

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT  
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# F9

**Prepared December 3, 2021 for December 17, 2021 Hearing**

**To:** Coastal Commissioners and Interested Persons

**From:** Dan Carl, Central Coast District Director

**Subject: Central Coast District Director's Report for December 2021**

The following coastal development permit (CDP) waivers, immaterial CDP amendments, immaterial CDP extensions, emergency CDPs, and local government LCP modification acceptances (i.e., required for LCP amendment certification) for the Central Coast District Office are being reported to the Commission on December 17th. Pursuant to the Commission's procedures, each item has been appropriately noticed as required, and each item is also available for review from the Commission's Central Coast District Office in Santa Cruz. Staff is asking for the Commission's concurrence on the items in the Central Coast District Director's Report and will report any objections received and any other relevant information on these items to the Commission when it considers the Report on December 17th during the virtual online hearing.

With respect to the December 17th hearing, interested persons may sign up to address the Commission on items contained in this Report prior to the Commission's consideration of the Report. The Commission can overturn staff's noticed determinations for some categories of items subject to certain criteria in each case (see individual notices for specific requirements).

**Items being reported on December 17, 2021 (see attached)**

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**CDP Waivers**

- 3-20-0697-W, Marina Parking Lot Improvements (City of Monterey)
- 3-20-0639-W, Monterey Beach House Façade (City of Monterey)

**CDP Amendments**

- 3-00-125-A10, Caltrans' Waddell Bluffs Talus Materials Program (Santa Cruz County)
- 3-10-036-A1, Salt Building Improvements (Morro Bay)

**CDP Extensions, Emergency CDPs, LCP Modification Acceptances**

- None

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# NOTICE OF PROPOSED PERMIT WAIVER

**Date:** December 3, 2021

**To:** All Interested Parties

**From:** Susan Craig, Central Coast District Manager  
Alexandra McCoy, Coastal Planner

**Subject: Coastal Development Permit (CDP) Waiver 3-20-0697-W**  
Applicant: City of Monterey

## Proposed Development

Reconstruction and reconfiguration of an existing parking lot, realignment of the recreational trail, installation of new lighting fixtures and bio-filtration infrastructure, and landscaping improvements at the City of Monterey Marina public parking lot (fronting Municipal Wharves I and II) near Del Monte Beach in the City of Monterey, Monterey County (APN 001-701-012-000).

## Executive Director's Waiver Determination

Pursuant to Title 14, Section 13238 of the California Code of Regulations, and based on project plans and information submitted by the Applicant regarding the proposed development, the Executive Director of the California Coastal Commission hereby waives the requirement for a CDP for the following reasons:

The City's Marina public parking lot provides parking for Municipal Wharves I and II, the City's small boat docks, and the public boat ramps, as well as parking more broadly for public recreational access to the City's public recreational access trail and related public amenities in this busy shoreline area. The 4.3-acre project site includes the Marina parking lot that currently provides 268 public parking spaces with two entrances and exits (i.e., at Figueroa Street and Washington Street). The project site also includes three restaurants,<sup>1</sup> and the Monterey Bay Recreational Access Trail currently extends through the middle of the existing parking lot. That recreational trail alignment has proven to be less than ideal because the trail crosses vehicular traffic lanes within the lot multiple times, which has led to user conflict and accidents. The proposed parking lot reconfiguration is intended to help alleviate those trail/traffic lane issues and to improve the parking lot flow more generally, and it includes the removal and replacement of existing asphalt, reconfiguration of the parking lot layout, realignment of the recreational trail, and new landscaping.

Although the proposed reconfiguration would provide ten fewer regular parking spaces than currently exist, the reconstructed parking area would provide a more efficient flow

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<sup>1</sup> No changes are proposed for the restaurant buildings.

through the parking lot for vehicles, including vehicles with boat trailers. In addition, the relocation of the recreational trail is designed to help to improve safety issues by relocating the areas where the trail crosses vehicular lanes to provide for shorter crossing distances, and also by installing elevated crosswalks at those crossings that will act as speed bumps to slow vehicles (and that will also provide a level pedestrian/bicyclist path of travel on the trail from one side of each crossing to the other). Although it would be strongly preferred for the recreational trail to be reconfigured differently through the lot to better avoid such vehicular lane crossings altogether, the City indicates that such a redesign would be difficult due to the range of competing demands at the margins of the lot (including the restaurants, the boat launch, the Wharves' access, the boat docks' access, and the entrances and exits to the lot itself), and that such a level of redesign is outside the scope of this project. At the same time, the City has committed to monitoring usage patterns and evaluating potential future options, including as may be identified through the LCP development process currently underway in the City.

The project also includes installation of new lighting fixtures to increase safety for pedestrians and vehicles traveling through the lot, and installation of new bio-filtration boxes to better treat stormwater runoff to improve water quality where such runoff makes its way to the ocean. Thirty-three existing trees in the Marina parking lot will be removed,<sup>2</sup> but these trees do not provide habitat for any sensitive species or raptors. The City will perform nest surveys if the project commences during the bird breeding season (i.e., February 1 through August 31) and will avoid and buffer any trees with nests until the young have fully fledged.<sup>3</sup> All grading will be overseen by an archeological monitor to ensure proper protection of potential archeological resources. Finally, low-water-use and pollinator-friendly landscaping, including 25 native replacement trees (specifically, *Cercis occidentalis* and *Prunus ilicifolia*), will be planted in medians and along the edges of the parking lot.

Construction is expected to take place outside of peak summer months, and alternative public parking will be available just inland of Del Monte Avenue at an existing City parking lot. Access to the public boat ramp will be temporarily closed for a duration not to exceed one week while the entrance to the boat ramp is reconstructed, and alternative boat ramp access will be available at the City's Breakwater parking lot on the opposite side of the Marina. The Waterfront parking lot directly adjacent to the Marina parking lot will remain open throughout construction to provide parking access for Wharves I and II. In addition, continuous recreational trail access will be maintained during all construction via a detour that will direct trail users to Figueroa Street and along Del Monte Avenue and then to a reconnection with the existing trail outside of the project site. The project also includes a series of construction best management

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<sup>2</sup> The 33 trees to be removed consist of 6 Monterey cypress (between 14 and 60 inches in diameter at breast height (dbh)), 4 eucalyptus (between 10 and 24 inches dbh), 11 ironwood (between 6 and 17 inches dbh), 6 coastal live oaks (between 6 and 13 inches dbh), and 6 Monterey pines (between 10 and 54 inches dbh).

<sup>3</sup> The buffers between construction activities and active bird nests will be 300 feet for all non-raptor bird species and 500 feet for any raptor species.

practices to protect coastal resources, including erosion and sediment controls, spill prevention measures, and good housekeeping practices. And the Applicant has proposed that the Executive Director is allowed to authorize minor changes to the proposed project if such changes (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

Finally, the existing parking fees at the parking lot have not been recognized by a CDP, and there is an open Coastal Act violation on the matter (Violation number V-3-21-0113). This waiver does not authorize such fees, rather the City is working on submitting a separate CDP application for such parking fees, not only as applies to this parking lot but also as it relates to other areas of the City. Although staff generally prefers to resolve Coastal Act violations as part of the decision-making process when applications such as this are submitted, staff did not require that here as the City is actively working with staff to prepare a CDP application for parking rates, and the City also identified short term timing and funding concerns that pointed to the need to pursue reconfiguration sooner than the fee issue could be resolved. Thus, the fee issue will be resolved separately.

In sum, and bracketing the fee issue, the proposed project is intended to ultimately improve public recreational access at this location, construction related impacts have been adequately addressed as much as possible with a project of this nature, and the project can be found consistent with the Coastal Act.

#### **California Environmental Quality Act (CEQA)**

CEQA Section 21080.5(d)(2)(a) prohibits a proposed development from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the development may have on the environment. The City of Monterey, acting as lead CEQA agency, determined that the proposed project was categorically exempt from CEQA review pursuant to Section 15302 (as a reconstruction of an existing facility on the same site and with substantially the same purpose and capacity), and thus the City of Monterey did not identify any significant adverse environmental effects from the proposed project.

The Commission's review, analysis, and decision-making process for CDPs and CDP amendments has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (CCR Section 15251(f)). Accordingly, in fulfilling that review, this report has discussed the relevant coastal resource issues with the proposal and has concluded that approval of the proposed CDP waiver is not expected to result in any significant environmental effects, including as those terms are understood in CEQA.

Accordingly, it is unnecessary for the Commission to suggest modifications (including through alternatives and/or mitigation measures) as there are no significant adverse environmental effects that approval of the proposed CDP waiver would necessitate. Thus, the proposed CDP waiver will not result in any significant adverse environmental effects for which feasible mitigation measures have not been employed, consistent with CEQA Section 21080.5(d)(2)(A).

**Coastal Commission Review Procedure**

This waiver is not valid until the waiver has been reported to the Coastal Commission. This waiver is proposed to be reported to the Commission on December 17, 2021, during the virtual Coastal Commission meeting. If four or more Commissioners object to this waiver at that time, then the application shall be processed as a regular CDP application.

**If you have any questions about the proposal or wish to register an objection, please contact Alexandra McCoy (Alexandra.mccoy@coastal.ca.gov) in the Central Coast District office.**

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## NOTICE OF PROPOSED PERMIT WAIVER

**Date:** December 3, 2021  
**To:** All Interested Parties  
**From:** Susan Craig, Central Coast District Manager  
Esme Wahl, Coastal Planner  
**Subject: Coastal Development Permit (CDP) Waiver 3-21-0639-W**  
Applicant: Cox and Young Ventures, LLC.

### Proposed Development

Replace an existing fabric awning (3 feet by 7 feet) with a heavy timber and corrugated metal roof awning (3 feet by 11 feet) and build a cedar façade (12 feet wide by 2 feet deep by almost 17 feet tall) at the entrance to the Monterey Beach House at 285 Figueroa Street fronting Del Monte Beach and the Monterey Bay Coastal Recreation Trail just upcoast of Monterey Harbor in the City of Monterey, Monterey County.

### Executive Director's Waiver Determination

Pursuant to Title 14, Section 13238 of the California Code of Regulations, and based on project plans and information submitted by the Applicant regarding the proposed development, the Executive Director of the California Coastal Commission hereby waives the requirement for a CDP for the following reasons:

The Monterey Beach House is an event center located between Del Monte Beach and the Monterey Bay Coastal Recreation Trail just upcoast of the Monterey Harbor. The proposed awning and façade enhancement are intended to help improve the overall appearance of the fairly non-descript building. Public access to the beach and the recreation trail will not be affected during or after construction, and best management practices (including covering exposed piles of soil and wastes and prohibiting construction activities that result in discharge of materials, polluted runoff, or wastes to the beach or the adjacent marine environment) are included in the proposed project plans. In summary, the project should help improve beach-area aesthetics (albeit minimally), and has been sited and designed to avoid adverse effects on coastal resources otherwise, including public access to the shoreline, and thus the project can be found consistent with the Coastal Act.

### California Environmental Quality Act (CEQA)

CEQA Section 21080.5(d)(2)(a) prohibits a proposed development from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the development may have on the environment. The City of Monterey Planning Office, acting as lead CEQA agency, determined that the proposed project was categorically exempt from CEQA

review pursuant to Section 15301 (as a minor alteration to existing facility with no expansion of use), and thus the City of Monterey Planning Office did not identify any significant adverse environmental effects from the proposed project.

The Commission's review, analysis, and decision-making process for CDPs and CDP amendments has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (CCR Section 15251(f)). Accordingly, in fulfilling that review, this report has discussed the relevant coastal resource issues with the proposal and has concluded that approval of the proposed CDP waiver is not expected to result in any significant environmental effects, including as those terms are understood in CEQA.

Accordingly, it is unnecessary for the Commission to suggest modifications (including through alternatives and/or mitigation measures) as there are no significant adverse environmental effects that approval of the proposed CDP waiver would necessitate. Thus, the proposed CDP waiver will not result in any significant adverse environmental effects for which feasible mitigation measures have not been employed, consistent with CEQA Section 21080.5(d)(2)(A).

#### **Coastal Commission Review Procedure**

This waiver is not valid until the waiver has been reported to the Coastal Commission. This waiver is proposed to be reported to the Commission on Friday, December 17, 2021, during the virtual Coastal Commission meeting. If four or more Commissioners object to this waiver at that time, then the application shall be processed as a regular CDP application.

**If you have any questions about the proposal or wish to register an objection, please contact Esme Wahl ([Esme.Wahl@coastal.ca.gov](mailto:Esme.Wahl@coastal.ca.gov)) in the Central Coast District office.**

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## NOTICE OF PROPOSED PERMIT AMENDMENT

**Date:** December 3, 2021  
**To:** All Interested Parties  
**From:** Susan Craig, Central Coast District Manager  
Rainey Graeven, Coastal Planner  
**Subject: Proposed Amendment to Coastal Development Permit (CDP) 3-00-125**  
Applicant: California Department of Transportation (Caltrans)

### Original CDP Approval

CDP 3-00-125 was approved by the Coastal Commission on October 12, 2000 and has been amended nine times. CDP 3-00-125, as amended, allows for the annual collection, movement, and placement of up to 30,000 cubic yards per year of landslide talus material from the toe of Waddell Bluffs inland of Highway 1 to the bluffs on the seaward side of Highway 1 (immediately south of the San Mateo County line at the Waddell Creek State Beach portion of Big Basin Redwoods State Park). Talus operations under the CDP are limited to the period between October 15th through December 31st of each year. Talus placement is limited to specified locations adjacent to the shoreline where the talus materials can be reached by ocean wave action, including atop the 600-foot-long rock revetment that protects the Waddell Creek beach parking lot and atop the revetment fronting Highway 1 extending upcoast from the parking lot. The CDP requires that authorized activities be monitored and that Caltrans report such data to the Commission every five years. The existing amendments include CDP Amendments 3-00-125-A1 through 3-00-125-A9.

### Proposed CDP Amendment

The proposed amendment would extend the permit expiration (currently December 31, 2021) for an additional six months to June 30, 2022. While past extensions of this permit have typically authorized continued operations for five-year intervals, Commission staff and Caltrans staff are coordinating to update the existing permit to provide greater clarity, certainty, and efficiency regarding the parameters and requirements of the CDP. The permit update will go before the Commission as a CDP amendment prior to the June 30, 2022 expiration. Importantly, this extension would ensure that the update is in place prior to the next year's annual talus disposal window, which begins on October 15, 2021. In other words, an updated CDP will govern operations going forward beginning in the 2022 disposal season. The proposed amendment will give Commission staff and Caltrans staff additional time to complete the permit update effort already underway and ensure that the CDP does not expire on December 31, 2021. The Commission's reference number for this proposed amendment is **3-00-125-A10**.

### **Executive Director's Immateriality Determination**

Pursuant to Title 14, Section 13166(b) of the California Code of Regulations, the Executive Director of the California Coastal Commission has determined that the proposed CDP amendment is immaterial for the following reasons:

Project activities have remained largely the same since Caltrans' talus operations began at this location in 1994, and continuation will allow Caltrans to maintain safe highway operations while mimicking natural shoreline erosion and sand supply processes as closely as feasible. Although Commission and Caltrans staff agree that an updated permit will ultimately serve to increase clarity, certainty, and efficiency, including making certain operational considerations that have adapted over time more explicit, they also agree that the six-month extension is appropriate at this point to allow time to collaboratively develop the updated CDP. In sum, the proposed amendment will maintain public access and natural shoreline processes consistent with the Commission's original coastal development permit approval, as well as consistent with the Coastal Act.

### **California Environmental Quality Act (CEQA)**

CEQA Section 21080.5(d)(2)(a) prohibits a proposed development from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the development may have on the environment. Caltrans, acting as lead CEQA agency, adopted a Negative Declaration for annual talus disposal activities.

The Commission's review, analysis, and decision-making process for CDPs and CDP amendments has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (CCR Section 15251(f)). Accordingly, in fulfilling that review, this report has discussed the relevant coastal resource issues with the proposal and has concluded that approval of the proposed immaterial CDP amendment is not expected to result in any significant environmental effects, including as those terms are understood in CEQA.

Accordingly, it is unnecessary for the Commission to suggest modifications (including through alternatives and/or mitigation measures) as there are no significant adverse environmental effects that approval of the proposed immaterial CDP amendment would necessitate. Thus, the proposed immaterial CDP amendment will not result in any significant adverse environmental effects for which feasible mitigation measures have not been employed, consistent with CEQA Section 21080.5(d)(2)(A).

### **Coastal Commission Review Procedure**

The CDP will be amended as proposed if no written objections are received in the Central Coast District office within ten working days of the date of this notice. If such an objection is received, the objection and the Executive Director's response to it will be reported to the Commission on Friday, December 17, 2021 at the virtual online meeting. If three or more Commissioners object to the Executive Director's determination of immateriality at that time, then the application will be processed as a material CDP amendment.

**If you have any questions about the proposal or wish to register an objection, please contact Rainey Graeven in the Central Coast District office at [Rainey.Graeven@coastal.ca.gov](mailto:Rainey.Graeven@coastal.ca.gov).**

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**NOTICE OF PROPOSED PERMIT AMENDMENT**

**Date:** December 3, 2021

**To:** All Interested Parties

**From:** Susan Craig, Central Coast District Manager  
Alexandra McCoy, Coastal Planner

**Subject: Proposed Amendment to Coastal Development Permit (CDP) 3-10-036**  
Applicant: Rick Gambil

**Original CDP Approval**

CDP 3-10-036 provided for the remodel of an existing two-story commercial building, removal of an existing bayside indoor patio, installation of a new lateral public accessway and public deck, and repair and expansion of an existing boat dock at the Salt building located at 571 Embarcadero fronting Morro Bay in the City of Morro Bay, San Luis Obispo County.

**Proposed CDP Amendment**

CDP 3-10-036 would be amended to allow for changes to the previously approved and constructed development including: a) conversion of 839 square feet of second floor office space into one 988 square-foot vacation rental unit, including two new outdoor decks (to be constructed through modification of the roofline); b) replacement of existing damaged docks with larger docks and replacement of the damaged gangway with a new longer gangway (and installation of a latching gate at the top of the gangway); c) increasing the area of the Applicant's water lease with the City by 450 square feet; d) replacement of two existing pilings; and e) a 207 square-foot expansion of the Harborwalk lateral public accessway at the site. The Commission's reference number for this proposed amendment is **3-10-036-A1**.

**Executive Director's Immateriality Determination**

Pursuant to Title 14, Section 13166(b) of the California Code of Regulations, the Executive Director of the California Coastal Commission has determined that the proposed CDP amendment is immaterial for the following reasons:

The project site is occupied by an existing, two-story commercial building known as the Salt Building, which has two retail shops and a restaurant on the first floor (that are separated by an interior breezeway that is open to the public and that connects the Embarcadero to the bay-fronting public access Harborwalk along the water's edge) and an 839 square-foot office on the second floor. The site also includes other previously approved and constructed components along the bayside of the building, such as an enclosed public access patio with table seating and a 534 square-foot portion of the public access Harborwalk that is approximately 8 feet wide. The Commission's approval

of CDP 3-10-036 also allowed for construction of an approximately 450 square-foot dock system, which was removed in January (discussed further below).

The primary purpose of the proposed project is to restore recreational boating opportunities at the site as well as to convert the existing second-story office space to a vacation rental. However, the proposed project also includes improvements to public access and other related components that will improve the visitor experience at the site.

Regarding recreational boating, the previous approval allowed for construction of an approximately 450 square-foot dock system comprised of an 80 square-foot gangway on the southern side of the site, leading to a 370 square-foot dock consisting of a head dock with two dock fingers extending into the bay and which was supported by four pilings. This dock system was removed in early 2021 after extreme tidal fluctuation caused by a King Tide event damaged the dock system.<sup>1</sup> The proposed project includes a replacement dock system that is reconfigured and slightly larger to help to prevent future damage from similar tidal fluctuations, and to bring the dock system into compliance with current building codes. Specifically, the shoreside of the gangway is proposed to be relocated to the northern end of the site, the gangway will be expanded to 112 square feet, and the dock system will be expanded to 525 square feet. To accommodate the new location of the gangway and the reconfigured dock system, the proposed project also includes a 450 square-foot water lease line amendment and an expansion of the previously approved and constructed public access Harborwalk to 10 feet in width (i.e., a 207 square-foot expansion to result in a public access Harborwalk area of 741 square feet at the site). In addition, two existing pilings at the ends of the previously approved finger docks will be removed, and two new 16-inch steel piles will be driven using a vibratory hammer at the end of the proposed finger docks. The remainder of the existing piles that previously supported the dock will remain and will be used to support the new dock.

The dock area is located in an area of known eelgrass habitat that exists along the entire Embarcadero at the shoreline edge, and a August 4, 2021 survey of the site concluded that three individual, solitary, newly recruited eelgrass plants (each consisting of one stem bearing 2 to 4 blades 8 to 14 inches long) located within the footprints of the proposed dock components. The Commission has not treated individual eelgrass plants nor eelgrass habitat areas as environmentally sensitive habitat areas (ESHAs) under Coastal Act Section 30240, but rather has addressed them under more general coastal resource protection policies, including those geared to marine resources (i.e., Sections 30230, 30231, 30233, 30235, and 30250). In that framework, the Commission has sought to avoid eelgrass impacts as much as possible but has typically allowed impacts for projects that meet other important Coastal Act objectives (here,

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<sup>1</sup> The previously approved and installed gangway and docks were damaged beyond repair. Specifically, during the extreme tidal fluctuations caused by a King Tide in early January 2021, the gangway was not long enough to bridge from the shore side to the floating dock; the gangway detached from the shore and fell into the water. The fallen gangway then applied pressure against the existing piles and the end of the finger docks broke apart under that pressure. The damaged gangway and dock system was removed from the site the following day to prevent further damage to the adjacent lease site's slips and boats.

docks that provide both public access and boating access) provided such impacts are appropriately mitigated. In particular, eelgrass depends on a particular limited depth of water<sup>2</sup> and adequate sunlight to thrive. Here, while the existing eelgrass on the site has a combined basal coverage of under one square inch of cover, the docks and berthing areas for boats would cover approximately 250 square feet of eelgrass habitat (i.e., approximately 150 square feet of docks and approximately 100 square feet expected to be occupied by boats), and shade it in such a way that it would no longer be conducive to eelgrass health. To mitigate for this impact, the Applicant has proposed to donate \$2,500 to the Morro Bay National Estuary Program, which will use the donation for eelgrass restoration and/or eelgrass monitoring in the Bay. Such mitigation fee is in line with past mitigation fees along the Embarcadero associated with similarly sized dock systems and can be found adequate for mitigation purposes in this case.<sup>3</sup>

The proposed project also includes additional mitigation measures to help protect against other coastal resource impacts associated with proposed piling replacement activities, such as implementation of a 50-foot exclusion zone for marine mammals and turtles during all piling repairs, and the use of a vibratory hammer (that produces fewer potential sound impacts as compared to an impact hammer). The proposed project also incorporates into the project description a series of construction best management practices (BMPs) for work in, over, and near the marine environment. These BMPs are consistent with BMPs typically required by the Commission in such projects and serve to help protect the marine environment by such means as ensuring collection and containment of construction debris, spill prevention, and general good construction housekeeping.

With respect to the conversion of the second-floor office space into a vacation rental unit, that modification provides for a higher Coastal Act priority use in an area along the immediate shoreline where such overnight accommodations are fairly limited. And it can be accomplished with only minor changes that shouldn't lead to any adverse coastal resource impacts that were not already associated with the originally approved project (i.e., the roofline and deck changes won't significantly impact public views, parking needs for the modified project are the same as the proposed to be modified project, etc.).

The proposed project also includes other improvements to the public access amenities

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<sup>2</sup> The California Eelgrass Mitigation Policy states that eelgrass does not extend deeper than 12 feet mean lower low water (MLLW) and the definition of eelgrass habitat excludes areas of unsuitable environmental conditions such as hard bottom substrates, shaded locations, or areas that extend to depths below those supporting eelgrass.

<sup>3</sup> That said, staff notes that it is in the process of refining its eelgrass mitigation framework for Morro Bay projects, and that it is possible that that effort leads to a different mitigation approach, including where mitigation fees that may be employed could be higher or lower for a case such as this, and this case should not be used by others as a roadmap for addressing eelgrass impacts. On the contrary, staff will always apply the best available information and science to these decisions, and, when conclusions are drawn regarding the refined Morro Bay eelgrass approach, staff will be applying those conclusions regardless of past cases, including this one.

on the site, such as updating the two existing interpretive signs on the site (one coastal biology related sign on the Harborwalk and one sign on the Embarcadero that describes the history of the building) and replacement of the existing signs within the breezeway with “pub signs” (i.e., smaller signs above eye level) to help reduce visual clutter through the corridor. Approval of the base CDP included a condition of approval (Special Condition 2) to submit a Public Access Management Plan (PAMP), and that PAMP was previously submitted and approved. Pending this amendment’s approval, the previously approved PAMP will be revised to reflect the amended project’s public access components. The Applicant here, however, requests one change to Special Condition 2, which currently prohibits “barriers to walking on the gangway or docks, such as ropes or gates...”. The Applicant is concerned that children and other individuals that require observation may wander down the gangway and to the dock unattended, and present a potential safety hazard without a gate. Thus, the Applicant proposes a gate at the top of the gangway that would have a latch and would remain unlocked so that the public can continue to walk on the gangway and docks during daylight hours (i.e., from one hour before sunrise to one hour after sunset) in accordance with Special Condition 2. The gate would include signage making it clear that the gangway is available to the general public during daylight hours, and Special Condition 2 would still prohibit signs that discourage the public access otherwise.<sup>4</sup>

In terms of other agency approvals for the amended project components, the Regional Water Quality Control Board waived the requirement for a 401 Water Quality Certification for the project, but the Applicant requires a federal Army Corps of Engineers (ACOE) permit. Per revised Special Condition 4, the Applicant is required to submit a valid ACOE permit for the amended project before construction can commence. Finally, the base CDP included a condition of approval (Standard Condition 2) which set the CDP’s expiration date. The development authorized by the original CDP was commenced prior to the two-year CDP expiration date, and thus the CDP has been exercised. Authorization for the subsequent development described in this CDP amendment is effective for two years from the date on which the Commission authorizes the amendment (i.e., construction of the development authorized by this amendment must commence by December 17, 2023 or it is no longer authorized). Standard Condition 2 will be revised to reflect these changes. See Appendix 1 for changes to the standard and special conditions through and including this amendment request.

In sum, the proposed amendment will provide for improved and more resilient boating infrastructure on the site, create a vacation rental in this important visitor-serving area, and provide for expanded public access improvements to improve the visitor-experience on the site. The project also includes a series of BMPs, and mitigation measures to address impacts otherwise, including a mitigation fee directed to the Morro Bay National Estuary Program for eelgrass enhancement in the Bay. As such, the amendment is

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<sup>4</sup> The proposed gate at the top of the gangway is also consistent with other more recent Commission actions for development along the Embarcadero that allow for gates at the head of gangways with similar signage (see, for example, CDP 3-19-0011 (Harborwalk Plaza Mixed-Use Project) and CDP 3-19-0262-W (Boatyard Riprap and Floating Dock Replacement)).

consistent with the intent and objectives of the Commission's original CDP and can be found consistent with the Coastal Act.

### **California Environmental Quality Act (CEQA)**

CEQA Section 21080.5(d)(2)(a) prohibits a proposed development from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the development may have on the environment. The City of Morro Bay, acting as lead CEQA agency, determined that the proposed amendment project was categorically exempt from CEQA review pursuant to Section 15301 (deeming it a minor alteration to an existing facility without expansion of use).

The Commission's review, analysis, and decision-making process for CDPs and CDP amendments has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (CCR Section 15251(f)). Accordingly, in fulfilling that review, this report has discussed the relevant coastal resource issues with the proposal and has concluded that approval of the proposed CDP amendment is not expected to result in any significant environmental effects, including as those terms are understood in CEQA.

Accordingly, it is unnecessary for the Commission to suggest modifications (including through alternatives and/or mitigation measures) as there are no significant adverse environmental effects that approval of the proposed CDP amendment would necessitate. Thus, the proposed CDP amendment will not result in any significant adverse environmental effects for which feasible mitigation measures have not been employed, consistent with CEQA Section 21080.5(d)(2)(A).

### **Coastal Commission Review Procedure**

The CDP will be amended as proposed if no written objections are received in the Central Coast District office within ten working days of the date of this notice. If such an objection is received, the objection and the Executive Director's response to it will be reported to the Coastal Commission on Friday, December 17, 2021 at the virtual online meeting. If three or more Commissioners object to the Executive Director's determination of immateriality at that time, then the application shall be processed as a material CDP amendment.

**If you have any questions about the proposal or wish to register an objection, please contact Alexandra McCoy in the Central Coast District office at [Alexandra.McCoy@coastal.ca.gov](mailto:Alexandra.McCoy@coastal.ca.gov).**

**Appendix 1 – Standard and Special Conditions of CDP 3-10-036, as amended through and including 3-10-036-A1**

Updated Conditions of CDP 3-10-036 are shown below, where text in underline format indicates text to be added and text in ~~striketrough~~ format indicates text to be deleted based on CDP Amendment 3-10-036-A1.

**A. Standard Conditions**

1. **Notice of Receipt and Acknowledgment.** The amended permit is not valid and development shall not commence until a copy of the amended permit, signed by the permittee or authorized agent, acknowledging receipt of the amended permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development proposed under CDP Amendment 3-10-036-A1 has not commenced, the amended permit will expire on December 17, 2023 ~~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 amended permit expiration date must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

**B. Special Conditions**

1. **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 in substantial conformance with the plans submitted to the Coastal Commission (Site Plan prepared by Maul Associates, dated February 10, 2009 and Revised Plans prepared by C.P. Parker, dated May 17, 2011) except that they shall be revised and supplemented to comply with the following requirements:
  - a. **Project Modifications.** Final plans shall incorporate the modifications shown on the Revised Plans prepared by C.P. Parker, dated May 17, 2011.
  - b. **Elevations.** Final plans shall include elevations showing the entire project, including the patio, lateral access and floating docks.
  - c. **Public Access Boardwalk.** The public access boardwalk shall be located

directly adjacent to the bay and shall provide for seamless connectivity to future public access boardwalks along properties north and south of the development site.

- d. **Restaurant Patio.** All existing and newly installed windows shall be frosted, partially-frosted or otherwise treated with visually permeable barriers that are designed to prevent bird strikes.
- e. **Non-Native and Invasive Plant Species Prohibited.** Plans shall identify all plant materials to be used for landscape purposes, and all irrigation systems designed to maintain site landscaping. Landscaped areas shall consist only of native plants of local stock that are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be so identified from time to time by the State of California, and no plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be planted or allowed to naturalize or persist on the property. Plans shall include provisions to ensure that all site landscaping is maintained in its approved state in perpetuity.
- f. **Lighting.** The location, type, and wattage of all light fixtures (including catalog sheets for each fixture) shall be illustrated. All exterior lighting shall be designed and located so that only the intended area is illuminated and off-site glare is prevented. All lighting shall be cutoff style fixtures that are directed downward to prevent glare on adjacent and surrounding areas (i.e., Morro Bay), and shall be limited to the maximum extent feasible while still providing for public safety. Lights shall have solid sides and reflectors to further reduce lighting impacts, and shall be placed on a switch or timer to turn them off when not needed during the late evening.
- g. **Design.** The plans shall clearly identify all measures that will be applied to ensure that the project design, including all structures and including all other project elements within the public view (e.g., walkways, paved areas, railings, benches, tables, chairs, lighting, signs, landscaping, etc.), emulates Morro Bay Embarcadero aesthetics, including use of a maritime theme and pedestrian-oriented form and scale. Plans shall clearly identify all publicly visible structural elements, materials, and finishes (including through site plans and elevations, materials palettes and representative photos, product brochures, etc.). The existing street sign shall remain, and the materials used for the reconstructed restaurant patio shall be retained to the maximum extent feasible, or replaced with similar materials.
- h. Amendment 3-10-036-A1.** Additional development, including changes to originally authorized development, was authorized via CDP Amendment 3-10-036-A1 (approved on December 17, 2021). The project plans dated February 13, 2018 received in the Commission's Central Coast District Office on May 21, 2021 show the changes made to the originally approved project by CDP Amendment 3-10-036-A1, and are considered a part of the approved Final Plans.

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

- 2. Public Access Management Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit for Executive Director review and approval two sets of full-scale public access management plans (Access Plans). The Access Plans shall clearly describe the manner in which general public access associated with the approved project is to be managed and provided, with the objective of maximizing public access to the public access areas of the site (including all site walkways (including the lateral access way along the bayfront and the vertical access way through the building), benches, boardwalks, stairs, gangways, and the floating docks). The Access Plans shall be substantially in conformance with the public access portion of the plans submitted to the Coastal Commission, 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. Floating Docks.** The floating docks shall be publicly available for either short-term or long-term use by recreational or commercial boats. Signs discouraging the public from walking on the docks, and barriers to walking on the gangway or docks, such as ropes or gates, are prohibited. Residential use of the docks is prohibited. Any fees shall be as low as possible, commensurate with standard rates for the area.
  - c. Amenities.** Public access amenities (such as benches, bicycle racks, trash and recycling receptacles, etc.) shall be retained or provided, including at a minimum, benches along the street sidewalk and in the vertical access way, and at appropriate locations along the lateral access way, where space allows.
  - d. Public Access Signs/Materials.** The Access Plans 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 shall be provided. The signs shall be designed so as to provide clear information without impacting public views and site character. At a minimum, public access directional signs shall be placed at the Embarcadero Road entrance to the vertical access, at the intersection of the lateral access boardwalk with the vertical access, at both ends of the lateral access way, and along the lateral access way. All directional signs shall include the Commission's access program "feet" logo and the California Coastal Trail emblem. At a minimum, at least one public access interpretive sign

(appropriate to Morro Bay issues, information, and history) shall be located at an appropriate location along the lateral access way, and at least one public access interpretive sign specific to the history of the Salt Building shall be placed near the streetside entrance to the vertical access way.

- e. **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, gates, etc.) shall be prohibited. The public use areas shall be maintained in a manner that maximizes public use and enjoyment.
- f. **Public Access Use Hours.** All public access areas and amenities shall be available to the general public free of charge during at least daylight hours (i.e., one hour before sunrise to one hour after sunset), and during at least all non-daylight hours when the retail components of the approved project are open. The Access Plans shall provide for 24-hours per day access to the lateral and vertical access features once connectivity is provided via the lateral access boardwalk to either the upcoast or downcoast lateral access ways.
- g. **Public Access Amenities Provided Prior to Occupancy.** All public access components of the approved project shall be constructed and ready for use prior to reoccupancy of the restaurant portion of the project.
- h. **Public Access Areas and Amenities Maintained.** The public access components of the project shall be maintained in their approved state in perpetuity.
- i. **Amendment 3-10-036-A1.** Additional development, including changes to originally authorized development, was authorized via CDP Amendment 3-10-036-A1 (approved on December 17, 2021). Notwithstanding the above subsections, that amendment allows for a latching low gate at the top of the gangway that shall remain unlocked during daylight hours, and that shall include signage stating that general public access is allowed and available to both the gangway and the floating docks during daylight hours. PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT, the Permittee shall submit for Executive Director review and approval two sets of full-scale revised Access Plans incorporating this and other changes associated with that amendment approval.

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

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

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

regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

- f. **Pilings.** The new pilings and piling sleeve shall be made from steel. Pilings shall be installed using a vibratory hammer. Construction barges shall be floating at all times and shall only operate at tides high enough so that the barge does not rest against the bottom of the bay.
- g. **Notification.** The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least 3 working days in advance of commencement of construction, and immediately upon completion of construction.
- h. **Amendment 3-10-036-A1.** Additional development, including changes to originally authorized development, was authorized via CDP Amendment 3-10-036-A1 (approved on December 17, 2021). The project plans dated February 13, 2018 received in the Commission's Central Coast District Office on May 21, 2021 show the construction related changes made to the originally approved project by CDP Amendment 3-10-036-A1, and are considered a part of the approved Construction Plan, including the Best Management Practices (BMPs) identified on the plans.

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

- 4. **Other Agency Approval.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director written evidence that all necessary permits, permissions, approvals, and/or authorizations for the approved project have been granted by the Morro Bay Harbor District, the California State Lands Commission, the U.S. Army Corps of Engineers (ACOE), and the U.S. Coast Guard. Any changes to the approved project required by these agencies shall be reported to the Executive Director. No changes to the approved project shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

PRIOR TO COMMENCEMENT OF CONSTRUCTION PURSUANT TO CDP AMENDMENT 3-10-036-A1, the Permittee shall submit to the Executive Director written evidence that all necessary permits, permissions, approvals, and/or authorizations for the approved project have been granted by ACOE, and any changes to the approved project required by ACOE shall be reported to the Executive Director. No such changes shall occur without a CDP amendment unless the Executive Director determines that no amendment is necessary.

- 5. **Boat Slip Parameters.** All boat slips shall be used for commercial and recreational

fishing vessels, commercial and recreational passenger vessels, or commercial service vessels only. The use of the docks and slips for private residential use is prohibited.

- 6. Assumption of Risk, Waiver of Liability and Indemnity Agreement.** The Permittee acknowledges and agrees, on behalf of itself and all successors and assigns: (i) that the site is subject to coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, tidal scour, coastal flooding, and the interaction of same; (ii) to assume the risks to the Permittee and the property that is the subject of this permit, including as amended through CDP Amendment 3-10-036-A1, of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; and (v) that any adverse effects to property caused by the permitted project shall be fully the responsibility of the property owner.
- 7. Liability for Costs and Attorneys Fees.** The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and/or (2) required by a court) that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit, including as amended through CDP Amendment 3-10-036-A1. The Permittee shall reimburse the Coastal Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.