove Inn properties, but the land uses permitted on the properties would be restricted. For example, uses permitted on the Monarch Cove Inn property could be limited to residential and visitor accommodation uses, with other non-residential commercial uses currently allowed, such as carnivals and circuses, no longer permitted.
3. **Limit intensity of visitor accommodation uses.** This option would also maintain the VS zoning on the El Salto and Monarch Cove Inn properties, but would reduce the maximum permitted intensity of hotels and other visitor accommodation uses on the site. This could be accomplished by limiting the square footage of new or existing uses, specifying a maximum number of permitted guest rooms, or reducing the maximum allowable lot coverage on the site. The Coastal Commission would likely have concerns with this option.
4. **Rezone to R-1.** A final option is to eliminate the VS zoning that applies to the Monarch Cove Inn and El Salto properties. Currently the properties are subject to VS/R-1 “dual zoning,” meaning that both the R-1 and VS zoning standards apply to the property. If the VS zoning were eliminated, visitor accommodation and related visitor-serving uses (aside from bed and breakfast establishments) would not be allowed on the properties. The Coastal Commission would likely have concerns with this option.

Issue 16: Height

During stakeholder interviews, participants expressed a variety of opinions on the maximum permitted building height in Capitola. Residents often want to limit the height of buildings in residential and commercial areas in order to protect the character of residential neighborhoods. Some wish to maintain the existing height limits in the Village in order to maintain the existing Village character. Other stakeholders, particularly architects and property owners, recommend increasing permitted height in certain locations, such as the Village, in order to encourage quality architectural design, renewed investment, and the increased vitality that new development would bring.

In light of this input, the sections below addresses allowed heights in residential neighborhoods, the Village, and for a new Village hotel.

A. Residential Neighborhoods

In the R-1 zone the maximum permitted building height is 25 feet, with 27 feet permitted for half-story designs and buildings that use historic design elements. Staff has received comments

that the 25 feet maximum height limit prevents home designs that would fit well within established neighborhoods. In neighborhoods with larger lots, such as Cliffwood Heights, taller homes may not appear out of place. The existing height standard also does not consider sloping lots and other unique site conditions.

Options:

1. **Maintain existing standards.**
2. **Eliminate 27-foot exception.** This option would eliminate the 27-foot height exception by requiring all buildings to meet either a 25-foot or 27-foot height standard.
3. **Allow greater variation based on existing neighborhood character.** This option would allow greater variation in permitted building height based on neighborhood characteristics. There are a number of different ways to achieve this as described in Issue #1.

B. Capitola Village

The maximum building height permitted in the Central Village (CV) zone is 27 feet, though the Planning Commission may approve taller buildings for the restoration of a historic building. Critics of this height limit contend that the Village's most treasured buildings are over the current height limit and allowing taller buildings would encourage investment in the Village, enhance vitality, and allow for higher-quality building design. Supporters of the 27 foot height limit suggest that allowing new buildings taller than 27 feet would damage the Village's unique character and charm.

Options:

1. **Maintain existing standard.**
2. **Expand exception provisions.** With this option the zoning code could modify the existing exception provision to allow taller buildings in more cases. For example, the Planning Commission could allow taller buildings if it would allow for a superior design or would enable the project to provide a substantial community benefit.
3. **Increase maximum height limit to accommodate 3 stories.** The zoning code could increase the maximum allowed building height to accommodate three stories. This could be accompanied by new standards and findings to ensure taller buildings are compatible with the existing Village character and don't negatively impact adjacent residential areas. Allowing three-story buildings in the Village could increase opportunity for new vertical mixed use development with ground floor retail and housing or office uses above.

C. Hotel

General Plan Policy LU-7.5 identifies guiding principles for the design of a new Village hotel, including the following three height-related principles:

- The design of the hotel should respect the scale and character of neighboring structures and enhance Capitola's unique sense of place.
- The maximum height of the hotel should remain below the elevation of the bluff behind. The bluff behind the hotel should remain legible as a green edge with existing mature trees maintained on site.

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- The hotel design should minimize impacts to public views of the beach and Village from Depot Hill.

The updated zoning code needs to reflect these guiding principles and establish a height standard for a new Village hotel.

Options:

1. **Apply CV Zone Standard to Hotel.** This option would apply the same height standard to the Village hotel that applies to all other properties in the Village. If the maximum permitted height in the CV remains at 27 feet, the hotel could also not exceed 27 feet. However, this option would not be consistent with General Plan goals and Policy LU-7.5.
2. **Establish Performance Standard for Hotel Height.** In zoning codes, performance standards dictate a specific outcome and provide flexibility in how best to achieve the outcome on a case-by-case basis. The Zoning code could establish a performance standard for the Hotel height instead of a numerical standard. This performance standard could be similar to the guiding principle in the General Plan that the maximum height of the hotel should remain below the elevation of the bluff behind and that the bluff behind the hotel should remain legible as a green edge with existing mature trees maintained on site.
3. **Establish a Numerical Standard Unique to Hotel.** The updated zoning code could contain a specific numerical standard for the maximum hotel height. One approach might be to limit building height at the Monterey Avenue frontage to two stories but allow a greater maximum height at the rear of the property as contemplated in the General Plan.

Issue 17: Floor Area Ratio

In the R-1 (Single Family) Zoning District, building size is regulated by the relationship of the building to the lot size, a measurement identified as *floor area ratio* (FAR). *Floor area ratio* is defined as the gross floor area of all of the buildings on the lot divided by the net lot area. Municipalities incorporate FAR maximums into the code to control overall size, massing, and scale of a buildings on a lot. The following table identifies the elements included in existing code's FAR calculation.

Elements included in FAR calculation

1. Basement in excess of 250 sf, including access staircase
2. Open areas below ceiling beyond sixteen feet in height (phantom floors)
3. Upper floor area greater than four feet in height measured between bottom of the upper floor and top of ceiling (includes garages and carports)
4. For 1 ½ story structures, the stairwell is counted on 1st floor only
5. Windows projecting more than 12 inches from wall
6. Upper floor decks over 150 sf
7. Covered exterior open space in excess of 150 sf including eaves greater than eighteen inches

During the public outreach, the inclusion of decks, basements, and eaves in the FAR calculation was cited as an opportunity for change and improvement.

A. Decks

Within the architect, designer, and planner stakeholder group, staff received criticism that the FAR calculation limits articulation of buildings, especially the inclusion of upper floor decks, covered first floor decks beyond 150 sf, and first floor decks beyond 30 inches in height. There were also discussions of how the code lacks guidance on decks within hotels and restaurants.

Options:

1. **Maintain existing standards.**
2. **Increase allowance beyond 150 sf.** Update Floor Area calculation to increase the amount of area within covered first story decks, decks beyond 30 inches in height, and second story decks that is not counted toward the floor area calculation. The 150 sf allowance could be doubled to 300 sf.
3. **Add exception for special circumstances.** There are special circumstances in which allowing a second story deck will not have an impact on neighbors or may be an asset to the public. The code could include exceptions for special circumstances to allow larger decks that are not counted toward the floor area.
 - a. **Front Façade.** Privacy issues are typically on the side and back of single family homes. The ordinance could consider increased flexibility for decks on the first and second story front facades to allow for increased articulation while not impacting privacy of neighbors. There are two options for decks on front facades. The first is to increase the allowed deck area (beyond 150 sf) on the front façade of a home. The second option is to remove front façade decks from the calculation entirely by including front story decks and porches within the list of items *not* included in the floor area calculation.
 - b. **Open Space.** There are a number of homes in Capitola that are located adjacent to open space. For example, the homes located along Soquel Creek and ocean front properties. Similar to the prior exception, the code could be revised to either increase the allowed deck area or remove the calculation entirely for decks located on elevations facing open space.
 - c. **Restaurants and Hotels.** Visitor experiences are enhanced when they take in a view. The code currently does not include an exception for decks on hotels or restaurants. The code could be revised to either increase the maximum allowed deck area of restaurants and hotels or remove decks on restaurants and hotels from the floor area calculation entirely.
 - d. **Eliminate decks from FAR formula**

B. Basements

Stakeholders raised contrasting views on inclusion of basements in the FAR. One perspective is that basements should not be included toward the FAR calculation because they do not influence massing and allow increased living space without adversely affecting community character. The other perspective is that although basements do not increase massing, they do increase living areas and therefore intensify impacts on parking demand. It is worth mentioning that studies have shown that larger new homes generally have fewer inhabitants than smaller new homes. Within the current code, the parking requirement is based on the floor area of the home. Also, removal of basements from the FAR calculation will likely result in larger home sizes with increased sales prices, impacting affordability.

Options:

1. **Maintain existing standards.**
2. **Increase existing allowance beyond 250 square feet.**
3. **Remove basements from FAR formula.**

C. Phantom Floors, Roof Eaves, and Window Projections (Bay Windows)

The Floor Area Ratio calculation includes phantom floors (all open area below the ceiling or angled walls greater than sixteen feet in height), eaves greater than eighteen inches in length, and bay windows which extend 12 inches or more from the wall. Calculating these features in the FAR is administratively difficult and confusing for applicants. Roof eaves and bay windows can add to the architectural style of the home and are controlled within setback regulations. To simplify the FAR calculation, these elements could be removed.

Options:

1. **Maintain existing standards.**
2. **Remove phantom floors from the FAR calculation.**
3. **Remove roof eaves from the FAR calculation.**
4. **Remove window projects from FAR calculation.**
5. **Remove a combination of phantom floors, roof eaves, and/or window projections from the FAR calculation.**

Issue 18: City Council Appeal of Planning Commission Decision

The City Council has appealed Planning Commission decisions over the years. In a recent lawsuit, Woody's Group, Inc. v. City of Newport Beach, it was found to be illegal for a City Council member to appeal a Planning Commission when not a "interested party". The court also found that the council erred in allowing the City Council member to sit as adjudicator of his own appeal.

To allow City Council review of Planning Commission decisions, Capitola may adopt a "call-up" ordinance that allows a member of City Council to call-up a recent decision by the Planning Commission. If an application is called-up, the City Council is allowed to review and make a final decision on the application. The ordinance can either require or not require a majority vote of the City Council to call-up an application.

Options:

1. **Maintain existing appeal process.**
2. **Add "call-up" procedure without requirement of majority vote by CC to call-up an application.**
3. **Add "call-up" procedure and require majority vote by City Council to call-up an application.**

Issues List: All Zoning Issues Collected during Public Outreach

Number	Subject	Comment or Explanation of Issue	How issue will be addressed
1	Appeal by City Council	Legal issue with City Council appeals of Planning Commission decisions. Recent case law (Woodys Group, Inc. v. City of Newport Beach). Also, public input was received from local stakeholder group regarding negative public perception created by City Council appealing Planning Commission decisions.	See Issues and Options #18
2	Automatic Denials	Applicants occasionally fail to submit complete applications and/or fail to pay off a deficit account. Under current regulations, staff is required to present these applications to the Planning Commission or City Council for a denial, often creating a greater account deficit.	Add provision to enable automatic denials without a public hearing for applications that do not resubmit complete information or do not maintain a positive developer deposit account for more than a specified amount
3	Decision making matrix	Establish the level of review of each type of decision maker. Administrative decisions by staff, decisions by Planning Commission and City Council. Establish the limits and leave no room for interpretation.	Include a matrix in the code that specifies thresholds for review
4	Fee references	Specific fee references do not belong in code	Delete all specific fee references and replace with requirement to pay fees consistent with adopted fee schedule
5	Modification of approved permit	It is typical for an owner/applicant to request a modification to an approved design. The code lacks guidance on the review process. A condition of approval requires significant changes to design permits to return to Planning Commission. Open to interpretation	See Issues and Options #10. New substantial Conformance Process
6	Permit Extensions	Permits may be extended for one year. Public input requesting increase in extensions to 2 years. Some concerns that there is no maximum limit for extensions.	Increase extensions to 2 years with maximum of 2 extensions per permit application. Add use and reliance standards.
7	User guide	Suggested a user guide to direct applicant through code	Create a user guide
8	AR (Automatic Review)	Everything is reviewed so why have an Automatic Review overlay.	Issues and Options #14.
9	Arch and Site review	Reconsider the function and make up of the Arch and Site Committee	Issues and Options #11
10	Neighborhood Character	i. Identify neighborhood priorities specified in the general plan. ii. Guide design elements including placement of buildings, form, and massing. iii. Define the public realm – streets, sidewalks, bike lanes, crosswalks, curb and gutter, trees/landscape, bus stops, benches, and trails. iv. Review should be neighborhood specific and include how we manage the automobile (width of streets, on street parking, off street parking) v. Acknowledge that within the definition of Capitola exists an eclectic mix of design. vi. Add criteria to review compatibility and context within neighborhood	Issues and Options #1 and #12
11	Neighborhood Character	Require streetscapes with Design Permit applications to evaluate compatibility of projects.	Issues and Options #12
12	Neighborhood Character	Massing – More articulation should be required and prevent two story homes with no change in wall plane between first and second story, applicable to all sides.	Issues and Options #12
13	Neighborhood Character	Exterior finishes. 1. Multiple exterior finishes should be required to add more interest. Stucco only should not be allowed. 2. Regulate types of exterior finishes that are allowed. No vinyl. 3. Require trim and of substantial profile.	Issues and Options #12

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Number	Subject	Comment or Explanation of Issue	How issue will be addressed
14	Neighborhood Character	Privacy for adjacent neighbors should be maintained when reviewing second story additions, including new second story decks and second story window locations	Issues and Options #12
15	Threshold for Residential Design Permit	Public Input that 1 st floor additions and detached structures that meet development standards should be exempt from Design Review	Issues and Options #12
16	Threshold for Residential Design Permit	Public Input: Consider 2nd floor additions to go through administrative review with adjacent neighbors noticed and have 10 day appeal to Planning Commission if objector have concerns	Issues and Options #12
17	Threshold for Residential Design Permit	Single story additions that meet all requirements of zoning should not require Planning Commission review	Issues and Options #12
18	Threshold for Commercial Design Permit	It is unclear in the current code when a design permit is needed for a façade upgrade .	Issues and Options #12
19	Views	Public comment to protect views. Public views are considered within the coastal findings and historic vistas are considered within architecture and site review consideration 17.63.90(J)	Issues and Options #12
20	Archaeological/Paleontological Resources (Overlay)	Identify the best way to approach current archaeological/paleontological resources overlay zone.	Issues and Options #14.
21	Archaeological/Paleontological Resources (Overlay) Report	Report is intensive and not always necessary. Survey report should be required when a specific amount of native soil will be moved	Issues and Options #14.
22	Conditional Uses in CC (community commercial)	Conditional use list should be expanded in CC	Establish broad categories of land uses that encompass many specific uses
23	Setbacks	Unclear in the CC Zone	Clarify in updated cc zone
24	Accessory structures	17.15.035 allows "additional" accessory structures. 17.15.140 mentions only 1 accessory structure in rear and side yard	Clarify review authority and process as follows: Administrative approval for one accessory structures 80 sf or less, no electrical, no plumbing. CDD approval of additional accessory structures or accessory structure larger than 80 sf. without electric or plumbing. Add exception for pool/hot tub mechanical equipment in enclosed structure with electric/water. Planning Commission approval conditional use permit for accessory structure with electric or plumbing.
25	Accessory Structures	Unclear and disorganized. The standards should be in the general regulations and applicable to all accessory structures throughout town.	Create clear standards and organize within correct section of new code.
26	Animal regulations	Outdated regulations in 17.81.060. Add setbacks for chicken coops.	Maintain existing limits for animal regulations. Update section to specify that accessory structures, such as chicken coop, must comply with standards for accessory structures.
27	Fence	Arbors and trellis are not included in the fence regulations. They are all over town and are typically 8 feet high.	Create allowance for arbors or trellis in front yard above walkway entrance.
28	Fence	Regulations are for residential. No commercial standards	Add fence standards for commercial zones
29	Fence	Treatment of fence in public right-of-way is unclear.	Clarify that a fence in the public right-of-way requires a major revocable encroachment permit approved by the Planning Commission - Consistent with 12.56.060(B) of Municipal Code.
30	Fence	Corner lots. Existing 5 foot inset creates issues for property owners and strange fence lines.	Remove required inset for corner lots when it can be demonstrated that adequate sight distance exists and add height restriction that is consistent with the public works requirement.
31	Fence height	Measurement from both sides of property line in situations with uneven grades.	update regulation to address uneven grade

Number	Subject	Comment or Explanation of Issue	How issue will be addressed
32	Fence permit	Currently replacement fences and fences that conform with the code require a permit. Too much oversight of fences	Update code to allow fence replacements. Include fence regulations and ability for the Planning Commission to approve alternative location, heights, and materials for special circumstances.
33	Fence and retaining walls	No rules for height of retaining walls and separation	Include retaining walls within fence section.
34	Fence permit	Retaining walls should be called out within the fence permit sections. Set standard for when engineering and permit is required.	Add standards within fence permit section. Rename section wall and fence permits
35	Fencing in unique areas	Identify unique circumstances for lots with views of ocean, walkways, or river. In these areas the standards for front, side, and rear yard setbacks, allowed encroachments, and fences should be improved. Prevent high fences on street facing yards where inappropriate. (Prospect Ave). Establish rules for walls and fences within riparian areas	Consider within fence regulation updates
36	Landscape - water efficient landscape	Chapter 17.97 does not comply with state law	Maintain and improve standards for water-efficient landscaping. Add requirement that landscaping projects subject to the requirements of AB 1881 comply with State Water Efficient Landscape Ordinance.
37	Lighting	Lighting in residential areas should be required to be down directed and shielded to not impact adjacent property owners. Night sky ordinance.	Add lighting standards and night sky provisions.
38	Pathways	Protect public pathways within updated code. Identify what can/cannot occur along pedestrian pathways. Maintain setbacks from pathways to prevent further encroachment of development. Examples: Riverview Pathway, Prospect Avenue, Cliff Drive, Grand Avenue	Create standards for areas along pathways and railroad
39	Problem sites in need of attention	Create solutions to existing problem sites (Rispin, Village parking, and Village hotel) within the updated code. Set up favorable standards.	Incorporate desirable development standards for identified sites, consider incentives for positive redevelopment opportunities.
40	Railtrail	Rail – Build in zoning requirements for setbacks/public improvements at intersections of railtrail in anticipation of transit service and public access and parking.	Include new considerations for development near rail access points (41st Avenue, Monterey Avenue, New Brighton, 47th, to include pedestrian and bicycle ease, fence, parking, benches, landscaping etc..
41	Solar	Remove permit requirements for non-commercial solar energy facilities	Remove discretionary permit requirements for non-commercial solar energy facilities
42	Temporary Storage Facilities (PODS)	PODS require an encroachment permit when located on city street. §9.52.010 regulates unenclosed storage but does not list PODs within the exceptions of what may be stored. Therefore, they are illegal if located in the front of the home. Long-term pods are a source of complaints by residents.	Create administrative permit that establishes a 30 day time limit for temporary storage facilities. Require CUP from PC for temporary storage beyond 30 days.
43	Conditional Uses in CN (Neighborhood Commercial)	Conditional use list should be updated/expanded in CN	Update conditional uses in CN district to include full range of land uses appropriate in the CN district. Note: Staff will update this item with complete list of updated/new conditional uses as code is drafted.
44	Setbacks in CN	Setbacks are too restrictive for the small lots and prevent development. EXISTING SETBACKS: Front yard: 15 foot landscape strip. Side yard: 10% of lot width. Rear yard: Commercial 10 foot landscape strip OR Residential 20% of lot depth	The CN setback requirements will be updated to remove the term <i>landscape strip</i> and require front, rear, and side yard setbacks. Lots between 401 - 431 Capitola Avenue are substandard. These lots will be rezoned to Central Village to allow placement along the street frontage to maintain the existing rhythm of the street. See Attachment A.
45	Coastal Zone exemptions	This section is very difficult to understand.	Clarify exempt projects in Coastal Zone
46	Coastal Permit review	Currently the code states review by PC and CC	Clarify review authority is PC
47	Allowed and Conditional Use - placement in commercial districts	Commercial Uses that collect sales tax and TOT should be allowed along traffic corridors to maintain tax base. Medical has its place in retail but should either have a maximum % limit within an area or designate medical to specific areas. Storage facilities should not be located in commercial districts.	Issues and Options #4

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Number	Subject	Comment or Explanation of Issue	How issue will be addressed
48	Allowed and Conditional Use Land Use and review	Provide more flexibility in allowed uses. Identify those uses the city does want and allow them.	Issues and Options #4
49	Allowed and Conditional Use Land Use and required design review	All principle permitted uses require architectural and site review in Community Commercial zoning district. New zoning code should remove required review for tenant modifications for those types of commercial uses the City would like to encourage	Issues and Options #12
50	Allowed Use and Tenant modifications	Provide more flexibility in use to allow new businesses to come into existing commercial sites with little or no review if the building is not being modified. Timing and execution are critical for business success.	Issues and Options #12
51	Allowed and Conditional Use Land Use categories	Land uses are outdated. Update and categorize uses better. Example: sauerkraut production not allowed. Gym or yoga studio not listed.	Modernize land use classification in code
52	Commercial land use	Avoid commercial leakage to County. Target example. Figure out what made Target site appealing vs. Home Depot location. Zone to allow what anchor businesses need. Visibility was identified as one reason for commercial leakage.	Issues and Options #4
53	Density	Allow density bonus for project that provide congestion relief (ex. Square footage credit for bike parking, transit	Issue and Option #3
54	Drive-thru	Allow drive-thru on 41st Avenue. Survey showed support (98.3%) for drive-thru along 41st avenue.	Create conditional use permit review for drive-thrus on 41st. Establish a required setback from residential properties and shielding.
55	Food establishment with 6 chairs	The zoning code lists "restaurants, including take-out restaurants or adding a take-out window to an existing restaurant use" as a conditional use permit. In the parking section, the # or spaces required for a "Retail use and restaurants/take-out food establishments with six or fewer seats" are treated equal. This allows retail to convert to restaurant with a limit of 6 seats. Applicants are often confused on the limitation of 6 chairs. The 6 seat regulation is problematic to monitor.	Create a new land use category for "to-go" restaurant. Rather than limit seats, limit the area for dining. Update the parking regulations to include the same amount of parking for "to-go" restaurants as retail. This will allow retail to be converted to "to-go" restaurants. It will also eliminate the need the staff to continuously monitor seats.
56	Outdoor Display - Permanent	17.21.035 requires a conditional use permit for outdoor display in the CV (Central Village). Many violations exist in the CV. Expand outdoor display to all commercial areas. No standards exist. Need standards placement of display on private property, size of area, upkeep, maintaining pedestrian circulation, etc. Specify that automated dispensers (outdoor soda machines, red box, shipping centers) require a permit. Build integrity into process. Not just quantitative measure but qualitative measures too.	Establish new standards to address outdoor commercial displays on properties in commercial and mixed uses zones. Standards will address location of displays, screening, hours, permitted materials, height, etc.
57	Outdoor Display/Parking lot sale - Temporary Use	No regulations in code. There is an administrative permit for sales twice a year on weekends. No standards exist. Add administrative permit with standards.	Add a new section to address temporary uses, including temporary parking lot sales associated with a permanent business.
58	Outdoor Dining	The code currently does not specify outdoor dining as a use. Request to consider utilization of public parking spaces in Village for dining decks. Add conditional use and standards for review of outdoor dining on private or public areas within commercial districts.	Staff will discuss with Coastal Commission possibility of using street parking spaces for dining decks. Zoning Code will contain new standards for sidewalk dining that address hours of operation, required permits, minimum sidewalk clearance, design of dining area, operation standards, and maintenance standards.
59	Public realm along 41st avenue	Support (71.9%) to improve the design of the public realm with improved pedestrian sidewalks, bicycle lanes, street trees and landscaping, and pocket parks, where appropriate	Issues and Options #3
60	Thresholds for design review in CC	New structure vs. front façade change vs. accessory structure vs. new landscaping	Issues and Options #12

Number	Subject	Comment or Explanation of Issue	How issue will be addressed
61	Top 5 community benefits for increased FAR along 41st Ave	Pedestrian Circulation Improvements (35.6%), Public Realm Improvements (32.2%), Bicycle Circulation (29.7%), Provide funding/support for Regional Trail System (28%), and Automobile circulation and parking improvements (22.9%).	Issues and Options #3
62	Transition standards for circulation to decrease Impacts on neighbors	Neighborhood integrity – protect neighborhoods from vehicle cut-through circulation	Include in review criteria for commercial and mixed-use projects.
63	Transition standards for commercial development adjacent to residential	The code lacks standards to buffer residential uses that are adjacent to commercial.	Add transition standards to commercial and mixed-use projects.
64	Transition standards for commercial development	Transition areas between Commercial and Residential should have development standards to protect residents	Update code to include transition standards between commercial and residential
65	Bakeries, Coffee Shop, Take-out, Restaurant	Confusion of why bakeries are allowed uses in CC but take out restaurant is a CUP. Coffee shop is treated as take our restaurant. What is the difference between a bakery, a coffee shop, and a yogurt shop?	Categorize land uses appropriately associated with impacts. Principally permitted or CUP
66	Density and mixed use	i. Density works with good architecture and designing the public realm. Allow increased density by requiring great architecture and improved public realm. ii. Allow more height in mixed use commercial. Limit with # of stories rather than maximum height. Define stories. iii. 41st Avenue and Capitola Road could be a new Urban Village with mixed use and housing. iv. Sustainability is not stopping development. Shift mindset to allow housing through density with multi-modal transportation. Density and multi-modal transportation have a mutually beneficial relationship and are sustainable.	Issues and Options #2 and #3
67	Urban Agriculture/Community Gardens	Include urban agriculture in zoning update	Add definitions, standards, and include in permitted use lists
68	Commercial standards for different types of commercial areas.	Create different commercial standards (uses, landscaping, signs, and parking) for the different commercial areas. 41st Avenue, Central Village, and Neighborhood Commercial.	Issues and Option #2, #3, #7
69	Conceptual Review	Invite the conversation to work toward a desirable outcome rather than being reactive. Keep conceptual review process in code update	Keep conceptual review process in code update.
70	Conditional Uses in CR (Commercial Residential) District	Conditional use list should be expanded in CR	Expand conditional uses in CR district
71	Development standards in CR	Development standards are too open ended	Create more specific development standards in the CR
72	Conditional Use Permit Findings	Findings are lacking	Add specific findings for CUP
73	Conditional Use Permit Modifications	No reference to required process for modifications to CUPs.	Add process for modification to CUP
74	Central Village hotel	Zone for hotel in village	Issues and Options #5, #16
75	Conversion of commercial to residential in CV	CV states that commercial may not be converted to residential under architectural and site review section.	Reorganize to include requirement under "use" section.
76	Height	Increase maximum height to 30' to result in better design and more useful space in Village	Issues and Options #16
77	Outdoor dining in village	Create opportunities for outdoor dining in the village	Update code to support outdoor dining in village, to the extent adequate parking can be provided.
78	Transient Rental Overlay	Requires a CUP by Planning Commission. Permits expire annually. Not enforced.	Update code to create administrative permit process.
79	Uses in Central Village	Use list is lacking diversity	Expand conditional uses in Central Village
80	Definitions	Personal service establishment - Listed Use, Not defined	Update definitions

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Number	Subject	Comment or Explanation of Issue	How issue will be addressed
81	Definitions	Bakeries, Coffee Shop, Take-out, Restaurant. Listed Uses, Unclear what the differences in the uses are.	Update definitions
82	Definitions	The code utilizes the term "design use". Uses should be tied to land uses not design.	Update definitions
83	Definitions	Professional Office Use. Not defined. Medical? Real estate? Engineering? Architecture?	Update definitions
84	Definitions	Lodging Facility, Hotel, Motel, Bed and Breakfast. Many terms used for lodging.	Update definitions
85	Definitions	Height. Not defined. Unclear how it is measure in different situations (Slope)	Update definitions
86	Definitions	Lot Area. Define to specify what is/is not included in calculation for FAR. Floor area is based on the size of the lot area. Lot area is not defined. There are unique circumstances in which lots have areas that extend into the ocean, creeks, trails, roads, and alleyways.	Update definitions
87	Definitions	Yard vs. Landscape Area vs. Landscape strip. Terms utilized within development standards but unclear what the differences are.	Update definitions
88	Definitions	Demolition. Define for evaluation of non-conforming. Problem with applicant taking down the majority of a structure and replacing in the same spot.	Update definitions
89	Definitions	Accessory structures, secondary units, kitchen, dwelling unit. Clarify definitions.	Update definitions
90	FEMA	Outdated regulations within floodplain	update regulations to reflect most recent FEMA regulations
91	Bluff Erosion	Geological Hazard overly is not consistent with General Plan	Issues and Options #14.
92	Additional credit for green building techniques	Include credits for alternative transportation, impervious surfaces, walk/bike	This will be addressed in the Climate Action Plan. Note: Staff will update to reflect CAP guidance.
93	Check list rather than points	Create a check list with boxes rather than quantifying everything	This will be addressed in the Climate Action Plan. Note: Staff will update to reflect CAP guidance.
94	Duplication in Local and State regs	CAL green covers mandatory state requirements. Eliminate the duplication in process from Federal and State levels	Update and expand the green building program to comply with state mandates for greenhouse gas emission reductions
95	Points for reutilizing buildings and longevity	Points should be granted for reutilizing existing buildings and longevity	This will be addressed in the Climate Action Plan. Note: Staff will update to reflect CAP guidance.
96	Solar	Assembly Bill 2188 requires adoption of administrative ordinance for small rooftop solar systems	Update code to comply with state regulation
97	Demolition of Historic Features	Demolition of Historic Features. No process outlined for demolition of historic structures	Issues and Options #6
98	Historic features review	Historic Feature Determination. Criteria in 17.87.030 for identifying historic feature is extremely broad.	Issues and Options #6
99	Non-conforming	Non-conforming 80% improvements. Regulations are too restrictive and do not support historic preservation.	Issues and Options #8
100	Process for review of potential historic resource	Process for review of potentially historic resources. City has 2005 list of historic structures. This list should be treated as a "potentially historic structure list". Process for modification to a structure on the list is lacking in the code.	Issue and Option #6
101	Repairs to Historic Features	Repairs to Historic Features. Code specifies that modifications to historic require a CUP. Does not specify process for replacing damaged exterior materials if they	Update to allow in-kind replacement of damaged historic materials. Administrative review for exact replications of historic material.
102	Incentives	Incentives for Historic Preservation. Add incentives for historic preservation	Issues and Options #6
103	Modification to historic resource	Modification to Historic. No standards in code for review of modifications to historic structures.	Issues and Options #6
104	IP (Industrial)	Conditional use list should be updated/expanded. Reconsider fish processing, vinegar operations, etc.	Expand/update conditional uses in IP district to include broad range of uses appropriate for IP district. Note: Staff will update this cell once upon draft of the use table.

Number	Subject	Comment or Explanation of Issue	How issue will be addressed
105	IP (Industrial)	Issue with impacts on neighboring mobile home park. Consider impact to dense population prior to listing as allowed or conditional use	Include consideration for CUPs to assess impacts on neighboring mobile home park.
106	Capitola Road as connection	Support idea of Capitola Road connecting 41st Avenue and Village. Allow hotels along Capitola Road.	Capitola Road is presently designated as a mixed-use area and is proposed to remain. Commercial uses, including small hotels, are allowed in mixed-use areas
107	Non-Conforming Structural Alterations	Too many developers get non conforming status then take the majority of the building down and rebuild in nonconforming place.	Issues and Options #8
108	Non Conforming	Non-conforming Structures and Non conforming Use must be better defined. The 80% rule is open to interpretation. Process for valuation should be codified.	Issues and Options #8
109	Non-Conforming sunset clause	Non-conforming uses/structures: discussion on current sunset clause to end all nonconforming uses by the year 2019. i. Requirement to go away isn't necessary unless the use is a nuisance. ii. City should study the existing conditions and guide the outcome to a better resolution. iii. City should drive re-development of blighted properties. iv. Code should address public nuisance issue if present 1. Adequate parking onsite 2. Maintain structures so they are updated and look good in the	Issues and Options #8
110	Non-conforming homes	Examples of homes being built in same place and having non-conforming status. Plans show walls remaining. In field, walls are removed. If a home is undergoing a full remodel and has non-conforming parking, parking issues should be fixed. Riverview example near north end	Issues and Options #8
111	Non-conforming multi-families in R-1	Many multifamily structures in the north of Capitola Rd 40's are in need of repair and have impact on surrounding neighborhood. Consider assessment district for street improvements for street landscaping, parking, bulb-outs.. Etc to result in mitigation of existing impacts. Consider requiring building to remove carports, plat trees, remove dumpsters, and include design improvements to the front facades.	Issues and Options #8
112	Carports	Carports should be discouraged	Issues and Options #5
113	Central village parking	Commercial parking in CC Section 17.27.120 should be applied to the Central Village.	Issues and Options #5
114	Compact parking spaces	Compact parking spaces are problematic	Maintain existing compact space provisions, which are typical
115	Electric car recharge	No requirement for electric car recharge in large parking lots	Add requirement for charging stations in larger project, and development and operational standards, clarify it is a permitted accessory use in all zones
116	Garage size	Garage internal dimension of 10' x 20' minimum is too big	Decrease garage minimum requirements to 18' x 10'
117	Garages	Often used for storing. Rethink the requirement for covered parking/garage.	See Issues and Options #5
118	Location of required parking	The code states: <u>17.51.120 Space for required off-street parking and loading shall not occupy any part of a required open space for a rear or side yard. On corner or through lots, parking space may not be included as part of required yards lying adjacent to either street.</u> No allowance for parking in rear or side yard setbacks. Makes parking on corner lot nearly impossible	Modify parking allowances within side yards. There is a 2 foot strip required in the R-1. Maintain the required 2 foot strip for residential properties but allow parking to encroach into the side yard.

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Number	Subject	Comment or Explanation of Issue	How issue will be addressed
119	Storage of RV and Boats	RV and Boat storage can displace required onsite parking. This displaces parking from the driveway onto the street. In areas with high street parking demand this is problematic.	Require additional parking for storage of RVs, PODs, boats, etc so required parking is not displaced by storage.
120	Multi-unit parking	Multi-units. Parking requirement based on # of units not unit size.	See Issues and Options #5
121	Parking alternatives	Build into the process an option that an applicant can provide a solution to parking other than onsite. (Bicycle off-sets, multi-modal options in proximity to	See Issues and Options #5
122	Parking Issues	<p>Parking</p> <p>i. Capitola is maxed out of on-street parking</p> <p>ii. Shared parking leads to more congestion, more competition for limited on-street parking, and impact to nearby residential neighborhoods. Commercial areas that are adjacent to residential neighborhoods should not be allowed to decrease parking requirement through mixed use. Also need to be cautious to not create additional residential parking problems by creating mid-block pedestrian connections between commercial and residential zones. Make it too easy for retail shoppers and employees to access residential neighborhoods to park during busy seasons like Christmas.</p> <p>iii. Do not allow variances for parking.</p> <p>iv. Avoid parking impacts on adjacent residential neighborhoods resulting for new multi-story mixed use development along the east side (between 41st & 42nd) of the 41st Avenue corridor. Separate dedicated parking for residential and commercial uses (no shared parking) is a key planning consideration.</p> <p>v. be careful in allowing additional commercial space being built on existing mall parking which could very quickly change an "over-parked" condition into an "under-parked" one with inevitable negative impacts on adjacent</p>	See Issues and Options #5
123	Parking lot landscaper requirement impact on Solar installations	The current parking lot landscape requirements do not consider solar installations for covered parking.	Update landscape requirements to build flexibility into the requirements for parking lots with solar installations. Possible decrease in required tree planting.
124	Parking lot design: City's standard specifications	Code does not include City's standard specifications for parking lot design. The public works director has new standards that he would like to see referenced.	Reference city's standard specifications.
125	Parking reductions	Allow parking reduction in exchange for onsite bicycle parking, mixed use development, and proximity to multi-modal transportation, such as bus stop.	Issues and Options #5
126	Required parking for land uses that are not identified in parking section.	No established standards for parking requirements for unlisted uses.	Establish criteria/methodology for parking requirements for non-listed uses.
127	Required parking spaces	Allow applicants to utilize best available information to comply with parking. (Example: Urban Land Institute parking methods). The zoning code often demands too much parking and is an approximation. There are more accurate tools out there that incorporate other factors such as multi-family, mixed use, proximity to public transit etc.	Issues and Options #5
128	In-lieu parking	In-lieu parking to collect payment for required parking spaces and utilize the funds to develop public parking lots that are in close vicinity to the new or intensified use. Adding an allowance for in-lieu parking creates public/private partnerships creating opportunities for new uses in areas challenged with limited space for onsite parking, such as the Village.	In-lieu parking policy exists for hotels and valet in the village.
129	4 acre minimum requirement for PDs	4 acre minimum is not practical due to scarcity of 4-acre + properties	Issues and Options #13

Number	Subject	Comment or Explanation of Issue	How issue will be addressed
130	Maintain PD	Keep Planned Development. Infill requires flexibility to result in the best design within an established area. Let architect fix issues through design rather than zoning creating additional hurdles to development. Reminder that the buildings that are most loved in Capitola could not be built within today's zoning code. Allow for creativity.	Issues and Options #13
131	preliminary view by PC and CC	PD preliminary plan is reviewed only by PC. It would be more reliable to bring CC in at this stage so applicant has perspectives of recommending and approving bodies.	Issues and Options #13
132	Remove PD	Eliminate spot zoning that allows parcels in residential neighborhoods to be rezoned as Planned Development	Issues and Options #13
133	Professional Office Zone	There is one small area zoned OP (Professional Office) along Capitola Road. It is located between the CN (neighborhood commercial) and CR (Commercial/Residential) zoning districts.	Rezone OP to Neighborhood Commercial.
134	City Hall and Pac Cove Development Standards	Lack development standards that allow a multi-story parking structure to be reviewed on City Hall parking lot site for the village. The City Hall property will likely be redeveloped in the future. Development standards should be included in update for redevelopment	Create development standards that allow a multi-story parking structure to be reviewed on City Hall parking lot site for the village. Include guidance within the public facilities chapter or within the planned development chapter for future development on property.
135	FAR calculation	17.15.100(B)6. Remove decks on second story and garages from calculation.	Issues and Options #17
136	Floor Area Ratio	Clarify what is/is not included in FAR	Issues and Options #17
137	Floor Area Ratio	Floor area ratio and basements discussion. Although basements do not influence mass and scale, basements should be included in the FAR calculation to prevent additional bedrooms and impacts on parking.	Issues and Options #17
138	Floor Area Ratio	Floor Area Ratio. If floor area is to control massing, basement, decks, and stairs should not be included in calculation.	Issues and Options #17
139	Floor Area Ratio	Floor Area Ratio should not include the unbuildable portion of the lot. (Example: 1840 Wharf Rd, Riverview Avenue, Depot Hill properties on Bluff)	Floor area is based on the size of the lot area. Lot area is not defined. There are unique circumstances in which lots have areas that extend into the ocean, creeks, trails, roads, and alleyways. The definition of lot area will be updated to specify that lot area does not include areas of lots that are located beyond the cliff edge, or beyond the high water mark of a creek. The update will also include specificity that the trail and open space parcel between Soquel Creek and Riverview is not calculated in the lot area.
140	Garage conversions	Code is vague on garage conversions to living space when parking requirement is met within driveway.	Specify that garage conversions are allowed if onsite parking requirements are met.
141	Height	Public Input: Height limit of 25 feet in R-1 is too restrictive for certain types of architectural design.	Issues and Options #16
142	Height	Height: Allow flexibility for additional height for design compatibility and unique circumstances (sloped lots).	Issues and Options #16
143	Height in Cliffwood Heights	Cliffwood heights has larger lots. Taller homes could be allowed in this area	Issues and Options #16
144	Minimum lot size for secondary units is 5000sf.	Lower minimum lot size to allow more secondary units on smaller properties.	Issues and Options #9

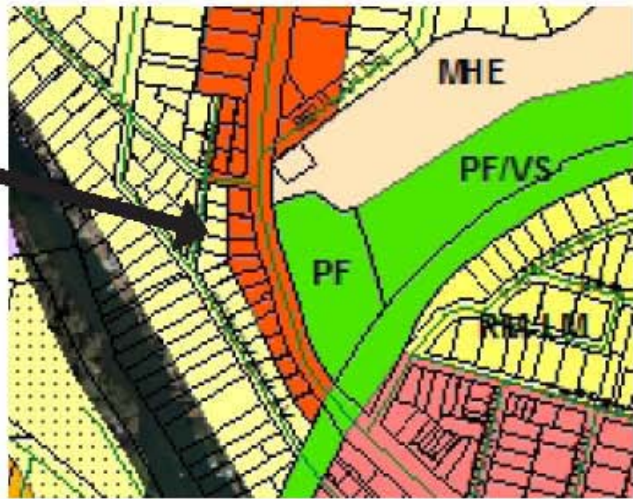
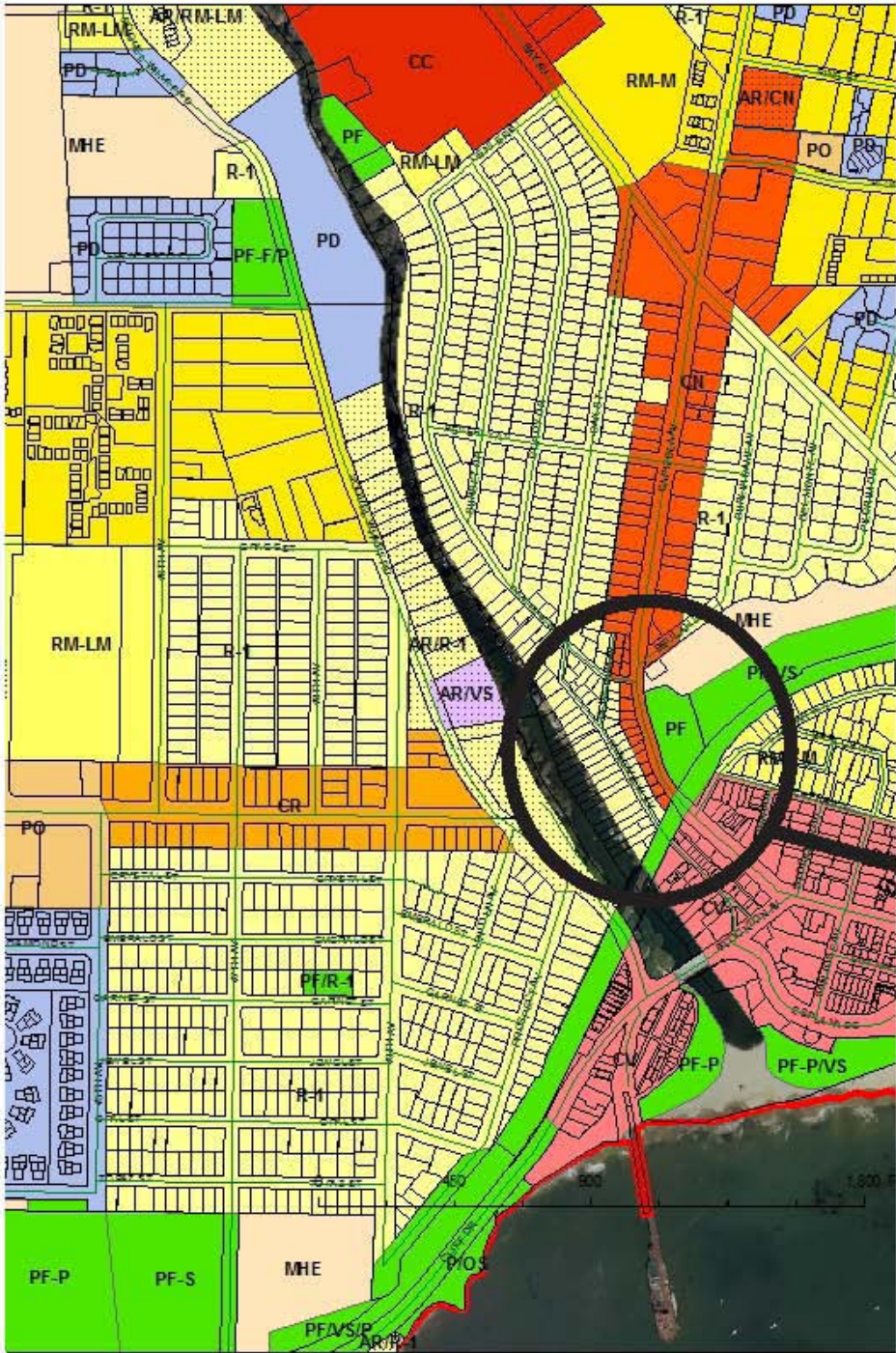
Item #: 10.C. Attach 2.pdf

Number	Subject	Comment or Explanation of Issue	How issue will be addressed
145	Kitchen Limitations and Secondary Dwelling	Code limits 1 kitchen to each dwelling unit. Often times laundry rooms are converted to kitchens and become code issues. Another issue is that outdoor kitchens are <u>not allowed due to single limit.</u>	Update dwelling unit definition to allow for 1 outdoor kitchen and limit each dwelling unit to 1 laundry room.
146	Minimum lot size	Density in R-1. Do not increase density in R-1. Maintain minimum lot size requirement as is. (5000 sf).	Maintain R-1 minimum lot size of 5,000 sf
147	Minimum lot size	Many lots are 4000 sf in R-1. (modify minimum lot size to fit the neighborhood the lot is in. (Jewel box example)	Existing lots under 5,000 sf are legal and may remain in perpetuity according to state law. No change <u>proposed.</u>
148	Multi-family.	Do not downsize multi-family lots. Lock in centralized sites for multi-family with minimum density requirements	No down-zoning of MF lots proposed.
149	Neighborhood Character	With several types of neighborhoods with different lot sizes and characteristics, it seems logical to introduce a new residential zone. The Riverview and Cliffwood Heights neighborhoods are very different but share the same zoning designation. This requires the need for variances and special considerations. A new zone would be appropriate to keep specific neighborhoods intact. Cliffwood Heights - (large lots), Depot Hill (row is landscaped, front setback from property line). Riverview	Issues and Options #1
150	Rental Stock	Allow multi-units that are intended to be rented	Multi-family uses are allowed to be rented. No <u>change proposed.</u>
151	Required separation between buildings (3 feet) is listed in <u>wrong area of code.</u>	Regulation is listed under setback requirements of the R-1	Reorganize to include required separation within section on garages and accessory structures.
152	Roof top decks in Single family and CV zones	Suggestion that rooftop decks be prohibited.	Add Design Permit considerations to protect privacy.
153	Second Dwelling Units	Code requires owner to live in either primary home or secondary unit. Public input that the city should reconsider this requirement and allow both to be rental.	Issues and Options #9
154	Second Dwelling Units	Consider excluding secondary dwelling units from FAR calculation.	A lot with a secondary unit is given an increased FAR of 60%. Rather than provide the increase FAR, the new code can exclude secondary dwelling units from the FAR calculation. By allowing the exception, the FAR would never exceed 60% as currently allowed.
155	Secondary Dwelling Units	Detached units limited to 15 feet high	Issue and Option #9
156	Secondary Dwelling Units	Allow on lots with 4,000 sf	Issue and Option #9
157	Setbacks in RM	RM setbacks are confusing	Updated code will have standardized tables with limited and specified exceptions.
158	Setbacks of Detached Structures	Current setback requirement is 8 feet from rear property line. Decrease the setback requirement in rear yard	Decrease to 5'
159	Setbacks and Encroachments	Setbacks regulations and encroachments are confusing and the exceptions are not consistent	Updated code will have standardized tables with limited and specified exceptions.
160	Side Yards 15% regulation	<u>17.15.110E(3) Side yard: for levels above the first floor, set back shall be at least fifteen percent of the side yard.</u> It seems there was an error in the description of the second story setbacks to be 15% of the lot width as opposed to 15% of the side yard setback.	Updated code will have standardized tables with limited and specified exceptions.

Number	Subject	Comment or Explanation of Issue	How issue will be addressed
161	Side Yards Second Story	<u>17.15.110E(3) Side yard:</u> For levels above the first floor, setback shall be at least fifteen percent of the side yard although not more than ten feet shall be required. For half-stories, projected building area under/from the roof (e.g., shed or dormer areas) shall also meet the second floor setback requirements. <u>Up to twenty percent of a second floor wall may be at the same setback as a first floor wall with a setback of at least four feet;</u> On lots that have substandard widths (less than 40' wide) the required additional setback on the second story is problematic for practical floor plans and space.	Simplify in standardized table with exception for lots with width less than 40' wide.
162	Transitional and Supportive Housing	State law requires definitions of transitional and supportive housing and requires them to be permitted the same as residential uses in the same zone.	Update under uses as principally permitted
163	Yard Encroachments	Pools, Jacuzzis, firepits, and air conditioners are not included in encroachments for side and rear setbacks. Requested often.	Include pools in encroachments and establish minimum 5' setback for side and rear yard setbacks
164	Residential	Healthy neighborhoods: zone for what the City would like to see within the neighborhoods – pedestrian/bicycle connectivity – interactive yards – less emphasis on the car. Example of Santa Cruz county pleasure point community plan	Update development standards to allow engaging front yard encroachments (patios, decks, walkways, raised flower beds, trellis, hardscape furniture (concrete bench). Commercial standards to include interior sidewalks and bike paths in parking lots.
165	Auto Plaza Drive Signs	Auto plaza Drive lacks visibility with no allowance for a monument sign or other prominent sign along 41st avenue.	Add sign standard to allow prominent sign at the entrance of auto plaza drive
166	Central Village Pedestal Sign	Central Village Pedestal Signs – remove. Ordinance does not work. Enforcement is an issue. Village should have consistency in rules and enforcement.	Issues and Options #7
167	Content regulated within signs	Current code regulates sign content. This is illegal.	Clarify that ordinance cannot regulate sign content
168	Design of Signs	Allow creativity.	Set standards for size, location on building, logos, brand identification, and types of signs. Allow flexibility in materials, lighting, and color.
169	Digital Signs	Digital display not allowed	Create clear standards for digital display.
170	Master Sign Program	Directional signs should be allowed within larger developments.	Update master sign program regulations
171	Master Sign Program and variety	Not much variation allowed within individual plazas with master sign program.	Allow more variety between sign styles within master sign program.
172	Monument Signs	Monument signs in code are too limited for large developments such as King Plaza.	Issues and Options #7
173	Political Signs	Rules for political signs are unclear	Clarify rules for political signs
174	Sign materials and quality	Quality of signs influence perception of City overall. There is an impact on retail when quality is sacrificed. High quality provides better perception and more money is spent.	Issues and Options #7
175	Signs at large centers	Visibility. Current code does not allow enough visibility from the street. Auto plaza, mall, and large shopping centers are impacted by sign code regulations.	Issues and Options #7
176	Signs in different commercial areas (41st, village, neighborhood commercial, and industrial)	Different areas should have different standards.	Issues and Options #7

Item #: 10.C. Attach 2.pdf

Number	Subject	Comment or Explanation of Issue	How issue will be addressed
177	Signs in large centers	No flexibility in # of types of signs. Difficult for large properties to comply and advertise effectively. Provide a maximum allowance for signs and allow businesses/property owners to determine the number and size of individual signs which fit within the maximum allowance (e.g., set a cumulative square-foot maximum signage allowance for a shopping center without limits on the number or size of individual signs)	This can be accomplished through a master sign plan. Code update can provide more transparency in the flexibility of a master sign plan
178	Threshold for Sign Permit	Sign ordinance requires all new signs to go before Planning Commission. Some signs should be allowed with administrative review	Issues and Options #7
179	Community Care Facilities	Standards need to be updated per state law and organized.	Update standards per state law and locate in special land use regulations.
180	Day care facilities	Standards need to be updated per state law and organized.	Update standards per state law and locate in special land use regulations.
181	Home Occupations	Home Occupations is defined and then listed as a Conditional Use in various zones (R-1, CV, MHE, RM). The definition describes the limitations. Current noticing requirement is time consuming and an added cost for new businesses.	Create an administrative review process that conditions home occupancy permit to standards. Create contingency that home occupation permit may be revoked when standards are not followed.
182	Second homes	Second home owner impacts i. Losing families in neighborhoods, losing community, 'dark' homes losing self policing by residents. ii. TOT must be enforced. City needs to enforce online nightly rentals in non-transient neighborhoods. (Air BnB, VRBO)	Ongoing code enforcement issues. Maintain Transient overlay.
183	Increase Nightly Rental Stock	Expand transient rental zone	Staff heard significant concerns about existing vacation rentals and very little support for expanding the transient rental overlay zone. No changes proposed.
184	Variance	Variance section is not in conformance with state code	Update to conform with state code
185	Depot Hill/ VS density	Resident of Depot Hill requested following modifications underlined and italicized. Chapter 17.30 V---S Visitor Serving District 17.30.070 Development standards. The V-S (visitor serving) district may be the only zoning district applicable to a property, but at times it is applied along with other zoning districts to a property, such as "VS/R--1," or "VS/PF" dual zoning. Dual zoning means that the uses and development standards of the V-S district apply, although uses allowed by the other district may also be permitted through approval of a conditional use permit, and the planning commission may apply development standards from the other zoning district in lieu of or as well as the V-S district, as determined through architectural and site review. <u>All visitor-serving development in the Escalona Gulch/Depot Hill area (that area bounded by Park Avenue and Bay Avenue) shall not exceed eight (8) units per acre.</u> (Ord. 868 § 1, 2004)	ISSUES and OPTIONS # 15
186	Visitor serving uses in depot hill	Visitor Serving Use within Depot Hill. Suggest no increase in density (or intensity) for future projects. Current Hotel Use Permit must be enforced. The list of uses should be narrowed to include only those uses that are compatible with the surrounding single family neighborhood. Amusement Park and Campground are not compatible uses. (City should consider eliminating VS zone in Depot Hill)	ISSUES and OPTIONS #15



There are substandard lots in the Neighborhood Commercial Zone along Capitola Avenue that have inadequate depth to comply with front yard and rear yard setback requirements.

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Issues and Options Matrix		
	Direction	
	PC	CC
ISSUE 1: Protecting the Unique Qualities of Residential Neighborhoods (Page 7)		
Option 1: Maintain existing R-1 standards for all neighborhoods. With this option the Zoning Code would retain its existing R-1 standards that apply to all residential neighborhoods. Some specific standards may be modified to better meet the needs of property owners and address neighborhood concerns. After the future preparation of residential design guidelines, reference to these guidelines could be added to the R-1 chapter or to the findings required for approval of a Design Permit.		
Option 2: Introduce tailored development standards for individual residential neighborhood. With this option the Zoning Code would identify the various neighborhoods within Capitola and identify the character-defining attributes of each area. The zoning code would establish standards for each of the residential neighborhoods that encourage the individual attributes and patterns within a neighborhood. The neighborhoods may be delineated through different residential base zones (e.g., R-1, R-2) or through overlay zones similar to residential overlay in the Village zone.		
Option 3: Allow case-by-case deviations to R-1 standards. With this option a single set of standards would remain for the R-1 zone, but the Planning Commission could allow for deviations to these standards on a case-by-case basis. This would be a different process from a variance, with different findings required for approval. Standards subject to allowable deviation could include building height, setbacks, second story stepbacks, garage and parking design, and floor area ratio. To approve, the Planning Commission would need to find that the deviation reflects the prevailing character in neighborhood and won't negatively impact adjacent properties. A maximum allowable deviation could also be established (e.g., 15 percent maximum deviation from standard), and deviations could be allowed only in certain locations.		
Notes:		

Issues and Options Matrix		
	Direction	
	PC	CC
ISSUE 2: Maintaining and Enhancing the Village Character (Page 8)		
Option 1: Maintain existing standards with advisory design guidelines. In this option, the standards of the Central Village would remain as they are today. We would clarify that the Guidelines are advisory, not mandatory.		
Option 2: Establish new building form and character standards. The Zoning Code could establish mandatory site and building standards to maintain and enhance the Village character. These would apply to non-residential and mixed-use development. New standards could address the following design concepts: <ul style="list-style-type: none"> • Maximum setbacks to keep buildings and their entrances close to the sidewalk. • Permitted treatment of setback areas (e.g., plazas and landscaping, no parking) • Minimum building width at street edge (defined as percentage of lot width) to maintain a continuous presence of storefronts. • Buildings oriented towards a public street with a primary entrance directly accessible from the sidewalk. • Maximum length of unarticulated/blank building walls. • Required storefront transparency (percentage clear glass) • Maximum building/storefront width (require larger buildings to be broken down into a pedestrian-scale rhythm with individual building bay widths) • Surface parking location (at rear or side of buildings, not between a building and a street-facing property line). • Frequency and width of driveways crossing sidewalks. • Requirements or incentives for residential front porches. 		
Option 3: Incorporate design guidelines as standards in the Zoning Code. Design “guidelines” for residential overlays that are expressed as mandatory “shall” statements would be incorporated into the Zoning Code as new standards. These guidelines can be found on pages 12 and 13 of the Design Guidelines. Guidelines would be modified as needed to protect and enhance the design character of these areas.		
Option 4: Remove reference to Central Village Design Guidelines. This modification would require applicants to follow the development standards in the code without any guidance from the guidelines. The guidelines would be repealed during the zoning code update. The reference could be reintroduced after the City prepared updated design guidelines for the Village		
Notes:		

Issues and Options Matrix		
	Direction	
	PC	CC
ISSUE 3: Accommodating High-Quality Development on 41st Avenue (Page 10)		
Option 1: Maintain Existing Regulations.		
Option 2: Increase Parking Flexibility. Existing off-street parking requirements for individual land uses and properties could prevent the type of development and improvements envisioned by the General Plan. Allowing for shared parking, mixed use reductions, and a more district-based approach to parking would help to remove this barrier. Specific methods to introduce increased parking flexibility are addressed in Issue #5.		
Option 3: Create incentives for desired improvements. The General Plan allows for increased floor area ratio (FAR) for certain types of project on 41 st Avenue. The Zoning Code could build from this concept by offering incentives for project that include community benefits such as new public gathering places and entertainment uses. Incentives could include additional FAR, flexibility on development standards such as height and parking, and a streamlined permitting process. Allowed FAR with an incentive-based bonus would always be within the maximum established in the General Plan. The existing Planned Development provisions (Chapter 17.39) is another tool that allows deviations from development standards. This option is further discussed within Issue #13.		
Option 4: Strengthen connection to 41st Avenue Design Guidelines. The existing Design Guidelines for 41 st Avenue is in many ways consistent with the General Plan. The updated Zoning Code could strengthen the connection to this document by requiring the Planning Commission to find proposed projects consistent with the Guidelines when approving Design Permits. The City will update the Design Guidelines to better reflect the vision and goals for the corridor following adoption of the new Zoning Code.		
Option 5: Streamline Permitting Process. The City currently requires Design Permits for new tenants in commercial zones, and a Conditional Use Permit for many types of uses. This requirement can discourage small scale and incremental improvements to properties necessary for long-term vitality. As discussed in Issue #10 and #12, the updated zoning code could streamline the permitting process for certain types of projects to encourage new investment on the corridor.		
Notes:		

Issues and Options Matrix		
	Direction	
	PC	CC
ISSUE 4: Protecting Retail Vitality on 41st Avenue (Page 11)		
Option 1: Maintain existing regulations.		
Option 2: Add new findings for professional and medical office uses. The updated zoning code could include new findings required to approve office and other non-retail uses in the CC zone. For example, to approve such a use the Planning Commission would have to find that the proposed use would not detract from the economic viability of the district and/or shopping center where it is located. The applicant would be required to demonstrate to the Planning Commission’s satisfaction that this finding can be made. The requirement to make this or similar findings could apply throughout the CC zone, or just in specific locations where the City wishes to maintain a high concentration of retail and personal service uses.		
Option 3: Encourage professional and medical office uses in certain locations. The updated zoning code could make it easier to establish professional and medical office uses in certain locations, thus discouraging these uses in prime retail areas. For example, the zoning code could allow office uses by-right in tenant spaces that do not have a visible presence from 41st Avenue, Capitola Road, or Clares Street or that are on upper floors of a building. This could be a form of “vertical zoning” to incentivize the establishment of office uses in desirable locations. The updated zoning code could also use new overlay zones to identify locations where professional and medical offices are allowed by-right without a conditional use permit. The zoning code would also establish new design and operational standards for office uses allowed by-right to ensure neighborhood compatibility.		
Option 4: Introduce new limitations for professional and medical office uses. Cities often use zoning regulations to limit the concentration of land uses in certain areas. For example, the Capitola zoning code could state that medical office is limited to 20 percent of each multi-tenant building or shopping center in certain locations. Or the zoning code could establish a total cap on the number of medical office uses or a minimum separation standard for these uses. These limitations could be absolute (cannot be exceed under any circumstance) or the Planning Commission could allow for exceptions in special circumstances on a case-by-case basis.		
Notes:		

Issues and Options Matrix		
	Direction	
	PC	CC
Issue #5: Parking (Page 12)		
Issue #5A: Number of Required Parking Spaces (Page 13)		
Option 1: Maintain Existing Requirement.		
<p>Option 2: Modify Parking Requirements for Certain Land Uses in All Areas. The updated Zoning Code could modify parking requirements for certain land uses in all areas of the City. Parking requirements could be modified for:</p> <ul style="list-style-type: none"> • Restaurants, potentially reducing the parking requirement (currently 1 space/60 sf). • Take-out food establishments, eliminating the need for seat counting • Single-family homes, creating one standard regardless of size • Multi-family homes, allowing reduced parking requirements for small units 		
<p>Option 3: Create Location-Based Parking Standards. The updated Zoning Code could establish different parking requirements depending on the location. For example, parking requirements in the Village could be different from on 41st Avenue, reflecting that more people walk to destinations in the Village from their homes or lodging or park once in or near to the Village and walk to multiple destinations during their visit. This approach could apply only to certain land uses, such as restaurants, or to all land uses.</p>		
<p>Option 4: Allow for reductions with Planning Commission approval. The updated Zoning Code could allow for reductions in the number of required parking spaces as suggested in General Plan Policy MO-5.3. Reductions would need to be approached carefully to avoid spillover parking impacts on neighborhoods. All reductions would be approved by Planning Commission after making special findings. Possible reductions include the following:</p> <ul style="list-style-type: none"> • Low Demand. The number of parking spaces could be reduced if the land use would not utilize the required number of spaces due to the nature of the specific use, as demonstrated by a parking demand study. • Transportation Demand Management Plans. The # of parking spaces could be reduced if the project applicant prepares and implements a Transportation Demand Management Plan to reduce the demand for off-street parking spaces by encouraging the use of transit, ridesharing, biking, walking, or travel outside of peak hours. • Bus Stop/Transportation Facility Credit. The number of parking spaces could be reduced for commercial or multiple-family development projects in close proximity of a bus stop. • Mixed-Use Projects. A mixed-use project with commercial and residential units could reduce parking requirements for commercial and office uses. 		
<p>Option 5: Allow for reductions By-Right. Similar to Option 2, except that a project could receive a reduction by-right (without Planning Commission approval) provided that it complies with objective standards.</p>		

Issues and Options Matrix		
	Direction	
	PC	CC
Issue #5: Parking (continued)		
Issue #5B: Village Hotel Parking (Page 15)		
Option 1: Maintain Existing Requirements		
Option 2: Specific On-Site Parking standard for Village Hotel. The updated Zoning Code could establish a specific on-site parking requirement for a new hotel in the Village. For example, the Zoning Code could carry forward the existing standard of 1 on-site parking space per guest room. Or, the Zoning Code could require 0.5 on-site spaces with the remaining parking need accommodated at an off-site location.		
Option 3: Base Standard on a Parking and Traffic Study prepared for the hotel development project application. The updated Zoning Code could state that the number of parking spaces required for the hotel will be as determined necessary by a parking and traffic study prepared for a hotel development project application. The Code could allow for a percentage of this needed parking to be accommodated off site.		
Option 4: Allow Planning Commission and/or City Council to establish parking standards for an individual project based on performance criteria. Similar to Option 2, the Planning Commission or City Council could establish on-site and off-site parking requirements for a Village Hotel in response to a specific application. This requirement would reflect the findings of a parking and traffic study. In addition, the Zoning Code could contain specific findings that the City must make when establishing this requirement. The findings, or “performance criteria,” could reflect public input on Village Hotel parking and circulation obtained during the General Plan Update process. For example, the Zoning Code could state that when establishing the required parking for the Village Hotel, the City must find that: <ul style="list-style-type: none"> • The hotel is served by a combination of on-site and off-site parking. • Parking provided on-site is no more than the minimum necessary for an economically viable hotel. • On-site parking is minimized to reduce vehicle traffic in the Village and strengthen the Village as a pedestrian-oriented destination. • On-site hotel parking will not result in any noticeable increase in traffic congestion in the Village. • Additional parking to serve the hotel is located within 1,000 feet of the proposed hotel. 		
Notes:		

Issues and Options Matrix		
	Direction	
	PC	CC
Issue #5: Parking (continued)		
Issue #5C: Parking Efficiency (Page 16)		
Option 1: Maintain existing regulations.		
Option 2: Clarify existing code to match past practice, including:		
A: Add New Shared Parking Provision. The updated Zoning Code could allow multiple land uses on a single parcel or development site to use shared parking facilities when operations for the land uses are not normally conducted during the same hours, or when hours of peak use differ.		
B: Add new parking lift provisions. The updated Zoning Code could specifically allow for elevator-like mechanical system to stack parking spaces in a vertical configuration. Many cities are incorporating such a provision into their zoning codes to allow for a more efficient use of structured parking areas.		
Notes:		
Issue #5D: Garages (Page 17)		
Option 1: Maintain existing regulations.		
Option 2: Add design standards for carports. Continue to require at least one covered parking space for homes 1,500 square feet or more. Covered parking may be provided in a garage or carport. Design standards for carports would be added.		
Option 3: Limit covered spaces to garages only. Specify that a carport may not satisfy the covered parking requirement.		
Option 4: Eliminate covered parking requirement. Remove the requirement for covered parking spaces for single-family homes.		
Notes:		

Issues and Options Matrix		
	Direction	
	PC	CC
Issue #6: Historic Preservation (Page 17)		
Option 1: Establish a Historic Resources Board. Many communities with historic resources establish a historic resources board or commission to assist with historic preservation activities. The roles and responsibilities of the historic resources board vary in different communities. Common functions include determining if modifications to a historic resource are consistent with the Secretary of Interior’s Standards, advising on designation of historic features, advising on impacts to historic resources under CEQA, and advising the Planning Commission and City Council on other matters pertaining to historic preservation.		
Option 2: Establish a new Historic Preservation Overlay Zone. Capitola could establish a new historic preservation overlay zone to apply to existing National Register Historic Districts (Old Riverview, Rispin, Six Sisters and Lawn Way, Venetian Court.). Properties within this overlay could be subject to special permit requirements, design standards, and incentives for preservation.		
Option 3: Establish new enforcement and penalty provisions. The updated Zoning Code could strengthen enforcement and penalty provisions. Pacific Grove, for example, establishing financial penalties and development limitations on structures in violation of the City’s historic preservation ordinance.		
Option 4: Establish new maintenance and upkeep provisions. Capitola could include language specifically requiring adequate maintenance and upkeep of historic resources to prevent demolition by neglect.		
Notes:		

Issues and Options Matrix		
	Direction	
	PC	CC
Issue 7: Signs (Page 19)		
A. Threshold for Review		
Option 1: Maintain existing regulations.		
Option 2: Allow staff-level review with new standards. Revise sign standards to include new, well-defined and well-illustrated design standards that create maximum allowances within staff-level review and an option for Planning Commission review for signs that go beyond the maximum allowance. In this option, new maximum limits are established. Signs can be approved administratively within an over-the-counter permit.		
Notes:		
B. Tailored Standards (Page 19)		
Option 1: Maintain existing regulations.		
Option 2: Create tailored standards for different commercial areas. Certain sign standards could be adjusted to address the unique issues in different commercial areas. Tailored standards could address types of permitted signs, maximum sign area, sign dimensions, sign location and placement, illumination, materials, and other issues. The Livermore Development Code, beginning in Section 4.06.160, is an example of this approach: http://www.codepublishing.com/ca/livermore.html . The general desired signage character for different districts in Capitola could be as follows: <ul style="list-style-type: none"> • Village: Pedestrian oriented signs, village scale • Neighborhood Commercial: Neighborhood-scale signs serving pedestrians and vehicles • 41st Avenue: Larger-scale signs that are auto-oriented to support corridor as a regional shopping destination. • Auto Plaza Drive: Unique to the use (auto-dealers) and address visibility challenges • Industrial Zone (Kennedy Drive): More industrial design aesthetic and flexibility of type and materials. 		
Notes:		

Issues and Options Matrix		
	Direction	
	PC	CC
Issue 7: Signs (continued)		
C. Monument Signs (Page 20)		
Option 1: Maintain existing regulations.		
Option 2: Create a new limit for monument signs based on linear frontage along a prime commercial street.		
Option 3: Create an allowance for more than 4 tenants per monument sign.		
Option 4: Update Master Sign Plan to clarify discretion in monument signs (lot size, # of tenants, and frontage).		
Notes:		
Issue 8: Non-Conforming Uses (Page 20)		
A. Calculation of Structural Alterations (Page 21)		
Option 1: Maintain the existing 80 percent building valuation maximum of present fair market value.		
Option 2: Maintain valuation cap but allow the Planning Commission to authorize additional alterations if specific findings can be made.		
Option 3: Remove valuation cap for structural alterations to non-conforming structures. In this option, all non-conforming structures could be maintained and updated, provided that the alterations do not create a greater degree of non-conformity. Any addition to a non-conforming structure would be required comply with all development standards of the zone.		
Option 4: Change building valuation cap to a percentage of square footage calculation. Under this approach, alterations to non-conforming structures would be limited based on how much of the existing structure is modified. For example, the new code could limit alterations to non-conforming structures to 80% of the existing square-footage. Using a percent of square footage approach would be easy to understand and administer and would significantly reduce disagreements over valuation calculations, while still limiting the degree of allowable modifications.		
Option 5: Maintain the existing 80% threshold with new exception for historic resources. In this option the 80% maximum of present fair market value would be maintained. An exception for historic structures would be added to allow historic structures to be updated. Any addition to a historic structure must comply with all development standards of the zone.		
Notes:		

Issues and Options Matrix		
	Direction	
	PC	CC
Issue 8: Non-Conforming Uses (Continued)		
B. Non-conforming activities and structures on improved R-1 parcels. (Page 22)		
Option 1: Maintain existing sunset clause and opportunity to apply for extension.		
Option 2: Modify regulations to allow non-conforming multi-family uses to remain throughout the City, but not intensify. This approach could be applied citywide with appropriate findings or only to specific areas.		
Option 3: Modify regulations to allow non-conforming multi-family uses to remain in targeted areas of the City. Under this option, a sunset clause could be retained for areas like the northern Jewel Box neighborhood, but would be eliminated in areas where multi-family uses have had fewer compatibility issues.		
Option 4: Rezone areas with existing non-conforming multi-family uses to a multi-family zone. This approach could be applied citywide or only to specific areas.		
Option 5: Create an incentive program to allow participating non-conforming property owners to retain their uses subject to providing specified public benefits. For example, a program could be established to allow property owners to continue non-conforming multi-family uses if they provide guaranteed affordable housing, make significant investments in the structures which improve appearance and function, invest in neighborhood improvements (landscaping, parking, etc.) and/or reduce the degree of non-conformity (e.g., reduce a 4-plex to a 3-plex or a duplex).		
Notes:		

Issues and Options Matrix		
	Direction	
	PC	CC
Issue 9: Secondary Dwelling Units (Page 24)		
Option 1: Maintain existing code allowances/limitations for secondary dwelling units.		
Option 2: Amend the code to encourage development of additional secondary dwelling units. If this option is selected, the following changes may be considered:		
a. Decrease the minimum lot size requirement for secondary dwelling units;		
b. Increase the threshold which triggers the need for Planning Commission review;		
c. Allow all secondary dwelling units to be approved through an administrative process;		
d. Eliminate the current residency requirement and allow both the primary and secondary dwellings to be rented.		
Option 3: Amend the code to encourage development of additional secondary dwelling units in specific areas of the City only.		
Notes:		

Issues and Options Matrix		
	Direction	
	PC	CC
Issue 10: Permits and Approvals (Page 24)		
Option 1: No change to existing permits.		
Option 2: Modify permits. With this option staff will look for opportunities to combine, delete, and add permits in the zoning code to better meet the city’s needs. Possible changes include the following:		
<p>a. Create a new Administrative Permit. This new permit would be used for a wide range of existing, ministerial staff-level actions. It could be used as a general replacement for existing fence permits, temporary sign permits, approvals of temporary sidewalk/parking lot sales, and temporary storage approvals.</p>		
<p>b. Create a new Minor Use Permit. This new permit would be similar to a Conditional Use Permit except that it would be approved by Community Development Director. Notice would be mailed to neighbors prior to final action by Community Development Director and decisions could be appealed to Planning Commission. The Director could also choose to refer applications to Planning Commission for decision. A Minor Use Permit could be a good middle ground for uses that shouldn’t be allowed by-right, but that also generally don’t need to go the Planning Commission for a public hearing and approval, such as a home occupancy permit and transient occupancy permits.</p>		
<p>c. Create a New Substantial Conformance Process. The zoning code currently requires applicants to submit a new application if they wish to make any changes to an approved permit – even if the change is very minor in nature. Under this option, a substantial conformance process would be developed to allow administrative approval of specified minor alterations while still requiring Planning Commission consideration of more substantive changes.</p>		
Notes:		

Issues and Options Matrix		
	Direction	
	PC	CC
Issue 11: Architecture and Site Review (Page 25)		
A. Authority of Architecture and Site Review Committee (Page 25)		
Option 1: Maintain existing authority of Architecture and Site Committee.		
Option 2: Modify existing role of the Architecture and Site Committee. Authorize the Architecture and Site Committee to approve or deny design permit applications. Thresholds may be established for the projects that require Architecture and Site Committee approval rather than Planning Commission approval. Under this approach, decisions rendered by the Committee could be appealed to the Planning Commission.		
Option 3: Eliminate the Architecture and Site Committee. Three of the six members of the Committee are City staff. The project planner could work with these staff members and outside experts to address project design issues.		
Notes:		
B. Timing of Design Permit Review (Page 26)		
Option 1: Maintain existing timing of Architecture and Site Review.		
Option 2: Repurpose the committee to be a pre-design committee. In this option, the committee would meet with an applicant prior to accepting a formal development application. The committee would identify characteristics of the site/neighborhood to guide the future design. Staff would provide guidance on the development requirements for zoning, public works, and building.		
Notes:		
C. Composition of Architecture and Site Committee (Page 26)		
Option 1: Maintain the existing composition of the Architecture and Site Committee.		
Option 2: Replace the committee with a City Architect. Under this option, the City would contract an architect to review all development applications, provide design solutions, and make recommendations to staff and the Planning Commission. The downside of this option is that the valuable input of the historian and landscape architect would be eliminated in the review, unless those services are also separately contracted.		
Option 3: Replace committee with an Architectural Peer review committee. The committee could be replaced with an architectural peer review committee made up of three or more architects. The architectural peer review committee would continue to make a recommendation to the Planning Commission.		
Option 4: Revise committee to add any of the following: water district staff, sewer district staff, fire district staff, additional architect, and/or a citizen's representative.		
Notes:		

Issues and Options Matrix		
	Direction	
	PC	CC
Issue 12: Design Permits (Page 27)		
A. When a Design Permit is Required – Commercial Uses (Page 27)		
Option 1: Maintain existing thresholds.		
Option 2: Require Design Permits only for Exterior Modifications. With this option, a design permit would be required to establish a new use only with an exterior modification to the structure. All other commercial design permit thresholds would remain the same.		
Option 3: Require Design Permit only for Larger Projects. Design permit thresholds could be lowered so that fewer types of commercial projects require a Design Permit. This approach could be similar to Santa Cruz, where design permits are required only for new commercial structures and exterior remodel increasing floor area by 25 percent or exceeding a specified dollar value.		
Notes:		
B. Design Permit Approval Authority – Commercial Use (Page 27)		
Option 1: Maintain existing review authority.		
Option 2: Delegate limited approval authority to the Director With this option, the Director would approve more types of commercial projects requiring a Design Permit. For example, the Director could approve:		
a. Minor repairs, changes and improvement to existing structures which use similar, compatible or upgraded quality building materials.		
b. Additions not visible from the front façade up to a specified square-footage threshold.		
c. Expansion of one tenant space into a second tenant space in a multi-tenant building.		
d. Dish-type antenna greater than 24 inches as specified.		
e. Accessory structures		
Notes:		

Issues and Options Matrix		
	Direction	
	PC	CC
Issue 12: Design Permits (continued)		
C. When a Design Permit is Required – Residential Uses (Page 28)		
Option 1: Maintain existing thresholds.		
Option 2: Modify threshold for residential design permits. The threshold could be revised in multiple ways. Thresholds that could be modified to include:		
a. Increase existing threshold (greater than 400 square feet) for additions located on the rear of a single family home		
b. Allow first story additions (unlimited) that are located on the back of an existing home and comply with all standards of the code.		
c. Allow minor additions to the front of a building that upgrade the front façade and comply with all standards of the code. Minor additions could include enclosing recessed entrances, enclosing open front porches, and installation of bay windows.		
Notes:		
D. Design Permit Approval Authority – Residential Use (Page 29)		
Option 1: Maintain existing review authority.		
Option 2: Delegate limited approval authority to the Director With this option; the Director would approve more types of commercial projects requiring a Design Permit. For example, the Director could approve:		
Notes:		

Issues and Options Matrix		
	Direction	
	PC	CC
Issue 12: Design Permits (continued)		
E. Consideration for Design Permit Approval (Page 29)		
Option 1: Maintain existing architecture and site considerations.		
Option 2: Maintain the existing architecture and site considerations with additional considerations focused on design, including massing; height, scale and articulation, neighborhood compatibility; privacy; quality exterior materials; and submittal requirements		
Option 3: Update design considerations to focus on design rather than including ancillary issues. In this option, existing ancillary issues would be removed from the criteria and the updated list would focus on design, materials, context, and compatibility.		
Notes:		
Issue 13: Planned Development (Page 30)		
Option 1: Maintain existing regulations.		
Option 2: Reduce or eliminate minimum parcel size requirement. Reduce the minimum parcel size required to establish a PD district, or eliminate the minimum parcel size requirement entirely. This option would eliminate or establish a new minimum parcel size (possibly 1 or 2 acres). It is typical for there to be some minimum size requirement, so that individual single-family lots cannot be rezoned to PD, for example.		
Option 3: Modify approval process. Modify the planned development review process so that the City Council reviews the preliminary development plan as well as the general development plan. This change would add an additional step in the process but would increase certainty for applicants and allow the City Council to influence project design earlier in the process.		
Option 4: Eliminate PD. Eliminate the PD district entirely. To deviate from standards of the applicable zoning district, an applicant would need to receive a variance, a rezone, or some other exception to development standards.		
Notes:		

Issues and Options Matrix		
	Direction	
	PC	CC
Issue 14: Environmental and Hazard Overlays (Page 30)		
Option 1: Maintain existing overlays and clarify boundaries. In this option all five of the existing environmental and hazard overlays would be maintained and shown on the zoning map.		
<p>Option 2: Modify existing overlays. This option would modify existing overlays as described below:</p> <ul style="list-style-type: none"> • Archaeological/Paleontological Resources (APR). Eliminate this overlay zone. Continue to require the preparation of an archaeological survey report and mitigation plan for any project which disturbs native soils in an area with a probability of containing archaeological resources. Continue to address issue through CEQA process. • Automatic Review (AR). Remove this overlay zone as it duplicates current process. • Coastal Zone (CZ). Maintain this overlay zone as required by State law. • Floodplain (F). Move existing Chapter 17.50 (Floodplain District) out of the zoning code and remove the floodplain overlay boundaries from the zoning map. Floodplain regulations are administered by the Building Official, not the Community Development Director, and should be located in Title 15 (Buildings and Construction), not the zoning code. The boundaries of this overlay should not be included in the zoning map, as they are based on FIRM maps which are frequently changing, particularly with rising seas. • Geological Hazards (GH). Eliminate this overlay zone and replace with citywide standards for proposed development in beach areas, bluff and cliff areas, landslides-prone areas, and steep slope areas • Chapter 17.95 (Environmentally Sensitive Habitats). Map boundaries of these areas as a new overlay zone and maintain existing regulations. 		
Option 3: Create a new, consolidated environmental/hazards overlay. This option would merge the overlays into one new environmental/hazards overlay. The zoning code would state that proposed development within these areas could be subject to additional standards and limitations. The Coastal Zone overlay would remain as a separate overlay. This option could be combined with the creation of new citywide standards that would address geological hazards, flood hazards, sensitive habitat, and archaeological/paleontological resources.		
Notes:		

Issues and Options Matrix		
	Direction	
	PC	CC
Issue 15: Visitor-Serving Uses on Depot Hill (Page 31)		
Option 1: Maintain existing permitted uses.		
Option 2: Modify permitted use. With this option the VS zoning would remain on the El Salto and Monarch Cove Inn properties, but the land uses permitted on the properties would be restricted. For example, uses permitted on the Monarch Cove Inn property could be limited to residential and visitor accommodation uses, with other non-residential commercial uses currently allowed, such as carnivals and circuses, no longer permitted.		
Option 3: Limit intensity of visitor accommodation uses. This option would also maintain the VS zoning on the El Salto and Monarch Cove Inn properties, but would reduce the maximum permitted intensity of hotels and other visitor accommodation uses on the site. This could be accomplished by limiting the square footage of new or existing uses, specifying a maximum number of permitted guest rooms, or reducing the maximum allowable lot coverage on the site.		
Option 4: Rezone to R-1. A final option is to eliminate the VS zoning that applies to the Monarch Cove Inn and El Salto properties. Currently the properties are subject to VS/R-1 “dual zoning,” meaning that both the R-1 and VS zoning standards apply to the property. If the VS zoning were eliminated, visitor accommodation and related visitor-serving uses (aside from bed and breakfast establishments) would not be allowed on the properties.		
Notes:		

Issues and Options Matrix		
	Direction	
	PC	CC
Issue 16: Height (Page 32)		
A. Residential Neighborhoods (Page 32)		
Option 1: Maintain existing standards.		
Option 2: Eliminate 27-foot exception. This option would eliminate the 27-foot height exception by requiring all buildings to meet either a 25-foot or 27-foot height standard.		
Option 3: Allow greater variation based on existing neighborhood character. This option would allow greater variation in permitted building height based on neighborhood characteristics. There are a number of different ways to achieve this as described in Issue #1.		
Notes:		
B. Capitola Village (Page 33)		
Option 1: Maintain existing standard.		
Option 2: Expand exception provisions. With this option the zoning code could modify the existing exception provision to allow taller buildings in more cases. For example, the Planning Commission could allow taller buildings if it would allow for a superior design or would enable the project to provide a substantial community benefit.		
Option 3: Increase maximum height limit to accommodate 3 stories. The zoning code could increase the maximum allowed building height to accommodate three stories. This could be accompanied by new standards and findings to ensure taller buildings are compatible with the existing Village character and don't negatively impact adjacent residential areas. Allowing three-story buildings in the Village could increase opportunity for new vertical mixed use development with ground floor retail and housing or office uses above.		
Notes:		

Issues and Options Matrix		
	Direction	
	PC	CC
Issue 16: Height (continued)		
C. Hotel (Page 33)		
Option 1: Apply CV Zone Standard to Hotel. This option would apply the same height standard to the Village hotel that applies to all other properties in the Village. If the maximum permitted height in the CV remains at 27 feet, the hotel could also not exceed 27 feet. However, this option would not be consistent with General Plan goals and Policy LU-7.5.		
Option 2: Establish Performance Standard for Hotel Height. In zoning codes, performance standards dictate a specific outcome and provide flexibility in how best to achieve the outcome on a case-by-case basis. The Zoning code could establish a performance standard for the Hotel height instead of a numerical standard. This performance standard could be similar to the guiding principle in the General Plan that the maximum height of the hotel should remain below the elevation of the bluff behind and that the bluff behind the hotel should remain legible as a green edge with existing mature trees maintained on site.		
Option 3: Establish a Numerical Standard Unique to Hotel. The updated zoning code could contain a specific numerical standard for the maximum hotel height. One approach might be to limit building height at the Monterey Avenue frontage to two stories but allow a greater maximum height at the rear of the property as contemplated in the General Plan.		
Notes:		

Issues and Options Matrix		
	Direction	
	PC	CC
Issue 17: Floor Area Ratio (Page 34)		
A. Decks (Page 35)		
Option 1: Maintain existing standards.		
Option 2: Increase allowance beyond 150 sf. Update Floor Area calculation to increase the amount of area within covered first story decks and second story decks that is not counted toward the floor area calculation. The 150 sf allowance could be doubled to 300 sf.		
<p>Option 3: Add exception for special circumstances. There are special circumstances in which allowing a second story deck will not have an impact on neighbors or may be an asset to the public. The code could include exceptions for special circumstances to allow larger decks that are not counted toward the floor area.</p> <ul style="list-style-type: none"> a. Front Façade. Privacy issues are typically on the side and back of single family homes. The ordinance could consider increased flexibility for decks on the first and second story front facades to allow for increased articulation while not impacting privacy of neighbors. There are two options for decks on front facades. The first is to increase the allowed deck area (beyond 150 sf) on the front façade of a home. The second option is to remove front façade decks from the calculation entirely by including front story decks within the list of items <i>not</i> included in the floor area calculation. b. Open Space. There are a number of homes in Capitola that are located adjacent to open space. For example, the homes located along Soquel Creek and ocean front properties. Similar to the prior exception, the code could be revised to either increase the allowed deck area or remove the calculation entirely for decks located on elevations facing open space. c. Restaurants and Hotels. Visitor experiences are enhanced when they take in a view. The code currently does not include an exception for decks on hotels or restaurants. The code could be revised to either increase the maximum allowed deck area of restaurants and hotels or remove decks on restaurants and hotels from the floor area calculation entirely. d. Eliminate decks from FAR formula 		
Notes:		

Issues and Options Matrix		
	Direction	
	PC	CC
Issue 17: Floor Area Ratio (Continued)		
B. Basements (Page 35)		
Option 1: Maintain existing standards.		
Option 2: Increase existing allowance beyond 250 square feet.		
Option 3: Remove basements from FAR formula.		
Notes:		
C. Phantom Floors, Roof Eaves, and Window Projections (Bay Windows) (Page 36)		
Option 1: Maintain existing standards.		
Option 2: Remove phantom floors from the FAR calculation.		
Option 3: Remove roof eaves from the FAR calculation.		
Option 4: Remove window projects from FAR calculation.		
Option 5: Remove a combination of phantom floors, roof eaves, and/or window projections from the FAR calculation.		
Notes:		

Issues and Options Matrix		
	Direction	
	PC	CC
Issue 18: City Council Appeal of Planning Commission Decision (Page 36)		
Option 1: Maintain existing appeal process.		
Option 2: Add “call-up” procedure without requirement of majority vote by CC to call-up an application.		
Option 3: Add “call-up” procedure and require majority vote by City Council to call-up an application.		
Notes:		



CITY COUNCIL AGENDA REPORT

MEETING OF MARCH 12, 2015

FROM: COMMUNITY DEVELOPMENT DEPARTMENT

SUBJECT: ORDINANCE AMENDING ZONING CODE CHAPTER 17.03 TO DEFINE SUPPORTIVE AND TRANSITIONAL HOUSING AS REQUIRED BY STATE LAW

RECOMMENDED ACTION: Amend the Capitola Municipal Code Chapter 17.03 to add definitions for Supportive and Transitional Housing.

BACKGROUND: The City of Capitola's current Housing Element was adopted by the City Council on February 11, 2010, and certified by the California Department of Housing and Community Development (HCD) on April 6, 2010. HCD's approval and certification of the Housing Element was conditioned upon the City's commitment to complete a number of action items during the 2007-2014 planning period.

The 2007-2014 Housing Element included six action items which were to be completed within one year of adoption. Five of the six action items were completed in 2011, when the City Council adopted a series of ordinances to address issues related to secondary dwelling units, single-room occupancy units (SROs), reasonable accommodation, and emergency shelters. The final uncompleted action item from the 2007-2014 Housing Element is to add definitions for Supportive Housing and Transitional Housing in the Zoning Code as required by State law.

DISCUSSION: In 2007, Senate Bill 2 (SB 2) was signed into law. The statute requires every California city and county to, among other things, define Transitional and Supportive Housing as a residential use subject only to those restrictions which apply to other residential uses in the same zone. To fulfill SB 2 requirements, the City must amend Zoning Code Chapter 17.03 to add definitions for Transitional and Supportive Housing.

Because SB 2 already prevents cities from regulating supportive and transitional housing more restrictively than other residential uses, the proposed ordinance amendment would simply align Capitola's Zoning Code with State law and would not further limit the City's legal authority to regulate Transitional and Supportive Housing units.

Transitional Housing, as defined by Section 50675.2 of the California Health and Safety Code, is a form of rental housing, which may include multi-family housing, single-family housing, or group homes. Transitional Housing is operated under State or Federal program requirements which call for termination of assistance and recirculation of the housing unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six months.

Item #: 10.D. Staff Report.pdf

AGENDA STAFF REPORT March 12, 2015
Ordinance Amendment for Supportive and Transitional Housing

Supportive Housing, as defined by Section 50675.14 of the California Health and Safety Code, is housing with no limit on the length of stay, occupied by a target population. The target population for supportive housing includes low-income persons having one or more disabilities. These disabilities may include mental illness, substance abuse, or other chronic health conditions. Supportive Housing is also linked to on-site or off-site services that assist residents in retaining their housing, improving their health, and maximizing their ability to live, and when possible, work in the community.

State law allows a distinction in the permitting requirements for residential care facilities in single-family zones based on the number of people served by the housing type. A size distinction currently exists in the City's Zoning Code for residential care facilities. Facilities serving six or fewer residents are allowed by right in accordance with State law; facilities serving seven or more residents are conditionally permitted. The proposed ordinance amendment would retain this permitting approach for Supportive and Transitional Housing Facilities in single-family residential zones to ensure that larger facilities are considered by the Planning Commission at a noticed public hearing.

Adoption of the proposed ordinance amendment would ensure full compliance with the provisions of SB 2 and will enable the City to take advantage of HCDs streamlined Housing Element Update process.

FISCAL IMPACT: None

ATTACHMENTS:

1. Proposed Ordinance Amendment to Municipal Code Section 17.03
2. CA HCD Senate Bill 2 FAQ Sheet

Report Prepared By: Richard Grunow
Community Development Director

Reviewed and Forwarded
By City Manager: 

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
AMENDING CHAPTER 17.03 OF THE CAPITOLA MUNICIPAL CODE BY
ADDING SECTIONS 17.03.665 AND 17.03.688 TO DEFINE SUPPORTIVE HOUSING
AND TRANSITIONAL HOUSING AS REQUIRED BY STATE LAW**

BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPITOLA AS
FOLLOWS:

Section 1. Section 17.03.665 is hereby added to the Capitola Municipal Code to read as follows:

“17.03.665 Supportive Housing.

“Supportive Housing” means housing with no limit on length of stay and that is occupied by a target population as defined in subdivision (d) of Section 53260 of the California Health & Safety Code, and that is linked to onsite or offsite services that assist residents in retaining housing, improving their health status, maximizing their ability to live and, when possible, work in the community. Supportive Housing shall be treated as a residential use and shall be subject only to those restrictions that apply to other residential uses of the same residential housing type located in the same zoning district.”

Section 2. Section 17.03.688 is hereby added to the Capitola Municipal Code to read as follows:

“17.03.688 Transitional Housing.

“Transitional Housing” means residential units operated under program requirements that call for: 1) the termination of any assistance to an existing program recipient, and 2) the subsequent recirculation of the assisted residential unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six months. Transitional Housing may be provided in all residential housing types. In all cases, Transitional Housing is and shall be treated as a residential use and shall be subject only to those restrictions that apply to other residential uses of the same residential housing type located in the same zoning district.

Section 3. This ordinance shall take effect and be in full force thirty (30) days after its final adoption.

This ordinance was introduced on the 12th day of March, 2015, and was passed and adopted by the City Council of the City of Capitola on the ___ day of _____, 2015, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

APPROVED:

Dennis R. Norton, Mayor

ATTEST:

_____, CMC
Susan Sneddon, City Clerk

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**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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MEMORANDUM

Updated: April 10, 2013

DATE: May 7, 2008

TO: Planning Directors and Interested Parties

FROM: 
Cathy E. Creswell, Deputy Director
Division of Housing Policy Development

SUBJECT: **Senate Bill 2 -- Legislation Effective January 1, 2008:
*Local Planning and Approval for Emergency Shelters and
Transitional and Supportive Housing***

Chapter 633, Statutes of 2007 (SB 2) clarifies and strengthens housing element law to ensure zoning encourages and facilitates emergency shelters and limits the denial of emergency shelters and transitional and supportive housing under the Housing Accountability Act. The law will facilitate efforts to address the critical needs of homeless populations and persons with special needs throughout all communities in California. Generally, SB 2 amends housing element law regarding planning and approval for emergency shelters and transitional and supportive housing as follows:

Planning (Government Code Section 65583)

- At least one zone shall be identified to permit emergency shelters without a conditional use permit or other discretionary action.
- Sufficient capacity must be identified to accommodate the need for emergency shelters and at least one year-round emergency shelter.
- Existing or proposed permit procedures, development and management standards must be objective and encourage and facilitate the development of or conversion to emergency shelters.
- Emergency shelters shall only be subject to development and management standards that apply to residential or commercial within the same zone.
- Written and objective standards may be applied as specified in statute, including maximum number of beds, provision of onsite management, length of stay and security.
- Includes flexibility for jurisdictions to meet zoning requirements with existing ordinances or demonstrate the need for emergency shelters can be accommodated in existing shelters or through a multi-jurisdictional agreement.

Item #: 10.D. Attach 2.pdf

Chapter 633, Statutes of 2007 (SB 2)

Page 2

- Transitional and supportive housing shall be considered a residential use and only subject to those restrictions that apply to other residential uses of the same type in the same zone.

Local Approval (Government Code Section 65589.5: Housing Accountability Act)

- Limits denial of emergency shelters, transitional housing or supportive housing by requiring specific findings.
- Some findings shall not be utilized if new planning requirements of SB 2 are not met; such as identifying a zone without a conditional use permit,

Attached is a briefing paper informing local governments of SB 2, providing assistance in evaluating these new provisions to effectively implement this important new State law; in addition to a copy of the legislation. Electronic copies of these can be found on the Department's website at www.hcd.ca.gov or the Senate's website at www.senate.ca.gov. You may also obtain copies of published bills from the Legislative Bill Room by calling (916) 445-2323. If you have any questions, or seek additional technical assistance, please contact Paul McDougall, HPD Manager, at (916) 445-4728.

Attachments

Chapter 633, Statutes of 2007 (Senate Bill 2)

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Introduction

Homeless Needs

Homelessness in California is a continuing and growing crisis. On any given day, there are at least 361,000 homeless individuals in California – or 1.1 percent of the State’s total population. Of this number, two-thirds are estimated to be single adults, while the other third are families. Some 30 percent of California’s homeless – 108,000 – are so-called “chronic” homeless who have been homeless for six months or more. This population tends to be comprised of single adults who face such obstacles as mental illness, substance abuse problems and chronic physical health problems or disabilities that prevent them from working. Homeless individuals and families are without permanent housing largely because of a lack of affordable housing, often compounded by limited education or skills, mental illness and substance abuse issues, domestic violence and the lack of family or other support networks.¹

California’s homelessness crisis demands the effective involvement of both the public and private sectors. A housing element can be an effective and powerful tool in combating homelessness. Passage of SB 2 strengthened the law to increase its effectiveness in addressing the needs of California’s homeless population. The upcoming housing element update presents an important opportunity to make ending homelessness a critical priority.

Purpose and Objectives of SB 2

The framework of SB 2 resulted from a collaborative effort by key stakeholders including housing and homeless advocates and providers, local governments, planners, and the building industry. SB 2 strengthens existing housing element requirements to provide the opportunity for the development of emergency shelters and transitional and supportive housing. SB 2 ensures zoning, development and management standards and permit procedures encourage emergency shelters while allowing flexibility for existing local strategies and cooperative efforts.

SB 2 focuses on the impacts of zoning requirements on the development of emergency shelters. While the new statute requires that every local government zone for the development of emergency shelters, it does not restrict how local governments allocate resources to address local priority needs. For example, nothing in SB 2 prohibits communities from also adopting a “Housing First” strategy to provide homeless persons with housing immediately and then providing services as needed.

¹ *Governor’s Interagency Task Force on Homelessness, Progress Report and Work Plan for 2003.* Health and Human Services Agency and Business, Transportation and Housing Agency, December 2002

Section 1

Planning

(Government Code Section 65583)

Identifying and Analyzing Needs and Resources

Current law, Government Code Section 65583(a)(7), requires an identification and analysis of the needs of homeless persons and families. The analysis is an essential component of an effective housing element; however data sources can be limited and vary in estimates of need. As a result, an analysis should consider a variety of data sources and include proactive outreach with service providers to examine the degree and characteristics of homeless needs in the community and surrounding communities. A thorough analysis includes:

- An estimate or count of the daily average number of persons lacking shelter. Wherever possible, and to better describe the characteristics of needs, this figure could be divided into single males, single females and families (one or more adults with children) as the needs of each subgroup differ significantly.
- As local data or other existing sources permit (see list below), a description of the percentage of the homeless population who are mentally ill, developmentally disabled, veterans, runaway or emancipated foster youth, substance abusers, survivors of domestic violence, and other subpopulations of homeless considered significant by the jurisdiction.
- An inventory of the resources available within the community including shelters, transitional housing and supportive housing units by type. The analysis should estimate the number and type of existing shelter beds, and units of transitional and supportive housing available.
- Assess the degree of unmet homeless needs, including the extent of need for emergency shelters. As part of this analysis, SB 2 now clarifies the need assessment for emergency shelters must consider seasonal and year-round need. In recognition of local efforts to encourage supportive housing, SB 2 allows jurisdictions with 10 Year Plans to End Chronic Homelessness to reduce the need for emergency shelters by the number of supportive housing units identified in an adopted 10-year plan and that are either vacant or funding has been identified to allow construction in the housing element planning period.

Resources to identify and analyze homeless needs, include:

- Consolidated plans
- Continuum of care plans
- 10 Year Plans to End Chronic Homelessness
- Interagency Council on Homelessness, Guide to Developing Plans and Examples (<http://www.ich.gov/slocal/index.html>)

- Local service providers such as continuum of care providers, local homeless shelter and service providers, food programs, operators of transitional housing programs, local drug and alcohol program service providers, county mental health and social service departments, local Salvation Army, Goodwill Industries, churches and schools, and
- 15 countywide Designated Local Boards certified by the Department's Emergency Housing and Assistance Program (<http://www.hcd.ca.gov/fa/ehap/cntys-with-dlb.html>).

Identifying Zoning for Emergency Shelters

Prior to enactment of SB 2, housing element law required local governments to identify zoning to encourage and facilitate the development of emergency shelters. SB 2 strengthened these requirements. Most prominently, housing element law now requires the identification of a zone(s) where emergency shelters are permitted without a conditional use permit or other discretionary action. To address this requirement, a local government may amend an existing zoning district, establish a new zoning district or establish an overlay zone for existing zoning districts. For example, some communities may amend one or more existing commercial zoning districts to allow emergency shelters without discretionary approval. The zone(s) must provide sufficient opportunities for new emergency shelters in the planning period to meet the need identified in the analysis and must in any case accommodate at least one year-round emergency shelter (see more detailed discussion below).



Cloverfield Services Center – Emergency Shelter by OPCC in Santa Monica, CA
Photo courtesy of OPCC in Santa Monica

When identifying a zone or analyzing an existing zone for emergency shelters, the element should address the compatibility and suitability of the zone. The element should consider what other uses are permitted in the zone and whether the zone is suitable for residential or emergency shelters. For example, an industrial zone with heavy manufacturing may have environmental conditions rendering it unsuitable for residential or shelter uses. In some localities, manufacturing or industrial zones may be in transition, where older industrial uses are redeveloping to residential, office or commercial. Transitioning zones may be compatible

with residential uses and suitable for emergency shelters. Also, a commercial zone allowing residential or residential compatible services (i.e., social services, offices) would be suitable for shelters. For example, Sacramento County permits emergency shelters in its commercial zone along with other residential uses and uses such as retail that are compatible with residential.

SB 2 clarifies existing law by requiring zoning identified for emergency shelters to include sufficient capacity to accommodate the need. The identified zone(s) must have sufficient capacity, when taken as a whole, to meet the need for shelters identified in the housing element, and have a realistic potential for development or reuse opportunities in the planning period. Further, capacity for emergency shelters must be suitable and available and account for physical features (flooding, seismic hazards, chemical contamination, other environmental constraints, and slope instability or erosion) and location (proximity to transit, job centers, and public and community services). The element should also address available acreage (vacant or underutilized) and the realistic capacity for emergency shelters in the zone. For example, if a jurisdiction identifies the public institution zoning district as the zone where emergency shelters will be allowed without a conditional use permit, the element should demonstrate sufficient acreage within the zoning district that could accommodate the actual development of an emergency shelter. The element could also discuss the potential for reuse or conversion of existing buildings to emergency shelters.

SB 2 ensures that each local government shares the responsibility to provide opportunities for the development of emergency shelters. Regardless of the extent of need identified in the element, local governments must provide zoning to allow at least one year round emergency shelter, unless the need for emergency shelters is accommodated through existing shelters or a multi-jurisdictional agreement (see discussion below). This is especially important given the fact that the homeless population is not always visible in the community; is sometimes transitory; data resources are frequently inadequate and the availability and adequacy of services and programs vary significantly by community and can impact the homeless count.

If a local government's existing zoning does not allow emergency shelters without a conditional use permit or other discretionary action, the housing element must include a program to identify a specific zone(s) and amend the zoning code within one year of adoption of the housing element (65583(a)(4)). The only exceptions permitted to the non-discretionary zoning requirement are where a jurisdiction demonstrates their homeless needs can be accommodated in existing shelters; or where the jurisdiction meets all of its need through a multi-jurisdictional agreement (discussed in later sections).

Where a local government has identified a zone and sufficient capacity to encourage emergency shelters consistent with the provisions of SB 2, a local government may also identify additional zones for the development of emergency shelters that require a conditional use permit.

Permitting Emergency Shelters without Discretionary Action

To comply with SB 2, localities must have or adopt a zoning classification that permits emergency shelters in a non-discretionary manner (localities may however apply development standards pursuant to Section 65583(a)(4)). In such zones, permitted uses, development standards and permit procedures must include:

- Objective development standards that encourage and facilitate the approval of emergency shelters.
- Decision-making criteria such as standards that do not require discretionary judgment.
- Standards that do not render emergency shelters infeasible, and only address the use as an emergency shelter, not the perceived characteristics of potential occupants.

Requiring a variance, minor use permit, special use permit or any other discretionary process does not constitute a non-discretionary process. However, local governments may apply non-discretionary design review standards.



Emergency Shelter – Jackson, California
Photo courtesy of Amador-Tuolumne Community Action

A local government should not require public notice of its consideration of emergency shelter proposals unless it provides public notice of other non-discretionary actions. For example, if a local government permits new construction of a single-family residence without discretionary action and public notice is not given for these applications, then a local government should employ the same procedures for emergency shelter applications. The appropriate point for public comment and discretionary action is when zoning is being amended or adopted for emergency shelters, not on a project-by-project basis.

Development Standards to Encourage and Facilitate Emergency Shelters

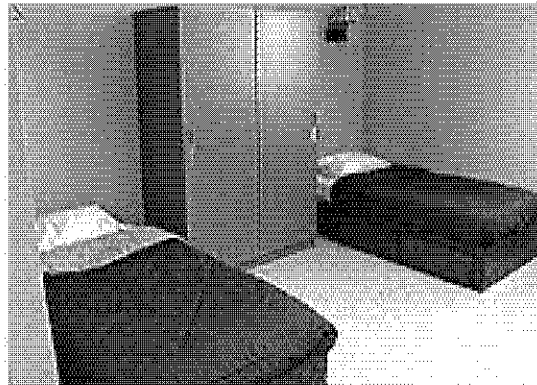
SB 2 requires that emergency shelters only be subject to those development and management standards that apply to residential or commercial use within the same zone, except the local government may apply certain objective standards discussed on the next page (Government Code Section 65583(a)(4)). For example, a light commercial zone might permit a range of wholesaler, service repair and business services subject to buildable area and lot area requirements. In this case, the emergency shelter may be subject only to the same buildable area and lot area requirements. The same zone might permit residential uses subject to certain development standard (i.e., lot area, heights, and setbacks) requirements. In this case, emergency shelters should only be subject to the same development standards.

To demonstrate that processing procedures and standards are objective and encourage and facilitate development of emergency shelters, the housing element must address how:

- zoning explicitly allows the use (meaning the use is specifically described in the zoning code);
- development standards and permit procedures do not render the use infeasible;
- zoning, development and management standards, permit procedures and other applicable land-use regulations promote the use through objective; and predictable standards.

SB 2 allows flexibility for local governments to apply written, objective development and management standards for emergency shelters as described in statute and below.

- The maximum number of beds or persons permitted to be served nightly by the facility.
- Off-street parking based upon demonstrated need, provided that the standards do not require more parking for emergency shelters than for other residential or commercial uses within the same zone.
- The size and location of exterior and interior on-site waiting and client intake areas.
- The provision of on-site management.
- The proximity to other emergency shelters provided that emergency shelters are not required to be more than 300 feet apart.
- The length of stay.
- Lighting.
- Security during hours that the emergency shelter is in operation.



These standards must be designed to encourage and facilitate the development of, or conversion to, an emergency shelter. For example, a standard establishing the maximum number of beds should act to encourage the development of an emergency shelter; local governments should establish flexible ranges for hours of operation; length of stay provision should be consistent with financing programs or statutory definitions limiting occupancy to six months (Health and Safety Code Section 50801) and should not unduly impair shelter operations. Appropriate management standards are reasonable and limited to ensure the operation and maintenance of the property.

Encouraging Multi-Jurisdictional Cooperation and Coordination

SB 2 recognizes and encourages multi-jurisdictional coordination by allowing local governments to satisfy all or part of their obligation to zone for emergency shelters by adopting and implementing a multi-jurisdictional agreement, with a maximum of two adjacent communities. The agreement must commit the participating jurisdictions to develop at least one year-round shelter within two years of the beginning of the housing element planning period. For example, jurisdictions in Southern California Association of Governments (SCAG) region with a statutory due date of June 30, 2008 would need to ensure the development of shelter(s) by June 30, 2010. To utilize this provision, local governments must adopt an agreement that allocates a portion of the new shelter capacity to each jurisdiction as credit towards the jurisdiction's emergency shelter need. The housing element for each participating local government must describe how the capacity was allocated. In addition, the housing element of each participating jurisdiction must describe:

- How the joint facility will address the local governments need for emergency shelters.
- The local government's contribution for both the development and ongoing operation and management of the shelter.
- The amount and source of the funding to be contributed to the shelter.
- How the aggregate capacity claimed by all of the participating jurisdictions does not exceed the actual capacity of the shelter facility.

If the local government can demonstrate that the multi-jurisdictional agreement can accommodate the jurisdiction's need for emergency shelter, the jurisdiction is authorized to comply with the zoning requirements for emergency shelters by identifying a zone(s) where new emergency shelters are allowed with a conditional use permit.

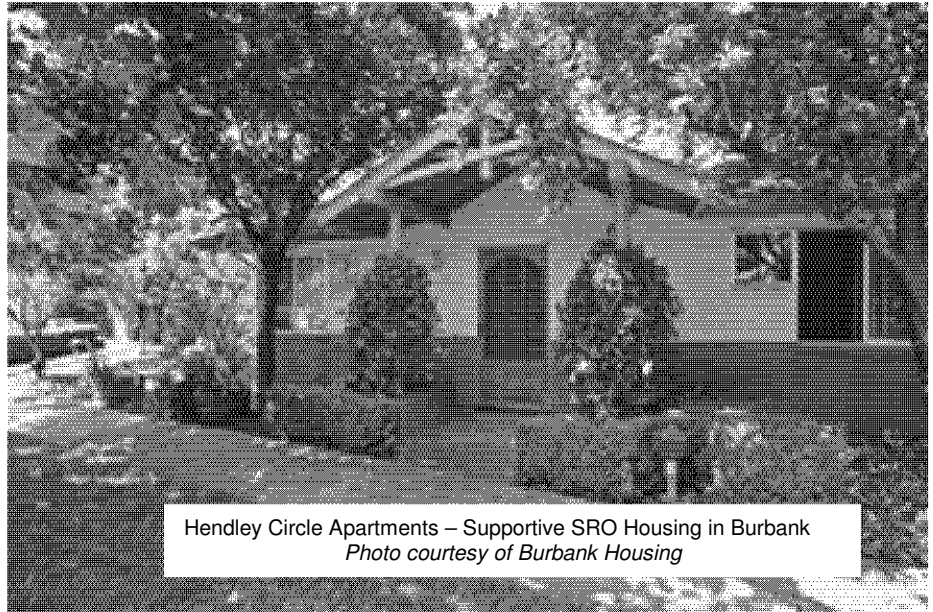


Quinn Cottages, Transitional Housing in Sacramento, CA
Photo courtesy of Cottage Housing, Inc.

Existing Ordinances and Existing Shelters that Accommodate Need

Existing Ordinances Permitting Emergency Shelters

Many local governments have a record of effective actions to address the homeless needs in their community. SB 2 recognizes and provides flexibility for jurisdictions that have already adopted an ordinance(s) that complies with the new zoning requirements. For those local governments with existing ordinances and zoning consistent with requirements of SB 2, no further action will be required to identify zones available



Hendley Circle Apartments – Supportive SRO Housing in Burbank
Photo courtesy of Burbank Housing

for emergency shelters. The housing element must however, describe how the existing ordinance, policies and standards are consistent with the requirements of SB 2.

Existing Shelters That Accommodate the Need for Emergency Shelters

Local governments that can demonstrate, to the satisfaction of the Department, the existence of one or more emergency shelters either within the jurisdiction or pursuant to a multi-jurisdictional agreement that can accommodate the need for emergency shelters identified in the housing element may comply with the zoning requirements of SB 2 by identifying a zone(s) where new emergency shelters are allowed with a conditional use permit. To demonstrate homeless needs can be accommodated in existing shelters, an element must at minimum list existing shelters including the total number of beds and the number vacant. The analysis should support and document the estimate of vacant beds and must consider seasonal fluctuations in the need for emergency shelters.

Transitional and Supportive Housing

Transitional housing is defined in Section 50675.2 of the Health & Safety Code as rental housing for stays of at least six months but where the units are re-circulated to another program recipient after a set period. Transitional housing may be designated for a homeless individual or family transitioning to permanent housing. This housing can take several forms,

such as single family or multifamily units, and may include supportive services to allow individuals to gain necessary life skills in support of independent living. *Supportive housing* as defined at Section 50675.14 of the Health & Safety Code has no limit on the length of stay, is linked to onsite or offsite services, and is occupied by a target population as defined in Health & Safety Code Section 53260. Services typically include assistance designed to meet the needs of the target population in retaining housing, living and working in the community, and/or improving health and may include case management, mental health treatment, and life skills.

The housing element must demonstrate that transitional housing and supportive housing are permitted as a residential use and only subject to those restrictions that apply to other residential dwellings of the same type in the same zone (Government Code Section 65583(a)(5)). In other words, transitional housing and supportive housing are permitted in all zones allowing residential uses and are not subject to any restrictions (e.g., occupancy limit) not imposed on similar dwellings (e.g., single family home, apartments) in the same zone in which the transitional housing and supportive housing is located. For example, transitional housing located in an apartment building in a multifamily zone is permitted in the same manner as an apartment building in the same zone and supportive housing located in a single family home in a single family zone is permitted in the same manner as a single family home in the same zone.

If jurisdictions do not explicitly permit transitional and supportive housing as previously described, the element must include a program to ensure zoning treats transitional and supportive housing as a residential use, subject only to those restrictions on residential uses contained in the same type of structure.

Housing Element Policies and Programs

Effective programs reflect the results of the local housing need analyses, identification of available resources, including land and financing, and the mitigation of identified governmental and nongovernmental constraints.

Programs consist of specific action steps the locality will take to implement its policies and achieve goals and objectives. Programs must

include a specific timeframe for implementation, identify the agencies or officials responsible for implementation, and describe the jurisdiction's specific role in implementation.

Where a jurisdiction does not provide an analysis demonstrating compliance with the provisions of SB 2 through existing zoning, the element must have a program(s) to address the results of that analysis. For example, if the element does not identify an existing zone to



Gish Apartments – Supportive Housing, San Jose, CA
Photo courtesy of First Community Housing and Bernard Andre

permit emergency shelters without a conditional use permit or other discretionary action, the element must include a program to establish the appropriate zoning, unless the jurisdiction has satisfied its needs through existing emergency shelters or a multi-jurisdictional agreement. If development and management standards do not encourage and facilitate emergency shelters or zoning does not treat transitional and supportive housing as a residential use, the element must include a program(s) to amend existing zoning or processing requirements to comply with SB 2.

Programs to address the requirements of SB 2 for emergency shelters must be implemented within one year of adoption of the housing element. Programs to address requirements for transitional and supportive housing should be implemented early in the planning period. Further, since the program for emergency shelters must be implemented within one year of adoption, the housing element should provide analysis to support and assure effective implementation of the program. For example, the analysis should examine the suitability of zones to be included in the program and whether sufficient and suitable capacity is available. The same type of analysis could evaluate development and management standards that will be considered as part of establishing or amending zoning. This analysis should demonstrate the necessary commitment to ensure zoning, permit procedures and development standards encourage and facilitate emergency shelters.

******* UPDATED*******

Please be aware, if the adopted housing element from the previous cycle (4th cycle) included a program to address the requirements of SB 2 for emergency shelters, and the required timeframe has lapsed, the Department will not be able to find future housing elements in compliance until the required rezoning is complete and the element is amended to reflect that rezoning.

Timing: When SB 2 Applies

In accordance with Government Code Section 65583(e), any draft housing element submitted to the Department after March 31, 2008 will be required to comply with SB 2.

Section 2

Local Approval

(Government Code Section 65589.5)

The Housing Accountability Act

To promote predictability for the development of housing affordable to lower- and moderate-income households, the Housing Accountability Act (Government Code Section 65589.5) prohibits a jurisdiction from disapproving a housing development project, including housing for farmworkers and for very low-, low-, or moderate-income households, or conditioning approval in a manner that renders the project infeasible for development for the use of very low-, low-, or moderate-income households, including through the use of design review standards, unless it makes at least one of five specific written findings based on substantial evidence in the record (Government Code Section 65589.5).

SB 2 adds emergency shelters to the list of uses protected under the Housing Accountability Act. In addition, SB 2 clarifies that the definition of a housing development project includes transitional or supportive housing (see Attachment 1: SB 2 - changes are underlined).

Zoning Inconsistency

Pursuant to the Housing Accountability Act, a local government is prohibited from making the finding regarding zoning and general plan inconsistency (Section 65589.5(d)(5)) to disapprove a development if the jurisdiction identified the site in its general plan (e.g., housing or land-use element) as appropriate for residential use at the density proposed or failed to identify adequate sites to accommodate its share of the regional housing need for all income groups. In addition to extending these provisions to emergency shelters and transitional housing, SB 2 prohibits the use of the zoning and general plan inconsistency finding to disapprove an emergency shelter if the jurisdictions have:

- not identified a zone(s) where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit,
- not demonstrated the identified zone(s) include sufficient capacity to accommodate the need for emergency shelter, or
- not demonstrated the identified zone(s) can accommodate at least one emergency shelter.

This provision applies to any site identified in any element of the general plan for industrial, commercial, or multifamily residential uses. In any court action, the burden of proof is on the local jurisdiction to demonstrate its housing element satisfies the above requirements of SB 2.

Attachment 1

Statutory Changes to Housing Element Law (*underline version*)

Attachment 1

Changes to State Housing Element Law
Chapter 633, Statutes of 2007 (SB 2)
(changes indicated in strikeouts and underlines)

65582. As used in this article, the following definitions apply:

- (a) "Community," "locality," "local government," or "jurisdiction" means a city, city and county, or county.
- (b) "Council of governments" means a single or multicounty council created by a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 1 of Title 1.
- (c) "Department" means the Department of Housing and Community Development.
- (d) "Emergency shelter" has the same meaning as defined in subdivision (e) of Section 50801 of the Health and Safety Code.
- (e) "Housing element" or "element" means the housing element of the community's general plan, as required pursuant to this article and subdivision (c) of Section 65302.
- (f) "Supportive housing" has the same meaning as defined in subdivision (b) of Section 50675.14 of the Health and Safety Code.
- (g) "Transitional housing" has the same meaning as defined in subdivision (h) of Section 50675.2 of the Health and Safety Code.

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, ~~and~~ mobilehomes, and emergency shelters, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

- (a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:
 - (1) An analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected housing needs for all income levels, including extremely low income households, as defined in subdivision (b) of Section 50105 and Section 50106 of the Health and Safety Code. These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584. Local agencies shall calculate the subset of very low income households allotted under Section 65584 that qualify as extremely low income households. The local agency may either use available census data to calculate the percentage of very low income households that qualify as extremely low income households or presume that 50 percent of the very low income households qualify as extremely low income households. The number of extremely low income households and very low income households shall equal the jurisdiction's allocation of very low income households pursuant to Section 65584.
 - (2) An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) (A) The identification of a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit. The identified zone or zones shall include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7), except that each local government shall identify a zone or zones that can accommodate at least one year-round emergency shelter. If the local government cannot identify a zone or zones with sufficient capacity, the local government shall include a program to amend its zoning ordinance to meet the requirements of this paragraph within one year of the adoption of the housing element. The local government may identify additional zones where emergency shelters are permitted with a conditional use permit. The local government shall also demonstrate that existing or proposed permit processing, development, and management standards are objective and encourage and facilitate the development of, or conversion to, emergency shelters. Emergency shelters may only be subject to those development and management standards that apply to residential or commercial development within the same zone except that a local government may apply written, objective standards that include all of the following:

(i) The maximum number of beds or persons permitted to be served nightly by the facility.

(ii) Off-street parking based upon demonstrated need, provided that the standards do not require more parking for emergency shelters than for other residential or commercial uses within the same zone.

(iii) The size and location of exterior and interior onsite waiting and client intake areas.

(iv) The provision of onsite management.

(v) The proximity to other emergency shelters, provided that emergency shelters are not required to be more than 300 feet apart.

(vi) The length of stay.

(vii) Lighting.

(viii) Security during hours that the emergency shelter is in operation.

(B) The permit processing, development, and management standards applied under this paragraph shall not be deemed to be discretionary acts within the meaning of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(C) A local government that can demonstrate to the satisfaction of the department the existence of one or more emergency shelters either within its jurisdiction or pursuant to a multijurisdictional agreement that can accommodate that jurisdiction's need for emergency shelter identified in paragraph (7) may comply with the zoning requirements of subparagraph (A) by identifying a zone or zones where new emergency shelters are allowed with a conditional use permit.

(D) A local government with an existing ordinance or ordinances that comply with this paragraph shall not be required to take additional action to identify zones for emergency shelters. The housing element must only describe how existing ordinances, policies, and standards are consistent with the requirements of this paragraph.

(5) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in

the analysis pursuant to paragraph (6), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities identified pursuant to, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph Transitional housing and supportive housing shall be ~~(5) considered a residential use of property, and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone.~~

~~(6)~~ An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

~~(67)~~ An analysis of any special housing needs, such as those of the elderly, persons with disabilities, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter. The need for emergency shelter shall be ~~(7) assessed based on annual and seasonal need. The need for emergency shelter may be reduced by the number of supportive housing units that are identified in an adopted 10-year plan to end chronic homelessness and that are either vacant or for which funding has been identified to allow construction during the planning period.~~

~~(8)~~ An analysis of opportunities for energy conservation with respect to residential development.

~~(89)~~ An analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use. "Assisted housing developments," for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. "Assisted housing developments" shall also include multifamily rental units that were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use and the total number of elderly and nonelderly units that could be lost from the locality's low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is comparable in size and rent levels, to replace the units that could change from low-income use, and an estimated cost of preserving the assisted housing developments. This cost analysis for replacement housing may be done aggregately for each five-year period and does not have to contain a project-by-project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the local government which have legal and managerial capacity to acquire and manage these housing developments.

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs which can be used to preserve, for lower income households, the assisted housing developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community. In considering the use of these financing and subsidy programs, the analysis shall identify the amounts of funds under each available program which have not been legally obligated for other purposes and which could be available for use in preserving assisted housing developments.

(b) (1) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

(2) It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the total housing needs. The quantified objectives shall establish the maximum number of housing units by income category, including extremely low income, that can be constructed, rehabilitated, and conserved over a five-year time period.

(c) A program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, ~~the~~ provision of regulatory concessions and incentives, and ~~the~~ ~~the~~ utilization of appropriate federal and state financing and subsidy programs when available and the utilization of moneys in a low- and moderate-income housing fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) Identify actions that will be taken to make sites available during the planning period of the general plan with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing.

(A) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall identify sites that can be developed for housing within the planning period pursuant to subdivision (h) of Section 65583.2.

(B) Where the inventory of sites pursuant to paragraph (3) of subdivision (a) does not identify adequate sites to accommodate the need for farmworker housing, the program shall provide for sufficient sites to meet the need with zoning that permits farmworker housing use by right, including density and development standards that could accommodate and facilitate the feasibility of the development of farmworker housing for low- and very low income households.

- (2) Assist in the development of adequate housing to meet the needs of extremely low, very low, low-, and moderate-income households.
- (3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, **and** provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.
- (4) Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.
- (5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability.
- (6) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (89) of subdivision (a).
The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (89) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance.
- (7) The program shall include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals. The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.
- (d) (1) A local government may satisfy all or part of its requirement to identify a zone or zones suitable for the development of emergency shelters pursuant to paragraph (4) of subdivision (a) by adopting and implementing a multijurisdictional agreement, with a maximum of two other adjacent communities, that requires the participating jurisdictions to develop at least one year-round emergency shelter within two years of the beginning of the planning period.
(2) The agreement shall allocate a portion of the new shelter capacity to each jurisdiction as credit towards its emergency shelter need, and each jurisdiction shall describe how the capacity was allocated as part of its housing element.
(3) Each member jurisdiction of a multijurisdictional agreement shall describe in its housing element all of the following:
(A) How the joint facility will meet the jurisdiction's emergency shelter need.
(B) The jurisdiction's contribution to the facility for both the development and ongoing operation and management of the facility.
(C) The amount and source of the funding that the jurisdiction contributes to the facility.
(4) The aggregate capacity claimed by the participating jurisdictions in their housing elements shall not exceed the actual capacity of the shelter.
- (e) Except as otherwise provided in this article, amendments to this article that alter the required content of a housing element shall apply to both of the following:
(1) A housing element or housing element amendment prepared pursuant to subdivision (e) of Section 65588 or Section 65584.02, **wherewhen** a city, county, or city and county submits a **first** draft to the department for review pursuant to Section 65585 more than 90 days after the effective date of the amendment to this section.

(2) Any housing element or housing element amendment prepared pursuant to subdivision (e) of Section 65588 or Section 65584.02, wherewhen the city, county, or city and county fails to submit the first draft to the department before the due date specified in Section 65588 or 65584.02.

Housing Accountability Act

65589.5. (a) The Legislature finds and declares all of the following:

(1) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California. (2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(3) Among the consequences of those actions are discrimination against low income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing projects, reduction in density of housing projects, and excessive standards for housing projects.

(b) It is the policy of the state that a local government not reject or make infeasible housing developments, including emergency shelters, that contribute to meeting the housing need determined pursuant to this article without a thorough analysis of the economic, social, and Environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (d) of Section 50199.50 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the project infeasible for development for the use of very low, low-, or moderate- income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the project. The share of the regional

housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(B) If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low and low-income categories.

~~(e) This section does not relieve the local agency (C) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.~~

~~(e) Nothing in this section shall be construed to relieve the local agency~~ from complying with the Congestion Management Program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code). ~~This~~ Neither shall anything in this section also does not be construed to relieve the ~~local agency~~ local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) ~~This~~ (1) Nothing in this section ~~does not~~ shall be construed to prohibit a local agency from requiring the development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development project. ~~This.~~ (2) Nothing in this section ~~does not~~ shall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

(3) This section does not prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the development project or emergency shelter.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing development project" means a use consisting of ~~either~~ any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses in which nonresidential uses are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, "neighborhood commercial" means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.

(C) Transitional housing or supportive housing.

(3) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to moderate-income households as defined in Section 50093 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based.

(4) "Area median income" means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) "Disapprove the development project" includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved.

(B) Fails to comply with the time periods specified in subparagraph (B) of paragraph (1) of subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes restrictions, including design changes, a reduction of allowable densities or the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of restrictions on the development is the subject of a court action which challenges the denial, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by substantial evidence in the record.

(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(k) The applicant or any person who would be eligible to apply for residency in the development or emergency shelter may bring an action to enforce this section. If in any action brought to enforce the provisions of this section, a court finds that the local agency disapproved a project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or moderate-income households including farmworker housing, without making the findings required by this section or without making sufficient findings supported by substantial evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the development project or emergency shelter. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner who proposed the housing development or emergency shelter, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency, in which case the application for the project, as constituted at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed approved unless the applicant consents to a different decision or action by the local agency.

(l) If the court finds that the local agency (1) acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section and (2) failed to carry out the court's order or judgment within 60 days as described in paragraph subdivision (k), the court in addition to any other remedies provided by this section, may impose fines upon the local agency that the local agency shall be required to deposit into a housing trust fund. Fines shall not be paid from funds that are already dedicated for affordable housing, including, but not limited to, redevelopment or low- and moderate-income housing funds and federal HOME and CDBG funds. The local agency shall commit the money in the trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. For purposes of this section, "bad faith" shall mean an action that is frivolous or otherwise entirely without merit.

(m) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of

preparation of the record shall be borne by the local agency. Upon entry of the trial court's order, a party shall, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(o) This section shall be known, and may be cited, as the Housing Accountability Act.

Attachment 2

Definitions

Attachment 2

Definitions

Emergency Shelters (Health and Safety Code Section 50801(e))

"Emergency shelter" means housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay.

Transitional Housing (Health and Safety Code Section 50675.2)(h)

"Transitional housing" and "transitional housing development" means buildings configured as rental housing developments, but operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six months.

Supportive Housing (Health and Safety Code 50675.14(b))

Housing with no limit on length of stay, that is occupied by the target population as defined in subdivision (d) of Section 53260, and that is linked to on- or off-site services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

Target Population Definition per HSC 53260(d)

(d) "Target population" means adults with low-income having one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health conditions, or individuals eligible for services provided under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with [Section 4500 of the Welfare and Institutions Code](#)) and may, among other populations, include families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, or homeless people.

Attachment 3

Helpful Links

Attachment 3

Helpful Links

National Alliance to End Homelessness

<http://www.endhomelessness.org/section/tools/tenyearplan>

Interagency Council on Homelessness

<http://www.ich.gov/>

Interagency Council on Homelessness, Guide to Developing Plans and Examples

<http://www.ich.gov/slocal/index.html>

U.S. Department of Health and Human Services, Homelessness Resource Center

[http://www.nrchmi.samhsa.gov/\(X\(1\)S\(axpyp555dhn54z45qhpqvnj4\)\)/Default.aspx?AspxAutoDetectCookieSupport=1](http://www.nrchmi.samhsa.gov/(X(1)S(axpyp555dhn54z45qhpqvnj4))/Default.aspx?AspxAutoDetectCookieSupport=1)

The National Coalition for the Homeless – Local Resources in California

<http://www.nationalhomeless.org/resources/local/california.html>

HCD Selected Bibliography on Homeless Issues

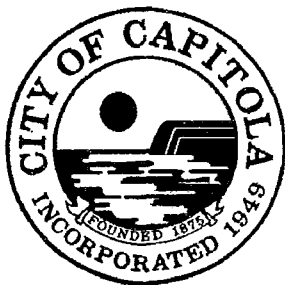
<http://www.hcd.ca.gov/hpd/biblio.html>

Building Blocks for Effective Housing Elements

(links to funding resources, data, policy and research on homelessness)

http://www.hcd.ca.gov/hpd/housing_element/index.html

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CITY COUNCIL AGENDA REPORT

MEETING OF MARCH 12, 2015

FROM: CITY CLERK'S OFFICE

SUBJECT: INTRODUCTION OF AN ORDINANCE AMENDING THE CAPITOLA MUNICIPAL CODE SECTION 2.04.140 REGARDING COUNCIL MEMBERS PLACING AN ITEM ON THE CITY COUNCIL AGENDA

RECOMMENDED ACTION: Approve the first reading of an Ordinance amending the Capitola Municipal Code (CMC) Section 2.04.140.

BACKGROUND: Currently CMC Section 2.04.140 states that the Mayor, any member of the City Council, or the City Manager has the authority to place a matter on the Council agenda (Attachment 1). Ordinance No. 919, adopted in June 2007, amended the Section 2.04.140 authorizing any Councilmember, as well as the Mayor, to place items on City Council meeting agendas. In addition, Section 2.04.140 authorizes the City Treasurer, City Clerk and City Attorney to place items on the agenda pertaining to subjects reasonably related to their powers.

During the January 29, 2015, Special City Council Workshop, the Council reviewed the City Council meeting procedures. After their review the Council instructed staff to return with an Ordinance so as to further define the authority of Council Members to permit any member of the City Council to request that an item be agendaized for a future Council meeting, with the condition that the proposed agenda item be requested at an open City Council meeting.

DISCUSSION: This proposed Ordinance, if adopted by the City Council would authorize all Council Members, in addition to the Mayor, to place items on Council meeting agendas with the condition that the agenda item be presented at an open City Council meeting.

FISCAL IMPACT: Not applicable.

ATTACHMENTS:

1. CMC Excerpt
2. Draft Ordinance Amendment

Report Prepared By: Susan Sneddon, CMC
City Clerk

Reviewed and Forwarded
By City Manager: 

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2.04.140 Agenda.

The following have authority to place a matter on the council agenda:

A. The mayor or any member of the city council;

B. The city manager;

C. The city council may, after the seventy-two hour agenda-posting deadline has expired, add items to the agenda in the manner provided in Government Code Section 54954.2(b). A majority of a quorum of the city council may order that any designated matter be on any future agenda;

D. The chair of any board or commission, provided the subject is reasonably related to the powers and duties of the body and concerns a matter upon which the council has authority to act;

E. The city treasurer, city clerk, or city attorney, provided the subject is reasonably related to their powers and duties and concerns a subject upon which the council has authority to act.

Other persons must direct their agenda requests to the city council (at council meetings), the mayor, or the city manager. Agendas shall otherwise be prepared under the direction of the city manager and shall be posted, noticed and distributed in accordance with the Brown Act. For purposes of Government Code Section 54954.2(a), agendas shall be posted in the entrance area to the city council chambers. (Ord. 919 § 1, 2007; Ord. 830 § 1, 2001; Ord. 375 (part), 1974)

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ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
AMENDING SECTION 2.04.140 OF THE CAPITOLA MUNICIPAL CODE PERTAINING TO
THE PLACEMENT OF ITEMS ON THE CITY COUNCIL MEETING AGENDAS**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPITOLA AS
FOLLOWS:

Section 1. Section 2.04.140 of the Capitola Municipal Code is hereby amended to read as follows:

2.04.140 Agenda.

The following have authority to place a matter on the Council agenda:

A. The Mayor or any member of the City Council with the condition that the proposed agenda item be requested at an open City Council meeting;

B.A. The City Manager;

C.B. The City Council may, after the seventy-two hour agenda-posting deadline has expired, add items to the agenda in the manner provided in Government Code Section 54954.2(b). A majority of a quorum of the city council may order that any designated matter be on any future agenda;

D.C. The Chair of any Board or Commission provided the subject is reasonably related to the powers and duties of the body and concerns a matter upon which the council has authority to act;

E.D. The City Treasurer, City Clerk, or City Attorney, provided the subject is reasonably related to their powers and duties and concerns a subject upon which the council has authority to act.

Other persons must direct their agenda requests to the City Council (at Council meetings), the Mayor, or the City Manager. Agendas shall otherwise be prepared under the direction of the City Manager and shall be posted, noticed and distributed in accordance with the Brown Act. For purposes of Government Code Section 54954.2(a), agendas shall be posted in the entrance area to the City Council Chambers.

Section 2. This ordinance shall take effect and be in force thirty (30) days after final adoption.

This ordinance was introduced on the 12th day of March, 2015, and was passed and adopted by the City Council of the City of Capitola on the ___ day of _____, 2015, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Dennis Norton, Mayor

ATTEST:

_____, CMC
Susan Sneddon, City Clerk

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