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Th15c



Prepared April 10, 2012 (for April 12, 2012 hearing)

To: Commissioners and Interested Persons
From: Madeline Cavalieri, District Manager
Subject: **STAFF REPORT ADDENDUM for Th15c**
CDP Application Number 3-11-031 (Giovanni's Fish Market and Docks)

The purpose of this addendum is to modify the staff recommendation for the above-referenced item. Specifically, in the time since the staff report was distributed, the applicant notified Staff that: (1) one of the passenger boats that was proposed to be included in the sportfishing business is no longer licensed to carry passengers and is no longer proposed to be used as part of the sportfishing business; (2) the City's stormwater regulations do not call for on-site infiltration of stormwater in areas directly adjacent to the Embarcadero, as required by the staff recommendation, because the proximity to the bay and the presence of artificial fill beneath the Embarcadero render on-site bio-infiltration ineffective in this case, and; (3) the staff recommendation incorrectly identifies the Morro Bay Harbor Department as an approving authority, where it should refer to the City of Morro Bay. Several minor corrections to the staff recommendation are needed to address these issues.

First, the proposed project includes operating Virg's sportfishing business, which had initially proposed the use of three boats: the Admiral is 84 feet long and holds 75 passengers; the Princess is 58 feet long and holds 49 passengers; and the Fiesta is 49 feet long and holds 40 passengers (for a total of 164 passengers for all three boats). However, the applicant has indicated that the Admiral is no longer licensed to carry passengers, and therefore the proposed number of passengers to be served by the proposed business has been reduced from 164 to 89. In addition, the LCP requires passenger for hire vessels to provide one parking space for each six and a half feet of boat length. Because the Admiral is no longer proposed to be included in the sportfishing business, the LCP parking requirement is reduced from 29 spaces to 16 spaces. Any future additions to the number or length of boats used by Virg's sportfishing business would require an amendment to this CDP and any necessary additional parking.

Second, the applicant has indicated that the requirement to include stormwater infiltration measures into the project, such as vegetated swales or strips, is contrary to the City's stormwater regulations. Staff confirmed this with City staff, who indicated that bio-filtration is not appropriate in this case because the nature of the Embarcadero fill at the site would make it ineffective for water treatment purposes. In the alternative, mechanical filtration combined with other types of water quality BMPs (such as reducing hydraulic connectivity, etc.) can achieve the same kinds of water quality improvements, consistent with the already stated requirements and the objective overall of the water quality condition in the original staff recommendation, and is appropriate in this case.



Finally, the staff recommendation identifies the Morro Bay Harbor Department as an approving agency, but the Harbor Department is included within the City of Morro Bay, and Morro Bay is the entity that would be approving any necessary City permits.

To address these three items, the staff report dated prepared March 23, 2012 is modified as shown below. Specifically, the project description is revised to include two boats for Virg's sportfishing business, not three, and the parking requirement is reduced from 29 spaces to 16 spaces. In addition, references to requirements for bio-infiltration measures, such as vegetated swales and strips have been removed from the findings and the special conditions. Finally, the requirement for Harbor Department approval has been replaced with a requirement for City of Morro Bay approval, if necessary. With these changes, the applicant is in agreement with the staff report terms and conditions.

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

1. Revise the second sentence of Paragraph 2 on page 6 of the Staff Report as follows:

Virg's operates ~~three~~ two boats: ~~the Admiral is 84 feet long and holds 75 passengers; the Princess is 58 feet long and holds 49 passengers; and the Fiesta is 49 feet long and holds 40 passengers (for a total of 164 89 passengers for all three boats).~~

2. Change the required number of parking spaces from 29 to 6 in paragraph 1 on Page 12 of the Staff Report and in Special Condition 6 on page 27 of the Staff Report.

3. Revise Paragraph 4 on Page 17 of the Staff Report as follows:

...Specifically, all development should be premised on Low Impact Development (LID) BMP strategies and techniques (e.g., limiting impervious surfacing, ~~maximizing infiltration in BMP design,~~ reducing the hydraulic connectivity of impervious surfaces, ~~directing runoff to vegetated areas, etc.~~)...

3. Revise Special Condition 1(f)(2) on Page 22 of the Staff Report as follows:

All development shall incorporate Low Impact Development (LID) BMP strategies and techniques (e.g., limiting impervious surfacing, ~~maximizing infiltration in BMP design,~~ reducing the hydraulic connectivity of impervious surfaces, ~~directing runoff to vegetated areas,~~ etc.) as much as possible.

4. Delete Special Condition 1(f)(3) on Page 22 of the Staff Report, and renumber subsections that follow accordingly.

5. Replace "Morro Bay Harbor Department" with "City of Morro Bay" in Special Condition 7 on Page 27 of the Staff Report.



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Staff report prepared by:	M.Cavalieri
Staff report approved by:	Dan Carl
Hearing date:	4/12/2012

COASTAL DEVELOPMENT PERMIT APPLICATION

Application number3-11-031, Giovanni's Fish Market and Docks

Applicant.....Giovanni DeGarimore

Project locationAlong the Morro Bay Embarcadero (lease sites 102 and 102W) at 1001 Front Street adjacent to and over Morro Bay in the City of Morro Bay, San Luis Obispo County.

Project descriptionExpand an existing boat dock, adding an additional 74' x 8' headfloat and four 50' foot long finger docks, supported by 12 new steel pilings; improve an existing outdoor public seating patio with a retractable awning and receive after-the-fact approval for an unpermitted expansion of the seating area; reconfigure an existing parking lot and receive after-the-fact approval for unpermitted paving of the parking lot; and relocate an existing sportfishing business to the project site.

Local ApprovalsConditional Use Permit UP0-284, City of Morro Bay City Council, March 12, 2011.

File documents.....City of Morro Bay Certified Local Coastal Program (LCP); Eelgrass and Caulerpa Taxifolia Survey, Tenera Environmental, March 23, 2010.

Staff Recommendation ..Approval with Conditions

A. Staff Recommendation

1. Summary of Staff Recommendation

The proposed project is to expand an existing boat dock and enhance an existing public seating patio at an existing visitor-serving establishment at the site of Giovanni's Fish Market on the Embarcadero in the City of Morro Bay. The project includes the extension of an existing headfloat and the addition of new finger docks, the installation of an awning over and an after-the-fact approval of an unpermitted expansion of the public seating patio, and the reconfiguration of a parking lot and after-the-fact approval for paving the parking lot, as well as the relocation of an established sportfishing business to the project site. The project site is located directly adjacent to Morro Bay, in an important visitor-serving area.



Morro Bay has significant commercial fishing and water-oriented recreation resources, and the Bay contains significant biological resources, including wetlands and other habitat for sensitive species.

The Coastal Act requires public access to the shoreline to be maximized and includes strong protections for the visual and biological resources present at this location. In addition, the Coastal Act protects and encourages the development of commercial fishing and recreational boating facilities. The proposed project would enhance public access and recreation at the site by expanding the docks, adding a gangway for pedestrians (to replace an existing ladder access), providing an awning over the public seating patio, and relocating a visitor-serving sportfishing business. However, as proposed, the project does not adequately protect public parking access, lateral access, view access, dock access, and patio access at the site. It also does not adequately protect against inappropriate lighting, and raises other habitat and water quality concerns, including in relation to construction over the Bay.

Staff is recommending special conditions to address these Coastal Act inconsistencies, including conditions to account for parking, lateral access, view deck, patio area, floating dock, and overall public use parameters; conditions to address construction and overall habitat and water quality impacts, including a biological monitor; and conditions for assumption of risk, notification, and other liability. All of these conditions are consistent with the Commission's approach to such development generally along the Embarcadero.

As conditioned, staff recommends that the Commission find that the proposed project complies with the public access, visual, biological resources and water quality requirements of the Coastal Act, and that it approve a CDP with conditions for the project. The necessary motion is found directly below.

2. Staff Recommendation on Coastal Development Permit

Staff recommends that the Commission, after public hearing, **approve** the proposed project subject to the standard and special conditions below.

Motion: I move that the Commission approve coastal development permit number 3-11-031 pursuant to the staff recommendation. I recommend a yes vote.

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.

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 Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.



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B. Findings and Declarations

The Commission finds and declares as follows:

1. Project Background, Location, and Description

Embarcadero History

Until the mid-1940's, most of the small community of Morro Bay was built on the bluff tops above the Bay's tidal flats. Between 1942 and 1945, the north and south breakwaters at the entrance to the Morro Bay harbor, two "T"-piers, and the inner harbor bulkhead were constructed for a Navy amphibious base. A navigational channel was dredged and the spoils deposited behind the inner harbor bulkhead to create a fill area along the Bay that became known as the Embarcadero. In the late 1940's the Navy base, including all waterfront facilities, was sold to San Luis Obispo County. Buildings began to be constructed on the Embarcadero, and various docks and piers were occupied by a growing fleet of commercial fishing boats. In 1964, the City of Morro Bay incorporated and assumed jurisdiction over the County's waterfront land and facilities, including the Embarcadero. Trusteeship of state tidelands was also transferred to the City at that time.



Morro Bay and the Embarcadero in particular, are major tourist attractions and prime coastal visitor-serving destinations with an estimated 1.5 million visitors annually. The Embarcadero is now largely developed with a variety of visitor-serving (overnight units, restaurants, gift shops, etc.) and coastal-related land uses (i.e., kayak rental, commercial and recreational fishing services, etc.). Parcels on the bayside of the Embarcadero are located on state tidelands and are leased to individual lessees by the City through the City's proxy relationship to the State Lands Commission. The Coastal Commission retains permitting jurisdiction on all such tideland properties, including the fill areas along the Embarcadero, and including the property that is the subject of this permit application. As a result, the standard of review for the proposed project is the Coastal Act, although the certified Morro Bay LCP can provide non-binding guidance.

Project Location

The project site is situated along the north Morro Bay waterfront, approximately one block south of the South T-Pier, at 1001 Front Street (see Exhibit A). Although the site has a Front Street address, it is located along Embarcadero Road, the first public through road that parallels the Morro Bay estuary and the City's commercial and recreational harbor. The character of the Embarcadero in this location is strongly focused on visitor-serving development and commercial fishing.

The project site is located west of Embarcadero Road just south of Beach Street within Planning Area 3 (Embarcadero Visitor Area) of the City of Morro Bay Waterfront Master Plan (WMP), which includes the City's main visitor-serving waterfront area, located between Beach Street and South Street, between the bluff and waterfront. It covers four lease sites (102, 102W, 105.2 and 105.1W), as well as property that is owned in fee, and includes more than 250 linear feet of bay frontage. The site is zoned Waterfront/Planned Development (WF/PD) with a design overlay (S.4) in the LCP.

The land side of the project site contains a commercial building with two restaurants (Giovanni's Fish Market and Coffee Pot) and a retail store (Shirt Shop) on the southern end, and a commercial retail building (currently occupied by Stax Wine Bar) on the northern end, with a parking lot between them. The water side of the project site contains a wharf that extends through the project site, a floating dock at the southern end of the site, and a fuel dock at the northern end of the site. The southern portion of the wharf has a public seating patio on it that is directly adjacent to the take-out window of Giovanni's Fish Market. The patio has tables that are open to both restaurant patrons and the general public, and it is enclosed by a windscreen. There is a public lateral access way that wraps around the patio that ranges in width from five feet to approximately eight feet. The northern portion of the wharf contains commercial fishing facilities and activities that have occurred on the site since prior to the enactment of the Coastal Act. The area is used as an unloading area by commercial fisherman and is largely occupied by fishing equipment, including live fish tanks, a scale and a hoist. Lateral public access is not currently available across the commercial fishing area. The existing floating boat dock is approximately 60' by 8', is accessed by a ladder (as opposed to a gangway) and has generally been used by commercial fishermen in the past. See Exhibit A for a location map, Exhibit B for the proposed site plan, and Exhibit E for site photos.



Permit and Development History

The docks and various businesses at the project site have been in use since prior to the enactment of the Coastal Act and various permit authorizations have been granted by the Commission over time. The family of the current project applicant, Giovanni DeGarimore, has held a lease for the property from the City since 1985. Prior to 1985, the lease was held by Brebes Ocean House, Inc., and the property and development on it had fallen into some disrepair. When the DeGarimore family obtained the lease, the City's lease agreement required the site to be restored, including repairs to the wharf, floating dock and fuel dock. In 1995, the Commission approved a permit to demolish a portion of the existing building on the project site, remove two storage buildings, repair the wharf and replace pilings (CDP 3-95-016). In 1995, the Commission approved a CDP waiver to repair the fuel system on the northern portion of the site, including replacing the underground fuel storage tanks (CDP 3-97-090-W). In 2001, the Commission issued a waiver for the repair and replacement of the existing wharf, dock and pier structure (3-00-044-W). Finally, in 2006, the Commission issued a waiver to add approximately 350 square feet to the fish market building, as well as a restaurant takeout window, and the public seating patio enclosed by a windscreen (3-06-013-W).

Despite this history, documentation is lacking and the currently authorized configuration for the floating dock is unclear. The 2001 waiver authorized replacement of the dock, but there are no project plans to indicate the authorized configuration. Plans associated with the previous permit files indicate that a floating dock existed, but do not indicate its configuration. In addition, Commission Staff reviewed historic photos of the site in the context of this current application that don't show any dock present. However, City staff reviewed the historic photos available to them and interviewed their former harbormaster, and determined that the floating dock that existed in 2000 and later was 60' by 8'. Further, according to the Applicant, the floating dock at the project site has been repaired and replaced numerous times in the past, potentially explaining its absence in various historic photos. Given the uncertainty associated with the Commission's 2001 waiver and what dock "replacement" was authorized, and the research performed by City staff, in considering the proposed project, it is reasonable to assume that the existing 60' by 8' dock is properly permitted. On the other hand, the public seating patio that was constructed under the 2006 waiver is larger than what was approved. The unpermitted area can be seen when comparing the existing configuration shown in the proposed plans in Exhibit B with the approved patio in Exhibit C. The approved patio extends only as far as the northern limit of the restaurant building, while the existing patio extends 15 to 20 feet beyond it. In addition, the existing parking lot was paved during the time of the construction that was performed under the 2001 waiver, but this development was not authorized by the waiver or otherwise, and is therefore unpermitted.¹

Project Description

The project includes four components: dock expansion; seating area improvements; parking lot improvements; and relocation of a sportfishing business. The dock expansion includes adding 74 linear feet to the existing 60 linear foot headfloat, resulting in a 134' by 8' headfloat. The expansion also

¹ The parking lot itself appears to pre-date Coastal Act permitting requirements.



includes the addition of four new finger docks. Three of the new finger docks would be approximately 50' x 4'4" and one of the new finger docks would be slightly wider (50' x 5') for ADA accessibility. The bayward end of each new finger dock would be supported by three new steel pilings, for a total of twelve new pilings. The proposed decking material is brown Trex. The project also includes installing a new gangway for access, as well as new dock lighting. The lighting includes four pedestal lights where the finger docks meet the headfloat, as well as four flood lights on motion sensors at the seaward ends of the finger docks. In addition, the dock expansion requires the addition of five new parking spaces pursuant to LCP requirements, and the Applicant proposes to provide those spaces by restriping the existing parking lot. This parking lot was paved without coastal development permit authorization, and therefore, the current project also includes after-the-fact authorization to recognize the paving.

In addition, the project includes after-the-fact authorization for the unpermitted expansion of the public seating patio, as well as the addition of a retractable awning system over the patio. The retractable awning system will require the installation of several supports along the center of patio, as well as the extension of an interior windscreen, also for support purposes. See the site plans in Exhibit B.

Finally, the project includes relocating an existing sportfishing business, Virg's, from a dock approximately one block away to this site. Virg's operates three boats: the Admiral is 84 feet long and holds 75 passengers; the Princess is 58 feet long and holds 49 passengers; and the Fiesta is 49 feet long and holds 40 passengers (for a total of 164 passengers for all three boats). Virg's sportfishing operations and number of passengers fluctuate based on the duration and quality of the fishing season.

2. Coastal Development Permit Determination

A. Public Access and Recreation and Coastal Dependent Uses

1. Coastal Act Policies

Coastal Act Sections 30210 through 30224 require that new development maximize public recreational access, provide visitor-serving recreational facilities, protect oceanfront land for recreational use and development, encourage recreational boating facilities, and in general, establish that coastal-dependent, visitor-serving, and public recreational access developments, and especially lower cost recreational developments, have priority over other types of uses and development. Relevant policies state:

Section 30210: *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211: *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*



Section 30212(a): *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...*

Section 30213: *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...*

Section 30220: *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Section 30221: *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

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

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

In addition, the Coastal Act includes strong protections for coastal-dependent uses, including boating facilities as well as commercial fishing operations. Section 30234 states:

Section 30234: *Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.*

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

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

Although not the standard of review, the LCP's zoning standards and Waterfront Master Plan also detail specific uses and guidelines for development at this site. Applicable sections are as follows:



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

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

Waterfront Mater Plan Area 3: Embarcadero Visitor Area. *This portion of the Embarcadero contains the majority of the shopping and eating establishments as well as the most intense mix of pedestrian and automotive activity. Portions of this area also have commercial fishing activities and some wharf tie-ups...*

In addition, the LCP provides 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.*

The zoning ordinance of the LCP specifies the number of spaces required for different types of uses. Relevant sections state:

17.44.020(A)(1). *Facilities Required. For every structure erected or enlarged, and for all land devoted to a new use, and for any structure or land changed to a more intensive use that would require the provision of more parking spaces over what already exists, off-street parking spaces shall be provided in accordance with the requirements and standards of this chapter, a change, expansion or intensification of land use which would increase the number of parking spaces*



required as provided in this title shall be based only upon the number of spaces required for the change or expansion.

17.44.020(C). *Off-Street Parking—Requirements by Use. When determining the parking requirements for land uses, the following standards shall be used:... (3) Commercial Recreation Uses... (m) Cruise ships or other passenger for hire vessels: one space for each six and one-half lineal feet of boat length.*

The zoning ordinance also allows for off-street parking requirements to be met either on or off-site, or by payment of an in-lieu fee. Relevant sections state:

17.44.020(A)(6)(a). *Off-street parking requirements may be met partially or wholly upon a site other than the site on which the use and/or structure is located. Said site shall be located within six hundred feet of the use to be served and an adequate indenture shall be recorded designating the off-street parking facility and the use or structure to be served, providing legal description of the sites, and certifying that the parking facility shall not be used for any other purpose.*

17.44.060(A)(7)(a). *Where it can be demonstrated that the reasonable and practical development of commercially zoned property precludes the provision of required off-street parking on the property located within or adjacent to the parking management plan area defined in Figure 17.44.020(1) codified at the end of this chapter and on file in the office of the city clerk. The planning commission upon recommendations of the director, may permit the applicant to satisfy parking requirements by payment of an in-lieu parking fee. The planning commission will determine the total parking requirements for each individual project at the time of permit review.*

17.44.060(A)(7)(b). *Fees accepted under this provision will be used by the city to provide the additional required parking at another location in lieu of the applicant providing the required off-street parking. Such parking shall be provided within a reasonable distance from the contributing project or within close proximity to public transit providing access to the use. All such fees collected shall be used by the city for the planning, design, acquisition or lease of land, and development and redevelopment of public parking facilities within or adjacent to the parking management plan area and for public transit facilities providing access to said parking.*

In sum, the Coastal Act requirements (and LCP guidance) applicable to the site clearly require that development at this location maximize public access and recreational opportunities, including by providing adequate parking, while also protecting commercial fishing operations. Given that it is a public property, and includes development over and into public trust resources of the Bay, this direction is only magnified, and it is clear that a significant public benefit is required of approvable projects at this location.

2. Analysis

The proposed project is located on public trust lands seaward of the first through public road and is in and adjacent to Morro Bay. In general, the proposed project will improve and enhance the existing



development that currently provides commercial fishing facilities and visitor-serving amenities. It will provide new recreational boat docking opportunities along the finger docks and it will improve pedestrian access to the docks by replacing the existing ladder with a gangway; It will establish a visitor-serving sportfishing operation at the site; And it will provide a retractable awning over the public seating area so that the public can be protected from rain and wind. However, as described below, the proposed project also has the potential to negatively impact public access and recreation at the site.

Lateral Access, Public Seating Patio and View Deck. The proposed improvements to the public seating patio fall short of the Coastal Act's requirements for maximizing public access for several reasons. First, the awning and the awning support structure will add to the sense that the patio is enclosed and not open to the general public, potentially discouraging the public from using this space at all (see visual simulation in Exhibit D). Although there is some existing signage that indicates the patio is open to the general public, and additional signage is proposed, it is not clear that it is adequate to ensure that the area is maximized for public use. The current configuration and minimal signage is inadequate in this respect, and the proposed measures likewise do not adequately ensure the public is aware that the space is available for general public use. Therefore, Special Condition 2 requires a Public Access Management Plan to clearly indicate where signs would be located and requiring signs to be located, at a minimum, along the lateral accessway and on table tops.

Further, the unpermitted expansion of the seating area encroaches into the open wharf area to the north and lateral access to the west. Although the patio is in itself a public access amenity, the Commission has generally required 10-foot wide lateral access along the bayside of the Embarcadero, and the expanded patio would encroach within that 10-foot wide area. In addition, the parking lot would be paved and re-striped adjacent to the commercial fishing facilities on the wharf at the north end of the site, but this newly developed parking area would not accommodate lateral public access through the site. Therefore, to maximize the lateral access as much as possible on these public trust lands, Special Condition 1 requires revised plans showing that all existing benches, planters and other items have been removed from the lateral access way on the southern end of the site. In addition, Special Conditions 1 and 2 require the remainder of the wharf area north of the existing patio area and up to the commercial fishing activities to be retained as a public view deck. To enhance this public view deck, the applicant has proposed, and Special Conditions 1 and 2 require, that the existing restroom be open and available to the general public, not just restaurant patrons, and that some of the benches and planters from the access way may be relocated to this area.

Finally, Special Conditions 1 and 2 require a lateral access way to be established and maintained on the northern half of the project site. Currently, the northern half of the project site is a missing link in the lateral access way that is envisioned to extend through the City's visitor-serving Embarcadero area. This lateral access way, which is a significant section of the California Coastal Trail because of its location directly adjacent to the bay in this unique visitor-serving area, is called for in the City's LCP, and the Commission, in numerous previous actions, has ensured it is provided in new development and redevelopment projects, consistent with LCP and Coastal Act requirements for these public trust lands. This segment, along the northern half of the project site, is particularly unique, due to the proximity to commercial fishing docks, and has the potential to offer the public an opportunity to experience and



appreciate commercial fishing operations. Unfortunately, this area of the wharf is constrained with existing sheds and other structures that limit the width of any potential lateral public access in several areas (see site plan in Exhibit B and site photos in Exhibit E). Nonetheless, some lateral public access across this critical link is possible and appropriate at this time.² Although there is a need at some times to block public access to the commercial fishing operations area (i.e., when unloading fishing boats, etc.), the Applicant has expressed willingness to allow for public access when active operations are not occurring. Further, because the project includes paving and restriping the parking lot, which is directly adjacent to this commercial fishing area, it is appropriate to require the parking lot to be developed in such a way that would allow through public access to be maximized as much as possible. Specifically, Special Condition 1 requires the parking lot adjacent to any highly constrained wharf areas, such as those that contain the "Tanks & pumpshed, approximately 5' by 5'" and the "Work shed, approximately 8' by 12'" (see Exhibit B), to be striped to accommodate through public access that is a minimum of five feet wide. Only areas that are too dangerous for public access due to active fish unloading activities may be temporarily blocked, and the duration of blocked access shall be limited to the minimum necessary to ensure the safety of the public during active fishing operations. Finally, when access through the commercial fishing area is closed, the public must be directed to alternative access through or around the site. With these conditions, the portion of the project on the wharf will maximize public access consistent with Coastal Act requirements.

Boat Dock. The proposed project includes expanding the existing floating dock from 60 linear feet to 134 linear feet and adding four new 50-foot long finger docks, as well as replacing the existing ladder access with a gangway. This expansion will require the placement of 12 new pilings. The Applicant indicates that the docks are intended to be used by commercial and recreational boats, including the proposed sportfishing operation (Virg's), and commercial fishermen. However, it is unclear how this facility would be operated in this respect, including to ensure that it is publicly available for general public recreational use, and to ensure that any fees are kept low and commensurate with standard rates for the area. Such facility can be found Coastal Act consistent if it includes parameters to ensure that it is clearly an integral part of the overall development (including integrating docking use with overall operations of the site), it is clearly provided and available for general public and/or commercial fishing use, any fees are minimized, and provided it is not available for residential use. This approval is conditioned to ensure that the dock facility is understood in this way (see Special Condition 2(c)).

Public Access Signing. Similarly, and on a broader scale in terms of public access parameters for the public access amenities of the site (lateral and vertical accessways, view deck, floating dock, etc.), the project currently lacks clarity as to how such facilities would be provided, maintained, and kept available for general public recreational use in a manner that maximizes their utility and value. There is also a lack of specificity on signage, interpretation, and use and provision of related access amenities (e.g., tables, benches, etc.). In fact, the existing facility and signage is informative in this respect, and

² Public access amenities in close proximity to commercial fishing operations have been required in other Commission actions along the Embarcadero, including the approval of the Great American Fish Company, Virg's and Harbor Hut Redevelopment (3-08-025), and according to City staff, restaurant seating has been successfully integrated within the site of commercial fish operations at another Embarcadero establishment, Tognazzini's Dockside.



shows how inadequate information can make an operation like this appear unavailable for public use. Accordingly, this approval is conditioned for an access management plan designed to ensure maximum public recreational access benefit in perpetuity, where the primary objective is to maximize public recreational access at the site (including to all site walkways, seating area, and the view deck) and all related areas and public access amenities, to provide clear and informative signage, and to ensure that the project's public access features are available for free, general public use during daylight hours (and during all non-daylight hours when the retail components of the approved project are open) 365 days per year (see Special Condition 2).

Parking. The parking requirement per the LCP guidance is five additional spaces for the dock expansion and 29 additional spaces for the establishment of the sportfishing business (Virg's). This guidance does not include any parking space requirements specifically attributable to public access use. The site is situated in the central Embarcadero, which is the busiest and most congested location along the waterfront. The proposed project provides the five spaces for the dock expansion by restriping the existing parking lot that is located on the project site and the adjacent site to the north. However, the project does not propose to include any parking to accommodate Virg's. In its review of the project, the City did not require additional parking to be provided for Virg's because the business is being relocated from a site that is approximately one block away. The City found that parking for Virg's was accommodated because it is called out in the LCP as a business along the Embarcadero that is assigned six parking spaces in the nearby off-street public parking facilities. However, the City's reasoning is not appropriate in this case because Virg's is being established at a new site, and the previous site will be eventually utilized by a new business that will require its own parking. In addition, the City's past practice, in part to address business turnover, has been to credit sites with prior parking commitments, not businesses, so this approach would be contrary to past practice. Further, current LCP requirements call for 29 parking spaces, which is substantially more than the six that are called out in the LUP. Finally, such an approach does not maximize public access to the coast consistent with Coastal Act policies because it will lead to increased demand for parking in the busiest area of the City's main visitor-serving neighborhood, and patrons of Virg's may occupy parking to the detriment of the general public. Therefore, Special Condition 6 requires the LCP's parking requirement to be fulfilled prior to establishing Virg's at the site. The Applicant may fulfill the requirement for 29 spaces either through an off-site arrangement, which may include contractual agreements with private parking areas, valet services, shuttles, etc.. If an off-site arrangement is chosen, the condition requires the Applicant to submit a parking management plan to ensure the parking is available for as long as a sportfishing operation of at least the size of Virg's operates at this location. Alternatively, the Applicant can fulfill the requirement by paying parking in-lieu fees to the City (at \$15,000 per required parking space), wherein the City would use the money to improve the parking supply in the area. Such in-lieu fees must be provided prior to establishing Virg's at the site. As conditioned, potential public access parking impacts are appropriately offset.

3. Conclusion

As proposed and conditioned by this permit, the project will provide new public recreational access opportunities on the Morro Bay Embarcadero by connecting the lateral bayside trail along the



Embarcadero at this “gap” site, expanding the boat docking facilities, improving the public seating patio and establishing a visitor-serving sportfishing operation. Permit conditions refine and secure these public access elements. In sum, and only as conditioned, the project will provide maximum public benefit while protecting existing commercial fishing operations, as required by the Coastal Act.

B. Marine Resources

The project involves construction and filling activities in the Morro Bay estuary that may result in adverse environmental impacts to marine resources, as well as adversely affect water quality. The project involves the installation of new floating docks and pilings directly in the bay, as well as construction activities in and over open coastal waters.

1. Coastal Act Policies

Coastal Act Section 30230 requires that marine resources be maintained, enhanced and restored. New development must not interfere with the biological productivity of coastal waters or the continuance of healthy populations of marine species. Coastal Act Section 30230 states:

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

Additionally, Coastal Act Section 30233 allows fill of open coastal waters and estuaries for the placement of structural pilings for expanded harbor and marina facilities as well as public recreational piers that provide public access and recreational opportunities. The Coastal Act allows such activities where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. It states in relevant part:

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

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities. ...

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



Coastal Act Section 30231 requires that the productivity of coastal waters necessary for the continuance of healthy populations of marine species shall be maintained and restored by minimizing waste water discharges and entrainment and controlling runoff. Coastal Act Section 30231 states:

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

Coastal Act Section 30234 protects commercial boating facilities and encourages new development to upgrade these facilities in the following manner:

Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.

2. Analysis of Impacts on Marine Resources and Essential Fish Habitats

The project site is located immediately adjacent to and over the waters of Morro Bay in a sand/mudflat area with depths ranging between approximately -12 mean low low water (MLLW) and -14 MLLW. Morro Bay and the surrounding area provide a variety of biological habitats, including coastal wetlands, intertidal mud/salt flats, rocky subtidal and intertidal zones, riparian corridors and woodlands. All of these habitats provide highly productive, diverse and dynamic ecosystems. Morro Bay includes the largest eelgrass beds in the southern part of the state, with dense stands located in the lower intertidal areas and shallow channels within the Bay. Eelgrass provides a complex and highly productive ecosystem, serving as a spawning and nursery ground for many species of fish (e.g., halibut, English sole, topsmelt, shiner perch, speckled sanddab, plainfin midshipmen, arrow and bay goby), and larger invertebrates (e.g., bay shrimp, spiny cockle, nudibranchs, cancer crabs, yellowshore crab). In addition, the Bay serves as a critical link of the Pacific Flyway by providing important habitat for resident and migrating shorebirds and waterfowl. Finally, according to the National Marine Fisheries Service (NMFS), the site is within shallow water habitat that contains essential fish habitat (EFH) for various federally managed fish species.³

The project includes the installation of approximately 1,450 square feet of new floating dock coverage with new dock lighting, as well as installation of 12 new steel pilings. The installation of floating docks

³ Robert S. Hoffman, National Marine Fisheries Service letter to Colonel R. Mark Toy, U.S. Army Corps of Engineers, August 10, 2011.



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

With respect to Coastal Act policy requirements, marine resources must be protected and restored (Section 30230). New fill within the marine environment may be approved for limited uses, provided that the proposed development is the least environmentally damaging alternative and all feasible mitigation measures have been applied to minimize adverse impact to the marine environment (Section 30233). New development must also be consistent with all other applicable marine resource protection policies. As noted above, the proposed project includes a request for new fill to support an expansion of commercial and recreational boating facilities.

Eelgrass. Eelgrass (*Zostera marina*) is a marine plant that grows in clear, well-lit, shallow coastal waters and provides shelter and spawning habitat for fish and invertebrates. It is widely recognized as one of the most productive and valuable habitats in shallow marine environments. The 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act set forth Essential Fish Habitat provisions to identify and protect important habitats of federally managed marine and anadromous fish species. Eelgrass beds are considered a Special Aquatic Site by the U.S. Army Corps of Engineers (ACOE), CDFG, USFWS, and NOAA Fisheries. Eelgrass habitat is regulated under Section 404 of the Clean Water Act and is considered Essential Fish Habitat by NOAA Fisheries.

Though the central and southern portion of the bay still contain fairly large, intact, and thriving eelgrass beds, the main harbor area adjacent to the proposed development site has undergone significant changes that have altered the condition and extent of eelgrass at this location. In addition, development along the Embarcadero has resulted in changes to the historic extent of eelgrass along these shores. The waterfront area has been heavily used by commercial and recreational fishing boats since the opening of the harbor in the mid 1940's. As a result, much of the fringing eelgrass beds and benthic environments that once existed have become fragmented and only remnant patches of eelgrass beds exist in areas where favorable ambient conditions prevail to support growth. Eelgrass thrives in a very narrow range of environmental conditions including shallow water with minimal turbidity and a mud or sandy substrate with good exposure to sunlight (i.e., minimal shading). A good example of this is the healthy eelgrass beds at the north end of the harbor adjacent to the Dynegy Energy intake. At this location, there is little development or disturbance of the shallow (i.e., less than 10-foot) intertidal area. Water clarity is good and adequate sunlight is available to support colonization and retention of eelgrass. In contrast, in many instances around the harbor, structures such as buildings, piers, and docks have encroached into this shallow intertidal zone and eelgrass has retreated.

⁴ Id (NMFS letter August 10, 2011).



The Applicant had an eelgrass survey performed in March 2010 that showed there was no eelgrass at the project site or within the study area. However, according to the Southern California Eelgrass Mitigation Policy, which the Commission has generally used to help it evaluate eelgrass impacts in Morro Bay, that survey is now out of date. Further, correspondence and photographs from the Applicant's representative indicate that a new patch of eelgrass is growing just south of the existing wharf, inside of the study area for the eelgrass survey, which was not indicated in the survey. Therefore, although the project will directly impact an area that is slightly deeper than neighboring eelgrass habitat, there is known eelgrass located in very close proximity to the project site, and there is a potential for eelgrass to grow at the site itself. Therefore, to ensure the proposed project would avoid and minimize impacts to eelgrass habitat, the Applicant will be required to have eelgrass surveys conducted in the project vicinity both before and after construction, and annually thereafter for 3 years. If eelgrass is found to be impacted, remedial measures are required to proportionally offset any reduction in habitat and to ensure that eelgrass impacts are properly mitigated. In the Morro Bay area, the Commission has typically relied on NOAA Fisheries Southern California Eelgrass Mitigation Policy standards in this respect, including proportionally offsetting impacts on at least a 1.2:1 ratio as identified in that Policy. Thus, special conditions require the Applicant to offset any such reduction in eelgrass identified, including through application of this Policy. Special Conditions 5 contains the survey and mapping requirements and contingency measures necessary to ensure successful restoration and enhancement, if required.

Dock Lighting. The presence of artificial lighting in the marine environment can cause adverse impacts to marine habitats. Light influences organisms in numerous ways and is especially important in driving activity patterns, breeding seasons/reproduction, and predator/prey interactions. Light is used as a stimulus for the timing of daily and seasonal rhythms in both animals and plants. Many animals use light levels as a stimulus for their activity cycles. For example, diurnal animals become active as light levels increase, nocturnal animals become active as light levels decrease, and crepuscular animals are active during the short intervals of dusk and dawn. The breeding seasons of many animals and plants are set by their response to day-length changes. And most predators are specifically adapted to hunt under particular light conditions; daylight, darkness, or dawn and dusk. Artificially lighting the water at this location is a significant disturbance to natural conditions and could negatively impact the activity patterns, breeding, and/or predator/prey interactions of intertidal organisms.

The project was conditioned by the City to include dock lighting that would illuminate all dock areas to a minimum luminescence of five-foot candle. To comply with this condition, the Applicant has proposed to install four pedestal lights at the intersections of the finger docks and the headfloat, as well as four flood lights at the bayward ends of the floating docks. The pedestal lights would have an 11-foot candle in order to provide the 5-foot candle level along the entire dock. See site plans in Exhibit B. It is not clear that the degree of lighting proposed is necessary to comply with the City's condition. Further, as discussed above, the proposed lighting has the potential to cause adverse impacts to marine resources, inconsistent with Coastal Act policies cited above. Therefore, Special Condition 1(b) requires a revised lighting plan that minimizes artificial lighting impacts to the bay, to be submitted to the Executive Director for review and approval prior to issuance of the CDP. The plan may incorporate a variety of measures to minimize artificial lighting, including restricting the hours that lights may be turned on, setting lights on motion sensors, increasing the number of lights to reduce the brightness, and ensuring



that all lighting is downward facing and/or dock level and focused to the dock (and not the water) and illuminates only those areas that are necessary to ensure passenger safety. As conditioned, the project would minimize the impacts of artificial lighting in the marine environment, consistent with Coastal Act requirements.

Other Marine Impacts. Morro Bay contains habitat for marine mammals, including sea otters, that may be adversely impacted by construction activities. To avoid such impacts, Special Condition 4 requires a biological monitor to be present during construction and to stop or alter construction activities when sea otters or other marine mammals are present. In addition, the use of a vibratory hammer required by Special Condition 3(f) would minimize any potential acoustic impacts to wildlife. Specifically, vibratory hammers are used when other forms of pile driving lead to unacceptable levels of underwater noise, and should ensure that such underwater noise is appropriately minimized and should not exceed maximum noise thresholds typically applied by the Commission.⁵ Finally, to avoid bird strikes, all existing and newly installed glass on the restaurant patio would be frosted or otherwise treated to minimize bird strikes, as required by Special Condition 1(d).

2. Water Quality

Coastal Act Section 30230 requires the maintenance, enhancement, and where feasible, the restoration of marine resources. In addition, biological productivity and water quality are protected through Coastal Act Section 30231. The site is located immediately adjacent to and over the waters of Morro Bay. Construction activities associated with the development of the site, and drainage and run off from the completed project could potentially result in adverse impacts on Morro Bay water quality, inconsistent with the cited Coastal Act policies. Construction activities associated with the development of the site could potentially result in adverse impacts to the biological resources and water quality of Morro Bay. In particular, these activities include constructing improvements to the existing restaurant patio and installing twelve new pilings. Fortunately, impacts to water quality during construction can be readily minimized through the development and implementation of a construction plan that, at a minimum, includes identification of all construction and staging areas, all construction methods and timing, and all other construction BMPs (i.e., silt curtains, washing/refueling areas, spill containment measures, site cleanup procedures, waste disposal, etc.), including those designed to prevent release of construction-related materials, liquids, soil, and debris into the Bay (see Special Condition 3). To ensure maximum public notification and good construction relations, the construction plan must also be kept on site and all persons involved in construction must be briefed on the content and requirements of it, and a construction coordinator must be designated and available to answer questions and also investigate complaints and take remediation action if necessary, 24 hours per day for the duration of the project (see Special Condition 3(e)).

In terms of post-construction water quality measures, the project includes paving a large parking lot that is located directly adjacent to the bay with an impervious surface, which would lead to increased runoff and adverse impacts on water quality. Currently, runoff from the site drains directly to the bay, and

⁵ Such underwater noise should not exceed an accumulated 190 dB SEL as measured 5 meters from the source, and no time should peak dB SEL rise above 206 at 10 meters from the source.



runoff from the site is expected to include pollutants associated with motor vehicles (e.g., oils, brake dust, fluids, etc.) as well as floatables (such as paper, cigarette butts, other trash, etc.). Therefore, Special Condition 1f requires the revised project plans to include a post-construction drainage plan that includes measures to reduce the impacts of post-construction runoff from the site. Specifically, all development should be premised on Low Impact Development (LID) BMP strategies and techniques (e.g., limiting impervious surfacing, maximizing infiltration in BMP design, reducing the hydraulic connectivity of impervious surfaces, directing runoff to vegetated areas, etc.). Thus, Special Condition 1f requires the Applicant to submit a post-construction drainage plan to ensure that all runoff generated from the site is limited, and does not degrade coastal water quality. Such plan shall clearly identify a drainage system designed to collect, filter, and treat all runoff prior to its discharge from the site and to remove vehicular contaminants and other typical urban runoff pollutants more efficiently than standard silt and grease traps and oil/water separators. The Commission fully expects such plan to be premised on LID BMP strategies and techniques, and fully expects that the drainage system will incorporate a treatment train approach with BMPs in series, including natural BMPs and pollutant specific BMPs (engineered systems with media filtration and treatment for expected vehicular pollutants), and that the drainage system will be designed to filter and treat the volume of runoff produced from each and every storm event up to and including the 85th percentile 24-hour runoff. In addition, the City's conditions of approval require a project-specific Oil Spill Response and Recovery Plan to ensure the impacts of any spills are avoided and minimized, and require refueling areas to be located and protected to minimize potential water quality impacts. To ensure maximum effectiveness of the City's requirements, this approval incorporates the City's conditions as conditions of this permit (see Special Condition 11).

3. Conclusion

In sum, the proposed new fill for the expansion of the commercial and recreational boating facilities is an allowable use under Coastal Act Section 30233. As conditioned to include all relevant authorizations, final project plans for the dock facilities, pre and post-construction BMPs, and to avoid and mitigate potential impacts to eelgrass beds and minimize disturbance of resident wildlife, no significant disruption of marine resources will result. With the inclusion of mitigation measures designed to prevent adverse impacts from construction activities, and to protect essential fish habitats and resources of the marine environment, the project conforms to the marine resource protection requirements of Coastal Act Sections 30230, 30231, and 30233.

C. Visual Resources/Community Character

1. Applicable Policies

Coastal Act Section 30251 states:

Section 30251. *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New*



development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Additionally, Coastal Act Section 30253(5) states:

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

In addition, the LCP contains policies related to protection of public views along the Embarcadero and of the unique geographic features surrounding the City's working harbor including Morro Rock, the Bay and sandspit. These include the previously cited requirements for providing visual access (LCP Waterfront Design Guideline Chapter 5) in new development. Also, through the Waterfront Master Plan, the LCP provides clear guidance with respect to visual compatibility of new development with both existing development and surrounding natural features. New development must incorporate an architectural character consistent with the maritime theme of the waterfront, ensure the visual compatibility of new development with both existing development and surrounding natural features, and avoid lighting that is out of character with the area.

2. Analysis

The proposed project is relatively small in scale and should thus have relatively minimal impacts on visual resources. It does present a visual impediment in the public view, but the existing facility already presents in much the same way, and the retractable awning proposed should not much alter that existing perception. However, as discussed above in the biological resources section, the proposed dock lighting appears to be excessive. The pedestal lights are extremely bright and the flood lights would not effectively direct light to dock areas. Therefore, the project has the potential to significantly impact the visual resources of the dock area, which can be seen from the project site, as well as from various locations along the very popular, visitor-serving Embarcadero. Further, the lighting would be out of character with the working, fishing village atmosphere along the Embarcadero. As such, Special Condition 1(b) requires a revised lighting plan that will minimize dock lighting as much as possible, including by reducing the brightness of the lights as much as possible, ensuring lighting is downward facing and/or dock level and focused to the dock (and not the water) and illuminates only those areas that are necessary, and restricting the hours that such lighting can be in operation. As conditioned, the project will be consistent with Coastal Act policies protecting visual resources and community character.

D. Other

Coastal Act Section 30253 requires the project to assure long-term stability and structural integrity, and to minimize risk to life and property in areas of high geologic, flood, and fire hazard. The Commission recognizes that there is a certain amount of risk involved in development such as this that is located at the shoreline edge and that can be directly subject to erosion, violent storms, large waves, flooding,



earthquakes, and other geologic hazards. These risks can be exacerbated by such factors as sea level rise and localized geography that can focus storm energy at particular stretches of coastline. The Commission has sought, through this review, to limit such risks, but they cannot be eliminated entirely, and this fact must be recognized and liabilities assumed by the Applicant accordingly. Specifically, the Commission's experience in evaluating proposed developments in areas subject to hazards has been that development has continued to occur despite periodic episodes of heavy storm damage and other such occurrences. Development in such dynamic environments is susceptible to damage due to such long-term and episodic processes. Past occurrences statewide have resulted in public costs (through low interest loans, grants, subsidies, direct assistance, etc.) in the millions of dollars. As a means of allowing continued development in areas subject to these hazards while avoiding placing the economic burden for damages onto the people of the State of California, Applicants are regularly required to acknowledge site hazards and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. Accordingly, this approval is conditioned for the Applicant to assume all risks for developing at this location (see Special Condition 9).

In addition, the project is located within the jurisdiction of a series of other agencies that have some regulatory authority over the site. Accordingly, this approval is conditioned to ensure that the project (as conditioned and approved by this CDP) has received all necessary authorizations (or evidence that none are necessary) from the Morro Bay Harbor District, the California State Lands Commission, the U.S. Army Corps of Engineers, and the California Department of Fish and Game (see Special Condition 7).

Finally, development, including, but not limited to, construction of the expanded public seating area and paving of the parking lot, has taken place without benefit of a coastal development permit. Therefore, because this is an after-the-fact permit approval, Special Condition 12 requires all "prior to issuance" conditions be satisfied within 180-days of the Commission's action. Further, although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the policies of the City of Morro Bay LCP and Chapter 3 of the Coastal Act. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations, nor does it constitute an implication of the legality of any development undertaken on the subject site without a coastal permit, or that all aspects of the violation have been fully resolved.

3. 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 Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two full size sets of Revised Final Plans to the Executive Director for review and approval. The Revised Final Plans shall be in substantial conformance with the plans submitted to the Coastal Commission (dated received in the Commission's Central Coast District Office on April 25, 2011, and titled New Dock Plans prepared by C.P. Parker Architect) except that they shall be revised and supplemented to comply with the following requirements:
 - a. **Lateral Access and View Deck.** Public lateral access shall be provided and maintained through the site. All structures, such as benches and planters, shall be removed from the lateral access area that surrounds the existing windscreen on the southern portion of the site. The wharf area north of the windscreen, up to the commercial fishing area on the northern portion of the site, shall be maintained as a public view deck (which shall be explicitly identified as such on the plans). In addition, a lateral access way through the commercial fishing area on the northern half of the site shall be established and maintained. This lateral access on the northern half of the site shall be a minimum of five feet wide and shall be located as close to the bayfront as possible, while maintaining continuity and flow. Finally, an alternative public access way that avoids the commercial fishing area and is a minimum of five feet wide shall be identified on the plan, for use when the lateral access through the commercial fishing area is not available. These areas shall be managed and maintained consistent with the Public Access Management Plan required in Special Condition 2, below.
 - b. **Wharf.** Benches, planters and other public access amenities, such as table seating, may be installed in the public view deck, consistent with the Public Access Management Plan required in Special Condition 2, below.
 - c. **Lighting.** The location, type, and wattage of all light fixtures (including catalog sheets for each fixture) shall be illustrated. All exterior lighting shall be designed and located so that only the intended area is illuminated and off-site glare is prevented. All lighting shall be cutoff style fixtures that are directed downward to prevent glare on adjacent and surrounding areas (i.e.,



Morro Bay), and shall be limited to the maximum extent feasible while still providing for public safety. Lights shall have solid sides and reflectors to further reduce lighting impacts, and shall be placed on a switch or timer to turn them off when not needed during the late evening. Boat dock lighting shall be redesigned to reduce brightness and prevent off-site glare as required by this condition.

- d. Public Access Signs.** The plans shall identify in site plan view the public access signs and public access amenities (e.g., benches, landscaping, etc.) to be installed.
- e. Restaurant Patio.** All existing and newly installed windows shall be frosted, partially-frosted or otherwise treated with visually permeable barriers that are designed to prevent bird strikes. The patio area shall include openings at both the north and south ends of sufficient width to ensure general public accessibility. In addition, the existing restroom, located adjacent to the patio, with an entrance from the exterior of the building, shall be established and maintained for general public use.
- f. Post Construction Drainage.** Final Plans shall provide for a post-construction drainage system designed to filter and treat (i.e., designed to remove typical urban runoff pollutants) the volume of runoff produced from each and every storm and/or precipitation event up to and including the 85th percentile 24-hour runoff event for volume-based BMPs and/or the 85th percentile, 1-hour runoff event (with an appropriate safety factor) for flow-based BMPs, prior to discharge. All drainage system components shall be consistent with the following:
 - 1.** The drainage system and its individual components (such as drop inlets and filtration mechanisms) shall be sized according to the specifications identified in the California Storm Water Best Management Practice Municipal Handbook (California Storm Water Management Task Force, March 1993).
 - 2.** All development shall incorporate Low Impact Development (LID) BMP strategies and techniques (e.g., limiting impervious surfacing, maximizing infiltration in BMP design, reducing the hydraulic connectivity of impervious surfaces, directing runoff to vegetated areas, etc.) as much as possible.
 - 3.** The drainage system shall include natural biologic filtration components, such as vegetated filter strips and grassy swales that are vegetated with native plant species capable of active filtration and treatment (e.g., rushes), as much as possible. If grades require, check-dams may be used in such biologic filters.
 - 4.** The drainage system shall include at least one engineered filtration unit to which all drainage shall be directed prior to any discharge. The engineered filtration unit(s) shall be specifically designed to remove, at a minimum, potential vehicular contaminants, and shall include media designed to remove such contaminants.
 - 5.** All drainage system elements shall be permanently operated and maintained. At a minimum:



(1) All filtration/treatment components shall be inspected to determine if they need to be cleaned out or repaired at the following minimum frequencies: prior to October 15th each year; prior to April 15th each year; and during each month that it rains between November 1st and April 1st. Clean-out and repairs (if necessary) shall be done as part of these inspections. At a minimum, all filtration/treatment components must be cleaned prior to the onset of the storm season, no later than October 15th of each year; and (2) Debris and other water pollutants removed from filter device(s) during clean-out shall be contained and disposed of in a proper manner.

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

- 2. Public Access Management Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of a public access management plan (Public Access Plan) to the Executive Director for review and approval. The Public Access Plan shall clearly describe the manner in which general public access associated with the approved project is to be provided and managed, with the objective of maximizing public access to the public access areas of the site (including all walkways, the public seating patio and the public view deck) and all related areas and public access amenities (i.e., bench seating, etc.) described in this special condition. The Public Access Plan shall be substantially in conformance with the plans submitted to the Coastal Commission (and referenced in Special Condition 1 above), and shall at a minimum include the following:
- a. Clear Depiction of Public Access Areas and Amenities.** All public access areas and amenities, including all of the areas and amenities described above, shall be clearly identified as such on the Public Access Plan (including with hatching and closed polygons so that it is clear what areas are available for public access use).
 - b. Lateral Access.** The lateral access around the patio shall remain free of benches, planters and other street furniture. In addition, lateral access shall be established north of the existing patio area, and shall extend through the project site. The lateral access through the commercial fishing area shall remain open for general public use as much as possible, but may be closed during active fish unloading activities that render public lateral access dangerous. Public access closures shall be limited only to periods when active fish unloading activities prohibit safe public access, should be accomplished using temporary ropes, cones or other appropriate barriers, and must include signs informing the public of the expected duration of the closure and directing the public to alternative public access through or around the site. All lateral public access ways shall remain free of unnecessary materials and structures, including portable storage structures and garbage bins that are not intended for use by the public, etc.
 - c. Floating Dock.** All parameters for use for the floating dock shall be clearly identified. The floating dock shall be publicly available for general public pedestrian access and transient boat use (and not as a long-term residential or live-aboard docking area) for general public and/or



commercial fishing use, and shall be clearly integrated into the overall development (including integrating docking use with overall commercial operations of the site).

- d. Amenities.** Public access amenities (such as benches, table and chairs, bicycle racks, trash and recycling receptacles, etc.) shall be provided, including at a minimum, benches in the public view deck north of the seating patio.
- e. Public Access Signs/Materials.** The Public Access Plan shall identify all signs and any other project elements that will be used to facilitate, manage, and provide public access to the approved project, including identification of all public education/interpretation features that will be provided on the site (educational displays, interpretive signage, etc.). Sign details showing the location, materials, design, and text of all public access signs shall be provided. The signs shall be designed so as to provide clear information without impacting public views and site character. At a minimum, public access directional signs shall be placed at both ends of the lateral access across the site, as well as at entrances to the patio, adjacent to the view deck area, and at either end of the commercial fishing wharf. The public view deck and public restrooms shall be conspicuously signed and available for public use, and tables on the public view deck and within the public seating patio shall include signs on them indicating that the public may use the tables for free without any purchase. Public access signage shall include the California Coastal Trail and California Coastal Commission emblems.
- f. No Public Access Disruption.** Development and uses within the public access areas that disrupt and/or degrade public access (including areas set aside for private uses, barriers to public access (furniture, planters, temporary structures, private use signs, fences, barriers, ropes, etc.), except those allowed on the commercial fishing section of the wharf pursuant to Special Condition 2b, shall be prohibited. The public use areas shall be maintained consistent with the approved Public Access Plan and in a manner that maximizes public use and enjoyment.
- g. Public Access Use Hours.** All public access areas and amenities shall be available to the general public free of charge during at least daylight hours (i.e., one hour before sunrise to one hour after sunset), and during at least all non-daylight hours when the retail components of the approved project are open.
- h. Public Access Areas and Amenities Maintained.** The public access components of the project shall be maintained in their approved state in perpetuity.

The Permittee shall undertake development in accordance with the approved Public Access Plan, which shall govern all general public access to the site pursuant to this coastal development permit.

- 3. Construction Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and approval. The Construction Plan shall, at a minimum, include the following:



- a. **Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to have the least impact on public access and Morro Bay resources, including by using inland areas for staging and storing construction equipment and materials as feasible.
- b. **Construction Methods.** The Construction Plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separated from bay and public recreational use areas (including using unobtrusive fencing (or equivalent measures) to delineate construction areas).
- c. **Construction BMPs.** The Construction Plan shall also identify the type and location of all erosion control/water quality best management practices that will be implemented during construction to protect coastal water quality, including the following: (a) silt fences, straw wattles, or equivalent apparatus, shall be installed at the perimeter of the construction site to prevent construction-related runoff and/or sediment from discharging to the bay; (b) equipment washing, refueling, and/or servicing shall take place at least 50 feet from the bay. All construction equipment shall be inspected and maintained at an off-site location to prevent leaks and spills of hazardous materials at the project site; (c) the construction site shall maintain good construction housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the site); and (d) all erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each work day.
- d. **Construction Site Documents.** The Construction Plan shall provide that copies of the signed coastal development permit and the approved Construction Plan be maintained in a conspicuous location at the construction job site at all times, and that such copies are available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the coastal development permit and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.
- e. **Construction Coordinator.** The Construction Plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints



received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

- f. Pilings.** The new pilings and piling sleeve shall be made from steel. Pilings shall be installed using a vibratory hammer. Construction barges shall be floating at all times and shall only operate at tides high enough so that the barge does not rest against the bottom of the bay.
- g. Notification.** The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least 3 working days in advance of commencement of construction, and immediately upon completion of construction.

The Permittee shall undertake construction in accordance with the approved Construction Plan.

- 4. Biological Monitor.** All work that disturbs the ocean floor (i.e., installation of pilings) shall be monitored by the project biologist to ensure that impacts to marine mammals are avoided. A U.S. Fish and Wildlife Service-approved biological monitor shall be present on site during construction and shall have the authority to stop construction if any individuals of southern sea otter are seen within 100 feet of the project area. Construction will be allowed to resume after sighted otters have left the 100-foot radius of the project area. The monitor will have discretionary authority to temporarily halt the project if it is determined that the otter could be affected by the project even if the otter is beyond the 100-foot boundary. All construction crew employees shall be informed on the requirements of this condition.
- 5. Eelgrass Monitoring Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of an eelgrass monitoring plan (EMP) to the Executive Director for review and approval. The EMP shall, at a minimum, provide for the following:
 - a. Eelgrass Surveys.** Pre- and post-construction surveys shall be performed to identify the location of any existing eelgrass and identify any impacts to existing eelgrass due to construction.
 - b. Eelgrass Protection.** All eelgrass beds identified in the project area shall be shown on a map in site plan view, and shall be protected as eelgrass habitat in perpetuity.
 - c. Monitoring.** A monitoring report shall be submitted to the Executive Director for review and approval within three months of completion of construction. The report shall at a minimum include a site plan and written description of the status of eelgrass beds in the project area. If the report identifies a reduction in eelgrass coverage as compared to the existing eelgrass coverage at the time of the pre-construction survey, then the report shall identify remedial measures to offset such reduction within the eelgrass beds in the project area at a 1.2:1 basis. In such case, reporting shall continue on an annual basis for at least three years or until all such eelgrass beds are supporting eelgrass as documented in two consecutive annual reports, whichever is later.

The Permittee shall undertake development in accordance with the approved Eelgrass Monitoring



Plan.

- 6. Parking Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director for review and approval, either: (1) evidence of payment of an in-lieu parking fee to the City of Morro Bay's parking in-lieu fee fund at the rate of \$15,000 per parking space for the 29 required spaces; or (2) two copies of a Parking Plan that clearly documents the manner in which the 29 required parking spaces are to be provided for project users for as long as a sportfishing operation of at least the size of Virg's operates at this location. The plan shall clearly identify where and how site users will make use of such parking (including but not limited to contractual agreements with private parking areas, valet service, shuttles, etc.).

The Permittee shall undertake development in accordance with the approved parking plan.

- 7. Other Agency Approval.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director written evidence that all necessary permits, permissions, approvals, and/or authorizations for the approved project have been granted by the Morro Bay Harbor District, the California State Lands Commission, the U.S. Army Corps of Engineers, and the California Department of Fish and Game. Any changes to the approved project required by these agencies shall be reported to the Executive Director. No changes to the approved project shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.
- 8. Boat Slip Parameters.** All boat slips and side-tie docks shall be used for commercial and recreational fishing vessels, commercial passenger vessels, and commercial service vessels only. The use of the docks and slips for long-term private residential, live-aboard, and/or recreational vessels is prohibited.
- 9. Assumption of Risk, Waiver of Liability and Indemnity Agreement.** The Permittee acknowledges and agrees, on behalf of itself and all successors and assigns: (i) that the site is subject to coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, tidal scour, coastal flooding, and the interaction of same; (ii) to assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; and (v) that any adverse effects to property caused by the permitted project shall be fully the responsibility of the property owner.
- 10. Lease and Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the Permittee and City have executed and recorded against the



lease sites and parcel(s) governed by this permit a lease and deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The lease and deed restriction shall include legal descriptions of the lease sites and parcels governed by this permit. The lease and deed restriction shall also indicate that, in the event of an extinguishment or termination of the lease and deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

11. Incorporation of City Conditions. All conditions of approval imposed on the project by the City of Morro Bay are incorporated as conditions of this approval. Any of the incorporated City conditions requiring materials to be submitted to the City and/or otherwise requiring City approval (such as Development Director approval), shall also require the same materials to be submitted to, and/or the same approvals granted by, the Executive Director under the same review and approval criteria as specified in the City conditions. For future condition compliance tracking purposes, such incorporated City conditions shall be considered subsections of this Special Condition 11. To the extent any such incorporated City conditions conflict with these conditions (i.e., standard conditions 1 through 5, and special conditions 1 through 10), such conflicts shall be resolved in favor of these conditions.

12. Condition Compliance. WITHIN 180 DAYS OF COMMISSION ACTION ON THIS CDP APPLICATION, or within such additional time as the Executive Director may grant for good cause, the Applicants shall satisfy all requirements specified in the conditions hereto that the Applicants are required to satisfy prior to issuance of the permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

C. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

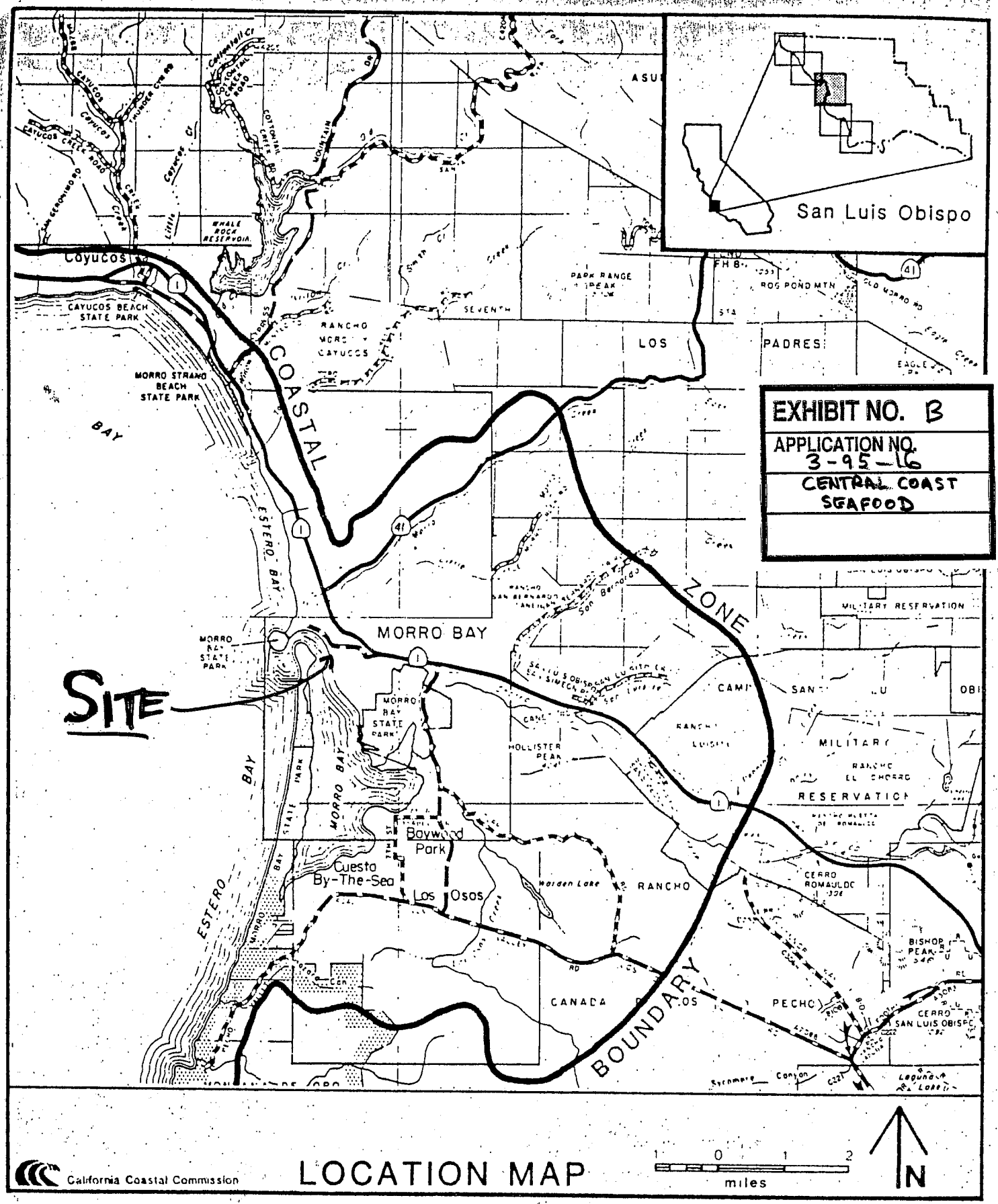
The City of Morro Bay, acting as the lead CEQA agency, conducted an environmental review for the proposed project as required by CEQA and issued a Negative Declaration with Mitigations.



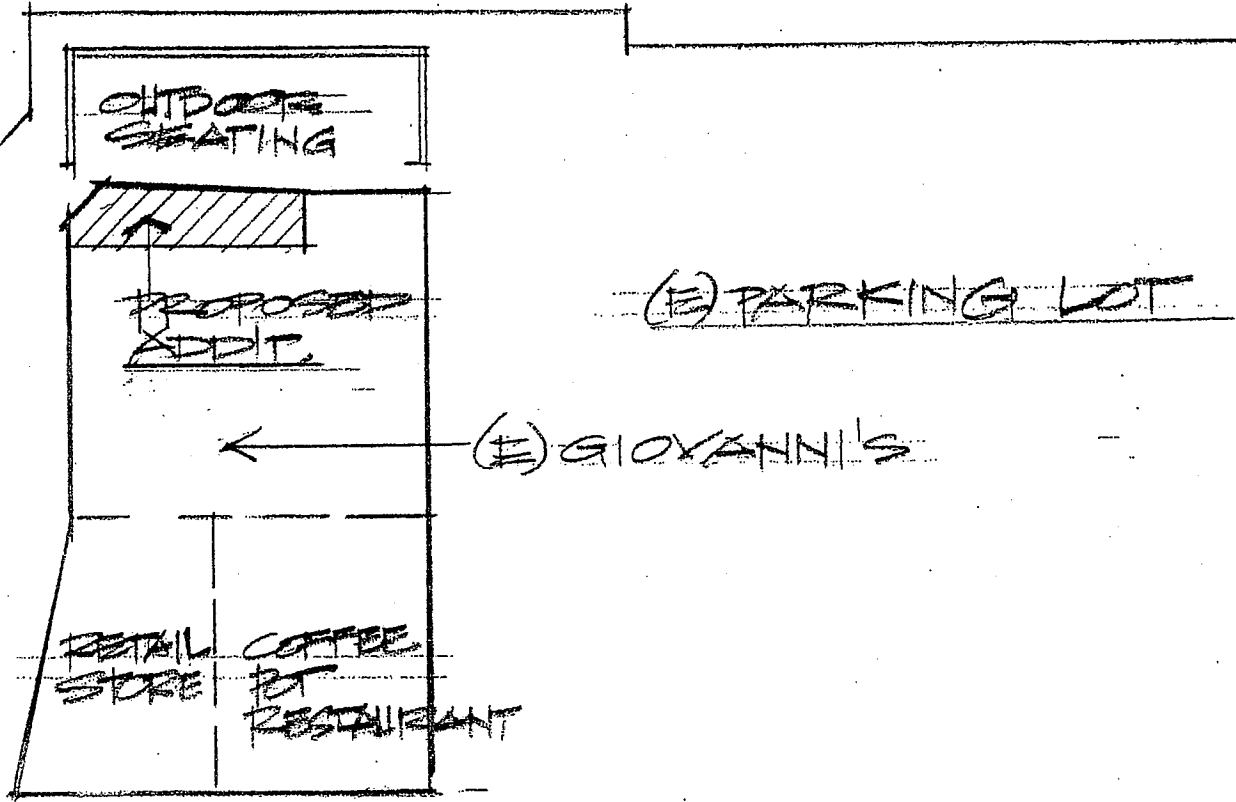
The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The Commission has reviewed the relevant coastal resource issues with the proposed project, and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference.

The Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA. As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. If so modified, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).





BACK



FRONT ST.

SITE PLAN





2



4



1



3



9



10



11



12

