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# Th9a

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Staff: A. Campbell - SC  
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Hearing Date: 5/15/2014

## 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.

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## 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.

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 this site to be developed so as to provide maximum access, visitor serving amenities and public benefit. This requirement is 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, including against cumulative impacts, 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 10 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 publicly accessible ADA accessible restrooms at the site will increase visitor serving amenities. There is also potential to increase visitor 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 northern portion of the proposed lateral access would be reduced from more than 20 feet to 8 feet. In addition, the project would prevent general public access to the floating dock and would only provide an eight foot wide lateral accessway for the northern section, which is less than is currently present or typically required. In addition, 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 development site contains areas of eelgrass and potential eelgrass habitat, which is a biological resource necessary for the continued health of the harbor and used as 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 these special biological resources, avoidance of impacts is paramount. Fortunately, the proposed project does set a foundation from which a project with public benefit can be achieved whilst 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 value biological resources. With this adjustment, the lateral access way in front of the new retail unit will be 10 feet wide, ensuring compliance with the Coastal Act. In addition, through ensuring the heights of buildings do not increase in any area, the views of Morro Rock can be protected. Provisions of these modifications would ensure that the project is Coastal Act compliant and that a project of high public benefit is achieved whilst the valuable biological and visual resources are protected.

As conditioned, project is consistent with the Coastal Act, and staff recommends **approval** of the CDP. The motion is 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

## 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 bayside lateral accessway shall be a minimum of 10 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 eelgrass bed, or portion thereof. 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 and potential eelgrass habitat 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. Post construction surveys identifying areas of eelgrass shall be completed within 90 days of completion of construction and one year and two years following the completion of construction. Any change in eelgrass extent shall be documented and reported to the Executive Director. Loss of eelgrass area shall be mitigated in line with the specifications of the Southern California Eelgrass Mitigation Policy.
  - d. **Location of Pilings.** No pilings shall be located in areas of eelgrass as identified in the pre-construction survey.
  - e. **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.
  - f. **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.
  - g. **Lighting.** The location, type, and wattage of all light fixtures (including catalog sheets for each fixture) shall be illustrated. All exterior lighting shall be designed and located so that only the intended area is illuminated and off-site glare is prevented. All lighting shall

be cutoff style fixtures that are directed downward to prevent glare on adjacent and surrounding areas (i.e., Morro Bay), and shall be limited to the maximum extent feasible while still providing for public safety. 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.

- h. 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 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 bayside lateral accessway on the project site shall be a minimum of ten 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. All directional 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. 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, 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.

- 7. Liability for Costs and Attorney's Fees.** The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorney's fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and (2) required by a court that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Permittee shall reimburse the Coastal Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

## **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 a visual

simulation of the proposed façade changes.

The new retail unit would be constructed on the harbor side of the upcoast building on the existing public bayside walkway. The retail unit would cover 534 sq. ft. and would 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 5 feet to 10 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 25 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, 14 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 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.

However, the proposed reduction in width of the northern portion of the bayside walkway does

not maximize public access as required by the Coastal Act. 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 (Exhibit 2). Currently, this 20+-foot-wide area is especially 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. Although the Commission has occasionally approved projects that have provided less than ten feet, these exceptions were for remodel projects that were constrained by existing development, did not include extension of the building footprint, and did not result in the loss of existing public access area. Therefore, especially given the project's impact on existing public access, it is appropriate to maintain the continuity of the 10-foot wide access along the Embarcadero and maintaining a ten foot lateral access width is necessary to meet the Coastal Act requirements regarding maximizing public access.

Therefore, to achieve Coastal Act consistency, Special Conditions 1(a) and 2(b) require that a minimum ten-foot-wide bayside lateral access be maintained. As conditioned, the project 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 1600 sq. ft. of bay waters and will provide mooring space for six small-to-medium-sized boats (Exhibit 2). The project proposes 14 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. 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 Section 30210 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. Thus, the proposed project is inconsistent with Coastal Act Section 30210 because it does not maximize access to publicly-owned tidelands.

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. However, the City and the Applicant have 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. For example, 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. Also, it is important to note that although a remodel 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 nor is the dock integral to the continued operation of the businesses on the property. 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.

Further, the floating dock can 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 and 30224.

**Public Access Use Parameters and Signage.** 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 access parameters 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 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 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 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 the 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 building, and to add a new façade along the southern side of the building (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. The LCP guidance for buildings on this section of the Embarcadero allows for a maximum height of 14 feet. This 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 as consistent with the LCP.

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(e) 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(h) 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<sup>1,2</sup>. 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, the proposed walkway is still 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 eelgrass beds and requires the use of translucent grating on the new walkway to the greatest extent feasible, to allow for light to reach the water below. 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.

Potential impacts to eelgrass productivity and health can also be caused by shading from the floating dock and boats docked at the structure. The biological report provided by the Applicant identifies the area directly under the floating dock as potential eelgrass habitat. As such, there will be shading from the dock and docked boats on areas where eelgrass could potentially grow. Although there may be a regular changeover of boats moored at the floating dock, docked boats cause nearly continuous shading of a greater area than the floating dock itself. Finally, although the proposed floating dock may not cause shading of adjacent waters when the sun is directly overhead, as the declination of the sun changes throughout the day, the dock will also shade

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<sup>1</sup> 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.

<sup>2</sup> 2013 Monitoring and Transplant Recovery Report. Merkel & Associates, Inc. November 2013.

some of the adjacent water area that is not directly below the dock. When in close proximity to existing eelgrass beds, such shading could cause eelgrass impacts. Special Condition 1(b) prohibits direct coverage and shading of eelgrass by the floating dock and prohibits boats from being docked directly over eelgrass beds. This condition also requires the use of translucent grating to be used on the floating dock to the greatest extent feasible.

The biological survey for eelgrass provided by the Applicant was originally completed in August 2011, with a follow up survey done in May 2013. 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 2013. Accurate knowledge of the location of eelgrass at the time of construction is important to avoid eelgrass impacts. 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. Special Condition 1(c) requires a pre-construction survey to be done within the above timeframe prior to the commencement of construction to accurately map the current extent of the eelgrass beds. This condition also requires post-construction surveys to be done at specific intervals, with appropriate mitigation for any loss of eelgrass area.

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 has impacts on eelgrass, which does not exhibit high resilience or quick colonizing ability. Although the proposed project currently has all pilings located outside of surveyed beds, Special Condition 1(d) ensures that pilings will be located outside of eelgrass beds if variations in the extent or location of eelgrass are detected in the pre-construction survey. 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 mitigates the project's impacts 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 14 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 14 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-treated<sup>3</sup> (and similar chemical compounds) wood pilings due to its adverse effect on the marine environment.<sup>4</sup> 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 14 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

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<sup>3</sup> 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.

<sup>4</sup> 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.

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, 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(g) 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(f).

### **Conclusion**

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. OTHER**

Finally, Coastal Act Section 30620(c)(1) authorizes the Commission to require Applicants to reimburse the Commission for expenses incurred in processing CDP applications, and states:

*Section 30260(c)(1). The commission may require a reasonable filing fee and the reimbursement of expenses for the processing by the commission of any application for a coastal development permit under this division and, except for local coastal program submittals, for any other filing, including, but not limited to, a request for revocation, categorical exclusion, or boundary adjustment, submitted for review by the commission.*

Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application in the event that the Commission's action is challenged by a party other than the Applicant. Therefore, consistent with Section 30620(c)(1), the Commission imposes Special Condition 7 requiring reimbursement for any costs and attorneys' fees that the Commission incurs in connection with the defense of any action brought by a party other than the Applicant challenging the approval or issuance of this permit.

## **H. 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.

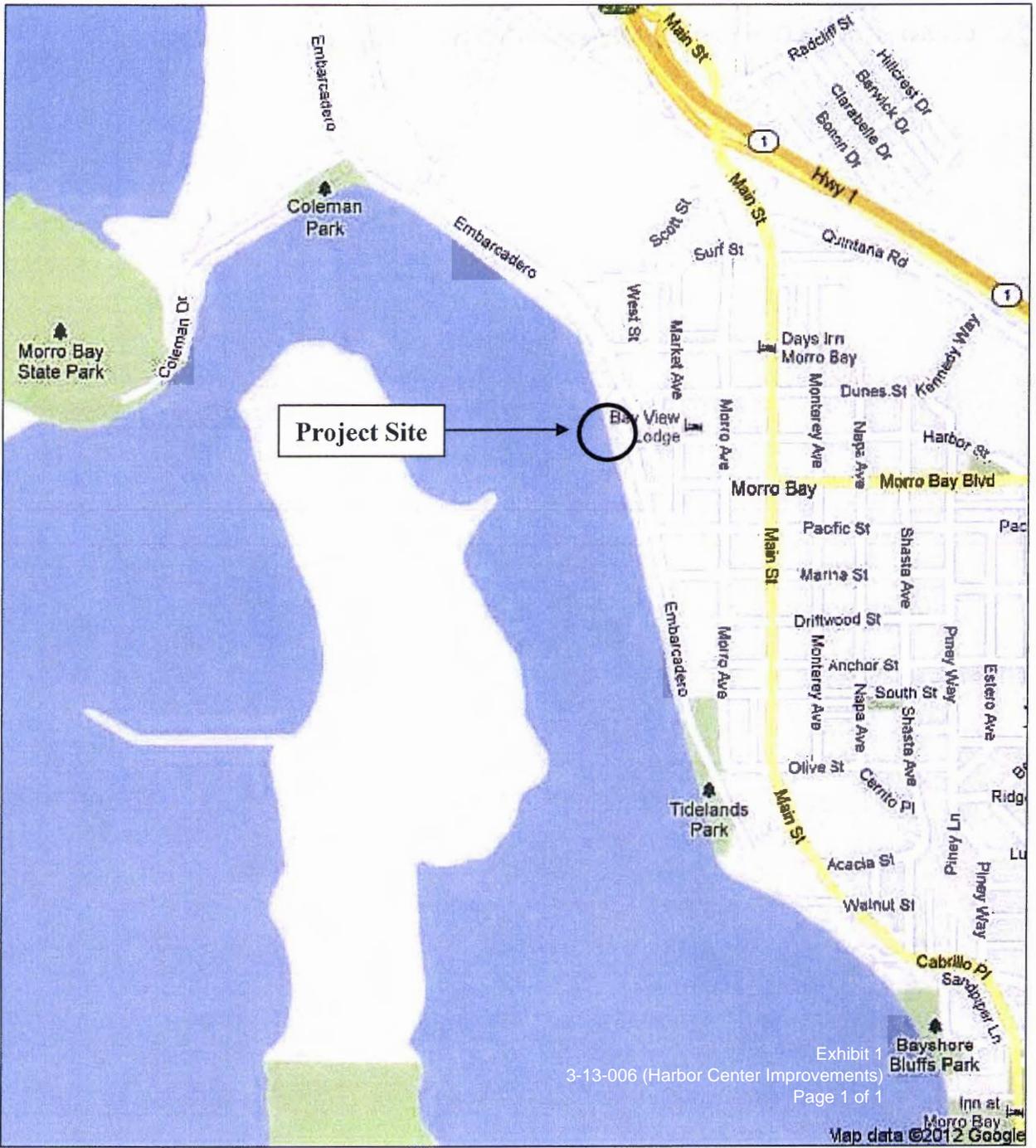
The City of Morro Bay, acting as the lead CEQA agency, conducted an environmental review for the proposed project as required by CEQA and issued a Negative Declaration with Mitigations.

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



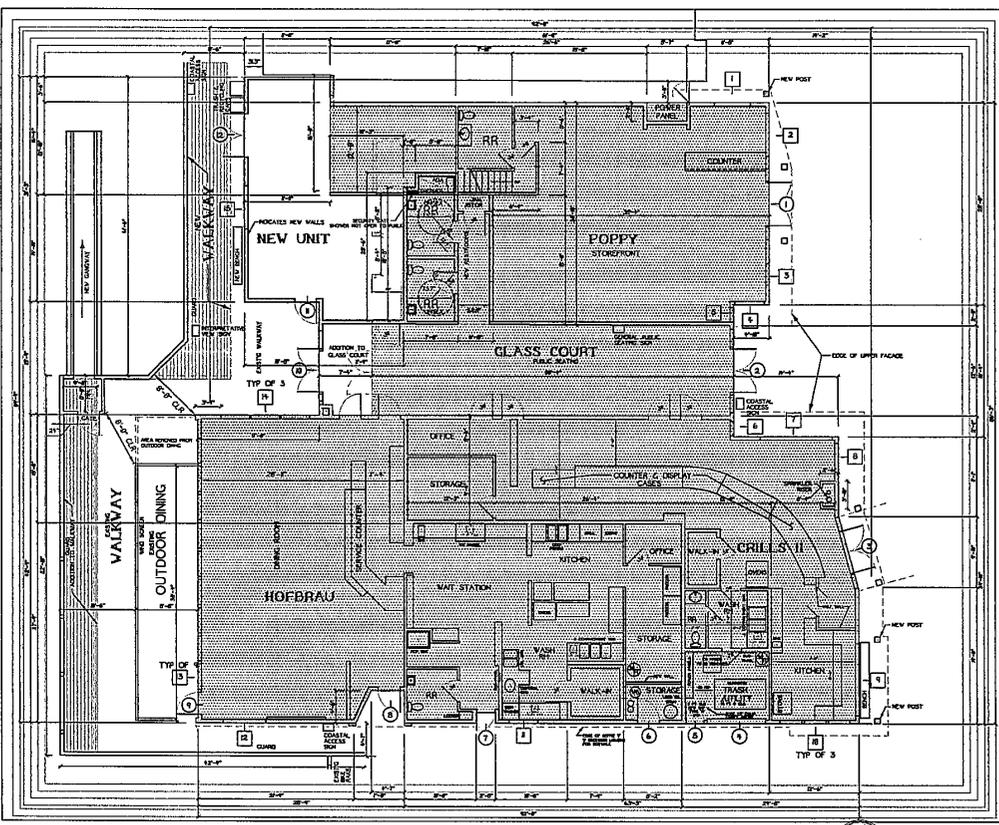




NOT THE FIELD INSTRUMENT DESIGN

AUTUMN 2015

EXTERIOR WINDOW SCHEDULE		EXTERIOR DOOR SCHEDULE	
NO.	DESCRIPTION	NO.	DESCRIPTION
1	6" x 6" ALUMINUM WINDOW	1	6" x 6" ALUMINUM DOOR
2	6" x 6" ALUMINUM WINDOW	2	6" x 6" ALUMINUM DOOR
3	6" x 6" ALUMINUM WINDOW	3	6" x 6" ALUMINUM DOOR
4	6" x 6" ALUMINUM WINDOW	4	6" x 6" ALUMINUM DOOR
5	6" x 6" ALUMINUM WINDOW	5	6" x 6" ALUMINUM DOOR
6	6" x 6" ALUMINUM WINDOW	6	6" x 6" ALUMINUM DOOR
7	6" x 6" ALUMINUM WINDOW	7	6" x 6" ALUMINUM DOOR
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9	6" x 6" ALUMINUM WINDOW	9	6" x 6" ALUMINUM DOOR
10	6" x 6" ALUMINUM WINDOW	10	6" x 6" ALUMINUM DOOR
11	6" x 6" ALUMINUM WINDOW	11	6" x 6" ALUMINUM DOOR
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28	6" x 6" ALUMINUM WINDOW	28	6" x 6" ALUMINUM DOOR
29	6" x 6" ALUMINUM WINDOW	29	6" x 6" ALUMINUM DOOR
30	6" x 6" ALUMINUM WINDOW	30	6" x 6" ALUMINUM DOOR



PROPOSED FLOOR PLAN WITH EXISTING TENANT IMPROVEMENTS

HELD PROPERTIES  
**HARBOR CENTER**  
 801 EMERALDCREEK, MARINO BAY, CALIF.

LAND/SEA INTERFACE  
 GENE ROBERTY ARCHITECT 1-800-772-8138

REVISION  
 W/13  
 3/26/15

DRAWING TO SCALE FOR ALL DIMENSIONS  
 PROPOSED & EXISTING FLOOR PLANS  
 SCALE: AS SHOWN  
 DATE: 03/26/15  
 SHEET NO. 7-6  
 OF 10 SHEETS





Existing Facade



Proposed Facade

