

CALIFORNIA COASTAL COMMISSION

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APPEAL STAFF REPORT

SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

Appeal number A-3-MRB-03-081, Reddell

Applicants Dan Reddell

Appellants George Contento

Local government City of Morro Bay

Local decision On May 19, 2003, the Planning Commission approved with conditions an application for a lot line adjustment, conditional use permit, and coastal development permit to construct a three and four story mixed use building along the bluffs at 215 Harbor Street. The Planning Commission's decision was appealed on July 3, 2003 and subsequently upheld by the City Council on July 28, 2003.

Project location 215 Harbor Street, Morro Bay, San Luis Obispo County (APN: 066-291-013). See Exhibit 1.

Project description As approved by the City of Morro Bay, the project involves adjusting the lot line of six existing parcels totaling 17,182 square feet and construction of a three and four story mixed use building on the reconfigured lots, resulting in six new visitor-serving commercial uses on the ground floor totaling 5,133 square feet and six single-family residences with garages totaling 17,549 square feet on the upper floors for a total of 22,682 square feet.

File documents City of Morro Bay Permit Numbers TTM 02-02, CUP 08-02, and CDP 35-02R; January 26, 2003 Initial Study and Draft Mitigated Negative Declaration; and the City of Morro Bay certified Local Coastal Program.

Staff recommendation . **Substantial Issue Exists; Approve w/ Conditions**



California Coastal Commission
April 15, 2004 Meeting in Santa Barbara

Staff: M. Watson Approved by: *MW*

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Summary of staff recommendation: On May 19, 2003 the City of Morro Bay approved a Coastal Development Permit authorizing the construction of a three and four story mixed use building at 215 Harbor Street overlooking the Embarcadero in Morro Bay. On July 28, 2003, the City Council denied an appeal of the project finding it consistent with the certified LCP standards. On August 11, 2003, George Contento appealed the City approval on the basis that the project did not conform to the underlying commercial visitor serving zoning standards, and other LCP policies regarding public access, blufftop development, and visual impacts.

The underlying zoning is visitor-serving commercial (C-VS) but the site is located within the Planned Development (PD) and Special Design Criteria (S.4) overlay zones. As stated in the certified LCP, the purpose of C-VS zone is to provide a district for commercial uses intended to primarily serve the needs of tourists and other visitors to the city. The C-VS zoning does provide for residential uses, but only when secondary to principally permitted commercial uses.

The project site encompasses six contiguous lots on a sloping coastal bluff above Morro Bay's scenic Embarcadero. The proposed development is subject to the City's bluff development, planned development and special design criteria standards because of its location and because it is a 17,182 square foot property in single ownership. As approved, the project will adjust lot lines to create six small lots that range from 2,200 square feet to 3,667 square feet. The applicant proposes to construct six commercial retail shops ranging from 614 square feet up to 1,522 square feet on the ground floor level with six single family residences ranging from 1,651 square feet to 3,102 square feet on the second, third and fourth floors. In addition, each residential unit is provided with a private garage ranging from 485 to 550 square feet. The six residential units also include 2,255 square feet of porches, balconies, and decks. The total amount of new commercial floor area is 5,133 square feet; the total amount of residential floor area (with garage, without balconies and decks) is 17,552 square feet. The ratio of residential to visitor-serving commercial floor space is greater than 3:1.

Building height along the primary elevations (i.e., Harbor, Market, and Front Streets) averages between 32– 42 feet which exceeds the 30' height standard for development in the C-VS zone. In approving the project, the City cited the exemption allowance for projects located within a planned development (PD) overlay, which allows for modification of or exemption from the development standards of the primary zone, which would otherwise apply, if it would result in better design or other public benefit. The applicant provided as an example of the public benefits, under-grounding of utilities, provision of ADA accessible public sidewalks and mini-plazas, and the chance to "master plan" development on all six lots at one time.

Each of the approved six residential units will have a two-car garage. In addition, one handicapped-accessible space and two guest spaces are provided for a total of 15 parking spaces to serve the residential portion of the project. City standards further require one parking space per every 300 square feet of commercial floor area space (e.g., $5,133 / 300 = 17.11$). The applicant has suggested, however, that a parking in-lieu fee will be paid to the City for acquisition and provision of the balance of required



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parking spaces, although this was not required by the City as a condition of approval.

The project approved by the City raises a substantial issue regarding conformance to the City of Morro Bay certified Local Coastal Program (LCP) public viewshed and neighborhood compatibility, primary zoning, parking, and blufftop development policies. For example, the City's approval exceeds maximum allowable heights and failed to adequately evaluate the impacts on public views to Morro Bay and Morro Rock. The approval of the mixed-use building does not provide an appropriate balance of commercial (primary) to residential (secondary) uses and failed to adequately consider impacts on neighborhood compatibility or provide adequate mitigation for required parking. In general, the certified LCP requires development to be sited to protect views to and along the ocean and scenic coastal areas, and be visually compatible with the character of the surrounding area. The size and scale of the approved development is much larger than all existing development adjacent to the project site and along the Embarcadero and is generally inconsistent with the small town fishing village character of Morro Bay. Furthermore, excessive massing will obstruct significant coastal views of Morro Bay and Morro Rock, the landmark of the community.

As a result, staff recommends that the Commission find that the appeal raises a **substantial issue** regarding conformance to the certified LCP.

In meetings with staff, the applicant has proposed modest revisions to the approved project that would remove a fourth floor element and increase the Harbor Street setbacks of the upper floors to reduce visual impacts. Notwithstanding the proposed design improvements, additional measures are needed to ensure the project is consistent with the certified LCP. Staff therefore recommends that the Commission **approve a project with conditions** designed to resolve issues with visual resources, neighborhood compatibility, parking, consistency with underlying zoning. Specifically, the recommended conditions:

- Achieve consistency with the LCP visual resource policies by reducing the overall height of the proposed development and increasing views towards Morro Bay and Morro Rock;
- Bring the project into conformance with the LCP zoning standards by facilitating greater balance between the residential and visitor-serving commercial uses on the site;
- Require an appropriate parking in-lieu fee to be paid to the City of Morro Bay for the future purchase of property and provision of public parking in the Embarcadero;
- Incorporate the conditions and mitigation measures approved by the City of Morro Bay in order to achieve compliance with the local conditions of approval.



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Exhibits

- Exhibit 1: Project Location Map
- Exhibit 2: City of Morro Bay Staff Report, Findings and Conditions
- Exhibit 3: Appeal of George Contento
- Exhibit 4: Current Project Plans, Elevations, Lot Configuration
- Exhibit 5: Photos of Surrounding Area
- Exhibit 6: Special Condition 1 Illustration
- Exhibit 7: Bluff Alignment: Topography Map

1. Local Government Action

On May 19, 2003, the City of Morro Bay Planning Commission approved and issued a coastal development permit for a mixed-use building at 215 Harbor Street overlooking the Embarcadero and waterfront. The City relied upon planned development (PD) overlay exemptions to overall height and side yard setbacks to make a finding of project consistency with the certified LCP. In its findings, the City concluded that a greater than normal public benefit would be achieved by such deviations from the



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standards. Some examples of those benefits mentioned include neighborhood revitalization, a visual connection between downtown and the waterfront, construction of a block-long sidewalk with curb and gutter, and architectural distinctiveness. The project did not include enough requisite parking onsite and as a consequence should rely upon payment of an in-lieu fee to adequately mitigate for the loss of parking. Though there is a brief analysis of parking in the Planning Commission's January 18, 2003 report, no findings or conditions requiring an in-lieu fee were attached to the City's final report approving the project. See Exhibit 2.

An appeal of the Planning Commission decision was filed on July 3, 2003 by a local resident, George Contento, who argued that the project was inconsistent with the City's certified LCP policies regarding the underlying zoning, visual compatibility, public parking, and bluff top standards. The appellant's contentions were denied by the City Council on July 28, 2003 upholding the earlier Planning Commission decision.

2. Standard of Review for Appeals

Coastal Act section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because the development is within 300 feet of the mean high tide line.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located within 300 feet of the mean high tide and thus, this additional finding is not required in the de novo review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicants, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.



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3. Summary of Appellant's Contentions

In general, the Appellant asserts that the project is inconsistent with the base zoning of commercial visitor serving in that roughly 77% of the floor area is dedicated to residential use. The appellant further contends that a residential use is inconsistent with Coastal Act policies, which place a priority on visitor serving uses in areas where it is suitable. Another claim is that the project does not provide adequate parking and that the City's in-lieu parking fee is inadequate to provide enough funds to purchase parking spaces in the Embarcadero area. In addition, the appellant contends the project exceeds height limits specified in the bluff development standards and is inconsistent with the visual policies of the LCP. Specifically, the appellant contends that the City-approved project is not consistent with the certified Land Use Plan (LUP) Policies 1.07A, 1.25, 2.02, 2.08, 12.01, 12.02, 12.06 and Commercial Visitor Serving zoning standards 17.24.120, and bluff development standards 17.45 because:

- The C-VS district is intended to primarily serve the needs of tourists and other visitors to the City. The Harborview project contains six residential units over commercial space with a total floor area of roughly 74%. Commercial space is 26%.
- Harborview is short 34 parking spaces. Morro Bay's parking in-lieu fee is inadequate to provide enough funds to purchase parking spaces in the Embarcadero.
- The proposed project is inconsistent with bluff top development standards, which limit building height to 14 feet.
- Harborview will appear to be five stories tall. Currently, no existing development on the bluffs or the Embarcadero exceeds 2.5 stories in height. The project is inconsistent with the existing small town character and will block public views from streets.

Please refer to Exhibit 3 for the full text of the appeal.

4. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action.

Motion. I move that the Commission determine that Appeal Number A-3-MRB-03-081 raises no substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff Recommendation of Substantial Issue. Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.



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Resolution To Find Substantial Issue. The Commission hereby finds that Appeal Number A-3-MRB-03-081 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

Recommended Findings and Declarations on Substantial Issue

These findings incorporate by reference, the more detailed discussion of the issues found in the De Novo portion of this report.

5. Project Location, Description, and Background

The project approved by the City is located in the Bayfront planning area on the bluffs of the Embarcadero at 215 Harbor Street in the City of Morro Bay. The Embarcadero is defined as the area between Beach Street on the north, Main Street on the east, Olive Street on the south, and the waterfront to the west. The LUP notes that the Embarcadero area provides visitors and residents direct views to the bay, Morro Rock and a working harbor. See Exhibit 1.

The project site comprises an entire city block and is located in the heart of the waterfront, the most visited part of the City. The entire area is zoned commercial visitor serving (C-VS) and there are numerous restaurants, hotels, shops, and boutiques in this area. The site of the proposed development also lies within a planned development (PD) and special design criteria (S.4) overlay zone. The purpose of the PD overlay is to provide for detailed and substantial analysis of development on parcels which because of location, size, or public ownership, warrant special review. This overlay also is intended to allow for modification of or exemption from the development standards of the primary zone which would otherwise apply if such action would result in a better design or other public benefit. The final zoning consideration is the special design consideration overlay which requires special design review to maintain and enhance the character and visual quality of areas so designated.

The site of the proposed development rises up to approximately 40 feet above sea level, such that there are views down Harbor Street towards Morro Rock, Morro Bay, and the sand spit. The City's LUP describes Morro Rock as "the landmark of the community" and "the most significant visual feature of the area." Morro Bay and the Embarcadero in particular is *the* major tourist attraction of the community and a prime coastal visitor-serving destination with an estimated 1.5 million visitors annually.

As noted above, the approved project comprises six attached mixed use buildings, three and four stories in height, on six legal lots of record. The approval includes 6 ground floor commercial visitor serving establishments, roughly 5,135 square feet in total and 6 residential units roughly 14,405 square feet in total on the second, third, and fourth floors. The approval also includes 6 two-car garages, one for each residential unit and an additional three spaces for ADA accessible parking and two guests. The total



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residentially related garage space is 3,150 square feet. Together the residential component of the project (residential units plus garage) comprises roughly 77% of the total enclosed floor area space, while the total commercial retail space consists of approximately 23% of the total enclosed floor area. Add to that another 2,250 square feet of porches, balconies, patios, and walks and the total gross structural coverage of the residential units equates to 19,800 square feet or roughly 79% of the building. The project will also include such customary improvements as sidewalks, curbs and gutters, ADA accessible ramps and landings, landscaping, and increasingly more common improvements such as underground utilities lines.

The blufftop site at 215 Harbor Street lies north of Harbor Street, east of Front Street, and west of Market Street. The blufftop at this location is at an elevation of approximately 40 feet above mean sea level and has the remnants of an old hotel and residential buildings on it. Constructed sometime prior to 1958, the Harbor View Motor Lodge remained on the site until March 1995 when a large bluff retaining wall along Front Street collapsed during a rainstorm. Upon the collapse of the retaining wall that supported the site, the motor lodge buildings were condemned and demolished. Today the bluff parcel slopes up from approximately 14 feet above mean sea level at Front Street to roughly 40 feet mean sea level at Market Street. In determining average grade from which to measure building height, the certified LCP establishes that building height calculations be measured from topographic conditions that were in existence on January 1, 1986. At that time, the property was developed with a large retaining wall (+/- 25 feet high) along Front Street. According to LCP policy 17.12.310, what is allowable in terms of establishing average grade and thus maximum building heights today must be measured from pre-existing grades, even though the collapse of the bluff retaining wall in 1995 has altered the topography significantly.

Also of note, the certified LCP establishes that new development located within 50 feet of the bluff edge shall not exceed a height limit of 14 feet, with the exception of steeply pitched roofs and other appurtenances (i.e., chimney stacks) which may rise to 17 feet. The City's staff report findings declare that the natural bluff feature was lost years ago during construction of the Harbor View Motor Lodge and the large retaining wall along Front Street. It appears, however, from comparing old State Tidelands Maps and USGS photo-rectified topographical maps with recent aerial photos of the site, that the existing bluff edge position follows the same or similar alignment as the historical (pre-development) bluff edge. The certified LCP provides policies for delineating the bluff top edge along with standards for establishing bluff setbacks, height requirements, and development controls, though the City's staff report findings and approval did not reference them.

6. Substantial Issue Findings

1. Visitor Serving Priorities. The appellant contends the project is inconsistent with the base visitor serving commercial (C-VS) zoning of the parcel. Appellant indicates that the primary purpose is for visitor-serving type uses such as restaurants, hotels, gift shops, etc., and that the amount of building space dedicated towards residential use (i.e., 74%) is inappropriate under this zoning. Table 17.24.120(I) of the LCP specifically states that a single apartment unit or security quarters may be



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allowed only when secondary to permitted commercial uses and located on the rear one-half of a lot or upper story.

The project site is also located in a planned development and special design criteria overlay zone. Section 17.40.030 (PD) provides for detailed and substantial analysis of development on parcels, which because of location, size or public ownership warrant special review. This section is also intended to allow modification or exemption from the development standards of the primary zone if such an action would result in a better design or greater than normal public benefit achieved by such modifications. Section 17.40.050G (Special Design Criteria S.4) requires the submittal of viewshed plans for review and approval to protect and enhance the character and visual qualities of the area.

As noted in the appeal, the approved project is weighted in favor of residential development over the visitor-serving commercial aspects of the project by 3:1 and appears to be inconsistent with the intent of the visitor serving commercial district. The approval allows an exemption from the underlying zoning height standard, and fails to consider other complimentary standards (bluff development, visual resource) that ultimately results in a degradation of public views of Morro Bay and Morro Rock and is not subordinate to the character and form of the coastal bluff. The city's approval did not demonstrate greater than normal public benefits or adequately evaluate the project's impacts on significant coastal views as required by 17.40.050G. The approval may set a precedent for other mixed-use developments contemplated in this area and the potential for adverse impacts to coastal resources, particularly visual resources and neighborhood compatibility, will be exacerbated if development in the surrounding area seeks similar exemptions to the baseline and overlay standards established by the LCP. Thus, the appeal raises a substantial issue regarding the project's consistency with the base zoning.

2. Visual Impacts. Similarly, appeal contentions regarding the visual impacts of the increased development intensity raise a substantial issue regarding the project's consistency with LCP visual resource protection standards, such as Section 17.48.190 and Policies 12.01, 12.02, and 12.06 requiring that the scenic and visual qualities of coastal areas be protected and enhanced. Appellant contends that the large-scale development is not consistent with the City's small town atmosphere and will adversely impact public views, as well as set a bad precedent for Morro Bay and the other central coast towns. The exemptions to LCP height and visitor-serving priority standards approved by the City have the potential to conflict with LCP visual resource protection requirements by blocking coastal views, altering coastal bluffs, and introducing a design and intensity of use that is not compatible with surrounding development. Because these impacts are not addressed by the City's approval, the appeal raises a substantial issue.

3. Parking. The appeal contentions raised surrounding parking impacts associated with the project raise a substantial issue regarding the project's consistency with LCP parking standards, 1.07A and 2.08. The appellant contends that the approved project will harm public access to a prime visitor serving area by not providing enough public parking on-site and notes that the current level of public parking along the City's waterfront is inadequate. The appellant further contends that the City's in-lieu parking fee system is inadequate to fund acquisition of available lands and provide parking especially in the Embarcadero area as required by LCP policy. Though the City approval adequately conformed to the parking



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requirements for that portion of the development associated with the residential (secondary) use, it did not comply with the parking requirement for public parking associated with development of a visitor serving commercial (primary) use and was not conditioned to include a fee in-lieu of the required parking. Therefore, the appeal raises a substantial issue regarding the project's conformance to LCP parking requirements.

4. Bluff Top Development. As with the appeal contentions above, the City approval raises a substantial issue with respect to the project's conformance with the certified LCP bluff development standards such as 17.45.010 and 17.45.040. In this instance, the appellant contends that the approved project is inconsistent with blufftop development standards, which limits new development to 14 feet in height above the existing bluff. The Harborview project is two and sometimes three times that height and does not step down the bluff face as required. As with section 7.1 above, the City approval relied upon the planned development (PD) designation to grant an exemption from the bluff development standards protecting the unique geographic features of the bluff. The approval fails to consider other complimentary standards designed to preserve and enhance public views to and along the bay and ensure that bluff development is subordinate to the character and form of the coastal bluff area. Thus, the appeal raises a substantial issue regarding the project's consistency with the LCP's bluff development standards.

5. Substantial Issue Conclusion. The appeal raises a number of issues associated with the project's consistency with the City's certified LCP. The proposed mixed-use project is too large, too massive, and skewed too far towards residential development to be consistent with the underlying zoning standards, the bluff development standards, and the general character of the Embarcadero. The approval will block views to the City's most prominent visual resource –Morro Rock and does not include an adequate evaluation of potential viewshed impacts. The City's approval does not include the required amount of parking for the commercial portion of the development and does not provide any mitigation for the deficiency. The City-approved mixed-use building is not compatible with the character of the bluff setting or surrounding development and will become the dominant feature of the site.

Therefore, a substantial issue is raised regarding the consistency of the City's approval with the certified LCP policies and standards.

8. Staff Recommendation on De Novo Permit

The staff recommends that the Commission, after public hearing **approve** the Reddell coastal development permit with conditions.

MOTION: *I move that the Commission approve Coastal Development Permit No. A-3-MRB-03-081 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL: Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.



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RESOLUTION TO APPROVE THE PERMIT: The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified City of Pismo Beach Local Coastal Program. 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.

9. Conditions of Approval

A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Revised Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the permittee shall submit to the Executive Director for review and approval revised project plans showing a project reduced in size but similar in design to the project approved by the City and clearly showing square footage, point of measurement for building height and finished floor heights, with heights labeled and dimensioned on the plan. The final site plan, floor plans, and elevations shall be in substantial conformance with the revised project concept plans drafted by Mark Allen and dated as received by the Commission on October 23, 2003 to the following



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criteria:

- a) **Building Height.** Overall building height shall be limited to 14' as measured from average site grade of 38.5 feet. In addition to the height limitation, the Market Street facade shall not present more than two levels (floors) on the east elevation. The Front Street facade shall present no more than three levels (floors) at the west elevation. Plate height at the Front Street elevation shall not exceed 31 feet from the identified finished floor elevation. Magilside Drive facade shall not exceed two levels (floors). The Harbor Street facade shall not exceed three levels (floors). Chimneys, vents, and other appertenances shall be limited to three feet above the roofline. Building facades shall be broken up and setback such that no unbroken portion of the building fronting a public street shall exceed 20 feet in height above finished grade. Please see Exhibit 6 for a graphic illustration of this condition.
 - b) **Mixed Use Development.** The revised building plans shall demonstrate a more balanced weighting of commercial and residential uses and in no instance shall the proportion of residential use (i.e., floor area, garage, other enclosures, etc.) exceed 65% of the total uses on the site.
2. **Parking In-Lieu Fee. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the Permittee shall submit to the Executive Director for review and approval, evidence that the entire parking requirement has been satisfied for the residential and commercial uses or evidence that a parking in-lieu fee has been paid to the City of Morro Bay equal to a) the current fair market value of purchasing land in the vicinity of the project (i.e., Embarcadero) *and* b) construction of the required number of off-site parking spaces needed to serve the development.
3. **Compliance with Local Conditions of Approval.** With the exception of City Conditions 1 and 3, all 35 conditions of the City of Morro Bay Coastal Development Permit # 35-02R become conditions of this permit. (See Exhibit 2 of this report for a copy of the local conditions of approval). Because the City imposed these conditions under legal authority that included but was not limited to the Coastal Act, they remain binding on the applicant as City requirements notwithstanding the Commission's action on this appeal. Accordingly, **PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT,** the permittee shall provide evidence to the Executive Director that those conditions requiring action prior to the commencement of any work have been signed-off by the appropriate City official. Evidence of subsequent condition compliance must also be submitted to the Executive Director at the required stage. In the event that City officials do not exercise such authority, permittee shall submit condition compliance materials to the Executive Director for review and approval.



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10. De Novo Coastal Permit Findings

By finding a substantial issue in terms of the project's conformance with the certified LCP, the Commission takes jurisdiction over the CDP for the proposed project. The standard of review for this CDP determination is the City LCP and the Coastal Act access and recreation policies. The substantial issue findings above, including all citations and analysis, are incorporated directly herein.

A. Visitor Serving Priorities

The City's certified zoning standards detail specific uses and guidelines for development within visitor serving commercial (C-VS), Planned Development (PD), and Special Design Criteria (S.4) overlay zones. Those policies state:

17.24.120 Visitor-serving commercial (C-VS) district.

Purpose. The purpose of the visitor-serving commercial (C-VS) district is to provide a district for commercial uses intended primarily to serve the needs of tourists and other visitors to the city and not to include commercial uses of a more general nature which are oriented towards residents. Uses in this tourist-oriented district shall also provide for landscaping and related aesthetic improvements which create and enhance the visual attractiveness of the city.

Table 17.24.120 (I)

Unless otherwise designated, the following uses, or other uses which are found to be similar and consistent with the general plan and local coastal plan may be allowed with the appropriate permits and licenses:

A single apartment unit or security quarters only when secondary to permitted commercial uses and on the rear one-half of a lot or upper story.

17.40.030 Planned development, (PD) overlay zone.

A. Purpose. The purpose of the planned development (PD) overlay zone, is to provide for detailed and substantial analysis of development on parcels which, because of location, size or public ownership, warrant special review. This overlay zone is also intended to allow for the modification of or exemption from the development standards of the primary zone which would otherwise apply if such action would result in better design or other public benefit.

D. General Development Standards. The standards for development within a PD overlay zone shall be those of the base zoning district, provided however, that standards may be modified by the planning commission or city council as they relate to: building heights; yard requirements; and minimum lot area for dwelling units in the density range provided that any specific design criteria of the general plan and coastal land use plan, applicable to the property, is not exceeded. For those areas of the city which are covered by the waterfront master plan, all new development projects requiring discretionary permits (conditional use permits, etc.) shall be consistent with the design guidelines contained in Chapter 5 of the waterfront master plan. Modifications of standards shall only be approved upon a finding that greater than normal



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public benefits may be achieved by such deviations. Such benefits may include, but are not limited to improved or innovative site and architectural design, greater public or private usable open space and provisions of housing for the elderly or low/moderate income families, provision of extraordinary public access, provision for protecting environmentally sensitive habitat (ESH) areas, but in all cases these provisions shall meet the coastal land use policies.

17.40.050 Special treatment (S) overlay zone.

G. S.4 Special Design Criteria Overlay Zone. In order to maintain and enhance the character and visual quality of these areas, special design review has been found to be necessary. Applications for development shall include (as appropriate) submittal of architectural, landscaping, lighting, signing and viewshed plans for review and approval.

Analysis

The development site is zoned C-VS with a planned development (PD) and special design criteria (S.4) district overlay. The primary purpose of the C-VS zoning as defined in the certified LCP is to provide uses that serve the needs of tourists and other visitors to the City and not to include uses of a more general nature that are oriented towards residents. Mixed-use development such as that proposed here may also be allowed with a conditional use permit. Table 17.24.120 (I) of the certified zoning establishes that a single apartment unit or security quarters may be allowed only when secondary to permitted commercial uses and located on the rear one-half of the lot or upper story.

In this particular case, the approved project adjusts lot lines to create 6 modest building sites (2,200 – 3,665 square feet) with 6 commercial establishments on the ground floor of the building (615 – 1,520 square feet) and 6 single-family residential units on the second, third, and fourth floors (1,650 – 3,650 square feet). The total amount of floor area space dedicated to visitor-serving commercial uses is 5,135 square feet or roughly (23%) of the total enclosed building area. Roughly 14,405 square feet is dedicated to residential living space and another 3,150 square feet for enclosed residential garages. There is also more than 2,250 square feet of residential balconies, porches, walks, and decks proposed. Though there are not any specific size limits for residential units in the C-VS district, the current ratio of residential to commercial use is more than 3:1. Gross structural coverage attributed to the residential use approaches 79%. Table 1 provides a breakdown of the approved development (floor area space) by use.

The applicant maintains that the project's retail space compares favorably with other retail establishments along the Embarcadero and that all the residential uses are located on the upper floors and thus secondary to commercial uses. Applicant exclaims the project adds more than 5,000 square feet of new retail space to the waterfront, a multitude of public benefits, while also providing six single-family residences. Applicant further notes that the project will provide shopping, dining, and other amenities that will enliven the visitor experience and compliment nearby hotels.



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TABLE 1: FLOOR AREA (SQ. FT.) BY USE

| | LOT SIZE | COMMERCIAL FLOOR AREA | RESIDENTIAL FLOOR AREA | RES + GARAGE | TOTAL |
|--------------|---------------|-----------------------|------------------------|---------------|---------------|
| UNIT A | 3,667 | 887 | 3,102 | 3,651 | 4,538 |
| UNIT B | 2,902 | 1,522 | 2,680 | 3,220 | 4,744 |
| UNIT C | 2,262 | 706 | 1,651 | 2,191 | 2,897 |
| UNIT D | 2,951 | 740 | 2,409 | 2,949 | 3,689 |
| UNIT E | 2,200 | 664 | 2,167 | 2,659 | 3,323 |
| UNIT F | 3,200 | 614 | 2,396 | 2,879 | 3,493 |
| TOTAL | 17,182 | 5,133 | 14,405 | 17,549 | 22,684 |
| | | 23% | | 77% | |

From the data provided in Table 1, the City-approved development is not consistent with the underlying zoning standard identified in Table 17.24.120 (I) that allows a single apartment unit or security quarters only when secondary to permitted commercial uses and [located] on the rear one-half of a lot or upper story. The applicant suggests that establishing secondary uses is as simple as determining that all uses will be located on the second floor. Unfortunately, the applicant fails to observe that the standard has two criteria and clearly states the residential use must be secondary and located on the rear one-half of the lot or upper story, indicating that secondary implies some additional limitation on residential use. The descriptive terms “single apartment unit” or “security quarter” also imply a small residential unit. Secondary uses as it is interpreted within the context of the entire standard, implies that they are inferior or subordinate to primary uses. Clearly, based on floor area alone, the residential use is not subordinate to the commercial use. Similarly, with respect to height and massing, the residential uses are not subordinate. Even with respect to provision of off-street parking, the residential uses are not subordinate to the visitor-serving commercial aspects of the project.

The City’s findings and approval was based largely on the conclusion that the residential uses were



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secondary because they could not be accessed from the ground floor along the primary elevations. Though a review of the project plans suggest that at least a portion of one residential unit and the enclosed residential parking garages will be located at grade. Presumably ingress / egress will be accessed from Magilside Drive and Harbor Street (primary) elevations. The LCP standard requires that residential units be located on the rear one-half of the lot or on the upper story. In this case, the applicant has designed a project that does both.

Finally, the certified zoning allows a single apartment unit or security quarters to be permitted with a conditional use permit. It is, however, a stretch to conclude that the proposed residential units are similar to "single apartment units" or "security quarters." *Averaging* at just under 2,925 square feet, the residential units with garages are fairly large single-family residences by Morro Bay standards, where the average size home is 1,949 square feet.

The development site is also located in a planned development (PD) district overlay affording it modification or exemption from the development standards of the primary zone if it would result in a better design or other public benefit. Section 17.40.030 D of the zoning provides for modification of building heights, yard requirements, and minimum lot area. Modifications of these standards can only be approved upon a finding that greater than normal public benefits may be achieved by such deviations. Examples of those benefits include: innovative site and architectural design, greater public or private usable open space, provision of housing for low income families and the elderly, provision of extraordinary public access and protection of environmentally sensitive habitat.

The City's approval includes an exemption from the 30' height limit for development within the visitor-serving commercial zone. In justifying the need to invoke the PD exemptions, the City found that the project provided an opportunity to master plan six parcels at once and obtain all of the street frontage improvements at the same time. The City also sited the project's site design and creative architecture, agreement to underground utilities, as well as an opportunity to advance community goals promoting mixed-use development that it believes will draw tourists from the Embarcadero to the downtown area.

The City's approval does not, however, demonstrate that the exemptions will result in greater than normal public benefits. For example, the identified public benefits include:

1. Improved public access by providing ADA accessible sidewalks and six street-level visitor serving retail shops with terraced mini-plazas.
2. Creation of a welcoming corridor between downtown Morro Bay and the waterfront. Harbor Street provides a direct link to the downtown. The idea is that the six retail shops will create a point of interest that draws persons up the hill and eventually to the downtown area.
3. An enlivened pedestrian experience.
4. Project revitalizes the neighborhood.
5. Establishing a strong visual connection between the downtown and the waterfront. The applicant



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claims the project will restore and enhance the visual quality in a visually degraded area.

6. Architectural Interest. The three and four story buildings step up the hill proportionate with the hillside corner itself. Scale of the buildings are minimized and made interesting through variations in depth and height, pop-outs, extensive use of windows.

As noted above, these improvements may, in fact, benefit the public, but they do not appear to constitute greater than normal public benefits and could be expected to be required of any proposal. With respect to creating a welcoming corridor to the downtown, Staff notes that the heart of the downtown is three to four blocks east of the development site with little draw for visiting tourists. The real attraction in Morro Bay is the working harbor of the Embarcadero and the visitor serving restaurants and retail shops along the waterfront. Staff also notes that the project site is zoned for visitor serving commercial and thus, the provision of commercial development, in and of itself, does not represent a greater than normal public benefit. With respect to revitalizing the neighborhood, the proposed building site has been dormant for some time and thus, the City-approved development will help to revitalize the area. However, the proposed project would do more to revive the City's revenue stream if more of the proposed development were devoted more toward visitor serving commercial uses as opposed to residential uses. Further, Staff disagrees with the applicant's characterization of the bluffs. The proposed development site is located at the southern end of an unbroken natural bluff designated as highly scenic in the certified LCP. Construction of the project, as proposed, will obstruct significant coastal views to Morro Rock and Morro Bay and further degrade the visual quality of the bluff site. The proposed architectural design is interesting, though the approved residences are not low cost and the exemptions are not necessary to protect public access or sensitive habitats. The project will provide open space (albeit paved), but the architectural design conflicts with other LCP resource protection requirements by blocking coastal views, and introducing a design and intensity of use that is not compatible with surrounding development or the character of the bluff setting.

Thus, as approved by the City, the proposed development does not conform to the underlying zoning standards of the LCP. In order to bring the project into conformance with the certified LCP the Commission is recommending special conditions that address the overall height of the building and limit the number of vertical stories on the primary elevations to ensure the project is consistent with the standards identified in the underlying visitor serving commercial zoning. The special conditions also require a more even balance between primary and secondary uses while still providing for significant development of a mixed use building. Only as conditioned, can the proposed project be found consistent with sections 17.24.120, 17.40.030, and 17.40.050 of the City's certified LCP.

B. Community Character

The LCP acknowledges the need of the City to preserve the unique character of its varied neighborhoods and to create a higher quality visual environment within them. The certified land use plan states,



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Among some of the issues that predicate the establishment of policy to preserve neighborhood character are the following:

- (a) New residences and new residential additions are often out of scale and character with the residences in the vicinity,*
- (b) the current allowable height and bulk for residential development is not appropriate for some portions of the community. Such buildings would in many cases block important views and conflict with the character of individual neighborhoods.*

The LCP identifies 3 neighborhoods as primary candidates for protection of neighborhood character, including the Embarcadero.

Development of waterfront areas along the Embarcadero, as well as along the bluffs above the waterfront is an integral part of the views of the bay and Morro Rock and the views from this area should be enhanced.

The LCP policies applicable to this project require new development to be compatible with character of the surroundings by maintaining size, scale, and height relationships with existing development in the area. Those policies state in part:

Land Use Plan Policy 12.01

Permitted development shall be ... visually compatible with the character of surrounding areas.

Land Use Plan Policy 12.02

Permitted development shall be sited and designed to ...be visually compatible with the surrounding area. Specific design criteria shall be established for the following areas:

a. The Embarcadero

The criteria shall include the following specific requirements and shall be applied to proposed projects on a case by case basis during architectural review:

- a. Building height/bulk relationship compatible with existing surrounding uses;*

Land Use Plan Policy 12.06

New development in areas designated on Figure 31 as having visual significance shall include as appropriate the following:

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



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17.45.010 Bluff Development Standards: Purpose

Regulations and performance standards are herein specified to regulate development on coastal bluffs for the following purposes:

A. Protect Public Views. To protect public views to and along the ocean and scenic coastal areas, maintain the character of the bluff setting...

D. Geographic Features. To maintain the unique geographic features of the bluffs and ensure development is subordinate to the character and form of the coastal bluff areas.

17.45.040 Bluff Development Standards.

In addition to the primary base zoning district, and suffix zones, combining districts, specific plan requirements, the following standards shall apply within the bluff buffer area for development on coastal bluff properties:

C. Permitted Development. Permitted development shall be sited and designed to protect public views to and along the ocean and scenic coastal areas, and shall be subordinate to the character of the setting.

17.48.190 General Regulations

New development may be permitted only if the siting and design meet the following standards:

C. Compatibility: the development is visually compatible with the character of the surrounding area and any design themes adopted for the area by the city.

E. Scenic area standards: in highly scenic areas, as depicted in the Morro Bay coastal land use plan/coastal element, the following additional standards shall also apply:

1. Character: the proposed development shall be subordinate in character to its surroundings.

2. Height/bulk: the height/bulk relationships in the development shall be compatible with the surrounding area.

Analysis

These LCP policies were adopted to protect the unique character and small town atmosphere of the City of Morro Bay. The town is made special by the style and character of development along the Embarcadero and the City's waterfront. In particular, the surrounding district is primarily characterized by elements of its commercial fishing roots and the visitor-serving shops, restaurants, and hotels that cater to thousands of out-of-town visitors annually. Development in the area adjacent



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to the project site tends to be a mix of residential and visitor-serving commercial uses, one and two stories in height. Building size and mass is largely defined by the underlying zoning standards, the location of the development (i.e., waterfront, blufftop, etc.), and the City's goals to preserve the character of the Embarcadero.

As noted in the substantial issue findings above and incorporated by reference into this portion of the staff recommendation, development of the bluffs north of the project site is limited to the blufftop with the natural landform of the bluff face unaltered. South of the project site, development is generally more intensive and follows the contour of the land stepping down the bluff. The Market Street frontage is characterized by single story development, such that existing views to and along the bay and Morro Rock are maintained. Please see Exhibit 5. At the toe of the bluff (Front Street), buildings often have multiple stories but are limited to less than 30 feet in height. Existing development along Harbor Street is currently limited to two stories or less.

The proposed project is an architecturally thoughtful design incorporating the use of numerous building offsets, appendages, and fenestrations to create patios, balconies, and walkways to break up mass. Unfortunately, the proposed development is still quite large and, in fact, much larger in size, scale, and height than all other existing development along the bluffs. As approved by the City, the commercial/residential mixed-use building is 2-stories in height along Magilside Drive, 3-stories along Market Street, 3 and 4-stories along Harbor Street, and 3-stories in height along Front Street. Overall building height is 24' at the north elevation (Magilside Drive), 34' at the east elevation (Market Street), 42' at the south elevation (Harbor Street) and 36' at the west elevation (Front Street). Structural development covers nearly 60% of the roughly 17,200 square foot site and non-structural impervious surfaces cover the balance of the site. Although the project will be constructed over 6 individual lots, the dwellings share common walls and the building appears to be one large structure –150' long x 82' wide. The height and mass of the approved project exceeds the height/bulk relationships of adjacent development and certainly is not subordinate to the character of the bluff setting at this location. This structure will loom over existing development and become the dominant feature of the site. As a result, the three and four story mixed-use structure is inconsistent with the certified LCP policies protecting the unique character of the Morro Bay's Embarcadero and surroundings.

In order to bring the project into conformance with the certified LUP and Implementing Ordinances, the Commission is recommending special conditions of approval. Design guidelines pertaining to the height of the building and limiting the number of vertical stories along the north and east elevations are intended to ensure that the project reflects the mass and height relationships of adjacent development and protects the character and form of the coastal bluffs. Special Condition 1 places a limit on overall height to 14 feet above the historic average grade of 38.5 feet. The basis for the 14-foot limit originates in the City's bluff top development standards, which require that all development within 50 feet of the bluff edge to be limited to 14 feet. See section E below. This limit is needed to comply with LUP policy 12.02 and general zoning regulations 17.48.190 that requires new development to limit view blockage of the Bay and Morro Rock. Based on the existing site conditions, nearly the entire site lies within 50 feet of the bluff edge. See Exhibit 7.



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Additionally, in order to maintain the height/bulk relationship consistent with the existing surrounding uses, special condition 1 places limits on the building facades (i.e., numbers of floors) of the primary elevations (i.e., east, south, and west). Market Street is limited to no more than 2 floor levels and Harbor and Front Streets are limited to no more than 3 floor levels. Because of its location at the base of the bluff and directly adjacent to the Embarcadero, Front Street is further limited to an overall plate height of 32 feet. This exceeds the overall height limit of the visitor serving commercial district by two feet, but staff believes the unique and thoughtful architectural design warranted a slight exemption from strict application of the standard as allowed by the PD overlay.

The reduction in height and numbers of vertical floors reduces mass and scale of the proposed structure and brings in line with size and scale of existing development along the primary elevations. Along with ensuring compatibility with surrounding development, the special conditions will preserve public views to and along the bay and Morro Rock and help to ensure the development is subordinate to the character and form of the coastal bluff.

As conditioned to implement these recommended mitigations consistent with the Commission's understanding of them, the project as proposed is consistent with Land Use Plan policies 12.01, 12.02, and 12.06, as well as zoning standards 17.45.010, 7.45.040, and 17.48.190 of the City's certified LCP.

C. Visual Resources

The certified LCP characterizes the City's visual resources as "unique" and of "spectacular visual quality," including views of the bay, sandspit, Morro Rock, and a picturesque collection of fishing and recreational boats. The site of the proposed development is on the western bluffs directly above the waterfront in the Embarcadero. The Embarcadero, as defined by LUP policy 2.03, is the area located between Beach Street on the north, Main Street on the east, Olive Street on the south, and the waterfront to the west. The LCP notes that the City should "conspicuously seek to take better advantage of its visual qualities while attempting to restore and repair damage done to those qualities. To achieve these goals, the City's certified LCP policies detail specific public viewshed protections, which state, in part:

Policy 12.01

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 and 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 on Figure 31, shall be subordinate to the character of its setting.

Policy 12.02

Permitted development shall be sited and designed to protect views to and along the coast and designated scenic areas and shall be visually compatible with the surrounding area. Specific design criteria shall be established for the following areas:



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a. *The Embarcadero (as defined in Policy 2.03)*

b. *Downtown Commercial area.*

The criteria shall include the following specific requirements and shall be applied to proposed projects on a case by case basis during architectural review:

a. *Building height/bulk relationship compatible with existing surrounding uses;*

b. *Landscaping to restore and enhance visually degraded areas using native and drought resistant plant and tree species;*

c. *Preservation and enhancement of views of the ocean, bay, sandspit and Morro Rock;*

d. *Any other requirements applicable from Coastal Commission conceptual approval of the Urban Waterfront Restoration Plan.*

Policy 12.06

New development in areas designated on Figure 31 as having visual significance shall include as appropriate the following:

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

b. *Designation of land for parks and open space in new developments which because of their location are popular visitor destination points for recreation uses.*

c. *View easements or corridors designed to protect views to and along the ocean and scenic and coastal areas.*

17.48.190 General Regulations: Protection of visual resources and compatible design.

New development shall project and, where feasible, enhance the visual quality of the surrounding area. New development may be permitted only if the siting and design meet the following standards:

A. *Protection of public views: significant public views to and along the coast are protected.*

B. *Natural landform protection: alterations to natural landforms are minimized.*

C. *Compatibility: the development is visually compatible with the character of the surrounding area and any design themes adopted for the area by the city.*

D. *Visual quality: restores and enhances visual quality in visually degraded areas.*

E. *Scenic area standards: in highly scenic areas, as depicted in the Morro Bay coastal land use plan/coastal element, the following additional standards shall also apply:*

1. *Character: the proposed development shall be subordinate in character to its surroundings.*

2. *Height/bulk: the height/bulk relationships in the development shall be compatible with the*



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surrounding area.

- 3. Parks and open space: parks or open space shall be designated and incorporated into new developments.*
- 4. View corridors: view corridors shall be incorporated into the development to protect significant public views to and along the shoreline and other scenic areas.*
- 5. Landscaping: landscaping shall be provided to restore and enhance visually degraded areas using native, if feasible, and drought-resistant plant and tree species.*
- 6. Preservation and enhancement: preservation and enhancement of views of the ocean, bay, sandspit and Morro Rock.*

The City's certified LCP policies and standards require that new development be designed to protect and preserve public views to and along the coast and be visually compatible with, and subordinate to, the character of the surrounding area. This includes maintaining / preserving height and bulk relationships with existing development, preservation and enhancement of views of the ocean and bay, sand spit and rock, landscaping to enhance and restore visually degraded areas, and designation of land for parks and open space in new developments.

The project approved by the City is located on the bluffs overlooking the waterfront in an area defined as visually significant in the certified LCP. The project site is located at the south end of a natural bluff in the heart of the Embarcadero, the most visited part of the City. Development in the area adjacent to the project site, generally follows the contour of the land and steps down the bluff. Looking towards the coast from the Market Street frontage, existing development is single story in height preserving views to and along the Bay and Morro Rock. Looking up from the Embarcadero and Front Street, the bluff face is undeveloped north of Harbor Street. Existing development is located on the top of the bluff and mainly small scale residential in nature. See Exhibit 5.

Because the site rises up to approximately 40 feet above sea level, there are views down Harbor Street towards Morro Rock, Morro Bay, and the sand spit. The City's LUP describes Morro Rock as "the landmark of the community" and "the most significant visual feature of the area." Morro Bay and the Embarcadero in particular is *the* major tourist attraction of the community and a prime coastal visitor-serving destination with an estimated 1.5 million visitors annually.

South of Harbor Street across from the project site, the bluff is more extensively developed with visitor-serving commercial structures that are larger than those to the north. Development such as Dorn's Restaurant and the Blue Sail Inn appear large from the Front Street elevation, but maintain a single story façade along the top of the bluff (Market Street elevation). By stepping down the bluff, development is accommodated without creating an overly massive and imposing façade that blocks public views or diminishes the small town character of the Embarcadero.

Along its primary elevations, the mixed-use building is 3 - 4 stories and 32' - 42' in height, exceeding



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the 30' height standard of the primary zoning. It is the largest development (size and mass) of its kind along the Embarcadero. The floor area ratio (i.e., ratio of floor area to lot size) ranges from 109% to 163%. Gross structural area (i.e., floor area, garages, balconies, decks) is more than 2.5 times the size of the building footprint. See Table 1 in section A above. In terms of permanent public viewshed impacts, the proposed mixed-use development will block coastal views to Morro Rock, the bay and the sand spit. Along the Market Street (east) elevation, the proposed structure is twice the height than the existing structure on site that will be demolished as part of this project. Because of this, motorists, pedestrians, and bicyclists will lose a portion of the important public view along Harbor Street. Harbor Street provides an important link from the downtown to the central Embarcadero and affords dramatic views of Morro Rock from atop the bluff. Please see Exhibit 5.

As currently proposed, the Harborview mixed-use building will be larger in size and mass than any of the existing development south of Harbor Street and much larger than any bluff development north of Harbor Street. Accordingly, the City-approved development is not subordinate to the character of its surrounding, does not maintain the bulk/height relationships established elsewhere in the Embarcadero, and is not visually compatible with the pattern of existing development gracing the bluffs. The proposed development represents a significant departure from the established character of the community and embodies little of the coastal fishing town atmosphere that characterizes the City's Embarcadero.

The City approval of such a large structure at this location concluded that even if the building height were restricted to 14', views to Morro Rock and along the coast would be similarly blocked. However, that is not the case. Fourteen feet is the approximate height of the existing structure located on site. Photo simulations provided by the applicant demonstrate that significantly more of Morro Rock will be blocked from view by the proposed 35-foot Market Street façade than is currently blocked by the existing structure.

The certified LCP requires permitted development to be sited and designed to protect and enhance views to and along the coast and designated scenic areas. The policies regarding visual compatibility are designed to avoid excessively large structures that would have significant adverse impacts on the public views. In this instance, rather than designing to minimize visual impacts, the applicant has chosen to design a project that because of its size and scale does not minimize impacts but instead will block views to and along the coast. In fact, the project meets or exceeds all maximum zoning standards. The Commission notes that maximum zoning standards (height, FAR, coverage, etc) are exactly that, maximums, and depending on the site characteristics and other factors (i.e., LUP policies), building to zoning maximums is not warranted.

During meetings with staff, the applicant has suggested that he would reduce the fourth floors on buildings A and B and further setback the upper floor elements along Harbor Street to lessen the visual impact of the project. The applicant maintains that the project meets all City guidelines for building height and maximum lot coverage except for a portion of Unit A and B that was granted an exemption from the height standard because of the project's public benefits under the PD overlay zone. The applicant further notes that the height, bulk, and size are consistent with the surrounding area, which is expanding, upgrading and evolving in response to marketplace demand and changing times.



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Notwithstanding the applicant's proposed project modifications, additional measures are needed to ensure that the project is carried out consistent with the LCP visual resource protection policies and standards. Accordingly, the Commission is recommending special condition one limiting the building height to 14 feet above the historic average site grade of 38.5 feet. Limiting the building height to 14 feet will maintain a line-of-site over the top of the proposed structure and thus, maintain views to Morro Bay and Morro Rock. Special condition one also restricts the building facades to ensure that the mixed-use structure, as viewed from the primary elevations, is visually compatible with surrounding development. Additionally, in order to avoid a large vertical façade, special condition one requires setbacks and articulations along the street frontages.

As conditioned to implement visual mitigations consistent with the Commission's understanding of them, the project can be found to be consistent with policies 12.01, 12.02, and 12.06, as well as zoning standard 17.48.190 of the City's certified LCP.

D. Parking

The City's certified LCP policies provide standards for the provision of parking in all new development. Those policies state:

Policy 1.07A

In reviewing all new development requests, provision shall be made for adequate off-street parking in order to serve the needs of the development. Once an approved parking management program for the City providing off-street parking resources has been developed and implemented as part of the LUP, new development shall be allowed to satisfy parking requirements through participation in such a program. If the program includes an in-lieu fee system, the new development shall provide an in-lieu fee of an amount equal to the purchase of land and construction of the number of spaces needed to serve the development's needs.

Policy 2.08

In reviewing visitor-serving development in the Embarcadero as defined in Policy 2.03, the City shall find that provision of off-street parking is sufficient to serve the development's peak demands as defined in Phase III of the Local Coastal Program. Parking demands shall be satisfied by the provision of off-street facilities on the development site or within 300 feet. Once a parking management program for the Embarcadero has been developed which provides off-street parking resources, and such a program is implemented, applications for development shall be allowed to satisfy their peak parking demands through participation in the program. If the program includes an in-lieu fee system, the applicant shall provide the City an in-lieu fee of an amount equal to the purchase of land and construction of the number of spaces needed to serve the development's peak needs. The City shall use the fees to provide for parking support in the Embarcadero.

As noted in the Background section above, the approved project includes 6 two-car garages -one for each



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residential unit, one handicapped-accessible parking space, and two resident guest spaces for a total of 15 parking spaces. Though the applicant has adequately fulfilled the parking requirement for the residential (secondary) use, it falls short of providing adequate parking for the commercial (primary) uses. The first floor of the project is dedicated to commercial uses with a parking requirement of one space for every 300 square feet (17.44.020), the total parking demand for the commercial component of the project would be 17 spaces (5,135 s.f. / 300 s.f. = 17 spaces). The approved project does not include any parking for the required commercial spaces and was not conditioned to include a fee in-lieu of the required parking.

The City's certified LCP includes policies and standards relating to the provision of off-street parking for all new development and calls for the creation and implementation of a parking management program that provides parking resources throughout the City. New development is allowed to satisfy parking requirements through participation in such a program and if the program includes an in-lieu fee system, the new development shall provide an in-lieu fee of an amount equal to the purchase of land and construction of the number of spaces needed to serve the development's needs. See policies 1.07A and 2.08. As proposed, the project falls short of providing adequate commercial parking spaces on site. Applicant responds by stating that the required commercial parking is provided through an in-lieu fee and that the City of Morro Bay has actively pursued additional parking. Though the city staff report discusses the use of an in-lieu fee to mitigate for the lack of parking, the approval did not include a condition requiring payment of the fee.

The City of Morro Bay does not have a parking management program and thus, a strict interpretation of the standard would require all new development to provide on-site parking, until and unless, the City developed and implemented a parking program. That being said, the City does actively collect parking in-lieu fees to help purchase available land and provide parking along the City's Embarcadero. In May 1997, the City designated use of parking in-lieu fees to make improvements at an existing 100-space parking lot on Front Street. After rehabilitation, the parking facility provided an additional 26 public parking spaces. In 2001, the City purchased a property that provides 40 parking spaces on the blufftop above the Embarcadero at a cost of \$501,330 for an average cost of \$12,500 per parking space. The City has also acquired property that is currently being used for parking but that was not paid with by funds from the parking in-lieu fee program. Parking in-lieu fee funds weren't use because the long-term use of the property is still in question. The property is located on the Embarcadero and is appraised at \$2.7 million, and it provides 60 short-term parking spaces at an average cost of \$45,000 per space. Based on the data provided by the City, since 1995 the parking in-lieu fee program has funded a total of 66 new parking spaces. Another 60 spaces have been provided with other funds. Over the same time period, the total number of parking spaces required as a condition of development and mitigated by in-lieu fee is 159.

With respect to the approved project, the City's findings identify a parking in-lieu fee as the most appropriate vehicle for mitigating the public parking requirement associated with the new development and estimates an in-lieu fee equal to \$4,000 per required parking space. Staff notes that the proposed in-lieu fee is 3 to 10 times less than the demonstrated cost of acquiring a parking space near the



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Embarcadero lending credence to the contention that the parking in-lieu fee is inadequate to fund acquisition of available lands and provide parking. Since 1995, the City has been able to provide only 66 of the required 159 parking spaces through its in-lieu fee program, although an additional 60 have been provided by using public funds. As the property values along the Embarcadero continue to increase and the availability of suitable properties to establish parking sites becomes more limited, it will be more difficult and expensive to acquire property solely for the purpose of providing parking.

As proposed, the project is inconsistent with the above referenced LCP policies. The Commission is recommending special condition 2 requiring the applicant to either provide adequate on-site parking for the entire development or to provide evidence that an in-lieu fee of an amount equal to purchase land and construct the required parking at today's costs has been paid to the City of Morro Bay. Only as so conditioned can the project be found consistent with LCP policies 1.07A and 2.08.

E. Bluff Development

Policy 1.25

New developments on bluff tops shall not exceed a height of 14 feet above the existing bluff top. In addition, new developments shall be designed in such a manner as to avoid alteration of bluff faces, and where feasible given physical constraints, shall be designed to step down bluff faces.

17.12.66 Bluff top edge.

"Bluff top edge" means the upper termination of a bluff. When the top edge of the bluff is rounded away from the face of the bluff as a result of erosional processes, the edge shall be defined as that point beyond which the downward gradient of the land surface increases more or less continuously until it reaches the general gradient of the bluff. In a case where there is a step like feature at the top of the bluff face, the landward edge of the topmost riser shall constitute the bluff top edge.

17.12.172 Coastal bluff area.

"Coastal bluff area" means that area commencing either between:

- 1. The landward edge of the rocky or sandy portion of the beach or bay; or*
- 2. Immediately landward of the Embarcadero or Front Street, to the nearest street right-of-way. A coastal bluff consists of rock, sediment or soil resulting from erosion, faulting, folding or excavation of the land mass and having vertical relief of ten feet or more as measured from the toe of the bluff to the bluff edge.*

17.12.310 Height of building.

A. "Height of building" means the vertical distance from the average level of the highest and lowest portion of the lot covered by the building, as measured to the topmost point of the roof but not including ventilation stacks and chimneys under six feet in width or length.



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B. When measuring the various levels on a lot to calculate the height, the grades in existence on the lot on January 1, 1986, shall be used; any fill added to the site since that date shall be deducted from present grade elevations and any areas cut since that date may be added to the present grade elevations when calculating the height limit.

17.45.010 Bluff Development Standards: Purpose

Regulations and performance standards are herein specified to regulate development on coastal bluffs for the following purposes:

A. Protect Public Views. To protect public views to and along the ocean and scenic coastal areas, maintain the character of the bluff setting, not impair but facilitate public access, address environmental concerns as provided in the general and local coastal plans.

B. Protect the Coastal Bluffs. To protect the coastal bluffs in the city from future development which may damage such bluffs, and in an effort to minimize the hazards to life and property.

C. Adverse Visual Impacts. To mitigate the potential for adverse visual impacts that can be created by blufftop development and to preserve existing public coastal views for the future enjoyment of the city's residents and visitors.

D. Geographic Features. To maintain the unique geographic features of the bluffs and ensure development is subordinate to the character and form of the coastal bluff areas.

17.45.040 Bluff Development Standards.

In addition to the primary base zoning district, and suffix zones, combining districts, specific plan requirements, the following standards shall apply within the bluff buffer area for development on coastal bluff properties:

B. New Development Located Within Fifty Feet Of The Bluff Edge. New development located within fifty feet of the bluff edge shall not exceed a height limit of fourteen feet; provided, however, that for peaked roofs (4 in 12 or greater pitch) and other architectural features, a height of up to seventeen feet may be permitted.

C. Permitted Development. Permitted development shall be sited and designed to protect public views to and along the ocean and scenic coastal areas, and shall be subordinate to the character of the setting. Development shall not impair but facilitate public access, environmental concerns, and public views as provided in the general and local coastal plans. Development shall be coordinated with existing or planned future public facilities.

Analysis

As noted in the findings above, the City relied upon the planned development (PD) designation to grant an exemption to the overall height and setbacks. The exemption in combination with other actions taken by the City, allowed it to approve a three and four-story building as consistent with a 14-foot height limit.



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As defined in section 17.12.310, the height of the building is measured as the vertical distance from the average grade of the lot in existence on January 1, 1986 to the topmost point of the roof. In 1986, a large retaining wall was located along the southwestern property line elevating the topographic condition to approximately 38 feet above mean sea level. The wall collapsed during a rainstorm in March 1995 and the fill material behind it subsequently washed away. Since that time, the bluff has equilibrated to its current topographic condition, which in some areas is more than twenty feet below the height of the grade when the retaining wall existed. Relying solely on this standard as the City did, creates an unintended and very special benefit to the applicant, and one that is inconsistent with all the other policy direction of the LCP.

Applicant responds that the bluff had been fully developed in the past and the bluff features have been damaged beyond recognition by that past development. The zoning ordinance allows for new development within 50 feet of the bluff edge to have a 14-foot flat roof or 17-foot high, pitched roof. The project site does not have recognizable natural landforms and the proposed architecture will serve to restore the lines of the bluff. The project does not exceed the height limitation except for a small portion of the overall project that extends into the bluff top area by 10 feet.

The purpose of the City's bluff development standards as stated in Section 17.45 of the zoning ordinance are to protect public views and maintain the character of the bluff setting. New development must mitigate potential adverse visual impacts, maintain the unique geographical features of the bluffs, and ensure development is subordinate to the character of the bluff area. Section 17.45.040B states that new development within 50 feet of the bluff edge shall not exceed a height limit of fourteen feet, providing however, that for peaked roofs and other architectural features, a height of up to seventeen feet may be permitted. Where the City's approval ran into trouble was in its determination of the bluff edge. The City's approval assumed that the bluff edge was coterminous with the retaining wall that was in place in 1995 prior to collapse. The certified LCP standard, however, specifically establishes the bluff top edge based on existing on the ground conditions (§ 17.12.66). The City's findings stated that after the collapse of the retaining wall, the bluff feature was destroyed beyond recognition and that for lack of any identifiable geographic feature, the prior location of the wall would serve as the bluff edge.

Staff disagrees with the City's findings for a couple of reasons. First, it is clear from aerial photos that the bluff feature is intact at this location. Further, the City could have simply looked to the LCP for a definition of the bluff to aid in its determination. Section 17.12.172 states that a Coastal Bluff Area is the area immediately landward of the Embarcadero or Front Street to the nearest street right-of-way and having a vertical relief of ten feet or more as measured from the toe of the bluff to the bluff edge. The western edge of the proposed development site is located along Front Street and has a vertical relief of approximate twenty feet from its toe to the bluff edge. Secondly, section 17.12.66 provides the criteria for establishing the blufftop edge but was not referenced in the City's staff report. And lastly, staff compared the existing topographical conditions with old State Tidelands Maps and USGS photo-rectified topographical maps and found that the existing bluff edge position follows the same or similar alignment as the historical (pre-development) bluff edge. By making a finding that the bluff had been destroyed and then assuming the bluff edge was coterminous with the prior retaining wall excluded a



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large portion of the development site from the bluff top development standards of the LCP.

As a result, the City-approved project is inconsistent with the certified LCP because it is based on the maximum allowable height of the underlying visitor serving commercial zone rather than the maximum height allowed by the bluff top development standards, and an improperly defined the bluff edge (i.e., the location of the now non-existent retaining wall) rather than a delineation based on existing topographic conditions. As such, the approval results in a structure that exceeds the blufftop development standards and is inconsistent with the blufftop development, visual resource, and general development standards of the certified LCP. The approved project is larger in size, scale, and height than all other existing development along the bluffs in the Embarcadero. It is more massive than all other structures and will block public views of Morro Rock and the Bay from both Harbor and Market streets.

As noted in the Community Character section above, the approved development is out of character with the bluff setting north of Harbor Street. Development in this location is confined to the blufftop and typically one and two-story in height. Buildings are set back from the bluff edge to minimize hazards and preserve the natural geologic features of the bluff face. By contrast, the City approved structure will essentially replace the bluff by covering the entire lot including the area of the bluff face and become the dominant feature of the site. South of Harbor Street, development occurs on the bluff face, but it is generally limited to two stories in height and 30 feet overall from existing grade. Based on the City's interpretation of the average grade and bluff edge location, the approved development rises more than 40 feet from existing grade along Front and Harbor Streets. The City's approval did not adequately evaluate the project's impacts on the character of the bluffs or the coastal fishing village roots that attracts many visitors to the Embarcadero. And though while the City approval establishing the average grade of the site may be consistent with an outmoded zoning standard, the approval is inconsistent with many other LCP standards including those established to define the bluff top edge and limit the height of blufftop development (§ 17.12.66 and 1745.040B).

Accordingly, staff is recommending special condition one that limits new development on bluff tops to a height of 14 feet from the historical average grade of 38.5 feet. By restricting the height of the proposed building, the potential for any adverse impacts on public views will be minimized and the development will be brought into line with the character of unique geographic features of the bluffs.

As conditioned to implement bluff development mitigations consistent with the Commission's understanding of them, the project can be found to be consistent with policy 1.25, as well as zoning standards 17.12.66, 17.12.172, 17.45.010, and 17.45.040 of the City's certified LCP.

F. 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



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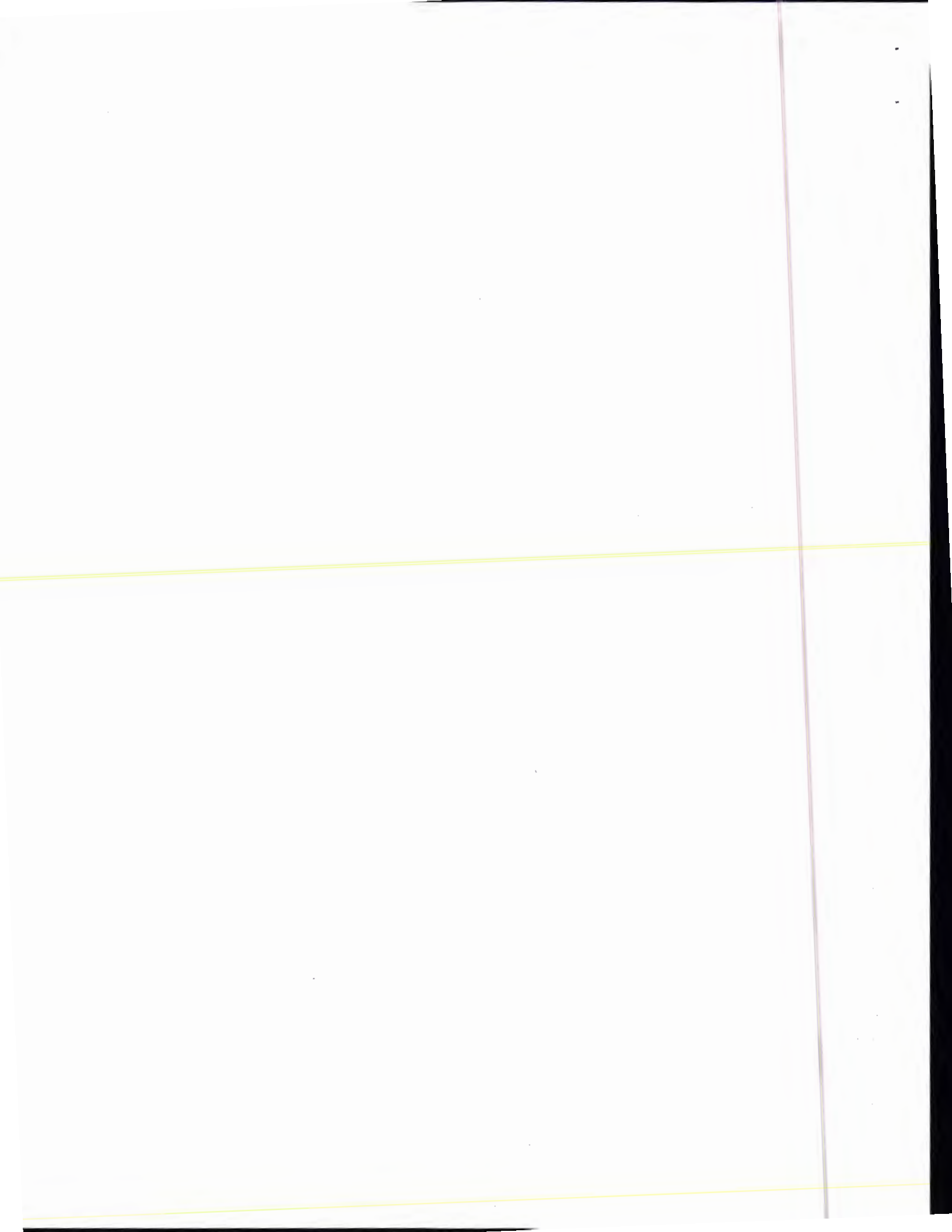
Harborview Mixed Use Development

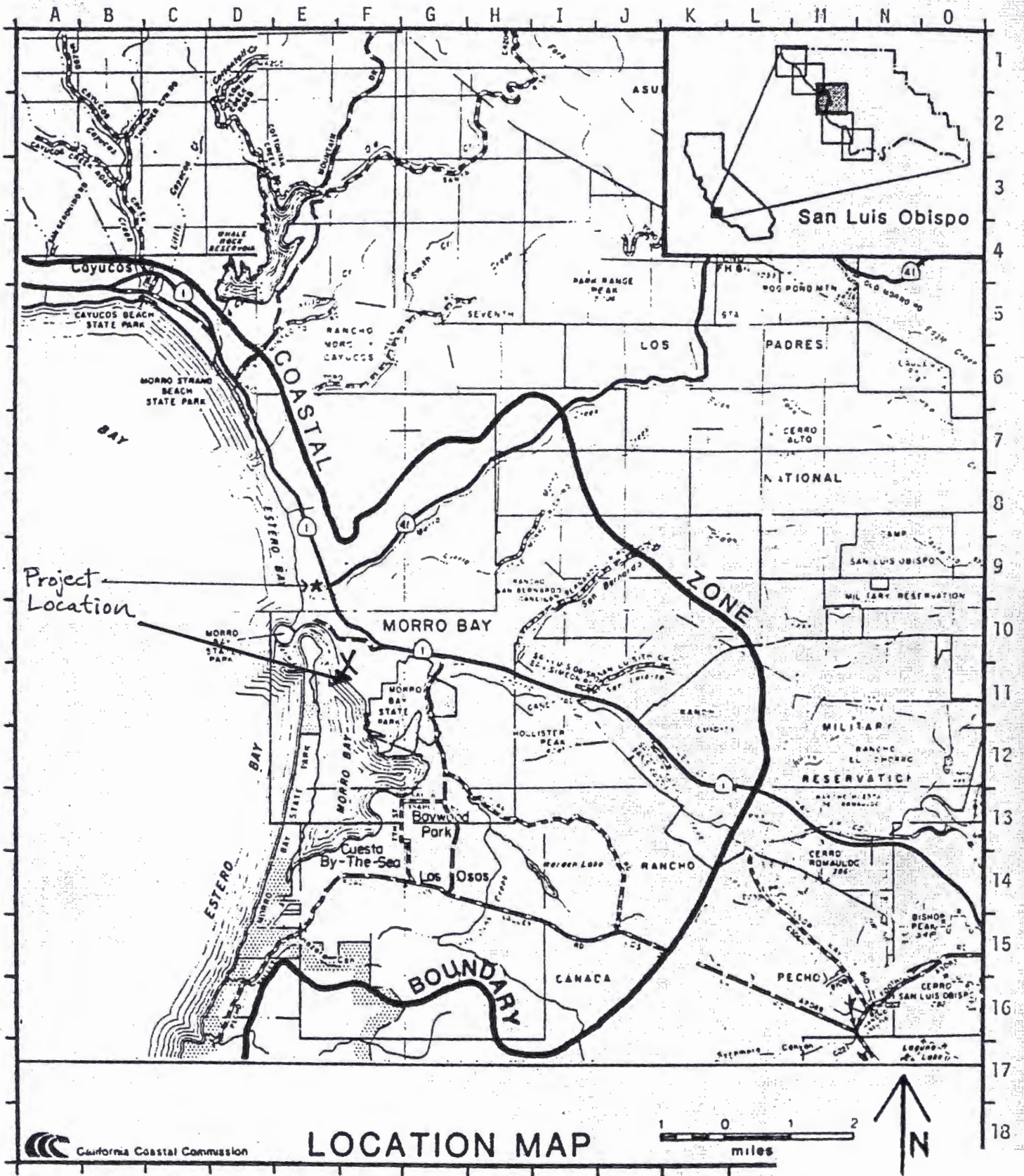
Page 31

the environment.

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. This staff report has analyzed the environmental impacts posed by the project and identified changes to the project that are necessary to reduce such impact to an insignificant level. Based on these findings, which are incorporated by reference as if set forth herein in full, 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.





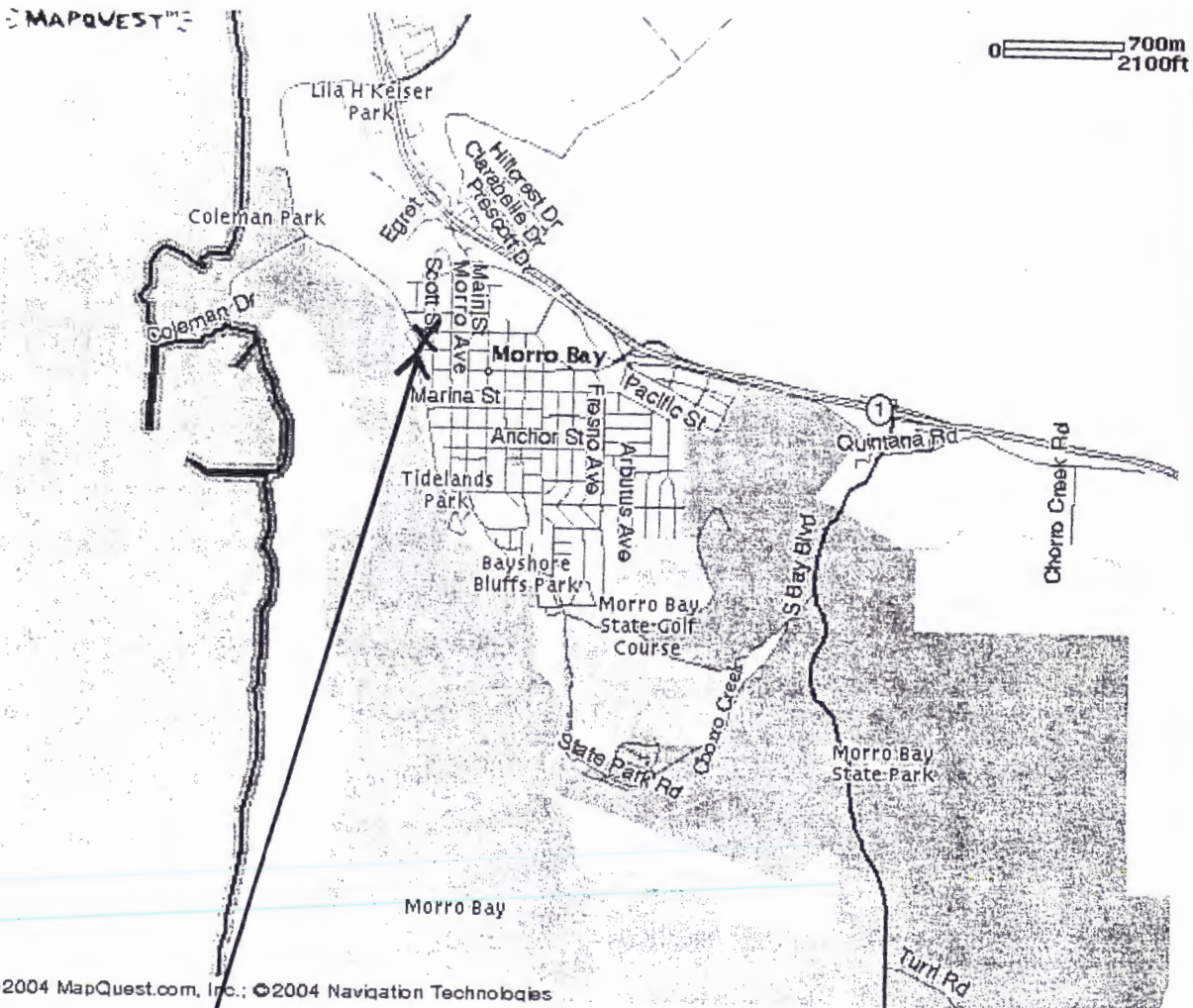


California Coastal Commission

LOCATION MAP

County of San Luis Obispo

PROJECT LOCATION 215 HARBOR MORRO BAY



Location



Staff Report

TO: Honorable Mayor and City Council **DATE:** July 14, 2003
FROM: Gary Kaiser, Senior Planner
SUBJECT: Appeals of Planning Commission's Action in Approving a Development Project at 215 Harbor Street (TM 02-02; CUP 08-02 & CDP 35-02R)

INTRODUCTION

This agenda item is a public hearing to consider appeals filed by both the project proponent and neighboring property owner of the Planning Commission's decision to conditionally approve a three (3) and four (4) story mixed-use development on the north side of Harbor Street, between Market and Front Streets. The project proponent is dissatisfied with conditions imposed by the Planning Commission, and the neighboring property owner is dissatisfied that the project was approved at all, even with the added conditions (Exhibits A & B, respectively).

If the City Council overturns the decision of the Planning Commission and denies the proposed project outright, the project proponent's appeal regarding the Conditions of Approval would be moot. The appeals should therefore be dealt with in that order; whether the project should be approved at all and then, if so, under what conditions.

RECOMMENDATION

Uphold the decision of the Planning Commission and deny both of the appeals.

ISSUE SUMMARY

After three (3) lengthy public hearings held on February 18, 2003, May 5, 2003 and May 19, 2003, the Planning Commission majority made required findings and conceptually approved the subject Tentative Tract Map (for proposed lot line adjustment), Conditional Use Permit and Coastal Development Permit applications (Exhibits C through G). The approvals would allow for the applicant to return to the Planning Commission for approval of exterior details, as conditioned, and then proceed into plan check for the construction of a mixed-use development.

Prepared by: GK. Department Review: [Signature]
City Manager Review: R
City Attorney Review: lws

CCC Exhibit 2
(page 1 of 36 pages)

In approving the project, the Planning Commission added a multi-part condition that essentially requires the applicant to: (a) eliminate all flat roofs not designed for decks, and (b) reduce the size of Unit F -- the eastern most unit along Market Street -- in order to provide increased setbacks from both Magilside and Market Streets and additional architectural variation (Exhibit H). The condition reduces the size and scale of the overall project for neighborhood compatibility, and also lessens the extent to which an exception is required relative to building height. This is the condition now being contested by the applicant. In addition, the Planning Commission's action to approve the project, even with the added conditions, is being appealed by a neighboring property owner.

Council may recall that the subject site is the location of the former Harbor View Motor Lodge (aka Harbor View Motel). Constructed at some point prior to 1958, the motel remained on the site until March of 1995 when a large retaining wall along Front Street collapsed in a heavy rainstorm. Upon the collapse of the retaining wall that supported the site, motel buildings were deemed unsafe and demolished.

The combination of the old motel and 'act of God' that resulted in its demise has created an anomaly with regard to allowable building heights. The Morro Bay Municipal Code mandates that all allowable building height calculations must be measured from topographic conditions that were in existence on January 1, 1986 (MBMC Section 17.12.310). At that time, the property was improved with the motel and large retaining wall, and so what is allowable today in terms of building height must be measured from those grades. According to the Municipal Code, the property owner lost high value improvements during the storm of 1995 but the property owner did not also lose what was allowable on the property in terms of building height. Surrounding residents and property owners that have enjoyed enhanced private views since the motel was lost in 1995 do not wish to acknowledge or endorse this particular zoning standard and have offered creative alternatives from which to measure the building height. The standard is nevertheless a Municipal Code mandate that has been consistently applied since its adoption almost 10 years ago (also in 1995).

Based upon the building height calculation method prescribed in the Municipal Code, and as shown by Exhibit I, only a small portion of the proposed building (westerly half of the 4th floor of Unit C) would extend into the allowable building height envelope. Most of the project, including that which would obstruct views from neighboring properties to the north and east of the project, is well within the allowable 30-foot height limit.

DISCUSSION

The environmental document and earlier staff reports prepared for the Planning Commission are complete and thorough in describing technical aspects of the proposed project and the environmental and policy issues pertaining thereto. Those documents, together with minutes from Planning Commission hearings, are attached and may be referred to for more information on other aspects of the proposed project. For brevity, however, this memorandum will focus very narrowly on the specific points raised in the appeals.

Appeal #1 – Appeal of Decision to Approve the Project

The appeal that calls for a reversal of the Planning Commission's decision to approve the proposed project is based on several grounds that are stated on the appeal form. The grounds, and staff commentary, are as follows:

Ground 1 – “The proposed project violates the Bluff Development Standards.”

Commentary – Notwithstanding the staff reports and all of the public discussion on the proposed project, there remains a basic misunderstanding of the two key Zoning Ordinance requirements.

PD Overlay Zone

First, on sites that are zoned with a PD Overlay, exceptions to zoning standards may be granted if it is determined that a public benefit or better design would result. One may disagree with the Planning Commission as to whether a better design has resulted, or that public benefits are substantial to warrant allowable exceptions, but there is no question that the PD Overlay exists and that it specifically allows for exceptions to such things as lot size, building height and setbacks (MBMC Section 17.40.030). **The proposed project does not involve a variance and does not in any way violate zoning standards since the Planning Commission has determined the project would result in a public benefit.**

Allowable Building Height

Secondly, the Morro Bay Municipal Code mandates that all allowable building height calculations must be measured from the grades that were in existence on January 1, 1986. This may seem odd in this unique case, where the grades in existence on January 1, 1986 are significantly different than they are now, but no alternate yardstick is provided.¹ In 1986, the Harbor View Motel existed, as did the large retaining wall along Front Street. In consideration of the fact that the natural bluff feature on the site was destroyed beyond recognition when the Motel was constructed, one could easily argue that the Bluff Development Standards should not be applied to the property at all.

If the Bluff Development Standards are applied, the top of the retaining wall would most logically be viewed as the bluff top. Few, if any, would question this had the retaining wall not collapsed. This means that within 50 feet of the wall, a 14-17 foot height limit would apply (depending on whether the roof is flat or pitched, respectively) but that a 30-foot height limit would apply over the balance of the site.

¹ The Planning Commission made a point to stress the unique set of circumstances that apply in this particular case with respect to building height determinations, and that those unique circumstances would avoid any possibility that the final decision on this project could set a precedent for other development projects along the bluffs.

Exhibit I shows the proposed project in relation to the allowable building height on the property. For comparison, Exhibit J shows how the Harbor View Motel related to the allowable building height. As shown by these Exhibits, both the pre-existing and proposed buildings extend slightly above the reduced height limit that applies in proximity to the historic (1986) bluff top. In the case of the proposed project, the projection only extends ten (10) feet into the setback area and this occurs in the center of the proposed building. Removing the westerly half of the fourth floor of unit "C" would bring the entire project within the allowable building height "envelope" but it would not seem to accomplish much else in terms of protecting views or compatibility with surrounding structures. The pre-existing motel extended above the height limit within most of the bluff setback area.

The Planning Commission discussed this issue at length and concluded that beneficial aspects of the project outweighed the benefits that would be derived from strict adherence to the bluff standards, especially in a case where the bluff no longer exists. The added condition, did, however, reduce the extent to which the proposed building would require an exception relative to building height.

Ground 2 – *"The project has only 26.5% commercial space in a CV-S Zone."*

Commentary – This is an accurate statement. Not counting garages, walkways, decks and other appurtenances, and also not counting the reduced residential space required by conditions imposed by the Planning Commission, the project would contain a total of 19,538 square feet of habitable floor area. Of that space, 14,405 square feet (73.7%) would be for residential use and 5,133 square feet (26.3%) would be for commercial visitor-serving use.

Zoning regulations allow for a single residential unit on any lot within the CV-S district provided that the residential unit is located on the rear half of the lot or upstairs. The Planning Commission also discussed this issue at length and concluded that: (a) each of the proposed residential units are on separate lots; (b) residential uses are limited to the upper floors; (c) zoning regulations do not limit the size of residential units in the CV-S district; and (d) the proposed project does not conflict with zoning regulations relative to the size and placement of residential units.

Ground 3 – *"Public benefits are not "greater than normal" to trigger PD Overlay Powers."*

Commentary – The significance of the project's public benefits is largely a subjective matter of personal opinion, especially when it comes to the design issues. However those benefits are valued, they must be compared to what would be lost or compromised as a result of granting the requested exceptions. For a quick comparison, requested exceptions and project benefits are:

Requested Exceptions²

- Westerly half of the fourth floor of Unit "C" would project into the allowable building height area (over 17' limit within 50' of bluff top, not the 30' limit).
- Building would extend five (5) feet into the ten (10) foot setback from Magilside Lane.
- Some of the existing nonconforming lots would be further reduced in size.

Project Benefits

- Cohesive development provides an opportunity to master plan all six (6) parcels as one and get all of the street frontage improvements and public plazas installed at once, rather than have to wait for the parcels to be developed individually.
- Opportunity to advance community goals and policies, such as those that promote mixed use; development that steps down the bluff; and uses that that would draw tourists from the Embarcadero into the downtown area.
- Exemplary site design and architecture that is creative and interesting;
- Agreement to underground existing power poles on Market and Magilside.
- Economic benefits in terms of fees, taxes, jobs and housing.

The Planning Commission also considered this issue at length and concluded that the project benefits outweighed and justified requested exceptions.

Ground 4 – "Violates the Coastal Plan and Special Design Criteria (S.4 Overlay)."

Commentary – It is difficult to comment on the appellant's assertion that the project violates the Coastal Plan and Special Design Criteria of the S.4 Overlay Zone, as no evidence to support that assertion has been presented. Exhibits K & L constitute an exhaustive list of policies that appear in the General Plan and/or Coastal Plan. The proposed project would not appear to be in conflict with any of these policies. The appellant may be again referring to the ratio of residential-to-commercial use area being proposed, in which case there is also no clear conflict. Projects located in an S.4 Special Design Criteria Overlay Zone are subject to the following:

"In order to maintain and enhance the character and visual quality of these areas, special design review has been found to be necessary. Applications for development shall include (as appropriate) submittal of architectural, landscaping, lighting, signing and viewshed plans for review and approval." [MBMC Section 17.40.050.G]

The applicant has been required to submit all of these materials for review and approval.

² The Council could make the determination that Magilside Lane is an alley rather than a street, in which case no setbacks or exceptions would be required. The Council could make the practical determination that there is no natural bluff feature on the site that warrants protection and that Bluff Development Standards are therefore not applicable, in which case the exception for building height would not be required. This would leave only the lot size exception, which has no physical impacts.

Ground 5 – *“There is a significant and substantial evidence that the project may have a significant impact on the environment, and that an EIR is needed.”*

Commentary -- It is unclear what aspects of the project are being referred to and in what manner a significant impact on the physical environment could result. Social issues, such as neighborhood compatibility, architectural treatment and alteration of private or otherwise unprotected views, would not be considered as having significant impacts on the physical environment under CEQA. On the other hand, a lengthy Draft Mitigated Negative Declaration (MND) was prepared to explain in detail why the project, with certain mitigation measures, would not have a significant impact on the environment. The availability of the Draft MND was announced by mail and by publication in the Telegram-Tribune, as required by state law, but no written comments or other testimony was presented to counter the conclusions reached in the document.

Appeal #2 – Decision to Add Condition #35

Grounds – To paraphrase, the appellant asserts that the added condition would make the project economically infeasible and that it would unnecessarily and negatively alter desired architectural character.

Commentary -- The appellant has separated the issue into different subcomponents but is appealing a single condition, being Condition #35. The Condition reads as follows:

“35. Residential square footage in unit F shall be reduced as necessary to eliminate upper floor projections into the 5-foot setback along Magilside Drive (soon to be renamed “Pelican Place”) and provide for more architectural relief along the Market Street elevation. Options for the architectural relief shall include, but may not be limited to, an additional 5-foot setback (from Market Street) for the upper floor. In addition, the Harbor Street setback for all levels of unit F shall be increased to that of the adjoining unit and all roofs not designed for use as a deck (i.e., the southerly half of units D, E, & F) shall be pitched rather than flat.”

After considerable public testimony from the project proponents and opponents, the Planning Commission made a decision to add Condition #35 because they believed that it represented a fair compromise that would allow the project to proceed while ensuring that substantial steps would be taken to increase its compatibility with surrounding development. Increasing setbacks along Magilside, Market and Front Streets, and substituting pitched roofs for flat roofs (except where a roof deck is planned) would indeed reduce the perceived size of the proposed building and improve the transition with existing development to the north and east of the project.

Staff supports the proposed project as conditioned by the Planning Commission because they were charged with determining architectural compatibility. This decision of architectural compatibility now rests with the City Council. As suggested by the appellant by the manner in which the various subcomponents of Condition #35 are separated, it would be possible to uphold some aspects of the appeal but not others. Please note that the first issue raised regarding setbacks along Magilside is moot because the Planning Commission only required a five (5) foot setback

CONCLUSION

The Planning Commission carefully considered and debated the issues and arguments presented by both appellants and ultimately agreed to what in their opinion was a fair and reasonable compromise that would allow for the project to proceed subject to conditions that increased its compatibility with the neighborhood. As of the date of this memorandum, there has been no information presented from either side that would suggest any substantial change in the factual circumstances surrounding the Planning Commission's approval. This project is a clear indication that as the City builds out the remaining vacant and underdeveloped parcels, larger buildings and increased densities are likely to be proposed as neighborhoods evolve to a more dense urban setting.

EXHIBITS

- Exhibit A – Appeal Form (as to added conditions)
- Exhibit B – Appeal Form (as to approval, even with added conditions)
- Exhibit C – February 18, 2003 Staff Report
- Exhibit D – February 18, 2003 Planning Commission Minutes
- Exhibit E – May 5, 2003 Memorandum to Planning Commission
- Exhibit F – May 5, 2003 Planning Commission Minutes
- Exhibit G – May 19, 2003 Planning Commission Minutes
- Exhibit H – Follow-up Letter with Added Condition
- Exhibit I – Proposed Project in Relation to Allowable Building Height
- Exhibit J – Harbor View Motel in Relation to Allowable Building Height
- Exhibit K – Policies that Appear in Both General and Coastal Plans
- Exhibit L -- Additional Policies that Appear in Coastal Plan



AGENDA ITEM: XI.D.
ACTION: _____

CITY OF MORRO BAY PLANNING COMMISSION

February 18, 2003

PROJECT SUMMARY

Request for Tentative Tract Map, Conditional Use Permit and Coastal Development Permit approval for proposed three- and four-story mixed-use condominium project.

FILE NUMBER

TTM 02-02; CUP 08-02
& CDP 35-02R

LOCATION

215 Harbor Street
(north side, between
Market and Front Streets)

APN

066-291-013

APPLICANT

Dan Reddell
560 Morro Bay Blvd.
Morro Bay, CA 993442

AGENT

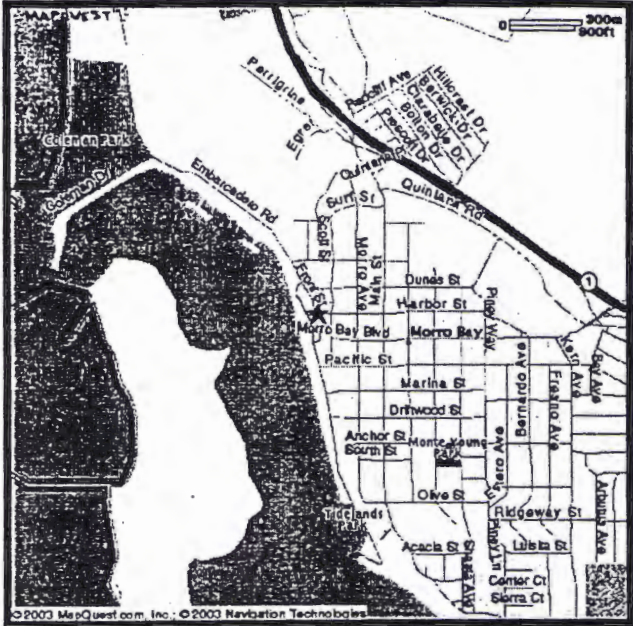
Mark Allen
735 Santa Ysabel
Baywood Park, CA 93402

EXHIBITS

- A. Findings for Approval
- B. Conditions of Approval
- C. Draft Mitigated Negative Declaration
(including mitigation summary, traffic report and proposed plans)
- D. 10-Room Bed & Breakfast Approved for the Site on 11-6-00

UNDER SEPARATE COVER

- A. Color & Materials Board
(available at Public Services Department and Hearings)
- B. Story Pole Study Results



Vicinity Map

CCC Exhibit 2
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SUMMARY

The proposal is to construct a three- and four-story¹ building that would contain both commercial and residential uses in the form of six (6) separately owned but attached and vertically integrated airspace condominiums. Each of the six (6) condominium units would be restricted to visitor-serving commercial uses on the ground floor and residential uses on third and fourth floors, with the ability to "mix and match" retail and commercial uses on the second floor. As such, the project would contain anywhere from 5,300 to 10,600 square feet of visitor-serving commercial space and anywhere from 5,800 to 11,100 square feet of residential space.

If the project were viewed as a single entity with six (6) residential units, it would potentially be inconsistent with zoning regulations because properties in the C-VS zone are specifically limited to a "single" unit when accessory to a permitted commercial use and situated either upstairs or on the rear half of the lot. With the proposal to subdivide the site into six (6) airspace condominium units, however, it is possible to view the six (6) condominiums as distinct and separate units each with a single residential component that is upstairs and secondary to a permitted commercial use. If the project is viewed in this light, findings of policy consistency can be made. The fact that the site is currently comprised of six (6) separate legal lots, that could be developed independently each with a residential unit upstairs, makes it easier to continue viewing the project as such.

The project calls attention to the uniqueness of some of the City's land use definitions, such as those pertaining to allowable building height and lot coverage, but the applicant is indeed proposing to comply with all zoning and subdivision standards with one (1) and possibly two (2) exceptions involving building height within fifty (50) feet of the bluff top and setbacks along Magilside Drive. The requested height limit exception would not seem to substantially increase impacts on public views (although a handful of private views would be impacted) and the need for an exception to setback requirements along Magilside depend on an interpretation as to whether Magilside is a street or alley. That exception too, if needed, would not substantially impact public views but together the height and setback issues add to the building's bulk and mass in relation to surrounding uses. That issue notwithstanding, the public benefits of the project would seem to outweigh what is lost, if anything in terms of the interests of the community as a whole, from the granting of the requested exception(s). Again, City zoning regulations do not protect private views.

Aesthetically, the proposed project is well designed in the sense that building bulk and mass is effectively reduced and made interesting through extensive variations in depth and height, with numerous architectural pop-outs and extensive use of windows and terraced porch spaces. The exterior colors and materials proposed, however, are somewhat bland and institutional and could stand to be enlivened through some combination of a bolder color scheme, inserted tiles, bright colored trim, variations in window shape and treatment and possibly the addition of awnings.

¹ Two of the proposed units are 4-story units and four of the proposed units are 3-story units but not all of the stories would rise above ground level. As viewed from Magilside, the units would appear to be 1 and 2-story units. Essentially, the northern half of the proposed building would only have two stories above the ground, except for the portion of the northerly half that abuts Front Street. (page 10 of 36 pages)

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The following offers a more detailed discussion of the project and its consistency with planning goals and policies of the City, including a summary of staff's findings relative to the project's environmental impacts and mitigation measures to ensure those impacts do not reach significant levels.

STAFF RECOMMENDATION

Recommend that the City Council *CONDITIONALLY APPROVE THE PROJECT* by adopting a motion including the following action(s):

- A. Find that the Final Mitigated Negative Declaration prepared for the project is complete and adequate pursuant to the requirements of the California Environmental Quality Act (CEQA) and that the project, as conditioned for compliance with specified mitigation measures, will not have a significant adverse effect on the environment;
- B. Adopt the Findings for Approval included as Exhibit "A" of the staff report, including those pertaining to the California Environmental Quality Act (CEQA); and
- C. Approve TTM 02-02; CUP 08-02 & CDP 35-02R, as described in the staff report and at hearings and as shown on site development plans received by the Public Services Department on July 3, 2002, subject to the Conditions of Approval included as Exhibit "B" of the staff report.

DISCUSSION

The ensuing discussion begins with a brief description of the site's physical, historical and legislative setting followed by a description of the proposed project and evaluation as to its consistency with the Local Coastal Program (i.e., General Plan, Coastal Plan and implementing zoning and subdivision regulations). The discussion will then summarize the project's potential environmental effects and mitigation measures that were identified in the course of environmental review to reduce those effects to less than significant levels. The complete environmental document prepared for the project pursuant to the California Environmental Quality Act (CEQA) is attached hereto as Exhibit "C."

Physical/Historical/Legislative Setting

Physical – The site is located on the north side of Harbor Street, extending north to Magilside Drive, east to Market Street and west to Front Street. The site is 17,188 square feet and is presently described as six (6) separate but contiguous parcels that emerged over the years by deed transaction from what was originally Lot 4 and the southern portion of Lot 3 in Block 44 of the Town of Morro. Currently, there are three (3) residential units on the easterly portion of the property but the westerly two-thirds of the site is vacant, except for remnants of the foundation of the two-story hotel that previously existed on the property.

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The site, which slopes at approximately 15% downward toward the Bay and the Embarcadero, was previously developed and is surrounded by urban development. The site is prominently visible from the Embarcadero but only has the potential to obstruct coastal views partially and momentarily along Market Street, Harbor Street and Magilside Drive.

Historical – Previous development on the site consisted of a 17-room motel (Harbor View Motor Lodge) that included a swimming pool, caretaker's unit and small residence. As part of this original development, a large retaining wall roughly 20 - 25 feet in height was constructed along Front Street. The wall held back soils to keep the motel elevated as to overlook the rock, bay and Embarcadero. In 1996, soils behind that retaining wall became saturated in a rainstorm and caused the wall to suddenly fail. Failure of the wall, in turn, led to massive soil loss and the need to demolish the old motel that had become unstable. This, plus the lack of significant discoveries in the immediate project vicinity, explain the site's low sensitivity for cultural resources. This information about historic but not-too-distant uses on the subject site may prove useful should discussions arise about the possibility that historic uses could be credited in calculating impacts of the proposed project. It should also be noted that a 10-room Bed & Breakfast (B&B) establishment was approved for the site on November 6, 2000 (Exhibit D). The approval was never used, however, and has since expired. In approving the B&B, no exceptions to zoning regulations were granted.

Legislative – As a coastal community, the City of Morro Bay exercises permitting authority over coastal development because a Local Coastal Program (LCP)² certified by the California Coastal Commission as consistent with goals, objectives and policies of the California Coastal Act has been adopted.³ Some of the coastal development permits (CDPs) within the City's permitting jurisdiction are appealable to the Coastal Commission depending on a project's location. This is the case for projects located between the sea and first public road paralleling the sea or 300 feet from the inland extent of any beach or the mean high tide line where there is no beach, whichever is a greater distance.⁴ There is no beach within the bay, or at least this portion of the bay, but the proposed project is located within 300 feet the mean high tide mark. The CDP is therefore appealable to the California Coastal Commission.

In addition to the site's proximity to the sea and potential Coastal Commission involvement, the review process is also influenced by the General/Coastal Plan designation and zoning. In this case, the site is designated for visitor-serving commercial (C-VS) use, and zoned accordingly, with a planned development (PD) overlay. The PD Overlay elevates the level of review for all development to the Planning Commission via the conditional use permit process.

For projects located on public property (i.e., the waterfront or State Park), or on private property exceeding one (1) acre, the PD Overlay requires a heightened review process involving concept plans and precise plans and action by both the Planning Commission and City Council. The proposed project is not subject to this procedural requirement because it is located on private

² The LCP is an aggregate of the General Plan, Local Coastal Plan and zoning regulations adopted to implement those plans.

³ Note that a portion of the City generally described as below the mean high tide mark and/or where a public trust may exist (ie, publicly-owned property along the waterfront or within State Parks) remains in original Coastal Commission jurisdiction.

⁴ Also included in the area where CDPs are appealable to the Coastal Commission are those located within 100 feet of a stream or wetland and/or within 300 feet of the seaward face of any coastal bluff.

property of less than one (1) acre.⁵ The PD Overlay does, however, allow flexibility from strict application of zoning standards, such as bluff development standards and setbacks, where a better design or public benefit would result.

Finally, the site is located in S.4 and S.6 special treatment areas. The provisions of the S.4 treatment area apply to the proposed project. The project is therefore subject to special design criteria and must demonstrate that the project brings an enhanced visual quality to the area. The provisions of the S.6 special treatment area speak to the issue of "residential protection" and provide expanded abilities to rebuilt nonconforming homes that have been destroyed. The provisions of this special treatment area do not apply to the proposed project directly but it is perhaps pertinent to reiterate that there are three (3) existing residential units on the subject property. In summary, the proposed project requires discretionary TTM, CUP and CDP approvals and must adhere to "special design criteria."

| Adjacent Zoning/Land Use | | | |
|--------------------------|---------------------|-------|-------------|
| North: | C-VS/PD/S.4/S.6 | South | C-VS/PD/S.4 |
| East: | C-VS/R-3/PD/S.4/S.6 | West: | C-VS/PD/S.4 |

| Site Characteristics | |
|--------------------------|---|
| Site Area | 17,188 square feet, extending on the north side of Harbor Street from Market Street to Front Street. |
| Existing Use | Three (3) Single-family Residences, but formerly the location of the Harbor View Motor Lodge. |
| Terrain: | The site slopes downward towards the bay (to the west) at approximately 15%. |
| Vegetation/Wildlife | The site was fully developed in the recent past and is amid an urban and largely built out area. Vegetation consists of non-native ground covers of little or no biological value. |
| Archaeological Resources | The site was fully developed in the past and much of the native soils was lost after a large retaining wall failed. Due to the site's low sensitivity, a 10-room bed & breakfast establishment was subsequently approved with a "standard discovery clause" that allowed construction to proceed unless artifacts of significance were encountered during construction. In this case, the applicant has agreed to a Phase I (plus any other required testing) prior to the issuance of permits. |
| Access | The site has direct street (or alley) frontage on all four sides (Magilside, Market, Harbor and Front Streets) but only Harbor Street and Magilside Drive would be used to serve the proposed project. |

⁵ The proposed project nevertheless does require approval by the City Council, not because of the PD Overlay and requirements for concept and precise plan approvals but because of the proposed Tentative Tract Map application.

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| <u>General Plan, Zoning Ordinance & Local Coastal Plan Designations</u> | |
|---|--------------------------------------|
| General Plan/Coastal Plan Land Use Designation | Commercial Visitor-Serving |
| Base Zone District | C-VS |
| Zoning Overlay District | S.4 and S.6 |
| Special Treatment Area | N/A |
| Combining District | PD |
| Specific Plan Area | N/A |
| Coastal Zone | Yes, and within appeals jurisdiction |

Project Description

As summarized above, the applicant is proposing to construct a three- and four-story building that would contain both commercial and residential uses in the form of six (6) separately owned but attached and vertically integrated airspace condominiums, with the overall site owned and maintained in common. Each of the six (6) condominium units would be restricted to visitor-serving commercial uses on the ground floor and residential uses on third and fourth floors. The applicant's intent, however, is to "mix and match" retail and commercial uses on the second floor. In total, the project would therefore contain anywhere from 5,300 to 10,600 square feet of visitor-serving commercial space and anywhere from 5,800 to 11,100 square feet of residential space, depending on the mix of second floor uses.

As more specifically shown on proposed plans, four of the units would be three (3) stories (units B, D, E & F) and two (2) of the units would be four stories (units A & C). First floor commercial spaces range from 614 square feet to 933 square feet and second floor areas range from 576 square feet to 1,336 square feet (not counting stairwells). Individually, the six (6) mixed-use condominiums would range in size from 2,322 square feet to 3,312 square feet. If there were to be no commercial use of second floors, Units A, B & C would be 2-bedroom units and Units D, E & F would be 3-bedroom units. If second floors were to be entirely devoted to commercial uses, floor plans would have to be redrawn and all of the residential units would become 1-bedroom units. As currently drawn, Units A, C, E & F would be 1-bedroom units; Unit B would have 0 bedrooms (so the living room would have to be converted to a bedroom); and Unit D would have two bedrooms without a kitchen (so one of the bedrooms would have to be converted to a kitchen). For additional details of the proposed project, please refer to plans attached hereto as Exhibit "C." Plans include a site plan; preliminary grading and drainage plan; floor plans for each level; elevations and perspective renderings; a lighting plan; and a landscaping plan. Note that plans include curb, gutter and sidewalk improvements along Market, Harbor and Front Streets with bulb-outs at the two Harbor Street intersections. In addition, a color and materials board has been provided showing the proposed color and texture of exterior materials. The color and materials board and results of a story pole study performed on-site during the week of February 10th will be available at project hearings.

Consistency with the Local Coastal Program

For the proposed project to be approved, findings must be made that the project is consistent with applicable goals, objectives and policies of the Local Coastal program (as defined above to include the General Plan, the Local Coastal Plan and the implementing Zoning Regulations).

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The proposed project appears to be consistent with the various applicable goals, objectives and policies of the LCP but there are a few Land Use and Visual Resources Element policies that warrant some discussion in addition to the aforementioned zoning issues.

Land Use Element Policies-- In the Land Use Elements of the General Plan and Coastal Plan, there are policies set forth that apply within designated Visitor-Serving Commercial areas. The Zoning Ordinance implements those policies by specifically listing allowable uses. The General Plan and Coastal Plan both contain language establishing that the use of private land for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation is a priority over private residential, general industrial or general commercial development (General Plan Program LU 37.2 and Coastal Plan Policy 2.02). As provided in the Zoning Ordinance, the purpose and intent of the Visitor-Serving Commercial (C-VS) District is:

“to provide a district for commercial uses intended primarily to serve the needs of tourists and other visitors to the City and not to include commercial uses of a more general nature which are oriented towards residents. Uses in this tourist-oriented district shall also provide for landscaping and related aesthetic improvements which create and enhance the visual attractiveness of the City.”

Hence, zoning regulations limit allowed commercial uses to those that cater to tourists and the traveling public. Residential uses are limited to *“a single apartment or security quarters only when secondary to permitted commercial uses and on the rear one-half of a lot or upper story.”*

It is possible to view “the project” as a single entity containing six (6) residential units. As such the project would seem to conflict with zoning regulations that specifically limit residential uses to “a single” apartment or security quarters. The fact that residential square footage within the proposed building exceeds, or may exceed, commercial square footage may also raise questions as to whether the residential component is indeed “secondary.” However, it is also possible to view the project as containing six (6) separate and distinct entities each with a ground floor visitor-serving component and an upper floor, and therefore secondary, residential component. The latter is probably a more reasonable perspective in this case because (a) the tract map (condominium) aspect of the proposal really does create separate and distinct ownerships within each of the six (6) units and (2) the site presently consists of six (6) separate legal parcels that could be sold and developed separately, in which case each would unquestionably be allowed a secondary residence.⁶ Provided the tract (condo) map becomes a required component of the project, findings of consistency with the Land Use Elements can be made.

Visual Resources Element Policies -- In the Visual Resources Elements of the General Plan and Coastal Plan, there are policies set forth that also apply to the proposed project. As was the case with Land Use Element policies, the Zoning Ordinance reinforces and implements those policies. Policy VR-2 of the General Plan, for example, states as follows:

⁶ Given the existing six (6) parcels, some have suggested the proposed tract map is actually more like a proposed lot line adjustment. This may be an accurate comparison when assessing the project's impacts and what the appropriate impact fees should be but it is clearly not a lot line adjustment because (a) the applicant is proposing a new and different type of ownership pattern (i.e., three dimensional rather than two dimensional) and a seventh separate and distinct parcel, being the commonly-owned areas outside the walls of the building, would be created.

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“ 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 and 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 on Figure VR-1, shall be subordinate to the character of its setting.”

Policy 12.01 of the Coastal Plan has very similar language. To implement these policies, the Zoning Ordinance states in Section 17.48.190:

“New development shall project and, where feasible, enhance the visual quality of the surrounding area. New development may be permitted only if the siting and design meet the following standards:

A. Protection Of Public Views

Significant public views to and along the coast are protected

B. Natural Landform Protection

Alterations to natural landforms are minimized

C. Compatibility

The development is visually compatible with the character of the surrounding area and any design themes adopted for the area by the City.

D. Visual Quality

Restores and enhances visual quality in visually degraded areas

E. Scenic Area Standards

In highly scenic areas, as depicted in the Morro Bay Coastal Land Use Plan/Coastal Element, the following additional standards shall also apply:

1. Character

The proposed development shall be subordinate in character to its surroundings.

2. Height/bulk

The height/bulk relationships in the development shall be compatible with the surrounding area.

3. Parks or open space

Parks or open space shall be designated and incorporated into new developments.

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4. *View corridors*

View corridors shall be incorporated into the development to protect significant public views to and along the shoreline and other scenic areas.

5. *Landscaping*

Landscaping shall be provided to restore and enhance visually degraded areas using native, if feasible, and drought-resistant plant and tree species.

6. *Preservation and enhancement*

Preservation and enhancement of views of the ocean, bay, sandspit and Morro Rock."

The site does not lie within a highly scenic area according to the General/Coastal Plan; however, the site has been zoned with an S.4 (Special Design Criteria) Overlay wherein development must maintain and enhance the character and visual quality of the area. Suffice it to say that aesthetics and visual impacts are important with a project of this scale and in such a prominent location.

As mentioned above, the project is well designed in the sense that building bulk and mass is effectively reduced and made interesting through extensive variations in depth and height, with numerous architectural pop-outs and extensive use of windows and terraced porch spaces. The Planning Commission, and ultimately the Council, will nevertheless have to make a difficult and largely subjective decision as to whether the proposed project is compatible with surrounding uses in terms of size and bulk.

Building Height – Up until the mid-1990's, the Harbor View Motor Lodge motel existed on the site. As mentioned above, the motel sat on land supported by a large (+/-20' high) retaining wall that failed during a rainstorm in 1996. Because of the retaining wall failure, the motel was unsafe and needed to be demolished immediately. As a result of the retaining wall failure, elevations on the site today are considerably lower than the elevations on the site when the motel existed. Section 17.12.310 of the Zoning Ordinance defines "height of building," as follows:

"'Height of Building' means the vertical distance from the average level of the highest and lowest point of that portion of the lot covered by the building, as measured to the topmost point of the roof but not including ventilation stacks and chimneys under six feet in width or length.

When measuring the various levels on a lot to calculate the height, the grades in existence on the lot on January 1, 1986, shall be used; any fill added to the site since that date shall be deducted from present grade elevations and any areas cut since that date may be added to the present grade elevations when calculating the height limit."

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Thus, the grades in existence on January 1, 1986 "shall" be used in determining allowable building height. As shown by plans that depict proposed building elevations (Sheets A-5.0 and A-5.1), the proposed building is three (3) and in some instances four (4) stories but it does not exceed the 30-foot height limit for structures located in the C-VS district. In fact, based on Morro Bay's building height definition, most of the building does not exceed 25 feet in height.

Notwithstanding the 30-foot height limit in the C-VS zone, the Bluff Development Standards (Chapter 17.45 of the Zoning Ordinance) apply to the site and correspondingly reduce allowable building heights in proximity to the bluff. Section 17.45.040 states:

"New development located within fifty feet of the bluff edge shall not exceed a height limit of fourteen feet; provided, however, that for peaked roofs (4 in 12 or greater pitch) and other architectural features, a height of up to seventeen feet may be permitted."

The subject site is somewhat of an anomaly in the sense that the natural bluff feature was lost years ago when the Harbor View Hotel was built. One of the primary purposes for the Bluff Development Standards, as stated in Section 17.45.010 of the Zoning Ordinance, is:

"To protect the coastal bluffs in the City of Morro Bay from future development which may damage such bluffs, and in an effort to minimize the hazards to life and property."

The bluff on this site was damaged beyond recognition by past development.

In any case, there may be a swath of ground 50-feet in width that runs through the site wherein the reduced height limit applies. Within this swath, and only within this swath, the proposed project exceeds height limits of the Zoning Ordinance. This is the exception being sought in consideration of the project's overriding public benefits, as permissible pursuant to PD Overlay Zone provisions. Again, the opportunity to master plan all six (6) of the existing parcels as part of a single planned development that is architecturally interesting and that includes extensive public improvements new visitor-serving commercial uses leading to, and therefore helping to revitalize, the downtown area is no doubt a public benefit.

The decision as to whether that public benefit warrants the increased height limit being requested is largely subjective and will not be reached using a perfect science. Relying on the City's policy not to protect private views, staff has balanced the pros and cons of the proposal and has determined that in a utilitarian sense a greater community good would come from project approval than would come from project denial. This will no doubt be the focus of considerable discussion at the project hearings.

Bluff Development Standards also state:

"In the Embarcadero area between Surf Street and Anchor Street, new development is allowed within the bluff buffer area and may be stepped down the bluff face provided the development shall not require the construction of protective devices or retaining walls that would alter natural landforms or impeded public access"

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This is the section that allows for development over the bluff face in the project area provided public access is not impeded. In this case, there is currently no public access across the site but, if the project is built, the public could walk through the site from either Magilside or Market Street. The project would therefore be consistent with (and indeed would seem to further) this policy.

Lot Coverage – Many local jurisdictions regulate lot coverage for the purposes of limiting impervious surfaces either for urban runoff/drainage reasons or to retain suitable areas for landscaping. A classic example occurs in the Lake Tahoe watershed, where preserving water quality in the Lake is a clear and expressed community goal.

In Morro Bay, however, lot coverage has nothing to do with covering the lot with impervious surfaces, as it is possible (and almost typical in some sections of the City) to pave 100% of the site and still comply with lot coverage regulations. The concept has more to do with structures that have a roof, and therefore provide “coverage” for humans, than improvements that cover the site.

It is unclear why lot coverage is regulated in Morro Bay, since it does nothing to address runoff, landscaping, aesthetics, privacy, solar access or “mansionization.” In fact, it may be counter-productive in dealing with these issues. In any case, the City’s definition of “building lot coverage” is as follows:

“Building Lot Coverage” means the coverage of a lot by all portions of the building, either at or above ground level, including garages, carports, roofed porches and cantilever portions of the building and the area of raised uncovered decks over 30 inches in height which encroach into any setback areas, excluding roof overhangs, eaves, open decks, or similar architectural extensions.”

For practical purposes, the proposed project includes driveways, porches, planters, stairs and walkways that cover the entire site, or very close to it. The project nevertheless complies with Morro Bay’s 60% maximum lot coverage standard because much of this paved area (i.e., driveway between Units C & D and concrete porches along Harbor Street) is not covered and is therefore not considered lot “coverage.”

Setbacks

As noted above, the project complies with setback requirements with the possible exception of those along Magilside Drive. If Magilside is considered a street, the Magilside frontage would be considered an exterior side yard and a ten (10) foot setback requirement would apply. If, however, Magilside is considered an alley, there would be no setback requirement.

According to Chapter 17.12 of the Zoning Ordinance (DEFINITIONS), a street is means:

“a public thoroughfare accepted by the city which affords a means of access to abutting property including avenue, place, way, drive, lane, boulevard, highway, road and any other thoroughfare except an alley.”

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An alley is defined as:

“a public or private way less than thirty feet in width which affords a secondary means of access to abutting property.”

The public right-of-way for Magilside is exactly 30 feet in width and all properties along Magilside have another street frontage in addition to Magilside (if not physical access, legal access). Considering that the right-of-way is 60 feet in width for Front Street and 80 feet in width for Harbor and Market Streets, Magilside indeed seems like something less than a bona fide street. Also, it does not appear than any of the existing structures along Magilside have provided much if any setback at all. In any case, a setback of five (5) feet is proposed along the Magilside frontage of the site. Although the project would add three (3) driveway approaches onto Magilside, the 5-foot setback would allow for a pedestrian walkway off the road surface used by automobiles.

If it is determined that Magilside is indeed an alley and not a street, the issue of setbacks is moot. If not, the proposed setback can still be allowed for provided that findings are made that a better design would result or that the project offers overriding public benefits. An additional five (5) foot setback along Magilside would allow for a wider sidewalk but would not seem to further community goals compared to the benefits of a mixed-use, infill, private “redevelopment” project of this scale. Findings for the allowance of such an exception would therefore not be difficult to make.

Parking

Unless restricted to 1-bedroom units, each of the six (6) residential units would demand two (2) parking spaces. This, plus the requirement to provide one guest space for every five spaces required, would equate to a parking demand of 14 spaces for the residential component of the project.

Assuming all of the first and second floors are devoted to commercial uses with a parking demand of one space for every 300 square feet (which is the parking requirement for most commercial uses), the parking demand for the commercial component of the project would be $(10,600 \text{ sf} \div 300)$ 35 spaces. The grand total for the project, then, would be $(14 + 35)$ 49 spaces.

The project would include 15 parking spaces on-site (12 enclosed, 3 covered).⁷ The balance is therefore 34 spaces. In lieu fees for the 34 spaces would equate to $(34 \times \$4,000.00)$ \$136,000.00.

Anticipating that the applicant or Planning Commission (or City Council for that matter) will inquire as to the possibility that the historic parking demand could be applied or credited to the proposed project, the figures on the following chart are provided :

⁷ Each of the six (6) residential units would have a two-car garage. In addition, there would be a handicapped-accessible space and two guest spaces for a total of fifteen (15) spaces.

| Historic Use | Parking Requirement | Spaces Required |
|----------------|------------------------|-----------------|
| 17-room motel | 1 space per guest room | 17 |
| Manager's unit | 2 spaces | 2 |
| Residence | 2 spaces | 2 |
| | | |
| | Grand Total | 21 spaces |

If the historic motel use were credited to the proposed project, the parking balance would be reduced to 13 spaces (34 - 21). In lieu fees would then equate to \$52,000.00.

Bluff Development Standards

It is arguable as to whether Bluff Development Standards contained in Chapter 17.45 of the Zoning Ordinance should have been applied to the subject site but it is clear that they have been and that the proposed project is potentially inconsistent with those standards. The project's compliance with Bluff Development Standards will therefore be a substantial planning issue for the Commission and Council to wrestle with, as eluded to under height limit discussions above.

To clarify the theoretical question as to the distinction between true coastal bluffs and other topographical features in proximity to the ocean, we offer this. Official maps adopted by the California Coastal Commission on October 11, 1991 show the area of original and retained Coastal Commission jurisdiction wherein coastal development permits must still be obtained from the Coastal Commission. The official maps also show the appeals jurisdiction, which is defined as follows:

"This area includes lands between the sea and the designated first public road paralleling the sea or 300 feet from the inland extent of any beach or the mean high tide line if there is no beach, whichever is the greater distance. Also included are the lands within 100 feet of streams and wetlands and lands within 300 feet of the top of the seaward face of any coastal bluff."

In reviewing official maps adopted by the Coastal Commission it is clear that at the north end of town, where there is a beach and true coastal bluff, the original jurisdiction extends from the mean high tide line to the bluff face and the appeals jurisdiction extends from the bluff face inland a distance of 300 feet or first public street if the street is more than 300 feet away. Along the Embarcadero west of the proposed project, however, the official maps do not recognize the existence of either a beach or a bluff.

To wit, the area of original jurisdiction extends from the mean high tide line to the Embarcadero and the appeals jurisdiction extends from the Embarcadero east a distance of 300 feet. If the topographical feature, or "bluff," on the east side of the Embarcadero were a coastal bluff in the Coastal Commission's opinion, the appeals jurisdiction would begin there and extend a distance of 300 feet east pursuant to the last part of the last sentence cited above.

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This is an interesting discussion but does not discount the fact that Bluff Development Standards have been extended by the City and applied to the project site. The proposed project is designed to step down the "bluff" face without the need for a retaining wall that would alter the natural landform or impede public access.

Environmental Review

There is little precedence for this "crediting of past uses" in the preparation of environmental documents pursuant to the California Environmental Quality Act (CEQA), at least as far as the actual analysis of the project's impacts are concerned. Under CEQA, the baseline for environmental review is the condition of the site and its surroundings at the time that environmental analysis is commenced. Having said that, it is the City as lead agency that determines what is appropriate in terms of mitigating the project's impacts.

In discussions of air quality, traffic, parking, water use, et cetera, no credit for historic uses were applied during preparation of a Draft Mitigated Negative Declaration for the proposed project (Exhibit C). Nevertheless, such credits could be recognized and applied in approving the project through findings and conditions of approval.

As discussed in detail within the body of the Draft Negative Declaration, the project's potential impacts can be reduced to less than significant levels through incorporation of a mitigation monitoring plan. The applicant has agreed to incorporate the mitigation monitoring plan into the project and fully comply with its mandates.

Public Review – The public review period for Draft Mitigated Negative Declaration began with a legal ad published in the Telegram-Tribune on January 27, 2003 and ran through 5:00 PM on February 18, 2003. This is a day or two longer than required by CEQA and, for practical purposes, comments will probably be accepted until a final decision is rendered by the City Council.⁸ As of the publication of this staff report, no public comments were received. Any comments received prior to the hearing will be presented for consideration at the hearing.

Following is a summary of the Draft Mitigated Negative Declaration relative to the project's potential impacts and mitigation measures to reduce those impacts to less than significant levels (refer to the document itself for more detailed discussions or for discussions of non-issue areas, such as impacts on agricultural resources, biological resources, cultural resources, recreation, noise or risk of upset):

Visual Resources/Aesthetics – Policies contained within the Coastal Plan and General Plan speak to the need to protect visual resources. In addition, the project is subject to Section 17.48.190 of the Zoning Ordinance that requires "protection of visual resources and "compatible design" and the requirements of the S.4 (Special Design Criteria) zoning overlay. The project cannot be approved unless found consistent with the Coastal/General Plan and zoning regulations through a public process that involves meetings of the Planning Commission and Council. Mitigation measures (and in particular mitigation monitoring) are nevertheless required to ensure that what is built is consistent with what is approved.

⁸ The City's Subdivision Ordinance delegates decision-making authority to the Planning Commission for Tentative and Final Parcel Maps (4 or fewer lots) but Tentative and Final Tract Maps (5 or more lots) must go to the City Council. (page 22 of 30 pages)

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Architectural style, colors and exterior materials are subjective issues but the issues of size and bulk are not. From a size and bulk standpoint, the project would block public views of the bay and rock along Magilside and Market Streets and, to a lesser extent, along Harbor Street. A smaller building, however, would block the same view to substantially the same extent. Even if the entire project were limited to fourteen (14) feet in height, views of the bay and rock would be lost to persons walking, bicycling or driving along these streets. Therefore, the project's potential impacts are considered moot in light of what the Zoning Ordinance clearly allows for and are less than significant from an environmental standpoint.

All lighting would be required to comply with zoning regulations that require shielding and prohibit light from being directed or allowed to spill off-site. No mitigation for lighting is necessary because it would be redundant.

Mitigation: At a noticed public hearing, the Planning Commission and City Council shall consider details of the proposed architectural treatment, including landscaping, and shall require any changes deemed necessary or appropriate to avoid or minimize adverse impacts. The residual impacts must be less than significant. If not, findings cannot be made for approval of the project because the project would be in conflict with the General/Coastal Plan.

Air Quality – Project emissions would be below the San Luis Obispo County Air Pollution Control District (APCD) Tier II significance criteria. The project does not have the potential to have a significant adverse impact related to air quality nor would the project's contribution to air pollution be cumulatively considerable. Prior to their demolition, pre-existing structures were investigated for the presence of Asbestos by a qualified asbestos consultant (Thomas J. Bauman, C.A.C. #92-0507) in March of 1995. The investigation, as reviewed and approved by the San Luis Obispo County Air Pollution Control District (APCD) on March 29, 1995, detected no asbestos.

Short-term dust and emissions during construction would be mitigated through compliance with existing construction practices (i.e., keeping the site watered) mandated by zoning and building codes. The project would therefore not have significant adverse impacts related to air quality. Conversely, it could be fairly argued that the "live-work" mixed-use concept improves air quality by providing work-at-home alternatives to persons currently commuting.

Geology/Soils – A Soils Engineering Report and Geotechnical Investigation were prepared for the previously approved 10-room (plus managers unit) Bed & Breakfast establishment (Earth Systems Consultants dated June 1, 1992 and Geo Source Inc dated September 29, 1999, respectively). The site must be graded and recompacted to accommodate proposed construction. Grading, and the designed of foundations and buildings must be engineered. Through the building permit process, updated soils and geological reports may be required but the earlier ones confirm the site is generally suitable for the type of development proposed.

Mitigation: The applicant shall provide all updated and project-specific soils and geology reports required by the Building Official in the course of obtaining a building or grading permit. Project design and construction shall be consistent with recommendations contained in soils and geology reports, as required by the Building Official.

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Water/Drainage – Currently, the City has established that projects that increase demand by more than eight (8) water equivalency units (WEUs) may have a significant impact and therefore warrant serious consideration or further study. A conventional detached single-family dwelling equates to one (1) WEU and the City maintains a chart for other uses. Pursuant to the chart, residential condominiums demand 0.65 WEU per unit, or 3.9 for the six units proposed. For the commercial component of the proposed condominiums, water demand depends on the type of commercial use. For example, a restaurant or Laundromat would use more water than a retail store, office or art studio. For retail or office uses, water demand is estimated at 0.15 WEU per 1,000 square feet. For restaurants, water demand is estimated at 2.06 WEU per 1,000 square feet.

Based on the square footage figures provided, the project water demand is between 4.56 WEU's (if all of the commercial spaces are retail or office) and 13.07 WEU's (if all of the commercial spaces are restaurants). If four (4) of the commercial spaces were restaurants and two (2) were retail or office, water demand would be 7.21 WEU's and thus still below the 8 WEU thresholds (counting the residential uses). Mitigating to preclude the project from exceeding 8 WEU's can easily be monitored in connection with the review and approval of business licenses.

Finally, the potential for temporary erosion of soils on-site exists if grading operations are conducted during the rainy season. This can be addressed through standard conditions requiring approval and implementation of an engineered erosion/sedimentation control plan. Separating grease and hydrocarbons from urban runoff is also important prior to the runoff entering the bay. The project proposes paving substantial proportions of the site with impervious surfaces associated with driveways, parking areas and rooftops resulting in increased site runoff that could have capacity impacts on downstream facilities (i.e., downstream facilities may not be adequately sized to accept increased runoff). There are, however, in lieu fees routinely collected upon building permit issuance that are intended to address this regional issue. Through the calculation of in lieu fees, the applicant's fair share contribution is determined. The payment of that fee then satisfies the applicant's obligation. In addition, the project would be extending curb, gutter and sidewalk improvements around the entire site frontage. This would help reduce erosion in the long-term, as the runoff would no longer come in contact with unpaved surfaces.

Mitigation: Frontage improvements mentioned above (i.e., curb, gutter and sidewalk along the entire property street frontage) may require off-site (but within existing right-of-way) improvements to avoid adverse impacts on the right-of-way or on adjoining properties, or simply to achieve a smooth transition with existing improvements. The applicant shall provide such "transitional" drainage improvements, as required by the City Engineer. Improvement plans shall also satisfy the City Engineer and Public Services Director relative to applicable state and federal urban storm water runoff programs.

At a minimum, an engineered erosion/sedimentation control plan shall be submitted for review and approval by the City Engineer for any grading activities that occur, or that may occur, during the rainy season. Finally, project fees shall include in lieu fees for the improvement of downstream drainage facilities.

Land Use Planning – Under the "Summary" and "Consistency with Local Coastal Program" sections (above), the extent to which the City must rely on the tract (condo) map component of the project in order to make policy consistency findings is discussed and stressed. Page 24 of 36 pages

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Mitigation: Prior to the final Tract Map recording, or the issuance of any permits, applicable traffic impact fees shall be paid.

PUBLIC NOTICE

Notice of this item was posted at the site and published in the San Luis Obispo Telegram-Tribune newspaper on February 7, 2003 and all property owners of record within 300 feet of the subject site were notified of the public hearing and invited to voice any concerns on this application. (NOTE: This is in addition to the noticing and public review that was done for the Draft Mitigated Negative Declaration, as discussed above).

CONCLUSION

With recommended conditions, and utilizing the flexibility afforded by the PD relative to buildings height near the bluff edge (and possibly setbacks along Magilside), the proposed project can be found consistent with zoning regulations and all applicable goals, objectives and policies of the General Plan and Local Coastal Plan. The requirements of the California Environmental Quality Act (CEQA) have been satisfied through the preparation of a Mitigated Negative Declaration. The Mitigated Negative Declaration satisfies the "letter" of the CEQA statutes with respect to its completeness and adequacy and the "spirit" of the CEQA statutes with respect to fostering an informed decision by fully disclosing the potential impacts of the proposed project to decision-makers and the general public. With recommended conditions of approval, the project would not have significant adverse impacts on the environment.

In staff's opinion, the project would also benefit from a bolder, more lively exterior color scheme, potentially with tile inserts, trim, awnings, different window treatments or some combination of elements along those lines. If the Planning Commission is uncomfortable sending the project to the City Council for final approval without locking in a specific exterior treatment for the project, they could grant conceptual approval subject to a condition that such details be provided to the City Council for their consideration. The Council, however, may not appreciate having to delve into such detail. The staff recommendation is that the Commission simply require the applicant to work with staff to achieve the desired exterior look prior to the issuance of building permits. Alternatively, the Commission could require the applicant to return to the Planning Commission for approval of architectural details once Council approval has been secured (much like the concept/precise plan process used on public property). In any case, the proposed building is beautifully designed and presents unique and exciting opportunities to make a strong and positive statement. This opportunity should be taken advantage of through exemplary exterior treatment.

Based on an objective reading of the goals and policies expressed in the Coastal Plan, General Plan and zoning regulations, and careful balancing of those goals and policies, staff's opinion and recommendation can be summed up very simply -- in a utilitarian sense, it appears that project approval would bring a greater community good than would project denial. This will no doubt be the focus of considerable discussion at the project hearings, as the project is certainly not without its issues. The City's Coastal Program and zoning codes do not protect private views but the Commission and Council must give consideration to the size and scale of the project in relation to surrounding development.

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In the end, staff anticipates that the Planning Commission and Council will also seek the greater good and conclude that the project is a strong and positive investment into the community that advances community goals.

Report prepared by: Gary Kaiser, Senior Planner

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EXHIBIT A

**FINDINGS FOR APPROVAL
CUP 08-02; TTM 02-02 & CDP 35-02R**

General

The staff report and environmental document prepared for the project contain detailed discussions regarding the project's potential environmental effects and appropriateness in the context of its historical, physical and legislative surroundings. Those discussions are included herein by reference as is relevant testimony presented at public hearings regarding the project.

California Environmental Quality Act (CEQA)

- A. The Mitigated Negative Declaration (MND) prepared for the project is complete and adequate and fully complies with the California Environmental Quality Act (CEQA). The information contained in the MND, and all public comments submitted pursuant thereto, have been considered prior to taking action on the project. All feasible mitigation measures identified in the MND have been agreed to be the applicant and have been carried over as Conditions of Approval. With the Conditions of Approval, the project would not have a significant impact on the environment.

Subdivision Map Act Findings

- A. The proposed map is consistent with the General Plan and Coastal Land Use Plan.
- B. The design and improvement of the proposed subdivision is consistent with the General Plan and Coastal Land Use Plan.
- C. The site is physically suitable for the type and density of development proposed.
- D. The design of the subdivision and related improvements will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- E. The design of the subdivision and improvements will not cause serious public health problems.
- F. The design of the subdivision and related improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

Conditional Use Permit Findings

- A. The project is an allowable use in the C-VS (PD) zone district and is consistent with the certified Local Coastal Program and General Plan for the City of Morro Bay, based on the analysis and discussion in the staff report; and

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- B. The establishment, maintenance, or operation of the proposed use will not be detrimental to the health, safety, morals, comfort and general welfare of persons residing or working in the neighborhood of the proposed use, as evidenced by public testimony received during the public hearing; and
- C. The use will not be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the City because the project, as conditioned, will be constructed and will operate in accordance with all applicable City standards and regulations intended to protect persons and property, as indicated in the staff report.

Coastal Development Permit Finding

- A. The project is consistent with applicable provisions of the certified Local Coastal Program, as discussed in the staff report.

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EXHIBIT B

**CONDITIONS OF APPROVAL
CUP 08-02; TTM 02-02 & CDP 35-02R**

STANDARD CONDITIONS

1. This permit is granted for the use as described in the staff report, as discussed at the February 18, 2003 hearing and as depicted on plans received by the Public Services Department on July 3, 2003 ("Exhibit C" of the staff report). The approved use is modified, however, by the following Conditions of Approval:
2. Inaugurate Within Two Years: If the approved use is not established within two (2) years of the effective date of this approval, this approval will automatically become null and void. However, upon written request by the applicant prior to the expiration date of this approval, up to two (2) one-year time extensions may be granted. Said extensions may be granted by the Public Services 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: Minor changes to the project description and/or conditions of approval shall be subject to review and approval by the Public Services Director. Any changes to this approved permit determined not to be minor by the Director shall require the filing of an amendment subject to Planning Commission review.
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. 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.
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 applicant's failure to comply with conditions of approval. This condition and agreement shall be binding on all successors and assigns.
7. Compliance with Conditions: The applicant's establishment of the use and/or development of the subject property constitutes acknowledgement and acceptance of all Conditions of Approval. Compliance with and execution of all conditions listed hereon shall be required prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Public Services 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.

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8. Acceptance of Conditions: The applicant accepts the conditions upon recordation of the final Tract (Condominium) and acknowledged the obligation to maintain compliance for the life of the project.
9. Water Saving Devices: Prior to final occupancy clearance, 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.
10. Screening of Equipment/Utility Meters/Fencing: No roof-mounted air conditioning, heating equipment, vents, ducts or other mechanical equipment shall be allowed within the project. All such equipment, including meters, the trash enclosure walls and gate and the fire sprinkler risers along Market Street, shall be suitably screened from public view as approved by the Public Services Department. Prior to building permit issuance, the approved method of screening shall be shown on the project plans.
11. Construction Hours: Pursuant to MBMC Section 9.28.030 (I), noise-generating construction related activities shall be limited to the hours of seven a.m. to seven p.m. daily, unless an exception is granted by the Director of Public Services pursuant to the terms of this regulation.
12. Utility Services: All fees, including water and sewer impact fees, shall be paid at the time the building permit is issued unless otherwise noted.
13. Property Line Verification. It is owner's responsibility to verify lot lines. Prior to foundation inspection the lot corners shall be staked and setbacks established by a licensed professional.
14. UBC Compliance. The entire project, including all setbacks, exterior wall openings and handicapped accessible issues, shall comply with the Uniform Building Code, as determined by the Building Official.

PUBLIC WORKS CONDITIONS

15. Off-Site Public Improvements: Off-Site Public improvements are required as set forth in Morro Bay Municipal Code Title 16 Subdivisions, and Chapter 14.44 Building Regulations - Frontage Improvements - Curbs, Gutters, Sidewalks, Streets and Street Trees. Some of the required frontage improvement shall include the following: Concrete sidewalk, curb & gutter (Harbor, Market and Magilside frontages), driveway; a water meter for each residential unit in the sidewalk; a water valve in the street for fire line supply and/or fire hydrant; street trees chosen from one of the species listed in the City Master Tree List.
16. Prior to building permit issuance the Applicant shall (1) submit public improvement plans designed by a civil engineer registered in California for approval by the City, (2) include the general notes provided by the City upon the improvement plans, (3) submit cost estimates calculated on the City provided Engineering Estimate Worksheet of the off-site improvements for review by the Engineering Division, (4) deposit a financial security with the City in the amount of 150% of the estimated construction cost of the public improvements, and (5) complete the City's improvement agreement and its insurance

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requirements. Existing concrete frontage public improvements may remain except for portions which may be in need of repair, or do not meet City specification. Prior to project completion sign off, record asbuilt plans shall be furnished on mylar.

17. Subdivision & Map: \$205.20 fee. Pursuant to Morro Bay Municipal Code Title 16 Subdivisions, this project is a Subdivision. The City Master Fee Schedule requires the Applicant pay a Map Fee of \$205.20 + direct costs for checking, inspection, and other provided work performed by contracted engineering services.
18. Traffic Impact Fee: \$1,570.55. In consideration of the previously existing motel on the site, a traffic study submitted by the Applicant's traffic engineer indicates a net trip generation increase of 3 peak hour trips. One purpose of the traffic study is to provide peak hour information necessary for determination of the traffic impact fee. The fee shall be proportionate to the increase in peak traffic flows at the Highway 41 Main Street, Radcliff Main Street and Quintana Morro Bay Boulevard intersections which have an identified cost of \$980,000, \$1,000,000, and \$585,000 respectively for construction of future intersection and channelization improvements.

Peak hour traffic at Highway 41 Main 41 = 1,755, Radcliff Main = 1443, Quintana Morro Bay Blvd = 1,833.

Peak hour trip rate per Applicant's traffic engineer = 3

Assume 1 trip at Highway 41 Main, at Radcliff Main, and at Quintana Morro Bay Blvd.

$(1 \div 1,755) \times \$980,000 = \558.40 , $(1 \div 1,443) \times 1,000,000 = \693.00 , $(1 \div 1,833) \times 585,000 = \319.15 .

Fee = $\$558.40 + \$693.00 + \$319.15 = \$1,570.55$

19. Encroachment Permits: Are issued by the Engineering Division, prior to construction in or use of land in the City right-of-way.
 - Standard Encroachment Permit,
Required for standard construction per City standard specifications. Current fee \$71.82
 - Sewer Encroachment Permit,
Required for sewer work in the City right-of-way. Current fee \$71.82
 - Special Encroachment Permit,
Required for non-standard work or encroachments in the City right-of-way. The owner submits a completed Special Encroachment Permit, including drawings, notarization and insurance indemnifying the City. After review, approval, and recordation, the Permit and insurance requirements continue with the current and future owners. Current fee \$35.91 plus applicable direct costs checking, administration, and recording.
20. Drive Approach: A drive approach in the right-of-way shall meet the requirements of the City Standard Specification Drawings B-6 through B-10 as applicable. A standard encroachment permit is required.
21. Repair & Replacement of Public Improvements: Prior to project completion the Applicant shall repair curb, gutter, street, or other public improvements which were damaged as a result of construction operations for this project. Curb, berm, gutter or other improvements as required shall be installed at abandoned or illegal drive approach areas.

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22. Sediment or Debris Provisions: Sedimentation control measures shall prevent sediment or debris from entering the City right of way, roadway, or adjacent properties.
23. Drainage: Route roof and paved surface storm water run off to the street flowline .
Drainage method to be shown on the plans.
24. Sewer Backwater Valve: A backwater valve shall be installed on site to prevent a blockage of the municipal sewer main from causing damage to the proposed project.
25. Engineering Checking and Inspection Costs: the Applicant agrees to pay invoiced amounts for reimbursement to the City for it's payment of the direct cost of checking, inspection, and other provided work related to this project performed by contracted engineering services.
26. Title Report: The Applicant shall submit a current title report, with the first improvement and grading plan submittal indicating all easements of record.
27. Oil-Water Separator: To reduce pollution to creek, bay and ocean waters, the applicant shall install an oil-water separator/isolator on site between all drainage water inlets and the street gutter. Inlet and/or outlet structure design shall address silt and hydrocarbon containment.
28. 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.
29. Sewer Backwater Valve: Prior to project completion 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.

PLANNING CONDITIONS

30. All mitigation measures agreed to by the applicant in the course of environmental review shall be incorporated into the project and monitored. Following is a summary of required mitigation measures and monitoring requirements:

AESTHETICS: At a noticed public hearing, the Planning Commission and City Council shall consider details of the proposed architectural treatment, including landscaping, and shall require any changes deemed necessary or appropriate to avoid or minimize adverse impacts. The residual impacts must be less than significant. If not, findings cannot be

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made for approval of the project because the project would be in conflict with the General/Coastal Plan.

AIR QUALITY: No mitigation is required because project impacts would not exceed APCD thresholds of significance. The project would nevertheless be subject to standard construction practices, including standard dust control measures (i.e., keeping the site watered) to address short-term air quality impacts related to grading.

CULTURAL RESOURCES: A Phase I cultural resource evaluation report for the site shall be completed and, if necessary, so too shall a Phase II evaluation. Any mitigation measures recommended by the project archaeologist shall be incorporated into the project at the sole expense of the applicant.

GEOLOGY/SOILS: The applicant shall provide all updated and project-specific soils and geology reports required by the Building Official. Project design and construction shall be consistent with recommendations contained in soils and geology reports, as required by the Building Official.

HYDROLOGY/WATER QUALITY: Frontage improvements mentioned above (i.e., curb, gutter and sidewalk along the entire property street frontage) may require off-site (but within existing right-of-way) improvements to avoid adverse impacts on the right-of-way or on adjoining properties, or simply to achieve a smooth transition with existing improvements. The applicant shall provide such "transitional" drainage improvements, as required by the City Engineer. Improvement plans shall also satisfy the City Engineer and Public Services Director relative to applicable state and federal urban storm water runoff programs. At a minimum, an engineered erosion/sedimentation control plan shall be submitted for review and approval by the City Engineer for any grading activities that occur, or that may occur, during the rainy season. Finally, project fees shall include in lieu fees for the improvement of downstream drainage facilities.

LAND USE/PLANNING: The cited language in the Zoning Ordinance specifically limits residential use to "a single apartment unit or security quarters (emphasis added)." With the proposed condominium (tract) map, each distinct and separately owned condominium would have a "single" residential unit that would be on upper floors only and that would therefore be accessory to a ground floor commercial visitor-serving use. Using this reasoning, the project can be found consistent with the Zoning Ordinance. Without the condo/tract map component, however, the project would conflict with the Zoning Ordinance. The applicant shall submit a final Tract Map and draft Codes, Covenants and Restrictions (CC&Rs) for review and approval of the Public Services Department and City Attorney. Prior to the issuance of a building permit, and Tract Map and CC&Rs shall be recorded.

POPULATION/HOUSING: Pursuant to Chapter 17.50 of the Zoning Ordinance, the applicant shall deed restrict one of the units to maintain its affordability to low and moderate income households, as established by the Public Services Department and San Luis Obispo Housing Authority. However, if the City determines that it is not feasible for the applicant to provide affordable housing on-site, based upon a detailed economic analysis to be prepared by the applicant, the City shall require the developer to provide such housing at another location in Morro Bay, or elsewhere in the county within three miles of the Coastal Zone. If the City determines that it is not feasible or desirable for the developer to provide such affordable housing off-site, the developer shall pay a fee in-lieu of providing such housing. Said fee shall be as prescribed in Section 17.50.060 (determined by City Council) and must be paid prior to the recordation of the final Tract Map and prior to issuance of a building permit.

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RECREATION: The applicant shall pay standard Quimby Act park fees prior to the recordation of the final Tract Map and prior to the issuance of a building permit. With the payment of required fees, the project would not have a significant impact on recreation.

TRANSPORTATION/CIRCULATION: Prior to the final Tract Map recording, or the issuance of any permits, applicable traffic impact fees shall be paid. A detailed breakdown of the fee calculation, and basis for the fee, is contained in the project file and is available for public review on demand.

UTILITY/SERVICE SYSTEMS: In the course of reviewing and approving individual business licenses within the project, planning staff shall monitor the overall project's water demand. Water demand within the overall project shall not exceed eight (8) WEUs. However, if the City Council increases the "threshold of potential significance" from eight (8) WEUs to something else, that something else shall be the project's limit.

31. Covenants, Codes and Restrictions (CC&Rs) shall be submitted with the final Tract Map for review and approval by planning staff and the City Attorney. The CC&Rs shall clearly describe maintenance provisions for common areas. CC&Rs shall also establish an Association responsible for reviewing and approving all structural and nonstructural building alterations, including uses, signs and exterior colors. CC&Rs shall restrict the project to continued consistency with plans hereby approved, unless otherwise approved by the City. CC&Rs shall be recorded prior to or in conjunction with the final Tract Map, as stated above.
32. The applicant is encouraged to pursue a bolder and more enlivened exterior treatment for the project through some combination of (but not limited to): colors; tile inserts; awnings and/or variations in window shape and treatment. Such exterior enhancements may be added to the project administratively if deemed positive changes in staff's opinion. Staff shall, however, have the discretion to elevate such decisions to the Planning Commission.
33. Prior to or in conjunction with building permit issuance, the applicant shall submit a sign program for the project, showing details regarding design and placement. Sign area shall be limited to one (1) square foot of sign area per lineal foot of business frontage. In addition, up to 25% of window areas may be used for signs but in no case shall signs be allowed above the first floor. If awnings are added to the project they too may be used for signage, with text limited to valances.

FIRE CONDITIONS

32. Provide approved numbers (addresses) in such a position as to be plainly visible and legible from the street fronting the property. Lettering shall be a minimum of 5" high on a contrasting background. [UFC, Sec. 901.4.4] *Add note on plans.*
33. Submit all plans and specification sheets for any required fire sprinkler system to the Building Department for review and approval concurrent with Building Plan submittal. The sprinkler system shall be full coverage in accordance with NFPA Standard 13 or 13-R, as applicable based on area of building [UFC, Sec. 1001.4]. Please provide the following standard information on the plans:

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- A. Owners name, north arrow, occupancy of each room and make of fire sprinklers proposed.
- B. Provide manufacturers literature/cut-sheets indicating UL approval for all valves, hangers, sprinkler heads, alarm devices, gauges, etc.
- C. The fire sprinkler contractor shall do their own static water pressure test and show the information on the plans.
- D. Please indicate on the plans where proposed utilities/appliances are located. Will these appliances effect the location or temperature rating of any fire sprinklers?
- E. Provide a symbol index on the plan for future reference.
- F. Please include a 10% water pressure reduction in the hydraulic design of the fire sprinkler system.
- G. Show location of inspector's test on the plans.
- H. Comply with manufactures maximum and minimum clearances from walls to sprinkler heads.

34. Show the location of the nearest three (3) fire hydrants on the site plan.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863

RECEIVED



AUG 11 2003

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please review attached appeal information sheet prior to completing this form.

SECTION I. Appellant(s):

Name, mailing address and telephone number of appellant(s):

George Contento
385 Arcadia Avenue
Morro Bay, CA. 93442
(805) 772-4370
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Morro Bay

2. Brief description of development being appealed:
Harborview, 215 Harbor Street, Morro Bay. Six units
on six contiguous lots, 74% residential over 26% commercial
in a commercial visitor-serving zone, on the bluffs over-
looking the Embarcadero, bay, dunes and harbor.

3. Development's location (street address, assessor's parcel number, cross street, etc.):
215 Harbor Street, Morro Bay, CA. 93442. Corner of
Harbor and Market and Front Streets in Morro Bay.
Assessor Parcel Number 066-291-013

4. Description of decision being appealed:
a. Approval; no special conditions: X
b. Approval with special conditions: _____
c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-MRB-03-081
DATE FILED: 8-11-03
DISTRICT: Central Coast

REASONS FOR APPEAL

THE PROJECT VIOLATES THE LCP AND THE BASE ZONING OF COMMERCIAL VISITOR-SERVING.

The LCP, Chapter II, Section C-2 indicates Visitor-Serving uses that should be developed are: hotels/motels, overnight RV facilities, restaurants, gift shops, goods and supply stores, commercial recreation and other uses typically found to accommodate tourist needs and activities.

The Harborview Project contains six units with residential over commercial space. The commercial space is 26% of the total square footage, residential 74%.

The project is in LCP Area 6, on the LCP designated bluffs overlooking, and at the heart of, Morro Bay's Embarcadero and waterfront, the most visited part of the city.

Chapter IV of the LCP covers Visitor-Serving facilities. This project appears to violate PRC Sections 30222 and 30223, and Policies 1.07A, 2.02 and 2.08. Policy 2.08 will be discussed next.

THE PROJECT HARMS PUBLIC ACCESS TO A PRIME VISITOR-SERVING AREA

Harborview is short 34 parking spaces. Chapter III, Section D-4 of the LCP notes that parking along the Embarcadero is barely adequate to meet demands. This is even truer today. Morro Bay's in-lieu parking fee system is inadequate in providing enough funds to purchase parking spaces, especially in the Embarcadero area.

Chapter IV Section G contains Visitor-Serving policies. Policy 2.08 requires that in-lieu parking fees for this project be equal to the purchase of land and construction of the number of spaces needed to serve the development's peak needs in the Embarcadero Area. This was not provided for in the project.

THE PROJECT CONFLICTS WITH ACCESS AND RECREATIONAL POLICY 1.25

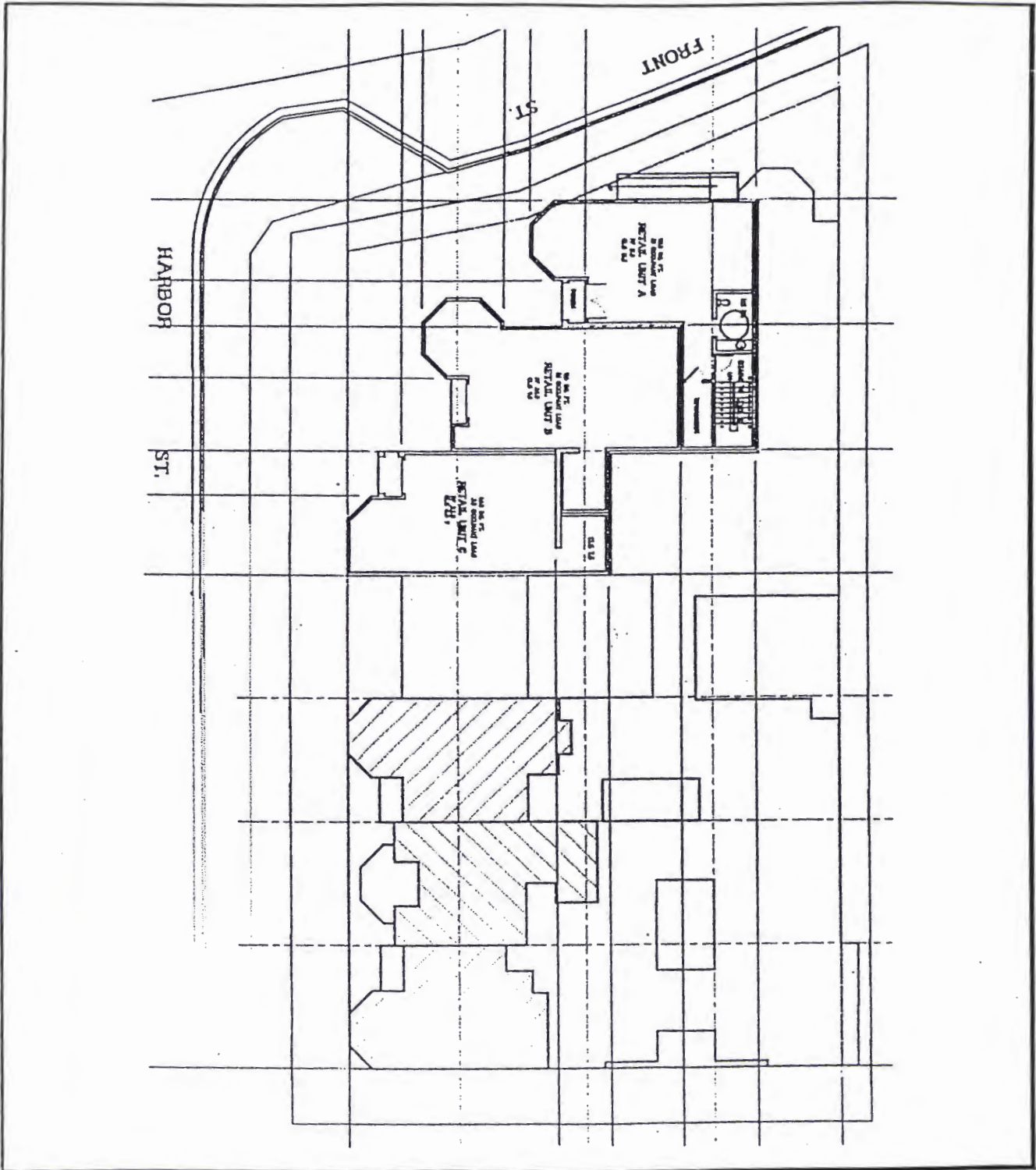
LCP Policy 1.25, Chapter III Section G-2, requires that new developments on the bluff top shall not exceed 14 feet above the existing bluff top. Harborview is more than twice that height, and does not step down the face of the existing bluff as required. This is similar to the height limit in the Bluff Development Standards, zoning code 17.45, which the city chose not to strictly enforce here.

THE PROJECT VIOLATES THE VISUAL RESOURCE POLICIES OF THE LCP.

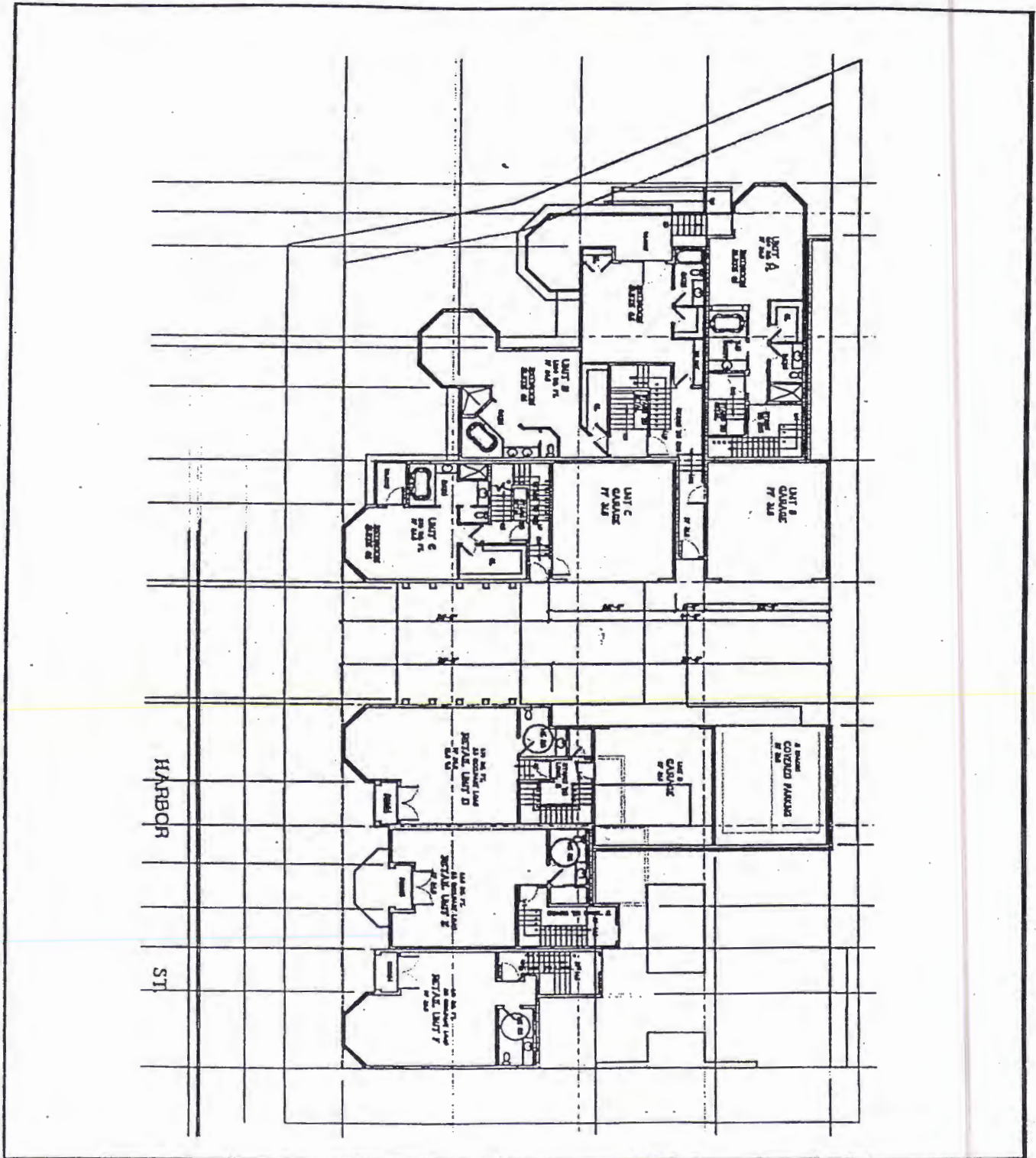
Harborview is nothing like Morro Bay has ever seen before on its' waterfront bluffs. City staff admits that from certain angles the public will be able to see 5 stories of structure. Currently, no development on the bluffs over the Embarcadero has more than 2.5 stories of impact. Harborview will deliver great harm to Morro Bay's small town atmosphere. Nothing on the bluffs, or below, has its' height, bulk and scale, except the power plant. Public views will be blocked from streets and even motel rooms(handicap accessible) around the project. Harborview sets bad precedents for Morro Bay, and also for the entire North Coast of San Luis Obispo County, from Los Osos to San Simeon.

Chapter XIII of the LCP contains the following Coastal Act Sections and LCP Policies that conflict with Harborview: Section 30251, Section 30253, Policy 12.01, Policy 12.02, and Policy 12.06.

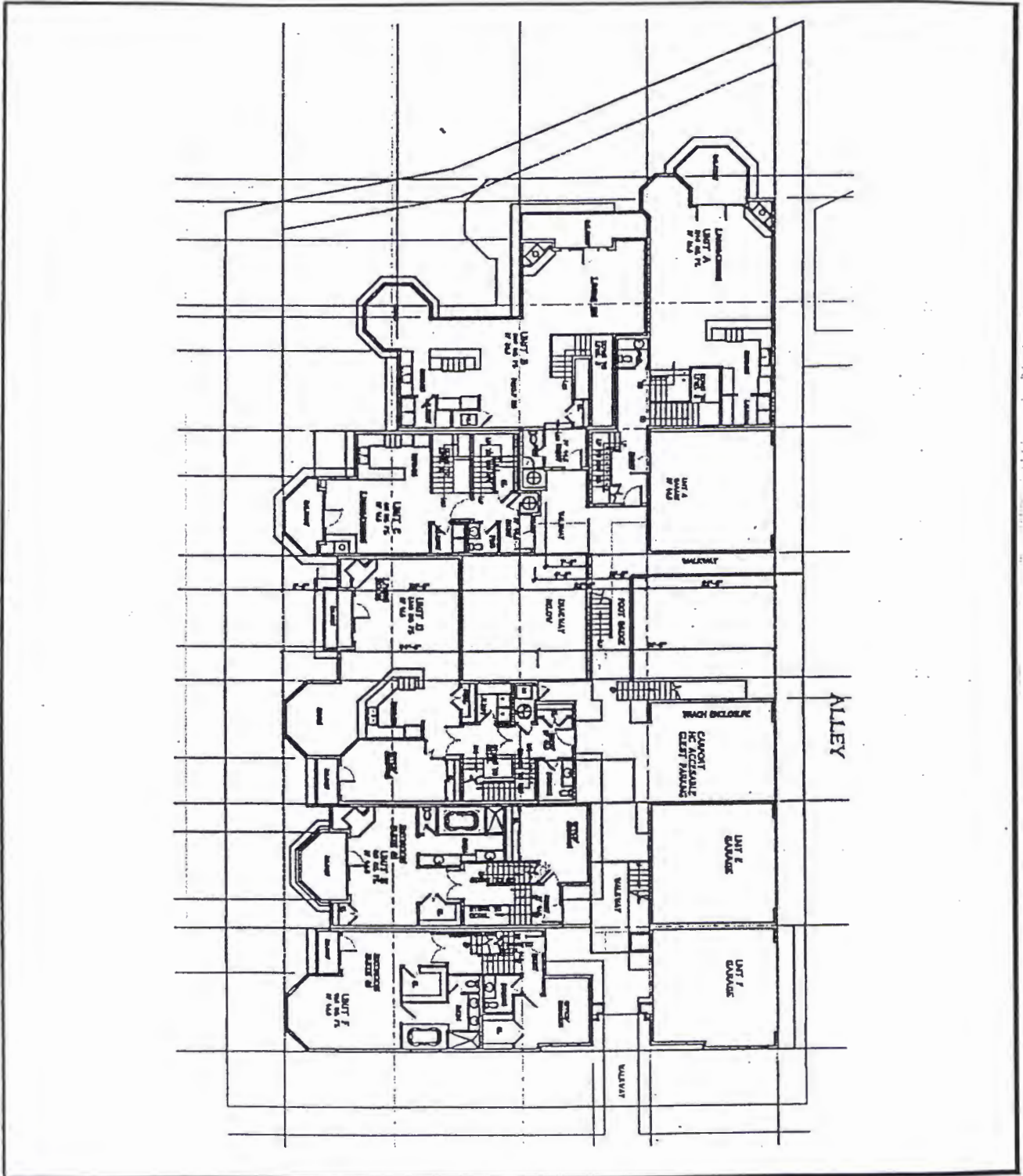
FLOOR PLAN - LEVEL 1



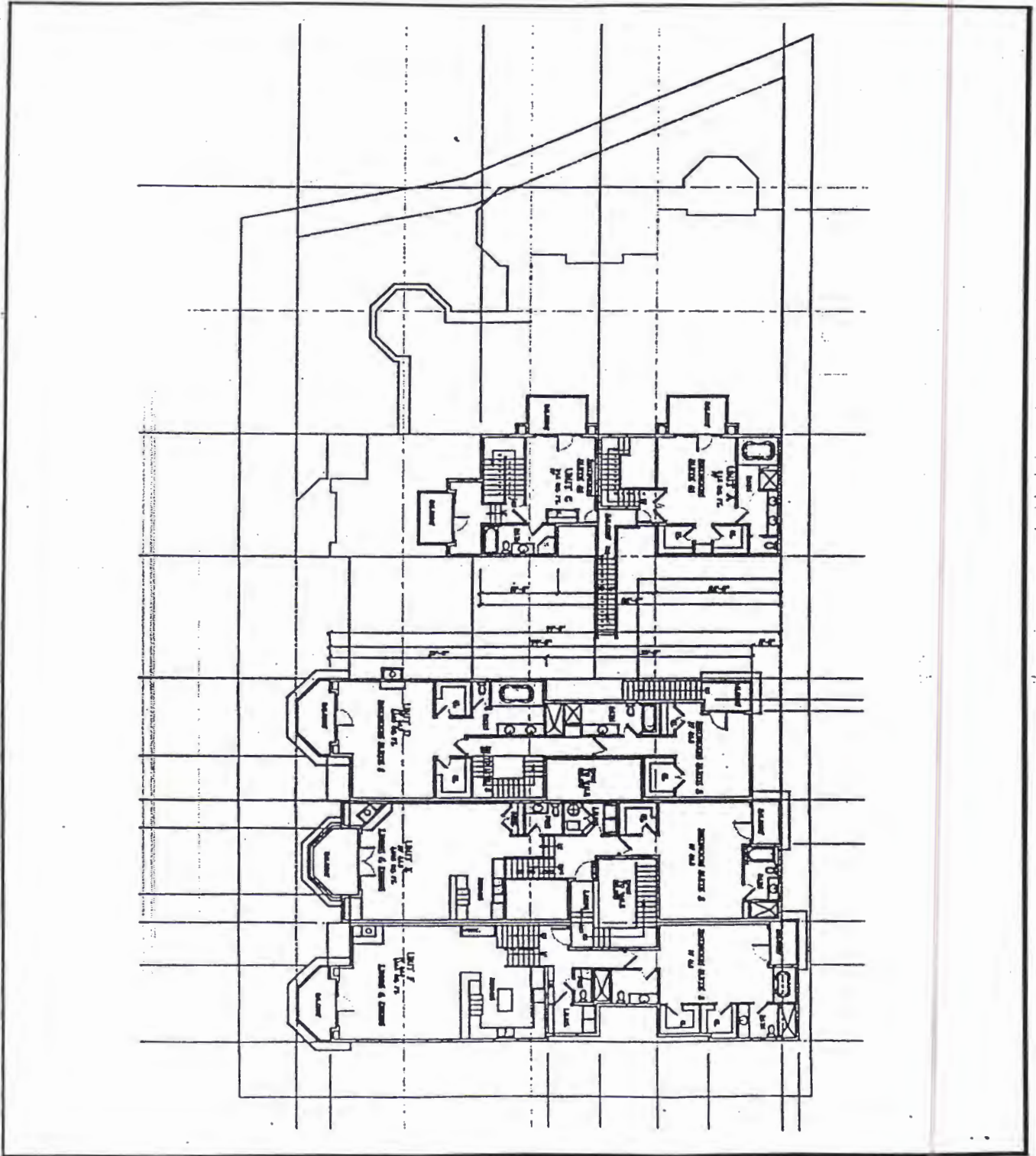
FLOOR PLAN - LEVEL 2



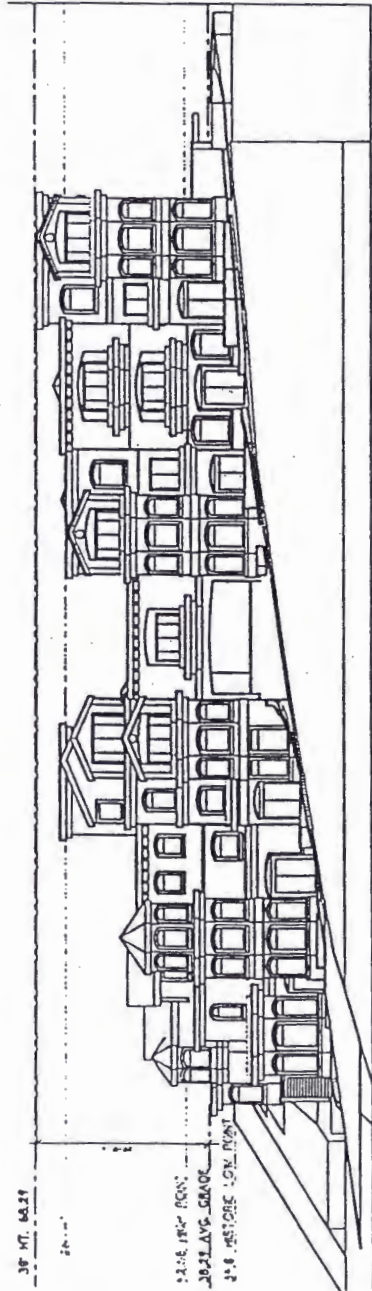
FLOOR PLAN - LEVEL 3



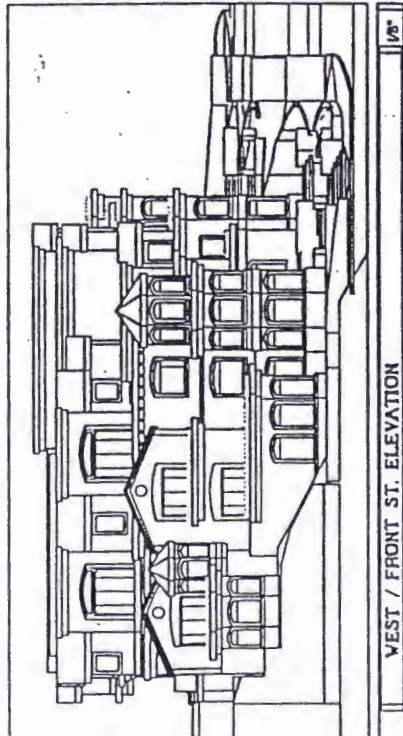
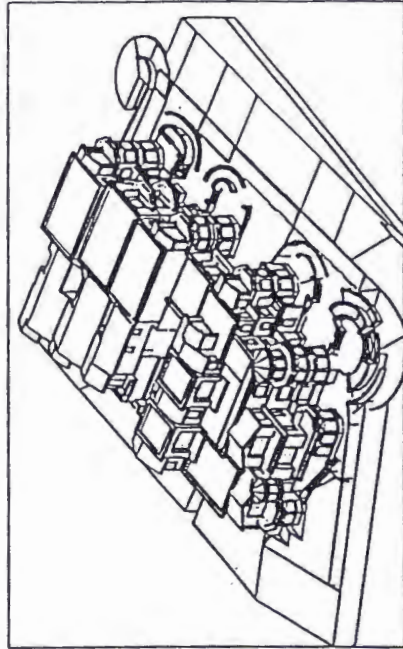
FLOOR PLAN - LEVEL 4



ELEVATIONS, PAGE 1



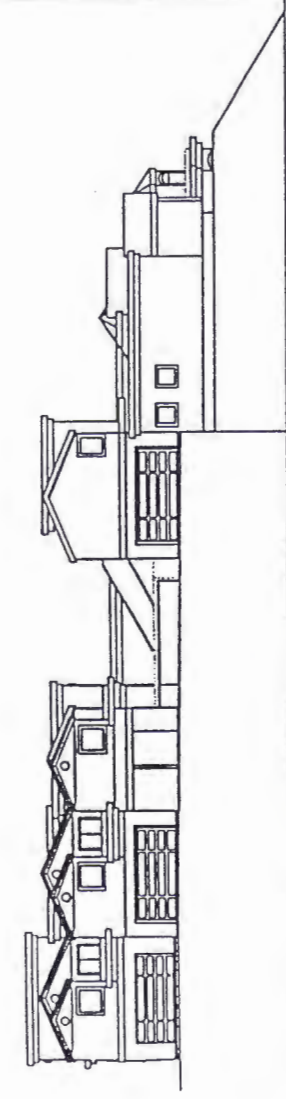
SOUTH / HARBOR ST. ELEVATION



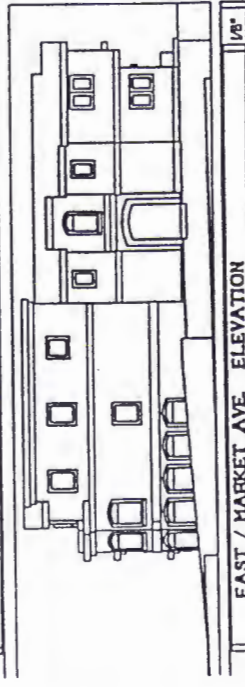
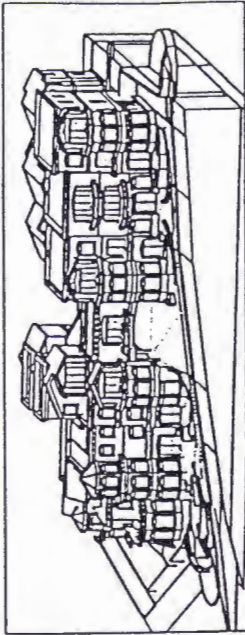
WEST / FRONT ST. ELEVATION

ELEVATIONS, PAGE 2

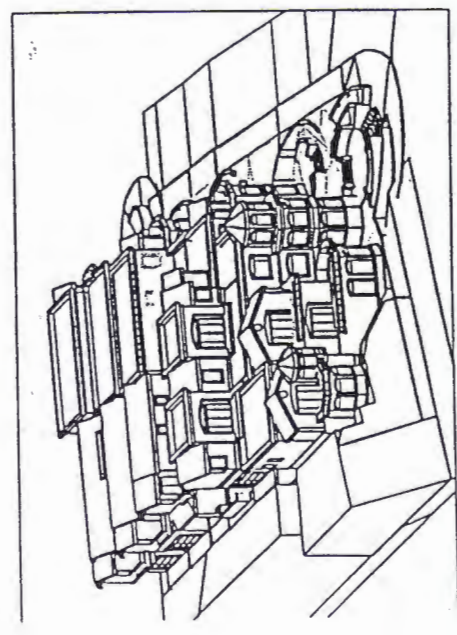
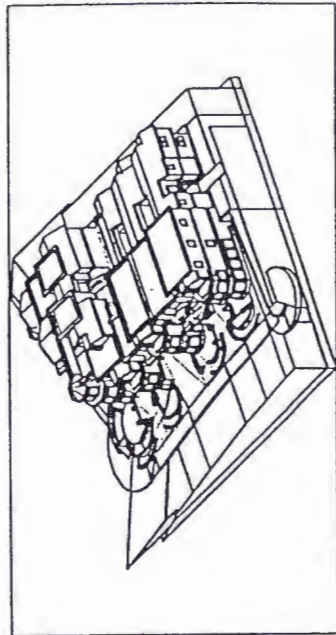
City of Madison
Public Services Department



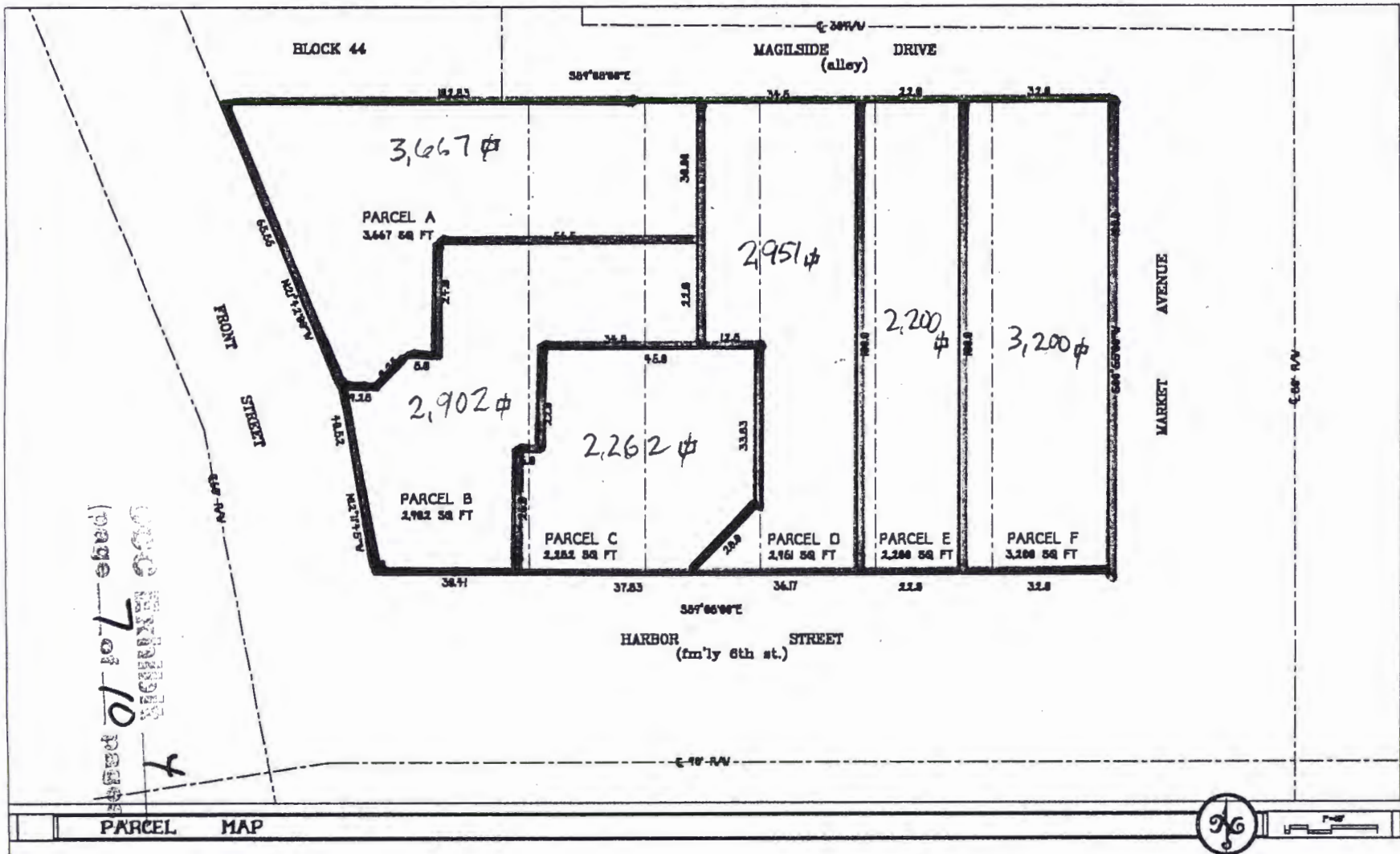
NORTH / ALLEY ELEVATION 1/8"



EAST / MARKET AVE. ELEVATION 1/8"




NEW LOT SIZES



7 of 10 pages
 0000000000
 4

| PARCEL | SQUARE FOOTAGE | ORIGINAL SQUARE FOOTAGE |
|--------|----------------|-------------------------|
| A | 3,667 | 4,704 |
| B | 2,902 | 2,500 |
| C | 2,282 | 2,500 |
| D | 2,951 | 2,500 |
| E | 2,200 | 2,500 |
| F | 3,200 | 2,500 |


MARK L. ALLEN
 SURVEYORS
 1000
 SANTA BARBARA
 CALIFORNIA 93101

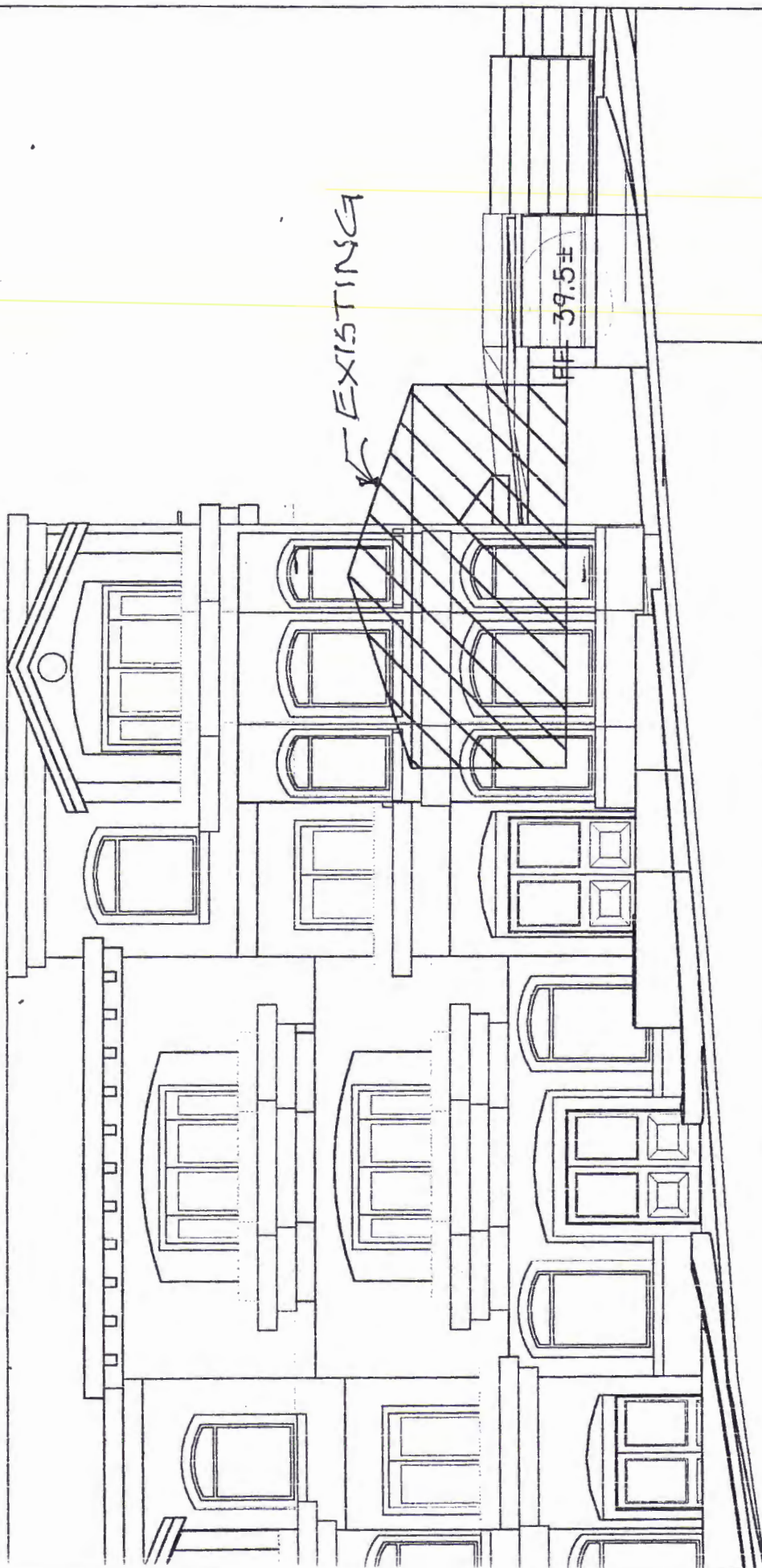
REVISED

PRELIMINARY
 LOT LINE ADJUSTMENT
 MAP

FOR
 THE HARBOR VIEW
 PROJECT

0204

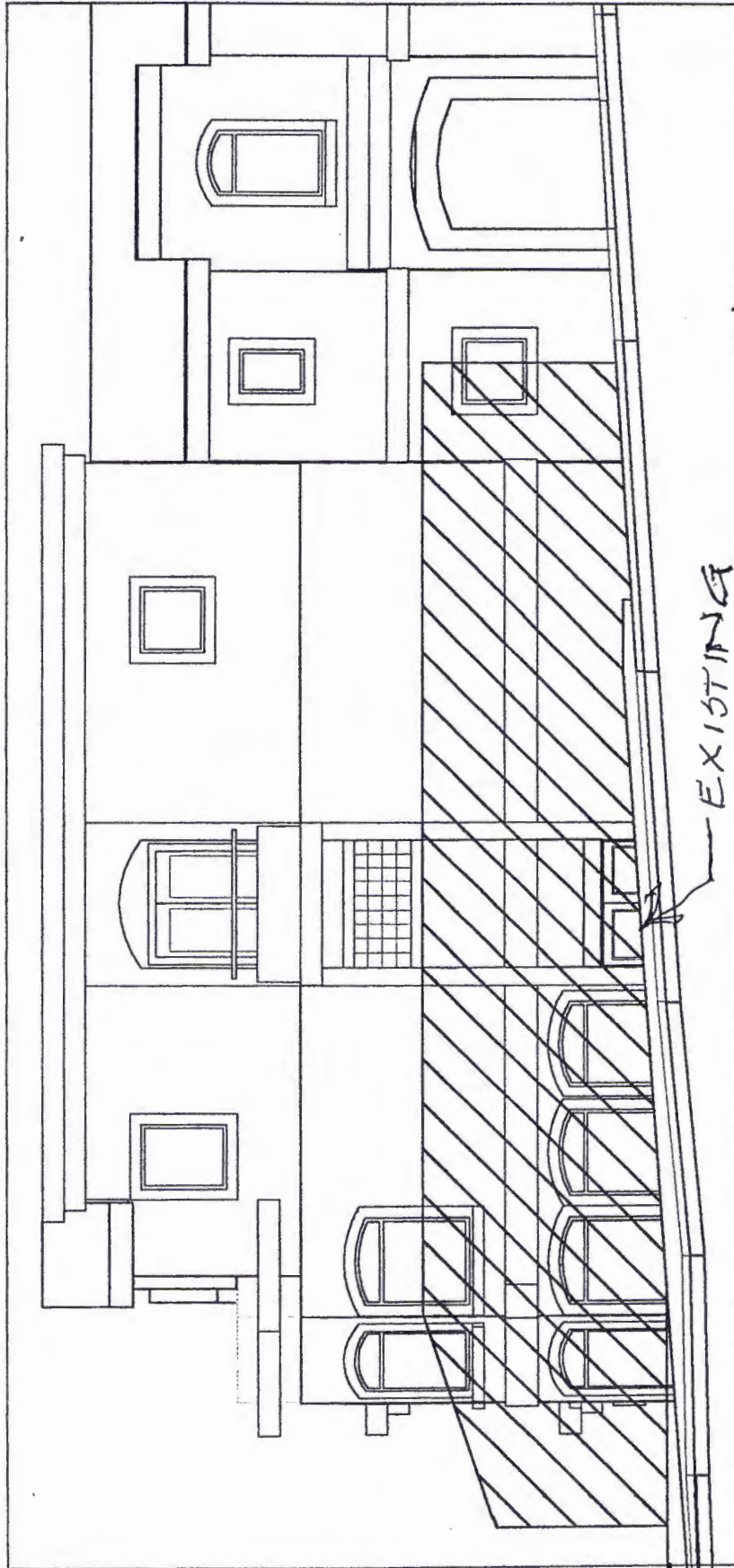
1



SOUTH / HARBOR ST. ELEVATION

SCALE 1/8"=1'-0"

4



EAST / MARKET AVE. ELEVATION

SCALE 1/8"=1'-0"

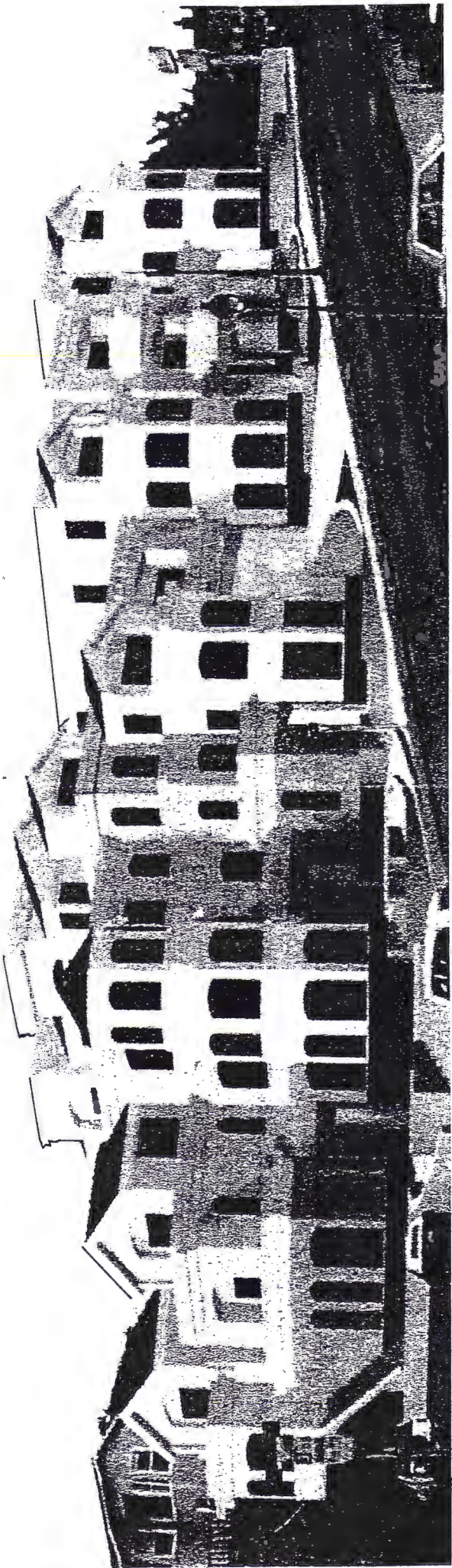


Exhibit
10 of 10

4

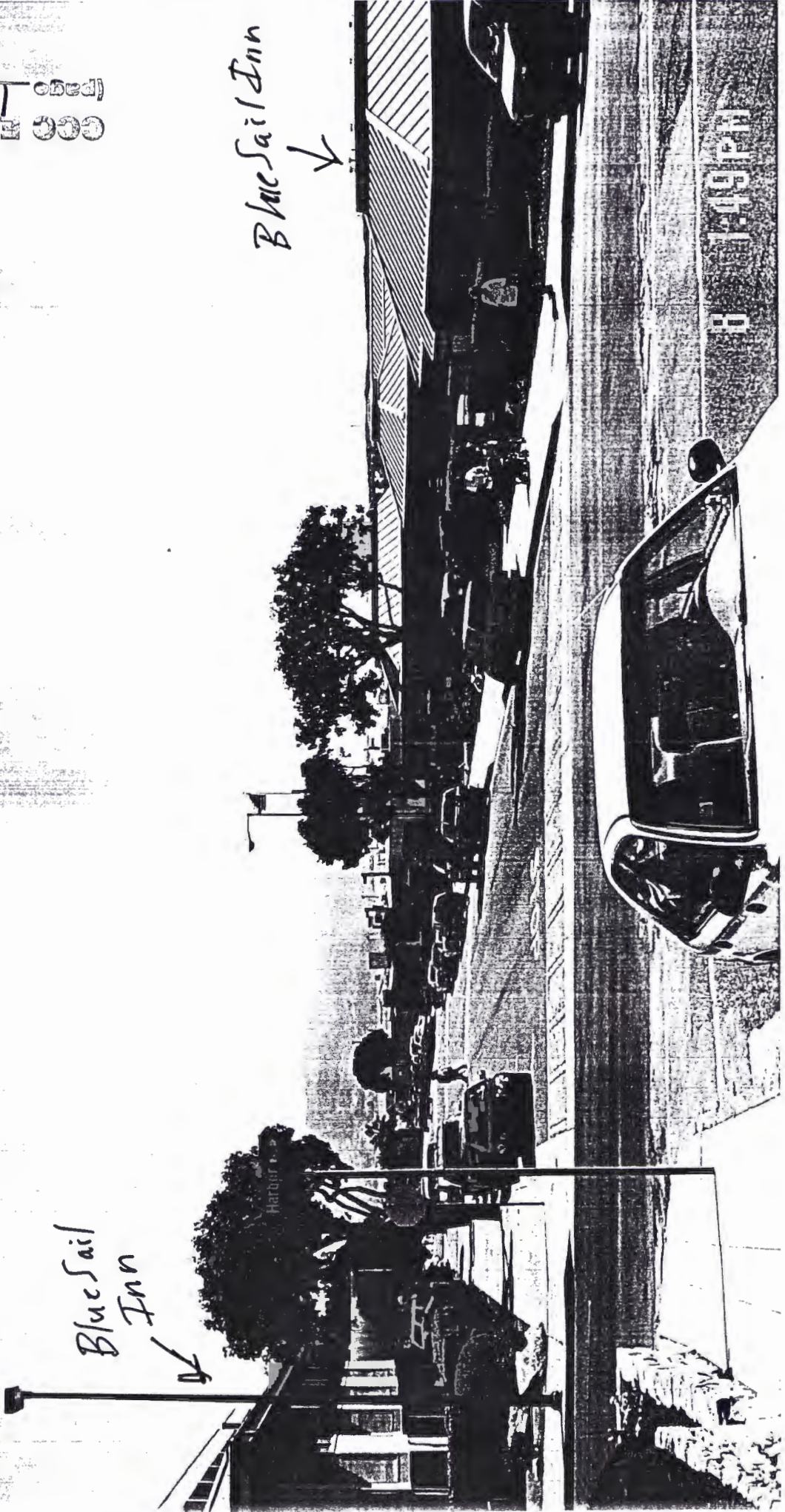
(35)

Looking down...
Again shows all single-story buildings on the bluff for 2 blocks south of Harborview.

CCC Exhibit
Page 1 of 4
(pages)

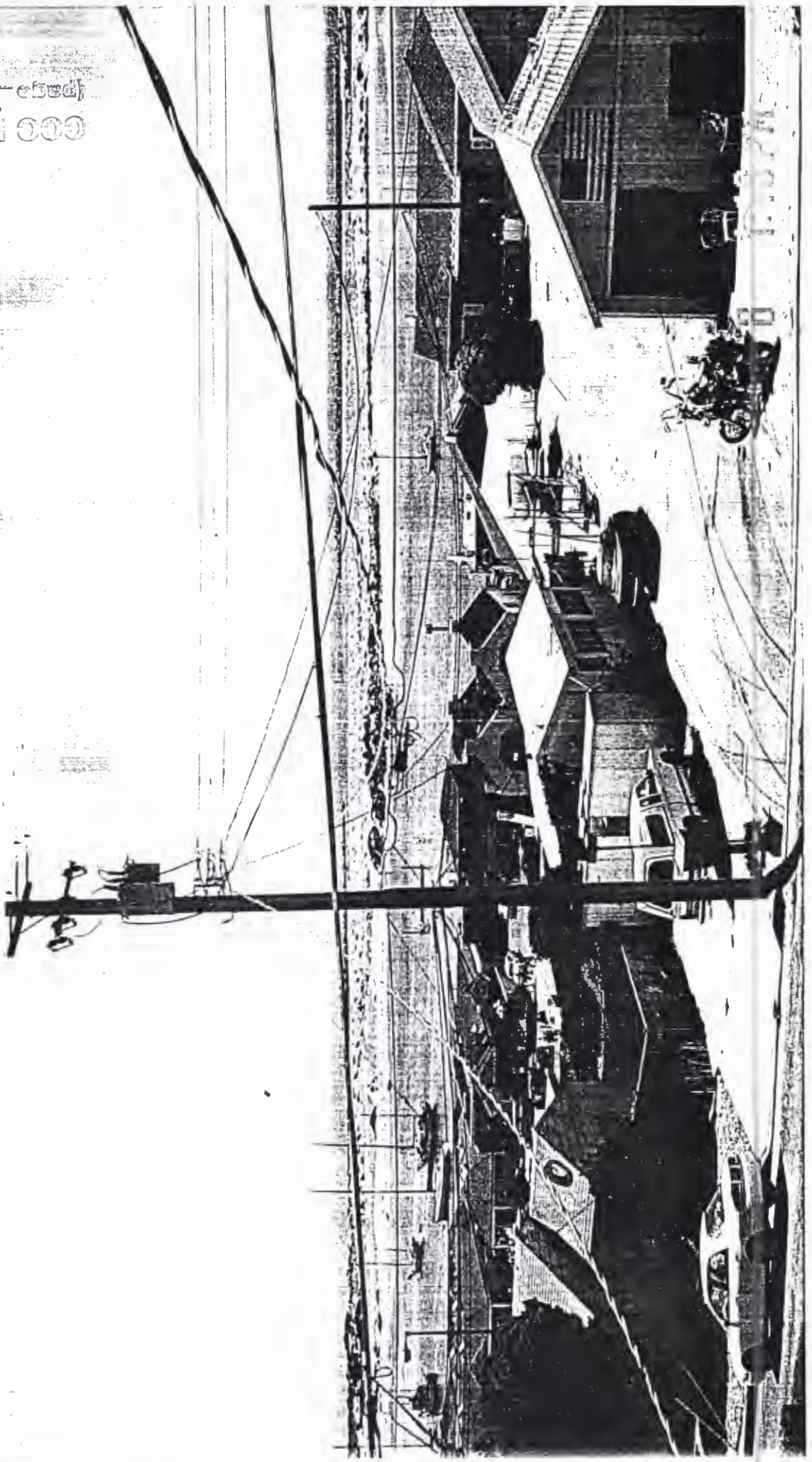
Blue Sail Inn

Blue Sail Inn



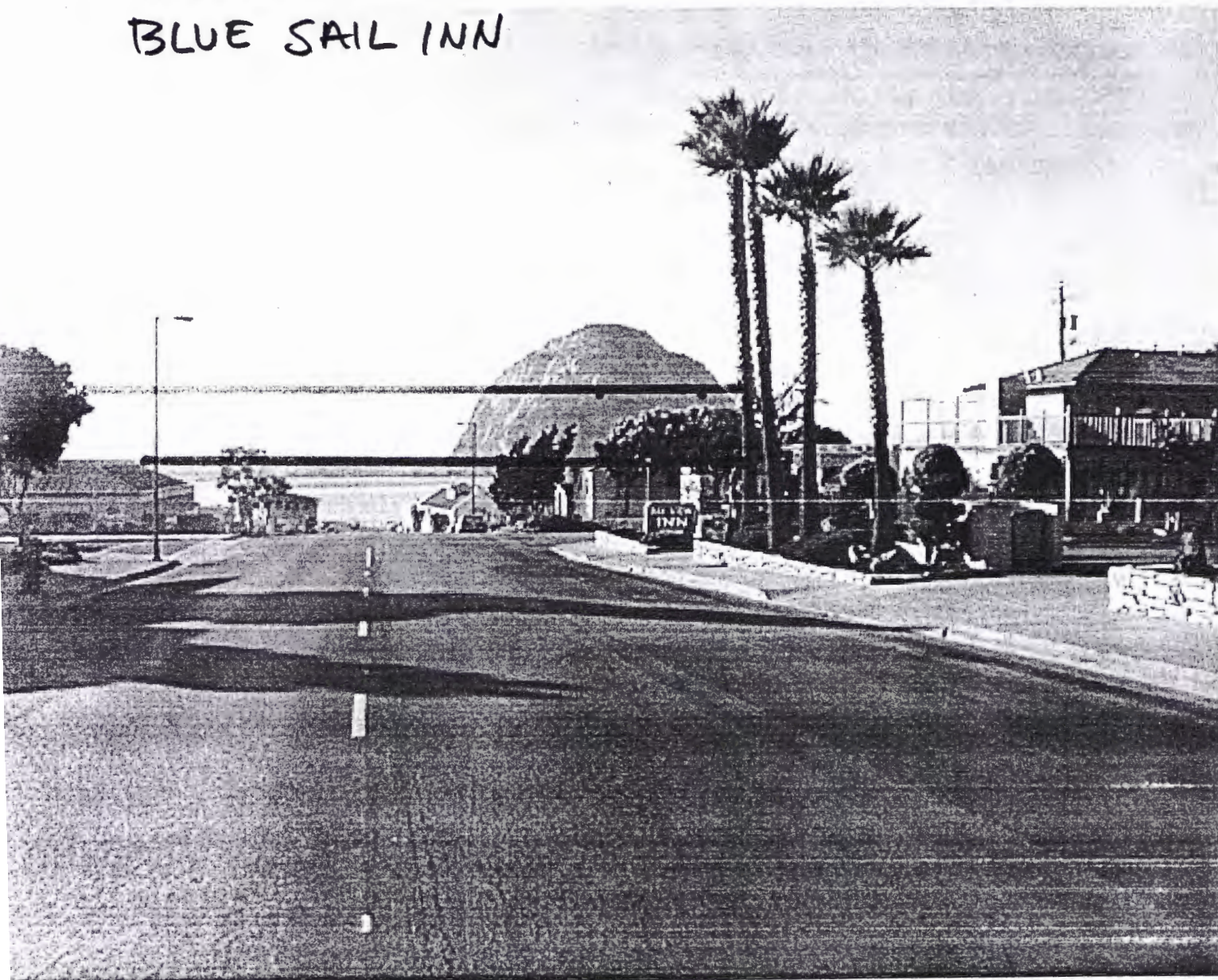
Blue Sail Inn

CCC Exhibit
Page 2 of 4
5



41

PROPOSED HEIGHT OF PROJECT RELATIVE TO
BLUE SAIL INN

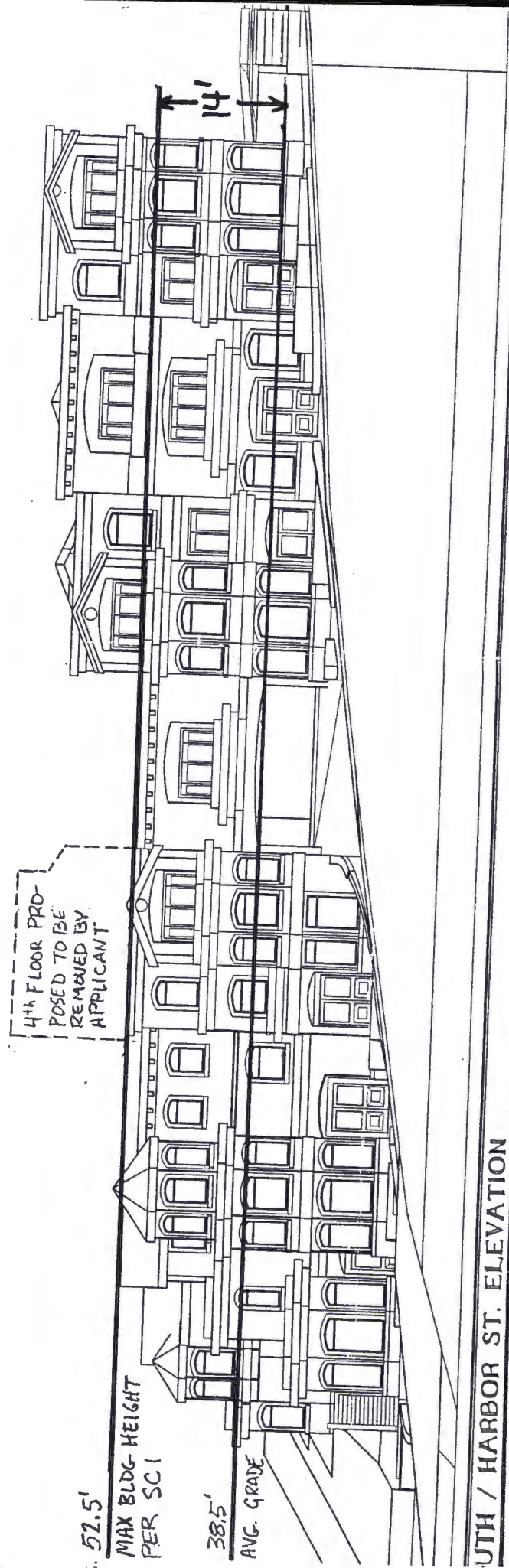


3 4 5

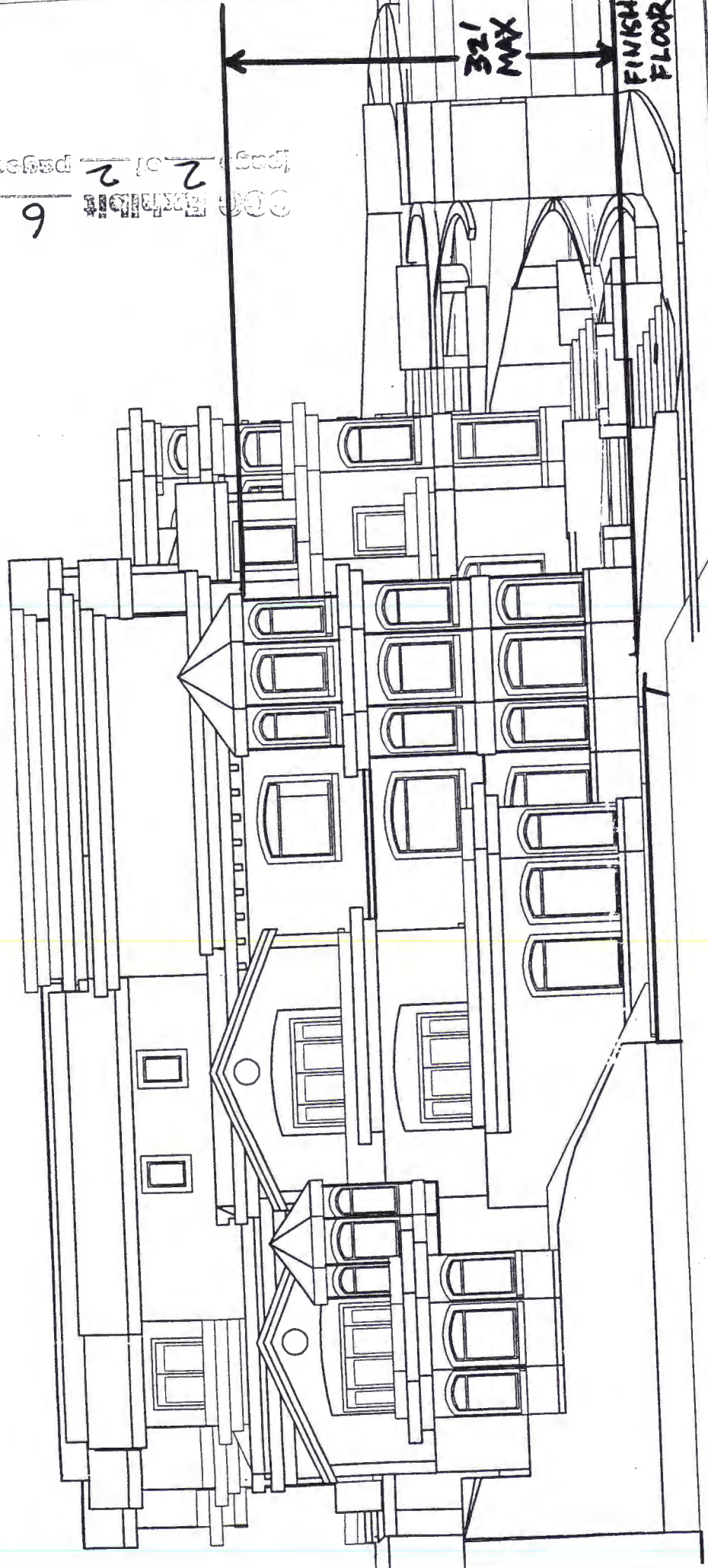


4 4 5

MAXIMUM BUILDING HEIGHT
PER SPECIAL CONDITION 1.



OUTH / HARBOR ST. ELEVATION



WEST / FRONT ST. ELEVATION

1/8"

MAXIMUM PLATE HEIGHT PER SPECIAL CONDITION P-

BLUFF TOP EDGE DELINEATION

