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original staff report

F17a

Prepared October 8, 2014, for October 10, 2014 Hearing

To: Commissioners and Interested Persons
From: Susan Craig, District Manager
Justin Buhr, Coastal Planner
Subject: **STAFF REPORT ADDENDUM for F17a**
Coastal Permit Application 3-13-006 (Held Harbor Center)

The purpose of this addendum is to supplement the recommended findings with additional clarification, and to modify the staff recommendation and several special conditions for the above-referenced item. In the time since the staff report was distributed, staff has received new input and information from the Applicant that require a response and a few modifications to the staff recommendation and some of the special conditions. Specifically, this addendum provides added clarification in relation to visual resource impacts and boat slip use parameters, and makes modifications to the staff recommendation related to the bayside lateral public accessway, public access to the floating dock, protection of eelgrass, and the type of pilings to be used. These changes do not modify the basic staff recommendation, which is still approval with conditions, but instead modify certain aspects of the conditions of approval.

Thus, the staff report is modified as shown below (where applicable, text in underline format indicates text to be added, and text in ~~striketrough~~ format indicates text to be deleted):

1. Response to comments related to Project Description and Modified Project:

The Applicant states that the staff report inadequately acknowledges the major modifications the Applicant has undertaken to address staff's concerns early in the process. Commission staff acknowledges that there has been close collaboration with the Applicant since the initial application was filed, and that the Applicant has modified the project based upon staff's recommend changes in order to sufficiently protect valuable coastal resources and comply with the Coastal Act. This staff report is the result of a thorough analysis of the project as it is currently before the Commission for review.

2. Response to comments related to the Bayside Lateral Public Accessway:

The Applicant asserts that staff incorrectly noted that Coastal Development Permit 3-11-031 (Giovanni) was conditioned to install a ten-foot wide walkway. However, this staff report simply states that the Commission has generally found ten feet to be the appropriate width for lateral public access in this important and well-used visitor serving area, and cites to the Giovanni staff

report as an example of when the Commission made such a finding. Staff acknowledges that a portion of the Giovanni accessway is narrower than ten feet wide due to commercial fishing operations that could not be relocated. The Giovanni staff report contains a thorough discussion about this special circumstance and also notes that a ten-foot wide accessway is typically required by the Commission. In this instance, not unlike Giovanni, a ten-foot wide lateral accessway would be preferred but due to the public access amenities included in the project as a whole, staff believes that it is appropriate for a portion of the lateral accessway to be only eight feet wide. As stated in the findings on Page 15 of this staff report: *In this instance, given the other public access improvements related to the project, which include the two new ADA compliant public restrooms, increased width of the southern portion of the walkway from five feet to ten feet, public access to and along the proposed boat dock (discussed subsequently), use of the new retail unit as a visitor-serving recreational kayak rental, and increased public use of the glass court area, the proposed decrease of this northern portion of the walkway to the LCP-required minimum of eight feet is consistent with the Coastal Act's public access and recreation policies.*

In addition, the Applicant's representative has requested a slight modification to condition 1(a) to add clarity in regards to the locations of the accessway that will be permitted at eight feet. This requested modification does not change the intent of the condition, so staff is revising the staff recommendation to amend Special Condition 1(a) on Page 5 as follows:

Bayside Lateral Public Accessway. *The bayside lateral accessway shall provide for seamless connectivity to the existing lateral accessways along properties north and south of the development site. The entire southern portion of the bayside lateral accessway shall be a minimum of ten feet wide. The northern portion of the bayside lateral accessway and the middle portion of the bayside lateral accessway along the entrance to the gangway shall be a minimum of eight feet wide. The existing vertical accessways on the northern and southern portions of the site that connect to the bayside lateral accessway shall at least maintain their current width.*

3. Response to comments related to Public Access of the Boat Docks:

a. Condition 2(c) requires general public access to the proposed floating dock, including a sign to inform the public of this access opportunity. The condition also prohibits all barriers to walking on the gangway or dock, other than an unlocked gate to prevent access by unattended children. Page 14 of the staff report cites the requirements of Coastal Act Sections 30210 and 30233 as the basis for this public access requirement on the floating dock. However, the Applicant has correctly identified that Coastal Act Section 30233 has not been typically interpreted to require public access to new or expanded boating facilities. Therefore, staff recommends deleting the reference to Coastal Act Section 30233 from the Public Access section of the staff report as an applicable policy for the requirement of general public access to the floating dock. Section 30210 still requires new development to maximize public access, however, so it is still necessary to ensure that a new dock over public tidelands, in an area that caters to tourists and provides recreational opportunities, includes public access. Staff therefore does not recommend any changes to Condition 2(c), but the findings should be modified to remove the reference to Section 30233.

Delete the following text on Page 14 of the staff report dated prepared September 19, 2014 as

follows:

~~Coastal Act Section 30233 allows for the filling of open coastal waters and estuaries, including Morro Bay, for only seven specifically identified uses, including for structural pilings for public recreational piers that provide public access and recreational opportunities.~~

~~**Section 30233:** (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes...shall be limited to the following:~~

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

Insert the following text on Page 15 and 16 of the staff report dated prepared September 19, 2014 as follows:

Pursuant to Coastal Act Section 30210, projects of this nature are only allowed where they provide for maximum public access and recreational opportunities. ~~Similarly, pursuant to Coastal Act Section 30233(a)(3), fill in open coastal waters is only allowed for structural pilings for public recreational piers that provide public access and recreational opportunities.~~ In this case, the new pilings are proposed to support a new pier that would provide for boating recreational activities. This could be found consistent with Coastal Act Sections 30210 ~~and 30233~~ if the dock was proposed to be accessible by the general public. However, the floating dock is proposed to be restricted from general public use by the installation of a security gate, and its use reserved solely for boaters. To maximize public access in this important visitor serving recreation area located over public tidelands, the Commission has typically required general public access, i.e. not just access for boat users, to dock additions. The Commission has required general public access to docks because the experience of Morro Bay from a floating dock is inherently different than the experience from a raised lateral access walkway. A floating dock brings the public into closer proximity to the water, from which the public can experience the Bay at water level and from a unique perspective. Thus, the proposed project is inconsistent with Coastal Act Sections 30210 ~~and 30233~~ because its proposed exclusion of the general public from accessing coastal waters does not maximize access to publicly-owned tidelands, ~~nor does the project's proposed fill in coastal waters provide for public access and recreational opportunities.~~

Delete the following text on Page 16 of the staff report dated prepared September 19, 2014 as follows:

As conditioned, the proposed project is consistent with Coastal Act Sections 30210; and 30224, ~~and 30233.~~

b. The Applicant provided public access plans related to two prior coastal development permits (3-10-036 (Salt Building Remodel) and 3-08-052 (Giovanni)), which were approved along the Embarcadero in Morro Bay and cited within the staff report as examples of when the Commission required public dock access. The Applicant provides the public access plans in an effort to demonstrate that the docks are not included or open for general public use. Staff does not concur with the assessment that access to the Giovanni and Salt Building docks is not

required. Each of these permits included special conditions that require a similar type of public access on docks as is being recommended in this case. Staff modifies footnote one of Page 16 of the staff report to include the specific requirements of these special conditions, as follows:

In granting coastal development permit 3-10-036 (Salt Building Remodel), the Commission conditioned the floating docks to “be publically available for either short-term or long-term use by recreational boats. Signs discouraging the public from walking on the docks, barriers to walking on the gangway or docks, such as ropes or gates, are prohibited. Residential use of the docks is prohibited. Any fees shall be as low as possible, commensurate with standard rates for the area.” Further, the Commission has required public access to docks in several other recent permits on the Embarcadero (see 3-11-031 (Giovanni), requiring, in part: “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, 3-08-052 (Morro Bay Conference Center), requiring public access signs at the top of the gangway to the docks and providing that all public access areas be available free of charge, other than minimal docking fees, and 3-07-048 (Held Mixed Use) requiring in special condition 1d, “Floating Dock” “Final plans shall illustrate the publicly available floating dock and gangway including all support structures and connections.”

Therefore, it is clear that general public access to floating docks is required in each of these permits, contrary to the Applicant’s assertion. Furthermore, the access plans the Applicant provides are not legible, so staff is unable to determine if those exhibits actually do show that public access to the docks is limited. If public access is limited in those plans, that would be inconsistent with the approved conditions for these developments, and staff would refer these potential violations to the Commission’s enforcement unit for action.

4. Response to comments related to Visual Resources:

The Applicant has requested a modification to Condition 1(d). This condition limits the height of the proposed awnings and façade enhancements to protect visual resources. As stated on Page 19 in the staff report, the proposed increase in the current height of these building elements will result in reduced views of Morro Rock for pedestrians walking along the Embarcadero. The Applicant cites to the staff report where it states “no roof top utilities would be hidden by this section of the façade” and claims that the staff report is in error as the visual simulations contained in Exhibit 3 show the façade covering views of the exposed rooftop equipment. However, the staff report analyzed the increase in height of the new façade and the associated impacts in two parts. First, the height of the new awning and its associated visual impacts along the southeastern section of the downcoast building were analyzed. The new awning will result in an increase in building height in this area from 14 feet to 15 feet two inches. It is clear in the visual simulations that it is this increase in height, which is over the 14 feet maximum height provided for in the LCP, which will reduce the visibility of the rooftop elements. Second, the staff report analyzed the section of façade along the southern portion of the building that would increase the existing façade height from 12 feet to 14 feet. The increase in height of this portion of the façade will result in reduced views of Morro Rock but it will not reduce the visibility of the rooftop elements because there are no rooftop elements located in this area of the building. The quote from the staff report referenced by the Applicant stating that “no roof top utilities would be hidden by this section of the façade” is referring to this portion of the façade, and it is

accurate. The Applicant also states that the increase in building height would not produce a significant impact on the views of the Rock. However, staff believes that any increase in building height will have a negative impact on this valuable visual resource. Staff recommends that the condition remain as drafted in order to protect views of Morro Rock.

5. Response to comments related to Eelgrass:

a. The eelgrass conditions specified in Special Conditions 1(b) and 1(c) contained within this staff report require avoidance of direct shading impacts based on the extent of existing eelgrass as mapped on the Applicant's Site Plan. The timing for preconstruction and post construction surveys are outlined and mitigation for any decline in eelgrass due to project impacts is required. Based on further internal staff discussions, and the suggestions of the Applicant, some modifications to the eelgrass conditions are recommended. The intent of the conditions as drafted is to provide maximum protection for eelgrass due to its extreme decline in recent years. However, as drafted, the conditions could result in mitigation being required twice for the same impact. Also, as drafted, the Applicant would be required to mitigate for any decline in eelgrass between the time of the initial eelgrass survey (used to map eelgrass on the Applicant's Site Plan) and the preconstruction survey that is required before construction takes place. The following modifications ensure the Applicant is not responsible for impacts outside of those related to the proposed project. Thus, the staff report is modified as follows:

Modify Condition 1(c) on Page 5 as follows:

- c. ***Pre- and Post-construction surveys.*** *A survey identifying areas of eelgrass within the lease areas shall be completed no earlier than 90 days and no later than 30 days prior to the commencement of construction. The survey shall be submitted to the Executive Director for review as part of the final plans. ~~If additional eelgrass is identified that would be directly shaded by the proposed project, then the report shall identify remedial measures to offset such reduction within the eelgrass beds at a ratio of 1.2:1 in line with the specifications for mitigation of eelgrass habitat as provided for in the Southern California Eelgrass Mitigation Policy.~~ Post construction surveys identifying areas of eelgrass shall be completed on an annual basis with the first report due within 90 days of completion of construction 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. Annual reporting shall continue for ~~at least three years or until all eelgrass beds to be protected are supporting eelgrass as documented in two consecutive annual reports, whichever is later.~~ Any change in eelgrass extent shall be documented and reported to the Executive Director. If the report identifies a reduction in eelgrass coverage as compared to the existing eelgrass coverage as identified in the Applicant's ~~Site Plan~~ pre-construction eelgrass survey, then the report shall identify remedial measures to offset such reduction within the eelgrass beds in the project area at a 1.2:1 ratio in line with the specifications for mitigation of eelgrass habitat as provided for in the Southern California Eelgrass Mitigation Policy.*

b. Next, the Applicant has stated that relocation of the lateral bayside accessway inland to avoid eelgrass coverage is infeasible. However, staff disagrees that relocating the accessway eastward in order to reduce the direct shading impacts to eelgrass is infeasible. As discussed on Page 22 of the staff report, this eastward relocation would result in an approximately 20 square foot reduction in the size of the proposed retail unit. The proposed retail unit is currently designed at 534 square feet. This relocation would reduce the size of the retail unit by less than four percent, and the applicant has not submitted substantial evidence to substantiate its claim that this four percent reduction in the size of its commercial space will render the project infeasible.

The Applicant also states that the area of the accessway that would provide direct shading impacts to existing eelgrass will be built using a fiberglass grated material to allow for light to penetrate the accessway, and thus that relocation of a portion of this accessway to protect eelgrass is not necessary. However, the translucent decking to provide light for known eelgrass habitat has shown mixed results. Based on the extreme decline in the eelgrass population within Morro Bay, avoidance of direct shading of existing eelgrass as shown on the Applicant's Site Plan is necessary.

c. The Applicant has also requested a modification to Special Condition 1(c) to require a preconstruction survey no earlier than 60 days prior to the commencement of construction. The condition within the permit allows for the preconstruction survey to be done between 90 and 30 days prior to the commencement of construction. Therefore, the condition is more expansive than what the Applicant is requesting and will allow for the Applicant to perform a preconstruction survey within the time frame requested by the Applicant. As to this request, no modification is necessary.

d. Next, the Applicant has requested a modification to remove language from Condition 1(c) that requires that the preconstruction eelgrass survey be submitted to the Executive Director for review as part of the final plans. The Applicant properly identifies that Commission staff worked with the Applicant to ensure that a project could be approved that provides maximum eelgrass protection. Initially, the project was conditioned to relocate any portion of the proposed development, including the floating boat dock, if the preconstruction survey identified any eelgrass that would suffer direct impacts from the project. The Applicant's representative outlined the difficulties this would cause for the Applicant, and staff adjusted the condition accordingly. The condition (see modification above) no longer requires total avoidance of direct shading impacts if the preconstruction survey finds new eelgrass that would otherwise require relocation of a project element. Nonetheless, it is appropriate for the Applicant to submit the preconstruction survey for review by the Executive Director as a part of the final plans. The condition does not require the Applicant to relocate the project if new eelgrass is found in the preconstruction survey, and knowledge of the outcome of the preconstruction survey is relevant for monitoring of possible future mitigation.

e. Finally, the Applicant has requested a modification to reduce post construction monitoring from three years to two years. As previously mentioned, the eelgrass situation in Morro Bay is dire. Maximum levels of protection are necessary to ensure the survival of eelgrass in Morro Bay. The Commission has required three years of post-construction monitoring for similar development along the Embarcadero in Morro Bay. Therefore, it is staff's recommendation that three years post-construction monitoring is required.

6. Response to comments related to Pilings:

Special Condition 3(f) requires that the new pilings and piling sleeves for the proposed boating docks be made of steel. The Applicant has requested a modification of Special Condition 3(f) to allow fiberglass pilings. Staff has discussed this request with staff of the Commission's Water Quality unit, who is in support of this proposed modification, including because fiberglass is commonly used in pier pilings and offers necessary water quality protections. Thus, the staff report is modified as follows:

Modify Special Condition 3(f) on Page 9 of the staff report as follows:

- f. Pilings. The new pilings and piling sleeves shall be made from steel or fiberglass. Construction barges shall be floating at all times and shall only operate at tides high enough so that the barge does not rest, bump or drag against the bottom of the bay. The Construction Plan shall include a pile driving plan and monitoring program designed to ensure that underwater noise generated by pile driving activities is minimized to the maximum extent feasible and does not exceed: (1) an accumulated 187 dB SEL as measured 5 meters from the source; and (2) peak dB above 208 dB as measured 10 meters from the source. In the instance anything other than a vibratory hammer is to be used for pile driving activities, the plan shall provide for a hydro-acoustical monitor to ensure that underwater noise generated by pile driving activities does not exceed such limits. The plan shall identify the type of method used to install pilings. Vibratory hammers shall be used where feasible; if another method is used, a bubble curtain shall be employed to contain both noise and sediment. The plan shall also provide for additional acoustical BMPs to be applied if monitoring shows underwater noise above such limits (including, but not limited to, alternative pile driving methods (press-in pile placement, drilling, dewatered isolation casings, etc.) and additional noise dampening measures (sound shielding and other noise attenuation devices).*

7. Response to comments related to Boat Slip Parameters:

The Applicant has requested a modification to Condition 5, which would delete the description of the types of vessels that may use the new floating dock. The condition is drafted in a manner that is extremely broad and will allow for nearly any type of boating vessel to use the dock. The Commission has approved this condition language for other projects that included new boating facilities on the Embarcadero in Morro Bay. Therefore, no modification to this condition is necessary.

September 30, 2014

Chair Kinsey and Members of the Commission
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

Delivered to Santa Cruz CA Coastal Commission office via overnight mail

RE: Harbor Center CDP #3-13-006
Agenda Item No. F17a

Dear Chair Kinsey and Members of the Commission,

This letter is in advance of your meeting for the above mentioned project because I feel that there will not be adequate time to present all the information and background materials during the hearing.

I must respectfully object to several points in the staff analysis and conditions of approval provided in your report. Specifically the areas for which I have concern are:

- **Project Description and Modified Project** – Staff report only briefly mentions that the project had already been modified at staff request earlier in the process
- **Bayside Public Accessway** – There is a net gain of 2.2% in the public accessway that is not made clear in the staff report. The accessway is a minimum of eight feet for a short segment to protect the Eelgrass bed.
- **Boat Docks** – Docks are routinely and historically supported by staff for “new or expanded boating facilities,” distinctly different from “recreational uses.”
- **Visual Resources** – Intent of the façade, at 15’2” is to conceal rooftop equipment and to match the existing façade. The proposed façade was reduced in height and found acceptable by the City of Morro Bay (4-0-1 vote).
- **Biological Resources** – The Southern CA Eelgrass Mitigation Policy is the controlling document for Eelgrass issues. The staff proposed conditions set up timing conflicts, unjustified measures and inconsistencies with federal permits.
- **Piling Construction** – Minor correction that the project proposes steel and/or fiberglass pilings.

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- **Boat Slip Use Limitations** – Staff seems to be conflating our local “Measure D” guidelines enacted to protect our commercial fishing industry, with general coastal resource planning.

I will address each concern below. In addition I have attached several exhibits to illustrate my discussion points and a copy of my requested modifications to the conditions of approval in Exhibit A.

Project Description and Modified Project:

First, I believe it is important to note that this project was modified early in the process to address staff’s concerns regarding Eelgrass, retail space, public access among other things. The staff report makes reference to a previously submitted project however does not offer an adequate description of the changes that were made.

Briefly the major modifications included the reduction of 288 square feet of existing and proposed retail space, relocation of the proposed restrooms, reduced size and relocation of the floating docks, relocation of the gangway, relocation of northern portion of the accessway, and an increase in the southern public accessway from eight feet to ten feet wide. Most all of this was done so that the original project impacts to Eelgrass have be avoided and minimized to the greatest extent feasible.

Bayside Public Accessway:

There are several key issues within this section of the report that I believe need to be corrected and/or additional information supplied in order for the Commission to understand my concerns with the condition of approval # 1.a.

First, I would like to note that on page 15 the staff is correct that the City of Morro Bay LCP requires leaseholders to install a boardwalk that is a minimum of eight feet. There are constraints with this project that limit sections of the boardwalk to the eight feet however, the project as proposed has provided for a ten foot wide boardwalk in the areas that are feasible. The Commission has recognized in the past that each site along the Embarcadero must be evaluated individually and at times there is a need to modify the requirement. Additionally, staff incorrectly noted that Giovanni 3-11-031 was conditioned to install a 10 foot wide walkway. This project had a preexisting walkway and a new walkway through a commercial fish unloading that was approved at five feet wide.

Second, on page 15 the staff states that proposed retail unit will remove a “significant portion” of the currently 20+ foot-wide public walkway. This is a bit

misleading in that the existing walkway ranges from 5 feet to 14 feet to the 20+ feet at the maximum.

Furthermore, Staff stated that the project as whole must maximize public recreational access to make the requisite findings which include a portion of the boardwalk at eight foot wide (consistent with the LCP). However, there is additional information that is not contained in your staff report that provides a better picture of the overall project and that is as follows:

- 32% of the existing walkway is five feet wide.
- The existing walkway connection to the adjacent lease site to the north is five feet wide and with the new project will be 10 feet wide.
- 80% of the new walkway (approximately 95 feet long) will be 10 feet wide and the only reduction is 27 feet long along the new retail unit.
- Addition of the new retail unit does not result in an overall loss of existing access. The current access is 1,492 sq. ft. and the new access area will be 1,526 sq. ft. for an increase of approximately 2.2%.
- There is an offset by reducing the existing outdoor restaurant seating by 217 sq. ft. to accommodate the new 10 foot wide walkway.
- The 729 sq. ft. glass court area will become a general public use area with tables and benches.

Given this additional information and comparison to existing conditions to review as a whole, it is clear that the project as proposed increases access and therefore is consistent with the Coastal Act's public access policies.

Boat Docks:

Staff notes on page 15 that the construction of the new docks is **not** consistent with Coastal Act Section 30210 because projects of this nature are only allowed where they provide for public access. It is also **not** inconsistent with Coastal Act Section 30233(a)(3), fill in coastal waters, because that section only allows for structural pilings for public recreational piers that provide public access and recreational opportunities.

This analysis and conclusion is a far departure from what staff has historically presented to the Commission for finding dock projects and fill in coastal waters consistent with the Coastal Act policies. At least over the past eight years, staff has always stated that the proposed fill for the new or expansion of boating facilities is one of the two allowable uses, the other being public recreational piers, under Coastal Act Section 30233.

I have attached Exhibit B which contains the specific pages to this point from five different permits ranging from 2005 to 2011. As you can see it is very clear-cut with each of these reports that a project such as this is consistent with the Coastal Act without requiring that the docks be open and available to general public access. Because of all the above, I am requesting modifications to condition #'s 2, 2.c, and 2.e

Staff continues on page 16 to state that "the Commission has typically required general public access, i.e. not just access for boat users, to dock additions". Footnote 1 cites specifically permit 3-10-036 (Salt Building) and permit 3-11-031 (Giovanni) that have conditioned the floating docks to be publically available. This statement and references are incorrect. I have attached in Exhibit C the approved public access plans from the above mentioned projects that demonstrates the docks are **not** included or open for general public use.

I have had numerous discussions with staff over the past few years about the inappropriateness of allowing the general public to access the docks for safety and security reasons. Staff notes this on page 16 but, tries to placate the situation by allowing access during the daylight hours and allowing a gate that prevents unsupervised children access. This does not cure the issue that I have raised which is that docks can be inherently an unsafe place especially to the public that are not familiar the marine environment. Bad weather, a wake from a boat or supplies/gear that is stored on the docks just adds to the problem and by merely allowing the public access during daylight hours does not create a safer condition.

Furthermore, I have stressed with staff that it is not only the unsupervised children that I am concerned about. A child may be down on the docks with their parents but as kid play goes, they can take off running, trip and fall off the dock before anyone has a chance to react. For discussion purposes I would not limit this scenario to just children. It would be absolutely devastating to loose just one person from an accident.

While staff also provides a Civil Code Section that limits the liability to further appease concerns, I frankly do not think that this will provide any owner a 100% guarantee that they would not be subject to a lawsuit for which they would need to defend themselves or a possible judgment because the courts ruled that this statute did not apply.

Last, the boaters that rent these slips should be offered a reasonable expectation of security for their boats and gear by not allowing the general public access. All

harbors up and down the coast that I am aware of have large locking gates to prevent access for anyone but the boater owners.

The City of Morro Bay provides numerous locations along the waterfront in the way of piers, view decks and floating docks for the general public to either walk on or launch small crafts such as kayaks or skiffs. That is certainly the case here where there is a city operated view deck and floating dock adjacent to this project. I have attached a Google Earth photograph in Exhibit D to show this.

With all the above points, it would be consistent with the Coastal Act policies to approve this project as proposed without the inclusion of allowing general public access to the floating docks.

Visual Resources:

In the staff analysis on page 19 it states that the addition of the façade along the southern side of the building will directly obstruct views of the rock. Continuing on page 20, it says that “no roof top utilities would be hidden by this section of the façade”.

First, I would direct your attention to Exhibit 3 in your staff report where it shows the existing building with roof top equipment exposed and the second exhibit where the façade covers this equipment.

Second, this is an awning proposed to provide architectural compatibility with the existing building and not an entire roof. As a side note the Morro Bay City Council discussed the original proposal for the full awning to be constructed at 15 feet two inches however, they ultimately approved (4-0-1, one Council Member recused) a reduced height version as it is presented today.

As shown in the staff report exhibit 3, this awning does not produce a significant impact on the views of the rock. The photo simulation was taken at a fairly close range to the building so minimal increases would cover a pedestrian view.

Alternatively, an approaching car coming towards the waterfront would not have their view of the rock obstructed because they will be able to see over the top of the building.

For all the above reasons, I would ask the Commission to delete condition 1.d.

Biological Resources:

First I would like to recognize that we understand the importance of protecting the Eelgrass beds. I believe this applicant has taken great strides in that direction with the modified project as described above.

However, the staff report and conditions of approval require further alterations to the plans, unjustified mitigations, timing conflicts for the issuance of permits and inconsistency with federal permits.

In order to provide the details for each of the above, I have included specific sections of conditions # 1.b & 1.c. below.

#1.b. Shading of Eelgrass:

This condition requires the relocation of the bayside lateral access and other project components if they are located vertically above any existing Eelgrass bed. Currently the project as proposed shows a section of the boardwalk located vertically above a very small portion of the existing Eelgrass bed (approximately 2' wide by 10 feet long). In order to comply with this and condition #1.a as written, the boardwalk would need to move eastward which in turn would reduce the width of the new retail unit.

First, the Southern California Eelgrass Mitigation Policy (SCEMP) recognizes that boat docks and other structures have the potential to impact Eelgrass therefore; the Policy was developed by National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the California Department of Fish and Game to provide a basis for consistent recommendations for projects that may impact on the existing resources. Additionally the intent of this policy is to provide a basis for consistent recommendations for projects that may impact existing eelgrass resources. The policy was not designed to require that every project have a zero impact on the Eelgrass resources but if avoidance is infeasible, the impacts should be minimized with alternative construction materials. The proposed design has avoided the Eelgrass bed to the greatest extent feasible and has also proposed construction materials, a fiberglass grated boardwalk, to allow for greater light penetration.

Second, as drawn the retail unit is 12 feet wide in this location and the reduction will cause additional difficulties with respect to the shape and size. The available interior section will be nine feet wide which severely limits the usable space. While staff notes that this new reduction is only 20 square feet, it must be considered that the project as modified has already eliminated 56 square feet

from the new unit and 232 square feet from the existing retail unit to address the Eelgrass issue that staff originally requested the applicant undertake.

This project, as mentioned above, has been designed within the spirit and intent of the SCEMP and therefore the additional relocation and reduction in the boardwalk and new retail unit that staff proposes have gone exceedingly far and are not warranted.

#1.c Pre- and Post-construction surveys:

“A survey identifying areas of eelgrass within the lease areas shall be completed no earlier than 90 days and no later than 30 days prior to the commencement of construction.” This section is not consistent with the Army Corps of Engineers (ACOE) permit, attached as Exhibit E. The ACOE permit, done in cooperation with the National Marine Fisheries Service (NMFS), requires a pre-construction survey no earlier than 60 days. This permit condition should follow the same regulatory requirements as the ACOE permit.

“The survey shall be submitted to the Executive Director for review as part of the final plans.” There are numerous reasons why this part of the condition as written will set up conflicts for the issuance of final permits. Basically, there is not enough time within the 60 day time frame to provide a pre-construction Eelgrass Survey report with the final set of plans to the Commission for compliance review and then to issue the permit. I have experienced first-hand with a couple of different projects that compliance review can take from 30 to 60+ days which does not allow sufficient time to secure the final permits from the City of Morro Bay and ACOE as each of these agencies require proof of that the Commission has issued the CDP. I have written an in depth response to staff regarding this issue and is attached to your staff report as Exhibit 4, pages 3 – 7.

The requested condition modification leaves in the portion that the pre-construction Eelgrass report be submitted to the Commission but, deletes the problematic part requiring this as part of the final plans for review.

“If additional eelgrass is identified that would be directly shaded by the proposed project, then the report shall identify remedial measures to offset such reduction within the eelgrass beds at a ratio of 1.2:1 in line with the specifications for mitigation of eelgrass habitat as provided for in the Southern California Eelgrass Mitigation Policy.” This particular section at first blush appears to be a mitigation measure by “offsetting the reduction with the Eelgrass beds”. However on closer examination

of this it becomes clear that this is not a mitigation measure to offset an identified and quantified impact created by the project but merely a requirement proposed by staff that is inconsistent with CEQA and other State regulations. Furthermore CEQA guidelines describe this best by stating, "An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable".

The condition as written is purely speculative that the boardwalk or any other project component identified at the time of the final plans and pre-construction survey is done will have a detrimental impact on the Eelgrass beds. It should be noted that a proper mitigation measure to offset the project impacts is included within the overall condition and is described in more detail below.

"Annual reporting shall continue for at least three years or until all eelgrass beds to be protected are supporting eelgrass as documented in two consecutive annual reports, whichever is later." I have noted this particular section only for the requirement of three years for monitoring. The ACOE permit requires a post-construction survey within 30 days (ACOE Permit Condition #11) and requires two annual post-construction surveys (ACOE Permit Condition #17). I would ask the Commission to revise this part of the condition so that it is consistent with the ACOE permit.

"If the report identifies a reduction in eelgrass coverage as compared to the existing eelgrass coverage as identified in the Applicant's Site Plan, then the report shall identify remedial measures to offset such reduction within the eelgrass beds in the project area at a 1.2:1 ratio in line with the specifications for mitigation of eelgrass habitat as provided for in the Southern California Eelgrass Mitigation Policy." In this section I am requesting a change from the coverage in the "Applicant's Site Plan" to "pre-construction survey. Once again staff is requiring mitigation for an occurrence that may be well beyond the applicant's control or a direct project impact.

For example if the applicant doesn't build a portion of the project for a couple of years, the Eelgrass bed may change in the interim. In the intervening time it is also possible for the bed too shrink in the area located directly below the boardwalk but expand outward in to a more suitable habitat area.

The condition as written requires mitigation to be based upon the identified bed location on the current plans and not on the size and location of the bed at the time of the pre-construction survey. It is not an acceptable mitigation measure

to place on a project for which an impact cannot be determined until there is a base report done in order to evaluate the pre and post conditions and any impacts. Conversely it is acceptable to include a condition to mitigate for direct impacts that occur as a result of the project. This language is part of the condition as written and is also a requirement of the ACOE permit.

Last if this entire condition remains as proposed by staff, one of two things will happen. 1) The applicant will be required to mitigate twice for the same impact on the same section of the Eelgrass bed. The first would be to offset the areas directly shaded by the project based upon the pre-construction survey showing a project component over the bed. Second if the shading documents an impact to the bed after the annual follow up surveys, the project is required to mitigate once again. 2) The applicant is required to mitigate for simply having a project component proposed over the Eelgrass bed but if the annual follow up surveys do not indicate any reduction in the bed, they are paying for an impact that did not occur.

To eliminate the possible double requirement or obligation for something that does not exist, this condition should be revised.

Condition # 3.f. Pilings:

The project proposes steel and/or fiberglass pilings so this is a minor correction to the condition to allow for that.

Condition # 5 Boat Slip Parameters:

There are no City codes or policies that limit the types of boats that can be docked in the area south of Beach Street. The area north of Beach Street is the area governed by Measure which has restrictions. So I would ask the Commission to delete any reference that in any way limits the types of boats because it is unnecessary and will undoubtedly lead to frustration and confusion in the future as to what was meant by the inclusion of this part of the condition. The remaining part of the condition that prohibits the docks for private residential use is acceptable since this was included in the project description.

In conclusion this project has three significant components that are priorities under the Coastal Act, boating opportunities, public access and visitor serving opportunities and as designed, provides a delicate balance between these uses.

In reviewing existing lease sites that are limited to additions and redevelopment in small areas, I would respectfully ask the Commission for additional consideration with respect to adding docks, public access and new commercial spaces.

Consistency in reviewing and conditioning projects will only serve to assist future applicants in bringing forward good and viable projects that can promote the goals of the Coastal Act and also provide for the needs of the City of Morro Bay and business community. I do not believe that staff has provided a consistent analysis of the issues and constraints as they have done in the past with other projects which is reflected in conditions of approval. All of this makes it difficult at best to design a project that is acceptable to the Commission, City of Morro Bay and other permitting agencies.

I will look forward to addressing the Commission at your hearing and will certainly be happy to answer any further questions. Thank you for your time and consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Cathy Novak". The signature is fluid and cursive, with the first name "Cathy" written in a larger, more prominent script than the last name "Novak".

Cathy Novak
Project representative

cc: Mr. Smith Held
CA Coastal Commission staff

Enclosures:

- Exhibit A – Proposed revisions for conditions of approval
- Exhibit B – Previous permit actions on fill in coastal waters
- Exhibit C – Public access plans – Giovanni's & Salt Building
- Exhibit D – Google Earth image of City pier & docks
- Exhibit E – Army Corps of Engineers permit for 901-915 Embarcadero project

Exhibit A – Proposed revisions for conditions of approval

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two full size sets of final plans to the Executive Director for review and approval. The Final Plans shall be in substantial conformance with the plans submitted to the Coastal Commission (Site Plan prepared by Gene Doughty - Architect, dated May 28, 2013) except that they shall be revised and supplemented to comply with the following requirements:
 - a. **Bayside Lateral Public Accessway.** The bayside lateral accessway shall provide for seamless connectivity to the existing lateral accessways along properties north and south of the development site. The entire southern portion of the bayside lateral accessway shall be a minimum of ten feet wide with the exception of eight feet wide noted on the plans at the mid section of the project. The northern portion of the bayside lateral accessway shall be a minimum of eight feet wide. The existing vertical accessways on the northern and southern portions of the site that connect to the bayside lateral accessway shall at least maintain their current width.
 - b. **Shading of eelgrass.** ~~No part of any bayside lateral accessway, floating dock, other structure, or boat docking area shall be located vertically above any existing eelgrass bed, or portion thereof, as identified on the Applicant's Site Plan.~~ Nothing shall be allowed to dock, for any length of time, above any existing eelgrass bed. Translucent or alternative fiberglass grating shall be used to the greatest extent feasible on the new portions of the bayside lateral accessway and floating dock. Priority locations for grating shall be on areas of structures adjacent to eelgrass habitats and where there is potential eelgrass habitat, as identified in the pre- and post-construction surveys.
 - c. **Pre- and Post-construction surveys.** A survey identifying areas of eelgrass within the lease areas shall be completed no earlier than 90 60 days and no later than 30 days prior to the commencement of construction. The survey shall be submitted to the Executive Director, for review as part of the final plans. ~~If additional eelgrass is identified that would be directly shaded by the proposed project, then the report shall identify remedial measures to offset such reduction within the eelgrass beds at a ratio of 1.2:1 in line with the specifications for mitigation of eelgrass habitat as provided for in the Southern California Eelgrass Mitigation Policy.~~ Post construction surveys identifying areas of eelgrass shall be completed on an annual basis with the first report due within 90 days of completion of construction 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. Annual reporting shall continue for at least three-two years, or until all eelgrass beds to be protected are supporting eelgrass as documented in two consecutive annual reports, whichever is later. Any change in eelgrass extent shall be documented and reported to the Executive Director. If the report identifies a reduction in eelgrass coverage as compared to the existing eelgrass coverage as identified in the Applicant's Site Plan pre construction survey, then the report shall identify remedial measures to offset such reduction within the eelgrass beds in the project area at a 1.2:1 ratio in line with the specifications for mitigation of eelgrass habitat as provided for in the Southern

California Eelgrass Mitigation Policy.

- d. ~~**Building heights.** The top of the awnings shall be no more than 14 feet in height. The façade improvements shall not increase in height beyond the existing building height.~~
- e. **Windows and screens.** All existing and newly installed windows and screens shall be frosted, partially-frosted or otherwise treated with visually permeable barriers that are designed to prevent bird strikes.
- f. **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. No direct light shall fall on the waters of Morro Bay and indirect light falling on bay waters shall be limited. 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.
- g. **Design.** The plans shall clearly identify all measures that will be applied to ensure that the project design, including all structures and including all other project elements within the public view (e.g., walkways, paved areas, railings, benches, tables, chairs, lighting, signs, landscaping, etc.), emulates Morro Bay Embarcadero aesthetics, including use of a maritime theme and pedestrian-oriented form and scale. Plans shall clearly identify all publicly visible structural elements, materials, and finishes (including through site plans and elevations, materials palettes and representative photos, product brochures, etc.).

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

- 2. **Public Access Management Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit for Executive Director review and approval two full-size sets of a public access management plan (Access Plan). The 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 the bayside lateral accessway, the glass-covered vertical accessway between the buildings, the public restrooms, the vertical accessways on the northern and southern portions of the site, ~~gangways, the floating dock,~~ and location of benches, public access signs, etc.). The Access Plan shall be substantially in conformance with the public access portion of the plans submitted to the Coastal Commission, except as modified by these special conditions, and shall at a minimum include the following:

- a. **Clear Depiction of Public Access Areas and Amenities.** All public access areas and amenities, including all of the areas and amenities described above, shall be clearly identified as such on the Access Plans (including with hatching and closed polygons so that it is clear what areas are available for public access use).

- b. **Lateral Accessway.** The entire southern portion of the bayside lateral accessway shall be a minimum of ten feet wide. The northern portion of the bayside lateral accessway shall be a minimum of eight feet wide.
- c. **Floating Dock.** The floating dock shall be publicly available for either short-term or long-term use by recreational or commercial boats. ~~Signs discouraging the public from walking on the docks during daylight hours are prohibited.~~ A gate, no higher than the adjacent railings and constructed so as to not substantially block views, may be installed for safety reasons. ~~The gate may have a latch, but shall be open to the general public during at least daylight hours (i.e., one hour before sunrise to one hour after sunset). A sign informing the public of coastal access, including times, shall be located on the bayside lateral accessway side of any installed gate. Any and all other barriers to walking on the gangway or dock, such as ropes or gates, are prohibited.~~ Residential use of the docks is prohibited. Any dock fees shall be as low as possible, commensurate with standard rates for the area.
- d. **Amenities.** Public access amenities (such as benches, bicycle racks, trash and recycling receptacles, etc.) shall be retained or provided, including at a minimum, benches along the Embarcadero sidewalk and in the glass-covered vertical accessway, and at appropriate locations along the lateral accessway, where space allows.
- e. **Public Access Signs/Materials.** The Access Plan shall identify all signs, handouts, brochures, and any other project elements that will be used to facilitate, manage, and provide public access to the approved project, including identification of all public education/interpretation features that will be provided on the site (educational displays, interpretive signage, etc.). Sign details showing the location, materials, design, and text of all public access signs shall be provided. The signs shall be designed so as to provide clear information without impacting public views and site character. At a minimum, public access directional signs shall be placed at the Embarcadero Road entrance to the southern vertical accessway, at the Embarcadero Road entrance to the glass-covered walkway, and at the northern end of the lateral accessway, ~~and at the entrance to the gangway from the lateral accessway.~~ Signs directing the public to the public restrooms shall be placed at both ends of the glass-covered walkway. All directional signs (except the restroom signs) shall include the Commission's access program "feet" logo and the California Coastal Trail emblem. At a minimum, at least one public access interpretive sign (appropriate to Morro Bay issues, information, and/or history) shall be located at an appropriate location along the lateral accessway.
- f. **No Public Access Disruption.** Development and uses within the public access areas that disrupt and/or degrade public access (including areas set aside for private uses, barriers to public access (furniture, planters, temporary structures, private use signs, ropes, etc.)) shall be prohibited. The public use areas shall be maintained in a manner that maximizes public use and enjoyment.
- g. **Public Access Use Hours.** All public access areas and amenities shall be available to the general public free of charge during at least daylight hours (i.e., one hour before sunrise to one hour after sunset), and during at least all non-daylight hours when the retail

components of the approved project are open. The Access Plan shall provide for 24-hours per day access to the lateral access.

- h. Public Access Amenities Provided Prior to Occupancy.** All public access components of the lateral access way portion of the approved project shall be constructed and ready for use prior to occupancy of the new retail unit portion of the project.
- i. 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. 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 the construction coordinator's 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. **Pilings.** The new pilings and piling sleeves shall be made from steel or fiberglass. Construction barges shall be floating at all times and shall only operate at tides high enough so that the barge does not rest, bump or drag against the bottom of the bay. The Construction Plan shall include a pile driving plan and monitoring program designed to ensure that underwater noise generated by pile driving activities is minimized to the maximum extent feasible and does not exceed: (1) an accumulated 187 dB SEL as measured 5 meters from the source; and (2) peak dB above 208 dB as measured 10 meters from the source. In the instance anything other than a vibratory hammer is to be used for pile driving activities, the plan shall provide for a hydro-acoustical monitor to ensure that underwater noise generated by pile driving activities does not exceed such limits. The plan shall identify the type of method used to install pilings. Vibratory hammers shall be used where feasible; if another method is used, a bubble curtain shall be employed to contain both noise and sediment. The plan shall also provide for additional acoustical BMPs to be applied if monitoring shows underwater noise above such limits (including, but not limited to, alternative pile driving methods (press-in pile placement, drilling, dewatered isolation casings, etc.) and additional noise dampening measures (sound shielding and other noise attenuation devices).
- 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.

Minor adjustments to the above construction requirements may be allowed by the Executive Director in the approved Construction Plan if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources. All requirements above and all requirements of the approved Construction Plan shall be enforceable components of this coastal development permit. The Permittee shall undertake construction in accordance with the approved Construction Plan.

4. **Other Agency Approval.** Prior to commencement of construction, 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 where applicable. 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.
5. **Boat Slip Parameters.** ~~All boat slips shall be used for commercial and recreational fishing vessels, commercial and recreational passenger vessels, other recreational vessels, or commercial service vessels only.~~ The use of the docks and slips for private residential use is prohibited.
6. **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.

Exhibit B – Previous permit actions on fill in coastal waters

has the potential to cause adverse impacts to marine habitats by decreasing the availability of natural light, due to the shadow cast by the dock. According to NMFS, which provided comments on the proposed project, light levels underneath overwater structures fall below levels necessary for photosynthesis to occur in diatoms, benthic algae and eelgrass, which negatively impacts food webs that support many species of marine and estuarine fish. Shading from overwater structures also impacts fish behaviors, negatively impacting ecosystems. Finally, placement of artificial structures, including docks and pilings, can lead to proliferation of non-native species.⁴

* 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 and recreational boating facilities.

Eelgrass. 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 is 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 eelgrass has retreated.

⁴ Id (NMFS letter August 10, 2011).



and in water generally deeper than -10 feet mean sea level. The proposed design will protect existing larger eelgrass beds and will also open up previously occupied bay waters to facilitate natural regeneration and growth of eelgrass.

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. To ensure that this is carried out, 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. Remedial measures may be necessary to offset any reduction in the extent of eelgrass coverage within the development footprint. 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(m) and 4 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 boating facilities is an allowable use under Coastal Act Section 30233. And although the proposed expansion may result in the loss of a small amount of eelgrass initially, the revised location of the docks offers a significant 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

The proposal to expand boating slip areas further into the Bay by 40 feet beyond the limits of the current water lease site boundaries raises two significant issues. First, the project could create a potential navigation hazard because it would place new boat slips further out towards the 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.

With respect to the latter, the Harbor District has indicated that the tidelands land use plan² guidance is broad and flexible enough to allow such an expansion into the bay. Regarding safe navigation in and around the navigation channel, the Harbor District has suggested that the distance between the end of the proposed expanded finger slips and the main navigation channel provides adequate distance for safe navigation, even for large commercial fishing vessels. According to the Harbor District, when the

² 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.



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 plan¹ 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

¹ 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.



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

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

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

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

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

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

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

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

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

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

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



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.

b. Analysis of Proposed Project

As described above, the project involves fill in the Morro Bay estuary to construct a public lateral access boardwalk that will provide an important link in the plan for continuous shorefront lateral access along the Embarcadero and an expanded floating dock. As proposed, the project requires installation of 12 new pilings in the intertidal mudflats seaward of the inner harbor revetment (i.e., bulkhead).

The applicant has proposed Best Management Practices (BMPs) and mitigation measures regarding material containment, installation procedures, construction staging, and debris disposal to prevent fouling of coastal waters. Pilings will be constructed of steel and steel-capped pilings driven into place with a pile driver. A flexible skirt will be used to contain disturbed sediments during installation. Heavy-duty netting will be installed beneath all work areas to collect construction discards and a floating containment boom will be placed into the bay to capture all debris that falls into the water. Netting and boom will be cleaned daily or as often as necessary to prevent accumulation of debris. All wastes will be disposed of in the appropriate manner. The applicant's proposed BMPs are very similar to those used by the Commission and are adequate to satisfy the requirements of Coastal Act Section 30231. In addition, the City of Morro Bay imposed special conditions on its permit to control release of sediments, trash/debris, and other hazardous materials from entering coastal waters. Special Condition 7 requires that all special conditions of the City's permit be incorporated into the conditions and requirements of this Coastal Development Permit.

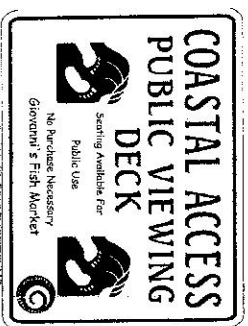
* With respect to the proposed new fill in the bay, Coastal Act Section 30233(a)(4) limits the placement of fill (i.e., structural pilings) to only a few specified uses, two of those uses are for expanded boating facilities and public recreational piers that provide public access and recreational opportunities. The applicants originally proposed to install 16 pilings to support the new outdoor patio, access and expanded boating facilities, but subsequently revised their project description and reduced the number of required pilings to a maximum of 12. The new number of pilings reflects the reduction in the project by eliminating the proposed outdoor dining patio. However, it is possible the number of pilings may be further reduced. The foundation for the lateral access can be constructed by extending the existing structural ledgers already in place, without the need for additional structural pilings. The applicants have proposed installing pilings in the water near the location of the floating dock with grade beams that extend back to the existing development. The floating dock would tie-up to the pilings and the public lateral access would be constructed on top of the grade beams. This alternative would leave exposed grade beams in the area between the lateral access and floating dock. Structural pilings cannot be installed directly beneath the public lateral access because they would run into the existing shoreline



Exhibit C – Public access plans – Giovanni's & Salt Building

NEW COASTAL ACCESS SIGNAGE

PROJECT INFO



DATE: 10/28/12
 DRAWN BY: J. PARKER
 CHECKED BY: J. PARKER
 SCALE: 1/8" = 1'-0"

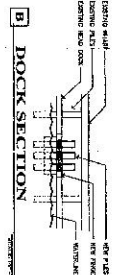
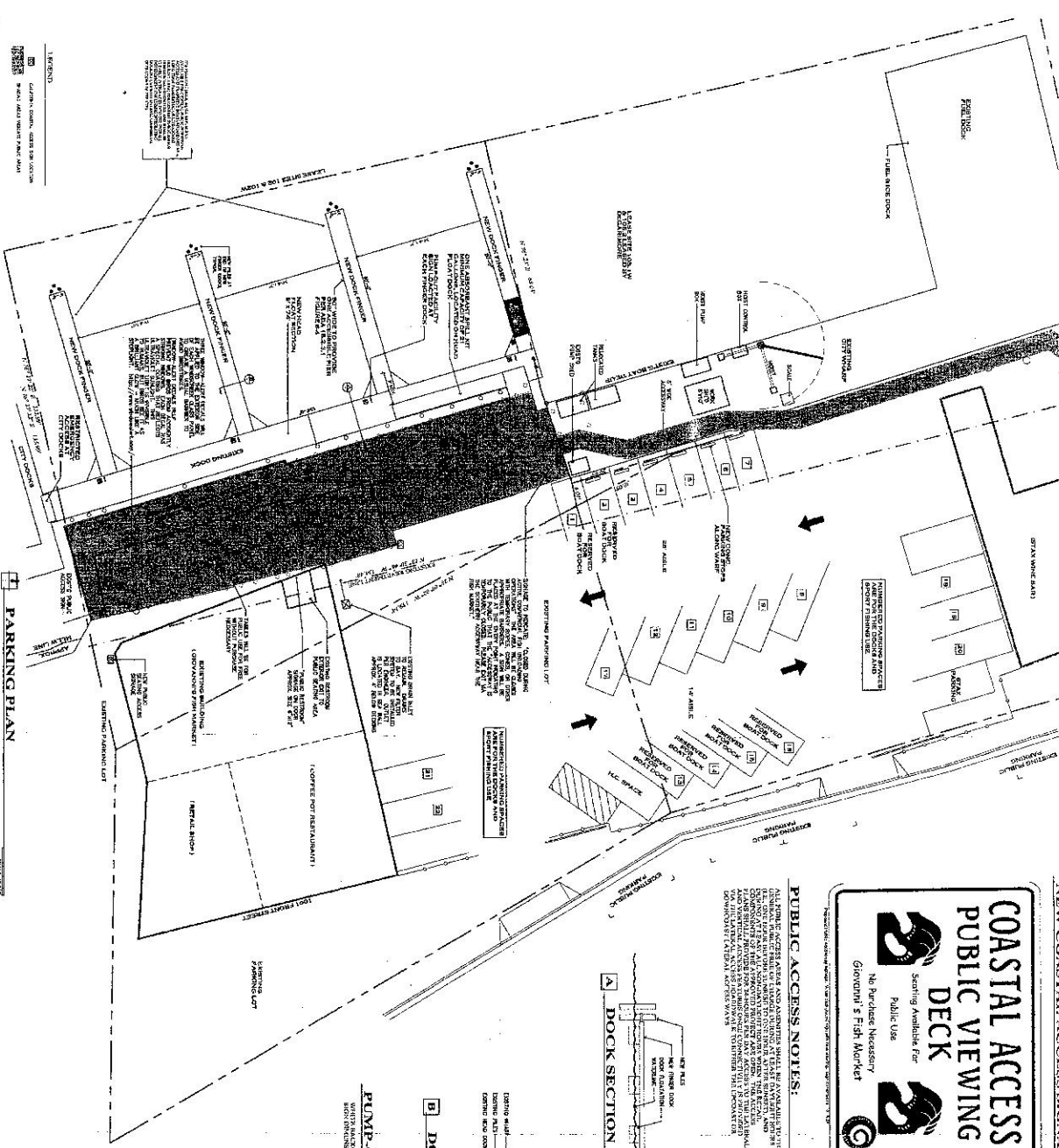
PUBLIC ACCESS NOTES:

1. ALL PUBLIC ACCESS AREAS SHALL BE MAINTAINED IN A SAFE AND ACCESSIBLE MANNER AT ALL TIMES.
 2. ALL PUBLIC ACCESS AREAS SHALL BE MAINTAINED IN A SAFE AND ACCESSIBLE MANNER AT ALL TIMES.
 3. ALL PUBLIC ACCESS AREAS SHALL BE MAINTAINED IN A SAFE AND ACCESSIBLE MANNER AT ALL TIMES.

DATE: 10/28/12
 DRAWN BY: J. PARKER
 CHECKED BY: J. PARKER
 SCALE: 1/8" = 1'-0"



C. P. PARKER
 ARCHITECT



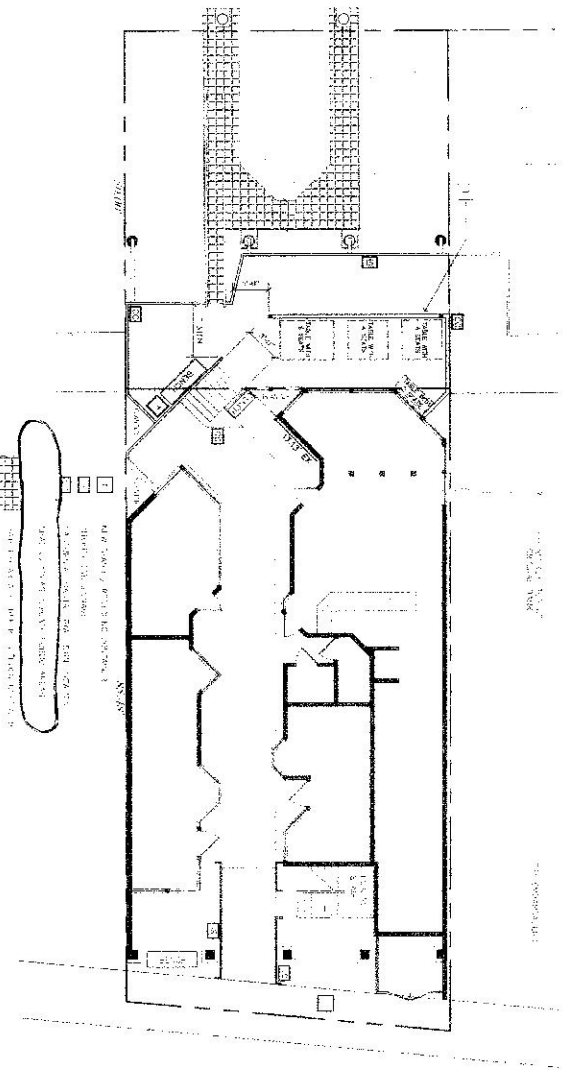
PUMP-OUT FACILITY SIGNAGE

DATE: 10/28/12
 DRAWN BY: J. PARKER
 CHECKED BY: J. PARKER
 SCALE: 1/8" = 1'-0"

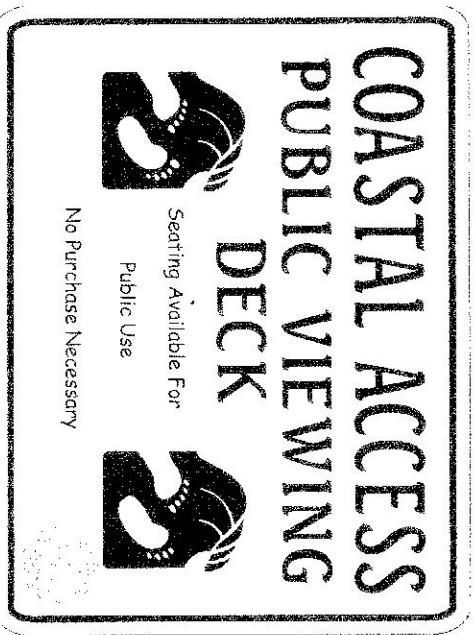
SHaded AREA INDICATES PUBLIC ACCESS

APPROVED
 DATE: 10/28/12
 BY: J. PARKER

PARKING PLAN
 DATE: 10/28/12
 BY: J. PARKER



7 SIDE PLAN



Project: H.M.S. Salt Building, 1000 N. 1st St., Salt Lake City, UT 84103. Date: 10/1/11. Scale: 1/8\"=1'-0\".

10/1/11
1000 N. 1st St., Salt Lake City, UT 84103
1000 N. 1st St., Salt Lake City, UT 84103
1000 N. 1st St., Salt Lake City, UT 84103

C. P. PARKER
ARCHITECT

CHIEF ARCHITECT: C. PARKER
1000 N. 1st St., Salt Lake City, UT 84103
1000 N. 1st St., Salt Lake City, UT 84103

SIGNATURE



CONSULTANT
CONSTRUCTION
COORDINATOR

ARCHITECT
ARCHITECT
ARCHITECT

ARCHITECT
ARCHITECT
ARCHITECT

SIGNATURE

H.M.S. SALT
BUILDING

PUBLIC
BOARDWALK
ADDITION

GENERAL CONTRACTOR
ARCHITECT
ARCHITECT

CONSTRUCTION
DOCUMENTS

Project No.	11-112
Project Name	C.P.P.
Design Date	10-20-11
Issued Date	10-20-11
Scale	AS NOTED
Drawings	

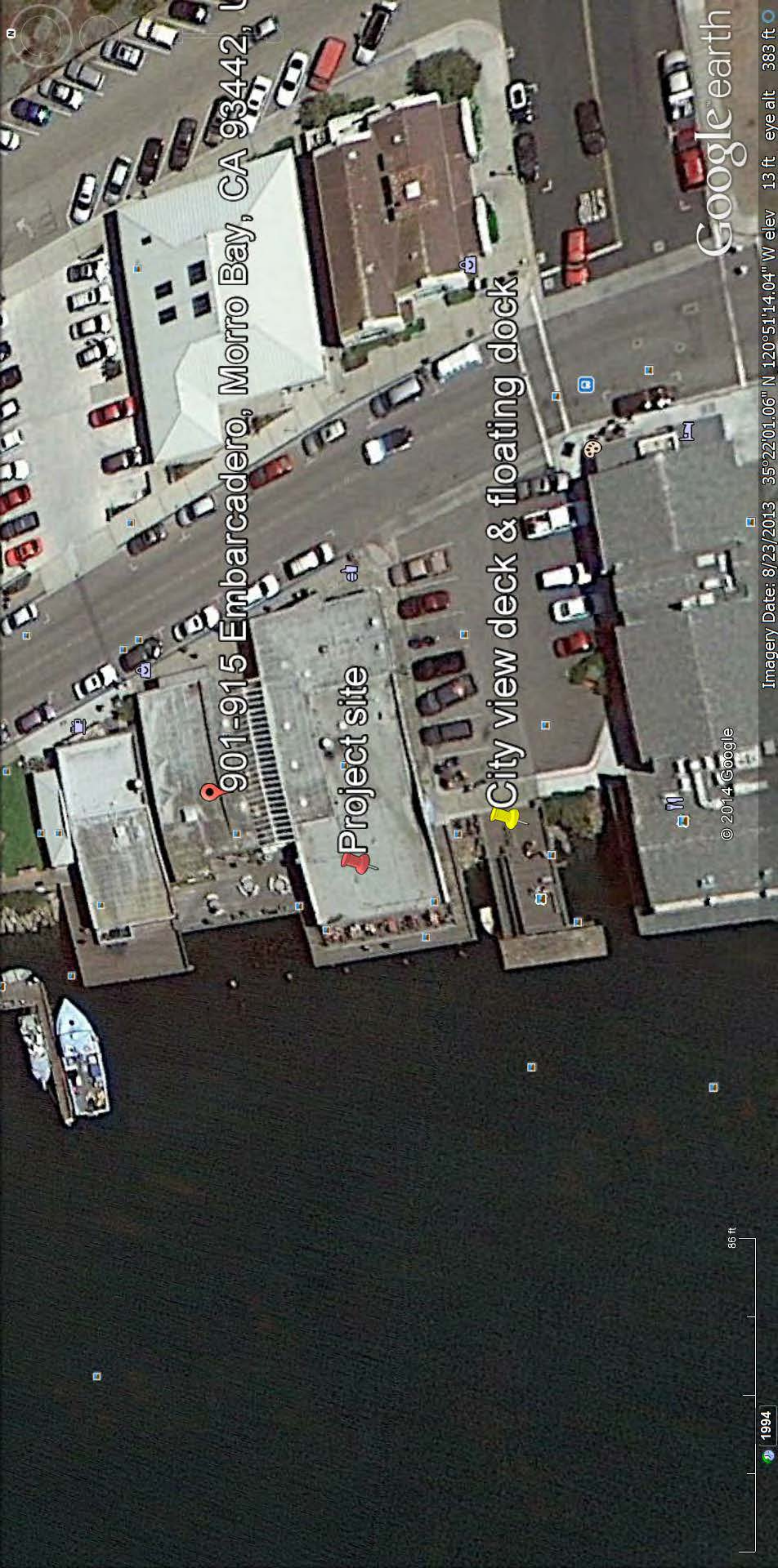
SIGNATURE

PUBLIC ACCESS

SIGNATURE

A1.3

Exhibit D – Google Earth image of City pier & docks



901-915 Embarcadero, Morro Bay, CA 93442, U

Project site

City view deck & floating dock

Google earth

© 2014 Google

Imagery Date: 8/23/2013 35°22'01.06" N 120°51'14.04" W elev 133 ft eye alt 383 ft

86 ft

1994

Exhibit E – Army Corps of Engineers permit for 901-915 Embarcadero project



DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
VENTURA FIELD OFFICE
2151 ALESSANDRO DRIVE, SUITE 110
VENTURA, CALIFORNIA 93001

April 21, 2014

DUPLICATE

Mr. Smith Held
P.O. Box 225
Cayucos, California 93430

Dear Mr. Held:

Reference is made to your request dated January 16, 2013 (File No. SPL-2013-00323-JWM), for Department of the Army authorization of your proposed project at 901-915 Embarcadero, within the City of Morro Bay, San Luis Obispo County, California.

Under the provisions of Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403), you are hereby authorized to conduct the work described below (see enclosed drawings).

Specifically, you are authorized to conduct the following:

1. Install 13 new steel or fiberglass piles, install sleeves over 3 existing steel piles, and remove 2 existing treated wood piles;
2. Install new floating docks with finger-style slips to accommodate up to eight small to mid-size boats;
3. Install a gangway ramp, and,
4. Replace and widen an existing wooden elevated walkway ("boardwalk").

The owner or authorized responsible official must sign and date both copies of this Letter of Permission (LOP) indicating that he/she agrees to the work as described and will comply with all conditions. One of the signed copies of this Letter of Permission must be returned to the Corps of Engineers (a pre-addressed envelope is enclosed).

Thank you for participating in our regulatory program. If you have any questions, please contact John Markham at 805-585-2150 or via e-mail at John.W.Markham@usace.army.mil.

Please be advised that you can now comment on your experience with Regulatory Division by accessing the Corps web-based customer survey form at:
<http://per2.nwp.usace.army.mil/survey.html>.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. W. Markham", with a horizontal line extending to the right.

John W. Markham
Senior Project Manager
North Coast Branch

Enclosure(s)

Cc: Cathy Novak (Cathy Novak Consulting)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this LOP will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

PERMITTEE

DATE

TRANSFEREE

DATE

PERMIT CONDITIONS

General Conditions:

1. The time limit for completing the authorized activity ends on **April 21, 2017**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of your permit.

Furthermore, you must comply with the following non-discretionary Special Conditions:

Special Conditions:

1. This permit is contingent upon the issuance of a Coastal Zone Management Act (CZMA) consistency certification. The Permittee shall abide by the terms and conditions of the CZMA consistency certification. The Permittee shall submit the CZMA consistency certification to the Corps Regulatory Division (preferably via email) within two weeks of receipt from the issuing state agency. The Permittee shall not proceed with construction until receiving an e-mail or other written notification from Corps Regulatory Division acknowledging the CZMA consistency certification has been received, reviewed, and determined to be acceptable. If the California Coastal Commission fails to act on a valid request for concurrence with your certification within six months after receipt, please notify the Corps so we may consider whether to presume a concurrence has been obtained.

2. The permitted activity shall not interfere with the right of the public to free navigation on all navigable waters of the United States as defined by 33 C.F.R. Part 329. In addition, the entire length of vessels moored at the new docks shall be kept outside of the federal navigation channel boundary at all times (see attached aerial), and all vessels shall be prepared to temporarily re-locate during navigation channel dredging operations.
3. No earthwork is authorized by this Letter of Permission.
4. No other modifications or work shall occur to the structure permitted herein.
5. A pre-construction survey of the project area for *Caulerpa taxifolia* (*Caulerpa*) shall be conducted in accordance with the *Caulerpa* Control Protocol (see <http://swr.nmfs.noaa.gov/hcd/caulerpa/ccp.pdf>) within 60 days of the proposed construction date. The results of that survey shall be furnished to the Corps Regulatory Division, NOAA Fisheries, and the California Department of Fish and Game (CDFG) at least 15 calendar days prior to initiation of work in navigable waters. In the event that *Caulerpa* is detected within the project area, the Permittee shall not commence work until such time as the infestation has been isolated, treated, and the risk of spread is eliminated as confirmed in writing by the Corps Regulatory Division, in consultation with NOAA Fisheries and CDFG.
6. A pre-construction survey of the project area for eelgrass (*Zostera marina*) shall be conducted in accordance with the NOAA Fisheries' Southern California Eelgrass Mitigation Policy (Policy) (http://swr.nmfs.noaa.gov/hcd/policies/EELPOLrev11_final.pdf) within 60 days of the proposed construction date. The results of that survey shall be furnished to the Corps Regulatory Division, NOAA Fisheries, and the California Department of Fish and Game (CDFG) at least 15 calendar days prior to initiation of work in navigable waters.
7. In the event eelgrass is detected within the footprint of the dock, gangway, view deck extension(s), or boardwalk during the pre-construction survey, the Permittee shall conduct two years of post-construction eelgrass monitoring surveys per the mapping guidelines in NOAA Fisheries' Southern California Eelgrass Mitigation Policy (http://swr.nmfs.noaa.gov/hcd/policies/EELPOLrev11_final.pdf). All required post-construction monitoring surveys shall be submitted by the Co-Permittees to the Corps Regulatory Division and NOAA Fisheries within 30 calendar days of each survey completion date. Based upon the post-construction monitoring survey results and in accordance with the Policy, the Corps Regulatory Division will determine the need and/or amount of Essential Fish Habitat (EFH) mitigation required to offset adverse impacts to such habitat. The Corps Regulatory Division will transmit its determination to the Co-Permittees in writing. Within 60 calendar days of receiving the Corps Regulatory Division's determination specifying the need and amount of mitigation, the Co-Permittees shall submit a draft EFH mitigation plan to the Corps for review and approval. The EFH mitigation plan shall be prepared in accordance with the Policy and the Corps' Los Angeles District Mitigation Guidelines and Monitoring Requirements, dated April 19, 2004. The Co-Permittees shall fully implement the final EFH mitigation plan as approved by the Corps Regulatory Division.

8. The Permittee shall discharge only clean construction materials suitable for use in the oceanic environment. The Co-Permittees shall ensure no debris, soil, silt, sand, sawdust, rubbish, cement or concrete washings thereof, oil or petroleum products, from construction shall be allowed to enter into or placed where it may be washed by rainfall or runoff into waters of the United States. Upon completion of the project authorized herein, any and all excess material or debris shall be completely removed from the work area and disposed of in an appropriate upland site.
9. The Permittee shall notify the Corps Regulatory Division of the date of commencement of operations not less than 14 calendar days prior to commencing work, and shall notify the Corps of the date of completion of operations at least five calendar days prior to such completion.
10. To ensure navigational safety, the Permittee shall provide appropriate notifications to the U.S. Coast Guard as described below:

Commander, 11th Coast Guard District (dpw)
TEL: (510) 437-2980
E-mail: d11LNLM@uscg.mil
Website: <http://www.uscg.mil/dp/lnmrequest.asp>

U.S. Coast Guard, Sector LA-LB (COTP)
TEL: (310) 521-3860
E-mail: john.p.hennigan@uscg.mil

A) The Permittee shall notify the U.S. Coast Guard, Commander, 11th Coast Guard District (dpw) and the U.S. Coast Guard, Sector LA-LB (COTP) (contact information shown above), not less than 14 calendar days prior to commencing work and as project information changes. The notification shall be provided by e-mail with at least the following information, transmitted as an attached Word or PDF file:

- 1) Project description including the type of operation (i.e. dredging, diving, construction, etc).
- 2) Location of operation, including Latitude / Longitude (NAD 83).
- 3) Work start and completion dates and the expected duration of operations. The Coast Guard needs to be notified if these dates change.
- 4) Vessels involved in the operation (name, size and type).
- 5) VHF-FM radio frequencies monitored by vessels on scene.
- 6) Point of contact and 24 -hour phone number.
- 7) Potential hazards to navigation.
- 8) Chart number for the area of operation.
- 9) Recommend the following language be used in the LNM: "Mariners are urged to transit at their slowest safe speed to minimize wake, and proceed with caution after passing arrangements have been made."

B) The Permittee and its contractor(s) shall not remove, relocate, obstruct, willfully damage, make fast to, or interfere with any aids to navigation defined at 33 C.F.R. chapter I, subchapter C, part 66. The Permittee shall ensure its contractor notifies the Eleventh Coast Guard District in writing, with a copy to the Corps Regulatory Division, not less than 30 calendar days in advance of operating any equipment adjacent to any aids to navigation that requires relocation or removal. Should any federal aids to navigation be affected by this project, the Permittee shall submit a request, in writing, to the Corps Regulatory Division as well as the U.S. Coast Guard, Aids to Navigation office (contact information provided above). The Permittee and its contractor are prohibited from relocating or removing any aids to navigation until authorized to do so by the Corps Regulatory Division and the U.S. Coast Guard.

C) Should the Permittee determine the work requires the temporary placement and use of private aids to navigation in navigable waters of the U.S., the Co-Permittees shall submit a request in writing to the Corps Regulatory Division as well as the U.S. Coast Guard, Aids to Navigation office (contact information provided above). The Co-Permittees is prohibited from establishing private aids to navigation in navigable waters of the U.S. until authorized to do so by the Corps Regulatory Division and the U.S. Coast Guard.

D) The COTP may modify the deployment of marine construction equipment or mooring systems to safeguard navigation during project construction. The Permittee shall direct questions concerning lighting, equipment placement, and mooring to the appropriate COTP.

11. Within 30 calendar days of completion of the project authorized by this permit, the Permittee shall conduct a post-project survey indicating changes to structures and other features in navigable waters. The Permittee shall forward a copy of the survey to the Corps Regulatory Division and to the National Oceanic and Atmospheric Service for chart updating: Gerald E Wheaton, NOAA, Regional Manager, West Coast and Pacific Ocean, DOD Center Monterey Bay, Room 5082, Seaside, CA 93955-6711.

12. The Permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the Permittee will be required, upon due notice from the Corps of Engineers Regulatory Division, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to **Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).**

2. Limits of this authorization.

- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures

such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give you favorable consideration to a request for an extension of this time limit.

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



F17a

Filed:	01/20/2014
180 th day:	7/19/2014
Staff:	J.Buhr - SC
Staff Report:	9/19/2014
Hearing Date:	10/10/2014

STAFF REPORT: CDP HEARING

Application Number: 3-13-006

Applicant: Smith Held, Held Family Trust

Project Location: The Harbor Center on the Morro Bay Embarcadero (lease sites 93, 94, 95, 93w, 94w and 95w) at 901-915 Embarcadero Road (APN 066-322-01) adjacent to and over Morro Bay in the City of Morro Bay, San Luis Obispo County.

Project Description: Remodel of an existing visitor-serving development, including construction of a new retail unit, modification of a lateral harbor-side access way, and installation of a new floating dock.

Staff Recommendation: Approval with Conditions.

SUMMARY OF STAFF RECOMMENDATION

The Applicant proposes to remodel an existing visitor-serving development on the Embarcadero in the City of Morro Bay. The project includes the construction of a new retail unit and public restrooms, modifications to the building façades, the extension of an enclosed glass-covered walkway, modification of the existing bayside lateral accessway, and construction of a floating dock. The project site is located directly adjacent to and over the waters of Morro Bay, in an important visitor-serving area. Morro Bay has significant visual resources, including Morro Rock, the Bay itself and the working harbor, and the Bay contains significant biological resources, including wetlands and other habitat for sensitive species such as eelgrass.

The site is in the Coastal Commission's original jurisdiction, and as such the Coastal Act is the

standard of review for the project, with the LCP providing guidance. The Coastal Act has a range of policies that require development at this site to provide maximum public access, visitor serving amenities, and public benefit. These requirements are accentuated as the site is public property (under lease) and covers valuable tidelands of Morro Bay such that development must include significant public benefits. Additionally, the Coastal Act provides strong protection of visual resources, particularly for areas to and along the coast and for special scenic resources such as Morro Rock. Finally, the Coastal Act requires that environmentally sensitive habitat areas be protected and that development must not reduce the biological productivity of coastal waters.

The proposed project would enhance some portions of public access and could provide for improved visitor serving facilities. Through widening the lateral access of the southern portion of the site to the recommended ten foot width, the southern portion would have improved public access and be appropriate to serve as part of the California Coastal Trail. The construction of public ADA accessible restrooms at the site will increase visitor serving amenities. There is also the potential to increase water-oriented recreation facilities through the construction of a floating dock with boat berths and a new retail store providing kayak rentals.

Despite these portions of the project providing public access and visitor serving benefits, there are elements of the project that are inconsistent with Coastal Act policies concerned with maximizing public access and the protection of biological and visual resources, as well as LCP guidance that requires new development along the Embarcadero to protect and enhance existing views of Morro Rock. As proposed, the project would prevent general public access to the proposed floating dock by installing a security gate at the gangway entrance and limiting access to the dock to only boat users. Also, the increase in height of a section of façade will directly obstruct existing views of Morro Rock – the most significant visual resource in the area. Finally, there are critically important biological resources on the site which warrant special consideration. The proposed extension of the lateral accessway partially covers an area that contains eelgrass and potential eelgrass habitat, which is a biological resource necessary for the continued health of the harbor and is a nursery ground for spawning marine organisms. There have recently been significant reductions in the health of Morro Bay eelgrass populations, leaving the remaining populations critically important. Given the importance of eelgrass and the protection that the Coastal Act places on this special biological resource, avoidance of impacts to eelgrass habitat is paramount.

Fortunately, the proposed project does set a foundation from which a project with maximum public benefit can be achieved while protecting public access, visual resources, and biological resources. Specifically, the adjustments necessary to bring the project into conformance with the Coastal Act include providing general pedestrian public access to the floating dock (for daylight hours at a minimum), provision of signage to announce this access, and a slight adjustment of the lateral access walkway to avoid impacts to valuable eelgrass habitat. In addition, through ensuring the heights of buildings do not increase in any area, the views of Morro Rock can be protected. These modifications ensure that the project is Coastal Act compliant and that a project of high public benefit is achieved while also protecting the site's valuable biological and visual resources.

As conditioned, the project is consistent with the Coastal Act, and staff recommends **approval** of the CDP. The motion and resolution are found on page 4 below.

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EXHIBITS

Exhibit 1: Location Map

Exhibit 2: Project Plans

Exhibit 3: Existing Façade and Simulation of Proposed Façade

Exhibit 4: Correspondence

I. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned 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 3-13- 006 pursuant to the staff recommendation, and I recommend a yes vote.*

***Resolution to Approve CDP:** 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.*

II. 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 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 of 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.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two full size sets of final plans to the Executive Director for review and approval. The Final Plans shall be in substantial conformance with the plans submitted to the Coastal Commission (Site Plan prepared by Gene Doughty - Architect, dated May 28, 2013) except that they shall be revised and supplemented to comply with the following requirements:
 - a. **Bayside Lateral Public Accessway.** The bayside lateral accessway shall provide for seamless connectivity to the existing lateral accessways along properties north and south of the development site. The entire southern portion of the bayside lateral accessway shall be a minimum of ten feet wide. The northern portion of the bayside lateral accessway shall be a minimum of eight feet wide. The existing vertical accessways on the northern and southern portions of the site that connect to the bayside lateral accessway shall at least maintain their current width.
 - b. **Shading of eelgrass.** No part of any bayside lateral accessway, floating dock, other structure, or boat docking area shall be located vertically above any existing eelgrass bed, or portion thereof, as identified on the Applicant's Site Plan. Nothing shall be allowed to dock, for any length of time, above any existing eelgrass bed. Translucent grating shall be used to the greatest extent feasible on the new portions of the bayside lateral accessway and floating dock. Priority locations for grating shall be on areas of structures adjacent to eelgrass habitats and where there is potential eelgrass habitat, as identified in the pre- and post-construction surveys.
 - c. **Pre- and Post-construction surveys.** A survey identifying areas of eelgrass within the lease areas shall be completed no earlier than 90 days and no later than 30 days prior to the commencement of construction. The survey shall be submitted to the Executive Director for review as part of the final plans. If additional eelgrass is identified that would be directly shaded by the proposed project, then the report shall identify remedial measures to offset such reduction within the eelgrass beds at a ratio of 1.2:1 in line with the specifications for mitigation of eelgrass habitat as provided for in the Southern California Eelgrass Mitigation Policy. Post construction surveys identifying areas of eelgrass shall be completed on an annual basis with the first report due within 90 days of completion of construction 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. Annual reporting shall continue for at least three years or until all eelgrass beds to be protected are supporting eelgrass as documented in two consecutive annual reports, whichever is later. Any change in eelgrass extent shall be documented and reported to the Executive Director. If the report identifies a reduction in eelgrass coverage as compared to the existing eelgrass coverage as identified in the Applicant's Site Plan, then the report shall identify remedial measures to offset such reduction within the eelgrass beds in the project area at a 1.2:1 ratio in line with the specifications for mitigation of eelgrass habitat as provided for in the Southern

California Eelgrass Mitigation Policy.

- d. Building heights.** The top of the awnings shall be no more than 14 feet in height. The façade improvements shall not increase in height beyond the existing building height.
- e. Windows and screens.** All existing and newly installed windows and screens shall be frosted, partially-frosted or otherwise treated with visually permeable barriers that are designed to prevent bird strikes.
- f. 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. No direct light shall fall on the waters of Morro Bay and indirect light falling on bay waters shall be limited. 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.
- g. Design.** The plans shall clearly identify all measures that will be applied to ensure that the project design, including all structures and including all other project elements within the public view (e.g., walkways, paved areas, railings, benches, tables, chairs, lighting, signs, landscaping, etc.), emulates Morro Bay Embarcadero aesthetics, including use of a maritime theme and pedestrian-oriented form and scale. Plans shall clearly identify all publicly visible structural elements, materials, and finishes (including through site plans and elevations, materials palettes and representative photos, product brochures, etc.).

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

- 2. Public Access Management Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit for Executive Director review and approval two full-size sets of a public access management plan (Access Plan). The 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 the bayside lateral accessway, the glass-covered vertical accessway between the buildings, the public restrooms, the vertical accessways on the northern and southern portions of the site, gangways, the floating dock, and location of benches, public access signs, etc.). The Access Plan shall be substantially in conformance with the public access portion of the plans submitted to the Coastal Commission, except as modified by these special conditions, and shall at a minimum include the following:

- a. Clear Depiction of Public Access Areas and Amenities.** All public access areas and amenities, including all of the areas and amenities described above, shall be clearly identified as such on the Access Plans (including with hatching and closed polygons so that it is clear what areas are available for public access use).

- b. Lateral Accessway.** The entire southern portion of the bayside lateral accessway shall be a minimum of ten feet wide. The northern portion of the bayside lateral accessway shall be a minimum of eight feet wide.
- c. Floating Dock.** The floating dock shall be publicly available for either short-term or long-term use by recreational or commercial boats. Signs discouraging the public from walking on the docks during daylight hours are prohibited. A gate, no higher than the adjacent railings and constructed so as to not substantially block views, may be installed for safety reasons. The gate may have a latch, but shall be open to the general public during at least daylight hours (i.e., one hour before sunrise to one hour after sunset). A sign informing the public of coastal access, including times, shall be located on the bayside lateral accessway side of any installed gate. Any and all other barriers to walking on the gangway or dock, such as ropes or gates, are prohibited. Residential use of the docks is prohibited. Any dock fees shall be as low as possible, commensurate with standard rates for the area.
- d. Amenities.** Public access amenities (such as benches, bicycle racks, trash and recycling receptacles, etc.) shall be retained or provided, including at a minimum, benches along the Embarcadero sidewalk and in the glass-covered vertical accessway, and at appropriate locations along the lateral accessway, where space allows.
- e. Public Access Signs/Materials.** The Access Plan shall identify all signs, handouts, brochures, and any other project elements that will be used to facilitate, manage, and provide public access to the approved project, including identification of all public education/interpretation features that will be provided on the site (educational displays, interpretive signage, etc.). Sign details showing the location, materials, design, and text of all public access signs shall be provided. The signs shall be designed so as to provide clear information without impacting public views and site character. At a minimum, public access directional signs shall be placed at the Embarcadero Road entrance to the southern vertical accessway, at the Embarcadero Road entrance to the glass-covered walkway, at the northern end of the lateral accessway, and at the entrance to the gangway from the lateral accessway. Signs directing the public to the public restrooms shall be placed at both ends of the glass-covered walkway. All directional signs (except the restroom signs) shall include the Commission's access program "feet" logo and the California Coastal Trail emblem. At a minimum, at least one public access interpretive sign (appropriate to Morro Bay issues, information, and/or history) shall be located at an appropriate location along the lateral accessway.
- f. No Public Access Disruption.** Development and uses within the public access areas that disrupt and/or degrade public access (including areas set aside for private uses, barriers to public access (furniture, planters, temporary structures, private use signs, ropes, etc.)) shall be prohibited. The public use areas shall be maintained in a manner that maximizes public use and enjoyment.
- g. Public Access Use Hours.** All public access areas and amenities shall be available to the general public free of charge during at least daylight hours (i.e., one hour before sunrise to one hour after sunset), and during at least all non-daylight hours when the retail

components of the approved project are open. The Access Plan shall provide for 24-hours per day access to the lateral access.

- h. Public Access Amenities Provided Prior to Occupancy.** All public access components of the lateral access way portion of the approved project shall be constructed and ready for use prior to occupancy of the new retail unit portion of the project.
- i. 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. 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 the construction coordinator's 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. **Pilings.** The new pilings and piling sleeves shall be made from steel. Construction barges shall be floating at all times and shall only operate at tides high enough so that the barge does not rest, bump or drag against the bottom of the bay. The Construction Plan shall include a pile driving plan and monitoring program designed to ensure that underwater noise generated by pile driving activities is minimized to the maximum extent feasible and does not exceed: (1) an accumulated 187 dB SEL as measured 5 meters from the source; and (2) peak dB above 208 dB as measured 10 meters from the source. In the instance anything other than a vibratory hammer is to be used for pile driving activities, the plan shall provide for a hydro-acoustical monitor to ensure that underwater noise generated by pile driving activities does not exceed such limits. The plan shall identify the type of method used to install pilings. Vibratory hammers shall be used where feasible; if another method is used, a bubble curtain shall be employed to contain both noise and sediment. The plan shall also provide for additional acoustical BMPs to be applied if monitoring shows underwater noise above such limits (including, but not limited to, alternative pile driving methods (press-in pile placement, drilling, dewatered isolation casings, etc.) and additional noise dampening measures (sound shielding and other noise attenuation devices).
- 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.

Minor adjustments to the above construction requirements may be allowed by the Executive Director in the approved Construction Plan if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources. All requirements above and all requirements of the approved Construction Plan shall be enforceable components of this coastal development permit. The Permittee shall undertake construction in accordance with the approved Construction Plan.

- 4. Other Agency Approval.** Prior to commencement of construction, 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 where applicable. 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.
- 5. Boat Slip Parameters.** All boat slips shall be used for commercial and recreational fishing vessels, commercial and recreational passenger vessels, other recreational vessels, or commercial service vessels only. The use of the docks and slips for private residential use is prohibited.
- 6. 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.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

Embarcadero History

Until the mid-1940's, most of the small community of Morro Bay was built on the bluff tops above the Bay's 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 the Embarcadero are located on State tidelands and are leased to individual lessees by the City through the City's proxy relationship to the State Lands Commission. The Coastal Commission retains permitting jurisdiction on all such tideland properties, including the fill areas along the Embarcadero, and including the properties that are 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 is located midway along the western side of the Embarcadero, at 901-905 Embarcadero Road (see Exhibit 1). Embarcadero Road is the first public through road paralleling both the Morro Bay estuary and the City's commercial and recreational harbor. The Embarcadero transitions from fishing village to industrial atmosphere south to north. This location near the junction of Harbor Street retains much of the fishing village character with small retail stores and recreational boating activities, whilst the industrial activities are visible looking north along the street. The project is located within Planning Area 3 of the City of Morro Bay Waterfront Master Plan (WMP), which includes the area from the bluff to the waterfront between Beach Street and South Street. The site is zoned Waterfront (WF), with a Planned Development (PD) overlay and a Design (S.4) overlay. Currently, the lease site is approximately 17,555 square feet (land lease is 6,303 sq. ft. and water lease is 11,212 sq. ft.), with approximately 130 linear feet of bay frontage. The project site comprises six lease sites (lease sites 93, 94, 95, 93w, 94w and 95w), three of which extend out into the Bay.

The project site is currently occupied by two buildings, collectively known as the Harbor Center, which are connected by an enclosed glass-covered walkway. The buildings contain two restaurants and a retail store as well as office space and 229 sq. ft. of storage space above the retail store. The enclosed glass-covered walkway runs between the two buildings and allows for pedestrian vertical access from the Embarcadero through the middle of the site to the existing bayside lateral access, which extends upcoast and downcoast from the project site and is a component of the California Coastal Trail in this location. One of the restaurants has an outdoor dining area on the bayside of the downcoast building with an existing windscreen surrounding this dining area. The Harbor Center has one restroom that is available for use by Harbor Center patrons but is not open to the general public. To the north of the project site is another restaurant and Anchor Park, and to the south there is a small car park and a pier which serves as a publicly accessible view point.

Project Description

The proposed project can be divided into four components; the façade remodel of the existing buildings, the construction of a new retail unit, the modification of the lateral access, and the construction of a floating dock. The components comprise a single project but will be discussed separately for convenience.

The façade remodel of the existing downcoast building would consist of a new awning on the southeast corner of the building, as well as a new façade extending along the entire southern side

of the building. The Applicant states that the purpose of the façade remodel is to hide the utility services located on the roof. The top of the awning would be 15 feet two inches above ground on the southeast corner, which is one foot two inches higher than the existing façade height of 14 feet. The top of the facade along the southern side of the building would be 14 feet above ground, which is two feet taller than the existing façade height of 12 feet. Two new posts (located out of the sidewalk right-of-way) would also be required for the proposed awning on the southeast corner as well as a third post on the northeast corner. The new post on the northeast corner would support minor façade modifications to the upcoast building, without any increase in façade height over existing. See Exhibit 3 for a photo of the existing Harbor Center and for a visual simulation of the proposed façade changes.

The new retail unit would be constructed on the harbor side of the upcoast building within the existing public bayside walkway. The retail unit would cover 534 sq. ft. and contain two ADA accessible restrooms open to the public. The new restrooms would also contain a shower facility, which would only be accessible to people with boats moored at the proposed new dock facility. The restrooms would be accessed through the existing publicly accessible glass-covered walkway, a portion of which would be extended approximately seven feet into the existing bayside walkway area. The glass-covered courtyard would contain seating open to the public. A new sign conveying public access information would be placed within the courtyard area and a new coastal access sign would be placed at the street entrance to the glass-covered walkway.

The existing bayside lateral access would be modified to widen the southern portion of this access by extending the walkway seaward. Specifically, the southern portion of the bayside lateral access would be widened from five feet to ten feet. The bayside lateral access in the northern section of the site would be extended seaward to replace some of the area occupied by the new retail unit. As proposed, the project would result in a reduction in width of the existing northern walkway from approximately 24 feet at its maximum to eight feet. Construction of the bayside walkway will be undertaken using sections of fiberglass decking. The bayside walkway on this site will continue to connect to existing bayside lateral access upcoast and downcoast of the project site, and will also connect to the glass-covered vertical access walkway in the middle of the site. The project proposes a coastal access sign and an interpretive sign (highlighting eelgrass habitat) to be installed along the bayside walkway. To widen the bayside walkway sections along the southern building, three existing creosote-treated wood pilings will be sleeved in steel for load bearing requirements.

A proposed new gangway will lead from the bayside walkway down to the proposed four-fingered floating dock that would cover approximately 1,587 square feet of tidelands. This dock will be capable of accommodating six small-to-medium-sized boats. The fingers of the proposed dock would extend into the harbor 45 feet and would be between four and five feet wide. For the construction of the dock, 13 new pilings are proposed. Support beams will also be required to be installed between the floating dock and the bayside walkway. The dock is proposed to have two-foot-wide fiberglass panels placed at strategic points to allow light to penetrate into the harbor waters. If the 20-foot intervals shown on plans are used as a guide, the length of the dock would allow approximately 8 fiberglass panels. This would result in 110 square feet of translucent grating (approximately 7 % of total area).

See Exhibit 2 for the proposed project plans.

B. STANDARD OF REVIEW

The site is within the Commission's retained CDP jurisdiction area. Thus, the standard of review for this proposed project is the Coastal Act with the City of Morro Bay's LCP providing guidance.

C. PUBLIC ACCESS

The project proposes the remodel of a commercial waterfront building complex and the associated lateral accessway, and also proposes the construction of a floating dock. The project site extends across the public trust waters of Morro bay. The site is leased to private individuals so that they may be developed with visitor-serving public access and recreation amenities. Given the strong public access policies of the Coastal Act, a project that provides significant public benefit is required.

Coastal Act Sections 30210 through 30224 require that 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.*

Coastal Act Section 30233 allows for the filling of open coastal waters and estuaries, including Morro Bay, for only seven specifically identified uses, including for structural pilings for public recreational piers that provide public access and recreational opportunities:

Section 30233: *(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes...shall be limited to the following:*

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

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

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

The Coastal Act also 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 waterfront (WF) zone applicable to this site. Applicable sections are as follows:

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

17.24.170(B). *Special WF zone standards... 9. Public Access Requirements. Public access from the nearest public roadway to the shoreline and along the bay front shall be provided in new development projects...*

ANALYSIS

Lateral Access. As discussed above, the project site includes existing bayside lateral access that

connects to upcoast and downcoast lateral access, and which comprises a component of the California Coastal Trail in this location. The City of Morro Bay LCP requires all harbor side leaseholders to install a boardwalk that is a minimum of eight feet wide for all renovation projects. In areas of Commission-retained jurisdiction, this width is guidance only. To maximize public access in these important visitor serving recreation areas on public lands, the Commission has typically required a lateral accessway ten feet wide (see 3-11-031 (Giovanni), 3-08-052 (Morro Bay Conference Center), 3-07-048 (Held Mixed Use)).

The project proposes to widen the section of bayside walkway along the downcoast building from five to ten feet (see Exhibit 2 for project plans). This would improve this section of lateral access along the harbor and would also improve this portion of the California Coastal Trail. Also, the proposed width of this section of the bayside lateral access meets the width typically required by the Commission for Embarcadero projects necessary to meet the maximum access requirements of the Coastal Act. Thus, as proposed, this component of the project is consistent with the Coastal Act.

The proposed project will also, however, result in a reduction in width of the northern portion of the bayside walkway to eight feet. The proposed new retail unit will remove a significant portion of the currently 20+-foot-wide public walkway (Exhibit 2). This 20+-foot-wide area is important because it provides outdoor public tables and chairs and allows easy movement and congregation to observe the views of Morro Rock and the Bay. Although eight feet is the minimum width required by the LCP (which can be used as guidance), the Coastal Act provisions for development of this type require that maximum public recreational opportunities shall be provided. As stated above, the Commission has generally found ten feet to be the appropriate width for lateral public access in this important and well-used visitor serving area. However, the Commission has occasionally approved projects that have provided less than ten feet when other public access enhancements are proposed and the requisite findings can therefore be made that the project as a whole maximizes public recreational access. In this instance, given the other public access improvements related to the project, which include the two new ADA compliant public restrooms, increased width of the southern portion of the walkway from five feet to ten feet, public access to and along the proposed boat dock (discussed subsequently), use of the new retail unit as a visitor-serving recreational kayak rental, and increased public use of the glass court area, the proposed decrease of this northern portion of the walkway to the LCP-required minimum of eight feet is consistent with the Coastal Act's public access and recreation policies.

Boat Dock. The proposed floating finger dock will be connected to the bayside lateral access by a gangway and will cover approximately 1,587 sq. ft. of bay waters and will provide mooring space for six small-to-medium-sized boats (Exhibit 2). The project proposes 13 new pilings in an area of significant biological resources in order to construct the dock. The entire dock would be located in and over public tidelands.

Pursuant to Coastal Act Section 30210, projects of this nature are only allowed where they provide for maximum public access and recreational opportunities. Similarly, pursuant to Coastal Act Section 30233(a)(3), fill in open coastal waters is only allowed for structural pilings for public recreational piers that provide public access and recreational opportunities. In this case, the new pilings are proposed to support a new pier that would provide for boating recreational activities. This could be found consistent with Coastal Act Sections 30210 and 30233 if the dock was proposed to be accessible by the general public. However, the floating dock is proposed to

be restricted from general public use by the installation of a security gate, and its use reserved solely for boaters. To maximize public access in this important visitor serving recreation area located over public tidelands, the Commission has typically required general public access, i.e. not just access for boat users, to dock additions¹. The Commission has required general public access to docks because the experience of Morro Bay from a floating dock is inherently different than the experience from a raised lateral access walkway. A floating dock brings the public into closer proximity to the water, from which the public can experience the Bay at water level and from a unique perspective. Thus, the proposed project is inconsistent with Coastal Act Sections 30210 and 30233 because its proposed exclusion of the general public from accessing coastal waters does not maximize access to publicly-owned tidelands, nor does the project's proposed fill in coastal waters provide for public access and recreational opportunities.

Therefore, the floating dock can only be found Coastal Act consistent if it is clearly available for general public access (at a minimum during daylight hours) and/or commercial fishing use, if any boat dock fees are minimized, and if residential boating use is prohibited for the boats that use the dock. With respect to this last issue, although no residential use of the dock is proposed, the Commission is aware that in some areas along the coast, slip space has been used for residential purposes. Residential use of the proposed dock is not consistent with Coastal Act Section 30210, which requires that the proposed dock can only be approved if it provides for maximized boating and public access opportunities, nor is it consistent with Coastal Act Section 30224, which requires that additional berthing space in harbors be limited to recreational (not residential) boating use. Special Conditions 2(c) and 5 ensure that the project meets the above requirements, i.e. public access to the dock during daylight hours, a prohibition on residential use of boats moored at the dock, low dock fees, etc. As conditioned, the proposed project is consistent with Coastal Act Sections 30210, 30224, and 30233.

Nonetheless, it should be noted that the Applicant has raised issues of public safety and boat security as reasons for preventing public access to the dock. These are legitimate concerns that need to be weighed when considering the final details of the project. However, the Commission finds that there are options to address these safety and security concerns other than a locked gate and public access limitations. First, the installation of a gate that allows adult access but prevents unsupervised child access to the dock could alleviate many of the safety concerns. To address boat security concerns, access to the dock could be limited to daylight hours by locking the gate during nighttime hours. Special Condition 2(c) allows for construction of a gate, as long as it is unlocked during daylight hours, when security concerns are reduced. Second, the legislature has limited liability for property owners who allow the public access to their property for recreational purposes. (See California Civil Code Section 846².)

¹ In granting coastal development permit 3-10-036 (Salt Building Remodel), the Commission conditioned the floating docks to "be publically available for either short-term or long-term use by recreational boats. Signs discouraging the public from walking on the docks, barriers to walking on the gangway or docks, such as ropes or gates, are prohibited. Residential use of the docks is prohibited. Any fees shall be as low as possible, commensurate with standard rates for the area." Further, the Commission has required public access to docks in several other recent permits on the Embarcadero (see 3-11-031 (Giovanni), 3-08-052 (Morro Bay Conference Center), 3-07-048 (Held Mixed Use)).

² California Civil Code Section 846: An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give an warning of hazardous conditions, uses of, structures, or activities on such premises

Finally, it is important to note that although a remodeled project at this site is required by the City for lease renewal, the specifics of the required remodel do not specifically call for a dock facility. If the proposed dock and associated fill are to be part of the project, the dock must provide public access in order to be found consistent with the Coastal Act, i.e. without public access to the dock; the dock cannot be found to maximize public access.

Public Access Use Parameters and Signing. In order to achieve the maximum public access required by the Coastal Act, especially due to the unique layout of this existing visitor-serving building, adequate signs informing the public about the available access are necessary. The proposed project includes coastal access signs that will be provided at each end of the bayside lateral walkway, in the new courtyard, and at the street entrance to the glass-covered walkway. Additionally, an interpretive sign will be located near the southern eelgrass bed.

However, a gate at the top of the gangway leading to the floating dock could deter pedestrians from accessing the floating dock. This would fail to maximize public access to the Bay and be inconsistent with the Coastal Act. This can be rectified by Special Condition 2(e), which requires the addition of a public access sign placed at the entrance to the gangway (preferably on the gate, if a gate is installed) and that describes that public access to the floating dock is available during daylight hours. Additionally, this CDP approval is conditioned to require the submission and Executive Director approval of an Access Management Plan. The Access Management Plan must demonstrate how maximum public recreational access benefit will be achieved, where the primary objective is to maximize public recreational access at the site (including to the vertical and lateral accessways and floating dock access, public access amenities, etc.), to provide clear and informative signage (including interpretive signage), and to ensure that the project's public access features are available for free, general public use at a minimum during daylight hours (and during all non-daylight hours when the retail components of the approved project are open) 365 days per year in perpetuity (see Special Condition 2). As conditioned, the proposed project is consistent with the public access and recreation policies of the Coastal Act.

As modified and conditioned by this permit, the project will enhance existing and provide new public recreational access opportunities on the Morro Bay Embarcadero by renovating these

to persons entering for such purpose, except as provided in this section.

A "recreational purpose," as used in this section, includes such activities as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picknicking, nature study, nature contacting, recreational gardening, gleaning, hang gliding, winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby (a) extend any assurance that the premises are safe for such purpose, (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume the responsibility for or incur liability for any injury to person or property caused by an act of such person to whom permission has been granted except as provided in this section.

This section does not limit the liability which otherwise exists (a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or (b) for injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, received from others for the same purpose; or (c) to any persons who are expressly invited rather than merely permitted to come upon the premises of the landowner.

Nothing in this section creates a duty of care or ground of liability for injury to person or property.

important visitor-serving buildings and improving lateral public access along approximately 120 feet of bay frontage in the vicinity of the Embarcadero's commercial fishing/working harbor. Project modifications and permit conditions refine and secure the public access elements at the site. In sum, and only as modified and conditioned, the project maximizes public recreational access, and as such, the project can be found consistent with the Coastal Act policies discussed in this finding.

D. VISUAL RESOURCES AND COMMUNITY CHARACTER

The project involves remodel and expansion of an existing visitor-serving commercial center and docks within public trust lands granted to the City of Morro Bay. Several significant visual features, including Morro Rock, the sandspit, and the Bay itself enhance the site, and the working waterfront gives the area strong community character. Given the significance of this shoreline location, development at the site has the potential to cause adverse impacts to the area's significant visual resources and community character.

The Coastal Act includes strong protections for visual resources and scenic views, such as the views of Morro Bay, the sandspit, and Morro Rock, and it protects the community character of this area, such as the surrounding fishing village atmosphere. Specifically:

***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.*

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

Finally, the LCP, including the City's Waterfront Design Guidelines, contain policies requiring 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:

***Policy 9.1.** Existing views of scenic values within the community shall be protected, preserved, and enhanced...*

Waterfront Design Guidelines

***Chapter 4. Area 3: Embarcadero Visitor Area: 3.(c)** Avoid structures and planting which limit visual access to the water or the Rock.*

***Chapter 5. Category 1. Public Visual Access:** 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...

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 LCP requires new development at this location to avoid limiting visual access to Morro rock, and further requires new development to make a positive contribution to the visual accessibility of the rock. In addition, the LCP provides 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. Taken together, the Coastal Act and the LCP guidance provide strong protections for the scenic and visual resources of Morro Bay.

ANALYSIS

As discussed above, the project site is in the prime visitor-serving area of the City, directly adjacent to the shoreline, with views of Morro Rock, Morro Bay, the sandspit, and waterfront development, including boat docks and fishing and recreational boats.

The project proposes to add a new awning to the southeast corner of the downcoast building, and to add a new façade along its southern side (see Exhibit 2 for project plans and Exhibit 3 for the existing façade and for simulations of the proposed façades). The Applicant states the purpose of the façade remodel is to hide roof mounted utilities and to provide “architectural compatibility with the existing building.” The new awning along the southeastern section of the downcoast building will increase the existing façade height from 14 feet to 15 feet two inches. The new facade along the southern portion of this building will increase the existing façade height from 12 feet to 14 feet.

Because different sections of the proposed façade changes impact coastal visual resources in different ways, the façade remodel can be divided into two parts: the new awning section on the southeastern corner (i.e. Embarcadero side) of the downcoast building, and the increase in façade height along the southern side of this building. With regard to the awning on the southeast corner, the proposed project would raise the height of this section one foot two inches over the existing height. This would result in an awning of fifteen feet two inches high. This increase in height would reduce the visibility of and view towards Morro Rock. The LCP guidance for buildings on this section of the Embarcadero allows for a maximum height of 14 feet. This 14-foot allowance can be increased but only where a finding is made that 80% of the roof is sloping with a minimum 4 in 12 pitch. However, the roof in this case is flat. Thus, as proposed the awning height is inconsistent with the guidance provided in the LCP. Special Condition 1(e) requires that the height of the awning be a maximum of 14 feet, consistent with the LCP and with Coastal Act requirements to protect the scenic and visual qualities of this area.

In addition, the proposed façade along the southern side of the building will directly obstruct views of the rock from the Embarcadero. Specifically, the two-foot increase in height of the façade, as compared to the existing building, will block views of Morro Rock (which is the most important visual resource in the region) that are currently visible from the Embarcadero (see

Exhibit 3). This increase in height will not only block an important view in its own right, but when taken cumulatively with other possible increases in the height of buildings along the Embarcadero area over time, this component of the project presents a significant negative impact to the area's visual resources. Additionally, as shown in the visual simulations provided by the Applicant, no roof top utilities would be hidden by this section of façade, meaning that the desired benefit of the façade is not achieved whilst visual resources are negatively impacted.

Coastal Act Section 30251 explicitly states that important visual resources shall be protected and enhanced where feasible; a loss in the views of Morro Rock from the proposed facade is not consistent with Coastal Act Section 30251. In addition, impacts to views of the rock are specifically prohibited by LCP policies, as discussed above, and new development is required to enhance visibility of the rock, not limit it. Therefore, Special Condition 1(d) provides that the height of this section of façade will not be increased so that existing views of Morro Rock will be protected. In addition, to ensure that the project is consistent with the community character of the surrounding area, Special Condition 1(g) requires that all project elements emulate and reflect the Morro Bay Embarcadero aesthetic.

As modified and conditioned by this permit, the project will renovate the existing commercial buildings in line with City leasing requirements without impacting significant coastal visual resources. Project modifications required by permit conditions will protect views of Morro Rock. As such, but only as modified and conditioned, the project protects views and can be found consistent with the Coastal Act Sections 30251 and 30253(5) regarding scenic views and community character.

E. BIOLOGICAL RESOURCES AND WATER QUALITY

Coastal Act Sections 30230, 30231 and 30240(b) state:

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

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

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

those habitat and recreation

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

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

ANALYSIS

The project site is located immediately adjacent to and over the waters of Morro Bay (see Exhibit 1 for project location and Exhibit 2 for project plans). Morro Bay and the surrounding area provide a variety of biological habitats, including coastal wetlands, intertidal mud/salt flats, rocky subtidal and intertidal zones, riparian corridors and woodlands. All of these habitats provide highly productive, diverse and dynamic ecosystems. In addition, the Bay serves as a critical link of the Pacific Flyway by providing important habitat for resident and migrating shorebirds and waterfowl.

Eelgrass beds

Morro Bay includes eelgrass beds of State significance, with dense stands located in the lower intertidal areas and shallow channels within the Bay. Eelgrass provides a complex and highly productive ecosystem, serving as a spawning and nursery ground for many species of fish (e.g., halibut, English sole, topsmelt, shiner perch, speckled sanddab, plainfin midshipmen, arrow and bay goby), and larger invertebrates (e.g., bay shrimp, spiny cockle, nudibranchs, cancer crabs, yellowshore crab). Eelgrass beds can be adversely impacted by shading from sunlight, siltation and direct disturbance. Within Morro Bay, eelgrass beds, have demonstrated a serious decline in recent years, showing a reduction from 344 acres in 2007 to less than 20 acres in 2013^{3,4}. Given the special biological significance of eelgrass beds, projects need to avoid impacts to this resource.

The biological survey provided by the Applicant identified two discrete areas of eelgrass within the project area of 129 sq. ft. and 151 sq. ft. respectively. As originally proposed, the bayside lateral walkway was located directly above one of these eelgrass patches. Subsequent project modifications designed to avoid this eelgrass patch moved the walkway landward; however, a portion of the currently proposed walkway is still directly aligned over a portion of this eelgrass bed. Therefore, the alignment of the proposed walkway would potentially negatively impact the eelgrass bed through shading effects, which could lead to the decline in the health and productivity of this important biological resource. Special Condition 1(b) prohibits the construction of the walkway directly above existing eelgrass beds and requires the use of

³ *State of the Bay 2014: A Report on the Health of Morro Bay Estuary*. Morro Bay National Estuary Program. Further corroborated through discussions with Erik Wilkins, California Fish and Wildlife Service.

⁴ *2013 Monitoring and Transplant Recovery Report*. Merkel & Associates, Inc. November 2013.

translucent grating on the new walkway to the greatest extent feasible, to allow for light to reach the water below. In order to accomplish this, the Applicant must relocate a portion of the northern walkway landward. While this will also result in a small reduction in size of the proposed new retail space of approximately 20 square feet, the reduction is necessary in order to entirely avoid direct shading of the eelgrass and maintain the LCP-compliant eight-foot-wide walkway required by Special Condition 1(a). As conditioned, the project will provide adequate protection of biological resources as required by the Coastal Act and will also remain consistent with the Coastal Act's public access and recreation policies. This condition will reduce impacts to eelgrass and help maintain the health and productivity of the existing eelgrass patches in this area of the Bay.

It is important to note that staff has worked diligently with the Applicant's representative to define a project for which the applicant is satisfied and meets the requirements of the Coastal Act. The Applicant states that any further reduction in size of the new retail unit will render the unit commercially unviable. However, the loss of only 20 square feet of commercial retail space still provides 514 square feet of retail space, so the proposed special condition results in a loss of less than four percent of the proposed square footage. Staff is recommending that a portion of the walkway be only eight feet in width, instead of the preferred and more typical ten feet, given the other public access elements provided by the proposed project, but it is critical that the walkway avoid direct shading impacts over any documented eelgrass habitat.

The biological survey for eelgrass provided by the Applicant was originally completed in August 2011, with a follow up survey done in November 2012. Although there was little change in eelgrass locations reported between the two survey dates, the eelgrass is not guaranteed to be in the same location now as it was in 2011 and 2012. Accurate knowledge of the location of eelgrass at the time of construction is important to allow for mitigation of construction and development impacts on the eelgrass. The Army Corps of Engineers requires a survey for eelgrass to be conducted no earlier than 90 days and no later than 30 days before construction. In order to ensure the proposed project will avoid and minimize impacts to eelgrass habitat, Special Condition 1(c) requires the Applicant to conduct eelgrass surveys in the project vicinity both before and after construction, and annually thereafter for at least three years. If eelgrass is found to be impacted, remedial measures are required to proportionally offset any reduction in habitat 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 Applicant to offset any such reduction in eelgrass identified, including through application of this Policy. Special Condition 1(c) contains the requirements and contingency measures necessary to ensure successful restoration and enhancement, if required.

Mitigation for loss of documented historical eelgrass habitat is also necessary at this point due to the severe decline of eelgrass within Morro Bay. The decline is so severe and rapid that extirpation is a possibility. For this project, staff consulted with NOAA fisheries to determine if any historical habitat was located within the project site. Through this consultation it was determined that there are not any documented historical eelgrass beds within the project site outside of the beds which currently exist and for which protection is being required. If it had been determined that documented historical eelgrass habitat was to be impacted by this project,

mitigation for this habitat loss would have been required.

Fill, in the form of pilings, is also proposed as part of this project. Coastal Act Section 30233(a) requires a project that includes fill of wetlands to meet three tests. The first test requires that the proposed activity must fit into one of seven categories of uses enumerated in Coastal Act Section 30233(a). The second test requires that there be no feasible less environmentally damaging alternative. The third and last test mandates that feasible mitigation measures be provided to minimize the project's adverse environmental effects.

First, the proposed fill is required to construct boating facilities, which are an allowed use under Section 30233(a)(3). Second, the Applicant considered several alternative locations for the floating dock and has altered both the location and the design of the dock by shifting the dock seaward from the original project proposal to help avoid eelgrass beds. As a result the dock was also shortened to avoid impinging on the navigational channel adjacent to the structure. The Commission has considered potential alternative locations for the floating dock and as described above finds that the dock must be constructed so that it is not located directly above eelgrass beds. Special condition 1(b) prohibits the construction of the dock directly above eelgrass beds. Also, any physical disturbance may impact eelgrass, which does not exhibit high resilience or quick colonizing ability. Thus, the proposed dock has been conditioned to be located in the least environmentally damaging location, and therefore the project meets the second test of Section 30233.

The final test requires the Commission to find that the adverse impacts of a project have been mitigated to the extent feasible. Here, with the special conditions that prohibit construction of the dock above eelgrass beds or the placement of pilings within eelgrass beds, and that require the use of translucent grating to allow passage of sunlight to the water below, direct impacts from pilings and shading impacts from the dock and gangway structures have been minimized. In addition, special conditions address indirect impacts to habitat and water quality, and require construction best management practices, as discussed below. As such, with the Special Conditions, the project's impacts are mitigated to the extent feasible. Thus, the project, as conditioned, meets all three tests of Coastal Act Section 30233(a).

There is also the potential for indirect impacts to eelgrass habitat due to construction activities. Specifically, the project includes the installation of 13 new steel pilings and the sleeving of three existing creosote-treated wood pilings with steel, as well as construction of the bayside lateral walkway and the floating dock. These construction activities have the potential to cause suspended sediment in the water column, which could settle on and smother the eelgrass beds. Special Condition 3(f) requires construction best management practices (BMPs) to reduce water quality impacts during piling installation, which will also serve to minimize any indirect impacts to eelgrass. To ensure that construction activities have not adversely impacted the eelgrass beds Special Condition 1(c) requires pre-construction and post-construction surveys of the eelgrass beds and appropriate mitigation for any impacts caused by construction.

In terms of water quality, new steel pilings are preferable to chemically treated wood and should have minimal impact on the marine environment once installed. The proposed project includes the installation of 13 new steel pilings to support the floating dock. In terms of the existing pilings, the Commission is generally working with local governments and others to avoid the use

of creosote-treated⁵ (and similar chemical compounds) wood pilings due to their adverse effect on the marine environment.⁶ This can be difficult in cases, such as this, where there are existing creosote-treated pilings in place. In such cases where creosote-treated wood pilings are being retained, it is believed that the impacts can be reduced by sleeving the pilings. The principle behind the use of sleeving (in this case with steel) is to add an additional layer of protection to marine wood products. Such sleeving not only protects the pilings from wear caused by the abrasion of boats, but also helps to prevent infestation by wood borers and helps contain contaminants and prevent them from leaching into the surrounding water. Thus, the proposed steel sleeves will reduce water quality impacts compared to existing conditions, and thus this component of the project can be found consistent with the Coastal Act.

Construction activities associated with the development of the site could potentially result in adverse impacts to the biological resources and water quality of Morro Bay. In particular, the proposed project includes constructing a new bayside lateral accessway, installation of a floating dock with 13 new steel pilings, and sleeving of three existing creosote-treated wood pilings with steel. Fortunately, impacts to water quality during construction can be readily 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 other construction BMPs (i.e., silt curtains, washing/refueling areas, spill containment measures, site cleanup procedures, waste disposal, etc.), including those designed to prevent release of construction-related materials, liquids, soil, and debris into the Bay (see Special Condition 3). To ensure maximum public notification and good construction relations, the construction plan must also be kept on site and all persons involved in construction must be briefed on the content and requirements of it (see Special Condition 3(d)), and a construction coordinator must be designated and available to answer questions and also investigate complaints and take remediation action if necessary, 24 hours per day for the duration of the project (see Special Condition 3(e)).

In addition, underwater acoustic impacts associated with pile driving have the potential to disturb marine mammals and to adversely alter the behavior of fish in the immediate vicinity of the project site, or cause them to avoid the construction area temporarily. In previous permit actions involving pile driving projects in coastal waters (including CC-074-05 (Caltrans), CDP 1-06-022 (Caltrans), CDP 3-10-036 (Imani)), 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 is to limit underwater noise levels to no more than 187 decibels sound exposure level (dB SEL) accumulated and 208 peak dB. These thresholds were determined by the interagency “Fisheries Hydroacoustic Working Group” (made up of representatives from Caltrans, the Army Corps of Engineers, U.S. Fish and Wildlife Service,

⁵ Creosote is added to the wood to discourage organisms (such as wood borers) that may impair the wood product’s integrity from coming into contact with the wood product. Creosote is a pesticide derived from coal tar that contains over 160 detectable hydrocarbon compounds. It is a hydrophobic, or relatively insoluble, compound, and is therefore used in marine applications because it will not wash away.

⁶ For example, studies have demonstrated that creosote is partially soluble, and is mobile in aquatic environments. Even the small amounts of creosote constituents that dissolve and mobilize in water over time can have adverse effects on marine resources. Pilings treated with creosote have been shown to contribute polycyclic aromatic hydrocarbons (PAHs) to the marine environment at levels that may be toxic to marine organisms.

NOAA Fisheries and the California Department of Fish and Wildlife) and have generally been used as appropriate acoustical standards in the marine environment absent additional site specific and/or new research data on the subject, including in recent Morro Bay cases (CDP 3-08-025 (Great American Fish Company et al) and CDP 3-08-052 (Morro Bay Conference Center)). Thus, in order to appropriately minimize adverse acoustical impacts to wildlife, Special Condition 3(f) requires underwater noise generated by pile driving activities to be minimized to the maximum extent feasible, and that such noise not exceed an accumulated 187 dB SEL as measured 5 meters from the source, and at no time exceed a peak above 208 dB at 10 meters from the source.

Further, as noted in the California Fish and Wildlife Service's November 7, 2013 letter regarding the project, the preferred alternative for pile driving is by vibratory hammer. This method presents less risk of having acoustic related impacts on wildlife than impact hammers and produces less sediment and should be employed where feasible. Because impact hammers have a higher risk of causing acoustic related impacts, if they are used for the project, a bubble curtain should be employed to ameliorate the acoustical affects. Special Condition 3(f), requiring the use of a bubble curtain for impact hammer use, will assist in the mitigation of acoustic impacts.

Irrespective of the method used, if construction noise exceeds the above thresholds, then alternative methods of pile driving (including, but not limited to, 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 3(f) requires that a pile driving plan and hydro-acoustical monitoring plan be developed and adhered to, to ensure that underwater noise generated by pile driving activities is minimized and does not exceed the specified limits.

Lighting

Although the Commission acknowledges that lighting may be required for safety and security purposes, such lighting can also have significant impacts on biological resources. Night lighting may impact or alter the ecological patterns and/or health of a range of aquatic and terrestrial species and communities. Specifically, alteration of nighttime light intensity may affect both avian species through aerial glow, and aquatic species through direct lighting or glare onto bay waters. Therefore, Special Condition 1(f) limits night lighting of the site to the developed areas of the site, requires that lighting be shielded downward, and prohibits light from being directed into Bay waters.

Windows and screens

Finally, to avoid bird strikes, all existing and newly installed glass is required to be frosted or otherwise treated to minimize bird strikes, as required by Special Condition 1(e).

Conclusion

The project is conditioned to protect existing eelgrass beds through avoidance, conduct underwater surveys to monitor and mitigate for negative impacts to the eelgrass related to the development of the project. The project is also conditioned to reduce potential negative impacts associated with construction of the floating dock. As conditioned, the project adequately addresses biological resource and water quality issues and is consistent with the Coastal Act's biological resources and water quality protection policies.

F. HAZARDS

Coastal Act Section 30253 addresses the need to ensure long-term structural integrity, minimize future risk, and to avoid landform altering protective measures in the future. Section 30253 provides, in part:

Section 30253. New development shall do all of the following:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Analysis

Coastal Act Section 30253 requires the project to assure long-term stability and structural integrity, and to minimize risk to life and property in areas of high geologic, flood, and fire hazard. The Commission recognizes that there is a certain amount of risk involved in development that is located at the shoreline edge and that can be directly subject to erosion, violent storms, large waves, flooding, earthquakes, and other geologic hazards. These risks can be exacerbated by such factors as sea level rise and localized geography that can focus storm energy at particular stretches of coastline. The Commission has sought, through this review, to limit such risks, but they cannot be eliminated entirely, and this fact must be recognized and liabilities assumed by the Applicant accordingly. Specifically, the Commission's experience in evaluating proposed developments in areas subject to hazards has been that development has continued to occur despite periodic episodes of heavy storm damage and other such occurrences. Development in such dynamic environments is susceptible to damage due to such long-term and episodic processes. Past occurrences statewide have resulted in public costs (through low interest loans, grants, subsidies, direct assistance, etc.) in the millions of dollars. As a means of allowing continued development in areas subject to these hazards while avoiding placing the economic burden for damages onto the people of the State of California, Applicants are regularly required to acknowledge site hazards and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. Accordingly, this approval is conditioned for the Applicant to assume all risks for developing at this location (see Special Condition 6).

The project is located within the jurisdiction of a series of other agencies that have some regulatory authority over the site. Accordingly, this approval is conditioned to ensure that the project (as conditioned and approved by this CDP) has received all necessary authorizations (or evidence that none are necessary) from the Morro Bay Harbor District, the California State Lands Commission, the U.S. Army Corps of Engineers, and the U.S. Coast Guard as required (see Special Condition 4).

G. 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

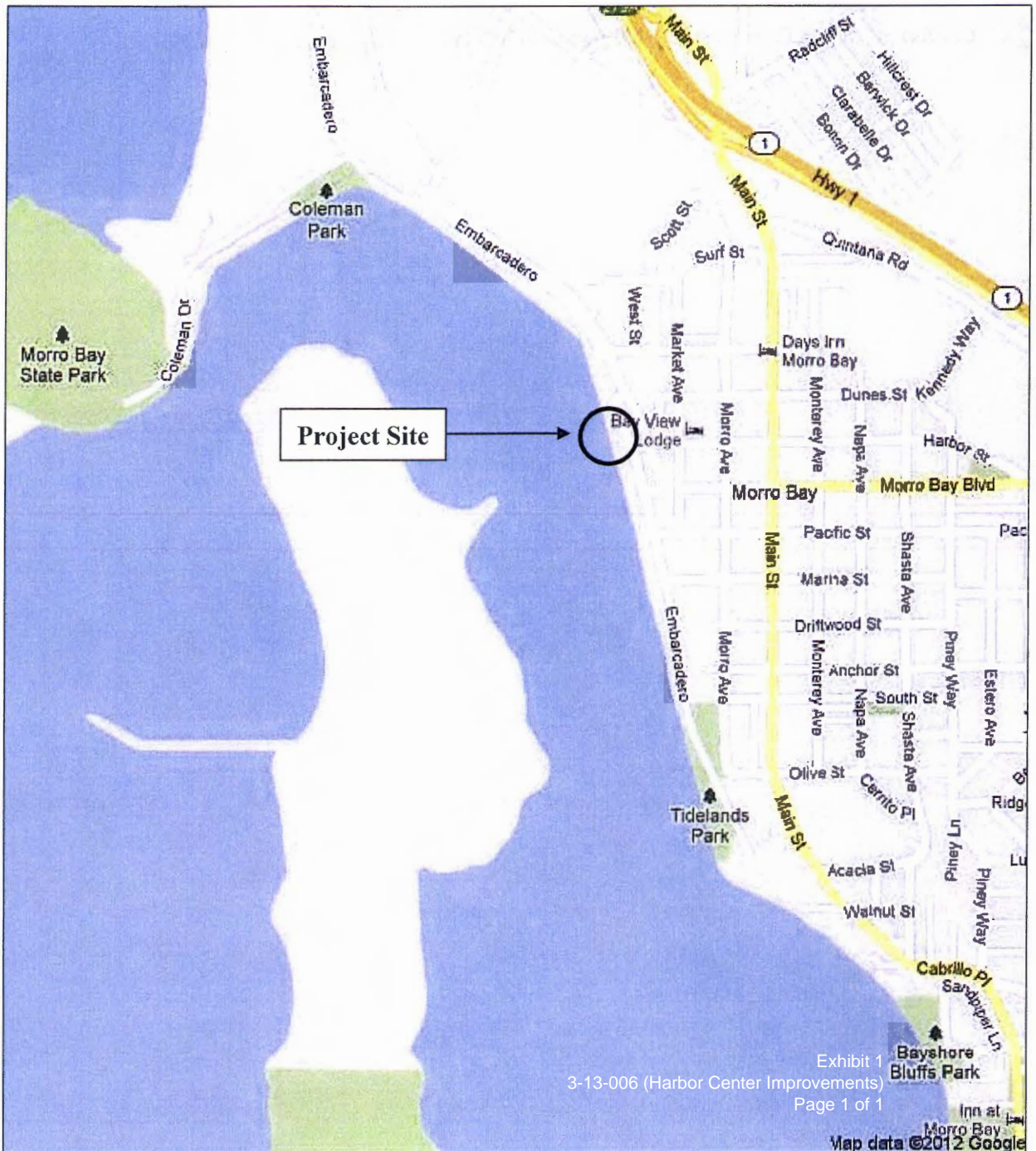
consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may 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.

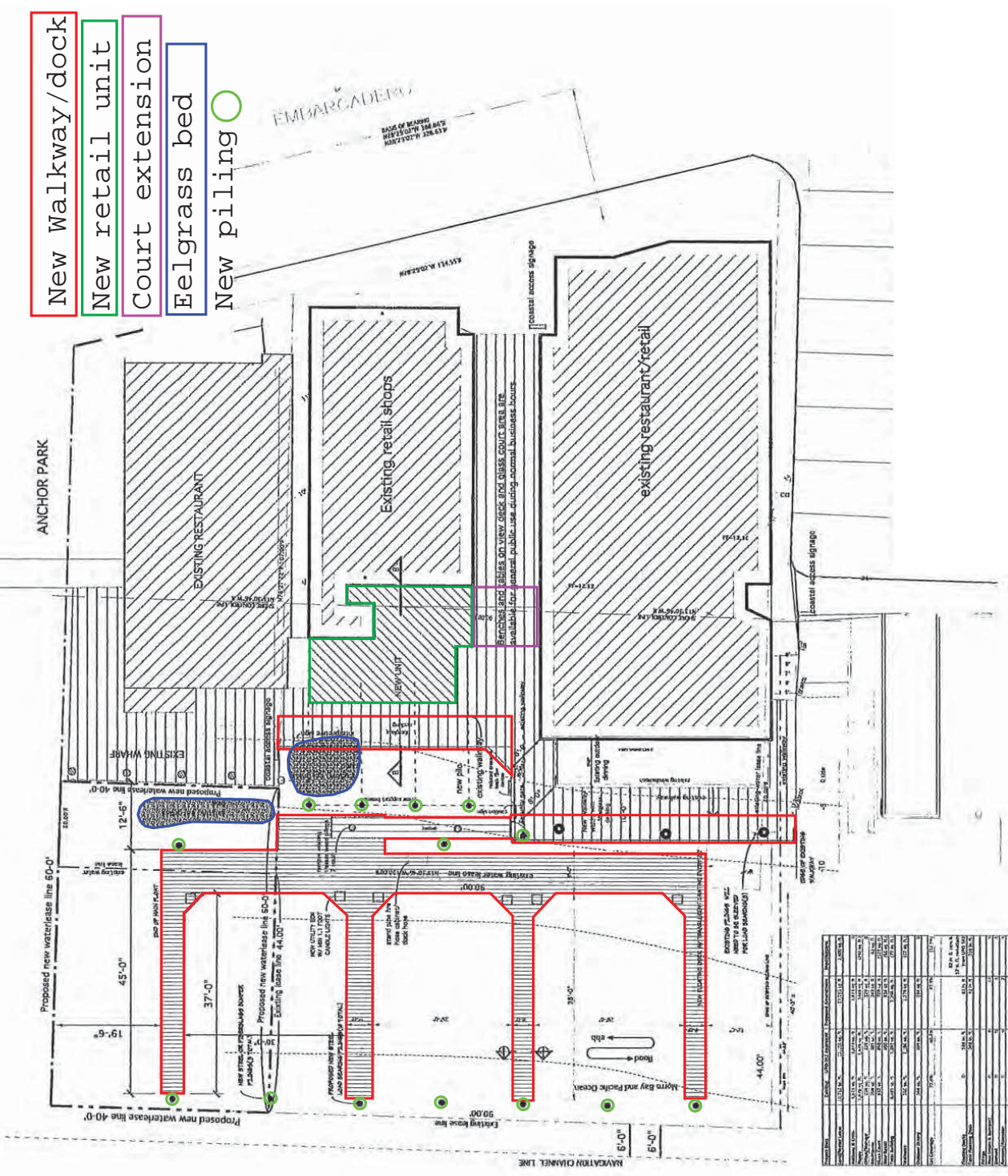
The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The Commission has reviewed the relevant coastal resource issues with the proposed project, and has identified appropriate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

VICINITY MAP

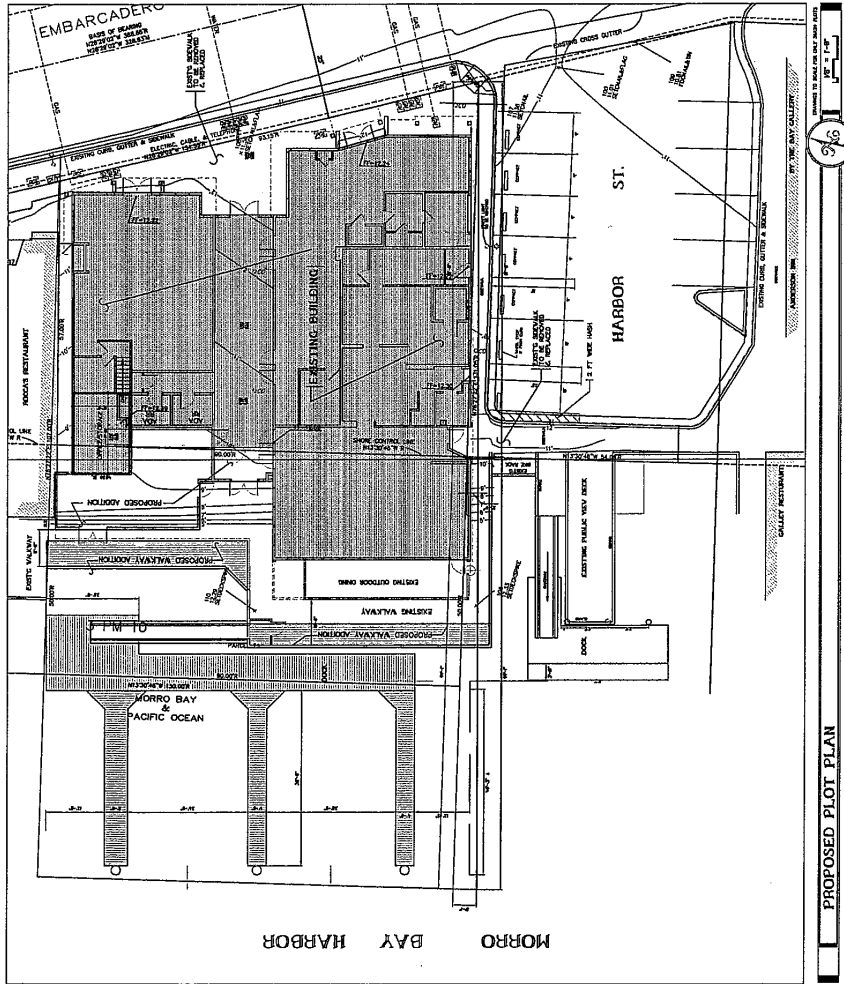


- New Walkway/dock
- New retail unit
- Court extension
- Eelgrass bed
- New piling



Item	Quantity	Unit	Material	Notes
1. New Walkway/dock	100	sq ft	Concrete	
2. New retail unit	1	unit	Steel	
3. Court extension	1	unit	Steel	
4. Eelgrass bed	100	sq ft	Grass	
5. New piling	100	sq ft	Wood	

SHEET A-2 SCALE: AS SHOWN DATE: 04/11/18 PROJECT: 3-13-006	PROPOSED SITE PLAN	HELD PROPERTIES HARBOR CENTER 801 EMBARCADERO, MORRO BAY, CALIF.	LAND/SEA INTERFACE CLIENT: MORRO BAY 1-800-775-8438	NOTES: 1. SEE SHEET A-1 FOR GENERAL NOTES. 2. SEE SHEET A-3 FOR EXISTING CONDITIONS. 3. SEE SHEET A-4 FOR PROPOSED CONDITIONS. 4. SEE SHEET A-5 FOR EXISTING UTILITIES. 5. SEE SHEET A-6 FOR PROPOSED UTILITIES. 6. SEE SHEET A-7 FOR EXISTING TRAFFIC. 7. SEE SHEET A-8 FOR PROPOSED TRAFFIC. 8. SEE SHEET A-9 FOR EXISTING LANDSCAPE. 9. SEE SHEET A-10 FOR PROPOSED LANDSCAPE. 10. SEE SHEET A-11 FOR EXISTING STRUCTURES. 11. SEE SHEET A-12 FOR PROPOSED STRUCTURES. 12. SEE SHEET A-13 FOR EXISTING UTILITIES. 13. SEE SHEET A-14 FOR PROPOSED UTILITIES. 14. SEE SHEET A-15 FOR EXISTING TRAFFIC. 15. SEE SHEET A-16 FOR PROPOSED TRAFFIC. 16. SEE SHEET A-17 FOR EXISTING LANDSCAPE. 17. SEE SHEET A-18 FOR PROPOSED LANDSCAPE. 18. SEE SHEET A-19 FOR EXISTING STRUCTURES. 19. SEE SHEET A-20 FOR PROPOSED STRUCTURES.
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PROPOSED & EXISTING FLOOR PLANS

HELD PROPERTIES
HARBOR CENTER
801 EMBARKADERO, MONTEREY BAY, CALIF.
GEN. BODILIGHT ARCHITECT 1-800-776-4438

LAND/SEA INTERFACE

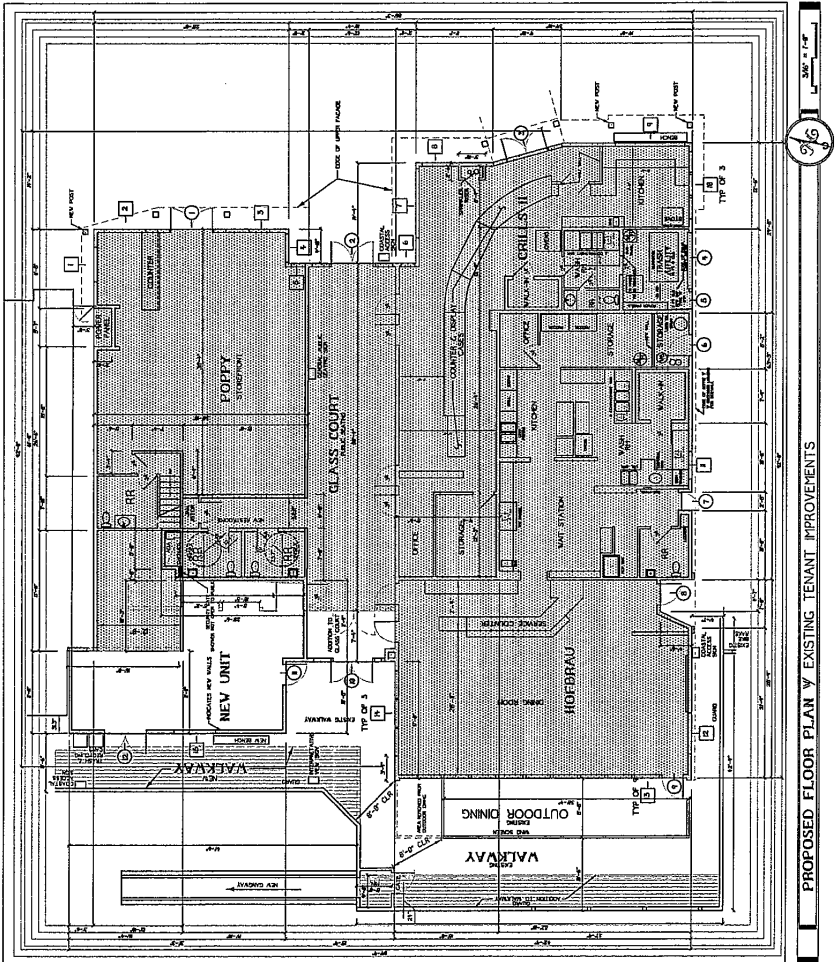
SECTION A-5

OF SHEET

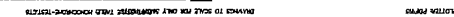
DATE: 10/10/00

BY: [Signature]

DRAWINGS TO SCALE FOR ONLY 3000 1075



NO.	DESCRIPTION	QTY	UNIT	PRICE	TOTAL
1	CONCRETE	1	YD	100.00	100.00
2	CEMENT	1	YD	100.00	100.00
3	IRON	1	YD	100.00	100.00
4	STEEL	1	YD	100.00	100.00
5	BRICK	1	YD	100.00	100.00
6	GLASS	1	YD	100.00	100.00
7	PAINT	1	YD	100.00	100.00
8	ROOFING	1	YD	100.00	100.00
9	PLUMBING	1	YD	100.00	100.00
10	ELECTRICAL	1	YD	100.00	100.00
11	MECHANICAL	1	YD	100.00	100.00
12	LANDSCAPE	1	YD	100.00	100.00
13	CONCRETE	1	YD	100.00	100.00
14	CEMENT	1	YD	100.00	100.00
15	IRON	1	YD	100.00	100.00
16	STEEL	1	YD	100.00	100.00
17	BRICK	1	YD	100.00	100.00
18	GLASS	1	YD	100.00	100.00
19	PAINT	1	YD	100.00	100.00
20	ROOFING	1	YD	100.00	100.00
21	PLUMBING	1	YD	100.00	100.00
22	ELECTRICAL	1	YD	100.00	100.00
23	MECHANICAL	1	YD	100.00	100.00
24	LANDSCAPE	1	YD	100.00	100.00
25	CONCRETE	1	YD	100.00	100.00
26	CEMENT	1	YD	100.00	100.00
27	IRON	1	YD	100.00	100.00
28	STEEL	1	YD	100.00	100.00
29	BRICK	1	YD	100.00	100.00
30	GLASS	1	YD	100.00	100.00
31	PAINT	1	YD	100.00	100.00
32	ROOFING	1	YD	100.00	100.00
33	PLUMBING	1	YD	100.00	100.00
34	ELECTRICAL	1	YD	100.00	100.00
35	MECHANICAL	1	YD	100.00	100.00
36	LANDSCAPE	1	YD	100.00	100.00
37	CONCRETE	1	YD	100.00	100.00
38	CEMENT	1	YD	100.00	100.00
39	IRON	1	YD	100.00	100.00
40	STEEL	1	YD	100.00	100.00
41	BRICK	1	YD	100.00	100.00
42	GLASS	1	YD	100.00	100.00
43	PAINT	1	YD	100.00	100.00
44	ROOFING	1	YD	100.00	100.00
45	PLUMBING	1	YD	100.00	100.00
46	ELECTRICAL	1	YD	100.00	100.00
47	MECHANICAL	1	YD	100.00	100.00
48	LANDSCAPE	1	YD	100.00	100.00
49	CONCRETE	1	YD	100.00	100.00
50	CEMENT	1	YD	100.00	100.00
51	IRON	1	YD	100.00	100.00
52	STEEL	1	YD	100.00	100.00
53	BRICK	1	YD	100.00	100.00
54	GLASS	1	YD	100.00	100.00
55	PAINT	1	YD	100.00	100.00
56	ROOFING	1	YD	100.00	100.00
57	PLUMBING	1	YD	100.00	100.00
58	ELECTRICAL	1	YD	100.00	100.00
59	MECHANICAL	1	YD	100.00	100.00
60	LANDSCAPE	1	YD	100.00	100.00
61	CONCRETE	1	YD	100.00	100.00
62	CEMENT	1	YD	100.00	100.00
63	IRON	1	YD	100.00	100.00
64	STEEL	1	YD	100.00	100.00
65	BRICK	1	YD	100.00	100.00
66	GLASS	1	YD	100.00	100.00
67	PAINT	1	YD	100.00	100.00
68	ROOFING	1	YD	100.00	100.00
69	PLUMBING	1	YD	100.00	100.00
70	ELECTRICAL	1	YD	100.00	100.00
71	MECHANICAL	1	YD	100.00	100.00
72	LANDSCAPE	1	YD	100.00	100.00
73	CONCRETE	1	YD	100.00	100.00
74	CEMENT	1	YD	100.00	100.00
75	IRON	1	YD	100.00	100.00
76	STEEL	1	YD	100.00	100.00
77	BRICK	1	YD	100.00	100.00
78	GLASS	1	YD	100.00	100.00
79	PAINT	1	YD	100.00	100.00
80	ROOFING	1	YD	100.00	100.00
81	PLUMBING	1	YD	100.00	100.00
82	ELECTRICAL	1	YD	100.00	100.00
83	MECHANICAL	1	YD	100.00	100.00
84	LANDSCAPE	1	YD	100.00	100.00
85	CONCRETE	1	YD	100.00	100.00
86	CEMENT	1	YD	100.00	100.00
87	IRON	1	YD	100.00	100.00
88	STEEL	1	YD	100.00	100.00
89	BRICK	1	YD	100.00	100.00
90	GLASS	1	YD	100.00	100.00
91	PAINT	1	YD	100.00	100.00
92	ROOFING	1	YD	100.00	100.00
93	PLUMBING	1	YD	100.00	100.00
94	ELECTRICAL	1	YD	100.00	100.00
95	MECHANICAL	1	YD	100.00	100.00
96	LANDSCAPE	1	YD	100.00	100.00
97	CONCRETE	1	YD	100.00	100.00
98	CEMENT	1	YD	100.00	100.00
99	IRON	1	YD	100.00	100.00
100	STEEL	1	YD	100.00	100.00



Existing Facade



Proposed Facade



Project statistics:

Staff report, page 12: The restrooms will be accessed through the glass covered walkway, a portion of which will be extended seven feet.

- Clarify the point that the glass court will be extended seven feet, but not the restrooms. The existing retail unit, Poppy, has been reduced in size 232 sq. ft. to incorporate space for the new restrooms and the restrooms will not encroach into the walkway.
- The glass court extension does not take away from the public area but, becomes a part of the walkway.
- The glass court is currently 632 sq. ft. with restaurant dining. The project as proposed is 729 sq. ft. and credit should be given for public benefit that this will become a general public use area with tables and benches.

Staff report, page 12: As proposed, the project would result in a reduction in the width of the existing northern walkway from approximately 25 feet at the maximum to eight feet.

- This is bit misleading in that the existing walkway is actually 24 feet at the maximum however, it needs to be made clear that there are several other components to this and they are:
 - 32% of the existing walkway is 5 feet wide.
 - 80% of the new walkway (approximately 95 feet long) will be 10 feet wide and the only reduction is 27 feet long along the new retail unit which is consistent with the LCP that requires an 8 foot wide walkway.

Staff report, page 12 and other sections: 14 new pilings are proposed.

- The project proposes 13 new piles and three sleeved piles.
- The proposed piles will be either steel or fiberglass.

Staff report, page 14: The Commission has typically required lateral accessway ten feet (See Giovanni), 3-08-052 and others.

- The reference to Giovanni's is in correct. The approved existing accessway was approved at approximately five feet at the narrowest and the new accessway along the wharf was 5 feet wide.
- The Imani project, 3-10-036 was approved with a reduction in the accessway at five feet, seven feet and nine feet to accommodate existing and proposed work.

Staff report, page 15: The proposed new retail unit will remove a significant portion of the currently 20+ foot wide public walkway for use as a commercial retail establishment, resulting in a walkway that is only eight feet in width. Currently, this 20+ foot wide area is especially important because it provides outdoor public tables... And, less than 10 foot walkways were approved because of exceptions for remodel projects that were constrained and did not result in the loss of public access area.

- Addition of the new retail unit and project as proposed does not result in an overall loss of existing access. The current access is 1,492 sq. ft. and the new access area will be 1,526 sq. ft. for an increase of approximately 2.2%.
- For comparison purposes, the current accessway along the northern portion of the existing retail, bathrooms and office/storage ranges in width from 5 feet to 14 feet to 24 feet. So the blanket statement that “the currently 20+ foot wide public walkway” is inaccurate and misleading.
- Additionally, I believe it is incorrect to state that a “significant portion of the currently 20+ foot wide public walkway” will be removed without providing more detail that this will be offset by reducing the existing outdoor restaurant seating by 217 sq. ft. and the glass court area that is proposed for general public access as well. The other point is included in the bullet point above.

Conditions of Approval:

Special Condition 1a: Requires the lateral accessway to be a minimum of 10 feet wide.

- See part of the discussion listed above.
- Requiring a 10 foot wide access in the location of the new retail unit will require a further reduction in the unit of 56 sq. ft. The unit will then be 477 sq. ft. which is not large enough for a majority of owners to a viable business. Furthermore, the new unit is somewhat of an irregular shape now and the two foot reduction will make a portion of the building less than 10 wide which significantly limits the availability for space and use.
- This project as proposed has combined new public access, recreational boating opportunities and visitor serving uses and provides a good balance between all of these uses and within the constraints of a pre-existing developed site.
- The analysis should be modified and incorporate these discussion points so that there is a clear and distinct picture painted of existing and proposed project.
- This condition should be modified to accept the project as proposed.

Special Conditions 1b & 1d: Requires that no part of the lateral accessway, floating dock, other structure, or boat docking area shall be located vertically above any Eelgrass bed, or portion therefore of. Priority locations for grating shall be on areas of structures adjacent to eelgrass habitats. And no pilings shall be located in areas of Eelgrass as identified in the pre-construction survey.

- These two conditions should be removed completely because as written, creates at least three major problems whereby it may make a potential project infeasible to construct or create significant time delays for months or possible years. The three specific items are in regards to design, construction timing and permitting are discussed below.
- The condition as written would require a potential complete re-design of the floating docks, gangway and lateral accessway to comply with this condition. First, the floating docks as designed are westward of the known Eelgrass bed. However, Eelgrass is not static and the location and size of the bed could shift and or grow between the time of the approvals and construction. If it was discovered that the bed shifted and a portion of the bed was then located over the top one or more of the following may occur:
 1. The docks being relocated further westward which would once again shorten the length of the finger docks and put more restrictions on the size of boats that could occupy the slips. The most western edge of the finger docks are located at the maximum point to stay within the lease site boundaries and out of the defined navigation channel.
 2. The gangway is at its maximum point westward for access from the lateral boardwalk. If the docks are relocated westward, it may be impossible to design a gangway in a location as to completely avoid the Eelgrass.
 3. The main pilings are placed in strategic locations so that they can support the floating docks and lateral accessway proposed. In some cases it may be possible to move main piles ever so slightly however, it may be impossible to relocate the piles to avoid an Eelgrass bed if it changes the stability of the structure or docks.
 4. The same as above applies to the main piles at the end of the finger docks.
 5. The “bumper” (piles between the finger dock sections) also can be moved slightly however if the pile is relocated for example three or four feet, it will completely change the configuration of the slips. These piles are put in place for boats to “bump” up against while they are entering the slip especially during severe tide and storm conditions so; they serve a valuable and important use. The slips are designed to accommodate two boats between each finger dock section and if the bumper pile is moved, it will increase the width of one side while decreasing the other side. By

decreasing the width of one berthing section, it will result in severely restricted use because frankly, it won't be wide enough to accommodate most of the boats that would want to dock there.

- Second, construction timing is a critical aspect as it relates to compliance review/fulfillment of conditions and permit issuance. The discussion points regarding this are as follows:
 1. Most projects in Morro Bay rely on the services of Associated Pacific (AP) for the pile driving. AP works coast-wide so therefore the equipment is not always stationed in Morro Bay and available for work. The applicant must coordinate with AP to schedule a time for the pile driving. It is not uncommon for AP to have a short window such as a week or two to do local work before the equipment is moved to another job site and not return for up to several months depending on the job size. Missing this window of opportunity may cause significant delays in starting the construction for the project.

After a tentative date is set, the applicant then knows the timing for which to schedule the pre-construction Eelgrass survey. Federal regulation requires that the pre-construction Eelgrass survey be performed no earlier than 60 days before the start of construction so there is a finite time in order to meet those permits conditions. Furthermore AP, or any other local contractor for that matter, does not have a vibratory hammer so they need to reserve one and make arrangements for the delivery at the start of the actual construction.

As both conditions are written, it will not be possible to provide any certainty for a project construction schedule because the outcome of the location of the piles, gangway, docks and other structures are left up in the air, so to speak, until the pre-construction Eelgrass survey is completed and the location of the beds are determined. If there are any modifications to plans and it takes too much time to resolve the changes, there may not be sufficient time to schedule the appropriate work.

- Third there are numerous reasons why the conditions as written will set up conflicts for the issuance of the permits.
 2. The CDP will not be issued until the compliance review has completely been done and the special conditions of approval are met. This means that a pre-construction Eelgrass survey, done within 60 days of the construction start, will need to be done and provided to the Commission for compliance review. If it is determined that a portion of the project is located above an Eelgrass bed or if a piling is located in "areas" of

Eelgrass, there will need to be project design modifications. Depending upon the magnitude of the change, it may very well become necessary to modify the permit at the Commission level rather than having “substantial conformance”. This in itself could require several months of work with architectural and engineering plan revisions, staff evaluation of the changes, preparation of a staff report and a hearing before the Commission. By doing so, the project pre-construction Eelgrass survey will expire and a new survey will need to be done prior to commence of the construction. There are also set time frames for the Eelgrass growing season and the timing of surveys. With this in mind, the applicant may need to wait several months to stay within the correct cycle in order to perform the survey. Furthermore, if they need to wait until the next growing cycle, the outcome for the location of the Eelgrass beds may change and then it could be discovered that the revised plans would then have an impact on the beds and be forced once again to redesign the project. This could potentially set up a project applicant for a permit process that could never be concluded.

Even in the case when there are only minor modifications to the design as a result of Eelgrass locations as determined by the pre-construction survey, it will still be impossible to finish the permit process within the 60 day time frame. Not only does the Commission need to review and accept the design modifications but, the City of Morro Bay also requires an amendment to the Use Permit by “substantial conformance” or returning to the approval body in this case the Planning Commission. Additionally, the Army Corps of Engineers is the federal permitting agency and will need to consider any modifications to their permit. To provide an example of this, I have created the following chart and listed the number of days to perform these tasks.

Number of days	Task
1	Perform Eelgrass survey
2	Biologist publishes report
2	Delivery & review by CCC
2	Revise con docs
2	Delivery, review by CCC & issue permit
2	City application for permit modification & review
10	Public comment period for permit modification
10	Director's decision and appeal period
1	City publishes final CUP
2	City building permit re-review
2	ACOE concurrence

1	City issues final building permit
10	Weekend days during this time period
14	USCG notification prior to construction
61	Total Days

As you can see, this is the most ambitious schedule that I could create and we are certainly over the timeframe. I do not believe that there is any way that the Commission, City, ACOE or project contractors could guarantee a two day turn around for each of their tasks that would make this schedule anything but that much worse. So, it is safe to say that strict adherence to the conditions as written will trigger the need to do another pre-construction Eelgrass survey.

In conclusion, the above conditions of approval will be infeasible to meet because of all the points raised above.

Federal regulations certainly recognize the difficulties in locating docks, piers, and other marine structures in areas of Eelgrass beds and potential habitat. To that end, the Southern CA Eelgrass Mitigation Policy includes a specific section that identifies this, provides allowances and mitigation measures to overcome this obstacle. This project has avoided the known Eelgrass beds to the greatest extent feasible which is consistent with the SCEMP.

I am not aware that the Commission has adopted a strict policy that requires “complete” avoidance as you indicated during our meeting but rather, they recognize that in some cases a project may not have the option to design without some potential for Eelgrass interaction. I believe the Commission has approved projects that have demonstrated that the proposed design avoid, to the greatest extent feasible, and have also included appropriate mitigation measures so that the project can indeed move forward.

Credit should be given and discussion of this should be included in the report that this project has done just exactly what I described above. The original project had a public view deck that was close to 13 feet wide but extended over the Eelgrass bed along with a portion of the floating docks. In working with staff during the initial review period, the applicant had chosen to modify the project to address the Eelgrass concerns. To do that there were concessions that needed to be made and balance struck between all the uses that the applicant was trying to provide for. For example, there was a reduction in size of the new unit, a reduction in the existing retail unit, a reduction in the restaurant outdoor seating, removal of the public view deck, relocation of the floating docks, an increase in the width of the walkway on the southern portion and a reduction in the northern walkway to eight feet for only a portion of the project. Collectively, this

modified and current project has done an outstanding job providing for all the important uses as visualized by the Coastal Act.

Special Conditions 1e: Requires the top of the awing and façade improvements shall not increase in height beyond the existing building.

- As we discussed this is not a significant impact to the view shed in particular because the pedestrian views will be obscured from certain vantage points purely because they cannot see over the buildings. After you move away from the building or go closer to the harbor side, the views will open back up again.
- The awing will hid the roof top utilities as shown in the proposed simulation.
- The awning is increased one foot two inches above the existing façade and not two feet as indicated in the report.
- There will be a modest increase in the view shed with the proposed project because the existing peaked façade over the entry way to the Hofbrau is higher than the proposed facade.
- While the LCP has design guidelines that flat roofs are 14 feet and pitched roofs are 17 feet, there are also allowances in the PD Overlay district for the increased height when it results in a better design. The design with the façade hiding the roof top equipment is certainly a benefit for his project. Furthermore the City Council recognized that there needed to be comprises in the façade/awning design so the project was conditioned that the one third of the awning/façade on the southern part of the building was to be 15.2' and the balance would be at 14 feet.
- The condition as written doesn't even allow for the awning/façade to increase in height to an elevation that is allowable by code.

Special Conditions 2b: Requires that the lateral accessway is 10 feet.

- This condition needs to be modified so that it is consistent with condition #1a and all points for discussion are provided under that section.

Special Conditions 2c: Requires floating dock be open for general public to access the docks.

- We have discussed this condition several times before this project. It is not appropriate to open the dock access to the general public. It is dangerous, a liability for the applicant, creates an unsecure environment for the boat owners and their property and has not been required for other projects in Morro Bay or other marinas up and down the coast.
- The general public has access along the project walkway and in addition has the open and free use of the City pier and floating dock that is adjacent to this project.
- Because of all of this, the general public is not being denied any reasonable access to the coast and Morro Bay Harbor.
- This condition should be modified by deleting the reference to the open dock for the public and other language that pertains to signage and gates that prevent the applicant from securing the docks.

Special Conditions 2e: Requires signage directing public to the docks.

- This condition should be modified by deleting the reference to installing a sign at the gate directing the public to the docks.

Special Conditions 3f: Requires hydro acoustical monitoring and other requirements for conventional pile driving.

- As we discussed, I am looking for a friendly amendment that allows the use of the vibratory hammer without requiring the hydro acoustical monitoring and other requirements that would be associated only with the conventional pile driving method.

Special Conditions 5: Limits dock use to specific types of boats.

- As we discussed, I am looking for a friendly amendment that allows for recreational boats, such as sailboats, to be included within the parameters of the condition. The project has not proposed any residential type use of the boats and does not have an issue with that in the condition.