

**CALIFORNIA COASTAL COMMISSION**

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**NOTE: THIS IS THE FINAL  
 APPROVAL CONTAINING ALL  
 COMMISSION MODIFICATIONS.**

**ADOPTED**

Filed: 12/30/94  
 49th day: WAIVED  
 Staff: SG/DC  
 Staff Report: 07/28/95  
 Hearing Dates: 02/09/95  
 08/09/95  
 Commission Actions:  
 Open & Continue (2/9/95)

**STAFF REPORT: APPEAL  
 SUBSTANTIAL ISSUE and DE NOVO ACTION**

LOCAL GOVERNMENT: San Luis Obispo County  
 DECISION: Approval with conditions  
 APPEAL NUMBER: A-3-SLO-94-051  
 APPLICANT: **DENNIS MORESCO** APPLICANT'S AGENT: Tim Ronda  
 APPELLANTS: Frank D. Powers, Stanley Walter Grabowski, Friends of the Estuary  
 at Morro Bay, Morro Coast Audubon Society (all filed separately)  
 PROJECT LOCATION: 1391 Second Street, Baywood Park, San Luis Obispo County  
 (APNs: 038-181-024 & 038-181-025)  
 PROJECT DESCRIPTION: Renovation and expansion of a shorefront motel from 15 units to 23  
 units (in two phases) along with the demolition of a commercial  
 building currently housing a coffee-shop and the expansion of an  
 on-site parking area; project site is immediately adjacent to the  
 Estuary of Morro Bay and the Baywood Park Pier and Boat Launch  
 in Baywood Park.  
 SUBSTANTIVE FILE DOCUMENTS: San Luis Obispo County Certified Local Coastal  
 Program; San Luis Obispo County permit file (D910182V and  
 D910177D).

**SUMMARY OF STAFF RECOMMENDATION**

Previous Commission Action Note: On February 9, 1995, the Commission opened and continued this item due to the fact that the full San Luis Obispo County Administrative Record pertaining to the proposed project had not yet been delivered and no staff recommendation could be made at that time.

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed. If the Commission so finds, staff further recommends that a public hearing on this project immediately follow with a

recommendation for approval with conditions provided that the project is modified per the recommended findings and conditions. Staff so recommends for the following reasons:

### **Appeal Issues**

The primary issues raised by this appeal regard the project's conformance with the wetland setback, maximum height, parking, and public access policies and standards of the San Luis Obispo County certified Local Coastal Program (LCP).

### **Project Description**

The proposed project involves the two-phased renovation and expansion of the existing Back Bay Inn Motel. The project involves: 1) a structural expansion leading to an increase from 15 to 23 units in two phases; 2) the demolition of an existing 1,000 square foot, on-site building currently housing a coffee-shop; and 3) the expansion of an on-site parking lot from 22 parking spaces to 36 spaces. The subject parcel is directly adjacent to the environmentally sensitive habitat of the Estuary of Morro Bay; one of the most significant wetland areas along the west coast. In addition to the nearby sensitive wetland resource afforded by Morro Bay itself, wetland vegetation exists along the southwestern edge of the subject parcel as well.

### **Project as Proposed Inconsistent with the Certified LCP**

While standards of the certified LCP applicable to the subject site require a 75 foot wetland setback and allow a maximum structural height of 14 feet, San Luis Obispo County in approving the project allowed two variances from LCP standards: 1) a wetland variance to allow for reduction in the required development setback from 75 feet to 27 feet (a 64% decrease); and 2) a height variance to allow an increase from 14 feet up to 22 feet (a 57% increase). The existing structures on site pre-date the LCP and are non-conforming in terms of both requirements (existing height is 22 feet, existing wetland setback is 50 feet). Furthermore, while the county findings are silent on this issue, both the existing paved parking lot as well as the proposed paved parking area are directly adjacent to Morro Bay.

In addition to wetland and height issues, the proposed project also raises coastal access issues due to fact that the subject parcel is uniquely situated adjacent to the public access destinations of both the Morro Bay shoreline and the Baywood Park Pier and Boat Launch; the pier and boat launch can only be accessed by traversing the applicant's property. Over forty years of continuous historical use of the subject site for shoreline access has been documented through legal challenges and documents received by Commission staff (see Exhibit 6). Fortunately, San Luis Obispo County has formalized these recreation areas through Condition 11 of their approval ensuring access to the pier, boat launch, and Morro Bay shoreline (see Exhibit 2-5).

However, in terms of parking issues, the proposed project raises significant issues due to a complicated set of parking requirements and pre-existing easements. In addition to LCP parking requirements pertaining to the motel, as well as issues regarding ongoing public parking uses, the subject parcel provides parking for the adjacent restaurant property through legal parking agreements. These legal documents require 17 parking spaces to be set aside on the subject parcel for restaurant uses over and above any parking requirements for any other on-site uses. While the expanded 36 space parking area approved by San Luis Obispo County sufficiently addresses on-site parking requirements for the expanded motel project, a larger parking facility is necessary to accommodate all parking requirements pertinent to the subject site (i.e., motel, restaurant, coffee-shop, and public parking).

Due to the fact that: 1) there is insufficient parking to accommodate all LCP, legal, and public parking requirements; and 2) the approved wetland setback distance of 27 feet and the approved height of 22 feet cannot be found consistent with LCP wetland and height policies and standards, Commission staff recommends that the Commission find that the appellants' contentions raise a substantial issue.

**SUMMARY OF ISSUES**

	PUBLIC ACCESS		WETLAND/ESHA	VISUAL RESOURCES
	Lateral and Vertical	Parking		
<b>Existing Back Bay Inn Motel</b>	Over 40 years of historical use of the shoreline and public pier at the subject parcel (pier can only be accessed by traversing applicant's parcel); pier built and maintained with public funds, but no formal recognition of public access rights  1975 temporary court order protecting public access to pier, boat launch, and parking area	22 spaces plus about 10 space overflow; 17 spaces are allotted to adjacent restaurant through easement (9 directly in front of public pier); substantial historical use of parking lot	50 foot buffer	22 foot motel height
<b>SLO Approval</b>	Lateral and vertical OTDs	36 spaces	27 foot buffer	22 foot motel height
<b>LCP Standard</b>	Coastal Act sections 30210-30214 and LCP CZLUO Section 23.04.420(b) protect existing public access	38 spaces <i>plus</i> any non-motel, non-restaurant public spaces (none required by SLO County)	75 foot buffer	14 foot motel height
<b>Inconsistencies with LCP</b>	OTDs protect existing lateral and vertical access to shoreline, pier, and boat launch	Not enough parking spaces to satisfy all parking demand on the subject site (LCP, legal, and public access requirements)	Approval is non-conforming; large incursion into required buffer area (64% decrease in required buffer distance)	Approval will lead to loss of public views due to increased height (57% increase in allowable height) in tandem with lessened wetland setback
<b>Alternatives through this approval</b>	Incorporate SLO County OTD condition to maintain existing access to shoreline, pier, and boat launch	Reduced building envelope and some shared parking arrangements can accommodate all uses with a 37-space parking lot	Reduce incursion into buffer maintaining the existing 50 foot setback; the incursion into the 75 foot required buffer can be mitigated through restoration of the wetland edge	Reduced building envelope maintaining 50 foot buffer minimizes any loss of public views by keeping 22 foot height in line with existing trees that are greater than 22 feet in height

**Approvable Alternative**

While the project as approved by San Luis Obispo County cannot be found consistent with the parking, wetland setback, and maximum height policies and standards of the certified LCP, there are feasible on-site alternatives that will make this project consistent with LCP policies and standards. This consistency can be accomplished by:

1. Moving all proposed structural motel development inland of a minimum 50 foot wetland buffer defined by the bayward edge of the existing motel structure.

2. Increasing the parking lot by one space (to 37 spaces) along with providing for shared use of parking spaces to accommodate all LCP and legal requirements and shifting the revised parking lot inland to allow for a minimal wetland buffer.
3. Allowing 22 foot heights only within the building envelope defined by the existing motel structure, proposed phase two expansion, and proposed phase one expansion inland of the 50 foot wetland buffer where screening is provided by trees and existing public view disruption is minimized.
4. Expanding the wetlands restoration plan along the shoreline edge of the property and incorporating the lateral and vertical easements within this restoration area.
5. Formalizing the public's right to park and access the shoreline of Morro Bay, the Baywood Park Pier, and the boat launch adjacent to the subject parcel.

A revised project, taking into account the conditions of approval, can be found consistent with the certified LCP and the access policies of Chapter 3 of the Coastal Act.

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**LIST OF EXHIBITS**

<b>Exhibit A - Standard Conditions.....</b>	<b>A-1</b>
<b>Exhibit 1 - Appeals Received.....</b>	<b>1-1 → 1-46</b>
<b>Exhibit 2 - San Luis Obispo County Findings.....</b>	<b>2-1 → 2-08</b>
<b>Exhibit 3 - Project Plans and Description.....</b>	<b>3-1 → 3-13</b>
<b>Exhibit 4 - Negative Declaration (CEQA).....</b>	<b>4-1 → 4-26</b>
<b>Exhibit 5 - Public Comment .....</b>	<b>5-1 → 5-30</b>
<b>Exhibit 6 - Historic Use Comment.....</b>	<b>6-1 → 6-07</b>

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**I. SUMMARY OF APPELLANTS' CONTENTIONS (See Exhibit 1 for the full text)**

Four separate appeals were filed against this project with the overriding concern being that the project did not conform to the certified San Luis Obispo County Local Coastal Program (LCP) because: 1) wetland setback and structural height requirements are not met; and 2) public coastal access will be negatively impacted in terms of historical uses at the subject site. The wetland variance allowed a reduction in the required setback from the LCP standard of 75 feet to 27 feet. The height variance allowed a increase from the LCP height limit of 14 feet up to 22 feet. The existing structures on site pre-date the LCP policies and are non-conforming in terms of both requirements (existing height is 22 feet, existing wetland setback is 50 feet).

1. Frank D. Powers

A. The project does not conform to the certified LCP because it was granted a variance from the wetland setback policy requiring a 75 foot setback pursuant to Section 23.07.172 of the Coastal Zone Land Use Ordinance component of San Luis Obispo County LCP (CZLUO).

B. The project does not conform to the certified LCP because it was granted a variance from height limit requirements that development in this area cannot exceed 14 feet pursuant to Section 23.04.120 of the CZLUO.

C. The project has the potential to impact both vertical and lateral public access. In addition, the project will result in both a loss of parking currently used by the public and an intensification of parking inadequacies now evident in the area.

2. Stanley Walter Grabowski

A. The San Luis Obispo County Board of Supervisors violated the spirit and intent of both the Coastal Act and the certified San Luis Obispo County LCP by granting variances to allow for both a non-conforming wetland setback and a non-conforming building height. The Board of Supervisors' findings are in error in that citing extraordinary and exceptional circumstances is not sufficient cause to allow for a project that does not conform to the certified LCP. The overall effect of these variances will be: 1) increased intrusion into Morro Bay leading to further endangerment of this wetland resource through both human presence and non-point source run-off; 2) further degradation of the Morro Bay viewshed and loss of public view corridors; and 3) overall incompatibility with the complexion of the surrounding area due to the magnitude and placement of the project.

B. The project does not conform to the certified LCP in terms of coastal access requirements. The project will negatively impact coastal public access in terms of: 1) loss of lateral and vertical access; and 2) intensified parking and traffic pressures.

3. Friends of the Estuary at Morro Bay

A. The project does not conform to the certified LCP because it reduces the setback from the mean high tide line from the required 75 feet to a distance of 27 feet. The effect of this

lessened setback will be to: 1) reduce the view of the bay from Second Street; 2) cause traffic to impinge on bayfront species; and 3) intensify flooding dangers at the subject site.

B. The project does not conform to the certified LCP because the existing height of the motel at 22 feet exceeds the height limit of 16 feet (the planning area limit is actually 14 feet). The continuation of this non-conforming use will lead to further degradation of the Morro Bay viewshed.

#### 4. Morro Coast Audubon Society

A. The project does not conform to the certified LCP because it reduces the wetland setback from the required 75 feet to a distance of 27 feet and allows the continuation of the non-conforming 22 foot height for the structure when the LCP has a 16 foot height limit for this area (the planning area limit is actually 14 feet). The reduction in setback distances will block views of the bay from Second Street and intensify flooding dangers at the subject site.

B. The variances granted for wetland setback and height requirements will set a precedent that LCP requirements are meaningless.

## II. LOCAL GOVERNMENT ACTION

On February 24, 1994, the San Luis Obispo County Planning Commission denied the Moresco application for variance (D910182V) and development plan/coastal development permit (D910177D) for the renovation and expansion of the existing Back Bay Inn Motel from 15 units to 22 units plus manager's unit along with the demolition of an existing office/commercial building and the expansion of an on-site parking area. While the variance allowing for a 27 foot wetland setback as requested by the applicant was approved by the Planning Commission, the request for an increase in allowable maximum heights to 22 feet was denied, as was the development plan for the entire project. In denying this project, the Planning Commission found that the applicant had reasonable use of the property without the granting of a variance for additional height. Furthermore, the Planning Commission found the proposed project to be inconsistent with the certified San Luis Obispo County LCP.

The applicant appealed the Planning Commission's decision to the San Luis Obispo County Board of Supervisors and a series of public hearings were held on May 3, 1994, August 16, 1994, September 20, 1994, and December 13, 1994. On December 13, 1994 the Board of Supervisors reversed the decision of the Planning Commission and conditionally approved the two-phased expansion of the Back Bay Inn Motel. On December 30, 1994, the application was appealed to the Commission by 4 separate appellants.

## III. APPEAL PROCEDURES

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea. Furthermore, developments approved by counties may be appealed if

they are not the designated "principal permitted use" under the certified LCP. Finally developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by a city or county (Coastal Act Section 30603(a)).

For projects not located between the sea and the first public road paralleling the sea, the grounds for an appeal shall be limited to an allegation that the development does not conform to the certified LCP (Coastal Act Section 30603(b)(1)). Because this project is appealed on the basis of its location between the sea and the first public road paralleling the sea, the grounds for an appeal to the Coastal Commission include not only the allegation that the development does not conform to the standards set forth in the certified local coastal program but also the allegation that the development does not conform to the public access policies of the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue," and no Commissioner objects, the substantial issue question will be considered moot, and the Commission will proceed directly to a de novo public hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Coastal Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act. In other words, in regard to public access and recreation questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

**IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE**

The staff recommends that the Commission determine that substantial issue exists with respect to the grounds on which the appeal was filed, pursuant to PRC Section 30603.

MOTION. Staff recommends a NO vote on the following motion:

I move that the Commission determine that Appeal Number A-3-SLO-94-051 raises NO substantial issue with respect to the grounds on which the appeal has been filed.

Staff recommends a NO vote which would result in a finding of substantial issue and bring the project under the jurisdiction of the Commission for hearing and action. A majority of the Commissioners present is required to pass the motion.

**V. STAFF RECOMMENDATION ON COASTAL PERMIT**

The staff recommends that the Commission after public hearing approve a coastal development permit for the project, subject to the suggested conditions attached, and adopt the following resolution:

Approval with Conditions

The Commission hereby grants, subject to the conditions below, a permit for the proposed development as modified, on the grounds that the modified development, as conditioned, will: be in conformity with the certified San Luis Obispo County Local Coastal Program; is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act; and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

**VI. STANDARD CONDITIONS (See Exhibit A)****VII. SPECIAL CONDITIONS**

*Note: See Exhibit 3-5 for a site depiction of applicable conditions.*

**Authorized Project**

1. This Coastal Development Permit authorizes the Phase One construction, renovation, and expansion of the existing Back Bay Inn Motel and the approval of Phase Two. Phase Two construction shall not commence until such time as a community-wide sewer system is developed and in use and only after review of the final plans for the Phase Two construction by the Executive Director. Final review of Phase Two shall be initiated by the permittee by letter to the Executive Director requesting final project review. The final project review will require any and all applicable local approvals for Phase Two construction, including the



information required by Condition 10 of this permit. Subject to the following conditions and criteria, this approval authorizes:

- a) PHASE ONE renovation and expansion of the existing Back Bay Inn Motel resulting in 14 total units and consisting of:
  - i) the renovation and expansion of the existing Back Bay Inn Motel structure; and
  - ii) only that portion of the proposed Phase One that can be constructed inland of the existing 50 foot wetland setback (see Exhibit 3-5).
- b) The demolition of the existing coffee-shop building on the subject parcel and reconstruction of a 400 square foot coffee kiosk/shop at either the northeast corner of the site adjacent to Second Street or near the cypress trees approximately 80 feet west of Second Street (see Exhibit 3-5).
- c) The renovation and expansion of the parking lot to 37 spaces. The revised parking lot shall provide shared-use of 5 parking spaces, 4 public parking spaces (see Condition 3) and 1 coffee-shop space, with motel/restaurant uses taking precedent over these five parking spaces during the evening hours of 6:00 pm to 6:00 am. Revised project plans shall show the parking lot shifted north away from Morro Bay to allow for lateral access (Condition 2) and wetland restoration activities (Condition 5), while still complying with the parking requirements of the certified LCP as well as Condition 3 of this approval.
- d) Approval of PHASE TWO is for structural expansion inland of the existing Back Bay Inn Motel (that expansion that is north and west of the existing structure) and is limited to 9 additional motel units. This approval should not be seen as any type of Commission consent for, or endorsement of, the future sewer system that is required for Phase Two development.

#### **Public Access**

2. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall comply with Condition 11 of the San Luis Obispo County permit (offer of dedication for public access across bayfront of property and to existing public pier and boat launch).

#### **Public Parking**

3. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall record a deed restriction in a form and content acceptable to the Executive Director, stipulating that the landowner (deed holder) acknowledges the public's right to access the parking lot and further providing for the public use of 4 (four) of the on-site parking spaces on the property. The public spaces shall be set aside exclusively for the public from the hours of 10:00 am to 6:00 pm (hours of least use for the motel and restaurant) and shall be available on a shared use basis at other times with on-site uses taking priority during the evening hours. These parking spaces, which shall be clearly signed as to the public's right to use these spaces, shall be located within the on-site parking location that is nearest to the Baywood Park Pier entrance. Furthermore, the deed restriction shall make it clear that in times of low motel occupancy, public use of parking spaces over and beyond the four parking spaces set aside for the public shall be encouraged. This document shall be recorded free of prior liens and any other encumbrances except for tax liens and shall run with the land, binding all successors and assignees of the permittees or landowner.

**Access Signage**

4. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval an access signage plan that will clearly delineate and advertise the public's right to use the Baywood Park Pier, Boat Launch and shoreline accessways (Condition 2) and the on-site public parking spaces (Condition 3 above). The signage plan shall also be in observance of the signage measures as outlined in the Negative Declaration (Exhibit 4) and in conformance with the accessway signing requirements of Section 23.04.420 of the Coastal Zone Land Use Ordinance. Approved signs for pedestrians shall be installed within 30 days of acceptance of the offer to dedicate access provided for by Condition 11 of the County permit (Variance D910182V and Development Plan/Coastal Development Permit D910177D as shown in Exhibit 2). Signs which identify public parking shall be installed prior to occupancy of the remodeled motel and coffee-shop.

**Wetland Restoration**

5. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, a revised wetland restoration plan, that extends the wetlands restoration area along the entire edge of the property adjacent to Morro Bay, shall be submitted for review and approval by the Executive Director. This revised restoration plan shall provide for wetland restoration and revegetation within the area measured from the mean high tide line to a line 15 (fifteen) feet inland from the inland extent of wetland vegetation, or, where there is no existing wetland vegetation, then 15 (fifteen) feet inland from the bayfront property line (as shown in Exhibit 3-5). The restoration shall take into account the mitigation measures as defined in the Negative Declaration and the existing Wetland Restoration Plan incorporated as an addendum to the Negative Declaration (prepared by Linda Allen March 30, 1992)(see Exhibit 4). This wetland restoration area will incorporate the shoreline access component of the project (Condition 2) requiring the placement of boardwalks or similar walkways that connect from Second Street laterally through to First Street and including components that connect to the Baywood Park Pier and Boat Launch area (see Exhibit 3-5). The boat launch area, providing access over the 1-2 foot high bluff edge to the Morro Bay tidelands, shall be relocated to a location immediately adjacent to the westerly edge of the public pier to reduce impacts to wetland vegetation.

**Wetland Buffer**

6. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall record a deed restriction in a form and content acceptable to the Executive Director, that allows only non-structural development, excepting public access boardwalks and the revised parking lot, between the inland edge of the wetland restoration area (Condition 5) and the motel development approved by this permit to maintain the required 50 foot setback from the wetland. This document shall be recorded free of prior liens and any other encumbrances except for tax liens and shall run with the land, binding all successors and assignees of the permittees or landowner.

**Demolition**

7. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and approval: an outline for the procedure and timing of the demolition phase and construction operations: staging area location and operation (e.g., concrete and equipment washdown area); observance of the construction mitigation measures outlined in the Negative Declaration (Exhibit 4); and observance of any

mitigation and enhancement measures recommended by the California Department of Fish and Game as approved by the Executive Director.

**Final Plans**

8. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and approval:
- a) revised elevations and phasing scheme as outlined in Condition 1 of this approval;
  - b) final site plans; and
  - c) final landscaping plans which address the mitigation measures outlined in the Negative Declaration and the Wetlands Restoration Plan as supplemented by Condition 5 of this approval.

**Water and Sewer (Phase One)**

9. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and approval:
- a) evidence that there is suitable site capacity with regards to the on-site septic system for all units subject to Phase One of this approval meeting all septic requirements of the Regional Water Quality Control Board and the Environmental Health Department; and
  - b) will serve letters stating that water is available for all on-site uses subject to Phase One of this approval.

**Water and Sewer (Phase Two)**

10. UPON INITIATING REVIEW OF PHASE TWO, the permittee shall submit to the Executive Director for review and approval:
- a) evidence that all on-site uses will be connected to the sewer system with the assurance that sufficient sewer capacity exists and meeting all requirements of the Regional Water Quality Control Board and the Environmental Health Department; and
  - b) will serve letters stating that water is available for all uses pertinent to Phase Two of this approval.

**Grading, Excavation, and Drainage**

11. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the permittee shall submit to the Executive Director for review and approval:
- a) final grading and excavation plans;
  - b) engineered structural plans for all building foundation work; and
  - c) final drainage plans including provisions of sediment, grease, and oil-traps in the parking lot and along Second Street or similar measures to eliminate non-point source pollutants (surface contaminants) from entering the Morro Bay Estuary; plans shall also identify permanent measures for maintenance and operation of all non-point source controls.

**Tree Maintenance**

12. The permittee shall maintain the trees and vegetation on the applicant's property and property line along both the First Street right-of-way and between the motel structure and Second Street so as to ensure adequate screening of the motel from public viewing areas.

## VIII. RECOMMENDED FINDINGS AND DECLARATIONS

### 1. PROJECT DESCRIPTION

The proposed project involves a two-phased renovation and expansion of the existing Back Bay Inn Motel from 15 units to 22 units plus one manager's unit (23 total units) and the demolition of an existing, on-site office/commercial building currently housing a coffee-shop. Phase one of the project consists of the demolition of the commercial building along with the remodeling of the existing motel structure resulting in 13 units and a managers unit (14 units) while phase two involves the expansion of the motel via the development of 9 additional units. In addition, the project includes the expansion of an on-site parking lot from 22 parking spaces to 36 spaces. The proposed project requires two variances from LCP standards: one, a wetland variance to allow for reduction in the required development setback from 75 feet to 27 feet; and two, a height variance to allow an increase from 14 feet up to 22 feet. The existing structures on site pre-date the LCP policies and are non-conforming in terms of both requirements (existing height is 22 feet, existing wetland setback for the motel structure is 50 feet). In addition, the existing parking lot immediately adjacent to Morro Bay is also within the wetland buffer area. While the existing parking lot edge is proposed to be shifted inland (by about 7 feet), the new expanded parking lot will still be mostly within the required wetland setback distance as well.

According to the conditions of San Luis Obispo County's approval (Exhibit 2), a wetlands protection plan is required for any wetland resources found on-site while an off-site wetlands restoration plan is required for the square footage of incursion into the wetland buffer zone. In addition, the applicant is required to delineate an archaeological site on the subject property as environmentally sensitive area; within this delineation, no structural development other than landscaping or walkways is permitted. Furthermore, conditions of approval include lateral and vertical offers to dedicate public coastal access as well as a visual access easement and an offer of dedication for the applicant's right of way along (unimproved) First Street for purposes of a public park. Moreover, primarily due to community concerns, the county also required the applicant to include a coffee-shop facility within the remodeled structure to make up for the coffee-shop proposed for demolition.

### 2. SITE LOCATION AND DESCRIPTION

The project site is located in the unincorporated community of Baywood Park directly adjacent to the shoreline of Morro Bay and it is bordered by First Street to the west, Second Street to the east and Morro Bay to the south. While Second Street connects through to El Morro Avenue along the edge of the bay at the southeastern corner of the subject parcel, unimproved First Street dead-ends at the bay itself. The entire southern edge of the parcel is defined by the environmentally sensitive habitat of Morro Bay. Morro Bay is one of the most significant wetland areas in all of California. The value of this area has been recognized officially as far back as 1966 when the California State Senate adopted Senate Resolution (SR) 177 which noted "the remarkable fish, wildlife, recreational, and esthetic resources" of the Morro Bay Estuary and declared Morro Bay to be of "utmost importance to the people of California." In July of 1995, the federal Environmental Protection Agency included Morro Bay and its watershed in the National Estuary Program, only the third such designated area in California (San Francisco Estuary and Santa Monica Bay being the other two). According to the San Luis Obispo County LCP:

*Morro Bay is the most important wetland on the California central coast. It is a shallow lagoon which drains Chorro and Los Osos Creeks, and supports several biotic communities including coastal salt marsh, tidal mudflats, and coastal scrub. The salt marsh is extensive, covering 472 acres. The dominant plant species is pickleweed. A total of 66 species breed in the bay and several of these are commercially important. The tidal mudflats, cover 1,452 acres. Morro Bay is one of the most significant migratory stops on the Pacific Flyway. Up to 25,000 waterfowl have been counted on one peak day and 89 species of water-associated birds have been observed here. The rare black rail is believed to be breeding there and the California clapper rail has been seen here, though not in recent years. Four marine mammals use the bay occasionally, including the protected southern sea otter (DFG 1974).*

The LCP description for Morro Bay is just as valid today as the original Department of Fish and Game report in 1974. Biologically Morro Bay remains the most extensive and valuable estuarine/intertidal ecosystem between Santa Barbara (100 miles south) and Elkhorn Slough (150 miles north). At high tides there are approximately 2,300 acres of open water, while at low tide approximately 1,450 of these are exposed mudflats. Morro Bay can be described as a sensitive wildlife area, home to an estimated 100 species of birds that rely upon the resource of the bay, among them such sensitive species as the peregrine falcon, snowy plover, black rail, and the canyon wren. Furthermore, Morro Bay watershed is home to 28 plant species considered rare by government agencies and other organizations. The bay supports many commercial fisheries and is a primary focus of tourism along California's Central Coast (from Morro Bay State of the Bay Conference Proceedings (1992)).

In addition to the nearby sensitive resource afforded by Morro Bay itself, there exists wetland vegetation on the subject parcel. The vegetated wetland area consists of salt water marsh vegetation and is found on the southwestern corner of the subject site running approximately 100 linear feet along Morro Bay (Exhibit 3-4). According to the botanical report prepared for the proposed project pursuant to CEQA requirements, seepweed was identified on the First Street right-of-way (immediately adjacent to the subject property) which contributed to this aggregate of salt marsh vegetation on site. Seepweed or Sea-blite (*suaeda californica*) is one of the 28 rare species identified in the preceding paragraph; *suaeda californica* is presently known to occur only in the Morro Bay watershed and has been listed as endangered by the US Fish and Wildlife Service. This wetland vegetation is similar in character to other wetland areas adjacent to Morro Bay.

LCP Note: The San Luis Obispo County LCP is organized geographically by planning areas (North Coast, Estero, San Luis Bay, and South County). As detailed in the certified LCP, planning area standards take precedence over general LCP policies and ordinance sections. The Back Bay Inn Motel expansion is located within the South Bay area (a sub-region of the overall Estero planning area) and as such is subject to the planning area standards and provisions for the South Bay component of the Estero planning area. The precedential nature of the specific planning area standards is important in terms of the project currently before the Commission due to the fact that it is these more precise wetland setback and height requirements that are the crux of this appeal.