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STAFF REPORT
CDP APPLICATION

Application Number:	**3-25-0777**
Applicant:	Paul Gillen
Project Location:	On the Morro Bay bayfront along the downcoast portion of the Embarcadero (at 431, 451, 471, and 495 Embarcadero) in the City of Morro Bay.
Project Description:	Convert an existing two-story office building to a first-floor commercial space and a take-out restaurant with three hotel units on the second floor; demolish three existing vacation rental buildings and construct a new two-story building containing seven additional hotel units for a total of ten hotel units; construct various public access amenities including a 10-foot wide segment of the Morro Bay Harborwalk, pocket park, public restrooms, and a new floating dock with finger slips.
Staff Recommendation:	Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The Applicant proposes to convert an existing approximately 3,000 square-foot two-story office building into a combination of commercial uses and a take-out restaurant with an attached kitchen on the first floor with three hotel units and a lobby on the second floor; to demolish three existing vacation rental units and to construct a new two-story building with seven standard-operating hotel units in their place, for a total of ten new hotel units; and to construct a series of public access improvements, including public restrooms, a new 10-foot wide lateral segment of the Harborwalk public access walkway along the building's frontage with Morro Bay, a new floating dock with three finger slips, and a public pocket park. 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 proposal is a visitor-serving project at its core that should help to invigorate this prime visitor-serving spot along the popular Embarcadero. The project includes active ground floor retail and restaurant space, as well as overnight accommodations, some of which would be at or below the lower cost threshold as defined in the LCP. Additionally, the project provides other substantial public access amenities, including a new 10-foot wide segment of the Harborwalk coastal trail that would traverse the bay side of the building, and that would connect with upcoast Harborwalk segments as well as the proposed pocket park downcoast, essentially "completing" and serving as the southernmost end of this primary visitor-serving stretch along the City's waterfront. The project also includes construction of a publicly accessible floating dock with three finger slips and a kayak rental shack, and multiple public restrooms (with three total stalls). In fact, over two-thirds of the project site's square footage is devoted to such public amenities. In addition, the Applicant is also proposing to implement a kayak program aimed at providing free kayak tours to lower income and underserved youth and their families, representing a unique public access opportunity for community members in San Luis Obispo County. The proposed lower cost rooms, in conjunction with these other public access benefits, is consistent with the Commission's overarching goals and intent in administering Coastal Act and LCP public access and recreation provisions, 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 amenities onsite. Doing so provides for a range of public access options and will result in an exciting opportunity to activate this important coastal locale for visitors, including new options that allow for youth, families and others who might not have historically had such an opportunity to better access and experience Morro Bay's waterfront and its amenities.

In short, the project represents development of higher Coastal Act and LCP priority uses (i.e., visitor-serving, coastal recreation-oriented commercial development, public access) adjacent to a commercial-oriented bayfront area. As conditioned, the project can be found consistent with the Coastal Act and the LCP, and staff recommends **approval** of the CDP. The motion is found on page 4 below.

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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 3-25-0777 pursuant to the staff recommendation, and I recommend a* ***yes*** *vote.*

Resolution to Approve CDP: *The Commission hereby approves Coastal Development Permit Number 3-25-0777 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) 3-25-0777 authorizes the proposed development (i.e., ground floor commercial/retail uses, a ten-unit standard operating hotel, and public access improvements) as described and shown in **Exhibit 3**, including with respect to the proposed room rates (which are also reiterated in **Special Condition 3**), all as modified by the terms and conditions of this CDP. The Permittee shall undertake development in accordance with the approved CDP.

2. **Final Plans.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two full size sets of Final Plans to the Executive Director for review and written 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 "Bayside Landing and Suites" and dated received in the Coastal Commission's Central Coast District Office October 24, 2025 (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 commercial/restaurant structure and hotel units, shall incorporate architectural details and varied materials to effectively blend in with the coastal environment. 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.

   b. **Landscaping.** 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.

   c. **Lighting Minimized**. Exterior lighting shall be wildlife-friendly, shall use bulbs/lamps that minimize the blue end of the visible spectrum (i.e., use correlated color temperatures ≤3000 K), and shall be limited to the minimum lighting necessary for pedestrian and safety purposes. All lighting (exterior and interior) shall be sited and designed so that it limits the amount of light or glare

visible from above (i.e., ≥90 degrees above nadir) and from public viewing areas (including but not limited to views from across Morro Bay) to the maximum extent feasible (including through uses of lowest luminosity possible (e.g., no more than 1,000 lumens near natural areas), warm temperature lighting, prohibiting lighting that blinks or flashes, directing lighting downward, etc.). All light fixtures shall be Dark Sky International approved or equivalent. The Revised Plans shall be submitted with documentation demonstrating compliance with these lighting requirements.

d. 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.

e. 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.

f. Pilings and Substructure. All pilings and all other structural substructure elements to be removed, installed, or otherwise used in association with the proposed development, including coating materials, shall be clearly identified. New pilings shall be made of steel and sealed with a marine grade epoxy/polyurethane coating, and new wood pilings are only allowed when wrapped with a polyurethane jacket. Any other wooden substructure components (either proposed new or to be demolished/removed) shall be clearly described, including their coatings and preservatives, and appropriate BMPs shall be incorporated.

All requirements above and all requirements of the Executive Director-approved Final Plans shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the Executive Director-approved Final Plans.

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 ten 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 ten 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. **Lower Cost Units.** The Permittee shall provide at least one year-round lower cost hotel room and one part-time (for 6 months of the year) lower cost unit, where the cost to rent such units overnight shall not at any time exceed the lower cost threshold as defined in the Morro Bay LCP as of 2025,[1] where such cost may be modified yearly to increase at no more than the change in the Consumer Price Index yearly. The above costs shall be inclusive of all service and other fees (e.g., cleaning, resort, administrative) but may be exclusive of any government-mandated fees (e.g., sales tax, transient occupancy taxes). The Permittee shall actively promote and publicize the availability of the lower-cost on-site rooms, in English and Spanish, including specifically to underserved communities such as lower-income communities, communities of color, and other communities that have been historically marginalized and face greater barriers to coastal access in nearby and in-land counties. All materials shall acknowledge the California Coastal Commission's role in providing the lower-cost on-site rooms. The Permittee may provide more lower cost on-site rooms than the minimum identified herein.

   e. **Monitoring Reports for Lower Cost Units.** The Permittee shall provide an annual report (with the first report due by March 31st of the first year of project occupancy, and subsequent reports due by March 31st of subsequent years) to the Executive Director for review and written approval. The monitoring reports shall include, at a minimum, the average daily rate charged each month during the preceding year for both the year-round and part-time lower cost units;

[1] As of 2025, the lower-cost daily room rate is no more than $148 per hotel room per night double-occupancy.

occupancy rates for the lower cost units for each applicable month (modified as above for the part-time lower cost unit); a description of proposed lower cost rates for the upcoming year (which shall be allowed to increase at no more than the annual Consumer Price Index each year), and an assessment of compliance with the terms and conditions of this CDP regarding the lower 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 CDP, the Permittee shall submit two full-size sets of a Public Access Management Plan (Access Plan) to the Executive Director for review and written approval. 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 park, wayfinding and public access signs, kayak program for lower income and underserved youth and their families, 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.** 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.) shall be provided. 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 at street level near the entrance to the public park at the Embarcadero, and at the entrance to all public restrooms. Additional signage on both sides of the crane used for loading operations to support marine construction activities shall indicate that public access is available at all times except during active loading operations and shall indicate alternative public access during loading operations. Signage providing details on how to access the lower income and underserved youth and their families kayak program shall also be included. All signs shall be designed so as to provide clear information without impacting public views and site character. All directional signs shall include the Commission's access program "feet" logo and the California Coastal Trail emblem. At least one public access interpretive sign

(appropriate to Morro Bay issues, information, and/or history) shall be located at an appropriate location along the lateral accessway.

c. **No Public Access Disruption.** Development and uses within the public access areas that disrupt and/or degrade public access (including areas set aside for private uses, barriers to public access (furniture, planters, temporary structures, private use signs, ropes, etc.)) shall be prohibited. The public use areas shall be maintained in a manner that maximizes public use and enjoyment. Lateral public access along the Harborwalk in the immediate area surrounding the crane shall remain open at all times except during active marine construction loading operations and any closure shall be limited to the minimum duration necessary.

d. **Public Access Parameters.** The public access areas and amenities along the bayfront lateral accessway, vertical accessways, and pocket park shall be open to the general public 24 hours per day and shall be available free of charge. The floating dock, and public restrooms shall be open to the public for general pedestrian access from at least one-hour before sunrise to one-hour after sunset. Any slip rental fees and kayak rental fees shall be as low as possible, commensurate with or lower than 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 available public use hours are prohibited.

e. **Public Access Amenities Provided Prior to Occupancy.** All public access components of the approved project shall be constructed and ready for use prior to occupancy of the hotel units.

f. **Public Access Areas and Amenities Maintained.** The public access components of the project shall be maintained in their approved state in perpetuity.

g. **Kayak Outreach Program.** The Access Plan shall include a plan to establish a kayak program substantially in conformance with the plan submitted to the Coastal Commission's Central Coast District Office on May 4, 2026. The program shall, at a minimum, provide at least four kayak tours per year serving approximately 25 people per tour (for a total of approximately 100 people per year) to organizations in the Morro Bay/San Luis Obispo County area. The intent is for such tours to be led by qualified professionals aimed at teaching marine wildlife and recreational boating skills to lower income and underserved youth[2] and their families. The kayak tours shall be free of charge to participants,

[2] The term "underserved youth" shall be defined as individuals up to the age of 18 years from underserved communities that have been historically excluded from accessing the benefits of coastal opportunities and/or disproportionately impacted by environmental burdens that include, but are not limited to, low-income households; Black, Indigenous, and communities of color; people with disabilities; inland and/or rural communities; youth who attend Title 1 schools (and their caregiver/s); the unhoused; LGBTQIA+; carceral-impacted youth; and, foster and transition age youth.

including that transportation to and from Morro Bay shall be paid for by the Permittee. The Permittee shall provide an annual monitoring report (with the first report due by December 31st of the first year of project occupancy, and subsequent reports due by December 31st of subsequent years) to the Executive Director for review and written approval that describes program implementation for the prior year, where the reports shall include, at a minimum, the number of tours provided (including total attendance for each tour), proof of marketing and outreach efforts taken to advertise the kayak program to the targeted underserved communities inclusive of non-English languages spoken in the targeted communities, a list of organizations partnered with, a description of the transportation provided for each tour, and suggestions for changes to the program to better serve its purpose. The ultimate intent of this reporting requirement is that the Permittee (or its affiliated designee) shall 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. The program shall continue as long as any portion of the Approved Development remains.

All requirements above and all requirements of the Executive Director-approved Public Access Management Plan shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the Executive Director-approved Public Access Management Plan.

5. **Construction Plan.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and written approval. The Construction Plan shall, at a minimum, include the following:

   a. **Construction Areas.** The specific location of all construction areas, all staging areas, and all construction access corridors shall be identified 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 Hydroacoustic Noise Mitigation Plan (in conformance with City Conditional Use Permit CUP24-04 Conditions 71 and 73 both of which shall be enforceable components of this CDP) for Executive Director review and written approval. The Pile Driving and Hydroacoustic 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 per CUP24-04 Condition 71 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, including those for overwater construction, that will be implemented during construction to protect coastal resources, including the following:

   1. **Runoff Protection.** Silt fences, or equivalent apparatus, shall be installed at the perimeter of the construction site to prevent construction-related runoff and/or sediment from entering into storm drains, Morro Bay, or otherwise offsite.

   2. **Equipment BMPs.** All construction equipment shall be inspected and maintained at an off-site location to prevent leaks and spills of hazardous materials at the project site.

   3. **Good Housekeeping.** The construction site shall maintain good construction housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the project site; etc.).

   4. **Erosion and Sediment Controls.** All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each work day.

d. **Construction Site Documents.** The Construction Plan shall provide that copies of the signed CDP and the approved Construction Plan be maintained in a conspicuous location at the construction job site at all times, and that such copies are available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.

e. **Construction Coordinator.** The Construction Plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that his/her contact information (i.e., address, phone numbers, email address, etc.) including, at a minimum, a telephone number and an email that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas while still protecting public views as much as possible, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the contact information (address, email, phone number, etc.) and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

f. **Notification.** The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least three working days in advance of commencement of construction, and immediately upon completion of construction.

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

All requirements above and all requirements of the Executive Director-approved Construction Plan shall be enforceable components of the CDP. The Permittee shall undertake development in accordance with this condition and the Executive Director-approved Construction Plan.

6. **Transportation Demand Management Program.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit a Transportation Demand Management Program (TDMP) to the Executive Director for review and written approval. Said program shall include all measures that will be implemented to limit automobile use associated with the approved development as much as possible, including providing 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 development in accordance with this condition and the Executive Director-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 (including as specified in City Conditional Use Permit CUP24-04 Planning Condition 70 which shall be an enforceable component of this CDP).

8. **Compliance with Local Conditions of Approval.** The proposed development was approved by the City of Morro Bay via Conditional Use Permit CUP24-04 and Major Revision MAJ25-001 (see **Exhibit 4**). 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. **Minor Modifications.** Additional or modified 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.

11. **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, tsunami, 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.

12. **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.

13. **Liability for Costs and Attorneys' Fees.** The Permittee shall reimburse the Coastal Commission in full for all 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 CDP, the interpretation and/or enforcement of CDP terms and conditions, or any other matter related to this CDP.

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, its officers, employees, agents, successors and/or assigns. By acceptance of this CDP and its terms and conditions, the Permittee irrevocably agrees to this obligation, which shall be continuing in nature and remain in full force and effect regardless of whether this CDP approval is invalidated as the result of the litigation contemplated by this condition or otherwise changed in any way.

4. FINDINGS AND DECLARATIONS

A. Proposed Project

1. Project Location

The project site is located in the Local Coastal Program's (LCP's) Bayfront planning area at 431, 451, 471, and 495 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 at the southern end of the primary visitor-serving portion of the Embarcadero, and is comprised of four inland tideland lease sites (sites 49, 50, 51, and 52) and their four corresponding tideland leases that extend into the bay (sites 49W, 50W, 51W, and 52W). The overall site consists of approximately 200 feet of bay frontage, where the portion of the site at 495 Embarcadero is currently occupied by an existing two-story commercial building currently used by a marine construction company (Associated Pacific Constructors), the portions of the site at 451 and 471 Embarcadero are currently occupied by three single-story vacation rental units, and the portion of the site at 431 Embarcadero is currently vacant.

Much of 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, which is also the southernmost end of the visitor-serving commercial region of the Embarcadero, and thus the beginning/terminus of the Harborwalk. Upcoast of the project site is Mariner Park, a small City-owned park providing picnic tables, benches, and access to the water via a gangway and a small public dock. Just upcoast of the park is the Estero Inn, which provides a 10-foot-wide stretch of the Harborwalk (approved by the Commission; 3-18-0152-W) with vertical access provided on both the north and south sides of the inn. Immediately downcoast of the project site is an open stretch of the Embarcadero with unobstructed views of Morro Bay where a sidewalk leads to Tidelands Park located approximately 500 feet south of the project site (see **Exhibit 1** for a location map and **Exhibit 2** for photos of the site and nearby area).

There is no parking provided on the project site, but there is public street parking along the Embarcadero landward of it, including spaces to the south between the project site

and Tidelands Park, and a free public parking lot with 25 spaces located slightly south of the project site and on the inland side of the Embarcadero (about 100 feet away) (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.

Today, 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.

For the site in question as part of this CDP application, the two-story office building at 495 Embarcadero has been occupied by the marine construction company, Associated Pacific Constructors. The site currently contains a wooden wharf on the bayward side of the building that has primarily been used for vessel tie-up, with a large crane used to load materials on barges for business operations. 451 and 471 Embarcadero are occupied by three vacation rental units where the wooden wharf continues behind these buildings, but public access is currently not provided on this wharf. There is also an approximately 700 square foot floating dock parallel to the wharf. And as previously noted, the site at 431 is undeveloped.

3. Project Description

The Applicant proposes to convert the existing approximately 3,000 square-foot two-story office building at 495 Embarcadero (lease sites 52/52W) into a combination of commercial uses and hotel units. The first floor would include two separate commercial spaces, the easternmost (i.e., closest to the Embarcadero) of which is proposed to be used as take-out restaurant with an attached kitchen and the westernmost (i.e., closest

to the bay) as a marine-related visitor-serving use. The second floor of the existing building would include a hotel lobby and three 384 square-foot hotel units, where the two units on the western side of the building would have decks facing the bay. Public restrooms would also be constructed on the first floor and would use a separate entrance on the north side of the building (i.e., the restrooms would be accessible without entering the commercial spaces).

The existing vacation rental buildings at 451 and 471 Embarcadero (lease sites 50/50W and 51/51W) would be demolished and a new two-story building with seven 384 square-foot hotel units would be constructed. Five hotel units would be located on the first floor with two units on the second floor, and each unit would have an 8-foot wide deck overlooking the Bay. Two staircases and one elevator would provide access to the second-floor hotel units and the units would connect to the existing building where the other three hotel units would be located, via a second floor walkway, for a total of ten units. The Applicant is proposing to provide 15% of the rooms at a lower cost rate, equal to the City's LCP definition for lower cost accommodations (which is no more than 75% of the peak season (July/August) statewide average daily rate for standard double-occupancy (2-person) rooms at hotels with the equivalent of AAA one- and two-diamond ratings, which was $148 as of 2024). Additionally, the Applicant is proposing to provide four free kayak tours per year, for a total of approximately 100 participants, to organizations within San Luis Obispo County that provide services and support to low-income and underserved youth and their families. The kayak tours would be operated out of the kayak rental shop that is proposed to be located onsite, discussed in further detail below. The tours would be provided at no cost to the organizations, and the Applicant would also provide the necessary funds for transportation to bring the participants to and from Morro Bay.

The site at 431 Embarcadero (lease sites 49/49W) is currently undeveloped, and the Applicant is proposing to construct a 420 square-foot commercial space with a separate restroom accessible from the Embarcadero. The Applicant is also proposing to construct a small pocket park at the southernmost end of the project site, where such park would feature various public amenities including benches, bike racks, marine sculptures, and interpretive signage, including in commemoration of Reg Whibley.[3] Furthermore, a 10-foot wide segment of the Harborwalk would be constructed on the bayside and along the entirety of the project site (spanning over 200 linear feet), where no such access currently exists. The proposed Harborwalk would extend northward past the lease site to connect to the existing public dock at Mariner Park. The Applicant is also proposing to construct a new four-foot wide gangway to provide access to a new 162-foot long and 8-foot wide floating dock parallel to the Harborwalk with one long tie-up for larger boats, and an additional three new five-foot by 50-foot finger slips. A low-profile building containing a kayak rental business is proposed to be located on one of the finger docks. The existing crane would remain on the Harborwalk for

[3] Reggie Whibley was a prominent member of the Morro Bay community and was known as a fisherman, businessman, and craftsman, and he was involved in the management of the harbor. He is one of the founders of Associated Divers Construction and he constructed the office at 495 Embarcadero, which later became Associated Pacific Constructors.

loading/unloading operations to support the marine construction business.

The existing wharf currently has a mix of 85 structural steel beams or timber piles and 24 nonstructural timber fender piles which protect the outer edge of the wharf. The proposed project would include the removal of 89 deteriorated piles of the existing 109 piles. A total of 31 new piles would be placed in water (meaning a net reduction of 58 in water piles), which would include 22 new epoxy coated steel piles and nine timber fender piles wrapped with a polyurethane jacket. The proposed project would also include the drilling of nine steel piles for the foundation system under the proposed hotel units on the landward lease site (i.e., the piles would not be located in water) to support the cantilevered Harborwalk.[4]

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

B. Standard of Review

The proposed project site is located both on now-filled but previously historic former tidelands (as is almost all of the Embarcadero area) as well as seaward of the current 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, with the certified City of Morro Bay LCP serving as non-binding guidance.

C. CDP Determination

1. Lower Cost Accommodations

Applicable Coastal Act Provisions

The Coastal Act protects and provides for lower cost visitor and recreational facilities 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. …*

In addition, the LCP similarly protects and encourages the provision of hotel rooms at a range of affordability options, mirroring Coastal Act 30213. Further, the LCP specifically envisions lower cost accommodations and other public access amenities on the tideland lease sites:

> ***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….*
>
> ***LUP Policy LU-6.5. Accommodations on State Tidelands.*** *Hotels and motels*

[4] The existing wharf is predominately supported by timber piles, including the 65 timber piles proposed for removal. The proposed project will instead rely on steel piles drilled inland of the bay to support the Harborwalk, which will cantilever above the bay.

developed on the State-owned tidelands shall provide lower-cost accommodations and publicly accessible facilities and/or amenities.

And the LCP's Implementation Plan (IP) further implements the above policy, including by prescribing a 25% ratio of lower cost relative to higher cost accommodations, and the IP further defines the rates that qualify as low-cost (i.e., no more than 75% of statewide average daily rate). The IP states:

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.*

IP Section 17.14.040.C.3.b. Reductions. *The number of low cost accommodations to be provided may be waived or reduced taking into consideration the feasibility of the project and any additional amenities that would be provided to serve as a lower cost option for families… A request for a reduction in the number of low cost accommodations is not allowed on State tidelands….*

Thus, Coastal Act Section 30213 requires lower cost facilities, including accommodations, to be protected, encouraged, and, if feasible, provided.[5] And the complementary LCP provisions go a step further along the Embarcadero to simply require that 25% of all units be lower cost. Among other means to ensure adequate lower cost accommodations, the Commission has in the past required mitigation of proposed higher cost rooms by requiring lower cost rooms to be provided at a 25% ratio (i.e., at least 25% of the rooms are at a lower cost rate). 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

[5] Coastal Act Section 30213 has its origins in the 1975 California Coastal Plan (the 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.

Coastal Act.

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 higher cost accommodation project is premised on the adverse impacts that the higher cost accommodations, if approved, have either on the existing stock of lower cost accommodations or the availability of space for lower cost accommodations in appropriate locations in the future. It should be noted, however, that in assessing the appropriateness of proposed mitigations for higher 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 for the lower cost accommodation issue, because the City itself has a higher percentage of lower cost accommodations than other coastal communities. In fact, in 2017 the City analyzed its visitor-serving accommodations and determined that 36% of hotel and motel units in the City had an average daily rate of less than $102.[6] Given that the average percentage of lower cost hotel/motel units in the inland and coastal areas of the State's coastal counties was approximately 25% in 2015, the City was at that time meeting and slightly exceeding the rest of the state in providing lower cost accommodations. The City placed a high importance on protecting this stock of lower cost accommodations, and such provisions relating to the ratio and definition of lower cost rates were codified in the recent LCP update (certified in 2024). Thus, when a project such as the proposed development comes in front of the City, there are clear requirements and definitions for when lower cost accommodation must be provided, the ratio at which lower cost accommodations are to be provided, and the method by which lower 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 lower cost accommodations remains essential, including to ensure consistency with Coastal Act Section 30213.

In this case, the Applicant is proposing to provide 15% of the 10 total hotel rooms (or 1.5 units) at rate of no more than the LCP's lower cost threshold[7] (where 1.5 units translates to 1 full-time and one part-time (0.5, or 6 months of the year) lower cost

[6] And where if campground/RV sites are also considered 'units' for that calculation, the City estimated that 52% of overall 'units' were less than $102 per night.

[7] The LCP sets the lower cost rate as a maximum, where the lower cost rate cannot exceed 75% of the statewide peak season (July/August) average daily double-occupancy room rate at qualifying hotels/motels. The statewide average daily double-occupancy room at hotels/motels with the equivalent of AAA one- and two-diamond ratings for July and August (the peak periods) in 2025 was about $197, where 75% of this rate would be $148 (per Smith Travel Research). Thus, in line with the City's lower cost definition, a lower cost room is not to exceed $148, where that rate is inclusive of all service and other fees (e.g., cleaning, resort, administrative, etc.) but may be exclusive of any government-mandated fees (e.g., sales tax, transient occupancy taxes, etc.).

units). As described above, the LCP requires 25% of the total number of rooms to be provided at a low cost rate. And while this requirement may be reduced when taking into consideration certain factors, including the feasibility of the project and any additional amenities that would be provided to serve as a lower cost option for families (see IP Section 17.14.040.C.3.b), this reduction is not applicable on State tidelands, where the proposed project is located. Again, the LCP is structured so that projects located on State tidelands along the Embarcadero are required to provide at least 25% of their units on site at lower cost rates, including to ensure that this popular visitor-serving district is open and available to all. Thus, the proposed project, at only 15% lower cost, raises consistency issues with the LCP's lower cost accommodations requirements.

That said, a few important things should be noted. First, the legal standard of review for the project is actually not the LCP, but rather the Coastal Act, with the LCP serving as non-binding guidance. While the Commission has historically tried to make sure that CDPs in such circumstances meet all LCP tests in addition to Coastal Act tests, including in recognition that the Commission certified those LCP provisions as the local embodiment of the Coastal Act for the local context, the Commission is under no actual legal obligation to do so.

Second, as indicated above, while the Commission has typically sought 25% lower cost rooms, it has also approved projects with reduced lower cost room percentages depending on the unique factors at hand in any particular case, including for projects along the waterfront in Morro Bay.[8] In other words, the Commission has not dogmatically applied a rote 25% lower cost room requirement, and has often looked for mitigation 'packages' as a means of meeting lower cost requirements, including when such packages provide lower cost benefits that can be seen as commensurate or better than having just lower cost rooms alone. Here, the Applicant is proposing such a package.

Specifically, the Applicant proposes 1.5 lower cost units (or 15% of the total units), and also proposes a host of other free public access improvements. For example, and as discussed in more detail in the "Public Access" section subsequently, the project would provide other substantial no cost public access and recreational benefits and opportunities, including in excess of LCP requirements. For example, the project will include three new public restrooms, a new public park/gathering space with benches, bike racks, and interpretive features, and a new public floating dock. And although it's a requirement of the LCP, the project will also include a new 10-foot-wide section of Harborwalk to seamlessly connect with upcoast segments and will serve as a critical element to enhance public access at a site where such access is not currently available. In regard to the new public floating dock, and notably, the Applicant proposes to activate this new in-water space with a kayak program which will provide at least four free kayak tours annually to lower income and underserved youth and their families within San Luis Obispo County. The intent is to teach marine safety and Morro Bay ecology for those that otherwise may not be able to readily access coastal waters, and provide an

[8] For example, in the Rose's Landing project (CDP 3-17-0581) and Harborwalk Plaza Mixed-Use (CDP 3-19-0011), both of which are located just upcoast of the project site, although both projects preceded the updated LCP policy at issue.

important free public coastal access amenity in the spirit of 'access for all'.

When understood as a holistic package, the public access offerings are significant, particularly given the complexities with constructing all of this over/near coastal waters, are no cost (and not just lower cost, providing even more benefit as free public access amenities), and serve as a meaningful improvement to the largely blocked off to the public and inaccessible status quo. As such, and while other proposed projects without such significant offerings may have different conclusions,[9] the Commission finds this proposal to meet the objectives of Section 30213 of the Coastal Act and the LCP. To ensure that the rooms remain lower cost over time, **Special Conditions 1** and **3(d)** memorialize the Applicant's proposed rate cap subject to increases consistent with changes in the yearly 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 ten hotel rooms be open and available to the general public, that rooms shall not be rented to any individual, family, or group for more than 29 consecutive days and that no individual ownership or long-term occupancy of hotel rooms shall be allowed. To further ensure that the hotel operates as proposed and approved, **Special Condition 3(c)** prohibits the conversion of any of the hotel overnight rooms (including suites) to limited-use overnight visitor accommodation units (e.g., timeshare, fractional ownership, etc.) or to full-time occupancy condominium units or to any other units with use arrangements that differ from the approved project, as well as requires annual monitoring reports to ensure same. These are all conditions the Commission typically requires of proposed hotel projects so as to ensure they remain open and available for transient overnight use over time. Finally, Special Condition **4(g)** codifies the Applicant's kayak tour program, and offers additional specificity for it. Thus, for all of the reasons described above, the project, as proposed and conditioned, can be found consistent with Coastal Act Section 30213.

2. 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*

[9] For example, if a site already has public access infrastructure in place, and/or does not provide over and above what the LCP would independently require, then the Commission would expect at least 25% of the rooms to be lower cost so as to satisfy Section 30213's requirements.

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

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

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

Section 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.*

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

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

In addition, the Coastal Act also requires the provision of transportation methods and/or parking adequate to serve new development, stating:

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 LUP also contains specific prescriptions for walkways, like the Harborwalk, stating:

> ***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

The project is at its core is a visitor-serving revitalization of the site that should help to invigorate this prime visitor-serving location along the popular Embarcadero. The project would convert an underutilized office building into a mix of visitor-serving commercial spaces, including a take-out restaurant, and would include ten new hotel units, including 1.5 units at lower costs that can help serve visitors who may not be able to afford market rates. The project also includes ample public access in the form of the Harborwalk in addition to other free public amenities such as a new public park with benches, restrooms, and bike racks in addition to a kayak program which will provide at least four free kayak tours annually to lower income and underserved youth and their families in the Morro Bay/San Luis Obispo County area. 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 10-foot wide lateral Harborwalk as part of new development,[10] 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 the LCP-required 10-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 would connect to the public dock at Mariner Park, a small City-owned park providing picnic tables, benches, and access to the water via a gangway and a small public dock. Further to the north is Estero Inn which also provides Harborwalk access with three vertical access points. On

[10] See, for example, CDPs 3-24-0149 (801 Embarcadero Hotel and Restaurant), 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).

the downcoast (south) end of the project site, the Harborwalk would curve and connect back to the Embarcadero. This downcoast lease site, where the pocket park is proposed to be located, marks the downcoast end of the primary visitor-serving stretch of development along the Embarcadero, where an existing sidewalk leads to Tidelands Park (located approximately 500 feet south of the project site). The Harborwalk would additionally connect to a new gangway and floating dock that would provide unobstructed access for visitors during the day,[11] and the floating dock would include three new finger slips with a low-profile kayak rental office to be located on one finger slip. The Applicant is also proposing to provide four free kayak tours to approximately 100 participants per year via partnerships with organizations within San Luis Obispo County that provide services and support to low-income and underserved youth and their families. The tours would be provided at no cost to the organizations, and the Applicant would also provide the necessary funds for transportation to bring the participants to and from Morro Bay. This program serves as a unique public access opportunity aimed at bringing community members to the coast who might not otherwise be able to access Morro Bay or attend a kayak tour. Thus, the proposed Harborwalk segment, floating dock, and associated kayak program would provide new visual and physical access to the water, including by filling a critical gap in the Harborwalk[12] where no such access currently exists and thus meeting the requirements for public access prescribed by LUP Policy LU-7.1.

Additionally, and as noted above, the Applicant proposes to construct a public pocket park on the downcoast lease site. The park would include public benches, bicycle racks, and a marine sculpture. The public park constitutes an important public access benefit to better activate the site, which is currently undeveloped, and would signify the downcoast end of the primary visitor-serving stretch of the Embarcadero as this site would mark the southernmost terminus of the Harborwalk. Additionally, the Applicant is proposing to maintain the existing crane located west of the southern corner of the existing office building on what would become the Harborwalk for loading/unloading operations to support the marine construction business. Such operations would require periodic closure of the Harborwalk at this location due to safety concerns, where such closure is estimated to last about two hours at a time;[13] however, alternative access would remain via the vertical accessway to the sidewalk along the Embarcadero through the middle of the site between the two new structures where seven of the hotel units would be located and back to the Harborwalk via the existing vertical accessway located on the north side of the building containing the take-out restaurant and commercial uses, thereby providing for continuous lateral access at all times. This wharf is the only location in Morro Bay that can structurally support this crane which allows for essential marine construction services, including emergency wharf repairs, and thus constitutes an important aspect of a working waterfront, where such use is a priority under the Coastal Act.

[11] A gate or similar structure is not proposed nor allowed to block access to the floating dock (see Special Condition 4).

[12] This access constitutes a portion of the California Coastal Trail.

[13] Although closures will vary with business operations, the Applicant estimates that closures will occur in multiday blocks every two to four weeks, where each closure will span two hours.

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 signage indicating alternative access when the crane is in use), 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 floating dock and restrooms (where both amenities would be open from one-hour before sunrise to one-hour after sunset, at minimum, and where slip rental fees associated with the dock would be allowed but would be required to be as low as possible, and commensurate with standard rates for the area; the restrooms would be free) and the immediate area surrounding the crane which is required to remain open at all times except during active commercial operations and any closure shall be limited to the minimum duration necessary (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. Additionally, **Special Condition 4(g)** requires the Applicant to submit a Kayak Outreach Program as part of the Public Access Management Plan which must detail the general parameters of the program (where a minimum of four tours are to be provided annually, with approximately 100 participants total) and shall list the organizations the Applicant will partner with for implementation of the program. The condition also requires an annual report to be submitted for Executive Director review and approval which shall describe the number of tours provided, including total attendance for each tour, the organizations partnered with, a description of the transportation provided for each event, and opportunities for improvements.

As conditioned, the proposed project is consistent with the public access and recreation policies of the Coastal Act because the project will (1) provide maximum public access and recreational opportunities consistent with the Applicant's private property rights (Section 30210); (2) facilitate the public's right of access to the sea (Section 30211); (3) provide access from the nearest public roadway to the shoreline and along the coast (Section 30212); (4) provide lower cost recreational facilities (i.e., the public park, improved vertical and lateral access, public restaurant, 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).

Finally, as noted above, the Coastal Act generally requires new development to provide adequate transit or parking options to serve the development in question. In the Embarcadero area, the City has relied on a historic parking evaluation 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 legally established historic use and (2) can be met on existing, nearby public street spaces and lots (which is where any parking requirements associated with the existing use would have been met). The Commission has traditionally employed a variant of this type of parking evaluation 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, the proposed project would require 15 parking spaces per the parking requirements of the IP. Based on information provided by the City, the Commission has determined the site's historic uses (two-story office building and three vacation rental units) would require approximately 14 parking spaces per the parking requirements of the IP. Thus, the City conditioned its Conditional Use Permit to require an in-lieu fee of $15,000[14] to mitigate for the difference of one parking space between the site's historic uses and the proposed uses. In general, parking is accommodated via free public street parking along the Embarcadero, and a free public parking lot (25 spaces) located approximately 100 feet from the project site. The City is also in the process of updating their Waterfront Master Plan,[15] which will seek to address circulation and parking concerns along the Embarcadero and thus will benefit this project site by relieving pressures around parking especially during peak periods. In addition, **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 (including bicycle storage, public transit inventive programs for employees, employee shower facilities, etc.).

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 through the provision of the new park space at the downcoast end of the project and activation of existing park space at the upcoast end, and walkway connections for the Harborwalk, and this can be accommodated without on-site parking usurping the space necessary to meet such objectives.

Thus, for this project, and similar to the manner in which the Commission evaluated parking demand for the other recently approved projects along the Embarcadero (see, for example, the Libertine, Rose's Landing and Harborwalk Plaza projects), the Commission finds that the parking demand should not significantly adversely affect

[14] It should be noted that in past cases in Morro Bay, the Commission has found that fees associated with the City's in-lieu parking fee program do not represent the true cost of building off-street parking spaces, which can range from $25,000 to $35,000 per parking space without land costs, up to $100,000 per space when land costs are included. In this case, given the suite of multi-modal public access improvements and the Applicant's amenability to preparing a Transportation Demand Management Plan to reduce vehicular usage (along with the fact that this is only one parking space), the Commission finds parking to be adequately addressed.

[15] The City received a grant for the Waterfront Master Plan update from the Commission's LCP Local Assistance Grant Program.

public parking that currently exists in the area, the difference in historic parking demand in adequately mitigated for via in-lieu fees required by the City's conditions, and thus that parking needs are sufficiently addressed. Thus, as conditioned, the project can be found consistent with the Coastal Act and the City's certified LCP with respect to public recreational access.

3. Public Views

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 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 will convert an existing two-story office building into a first floor commercial space and a take-out restaurant with three hotel units on the second floor. A walkway on the second floor will act as a bridge to connect the three hotel units to the structure containing the other seven hotel units, but the walkway will be open underneath to allow vertical public access to the Harborwalk and provide views of the bay from the Embarcadero. Of the seven hotel units not located in the building containing the commercial and restaurant uses, five of the hotel units would be located on the first floor with the remaining two units located on the second floor, where such units are proposed to be angled and offset such that gaps between each structure would provide better articulation rather than one continuous structure. Views from the proposed Harborwalk would generally be toward Morro Bay (instead of inland toward the Embarcadero). Additionally, the proposed project preserves scenic vistas at the street end through the creation of the pocket park and provides a new opportunity for expansive views of Morro Bay, Morro Rock, and the Pacific Ocean.

The proposed structure fits into the existing developed 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 the proposed design providing both one- and two-story buildings would be in keeping with the surrounding development pattern. The existing office building is 25 feet tall and the proposed second-floor hotel units would each be 22 feet in height when measured from average natural grade, which is consistent with many other developments along the bayside of the Embarcadero. The proposed structure is designed with articulated roof planes and varied wall surfaces (e.g., cedar and shiplap siding, metal roofing) and would incorporate colorful accents on trim and doors to emulate the colorful palette and maritime design currently found on the existing rental units. Although not the standard of review, the proposed project meets the Waterfront Master Plan height limit,[16] bulk and scale requirements, and maximum building coverage, and thus doesn't lead to significant impacts. And while the existing vacation rental units were not found to be historical for the purposes of CEQA, the units are considered culturally significant by some members of the Morro Bay community.[17] Thus, the Applicant has incorporated salvaged materials from the rental units into the proposed commercial space at 431 Embarcadero. As a whole, the incorporation of the existing colorful palette into the project, in addition to the inclusion of other elements such as stained glass and shiplap siding, would help to maintain the existing maritime design and honor the site's unique aesthetic. Thus, the proposed project isn't expected to result in significant impacts to visual resources, including because the project incorporates an articulated roof line with varying building heights and architectural variety to avoid the appearance of a monolithic structure, and thus can be found consistent with Coastal Act Section 30251. See pages 13 through 17 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, new floating dock, and pocket park would 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 design of the restaurant, commercial spaces, hotel units, and public spaces seamlessly blend in with the coastal aesthetic; minimizing lighting and excessive signage; requiring that all utilities on the project site be placed underground; and requiring 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

[16] The Waterfront Master Plan allows for a maximum building height of 17 feet, but that maximum height can be extended to 25 feet if a finding of 'significant public benefit' is made based on the project providing benefits above and beyond what is ordinarily required by the LCP. In this case, the City found that the proposed public amenities (including the new public restrooms, pocket park with benches and bike racks, the new publicly accessible dock, and curb and street enhancements) sufficiently meet this requirement and allow for a maximum height of up to 25 feet.

[17] The City does not currently have an adopted Historic Preservation Ordinance and therefore does not have a system in place to identify and protect locally historic resources.

of Morro Bay as a visitor destination for recreational use, and thus the project can also be found consistent with Section 30253(e) of the Coastal Act.

4. 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 Policies C-7.21 and 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(f)** additionally requires that final project plans include detailed information on all materials and coatings to be used on new piles (which, as explained previously, would either be steel with a marine grade epoxy coating, or polyurethane wrapped timber piles per the Applicant's proposed plans, all of which is typically recommended for in-water use in the past by the Commission in Morro Bay[18] due to their generally low potential for water quality impacts) 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 create noise and vibrations that can disturb the normal foraging, resting, and other behaviors of marine species.[19] **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

The proposed project involves the filling of coastal waters in the form of the Harborwalk extension on the north and south ends of the project site and the new floating dock, resulting in 51 in-water piers. However, this is actually 58 fewer pilings than the status quo, constituting a significant reduction of in-water structures, and under Coastal Act Sections 30233(a)(1) and (3), such fill can be permitted to maintain existing harbor

[18] Specifically, the Commission has approved the use of a similar mix of piling types and materials in other cases, such as for the 801 Embarcadero Restaurant/Hotel CDP (https://documents.coastal.ca.gov/reports/2024/6/Th16b/Th16b-6-2024-report.pdf).

[19] 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, which when taken together aim to reduce pile-driving noise and its associated impacts by requiring an onsite hydro-acoustical monitor and a marine wildlife monitor, along with other pile driving BMPs such as ramp up requirements. **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.

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 an urban pattern. The proposed project will result in 861 square feet of new overwater coverage for the north and south Harborwalk connections[20] and 1,326 additional square feet for the new floating dock.[21] These extensions overwater would exclusively support public access amenities where no such access currently exists and thus constitutes an allowable use for fill of coastal waters under Coastal Act Section 30233(a), including where such expansion will support commercial fishing via the new boat slips. Further, the proposed commercial uses, which include conversion of the existing office space at 495 Embarcadero into a restaurant and retail space, would provide for high priority visitor-serving uses. And while these visitor-serving uses don't directly represent a public access amenity, they will revitalize this southernmost lease site along the Embarcadero and provide for a substantial increase in the visitor-serving experience for the general public compared to what exists today. In fact, the vast majority of new 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 supported by Coastal Act Section 30233(a). And in the past, in order for a project to comply with Section 30233(a)(3) the Commission has looked to the totality of the project for determining whether any particular project is allowable, and applies that understanding here.[22] And, in fact, the Applicant calculated that approximately 68% of the site will constitute public access compared to the existing conditions which provide only 7% publicly accessible space. Thus, the project as a whole can be understood as balancing this expansion of commercial uses and public access by providing over two-thirds of the site for public access, including additional free public amenities such as restrooms, benches, and bike racks, and resulting in the overall elimination of in-water structures (i.e., the net removal of 58 deteriorated pilings). Further, the proposed development is similar to other recently approved CDPs along the Morro Bay waterfront which include a mix of restaurants, commercial spaces, and hotel

[20] The existing wharf on the bayside of the project site is 1,690 square feet, and it would not extend further seaward/west to accommodate the 10-foot Harborwalk, but it would extend to the north and south to accommodate the connection to the upcoast City-owned dock at Mariner Park, resulting in 275 square feet of additional overwater coverage, and for the downcoast pocket park and southern Harborwalk extension, which would result in 576 feet of additional overwater coverage.

[21] The proposed floating dock would total 2,038 square feet, where the existing floating dock is 712 square feet, and thus the proposed floating dock would result in an additional 1,326 square feet of overwater coverage.

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

units, all while providing an increase in public access amenities, such as bayfront Harborwalk segments.[23]

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 above conclusions regarding Coastal Act consistency may 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 coastal vertical and lateral public accessways, as there would be no feasible way of replacing the building and constructing the public accessways over the water without ensuring the structural integrity of said development with supporting pilings. As conditioned and as discussed above, the new pilings and the overwater footprint of the proposed development are not expected to result in significant adverse environmental impacts for which mitigation is required.

Other Marine Resources

With respect to eelgrass, a sidescan survey conducted by the Morro Bay National Estuary Program did not detect eelgrass in the area where the floating dock will be installed and such findings are possibly attributed to deeper water conditions that limit the extent of eelgrass habitat at this location. The Applicant's 2024 eelgrass survey found a narrow patch of eelgrass along the southern side of project site; thus, the Applicant has proposed a curved design of the pocket park/Harborwalk at this location to avoid that area. Furthermore, City Conditional Use Permit CUP24-04 Planning Condition 70 (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) which is incorporated as a condition of this CDP.[24] This requirement is consistent with what the Commission has approved in the past to protect eelgrass from the impacts of in-water and overwater construction along the Morro Bay waterfront,[25] 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 #CUP24-04 Planning Condition 70 are also conditions of this CDP.

[23] See, for example, CDPs 3-24-0149 (801 Embarcadero Hotel and Restaurant), 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).

[24] The CEMP requires that a pre-construction survey be completed within 30 to 60 days prior to issuance of a building permit. A post-construction survey is also required to be completed within 30 days of the completion of construction or as otherwise determined by the National Marine Fisheries Service (NMFS). The CEMP requires avoidance and minimization of impacts to eelgrass to be pursed to the maximum extent feasible (such as designing overwater elements in such a way to avoid existing habitats), where compensatory mitigation for impacts is required and includes comprehensive management plans, in-kind mitigation, mitigation banks and in-lieu fee programs, and out-of-kind mitigation.

[25] See, for example, CDPs 3-24-0149 (801 Embarcadero Hotel and Restaurant), 3-19-0011 (Harborwalk Plaza Mixed-Use Project), and 3-11-031 (Giovanni's).

Thus, overall the project, as conditioned, can be found consistent with the water quality and marine resource requirements of the Coastal Act.

5. Coastal Hazards

Applicable Coastal Act Provisions

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 in-water pilings protect coastal-dependent uses and support public coastal access infrastructure. Thus, this is a rather unique area from a hazards risk and abatement perspective, where the Commission's general lens through which to address such risk is for the Applicant to acknowledge, disclose, and internalize risk in light of potential hazards present both now and in the future. 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. Again, in this case, the site represents a unique case in that this stretch of the Embarcadero is already afforded protection through the rock revetment and pilings, where the harbor is not only a working waterfront but also supports numerous public access amenities. Given these factors, the Commission has typically analyzed these

factors by requiring the Applicant to assume all risks for developing at this location (see **Special Condition 11**).

Thus, the project, as conditioned, can be found consistent with Section 30253 of the Coastal Act.

6. 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 3-25-0777 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 12**). 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

Although a great deal of thought and planning has gone into the proposed project, including as it is affected by CDP terms and conditions, oftentimes minor unforeseen issues present themselves in complicated projects of this nature, particularly as construction gets underway, and it is important that the CDP is nimble enough to account for potential minor changes. Thus, minor adjustments to special condition requirements that do not require a CDP amendment or a new CDP (as determined by the Executive Director) 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 (see **Special Condition 10**).

Indemnification

Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. Thus,

the Commission is authorized to require reimbursement for expenses incurred in defending its actions on the pending CDP applications in the event that the Commission's action is challenged by a party other than the Permittee. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition 13** requiring reimbursement for any costs and attorney fees that the Commission incurs in connection with the defense of any action brought by a party other than the Permittee challenging the approval or issuance of this CDP, or challenging any other aspect of its implementation, including with respect to condition compliance efforts.

7. 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 3 and 32 Categorical Exemption from CEQA under Section 15303 (new construction or conversion of small structures) and Section 15332 (in-fill development projects in urban areas) of the CEQA Guidelines.

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(c)). 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[26]

- CDP File 3-25-0777

B. Appendix B – Staff Contact with Agencies and Groups

- City of Morro Bay

[26] These documents are available for review in the Commission's Central Coast District office.