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W23a

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Staff: Sarah Carvill - SC
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Hearing Date: 5/8/2019

STAFF REPORT: CDP HEARING

Application Number: 3-19-0011

Applicant: T.L.C. Family Enterprises

Project Location: On the Bayfront at 833 Embarcadero in the City of Morro Bay, San Luis Obispo County (APN 066-322-001; Land Lease Sites 87-88; Water Lease Sites 87W-88W).

Project Description: Demolish an existing, mostly vacant two-story 6,687-square-foot building; construct a new 7,994-square-foot, two-story building with restaurant and retail use on the ground floor and an eight-unit standard operating hotel on the second floor; construct a series of public coastal access improvements, including a ten-foot-wide segment of the Harborwalk and a five-foot-wide vertical accessway, a public outdoor seating area, public restrooms, and a children's play area; relocate floating dock and pilings; and related improvements.

Staff Recommendation: Approval with Conditions.

SUMMARY OF STAFF RECOMMENDATION

The Applicant proposes to demolish an existing, mostly-vacant 6,687-square-foot two-story structure and outdoor dining patio, and construct a new, two-story, 7,994-square-foot building comprised of ground-floor retail and a "market hall"-style restaurant operation, with three separate kitchen areas and a bar for different food and drink vendors, as well as an 8-unit standard-operating hotel on the second floor. As proposed, the hotel would be comprised of low-

and high-cost rooms. In addition, the project proposes a series of public access improvements, including a new ten-foot-wide lateral segment of the Harborwalk public access walkway along the building's Bay frontage, a new five-foot-wide vertical access along the southern/downcoast building side connecting the Embarcadero with the new Harborwalk segment, new public seating, and improvements to the adjacent public plaza on the northern/upcoast side. The project site is located within the prime visitor-serving Embarcadero area of the City of Morro Bay that fronts directly on Morro Bay itself.

The project at its core is a visitor-serving use that should help to invigorate this prime visitor-serving spot along the popular Embarcadero. The proposed ground floor includes active retail and restaurant space, envisioned as a "market hall" comprised of multiple food vendors serving the general public. The hotel will be upstairs on the second floor, and will include low-cost rooms onsite. On this point, the Applicant is proposing to provide one of the hotel units at or below the low-cost threshold for the area year-round, and to provide a second unit at or below the low-cost threshold for the area for two thirds of the year. The Applicant is thus providing on-site mitigation for the six rooms to be offered at a high cost year-round. The project provides other substantial public access amenities, including the new ten-foot-wide segment of the Harborwalk; improved vertical access on both sides of the proposed new building, including through a renovated public plaza upcoast of the structure; as well as public restrooms and public access signage to educate and facilitate public use of the site. 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 the Coastal Act's public access and recreation policies, namely, ensuring that proposed visitor-accommodation facilities in the coastal zone (and in particular on locations such as this one, 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 low-/no-cost visitor accommodating and public access amenities) onsite. Doing so provides for a range of affordability options, including lower-cost hotel units, thereby directly self-mitigating the impacts of the higher-cost rooms *in-kind*, as well as ensuring that the mitigation is located in the immediate area of the impact (i.e., the location of the high-cost rooms), thereby self-mitigating *onsite*. The Applicant's proposal thus represents an opportunity to provide a low-cost option for families to access Morro Bay's waterfront amenities.

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

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

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EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Photos of Project Site

Exhibit 3 – Proposed Project Plans

Exhibit 4 – Proposed Low-Cost Hotel Room Rates

Exhibit 5 – Visual Simulations and Design Board

Exhibit 6 – City of Morro Bay Conditional Use Permit #UP0-509

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 3-19-0011 pursuant to the staff recommendation, and I recommend a **yes** vote.*

***Resolution to Approve CDP:** The Commission hereby approves Coastal Development Permit Number 3-19-0011 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 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.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

- 1. Approved Development.** Coastal Development Permit (CDP) 3-19-0011 authorizes the development expressly proposed by the Applicant (i.e., ground floor retail and restaurant use, an eight-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 and other hotel amenities 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. Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two full size sets of Final Plans to the Executive Director for review and approval. The Final Plans shall be prepared by a licensed professional or professionals (i.e., architect, surveyor, geotechnical engineer, etc.), shall be based on current professionally surveyed and certified topographic elevations for the entire site, and shall include a graphic scale. The Final Plans shall be in substantial conformance with the proposed plans (titled “Harborwalk Plaza” and dated received in the Coastal Commission’s Central Coast District Office January 7, 2019 (see **Exhibit 3**)), shall clearly show the development’s siting and design, including through elevation and site plan views, and shall comply with the following requirements:

 - a. Utilities.** All utilities shall be placed underground.
 - b. Drainage and Runoff.** A post-construction drainage and runoff control system shall be identified that is sited and designed: to collect, filter, treat, and direct all site drainage and runoff in a manner intended to protect and enhance coastal resources as much as possible; to prevent pollutants, including increased sediments, from entering coastal waters as much as possible; to filter and treat all collected drainage and runoff to minimize pollutants as much as possible prior to infiltration or discharge from the site; to retain runoff from roofs, driveways, decks, and other impervious surfaces onsite as much as possible; to use low impact development (LID) best management practices (BMPs) as much as possible; to be sized and designed to accommodate drainage and runoff for storm events up to and including at least the 85th percentile 24-hour runoff event (allowing for drainage and runoff above that level to be likewise retained and/or conveyed in a non-erosive manner); to direct all drainage and runoff not infiltrated on site to City infrastructure able to handle the flows, and not directly to the Bay; and to include ongoing maintenance and management procedures (including at the least provisions for annual pre-storm season and post-storm event evaluation and repair/maintenance) that meet professional standards for maintenance of such systems, and that will apply for the life of the project.

- c. Pilings and Substructure.** The Plans shall identify all pilings and all other structural substructure elements to be removed, installed, or otherwise used in association with the proposed development, including coating materials. New pilings shall be made of steel or reinforced concrete and sealed with a marine grade epoxy/polyurethane coating. New wood pilings shall not be installed. Any other wooden substructure components (either proposed new or to be demolished/removed) shall be clearly described on the Plans, including their coatings and preservatives, and shall be consistent with the requirements of the Commission's standard BMPs for use of treated wood (as shown on **page 3 of Exhibit 3**). Measures proposed to minimize the hydro-acoustic noise impacts of any piling driving shall be described on the Plans.
- d. Loading Zone.** Subject to approval of the City, the Plans shall designate 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 white and shall also provide for signage to be placed adjacent to the space denoting its use for ten-minute passenger loading and unloading only. Any reference to this space as dedicated only for hotel guest loading and unloading shall not be included on the Final Plans. Evidence of review and approval of the loading and unloading zone location by the City shall be provided with the Final Plans.

The Permittee shall undertake development in accordance with the approved Final Plans, 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 Final Plans shall be enforceable components of the CDP.

- 3. Hotel Units.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that:

 - a. General Occupancy Requirements.** All eight 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.** The eight hotel units 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 of those two dates).
 - 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 one year-round low-cost hotel unit and one part-time low-cost unit 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 its affiliated designee) shall annually provide, for Executive Director review and approval, two copies of a monitoring report for the one year-round low-cost and one part-time 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 year-round low-cost unit, and for the part-time low-cost unit for those days in each month when it is offered on a low-cost basis; occupancy rates for the low-cost units for each applicable month (modified as above for the part-time low-cost unit); 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 ultimate intent of this reporting requirement is that the Permittee (or its affiliated designee) will make necessary 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 use of the public access areas of the proposed development (including the bayfront lateral accessway, the connecting vertical accessways, the public outdoor seating areas, the public plaza and children's play area, the public restrooms, 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, near the intersection of the public plaza and the bayfront lateral accessway, and near the vertical access entryway at the Embarcadero. 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 accessway and vertical accessways shall be open to the general public 24 hours per day and shall be available free of charge, except for the public restrooms, which shall be available free of charge during business hours, and may be closed outside of business hours. Business hours shall include any time at which the market hall and/or any of the retail shops are open to the public. The floating dock shall be open to the public for general pedestrian access from at least one hour before sunrise to one hour after sunset. Signs discouraging the public from walking on the docks during these hours are prohibited.
- e. Public Outdoor Seating Areas.** No restaurant condiments or table settings shall be allowed in the public outdoor seating areas on the north and west sides of the building. Signs shall be posted in these areas indicating that seating is available for public use and no purchase is necessary to utilize the area.
- f. 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.
- g. 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 with respect to 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.
- c. Construction Best Management Practices (BMPs).** The Construction Plan shall also identify the type and location of erosion control/water quality BMPs that will be implemented during construction to protect coastal resources, including the following:

 - i. 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.
 - ii. 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.
 - iii. 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.).
 - iv. 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. Transportation Demand Management Program.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit to the Executive Director for review and approval a Transportation Demand Management Program (TDMP). Said program shall include such measures as provision of bicycles for guests and methods for encouraging use of public transit, carpooling, and alternative transportation methods (e.g., bicycling to work) by employees. The Permittee shall undertake the development in accordance with this condition and the approved TDMP.
- 7. Eelgrass.** The Applicant shall be subject to the California Eelgrass Mitigation Policy (CEMP) and shall complete pre- and post-construction eelgrass surveys and mitigate for any impacts to eelgrass as required by the CEMP and as specified in City Planning Condition 12.
- 8. Compliance with Local Conditions of Approval.** The proposed development was approved by the City of Morro Bay via Conditional Use Permit #UP0-509 (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, the terms and conditions of this CDP shall prevail.
- 9. Deed Restriction.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the Permittee has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this CDP, 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 CDP as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description and site plan of the entire parcel or parcels governed by this CDP. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this CDP shall continue to restrict the use and enjoyment of the subject property so long as either this CDP or the development

it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION AND BACKGROUND

Embarcadero History

Until the mid-1940s, 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 1940s the Navy base, including all waterfront facilities, was transferred to San Luis Obispo County. Buildings were 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 within its City limits, 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 preserved in any such lease.

The City of 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 (e.g., overnight units, restaurants, gift shops) and coastal-related (e.g., kayak rental, commercial and recreational fishing services) land uses. Parcels on the bay side 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 833 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 added visitor-serving uses as well. The project site is located in the central portion of the Embarcadero, west of the Morro Bay Boulevard street end, and is comprised of four tidelands lease sites (sites 87, 88, 87W, and 88W), two of which extend out into the Bay (87W and 88W). The site consists of approximately 75 feet of bay frontage and is relatively flat, ranging from approximately 13.5 feet above mean sea level at the highest elevation to slightly more than 12 feet above mean sea level at the lowest elevation (the top of the seawall is slightly lower, with an elevation of approximately 11.25 feet). The land leases are

6,982 square feet in total area, and the water leases are 3,722 square feet in total area. The site is currently occupied by a vacant 6,687-square-foot, partially-overwater building comprised of 1,510 square feet of ground-floor retail space on the street side; 3,667 square feet of vacant, ground-floor restaurant space (formerly housing the “Off the Hook” restaurant) on the bay side, 1,088 square feet of which extend beyond the seawall and over rock riprap that slopes into the waters of the Bay;¹ and a partial, 1,510-square-foot second story on the street side that was formerly used as office space but now sits vacant. The northern portion of the land lease is developed as a public plaza with seating, a small children’s play area, a large utility box, and some landscaping.

The bayside portion of the Embarcadero includes a “Harborwalk,” which provides public lateral access directly along Morro Bay. However, the Harborwalk has gaps where there is no bayside lateral access, and there is currently such a gap in the Harborwalk at the project site. Instead, the portion of the existing building that overhangs the waterline is a fully enclosed, interior restaurant space, with a very narrow perimeter walkway used for maintenance access only. The public plaza connects to a lateral accessway on the adjacent, upcoast (northern) lease site,² providing vertical access to the coast; however, a private dining patio on the bay side of the plaza blocks physical access to the Bay on the project site itself, and partially obstructs visual access to the water as well (see **Exhibit 1** for a location map and **Exhibit 2** for photos of the site showing these elements).

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 space) free public parking lot located across the Embarcadero and slightly south of the project site (about 130 feet away). Another free public parking lot (approximately 40 spaces) is located on the blufftop approximately 450 feet southeast of the Embarcadero lot (see **Exhibit 1**).

In addition to the overhanging structure from the land lease portion of the project site, the water lease includes a 6-foot by 73-foot floating dock that is accessed from a gangway on the upcoast lease site. Over the years the dock has been used either by boat rental businesses (e.g., electric boats or day charters) or as rentable slip space for personal craft.

Project Description

The Applicant proposes to demolish the existing structure at the site, as well as the outdoor dining patio, and construct a new, two-story 7,994-square-foot building in approximately the same area as the existing structure. The proposed new building would include a combination of restaurant and retail uses on the ground floor, with two retail spaces on the street (or eastern) side (740 and 742 square feet, respectively) and restaurant use in the rear (i.e., bayward). The proposed restaurant concept is a “market hall”-style operation, with three separate kitchen areas

¹ The toe of the riprap was recently measured as extending twelve feet beyond the seawall, though prior studies, including one as recent as 2014, place the toe of the riprap even further bayward. This area is unnavigable in most tidal conditions due to insufficient inundation of the rocks. Excluding the riprap area (as measured in 2019), approximately 644 square feet of private commercial space (currently vacant) extends over the navigable waters of the Bay.

² This access constitutes a portion of the California Coastal Trail.

and a bar for different food and drink vendors and a 1,382-square-foot common seating area for customers. Additionally, a small (262 square feet) frozen yogurt shop would be located in a separate space fronting the public plaza. The ground floor would also include two public, unisex restrooms, one of which would be accessible from the exterior of the building;³ cleanup and trash facilities to be shared by the market hall vendors; and a small office and storage space (175 square feet).

The second floor would be developed as an eight-room boutique hotel, with rooms ranging from 248 to 449 square feet. The Applicant is proposing that six of the rooms would be high-cost (i.e., able to be offered at rates equal to or greater than \$197.20 per night), one would be low cost (i.e., less than or equal to the area's low-cost threshold of \$145 per night), and one would be offered at or below the low cost threshold for 240 days per year (i.e., eight months out of twelve). The Applicant proposes to maintain the balance of high-cost and low-cost accommodations by limiting adjustments to the proposed threshold room rates to the annual change in the Consumer Price Index, and would seek a CDP amendment for any other changes (see **Exhibit 4** for the Applicant's proposed rates and amenities).

The proposed project includes a ten-foot-wide segment of the Harborwalk along the entire bay frontage of the building, which would connect to the existing Harborwalk on the upcoast lease site and any future Harborwalk segment on the downcoast lease site (i.e., the "Libertine" site), which will be required when that lease site redevelops. The design also includes a 180-square-foot outdoor seating area between the proposed Harborwalk segment and the new building, and an additional 287 square feet of outdoor seating inland of the Harborwalk on the upcoast (north) side of the building. Both seating areas would be open to the general public at all times and posted with signs indicating that no purchase is necessary for their use, and restaurant settings and condiments would not be placed on these tables.⁴ The Applicant additionally proposes to demolish the existing outdoor dining patio and improve the open area on the upcoast side of the lease sites by removing the utility box (which would otherwise block visual access to the Bay) and by adding a new marine-themed children's play area and a bicycle rack. The project would also provide a five-foot-wide vertical accessway on the downcoast side of the building, where no vertical access currently exists due to the minimal distance between the existing structure on the project site and the structure on the adjacent, downcoast lease site.

The existing floating dock would be moved 11.5 feet bayward to accommodate the new segment of the Harborwalk, as well as approximately 2.5 feet upcoast. The gangway would be reoriented so that it is accessible from the project site (currently the gangway is accessed from the upcoast

³ The two public restrooms would be located on the upcoast side of the building. One would be accessible from within the market hall, while the other would open onto the public plaza. A third restroom would be accessible from the downcoast side of the building. The Applicant originally intended to make this restroom available to the public, as well, but the width of the proposed downcoast accessway is prohibitive to such use. The Applicant now proposes to design the space to include a shower for hotel guests (e.g., to wash off beach sand) and employees who commute using active transportation options (i.e., bicycling, walking, jogging).

⁴ The Applicant has proposed that the 180-square-foot seating area (located between the Harborwalk and the building) would be available for public use at all times, though the tables and chairs may be stored inside when the market hall is closed and during inclement weather. The furnishings in the larger public seating area in the public plaza would remain in place 24 hours per day regardless of weather conditions.

lease site). The proposed project also includes removal of nine wood piles and abandonment of one concrete pile that support the existing restaurant and dock. These would be replaced with five steel or concrete piles to support the new building and four steel piles to anchor the reconfigured floating dock. No change in the use of the dock is proposed.

See **Exhibit 3** for the proposed project plans.

B. 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 provides persuasive guidance in this situation.

C. 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, including accommodations, to be protected, encouraged, and, if feasible, provided.⁵ Among other means to provide lower-cost accommodations, the Commission has in the past required mitigation of proposed high-cost rooms by requiring low-cost rooms to be provided at a 25% ratio (i.e., for every four high cost rooms, one should be low cost). Although the Commission could, and sometimes has, used a different percentage, it has most often used the 25% figure, which mirrors requirements related to affordable housing that the Commission used when the Coastal Act required it to protect and provide for affordable housing. Aiming to ensure that 25% of new overnight accommodations in the coastal zone are lower cost is also logical from a policy perspective: Data from 2015 collected by Smith Travel Research demonstrates that 25% of hotel rooms in the inland and coastal areas of coastal counties are lower-cost, “economy” rooms. Seeking to ensure that new hotels in the coastal zone provide at least a similar percentage of lower cost accommodations would help maximize public access and recreational opportunities as required by the Coastal Act.

Regardless of the ratio used, requiring lower-cost accommodations (or an in-lieu fee payment) as mitigation for approval of a high-cost accommodation project is premised on the adverse impacts that the high-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. It should be noted, however, that in assessing the appropriateness of proposed mitigations for high-cost hotel room development, 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 mitigating project impacts to lower-cost visitor services.

Analysis

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

The first step to implement Coastal Act Section 30213 and LCP Policy 2.07 is to define what is and is not a lower-cost unit. In a constantly changing market, it can be difficult to determine what price points constitute low- and high-cost accommodations for a given area. More recent Commission actions have used a formula to determine low- and high-cost overnight accommodations specific to different parts of the coast.⁶ 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 accommodation as hotels and motels. Rather, hostels and campgrounds are generally inherently lower cost, and are the type of facilities that might be required as a mitigation measure for the loss of lower-cost overnight accommodations.

⁵ 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 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.

⁶ 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). In Morro Bay, CDP 3-16-0287 (Front Street Cottages) and CDP 3-17-0581 (Rose’s Landing Embarcadero Hotel) used a similar approach.

The formula used by the Commission in the past referenced instances calculates the average daily peak rate (generally July and August) of economy hotels and motels in a specific coastal zone area (e.g., a city or defined urban area) as it compares to the average daily rates of hotels and motels across the entire State of California during the same time of the year. Under this formula, the average daily room rate for economy hotels/motels within a specific area that have a room rate less than the statewide average daily room rate is the area's "low cost" threshold. Using this formula in similar recent past projects, the Commission has found low-cost accommodations 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, and \$197.20 and above for a high-cost room (using the same methodology). Thus rooms priced below \$145.50 would be low-cost, and rooms priced between \$145.50 and \$197.20 would qualify as moderately priced.⁷ The Commission used these price thresholds for two recent Morro Bay CDPs (see CDP 3-16-0287, Front Street Cottages, approved by the Commission in May 2017, and CDP 3-17-0581, Rose's Landing Embarcadero Hotel, approved by the Commission in March 2018).

Proposed Project

The Applicant has provided proposed rates for all eight rooms, and proposes two levels of affordability (see also **Exhibit 4**). As proposed, six rooms would be high-cost year-round, one room would be low-cost year-round, and one room would be low-cost for 240 days (i.e., approximately eight months) of each year and high-cost for the remainder of the year. For the low-cost rooms, rate increases are proposed as not to exceed the increase in the Consumer Price Index each year in order to ensure such mix remains in the designated price range over time. The Applicant is proposing to provide these low-cost accommodations onsite, and is thus providing on-site mitigation for the 6 and $\frac{1}{3}$ proposed high-cost hotel rooms. Additionally (and as detailed in **Exhibit 4**), the Applicant's proposal states all of the rooms, including the low-cost rooms, will be equipped with extra bedding to accommodate three to four persons total (i.e., more than the standard two-person hotel room), which will further reduce the per capita cost to stay overnight for families and other small groups.⁸

This proposal thus provides mitigation for approximately 20% of the high cost rooms. While this figure falls short of the 25% mitigation ratio which the Commission has used in the past, there are several reasons why the mitigation package, as proposed, can be considered appropriate to adequately mitigate project impacts to lower-cost visitor accommodations given the specific facts of this case. First, Morro Bay has a high stock of lower-cost overnight accommodations relative to other coastal communities in the state: In 2017, the City analyzed its visitor-serving accommodations and determined that 36% of hotels and motels in the City had an average daily rate of less than \$102. That figure is substantially higher (52%) when the City's campgrounds and RV parks are included in the calculation. As discussed above, the average percentage of lower cost hotels in the inland and coastal areas of the State's coastal counties is approximately

⁷ No moderate-cost rooms are proposed as part of this project.

⁸ The Applicant's proposal also notes that, with \$145 set as the *maximum* rate for the lower-cost rooms, the *average* daily room rate will be *below* \$145, since mid-week hotel room rates during the off season are often below \$100 per night.

25%. As of 2015, Newport Beach had approximately 5% lower cost hotels in their City and Half Moon Bay had approximately 12%.

Second, due to the small size of the Embarcadero lease sites, the proposed project in this case (along with all the hotels on the bay side of the Embarcadero⁹) is a small hotel with only eight rooms. While these smaller accommodations are more suited to the scale of development along the Embarcadero and to the eclectic and human-scale character of this part of the City, they do not provide the economies of scale that allow larger hotels and resorts operational flexibility. Thus, even a one-unit incremental change from a high-cost accommodation to a low-cost accommodation may result in a drastic increase in the percentage of rooms that are low-cost relative to the total number of rooms (given the small absolute numbers involved). By the same token, a one-unit incremental change from a high-cost accommodation to a low-cost accommodation may not be economically viable when the proposed hotel comprises a very small number of rooms to begin with. Under these circumstances, it may be appropriate to consider alternative mitigation which is also being provided, in addition to lower-cost rooms, to offset impacts of higher-cost rooms.

On that note, the proposed project in this case would provide other, substantial public access benefits and recreational opportunities (i.e., aside from the 1 and $\frac{2}{3}$ low-cost hotel units). These include a new Harborwalk segment; a new vertical accessway on one side of the proposed building; improved vertical access on the building's other side through an improved public plaza; two new public seating areas (including one immediately adjacent to the proposed Harborwalk segment); a children's play area; two public restrooms; a bicycle rack; and wayfinding signage and interpretive exhibits panels to help visitors identify public amenities and appreciate the area (all of which are discussed further below in the "Public Access" section).

Public access improvements and amenities such as these (i.e., other than the in-kind mitigation provided by dedicated low-cost rooms) have in the past been cited by the Commission as justification for a slightly reduced mitigation ratio for small hotels. The recent and similar Rose's Landing project (CDP 3-17-0581) provided two low-cost rooms out of ten total rooms (i.e., 20% mitigation). In that case, the Applicant's low-cost proposal was deemed appropriate based on the public access improvements that were also proposed as part of that project. These included an improved and widened (to ten feet) Harborwalk segment; removal of concrete furniture and other impediments in a public plaza adjacent to the building and providing improved vertical access between the Harborwalk and the Embarcadero sidewalk; adding pavers to the vertical accessway at the Morro Bay Boulevard street end; and public access signage to educate and facilitate public use of the site. For comparison, the proposed public access improvements associated with this project qualitatively exceed those provided as part of the Rose's Landing public access package.

In conjunction with these other public access benefits, the proposed number of low-cost rooms 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, on former State tidelands, immediately

⁹ These include the Estero Inn (eight units), Gray's Inn (three units), the Harbor Front Suites (six units), Rose's Landing (ten units; in development), and the Anderson Inn (eight units).

fronting the Morro Bay estuary, and adjacent to the City's visitor-serving commercial waterfront) include lower-cost rooms (and, where lower-cost rooms are not sufficient mitigation on their own, other substantial public access amenities) onsite. Doing so provides for a range of affordability options, including 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*. The Applicant's proposal thus represents an opportunity to serve as a low-cost option for accessing Morro Bay's waterfront amenities. Therefore, as proposed, the project includes an adequate number of onsite low-cost hotel units (when considered in context of the 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 proposed project provides an adequate amount of low-cost accommodations onsite to find the project consistent with Section 30213 of the Coastal Act (when considered in context of the additional public access amenities as discussed above). The proposed project increases the range of opportunities for overnight accommodations, and as conditioned adequately mitigates for impacts to overnight low-cost accommodations. 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 consistent with the Consumer Price Index. In addition, **Special Conditions 3(a) and (b)** require that all eight 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.

D. 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:

***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...*

Analysis

Public Coastal Access

The project at its core is a visitor-serving use that should help to invigorate this prime visitor-serving spot along the popular Embarcadero. The proposed ground floor includes active retail and restaurant space, the latter envisioned as a "market hall" comprised of multiple food vendors that serve the general public. The hotel will be located on the second floor and, as previously described, will include some low-cost rooms to serve visitors who may not be able to afford top market hotel rates. Thus, at this broad level, the project supports key Coastal Act priority uses envisioned for oceanfront properties, particularly those in already-urbanized, visitor-serving areas like the Embarcadero.

With respect to lateral and vertical coastal access, to maximize public access along the bayfront on the Embarcadero in Morro Bay, which constitutes public lands, the Commission has in the past required a ten-foot-wide lateral Harborwalk as part of new development (see, e.g., 3-18-0152 (Gray's Inn), 3-17-0581 (Rose's Landing), 3-11-031 (Giovanni's), 3-08-052 (Morro Bay Conference Center), and 3-07-048 (Held Mixed Use)), along with Harborwalk connections upcoast and downcoast where feasible, and vertical connections to the Harborwalk from the Embarcadero sidewalk. 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.

In this case, the Applicant proposes to construct a ten-foot-wide segment of Harborwalk across the entire bay frontage of the lease site. On the upcoast (north) end of the project site, this new portion of the Harborwalk will connect to a portion of the Harborwalk that the Commission required as part of a recently approved project on the upcoast Boatyard lease site. On the downcoast (south) end of the project site, a new vertical accessway will connect the Harborwalk back to the Embarcadero.¹⁰ The proposed Harborwalk segment will also provide new visual and physical access to the water along the public plaza on the lease site, as it would take the place of the existing, private dining deck (which would be demolished). The proposed vertical access on the upcoast side of the lease site consists of a 3,030-square-foot, approximately 30-foot-wide

¹⁰ There is currently no Harborwalk segment at the downcoast lease site (presently occupied by the Libertine Pub); however both the City and the Commission would require such access to be established when the site is redeveloped in association with the renewal of the lease (which was extended on a temporary basis in October of 2018 and will expire in September 2020 at the latest). The proposed segment of Harborwalk on the project site is positioned in a manner that will facilitate a connection to any future Harborwalk segment at the Libertine site.

public plaza.¹¹ Of that width, 22.5 feet is designated as a view corridor in the City's LCP (which is guidance). The downcoast vertical accessway would be secondary to the access provided along the upcoast plaza, and relatively narrow in comparison (i.e., five to six feet wide). However, by providing access back to the Embarcadero sidewalk on the downcoast side of the lease site, where neither vertical nor lateral access presently exists, the downcoast vertical accessway will maximize the utility of the proposed new Harborwalk segment by providing through access along the entire project area.¹² The Embarcadero sidewalk would also be widened from seven to eight feet. See **page 4 of Exhibit 3** for these proposed accessway improvements.

Additionally, and as noted above, the Applicant proposes to improve public access within the public plaza via removal of the private dining deck and installation of a public children's play area (see **page 5-6 of Exhibit 3**). The project would also include new public access signage and interpretive exhibits (specifically, a reverse periscope (which allows for underwater viewing) and two educational panels, all mounted on the railing of the lateral accessway) 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. Finally, the Applicant proposes to provide and maintain two publicly available, gender-neutral restrooms, which would be open during the business hours of the retail shops and market hall (i.e., at least between 10 a.m. to 8 p.m. daily). This would constitute an important public amenity along a commercial waterfront that attracts many visitors but is largely developed with private uses. The proposed project will therefore greatly improve coastal access along this section of the bayfront, especially for families with children (who will benefit from the children's play area) and visitors who do not wish to pay for a sit-down meal at a restaurant (for instance), but still wish to spend a day at the waterfront and need publicly-available restrooms in order to do so comfortably. Because the Morro Bay Embarcadero and the Harborwalk are part of the California Coastal Trail, all of the access improvements provided by the proposed project will also improve trail connectivity.

Lastly, the project includes two new outdoor seating areas that are proposed to be open to the public as well as to market hall patrons (see **page 5 of Exhibit 3**). One seating area (180 square feet) would be located on the bay side of the building, landward of the proposed Harborwalk segment (i.e., the Harborwalk would occupy the area of the deck closest to the water), and the other seating area (287 square feet) would be located on the upcoast side of the building between the Harborwalk and the public plaza. The Applicant has proposed that the seating areas be labeled with clear signage indicating that no purchase is necessary for their use, and that neither settings nor condiments be provided at the tables in order to avoid creating an appearance that the tables are reserved for market hall patrons. Though the Applicant has made these commitments through its proposal, they are memorialized in **Special Condition 4** to ensure that the high level of public amenity in the original proposal is maintained.

¹¹ This figure includes an 1,150-square-foot children's play area.

¹² The project site and the downcoast Libertine site are currently the only lease sites lacking a Harborwalk segment between the Front Street street-end (adjacent to the Libertine site on its downcoast site), and the next (unnamed) street-end that connects to the water's edge upcoast of the project site (see **Exhibit 1**). Thus, if the proposed project is approved and built, members of the public will be able to traverse nearly the entire segment of bayfront (except the Libertine site) on a continuous Harborwalk, and will be able to exit the Harborwalk to the Embarcadero sidewalk between the proposed project structure and the Libertine building, without backtracking to the upcoast public plaza.

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 review and 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, 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, with the exception of the public restrooms noted above (open during business hours) and the floating dock (open from one hour before sunrise to one hour after sunset, at minimum) (see **Special Condition 4(d)**). **Special Condition 1** requires the Applicant to construct the proposed improvements as modified by the conditions of this CDP approval. 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, improved vertical and lateral access, public restaurants, and low-cost rooms onsite) (Section 30213); (5) protect oceanfront land for recreational use (Section 30221); and (6) provide a high-priority visitor-serving commercial use (i.e., coastal-recreation-oriented restaurants, shops, and a hotel) (Section 30222).

Public Parking/Traffic

As noted above, Coastal Act Sections 30212.5 and 30252(4) require new development to provide adequate parking, including to ensure that public access to and along the coast is not adversely impacted by the development. During the local use permit approval process, however, the City found that the number of spaces required for this project under the IP was less than the parking need already generated by the site's prior uses. Specifically, the City undertook a parking analysis, which determined that the existing building on the site housed restaurant and retail uses prior to the passage of the Coastal Act.¹³ The City calculated the historic parking demand based on these uses. Restaurant dining is one of the most parking-intensive uses in the City's IP, and the proposed project replaces much of the indoor dining area in the existing building with kitchen facilities for the market hall and outdoor public seating and Harborwalk, resulting in a lower overall parking demand. Thus, during the City's approval process, the Applicant did not propose, and the City did not require, any onsite parking spaces. Rather, and in keeping with a common City practice along the Embarcadero, the project was approved based on the recognition that the project's parking need was (1) less than the site's historic credit, and (2) could be met on existing, nearby public street spaces and lots (which is where parking requirements covered by historic credits are met). As noted above, there is public street parking (three-hour limit) along the Embarcadero landward of the project site and a large (60 space) free public parking lot located across the Embarcadero from the project site (i.e., within 300 feet, as required by the

¹³ Commission staff research did not find any past CDPs that addressed parking requirements for the site, and thus determined that the site's pre-Coastal Act use serves as a good proxy for understanding historic parking demand relative to the proposed project.

LCP). Another free public parking lot is located on the blufftop approximately 450 feet southeast of the Embarcadero lot (see **Exhibit 1**). The Applicant does not propose to dedicate any existing public parking spaces for project use except for one on-street parking space fronting the proposed hotel to be used as a loading/unloading zone. **Special Condition 2(d)** allows one parking space on the Embarcadero to be dedicated for use as a ten-minute passenger loading and unloading zone (including for hotel guests and their luggage), but expressly prohibits the use of this space exclusively for hotel guests (i.e., this loading/unloading 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 it is for passenger loading/unloading only and will thus be unoccupied for stretches of time due to frequent turnover, the space will afford a view of the public plaza for those traveling down the Embarcadero.¹⁴

Thus, for this project, and similar to the manner in which the Commission evaluated parking demand for the adjacent Rose's Landing hotel project, the Commission finds that the parking demand will be less than what was historically required at the site, and that adequate public parking already exists in the area to serve the proposed development. However, while no new parking is technically needed relative to the existing and historical uses on site, invigorating the site and making it more active relative to existing conditions will, practically speaking, increase traffic in the area. This increase would be incremental and minor in the context of development and traffic flow along the Embarcadero as a whole, and can be offset by transportation demand management strategies. **Special Condition 6** requires the Applicant to prepare a Transportation Demand Management Plan detailing programs and incentives to encourage the use of alternative transportation by site employees and hotel guests. The proposed project plans include bicycle storage, a public bicycle rack, and employee shower facilities that can be leveraged to further mitigate impacts of the project on public parking/traffic and public coastal access to a less than significant level.

Thus, as conditioned, the project can be found consistent with the Coastal Act and the City's certified LCP with respect to public access impacts, including public parking and traffic.

E. VISUAL RESOURCES

Applicable Policies

The Coastal Act requires new development to be sited and designed to protect public views to and along 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

¹⁴ The above-discussed requirements are subject to approval by the City because the Applicant did not propose a loading zone during local review. While City staff is generally supportive of this change in the proposed project, they have not had the opportunity to analyze the suitability of the project area's street frontage to determine the optimal placement of a loading/unloading zone in that area, and locating the loading zone adjacent to the public plaza may not be feasible.

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, such as the Morro Bay Embarcadero, 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 calls for complete demolition and redevelopment of an existing two-story building with a new building of a slightly larger size: Most of the difference in square footage between the two structures (i.e., 6,687 square feet for the existing structure and 7,994 square feet for the proposed new building) is because the proposed structure would replace a partial second story with a full second story; the footprint of the proposed new building is actually slightly smaller than that of the existing building. Additionally, because the existing, partial second story is on the street side of the building, the view from the Embarcadero toward Morro Bay would not be materially impacted by the full second story. Views from the proposed Harborwalk will generally be toward Morro Bay (instead of inland toward the Embarcadero), and the second story will be located inland of the Harborwalk and therefore will not impact views of the Bay as seen from the Harborwalk.

The proposed structure fits into the developed, built-out visual landscape of the urban Embarcadero and is compatible with the character of nearby development, including with respect to height and bulk. The Embarcadero in this area includes a mix of one- and two-story buildings, so, at two stories, this structure would be in keeping with the surrounding development pattern. The building will be a maximum of 25 feet in height when measured from average natural grade, which is consistent with existing conditions, and the proposed structure is designed with articulated roof planes and varied wall surfaces (e.g., cement shingle siding and cement lap siding) and other features to avoid creating a boxy structure (see **Exhibit 5**). Hotel room balconies on two sides of the building would provide for additional variation in the building's massing, and the design also includes rooftop garden boxes, which will soften the building's appearance. See **Exhibit 5** for visual simulations of the proposed project.

The proposed public access improvements associated with the project, including the new Harborwalk segment, vertical access components, and improvements to the public plaza (e.g., especially the demolition of the private restaurant dining deck that currently blocks views to the Bay from the existing plaza) will enhance viewing opportunities of Morro Bay and Morro Rock. Within the view corridor portion of the public plaza, the proposed seating area, the children's play area features, and any other structure of amenity will not exceed 2.5 feet in height, which will ensure maintenance of the visual connection between the Embarcadero sidewalk and street

and the Bay. To further protect visual resources, **Special Condition 2(a)** requires that all utilities on the project site shall be placed underground. As conditioned, the project can be found 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.

F. WATER QUALITY AND MARINE RESOURCES

Applicable Policies

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 or 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.*

In addition, Section 30233 addresses filling of coastal waters and provides (in relevant part):

Section 30233. (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(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.

The Coastal Act defines fill as follows:

Section 30108.2. "Fill" means earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.

Analysis

Water Quality

As required by Coastal Act Section 30231, and as recognized by LCP Policies 9.10 and 9.11, development must 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, the Applicant has already adopted best management practices (BMPs) that the Commission has required in the past for overwater construction, and has included these BMPs on the project plans (see **page 3 of Exhibit 3**). In addition to providing direction to construction contractors related to prevention of leaks, spills, sediment runoff from the site, and general good housekeeping during construction, these BMPs also specify practices associated with the installation of piles (such as is proposed for this project) that protect coastal water quality. **Special Condition 2(c)** additionally requires that final project plans include detailed information on all materials and coatings to be used on new piles (which would all be steel or concrete per the Applicant's proposed plans and sealed with a marine grade epoxy/polyurethane coating) and their related substructure components and specify all measures proposed to minimize the hydro-acoustic noise impacts of any piling driving, which has the potential to disturb marine life. **Special Condition 5** requires submission of a Construction Plan to further ensure that 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.

Additionally, the Applicant has designed the project with the goal of obtaining a LEED certification at the level of silver or better, and has proposed rooftop gardens and water reclamation and reuse features that are expected to further reduce the potential for water quality impacts associated with runoff from the completed project. **Special Condition 2(b)** requires that final project plans identify these and other drainage-related project components, including (but not limited to) any low impact development (LID) features, the means by which runoff from impervious surfaces are either retained onsite or directed to City treatment infrastructure, and a program of ongoing repair and maintenance activities that ensure pre- and post- storm season evaluation of drainage infrastructure. As conditioned, the proposed project is consistent with Sections 30230 and 30231 of the Coastal Act.

Fill of Coastal Waters

Additionally, the proposed project involves filling of coastal waters in the form of the pilings that would be installed to support the reconstructed building, the new Harborwalk, and the relocated floating dock. These specific project elements would also constitute fill of coastal waters because they would be located (in whole or in part) over open water. Under Coastal Act Sections 30233(a)(1) and (3), such fill can be permitted to maintain existing harbor facilities and for the placement of piers that provide public access and recreation opportunities, including boating facilities.

The majority of the proposed project is located on filled tidelands that now constitute the Embarcadero, and are developed in a heavily urban pattern. As discussed above, 644 square feet of the existing building extends beyond the seawall and riprap over open coastal waters, and all of that existing space (although currently vacant) is dedicated to private commercial use. The proposed new structure, including the private commercial areas of the building's interior and the outdoor public areas, would have a total overwater footprint of 1,178 square feet (again, excluding the area over riprap), only 219 square feet of which would be occupied by the enclosed area of the building (for a total of 438 square feet of overwater private use when both floors are considered, i.e., 219 square feet of hotel balcony on the second floor and 219 square feet of market hall indoor seating area on the first floor). The remaining 959 square feet would be outdoor, fully public space. This includes the new Harborwalk segment and the smaller public seating area between the Harborwalk and the building. See **Exhibit 3** for project plans.

Notably, where the existing restaurant building extends over the water in a rectangular configuration and is perpendicular to the bayward edge of the public plaza, the proposed Harborwalk segment would cut inland at a diagonal to meet the public plaza further upcoast. This proposed configuration increases the project's overwater footprint, but provides better pedestrian flow along the proposed Harborwalk. The floating dock would be moved west to accommodate the new Harborwalk segment and the public outdoor seating area, but would be otherwise unchanged, including in terms of the recreational boating purposes it serves.

Thus, the proposal would reduce the amount of overwater area dedicated to private commercial use relative to existing conditions on the site, and the expansion of overwater coverage would be primarily for the purpose of providing public access that is currently

absent along the entire bay frontage of the project area, as well as the maintenance of existing boat tie-down facilities (i.e., in the form of the relocated dock), both of which purposes are supported by Coastal Act Section 30233(a).

Although fill of coastal waters with pilings and an overwater footprint exclusively for a private commercial use is not within the scope of an allowable use for fill of coastal waters under Coastal Act section 30233(a), in the past the Commission has allowed some private commercial use over water in limited circumstances based on case-specific factors, including the mix of public and private space proposed, the geography of the site, the adjacent land uses, and whether the private use is part of a larger development that can be found consistent with Coastal Act section 30233(a).¹⁵

In this instance, the project location is along a waterfront that is urbanized, engineered, and developed with adjacent upcoast and downcoast visitor-serving commercial uses, including overwater restaurant space on the downcoast adjacent property and two overwater restaurants on the second and third upcoast lease sites.¹⁶ Even more importantly, the project site consists of an *existing* overwater private, commercial building supported by pilings, and the current proposal represents an improvement over these existing conditions in several respects, including because: (1) the proposed building configuration represents a *reduction* in the amount of private, commercial, over-water area relative to existing site conditions; (2) the project includes significant public coastal access amenities, including a ten-foot-wide Harborwalk segment, public seating areas, and vertical accessways, and public restrooms, all proposed in conjunction with the restaurant/hotel uses; and (3) all *new* proposed overwater area (again, relative to existing conditions) would support these *public* amenities (specifically, the Harborwalk segment and one of two outdoor seating areas).

In cases similar to this (i.e., replacement of existing development along the developed, urbanized Morro Bay Embarcadero; reduction of overwater footprint of non-Coastal Act Section 30233(a) sanctioned uses; significant coastal public access improvements consistent with allowable uses of Section 30233(a); etc.), the Commission has approved redevelopment that “holds the line” on the seaward encroachment of commercial development by limiting private use overwater in redeveloped structures to what existed at the site previously, while allowing seaward expansion of structures to accommodate public access improvements (see, e.g., CDP 3-04-013 for the Galley Restaurant Redevelopment Project). Again, the proposed project would actually reduce the area of private overwater use relative to the current configuration of the site, in effect retreating from the “line” established by existing development there with respect to private use.

¹⁵ See, for example, CDP 3-18-0841 (Santa Cruz Harbor Sheet Pile and Restaurant Replacement), for which the Commission approved an expanded outdoor restaurant dining deck because the project included a new ten-foot-wide lateral public access walkway located seaward of the dining deck, and also included public restrooms and other public amenities. See also CDP 3-14-1722 (Scales Restaurant on Monterey’s Fisherman’s Wharf) for which the Commission allowed for an expanded outdoor dining area limited to the upper floor deck area but required the lower floor deck area and related public access corridor to remain open for general public access.

¹⁶ The Boatyard, which does not extend over water, is adjacent to the project site on the upcoast side; the next two structures house the Otter Rock Café and the Galley Seafood Grill and Bar, followed by the Hofbrau, which is located upcoast of the unnamed street-end.

If the facts were different, including if this were a rural area without existing up- and downcoast development, and/or if the proposal were to extend an existing building over coastal waters and increase coverage for a purpose not allowable under Section 30233(a), then the conclusions regarding Coastal Act consistency would differ. But in this case and in this context, the Commission finds the overwater elements of the proposed project to be appropriate and consistent with Section 30233(a). Regarding the other two prongs of Section 30233(a), there is no feasible less environmentally damaging alternative than limited allowance of the pilings and overwater footprint for the redeveloped building and coastal vertical and lateral public accessways, as there would be no feasible way of replacing the building and constructing the public accessways over the water without ensuring the structural integrity of said development with supporting pilings. Nor can the proposed development be accommodated by relocating inland, as the development site is constrained by the Embarcadero on the landward side of the lease site. As conditioned and as discussed above, limited addition of the pilings and the overwater footprint of the proposed development will not result in significant adverse environmental impacts for which mitigation is required.

Other Marine Resources

With respect to eelgrass, surveys conducted in 2006, 2010, and 2014 found none in the project area, and City Planning Condition 12 (see **Exhibit 6**) requires the Applicant to undertake pre- and post-construction surveys and mitigate for impacts consistent with the California Eelgrass Mitigation Policy (CEMP). This requirement is consistent with what the Commission has approved in the past to protect eelgrass from the impacts of in- and over-water construction along the Morro Bay waterfront, and the project's eelgrass protections can similarly be found consistent with Coastal Act Sections 30230 and 30231. **Special Condition 7** clarifies that compliance with CEMP and all requirements of City Planning Condition 12 are also conditions of this CDP.

G. 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 8** 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 3-19-0011 shall prevail.

Finally, to ensure that future property owners are properly informed regarding the terms and conditions of this approval, this approval is also conditioned for a deed restriction to be recorded against the property involved in the application (see **Special Condition 9**). This deed restriction will record the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property.

H. 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 that the activity may have on the environment.

The City of Morro Bay, acting as the CEQA lead agency, identified the proposed project as qualifying for a Class 2 Categorical Exemption from CEQA under Section 15302 of the CEQA Guidelines (for replacement or reconstruction projects) on August 21, 2018.

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 (14 CCR Section 15251(c)). The preceding coastal development permit findings discuss the relevant coastal resource issues with the proposal, and the permit conditions identify appropriate modifications to avoid and/or lessen any potential for adverse impacts to said resources to a level of less than significance.

As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as conditioned, would have on the environment within the meaning of CEQA. Thus, if so conditioned, 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 FILE DOCUMENTS¹⁷

- CDP File 3-19-0011

APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

- TLC Family Enterprises
- City of Morro Bay

¹⁷ These documents are available for review in the Commission’s Central Coast District office.