

## 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

W7b



Filed:	07/24/2008
180 <sup>th</sup> day:	01/20/2009
PSA-Extension	04/20/2009
Staff report prepared:	05/28/2009
Staff Report prepared by:	M. Watson
Staff Report approved by:	C. Lester
Hearing date:	06/10/2009

## COASTAL DEVELOPMENT PERMIT APPLICATION

**Application number** .....3-08-025, Harbor Hut, Virg's, Great American Fish Company (GAFCO) Redevelopment Project

**Applicant**.....George Leage, Darby Neil, and Jim Leage

**Project location** .....Along the Morro Bay Embarcadero (lease sites 110-113, 122-128, 110W-113W, 115W, 122W-128W) at 1185-1215 Embarcadero Road (APN 066-351-012, 013, 014, 015, 016, 018, 019, 020, 028, 029, 039) adjacent to and over Morro Bay in the City of Morro Bay, San Luis Obispo County.

**Project description**.....Renovation and redevelopment of three existing commercial business and related boating facilities spanning 22 lease sites including demolition of floating docks, the "Thai Boat" restaurant, "Virg's Tackle Shop", shed, and ancillary structures, and construction of a two-story commercial visitor-serving mixed use structure (Virg's), new commercial boating finger slips (Virg's and Harbor Hut), new marine fuel tanks, new restaurant/fish market expansion (GAFCO), side-tie dock and live bait receiver bins (Virg's), ancillary structures (e.g., pilings, framing, stairs, gangways, etc.), and public access improvements, including 8' wide public floating dock, gangways, ADA compatible lift, rooftop deck, and outdoor seating area.

**Local Approvals** .....Concept Plan Approval of Conditional Use Permit UP0-058 City of Morro Bay City Council, Phase I (April 28, 2008), Phase II (May 12, 2008).

**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 existing retail, commercial boating, restaurant, and related development on the site (i.e., Virg's Tackle Shop, Thai Boat Restaurant, existing floating dock, workmen's shed and ancillary structures), and construct a mix of uses and development consisting of



commercial lease space (i.e., commercial and recreational sport fishing equipment, bait, repair), restaurant expansion and restaurant relocation, commercial boating finger slips and related development (i.e., 100 steel pilings), bait holding tanks, marine fuel station, and public access improvements (i.e., publicly available floating dock, decks, outdoor seating area, restrooms, and pocket park, etc.) in its place. The project is located on 22 land and water lease sites in the northern Embarcadero adjacent to the commercial boating T-Piers. As proposed, the project will expand existing commercial boating facilities in Morro Bay by increasing the capacity of the boat slips and side-tie docks from 6 boats (existing, depending upon size) to a maximum of 11 boats (proposed, also depending upon size).

The proposed project does not involve any new land-based retail or visitor-serving uses that would necessitate provision of additional parking spaces. However, demolition of the Thai Boat restaurant will facilitate realignment of the commercial fishing dock access road (City project) and re-striping of the adjacent public parking lot to satisfy the increase in LCP parking requirement (3 additional spaces) necessitated by the increase in vessel demand (i.e., additional boat spaces).

The proposed project will also provide new public recreational access opportunities by expanding and tying together the existing network of floating docks and allowing the public to access almost 590 linear feet of Bay waters during daylight hours. Public access will be further enhanced by the provision of a small pocket park, observation decks and seating areas, restrooms, and an ADA accessible lift for dock access. The Applicants have also proposed to pay for the portion of the Harborwalk pedestrian path (already constructed) that traverses their lease sites on the inland side of the existing development. The Harborwalk pedestrian path provides a critical link in the northern Embarcadero shoreline access trail and a segment of the California Coastal Trail. Vertical access will be provided via three gangways and the one ADA accessible lift at various locations along the project-area waterfront.

Sensitive marine resources found in the area include marine mammals and birds, which are located in or nearby areas proposed for construction activity. Otters and pelicans can be impacted by noise or construction activity. Thus, mitigation measures are proposed that include hiring a "monitor" that will be present on the jobsite at all times during construction and have the authority to issue an immediate stop work order should these species be detected within in the project area. Additionally, eelgrass was detected on the lease site seaward of the existing development. The City's approval requires all activities that disturb the ocean floor (i.e., installation of pilings) to be monitored by a project biologist to ensure that impacts to eelgrass are avoided or minimized.

Notwithstanding the commercial fishing, public recreational, and visitor-serving value of these improvements, the proposed project includes several elements that raise Coastal Act consistency issues. Staff therefore recommends that the **Commission approve a revised project with conditions** requiring the Applicants to provide final project plans, eelgrass mitigation, additional public access improvements, construction BMPs, and ensuring a utilitarian maritime theme for all structures. These conditions maximize the project's conformance to the coastal access and resource protection requirements of the Coastal Act by requiring:

- Final project plans that: specifically identify the number and location of structural pilings to be



placed in estuary waters; accurately identify the location and seaward extent of commercial boating slips relative to the navigation channel and the City's T-Piers; illustrates an eight-foot wide shared lateral access floating dock along the entire bay frontage with vertical and lateral connections to adjacent properties and the City's municipal South T-Pier; and provides for see-through railings.

- Ongoing monitoring of affected site areas for eelgrass impacts; development and implementation of a mitigation plan if impacts are discovered; and compensatory mitigation for all eelgrass impacts within the newly created eelgrass habitat areas.
- The project site must be developed with public recreational/visitor-serving access components that are sited and designed in such a way as to provide maximum public benefit, including provision of lateral access on 590 linear feet of floating dock with vertical connections at the north and south ends of the dock; providing detail on access management over time; access and interpretive signing; and ensuring that the new floating dock is available for general public use during daylight hours 365 days a year for the life of the development.
- The design and appearance for all structures reflects the working dock/maritime theme that is characteristic of the established pattern of development along the Embarcadero.
- Construction plan and BMPs that identify the specific location of all construction areas, all staging areas, and all construction access corridors; the type and location of all erosion control/water quality best management practices that will be implemented during construction to protect coastal water quality; identification of a construction coordinator to be contacted during construction should questions arise regarding construction activities in case of both regular inquiries and emergencies.

As proposed and conditioned, the project represents an exceptional public recreational access and commercial boating 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**.

## 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 3-08-025 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 .....	5
1. Project Background, Location, and Description.....	5
2. Coastal Development Permit Determination .....	7
A. Marine Resources .....	7
B. Public Access and Recreation.....	14
C. Visual Resources/Community Character.....	19
3. Conditions of Approval .....	21
A. Standard Conditions.....	21
B. Special Conditions .....	22
C. California Environmental Quality Act (CEQA) .....	29
D. Exhibits	
Exhibit A: Location Map	
Exhibit B: Proposed Site Plans and Elevations	
Exhibit C: Site Photographs	
Exhibit D: Computer Simulation of Proposed Development	
Exhibit E: Waterfront Master Plan Policies	



## 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 project sites are situated along the north Morro Bay waterfront between the South T-Pier and North T-Pier, at 1185 through 1215 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 character of the Embarcadero in this location is strongly focused on commercial fishing, although the land portion of development that is the subject of this permit action includes visitor-serving and commercial retail uses as well.

The project sites are located west of Embarcadero Road and north of Beach Street within Planning Area 2 of the City of Morro Bay Waterfront Master Plan (WMP) and comprise 22 lease sites (110-113, 122-128, 110W-113W, 115W, 122W-128W), half of which extend out into the bay, and includes more than



590 linear feet of bay frontage. Planning Area 2 (T-Piers/Fisherman Working Area) includes the area between the Dynege energy intake building and the Embarcadero Road/Beach Street intersection.

The sites are zoned Commercial/Recreational Fishing (CF)/Harbor (H) with a Planned Development (PD) overlay in the LCP. In 1981 the community adopted and incorporated Measure D into the City of Morro Bay certified LCP zoning code. This measure prohibits approval of any new passenger for hire boats or any new restaurant, cafe, gift shop, or similar uses within the CF zone district. All existing such uses are considered non-conforming and must not be expanded or enlarged.

The project sites gently slope down from an elevation of roughly 14 feet above mean sea level at Embarcadero Road to approximately 11 feet above mean sea level at the top of the bulkhead. The land lease sites and much of the water lease sites are currently occupied by structures and other development including restaurants, fishing related shops, commercial retail, parking area, and public access improvements. There is also a network of floating dock and side-tie slips that is used to moor commercial fishing and recreational party boats and to provide access for a charter boat service. Public lateral access was constructed in combination with the Harborwalk pedestrian and bike trail improvements along the inland side of the existing structures and along the bayside revetment abutting the Dynege property. There are more intensive commercial fishing operations (i.e., boat repair dock, ice machine, fuel tanks, etc.) immediately adjacent to the north and thus general lateral access directly along the shoreline in this location is not provided. The Morro Bay South T-Pier is located immediately adjacent to the south and is currently open to general public use. See Exhibit A for location maps and Exhibit C for site photos.

#### Project Description

The project includes the demolition of all finger slips and floating docks (approximately 6,620 square feet of existing) including bait receivers, currently installed at the Great American Fish Company (GAFCO, lease site 115W), Virg's (lease site 113W), Harbor Hut (lease sites 122W-123W), and Virg's Tackle Shop (lease sites 124W-127W), and the construction/expansion of the GAFCO restaurant, and replacement/reconfiguration of the floating docks, bait receivers, and commercial boating finger slips. GAFCO proposes to expand their current restaurant use including via construction of a 605 square foot restaurant bar, 523 square foot fish market, 742 square foot outdoor deck, and 360 square feet of exterior walkways. In addition, roughly 2,300 square feet of 8-foot wide concrete floating docks and commercial boat finger slips are proposed on the water lease sites west of the landside development (including lease sites 113W, 115W, 122W-127W), and further out into state waters beyond the current extent of the referenced water lease sites. The floating docks will be accessed via four gangways/ramps and one ADA accessible lift, which would be available during limited hours for public access to the floating docks. Three bait receivers (in-water bait storage), each roughly 380 square feet, will be installed along side the floating dock on Virg's 113W water lease site. Construction of the floating docks, bait receivers, and finger slips requires the removal of 20 pilings from the bay and installation of 100 new steel pilings spaced at 25-foot intervals for structural stability.

The project also includes the demolition of Virg's tackle shop (lease sites 125-127), the Thai Boat



restaurant (lease site 128), and small storage shed/single-story building (lease site 124), and construction of a new two-story 6,585 square foot building with 2,000 square foot outdoor deck and walkway on the second floor. Virg's tackle shop and charter boat service will occupy the ground floor and it is anticipated that the Thai Boat restaurant (950 square feet) will relocate to the second floor of the new structure. The second floor will also offer two small office spaces (325 square feet each) and public restrooms (235 square feet). Once the Thai Boat restaurant has been demolished, underground fuel tanks will be installed in preparation for operating a marine service/fueling station. Lease site 128 will be reconfigured and the existing driveway realigned to make the approach safer for large vehicles and trucks. A new pocket park will be created at lease site 128 for general public use. Additionally, a new 450 square foot building would be constructed immediately adjacent to the Harbor Hut (lease site 124) that will include a rod and reel shop and public restrooms. The new Virg's building would be constructed at 25 feet in height, and the two new structures (i.e., Virg's and the rod/reel shop) would have a 15-foot wide view corridor between them. See Exhibit B for proposed project plans.

## 2. Coastal Development Permit Determination

### A. Marine Resources

The project involves construction, demolition, and filling activities in the Morro Bay estuary that may result in adverse environmental impacts to marine resources, as well as adversely affect water quality. The project involves the removal of 20 concrete pilings and demolition of existing structures in and over open coastal waters. It also includes construction of an expanded commercial boating facility including new finger slips and floating dock for joint commercial and public access uses which involves installation of 100 steel pilings directly in the Morro Bay estuary.

#### 1. Coastal Act Policies

Coastal Act Section 30230 requires that marine resources be maintained, enhanced and restored. New development must not interfere with the biological productivity of coastal waters or the continuance of healthy populations of marine species. Coastal Act Section 30230 states:

*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.*

Additionally, Coastal Act Section 30233 allows fill of open coastal waters and estuaries for the placement of structural pilings for expanded harbor and marina facilities as well as public recreational piers that provide public access and recreational opportunities. The Coastal Act allows such activities where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. It states in relevant part:



*(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:*

*(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities. ...*

*(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.*

Coastal Act Section 30231 requires that the productivity of coastal waters necessary for the continuance of healthy populations of marine species shall be maintained and restored by minimizing waste water discharges and entrainment and controlling runoff. Coastal Act Section 30231 states:

*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.*

Coastal Act Section 30234 protects commercial boating facilities and encourages new development to upgrade these facilities in the following manner:

*Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.*

Finally, Coastal Act Section 30250 states:

*(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent*





*of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels. ...*

## 2. Analysis of Impacts on Marine Resources and Essential Fish Habitats

Morro Bay is a small estuary of 2,300 acres fed by Chorro and Los Osos Creeks. It is protected from the Pacific Ocean by a lengthy sand spit. The estuary is a nursery for many species of invertebrates and fish, including some that live as adults in the ocean. The shallow water, eelgrass beds and wetlands provide protected habitat and rich food sources for birds, larvae, and fry. Marine mammals, invertebrates, fish, and seabirds make use of both the aquatic and terrestrial environments provided within the bay.

**Birds and Marine Mammals.** Marine mammals that have been found in the project area include the Pacific harbor seal (*Phoco vitulina*) and the threatened California sea otter (*Enhydra lutris*). California brown pelicans (*Pelecanus occidentalis californicus*) have also been observed in and around Morro Bay, the harbor, and the project site. Seals and otters feed on fish, clams, worms and other larger invertebrates throughout the estuary.

Typically, short-term noise impacts associated with construction activities are restricted to daylight hours and are not viewed as significantly impacting the physical environment. However, pile driving has the potential to adversely impact marine life, including fish and marine mammals. The noise and activity of construction may alter the behavior of fishes in the immediate vicinity of the T-Piers or cause them to avoid the construction area temporarily. In addition, noise associated with pile driving may also disturb marine mammals. National Marine Fisheries Service (NOAA Fisheries) has adopted 160 dB as an acceptable level of impulsive underwater sound. Based on available scientific evidence, acoustic harassment of marine mammals would not be expected to occur below this conservative level. However, the Morro Bay estuary also serves as an important habitat for many fish species which live among vast eelgrass beds. Thus, adverse impacts from loud noise will occur to these fish species if sounds levels from pile driving activities are excessive. In previous permit actions involving pile driving projects in coastal waters (including CC-074-05 (Caltrans) and CDP 1-06-022 (Caltrans)) the Commission has found that high pressure level impacts resulting from loud noise can, in some instances, kill fish and marine mammals and that the appropriate threshold for minimizing impacts to fish is to limit underwater noise levels to no more than 190 dB SEL accumulated and 206 peak dB. Noise levels above these thresholds may result in increased fish and marine mammal mortality rates. Thus, in order to minimize adverse impacts to fish and marine mammals, Special Condition 4(f) requires that underwater noise generated by pile driving activities shall not exceed an accumulated 190 dB SEL as measured 5 meters from the source. At no time shall peak dB SEL rise above 206 at 10 meters from the source. If construction noise exceeds the above thresholds, then alternative methods of pile driving (including, but not limited to, vibratory pile driving, press-in pile placement, drilling, dewatered isolation casings, etc.) or other sound mitigation measures (including, but not limited to sound shielding and other noise attenuation devices) shall be used as necessary to achieve the required dB threshold levels. Further, Special Condition 4(f) requires that hydro-acoustical monitoring be performed to ensure that underwater noise generated by pile driving activities do not exceed the specified limits and the applicant consult with the U.S. Fish and Wildlife Service (USFWS) and NOAA Fisheries to development a monitoring



program that meets this objective.

In addition, disturbing animals that are listed under the Endangered Species Act or Marine Mammal Protection Act may constitute harassment. To mitigate for any impacts, the City of Morro Bay conditioned its permit to require an environmental monitor to be on the job site at all times during which the pile driver is in operation. The environmental monitor will have the authority to halt any action that might result in injury or mortality of such wildlife, and will have the authority to employ non-invasive methods to discourage such animals from entering the construction area using methods approved by the California Department of Fish and Game (CDFG) and USFWS (such as use of hand waving, hand clapping, herding boards, or water hoses). The "otter monitor" will determine when it is safe to resume work after the mammal has left the area. The City's conditions of approval have been incorporated into this permit by Special Condition 8. As conditioned by the City and incorporated into this recommendation, construction of the proposed development will not adversely impact birds and marine mammals and is therefore consistent with Coastal Act Section 30230.

**Eelgrass Beds.** Eelgrass (*Zostera marina*) is a marine plant that grows in clear, well-lit, shallow coastal waters and provides shelter and spawning habitat for fish and invertebrates. It is widely recognized as one of the most productive and valuable habitats in shallow marine environments. The 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act set forth Essential Fish Habitat provisions to identify and protect important habitats of federally managed marine and anadromous fish species. Eelgrass beds are considered a Special Aquatic Site by the U.S. Army Corps of Engineers (ACOE), CDFG, USFWS, and NOAA Fisheries. Eelgrass habitat is regulated under Section 404 of the Clean Water Act and is considered Essential Fish Habitat by NOAA Fisheries.

Though the central and southern portion of the bay still contain fairly large, intact, and thriving eelgrass beds, the main harbor area adjacent to the proposed development site has undergone significant changes that have altered the condition and extent of eelgrass at this location. In addition, development along the Embarcadero has resulted in changes to the historic extent of eelgrass along these shores. The waterfront area has been heavily used by commercial and recreational fishing boats since the opening of the harbor in the mid 1940's. As a result, much of the fringing eelgrass beds and benthic environments that once existed have become fragmented and only remnant patches of eelgrass beds exist in areas where favorable ambient conditions prevail to support growth. Eelgrass thrives in a very narrow range of environmental conditions including shallow water with minimal turbidity and a mud or sandy substrate with good exposure to sunlight (i.e., minimal shading). A good example of this are the healthy eelgrass beds at the north end of the harbor adjacent to the Dynegy Energy intake. At this location, there is little development or disturbance of the shallow (i.e., less than 10-foot) intertidal area. Water clarity is good and adequate sunlight is available to support colonization and retention of eelgrass. In contrast, in many instances around the harbor, structures such as buildings, piers, and docks have encroached into this shallow intertidal zone and the eelgrass has retreated.

Several patches of eelgrass totaling approximately 1,000 square meters (10,765 square feet) are growing in approximately 10 feet of water in the vicinity of the proposed new boating and recreation facilities. According to Tenera Environmental, the firm hired to survey for eelgrass, robust eelgrass patches were



identified mostly outside the area of the proposed development footprint closer to shore and in between the finger slips and other floating docks. These patches were in water depths between 3 and 9 feet below the surface and ranged in cover between 70 and 300 square feet. The proposed new finger slips and floating dock would mostly avoid these significant eelgrass patches and provide additional opportunities for eelgrass colonization, though there would remain some potential impact to eelgrass through the loss of smaller isolated patches estimated at less than 6 square meters (64.6 square feet). The largest patch potentially impacted would be approximately 1.5 square meters (16.2 square feet) in size. Other existing eelgrass bed areas in the project vicinity could also potentially be impacted by construction activities and/or by the shading of sunlight from the new development.

With respect to Coastal Act policy requirements, marine resources must be protected and restored (Section 30230). New fill within the marine environment may be approved for limited uses, provided that the proposed development is the least environmentally damaging alternative and all feasible mitigation measures have been applied to minimize adverse impact to the marine environment (Section 30233). New development must also be consistent with all other applicable marine resource protection policies. As noted above, the proposed project includes a request for new fill to support an expansion of commercial boating facilities and public access.

As proposed, the new dock and boat facilities are designed to minimize impacts on existing eelgrass and provide maximum additional unobstructed shallow water areas within the desired range for eelgrass re-colonization and growth. The proposal includes retaining the floating dock in its current configuration and reorienting the boat slips approximately 45 feet to the west and in water generally deeper than -10 feet mean sea level. The proposed design will protect existing larger eelgrass beds while establishing new areas conducive to fostering eelgrass habitat that will be enclosed on all sides by floating docks. In so doing, the new configuration will open up previously occupied bay waters to facilitate natural regeneration and growth of eelgrass, and expansion of the existing thriving eelgrass beds. The design will also provide protection of these newly opened up eelgrass areas by preventing development or boats from encroaching within them. In its September 19, 2006 report prepared for the Applicant, Tenera Environmental estimates the proposed design would uncover approximately 340 square meters (3,675 square feet) of nearshore bay waters for eelgrass enhancement, which is roughly one-third the size of the existing eelgrass beds (1,000 square meters) or more than 50 times the amount of estimated potential eelgrass loss (6 square meters). In other words, potential loss of eelgrass areas would be offset at a roughly 50:1 ratio.

Clearly, the proposed dock and slip reconfiguration has the potential to be superior to the existing configuration in terms of providing opportunity for enhancement of eelgrass habitat, provided that all impacts associated with construction and shading are fully mitigated and eelgrass enhancement is realized. To ensure that the proposed enhancement takes root and to mitigate for all construction impacts, the Applicants will be required to survey the eelgrass beds in the vicinity of the project both before and after construction, and annually thereafter for 3 years. It is expected that new eelgrass areas will be significantly larger than any anticipated eelgrass impacts due to shading associated with the proposed project (i.e., the roughly 6 square meters based on the project as proposed). However, to ensure this is the case, remedial measures may be necessary to proportionally offset any uncompensated



reduction and to ensure that eelgrass impacts are properly mitigated. In the Morro Bay area, the Commission has typically relied on NOAA Fisheries Southern California Eelgrass Mitigation Policy standards in this respect, including proportionally offsetting impacts on at least a 1.2:1 ratio as identified in that Policy. Thus, special conditions require the Applicants to offset any such reduction in eelgrass identified, including through application of this Policy. Special Conditions 1(j) and 3 contain the mapping requirements and contingency measures necessary to ensure successful restoration and enhancement.

In sum, the proposed new fill for the expansion of the commercial boating facilities is an allowable use under Coastal Act Section 30233. And although the proposed expansion would result in the loss of a small amount of eelgrass initially, the revised location of the docks offers an opportunity for eelgrass habitat restoration and enhancement over the long term. Thus the proposed project is the least environmentally damaging alternative, in that it enhances available eelgrass habitat. Finally, Special Conditions are attached that will ensure restoration and enhancement is carried out, such that feasible mitigation measures are provided to minimize the adverse effects of the project. The project, as conditioned, is therefore consistent with Sections 30230 and 30233 of the Coastal Act.

### 3. Navigation Hazards

As noted above, the proposed project includes a request to expand commercial boating uses. The proposed development, however extends beyond the limits of the current water lease site boundaries into open coastal waters. This raises two significant issues. First, the project would create a potential navigation hazard because it would place new boat slips in close proximity to the ends of both the north and south commercial T-Piers and main navigation channel. Second, the proposed configuration of the boat slips has not been formally authorized by the City of Morro Bay (via lease agreement or reconfiguration of the water lease sites) or ACOE.

In discussions with Commission staff, the Harbor District has indicated that although the tidelands land use plan<sup>1</sup> guidance is broad and flexible enough to allow such an expansion into the bay, it has similar concerns regarding safe navigation in and around the City's T-Piers. The Harbor District has suggested that the distance between the end of the North T-Pier and the proposed expanded finger slips provides the minimum tolerance for safe navigation of typical large commercial fishing vessels. According to the Harbor District, when the project is brought back for precise plan review and approval, it is likely that some modification will be necessary to avoid creating a navigation hazard. Similarly, ACOE has expressed a concern relating to adequate clearance between the finger slips and the navigation channel. Aside from the obvious problems/conflicts arising from development immediately adjacent to the channel, ACOE has also raised questions with respect to its responsibility for maintaining the channel. ACOE is responsible for dredging sand and material from the navigation channel to ensure adequate depths for safe passage of larger vessels. Their concern is that the proposed development could interfere with its maintenance activities, by placing development near the navigation channel and preventing the

---

<sup>1</sup> As trustees of these tidelands, the City of Morro Bay is authorized to manage the use and development of these waters consistent with the terms of its State Tidelands Land Use Plan approved by the State Lands Commission. The City's Harbor District implements the terms of the Land Use Plan via the issuance of third-party leases of the land and water lease sites along the Embarcadero.



use of its maintenance dredge. According to ACOE, the maintenance dredge is very large and not very maneuverable, and thus would not be able to negotiate the tight areas created between the ends of the T-Piers and the proposed new finger slips.

Coastal Act Section 30250 states that new commercial development shall be located in proximity to existing developed areas able to accommodate it, and where it will not have any individual or cumulative impacts on coastal resources. Placing pilings and boat slips out into coastal waters in a way that creates navigation hazards cannot be found consistent with Section 30250 of the Act. In the Eelgrass Beds findings above, special conditions are included that require the floating dock and finger slip facility avoid disruption of eelgrass and implement all feasible mitigation measures to minimize such impacts. With this in mind, and as needed to revise the configuration of the finger slips to avoid navigation/maintenance hazards, Special Condition 1(e) requires the Applicants to identify the final location of the new finger slips, as well as the number and location of new pilings in site plan view on the lease sites. Special Condition 5 requires the Applicants to provide all relevant authorizations from the City of Morro Bay, ACOE, and State Lands Commission or evidence that permits/authorizations from these agencies are not necessary. Only as conditioned can the reconfiguration of the floating dock and finger slip facility be found consistent with Section 30250 of the Coastal Act.

#### 4. Water Quality

Coastal Act Section 30230 requires the maintenance, enhancement, and where feasible, the restoration of marine resources. In addition, biological productivity and water quality are protected through Coastal Act Section 30231. 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, inconsistent with the cited Coastal Act policies. In particular, those activities include the demolition of existing waterfront structures (buildings, floating docks, and foundation pilings), construction of the new commercial retail/visitor-serving buildings, and construction of the new public access view deck, floating dock, bait receivers, and boat slips. The project requires work over and adjacent to open coastal waters, which could lead to potential adverse water quality impacts. These 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 (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. Special Condition 4 requires the Applicants to implement specific mitigation measures regarding material containment, installation procedures, construction staging, and debris disposal during all ocean floor disturbing activities and over-water development. These mitigation measures and construction BMPs include at a minimum, the use of non-reactive piling materials (i.e., concrete, steel, untreated wood, plastic-dipped treated wood, reinforced recycled plastic, etc.); all pilings shall be driven into place; a flexible skirt shall be used to contain disturbed sediments during installation; heavy-duty netting shall be installed beneath all work areas to collect construction discards and a floating containment boom must be placed into the Bay to capture all debris that falls into the water; netting and



boom shall be cleaned daily or as often as necessary to prevent accumulation of debris; and all wastes shall be disposed of in the appropriate manner. The BMPs identified above are typical requirements for work over and into the Bay, and are adequate to satisfy the requirements of Coastal Act Section 30231.

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 4(e)).

In terms of post-construction water quality measures, the project includes measures to protect Morro Bay waters including improvements to the existing drainage system 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 the proposed water quality measures have been improved by the City's condition of approval. To ensure that both the proposed and City-required water quality measures are implemented, this approval incorporates the City's conditions as conditions of this permit (see Special Condition 8).

#### 5. Dock and Slip Parameters

Finally, the Applicants have indicated that the proposed use of the new floating dock and boat finger slips is primarily for commercial boating and partyboat vessels. Such facility can be found consistent with the Coastal Act if it includes parameters to ensure that it is clearly an integral part of the overall commercial fishing/commercial boating operations, and it is not used as a quasi-residential, long-term docking area. This approval is conditioned to ensure that the finger slips and dock facility is understood in this way (see Special Conditions 2(b) and 6).

#### 6. Conclusion

As conditioned to include all relevant authorizations, final project plans for the dock facilities, pre and post-construction BMPs, and to mitigate impacts to eelgrass beds and minimize disturbance of resident wildlife, no significant disruption of marine resources will result. With the inclusion of mitigation measures designed to prevent adverse impacts from construction activities, and to protect essential fish habitats and resources of the marine environment, the project conforms to the marine resource protection requirements of Coastal Act Sections 30230, 30231, and 30233.

### B. Public Access and Recreation

#### 1. Coastal Act Policies

Coastal Act Sections 30210 through 30224 require that new development maximize public recreational access, provide visitor-serving recreational facilities, protect oceanfront land for recreational use and development, encourage recreational boating facilities, and in general establish that coastal-dependent, visitor-serving, and public recreational access developments have 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 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.*

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 commercial fishing/harbor (CF/H) zone applicable to this site. The purpose of the CF/H district is as follows:



**17.24.180 Commercial/Recreational Fishing (CF) District.** *Purpose. The purpose of the commercial/recreational fishing district is to promote and accommodate both the commercial fishing industry and non-commercial recreational fishing activities in appropriate waterfront areas...*

**17.24.190 Harbor and Navigable Ways (H) District.** *Purpose. The purpose of the harbor and navigable ways or (H) district is to designate the area within the city limits covered by water, excluding sensitive habitat areas, for those uses which must be located on the water in order to function, or as an accessory use to a land based/shore facility or structure as provided in this chapter...*

**Waterfront Master Plan Area 2: T-Piers / Fishermen Working Area.** *This area is primarily devoted to the working fishing boats and shoreside support...*

In terms of siting and design criteria, the LCP advises that public visual access be protected and enhanced by, among other means, incorporating open view slots or corridors in the design of new or remodeled structures west of Embarcadero Road. The LCP further limits overall structural height to 17 feet and maximum building coverage to 70% of the land portion of the site. An increase in height up to 25 feet and corresponding second floor that is 70% of the maximum allowable first floor building coverage may be allowed for projects that include 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. A portion of 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. See Exhibit E: LCP Waterfront Design Guidelines.

In sum, the Coastal Act requirements (and LCP guidance) applicable to the site clearly require that development here maximize public access and recreational opportunities. Given that it is a public property, and includes development over and into public trust resources of the Bay, this direction is only magnified, and it is clear that a significant public benefit is required.

## 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 access components including lateral public access on the landward side of the existing businesses,<sup>2</sup> a publicly accessible floating dock with gangway access points and an ADA accessible lift, outdoor seating deck adjacent to the GAFCO, a second story observation deck at the new Virg's Sportfishing and tackle shop, and a pocket park adjacent to the Harborwalk pedestrian path at lease site 128. These improvements are intended to increase and improve the public access and recreational opportunities available at this location.

**Lateral and Vertical Dock Access.** Although the proposed project includes lateral and vertical access

---

<sup>2</sup> The Harborwalk pedestrian path has already been constructed landward of the existing restaurants and tackle shop, and the City has required the Applicants to contribute funds to cover the costs of installation at these locations.





to and along nearly 590-feet of bay frontage, it falls short of maximizing public recreational/visitor-serving access opportunities consistent with the Coastal Act. As proposed, the new floating dock, gangways, and ADA accessible lift will be public access enhancements along the bayfront of the site. However, the proposed floating dock access will double as a working dock for commercial fishing operations and thus at times when the boats are on or off-loading, public access on this feature may be precluded. Moreover, there isn't any through lateral access (i.e., connectivity to the south of the site). As originally proposed, the gangways (2) and ADA accessible lift are located near the north and central portion of the floating dock and thus pedestrians will have to double-back from the south end of the dock. A dedicated lateral access dock with land connections at both ends of the dock (i.e., at Virg's and the south T-Pier) would greatly enhance the public's ability to access and traverse the shoreline here. However, given the working harbor emphasis at this location and the difficulty in establishing access at the Harborwalk elevation seaward of existing buildings, dedicated public access is not feasible. Improved access connectivity, on the other hand, is feasible and necessary to make the Coastal Act findings of consistency. As such, this approval is conditioned to require an additional floating dock access connection via a new gangway from the City's municipal south T-Pier (see Special Condition 1(d)). Additional conditions are attached that formally recognize the floating dock as a shared public access/commercial boating facility (Special Condition 2(b)), ensure that it is constructed and opened concurrent with all other approved commercial/retail uses on site (Special Condition 7), and open and available for general public use during daylight hours, 365 days per year (Special Condition 2(f)). The conditions are necessary to fulfill Coastal Act and LCP requirements for maximizing public access.

**Outdoor Observation Decks.** Publicly available access and recreation amenities such as the Virg's Sportfishing second floor observation deck and an outdoor seating deck at the Great American Fish Company (GAFCO) also contribute to the overall access amenities in the vicinity, but fall short of maximizing public access as required by the Coastal Act and the certified Morro Bay LCP. The main shortcomings have to do with the possibility that these features may not be used exclusively for general public use due to their proximity to, and association with, existing commercial or retail enterprises present at these locations. As currently designed, both the outdoor seating deck at GAFCO and second-floor observation deck at Virg's Sportfishing will be constructed immediately adjacent to and outside of existing restaurants overlooking the Bay, which means they could be perceived by the public to be unavailable for general public use. Additionally, in the case of Virg's Sportfishing building, a wind screen is proposed within the area identified for public use in such a manner as to set up the potential for public versus private use conflicts. Accordingly, in order to meet the intent of the public access and recreation policies of the Coastal Act, special conditions are necessary to eliminate obstructions to public access (i.e., tables, wind screens, planters, etc.) and facilitate maximum public use of these areas. Special Condition 1(b) requires that the glass wind screen proposed for the Virg's Sportfishing second floor observation and view deck be relocated to the perimeter of the deck. All wind screens must be partially frosted or contain visually permeable designs to avoid unwanted bird strikes. Other barriers to public access including furniture, planters, temporary structures, private use signs, etc., are prohibited (see Special Condition 2(e)). Special Condition 2(f) requires the public access decks to be open and available during daylight hours and all non-daylight hours when the retail components of the approved project are open. All public access amenities must be appropriately identified and signed (Special Condition 2(c) and 2(d)), and maintained in their approved state in perpetuity (Special Condition 2(g)).



**Pocket Park.** The Applicants propose to install a pocket park adjacent to the Harborwalk pedestrian path at Lease Site 128, which is currently occupied by the Thai Boat restaurant. The proposal includes demolition of the restaurant and relocating the restaurant use to the second floor of Virg's Sportfishing building. The lease site will be slightly reconfigured to improve vehicular access to the City's commercial fishing docks and north T-Pier. Underground fuel tanks will be installed and park improvements made to benefit access and recreation. The Applicants state that the pocket park helps to qualify the project for design exceptions under the City's LCP significant public benefit provisions, which allow for increased height and massing of structures west of Embarcadero Road.<sup>3</sup> The improvement of a public park adjacent to the Harborwalk pedestrian path certainly would be a public benefit; however, special conditions are needed to memorialize the Applicants' proposal and provide additional detail regarding access improvements, as well as to secure a commitment to maintaining the pocket park in its approved state in perpetuity. Special Condition 1(i) is attached and requires the final plans to identify the pocket park. Special Condition 2(c) provides for a list of access amenities, including benches, bike racks, trash receptacles, etc.. To ensure that the pocket park is ultimately improved, Special Condition 7 requires the construction of the park improvements concurrently with other associated development and within 5 years of the date of the Commission's action on the coastal permit. And Special Condition 2(g) requires that the park improvements be maintained in their approved state. These conditions are necessary to fully implement the public access and recreation policies of the Coastal Act.

**Public Access Signage.** Similarly, and on a broader scale in terms of public access parameters for the public access amenities of the site (lateral and vertical accessways, view decks, floating 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.). 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, floating dock, pocket park, and view decks) and all related areas and public access amenities (i.e., restrooms, bench seating, bike racks, etc.), to provide clear and informative signage (including interpretive signage and acknowledgement of the Coastal Commission's action), and to ensure that the project's public access features are available for free, general public use during daylight hours (and during all non-daylight hours when the retail components of the approved project are open) 365 days per year (see Special Condition 2).

### 3. Conclusion

As proposed and conditioned by this permit, the project will provide new public recreational access opportunities on the Morro Bay Embarcadero by providing a unique lateral public access experience along nearly 590 feet of bay frontage in the vicinity of the Embarcadero's commercial fishing/working

---

<sup>3</sup> Virg's Sportfishing and tackle shop building is reliant upon applying just such an exception (for height and mass), as it is designed at two stories and 25 feet in height.



harbor. Public access view decks will be constructed in two locations and roughly at both ends of the proposed lateral access overlooking the Bay. Vertical access will be provided via three gangways and an ADA accessible lift to the new floating dock. And a new pocket park will be installed adjacent to the Harborwalk pedestrian path at the north end of the development site. Permit conditions refine and secure these public access elements. In sum, and only as conditioned, the project represents a truly exceptional public recreational 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. As such, the project can be found consistent with the Coastal Act policies discussed in this finding.

## C. 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 providing visual access (LCP Waterfront Design Guideline Chapter 5) in new development. Also, 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 surrounding 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 project site is currently developed with commercial and retail buildings spread over 590 linear feet and a minimum of 10 lease sites fronting Embarcadero Road. Though much of the project site is



occupied with development, there are both small and more significant open areas that provide view corridors through to Morro Bay, the sandspit, and Morro Rock. See photos in Exhibit C.

Inland of the project site, public views across the site are provided from the Harborwalk, the parking lot, and Embarcadero Road. In addition, a public street end and stairway on the bluffs about a block to the south also provides views of the bay, Morro Rock, Montana de Oro, and Point Buchon in the distance.

Construction of the proposed land-based development, like the existing structures, will obstruct public views from inland locations, including Embarcadero Road, over a portion of the site (roughly 30 linear feet; see Exhibits C and D) in the vicinity of the GAFCO restaurant, and to a lesser degree on the site of the proposed new Virg's Sportfishing and tackle shop buildings. Offsetting this impact are project improvements that include the establishment of two new view/observation decks, one at GAFCO and the other at Virg's, and a new 15-foot wide view corridor to the bay immediately north of Virg's Sportfishing. The proposed 26' x 28' (728 square feet) view deck at GAFCO will be located immediately seaward of the proposed new take-out fish market; and a 1,171 square foot observation deck will be provided on the second floor of the proposed new Virg's Sportfishing and tackle shop building. In addition, the removal and relocation of the Thai Boat restaurant from its current location, north of Virg's at lease site 128, will also open up a previously obscured view on the north end of the project site. As a result, both view decks will provide up-close and unobstructed views of the City's working harbor, as well as its renowned visual resources. The new view corridor north of the site will similarly showcase visual resources on the north end of Morro Bay. Of equal importance, no development is proposed within the existing view corridor fronting the Dynegy Energy property (approximately 195 linear feet in width), and thus the excellent views from the Harborwalk pedestrian path and Embarcadero Road will not be affected. As conditioned to ensure that the primary view corridors are protected and new view corridors/observation points are created which maximize public views of the project's bay-fronting elements (views of the bay, sandspit, and Morro Rock), the newly created and provided views adequately 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 there may be some blue water views affected by the new two story structure at Virg's Sportfishing, 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 very small portion of the inner harbor will be obstructed. Views of 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 proposed GAFCO fish market expansion is generally consistent with the overall maritime theme of single story structures established along the Embarcadero. The same cannot be said of the proposed Virg's redesign which lacks any resemblance to a maritime theme or working harbor motif. Of primary concern is the proposed two-story structure's



lack of building articulation, setbacks, and offsets that can provide architectural interest and break up mass, particularly along the east (Embarcadero Road) elevation. There is a mid-height pergola/marquee comprised of concrete pillars and header that is uncharacteristic of a working harbor or coastal fishing theme. The metal roof incorporates a fairly simple rectangular hip design. Overall height is designed at the LCP maximum 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, but further serves to reinforce the boxy/rectangular feel of the design elements. The proposed material palette includes mainly unnatural materials such as glass, metal, plaster, and concrete.

It is clear that the project lacks appropriate elements with respect to building forms and projections to ensure that the end result appropriately reflects the character of and will be compatible with Morro Bay Embarcadero aesthetics and that these aesthetics will be enforced and maintained over time. This includes maintaining the LCP-designated utilitarian maritime theme and pedestrian-oriented form and scale. To address this concern, Special Condition 1(a) requires submission of revised final project design plans, including an appropriate materials palette, for 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, protect the character of this popular visitor destination, and, where feasible, 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 is consistent with the visual resource and community character policies of the Coastal Act.

## 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. **Revised Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two full size sets of Revised Final Plans to the Executive Director for review and approval. The Revised 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 27, 2008, and titled Site Plans, Elevations, and Roof Plans prepared by C.P. Parker Architect, Shoreline Engineering, and Maul Associates) except that they shall be revised and supplemented to comply with the following requirements:
  - a. **Virg's Tackle Shop/Thai Boat Restaurant Design.** The design and appearance of this component of the project shall be modified to reflect a working dock, nautical/maritime theme (i.e., simple and utilitarian lines and materials, including use of board and bats, corrugated metal, brick, etc.). The plans shall clearly identify all measures that will be applied to ensure such design aesthetic is achieved, including with respect to all structures and all other project elements within the public view (e.g., walkways, paved areas, railings, benches, tables, chairs, lighting, signs, landscaping, etc.). At a minimum, the plans shall clearly identify all structural elements, materials, and finishes (including through site plans and elevations, materials palettes and representative photos, product brochures, etc.).
  - b. **Virg's Tackle Shop/Thai Boat Restaurant Public View Deck.** The wind screen shall be moved to the perimeter of the deck, and shall be frosted or partially-frosted plexiglass or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or plexiglass shall not be installed. Three benches oriented to Morro Bay and Morro Rock and for general public use shall be installed.
  - c. **Great American Fish Company Public View Deck.** The wind screen shall be frosted or partially-frosted plexiglass or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or plexiglass shall not be installed. Tables and chairs shall not interfere with through public pedestrian access from the municipal T-Pier, and shall be appropriately sited and spaced to ensure adequate public access maneuverability and space for viewing, including at the perimeter of the deck.
  - d. **Floating Dock and Public Access Ramps/Gangways.** The plans shall clearly identify the location, dimensions, and materials associated with all floating docks and all associated public access ramps, gangways, and ADA lifts, including a new connection from the City's municipal south T-Pier onto the floating dock fronting the Great American Fish Company. Structural pilings for the expanded floating dock shall be placed in approximately the same



location/orientation as the existing piles wherever possible and shall be placed as far apart as practicable to minimize the number of necessary pilings and prevent impacts to existing and potential eelgrass habitat.

- e. **Slips.** Final plans shall illustrate the location, dimension, and orientation of all boat slips (including one-sided slip areas along docks as well as two-sided slips), including identifying all support structures (i.e., pilings, bracing, etc.) and all connections to the floating dock and land based development. All reference points such as the lease site boundaries, location of revetment, waterline, etc. shall be shown and highlighted.
- f. **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.
- g. **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.
- h. **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.
- i. **Public Access Park.** The plans shall identify in site plan view the pocket park and related park amenities (e.g., benches, landscaping, interpretive signing, etc.) to be installed in the location of the to-be-demolished Thai Boat restaurant (Lease Site 128). See Special Condition 2(c) below for a list of required elements.
- j. **Eelgrass Mapping.** All existing eelgrass beds shall be avoided as much as possible. The plans shall identify in site plan view all existing eelgrass beds in the project area, all such existing eelgrass beds that will be shaded due to the project (including by docks and boats in slip locations), and all new eelgrass bed areas being created (including by moving docks and boat slips from current locations and by replanting) as part of the project.

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



- 2. Public Access Management Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of a public access management plan (Public Access Plan) to the Executive Director for review and approval. The Public Access Plan shall clearly describe the manner in which general public access associated with the approved project is to be provided and managed, with the objective of maximizing public access to the public access areas of the site (including all walkways along the inland side of the development (the Harborwalk), all floating docks and access thereto (i.e., gangways and ADA lift, etc.), the walkway and deck area at the Great American Fish Company next to the T-pier, the walkway adjacent to and the breezeway through Virg's, the stairway and elevator access at Virg's, the view deck area at Virg's, and the park at lease site 128) and all related areas and public access amenities (i.e., restrooms, bench seating, etc.) described in this special condition. The Public Access Plan shall be substantially in conformance with the plans submitted to the Coastal Commission (and referenced in Special Condition 1 above), 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 Public Access Plan (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 for general public pedestrian access and transient boat use (and not as a long-term residential or live-aboard docking area) for general public and/or commercial fishing use, and shall be clearly integrated into the overall development (including integrating docking use with overall commercial operations of the site).
  - c. Amenities.** Public access amenities (such as benches, table and chairs, bicycle racks, trash and recycling receptacles, etc.) shall be provided, including at a minimum seating areas within the public view deck at the Great American Fish Company (i.e., tables and chairs); benches within the public view deck at Virg's (3 benches), at the park at lease site 128 (1 bench), and at appropriate locations along the Harborwalk lateral pedestrian accessway; and bike rack parking for at least six bicycles in the vicinity of Virg's and at other locations (i.e., Harbor Hut or GAFCO) where it is appropriate.
  - d. Public Access Signs/Materials.** The Public Access Plan shall identify all signs 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 each gangway or lift entry point from the Harborwalk pedestrian trail, at the intersection of the Harborwalk trail and the park at lease site 128, at enough locations along the floating dock as to ensure public use parameters are known, at the entry to the south T-Pier and at the gangways from the T-Pier to the public view





deck (at Great American Fish Company) and floating dock, and at the breezeway and each ground-floor entrance to the public view deck at Virg's. The public view decks shall be conspicuously signed and available for public use, and any tables on the public view decks shall include signs on them indicating that the public may use the tables for free without any purchase. At a minimum, appropriate (to Morro Bay issues, information, and history) public access interpretive signs shall be placed at each of the public view decks, at at least one location along the Harborwalk, and at at least one location on the floating docks. Public access signage shall acknowledge the participants in the design and provision of the public access components, including the City of Morro Bay and the California Coastal Commission.

- e. **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, fences, barriers, ropes, etc.)) shall be prohibited. The public use areas shall be maintained consistent with the approved Public Access Plan and in a manner that maximizes public use and enjoyment.
- f. **Public Access Use Hours.** All public access areas and amenities shall be available to the general public free of charge 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.
- g. **Public Access Areas and Amenities Maintained.** The public access components of the project shall be maintained in their approved state in perpetuity.

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. **Eelgrass Monitoring Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of an eelgrass monitoring plan (EMP) to the Executive Director for review and approval. The EMP shall, at a minimum, provide for the following:
  - a. **Eelgrass Protection.** All eelgrass beds in the project area (those unaffected by the project and those created by the project – see Special Condition 1(j)) shall be identified in site plan view, and shall be protected as eelgrass habitat in perpetuity.
  - b. **Annual Monitoring.** Annual monitoring by a qualified biologist experienced with eelgrass shall be conducted to monitor the health and extent of eelgrass beds in the project area. A monitoring report shall be submitted to the Executive Director for review and approval on an annual basis with the first report due one-month following completion of the floating dock component of the project, and subsequent reports due at one year increments after that. All annual reports shall at a minimum include a site plan and written description of the status of eelgrass beds in the project area, including quantifying the amount of new eelgrass coverage observed within the eelgrass beds in the project area. If any annual report identifies a reduction in eelgrass coverage as



compared to then existing eelgrass coverage at the time of permit approval (see Special Condition 1j), then the report shall identify remedial measures to offset such reduction within the eelgrass beds in the project area. Annual reporting shall continue for at least three years or until all eelgrass beds to be protected pursuant to the EMP are supporting eelgrass as documented in two consecutive annual reports, whichever is later.

The Permittee shall undertake development in accordance with the approved Eelgrass Monitoring Plan.

- 4. Construction Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and approval. The Construction Plan shall, at a minimum, include the following:
  - 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. All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to have the least impact on public access and Morro Bay resources, including by using inland areas for staging and storing construction equipment and materials as feasible.
  - 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 all 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); and (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.
- f. **Construction and Pile Driving Noise Level Restrictions.** Underwater noise generated by pile driving activities shall not exceed an accumulated 190 dB SEL as measured 5 meters from the source. At no time shall peak dB SEL rise above 206 at 10 meters from the source. If construction noise exceeds the above thresholds, then alternative methods of pile driving (including, but not limited to, vibratory pile driving, press-in pile placement, drilling, dewatered isolation casings, etc.) or other sound mitigation measures (including, but not limited to sound shielding and other noise attenuation devices) shall be used as necessary to achieve the required dB threshold levels. Hydroacoustical monitoring shall be performed to ensure that underwater noise generated by pile driving activities does not exceed the limits specified above. The Applicants shall consult with the U.S. Fish and Wildlife Service and NOAA fisheries to develop a monitoring program that meets this objective. The Applicants shall submit a hydroacoustical monitoring plan for the review and approval of the Executive Director, prior to the commencement of pile driving activities.
- g. **Notification.** The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least 3 working days in advance of commencement of construction, and immediately upon completion of construction.

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

- 5. **Other Agency Approval.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director written evidence that all necessary permits, permissions, approvals, and/or authorizations for the approved project have been granted by the Morro Bay Harbor District, the California State Lands Commission, the U.S. Army Corps of Engineers, and the U.S. Coast Guard. Any changes to the approved project required by these agencies shall be reported to the Executive Director. No changes to the approved project shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.



- 6. Boat Slip Parameters.** All boat slips and side-tie docks shall be used for commercial and recreational fishing vessels, commercial passenger vessels, and commercial service vessels only. The use of the docks and slips for long-term private residential, live-aboard, and/or recreational vessels is prohibited.
- 7. Timing of Development.** Construction of the floating dock, bait receivers, and boat slips shall commence no later than 2 years from approval of this coastal development permit (i.e., by June 10, 2011). All public access areas and amenities associated with the floating docks shall be constructed and open for public use at the same time as the floating docks. All public access areas and amenities associated with the Great American Fish Company improvements shall be constructed and open for public use no later than four years from approval of this coastal development permit (i.e., by June 10, 2013), or concurrent with construction and use of associated development, whichever comes first. Construction associated with the Virg's Sportfishing and Thai Boat restaurant relocation, and pocket park improvements shall commence no later than 5 years from approval of this coastal development permit (i.e., by June 10, 2014). For purposes of this condition, "associated development" shall mean development at the same general location, where the locations are broken down by (a) development at and immediately adjacent to the Great American Fish Company, (b) development at and immediately adjacent to Virg's, and (c) all other development (including fuel tank installation and park improvements at and immediately adjacent to lease site 128). All deadlines in this condition may be extended for good cause by the Executive Director provided any extension beyond five years from approval of this coastal development permit (i.e., beyond June 10, 2014) shall require a Coastal Commission-approved amendment to this coastal development permit.
- 8. Incorporation of City Conditions.** All conditions of approval imposed on the project by the City of Morro Bay are incorporated as conditions of this approval. Any of the incorporated City conditions requiring materials to be submitted to the City and/or otherwise requiring City approval (such as Development Director approval), shall also require the same materials to be submitted to, and/or the same approvals granted by, the Executive Director under the same review and approval criteria as specified in the City conditions. For future condition compliance tracking purposes, such incorporated City conditions shall be considered subsections of this Special Condition 10. To the extent any such incorporated City conditions conflict with these conditions (i.e., standard conditions 1 through 5, and special conditions 1 through 9, and 10), such conflicts shall be resolved in favor of these conditions
- 9. 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.

**10. Lease and Deed Restriction.** 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 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 legal descriptions of the lease sites and 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.

## 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 as required by 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.

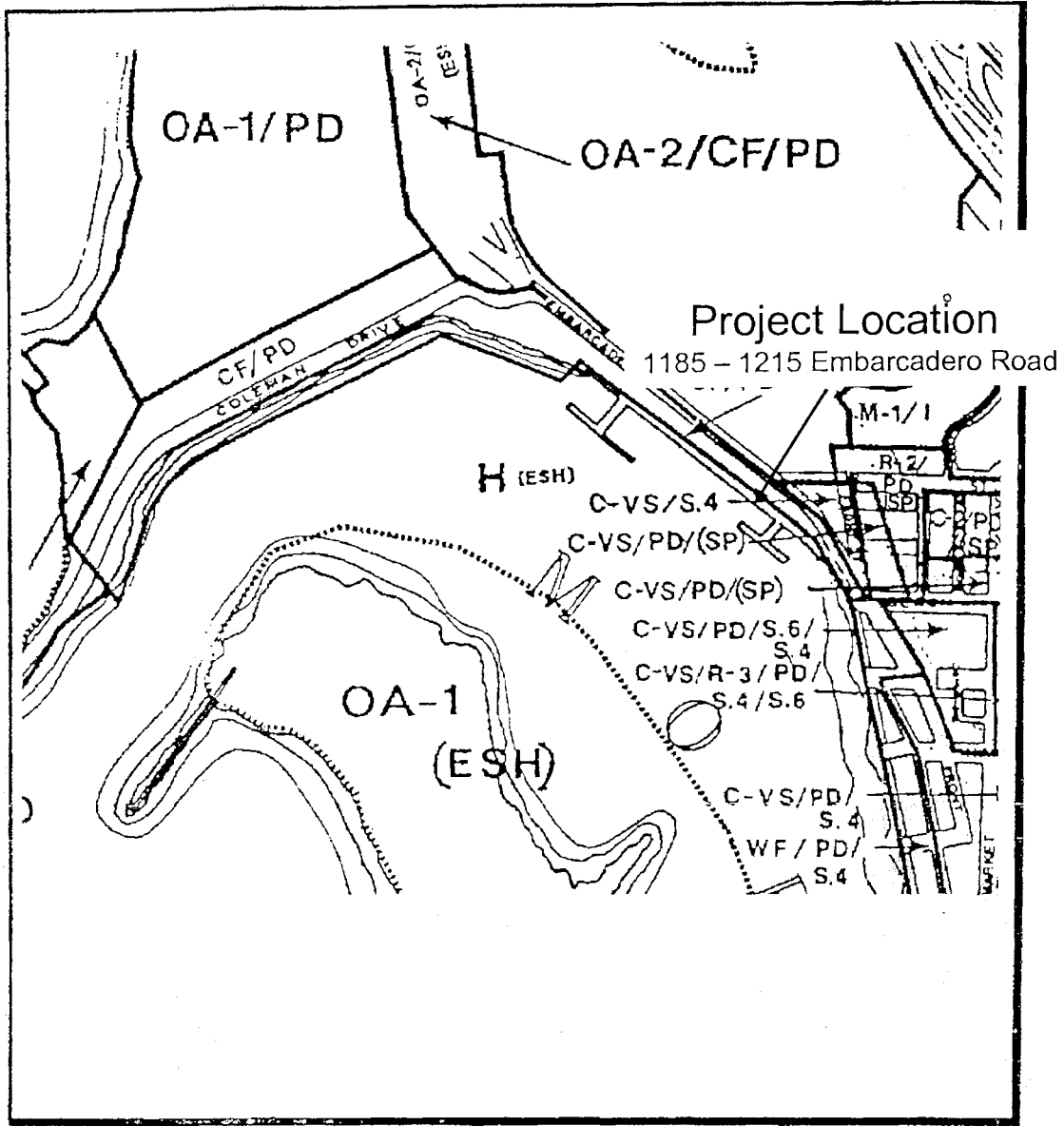
The Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA. As such, there are no



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).







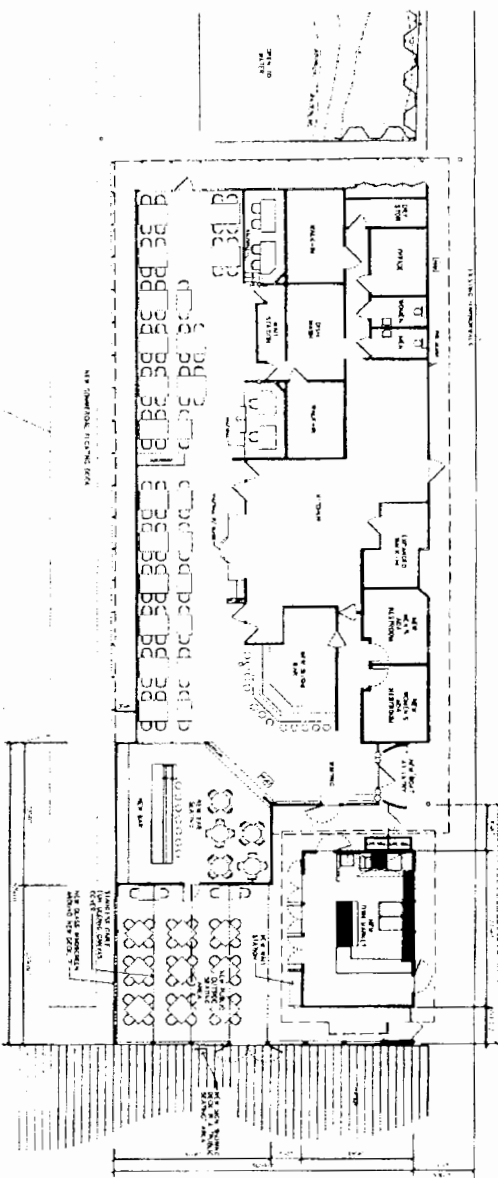
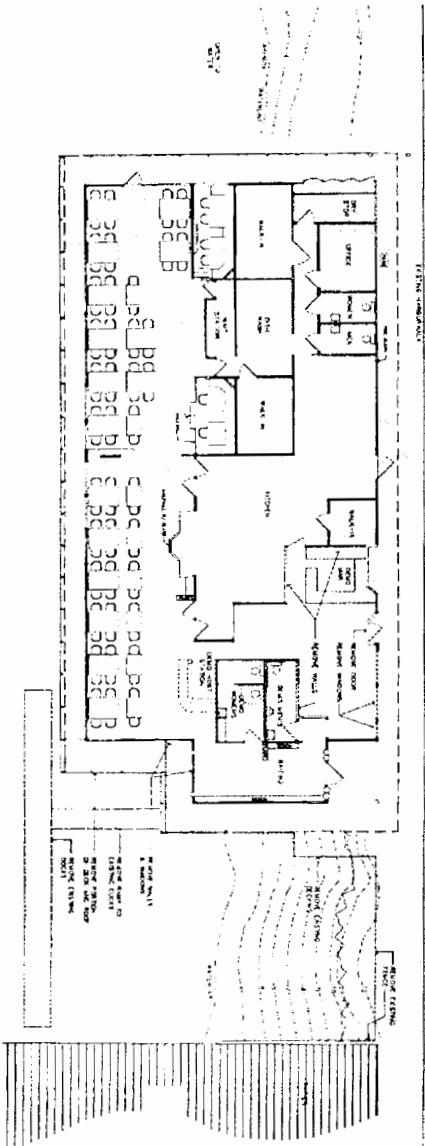
Planning Commission



ZONING MAP



# GAFCO Existing and Proposed Site Plans



DATE: 12/15/2017  
 PROJECT: GAFCO  
 SHEET: 2.1  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 APPROVED BY: [Name]

C. P. PARKER  
 ARCHITECT



Exhibit B  
 Site Plans and Elevations  
 Page 1 of 6

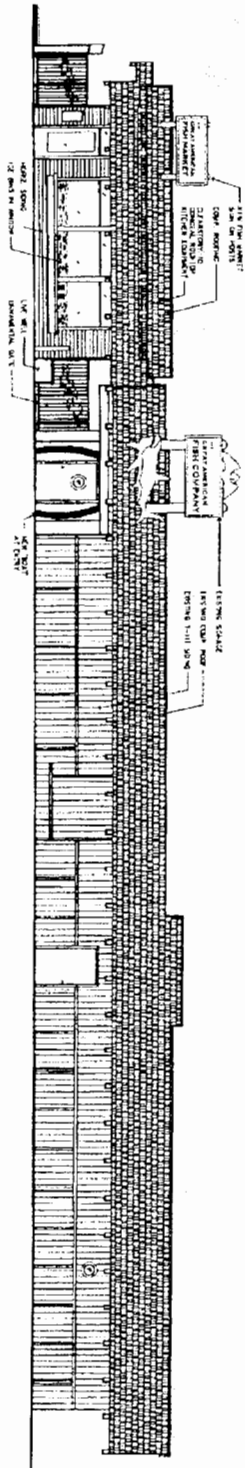
PROPOSED:  
 FISH MARKET,  
 PUBLIC DECK,  
 & REMODEL  
 FOR  
 THE GREAT  
 AMERICAN  
 FISH CO.  
 1000 MARKET ST. SE  
 SEASIDE, NC 28584  
 252-781-1111

CONDITIONAL USE  
 PERMIT

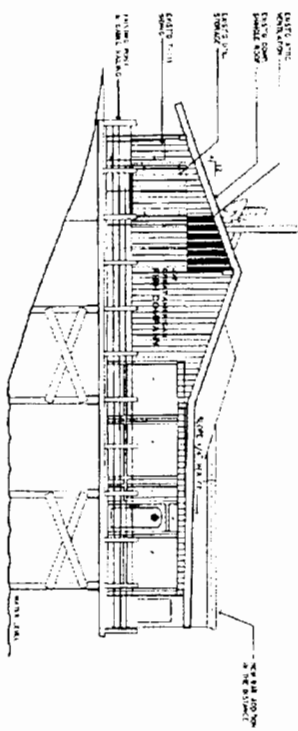
DATE: 12/15/2017  
 PROJECT: GAFCO  
 SHEET: 2.1  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 APPROVED BY: [Name]

2.1

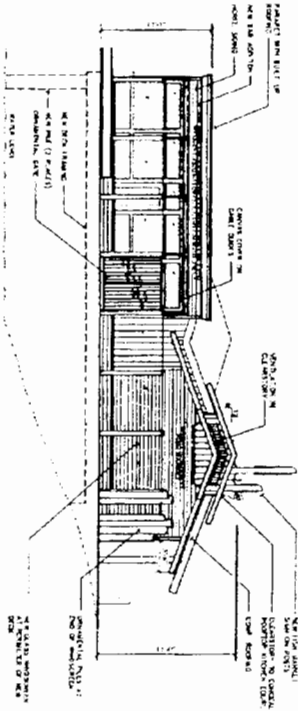
# GAFCO Elevations



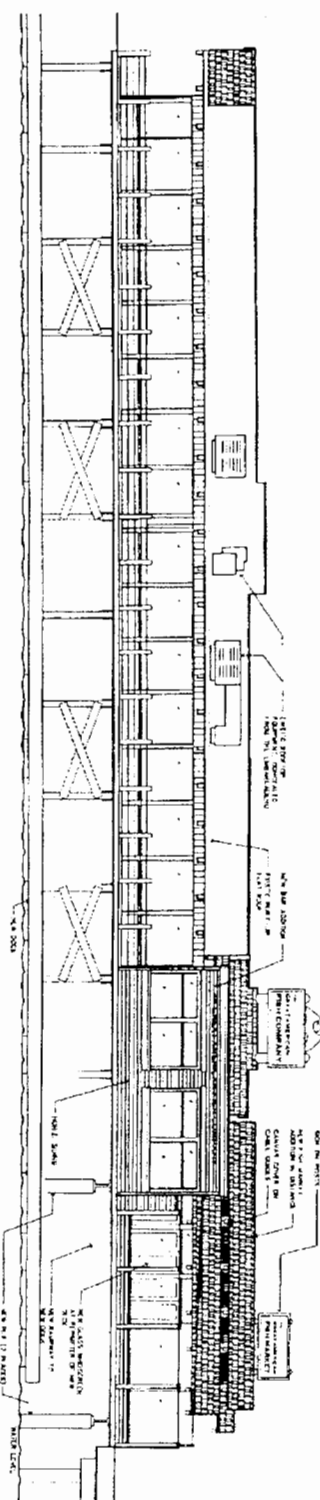
EAST ELEVATION



NORTH ELEVATION



SOUTH ELEVATION



WEST ELEVATION

Copyright © 1937  
 C. P. PARKER  
 ARCHITECT

C. P. PARKER  
 ARCHITECT



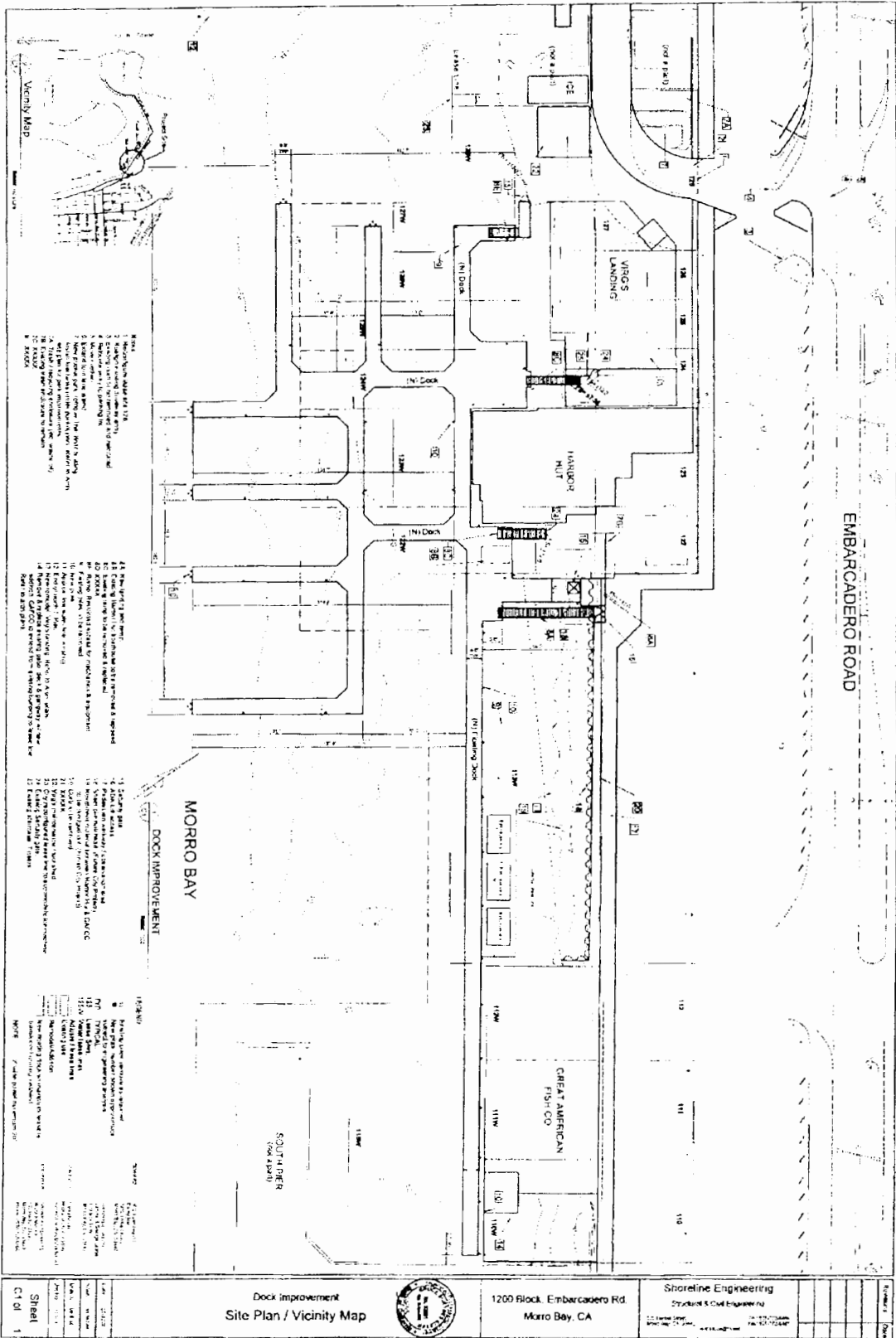
PREPARED BY  
 W. H. PARKER,  
 P. H. BROWN,  
 & REMODEL.

FOR  
 THE GREAT  
 AMERICAN  
 FISH CO.

CONDITIONAL USE  
 PERMIT

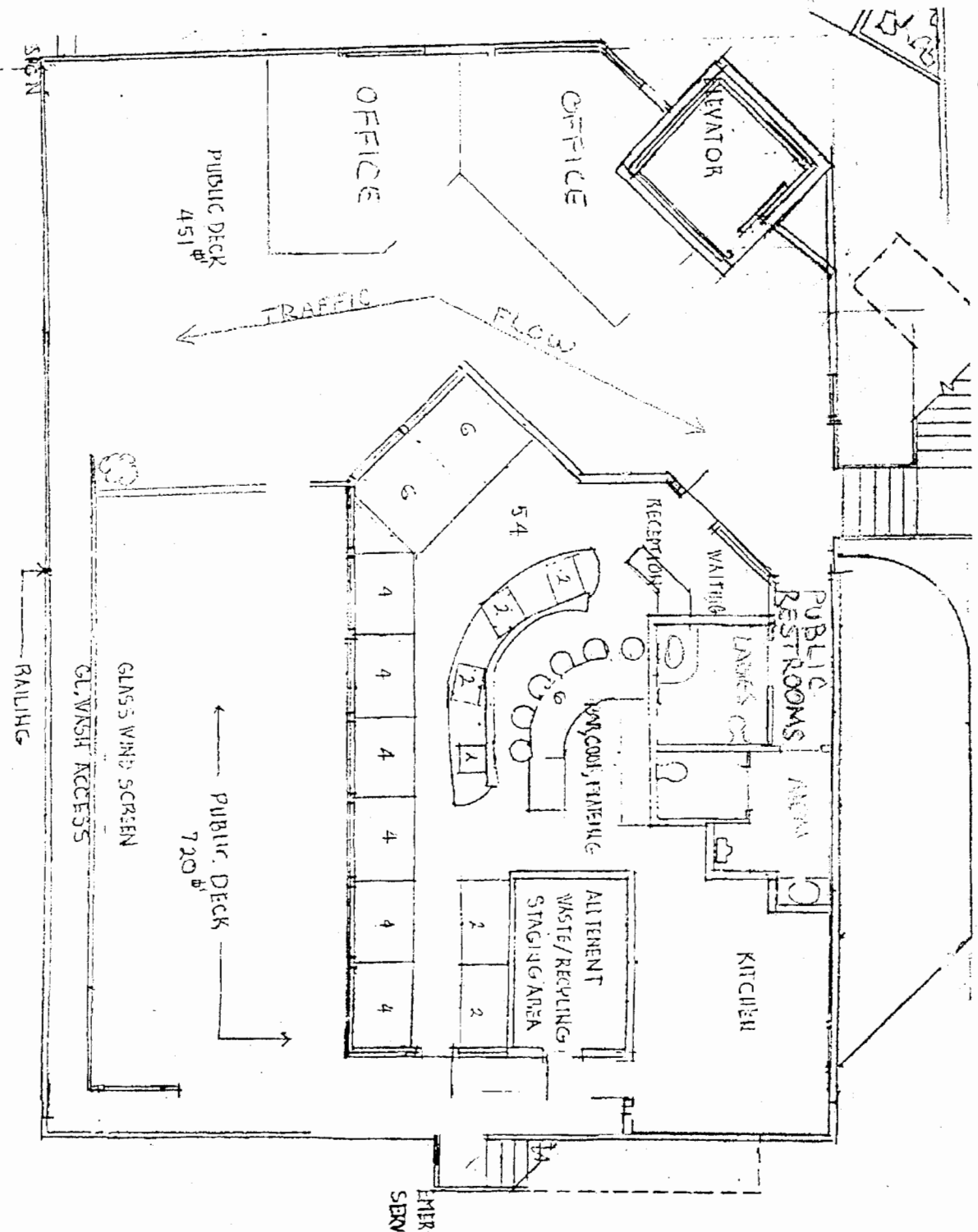
NO.	DATE	DESCRIPTION
1	JAN. 1937	PRELIMINARY DRAWING
2	JAN. 1937	FINAL DRAWING
3	JAN. 1937	REVISIONS
4	JAN. 1937	REVISIONS
5	JAN. 1937	REVISIONS
6	JAN. 1937	REVISIONS
7	JAN. 1937	REVISIONS
8	JAN. 1937	REVISIONS
9	JAN. 1937	REVISIONS
10	JAN. 1937	REVISIONS

# Proposed Dock and Boat Slip Site Plan



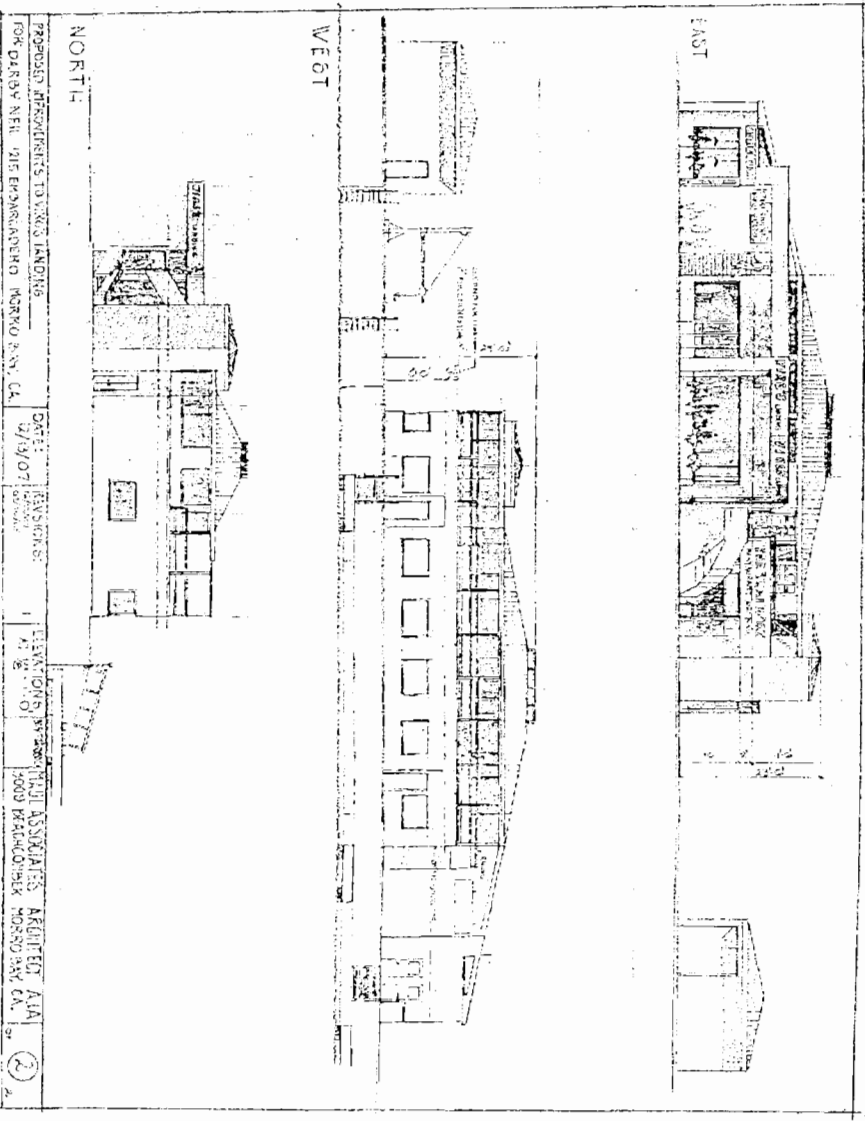


Virg's Second Floor Site Plan

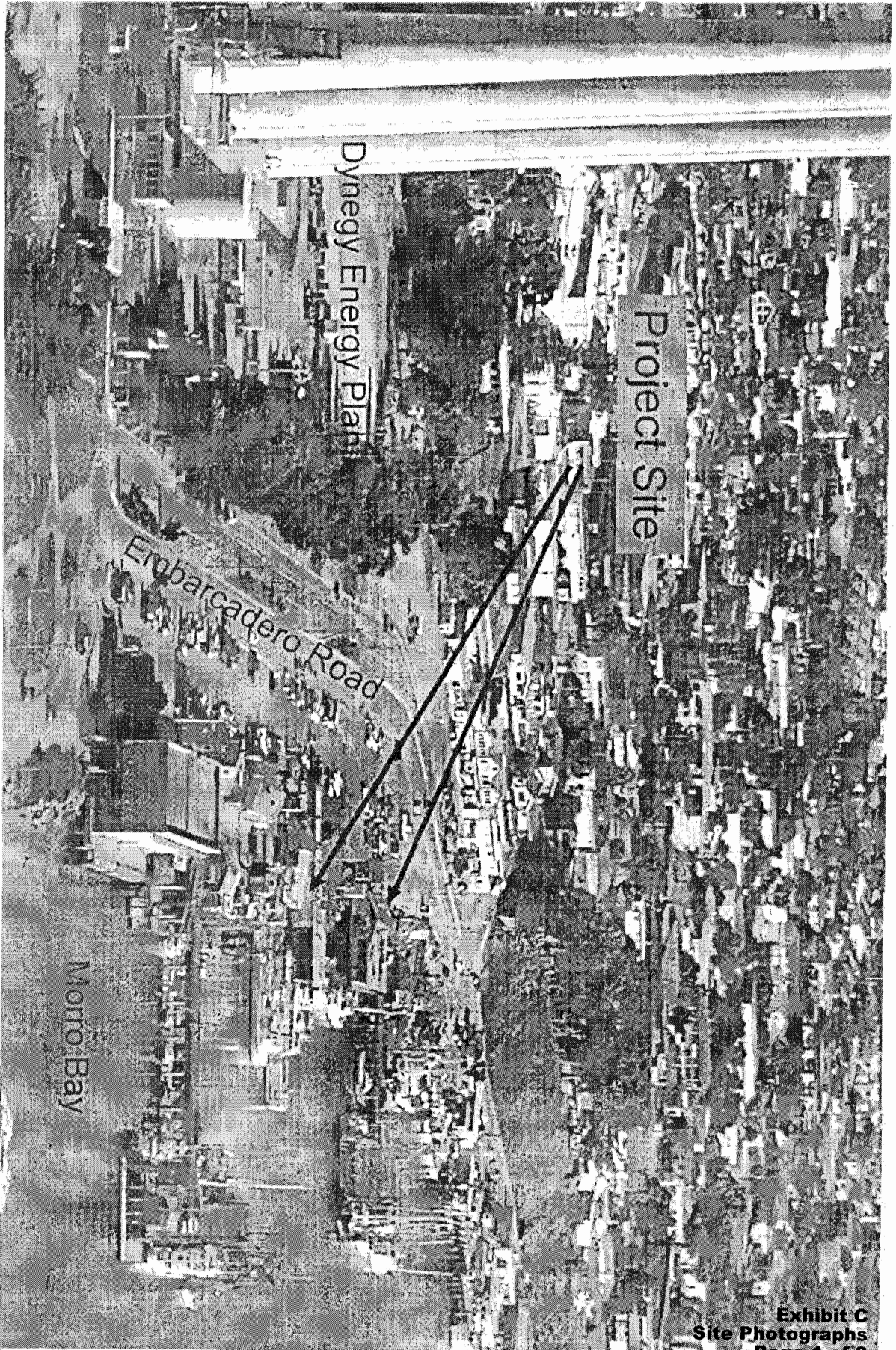


Revised Second Floor Plan 3/11/09

PROPOSED  
 Virg's Elevations



PROPOSED ARCHITECTURE TO VIRG'S LANDING  
 FOR DARYL NERI, 1415 BIRMGARAVENHO, MORGON P.A., CA  
 DATE: 2/14/07  
 ARCHITECT: VIRG ASSOCIATES, REGISTERED ARCHITECTS  
 1415 BIRMGARAVENHO, MORGON P.A., CA 94025  
 2



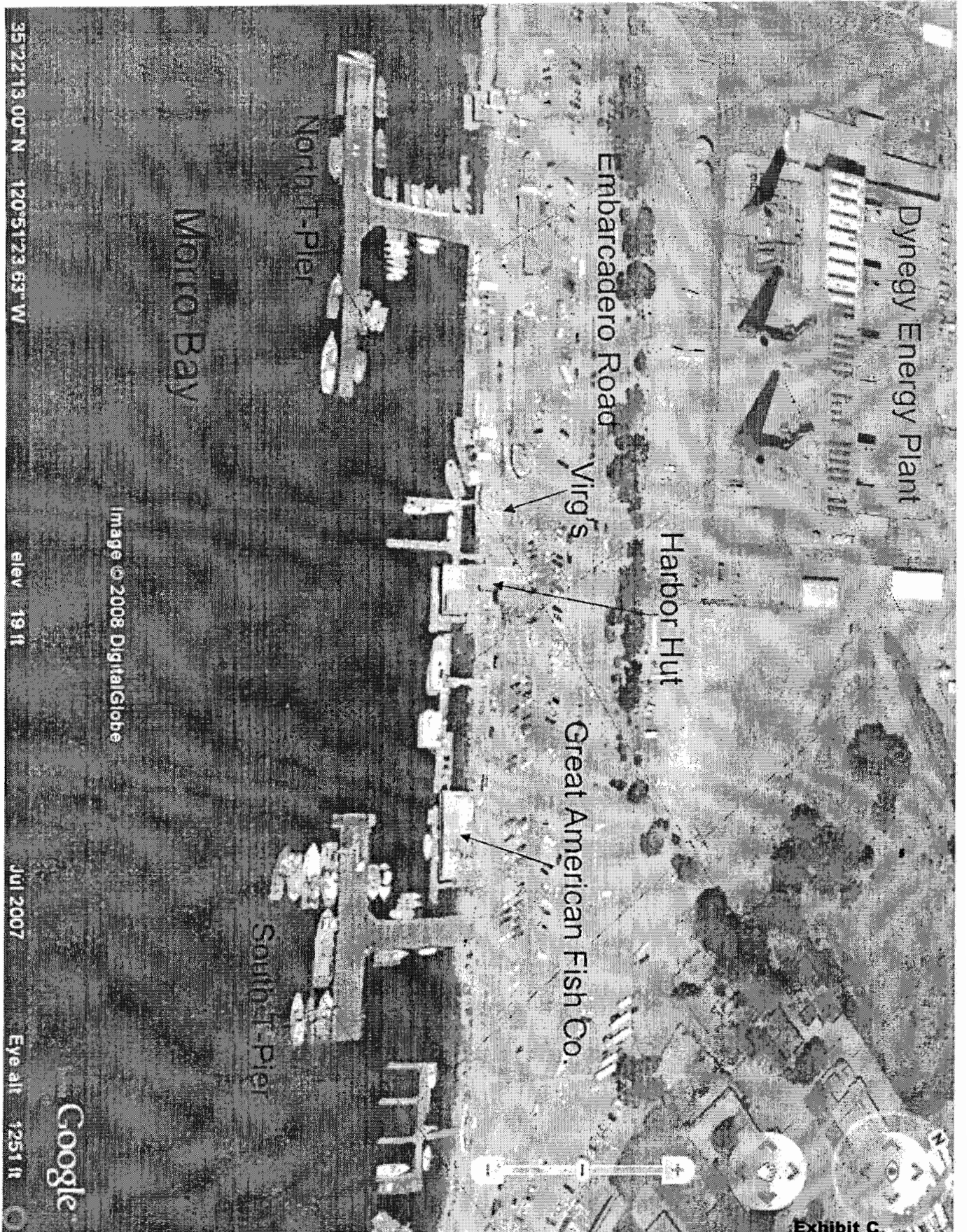
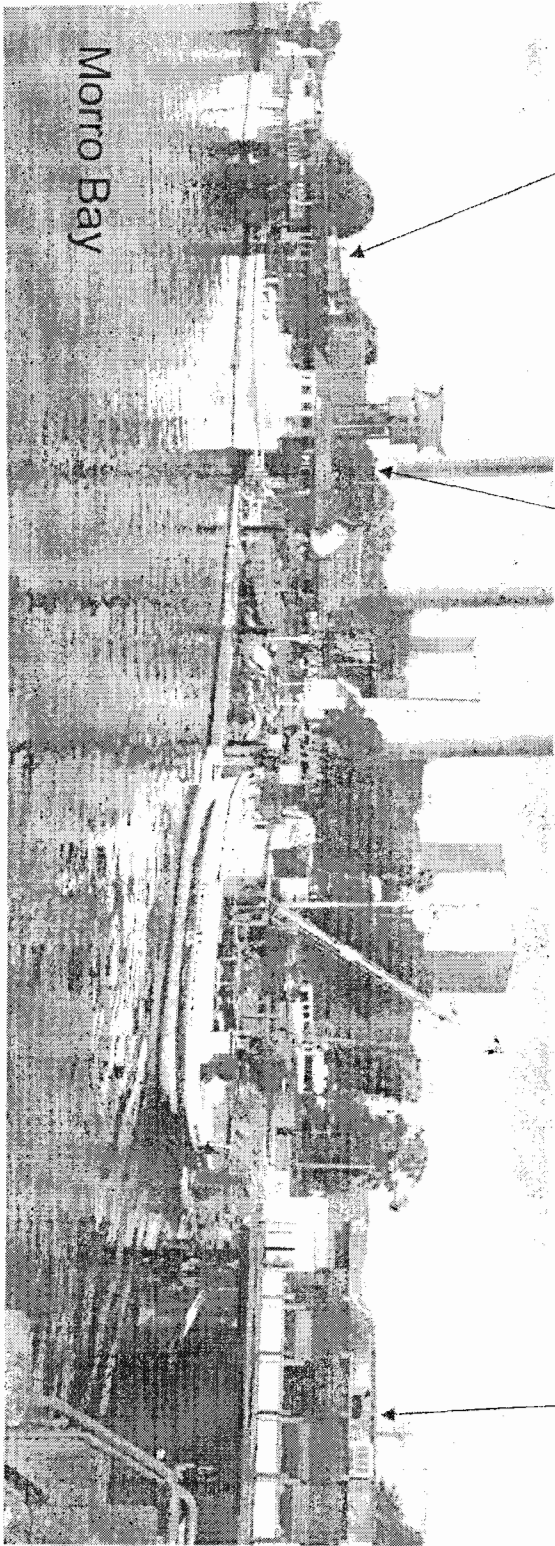


Exhibit C  
Site Photographs  
Page 2 of 3

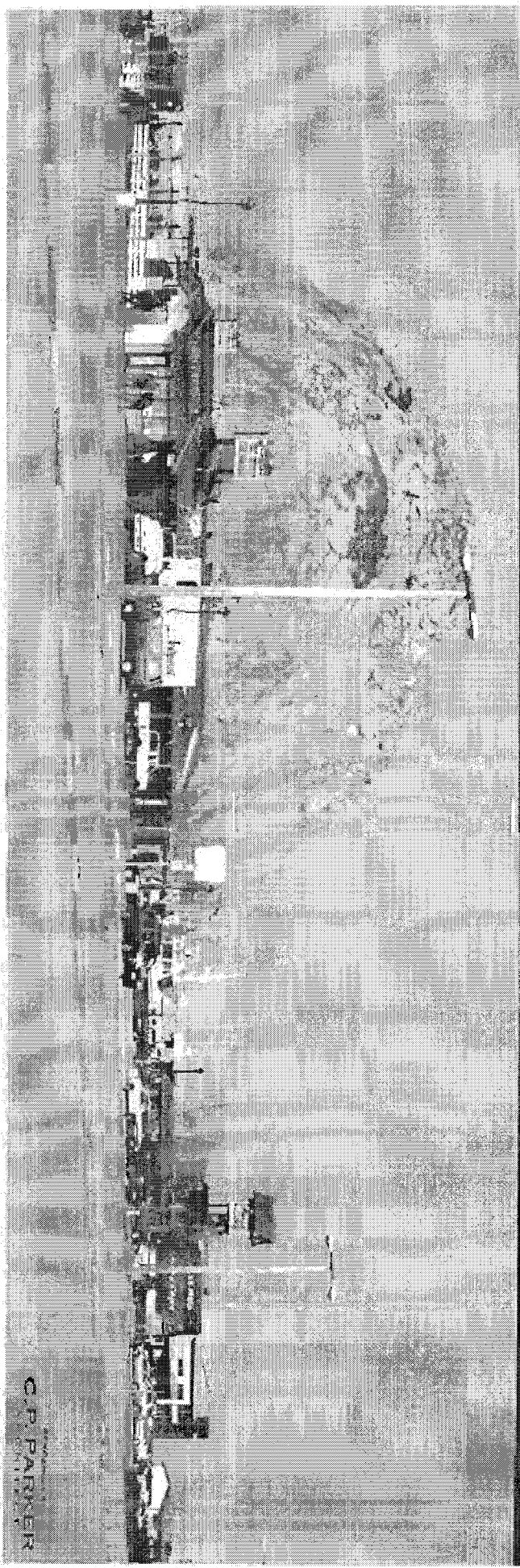




Virg's

Harbor Hut

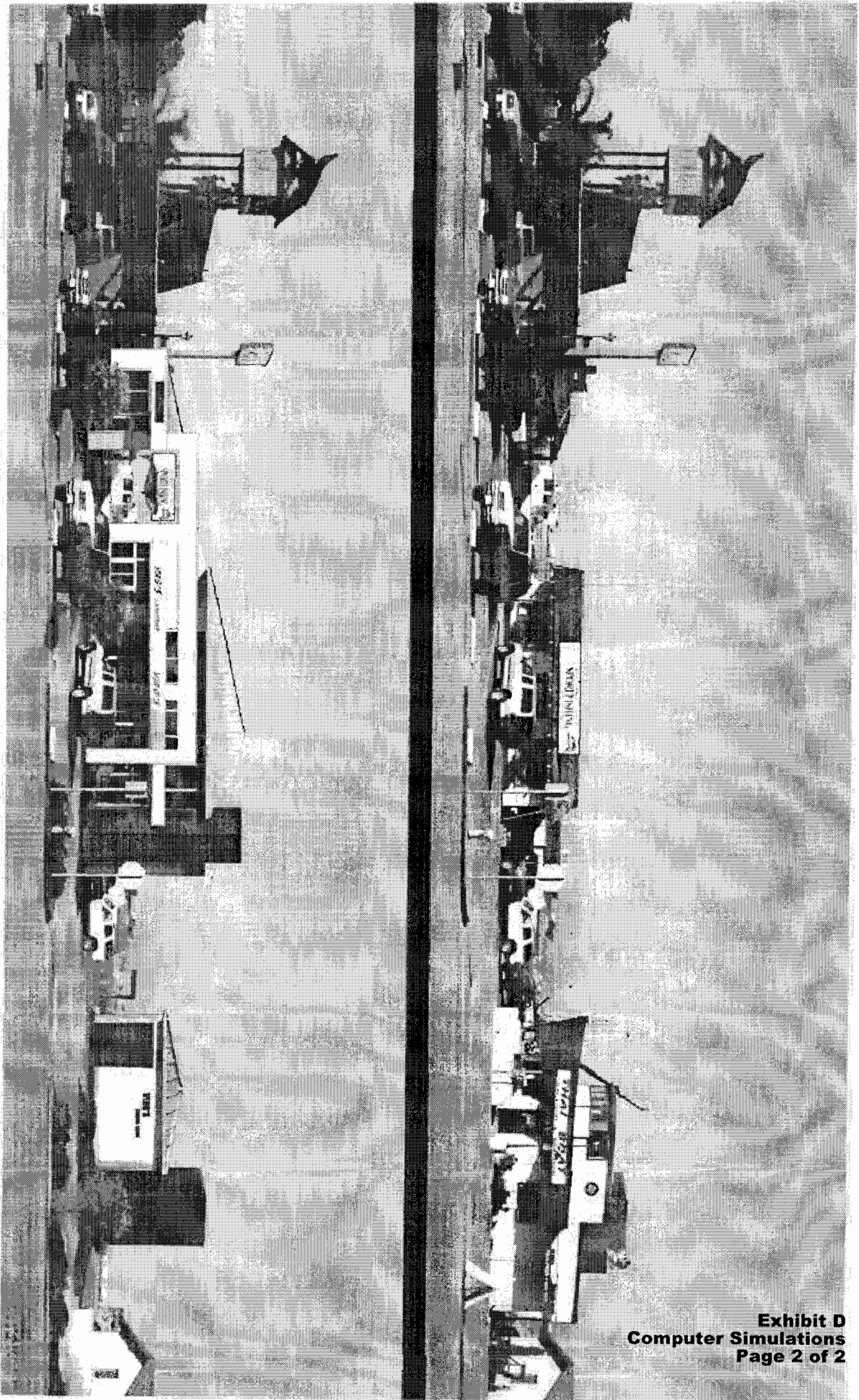
Great American Fish Co.



C. P. PARKER



**Exhibit D**  
**Computer Simulations**  
**Page 1 of 2**



**Exhibit D**  
**Computer Simulations**  
**Page 2 of 2**

## CHAPTER 5

### DESIGN GUIDELINES

To assist in evaluating the quality of a design submitted, the visual criteria have been divided into basic categories which correspond to the findings that are to be made with a project's approval.

#### **Category I. Public Visual Access:**

The view of the bay, sandspit and Morro Rock is one of the most prized possessions of the City and is essential to the visual quality of the area as well as the commercial success of the Embarcadero and the City as a whole. At present the mix of activities which include motels, restaurants, tourist shopping and visual participation in the commercial fishing and recreational boating are what give the Embarcadero its diverse and interesting character within the setting of the waterfront, bay and ocean beyond. It is this diversity based upon a working fishing village atmosphere which is physically and visually accessible to the pedestrian that make it an exciting place to visit and therefore economically viable.

There is a need to protect existing views to and along the shoreline of the harbor, sandspit, Morro Rock and the fishing and recreational fleet as seen from the street-ends off the Embarcadero, between buildings or through open areas from the Embarcadero, and from public viewing locations and public right-of-way on the bluff top.

Public Viewshed Defined: The public viewshed is defined as all areas of the bay, harbor, sandspit, and Morro Rock, currently visible from the Embarcadero, the street-ends, public observation points, and public right-of-way at the bluff top; but not including views from private property, businesses, or residences. Figure 5.4 identifies these viewing locations. This definition shall be used in evaluating any development proposal which has the potential to obstruct public views.

View Corridor Defined: View corridors shall be open linear spaces located between or adjacent to buildings affording views from the street of the harbor, bay, sandspit and Morro Rock. Said corridors shall not have visual obstructions except for low shrubs, seating benches and other street furniture of 30 inches in height or less. Taller lighting poles and similar fixtures may be allowed. No overhead structures such as canopies, balconies and pedestrian bridges (other than normal eaves) are permitted within the view corridors unless said structure is offset by additional width of view corridor equal to the vertical dimension of the overhead structure.

**Design Criteria:** The following criteria shall be considered in the design review process:

1. View Corridors Required:

- a) West side of Embarcadero / Front Street: All new construction and major remodels of existing buildings on the west side of the Embarcadero shall require the provision of open, unobstructed view corridors pursuant to figures 5.1, 5.2 and 5.3. Said view corridors shall be as follows:

Lot / Lease Width	Building Height	Min. View Corridor Width *	Sloping Roof 4 in 12	Findings of Significant Public Benefit Required
49 ft. or less	up to 14 ft.	none	no	no
49 ft. or less	14 to 17 ft.	none	yes	no
49 ft. or less	17 to 25 ft.	30%, min. 8 ft.	yes	yes
50 ft. or more	up to 14 ft.	15%, min. 8 ft.	no	no
50 ft. or more	14 to 17 ft.	15%, min. 8 ft.	yes	no
50 ft. or more	17 to 25 ft.	30%	yes	yes
Corner lots	see Figure 5.3			

\* Corridors widths are based upon a percentage of the width of the lot or lease site.

- b) East side of Embarcadero / Front Street: The view corridor requirements and view analysis applicable for properties located west of the Embarcadero, between the street and the bay, shall also be applicable to the portions of buildings over 14 feet located east of the Embarcadero, between the street and the bluff top. Said structures shall not be permitted to exceed 25 feet in height.

2. Building Heights:

**Standard Building Heights:** Building heights on the east and west side of the Embarcadero and Front Street are limited to 14 feet maximum if the roof is flat, or 17 feet maximum if there are sloping roofs equaling 80 percent of the total roof area with a minimum 4 in 12 pitch.

Increased Building Height: "Standard building heights" will be the maximum allowable height unless there is a use permit or planned development approved by the Planning Commission allowing for greater height pursuant to the Planned Development (PD) Overlay district. In addition to the required finding of significant public benefit, increases in height may be allowed up to a maximum of 25 feet under the "PD" zoning overlay district, with the finding that the overall viewshed characteristics will be improved or, at a minimum, not diminished from the public viewing locations established on Figure 5.4 and upon meeting the following additional requirements:

- a) For the areas east and west of the Embarcadero, 80 percent of all roofs for both one and two story structures shall be sloping with a minimum 4 in 12 pitch.
- b) Incorporate open view slots or corridors in the design of new or remodeled structures on the west side of the Embarcadero in order to enhance overall visual access to the water. View corridors shall be required for all buildings taller than 17 feet on the east side of the Embarcadero. These corridors can be along property or lease lines, sideyard setbacks or incorporated within the building as open areas or walkways. Said corridors are encouraged to be placed along common property or lease lines adjacent to similar existing or proposed view corridors on the adjacent property. Figures 5.1, 5.2 and 5.3 demonstrate some of these principles graphically by showing the various design configurations relative to building height and site coverage.
- c) Allow relocation of existing view corridors or visual openings between or through buildings as long as there is no reduction in the measured width when compared to existing corridors. Building massing and design should be guided by the objective of avoiding walling-off public visual access to the water from the Embarcadero.
- d) Encourage provision of public (non-customer) viewing areas of the bay and waterfront in the form of outdoor decks or balconies accessible from the lateral waterfront accessway on the upper or second story. This provision applies to future development on the seaward side of the Embarcadero.
- e) Regardless of any findings for significant public benefit provided, the maximum allowed height shall not exceed 25 feet or 30' for commercial fishing structures north of Beach St., except for flag poles, projections not exceeding 18 inches in width and all other exceptions included in Title 17. Additions and reconstruction of the existing PG & E power plant may be permitted to exceed the 25 foot height limit if the City finds that it is infeasible or inappropriate to construct the addition within the 25 foot height limit.

Note that the requirement for minimum 8 foot wide lateral public access across the entire water frontage of the property is not reduced by these requirements and is part of the City's Coastal Plan and zoning requirements. The only exceptions are where the City determines that the provision of such access to be unsafe or to conflict with commercial fishing or harbor related facilities.

3. **Building Setback, Coverage, Bulk and Scale:**

In order to protect the full breadth of existing public views, second floor setbacks and reduced building bulk will be required.

**Building Setbacks:** The minimum first floor front setback on both sides of the Embarcadero and Front Street shall be an average of 5 feet. The second floor front setback shall be a minimum of 10 feet from the right-of-way.

**Building Coverage, Bulk and Scale:**

- **West side of Embarcadero / Front Street:** The maximum coverage of all ground floor portions of buildings located west of the Embarcadero shall be 70 percent of the land portion of the properties. If permitted, the maximum area of the second floor, excluding open decks, shall be 70 percent of the maximum allowable first floor building coverage.
- **East side of Embarcadero / Front Street:** The maximum coverage of all ground floor portions of buildings located east of the Embarcadero shall be 85 percent of the land portion of the properties. The maximum area of the second floor, excluding open decks, shall be 80 percent of the maximum allowable first floor building coverage.

4. **Building in the "H" Zone:**

New or increased building extensions beyond the shoreline shall be in conformity with the Harbor ("H") zone. In addition, said construction shall meet the height, coverage and view corridor requirements stated in the standards 1, 2 and 3 above.

**Category 2. Site Design and Parking:**

At present, there is a lack of uniformity in the placement of buildings on their sites relative to public sidewalks in the Embarcadero visitor area (Area #3). This situation in turn adversely affects the overall sense of physical and visual cohesiveness for the area. The variation in the way buildings are placed interrupts a uniform treatment of sidewalks because of the varying minimum setbacks that have occurred over time. In some developments, especially on the east side of the Embarcadero, parking and vehicle service

areas interrupt the easy flow of pedestrian activity. While parking must be provided as required by the City Ordinance, attention to good design and, where possible, setting the parking back from the sidewalk will facilitate better site design more appropriate to the Embarcadero area.

The following criteria are to be considered in the design review process:

1. **Street Frontage:** Maintain a consistent street frontage. Buildings and related site development shall provide a continuity of interest and facilitate pedestrian movement along the street frontage.

Portions of the first floors of buildings may be built to the back of sidewalks. The ten foot front yard setback currently required in the "C-VS" Zone on the east side of the Embarcadero should be modified as indicated in #3 above in order to allow building construction to extend to the back of the sidewalk.

2. **Parking Lot Setback and Access:** No parking lots should be placed in front or side yards which interrupt the street continuity and pedestrian passage. Access driveways to the rear are acceptable on the east side of the Embarcadero.
3. **Minimum New Sidewalks:** Improve the public sidewalk to a minimum of 8 or more feet in width on the east and west side of the Embarcadero where feasible. Where reasonable, the west side should be widened at entries and view corridor areas.
4. **Sidewalk Treatment and Street Furniture:** Coordinate provision of special sidewalk paving treatment and street amenities as discussed elsewhere in this document including provision of benches, street trees and planters.
5. **Sidewalk Cafes:** Outdoor dining is encouraged. Said dining areas shall be enclosed in permanent low see-through railings or fences.
6. **Screening:** The trash areas shall be screened in the manner identified by the municipal code. Provide visual screening for trash enclosures.
7. **Maintenance:** A regular maintenance program for cleaning of all public facilities shall be implemented. Private businesses should be encouraged to participate in the cleaning of facilities in the vicinity of their businesses.



**Category 3. Architectural Design Character**

The benefits of an appropriate building character and consistency in theme include greater enjoyment of the central Embarcadero area by both visitors and residents, increased tourism, improved economic health for businesses and financial gains for the City. People enjoy attractive places both in terms of the natural environment and also the built environment.

The design goal for the Embarcadero is to enhance the visual experience of visiting the area by bringing about a gradual strengthening of architectural continuity and by encouraging buildings with distinctive visual quality. This design quality or character should reflect the historical and cultural identity of the Embarcadero -- one of a working fishing community with a variety of character and building types typical of pedestrian oriented communities which have evolved over time. The Embarcadero area is not encouraged to develop with any single theme or architectural style.

Further proportion, harmony of components, continuity and balance are all elements of good architectural design. Whether it is a sign or a multi-building project, its different elements should be integrated into a comprehensive design with the various elements compatible with each other. Elements should be in balance and in proportion to one another and their environment. Variety should be used to create interest, not used just for the sake of difference. Monotony in form and detail should be avoided as should be trite architectural styles from other areas that have no relevance to the Morro Bay area.

The following criteria are to be considered in the design review process:

1. **Fishing Village Character:** Maintain an architectural character in keeping with a working fishing community with the form and scale typical of pedestrian oriented communities which have evolved over time. The intent is to produce architecture that is both in character with the existing community and, as each new building or remodel is completed, adds to the overall ambiance of the waterfront area. The focus of this requirement is not to limit construction to a single style (such as at Solvang or downtown Santa Barbara) but rather to avoid massive buildings or buildings which detract from the waterfront character which is now a delight to visitors and residents alike.
2. **Adapting Existing Buildings:** In applying design criteria and conditions, consideration must be given to existing conditions. For example, new construction and signage conditions apply to buildings which abut the frontage walkways.

However, some existing buildings are set back from the street and conditions must be adapted to this situation

3. **General Design Treatment:** To establish building character, new construction shall be encouraged to meet the following design criteria. These guidelines are for retail and tourist commercial buildings -- exceptions may be made for buildings constructed to serve the fishing industry.
  - a) The areas immediately adjacent to the sidewalk shall be pedestrian oriented with windows, entries and display areas;
  - b) The front facade shall be in scale and character of the waterfront area (meaning that proportions tend to be vertical and long horizontal expanses in the same plane should be avoided -- see also concepts to be avoided below);
  - c) Wall surfaces should be articulated (board and batt, engaged pilasters, multilevel trim, cornices, built-up fascias);
  - d) Rooflines shall be varied to avoid monotonous views from the blufftop areas;
  - e) Materials and colors should be varied to break larger building masses and large wall planes into smaller elements;
  - f) Building proportions shall have harmony and balance and be integrated into a total composition.
4. **Construction concepts to be avoided:**
  - a) Large flat planes of any type of materials;
  - b) Contemporary "boxy" buildings similar to shopping centers or discount stores.
5. **Commercial Signage:** A unified treatment of the commercial signs is important to maintain the integrity of the Embarcadero area character. "Unified treatment" does not necessarily mean that all the signs must have the same style of lettering. Rather, it is more important that the lettering have similar stylistic traits and the signs are placed in a manner that complements the architectural style of the buildings which they designate. Sign location and size are governed by the sign ordinance of Morro Bay.

Signs must meet the following additional criteria:

- a) Pole signs are to be avoided.
- b) Projecting signs perpendicular to the building and awning signs are encouraged.

**Category 4. Areawide Design Compatibility:**

It is important to insure not only that the architecture is compatible but that the installation of the improvements at the street frontage are compatible with community standards and those of the adjacent neighbors. The design of a new building does not necessarily have to be the same as the adjacent designs, but there must be elements of compatibility in building articulation, color and materials. It is very difficult to foresee all considerations that might develop in the review process, but the intent here is to avoid building architectural styles that clash or create disharmony. The actual determination of these conditions will be left up to the City Planning Staff and Planning Commission. In addition, there must be physically compatible design regarding sidewalks and lateral pedestrian access along the waterfront.

The following criteria are to be considered in the design review process:

1. Sidewalks: Maintain a consistent street frontage and sidewalk connection along the Embarcadero.
2. Boardwalks: Develop where feasible a continuous pedestrian linkage along the waterfront. It is recognized that balcony or pedestrian levels may not always be at the same vertical elevation and therefore provision for steps and ramps must be made even though the adjacent building does not presently have provision for the lateral access. Exceptions for continuous handicapped access may be necessary as long as the developmentally disabled can get to each portion of the waterfront lateral access from the Embarcadero.
3. Architectural Compatibility: The buildings architectural character shall show consideration and recognition of neighboring buildings in the selection of: a) roof forms; b) wall colors and materials; c) doors and windows; as well as d) basic design character scale and proportion. In other words, new projects should not diminish, either directly or by cumulative impact of several similar projects, the use, enjoyment or attractiveness of adjacent buildings.

## FINDINGS FOR DESIGN ACCEPTABILITY

To facilitate the architectural review process, the following findings shall be made by the City Planning Staff or the Planning Commission during the review process.

### Category 1. Public Visual Access:

1. In the case of a project other than a minor remodel which has no impact on views, the proposed project makes a positive contribution to the visual accessibility to the bay and rock and it:
  - a) meets the Waterfront Plan height limit and maximum building coverage, bulk and scale requirements;
  - b) preserves and enhances the views as seen from street-ends;
  - c) enhances views to waterfront through and / or around the building; and
  - d) maintains a pedestrian character along the Embarcadero.
2. In the case of a remodel or administrative type project, at a minimum, it does not worsen an existing situation by blocking more views than is presently the case. It does not block view corridors or intrude into pedestrian access areas. It takes advantage of outward views and characteristics of the topography.
3. On the West side of the Embarcadero, in the case of granting of heights greater than 17 feet, the proposed project also provides significant public benefit pursuant to the Planned Development Overlay Zone requirements.

### Category 2. Site Design and Parking:

The proposed project provides the amenities identified in the Waterfront Plan, facilitates pedestrian visual and physical access to the waterfront, and takes advantage of outward views and characteristics of the topography.

### Category 3. Architectural Design Character:

The proposed project makes a positive contribution to the working fishing village character and quality of the Embarcadero area. The design recognizes the pedestrian orientation of the Embarcadero and provides an interesting and varied frontage that will enhance the pedestrian experience. The project gives its occupants and the public some

variety in materials and / or their application. The project contains the elements of harmony, continuity, proportion, simplicity and balance and its appearance matches its function and the uses proposed.

**Category 4. Areawide Design Compatibility:**

The proposed project does not diminish, either directly or by cumulative impact of several similar projects, the use, enjoyment or attractiveness of adjacent buildings and provides a visual and pedestrian transition to its immediate neighbors.

**PROJECT REQUIREMENTS AND APPLICATION PROCESS**

The visual impacts of development on the waterfront community have a high potential to generate visual impacts. In order to demonstrate visual conformity with the guidelines set forth, all applicants who are submitting a new project, a major expansion, or one which requires more than administrative review by the City of Morro Bay, are asked to meet the following submittal guidelines and process. After review of the applicant's submittal, the City shall approve or deny the design component of the project based on findings of conformity with the design categories set out in Section C.

1. It is strongly urged that the applicant and his design team meet with City staff for a pre-application meeting to determine the general character and impact of the project. The staff will seek to define the detail of submittal requirements for the applicant as defined below. It must be emphasized that while the amount of documentation may seem extensive, previous experience has proven that it will actually save the applicant time and reduce the amount of possible public controversy by taking the visual issue out of the realm of speculation.
2. Base submittal for design and visual context information: (Two story projects must submit documents meeting requirements "a", "b", and "c". Single story projects may omit "a" upon approval by staff).
  - a) A minimum of three views perpendicular to the waterfront showing the present (before project) condition and the same view with a simulation of the project montaged on the surface of the photograph. In the event of a large project more than the three basic views listed below may be required. A planning staff member should be consulted in case there is any doubt. The three view types are: