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# Th15c

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Action Deadline: 8/25/2018  
Staff: Mike Watson - SC  
Staff Report: 2/23/2018  
Hearing Date: 3/8/2018

## STAFF REPORT: CDP HEARING

**Application Number:** 3-17-0581

**Applicant:** Doug Redican

**Project Location:** On the Bayfront at 725 Embarcadero in the City of Morro Bay, San Luis Obispo County (APN 066-352-047; Land Lease Sites 82-85; Water Lease Sites 82W-85W).

**Project Description:** Conversion of the second floor restaurant to a 10-unit hotel; new hotel entry on ground floor; vertical and lateral public access improvements, including for abatement of existing violations; and related development.

**Staff Recommendation:** Approval with Conditions.

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## SUMMARY OF STAFF RECOMMENDATION

The Applicant proposes to convert an existing second floor restaurant to a 10-unit boutique hotel with two of the units to be reserved at low-cost rates year-round. The hotel would be located on the second floor of the Rose's Landing Galleria on the City's visitor-serving Embarcadero Bayfront.

With respect to lower-cost accommodations, the Applicant proposes to charge rates for two rooms equal to the Morro Bay area's low-cost threshold. Accordingly, the project as proposed includes a significant low-cost hotel room component, thereby self-mitigating for the impacts on availability of lower-cost visitor accommodations resulting from the other eight higher-cost rooms both *onsite* and *in-kind*. As such, the proposal is consistent with the Commission's

overarching goals and intent in administering Coastal Act Section 30213 by ensuring that proposed visitor-accommodation facilities in the coastal zone and in particular on locations such as this one (i.e., on former State tidelands, immediately fronting the Morro Bay estuary, and adjacent to the City's visitor-serving commercial waterfront), include as a component of the proposed project lower-cost rooms onsite. With conditions to ensure that the Applicant follows his own proposed rate structure, including through monitoring reports, as well as conditions requiring all 10 hotel rooms to be open and available to the general public, including through prohibitions on residential conversion, the project is consistent with the lower-cost visitor serving policies of the Coastal Act.

Regarding public access, there are access violations on the subject property, including obstructions within the existing Bayfront lateral accessway and public plaza, and use of a public patio for private restaurant seating, which were required to be available to the general public by two previous CDPs on this property. The Applicant proposes to rectify these violations by expanding the width of Bayfront lateral accessway from eight feet to 10 feet and by connecting this lateral access with expanded and enhanced vertical accessways upcoast and downcoast. The Applicant also proposes construction of a new second-story observation deck overlooking Morro Bay and Morro Rock, and an improved public plaza. As more fully described in the staff report, these improvements are substantial and should offer a vastly improved public experience at this prime visitor-serving spot. Thus, the Applicant's proposed public access amenities are consistent with the Coastal Act and will result in resolution of the above-described violations.

Finally, while the vast majority of the proposed project will be a benefit to the community, one issue raises significant concern. Specifically, even though the project requires no additional parking because parking has already been addressed for this site by the two previous CDPs, the proposed project would dedicate 11 existing public parking spaces for private hotel use 20 hours a day, 365 days a year. Such a proposal is both unnecessary given that parking demand has already been accounted for in past CDPs, and also adversely impacts the general public's ability to access and recreate in this prime visitor-serving area. As such, the proposed project's parking plan cannot be found consistent with Coastal Act mandates to maximize public access and recreational opportunities to and along the coast. Special conditions are thus included to expressly prohibit the use of any public parking to be reserved exclusively for private hotel use, including for hotel guests and employees. Hotel guests and employees can certainly park in any public parking space, including in the public parking lots immediately across the street from the hotel. However, those parking spaces cannot be reserved almost exclusively for hotel use, thereby privatizing access to public coastal lands. As conditioned, the proposed hotel use requires no additional parking mitigation, and will not usurp existing public parking spaces, and can be found consistent with the Coastal Act.

With other conditions, including protecting water quality during construction, the project is consistent with other relevant policies of the Coastal Act. In short, the project represents development of a Coastal Act priority use adjacent to a commercial-oriented Bayfront area. The project, as proposed, includes low-cost rooms and substantial public access improvements and offers an exciting opportunity to provide such low-cost visitor-serving uses within this highly popular visitor-serving area.

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

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Exhibit 4 – Proposed Low-Cost Hotel Room Rates

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Exhibit 6 – City of Morro Bay Conditional Use Permit A00-041/UP0-359

## I. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission approve Coastal Development Permit Number 3-17-0581 pursuant to the staff recommendation, and I recommend a yes vote.*

***Resolution to Approve CDP:** The Commission hereby approves Coastal Development Permit 3-17-0581 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

- 1. Approved Development.** Coastal Development Permit (CDP) 3-17-0581 authorizes the development expressly proposed by the Applicant (i.e., a 10-unit standard operating hotel and lateral and vertical public access improvements) as described and shown in **Exhibit 3** (including with respect to the room rates for two of the hotel rooms as shown in **Exhibit 4**), and as modified by the conditions of this CDP. The Permittee shall undertake development in accordance with the approved CDP. Any proposed changes to the development shall be reported to the Executive Director. No changes to the approved development shall occur without a Commission-approved amendment to this CDP unless the Executive Director determines that no amendment is legally required.
- 2. Revised Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Applicant shall submit to the Executive Director of the Coastal Commission for review and approval two sets of Final Plans. The Plans shall be in substantial conformance with the plans received by the Commission on December 12, 2017 (and shown in **Exhibit 3**) but modified to reflect the following change:

  - (a) Parking.** This CDP does not authorize any public parking spaces to be reserved partially (i.e. for certain hours of the day) or entirely (24 hours a day) for private hotel use, including for hotel guests and employees. All references to use of existing public parking spaces, lots, or buildings along the Embarcadero for dedicated hotel parking and any associated signage reserving said parking for hotel guests or employees during any portion of the day shall be removed from the Final Plans.
  - (b)** The designation of one parking space along the Embarcadero and adjacent to the public plaza for general passenger loading and unloading, limited to 10 minutes per vehicle. The Final Plans shall describe that the curb on this parking space shall be colored yellow and shall also provide for signage to be placed adjacent to the space denoting its use for 10-minute passenger loading and unloading only. Any reference to this space as dedicated for only for hotel guest loading and unloading shall not be included on the Final Plans.
- 3. Hotel Units.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of himself and all successors and assigns, that:

  - (a) General Occupancy Requirements.** All 10 hotel units shall be open and available to the general public. No individual ownership or long-term occupancy of the hotel units shall be allowed.
  - (b) Length-of-Stay Provisions.** All 10 hotel units shall be open and available to the general public, and shall not be rented to any individual, family, or group for more than 29 consecutive days, and not for more than 14 days between the Friday of Memorial Day weekend and Labor Day inclusive.

- (c) **Conversion Prohibited.** The conversion of any of the hotel units to limited use overnight visitor accommodation units (e.g., timeshare, fractional ownership, etc.) or to full-time occupancy condominium units or to any other units with use arrangements that differ from the approved project shall be prohibited.
- (d) **Low-Cost Units.** The two low-cost hotel units shall be available to the general public at rates no higher than as proposed by the Applicant, as allowed to be modified following the Consumer Price Index as specified in subsection (e) below (see **Special Condition 1** and **Exhibit 4**).
- (e) **Monitoring Reports for Low-Cost Hotel Units.** The Permittee (or his affiliated designee) shall annually provide, for Executive Director review and approval, two copies of a monitoring report for the two low-cost hotel units, beginning one year after occupancy of the hotel, and annually thereafter. The monitoring reports shall include, at a minimum, the average daily rate charged each month during the preceding year for the low-cost units, the occupancy rate for each low-cost unit for each applicable month, a description of proposed low-cost rates for the upcoming year (which shall be allowed to increase at no more than the annual Consumer Price Index each year without a CDP amendment), and an assessment of compliance with the terms and conditions of this CDP regarding the low-cost units. The Permittee (or his affiliated designee) shall be required to make changes as identified in any approved monitoring report as required by the Executive Director to maintain consistency with the terms and conditions of this CDP.

**4. Public Access Management Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit for Executive Director review and approval two full-size sets of a Public Access Management Plan (Access Plan). The Access Plan shall clearly describe the manner in which general public access associated with the approved project is to be provided and managed, with the objective of maximizing public access to the public access areas of the site (including the Bayfront lateral accessway, the second-story observation deck, the vertical accessway/public plaza on the southern side of the hotel, the vertical access adjacent to the Morro Bay Boulevard street end, and the location of benches, wayfinding and public access signs, etc.). The Access Plan shall be substantially in conformance with the public access portion of the plans submitted to the Coastal Commission as shown in **Exhibit 3**, except as modified by these special conditions, and shall at a minimum include the following:

- a. **Clear Depiction of Public Access Areas and Amenities.** All public access areas and amenities, including all of the areas and amenities described above, shall be clearly identified as such on the Access Plans (including with hatching and closed polygons so that it is clear what areas are available for public access use).
- b. **Public Access Signs/Materials.** The Access Plan shall identify all signs, handouts, brochures, and any other project elements that will be used to facilitate, manage, and provide public access to the approved project, including identification of all public education/interpretation features that will be provided on the site (educational displays, interpretive signage, etc.). Sign details showing the location, materials, design, and text of all public access signs (including the public access use hours described in **Special**

**Condition 4(d)** shall be provided. At a minimum, public access signs shall be placed near the entrance to the public plaza at the Embarcadero, at the Morro Bay Boulevard street end, at the intersection of the Morro Bay Boulevard and the Bayfront lateral access connection, near the intersection of the public plaza and the Bayfront lateral access, and at the stairway entrance to the second-story observation deck. The signs shall be designed so as to provide clear information without impacting public views and site character. All directional signs shall include the Commission's access program "feet" logo and the California Coastal Trail emblem. At least one public access interpretive sign (appropriate to Morro Bay issues, information, and/or history) shall be located at an appropriate location along the lateral accessway.

- c. No Public Access Disruption.** Development and uses within the public access areas that disrupt and/or degrade public access (including areas set aside for private uses, barriers to public access (furniture, planters, temporary structures, private use signs, ropes, etc.)) shall be prohibited. The public use areas shall be maintained in a manner that maximizes public use and enjoyment.
- d. Public Access Use Hours.** The public access areas and amenities along the Bayfront lateral access and the public plaza (including the vertical connections to the lateral access) shall be open to the general public 24 hours per day and shall be available free of charge. The second-story public observation deck shall also be available free of charge during at least daylight hours (i.e., one hour before sunrise to one hour after sunset).
- e. Public Access Amenities Provided Prior to Occupancy.** All public access components of the approved project shall be constructed and ready for use prior to occupancy of the hotel units.
- f. 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.

- 5. Construction Plan:** PRIOR TO ISSUANCE OF THE CDP, 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, including public parking, and other coastal resources.
  - (b) Construction Methods.** Construction and staging zones shall be limited to the minimum area required to implement the approved project. The Plans shall limit construction activities to avoid coastal resource impacts as much as possible.

- (c) **Construction BMPs.** The Construction Plan shall also identify the type and location of erosion control/water quality best management practices that will be implemented during construction to protect coastal resources, including the following:
- (1) **Runoff Protection.** Silt fences, or equivalent apparatus, shall be installed at the perimeter of the construction site to prevent construction-related runoff and/or sediment from entering into storm drains or otherwise offsite.
  - (2) **Equipment BMPs.** 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.
  - (3) **Good Housekeeping.** 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 project site; etc.).
  - (4) **Erosion and Sediment Controls.** 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 CDP 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 CDP 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 his/her contact information (i.e., address, phone numbers, email address, etc.) including, at a minimum, a telephone number and an email 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 while still protecting public views as much as possible, 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 contact information (address, email, phone number, etc.) 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) **Notification.** The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least three working days in advance of commencement of construction, and immediately upon completion of construction.



**(g) Daylight Work Only.** All work shall take place during daylight hours (i.e., from one hour before sunrise to one hour after sunset), except for interior work. Nighttime work (other than interior work) and lighting of the exterior work area are prohibited.

The Permittee shall undertake development in accordance with the approved Construction Plan, unless the Commission amends this CDP or the Executive Director determines that no amendment is legally required for any proposed minor deviations. All requirements of the approved Construction Plan shall be enforceable components of the CDP.

**6. Compliance with Local Conditions of Approval.** The proposed development was approved by the City of Morro Bay as a major amendment to Conditional Use Permit A00-041/UP0-359 (see **Exhibit 6**). The City's conditions associated with that action remain in effect. In the event of conflict between any such conditions imposed by the City and the terms and conditions of this CDP (e.g. with respect to hotel parking), the terms and conditions of this CDP shall prevail.

## **IV. FINDINGS AND DECLARATIONS**

### **A. PROJECT LOCATION AND BACKGROUND**

#### *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 transferred 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.

Pursuant to the terms of the State tidelands' grant, the underlying tidelands are only to be used for harbor development and for construction of facilities related to fisheries commerce and navigation, as well as for recreational uses, public parks, parking, roads, playgrounds, and businesses incidental to these uses. The City may lease said lands to business owners for stipulated purposes for periods of up to 50 years, though convenient access across said lands to the water and the absolute right to fish must always be reserved.

Morro Bay, and the Embarcadero in particular, are major tourist attractions and prime coastal visitor-serving destinations. 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 in its capacity as Trustee.

*Project Location*

The project site is located in the Local Coastal Program's (LCP's) Bayfront planning area at 725 Embarcadero in the City of Morro Bay (see **Exhibit 1**). The Embarcadero is the first public through road and it parallels the Morro Bay estuary and the City's commercial and recreational harbor. The Embarcadero's character is still strongly focused on commercial fishing, although more recent developments have put a more finished façade to this style over time. The project site is located in the central portion of the Embarcadero, south of Morro Bay Boulevard and the City's public view deck, and is comprised of eight sites leased from the City (sites 82 to 85, and 82W to 85W), four of which extend out into the bay (82W to 85W). The project site consists of 113 feet of bay frontage. The subject site gently slopes down from an elevation of roughly 13 feet above mean sea level at the Embarcadero to approximately eight feet above mean sea level at the top of the bulkhead. The land portion of the site (approximately 15,935 square feet) is currently occupied by a two-story commercial/retail structure totaling 10,102 square feet (i.e. the Rose's Landing Galleria), which includes four retail shops, a lower-floor restaurant and bar, outdoor patio dining, a second-floor restaurant, an outdoor public plaza, and public accessways. Public lateral access extends along the Bayfront of the Rose's Landing Bar and Grill, with connections to existing vertical access points at the public plaza on the south side of the site, and to a narrow accessway along the north side of the Rose's Landing building.<sup>1</sup> No parking exists on the project site; however there is public street parking (three-hour limit) along the Embarcadero landward of the project site and a large (60 spaces) free public parking lot located across the Embarcadero from the project site. Another free public parking lot is located on the blufftop approximately 150 feet east of the Embarcadero lot (see **Exhibit 2** for photos of the site).

*Project History*

On March 11, 1976 the Regional Commission approved CDP Number 75-3 authorizing the construction of a new cocktail lounge, deck, and remodel of (and addition to) an existing restaurant at the project site. In addition to specific restaurant improvements, the approved plans depict a covered eight-foot-wide Bayfront lateral accessway with open 42-inch-high railings located seaward of the restaurant addition, a five-foot-wide vertical accessway on the north side of the restaurant, and a 20-foot by 28-foot uncovered patio on the south side of the restaurant. This patio currently provides for a vertical connection to the Bayfront lateral accessway. All the accessway and patio improvements were intended to remain open and unencumbered to provide for lateral public access and public views of the Bay and Morro Rock, and were not authorized for restaurant use. At the time of the Commission's approval of CDP 75-3, the site contained a 15-space parking lot at the location of the current public plaza.

On April 6, 2001 the City of Morro Bay Planning Commission conceptually approved Conditional Use Permit (CUP) Number 72-00 to authorize a remodel of the existing 5,776-square-foot, two-story restaurant and replacement of the parking lot on the site with a new 4,640-square-foot, two-story retail/restaurant use and a new public plaza south of the restaurant. The City Council approved the CUP on June 11, 2001. On November 14, 2001, the Coastal Commission approved CDP Number 3-01-072 authorizing the project as described in the City's approval for CUP Number 72-00, which included a public plaza on the south side with benches, planters, trash cans, public art, etc.; a second-story public view deck, public restrooms, access

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<sup>1</sup> This access constitutes a portion of the California Coastal Trail.

and wayfinding signage, an ADA access ramp with connections to adjacent public access, expanded sidewalk widths, and payment of parking in-lieu fees. The lateral public access requirements and the public patio that were required pursuant to CDP 75-3 remained in effect under CDP 3-01-072.

On September 19, 2016, the Coastal Commission's Enforcement Division wrote a letter to the Applicant regarding violations at the site, including: impediments (i.e. restaurant tables and chairs) along the required eight-foot-wide Bayfront lateral accessway and the five-foot-wide vertical accessway on the north side of the site; appropriation of the 20-foot by 28-foot uncovered public patio and second-story public view deck for restaurant service, and; a myriad of obstructions within the public plaza. Additionally, the required signage for these public access improvements was either missing or placed in locations that were not readily visible to the general public. Enforcement staff's letter recommended that the Applicant resolve the violations via removal of impediments/obstructions and/or by obtaining a coastal development permit authorizing any after-the-fact development he wished to retain.<sup>2</sup>

## **B. PROPOSED PROJECT**

On May 23, 2017, the City of Morro Bay approved a major modification to Conditional Use Permit #A00-041/UP0-359 for the conversion of the second floor restaurant space to a 10-unit hotel, conversion of a portion of the first floor for the hotel lobby, improvements to existing public access on both the first and second stories as well as to the Bayfront lateral accessway, and a lease agreement for hotel parking in the City-owned lot located across the street from Rose's Landing. The City's approval, including staff report findings and conditions, is shown in **Exhibit 6**.

Specifically, the proposed project consists of the conversion of the second floor from a restaurant and public view deck to a 10-unit boutique hotel with a combined total square footage of 5,775 square feet including rooms, decks, a terrace, and walkways. Additionally, a new hotel lobby would be constructed in an existing lease space on the first floor, and the existing Rose's Landing restaurant use on the remaining portions of the first floor will remain. The project further includes improved public access by expanding the existing eight-foot-wide Bayfront lateral access to 10 feet in width. The new Bayfront lateral access will be uncovered and includes a 42-inch-high metal railing with a direct connection to an existing public view deck located on a site directly north of the project site, an improved and impediment-free public plaza with a vertical connection to the Bayfront lateral access, a second floor public observation deck (64 square feet) that faces Morro Rock and the Bay, coastal access signage, landscape planters, and outdoor furniture. The Applicant proposes to retain for restaurant seating the existing 20-foot by 28-foot uncovered patio, (which was required as a vertical access connection to the Bayfront lateral access by the Commission's 1976 CDP approval) with the expanded Bayfront lateral accessway and new vertical accessway from the public plaza providing for access from the Embarcadero and along the entire bayside of the restaurant. The City's approval also allows for 11 existing public parking spaces at the public parking lot across the Embarcadero to be reserved exclusively for hotel guests and employees between 3pm and 11am daily. Lastly, the project includes new exterior flourishes such as new windows, doors, awnings, and signing (see **Exhibit 3**).

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<sup>2</sup> As explained subsequently, if approved per Staff recommendation, this CDP would resolve these violations.

The hotel would provide 10 units of varying sizes and amenities ranging from 217 to 336 square feet. The Applicant is proposing to provide two of the smaller hotel units at rates equal to the area's low-cost threshold of \$145. As proposed, for both rooms, these rates could be increased at no more than the Consumer Price Index each year without needing a CDP amendment.

### **C. STANDARD OF REVIEW**

The Coastal Commission retains permitting jurisdiction on tideland properties, including the fill areas along the Embarcadero, and including the properties that are the subject of this permit application. As a result, the standard of review for the proposed project is the Coastal Act, although the certified Morro Bay LCP can provide persuasive guidance.

### **D. LOWER-COST ACCOMMODATIONS**

#### *Applicable Policies*

Coastal Act Section 30213 protects lower-cost visitor-serving facilities and states:

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

*The Commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.*

In addition, although not the standard of review for this CDP application, the Morro Bay LCP similarly protects and encourages the provision of hotel rooms at a range of affordability options, mirroring Coastal Act 30213:

***LCP Policy 2.07** New hotel/motel developments within the coastal zone shall, where feasible, provide a range of rooms and room prices in order to serve all income ranges... Consistent with Coastal Act Section 30213, the City shall in no event (1) require that overnight room rental be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private land; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.*

Thus, Coastal Act Section 30213 and the complementary LCP policy require lower-cost facilities to be protected, encouraged, and, if feasible, provided.<sup>3</sup> Over the years, the lower-cost facilities

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<sup>3</sup> Coastal Act Section 30213 has its origins in the 1975 California Coastal Plan (precursor to the 1976 Coastal Act). Based on extensive public input in the early 1970s, the Coastal Plan found that few tourist facilities for persons of low and moderate income were being built in many parts of the coastal zone, and that many such low and moderate cost facilities were being replaced by facilities that had higher costs, including particularly in terms of overnight

issue related to overnight accommodations has been especially important because permit applicants have typically requested that the Commission and LCP-certified local governments approve higher-cost overnight accommodations on land zoned for visitor-serving uses (some instances in which lower-cost accommodations were already situated on the land) rather than pursuing lower-cost accommodations (e.g., economy hotels), thus resulting in loss of either potential or actual lower-cost accommodations in appropriately-zoned areas. Overall, the Commission's past history of permitting overnight accommodations in the coastal zone confirms the need to guard against the loss or preclusion of lower-cost overnight accommodations along the coast, as recognized in Coastal Act Section 30213 and the LCP policies in various local jurisdictions based on Coastal Act Section 30213 (such as LCP Policy 2.07 here).

Thus, in order to facilitate lower-cost accommodations, the Commission has focused on three primary methods to do so where proposed visitor-accommodating development would have adverse impacts on lower-cost accommodations either through conversion of existing stock or preclusion of lower-cost accommodations in appropriately-zoned areas: (1) ensure lower-cost accommodations are provided onsite as some portion of the proposed project; or (2) alternatively, ensure an equivalent number of lower-cost units are created off-site; or (3) alternatively, ensure "in-lieu" funds are paid to create an equivalent amount of new lower-cost accommodations to be constructed elsewhere. To implement any of these options, the Commission must first: 1) define what is and is not a lower-cost unit; and 2) determine how many units per a given proposed project should be provided as lower cost mitigation to offset impacts caused by the proposed development. Under any of these potential approaches, the basis for requiring lower-cost accommodations (or an in-lieu fee payment) as mitigation for approval of a higher-cost accommodation project is premised on the adverse impacts that the higher-cost accommodations, if approved, have either on the existing stock of lower-cost accommodations or the availability of space for lower-cost accommodations in appropriate locations in the future.

#### *Defining Low-, Moderate-, and High-Cost Accommodations*

The first step to implement Coastal Act 30213 and corresponding LCP requirement is to define what is and is not a lower-cost unit. In a constantly changing market, it can be difficult to define what price point constitutes low-, moderate-, and high-cost accommodations for a given area. As such, the Commission has utilized different approaches over time to define such terms, including by considering the unique factual circumstances for each particular project. In previous actions, the Commission has addressed what are appropriate terms for defining lower-cost and high-cost hotels, including applying a quantitative methodology for determining what is considered "lower cost" in the geographic area in question.<sup>4</sup> More recent Commission actions have used a formula to determine low- and high-cost overnight accommodations specific to different parts of the coast.<sup>5</sup> The formula is based on California hotel and motel accommodations (single room up to double occupancy), and does not account for hostels, RV parks, campgrounds or other alternative accommodations into the equation, as these facilities do not typically provide the same level of

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accommodations. The Coastal Act addressed these findings in part by including the specific Section 30213 mandate to protect, encourage, and where feasible provide lower cost visitor and recreational facilities.

<sup>4</sup> Including CDPs 5-04-291, 5-88-062, 5-84-866, 5-81-554, 5-94-172, 5-06-328, A-253-80, A-69-76, A-6-IMB-07-131, 3-07-002, 3-07-003, and 3-16-0287.

<sup>5</sup> Including LCP amendment SBV-MAJ-2-08 and CDP amendment 5-98-156-A17, and most recently in Carlsbad (LCP-6-CAR-16-0015-2 Part A).

accommodation as hotels and motels. Rather, hostels and campgrounds are generally inherently lower cost, and are the type of facilities that a mitigation measure for the loss of lower-cost overnight accommodations might require.

The formula calculates the average daily peak rate (generally July and August) of lower-cost hotels and motels in a specific coastal zone area (e.g., a city or defined urban area) as it compares statewide based on the average daily rates of hotels and motels across the entire State of California. Under this formula, lower cost is determined as the average daily room rates for all hotels within a specific area that have a room rate less than the statewide average daily room rate. To obtain data inputs for the formula, statewide average daily room rates are collected monthly by Smith Travel Research (STR)<sup>6</sup> and are available on the "Visit California" webpage.<sup>7</sup> To be most useful, peak season (summer) rates are utilized for the formula, and to ensure that the lower-cost hotels and motels surveyed meet a minimally-acceptable level of quality, including safety and cleanliness, standard use of the formula only includes AAA Auto Club-rated properties.<sup>8</sup> Once the low-cost rate is identified, the Commission has used different approaches over time to define medium and high-cost rooms, including that high cost is determined as the equivalent cost percentage above the statewide average room rate as low cost is determined to be below the statewide average. In other words, if \$100 was the statewide average room rate, and low-cost rooms across a certain geographic area were determined to be 20 percent less (or \$80), then high cost in that same area would be defined as those rooms 20 percent above the statewide average, or \$120. This approach was used in 2008<sup>9</sup> and more recently in the Commission's approval of an LCP amendment authorizing a hotel in the City of Carlsbad in 2016.<sup>10</sup> By definition, the hotel rooms that are more expensive than the low-cost room rate as calculated, but less expensive than the high-cost room rate as calculated, qualify as moderate-cost rooms.

This formula is based solely on rates for standard, double occupancy rooms (equivalent to AAA one- and two-diamond rated hotels). However, the Commission has grappled with recognizing and accounting for rooms that are not standard, double occupancy rooms and has sometimes reached differing conclusions depending on the particular facts of a specific project. For example, in the 2007 approval of a previous CDP application for a project in Morro Bay,<sup>11</sup> the Commission found that all seven of the proposed rooms were high-cost despite the then-Applicant's assertion that they were larger rooms with kitchens designed for families. In that case, the Commission required mitigation via an in-lieu fee payment of \$13,860 per room for 25% of the total number of rooms proposed.<sup>12</sup> Conversely, for a proposed hotel in Venice, the

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<sup>6</sup> Smith Travel Research data is widely used by public and private organizations.

<sup>7</sup> See <http://industry.visitcalifornia.com/Research/> for STR's latest California Lodging Report.

<sup>8</sup> According to the AAA website, "to apply for (AAA) evaluation, properties must first meet 27 essential requirements based on member expectations – cleanliness, comfort, security and safety." AAA assigns hotels ratings using a "diamond" classification, with one being the lowest and five being the highest.

<sup>9</sup> A-6-IMB-07-131 (Pacifica Companies and Pacifica Hosts, Inc., City of Carlsbad).

<sup>10</sup> LCP amendment LCP-3-CAR-16-0015-2 Part A (Westin Hotel and Timeshare), approved by the Commission in July 2016.

<sup>11</sup> CDP 3-07-003 (League Morro Bay)

<sup>12</sup> Seven rooms were approved, so the mitigation fee was  $7 \times 0.25 \times \$13,860 = \$24,255$ .

Commission did not require any additional lower-cost mitigation, despite the fact that all 30 proposed hotel rooms were determined to be a mix of moderate and high cost, in part because the hotel provided suite-like rooms designed for families and included extensive free amenities (CDP 5-14-1932, Lambert, Venice, City of Los Angeles). In all cases, however, the Commission has required proposed overnight accommodations, either via low-cost rates, per capita affordability, and/or via extensive lower-cost amenities, services, and/or public access improvements, to be accessible to the broader public, including those with lower monetary means, to meet the Coastal Act's overarching goal of maximizing public access to the State's coastal zone for all. Thus, to summarize, the Commission has: 1) defined lower-cost hotel rooms as the average daily room rate for all hotels and motels within a specific geographic area that have a room rate less than the statewide average; 2) defined high-cost hotel rooms as the equivalent cost percentage above the statewide average room rate as low cost is determined to be below the statewide average; and 3) responded to the unique attributes of each particular proposed hotel accommodation project to ensure lower-cost rooms and/or public access amenities are provided.

#### *Number of Required Lower-Cost Rooms*

After defining the project as low-, moderate-, or high-cost, the Commission must next determine how many, if any, lower-cost rooms/units should be provided for a given project as mitigation for impacts to lower-cost visitor accommodations caused by the proposed development. In the past, the Commission has required mitigation for at least 25% of the number of new proposed **high-cost** rooms. In other words, 25% of the proposed high-cost rooms must be mitigated for at the identified low-cost rate. The precise amount of required low-cost units, however, is a case-specific exercise dependent on many factors, including other public access benefits being proposed, as exemplified in the Lambert example cited above. Although the provision of on-site lower-cost accommodations is preferred, if on-site provision is found to be infeasible, the Commission has alternatively required "in-lieu" mitigation payments for the construction of an equivalent number of lower-cost rooms/units (such as hostel beds) offsite. The funds are paid into an account managed by an appropriate entity, including the local government, State Coastal Conservancy, California Department of Parks and Restoration, Hostelling International, or a similar agency familiar with low-cost accommodations management to ensure that such funds are spent on new lower-cost units, including new campground and hostel facilities. Recently on the Monterey Peninsula, the Commission required, using this formula, a \$1.8 million mitigation payment from the Pebble Beach Company as mitigation for lack of on-site lower-cost options in the development of a new high-end resort hotel and additional rooms at the existing Inn at Spanish Bay and Lodge at Pebble Beach.<sup>13</sup>

To ensure that mitigation payments are commensurate with the actual cost to construct a lower cost unit, thereby ensuring that the monies levied on project applicants are adequate to fully mitigate for a project's lack of onsite lower-cost units, the Commission has sought guidance from organizations most familiar with the construction and/or operation costs of these types of accommodations. In 2014, Hostelling International prepared a study for the Commission to establish an appropriate in-lieu fee amount, which assumed the construction of a new 100-bed,

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<sup>13</sup> Monterey County LCP Amendment MCO-1-12 Part 1 (Del Monte Forest Update and Pebble Beach Company Concept Plan), approved by the Commission in May 2012.

two-story, reinforced masonry hostel facility built on a 12,000-square-foot vacant parcel in southern California. Construction costs (including assuming prevailing wages) were estimated at \$4,212,000, or \$42,212 per bed, while land costs were estimated at \$1,200,000, or \$12,000 per bed. The combined cost estimate totaled \$5,412,000, or \$54,120 per bed. The analysis concluded that the \$54,120-per-bed estimate fairly reflected new hostel construction costs and provided a reasonable estimate with respect to potential mitigation payments so as to ensure that fees were sufficient to actually construct the number of beds required to be built per the condition of approval. However, the analysis did warn that costs per bed can vary substantially, including because the analysis's assumption of a land purchase price of \$1,200,000 for the 12,000-square-foot parcel, or \$100 per square foot, can vary depending on the location in question.

In 2015, the Commission hired a consultant with expertise in the hotel resort development field to again review the hostel cost estimate so as to better understand the variables present in determining the price to develop a hostel bed. The consultant reviewed Hostelling International's 2014 report, and concluded that the report's cost estimates to construct the actual hostel structure are well developed. The consultant concluded that the 2014 analysis's \$42,120-per-bed building cost estimate would be appropriate throughout the coastal zone, as the assumed construction costs would be relatively uniform statewide. However, the consultant also indicated that the land cost component is tremendously variable across the State. Therefore, the consultant's recommendation was that for each application, a search for vacant land sales should be done to derive an estimate of the cost for an appropriately sized parcel of land in the subject area. The land cost at the particular location would then be added to the fixed \$42,120 construction cost. In other words, the consultant recommended that the cost to develop a hostel bed should be \$42,120 plus land costs, with land costs defined as the price per square foot times 120 square feet (the assumed size of a hostel bed). This methodology would most accurately reflect the price to develop a hostel bed in a particular location, and would therefore be the most accurate mitigation fee to ensure the fees were sufficient to pay for the construction of lower-cost units.<sup>14</sup>

In sum, the Commission has implemented Coastal Act Section 30213 by defining what is and is not a lower-cost unit, determining how many units per a given proposed project should be reserved as lower cost, ensuring that such units are provided onsite where feasible, based on the proposed development's impacts to lower-cost visitor accommodations, and, if not feasible, providing ways to mitigate for the lack of onsite lower-cost units by paying specified in-lieu fees for construction of those units elsewhere.

#### *Proposed Project*

First, using the Commission's methodology, as described above, to define the low-cost room price threshold, Commission staff reviewed data on room rates at various hotels and motels

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<sup>14</sup> Of course, while the refined methodology more accurately reflects the cost to develop a hostel bed, it does not address the inherent limitation in mitigating on-site hotel rooms with off-site hostel beds. In other words, hotel rooms and hostel beds are not the same accommodation types, and thus a more analytically accurate way to mitigate for a proposed project's lack of lower-cost hotel rooms would be to provide lower-cost hotel rooms, thereby mitigating in-kind. Therefore, to the extent that a high-cost hotel mitigates for impacts to low-cost rooms through this type of in-lieu fee hostel bed alternative, the permittee will virtually always pay *less* than would be required to mitigate those impacts by providing equivalent onsite low-cost hotel rooms or an in-lieu fee payment equivalent to the cost of building low-cost hotel rooms.



within the immediate coastal zone areas of Cayucos and Morro Bay. Commission staff then analyzed and cross-checked the various room rates submitted, and also researched additional economy accommodations in the area online and via phone calls. Table 1, below, presents the results of this research and lists the accommodations in the area that have average peak season rates below the July 2016 statewide average of \$171.48.<sup>15</sup> Based on the data, staff determined lower-cost accommodation rooms within the Cayucos and Morro Bay area to average no more than \$145 per night in July and \$146 in August, or an average of \$145.50 during these peak summer months. Low-cost hotel rooms in the Cayucos and Morro Bay area are therefore no more than 85% of the statewide average (\$145.50/\$171.48), or 15 percent below the statewide average. It is important to note that all of the accommodations evaluated in Table 1 constitute single-room, double-occupancy accommodations.

<b>Table 1</b>					
<b>Economy Class Hotels in the Morro Bay/Cayucos Coastal Zone with Room Rates Less than the Statewide Peak Average*</b>					
	<u>Hotel Name</u>	<u>Address</u>	<u>Area</u>	<u>July Average</u>	<u>August Average</u>
1	Cypress Tree Motel	125 S. Ocean Ave.	Cayucos	94.50	94.50
2	Seaside Motel	42 S. Ocean Ave.	Cayucos	155	155
3	Cayucos Beach Inn	333 S. Ocean Ave.	Cayucos	155	155
4	Cayucos Motel	20 S. Ocean Ave.	Cayucos	150	150
5	Estero Bay Motel	25 S. Ocean Ave.	Cayucos	129	129
6	Dolphin Inn	399 S. Ocean Ave.	Cayucos	144	154
7	Motel 6	298 Atascadero Rd.	Morro Bay	147	120
8	Holland Inn	2630 Main St.	Morro Bay	154	N/A
9	Bay View Inn	225 Harbor St.	Morro Bay	145	150
10	Morro Crest Inn	670 Main Street	Morro Bay	145	152.50
11	Seaside Inn	220 Beach St.	Morro Bay	N/A	159
12	Days Inn	1095 Main St.	Morro Bay	N/A	159
13	Sundown Inn	640 Main St.	Morro Bay	154	154
14	The Breakers	780 Market Ave.	Morro Bay	N/A	161
15	Pacific Shores Inn	890 Morro Ave.	Morro Bay	165	N/A
				<b>\$145</b> (average)	<b>\$146</b> (average)
<b>* All rates are calculated for single-room, double-occupancy accommodations.</b>					
<b>July 2016 statewide peak average = \$171.48</b>					
<b>85% of the statewide average and below = low cost (i.e. \$145.50 and below)</b>					
<b>115% of the statewide average and above = high cost (i.e. \$197.20 and over)</b>					

Based on the above, the price for a defined low-cost room is \$145.50 and below, and for a high-cost room \$197.20 and above. These are the same price thresholds the Commission has utilized for recent Morro Bay CDPs (see CDP 3-16-0287, Front Street Cottages, approved by the Commission in May 2017).

<sup>15</sup> Again, see STR's California Lodging Report at <http://industry.visitcalifornia.com/Research/>

While the Applicant has not proposed specific rates for all ten rooms, the Applicant has, however, proposed a rate of \$145 for two of the units (**see also Exhibit 4**). As proposed, rate increases are capped at no more than the Consumer Price Index each year. Thus, when compared with the low- and high-cost rate thresholds as shown in Table 1, two rooms are proposed at rates that would constitute low cost (i.e., \$145.50 or less).

#### *Analysis*

As described above, the Applicant has determined it is feasible to provide lower-cost accommodations onsite, and is proposing two of the proposed 10 hotel rooms (i.e., 20 percent of the proposed rooms) to be reserved as lower cost. As explained earlier, while the Commission has typically required 25 percent of proposed rooms to be lower cost, the Commission also responds to the unique facts of each case, including what other public access benefits are being proposed to address the Coastal Act's broad access-for-all mandates. In this case, the project also includes other substantial public access amenities, including an improved and widened (to 10 feet) lateral Bayfront public accessway with more direct connectivity to access at the Morro Bay Boulevard view deck (north) and to the public plaza (south). The new public access configuration provides greater utility to the general public and separates these public amenities from the existing Rose's Landing commercial, visitor-serving uses, eliminating the potential for public-private conflicts. Additionally, the Applicant proposes to improve public access through the public plaza via a 10-foot-wide paved walkway from Embarcadero Road to the Bayfront lateral access and removal of concrete furniture and other existing impediments to public access. This direct path will provide greater line-of-sight to the Bay and the other public access amenities available on-site. The Applicant further proposes paved vertical access improvements at the Morro Bay Boulevard street end (which contains a Bay overlook) and public access signage to educate and facilitate public use of the site. Thus, the proposed number of low-cost rooms, in conjunction with these other public access benefits, is consistent with the Commission's overarching goals and intent in administering Coastal Act Section 30213, namely, ensuring that proposed visitor-accommodation facilities in the coastal zone (and in particular on locations such as this one, i.e. on former State tidelands, immediately fronting the Morro Bay estuary, and adjacent to the City's visitor-serving commercial waterfront) include lower-cost rooms (and other amenities) *onsite*. Doing so provides for lower-cost hotel units, thereby self-mitigating the impacts of the higher-cost rooms *in-kind*, as well as ensuring that the mitigation is located immediately adjacent to the impact (i.e., the location of the high-cost rooms), thereby self-mitigating *onsite*. Alternative mitigation approaches, including paying offsite in-lieu fees, while certainly beneficial, include added complexity to ensure that such mitigation is fruitful.

In this case, the Applicant's proposal consists of secured, tangible, on-the-ground mitigation that will provide bona fide lower-cost hotel rooms at the same time and in the same location as the high-cost rooms. In addition, as described previously, although in-lieu fee equivalent mitigation has been used for the construction of equivalent number of offsite hostel beds (or campground facilities) in some instances, this approach may not adequately offset a project's impacts. As previously described, mitigating the lack of onsite hotel rooms by providing the same number of offsite hostel beds is inherently less desirable, including because *hotel rooms* generally provide better accommodations than *hostel beds*. For numerous reasons (e.g., privacy, space, amenities), while some visitors may be willing to stay in the type of shared accommodations provided by hostels, some may choose not to stay in such an environment. A more analytically accurate way to mitigate for a proposed project's lack of lower-cost hotel rooms is to provide lower-cost hotel

rooms, thereby mitigating in-kind. The Applicant's proposal thus represents an opportunity to build new in-kind lower-cost hotel rooms that are more private than a standard hostel bed, and which may serve as a low-cost option for families to access Morro Bay's waterfront amenities. Thus, as proposed, the project includes an adequate number of onsite lower-cost hotel units (plus additional public access amenities as discussed above) to mitigate for its proposed high-cost hotel units.

### *Conclusion*

Therefore, the Commission finds that no additional low-cost accommodations mitigation is required because the project provides, as proposed, an adequate amount of low-cost accommodations onsite for the project to be consistent with Section 30213 of the Coastal Act. Thus, the proposed project increases the range of opportunities for overnight accommodations, and does not displace any existing overnight low-cost accommodations. However, although the Applicant is proposing these lower cost rooms onsite, to ensure that the rooms remain low cost over time, **Special Condition 1 and Special Condition 3(d)** memorialize the Applicant's own proposed rate structure as shown in **Exhibit 4**, subject to increases via the CPI. In addition, **Special Conditions 3(a) and (b)** require that all ten hotel rooms be open and available to the general public, that rooms shall not be rented to any individual, family, or group for more than 29 consecutive days and that no individual ownership or long-term occupancy of hotel rooms shall be allowed. To further ensure that the hotel operates as proposed and approved, **Special Condition 3(c)** prohibits the conversion of any of the hotel overnight rooms (including suites) to limited-use overnight visitor accommodation units (e.g., timeshare, fractional ownership, etc.) or to full-time occupancy condominium units or to any other units with use arrangements that differ from the approved project, as well as requires annual monitoring reports to ensure same. Thus, for all of the reasons described above, the project, as proposed and conditioned, can be found consistent with Coastal Act Section 30213.

## **E. PUBLIC ACCESS AND RECREATION**

### *Applicable Policies*

Coastal Act Sections 30210 through 30224 require that development maximize public recreational access to and along the shoreline, provide visitor-serving recreational facilities, protect oceanfront land for recreational use and development, and in general establish that coastal-dependent, visitor-serving, and public recreational access developments have priority over other types of uses and development. In particular:

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

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

***Section 30212(a):** Public access from the nearest public roadway to the shoreline and*

*along the coast shall be provided in new development projects...*

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

**Section 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 30222:** *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

In addition, the Coastal Act also requires the provision of adequate, appropriately-distributed parking for new development:

**Section 30212.5:** *Whenever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.*

**Section 30252(4):** *The location and amount of new development should maintain and enhance public access to the coast by ... (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, ...*

Although not the standard of review, the LCP's Implementation Plan (IP) also details specific uses and guidelines for development within the waterfront (WF) zone applicable to this site. Applicable sections are as follows:

**IP Section 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.*

**IP Section 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...*

Finally Morro Bay's LCP provides guidance on parking requirements along the Embarcadero, including allowing payment of in-lieu fees into a parking management program to accommodate parking needs:

**LCP 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.*

In 2007, the City developed a parking management program, allowing for parking in-lieu fees to be used when adequate onsite parking was not provided, and applicants instead made use of public parking spaces to satisfy parking demand. These fees historically were applied by both the City and the Commission in approving projects at a rate of up to \$15,000 per parking space.<sup>16</sup> Although the City has decided to change some of the fees and parameters since 2007, this program is still in effect. Off-street parking requirements are spelled out in IP Section 17.44.020, including:

***IP Section 17.44.020. Parking Facilities. Subsection A – Off-Street Parking – General Requirements. Subsection C(1)(j):*** Motels, hotels: one space for each room or group of rooms intended to be occupied as a unit, plus one space for each ten rooms, plus two spaces for each resident manager's quarters.<sup>17</sup>

#### *Analysis*

##### *Public Parking*

With respect to parking, though not the standard of review, IP Section 17.44.020(C)(1)(j) calls for one parking space to be provided for each hotel room. Coastal Act Section 30252(4) also requires that the hotel provide adequate parking. The proposed hotel will include 10 units, necessitating 11 onsite parking spaces (i.e., one for each room, plus one additional space for each ten rooms) in order to provide adequate parking for all units. This parking demand can either be met onsite or, pursuant to LCP Policy 2.08, via an in-lieu fee into the City's Embarcadero parking management fund. However, during the City's approval process, the Applicant did not propose, and the City did not require, any onsite parking spaces. Rather, the City conditioned its approval to allow for the use of an existing on-street parking space fronting the proposed hotel to be used exclusively as a hotel loading zone, and also allowed 10 parking spaces at the adjacent City-owned public parking lot across the Embarcadero to be reserved exclusively for hotel guests between 3pm and 11am daily, i.e. 20 hours a day, 365 days a year. Thus, the City's action allows for 11 existing public parking spaces to be used almost exclusively for private hotel use.

There are numerous Coastal Act public access conformance issues associated with such a parking proposal. First, while ordinarily a *new* use would require adequate parking, the proposed hotel is not a new use in terms of parking demand at the site, but rather is a changed use from the current second-story restaurant use. The Commission approved two CDPs for development on this site, one in 1975 and another in 2001, authorizing the building to be used as a restaurant and authorizing the restaurant building's expansion, respectively. In both of those actions, the

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<sup>16</sup> See, for example, Commission approval of CDP 3-07-002.

<sup>17</sup> In this case, the proposal does not include any resident manager's quarters.

Commission analyzed parking demand and required parking mitigation, including in the form of a payment of \$80,000 to the City's parking management fund, which helps pay for the City's public parking lots along the Embarcadero. In other words, in both CDPs, the Commission found that parking demand generated for the site's restaurant use was satisfied. In this case, the proposed hotel use would require *less* parking than the existing second-story restaurant requires. Thus, the two previous CDPs have already accounted for parking demand generated by a more parking-intensive restaurant use on this site, and thus no additional parking mitigation is required for this less parking-intensive hotel use. And second, even though no additional parking is needed for this site, the proposed project would dedicate 11 existing public parking spaces (one space on the street for loading-unloading and 10 in a public parking lot) for private hotel use. Such a proposal is both unnecessary, as described above, and also adversely impacts the general public's ability to access and recreate in this prime visitor-serving area, inconsistent with Section 30210's stated requirement that access shall protect public rights, and also inconsistent with Section 30212.5, which envisions the use of public parking facilities by the *general* public, and inconsistent with Section 30252(4) because the project does not maintain the amount of general public access parking but instead represents a privatization of publicly-available parking spaces. As such, the proposed project's parking plan cannot be found consistent with the Coastal Act Section 30210 mandate to maximize public access and recreational opportunities to and along the coast. For these reasons, **Special Condition 2(a)** expressly prohibits the use of any public parking spaces to be reserved primarily or exclusively for private hotel use, including for hotel guests and employees, and requires revised Final Plans to show this prohibition. **Special Condition 2(b)** allows the use of one parking space on the Embarcadero for 10-minute passenger loading and unloading (including for hotel guests and their luggage), but expressly prohibits the use of this space for hotel guests only (i.e. this space may be used by non-hotel guests as well). This space is also required to be located adjacent to the public plaza because, given that this space is for passenger loading/unloading only and will thus be empty most of the time, it will afford a view of the public plaza for those traveling down the Embarcadero.

In conclusion, hotel guests and employees can certainly park in any public parking space, including because the spaces in the City's adjacent public parking lots are the fruits of the Commission's previous actions requiring parking fees to address this site's (and other sites') parking demand. However, those parking spaces cannot be reserved primarily for hotel use, which would result in the privatization of a publicly-available parking lot, inconsistent with Coastal Act Section 30223. As proposed by the Applicant, the hotel use requires no additional parking mitigation compared to the existing second-story restaurant use and, as conditioned, the hotel project will not usurp existing public parking spaces, and thus the project can be found consistent with the above-cited Coastal Act policies.

#### *Public Coastal Access*

To maximize public access along the Bayfront on the Embarcadero in Morro Bay, which constitutes public lands, the Commission has typically required a 10-foot-wide lateral Bayfront accessway (see 3-11-031 (Giovanni), 3-08-052 (Morro Bay Conference Center), 3-07-048 (Held Mixed Use)), along with lateral connections upcoast and downcoast where feasible, and vertical connections from the Embarcadero. The Commission has also required specific restrictions to protect the use of such accessways and appropriate signage to ensure that the public is adequately informed of their availability.

As discussed above, the project site includes existing Bayfront lateral access that connects to upcoast and downcoast lateral access, and which comprises a component of the California Coastal Trail in this location. The existing enclosed eight-foot-wide Bayfront lateral access is located at the rear of the Rose's Bar & Grill and is not readily visible from adjacent public areas. Access to the Bayfront lateral access is currently gained via a five-foot-wide path that dog-legs down from Morro Bay Boulevard on the north side of Rose's Landing, or requires a stroll through the public plaza and then through the outdoor patio on the south end (which is currently used for restaurant seating). Additionally, the site currently includes a second-story view deck.

In this case the project proposes to widen the Bayfront lateral accessway fronting Rose's Bar & Grill from the existing eight-foot width to a ten-foot width. The improved lateral access will eliminate the existing awning and windscreen enclosure and replace it with a 42-inch-high metal railing. On the north end, the lateral accessway will connect directly to the City's existing Bayfront view deck, and on the south end, the lateral accessway will have a more direct connection to the public plaza (i.e., this access will no longer pass through the uncovered patio area, which the Applicant proposes to retain for outdoor restaurant seating). The proposed vertical access on the north end consists of a ten-foot-wide paved path leading from the Morro Bay Boulevard street end to the City's Bayfront view deck on the adjacent parcel, which will then connect to the Bayfront lateral accessway. Similarly, on the south side, a 10-foot-wide paved path will provide vertical access from the Embarcadero through the public plaza and connecting to the Bayfront lateral accessway (see **Exhibit 2** for project plans).<sup>18</sup> Additionally, the Applicant proposes to improve public access within the public plaza via removal of concrete furniture and other existing impediments and proposes to install public access signage to educate visitors and to facilitate public use of the site. These improvements will provide greater line-of-sight to the Bay and draw the public in to the extensive public access amenities available onsite. The revised public access configuration will provide greater utility to the general public and will separate these public amenities from the existing Rose's Landing commercial restaurant uses, eliminating the potential for public-private conflicts. The proposed project will greatly improve this section of coastal access along the Bayfront and will also improve this portion of the California Coastal Trail.

Additionally, the Applicant is proposing to construct a new eight-foot x eight-foot second-story public observation deck with stairway access from the public plaza. This dedicated feature is separate from the hotel terrace use on the second floor and is intended to be used exclusively by the public. Lastly, the project includes an updated and improved public plaza with outdoor furniture, planter boxes, a dedicated 10-foot-wide paved pathway, and coastal signage. The proposed improvements, including the additional width of the pathway segments along the Bayfront lateral access and the Morro Bay Boulevard and public plaza vertical paths north and south of the project site, meet the width (i.e. 10 feet) typically required by the Commission for Embarcadero projects necessary to meet the maximum access requirements of the Coastal Act. The Applicant seeks to retain restaurant seating on the existing outdoor uncovered patio and convert the existing second-story view deck to hotel use. Both of these areas were required to be open to the general public for access and viewing in past CDPs. However, the Applicant proposes to mitigate the loss of these public spaces via the construction of the expanded lateral

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<sup>18</sup> As discussed above, the Rose's Landing project site consists of eight City-owned sites that the Applicant leases from the City.

accessway around the restaurant deck and by substantially improving the vertical access connections from the Embarcadero, thereby affording the public improved lateral access along the Bay. The proposed second-story observation deck will be oriented to the Bay and Morro Rock and thus provide better coastal views than the existing overlook, much of which faces the plaza and the Embarcadero. Overall, the proposed public access improvements rectify past violations and enhance the utility of public coastal access overall at this location.

To ensure the seamless integration of all the public elements of the project, this CDP approval is conditioned to require the submission of a Public Access Management Plan for Executive Director approval. The Public Access Management Plan must demonstrate how maximum public recreational access benefit will be achieved, where the primary objective is to maximize public recreational access at the site (including to the vertical and lateral accessways, second-story observation deck, public access amenities, etc.), to provide clear and informative signage (including interpretive signage), and to ensure that the project's public access features are available for free, general public use 24 hours a day, 365 days per year in perpetuity for the public accessways, and at a minimum sunrise to one hour after sunset for the second-story view deck (**see Special Condition 4**). As conditioned, the proposed project is consistent with the public access and recreation policies of the Coastal Act because the project will 1) provide maximum public access and recreational opportunities consistent with the Applicant's private property rights (Section 30210); 2) facilitate the public's right of access to the sea (Section 30211); 3) provide access from the nearest public roadway to the shoreline and along the coast (Section 30212); 4) provide lower-cost recreational facilities (i.e. the enhanced public plaza and improved vertical and lateral access, and the second-story observation deck (Section 30213); 5) protect oceanfront land for recreational use (Section 30221), and 6) provide a high-priority visitor-serving commercial use (i.e. a hotel) (Section 30222).

## F. VISUAL RESOURCES

### *Applicable Policies*

The Coastal Act requires new development to be sited and designed to protect public views to and along the scenic coastal areas and to be visually compatible with the character of the surrounding areas:

***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, the Coastal Act requires that special communities that are popular visitor serving and recreational destinations be protected:

***Section 30253(e):** New development shall: . . . (e) where appropriate, protect special*



*communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.*

#### *Analysis*

The proposed project fits into the visual landscape because it is mainly an interior remodel of an existing structure with only modest changes to the building's exterior (i.e., new windows, awnings, public observation deck, and three small hotel room balconies). The proposed architectural design is compatible with the character of nearby development, including with respect to height and bulk. The proposed structure will be a maximum of 25 feet in height when measured from finished grade, which is unchanged from existing conditions, and is designed with articulated roof planes and varied wall surfaces / features to avoid creating a boxy structure (see **Exhibit 5**). The proposed public access improvements associated with the project, including widening of the Bayfront lateral accessway, construction of a second-story observation deck, improvements to the public plaza, and widening of the vertical connections from Morro Bay Boulevard and the public plaza, will enhance viewing opportunities of Morro Bay and Morro Rock, consistent with Section 30251 of the Coastal Act. Furthermore, the proposed project is consistent with and protects the design aesthetic of the Embarcadero area of Morro Bay as a visitor destination for recreational use, and thus the project is consistent with Section 30253(e) of the Coastal Act.

## **G. WATER QUALITY**

The Coastal Act protects marine resources and water quality. Coastal Act Sections 30230 and 30231 provide:

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

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

Similarly, LCP Policies 9.10 and 9.11 protect water quality:

***LCP Policy 9.10.** In permitted development, drainage devices shall be required in order to conduct surface water to storm drains or suitable watercourses to prevent erosion. Drainage devices shall be designed to accommodate increased runoff resulting from modified soil and surface conditions as a result of development. Water runoff shall be*

*retained on-site whenever possible on whenever there is the capability to facilitate groundwater discharge.*

**LCP Policy 9.11.** *Degradation of the water quality of groundwater basins, nearby streams, or wetlands shall not result from development of the site. Pollutants, such as chemicals, fuels, lubricants, raw sewage, and other harmful waste, shall not be discharged into or alongside coastal streams or wetlands either during or after construction.*

As required by Coastal Act Section 30231 and as recognized by LCP Policies 9.10 and 9.11, development needs to protect water quality by controlling erosion and runoff. The project site is located directly adjacent to Morro Bay. Drainage and stormwater runoff from the site, both during and after construction, have the potential to degrade coastal water quality and diminish biological productivity by contributing sediments and pollutants to the Bay.

To provide consistency with the above-cited policies of the Coastal Act as well as the specific performance standards of the LCP, **Special Condition 5** requires submission of a Construction Plan to ensure Best Management Practices are implemented during construction to avoid water quality and other coastal resource impacts during construction. This condition also requires that copies of the CDP and the approved construction plan be maintained at the site during construction, and that a construction coordinator to be available to respond to any inquiries that arise during construction. As conditioned, the proposed project is consistent with Sections 30230 and 30231 of the Coastal Act.

## **H. OTHER**

The Commission's action on this CDP has no effect on conditions imposed by the City of Morro Bay pursuant to an authority other than the Coastal Act. However, **Special Condition 6** specifies that in the event of conflict between the terms and conditions imposed by the local government pursuant to an authority other than the Coastal Act/LCP and those of this CDP, the terms and conditions of CDP 3-17-0581 shall prevail.

## **I. VIOLATION**

On September 19, 2016, the Coastal Commission's Enforcement Division wrote a letter to the restaurant owner regarding violations at the site, including impediments along the required eight-foot-wide Bayfront lateral access and the five-foot-wide northern access path, appropriation of the 20-foot x 28-foot public patio and upper outdoor view deck for private restaurant service, and a myriad of obstructions within the public plaza. Additionally the required signage for these public access improvements was found to either be missing or placed in locations that were not readily visible to the general public.

Enforcement staff's letter provided that the restaurant owner could resolve the violations via either removal of impediments/obstructions and/or by obtaining a coastal development permit authorizing the development after the fact. The property owner has chosen to submit an application to convert the existing upper-floor restaurant use into a 10-unit hotel and to include

improvements that will address the underlying violations. The proposal includes construction of a new dedicated 10-foot-wide Bayfront lateral access with connections to the City's dock at the Morro Bay Boulevard street end and to the public plaza south of the Rose's Landing building. New vertical access constructed with pavers is proposed from the Embarcadero and will connect to the Bayfront lateral access both north and south of the project site. The Applicant proposes to use the uncovered patio for restaurant service seating. This patio currently provides for a vertical connection to the Bayfront lateral accessway. However, the new vertical access on the south side of the property will be located adjacent to (and outside of) the uncovered patio, and will form a more direct link to the Bayfront lateral access than does the patio currently. Additionally, the Applicant is proposing to construct a new eight-foot x eight-foot second-story public observation deck with stairway access from the public plaza. This dedicated feature is separate from the hotel terrace and will be appropriately signed to ensure that it will be used exclusively for the public. Lastly, the project includes an updated and improved public plaza with outdoor furniture, planter boxes, a dedicated 10-foot-wide paver pathway, and coastal signage. The proposed public access improvements would rectify past violations and enhance the utility of access overall at this location. **Special Condition 1** requires the Applicant to construct the improvements in accordance with the approved project plans. Issuance of the CDP and compliance with all of the terms and conditions of this permit will result in resolution of the aforementioned violations of the Coastal Act on the subject property.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies 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 implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a coastal permit. In fact, approval of this permit is possible only because of the conditions included herein and failure to comply with these conditions would also constitute a violation of this permit and of the Coastal Act. Accordingly, the applicant remains subject to enforcement action just as it was prior to this permit approval for engaging in unpermitted development, unless and until the conditions of approval included in this permit are satisfied.

## **J. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096 of Title 14 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 Mitigated Negative Declaration.

The Coastal Commission's review and analysis of consideration and granting of coastal development permits has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. (14 CCR § 15251(c).) As discussed

throughout this staff report, 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 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).

**Appendix A – Substantive Documents**

- Parking Management Plan, City of Morro Bay, CA, TPG Consulting, October 2007

**Appendix B – Staff Contact with Agencies and Groups**

- Scot Graham, Community Development Director, City of Morro Bay
- Cindy Jacinth, Senior Planner, City of Morro Bay