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# Th16b

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Staff: Sarah MacGregor - SC  
Staff Report: 5/24/2024  
Hearing Date: 6/13/2024

## STAFF REPORT CDP APPLICATION

**Application Number:** 3-24-0149

**Applicant:** California Coastal Investments, LLC

**Project Location:** On the bayfront at 801 Embarcadero, Morro Bay, San Luis Obispo County (APN 066-322-008; Land Lease Site 86, Water Lease Site 86W)

**Project Description:** Demolish an existing, two-story, 4,677-square-foot building, construct a new 5,206-square-foot, two-story building with restaurant and retail use on the ground floor and a seven-unit standard operating hotel on the second floor; construct a series of public coastal access improvements, including a fifteen-foot-wide segment of the Morro Bay Harborwalk, a second floor public viewing deck, public plaza improvements, and a new floating dock; and related improvements.

**Staff Recommendation:** Approval with Conditions

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### SUMMARY OF STAFF RECOMMENDATION

The Applicant proposes to demolish an existing, mostly vacant 4,677-square-foot two-story building and construct a new, two-story 5,206-square-foot building comprised of a ground-floor restaurant/brewery and coffee shop, as well as a seven-unit standard-operating hotel on the second floor. In addition, the project proposes a series of public access improvements including a new fifteen-foot-wide lateral segment of the Harborwalk public access walkway along the building's frontage with Morro Bay, a second floor public viewing deck, new floating dock with two side-tie public boat slips,

and creation of a public plaza. 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. On-site, the project includes active ground floor retail and restaurant space, as well as overnight accommodations on the second floor. In conformance with the Coastal Act's and LCP's low-cost requirements, the Applicant proposes to provide 25% of the hotel units at or below the low-cost threshold as defined in the LCP on site. Additionally, the project provides other substantial public access amenities, including a new fifteen-foot-wide segment of the Harborwalk coastal trail that traverses the bay side of the building and connects with up and downcoast segments, a second-floor public viewing deck, publicly accessible floating dock with two side-tie boat slips, and creation of a public plaza including curb and street enhancements. 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, and will result in an exciting opportunity to activate this important coastal locale. The Applicant's proposal thus provides a low-cost option for families to access Morro Bay's waterfront amenities.

With other conditions, including protecting water quality during and after construction, addressing site design concerns, and traffic demand management provisions, the project can be found consistent with 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. 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 – City of Morro Bay Conditional Use Permit #CUP22-09

## 1. 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 3-24-0149 pursuant to the staff recommendation, and I recommend a **yes** vote.*

***Resolution to Approve CDP:*** *The Commission hereby approves Coastal Development Permit Number 3-24-0149 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.*

## 2. 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.

### 3. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

- 1. Approved Development.** Coastal Development Permit (CDP) 3-24-0149 authorizes the development expressly proposed by the Applicant (i.e., ground floor commercial and restaurant use, a seven-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 as described in **Special Condition 3**, 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 “Libertine Morro Bay” and dated received in the Coastal Commission’s Central Coast District Office February 14, 2024 (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. Design.** All development, including both the hotel/restaurant structure and the adjacent public plaza, shall incorporate architectural details and varied materials to effectively blend in with the coastal environment. Garish and/or bright colors shall be prohibited. All windows shall be non-glare glass, all other surfaces shall be similarly treated to avoid reflecting light, and all windows shall be bird-safe. All signs and related project components shall be sited and designed to limit their number and visibility in public views and to seamlessly integrate into the surrounding environment and be subordinate to the coastal setting to the maximum extent feasible. All landscaping shall be identified on project plans and shall consist of low water-using, native, non-invasive species appropriate to the Morro Bay shoreline area, and shall be maintained in a litter-free, weed-free, and healthy growing condition (including through replanting and/or remediation to achieve consistency with this condition). 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 site.
  - b. Utilities.** All utilities shall be placed underground. All interior and exterior water-

using fixtures, appliances, equipment, irrigation infrastructure, and other such components (e.g., faucets, toilets, showers, ice machines, dishwashers, irrigation etc.) shall be certified for low-flow (or ultra-low flow) and high-water efficiency use, and water conservation measures (e.g., easily accessible shut off valves, recirculating pumps, drip and/or micro-spray irrigation, etc.) shall be applied to the maximum feasible extent.

- c. 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 (i.e., there shall be no new outfalls or other infrastructure that discharges directly into 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.
- d. 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 are not permitted. 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**).
- e. Loading Zone/ADA.** The Plans shall identify one parking space along the Embarcadero for general passenger loading and unloading, limited to 10 minutes per vehicle, and one ADA parking space. The Final Plans shall describe that the curb on the loading/unloading 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 these parking spaces 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 seven 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 seven 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 Permittee shall provide at least one year-round low cost hotel room and one part-time low cost unit for 9 months of the year where the cost to rent such rooms overnight shall not at any time exceed the lower-cost threshold as defined in the Morro Bay LCP as of 2024 and may be modified by the CPI yearly.<sup>1</sup> The above costs shall be inclusive of all service and other fees (e.g., cleaning, resort, administrative) but exclusive of any government-mandated fees (e.g., sales tax, transient occupancy taxes). The Permittee may provide more lower-cost on-site rooms than the minimum identified herein.
  - e. **Monitoring Reports for Low-Cost Hotel Units.** The Permittee shall provide an annual report (with the first report due by December 31<sup>st</sup> of the first year of project occupancy, and subsequent reports due by December 31<sup>st</sup> of subsequent years) to the Executive Director for review and approval. 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

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<sup>1</sup> As of 2024, the lower-cost daily room rate is no more than \$150 per hotel room per night.

more than the annual Consumer Price Index each year), 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 Harborwalk lateral accessway, the connecting vertical accessways, public plaza, second story public viewing deck, 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 at the bottom of the stairs leading to the public viewing deck. The signs shall be designed so as to provide clear information without impacting public views and site character. All directional signs shall include the Commission's access program "feet" logo and the California Coastal Trail emblem. At least one public access interpretive sign (appropriate to Morro Bay issues, information, and/or history) shall be located at an appropriate location along the lateral accessway and at least one interpretive sign shall be located on the second floor viewing deck.
  - 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 Parameters.** 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. The floating dock and second floor public viewing deck shall be open to the public for general pedestrian access from at least one hour before sunrise to one hour after sunset. Any dock fees shall be as low as possible, commensurate with standard rates for the area. All boat slips shall be used for commercial and recreational fishing vessels, commercial and recreational passenger vessels, other recreational vessels, or commercial service vessels only. The use of the docks and slips for private residential use is prohibited. Signs discouraging the public from walking on the docks during these hours are prohibited.
- e. Public Plaza.** The public plaza shall remain open to the general public 24 hours per day and shall remain under the management of the City of Morro Bay. Any events hosted in the plaza shall be available free of charge to the public, and no purchase shall be required to attend events. Any events hosted in the plaza may require separate authorization.
- 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 this condition and the approved Public Access Plan, both of which shall govern all general public access to the site pursuant to this CDP.

- 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, including identifying measures to minimize the hydro-acoustic noise impacts of any piling driving activities. The Permittee shall submit two copies of a Marine Wildlife Contingency Plan and a Pile Driving and Hydroacoustical Noise Mitigation Plan, in conformance with City Conditional Use Permit #CUP22-09 Conditions 11 and 13, for Executive Director review and approval. The Pile Driving and Hydroacoustical Noise Mitigation Plan shall define exclusion zones for marine mammals of at least 100 feet, or as identified by NOAA and DOT acoustic threshold guidance. The required biological monitor shall have the authority to stop construction if any marine mammals are seen within this defined exclusion zone.
- 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 Conditional Use Permit #CUP22-09 (Planning Condition 10).

- 8. Compliance with Local Conditions of Approval.** The proposed development was approved by the City of Morro Bay via Conditional Use Permit #CUP22-09 (see **Exhibit 4**). 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. Other Authorizations.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall provide to the Executive Director evidence of other required authorizations for, or alternatively evidence that no such authorizations are needed, for the development authorized by this CDP (e.g., U.S. Army Corps of Engineers, U.S. Fish & Wildlife, California Department of Fish and Wildlife, or the State Lands Commission). The Permittee shall inform the Executive Director of any changes to the project required by such entities where such changes shall not be incorporated into the project until the Permittee obtains a Commission-approved amendment to the CDP, unless the Executive Director determines that an amendment is not legally required.
- 10. 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.
- 11. Minor Modifications.** Additional development beyond that which is authorized herein in this approval shall be submitted for a determination of coastal development permit requirements (i.e., a separate coastal development permit, amendment to this permit, or waiver). Minor adjustments to the terms and conditions of this CDP may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; (2) do not adversely impact coastal resources; and (3) do not legally require a permit amendment.
- 12. Assumption of Risk, Waiver of Liability and Indemnity Agreement.** The Permittee acknowledges and agrees, on behalf of itself and all successors and assigns: (i) that the site is subject to coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, tidal scour, coastal flooding, and the interaction of same; (ii) to assume the risks to the Permittee and the property that is the subject of this

permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; and (v) that any adverse effects to property caused by the permitted project shall be fully the responsibility of the property owner.

#### 4. FINDINGS AND DECLARATIONS

##### **A. Project Location, Background, and Description**

###### **1. Project Location**

The project site is located in the Local Coastal Program's (LCP's) Bayfront planning area at 801 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 significant visitor-serving uses as well. The project site is located in the central portion of the Embarcadero, and is comprised of one inland tideland lease site (site 86) and one tideland lease which extends out into the bay (site 86W). The site consists of approximately 60 feet of bay frontage and is relatively flat ranging from 14.06 feet above mean sea level at the highest elevation to 12.76 feet above sea level on the Harborwalk. The site is currently occupied by a vacant building comprised of first and second floor restaurant space and a previous office space on the second floor.

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. Morro Bay Boulevard meets the Embarcadero just downcoast of the project site and terminates into an 11-space parking lot and a small public pier with a public gangway to a floating dock (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 100 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**).

## **2. Project Background**

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.

## **3. Project Description**

The Applicant proposes to demolish the existing structure at the site and construct a new two-story 5,206-square-foot building in approximately the same area as the existing structure. The proposed new building would include a combination of restaurant and commercial uses on the ground floor, with a coffee shop envisioned on the street (or eastern) side (approximately 553 square feet) and a restaurant/brewery in the rear (i.e., bayward overlooking the water). The restaurant would include the kitchen, main dining area, banquet room, a covered dining area to the southeast, an outdoor patio facing the Embarcadero, and outdoor seating along the bayside of the building. The basement would also be expanded for a larger brewing area and would include a cold and dry storage area, mechanical equipment, and laundry facilities. The basement expansion is proposed to be located on the east/landward side of the existing basement.

The second floor would be developed as a seven-unit boutique hotel, with rooms ranging from 250 to 384 square feet. The Applicant is proposing to provide 25% of the rooms at a low-cost rate, equal to the City's LCP definition for low-cost accommodations (which is no more than 75% of the statewide average daily rate, which is \$150 as of 2024). The second floor will also contain interior stairs and an elevator to the second

floor where an enclosed common lobby area will open onto a public viewing deck. The second-floor public viewing deck would be open to the public during daylight hours and would be publicly accessible from exterior stairs located on the southern end of the building and would also be accessible for the public via the elevator. The proposed project also includes a fifteen-foot-wide segment of the Harborwalk along the entire bay frontage of the building, which would connect to the existing Harborwalk on the upcoast and downcoast lease sites. The Applicant also proposes to construct a new 30-foot-long ADA accessible gangway leading from the Harborwalk to a new 8-foot-wide floating dock below with two side-tie boat slips. The proposed project will also include 7 new steel piles and sleeve 3 existing wood pilings. The Harborwalk and floating dock expansion will require the water lease to expand 15 feet to the west (bayside).

The Applicant is also proposing to construct a public plaza in the adjacent street end parking lot located between the project site and the downcoast building (Rose's Landing). The proposed plaza improvements include a portable stage for community events, electrical components, curb and street enhancements, and a pedestrian drop off area. Other public amenities proposed in the plaza include a bike rack, two public benches, and trash cans. The City would maintain ownership of the plaza, while the Applicant would construct the improvements to it.

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

## **B. Standard of Review**

The proposed project site is located both on historic former tidelands (as is almost all of the Embarcadero area) as well as seaward of the mean high tide line, both of which are within the Commission's retained CDP jurisdiction. The standard of review for development within the Commission's retained jurisdiction is Chapter 3 of the Coastal Act.

## **C. Lower-Cost Accommodations**

### ***Applicable Coastal Act Provisions***

The Coastal Act defines coastal-dependent and coastal-related as follows:

***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:

***Policy LU-6.1: Lower-Cost Visitor Serving Facilities.*** *Lower cost visitor-serving facilities, including overnight accommodations and public recreational opportunities shall be provided and encouraged. Existing lower-cost accommodations shall be protected and maintained....*

And the LCP's Implementation Plan (IP) further implements the above policy, including by prescribing the ratio of low cost accommodations required for development proposing new high cost accommodations (i.e., at one such low cost unit for every four high cost ones, or 25%), and the IP further defines the rates that qualify as lower-cost (i.e., no more than 75% of statewide average daily rate):

***IP Section 17.14.040.C.3.a.ii. Required Low Cost Accommodations.*** *New low cost visitor overnight accommodations shall be provided on at least a rate of one new low cost accommodation for every four new high cost accommodations.*

***IP Section 17.14.040.C.2.a. Low Cost.*** *The average daily room rate of all economy hotel and motel rooms in the City of Morro Bay based on the best available information (e.g., as defined in the City's Lower-Cost Visitor-Serving Accommodations Technical Memorandum, Smith Travel Research data, etc.), or not to exceed 75 percent of the prior year's statewide average daily rate.*

Thus, Coastal Act Section 30213 and complementary LCP provisions like the ones for Morro Bay here require lower-cost facilities, including accommodations, to be protected, encouraged, and, if feasible, provided.<sup>2</sup> 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.

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<sup>2</sup> Coastal Act Section 30213 has its origins in the 1975 California Coastal Plan (precursor to the 1976 Coastal Act). Based on extensive public input in the early 1970s, the Coastal Plan found that few tourist facilities for persons of low and moderate income were being built in many parts of the coastal zone, and that many such low- and moderate-cost facilities were being replaced by facilities that had higher costs, including particularly in terms of overnight 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.



Regardless of the ratio used, requiring lower-cost accommodations (or a 'package' of on-site, off-site, and/or in-lieu fee payments) 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***

The City of Morro Bay represents a unique case of low-cost accommodations where 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 25%, thus at that time the City was meeting and slightly exceeding the rest of the state in providing low-cost accommodations. The City placed a high importance on protecting this quantity of lower cost accommodations, and such provisions relating to the ratio and definition of low cost rates were codified in the recent LCP update. Thus, when a project such as the proposed development comes in front of the City, there are clear requirements and definitions for when low cost accommodation must be provided, the ratio at which low cost accommodations are to be provided, and the method in which low cost rates are calculated. All such provisions ensure protection of the City's stock of lower cost accommodations, especially in prime locations such as the Embarcadero where it is often a rare and special opportunity for a visitor to stay overnight steps away from Morro Bay and to experience a working waterfront. Thus, requiring and protecting low-cost accommodations remains essential, including to ensure consistency with Coastal Act Section 30213.

In this case, the Applicant is proposing, including in response to the LCP and the City's local approval, that 25% of hotel rooms (or 1 full unit and another unit at 9 months of the year) shall be set at rates of no more than the LCP's low-cost threshold. This condition sets the low-cost rate as a maximum, where the low-cost rate can't exceed 75% of the average daily room rate, which is typically what the Commission uses to understand how to define low cost rooms under the Coastal Act.<sup>3</sup> Thus, the proposed project includes lower-cost accommodations on site part of its mix of hotel rooms and thus can be found consistent with Coastal Act Section 30213 in this regard. Additionally, the proposed project would provide other substantial low and no cost public access benefits and recreational opportunities. These include a new fifteen-foot-wide Harborwalk

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<sup>3</sup> The statewide average daily room for July and August (the peak periods) in 2023 was about \$200, where 75% of this rate would be \$150 (per Smith Travel Research). Thus, in line with the City's low-cost definition, a low cost room shall not exceed \$150.

segment, a new public floating dock, second floor public viewing deck, and new public plaza with additional benefits such as benches, bike racks, and trash cans (all of which are discussed further below in the “Public Access” section). Thus, not only is the Applicant proposing to provide on-site low cost hotel units, but the proposed project is also providing a suite of other additional public access benefits as well.

Therefore, the proposed project provides an adequate amount of low-cost accommodations onsite for the Commission to find the project consistent with Section 30213 of the Coastal Act. 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 City and Applicant’s proposed rate cap subject to increases consistent with the Consumer Price Index, and **Special Condition 3(e)** requires monitoring reports for compliance purposes. In addition, **Special Conditions 3(a) and (b)** require that all seven 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 Coastal Act Provisions***

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 Land Use Plan (LUP) also details specific locations where the City should promote pedestrian access and connections, including by relocating certain parking areas along the bayside of the Embarcadero (for which the street end of Morro Bay Boulevard at the project site is specifically identified). The LUP also contains policies prescribing lateral access along the Embarcadero:

**Policy CIR-2.2: Street End Pedestrian Connections.** *Create safer and more distinct lateral access connections across the street ends on the west side of the Embarcadero at Dunes, Harbor, Morro Bay Boulevard, Front, Pacific, Marina and Driftwood Streets, including by relocating parking from these areas.*

**Policy LU-7.1: Lateral Access.** *... All lateral connections along the coast, with particular emphasis on the Embarcadero, shall be required to be improved and enhanced. ... For new development (defined by the Coastal Act) adjacent to the bayfront or ocean, open and unobstructed public access shall be provided from the nearest public roadway to the shoreline and along the*

*coast as required herein. ...*

*g. Lateral access along the waterfront revetment may be achieved in the following manner:*

*i. Walkways. In the form of open or enclosed unobstructed walkways, a minimum of 10 feet wide across the bayward side of the proposed development. ...*

## **Analysis**

### *Public Coastal Access*

The project at its core is a visitor-serving use that should help to invigorate this prime visitor-serving location along the popular Embarcadero. The proposed ground floor includes restaurant space comprised of indoor and outdoor seating, with a banquet room, bar area, and coffee shop. 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 hotels 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 (e.g., 3-19-0011 (Harborwalk Plaza Mixed-Use Project), 3-18-0152 (Gray's Inn), 3-17-0581 (Rose's Landing), 3-11-031 (Giovanni's), 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. This standard has since been codified in the recent LCP update where LUP Policy LU-7.1 prescribes the forms of lateral access required for new development, specifically along the Embarcadero. In previous approvals 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 fifteen-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 the recent approval for the Harborwalk Plaza Mixed-Use Project identified above. The proposed section of Harborwalk will extend bayward to the same width as the upcoast stretch and the proposed path will be made of the same material, thus creating a seamless transition/connection along the Harborwalk between the project site and the upcoast lease site. The Harborwalk will additionally connect to a new gangway and floating dock which will provide unobstructed<sup>4</sup> access for visitors during the day and the floating dock will include two side-tie boat slips. The downcoast end of the Harborwalk will transition into a lateral access path to connect the Harborwalk to the Embarcadero. The new

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<sup>4</sup> A gate or similar structure is not proposed nor allowed to block access to the floating dock (see Special Condition 4).

lateral access path will also provide access to the proposed public plaza which connects to an existing public pier and dock located bayward of the Morro Bay Boulevard Street end. This existing public pier and lateral access connects to the downcoast stretch of the Harborwalk located bayward of Rose's Landing, also discussed above. Thus, the proposed Harborwalk segment will provide new visual and physical access to the water and will fill a critical gap in the Harborwalk<sup>5</sup> where no such access currently exists, including by providing an additional width of five feet compared to other lease sites and required under LUP Policy LU-7.1.

Additionally, and as noted above, the Applicant proposes to construct a public plaza on the City owned Morro Bay Boulevard Street end located immediately downcoast of the project site. The public plaza would be constructed of decomposed granite and the Applicant is proposing additional public access amenities including a bike rack, two public benches and multiple trash cans. The public plaza constitutes an important public access benefit to better activate the site than the existing parking spaces in this area, including as the LCP identifies the replacement of such parking spaces to create these types of public spaces since the Embarcadero area already has adequate public parking opportunities nearby in other public lots (see discussion below). The plaza will enliven the bayside of the Embarcadero where the immediate downcoast (Rose's Landing) and the immediate upcoast (Harborwalk Mixed-Use Plaza) have also recently been redeveloped with similar mixed used projects featuring first floor restaurants and second floor hotel uses. Thus, the public plaza will provide vital pedestrian connection between businesses along the Embarcadero and will serve as a center point for access on the Harborwalk path. The Applicant will also provide a removable stage and three underground electrical boxes to be used during special events. The Applicant is proposing to construct the plaza under this CDP; however, the plaza will remain under City ownership and programming for events in the plaza (outdoor concerts, farmers markets, etc.) will need to be authorized by a future CDP.

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 second floor public viewing deck and the floating dock (which would be 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

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<sup>5</sup> This access constitutes a portion of the California Coastal Trail.

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 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*

As noted above, the Coastal Act generally requires new development to provide adequate parking, including to ensure access for those that may not be able to be served by public transit, walking, biking, or other non-vehicular modes of travel. In the Embarcadero area, the City has relied on a historic parking credit program where demand is based on the comparison of the historic uses at the site against the proposed uses. Thus, for the purposes of the City's review, onsite parking is not required along the Embarcadero if the project's parking need is (1) less than the site's historic credit and (2) can be met on existing, nearby public street spaces and lots (which is where parking requirements covered by the historic credits are met). The Commission has traditionally employed a variant of this parking credit system by comparing the amount of parking required for an existing use with the amount required for the proposed use, and the difference between the two is what is required to be addressed either on-site, off-site, via in-lieu fee, or some other permutation that satisfies parking and access needs.

In this case, based on information provided by the Applicant, the Commission has determined the site's historic uses (two-story restaurant with commercial/office use on the second floor) would require approximately 56 parking spaces per the parking requirements of the IP, whereas the proposed uses require approximately 40 parking spaces. Thus, the proposed project does not need to provide any additional parking mitigation since it actually requires less parking than the current space does. Furthermore, there is public street parking (three-hour limit) along the Embarcadero, and two free public parking lots are located less than 500 feet from the project. Thus, for this project, and similar to the manner in which the Commission evaluated parking demand for the adjacent Rose's Landing and Harborwalk Mixed-Use Plaza projects, the Commission finds that the parking demand will be less than what was historically required at the site, that adequate public parking already exists in the area to serve the proposed development, and thus that parking and access needs are sufficiently addressed.

However, it should be noted that construction of the public plaza will require the removal of eleven parking spaces located in the Morro Bay Boulevard street end on the bayside of the Embarcadero. Based on the analysis above, the proposed project will result in a decrease in parking demand by 16 spaces; thus, such reduced demand can be understood as accounting for the loss of these eleven spaces.<sup>6</sup> And while ensuring

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<sup>6</sup> The City's local approval conditioned the project to defer creation of the public plaza until the Applicant submits a relocation plan for the eleven parking spaces, and if the spaces are not able to be relocated

adequate parking in prime visitor serving locations is a priority, LUP Policy CIR-2.2 specifically speaks to relocating parking from the Embarcadero street ends to promote safer pedestrian access. Thus, not only is relocation of parking in this area specifically recognized as a priority in the LCP, but construction of the public plaza in the street end is a better and higher visitor-serving use for this prime waterfront location. In addition, the City is served by regional and local bus transit, and is also committed to working towards a balanced multimodal transportation system with a focus on pedestrian access and safety throughout the City, and particularly in the Embarcadero and downtown areas. The Commission welcomes such multimodal, less vehicle-centric approach in the City overall and along the Embarcadero in particular, and has articulated a vision as part of the newly updated LCP of widening sidewalks, reducing space dedicated solely to vehicles, and truly activating this visitor-serving destination as a walkable/bikeable and welcoming promenade. The proposed project helps implement this vision.

Thus, for this project, and similar to the manner in which the Commission evaluated parking demand for the adjacent projects, 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. **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 Applicant should investigate additional bicycle storage, public transit incentive programs for employees, and employee shower facilities that can further address the project's access, parking, and traffic issues.

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 Coastal Act Provisions***

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***

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within 14 months after the building permits are issued, the Applicant can deposit a sum equal to the plaza improvement cost into the City's general fund for use in the Harbor area. Thus, the City's condition does not guarantee construction of the plaza if the parking is not relocated. As discussed above, the Commission finds that the proposed public plaza is the highest and best use for that site, and thus most consistent with the Coastal Act mandate to maximize public access and recreation. In other words, **Special Condition 1** requires the Applicant to construct the plaza, does not require any replacement parking, and **Special Condition 4** requires the plaza improvements to be constructed prior to occupancy of the hotel, notwithstanding the City's condition on this issue. The City has indicated agreement with these conditions.

*development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

Additionally, the Coastal Act requires that special communities that are popular visitor-serving and recreational destinations, 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 (i.e., 4,677 square feet for the existing structure and 5,206 square feet for the proposed new building). Although the proposed project will result in a slight increase in area on the first floor, the project will actually result in a decrease to the second floor square footage compared to the existing building. Thus, due to the building orientation with the proposed first floor outdoor patio located along the Embarcadero and the public viewing deck spanning most of the southern end of the second floor, the project will better protect and provide diagonal view corridors from the Embarcadero towards Morro Bay. 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. Additionally, the proposed project preserves scenic vistas at the street end through the creation of the public plaza and provides a new opportunity for views via the second-floor public viewing deck which will provide expansive views of Morro Bay, Morro Rock, and the Pacific Ocean.

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., composite wood and shiplap siding, corten panels, and metal roof) and other features to avoid creating a boxy structure. The second-floor public viewing plaza and the covered outdoor dining area facing southeast towards the proposed public plaza would provide for additional variation in



the building's massing. See page 17 and 18 of **Exhibit 3** 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 downcoast public dock) will enhance viewing opportunities of Morro Bay and Morro Rock. To further protect visual resources, **Special Condition 2** includes a suite of design conditions that are typical for Commission CDPs, including ensuring that the overall designs of the hotel/restaurant structure and the plaza seamlessly blend in with the coastal aesthetic, to minimize lighting and excessive signage, to require that all utilities on the project site be placed underground, and to include native, drought-tolerant landscaping. 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 Coastal Act Provisions***

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.*

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 identically emulated in LUP Policy C-7.21 and Policy C-7.22, 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, **Special Condition 5** requires the Applicant to adopt best management practices (BMPs) that the Commission has required in the past for overwater construction. 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 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.<sup>7</sup> **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.

#### *Fill of Coastal Waters*

Additionally, the proposed project involves the filling of coastal waters in the form of the pilings that would be installed to support the reconstructed building, the new Harborwalk, and the new 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 Section 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. The overwater portion of the proposed building occupies nearly the same square footage as the existing building. However, the proposed project would provide 1,360 square feet of public Harborwalk access where no such access existed before which requires the expansion of the water lease to the west by 15 feet. Additionally, a portion of the second floor public viewing deck would also be located over open coastal waters where the existing building contained private restaurant uses on the second floor, thus the second floor public viewing deck is providing access where no such public access existed before. 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, including providing public boat tie-down facilities, both of which purposes are supposed by Coastal Act Section 30233(a).

Although fill of coastal waters with pilings and an overwater footprint 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)(4).<sup>8</sup>

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<sup>7</sup> The City's approval is conditioned to require the submission of a Marine Wildlife Contingency Plan and a Pile Driving and Hydroacoustical Noise Mitigation Plan. **Special Condition 5** requires the Applicant to submit these plans for Executive Director approval and requires the exclusion zones for marine mammals to be at least 100 feet, or as identified by NOAA and DOT acoustic threshold guidance.

<sup>8</sup> 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

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 and upcoast adjacent lease sites.<sup>9</sup> 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 fifteen-foot-wide Harborwalk segment, public plaza, 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 the new floating dock).

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. For example, the recent approval at the site located immediately upcoast (see CDP 3-19-0011 for the Harborwalk Plaza Mixed-Use Project) involved a similar extension of development over water for construction of the Harborwalk and other public amenities, thus the over water expansion for the proposed project is consistent with the approach taken for other projects in this area. 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.

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

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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.

<sup>9</sup> Rose’s Landing Bar and Grill is located immediately downcoast while the Harborwalk Plaza market hall is located immediately upcoast.

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, a survey conducted in 2022 found none in the project area, and Conditional Use Permit #CUP22-09 (Planning Condition 10) (see **Exhibit 4**) 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 Section 30230 and 30231. **Special Condition 7** clarifies that compliance with CEMP and all requirements of Conditional Use Permit #CUP22-09 are also conditions of this CDP.

#### **G. Hazards**

Coastal Act Section 30253 addresses the need to ensure long-term structural integrity, minimize future risk, and to avoid landform altering protective measures in the future. Section 30253 provides, in part:

**Section 30253.** *New development shall do all of the following:*

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

#### **Analysis**

Coastal Act Section 30253 requires the project to assure long-term stability and structural integrity, and to minimize risk to life and property in areas of high geologic, flood, and fire hazard. In this case, the project is located along a working waterfront where a bulkhead and various other infrastructure protect these coastal dependent uses; however, it is still necessary for the Applicant to internalize risk in light of potential hazards. The Commission recognizes that there is a certain amount of risk involved in development that is located at the shoreline edge and that can be directly subject to erosion, violent storms, large waves, flooding, earthquakes, and other geologic hazards. These risks can be exacerbated by such factors as sea level rise and localized geography that can focus storm energy at particular stretches of coastline. The Commission has sought, through this review, to limit such risks, but they cannot be eliminated entirely, and this fact must be recognized and liabilities assumed by the

Applicant accordingly. Specifically, the Commission's experience in evaluating proposed developments in areas subject to hazards has been that development has continued to occur despite periodic episodes of heavy storm damage and other such occurrences. Development in such dynamic environments is susceptible to damage due to such long-term and episodic processes. Past occurrences statewide have resulted in public costs (through low interest loans, grants, subsidies, direct assistance, etc.) in the millions of dollars. As a means of allowing continued development in areas subject to these hazards while avoiding placing the economic burden for damages onto the people of the State of California, Applicants are regularly required to acknowledge site hazards and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. Accordingly, this approval is conditioned for the Applicant to assume all risks for developing at this location (see **Special Condition 12**).

## **H. Other**

### ***Other Agency Approvals***

In addition to CDP authorization under the Coastal Act and LCP, the proposed project requires authorization from the U.S. Army Corps of Engineers, and may affect marine resources that are protected by USFWS and CDFW. To ensure that the Applicant has a sufficient legal interest to carry out the project consistent with the terms and conditions of this CDP and to ensure that the proposed project is authorized by all applicable regulatory agencies, **Special Condition 9** requires the Applicant to submit written evidence either of these agencies' approvals of the project (as conditioned and approved by this CDP) or evidence that such approvals are not required.

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 3-24-0149 shall prevail.

### ***Deed Restriction***

The terms and conditions of this approval are perpetual and run with the land, thus binding any future buyers and owners of the properties subject to this CDP. This approval is also conditioned for a deed restriction to be recorded against the property involved in the application (see **Special Condition 10**). This deed restriction will record the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property.

### ***Minor Modifications***

**Special Condition 11** requires that any modifications to activities authorized by this CDP shall require a CDP amendment, unless the Executive Director determines that such modifications will not adversely impact coastal resources and that no amendment is legally necessary.

## **H. 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 the CEQA lead agency, determined that the proposed project qualified for a Class 2 Categorical Exemption from CEQA under Section 15302 of the CEQA Guidelines (for replacement or reconstruction projects).

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 analyzed the relevant coastal resource issues with the proposal and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources. All above findings are incorporated herein in their entirety by reference.

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

## **5. APPENDICES**

### **A. Appendix A – Substantive File Documents<sup>10</sup>**

- CDP File 3-24-0149

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

- City of Morro Bay

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<sup>10</sup> These documents are available for review in the Commission's Central Coast District office.