

October 3, 2013

California Coastal Commission
Ms. Mary Shallenberger, Chair and Members of the Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

RE: Harbor Hut Project, Morro Bay, # 3-12-044, Troy Leage
Item Th12b, October 10, 2013 – Revised Findings

Dear Chair Shallenberger and Commissioners,

First I would like to thank you for your support to approve the Coastal Development Permit for the Harbor Hut project at your August 15, 2013 meeting.

Unfortunately I will not be able to attend your meeting on October 10 to provide comments on the revised findings so; I would like to provide you with this letter in advance.

I have reviewed the staff report and concur with the modifications supporting the findings for approval with the exception of one statement. On page 14, the last paragraph of your report states the following: *“Finally, although the proposed land use is inconsistent with the requirements of Measure D, which is used for guidance in this case, the restaurant use pre-dates Measure D, and is thus an allowed non-conforming use under the zoning policies of the LCP...”* At issue is the reference that the proposed land use (office/storage) is inconsistent with Measure D. For accuracy, the City of Morro Bay made the finding that the proposed project is consistent with Measure D and therefore, approved the project. The Commission has not made a determination that the project is inconsistent with Measure D but rather is using this for guidance to determine that it conforms to the Coastal Act Policies because of the following reasons stated in the same paragraph.

1. The restaurant use pre-dates Measure D so therefore is an allowed non-conform use.
2. The proposed project does not alter the existing land use.
3. Does not change the intensity of the use because it does not expand the seating or capacity of the restaurant.

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4. Does not encroach upon or interfere with or otherwise preclude protected coastal dependent uses on the project site or adjacent areas.


All in all, these statements would support that the proposed land use is consistent with Measure D rather than the opposite.

I requested a friendly amendment to your report however; Central Coast staff discussed my request and does not agree that the report needs to be amended. I feel that left uncorrected this misstatement could lead to confusion in the future if staff returns to the report for any clarification on the Commission's decision or interpretation of the policies.

In closing I would respectfully ask that this statement be revised. I would offer a simple change to read as follows: "Finally, although the proposed land use was determined by the City of Morro Bay that it is consistent with the requirements of Measure D, which is used for guidance in this case, the restaurant use pre-dates Measure D..."

Thank you for your time and consideration in this matter. I appreciate your support of this project and adoption of the revised findings.

Sincerely,



Cathy Novak

cc: Mr. Troy Leage
Mr. Joe Street and Central Coast District staff

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Th12b

CDP Approved: 8/15/2013
Staff: J. Street - SF
Staff Report: 9/19/2013
Hearing date: 10/10/2013

REVISED FINDINGS

Application Number: 3-12-044

Applicant: Troy Leage

Project Location: Along the Morro Bay Embarcadero (lease sites 122-123, 122W-123W) at 1205 Embarcadero Road (APN 066-351-17) adjacent to and over Morro Bay in the City of Morro Bay, San Luis Obispo County.

Project Description: Construction of a second-story, 686 sq. ft. private office/storage area above an existing restaurant

Commission Action: Approved (August 15, 2013)

Staff Recommendation: Adopt Revised Findings

STAFF NOTE

On August 15, 2013, the Coastal Commission approved a coastal development permit (CDP) for the proposed project by a vote of 7-1. Because the staff recommendation had been for denial, this report contains revised findings and conditions reflecting the Commission's action. For this same reason, the findings have been modified throughout from the previous version of the staff report, including changes to the sections addressing visual and scenic resources, land use and community character. Deletions to the previous report text are shown in ~~strike-through~~ text format, and additions are shown in underlined text format. Commissioners who are eligible to vote on the revised findings are those from the prevailing side who were present at the August 15, 2013 hearing (i.e., Commissioners Bochco, Brennan, Groom, McClure, Mitchell, Vargas, and Zimmer).

STAFF RECOMMENDATION ON REVISED FINDINGS

Staff recommends that the Commission adopt the following revised findings and conditions in support of its approval of a CDP for the proposed project on August 15, 2013. To implement this recommendation, staff recommends a YES vote on the following motion. Pursuant to Section 30315.1 of the Coastal Act, adoption of findings and conditions requires a majority vote of the members of the prevailing side present at the August 15, 2013, hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote. Passage of this motion will result in approval of the revised findings and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission adopt the revised findings and conditions in support of the Commission's action on August 15, 2013 approving the development proposed under CDP Application Number 3-12-044, and I recommend a yes vote.*

***Resolution to Adopt Revised Findings:** The Commission hereby adopts the findings and conditions set forth below for approval of a coastal development permit for the development proposed under CDP Application Number 3-12-044 on the grounds that the findings support the Commission's decision on August 15, 2013 and accurately reflect reasons for it.*

SUMMARY OF ~~STAFF RECOMMENDATION~~ COMMISSION ACTION

The Applicant proposes to construct a 686 sq. ft., second story addition to the existing Harbor Hut restaurant. The restaurant is located on four land and water lease sites on the northern portion of Embarcadero Road adjacent to the commercial boating T-Piers. As proposed, the second story addition would provide 185 sq. ft. of new office space, a wine storage room, and a private restroom, and would allow for conversion of the existing first-floor office into an employee break room.

~~However, the project as proposed does not conform to the visual resource and community character policies of the Coastal Act, and does not ensure that waterfront land is reserved for priority uses, as required by the Coastal Act. The project would obstruct significant views of Morro Rock and the bay, and it would establish uses that are not coastal dependent in this shorefront area, which is at the center of the commercial fishing area of this important Central Coast harbor. In addition, the project is located on historic tidelands, and although the tidelands have been filled, they remain subject to the State's public trust easement. As such, this land is protected for public trust allowed uses, including public recreational piers, visitor serving facilities, boating and fishing facilities. Therefore, the proposed project, which is not intended for visitor serving or other coastal dependent use, is not allowed on these public trust lands.~~

Further, the project site is located within a Commercial/Recreational Fishing (CF) zone district of the LCP, and is subject to Measure D, which is incorporated into the LCP, and which limits new development in the CF zone to projects “primarily for the purpose of serving or facilitating commercial or recreational fishing activities”, and prohibits the expansion or enlargement of existing non-conforming uses. In addition, through the Waterfront Master Plan, the LCP provides clear architectural guidelines, including building height limits, in order to ensure that new development along the Embarcadero is visually compatible with the character of the surrounding area, which encompasses both existing development and the natural setting.

The addition of a second story would increase the height of a portion of the restaurant building to over 21 feet, raising questions about its effect on restricting views from the Embarcadero to Morro Rock and to and along the shoreline. As with all projects along the Embarcadero, development at water’s edge has the potential to negatively impact these significant public views. In this case, however, the visual impacts are not significant. As a result, the project fails to protect views in this scenic coastal area, and negatively impacts the visual enjoyment of significant features Specifically, the increase is relatively minor in the public viewshed, and its effect on views is limited in this respect, particularly from the trail just inland of the restaurant that is already impacted by single-story development between the trail and the view. In addition, because there are multiple view corridors, public access areas, and public observation decks either available or planned adjacent to and seaward of the restaurant complex, the small increase in visual obstruction associated with the proposed project would not have a significant adverse impact on the visual enjoyment of prominent scenic resources in the area, including Morro Rock, Morro Bay and the sand spit. Moreover, Although the height of the proposed addition exceeds the limits set in the LCP’s Waterfront Master Plan, which is used as guidance in this location without also providing significant public benefit and is not visually compatible with the character of the Embarcadero., it is nonetheless lower than existing structures on the project site, and similar to that of previously-approved, neighboring projects. The project site and adjacent areas include access improvements that provide significant public benefits per prior Commission approvals, with which the proposed project would not interfere and can be understood in that context. The aesthetic qualities of the proposed addition are in keeping with existing Harbor Hut buildings, and would not alter the diverse architectural character of the Embarcadero. Finally, the proposed addition to the Harbor Hut restaurant building is unrelated to commercial fishing or recreational activities and therefore represents an expansion of a non-conforming use within the CF zone of the LCP, which is prohibited by Measure D. Further, this use is not allowed pursuant to the public trust easement that remains on these historic tidelands, and is inconsistent with Coastal Act policies requiring waterfront land to be protected for priority uses, including recreational and coastal dependent uses. would not interfere with or preclude priority uses, including recreation, commercial fishing, and other coastal-dependent uses, that are protected by the Coastal Act.

Based on the above, staff recommends the Commission find that approves the proposed project does not meet the requirements of Sections 30220, 30221, 30224, 30251, 30253 and 30255. Staff therefore recommends the Commission deny the permit application. subject to the conditions listed below.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

- Exhibit A: Location Map
- Exhibit B: Lease Map
- Exhibit C: Site Aerial Photographs
- Exhibit D: Project Plans
- Exhibit E: Project Simulation

~~I. MOTION AND RESOLUTION~~

~~Staff recommends that the Commission, after public hearing, deny a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in denial of the CDP and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.~~

~~**Motion:** I move that the Commission approve Coastal Development Permit Number 3-12-044, and I recommend a **no** vote.~~

~~**Resolution:** The Commission hereby **denies** Coastal Development Permit Number 3-12-044 and adopts the findings set forth below on grounds that the proposed development does not conform with the policies of Chapter 3 of the Coastal Act.~~

I. STANDARD CONDITIONS

This permit is granted subject to the following 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 Permittees 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 Permittees to bind all future owners and possessors of the subject property to the terms and conditions.

II. SPECIAL CONDITION

This permit is granted subject to the following special condition:

- 1. Indemnification by Applicants/Liability for Costs and Attorneys Fees.** By acceptance of this permit, the Permittee agrees to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

III. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION, BACKGROUND 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 trusteeship over the state tidelands underlying the Embarcadero. The filled and unfilled tidelands along the Embarcadero are historic tidelands subject to the State's public trust easement, and must be protected for public trust allowed uses, such as public recreational piers, visitor-serving facilities and boating and fishing facilities. 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 provides guidance.

The location of the Morro Bay Embarcadero is shown in Exhibit A. Aerial photographs of the location and project site are shown in Exhibit C.

Project Location and Background

The project site is situated along the north Morro Bay waterfront between the South T-Pier and North T-Pier, at 1205 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 northern Embarcadero is strongly focused on commercial fishing, although existing development in the project area also includes several restaurants and other visitor-serving uses. Preservation of the "working fishing village" character of the northern Embarcadero is a primary goal of the City of Morro Bay's Waterfront Master Plan (WMP), which is incorporated into the LCP.

The project site is located west of Embarcadero Road and north of Beach Street within Planning Area 2 of the WMP and comprises four lease sites (122-123, 122W-123W), half of which extend out into the bay, with a total developed area of just over 10,000 square feet. The properties include approximately 85 linear feet of bay frontage. Planning Area 2 (T-Piers/Fisherman Working Area) includes the area between the Dynegy energy facility intake building and the Embarcadero Road/Beach Street intersection. The project site is approximately 400 feet south of the power plant and 1000 feet northwest of the Beach St. intersection. Exhibit B shows a lease map of the northern Embarcadero.

The lease sites are zoned Commercial/Recreational Fishing (CF)/Harbor (H) with a Planned Development (PD) overlay in the LCP; the proposed project would fall within the CF zone. In 1981 the community adopted and incorporated Measure D into the City of Morro Bay certified LCP zoning code. This measure prohibits approval of new development that is not directly related to commercial and recreational fishing, including general commercial development, restaurants, cafes, gift shops, 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 site gently slopes 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. Portions of both the land (122-123) and water (122W-123W) lease sites are currently occupied by structures and other development. The largest structure on site is a one-story building (3,925 square feet) housing the main Harbor Hut restaurant, kitchen, office and storage areas (“restaurant building”). The restaurant building has a low profile, approximately 11 feet in height, with the exception of the area surrounding the main entrance, which consists of an A-frame structure with a high-pitched roof rising to 23 feet. The A-frame structure comprises approximately 14% of the roof area of the main building. Other existing development on the project site includes a detached take-out restaurant known as the “Li'l Hut” (400 square feet, 16 feet in height), a narrow, 37-foot high tower serving as signage for the restaurant, dining patios (960 square feet), a small storage shed, floating docks, and public access improvements. The existing restaurant was built in the 1970s after the original was lost in a fire. Site plans are given in Exhibit D.

In 2009, the Commission approved CDP 3-08-025, which provided for the renovation and redevelopment of three existing commercial business and related boating facilities spanning 22 lease sites, including those occupied by the Harbor Hut. If completed, the project would result in the demolition and replacement/reconfiguration of all boat finger slips, bait receivers and floating docks currently installed at the Harbor Hut and three neighboring parcels, the Great American Fish Company (GAFCO, lease site 115W), Virg's (lease site 113W), and Virg's Tackle Shop (lease sites 124W-127W), as well as an expansion of the GAFCO restaurant. The project approved in CDP 3-08-025 also includes the demolition of the existing Virg's Tackle Shop (lease sites 125-127), Thai Boat restaurant (lease site 128), and a small storage shed/single-story building (lease site 124), immediately to the north of the Harbor Hut complex. The structures would be replaced by a new two-story, 25-foot high, 6,585 square foot building to house these establishments, and provide office space and public restrooms. The new building would also include a publically-accessible 2,000 square foot outdoor deck and walkway on the second floor. Additionally, a new 450 square foot, single-story building (lease site 124) would be constructed

immediately adjacent to the Harbor Hut that would house a rod and reel shop and public restrooms. The two new structures would have a 15-foot wide view corridor between them.

Public lateral access at the project site was constructed in combination with the Harborwalk pedestrian and bike trail improvements along the inland side of the existing Harbor Hut structures and along the bayside revetment abutting the Dynegy 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. The approved developments under CDP 3-08-025 would also include public access components, including improved floating dock access, including on the docks seaward of the Harbor Hut restaurant, new public observation decks at GAFCO and the new two-story Virg's building (lease sites 125-127), a new pocket park with amenities, and improved signage.

See Exhibit A for a location map, Exhibit B for a lease map, Exhibit C for site and project plans, and Exhibits D and E for site photos.

The City of Morro Bay Planning Commission conditionally approved a use permit for the proposed project (as an amendment to the Applicant's conditional use permit) on September 19, 2012. This decision was appealed to the Morro Bay City Council on October 1, 2012, on the grounds that the proposed project is inconsistent with the policies of Measure D (Zoning Ordinance 17.24.180), which prohibit new development on the northern Embarcadero unless it is primarily for the purpose of serving or facilitating licensed commercial fishing or noncommercial recreational fishing activities. The City Council denied the appeal and upheld the Planning Commission's decision approving the use permit on October 23, 2012.

Project Description

The project consists of the construction of a 686 square foot, second-story addition to the existing Harbor Hut restaurant at 1205 Embarcadero Rd. The addition would be made to the northwestern wing of the main restaurant building, which currently houses the kitchen, storage and office space, walk-in refrigerators and freezers, and restrooms for restaurant patrons. The proposed addition would be built atop the landward portion of the existing building, entirely within the land area of lease site 123. The addition, as proposed, would include 185 square feet of office space, a wine storage room, a private bathroom, and hallway. The new office space would replace the existing 110 square foot office on the first floor (net increase of 75 sq. ft. in office space), which would then be repurposed as an employee break room and to provide additional space for storage space and food preparation. The project does not propose to expand restaurant seating or serving capacity.

The 686 square feet of the second story addition would be distributed laterally along ~19 linear feet of the Embarcadero boardwalk/pedestrian walkway, and extend seaward ~36 feet on top of the restaurant building. The addition would add approximately 11 feet to the height of the existing building, excluding the A-frame structure, for a total height of 21 feet, 6 inches. The proposed second story is similar in height to the existing A-frame entrance (23 ft), but extends farther inland and northwestward along the Embarcadero. ~~Thus, the~~ The proposed addition would

not be shielded by the A-frame along most sightlines. The second story addition would also require the construction of an exterior stairway extending an additional 7.5 linear feet southeast from the main building. See Exhibits C and E for site photos and Exhibit D for project plans.

The net increase of 75 square feet in office space under the proposed project would not trigger a requirement for additional on-site parking under local policies.

B. COASTAL DEVELOPMENT PERMIT DETERMINATION

The LCP can provide non-binding guidance, but the ~~The~~ standard of review for this application is Chapter 3 of the Coastal Act.

Visual Resources, Community Character & Coastal Dependent Development

Applicable Policies

Coastal Act Section 30251 addresses the protection of the scenic and visual qualities of coastal areas:

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(e) states that new development shall:

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

~~Finally, Coastal Act Sections 30220, 30221, 30224 and 30255 protect shorefront areas for water-oriented activities, recreational use, recreational boating facilities and coastal dependent development, including commercial and recreational fishing, in relevant part, as follows: Coastal Act Sections 30210 through 30224, along with Section 30255, 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 30212(b). For purposes of this section, “new development” does not include . . . (3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure. . . .

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 provided for on the property is already adequately provided for in the area.*

Section 30224. *Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by . . . limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities . . .*

Section 30255. *Coastal-dependent developments shall have priority over other developments on or near the shoreline . . . When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.*

Although not the standard of review, the City of Morro Bay’s certified LCP includes detailed, site-specific policies that provide guidance for interpreting these more general provisions of the Coastal Act.

The LCP’s zoning standards (incorporating Measure D) detail specific uses and guidelines for development within the commercial fishing/harbor (CF) zone and Planned Development (PD) overlay applicable to this site. The purpose of the CF district is as follows:

17.24.180 Commercial/Recreational Fishing (CF) District.

(A) 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...

(B)(1) Expressly Prohibited Uses. The City shall not grant any permit, authorization or other approval of any state owned tidelands subject to city lease between Beach Street and Target Rock, unless such development or use is primarily for the purpose of serving or facilitating licensed commercial fishing activities or noncommercial recreational fishing activities, or is clearly incidental thereto. For purposes of illustration . . . no approval shall be granted . . . for any new restaurant, café, gift shop or other retail establishments . . . and any existing such uses shall be considered nonconforming and shall not be expanded or enlarged.

Within the CF zone, new development is also required to protect visual resources and community character:

(B)(3) View Corridors Required. Permitted development, including structures...shall be designed and sited so as to preserve and enhance views to and along the coast and specifically to the ocean, bay, sandspit and Morro Rock. Consideration shall be given to views from adjacent public roadways and from the harbor. Structures shall be consistent with the character of a working fishing village and shall be subordinate to the setting.

(B)(6)(a) Harmonious Integration. The architectural and landscape design of a project...shall be consistent with the character of a working fishing village.

In addition, Chapter XIII (Visual Resources) of the Coastal Land Use Plan (LUP) portion of the LCP explicitly recognizes the aesthetic and economic value of the visual resources of the Morro Bay coastline, including both significant natural features (e.g., Morro Rock, the Bay, sandspit) and neighborhoods and other man-made features with a unique character, including the harbor and the Embarcadero district. The LUP states:

Chapter XIII(D)(6): Protection of Neighborhood Character. *One of the priorities of the Coastal Act is the protection of the character of the community and its neighborhoods. Morro Bay recognizes the need to preserve the unique character of its varied neighborhoods and to create a higher quality visual environment within them . . . There are three neighborhoods which require consideration for neighborhood character protection. These are the Embarcadero, the Downtown and Atascadero Beach Tract . . .*

Visual resource policies contained in the LUP also reference building height as a key component in maintaining the visual character of a community or neighborhood:

Policy 12.06: *New development in areas...having visual significance shall include as appropriate the following:*

- a. Height/bulk relationships compatible with the character of surrounding areas or compatible with neighborhoods or special communities which, because of the unique characteristics, are popular visit destination points for recreational users.*

Relevant Coastal Act provisions require the protection of the scenic and visual qualities of coastal areas. They also protect oceanfront areas, such as the subject site, for recreational uses. In addition, section 30224 encourages the expansion of recreational boating uses by limiting non-water-dependent land uses that might preclude boating support facilities. And section 30255 identifies coastal-dependent uses as priority uses over other development on or near the shoreline.

The relevant LCP sections used for guidance also protect visual resources and require boating-related uses in this area. In terms of siting and design criteria, the Waterfront Master Plan (WMP), which is incorporated into 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 Waterfront Master Plan also provides detailed guidance on the particular design characteristics, including building heights, which are appropriate for the Embarcadero and compatible with its unique character. For lot widths of greater than 50 ft., the WMP limits overall structural height to 14 feet maximum, or 17 feet if there are sloping roofs (minimum pitch 4 in 12) equaling 80% of the total roof area. An increase in height up to 25 feet may be allowed for projects within the PD zoning overlay 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.

In summary, the LCP contains detailed 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 otherwise degraded. 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.

In conclusion, the Coastal Act requirements (and LCP guidance) applicable to the site clearly require that development on this site be protected for recreational uses, that a priority be given to coastal-dependent uses, that public visual access be protected, and that development be compatible with the character of the Embarcadero waterfront area. Given that the proposed project is on public property and includes development immediately adjacent to the public trust resources of Morro Bay, this direction is magnified, so that approvable projects should include a significant public benefit.

Analysis – Visual Resources

The project site is currently developed with buildings spread over 85 linear feet and four lease sites fronting Embarcadero Road. Though much of the project site is occupied with development, there are nonetheless several open areas that provide view corridors through to Morro Bay, the sandspit, and Morro Rock on either side of and above the low-profile main restaurant. The broadest of these view corridors is from the public walkway occupying the large open area

between the Harbor Hut structures and GAFCO restaurant building to the southeast. Improvements planned for the GAFCO restaurant under CDP #3-08-025 would not reduce or otherwise impact visual resources in this area, and include the installation of a new public view deck. A smaller ground-level view corridor to the harbor currently exists between the main Harbor Hut building and the existing Virg's Sportfishing building to the northwest. ~~This corridor would be partially blocked if and when the planned two-story renovation of the Virg's building occurs.~~ The new, planned two-story Virg's building approved under CDP 3-08-025 would partially obstruct views from inland areas, but the project also includes a public view deck on the second floor, which enhances the ability of the public to enjoy views in this area.

Inland of the project site, public views across the site are provided from the Harborwalk, which is the California Coastal Trail at this location, from 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.

~~Based on these facts, the height of the proposed addition is inconsistent with the design guidelines of the LCP, which were formulated in order to preserve the unique visual character of the Embarcadero district.~~

Construction of the proposed second story addition ~~to the existing~~ would obstruct portions of the public views of Morro Rock, Morro Bay and the sandspit along multiple sight-lines from low-lying inland locations, including the public sidewalk and parking lot in the area of the Harbor Hut, the Harborwalk and Embarcadero Road (see Exhibits C, D and E). The proposed addition would be positioned on the northwest corner of the existing structure so that from most angles it would not be shielded by the existing, 23-ft high A-frame structure, and would therefore create minor new visual obstructions to the west and along the northwest-southeast corridor along the shoreline. ~~The added visual obstruction from street level would be especially apparent in the views toward Morro Rock and the sandspit.~~

With respect to views from the blufftop street end, views would also be partially obstructed. Construction of the new two-story addition would partially obstruct blue water views of the harbor and ocean beyond along a narrow band of the 180 degree view afforded by the street end. In addition, a small portion of the view of the inner harbor would be obstructed. However, views of the more significant and visually prominent natural features (e.g., Morro Rock, sandspit, Point Buchon) would not be significantly affected from this vantage point.

Nonetheless, within the context of the surrounding development, construction of this small, second story addition to the existing Harbor Hut building would represent a relatively minor increase in the vertical profile of the buildings along the northern Embarcadero, and would therefore not result in significant adverse impacts to visual and scenic resources in the area. As described above, there are several significant view corridors located on either side of the Harbor Hut complex, affording the public with opportunities to view the scenic features of the Morro Bay shoreline, including the harbor and bay, the sandspit, and Morro Rock. Moreover, the project approved previously in CDP 3-08-025, which includes development at the subject site, is poised to add new amenities that would increase opportunities for enjoying the area's scenic resources, including publicly-accessible docks in front of the Harbor Hut restaurant and public view decks located at the GAFCO restaurant and the second story of the new Virg's building. Thus, due to

its relatively small size, and its location within the existing and recently-approved built environment, the proposed addition would not significantly adversely impact public views.

In sum, the project will block public views of Morro Rock, Morro Bay and the sandspit along multiple sight lines, inconsistent with Coastal Act section 30251's requirement that development be sited and designed to protect views to and along the ocean and scenic coastal areas, adequately protects the scenic and visual resources of this coastal area, and is thus consistent with the visual resource policies of Coastal Act Section 30251.

Analysis – ~~Community Character & Coastal-Dependent Land Use~~

The purpose of the proposed development is to allow for new office, storage, food preparation and employee break-room space to support the operation of the Harbor Hut restaurant, which is a popular, visitor-serving establishment on the northern Embarcadero. The proposed development therefore enhances the function of the existing restaurant, which is a high priority visitor-serving use. In addition, because the proposed development consists largely of a second story addition, it would result in only a very small increase in the physical footprint of the existing land use – resulting from the installation of an external access stairway for the second story – in an area currently occupied by pavement near the restaurant entrance. This 65 square foot area, located landward of the main restaurant (see Exhibit D), is not large enough or otherwise appropriate for any other significant coastal-dependent or recreational use, and its loss would not significantly degrade existing public access areas at this site. Thus, the project does not comply with Coastal Act requirements to protect shorefront areas for coastal dependent land uses, including recreational uses and commercial fishing. In addition, the proposed use is not allowed on public trust lands, which must be protected for public trust allowed uses, such as public recreational piers, visitor serving facilities and boating and fishing facilities.

Further, it is evident that the project does not conform to the requirement, introduced in Measure D and incorporated into the LCP, that all new development in the CF zone serve, facilitate or otherwise support licensed commercial fishing activities or noncommercial recreational fishing activities. Finally, to the extent that the second-story addition would allow for the reconfiguration and expansion of activities (e.g., administration, wine storage) that are ancillary to the operation of the restaurant, the project would represent the enlargement of a non-conforming use within the CF zone, which is explicitly prohibited by Measure D.

Finally, although the proposed land use is inconsistent with the requirements of Measure D, which is used for guidance in this case, the restaurant use pre-dates Measure D, and is thus an allowed non-conforming use under the zoning policies of the LCP. The proposed project does not alter the existing land use, and likewise does not change the intensity of this use because it would not expand the seating or serving capacity of the restaurant. In summary, the proposed project would neither change the use of the site, or change the intensity of this use, nor would it introduce new uses not already present at the site, or encroach upon, interfere with, or otherwise preclude protected coastal-dependent uses on the project site or adjacent areas. Thus the proposed project can be found to conform with Coastal Act Sections 30210 – 30213, 30220, 30221, 30224 and 30255, protecting shoreline areas for water-oriented and other recreational activities, and priority coastal-dependent uses.

Analysis – Community Character

Coastal Act Section 30251 requires development to be visually compatible with the character of surrounding areas. While the height of the proposed development is in excess of the height limits contained in the LCP, it is nonetheless lower than that of existing structures at the site, including the A-frame entrance, which is part of the same building as the proposed addition and the 37-foot tall tower (see above). The total height of the proposed addition would also be somewhat lower than that of the neighboring new Virg's building (25 feet) approved under CDP #3-08-025. While it is important to note that this previously approved two-story structure was a component of a larger project that included multiple public access improvements (e.g., a second-floor view deck) that provided a significant public benefit, in this case the Commission finds that the building height under the proposed project is consistent with that of existing and previously-approved structures along the northern Embarcadero and is thus compatible with the character of surrounding areas.

The Commission also finds that the visual appearance of the proposed addition is compatible with the eclectic mix of the surrounding structures along the northern Embarcadero. Though it would not expand the Harbor Hut's visitor-serving capacity, the proposed project has the potential to increase the operational efficiency of the restaurant by allowing for more on-site seafood preparation and less frequent deliveries of food and other supplies, and by providing improved working conditions for employees in the form of a new break room. These improvements to restaurant operations could spill-over as benefits to the community in terms of reduced congestion along the Embarcadero and the public patio and walkway areas surrounding the restaurant.

As discussed above, the Waterfront Master Plan component of the LCP identifies the limitation of building heights as a key policy for maintaining the unique visual and community character of the PD zone overlay that includes the northern Embarcadero and the project site, but this policy is not the standard of review for this project and is instead used only as guidance. The proposed structure would be approximately 4.5 feet higher than that allowed in the LCP, but the height is nevertheless consistent with surrounding existing and proposed structures. It is therefore consistent with the Coastal Act requirement that it be compatible with surrounding areas. Moreover, the Commission finds that the extent and scope of public access improvements planned and required under CDP 3-08-025 will leave the Harbor Hut site and surrounding area with public access amenities that provide significant public benefits per prior Commission approvals, with which the proposed project would not interfere, and can be understood in that context. Therefore, the LCP's requirement that buildings of increased height must confer a "significant public benefit" has been addressed through this prior approval of development on this site. This LCP requirement provides specific direction for how to protect visual and community character at this location, as required by the Coastal Act, including Sections 30251 and 30253(e). The proposed development would expand the existing Harbor Hut restaurant building above the 14 foot height limit for flat-roofed buildings, and above the 17 foot height limit for buildings with steeply pitched roofs.

Even if the proposed use were allowed under the Coastal Act and LCP, which it is not (see above), the 21.5 foot height of the proposed two-story building would only be allowable if the structure met two specific conditions: The proposed structure must (a) have sloping roofs (minimum pitch 4 in 12) equaling 80% of the total roof area, and (b) confer a "significant public

benefit”. As proposed, the roof of the second story addition would be relatively flat, with only a slight slope of approximately 0.5 in 12 pitch. Combined with the near flat roof of most of the existing main restaurant building (only the A frame entrance structure has a steeply pitched roof), the addition would result in a building with less than 80% of its roof having a slope of greater than 4 in 12 pitch. Nor does the project meet the second criterion, as it does not include any expansion of visitor services or a public access component that could be interpreted as providing a significant public benefit. Based on these facts, the height of the proposed addition is inconsistent with the design guidelines of the LCP, which were formulated in order to preserve the unique visual character of the Embarcadero district. Moreover, there is no significant public benefit associated with the project that would justify an exception for the increased building mass and scale at this sensitive bay fronting site.

Based on these considerations, the proposed project can be found consistent with Coastal Act Sections 30251 and 30253(e), protecting the visual quality of coastal areas and the unique community character of popular visitor destination points.

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. The proposed project is a small addition to a restaurant in an existing developed area, would be compatible with the character of the area, and would not cause significant adverse impacts on shoreline views. In addition, the project would enhance this existing visitor-serving use, which also provides public access that will be enhanced pursuant to CDP 3-08-025. As currently designed, the project is not consistent with the visual resource policies of Coastal Act section 30251 because it does not “protect views to and along the ocean and scenic coastal areas”, and, following the detailed guidance provided by the City of Morro Bay certified LCP, the project is not “visually compatible with the character of the surrounding areas”. Further, the proposed project fails to minimize the adverse impacts of development on the unique visual character of the Embarcadero district, a popular visitor destination.

Finally, the proposed project is not an allowable use in this location. Coastal Act section 30255 creates a priority for coastal dependent uses in areas near the shoreline. In addition, the development is proposed on oceanfront land, which is protected for recreational uses pursuant to Coastal Act sections 30220, 30221, and 30224. The proposed project would add new office space and storage space to an existing commercial use. This development is neither coastal dependent nor a recreational use. Furthermore, the use is not an allowed use on public trust lands, and the LCP explicitly prohibits this use at this location, which under the LCP is required to be preserved for commercial and recreational fishing uses.

For the reasons described above, the Commission has determined the proposed project does not meet these requirements, cannot be found consistent with the Coastal Act, including Sections 30220, 30221, 30224, 30251, 30253 and 30255, and must be denied.

Indemnification

Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications.¹ Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application in the event that the Commission's action is challenged by a party other than the Applicant. Therefore, consistent with Section 30620(c), the Commission imposes Special Condition 1 requiring reimbursement for any costs and attorneys fees that the Commission incurs in connection with the defense of any action brought by a party other than the Applicant challenging the approval or issuance of this permit, the interpretation and/or enforcement of permit conditions, or any other matter related to this permit.

C. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Public Resources Code (CEQA) Section 21080(b)(5) and Sections 15270(a) and 15042 (CEQA Guidelines) of Title 14 of the California Code of Regulations (14 CCR) state in applicable part:

CEQA Guidelines (14 CCR) Section 15042. Authority to Disapprove Projects. [Relevant Portion.] A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.

Public Resources Code (CEQA) Section 21080(b)(5). Division Application and Nonapplication....(b) This division does not apply to any of the following activities: ...(5) Projects which a public agency rejects or disapproves.

CEQA Guidelines (14 CCR) Section 15270(a). Projects Which are Disapproved. (a) CEQA does not apply to projects which a public agency rejects or disapproves.

Section 13096 (14 CCR) requires that a specific finding be made in conjunction with coastal development permit applications about the consistency of the application with any applicable requirements of CEQA. This report has discussed the relevant coastal resource issues with the proposed project. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference. Section 21080(b)(5) of the CEQA, as implemented by Section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if the project was approved as proposed. Accordingly, the Commission's denial of the project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, do not apply.

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

¹ See also California Code of Regulations Title 14 Section 13055(g).

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 determined that the proposed project qualified for a categorical exemption from CEQA under Section 15303(c) (small facilities or structures), and issued a Notice of Exemption on September 21, 2012.

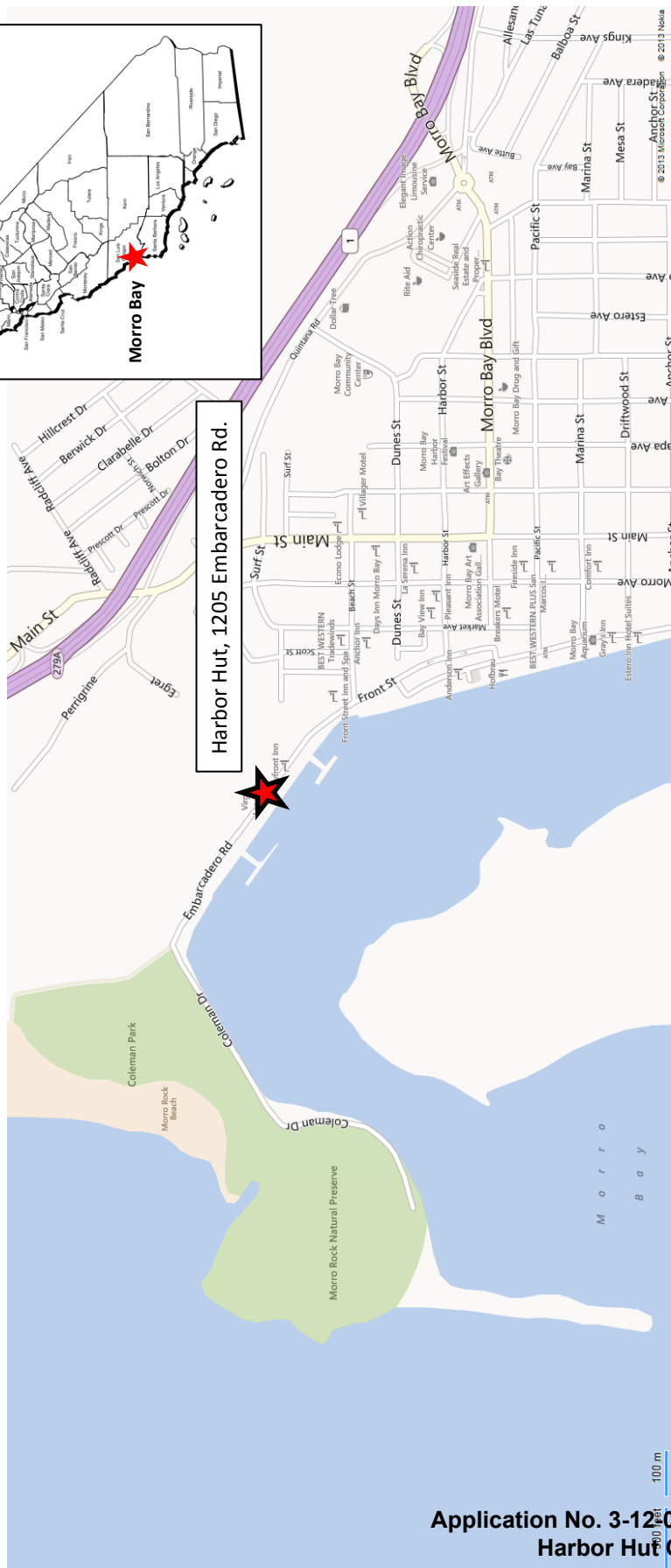
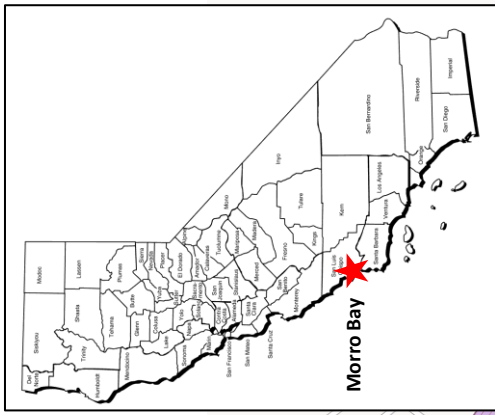
The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The Commission has reviewed the relevant coastal resource issues associated with the proposed project, and has identified 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 the proposed project will 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 would have on the environment within the meaning of CEQA. 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).

APPENDIX A: SUBSTANTIVE FILE DOCUMENTS

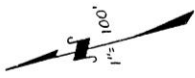
- CDP #3-08-025 (Harbor Hut, Virg's and GAFCO Redevelopment Project)
- City of Morro Bay Certified Local Coastal Program (LCP)
- City of Morro Bay Waterfront Master Plan

Project Location

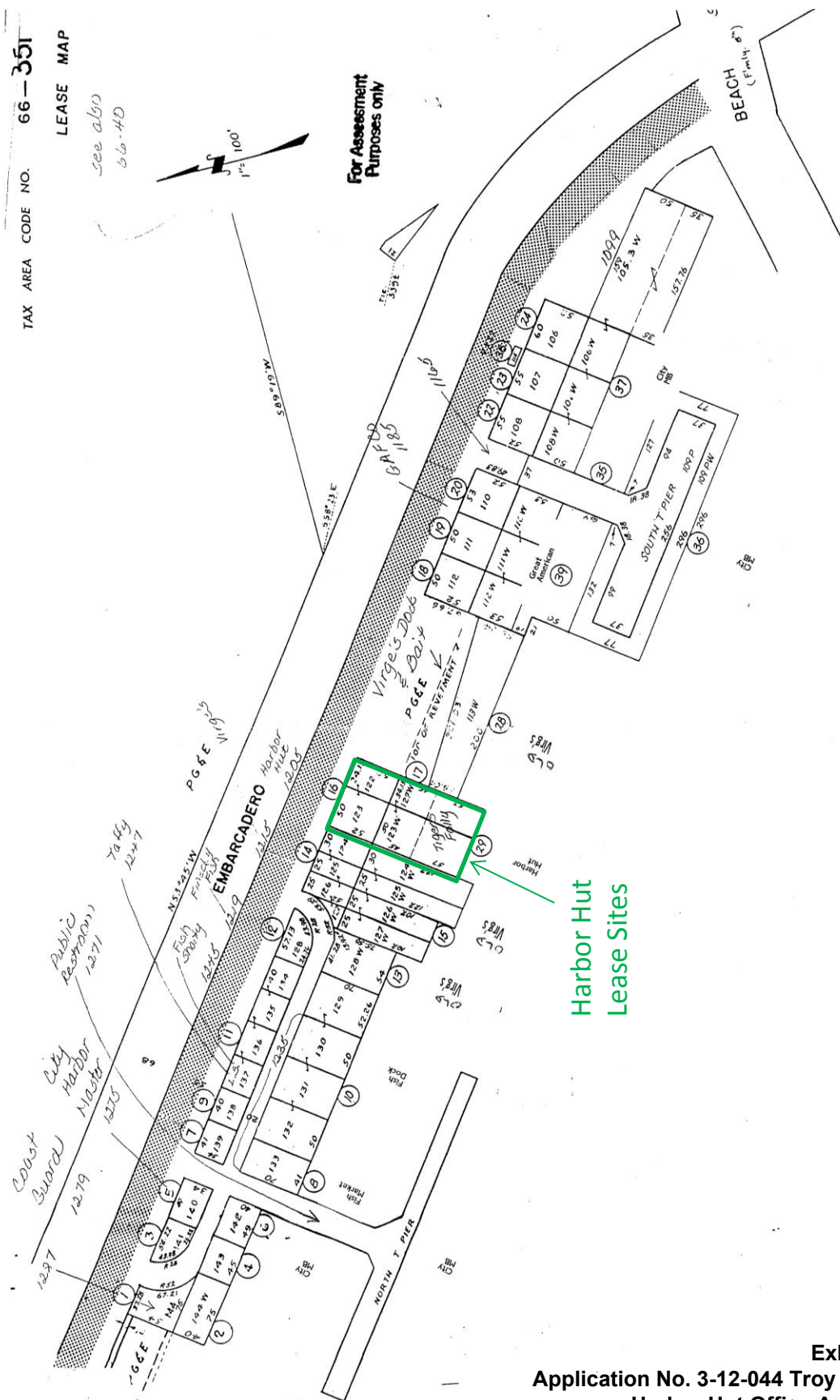


LEASE MAP

see also
66-40



For Assessment
Purposes only



Harbor Hut
Lease Sites

NOTE--ASSESSOR'S BLOCK & LOT
NUMBERS SHOW IN CIRCLES

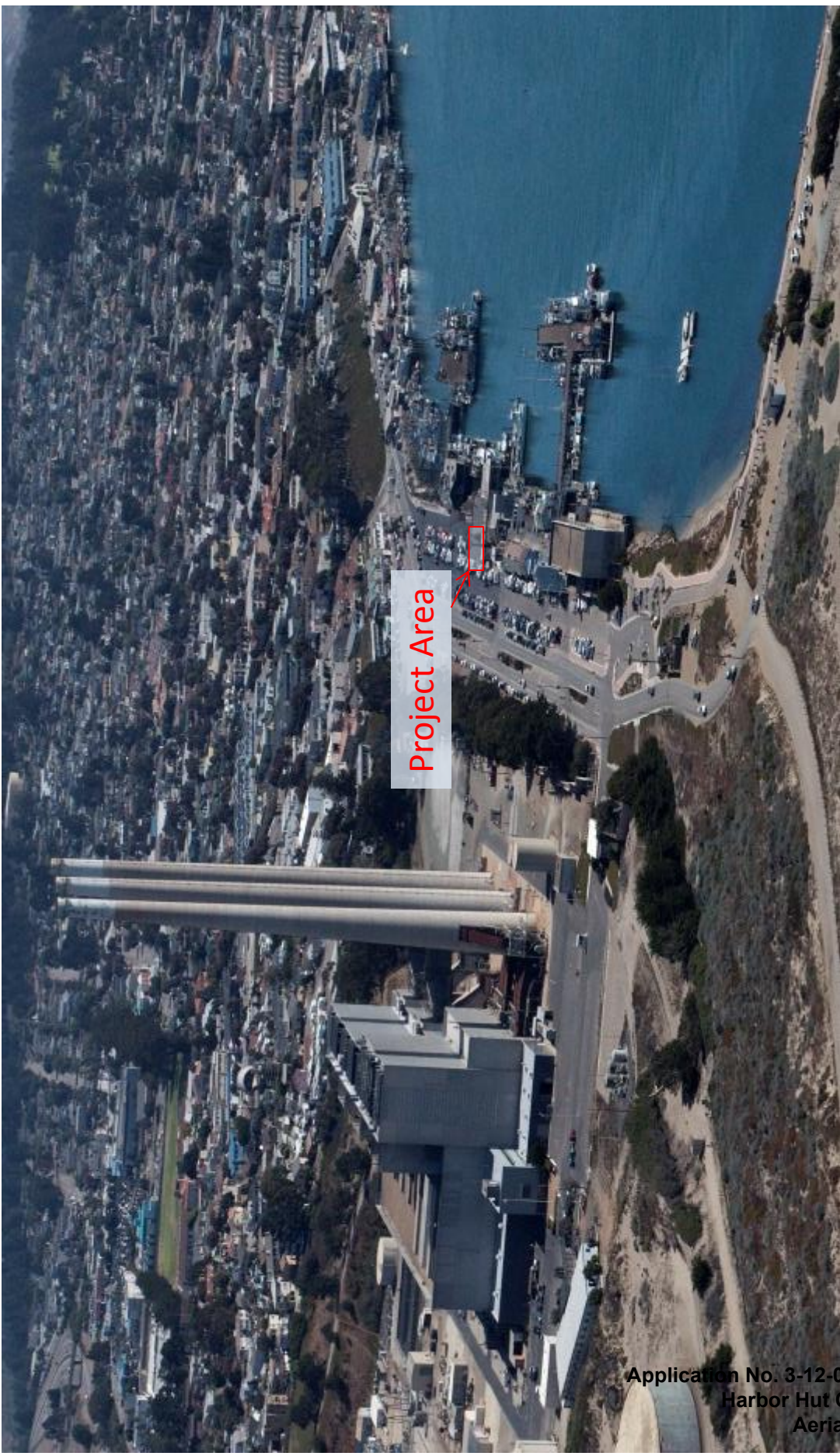
LEASE MAP
TOWN OF MORRO BAY
SAN LUIS OBISPO COUNTY
CALIFORNIA

Lease Map of northern Embarcadero

REV. 10/1/76



Aerial photograph of northern Morro Bay and Harbor
(Source: Bing Maps, 2013)



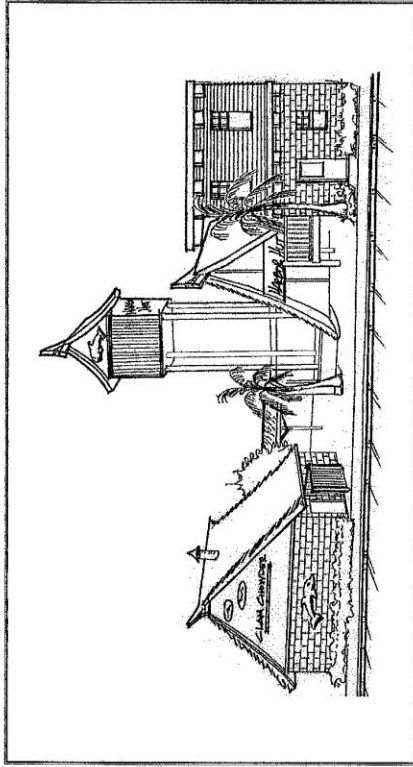
Project Area

Aerial photograph from the northwest
(Source: California Coastal Record Project Slide #201006798, Sep. 2010)



Aerial photograph of project site
(Source: USDA Farm Service Agency National Agricultural Imagery Program)

RELOCATED PRIVATE OFFICE



HARBOR HUT RESTAURANT 1205 EMBARCADERO - MORRO BAY, CALIF.

RECEIVED

JAN 02 2013

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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STAMPS



CONSULTANTS

PROJECT
PROPOSED
RELOCATED
PRIVATE OFFICE

FOR

**HARBOR HUT
RESTAURANT**

1205 EMBARCADERO
MORRO BAY, CALIF.
93920

DRAWING FRAME

DESIGN
DEVELOPMENT

NOT FOR CONSTRUCTION

Sheet No.	11
Drawn By	CPA
Draw Date	04/12
Updated	09/12
Scale	AS SHOWN
REVISIONS	

SHEET TITLE

COVER PAGE

SHEET NO.

A1.1

C. P. PARKER ARCHITECT

PROPOSED RELOCATED PRIVATE OFFICE

FOR HARBOR HUT RESTAURANT



CONSULTANTS

PROJECT

DESIGN DEVELOPMENT

DRAWING PHASE

NOT FOR CONSTRUCTION

Table with columns: No., Date, Description, Revisions. Includes entries for CTP, 06/26/12, 09/12/12, and AS NOTED.

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SHEET NO.

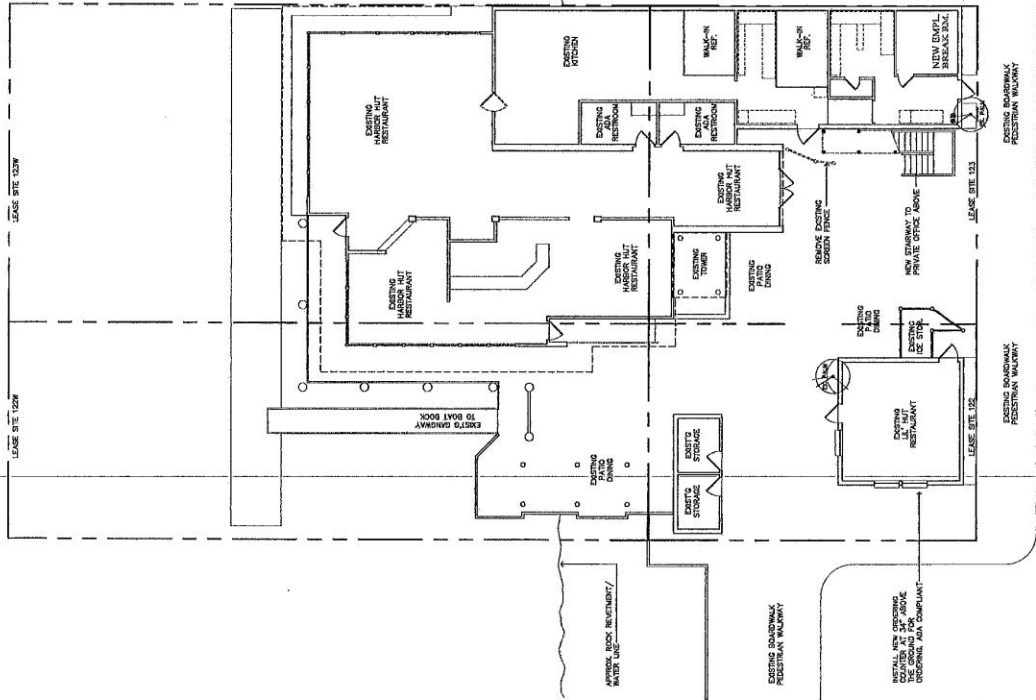
A2.1

PROJECT AREAS:

- RELOCATED PRIVATE OFFICE & STORAGE: 689 SQ. FT.
EXISTING MAIN RESTAURANT: 3,028 SQ. FT.
EXISTING OUTDOOR SEATING: 909 SQ. FT.
INTERIOR DINING (1 PER 60 SQ. FT.): 1,610 SQ. FT.
EXTERIOR DINING (1 PER 120 SQ. FT., AFTER FIRST 125 SQ. FT.): 243 SPACES
NEW PRIVATE OFFICE (1 PER 100 SQ. FT.): 6 SPACES
NEW PRIVATE OFFICE AREA (185 SQ. FT.): 185 SQ. FT.
EXISTING DOCK (4 SPACE PER 35' OF DOCK): 17 SPACES
TOTAL PARKING SPACES PROVIDED: (463) - 47 SPACES

ADA ACCESSIBILITY

THE EXISTING STRUCTURE MEETS ACCESSIBILITY REQUIREMENTS... INTENT IS TO INSTALL AN ACCESSIBLE COUNTER IN THIS LOCATION... PLUS NOT REQUIRING ELEVATOR ACCESS AND WILL NEED THE NEW RESTROOM WITHIN IT TO BE ADAPTABLE TO AN ADA...



SITE PLAN

NEW SECOND FLOOR OFFICE PLAN

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CONSULTANTS

PROJECT

PROPOSED
RELOCATED
PRIVATE OFFICE

FOR

**HARBOR HUT
RESTAURANT**

1205 EMBARCADERO
MORRISTOWN, NJ 07960

DRAWING PHASE

DESIGN
DEVELOPMENT

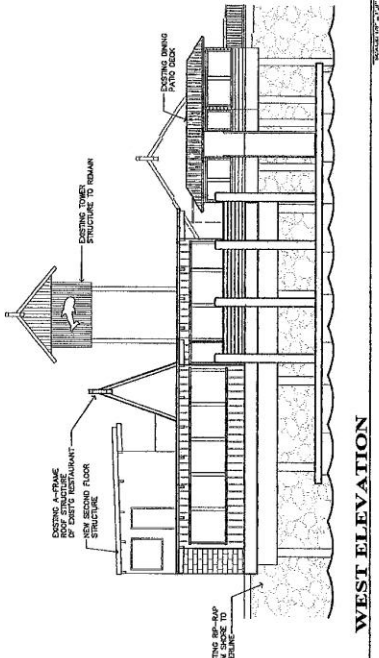
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REVISIONS	

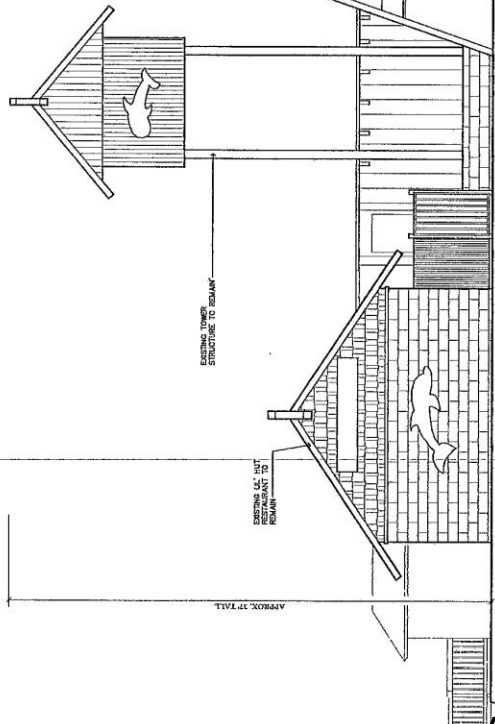
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ELEVATIONS**

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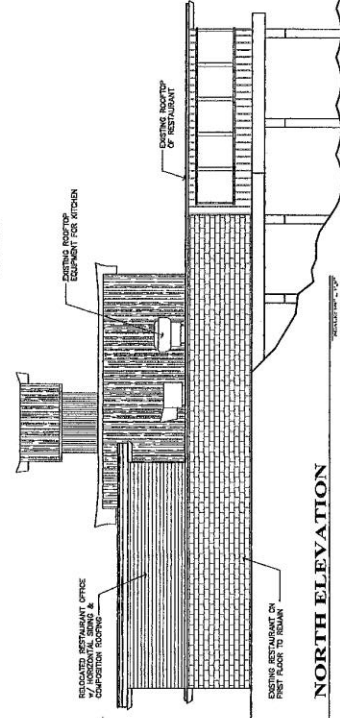
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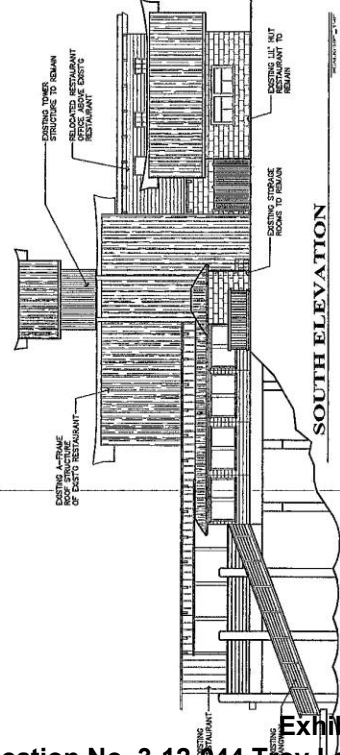
WEST ELEVATION



EAST ELEVATION



NORTH ELEVATION



SOUTH ELEVATION

HARBOR HUT RESTAURANT



PROPOSED SECOND FLOOR OFFICE ADDITION



EXISTING RESTAURANT PHOTO

C.P. PARKER
ARCHITECT