

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

W13a

Prepared November 10, 2008 (for November 12, 2008 hearing)

To: Commissioners and Interested Persons
From: Dan Carl, District Manager *DC*
Mike Watson, Coastal Planner *MW*
Subject: **STAFF REPORT ADDENDUM for W13a**
CDP Application Number 3-07-048 (Held Mixed Use Project)

In the time since the release of the above-referenced staff report (dated prepared October 30, 2008), staff has identified minor corrections necessary to ensure that the recommended lease and deed restriction condition (special condition 8 on staff report page 24) accurately reflects the City's property ownership and lessor role for the Morro Bay Embarcadero area. Accordingly, special condition 8 in the staff report is modified as follows (text in underlined format is text to be added, and text in ~~strike-through~~ format is text to be deleted):

8. ~~Deed and Lease~~ and Deed Restrictions. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the Permittee and City ~~have~~ has executed and recorded against the lease sites and parcel(s) governed by this permit a lease and deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The lease and deed restriction shall include a legal descriptions of the lease sites and ~~entire parcel or parcels~~ governed by this permit. The lease and deed restriction shall also indicate that, in the event of an extinguishment or termination of the lease and deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.



California Coastal Commission

3-07-048 (Held Mixed Use Project) stfprt addendum 11.12.2008 hrg.doc

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

W13a



Filed:	02/21/2008
180 th day:	N/A (extended to 270 days)
270 th day:	11/17/2008
Staff report prepared:	10/30/2008
Staff Report prepared by:	M. Watson
Staff Report approved by:	D. Carl
Hearing date:	11/12/2008

COASTAL DEVELOPMENT PERMIT APPLICATION

Application number3-07-048, Held Mixed Use Project

Applicant.....Smith Held, Held Family Trust, and the Estate of Armand Viole

Project locationAlong the Morro Bay Embarcadero (lease sites 67, 68, 67W, and 68W) at 575 and 591 Embarcadero Road (APN 066-137-001) adjacent to and over Morro Bay itself in the City of Morro Bay, San Luis Obispo County.

Project description.....Demolition of two existing residences, two retail stores, a carport, fencing, a floating dock, patio deck, and related structures, and construction of a two-story mixed development project that includes two commercial lease spaces, six hotel units, six parking spaces, two public restrooms, a new floating dock, and public access improvements to and along the bay frontage.

Local ApprovalsConcept Plan Approval of Conditional Use Permit UP0-140, City of Morro Bay City Council, August 27, 2007.

File documents.....City of Morro Bay Certified Local Coastal Program (LCP).

Staff Recommendation ..Approval with Conditions

A. Staff Recommendation

1. Summary of Staff Recommendation

The Applicants propose to demolish the existing retail, residential, and related decking development on the site, and to construct a new mixed-use development consisting of commercial lease space and a six-unit visitor-serving inn in its place. The new development includes roughly 1,200 square feet of commercial lease space, two public restrooms and utility space totaling 977 square feet, 1,818 square feet of covered parking, and two overnight units of approximately 1,510 square feet on the first floor and approximately 3,065 square feet of visitor-serving accommodations (four overnight units) on the second level. The development is made up of two main structures roughly 31 feet by 88 feet, and 25 feet in height, that are separated by a 27-foot wide driveway/courtyard. Parking requirements would be addressed by six parking spaces (two ADA accessible spaces) in carports beneath the second floor development, and through an in-lieu fee (calculated based on an additional 7 spaces, \$105,000) into the



City's parking fee fund.

As designed, the proposed project will expand visitor-serving uses on the Morro Bay Embarcadero with the establishment of six overnight rooms and two visitor-serving commercial retail units. The proposed project will also provide new public access opportunities by expanding lateral public access along 90 feet of bay frontage; a critical link in the central Embarcadero shoreline access trail and a segment of the California Coastal Trail. A lateral public access boardwalk will be constructed over the existing rock and mortar bulkhead that slopes into the bay, and a 325-foot reconstructed public view deck will be provided adjacent to the lateral accessway. Vertical access will be provided via the 27-foot wide shared driveway/courtyard between the two buildings, and a new floating dock will provide for expanded boating use.

Notwithstanding the public recreational and visitor-serving value of these improvements, the proposed project includes several elements that raise Coastal Act consistency issues, primarily related to ensuring that the public access components of the project are adequate, and will function appropriately over the long term to ensure that the project's access components are successful. The Coastal Act direction (and LCP guidance) applicable to the site clearly requires that development here maximize public recreational access and visitor-serving opportunities. Given that it is a public property, and includes development over and into public trust resources of the Bay itself, this direction is only magnified, and it is clear that a significant and extraordinary public benefit is required. In other words, the Coastal Act requires that this site be developed with truly exceptional public recreational/visitor-serving access components that are sited and designed in such a way as to provide maximum public benefit, and dictates that anything less cannot be found Coastal Act consistent.

Fortunately, the Applicants' proposed project provides a strong foundation from which to make adjustments in this regard, and staff has worked closely with the Applicants to identify mutually agreeable modifications to the project that can address Coastal Act inconsistencies appropriately in this case. Specifically, the adjustments necessary to bring the project into conformance with the Coastal Act include widening the lateral access boardwalk to 10 feet along the entire bay frontage; ensuring future bay side lateral access connectivity to adjacent properties; redesigning the driveway/courtyard so that it acts as an accessway in which cars are sometime allowed (e.g., use of cobbles or pavers to identify and delineate public vertical access, bollards at the entrance to limit use of the driveway to hotel patrons and to minimize user conflicts, covering the carport areas to hide cars, etc.); ensuring that the new floating dock is available for general public use; providing detail on access management over time; and requiring in-lieu fees to address parking deficiencies and to mitigate for low-cost overnight accommodations (consistent with the Commission's practice in this respect in recent Morro Bay cases).

As proposed and conditioned by this permit, the project will expand visitor-serving uses on the Morro Bay Embarcadero with the establishment of six overnight rooms and two visitor-serving commercial retail units. The proposed project will also provide new public recreational access opportunities by expanding lateral public access along 90 feet of bay frontage, a critical link in both the central Embarcadero shoreline access trail and the California Coastal Trail. A public access view deck will be constructed in roughly the same location as the existing private patio with connections to the lateral



boardwalk. Vertical access will be provided via a 27-foot wide courtyard between the two buildings, and a new floating dock is proposed for enhanced boating opportunities. Permit conditions refine and secure these public access and visitor-serving elements, and address low-cost accommodation issues.

In sum, and as conditioned, the project represents a truly exceptional public recreational/visitor-serving access project, with components that will be sited and designed in such a way as to provide maximum public benefit at this important public site along Morro Bay and the Embarcadero. Staff recommends that the **Commission approve a CDP with conditions**. The necessary motion is found directly below.

2. Staff Recommendation on Coastal Development Permit

Staff recommends that the Commission, after public hearing, **approve** the proposed project subject to the standard and special conditions below.

Motion: I move that the Commission approve coastal development permit number 3-07-048 pursuant to the staff recommendation.

Staff Recommendation of Approval: Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve the Permit: The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.



Staff Report Contents

A. Staff Recommendation.....	1
1. Summary of Staff Recommendation.....	1
2. Staff Recommendation on Coastal Development Permit	3
B. Findings and Declarations	4
1. Project Background, Location, and Description.....	4
2. Coastal Development Permit Determination	6
A. Public Access and Recreation.....	6
B. Visual Resources/Community Character.....	14
C. Water Quality.....	16
3. Conditions of Approval	17
A. Standard Conditions.....	17
B. Special Conditions	18
C. California Environmental Quality Act (CEQA).....	24
D. Exhibits	
Exhibit A: Location Map	
Exhibit B: Proposed Site Plans and Elevations	
Exhibit C: Site Photographs	
Exhibit D: Computer Simulation of Proposed Development	

B. Findings and Declarations

The Commission finds and declares as follows:

1. Project Background, Location, and Description

Embarcadero History

Until the mid-1940's, most of the small community of Morro Bay was built on the bluff tops above the tidal flats. Between 1942 and 1945, the north and south breakwaters at the entrance to the Morro Bay harbor, two "T"-piers, and the inner harbor bulkhead were constructed for a Navy amphibious base. A navigational channel was dredged and the spoils deposited behind the inner harbor bulkhead to create a fill area along the bay that became known as the Embarcadero. In the late 1940's the Navy base, including all waterfront facilities, was sold to San Luis Obispo County. Buildings began to be constructed on the Embarcadero, and various docks and piers were occupied by a growing fleet of commercial fishing boats. In 1964, the City of Morro Bay incorporated and assumed jurisdiction over the County's waterfront land and facilities, including the Embarcadero. Trusteeship of state tidelands was also transferred to the City at that time.

Morro Bay and the Embarcadero in particular, are major tourist attractions and prime coastal visitor-serving destinations with an estimated 1.5 million visitors annually. The Embarcadero is now largely



developed with a variety of visitor-serving (overnight units, restaurants, gift shops, etc.) and coastal-related land uses (i.e., kayak rental, commercial and recreational fishing services, etc.). Parcels on the bayside of Embarcadero are leased to individual lessees by the City through the City's proxy relationship to the State Lands Commission and the state tidelands underlying the Embarcadero. The Coastal Commission retains permitting jurisdiction on all such tideland properties, including the fill areas along the Embarcadero, and including the property that is the subject of this permit application. As a result, the standard of review for the proposed project is the Coastal Act, although the certified Morro Bay LCP can provide non-binding guidance.

Project Location

The proposed project is located on the bayside of the Embarcadero in Morro Bay at 575 and 591 Embarcadero Road (see Exhibit A). Embarcadero Road is the first public through road and it parallels the Morro Bay estuary and the City's commercial and recreational harbor. The Embarcadero's character is still strongly focused on commercial fishing, although more recent developments have put a more finished facade to this style over time. The project site is located in the central Embarcadero south of Marina Street and is comprised of four lease sites (67, 68, 67W, and 68W), two of which extend out into the bay (67W and 68W), and 90 feet of bay frontage. The subject site gently slopes down from an elevation of roughly 13 feet above mean sea level at Embarcadero Road to approximately 8 feet above mean sea level at the top of the bulkhead. The land portion of the site (approximately 8,340 square feet) is currently occupied by two residences totaling 1,985 square feet, two retail stores totaling approximately 1,175 square feet, a 365 square foot carport, fencing, and walkways. There is also a 315 square foot floating dock that is used to moor sailboats and provide access for a charter boat service, and a 325 square foot patio deck on pilings over the water. The project site is walled off along Embarcadero Road, and doesn't currently provide any public access. The Morro Bay Aquarium is located to the north and the Pacific Cafe to the south. Currently, there is no lateral access across the Aquarium property, however the Pacific Cafe does provide vertical and some lateral access to a glass-enclosed deck used primarily for restaurant seating over the water. See Exhibit A for location maps and Exhibit C for site photos.

Project Description

The project includes the demolition of all existing development and construction of two main two-story structures totaling 6,748 square feet (excluding 1,818 square feet carports) approximately 25 feet in height, with a 27-foot wide driveway/courtyard between the two main structures, and a lateral public access boardwalk 8 feet in width seaward of the proposed new structures along the entire width of the waterfront sites connected at its upcoast end to 325 square foot reconstruction of the private patio deck as a public view area. Vertical access to the lateral boardwalk and new view deck would be gained via the driveway/courtyard. The mixed-use development includes ground floor development made up of two retail commercial spaces (approximately 600 square feet each), two visitor-serving hotel units (755 square feet each), two utility rooms, two public restrooms, stairs, trash enclosures, and storage (totaling 977 square feet), and second floor development consisting of four visitor-serving hotel units (approximately 765 square feet each). The second floor units would each have a private balcony approximately 90 square feet in size. The proposed project also includes six covered parking spaces in



carports opening to the driveway/courtyard (approximately 1,818 square feet) including two spaces dedicated for ADA compatibility, and related improvements such as public benches, sidewalks, planters, and lighting. The proposed project also includes construction/replacement of a floating dock and gangway accessible from the south lease site. The dock will be re-sited slightly seaward of the existing dock to enhance nearshore habitat values and attached via support struts from the land side development to eliminate the need for new pilings or other fill. See Exhibit B for project plans.

2. Coastal Development Permit Determination

A. Public Access and Recreation

1. Applicable Policies

Coastal Act Sections 30210 through 30224 require that new development maximize public recreational access, provide visitor recreational facilities, protects oceanfront land for recreational use and development, encourages recreational boating facilities, and in general establishes a coastal-dependent, visitor-serving, and public recreational access priority over other types of uses and development. In particular:

***Section 30210:** In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

***Section 30211:** Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

***Section 30212(a):** Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...*

***Section 30213:** Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...*

***Section 30220:** Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

***Section 30221:** Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

***Section 30222.5:** Oceanfront land that is suitable for coastal dependent aquaculture shall be protected for that use, and proposals for aquaculture facilities located on those sites shall be*



given priority, except over other coastal dependent developments or uses.

Section 30223: *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Section 30224: *Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.*

Coastal Act Section 30233 specifically identifies the criteria for when fill of coastal waters, such as that envisioned for the proposed floating dock and public view deck, is allowable. In this case, it would be allowable if it were to provide for new or expanded boating facilities, including commercial fishing facilities and public recreational boating facilities, and a new public recreational view deck. Coastal Act Section 30233 states:

Section 30233: *(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

...(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

In addition, Section 30240(b) protects recreational areas such as the site and the Bay itself against development that would inappropriately degrade such areas, or that would be incompatible with them. Section 30240(b) states:

Section 30240(b): *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Finally, the Coastal Act protects special communities that are popular visitor destinations, like Morro Bay and the Embarcadero. Coastal Act Section 30253(5) states that:

Section 30253(5). *Where appropriate, protect special communities and neighborhoods, which, because of their unique characteristics, are popular visitor destination points for recreational uses.*

Although not the standard of review, the LCP's zoning standards also detail specific uses and guidelines



for development within the visitor-serving commercial (C-VS) zone applicable to this site. The purpose of the subject waterfront (WF) district is as follows:

17.24.170 Waterfront (WF) district. *Purpose. The purpose of the waterfront district is to provide for the continued mixture of visitor-serving commercial and recreational and harbor-dependent land uses in appropriate waterfront areas...*

In terms of siting, the LCP requires that at least thirty percent of the site (or 27 feet) be left free of structures to allow through views from the Road to Morro Bay across the site (LCP Waterfront Design Guideline Chapter 5, Criteria 1(a)). In addition, although the LCP height limit for this site is 17 feet and the maximum building coverage limit is 70% of the land portion of the properties, the LCP allows for an increase in height up to 25 and a corresponding second floor area that is 70% of the maximum allowable first floor building coverage for projects with a “significant public benefit.” The criteria for establishing such a significant public benefit includes, among other things, greater than normal public usable open space or provision of extraordinary public access. The proposed project is based on applying just such an exception (for height and FAR), and thus a significant public benefit must be associated with it to allow such exceptions for increased mass and scale at this sensitive bay-fronting site.

In sum, the Coastal Act direction (and LCP guidance) applicable to the site clearly requires that development here maximize public recreational access and visitor-serving opportunities. Given that it is a public property, and includes development over and into public trust resources of the Bay itself, this direction is only magnified, and it is clear that a significant and extraordinary public benefit is required. In other words, the Coastal Act requires that this site be developed with truly exceptional public recreational/visitor-serving access components that are sited and designed in such a way as to provide maximum public benefit, and dictates that anything less cannot be found Coastal Act consistent.

2. Analysis

The proposed project is located on public trust lands seaward of the first through public road and is adjacent to Morro Bay. The project includes multiple public recreational/visitor-serving access components including overnight visitor-serving accommodations, lateral public access along the bay frontage, a floating dock, and vertical access to the bay-fronting lateral access. These improvements are intended to increase and improve the visitor-serving uses and recreational opportunities available at this location and provide an important link in the plan for continuous shorefront access along the Embarcadero.

Lateral, Vertical, and Dock Access

Although the proposed project includes both lateral and vertical access to and along the 90-foot bay frontage, it falls short of maximizing public recreational/visitor-serving access opportunities consistent with the Coastal Act. In terms of lateral access, the new accessway and the reconstructed 325 square foot view deck will be a public access enhancement along the bayfront of the site. However, the proposed lateral access boardwalk is designed at the LCP minimum 8-foot width, which is fairly ordinary along this stretch of coastline, and there isn’t any lateral access connectivity to points north or south of the site. It is also immediately adjacent to the main structures proposed, thus limiting the area



available for accommodating access amenities that could promote enjoyment of the shoreline and the natural beauty of Morro Bay (e.g., areas for benches, lingering, interpretation, etc.). A wider lateral accessway designed to connect in the future up and downcoast would enhance the public's ability to access the shoreline here, particularly in terms of the vision for the central Embarcadero shoreline access trail and the California Coastal Trail that are, by definition, tied to such lateral accessway at this location. An increased width is necessary in this respect to make the Coastal Act consistency findings. This approval is conditioned to require a minimum 10-foot wide lateral access boardwalk along the bay front of the site that is open and available for general public use, and that is designed for future seamless lateral access connectivity (see Special Condition 1(e)).

In terms of vertical access, the project does not include a dedicated and stand alone public vertical access component. As currently designed, the parking plan for the development includes parking spaces in carports beneath the second story hotel suites. Access to these parking spaces is via the 27-foot wide shared driveway/courtyard between the proposed structures (where the driveway/courtyard also serves as the 27-foot through view corridor as required by the LCP). This area is also intended to serve as the public vertical access to the bay-front lateral boardwalk and associated amenities. Though it would be preferred to have separated access and vehicular driveways at this location, in this case a shared arrangement (i.e., an accessway doubling as a driveway) makes sense given the limited space available on the lease sites and the need to also accommodate through visual access unimpeded by structures over 27 linear feet of the frontage of the site.

However, the shared access/driveway configuration can lead to user conflicts and safety issues between pedestrians and vehicles, and will serve to diminish its utility as an accessway inasmuch as it will appear as a private commercial vehicular driveway and not as a public accessway. Its value as a vertical public accessway will be diminished as a result, and it may not even be clear that it is an accessway at all. Given there currently isn't any vertical access at this location, and other accessways are located further away and are not connected to this site laterally,¹ a well-designed and clearly identified accessway is particularly important at this location. It is also critical that the accessway appear as an accessway and a through view corridor. Unfortunately, the proposed design of this area to serve (and appear) as primarily a driveway impedes achievement of these objectives. Modifications to address these deficiencies are required to find Coastal Act consistency. Specifically, the driveway design must be modified to primarily appear and function as an accessway in which cars are sometimes present, as opposed to the opposite. This can be achieved through use of different paving/path materials (e.g., cobbles, turf block, pavers, decomposed granite, etc.), path alignment, maximized landscaping (including low landscaping adjacent to the accessway as well as taller landscaping nearer the buildings to reduce the perceived scale of the buildings from the accessway itself), informative and attractive signing and lighting, areas for access amenities (e.g., benches, bike racks, etc.), and methods for ensuring vehicular use is minimized and made to appear secondary to public access use (including bollards or equivalent at the street and toward the lateral accessway to limit and confine vehicles, parameters to ensure only hotel patrons use

¹ There is a public vertical accessway two lease sites over to the north at the Marina Street end (i.e., on the north side of the Morro Bay Aquarium), and there is a public vertical accessway located at the Driftwood Street end approximately four lease sites to the south, but neither connects to the shoreline at this site.



the parking spots, and putting doors or equivalent across the carport openings to hide the vehicles once parked). This approval is conditioned to ensure that the accessway/driveway is re-visioned and redesigned to meet these criteria (see Special Condition 1(f)).

In terms of the new floating dock, the Applicant indicates that it would be available for docking pleasure craft on its outside edge, and for free public launching/docking of smaller craft (e.g., kayaks, etc.) on its inside edge (see Exhibit B for the proposed dock configuration). However, it is unclear how this facility would be operated in this respect, including to ensure that it was publicly available for general public recreational use, and to ensure that any fees were kept low and commensurate with standard rates for the area. Such facility can be found Coastal Act consistent if it includes parameters to ensure that it is clearly an integral part of the overall development (including integrating docking use with overall operations of the site), it is clearly provided and available for general public and/or commercial fishing use, any fees are minimized, and it is provided as a transient use facility and not as a long-term docking area. This approval is conditioned to ensure that the dock facility is understood in this way (see Special Condition 2(b)).

Similarly, and on a broader scale in terms of public access parameters for the public access amenities of the site in general (lateral and vertical accessways, view deck, dock, etc.), the project currently lacks clarity as to how such facilities would be provided, maintained, and kept available for general public recreational use in a manner that maximizes their utility and value. There is also a lack of specificity on signage, interpretation, and use and provision of related access amenities (e.g., restrooms, benches, etc.). The Commission is aware of the pitfalls, large and small, that can accrue when such parameters are not clearly laid out at the time of project approval, and it is critical in this case that access is properly provided and maintained over time. Accordingly, this approval is conditioned for an access management plan designed to ensure maximum public recreational access benefit in perpetuity, where the primary objective is to maximize public recreational access at the site (including to all site walkways, boardwalks, courtyards, floating dock, and view deck) and all related areas and public access amenities (i.e., restrooms, bench seating, etc.), to provide clear and informative signage (including interpretive signage), and to ensure that the project's public access features are available for free (other than potential minimal docking fees) general public use during daylight hours (and during all non-daylight hours when the retail components of the approved project are open)² 365 days per year (see Special Condition 2).

Lower Cost Visitor Facilities

Coastal Act Section 30213 requires that lower cost visitor and recreational facilities be protected and where feasible, provided. As conditioned, the site will provide and ensure generally available no cost (and low cost, for docking) public recreational facilities throughout the site (walkways, boardwalks, view decks, etc.). These project components go a long way to providing the requisite lower cost facilities. However, the commercial visitor-serving aspect of the project (i.e., the hotel units), raises some question in this respect. In light of current trends in the marketplace and along the coast, the

² When lateral access up and downcoast is provided in the future, the vertical and lateral access components will need to be available 24 hours a day to maximize trail connectivity and continuity along the Embarcadero and the California Coastal Trail.



Commission is increasingly concerned with the challenge of providing lower-cost overnight accommodations consistent with the Coastal Act. Recent findings in support of a Commission decision concerning hotel-condominiums showed that only 7.9% of the overnight accommodations in nine popular coastal counties were considered lower-cost.³ Although statewide demand for lower-cost accommodations in the coastal zone is difficult to quantify, there is little question that lower cost opportunities (e.g., camping and hostels, etc.) are in high demand, and that there is on-going need to increase lower-cost opportunities along California's coast.⁴

The six proposed overnight units range between 735 and 755 square feet, and each include bay facing decks with prime coastal views of the bay, sandspit, and Morro Rock. The Applicants have indicated that the room rates will begin at \$175 per night and will mostly exceed \$200 per night, depending upon the season and market conditions.⁵ By comparison, many hotel/motels in the Morro Bay area offer more affordable rates (including rooms at the Travelodge (\$49 per night), Fireside Inn (\$65 per night), Days Inn (\$74 per night), Inn at Morro Bay (\$108 per night), and Ascot Suites (\$138 per night)). In terms of camping and hostel options, average cost data indicates perhaps a better range for what might be considered "lower cost" accommodations. For example, the average cost of a hostel is \$14, and camping rates at nearby State Parks range from \$9 to \$25 a night. The proposed project does not provide lower-cost overnight accommodations, and the project does not otherwise promise to include low-cost overnight accommodations off-site to address the requirements of Coastal Act Section 30213. In past actions in and around Morro Bay, the Commission has required one-quarter (25%) of proposed rooms be made available at affordable rates.⁶ Because the current proposal includes construction of a 6 suites, application of the 25% methodology means that at least 2 lower cost units ($6 \times 0.25 = 1.5$) should be provided.

Although, as indicated above, there are a number of hotel/motels in the City of Morro Bay that offer lower priced rooms than those proposed in this case, very few of them are located along the Embarcadero on commercial visitor-serving zoned properties. There hasn't been a recent comprehensive study of the location and underlying zoning designation of the existing stock of hotel/motel properties within Morro Bay, but anecdotal evidence suggests that many of the hotels lie on commercially zoned properties. Therefore, many of the City's hotel/motels are not protected in the sense that, in the future, the existing hotel use could be converted to more profitable and potentially non-visitor-serving uses. Therefore, it is critical that existing and proposed hotels located on the limited number of visitor-serving designated sites in Morro Bay, like this one, be protected for lower cost visitor-serving accommodations.

In lieu of providing lower cost accommodations on-site, the requirements of Coastal Act Section 30213

³ See LCPA 1-07, Oceanside; July 2008 hearing.

⁴ For example, State Parks estimates that demand for camping has increased 13% between 2000 and 2005, and that nine of the ten most popular campgrounds are along the coast.

⁵ According to hotel-guides.us, an internet source for hotel room rates, a hotel room rate of \$175 per night would register a rating of four out of five stars on its affordability chart (i.e., at the less affordable end of the range).

⁶ See, for example, CDP 3-07-002 (Estero Landing) and CDP 3-07-003 (Front Street Hotel).



can be met by providing an in-lieu fee for the purpose of funding lower-cost accommodations at an off-site coastal location in the same geographic region. Although the Commission prefers the actual provision of lower-cost accommodations in conjunction with projects, where necessary, the Commission has used in-lieu fees to provide lower-cost opportunities,⁷ including recently in Morro Bay.⁸

Accordingly, in order to mitigate for the absence of lower cost visitor accommodation facilities in the proposed development, and to bring the project into conformance with Coastal Act Section 30213, Special Condition 6 requires an in-lieu fee of \$13,860 per room for 25% of the total number of rooms.⁹ As currently designed, this results in a fee of \$27,720 (2 x \$13,860 = \$27,720). The fee would be placed in an interest bearing account, for the specific purpose of constructing lower-cost overnight accommodations (such as a hostel, tent campsites, etc.) in the coastal zone of San Luis Obispo County near the project site.

In summary, the Applicants are proposing to construct fairly expensive overnight visitor accommodation facilities immediately adjacent to the bay at Morro Bay on land designated Commercial Visitor-serving. Coastal Act Policy 30213 requires that lower cost visitor and recreational facilities shall be protected and, where feasible, provided. In this case, the proposed development is not consistent with the requirements of Section 30213. Therefore in order to bring the project into conformance, the project has been conditioned to require payment of an in-lieu fee for the construction of lower cost visitor-serving facilities in the area. As conditioned, the project can be found consistent with the lower cost visitor facilities policies of the Coastal Act.

Visitor-Serving/Land Use Priorities

Another issue raised by the rate structure and configuration of the proposed hotel units is the potential for the units to be sold/leased to private individuals and used as quasi-residential units or offered as time-shares. Such potential outcome would diminish the visitor-serving value and utility of such units. If units are individually owned, they are essentially residential investments and constitute a quasi-residential land use with only the possibility of functioning part time as overnight visitor-serving accommodations. Condominium hotels also are not contemplated within the specific policy language of the Waterfront or Embarcadero planning areas. Thus, condominium hotels are not currently an allowable use in these planning districts. In addition, the project does not include a limit on the length of stay or expressly prohibit private ownership of the individual rooms, and does not include adequate safeguards

⁷ For example, the Commission has required an in-lieu fee in permits to convert the Highlands Inn in Monterey County and the San Clemente Inn to timeshares. In these cases, the Commission required the applicants provide funding for a hostel to offset the loss of lower-cost accommodations. More recently, the Commission required payment of an in-lieu fee associated with the construction of a new hotel in Pismo Beach (A-3-PSB-06-001, Beachwalk Resort, July 11, 2007).

⁸ Id (Estero Landing and Front Street Hotel projects in December 2007).

⁹ The amount of the base fee was derived by estimating the cost of constructing seven new campsites and associated infrastructure. Based on information provided by the Department of Parks and Recreation, the creation of additional campsites within an existing State Park unit may cost up to \$5,000 per site. The typical amenities including grading to create a level parking pad and camp area, table or bench, fire pit, cook site, landscaping, and a share of utilities such as water and restrooms. However, this does not include the cost of constructing restrooms and utilities. In its evaluation of the cost of constructing a new campground at the Harbor Terrace site in Port of San Luis, including the extension of necessary utilities and the construction of restrooms and other campground amenities, the Port estimated the cost of each new tent campsites at more than \$13,860 per site in 2002.



to ensure the units are offered as a standard operating overnight units as opposed to something more residentially oriented. Although the Applicants have not expressed intent to sell the individual units, it is possible that it would become necessary depending upon the ability to secure adequate financing for the hotel development or to ensure full occupancy during the off-season. To ensure that the overnight accommodations remain visitor-serving and to ensure Coastal Act consistency in this respect, this approval is conditioned to prohibit private ownership of the hotel units; to limit lengths of stay for any individual, group, or family (i.e., a 29 day limit on the length of stay, including no more than 14 days during the summer peak-season); to require the hotel rooms to always be available for public transient use; and to establish use and rental parameters for operation.

Parking

The estimated parking requirement per the LCP guidance for the proposed mixed-use development is 13 spaces: one for each of the six hotel rooms, one space per every ten rooms, one space for every 300 square feet of commercial retail space, and two spaces for the floating dock (6 + 1 + 4 + 2 respectively). Such guidance does not include any parking space requirements specifically attributable to public access use. The Applicants have proposed to provide 6 spaces on-site (two ADA compatible) and payment equal to seven spaces into the City's parking in-lieu fee fund.¹⁰ Because the site is under-parked in this sense (both in terms of using the in-lieu fee method, and because public access parking has not been accounted for), there is the possibility for impacts to public parking along the Embarcadero and nearby, which could in turn inappropriately displace general public access parking. In this case, however, the limited scale of the project, the fee (that will eventually be used for parking development), and the public access amenities, as conditioned, are enough to ensure that potential public access parking impacts are appropriately offset.

3. Conclusion

As proposed and conditioned by this permit, the project will expand visitor-serving uses on the Morro Bay Embarcadero with the establishment of six overnight rooms and two visitor-serving commercial retail units. The proposed project will also provide new public recreational access opportunities by expanding lateral public access along 90 feet of bay frontage, a critical link in both the central Embarcadero shoreline access trail and the California Coastal Trail. A public access view deck will be constructed in roughly the same location as the existing private patio deck with connections to the lateral boardwalk. Vertical access will be provided via a 27-foot wide courtyard between the two buildings, and a new floating dock is proposed for enhanced boating opportunities. Permit conditions refine and secure these public access and visitor-serving elements, and address low-cost accommodation issues. In sum, and only as conditioned, the project represents a truly exceptional public recreational/visitor-serving access project, with components that will be sited and designed in such a way as to provide maximum public benefit at this important public site along Morro Bay and the

¹⁰ Under the City's parking management plan, applicants are allowed to satisfy all or a portion of the parking requirement via a combination of options including on-site, off-site, and in-lieu fee payment. However, if an off-site arrangement is chosen, the applicant must enter into a formal agreement with the parking provider that includes recording a deed restriction to formally reserve the requisite parking now and at all times in the future for the life of the project. In-lieu of providing parking on or off-site, applicants are allowed to submit a payment into the City's parking in-lieu fee fund at a rate of \$15,000 per space.



Embarcadero. As such, the project can be found consistent with the Coastal Act policies discussed in this finding.

B. Visual Resources/Community Character

1. Applicable Policies

Coastal Act Section 30251 states:

***Section 30251.** The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

Additionally, Coastal Act Section 30253(5) states:

***Section 30253(5).** Where appropriate, protect special communities and neighborhoods, which, because of their unique characteristics, are popular visitor destination points for recreational uses.*

In addition, the LCP contains policies related to protection of public views along the Embarcadero and of the unique geographic features surrounding the City's working harbor including Morro Rock, the bay and sandspit. These include the previously cited requirements for maintaining up to 30% of each site free of structures as a through view areas (LCP Waterfront Design Guideline Chapter 5, Criteria 1(a)). In addition, building height and bulk relationships must be compatible with existing development and coastal views may not be impaired or degraded otherwise. Through the Waterfront Master Plan, the LCP provides clear guidance with respect to visual compatibility of new development with both existing development and surroundings natural features. New development must incorporate an architectural character consistent with the maritime theme of the waterfront, be pedestrian oriented in form and scale, and avoid excessive height and massing.

2. Analysis

The relatively flat site is currently developed with one and two-story commercial retail and residential buildings, carport, fencing, an existing patio deck, a floating dock on the western lease sites, a significant amount of concrete and coverage on the site. Existing structures and fencing wall off the entire 90-foot Embarcadero Road frontage. The existing one and two-story structures, though not more than 20 feet in height, obstruct all of the public views of the bay, sandspit, and Morro Rock across the entire 90 feet of property frontage along Embarcadero Road. See photos in Exhibit C.

Inland of the project site, there are a few commercial retail and restaurant establishments, parking lots, and a multi-story visitor-serving hotel. Single-family residences line the bluff tops directly east and



south of the project site. There are no significant scenic vantages from these locations. On the bluffs about a block to the south however, is a public street end that provides views of the bay, Morro Rock, Montana de Oro, and Point Buchon in the distance.

Construction of the proposed mixed-use buildings, like the existing structures and fencing, will obstruct public views from Embarcadero Road over a significant portion of the site (see Exhibits C and D). To offset this impact, the project includes a 27-foot wide view corridor to the bay between the two proposed main structures.¹¹ As conditioned to ensure the 27-foot area is redesigned to emphasize it as an attractive public accessway, and to maximize new public views from it and from the project's bay-fronting components (views of the bay, sandspit, and Morro Rock), the newly created and provided views should be enough to offset the Embarcadero view blockage associated with the buildings themselves.

With respect to views from the blufftop street end, construction of the new two-story development will not significantly alter the views of the bay and points beyond. Though it is true some blue water views will be affected by the new structures, it will occur along a very narrow band of the 180 degree view afforded by the street end. Furthermore, because of the significant differences in height between the proposed new structures and bluff top elevation (almost 20 feet), only a small portion of the inner harbor will be obstructed. The more significant and visually prominent geologic features (e.g., Morro Rock, sandspit, Point Buchon headland) will be unaffected by the new structures.

In terms of design, the architectural character of the mixed-use development is generally consistent with the overall theme of one and two story structures established along the Embarcadero. The two structures include building articulation, setbacks, and offsets that provide architectural interest and break up mass. Second story offsets along the east (bayside) elevation also serve to minimize massing directly adjacent to the proposed lateral public access boardwalk and view deck. The roof design similarly includes articulation and variation, and thus the overall appearance is of a collection of individual appendages that are connected together. Overall height is 25 feet, which is compatible with the size and height of the structures seen along the Embarcadero, and consistent with development standards for projects that provide significant public benefits such as those proposed/conditioned in this application. The proposed material palette includes a mix of natural and man-made materials such as stone, wood, plaster, and metal. Horizontal wood and plaster siding will be painted muted colors. Stone or brick columns will be used for supports. Vertical windows are proposed throughout and a metal roof caps the construction. The City has conditioned its permit to require review and approval of all final materials to ensure compatibility with the architectural styling, themes, and character of the waterfront planning district.

It is clear that the project includes appropriate elements with respect to building forms and projections on a gross scale, but finer scale elements lack sufficient definition to ensure that the end result appropriately reflects the character of the area. The City's conditions of approval can be incorporated into this approval to ensure maximum effectiveness of them (see Special Condition 7), but there is little guarantee that the project's design elements will ensure compatibility with Morro Bay Embarcadero aesthetics, and that these aesthetics will be enforced and maintained over time. This includes

¹¹ As required by the LCP (Waterfront Design Guideline Chapter 5, Criteria 1(a)).



maintaining the LCP-designated maritime theme and pedestrian-oriented form and scale. The Commission is aware of the pitfalls – small and large – involved with ensuring a finished facade matches a design aesthetic, and such assurance is predicated on much of the surfacing detail that will be developed as the project moves forward. To address this concern, Special Condition 1(l) requires submission of project design plans, including an appropriate materials palette, for Commission staff approval.

3. Conclusion

The Coastal Act requires new development to protect views to and along the shoreline, be visually compatible with the character of the area, to protect the character of this popular visitor destination, and, where feasible, to restore and enhance visual quality in visually degraded areas. As conditioned to ensure design compatibility, and to ensure well designed maximum public recreational access that will open up new public views, the project can be found consistent with the visual resource and community character policies of the Coastal Act.

C. Water Quality

1. Applicable Policies

Coastal Act Sections 30230 and 30231 state:

Section 30230. *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231: *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

2. Analysis

The site is located immediately adjacent to and over the waters of Morro Bay. Construction activities associated with the development of the site, and drainage and run off from the completed project could potentially result in adverse impacts on Morro Bay water quality. In particular, those activities include the demolition of existing waterfront structures (office building and foundation pilings), construction of the new commercial retail/visitor-serving building, and construction of the new lateral access boardwalk view deck, and floating dock. The project requires work over and adjacent to open coastal waters, which could lead to potential adverse water quality impacts. Fortunately, impacts to water quality during



construction can readily be minimized through the development and implementation of a construction plan that, at a minimum, includes identification of all construction and staging areas, all construction methods and timing, and all construction BMPs otherwise (i.e., silt fences, straw wattles, washing/refueling areas, spill containment measures, site cleanup procedures, waste disposal, etc.), including those designed to prevent release of construction-related materials, liquids, soil, and debris into the bay (see Special Conditions 3(a-d)). To ensure maximum public notification and good construction relations, the construction plan must also be kept on site and all persons involved in construction briefed on the content and requirements of it, and a construction coordinator must be designated and be available to answer questions and also investigate complaints and take remediation action if necessary 24 hours per day for the duration of the project (see Special Condition 3(e)).

In terms of post-construction water quality measures, the project includes a suite of measures to protect Morro Bay, including improvements to the existing drainage system on-site, and water quality filtration/treatment units on-site to ensure that runoff from the parking lot and the rest of the project does not adversely affect Bay water quality. Some of these measures have been adjusted by the City's condition of approval. So as to ensure maximum effectiveness of them, this approval incorporates the City's conditions as conditions of this permit (see Special Condition 7).

3. Conclusion

As conditioned, the project adequately addresses water quality issues and it can be found consistent with the Coastal Act's water quality protection policies.

3. Conditions of Approval

A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.



- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

- 1. Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two full size set of final plans to the Executive Director for review and approval. The Final Plans shall be in substantial conformance with the plans submitted to the Coastal Commission (dated received in the Commission's Central Coast District Office May 23, 2007, and titled Site Plans, Elevations, and Roof Plans prepared by Mark L. Allen) except that they shall be revised and supplemented to comply with the following requirements:

- a. Development Footprint.** The maximum development footprint for the commercial retail/visitor-serving structures combined shall not exceed 5,512 square feet, and shall not encroach further seaward than the westernmost extent of lease sites 67 and 68 as shown on sheet A-1 of the May 23, 2007 plans (see Exhibit B).
- b. Building Height.** Building heights shall not exceed 25 feet as measured from existing grade.
- c. Public Access View Deck.** A public access view deck at least 18 feet by 18 feet shall be constructed adjacent to, and at the same elevation as, the lateral public access boardwalk.
- d. Floating Dock.** Final plans shall illustrate the publicly available floating dock and gangway including all support structures and connections.
- e. Public Access Boardwalk.** A 10-foot wide public access boardwalk along the bay frontage shall connect to the public access view deck, and shall provide for seamless connectivity to future public access boardwalks along properties north and south of the development site.
- f. Driveway/Courtyard.** The 27-foot wide driveway/courtyard shall be redesigned to primarily appear and function as a public accessway in which cars are sometimes present. The area shall, at a minimum, include: differentiation in paving paving/path materials to better identify pedestrian/bicycle access (e.g., cobbles, turf block, pavers, decomposed granite, etc.); a clear path alignment at least ten feet in width extending from Embarcadero Road to the public access boardwalk; maximized landscaping (including low landscaping adjacent to the accessway as well as taller landscaping nearer the buildings and transitional landscaping in between); lighting for wayfinding; and identified areas for access amenities (e.g., benches, bike racks, etc.) as well the amenities themselves and access to them (e.g., the restrooms). Removable bollards or equivalent shall be included at the street and toward the lateral accessway to limit and confine vehicles as much as possible, and to ensure use of the parking is limited to patrons of the hotel units. Driveway approach and ingress/egress shall be limited as much as possible. Development not associated with public recreational access in the driveway/courtyard area shall be limited as much as possible.



- g. Carports.** Carport areas shall be covered with doors or equivalent to hide cars from view as seen from the driveway/courtyard, where such doors or equivalent shall be designed to seamlessly integrate into the public access courtyard aesthetic.
- h. Railings.** All railings shall be designed to be unobtrusive and to maximize through views (e.g., vertical railings spaced sufficiently apart, cable railings, etc.) while maintaining pedestrian safety. Glass or equivalent railing systems shall be prohibited to avoid impacting birds.
- i. Parking.** The number of on-site parking spaces shall be limited to a maximum of three spaces per building and a maximum of six spaces overall. Any additional required parking must be satisfied off-site, either in an adjacent lot (by formal agreement), or by payment into the City's parking in-lieu fee fund at a rate of \$15,000 per space. Evidence of a formal parking agreement recorded at the County Recorder's Office shall be required for any off-site parking to be applied.
- j. Non-Native and Invasive Plant Species Prohibited.** Plans shall identify all plant materials to be used for landscape purposes, and all irrigation systems designed to maintain site landscaping. Landscaped areas shall consist only of native plants of local stock that are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be so identified from time to time by the State of California, and no plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be planted or allowed to naturalize or persist on the property. Plans shall include provisions to ensure that all site landscaping is maintained in its approved state in perpetuity.
- k. Lighting.** The location, type, and wattage of all light fixtures (including catalog sheets for each fixture) shall be illustrated. All exterior lighting shall be designed and located so that only the intended area is illuminated and off-site glare is prevented. All lighting shall be cutoff style fixtures that are directed downward to prevent glare on adjacent and surrounding areas (i.e., Morro Bay), and shall be limited to the maximum extent feasible while still providing for public safety. Lights shall have solid sides and reflectors to further reduce lighting impacts, and shall be placed on a switch or timer to turn them off when not needed during the late evening.
- l. Design.** The plans shall clearly identify all measures that will be applied to ensure that the project design, including all structures and including all other project elements within the public view (e.g., walkways, paved areas, railings, benches, tables, chairs, lighting, signs, landscaping, etc.), emulates Morro Bay Embarcadero aesthetics, including use of a maritime theme and pedestrian-oriented form and scale. At a minimum, the plans shall clearly identify all publicly visible structural elements, materials, and finishes (including through site plans and elevations, materials palettes and representative photos, product brochures, etc.).

The Permittee shall undertake development in accordance with the approved Final Plans.

- 2. Public Access Management Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit for Executive Director review and approval two sets of full-



scale public access management plans (Access Plans). The Access Plans shall clearly describe the manner in which general public access associated with the approved project is to be managed and provided, with the objective of maximizing public access to the public access areas of the site (including all site walkways, boardwalks, the courtyard, the floating dock, and the public view deck) and all related areas and public access amenities (i.e., restrooms, bench seating, etc.) described in this special condition. The Access Plans shall be substantially in conformance with the public access portion of the plans submitted to the Coastal Commission (including as shown on sheet A-1 of Exhibit B), except as modified by these special conditions, and shall at a minimum include the following:

- a. Clear Depiction of Public Access Areas and Amenities.** All public access areas and amenities, including all of the areas and amenities described above, shall be clearly identified as such on the Access Plans (including with hatching and closed polygons so that it is clear what areas are available for public access use).
- b. Floating Dock.** All parameters for use for the floating dock shall be clearly identified. The floating dock shall be publicly available as a transient use facility (and not as a long-term docking area) for general public and/or commercial fishing use, shall be clearly an integral part of the overall development (including integrating docking use with overall operations of the site), and any fees shall be as low as possible commensurate with standard rates for the area, where evidence to this effect shall be provided if fees are identified.
- c. Amenities.** Public access amenities (such as benches, bicycle racks, trash and recycling receptacles, etc.) shall be provided, including at a minimum benches along the courtyard, at the public view deck, and appropriate locations along the lateral accessway, and bike rack parking for at least six bicycles.
- d. Public Access Signs/Materials.** The Access Plans shall identify all signs, handouts, brochures, and any other project elements that will be used to facilitate, manage, and provide public access to the approved project, including identification of all public education/interpretation features that will be provided on the site (educational displays, interpretive signage, etc.). Sign details showing the location, materials, design, and text of all public access signs shall be provided. The signs shall be designed so as to provide clear information without impacting public views and site character. At a minimum, public access directional signs shall be placed at the Embarcadero Road entrance to the courtyard, at the intersection of the lateral access boardwalk with the courtyard, at the floating dock and at the gangway where it connects the floating dock to the lateral access boardwalk, and at the public view deck. At a minimum, appropriate (to Morro Bay issues, information, and history) public access interpretive signs shall be placed at the public view deck and along the lateral access boardwalk.
- e. Courtyard Access.** The Access Plans shall clearly specify all methods to be used to ensure that vehicular use is minimized in the courtyard area, and to ensure that such use is made to appear secondary to public access use (including though use of bollards or equivalent at the street and



toward the lateral accessway to limit and confine vehicles, limiting driveway improvements as much as possible, and putting doors or equivalent across the carport openings to hide the vehicles once parked), including providing that only hotel patrons may use the parking spots.

- f. No Public Access Disruption.** Development and uses within the public access areas that disrupt and/or degrade public access (including areas set aside for private uses, barriers to public access (furniture, planters, temporary structures, private use signs, etc.) shall be prohibited. The public use areas shall be maintained in a manner that maximizes public use and enjoyment.
- g. Public Access Use Hours.** All public access areas and amenities shall be available to the general public free of charge (other than potential minimal docking fees) during at least daylight hours (i.e., one hour before sunrise to one hour after sunset), and during at least all non-daylight hours when the retail components of the approved project are open. The Access Plans shall provide for 24-hours per day access to the lateral and vertical access features once connectivity is provided via the lateral access boardwalk to both upcoast and downcoast lateral accessways.
- h. Public Access Areas and Amenities Maintained.** The public access components of the project shall be maintained in their approved state in perpetuity.
- i. Public Access Amenities Provided Prior to Occupancy.** All public access components of the approved project shall be constructed and ready for use prior to retail/hotel occupancy of the project.

The Permittee shall undertake development in accordance with the approved Public Access Plan, which shall govern all general public access to the site pursuant to this coastal development permit.

- 3. Construction Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two full sized copies of a Construction Plan to the Executive Director for review and approval.
 - a. Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. Construction and staging zones shall be limited to the minimum area required to construct the approved project, and to avoid construction impacts to the bay, among other ways by using inland areas for staging and storing construction equipment and materials.
 - b. Construction Methods.** The Construction Plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separated from bay and public recreational use areas (including using unobtrusive fencing (or equivalent measures) to delineate construction areas).
 - c. Construction BMPs.** The Construction Plan shall also identify the type and location of erosion control/water quality best management practices that will be implemented during construction to protect coastal water quality, including the following: (a) silt fences, straw wattles, or equivalent apparatus, shall be installed at the perimeter of the construction site to prevent construction-



related runoff and/or sediment from discharging to the bay; (b) equipment washing, refueling, and/or servicing shall take place at least 50 feet from the bay. All construction equipment shall be inspected and maintained at an off-site location to prevent leaks and spills of hazardous materials at the project site; (c) the construction site shall maintain good construction housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the site); (d) all erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each work day.

- d. Construction Site Documents.** The Construction Plan shall provide that copies of the signed coastal development permit and the approved Construction Plan be maintained in a conspicuous location at the construction job site at all times, and that such copies are available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the coastal development permit and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.
- e. Construction Coordinator.** The Construction Plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

The Permittee shall undertake construction in accordance with the approved Construction Plan.

- 4. Shoreline Development Stipulations.** By acceptance of this permit, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns that:
 - a. No Further Seaward Encroachment.** Any future development, as defined in Section 30106 (“Development”) of the Coastal Act, shall be constructed inland of, and shall be prohibited seaward of, the bulkhead except for permitted development associated with construction, maintenance, or repair of the project approved by this coastal development permit.
 - b. Assumption of Risk, Waiver of Liability and Indemnity Agreement.** The Permittee acknowledges and agrees, on behalf of itself and all successors and assigns: (i) that the site is subject to coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, tidal scour, coastal flooding, and



the interaction of same; (ii) to assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; and (v) that any adverse effects to property caused by the permitted project shall be fully the responsibility of the property owner.

5. Hotel Requirements.

- a. **Length of Stay Provisions.** All six visitor-serving overnight units shall be open and available to the general public. Rooms may not be rented to any individual, family, or group for more than 29 days per year or for more than 14 days between Memorial Day and Labor Day.
- b. **Conversion Prohibited.** The conversion of the approved hotel units to limited use overnight visitor accommodation units (e.g., timeshare, fractional ownership, etc.) or to full-time occupancy condominium units or to any other units with use arrangements that differ from the approved project shall be prohibited.

6. **Lower Cost Overnight Accommodations Mitigation Fee.** PRIOR TO COMMENCEMENT OF CONSTRUCTION ACTIVITIES, the Permittee shall submit to the Executive Director for review and approval a plan to establish a Lower Cost Overnight Accommodations Fund (Fund). Subsequent to Executive Director approval of the plan and prior to construction, a sum equal to \$13,860 per room for 25% of the total rooms proposed shall be deposited into an interest bearing account designed to hold the Fund, to be established and managed by one of the following entities as approved by the Executive Director: the City of Morro Bay, the County of San Luis Obispo Parks Department, the Port San Luis Harbor District, the California Department of Parks and Recreation, Hostelling International, or similar entity. The purpose of the Fund account shall be to establish new lower cost overnight visitor-serving accommodations, such as new hostel or tent campground units, at appropriate locations within the coastal zone of San Luis Obispo County near the project site. The entire fee and any accrued interest in the Fund shall be used for the above-stated purpose, in consultation with the Executive Director, within ten years of the fee being deposited into the account. Any portion of the fee that remains after ten years shall be donated to one or more of the State Parks units located along the San Luis Obispo County shoreline (e.g., Estero Bay, Morro Strand, Morro Bay, Montana de Oro, or Pismo Beach State Park), or other organization acceptable to the Executive Director, for the purpose of providing lower cost public access and recreation improvements to and along the shoreline, including improvements to the California Coastal Trail.

PRIOR TO EXPENDITURE OF ANY FUNDS CONTAINED IN THIS ACCOUNT, the Executive Director must review and approve the proposed use of the funds as being consistent with the intent



and purpose of this condition. In addition, the entity accepting the in-lieu fee funds required by this condition shall enter into a memorandum of understanding (MOU) with the Commission, which shall include, but not be limited to, the following: (1) a description of how the funds will be used to create or enhance lower cost accommodations in the Coastal Zone; (2) a requirement that the entity accepting the funds must preserve these newly created lower cost accommodations in perpetuity; and (3) an agreement that the entity accepting the funds will obtain all necessary regulatory permits and approvals, including but not limited to, a coastal development permit for development of the lower cost accommodations required by this condition.

7. **Compliance with Local Conditions of Approval.** All conditions imposed by the City under legal authority other than the Coastal Act continue to apply.
8. **Deed and Lease Restrictions.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the Permittee has executed and recorded against the parcel(s) governed by this permit a lease and deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

C. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of Morro Bay, acting as the lead CEQA agency, conducted an environmental review for the proposed project per the requirements of CEQA and issued a Negative Declaration with Mitigations.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The Commission



has reviewed the relevant coastal resource issues with the proposed project, and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference.

The Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA. As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. If so modified, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

