STATE OF CALIFORNIA - THE RESOURCES AGENCY PETE WILSON, *Governor*

**CALIFORNIA COASTAL COMMISSION**

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# STAFF REPORT: APPEAL
# DE NOVO ACTION

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| LOCAL GOVERNMENT: | City of Morro Bay |
| LOCAL DECISION: | Approved with conditions, April 13, 1998 |
| APPEAL NUMBER: | **A-3-98-38** |
| APPLICANT: | **KEYOTO MORRO BAY** |
| APPELLANT: | Warren Dorn, Ned Rogoway, Donald Funk, and Bernard Melvin |
| PROJECT LOCATION: | 2233 Emerald Circle (Lot 90), Cloisters Subdivision, between Azure Street and the Morro Bay High School, City of Morro Bay |
| PROJECT DESCRIPTION: | Two story (25 feet) Single Family Residence |
| FILE DOCUMENTS: | File for A-4-MRB-91-44 (Cloisters Subdivision Appeal), Administrative File for City Coastal Development Permit CUP30-97 (Precise Plan)/CDP77-97R, and City of Morro Bay certified LCP |

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## SUMMARY OF STAFF RECOMMENDATION

On July 9, 1992, the Commission approved the Cloisters subdivision, on appeal, subject to special conditions which, among other things, required Commission certification of a water management plan for the City and City certification that water was available to serve the subdivided lots; limited elevation of finished grade; imposed height limits of 14 feet, 17 feet, and 25 feet on specified lots; and expanded a proposed wetland mitigation area. All of the conditions imposed by the Commission have been fulfilled.

On June 8, 1998, the Commission found, on appeal, that the City of Morro Bay's approval of this single family dwelling raised a substantial issue with respect to grading and the height of the house. In order to verify that the elevation of the finished grade and the height of the house are consistent with the LCP and with the approved subdivision which was found to be consistent with the LCP in 1992, staff selected an engineering and surveying firm to go to the site and independently determine elevations of various points in the subdivision. This information was then compared to the elevations shown on the subdivision grading plans

approved by the City in 1991 and referenced in the Commission's conditions of approval for the subdivision, and to the City-approved 1997 as-built grading plans. As discussed in the Findings section of this report, all but two of the spot elevations determined by the staff-selected engineering and surveying firm are equal to or less than the elevations shown on the approved 1991 grading plan. The deviations are insignificant. This report also discusses relevant water issues. Staff now recommends that the Commission, after public hearing, **approve** the proposed house for the reasons given in this report.

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**Exhibits**

1. Vicinity and Location Maps
2. City of Morro Bay Coastal Development Permit Conditions, Site Plan, and Elevation
3. View Corridor and Building Height Map
4. Special Conditions for Coastal Development Permit 4-91-44, Cloisters Subdivision
5. Staff Memorandum - Independent Survey

## I. STAFF RECOMMENDATION ON COASTAL PERMIT

The staff recommends that the Commission adopt the following resolution:

**APPROVAL**

The Commission hereby **approves,** subject to the conditions below, a permit for the proposed development, on the grounds that the development, as conditioned, will be consistent with the certified City of Morro Bay Local Coastal Program and the public access and recreation policies of the Coastal Act, and will not have any adverse effects on the environment within the meaning of the California Environmental Quality Act.

## II. 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 permitee 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 this permit is reported to the Commission. 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. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.

6. 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.

7. 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 CONDITION

1. **Incorporation of City's Coastal Permit Conditions.** All conditions of the City of Morro Bay Coastal Development Permit CUP 30-97(Precise Plan)/CDP77-97R are hereby incorporated as terms of this permit (see Exhibit 2). Any City-approved modifications of permit amendments shall be submitted to the Executive Director for a determination of materiality and, if deemed to be material, will be subject to the Commission's amendment procedures.

## IV. RECOMMENDED FINDINGS AND DECLARATIONS

### A. Project Description and Background

The project at issue is a single family dwelling on a vacant lot in the Cloisters subdivision in the City of Morro Bay. On July 9, 1992, the Commission found that the subdivision was consistent with the Morro Bay LCP and approved it on appeal subject to special conditions (CDP 4-91-44, Cloisters Subdivision). The special conditions required Commission certification of a water management plan for the City prior to recordation of a final map; City certification that water was available to serve the subdivided lots; limited the elevations of finished grade; imposed height limits of 14 feet, 17 feet, and 25 feet for houses on specified lots; and required an expanded wetland mitigation area. All of the conditions imposed by the Commission have been fulfilled.

On April 13, 1998, the City approved a coastal development permit for this house. The conditions of approval reflect the height limits imposed by the subdivision conditions, in this case, limiting the house to a height of 25 feet above finished grade.

## B. Standard of Review and Analysis

The standard of review for appeals, including any *de novo* hearing that might follow a finding of substantial issue, is the City's certified Local Coastal Program and, for projects seaward of the public road nearest the shoreline, the Public Access and Recreation policies of the Coastal Act.

### 1. LCP Policies 12.01 (Scenic Views), 12.06(a) (Visual Compatibility), and Coastal Act 30251

LCP Policy 12.01 states:

> 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 designated on Figure 31 [which includes the Cloisters site], shall be subordinate to the character of its setting.

Policy 12.06(a) states:

> New residential development in areas designated on Figure 31 as having visual significance [which includes the Cloisters,] shall include as appropriate the following:
>
> a. Height/bulk relationships compatible with the character of surrounding areas or compatible with neighborhoods or special communities which, because of their unique characteristics, are popular visitor destination points for recreation uses.

In 1988, the Commission certified Morro Bay LCP Amendment 3-88, as modified. Among other things, that amendment created a northbound view corridor across the Cloisters site in addition to the already required southbound view corridor and limited structure heights in both the north and south ends of the site to 14 feet. The applicant then filed suit against both the City and the Commission over the view corridors and height limits of LCP Amendment 3-88. A subsequent Settlement Agreement among the parties to the lawsuit ended litigation.

In 1990, the Commission certified Morro Bay LCP Amendment 2-89, which incorporated the Settlement Agreement. The amendment decreased the view corridor in the northern portion of the property by 50 feet and by 100 feet in the southern part of the property and increased the maximum allowed height in the southern part from 14 feet above grade to a maximum of 25 feet above grade with finished grade above flood level to be determined by the City Engineer (see Exhibit 3). Height of houses in the north part of the site remained at 14 feet, as certified by the Commission in LCP amendment 3-88.

In the 1992 appeal of the subdivision, the Commission found that, as conditioned, the height of the proposed houses on each lot was "consistent with the adopted LCP of the City of Morro Bay regarding protection of visual resources." In particular, the Commission imposed Condition 3a.(see Exhibit 4), which states:

> No structure in the south cluster (lots 46 through 120) shall exceed 25 feet in height above finished grade. Further, on lots 49 through 58, 89, 90, 93, 95, 101, 104, 108, 110, 112, 113, 115, 116, 118, 119, and 120 no structure shall exceed 25 feet above finished grade; on lots 91, 92, 94, 96 through 100, 102, 103, 105, 106, 107, 109, 111, 114 and 117 no structure shall exceed 17 feet in height above finished grade; and on lots 46, 47, 48, and 59 through 88 no structure shall exceed 14 feet in height above finished grade. Finished grade shall not exceed the minimum elevation necessary to flood-proof future residences nor shall it exceed finished grade as shown on the grading plan for the project approved by the City of Morro Bay on December 9, 1991.

Houses on the lots along the south property line, which abuts Morro Bay High School, are all allowed to be 25 feet tall. Cypress trees along the school's north boundary, planted some 35 years ago to provide a windbreak and screen the school from Highway One, also partially block the view of Morro Rock from southbound Highway One. Based on this fact, the Commission found:

> [b]y limiting the number of houses 25 feet above finished grade to one-third of the total in the south Cluster and requiring their location nearest the trees on the High School property, there will be no significant further impairment of the view of Morro Rock and the project can be found consistent with LCP Policy 12.01.

With respect to the overall mix of heights the Commission found the following:

> The existing view of Highway 1 across the site toward the southeast presents a stair-stepped appearance leading toward Morro Rock. Grasses, coyote brush, and willow on the site and cypress tress just beyond the south boundary of the site, in ascending order, lead the eye from ground level upward to the Rock. A mix of 14, 17, and 25 foot heights above finished grade will allow for a continuation of this stair stepped view. Heights greater than 25 feet or all structures at 25 feet would impair that view. Special Condition 3 allowing only 25 two-story houses (25 foot height limit), 17 houses 17 feet in height, and 33 houses 14 feet in height will provide a mix of heights in the southern cluster and protect significant coastal views from further impairment. The Commission finds that only with the imposition of Special Condition 3 can the project be consistent with the adopted LCP of the City of Morro Bay regarding the protection of visual resources.

As mentioned above, because the Cloisters site is in the floodplain, Condition 3a also limited fill on the site to the minimum necessary for flood protection but in no case could finished grade exceed the heights shown on the grading plan for the project approved by the City of Morro Bay on December 9, 1991.

This coastal development permit is for lot 90 in the south cluster of the Subdivision. Under Condition 3a, the house on this site must not exceed 25 feet in height above finished grade.

Finished grade can not exceed the minimum elevation necessary to flood-proof future residences and in no case may it exceed finished grade as shown on the grading plan for the project approved by the City of Morro Bay on December 9, 1991.

In order to verify that the elevation of the finished grade and the height of the house are consistent with the City approval, and that the view corridors and house clusters are located where required by the LCP, staff selected an engineering and surveying firm to go to the site and independently determine view corridor measurements and elevations of various points in the subdivision (see Exhibit 5). This information was then compared to the LCP view corridor dimensions and to the elevations shown on the subdivision grading plans approved by the City in 1991 and referenced in the Commission's conditions of approval for the subdivision, and to the City-approved 1997 as-built grading plans.

First, the view corridor dimensions as measured by the independent engineer are all within two feet of those required by the LCP. The dimensions measured ranged from 360 feet to 1151 feet. The two foot discrepancy occurred in the 1151 foot dimension and is equivalent to 0.17 percent (0.0017), which is insignificant. The other dimensions as measured by the independent engineer differed from the LCP dimensions by three inches out of 360 feet, and seven inches out of 410 feet; these are also insignificant. The view corridor dimensions and the cluster locations are therefore consistent with the LCP.

Second, all but two of the elevations determined by the independent surveyor were equal to or less than the elevations shown on the 1991 grading plan, as required by Condition 3a. The two higher elevations are both near the southeast corner of the site, adjacent to and below Highway One. One of the elevations is in the bike path and is 1.6 feet higher than the 1991 plans show, but has no effect on views since it is lower than the nearby building pads. The other elevation is about 400 feet to the northwest, on the east (inland) side of the south cluster at the base of the fill. It is 0.3 feet (about 4 inches) higher than the 1991 plans show. Each of these two higher elevations are insignificant in terms of view obstruction since both are below the highway elevation, are not in the view corridor, and are not building pad elevations. More generally, the compared elevations range from about 0.1 foot to more than 4 feet below those shown on the approved 1991 plans. The pad elevations on the City-approved 1997 "as-built" plans are within a half foot of those recorded by the independent survey, but differ to the extent that the pads on lots 67 through 78 extend the entire depth of each lot (consistent with the 1991 plans). None of the deviations will impact public views or result in building pads which exceed the previously-permitted elevations.

Finally, staff review of the grading plans and elevations revealed that those lots nearest the lowest point in the south cluster and the lowest point in the north cluster (i.e., the drainage inlet) could theoretically be lowered by one to one and one-half feet using the chosen drainage methodology (i.e., collection of storm water runoff by curbs and gutters, with disposal via gravity flow through a storm drain culvert). However, the result of lowering the building pad elevation would be that a house on those lots nearest the lowest point would need a floodwall or some other sort of barrier to keep water out of the house when it is raining during a 100 year storm event. This is because the clusters overall are graded with such a gentle slope and the drainage pipe is located at such an elevation that during a 100 year storm event, flood waters would back up into the drainage pipe to such an extent that rain water falling on the housing clusters would not be able to drain and would pond in the streets and on the lots until it overtopped the seaward edge of the lots. Alternatively, a house on those lots could be placed

on a raised foundation, but that would put the house at the same elevation it would be at if the lot were not lowered.

Other potential drainage methodologies include: creating a detention basin from which collected storm water would be pumped away from the site; or, allowing sheetflow runoff. Either of these methodologies could require or allow for the use of different lot elevations than those of the Cloisters subdivision, perhaps lower. However, it is important to note that the Commission-approved subdivision did not require any particular drainage method, although the grading and drainage plans show drainage pipes that are typical of the gravity flow methodology.

Accordingly, within the traditional drainage design of the approved subdivision, the information provided by the staff-selected engineer essentially corroborates staff's previous flood elevation analysis, summarized as follows:

> The predicted 100-year probability stormwater inundation level is elevation 16.3 feet. A 30-inch culvert is needed to drain this tract. Full effectiveness of the culvert during the 100-year storm event therefore requires the outlet flow line to be at 16.3 feet and the inlet at ±16.8 feet to provide the necessary gradient for the water to effectively flow through the pipe. This means the top of the culvert at the inlet would be at least elevation 19.3, at theoretical full effectiveness during a 100-year storm event. Therefore, because the actual culvert outlet and inlet elevations are 13.2 and 13.7 feet respectively, the culvert will not be operating at optimum efficiency during such a storm event. Therefore, we believe the low point on the bank of the drainage swale (18.6 ft.) rather than the culvert will be the controlling elevation. The adjoining lot elevations are 17.7 feet, barely adequate to avoid flooding of a finished floor level if a 1-foot+ foundation height is assumed. The other lots in the tract are graded to provide about a 4 foot elevation difference over a 400 foot distance, to insure runoff flow towards the culvert invert. This will provide a 1 percent gradient, barely adequate for storm conditions. Accordingly, we conclude that the lot elevations could not be any lower and still meet minimum flood avoidance standards.

The staff-selected independent engineer also determined the elevation of the top of the one house now under construction on the Cloisters site. Although of a different height than the house that is the subject of this appeal, the height of the house under construction can also be used to help determine whether or not fill elevations are correct. In that case, the elevation of the building pad is approximately 23.3 feet. Since the house on that lot is limited to 14 feet in height, the highest point of the roof should be 37.3 feet. The staff-selected engineer determined that the elevation of the highest point of the roof of that house is 37.4 feet, or one-tenth of a foot (1.2 inches) higher than expected. This margin of error is within tolerances. That house is approximately 200 feet from Highway One; any view obstruction due to the 1.2 inch difference in elevation is insignificant, both because of the distance from Highway One and because of the very small increase in height. There is nothing to indicate that the height of the house which is the subject of this report will obstruct views beyond those already acknowledged and approved by the Commission in the various LCP Amendments and the subdivision permit.

In conclusion, the subdivision, as approved by the Commission, was found to be consistent with the LCP regarding grading, finished grade heights, and proposed house heights. The as-built grading plans are consistent with this approval. The information provided by the staff-

selected engineer indicates that grading elevations are the minimum necessary to raise the building pads above the 100 year flood plain and also provide (barely) adequate slopes for gravity drainage. The independent survey verifies that the actual grading work is consistent with the approved and as-built plans. The appealed residence, at 25 feet, will be within the height limit standard for this particular lot, as confirmed by Commission staff's measurement of project plans. Therefore, the City's approval of a coastal development permit for the house is consistent with LCP policies 12.01 and 12.06(a).

**2. Water Issues**

**a. LCP Policy 3.01 (Water Availability)**

Policy 3.01 states, in relevant part:

> The City of Morro Bay shall approve future growth in conjunction with water and sewage treatment availability. Development shall be approved only if the City finds that sewer and water services are available to serve the proposed use.

This policy also limits the allocation of water to a model adopted by the Commission in a 1981 permit (4-81-309) until such time as a water management plan is submitted to the Commission as an LCP amendment.

Compliance with Policy 3.01 was raised in the appeal of the Cloisters subdivision. To address water supply issues, the Commission conditioned the subdivision as follows:

> The final map or maps may be recorded in phases, provided that no final map or maps for this subdivision shall be recorded until a Water Management Plan, as required by Morro Bay Local Coastal Program Policies 3.01 and 3.03 and fully incorporating the requirements of Policy 3.04, shall be adopted by the City of Morro Bay and certified by the Coastal Commission as an amendment to the City's Local Coastal Program, and until the City of Morro Bay certifies to the satisfaction of the Executive Director that water is available to serve the lot or lots within the applicable unit of the subdivision for which a final map has been recorded.

In compliance with this condition, the City submitted a water management plan to the Commission in 1995, which the Commission certified as an amendment to the LCP. On May 21, 1996, the Executive Director approved the City's certification that water was available to serve the lots within the Cloisters subdivision. Thus, the overall subdivision is consistent with Policy 3.01.

In the case of this specific single family development, the City has further found that water is available through its standard application of the existing retrofit requirement. In particular, the City requires that prior to the issuance of a building permit, "all necessary water equivalencies for the proposed use shall be obtained by the applicant; and a determination made that water service is available for the proposed use." The City's planning director has confirmed that prior to issuance of the building permit, the applicant must submit documentation that shows that 14 dwellings have been retrofitted. This would produce twice as much water as is needed by this single family use. No increased water demand will be created by this project. Staff notes that

as of this writing, there were approximately 1500 - 1800 residential structures available for retrofitting in the City of Morro Bay.

Finally, in addition to the fact that water is available through retrofitting, the City is now receiving state water, which substantially relieves the supply pressures that have previously been of concern in the City. As the following tables indicate, even in the worst drought year, with no conservation measures in place, the City will have enough water to meet current demand.

**City of Morro Bay Water Supply and Demand Analysis**

| **DEMAND (acre feet/year)** | | | |
|---|---|---|---|
| Usage in Gallons per Capita per Day | **CURRENT** (pop. 9696) | **MEASURE F** (pop. 12,200) | **LCP BUILDOUT** (pop. 15,600) |
| Current Usage (115 gpcd) | 1249 | 1572 | 2010 |
| Normal (141 gpcd) | 1531 | 1927 | 2464 |
| Drought (130 gpcd) | 1411 | 1777 | 2272 |
| 1987-92 Actual Conservation Performance (92 gpcd) | 999 | 1275 | 1608 |
| **SUPPLY (acre feet/year)** | | | |
| ***Source*** | ***Normal Year*** | ***Drought*** | ***Worst Case*** |
| ➢ Ground Water | 1164 | 950 | 950 |
| ➢ State Water | 1313 | 748 | 263 |
| ➢ Desalination | 515 | 515 | 515 |
| **Total Water Supply** | **2992** | **2213** | **1728** |

| **NET WATER SUPPLY (Supply – Demand) (Acre feet/year)** | | | | | | |
|---|---|---|---|---|---|---|
| | **Normal** | | **Drought** | | **Worst Case** | |
| **Usage (gpcd)** | **Current** | **Buildout** | **Current** | **Buildout** | **Current** | **Buildout** |
| Current (115) | 1743 | 982 | 964 | 203 | **479** | -282 |
| Normal (141) | 1461 | 528 | 682 | -251 | **197** | -736 |
| Drought (131) | 1581 | 720 | 802 | -59 | **317** | -544 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Conservation (92) | 1993 | 1384 | 1214 | 605 | 729 | 120 |

In summary, because this project is required to create its own water (prior to the issuance of the building permit), its approval is consistent with Policy 3.01.

**b. LCP Policy 3.03 (Water Management Plan)**

Policy 3.03 states:

> The City may develop a specific, comprehensive, long-range water plan which will implement water management policies that will provide water service consistent with sound resource planning. New water and sewer services to previously unsubdivided areas shall not be approved until a Water Management Plan has been developed, adopted, and submitted for Coastal Commission review and approval as a subsequent amendment to the LUP.

Policy 3.03 does not apply to the approval of a coastal development for a house in an area that has already been subdivided. This house is in an area that has been subdivided. Further, a water management plan was in fact certified by the Commission in 1995. Therefore, the City action is consistent with Policy 3.03.

**c. LCP Policy 3.04 (Environmental Safeguard for Coastal Waters)**

Policy 3.04(3) requires that the water management plan ensure that there will be an "adequate groundwater supply to protect the biological productivity of coastal waters including riparian stream corridors . . . ." Policy 3.04 does not apply to approval of a coastal development permit for an individual house but to the approval of a water management plan. Therefore, the City's action is consistent with Policy 3.04(3). Staff notes that the water management plan has been certified by the Commission, in part on the basis of its being consistent with the Environmental Sensitive Habitat policies of Chapter 3 of the Coastal Act (LCP Amendment 1-94).

**d. LCP Policy 3.05 (City Capital Improvement Program)**

Policy 3.05 states that the City shall adopt a five-year Capital Improvement Program for sewer and water service maintenance and improvements but does not propose a moratorium on construction until a Capital Improvement Program is in place. At the time of adoption of this policy, the City's sewer and water infrastructure was in poor condition. The purpose of the policy was to conserve water by upgrading the water and sewer systems to reduce leaks, etc. Since that time the City has replaced water lines and upgraded the sewer system. Thus, the primary concerns addressed by Policy 3.05 have now been addressed. Moreover, Policy 3.05 does not apply to the approval of a coastal development permit for a house. Therefore, the City action is consistent with Policy 3.05.

**e. Measure F (Water Conservation)**

Measure F was an initiative passed by the voters of Morro Bay in 1984. Only two of Measure F's 10 sections, sections 3 and 4, have been certified by the Commission as LCP

amendments. Section 3 governs the maximum number (77) and mix (multi-family and single family) of residential building permits that can be issued each year. Section 4 limits the amount of water for commercial and industrial building permits to no more than 130 percent of the residential allocation.

Section 3 potentially affects the appealed house in that the City can issue no more than 77 residential building permits per year. Thus, a building permit for the house would not be issued if it would be building permit number 78. The City of Morro Bay has issued 14 single family dwelling building permits for the year to date, and that 42 more are in process, including 11 for single family dwellings in the Cloisters subdivision. The first dwelling in the Cloisters subdivision received the fifth building permit for the year. However, the City action that has been appealed is the approval of a coastal development permit, not a building permit. Section 3 does not apply to actions on coastal development permits.

Section 4 limits the amount of water that commercial and industrial building permits require to no more than 130 percent of the residential allocation. The appeal concerns a single family dwelling, not a commercial or industrial building. Section 4 does not apply to the approval of a coastal development for a house.

Therefore, the project is consistent with the certified portions of Measure F.

**f. Measure I**

Measure I limits the amount of savings from retrofitting that can be allocated to a new use to no more than one-half of the savings. Furthermore, Measure I prohibits the City from allocating water to a new use based on water savings derived from projects performed by the City or on City managed property; projects that had previously earned water saving credits; replacement of City water pipes; and mandated projects or measures (such as forced rationing of water use or compulsory retrofitting of private property). Measure I also defined the word "project" to mean ". . .any measure, act, process or procedure by which the consumption of potable city water may be assumed, or expected, to decrease and thereby legally permit the allocation of city water to new use." Measure I is not certified as part of the LCP, although it is proposed for certification in pending LCP amendment 1-97. Because Measure I is not currently part of the LCP, it is not a valid standard of review for this project. (Commission staff has nonetheless determined, informally, that the City's approval complies with Measure I.)

**3. Public Access and Recreation**

For coastal development permits for development between the sea and the first public road, the local government, or the Coastal Commission on appeal, must make a finding that the project is in conformance with the Coastal Act's Chapter 3 policies regarding public access and recreation. The relevant Coastal Act access policies are listed below.

**<u>Section 30210</u>**

*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 (part)**

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

*(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*

. . . .

**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.*

Prior to development of the Cloisters subdivision, the site was vacant and had trails near or at the inland base of the dunes and through the dunes to the beach. Additionally, an unimproved State Park parking area with trail to the beach was located immediately adjacent to the site on the north. The LCP called for two vertical accessways and a lateral accessway based on historical use patterns, allowing a lateral path inland of the dunes. A previous, third accessway across the middle of the dunes was deleted by LCP amendment 3-88 as being inconsistent with protection of sensitive dune habitat. The LCP requirements have been fulfilled as part of the subdivision. This individual house will have no impact on access; all required access facilities are in place.

The Cloisters project provides for public access in the following ways:

**a. Dedication of Beach Frontage and Sand Dunes**

Of the total site area of 84.4 acres, approximately 22 acres are sand dunes. The dunes, which front on the beach, have been dedicated to State Parks. Two accessways go through the dunes; one on the north and one on the south. No accessways go into the heart of the dunes from the landward side because the entire dune area is being revegetated and restored with native plants, but access to the dunes is available on the seaward side of the dunes. Additionally, the beach seaward of the dunes was already owned by State Parks as part of Morro Strand State Beach.

**b. Public park**

The project included creation of a public park in the center of the site. The park is fully developed and has been dedicated to the City of Morro Bay. Park improvements include parking, restrooms, play and picnic area, and a connection to a lateral public access trail at the base of the dunes.

**c. Lateral trail**

A lateral public access trail runs the length of the site at the inland base of the dunes and connects the public park in the center of the site with vertical accesses at the north and south ends of the site.

**d. Vertical access**

Two vertical accesses are provided. Prior to the Cloisters development there were numerous trails and paths leading across the dunes. The current vertical access is limited to one site on the north and one site on the south. The northern vertical access is now a developed State Park parking lot with restroom and trail to the beach. Construction of the improved parking area was funded by the Cloisters project. The southern access is a path and boardwalk leading from the lateral path through the dunes. Although vertical access is now more restricted than in the past, it is beneficial in that the dune vegetation between the two vertical accessways is being restored with native plants. (European beach grass and iceplant previously were the dominant plants. Reduced trampling impacts will help to assure success of the native dune plant restoration project.)

The Cloisters project provides enhanced public access while at the same time restoring fragile coastal resources. Therefore, approval of this house is consistent with Coastal Act access policies 30210, 30211, 30212(a)(1), and 30221, as well as those of the LCP.

## C. Conclusion

After review of further information regarding fill elevations, house heights, and location of the view corridors, it is apparent that the Cloisters project grading is consistent with the approved plans. Any view blockage that may result from the development of houses on the site was either already contemplated and approved in the two previous LCP amendments applicable to this site or approved in the subdivision permit which was found to be consistent with the LCP. Any differences among the grades as shown on the 1991 grading plan, the 1997 as-built grading plan, and the 1998 spot elevation check maps are so small in relation to the overall visual resource that they are insignificant. The subject house is consistent with the height limits imposed by the LCP and the Commission when the subdivision was approved. Accordingly, as conditioned to incorporate the City's permit conditions (see Exhibit 2), the Commission finds that the subject house is consistent with the LCP, as well as the Coastal Act's Public Access and Recreation policies.

## V. CALIFORNIA ENVIRONMENTAL QUALITY ACT

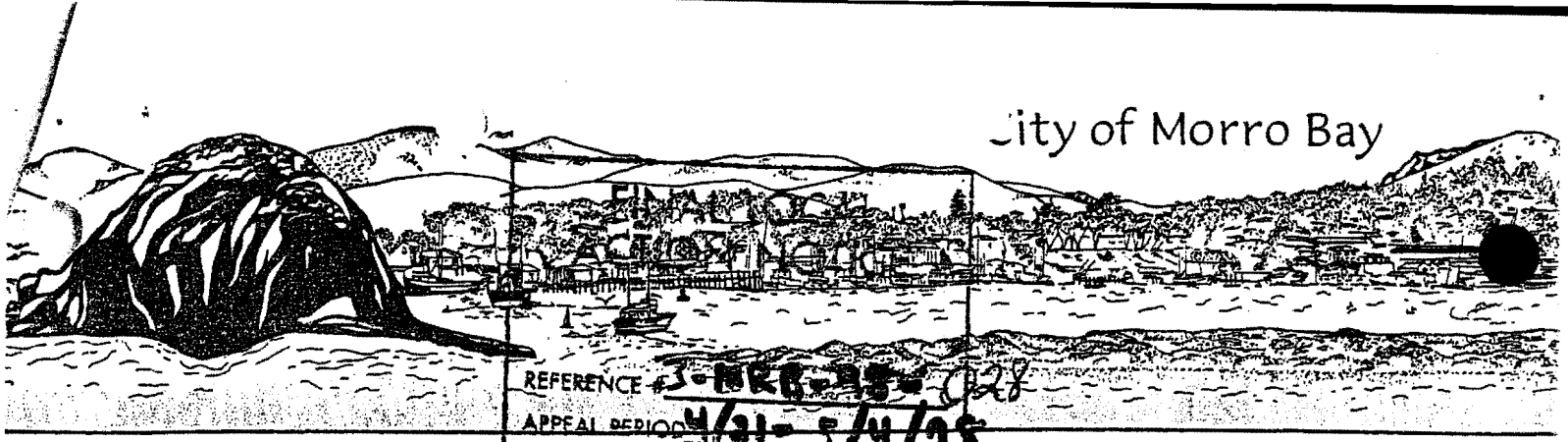
Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be

consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) 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 Commission finds that the proposed project, as conditioned, will not have any significant unmitigated adverse effects on the environment.

**NOTE:** **Exhibits 1, 3, 4, and 5 are identical to the corresponding exhibits attached to the A-3-98-37 staff report; therefore <u>only Exhibit 2 is attached</u> to this staff report.**

See A-3-98-37 for the following additional relevant attachments:

| | |
|---|---|
| Exhibit 1 | Vicinity and Location Maps |
| Exhibit 3 | View Corridor and Building Height Map |
| Exhibit 4 | Special Conditions for A-4-91-44, Cloisters Subdivision |
| Exhibit 5 | Staff Memorandum - Independent Survey |




PLANNING & BUILDING DEPARTMENT • 595 HARBOR STREET MORRO BAY, CALIFORNIA 93442 • 805-772-6210

# PLANNING AND BUILDING DEPARTMENT

## NOTICE OF FINAL ACTION ON COASTAL DEVELOPMENT PERMIT

NOTICE OF FINAL CITY ACTION
on Coastal Development Permit No. . CUP 30-97(Precise Plan)CDP 77-97R

The Following project is located in the Morro Bay Coastal Zone and a Coastal Permit Application has been acted on by the City.

RECEIVED
APR 20 1998
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Applicant: Keyoto Morro Bay % Bruno Bosio

Address: 1685 Tanglewood, SLO CA 93401

Project Description: Construct a new 2,040 square foot two story residence with a 484 square foot garage.

Project Location 2233 Emerald Circle

APN No. 065-388-045 Lot Area: 6,645 sq.ft.

Zoning: MMR/CCR/GC/PD

LUP/General Plan: Mixed Use Area G

Filing Date: 1/31/98 Action Date April 13, 1998

Action By: CITY COUNCIL Action Taken: DENIED APPEAL AND UPHELD PLANNING COMMISSION ACTION

Attachments: Permit, Findings, if any, and Conditions of Approval

☐ THIS SITE IS OUTSIDE OF THE COASTAL COMMISSION APPEAL JURISDICTION

☒ This City decision is appealable to the California Coastal Commission pursuant to the California Public Resource Code, Section 30603. Any person may appeal this decision to the Coastal Commission within TEN (10) working days following Commission receipt of this notice. Appeals must be in writing and should be addressed to: California Coastal Commission, 725 Front Street, Ste, 300, Santa Cruz, CA 95060, Phone: 415-427-863

BA04/15/98 10:46 AM\S:\MSOFFICE\WINWORD\PLAN&BLD\PERMITS\2233EMRL.PMT

Ex2
A-3-98-38

CC: WARREN DORN; NED ROGOWAY; BERNIE MELVIN; AND DONALD

CASE NO. CUP 30-97(PRECISE PLAN DP77-97R

SITE PLAN

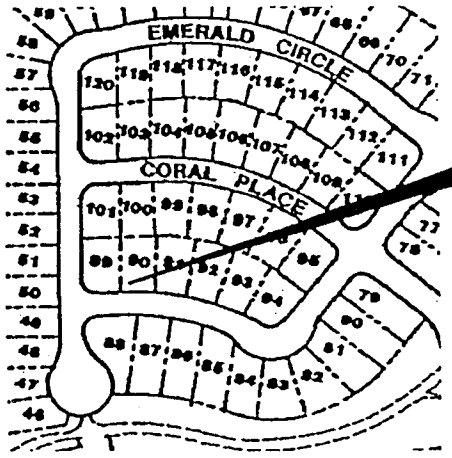
EXHIBIT A

A-3-98-3

Ex 2, #2

BUILDING SUMMARY

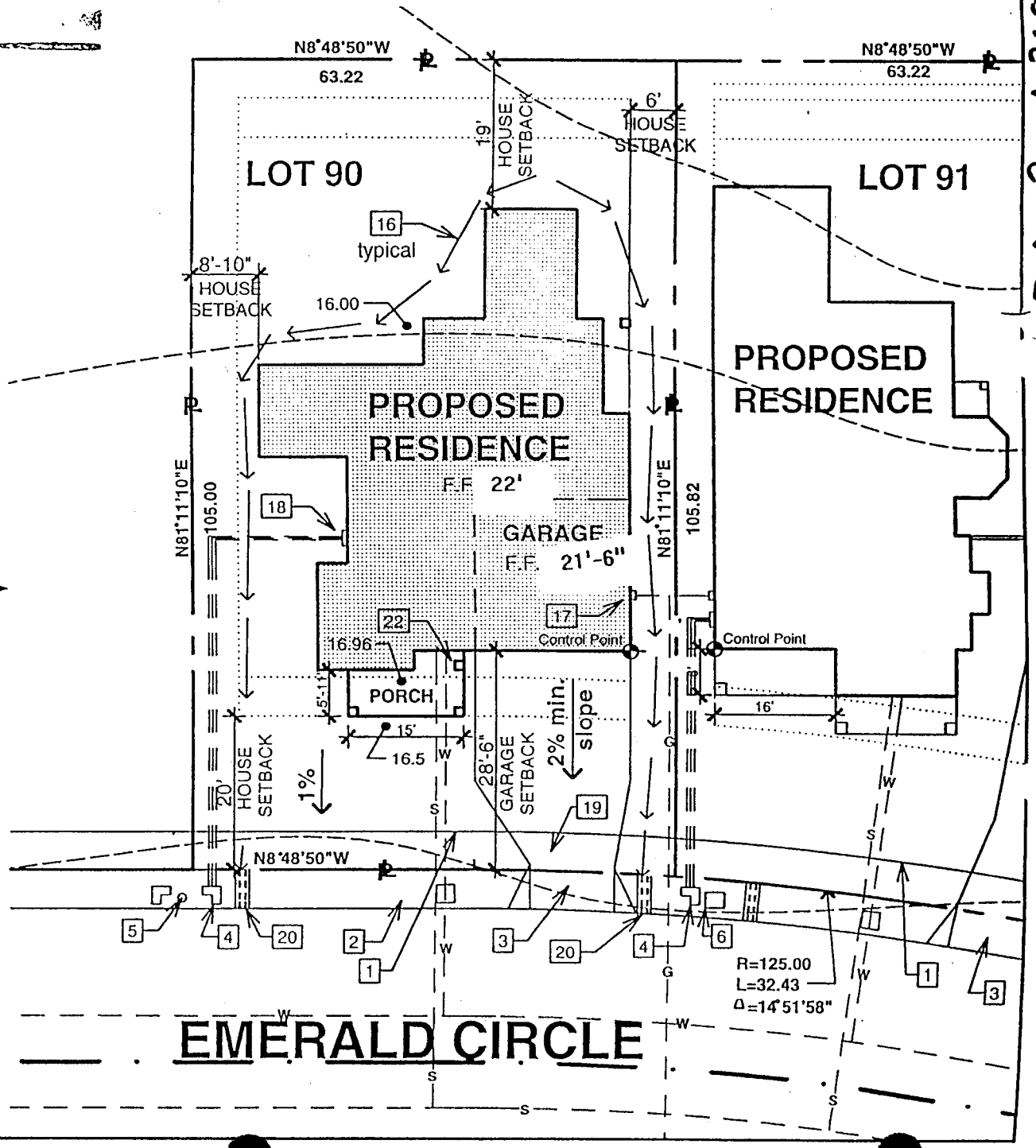
| | | |
|---|---|---|
| SITE AREA: | 6,645 SF | |
| USE: | Single Family Residence | |
| OCCUPANCY: | R-3 | |
| CONSTRUCTION: | Type V-N, Sprinklered | |
| NUMBER OF STORIES: | Two | |
| BUILDING AREA: | Conditioned Space | 2,040 sf |
| | Non-conditioned Garage | 484 sf |
| HEIGHT RESTRICTION: | 25' | |
| LOT COVERAGE: | 28% | |




PROJECT SITE

SCALE: NTS

N




the Cloisters

Plan 3a- Lot 90

2233 Emerald Circle


RRM DESIGN GROUP

Architecture · Planning · Engineering · Interiors · Landscape Architecture

3701 South Higuera Street, San Luis Obispo, California 93401 805/543-1794

Victor Montgomery Architect · Lic. Number CA 11090

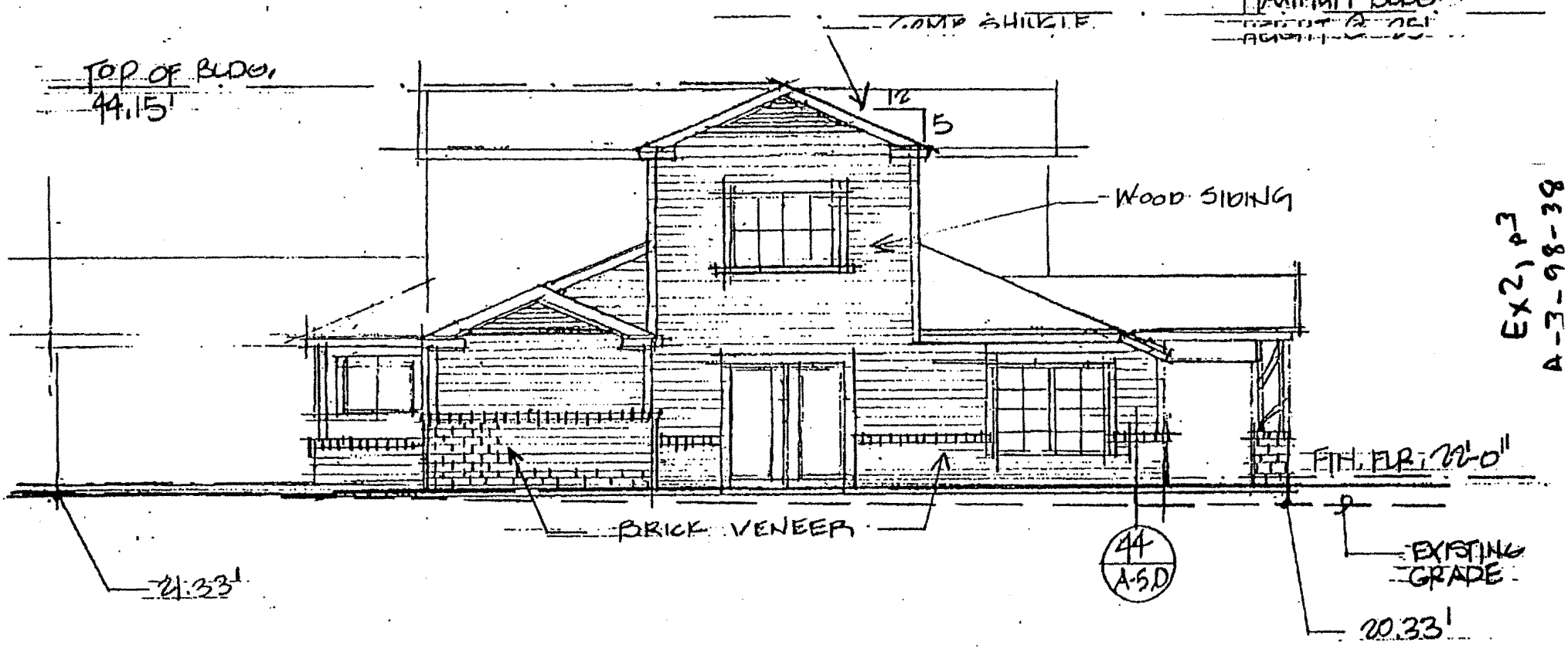
'6233 EMERALD

**Roof Height Compliance**

$\frac{\text{Low + High}}{2}$ = Avg. + Max. Height = Max. Elev. Of Roof Top

$\frac{21.33' + 20.33'}{2}$ = 20.83'+25' = 45.83'

RECEIVED
FEB 2 6 1998
COMMUNITY DEVELOPMENT DEPARTMENT




Ex 2, p3
A-3-98-38

# SOUTH ELEVATION

**Scale: 1/8"**

**FINDINGS**
**CASE NO. CUP 34-97/CDP 81-97R**
**2751 Indigo Circle**
**Construction of a Single Family Residence and Detached Garage**

Staff recommends that the Planning Commission make the following Findings:

1. The project will not be detrimental to the health, safety, comfort and general welfare of the persons residing or working in the neighborhood; and

2. The project will not be injurious or detrimental to property and improvements in the neighborhood; and

3. The project will not be injurious or detrimental to the general welfare of the City; and

4. The project is an allowable use in its zoning district and is also in accordance with the certified Coastal Land Use plan for the City of Morro Bay, and is in conformance with the coastal access policies of Chapter 3 of the California Coastal Act.

5. The project is in conformance with the applicable conditions of approval for Tract 1996 (Case No. CUP 28-90/TM 01-90); and

6. The project design is consistent with the elements contained in the approved CC&R's for Tract 1996, the Cloisters, that are intended to create a unified architectural and aesthetic consistency and tone so that each residence will harmonize with the beauty and natural surroundings and coastal nature of the property.

7. That for purposes of the California Environmental Quality Act, Case No. CUP 34-97/CDP 81-97R is Categorically Exempt, Class 3 (CEQA Guidelines Section 15303).

# CONDITIONS OF APPROVAL FOR
# A SINGLE FAMILY RESIDENCE AND DETACHED GARAGE
# CASE NO. CUP 34-97/CDP 81-97R
# 2751 INDIGO CIRCLE

## SC. STANDARD CONDITIONS:

1. Permit: This permit is granted for the land described in the staff report, referenced above, and all attachments thereto, and as shown on the attached exhibits, and on file with the Planning and Building Department. The locations of all buildings and other features shall be located and designed substantially as shown on the aforementioned exhibit(s), unless otherwise specified herein.

2. Inaugurate Within Two Year: Unless the construction or operation of the structure, facility, or use is commenced not later than two (2) years after the effective date of this approval and is diligently pursued thereafter, this approval will automatically become null and void; provided, however, that upon the written request of the applicant, prior to the expiration of this approval, the applicant may request up to two extensions for not more than one (1) additional year each. Said extensions may be granted by the Planning and Building Director, upon finding that the project complies with all applicable provisions of the Morro Bay Municipal Code, General Plan and Local Coastal Program Land Use Plan (LCP) in effect at the time of the extension request.

3. Changes: Any minor change may be approved by the Planning and Building Director. Any substantial change will require the filing of an application for an amendment to be reviewed and approved by the Planning Commission.

4. Compliance with the Law: All requirements of any law, ordinance or regulation of the State of California, City of Morro Bay, and any other governmental entity shall be complied with in the exercise of this approval.

5. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicants failure to comply with conditions of approval. This condition and agreement shall be binding on all successors and assigns.

6. Compliance with Conditions: Compliance with and execution of all conditions listed hereon shall be necessary, unless otherwise specified, prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Planning and Building Director and/or as authorized by the Planning Commission. Failure to comply with these conditions shall render this entitlement, at the discretion of the Director, null and void. Continuation of the use without a valid entitlement will constitute a violation of the Morro Bay Municipal Code and is a misdemeanor.

7. Acceptance of Conditions: Prior to obtaining a building permit and within thirty (30) days of the effective date of this permit, the applicant shall file with the Director of Planning and Planning and Building written acceptance of the conditions stated herein.

8. Compliance with Morro Bay Standards: This project shall meet all applicable requirements under the Morro Bay Municipal Code, and shall be consistent with all programs and policies contained in the certified Coastal Land Use plan and General Plan for the City of Morro Bay.

**PB. PLANNING AND BUILDING CONDITIONS:**

1. Compliance with Conditions of Approval for Tract 1996: The approved project shall comply with all applicable conditions of approval for approved Conditional Use Permit and Tract Map, Case No. CUP 28-90/TM 01-90, including, but not limited to, required noise standards, residential fire sprinklers, building and fence height limitations, lot coverage, and undergrounding of all utilities.

2. Design Review: The exterior finishes and materials shall remain in substantial conformance to the plans reviewed and on file with this approval. Any approved changes shall meet the intent as stated in Section 5.1 of the approved CC&R's for Tract 1996.

3. Setbacks: The setback of all new construction shall be measured from the property line or view corridor line as follows:

   **Front: 20 foot minimum**
   **Garage: 20 foot minimum**
   **Interior Side: 10 % of the lot width, with a 6 foot maximum**
   **Rear: 10 foot minimum**

4. Building Height Verification: Prior to either roof nail or framing inspection, a licensed surveyor shall submit a letter to the building inspector certifying that the height of the structure is in accordance with the approved plans and complies with the height requirement of **14 foot maximum above finish grade as accepted by the City Engineer**. The finish grade shall not exceed the minimum elevation necessary to flood-proof the residence, and in any event, shall not exceed the finished grade as shown on the grading plan for Tract 1996 approved by the City.

5. Water Equivalencies: Prior to the issuance of a building permit, all necessary water equivalencies for the proposed use shall be obtained by the applicant; and a determination made that water service is available for the proposed use.

6. Water Saving Devices: Water saving devices shall be installed in the project in accordance with the policies of the Morro Bay Coastal Land Use Plan and as approved by the Building Official.

7. Dust Control: That prior to issuance of a grading permit, a method of control to prevent dust and wind blow earth problems shall be submitted for review and approval by the Building Official.

8. Landscape Plan: Prior to issuance of a building permit, the applicant shall submit a landscape plan, including irrigation and hardscape details, for review and approval by the Planning and Building Director. Pursuant to the conditions of approval for Tract 1996, no landscaping, shall be maintained at a height exceeding the maximum allowed for the structure. Additionally, the criteria contained in the CC&R's, Sections 5.17-5.22 shall be met.

9. Maintenance of Landscaping: All plant materials shall be maintained diligently to ensure proper health, growth, and appearance. Replacement materials shall have similar functional characteristics as that originally approved. Sloped areas within the view corridor easement portion of the lot shall be maintained in accordance with the provisions outlined in the approved CC&R's.

10. Archaeology: In the event of the unforeseen encounter of subsurface materials suspected to be of an archaeological or paleontological nature, all grading or excavation shall immediately cease in the immediate area, and the find should be left untouched until a qualified professional archaeologist, knowledgeable in Chumash Culture, or paleontologist, whichever is appropriate, is contacted and called in to evaluate and make recommendations as to disposition, mitigation and/or salvage. The developer shall be liable for costs associated with the professional investigation.

## PW. PUBLIC WORKS CONDITIONS

1. Fees: Fees required pursuant to these Public Works Conditions shall be paid at or mailed to the Public Works Department, 695 Harbor Street, Morro Bay, CA 93442. Checks shall be made payable to the City of Morro Bay.

2. Encroachment Permits: Are issued at the Department of Public Works, 695 Harbor Street, prior to construction in or use of land in the City right-of-way and may be required prior to, building permit issuance, or as required by the City. Fees for required encroachment permits are as set forth in the Master Fee Schedule adopted by the City Council.

   --Standard Encroachment Permit,
   Required for standard construction per City standard drawings and specifications. Current fee $71.82

   --Special Encroachment Permit,
   Required for non-standard work or encroachments in the City right-of-way. Current fee $35.91 plus applicable direct costs for checking, administration, and recording.

   --Sewer Encroachment Permit,
   Required for any sewer work or construction in the City right-of-way. Current fee $71.82

3. Repair & Replacement of Public Improvements: The Applicant shall repair curb, gutter, street, or any public improvements which were damaged by Applicant during the course

of construction of this project. Applicant shall replace site frontage curb, berm or gutter at abandoned or illegal drive approach areas.

4. Grading and Drainage Plan: Route roof and driveway runoff to the street in a non-erosive manner and not concentrate runoff onto adjacent properties.The applicant may be required to submit a grading and/or drainage plan with calculations to demonstrate the proposed on-site drainage facilities will handle the peak run-off from the 25-year storm. If a proposal does not satisfy the Building Official that the parameters below will be met, a grading and drainage plan shall be submitted by the Applicant for approval by the Public Works Department and City Engineer prior to issuance of a building permit.

5. Grading/Erosion Provisions: If grading operations extend into the rainy season, November 1 through March 31, an Erosion and Sedimentation Control Plan shall be submitted for approval. The plan shall provide for positive measures to protect against erosion of adjacent property and prevent sediment or debris from entering any harbor, waterway, ecologically sensitive area, or public roadway. The plan shall be accompanied by such bond or other assurance as may be required by the Public Works Director. (Method of dust control shall be submitted to Building Official at the Community Development Department).

6. Domestic Water Pressure Reducer: The Applicant's plumber shall install a pressure reducer on the private property portion of the project if in his judgment his static water pressure readings indicate such device should be required. (Water pressure zones in Morro Bay vary from 40 to 120 psi.).

7. Domestic Water Backflow Prevention Device: If required, the Applicant is responsible for the installation of an approved domestic water backflow prevention device per MBMC chapter 13.08. Devices are generally not required for single family homes. Devices are usually required for irrigation systems on a dedicated water meter; systems which use may change in character of use (commercial rentals, etc.); gray water systems; or any plumbing system which has cross-connections or the ability to allow water of deteriorated sanitary quality to enter the public water supply. The installation shall occur prior to building permit completion approval by the City. Should the Applicant need further information, the City's contracted inspection provider can be reached at: (805) 781-5544, Office of Cross-Connection Inspector, S.L.O. County Health Agency, 2156 Sierra Way, San Luis Obispo, Ca. 93406.

8. Sewer Backwater Valve: The sewer lateral shall be provided with a backwater valve on private property to prevent a blockage of the municipal sewer main from causing damage to the proposed project.

9. Street Trees: Installation or removal of a tree in the City right-of-way shall be pursuant to the Morro Bay Municipal Code, Chapter 12.08 and the Standard Drawings and Specifications of the City of Morro Bay Public Works Department.