

## CALIFORNIA COASTAL COMMISSION

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Staff: D. Lilly-SD  
Staff Report: November 20, 2008  
Hearing Date: December 10-12, 2008

## REVISED FINDINGS

LOCAL GOVERNMENT: City of Imperial Beach

DECISION: Approval with Conditions

APPEAL NO.: A-6-IMB-07-131

APPLICANT: Pacifica Companies and Pacifica Hosts, Inc.

PROJECT DESCRIPTION: Demolition of an existing 38-unit hotel and construction of a new 4-story, 40 ft.-high, 129,845 sq.ft., 78-unit condominium-ownership hotel, including a restaurant, pool, conference facilities, and a 111 space underground parking garage, on a 1.39 acre beachfront lot, removal of an existing perched beach on the seaward side of the hotel, relocation and construction of a vertical seawall 35 ft. inland of its existing location, and street improvements on Date Avenue.

PROJECT LOCATION: 800 Seacoast Drive, Imperial Beach (San Diego County)  
APN 625-262-01

APPELLANTS: Coastal Commissioners Sara Wan and Mary Shallenberger

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### STAFF NOTES:

Staff recommends the Commission adopt the following revised findings in support of the Commission's action on April 10, 2008. In its action, the Commission approved the permit with the deletion of recommended Special Conditions that 1) limited the number of condo-hotel units in the development to 25% of the total 78 rooms (i.e., 20 rooms), and 2) required payment of a fee of \$30,000 per room for 10% (8 units) of the total number of overnight visitor accommodations in the approved project in lieu of providing lower cost accommodations on-site. In addition, the Commission required that the applicant agree that Pacifica Hosts Inc. (a business entity with significant assets that will manage the hotel) guarantee that the Seacoast Inn operates as a condo hotel or a hotel regardless of who manages the property. Pacific Hosts has also become a co-applicant to the permit as it will then be responsible, along with Pacifica Companies, for ensuring compliance with all of the special conditions of the permit.

Date of Commission Action: April 10, 2008

Commissioners on Prevailing Side: Achadjian, Blank, Burke, Clark, Hueso, Secord, Neely, Potter, Reilly, Shallenberger, Chairman Kruer.

#### **SUMMARY OF STAFF RECOMMENDATION:**

~~Staff recommends the Commission approve the de novo permit with several special conditions. The primary issues raised by the subject development relate to the LCP and Coastal Act requirements for public access and lower cost visitor serving facilities. As proposed, the project would demolish 38 existing, more affordable traditional hotel units, and replace them with 78 condo hotel units—units that will be less available to the general public than traditional hotel units because each unit will be privately owned and subject to owner occupancy. Ideally, development on prime visitor serving oceanfront lots would be high priority visitor serving uses, such as traditional hotel rooms, restaurants, or public recreational facilities, rather than low priority condo hotels. But the 78 condo hotel rooms, as conditioned herein, will provide some additional overnight accommodations for the public—just not as many as if the site were developed with a traditional hotel with the same number of hotel units. Therefore, staff is recommending that the condo hotel financing portion of the project be limited to 25% of the proposed units (i.e., 20 out of the 78 units).~~

~~In addition, while the applicant has indicated that the room rates at the new condo hotel are expected to be moderately priced (\$135-\$140), similar to the rates at the existing hotel, the Coastal Act and the certified LCP promote the development of lower cost visitor and recreational facilities. New overnight accommodations in prime visitor serving locations should serve people with a range of incomes, either directly on site or indirectly through contribution of a fee towards the construction of lower cost overnight accommodations. In a past action in the City of Oceanside LCPA #1-07, the Commission has required payment of a fee of \$30,000 for 50% of the number of new high cost units being developed when the proposal also involves the loss of existing hotel/motel units. This provision would mitigate the loss of oceanfront land that could otherwise have been available to develop with lower cost facilities, and was intended to encourage rehabilitation of existing hotel/motel inventory.~~

~~Since that action, staff has continued to work on both a methodology to define “lower cost” and to refine the policy questions raised by such proposals. Because the proposed project is not proposing to provide any on-site affordable priced units, but is providing moderately priced units, in this case, staff is recommending a fee of \$30,000 be applied to 10% of the proposed units, in this case, 8 units, for a total fee of \$240,000, to be used for the construction of lower cost visitor serving facilities in the area.~~

~~In addition, the permit is conditioned to include operational limitations on the condo hotel portion of the project, documentation of the lateral access grant, a waiver of liability for work performed on the shoreline, and submission of final landscaping plans that use only non-invasive species.~~

Standard of Review: Certified Imperial Beach LCP and the public access and recreation policies of the Coastal Act.

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SUBSTANTIVE FILE DOCUMENTS: Appeal Applications by Commissioners Wan and Shallenberger dated 12/28/07; Imperial Beach Resolution #2007-6559; Imperial Beach City Council Ordinances No. 2007-1061 with Development Agreement; Seacoast Inn Specific Plan; Seacoast Inn EIR; Certified City of Imperial Beach Local Coastal Program (LCP).

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~~I. PRELIMINARY STAFF RECOMMENDATION:~~

~~The staff recommends the Commission adopt the following resolution:~~

~~MOTION: *I move that the Commission approve Coastal Development Permit No. A-6-IMB-07-131 pursuant to the staff recommendation.*~~

**STAFF RECOMMENDATION OF APPROVAL:**

~~Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.~~

**RESOLUTION TO APPROVE THE PERMIT:**

~~The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified LCP and the public access 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.~~

**I. MOTION: *I move that the Commission adopt the revised findings in support of the Commission's action on April 10, 2008 concerning approval of Coastal Development Permit No. A-6-IMB-07-131***

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the revised findings hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the

Commission's action are eligible to vote on the revised findings. The Commissioners eligible to vote are:

Commissioners Achadjian, Blank, Burke, Clark, Hueso, Secord, Neely, Potter, Reilly, Shallenberger, Chairman Kruer.

## **RESOLUTION TO ADOPT REVISED FINDINGS:**

The Commission hereby adopts the findings set forth below for ***Coastal Development Permit No. A-6-IMB-07-131*** on the ground that the findings support the Commission's decision made on April 10, 2008 and accurately reflects the reasons for it.

### II. Standard Conditions.

See attached page.

### III. Special Conditions.

The permit is subject to the following special conditions:

~~1. Condominium Hotel Limitations. Up to 25% of the total 78 rooms (i.e., 20 rooms) in the approved project may be financed/operate as condo hotel units.~~

~~2. Lower Cost Overnight Accommodations Mitigation Fee. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall provide evidence, in a form and content acceptable to the Executive Director, that a fee of \$30,000 per room for 10% (8 units) of the total number of overnight visitor accommodations (78 units) in the approved project has been paid in lieu of providing lower cost accommodations on-site.~~

~~The required in lieu fee of \$240,000 shall be deposited into an interest bearing account, to be established and managed by one of the following entities approved by the Executive Director of the Coastal Commission: City of Imperial Beach, Hostelling International, California Coastal Conservancy, California Department of Parks and Recreation or a similar entity. The purpose of the account shall be to establish lower cost overnight visitor accommodations, such as new hostel beds, tent campsites, cabins or campground units, at appropriate locations within the coastal area of South San Diego County. The entire fee and accrued interest shall be used for the above stated purpose, in consultation with the Executive Director, within ten years of the fee being deposited into the account. All development funded by this account will require review and approval by the Executive Director of the Coastal Commission and a coastal development permit if in the coastal zone. Any portion of the fee that remains after ten years shall be donated to one or more of the State Park units or non-profit entities providing lower cost visitor amenities in a Southern California coastal zone jurisdiction or other organization~~

~~acceptable to the Executive Director. Alternative mitigation may include completion of a specific project that is roughly equivalent in cost to the amount of the in-lieu fee and makes a substantial contribution to the availability of lower cost overnight visitor accommodations in Imperial Beach and/or the South San Diego County coastal area, subject to the review and written approval of the Executive Director.~~

**~~PRIOR TO EXPENDITURE OF ANY FUNDS CONTAINED IN THIS~~**

**~~ACCOUNT~~**, ~~the Executive Director shall review and approve, in writing, the proposed use of the funds as being consistent with the intent and purpose of this condition. In addition, the entity accepting the in-lieu fee funds required by this condition shall enter into a memorandum of understanding (MOU) with the Commission, which shall include, but not be limited to, the following: (1) a description of how the funds will be used to create or enhance lower cost accommodations in the Coastal Zone; (2) a requirement that the entity accepting the funds must preserve these newly created lower cost accommodations in perpetuity; and (3) an agreement that the entity accepting the funds will obtain all necessary regulatory permits and approvals, including but not limited to, a coastal development permit for development of the lower cost accommodations required by this condition.~~

1. Pacifica Hosts Inc. will ensure that the Seacoast Inn operates as a condo hotel or a hotel regardless of who manages the property and guarantees the performance of the management company in accordance with the herein required conditions.

3 2. Condominium Hotel Operations. The approved development is subject to the following conditions/restrictions:

~~A maximum of 25% of the total number of guestrooms/units in the total project as a whole may be subdivided into condominiums and sold for individual ownership.~~

~~b a.~~ The hotel owner/operator shall retain control through ownership, lease or easements of all structures, recreational amenities, meeting space, restaurants, “back of house” and other non-guest unit facilities.

~~c b.~~ The Condominium-Hotel facility shall have an on-site hotel operator to manage rental/booking of all guestrooms/units. Whenever any individually owned hotel unit is not occupied by its owner(s), that unit shall be available for hotel rental by the general public on the same basis as a traditional hotel room.

~~d c.~~ The hotel operator shall market and advertise all rooms to the general public. Unit owners may also independently market and advertise their units but all booking of reservations shall be made by and through the hotel operator.

~~e d.~~ The hotel operator shall manage all guestrooms/units as part of the hotel inventory, which management will include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing

units for use by guests/owners, a service for which the hotel operator may charge the unit owner a reasonable fee.

~~f~~ e. If the hotel operator is not serving as the rental agent for an individually owned unit, then the hotel operator shall nevertheless have the right, working through the individually owned units' owners or their designated agents, to book any unoccupied room to fulfill demand, at a rate similar to comparable accommodations in the hotel. The owner or an owner's rental agent may not withhold units from use. In all circumstances, the hotel operator shall have full access to the condominiums' reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder.

~~g~~ f. All guestrooms/unit keys shall be electronic and created by the hotel operator upon each new occupancy to control the use of the individually owned units.

~~h~~ g. Unit owners shall not discourage rental of their unit or create disincentives meant to discourage rental of their unit.

~~i~~ h. All individually owned hotel units shall be rented at a rate similar to that charged by the hotel operator for the traditional hotel rooms of a similar class or amenity level.

~~j~~ i. The hotel operator shall maintain records of usage by owners and renters and rates charged for all units, and shall be responsible for reporting Transient Occupancy Taxes based on records of use for all units, a service for which the hotel operator may charge the unit owner a reasonable fee.

~~k~~ j. Each individually owned hotel unit shall be used by its owner(s) (no matter how many owners there are) for a maximum of ninety (90) days in any calendar year, with no stay exceeding twenty-five (25) consecutive days and which stay must be immediately preceded by a fifty (50) day period during which the guest room/unit interest is not reserved or used by an Owner-Investor.

~~l~~ k. The use period limitations identified in (k) above, shall be unaffected by multiple owners or the sale of a unit to a new owner during the calendar year, meaning that all such owners of any given unit shall be collectively subject to the use restriction as if they were a single, continuous owner.

~~m~~ l. No portion of the Condominium-Hotel may be converted to full-time occupancy condominium or any other type of Limited Use Overnight Visitor Accommodations or other project that differs from the approved Condominium-Hotel

~~n~~ m. The applicant shall execute and record a deed restriction(s), subject to the review and approval of the Executive Director, which prohibits the conversion of those traditional hotel units/rooms to any other type of ownership (e.g. limited use

overnight visitor accommodations) without an approved Coastal Development Permit or amendment. The deed restriction shall run with the land, shall be executed and consented to by the existing landowner(s) of the affected property(ies) and shall be binding on the landowner(s) and on all successors and assigns of the landowner(s) including without limitation any future lien holders. This deed restriction(s) shall not be removed or changed without approval of an amendment to the underlying coastal development permit and approval of an amendment to the permit by the Coastal Commission, unless it is determined by the Executive Director that such an amendment is not legally required.

o n. The hotel owner/operator shall be required to submit, **PRIOR TO ISSUANCE OF A COASTAL DEVELOPMENT PERMIT**, for the review and approval of the Executive Director, a Declaration of Restrictions or CC & R's (Covenants, Conditions & Restrictions) which shall include:

1. All the specific restrictions listed in a through m above;
2. A statement that provisions of the CC & R's/Declaration of Restrictions that reflect the requirements of a through m above cannot be changed without approval of a coastal development permit amendment, unless it is determined by the Executive Director that an amendment is not legally required. If there is a section of the CC & R's/Declaration of Restrictions related to amendments, and the statement provided pursuant to this paragraph is not in that section, then the section on amendments shall cross-reference this statement and clearly indicate that it controls over any contradictory statements in the section of the Declaration/CC & R's on amendments.

p o. The CC & R's or Declaration of Restrictions described above shall be recorded against all individual property titles simultaneously with the recordation of the condominium airspace map.

q p. The hotel owner/operator or any successor-in-interest shall maintain the legal ability to ensure compliance with the terms and conditions stated above at all times in perpetuity and shall be responsible in all respects for ensuring that all parties subject to these restrictions comply with the restrictions. Each owner of an individual guest room/condominium unit is jointly and severally liable with the hotel owner-operator for any and all violations of the terms and conditions imposed by the special conditions of the coastal development permit with respect to the use of that owner's unit. Violations of the coastal development permit can result in penalties pursuant to Public Resources Code Section 30820.

r q. All documents related to the marketing and sale of the condominium interests, including marketing materials, sales contracts, deeds, CC&Rs and similar documents, shall notify buyers of the following:

1. Each owner of any individual hotel unit is jointly and severally liable with the hotel owner-operator for any violations of the terms and conditions of the coastal development permit with respect to the use of that owner's unit; and
2. Each guest room/unit interest shall be restricted so as to limit its reservation, use, or occupancy by an Owner-Investor to a maximum of ninety (90) days in any calendar year, with no stay exceeding twenty-five (25) consecutive days and which stay must be immediately preceded by a fifty (50) day period during which the guest room/unit interest is not reserved or used by an Owner-Investor.

s. r. The hotel owner/operator and any successor-in-interest hotel owner and operator, and each future individual unit owner shall obtain, prior to sale of individual units, a written acknowledgement from the buyer that occupancy by the owner is limited to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, that the unit must be available for rental by the hotel operator to the general public when not occupied by the owner, and that there are further restrictions on use and occupancy in the coastal development permit and the CC & R's or Declaration of Restrictions.

t. s. The hotel owner/operator and any successor-in-interest hotel owner and operator shall monitor and record hotel occupancy and use by the general public and the owners of individual hotel units throughout each year. The monitoring and record keeping shall include specific accounting of owner usage for each individual guestroom/unit. The records shall be sufficient to demonstrate compliance with the restrictions set forth in a through m above. The hotel owner-operator shall also maintain documentation of rates paid for hotel occupancy and of advertising and marketing efforts. All such records shall be maintained for ten years and shall be made available to the City and the Executive Director of the Coastal Commission upon request and to the auditor required by section v below. Within 30 days of commencing hotel operations, the hotel owner-operator shall submit notice to the Executive Director of commencement of hotel operations.

u. t. Within 90 days of the end of the first calendar year of hotel operations, and within 90 days of the end of each succeeding calendar year, the hotel owner-operator shall retain an independent auditing company, approved by the Executive Director, to perform an audit to evaluate compliance with special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of the Condominium-Hotel. The audit shall evaluate compliance by the hotel owner/operator and owners of individual hotel units during the prior one-year period. The hotel owner/operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Executive Director upon request, within six months after the conclusion of each one year period of hotel operations. After the initial five calendar years, the one-year audit period may be extended to two years upon written approval of the Executive



Director. The Executive Director may grant such approval if each of the previous audits revealed compliance with all restrictions imposed above.

¶ 4. If the hotel owner and the hotel operator at any point become separate entities, the hotel owner and the hotel operator shall be jointly and severally responsible for ensuring compliance with the requirements identified above. If the hotel owner and hotel operator become separate entities, they shall be jointly and severally liable for violations of the terms and conditions (restrictions) identified above.

4 3. Lateral Access. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, and in order to implement the applicant's proposal, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, dedicating in fee a lateral public accessway to the City of Imperial Beach. Such accessway shall be located from the approved seawall to the Mean High Tide Line as generally depicted in Exhibit A attached to this report. The dedication shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect said interest. The recorded document shall include a graphic depiction and legal description of both the applicant's entire property and the area being dedicated to the City. The recorded document shall also reflect that development in the area dedicated to the City is restricted as set forth in the Project Description proposed by the applicant for public beach use.

5 4. Landscape Plans: By acceptance of this permit, the applicant agrees to the following:

- a. Landscaping on the site shall emphasize the use of drought-tolerant native species. Use of drought-tolerant, non-invasive ornamental species and lawn area is allowed as a small component. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized.
- b. The planting plan shall be implemented within 60 days of completion of construction.
- c. All required plantings shall be maintained in good growing condition, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape screening requirements.
- d. Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director.

No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6 5. Other Special Conditions from City of Imperial Beach. Except as provided by this coastal development permit, this permit has no effect on conditions imposed by the City of Imperial Beach pursuant to an authority other than the Coastal Act. The development agreement between the applicant and the City continues to be under the authority of the City of Imperial Beach.

7 6. Waiver of Liability. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, overtopping and flooding; (ii) to assume the risks to the applicant 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; and (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.

8 7. Timing of Construction. No construction shall take place on sandy beach area between Memorial Day weekend and Labor Day of any year. Access corridors and staging areas shall be located in a manner that have the least impact on public access via the maintenance of existing public parking areas and traffic flow on coastal access routes (no street closures or use of public parking as staging areas).

9 8. Deed Restriction. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant 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 permit, 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 permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. 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 permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## V. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description/History. The proposed project would demolish an existing 38-unit hotel and construct a new 4-story, 40-foot high, 129,845 sq.ft., 78-unit condominium-ownership hotel, including a restaurant, pool, conference facilities, and 111 space underground parking garage, on a 1.39 acre beachfront lot on the west side of Seacoast Drive in the City of Imperial Beach. All units would include kitchens.

All 78 units would be condo-hotel units; that is, each room would be owned by individual investors. Owners' stays would be limited to 90 days per calendar year with a maximum of 25 days of use during any immediately preceding 50 day time period. The facility would operate on the surface as a hotel, including maid service, room service, centralized room reservations with all rooms rented out in a "mandatory pool," and marketed by Pacifica Host Hotels and their in-house reservation center. The owner-operator of the project would maintain the legal ability and responsibility to ensure compliance with all of the conditions of the City's permit regarding construction and operation of the development.

The project also includes removal of an existing seawall and perched beach currently located on sandy beach. These encroachments extend onto the beach considerably further than development on either side of the Inn, into the paper street "Ocean Lane" (Boulevard). The City has indicated that their best efforts at researching the history of the seawall and perched beach have determined that the improvements are on privately owned land. However, the EIR for the project describes the area as a former public street easement, once owned by the City and intended for the location of Ocean Boulevard but now vacated, which the Seacoast Inn development has encroached into over the years for the recreational use of hotel guests. In any case, it is believed that the encroachments predate the Coastal Act. As proposed, the seawall would be reconstructed 35 feet inland of the existing seawall, consistent with the stringline of shoreline protection to the north of the site. The beach area seaward of the new wall would be dedicated to the City for public beach access. Sand taken from the perched beach and excavated from the subject site will be tested for suitability for beach replenishment and deposited on the beach if compatible.

Other aspects of the project include street end improvements at the western terminus of Date Avenue, adjacent to the south side of the subject site, consisting of enhanced paving, landscaping, and parking.

Overall, the physical design of the project is consistent with the Coastal Act and will have a positive impact on public views, shoreline sand supply, parking, and biological productivity. Thus, this staff report focuses on the issues where the project is not in compliance with the Coastal Act--public access and recreation related to condo-hotels and affordable overnight accommodations.

The standard of review is the certified City of Imperial Beach Local Coastal Program and the public access and recreation policies of the Coastal Act.

2. Permitted Use. The City's zoning code defines "hotel" as follows:

19.04.410. Hotel.

"Hotel" means any establishment offering commercial transient lodging accommodation on a less than monthly basis **to the general public** [emphasis added], including any incidental services such as eating, drinking, meeting, banquet, entertainment, or recreational services intended primarily for the convenience of guests. Hotels shall consist of various types which are further defined as follows:

H-1: A site area of a minimum square footage of thirty-five thousand square feet, at least thirty guest rooms, facilities for conference, meeting or public use and a full service restaurant on site.

H-2: A "Motel" which is an establishment providing guest rooms on a less than monthly basis, with most rooms gaining access from an exterior walkway.

H-3: A lot, parcel or segment of real property dedicated to "timeshare units" as defined in Section 19.04.756 of this Code.

H-4: A "bed and breakfast" lodging place containing no more than six guest rooms and one kitchen.

## **Chapter 19.27. C-2 SEACOAST COMMERCIAL ZONE**

19.27.010. Purpose of zone.

The purpose of the C-2 zone is to provide land to meet the demand for goods and services required primarily by the tourist population, as well as local residents who use the beach area. It is intended that the dominant type of commercial activity in the C-2 zone will be visitor-serving retail such as specialty stores, surf shops, restaurant, hotels and motels. The development standards of the C-2 zone encourage pedestrian activity through the design and location of building frontages and parking provisions.

19.27.020. Permitted uses.

A. The following commercial uses shall be permitted subject to subsections B, C, and D of this section as appropriate:

1. Beach equipment rental;
2. Bed and breakfast;
3. Bookstores;
4. Boutiques;
5. Financial institutions:
  - a. On first floor, subject to subsection B of this section,
  - b. All floors when located on Palm Avenue, Silver Strand Boulevard and/or Third Street.
6. Fishing supply;

7. Hotels and motels;
  8. Personal services;
  9. Professional offices:
    - a. On first floor, subject to subsection B of this section,
    - b. All floors when located on a Palm Avenue, Silver Strand Boulevard and/or Third Street.
  10. Public parks;
  11. Resident inns;
  12. Real estate offices;
  13. Private postal services;
  14. Restaurants;
  15. Retail shops;
  16. Specialty shops;
  17. Surf shops;
  18. Any other retail business or service establishment which the City Council finds to be consistent with the purposes of this chapter and which will not impair the present or potential use of adjacent properties, excluding those listed under subsection B of this section;
  19. Residential dwelling units may be permitted above the first floor at a maximum density of one unit per every one thousand five hundred square feet of lot area, subject to approval of a CUP and subject to subsections B and C of this section as appropriate;
  20. Kiosks (not to exceed twenty square feet in area each). The kiosks shall be located on public plazas or private leaseholds and shall not exceed ten locations in the Seacoast commercial zone;
  21. Short-term rentals.
- B. The uses listed below are permitted subject to the approval of a conditional use permit. Conditional use permits for financial institutions and professional offices shall be considered, provided these uses do not exceed thirty percent of the existing commercial square footage on Seacoast Drive and intersecting residential streets. Upper floor professional offices and financial institutions are not subject to this section.
1. Arcades and centers;
  2. Athletic and health clubs (second floor only);
  3. Bars and cocktail lounges;
  4. Liquor stores;
  5. Churches, clubs, fraternal organization (e.g., Masons, Moose, Elks and Eagles), service organizations (e.g., Rotary, Kiwanis, Lions Club and Jaycees), and veterans organizations (e.g., American Legion, VFW, FRA and Disabled American Veterans) subject to subsections E, F, G, and H of this section as appropriate;
  6. Commercial recreation facilities not otherwise listed;
  7. Educational institutions;
  8. Timeshares; shall be prohibited on the first floor unless twenty-five percent of the units are restricted to overnight accommodation;

9. Residential dwelling units above the first floor at a maximum density of one unit per every one thousand five hundred square feet of lot area, subject to subsections C and D of this section as appropriate;

10. Financial institutions: On first floor, subject to a conditional use permit per this subsection B;

11. Professional offices: On first floor, subject to a conditional use permit per this subsection B;

12. Theaters and assemblies;

13. Public parking lots;

14. Wireless communications facilities.

C. Site plan review by the City Council will be required if any of the following applies for proposed uses located in the C-2 zone:

1. All proposed commercial developments involving new construction;

2. Any addition, construction, remodeling or alteration of existing buildings resulting in an increase of ten percent or greater of the gross floor area of a commercial structure or in an individual commercial space within the structure or within a commercial shopping center;

3. Any proposed commercial use, residential use or structure requiring the approval of a conditional use permit;

4. Any development including residential dwelling units above the first floor.

[...]

#### 19.27.150. Specific Plan.

A. The City Council may approve a specific plan for a hotel use that allows deviations from the following regulations in the C-2 zone:

1. Building heights specified in section 19.27.070, provided that a height deviation may not exceed four stories or forty feet, whichever is less;

2. Building setbacks specified in section 19.27.040. The specific plan shall establish setbacks to create public view corridors to and along the beach and to avoid impacts to existing public ocean views. The specific plan shall set back private development from public use areas to maximize public access, create open space buffers and avoid conflicts between public and private uses;

3. Parking requirements specified in section 19.48.040 may be reduced to 1 parking space per unit if a site-specific parking study, taking into account the demand for parking associated with ancillary uses such as conference areas and restaurants, establishes that parking demand will not exceed 1 parking space per unit;

B. The intent of this section is to accommodate, to the greatest extent possible, an equitable balance of project design, project amenities, public

improvements, and community and City benefits. The purpose of the specific plan is to provide flexibility in the application of development regulations for hotel projects where strict application of those regulations would restrict design options and result in a less desirable project.

C. The City Council may approve a specific plan for a proposed hotel project that occupies property within both the Seacoast Commercial (C-2) and Seacoast Mixed-Use Overlay (MU-2) Zones that allows deviations from the C-2 zoning regulations that are authorized by subsection A and deviations from the following regulations in the MU-2 Zone:

1. Conditional Use Permit requirement specified in Section 19.27.140(B)(1);
2. Building setbacks specified in section 19.27.040. The specific plan shall establish setbacks to create public view corridors to and along the beach and to avoid impacts to existing public ocean views. The specific plan shall set back private development from public use areas to maximize public access, create open space buffers and avoid conflicts between public and private uses;
3. Building heights specified in section 19.27.140(C)(2)(c), provided that a height deviation may not exceed four stories or forty feet, whichever is less;
4. Parking requirements specified in section 19.48.040 may be reduced to 1 parking space per unit if a site-specific parking study, taking into account the demand for parking associated with ancillary uses such as conference areas and restaurants, establishes that parking demand will not exceed 1 parking space per unit.

D. All of the following findings must be made before a Specific Plan may be approved under this section:

1. The proposed project will not adversely affect the General Plan or the local coastal program;
2. The proposed project will not be detrimental to the public health, safety or welfare;
3. The proposed project, when considered as a whole, will be beneficial to the community and the City; and
4. The proposed deviations are appropriate for the location and will result in a more desirable project than would be achieved if designed in strict conformance with zoning regulations in the C-2 zone.

E. A Specific Plan approved under this section must state the ways in which the project benefits the community and the City and the ways in which the resulting project is preferable to what the existing regulations would have allowed.

## Land Use Plan

Table L-2, **LAND USE DESIGNATIONS AND SPECIFICATIONS** states in part:

**C-2 Seacoast Commercial (3 stories, except for hotels where 4 stories is may be permitted by specific plan)**

The Seacoast Commercial land use designation provides for land to meet the demand for goods and services required primarily by the tourist population, as well as local residents who use the beach area. It is intended that the dominant type of commercial activity in this designation will be visitor-serving retail such as specialty stores, surf shops, restaurants, hotels and motels, etc. In order to promote a more pedestrian-oriented community character, as well as to reduce the high volume of vehicle trips attracted by drive-thru establishments, drive-thru services for restaurants, banks, dry cleaners, and other similar auto related business establishments shall be prohibited in this zone. Residential uses may (included below) be permitted above the first floor at a maximum density of one unit per every 1,500 square feet of land. Discretionary permit review by the City shall be required for such residential use.

The **L-4 Commercial Uses and Areas** contains specific policies for commercial uses and areas, and states:

**e. Seacoast Commercial (C-2 & MU-2)**

The Seacoast commercial area shall serve as a visitor serving, pedestrian-oriented commercial area. Existing residential uses shall be slowly transitioned to new visitor serving commercial uses. As part of the design review, 2nd or 3rd stories may be required to be set-back from Seacoast Drive.

Timeshares shall be prohibited on the first floor unless 25% are reserved for overnight accommodation.

The subject site is zoned and designated for visitor-serving uses. As described above, the Seacoast Commercial District is somewhat unusual for a visitor-serving commercial zone, in that it allows a mix of general commercial, retail commercial, and residential uses, in addition to strictly visitor-serving uses such as overnight accommodations. For example, above the first floor, professional offices, residential dwelling units, financial institutions, athletic and health clubs may be permitted. Timeshares are allowed on upper stories, but are prohibited on the first floor unless twenty-five percent of the units are restricted to overnight accommodation. Financial institutions and professional offices may even be permitted on the first floor, provided these uses do not exceed thirty percent of the existing commercial square footage of the street frontages of the district.



However, condo-hotels are not listed as a permitted use in the C-2 Seacoast Commercial Zone. The LCP defines “hotel” as “any establishment offering commercial transient lodging accommodation on a less than monthly basis to the general public...” A condo-hotel is not a hotel as traditionally defined, nor does it meet the strict definition in the code as available “to the general public” because a portion of the time the units could be occupied by the owners and not the general public. Nor is the project a strictly residential or timeshare project, both permitted uses in the zone under certain circumstances.

However, the history of the Seacoast District area demonstrates that while visitor-serving uses have always been the priority uses in the district, a wide range of uses have been allowed along the shoreline in Imperial Beach.

The Seacoast District Specific Plan was first incorporated into the LCP in 1985. The District at that time encompassed an area of approximately 33 acres encompassing several blocks on both sides of Seacoast Drive between Palm Avenue and Imperial Beach Boulevard. The 1984 Plan divided the Seacoast District into six land use districts: the Beachfront Hotel District, the South Seacoast Park District, the Pier Plaza District, the Dune Park District, the Seacoast Mixed Use District, and the Civic Plaza District. The Seacoast Inn was located in the Dunes Park District. The principal permitted uses in the Dunes Park District were publicly owned recreational facilities and public or private parking areas or structures. Other allowed uses were mixed use residential and commercial, and tourist-commercial uses. The Beachfront Hotel District, located on the southern portion of the City from Imperial Beach Boulevard to approximately Elder Street, was the area specifically set aside for future development of a beachfront resort.

In May 1990, the Commission approved Imperial Beach LCPA #1-90, which established a new Seacoast District Specific Plan, superseding the previous one. This Specific Plan divided the Seacoast District into only four subareas, three on the seaward side of Seacoast Drive, one on the inland side. The Northwest Mixed Use Sub-area A on the northern portion of the District permitted open space and recreational facilities, hotels and motels, visitor-serving commercial uses, and residential uses with commercial uses on the ground floor fronting Seacoast Drive and Palm Avenue.

The Pier Plaza Sub-Area B, in the middle of the City between Daisy Avenue and Elder Avenue, included the Municipal Pier and the subject Seacoast Inn site. This sub-area was designated for various visitor-serving commercial retail uses, parking, plaza, and other public spaces.

The Beach Front Hotel Sub-Area C, between Elder Avenue and Imperial Beach Boulevard in the southern portion of the City’s shorefront permitted visitor-serving uses including hotel and motels, parking, public open spaces, and single ownership or multiple ownership resort condominiums or time shares, provided the total number of those units do not exceed one third of the total units in the hotel complex.

The Mixed Use Sub-Area D, located on the inland side of Seacoast Drive, permitted a variety of residential, commercial, and visitor-serving uses. In all cases, continuous visitor-serving development was required in developments fronting on or adjacent to Seacoast Drive.

However, little development occurred in the Seacoast District, and hoping to spur more growth, the City created the C-2 Seacoast Commercial zone, which the Commission approved on October 12, 1994 (LCPA #2-94), which superseded the Seacoast District Specific Plan. The various districts in the Seacoast Specific Plan were replaced by the C-2 (Seacoast Commercial) zone; previously the entire Seacoast area had been zoned SP-1 (Specific Plan). The Seacoast Commercial zone adopted at the time is essentially the same as it is today. Then, as now, the purpose of the C-2 zone was to serve the tourist population, with the main uses being visitor-serving retail, hotels, and motels. At that time, it was established that residential, financial institutions, and professional office uses are permitted above the first floor, and timeshares are prohibited on the first floor unless 25% of the units are restricted to overnight accommodations. The Beach Front Hotel Sub-Area was abandoned, and much of the land area immediately adjacent to the shoreline is now designated for high-density residential, in recognition of the existing pattern of development and lack of redevelopment funds to convert the area to commercial recreation or public recreational uses.

Since that time, several changes have been made to the C-2 zone allowing additional uses in the zone, some visitor-serving, such as public parks and public parking lots, others not visitor-serving, such as churches and a limited amount of professional office and financial institutions on the first floor (see LCPAs #1-97C and #1-01).

Other recent LCP amendments in Imperial Beach include #1-03, that designated short-term rentals as an allowable use in the Seacoast Commercial and General Commercial zones, while phasing out short-term rentals in residential zones.

The Commission is concerned that over the last 18 years, the City is gradually deprioritizing visitor-serving uses by eliminating the large Beach Front Hotel District, expanding the types of non-visitor-serving uses allowed in the Seacoast District, limiting short-term vacation rentals, and now, permitting condo-hotels in the Seacoast District. As discussed in detail below, condo-hotels are a low priority use compared to traditional hotels, and should not usurp existing hotels on prime visitor-serving land. Nevertheless, the Commission approved these prior LCP amendments, recognizing the difficulty Imperial Beach has had in attracting traditional visitor-serving development. Historically, residential uses and fractional hotels, such as timeshares, have been permitted under limited circumstances in the C-2 zone as long as existing visitor-serving uses are protected and prioritized.

The Commission respectfully disagrees with the City's position that a condo-hotel is a permitted use in the C-2 district as a hotel. It is not a traditional hotel, and is instead a mix of hotel and residential uses. Nor does the Commission believe that because timeshares are a permitted use (under certain circumstances), that condo-hotels should be

considered a permitted use. But, the C-2 zone does allow for some residential uses, as long as they are limited to the upper floors of a development. The provisions allowing timeshares also allow timeshares to be located on the first floor of development, as long as the number of timeshare units in a project is limited to 25% of the total units.

Therefore, the proposed mix of traditional hotel and residential uses, can be found consistent with the allowable uses in the C-2 zone, as long as the use remains primarily visitor-serving. ~~As discussed in detail below, Special Conditions on the project limit the percentage of condo-hotels to 25% of the total number of units.~~ Given the long history of varied visitor and non-visitor-serving uses permitted in the Seacoast District, the Commissions finds that in this particular case, ~~if limited to 25%—~~ strict conditions are placed on the operation of the condo-hotel units to ensure the development functions as an overnight accommodation, the proposed project can be found a permitted use in the Seacoast District. Special Condition #2 requires that the facility operate as a hotel, and that the units be available for hotel rental by the general public on the same basis as a traditional hotel room. Allowing a limited number of lower-priority uses, with a preponderance of visitor-serving uses, is consistent with the goals and past practices of the Commission regarding the Seacoast area. Only as conditioned can the project be found consistent with the permitted use sections of the certified Land Use Plan.

3. Public Access/Visitor-Serving Commercial/Lower-Cost Facilities. In addition to the above-cited policies describing the visitor-serving priorities of the Seacoast District, relevant policies of the City of Imperial Beach certified LCP pertaining to protection of visitor-serving facilities and public access and recreation include the following:

LUP Policy L-6 and L-9 state:

#### **L-6 Tourist Commercial Uses**

Imperial Beach should provide, enhance and expand tourist commercial uses to the extent that they can be compatible with the small beach oriented town character of the City.

#### **L-9 Lower Cost Visitor and Recreational Facilities**

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

LUP Policies P-1, P-2 and P-7 state:

#### **P-1 Opportunities For All Ages, Incomes, and Life Styles**

To fully utilize the natural advantages of Imperial Beach's location and climate, a variety of park and recreational opportunities for residents and visitors shall be provided for all ages, incomes and life styles.

This means that:

- a. The beach shall be free to the public.
- b. Recreational needs of children, teens, adults, persons with disabilities, elderly, visitors and others shall be accommodated to the extent resources and feasibility permit.

[...]

## **P-2 Ocean and Beach Are The Principal Resources**

The ocean, beach and their environment are, and should continue to be, the principal recreation and visitor-serving feature in Imperial Beach. Oceanfront land shall be used for recreational and recreation-related uses whenever feasible.

## **P-7 Increase Tourist Related Commercial Land Uses**

The City and its business community should take direct action to increase the amount of tourist-oriented businesses both along the beachfront, South San Diego Bayfront and inland areas.

Coastal Act public access policies include the following:

### **Section 30210**

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

### **Section 30211**

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

### **Section 30213**

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

**Section 30221**

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

**Section 30222**

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

**Condo-Hotel**

The Seacoast Inn is the only beachfront hotel in the City and one of only three hotels in the entire City. The City's LUP states that Imperial Beach should provide, enhance and expand tourist commercial uses, and encourages the protection of new lower-cost visitor and recreational accommodations. However, the proposed condo-ownership of the hotel units may result in a use on the site that functions, at least to some extent, as a residential use and thus could lessen the overall visitor-serving use of the existing hotel, inconsistent with the certified LCP and the public access policies of the Coastal Act.

According to the applicant, purchasing a condo-hotel unit at the subject site would cost approximately \$350,000, well out of range for most people. Condo-hotels are often presented to potential buyers as more of a second home type of purchase than, for example, timeshares, because of the higher purchase price, and because timeshare owners can typically only use their homes for 1-2 weeks a year. With the proposed project, condominium hotel owners could use their units as vacation homes for up to 90 days per year. As proposed, up to ¼ of the hotel units could be unavailable over a 1-year time period. Thus, the units may function as a quasi-residential use.

In the case of the proposed project, the Commission acknowledges that because the proposed project would increase the number of units on the subject site from 38 to 78, the project would increase the overall number of rental units available to the public. For a condo-unit available to the general public for 275 days a year (assuming 90 days occupied by the owner), 78 condo units would have 21,450 days available to the public for overnight accommodations in one year. Thirty-eight traditional hotel units would have 13,870 days available to the public. Thus, the proposed project would result in an additional 7,580 days of units available to the public each year, a 55% increase in rooms.

In comparison, a traditional 78-unit hotel would have 28,470 days available to rent each year. While in concept any addition to the hotel stock is supported by the recreational policies of the Coastal Act, the Commission is concerned that cumulatively, the conversion of existing hotels to condo-hotels and the construction of new condo-hotels

will eliminate opportunities for traditional hotels to locate and expand in prime visitor-serving locations.

In addition, although each owner would be limited to no more than 25 days within any preceding 50 day time period, there remains the potential for owners to use their unit during the time of year when hotel rooms for the general public are in highest demand. The time restrictions would allow a scenario where owners occupy every holiday period year round. For example, an owner could occupy a unit from Memorial Day weekend (May 24, 2008) to June 6 (14 days) then over Independence Day from July 3 to July 13 (11 days), over Labor Day weekend from August 15 through September 1 (16 days), 2 weeks over Thanksgiving, 2 weeks over Christmas, 1 week in early Spring, and 2 weeks over Easter.

The applicants have suggested that most owners would likely make their units available for rental during the summer, because owners receive a percentage of the room rental fees, and rates (thus, their income) are higher during the summer. Owners would then use their rooms during the off-season, when hotel occupancy is typically low.

However, it is unknown if this scenario is correct. The applicants have not provided any information on time of year stays for condo-hotel owners; such data may not exist for seaside condo-hotel resorts such as the proposed development. Thus, at this time, there is no reason to assume that condo-hotel owners would not have the same preferences and time constraints that make summer and holiday periods the most desirable vacation times for most people.

In addition, it is not certain that even when the units are not owner-occupied, that the rooms will be available for general transient use. There are membership organizations being formed to facilitate the peer-to-peer swapping of condo-hotel vacation units among owners (ref. National Association of Condo Hotel Owners at [www.nachos.us](http://www.nachos.us)). Thus, it appears possible that the condominium units would be disproportionately used by people who own similar units elsewhere, and not available to the general public.

In addition to immediately reducing the number of hotel units potentially available for transient use, the Commission is concerned about the long-term feasibility of the condo-hotel units. Like a traditional condominium, the proposed condominium units would have a condo association, property taxes and monthly condominium fees. Revenue from the rental of the units would be split between the hotel operator and the owners. Even when occupancy rates are low, owners would be expected to continue to pay fees to maintain the units, common areas, and amenities such as accessways, pools, and landscaping, as well as their mortgages.

Since owners are ultimately responsible for these costs, it is possible that they will want a say in how the property is managed and run. The Commission is concerned that during inevitable downtimes in the hotel industry, there will be considerable pressure from the condominium owners to be allowed to stay longer in their units. While the operator of the Seacoast Inn is responsible for maintenance of the common areas, condominium

owners may also be disinclined to continue to pay for the maintenance or continued operation of the publicly-accessible areas without the revenue from non-owner occupants. Thus, there is the potential that the property will become less attractive and available to the general public and that existing publicly-accessible areas will not be maintained and potentially closed to the public due to lack of maintenance.

Furthermore, as time goes by, if owners are not satisfied with the financial return on the properties, the Commission is concerned that there will be pressure to convert the property to purely residential use and eliminate the public recreational components of the project altogether. Traditional hotels have to cope with fluctuations in revenue, of course. But traditional hotels do not depend on numerous individual owners with a variety of financial capabilities and motivations for upkeep.

Further, the conversion to condominium ownership raises concerns regarding who will ultimately be responsible for enforcement of the restrictions and monitoring of the hotel operation. With 78 owners plus the hotel operator, enforcement of these conditions may prove difficult and impractical. Once the Commission authorizes the conversion to condominium form of ownership and the 78 units are sold, it will be extraordinarily difficult, if not impossible, for the Commission to require the hotel to convert back to a conventional hotel ownership if the special conditions were to be ineffective or difficult to enforce. Such difficulty in enforcement can ultimately lead to, among other things, the provision of visitor-serving amenities being compromised. Because condo-hotels are a relatively new venture, there is little track record so far on exactly what and how many problems might occur with this type of financing mechanism.

In order to address these concerns, the City of Imperial Beach incorporated into the requirements of the Specific Plan for the project, a series of special conditions such as were imposed in the permit for A-6-COR-06-46/Hotel del Coronado. These conditions place restrictions on the use, rental and marketing of the units, and prohibit conversion to timeshare or residential use.

These restrictions have been codified by Special Condition ~~#32~~. Special Condition ~~#3m~~ ~~#2l~~ specifically prohibits the conversion of any part of the project to full-time occupancy condominium. In addition, Special Condition #1 requires that Pacifica Hosts, Inc., the business entity that will be managing the hotel, at least initially, ensure that the Seacoast Inn operates as condo hotel or hotel (not a residential development). The condition requires that Pacifica Hosts, Inc. guarantee the performance of the management company. Finally, Pacifica Hosts, Inc. has also become a co-applicant to the permit with Pacific Companies, so that it will be equally responsible for ensuring compliance with all of the conditions of the permit. Pacifica Hosts, Inc. has the financial resources to ensure that the Seacoast Inn will operate primarily as a visitor serving accommodation for the life of the project.

While most of the marketing and advertising of the condo-hotel rooms will likely be performed by the hotel operator, each individual condominium owner would retain the right to market or advertise their unit on their own. All landscaping, swimming pools,

spas, sidewalks, and related structures around the condominium units would be maintained by the Seacoast Inn, but the condominium owners would pay a fee for their maintenance. The CC&Rs will provide the City a direct right of enforcement against both the individual owners of the parcels and the Seacoast Inn, should any of the regulations be violated. Special Condition ~~#32~~ details the requirements that must be included in the CC&R's, to ensure that potential and current owners are aware of the restrictions on use of the units.

The Commission has concerns that even with these special conditions imposed by the City, the condo-hotel still may not protect access by the general public. It has therefore added special conditions to ensure that the condo-hotel units are just as accessible to the general public as any other unit in the hotel, except when the units are owner-occupied. While owners will have a right to market their own units, reservations must be made by and through the hotel operation, the hotel operator will still market and advertise all 78 condo hotel units to the general public.

Special Condition ~~#3e~~ #2b requires that whenever any individually owned hotel unit is not occupied by its owner(s), that unit shall be available for hotel rental by the general public on the same basis as a traditional hotel room. Special Condition ~~#3f~~ #2e also states that if the hotel operator is not the owner's rental agent, then the operator shall have the right, working through the owner or its designated rental agent, to book any unoccupied room to fulfill demand, at a rate similar to comparable accommodations in the hotel. Thus, regardless of whether the hotel operator is the primary rental agent, if there is a demand on the part of the general public for one of the condo-hotel units, the hotel operator will be able to book that room.

The Specific Plan requires that if an owner violates the conditions and regulations of the CC&R's, the owner can be subject to legal action. Special Condition ~~#3q~~ #2p requires that the applicant or any successor-in-interest as hotel owner-operator maintain the legal ability to ensure compliance with the terms and conditions of the permit at all times in perpetuity and be responsible in all respects for ensuring that all parties subject to this permit comply with the terms and conditions of this permit. Each owner of an individual condominium unit is jointly and severally liable with the hotel owner-operator for violations of the terms and conditions of this permit, and this condition will be recorded on each individual deed, so that every owner is aware of the responsibility and liability associated with ownership of these units.

Special Condition ~~#3t~~ #2s contains detailed provisions for the monitoring and recording of hotel occupancy and use by the general public and the owners of individual hotel units throughout each year, to ensure that the restrictions set forth in the special conditions are being complied with.

Because a portion of the development involves construction on the beach, to minimize impacts to on public access, Special Condition #87 prohibits work from occurring on sandy beach between Memorial Day weekend and Labor Day of any year.



The Commission acknowledges that to the extent the proposed condo-hotel units operate as transient accommodations, they will provide some public access and recreational opportunities. The special conditions on the permit have been designed to ensure the units do in fact operate as close to a traditional hotel as possible. But the ability for non-owners to stay at one of the units will be limited by the occupancy of the owner. The opportunities for public access and recreation at these condo hotels will be less than with a traditional hotel property, and certainly less than what is ideal for one of only three hotels in the entire City. Enforcement of the conditions may be difficult. These problems can be mitigated by the conditions in the Specific Plan, but they cannot be eliminated entirely.

In addition, it is important to emphasize that land developed with lower-priority uses such as condo-hotels, is land that is no longer available for high-priority uses like traditional hotels. ~~The City of Imperial Beach and the applicant maintain that the economies of development in Imperial Beach are such that only a hotel using condo-hotel financing can be constructed in the City. The applicant has submitted information supporting their position that 100% condo hotel financing is required in order for the proposed development to be feasible (see Exhibit #9). It is clear that the City of Imperial Beach's plans over the last two decades for the redevelopment of the shoreline into a major tourist recreational area have not been as successful as desired. It may be that some amount or kind of non-traditional financing is required to attract development of overnight accommodations to Imperial Beach at this time. However, Imperial Beach's situation is atypical compared to the majority of the California and even San Diego County's coastline, where the overwhelming majority of new shoreline accommodations are of luxury accommodations. The Commission is sympathetic to the City of Imperial Beach's desire to attract upscale development, but from a statewide perspective, it is not entirely negative that there are still oceanfront lots where the best economic use may be lower cost facilities such as hostels, campgrounds, motels, or public recreational facilities available to a broad expanse of the public.~~

For all of these reasons, the Commission continues to prefer prime visitor-serving beachfront locations such as the subject site be developed with high-priority visitor-serving uses such as traditional hotels, particularly in communities such as Imperial Beach that have a lack of traditional overnight accommodations. The proposed project is particularly problematic, as it will not only construct lower-priority condo-hotels in a prime oceanfront location, it will reduce the supply of *existing* high-priority traditional hotel units by eliminating the 38 existing traditional hotel units on the site.

Thus, in past approvals, the Commission has limited fractional ownership of hotels to only a percentage of the rooms. For example, in Encinitas, the Commission approved a hotel with 77% condo-ownership. At the Hotel del Coronado, approximately 5% of the rooms are condo-hotels. In December 2007, the Commission approved an LCP amendment for the City of Oceanside that limits fractional ownership or condo-hotel units to no more than 25% of the total rooms in a hotel development. The City of Imperial Beach's LCP only allows timeshares on the first floor of any development if 25% of the units are restricted to traditional overnight accommodations.

~~Therefore, based on the above discussion, Special Condition #1 requires that only 25%, or 20 units, of the proposed 78 units operate as condo hotel units. The other 58 units must operate as traditional hotel units. In this manner, the Commission can be assured that the proposed project will have a minimal impact on the supply of existing high-priority traditional hotel rooms in Imperial Beach.~~

~~In conclusion, given the current popularity of condo hotel developments, the Commission must assure that this lower priority use does not become the dominant or the only form of overnight accommodations in the City. The subject site is a prime location adjacent to the beach, with a variety of public amenities. Allowing a quasi-residential use to take over 100% of the rooms on this site at the expense of the existing hotel rooms would not enhance and expand tourist commercial uses, and could set an adverse precedent regarding the preservation of visitor serving accommodations in the Coastal Zone, inconsistent with the certified LCP and the public access policies of the Coastal Act. Therefore, the Commission finds the proposed condominium hotel ownership project can only be found consistent with the Coastal Act if conditioned to ensure the maximum public access to the condo hotel rooms, and to require that 58 of the 78 units operate as traditional hotel rooms.~~

However, in this particular case, the City and the applicant have provided evidence that suggests the unique economics of development in Imperial Beach are such that only a hotel using condo-hotel financing can be constructed in the City. The applicant has submitted information supporting their position that 100% condo hotel financing is required in order for the proposed development to be feasible (see Exhibit #9). It is clear that the City of Imperial Beach's plans over the last two decades for the redevelopment of the shoreline into a major tourist-recreational area have not been as successful as desired, and it appears that the most likely means of attracting development of overnight accommodations to Imperial Beach at this time is through some form of non-traditional financing such as condo-hotels.

Imperial Beach's situation is atypical compared to the majority of California and even San Diego County's coastline, where the overwhelming majority of new shoreline accommodations are of luxury accommodations. The Commission notes that from a statewide perspective, it is not entirely negative that there are still oceanfront lots where the best economic use may be lower-cost facilities such as hostels, campgrounds, motels, or public recreational facilities available to a broad expanse of the public. Even in light of the unusual circumstances in Imperial Beach, it is unlikely that the Commission would approve additional developments that were 100% condo-hotel, as the Commission must assure that this lower-priority use does not become the dominant or the only form of overnight accommodations in the City. However, as conditioned, the project will function as a hotel to the greatest extent feasible, and thus, will increase the number of rooms available for overnight use in Imperial Beach.

Furthermore, the applicant is removing a seawall and perched beach that has been operated as a private beach for many years, and that will also improve public access.

Thus, in this particular case, given the City's economic climate at this point in time, the Commission finds the proposed project, as conditioned, will not have an adverse impact on the public's ability to access overnight accommodations in Imperial Beach, consistent with the Coastal Act and the certified LCP.

#### Lower-Cost Visitor-Serving Facilities

Pursuant to the public access policies of the Coastal Act, and particularly section 30213, the relevant portions of which are included in the Imperial Beach LUP, the Commission has the responsibility to both protect existing lower-cost facilities, and to ensure that a range of affordable facilities be provided in new development along the coastline of the state. In light of current trends in the market place and along the coast, the Commission is increasingly concerned with the challenge of providing lower-cost overnight accommodations consistent with the Coastal Act. Recent research in support of a Commission workshop concerning hotel-condominiums showed that only 7.9% of the overnight accommodations in nine popular coastal counties were considered lower-cost. Although statewide demand for lower-cost accommodations in the coastal zone is difficult to quantify, there is no question that camping and hostel opportunities are in high demand, and that there is an on-going need to provide more lower-cost opportunities along California's coast. For example, the Santa Monica hostel occupancy rate was 96% in 2005, with the hostel being full more than half of the year. State Parks estimates that demand for camping has increased 13% between 2000 and 2005. Nine of the ten most popular campgrounds are along the coast.

The existing Seacoast Inn has an average room rate of approximately \$135 per night. The applicant has submitted a study demonstrating that the new hotel will likely be able to support a room rate of approximately \$135-140 per night. In a constantly changing market, it can be difficult to define what price point constitutes "lower-cost," "moderate," and "higher-cost" accommodations for a given area. To address this, the Commission has created a formula to define lower-cost, moderate, and high-cost hotels.

The proposed formula is based on hotel accommodations (single room, up to double occupancy) in California. At this time, it does not incorporate hostels, RV parks, campgrounds or other alternative accommodations, as these facilities do not provide the same level of accommodation as hotels and motels. (However, these facilities are inherently lower cost, and are the type of facilities that a mitigation fee could go towards providing).

This method compares the average daily rate of lower cost hotels in the San Diego coastal zone with the average daily rate of all types of hotels across the state. Under this formula, lower-cost is defined as **the average room rate of all hotels that have a room rate less than the statewide average daily room rate.**

To determine this number, Commission staff surveyed average daily room rates for all hotels in California. Statewide average daily room rates are collected monthly by Smith Travel Research, and are available on the California Travel and Tourism Commission's

website: <http://www.visitcalifornia.com/page.php?id=526>, under the heading “California Lodging Reports.” Smith Travel Research data is widely used by public and private organizations.

Table 1 shows statewide average daily rates for 2003 through 2007, projected through 2008.

Table 1. Statewide Average Room Rates for 2003 to 2007 projected through 2008

	2003	2004	2005	2006	2007	<b>Projected 2008</b>
January	\$95.39	\$92.07	\$96.64	\$104.32	\$112.12	<b>\$114.22</b>
February	\$95.16	\$97.35	\$100.62	\$108.30	\$118.07	<b>\$121.72</b>
March	\$93.70	\$96.42	\$100.33	\$109.68	\$116.64	<b>\$122.10</b>
April	\$93.18	\$95.03	\$102.25	\$110.49	\$117.31	<b>\$124.04</b>
May	\$93.88	\$96.65	\$102.39	\$112.08	\$119.02	<b>\$125.82</b>
June	\$92.46	\$95.86	\$102.82	\$111.96	\$119.01	<b>\$126.73</b>
July	\$95.09	\$98.70	\$106.31	\$116.39	\$124.45	<b>\$132.92</b>
August	\$96.28	\$100.18	\$107.37	\$116.81	\$124.82	<b>\$132.88</b>
September	\$92.56	\$95.48	\$105.66	\$112.45	\$119.84	<b>\$128.41</b>
October	\$94.65	\$98.32	\$104.60	\$115.48	\$123.43	<b>\$131.40</b>
November	\$91.10	\$93.86	\$101.67	\$110.55	\$118.38	<b>\$126.12</b>
December	\$86.19	\$90.51	\$96.12	\$103.92	\$110.06	<b>\$117.05</b>
<b>ANNUAL AVERAGE</b>	<b>\$93.30</b>	<b>\$95.87</b>	<b>\$102.23</b>	<b>\$111.04</b>	<b>\$118.60</b>	<b>\$125.28</b>

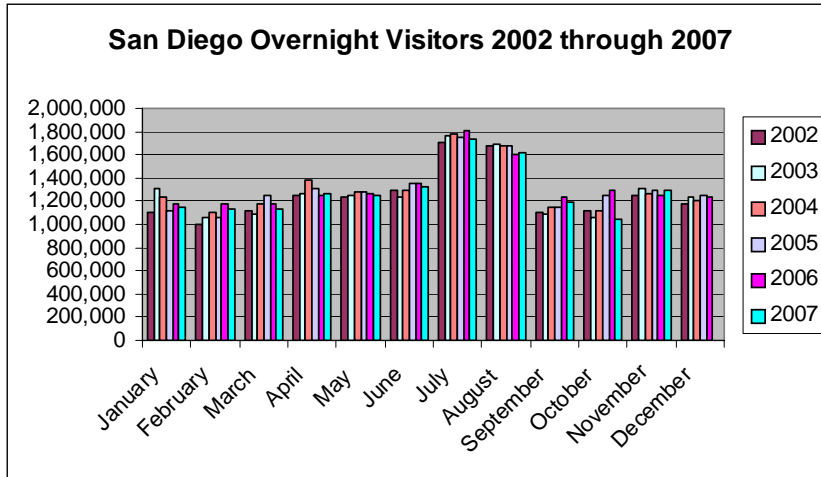
Source: Smith Travel Research, *California Tourism, June 2003 through June 2007*.

<http://www.visitcalifornia.com/page.php?id=526> [14 January 2008].

\*2008 value projected using exponential regression based on 2003 through 2007 values.

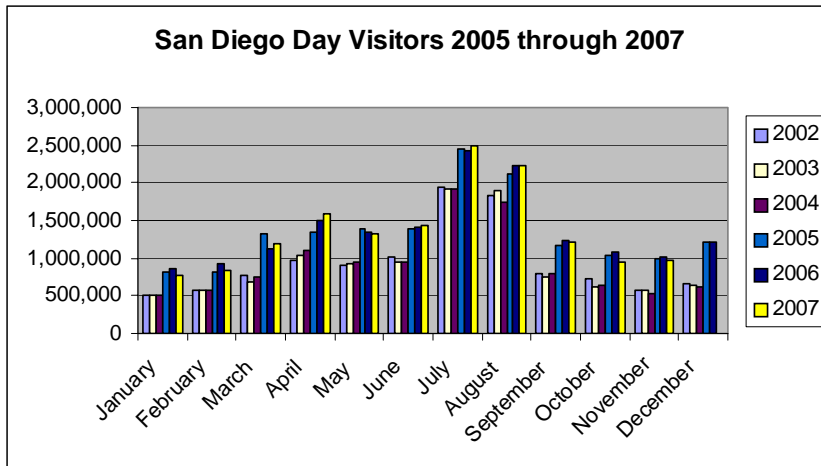
To be most meaningful peak season room rates are used. To determine the peak months in San Diego, the number of visitors to San Diego County from 2002 through 2007 were reviewed. This data is shown on Charts 1 and 2, below. The peak visitor months in San Diego for both day and overnight visitors are July and August.

Chart 1. San Diego Overnight Visitors



Source: San Diego Convention & Visitors Bureau, *San Diego County Visitor Industry Summary*.  
<http://www.sandiego.org/nav/Travel/ResearchAndReports> [5 March 2008].

Chart 2. San Diego Day Visitors



Source: San Diego Convention & Visitors Bureau, *San Diego County Visitor Industry Summary*.  
<http://www.sandiego.org/nav/Travel/ResearchAndReports> [5 March 2008].

To ensure that the lower cost hotels and motels surveyed meet an acceptable level of quality, including safety and cleanliness, only AAA rated properties were surveyed. According to their website, “to apply for [AAA] evaluation, [hotel] properties must first meet 27 essential requirements based on member expectations — cleanliness, comfort, security, and safety.” AAA assigns hotels ratings of one through five diamonds. The standards are described in Table 2.

Table 2. AAA Diamond Ratings

<b><i>One Diamond</i></b>
These establishments typically appeal to the budget-minded traveler. They provide essential, no-frills accommodations. They meet the basic requirements pertaining to comfort, cleanliness, and hospitality.
<b><i>Two Diamond</i></b>
These establishments appeal to the traveler seeking more than the basic accommodations. There are modest enhancements to the overall physical attributes, design elements, and amenities of the facility typically at a moderate price.
<b><i>Three Diamond</i></b>
These establishments appeal to the traveler with comprehensive needs. Properties are multifaceted with a distinguished style, including marked upgrades in the quality of physical attributes, amenities, and level of comfort provided.
<b><i>Four Diamond</i></b>
These establishments are upscale in all areas. Accommodations are progressively more refined and stylish. The physical attributes reflect an obvious enhanced level of quality throughout. The fundamental hallmarks at this level include an extensive array of amenities combined with a high degree of hospitality, service, and attention to detail.
<b><i>Five Diamond</i></b>
These establishments reflect the characteristics of the ultimate in luxury and sophistication. Accommodations are first class. The physical attributes are extraordinary in every manner. The fundamental hallmarks at this level are to meticulously serve and exceed all guest expectations while maintaining an impeccable standard of excellence. Many personalized services and amenities enhance an unmatched level of comfort.

Source: AAA, *What the Hotel Ratings Mean*

<<http://ww2.aaa.com/scripts/WebObjects.dll/AAAOnline?association=AAA&club=005&page=HotelCriteria&zip=>> [6 March 2008].

To develop the sample to represent lower cost hotels in San Diego, the AAA online database for AAA rated hotels within 5 miles of the cities and towns along the San Diego coast was searched. These cities and towns include: San Onofre, Las Flores, Oceanside, Carlsbad, Leucadia, Encinitas, Solana Beach, Del Mar, La Jolla, Pacific Beach, Ocean Beach, San Diego, National City, Chula Vista, Coronado, and Imperial Beach.

One way to identify lower cost hotels would have been to survey only one diamond hotels. However, of all the San Diego hotels identified in the AAA database search, only three one diamond hotels were found. Therefore the criterion was expanded to include one and two diamond hotels.

A total of 55 AAA-rated 1 or 2 diamonds room rates were compiled; of these, 25 were within the Coastal Zone. Table 3 shows these 25 hotels.

<b>Table 3</b>			
<b>1 and 2 Diamond Hotels in the Coastal Zone in San Diego County</b>			
1	Ocean Palms Beach Resort	2950 Ocean St	Carlsbad
2	Ramada Inn & Suites	751 MacAdamia Drive	Carlsbad
3	Crown City Inn	520 Orange Ave	Coronado
4	La Avenida Inn	1315 Orange Ave	Coronado
5	Villa Capri By the Sea	1417 Orange Ave	Coronado
6	Ocean Inn	1444 N Coast Highway 101	Encinitas
7	Portofino Beach Inn	186 N Coast Highway 101	Encinitas
8	Days Inn Encinitas/Moonlight Beach	133 Encinitas Blvd	Encinitas
9	Howard Johnson	607 Leucadia Blvd.	Encinitas
10	Southbay Travelodge	1722 Palm Ave	Imperial Beach
11	La Jolla Cove Suites	1155 Coast Blvd	La Jolla
12	Scripps Inn	555 Coast Blvd S	La Jolla
13	Pacific Shores Inn	4802 Mission Blvd	La Jolla
14	La Jolla Beach Travelodge	6750 La Jolla Blvd.	La Jolla
15	Motel 6	909 N Coast Hwy	Oceanside
16	Days Inn at the Coast	1501 Carmelo Dr	Oceanside
17	La Quinta Inn	937 N Coast Hwy	Oceanside
18	Days Inn Mission Bay/Sea World	4540 Mission Bay Drive	San Diego
19	Beach Haven Inn	4740 Mission Blvd	San Diego
20	Diamond Head Inn	605 Diamond St	San Diego
21	America's Best Value Inn - Mission Bay/Sea World	4545 Mission Bay Dr	San Diego
22	Ramada Limited Sea World	3747 Midway Drive	San Diego
23	Vagabond Inn Point Loma	1325 Scott St	San Diego
24	Best Western Posada at the Yacht Harbor	5005 N Harbor Dr	San Diego
25	Ocean Villa Inn	5142 W Point Loma Blvd	San Diego

The survey did not capture every hotel that might be considered “lower-cost;” not every hotel is listed with AAA, and it is possible that the AAA list could be incomplete. However, the survey did capture hotels from all along the coastline, and it is expected that these 25 one- and two-diamond hotels provide a good representation of hotels and allow for a sufficient hotel sample size of non-luxury hotels in San Diego’s coastal zone. Next, the average monthly rates for these 25 hotels were determined. In most cases, rate information was obtained from the hotel website. If the hotel did not have a website, or their website was unable to give reservation information, a phone survey was performed. The rates do not reflect discounts for multiple night stays; each rate obtained was for one night only. The rates do not reflect discounts for exclusive groups, such as AAA members or AARP members.

Again looking at peak season room rates, the statewide average daily room rate in California in 2008 for the months of July and August is projected to be \$132.90. Of the above 25 hotels in San Diego County, 8 charged less than the \$132.90 statewide average (see Table 4).

<b>Table 4</b>						
<b>1 and 2 Diamond Hotels in the Coastal Zone with Room Rates Less than State Peak Average</b>						
	<b>Hotel Name</b>	<b>AAA Rating</b>	<b>Address</b>	<b>City</b>	<b>July Average</b>	<b>August Average</b>
1	Ocean Inn	2 Diamonds	1444 N Coast Highway 101	Encinitas	\$109.65	\$108.68
2	Portofino Beach Inn	2 Diamonds	186 N Coast Highway 101	Encinitas	\$114.99	\$114.99
3	Days Inn Encinitas/Moonlight Beach	2 Diamonds	133 Encinitas Blvd	Encinitas	\$131.58	\$132.23
4	Southbay Travelodge	2 Diamonds	1722 Palm Ave	Imperial Beach	\$106.58	\$97.23
5	Motel 6	2 Diamonds	909 N Coast Hwy	Oceanside	\$83.89	\$84.54
6	Days Inn at the Coast	2 Diamonds	1501 Carmelo Dr	Oceanside	\$93.91	\$93.50
7	Days Inn Harbor View	2 Diamonds	1919 Pacific Highway	San Diego	\$126.84	\$107.39
8	Days Inn Mission Bay/Sea World	2 Diamonds	4540 Mission Bay Drive	San Diego	\$119.52	\$108.00
<b>AVERAGE FOR JULY AND AUGUST</b>					<b>\$108.35</b>	

The average room rate of these 8 hotels was \$108.35. Thus, based on the above formula, for San Diego County in 2008, lower-cost accommodations can be defined as those charging less than \$108.35 per night, or 18% below the 2008 statewide average daily room rate of \$132.90.

At some point, a survey of hotels charging more than the statewide average could be undertaken. But for now, an estimate of “higher-cost” can be defined as those hotels with daily room rates 20% (rounding up to be conservative) higher than the statewide average of \$132.90, or \$159.48. Rates between \$108.35 and \$159.48 would be considered moderately priced.

The result is a formula defining lower cost as a percentage of the most recent statewide average room rates available. One advantage of using this formula is that it adjusts over time without having to undertake new surveys of local hotel room rates. In 2008, any hotel charging less than \$108.35 per night would be considered lower-cost. In future years in San Diego, taking 82% of statewide average daily room rate for that year will yield the room rate for a lower-cost hotel, higher cost as 120% of the peak statewide average, and so on.

The applicant submitted a survey of overnight accommodations in the Imperial Beach region. Based on this survey, there are only three hotels and motels within the City, including the Seacoast Inn. An additional hotel closed in winter 2007. The City also permits short-term vacation rentals in the Seacoast Commercial District, and there is one RV park in the City, although it specializes in long-term, not transient stays. According to the applicant, prices for the three hotel facilities are very similar, ranging in cost from \$131 to \$135 a night. Costs for short-term rentals are considerably higher--



approximately \$259 a night. Camping at the RV park, if available for overnight stays, would be \$52 per night.

Thus, based on the above definition, there are no lower-cost overnight hotels or motels in Imperial Beach. The existing room rate of \$135 and the proposed room rate of \$140 would be considered moderately priced based on the above-described formula.

The Commission feels strongly that the loss of existing, lower cost hotel units should, under most circumstances, be mitigated at a 1:1 ratio of units lost to new units provided. However, even when there has been no loss of existing, lower cost units, if no lower cost units are proposed, the Commission has typically required mitigation to ensure a range of accommodation rates are made available to visitors. When high end or even moderately priced visitor accommodations are located on the shoreline, they occupy area that would otherwise be available for lower cost visitor and recreational facilities. Thus, the expectation of the Commission, based upon several precedents, is that developers of sites suitable for overnight accommodations will provide facilities which serve people with a range of incomes. If development cannot provide for a range of affordability on-site, the Commission requires off-site mitigation.

~~In order to be consistent with the LUP policy requiring that lower cost visitor facilities be protected, encouraged, and, where feasible, provided, a mechanism by which to promote the future development of lower cost accommodation is necessary. Therefore, Special Condition #2 requires the applicant to provide funding for construction of such units, in lieu of providing them onsite.~~ Although the Commission prefers the actual provision of lower-cost accommodations in conjunction with projects, where necessary, the Commission has used in-lieu fees to provide lower-cost opportunities. For example, the Commission has required an in-lieu fee in permits to convert the Highlands Inn in Monterey County and the San Clemente Inn to timeshares. In addition, the Commission required a similar in-lieu fee for the conversion of a 130-unit hotel (not yet constructed) located on the bluffs in Encinitas to a 100-unit condo-hotel, with 30 units required to remain as traditional hotel units (6-92-203-A4/KSL), for the Surfer's Point Resort development in Encinitas (#A-6-ENC-07-51), and for Oceanside LCPA #1-07 (Downtown District), the Commission approved a requirement that a \$30,000 fee be paid for 50% of the number of new high-cost units being developed, when existing units are demolished, in order to mitigate the loss of oceanfront land that could otherwise have been available to develop with lower-cost facilities

The \$30,000 fee amount was established based on figures provided to the Commission by Hostelling International (HI) in a letter dated October 26, 2007. The figures provided by HI are based on two models for a 100-bed, 15,000 sq. ft. hostel facility in the Coastal Zone. The figures are based on experience with the existing 153-bed, HI-San Diego Downtown Hostel. Both models include construction costs for rehabilitation of an existing structure. The difference in the two models is that one includes the costs of purchase of the land and the other is based on operating a leased facility. Both models include "Hard" and "Soft Costs" and start up costs, but not operating costs. "Hard" costs include, among other things, the costs of purchasing the building and land and

construction costs (including a construction cost contingency and performance bond for the contractor). “Soft” costs include, among other things, closing costs, architectural and engineering costs, construction management, permit fees, legal fees, furniture and equipment costs and marketing costs. Based on these figures, the total cost per bed for the two models ranges from \$18,300.00 for the leased facility to \$44,989.00 for the facility constructed on purchased land.

In looking at the information provided HI, it should be noted that while two models are provided, the model utilizing a leased building is not sustainable over time and thus, would likely not be implemented by HI. In addition, the purchase building/land model includes \$2,500,000.00 for the purchase price. Again, this is not based on an actual project, but on experience from the downtown San Diego hostel. The actual cost of the land/building could vary significantly and as such, it makes sense that the total cost per bed price for this model could be too high. In order to take this into account, the Commission finds that a cost per bed generally midrange between the two figures provided by HI is most supportable and likely conservative. Therefore, the in lieu fee assessed in this particular case, is \$30,000.00 per bed.

The portion of units to be assessed the \$30,000 fee should vary based on the projected rate of the proposed units. Specifically, 10% of new, moderate cost units should be mitigated, and 25% of new, higher cost units should be mitigated. Higher cost developments should be required to mitigate a larger number of units because as room rates rise, fewer and fewer visitors can afford to stay in the units. Those visitors who cannot afford higher cost room rates will increase demand for lower cost accommodations.

~~Accordingly, in order to mitigate for the absence of low cost visitor accommodations in the proposed project and bring the project into conformance with the certified LCP and Coastal Act Section 30213, Special Condition #2 requires a fee of \$30,000 be applied to 10% of the proposed units, in this case, 8 units, for a total fee of \$240,000. The fee is to be used for the specific purpose of constructing lower cost overnight accommodations (such as a hostel, tent campsites, etc.) in the coastal zone of South San Diego County.~~

This formula was developed to aid the Commission in determining the appropriate mitigation for projects that do not provide, or remove, low cost visitor accommodations in conformance with Section 30213 of the Coastal Act. The formula applied to the Seacoast Inn would result in a fee requirement of \$30,000 applied to 10% of the proposed units, in this case, 8 units, for a total fee of \$240,000. This figure is in line with the Commission’s past practice with regard to calculation of in-lieu fees as mitigation for the lack or loss of lower cost visitor accommodations in the Coastal Zone. These in-lieu fees have included \$87,810 in Seal Beach (ref. CDP #5-05-385), \$5,000,000 in Newport Beach (ref. CDP #5-07-85), and \$210,000 in Encinitas (ref. A-6-ENC-07-51). To put this figure further in perspective, the applicant has indicated that the cost of purchasing one of the proposed condo-hotel units is expected to be approximately \$350,000, so the required in-lieu fee is significantly lower than the cost of even one condo-hotel unit.

However, in this particular case, the Commission has determined that imposition of the fee would not be appropriate. There are only three hotels in the entire City, none of which are high-cost luxury hotels, which is highly unusual for a beachfront community. This lack of accommodations, in particular, high-end accommodations, appears to be at least in part a result of a long-standing depressed local economy and ocean water quality problems the City has faced as a result of sewage flowing north from Mexico. Given the unique economic circumstances in Imperial Beach, the Commission finds that imposition of the fee would potentially discourage or prevent the development of visitor-serving accommodations, rather than increase low-cost facilities and public access and as such, no fee is required.

### Summary

In summary, the applicant is proposing to construct a moderately priced condo-hotel on land designated primarily for tourist-serving commercial. The subject site is a prime location adjacent to the beach and supports a variety of public amenities. ~~Allowing a quasi-residential use to take over 100% of the rooms on this site at the expense of the existing hotel rooms would not enhance and expand tourist commercial uses, and could set an adverse precedent regarding the preservation of visitor serving accommodations in the Coastal Zone, inconsistent with the certified LCP and the public access policies of the Coastal Act. In general, the Commission believes that N~~new overnight accommodations should serve people with a range of incomes, either directly on site or indirectly through contribution of a fee towards the construction of lower cost overnight accommodations. ~~Therefore, the project has been conditioned to limit the number of condo hotel units on the site to 25% (20) of the proposed 78 units, and to require the submission of an in-lieu fee of \$240,000 for the construction of lower cost visitor serving facilities in the area.~~ However, in this particular case, as conditioned, the moderately-priced condo-units will provide new overnight accommodations that must operate largely as hotel units in perpetuity. Only as conditioned can the project be found consistent with the lower cost visitor serving policies of the Coastal Act and LCP.

4. Shoreline Processes and Public Access and Recreation. The following policies of the certified City of Imperial Beach apply to the proposed project:

#### **CO-1 The Beach**

Imperial Beach has few industries and must, therefore, rely on the attraction of tourists for economic development. The beach area is most critical and the City should:

1. Designate the beach as open space.
2. Retain public ownership of the beaches.

3. Insure continued public access to beaches and, where possible, provide additional access, as well as increased public parking opportunities in the beach area (see Parks, Recreation and Access Element).
4. Require landscaping of properties near the beach area to attain a pleasant visual image.
5. Assure continued replenishment of sand.

### **P-1 Opportunities For All Ages, Incomes, and Life Styles**

To fully utilize the natural advantages of Imperial Beach's location and climate, a variety of park and recreational opportunities for residents and visitors shall be provided for all ages, incomes and life styles.

This means that:

- c. The beach shall be free to the public.
- d. Recreational needs of children, teens, adults, persons with disabilities, elderly, visitors and others shall be accommodated to the extent resources and feasibility permit.
- e. City residents need mini-parks, neighborhood parks, community parks, activity centers, special use and all-purpose parks.
- f. The City should pursue increased recreational opportunities for the general public in the Tijuana Estuary, Borderfield State Park, the beach and the South San Diego Bayfront.

### **P-2 Ocean and Beach Are The Principal Resources**

The ocean, beach and their environment are, and should continue to be, the principal recreation and visitor-serving feature in Imperial Beach. Oceanfront land shall be used for recreational and recreation-related uses whenever feasible.

### **GOAL 14 SHORELINE ACCESS**

**To provide physical and visual access in the City's five coastal resource areas for all segments of the population without creating a public safety concern, overburdening the City's public improvements, or causing substantial adverse impacts to adjacent private property owners.**

### **GOAL 16 SHORELINE PROTECTION**

**To manage the City's shoreline in a way which enhances the shoreline environment while also providing recreational opportunities and property protection.**

**S-10 Regulate Shoreline Land Use and Development**

The City should regulate shoreline land use and development by:

- a) Minimizing construction on beaches and in front of seacliffs.
- b) Require setbacks from beaches and low-lying coastal areas.
- c) Regulate sand mining if some were to occur.

**S-11 Storm Waves, Flooding and Seacliff Erosion**

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, shoreline protection devices and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Prior to completion of a comprehensive shoreline protection plan designed for the area, interim protection devices may be allowed provided such devices do not encroach seaward of a string line of similar devices. [...]

In addition, the Coastal Act policies 30210, 30211, Section 30213 and Section 30220 cited above are applicable to the subject proposal.

The site is currently protected by a seawall constructed in the 1970's. The system consists of a perched beach held in place by a timber seawall capped by a low masonry wall. The perched beach provides an area for overtopping waters to dissipate and percolate back through the wall and to the ocean.

A geotechnical report submitted for the proposed project determined that the existing seawall is in good condition. However, the project proposes to remove the wall and construct a new vertical seawall 35 feet inland of the existing wall. The seawall will extend across the end of Date Street, and an improved pedestrian accessway to the beach will be constructed at Date Street. In addition, the applicant has proposed with the project to dedicate any beach area seaward of the new seawall that is owned by the applicant to the City for public lateral access. Special Condition #4~~3~~ reflects this proposal.

Additionally, although the applicants assert that the proposed development can be constructed safely despite the proposed seawall, the shoreline area is known to be hazardous and unpredictable. Given that the applicants have chosen to construct the proposed hotel in this location despite these risks, the applicants must assume the risks. Accordingly, Special Condition #7~~6~~ requires the applicants to acknowledge the risks and indemnify the Commission against claims for damages that may occur as a result of its approval of this permit.

The Commission has long recognized that shoreline protection is necessary along Imperial Beach's shoreline, and the City's certified LCP permits the construction of shoreline protection when it does not encroach seaward of a string line of similar devices. In the case of the proposed project, the proposed new location of the seawall 35 feet further inland than the existing wall will be entirely on private property, and will align with the existing shoreline protection to the north. The new wall will still be further seaward than the existing line of protection on the south; however, given that the new alignment will result in a substantial improvement in public access, recreational opportunities, and shoreline sand supply compared the current situation, the proposed seawall location can be found reasonable and consistent with the relevant policies of the LCP and Coastal Act.

5. Biological Resources. Goal 2 of the LUP Conservation & Open Space section states:

#### **GOAL 2 NATURAL RESOURCES – KEY FOUNDATION OF THE CITY**

**The ocean, beach, bay, estuary, weather and related ecosystems set much of the image of Imperial Beach. Conservation and protection of these resources shall be a key focus of the General Plan. The unique physiographic characteristics of Imperial Beach are recognized as the foundation for all other aspects of the community. These characteristics enhance the quality of life of residents and visitors and shall not be wasted, destroyed, or neglected. They are generally nonrenewable and provide many of the scenic, historic, economic, recreation, open space and ecological values for the community.**

The Commission's water quality staff have reviewed the Water Quality Technical Report prepared for the project and determined that it contains adequate provisions for the protection of water quality.

As proposed, all windows, glass features, and the pool screen will be designed to minimize the potential for bird strikes. All decorative glass will have a texture and the Plexiglas surrounding the pool will have an adhesive film applied, as necessary, to reduce reflectivity. The design and placement of windows will incorporate design elements that break up continuous glass surfaces that are known to be problematic for birds. Outdoor lighting will be minimized to reduce the likelihood of disturbances to sensitive species. The proposed landscape plan emphasizes native plants, drought-tolerant plant species. However, because the landscape plan does not specifically prohibit the use of invasive species, Special Condition #54 requires submittal of a landscape plan with this prohibition.

Special Condition #98 requires the applicant to record a deed restriction imposing the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. This restriction will serve to notify future owners of the terms and conditions of the permit such as the landscaping requirements.

The project includes placement of excavated sand on the beach, should it be found suitable material. The project includes detailed criteria for determining suitable replenishment material, including absence of hazardous material, trash and debris, color matching, and grain size within 10% of the receiver beach. Restrictions on the timing of work to avoid impacts to invertebrates and California grunion have been incorporated into the project consistent with past beach nourishment projects approved by the Commission. A pre- and post-construction monitoring program is included as part of the proposed project to monitor a wide variety of factors, including beach profiles, surf conditions, sensitive species and resources, sedimentation, and turbidity.

The proposed development will not have an adverse impact on any sensitive habitat, and, as conditioned, will not result in erosion or adverse impacts to water quality. Thus, the project is consistent with the resource protection policies of Chapter 3 of the Coastal Act.

6. Community Character /Visual Quality. The LUP states:

**GOAL 4 VISUAL QUALITY IS IMPORTANT**

The visual quality of the City's environment shall be preserved and enhanced for the aesthetic enjoyment of both residents and visitors and the economic well-being of the community. Development of neighborhoods, streets and individual properties should be pleasing to the eye, rich in variety, and harmonious with existing development. The feeling of being near the ocean and bay should be emphasized even when the water is not visible. Designs reflective of a traditional California seaside community should be encouraged.

**D-7 Signs**

The City should regulate signs in a manner which will emphasize safety, help improve and protect the appearance of buildings and the City as a whole, foster legible graphics and promote the public's awareness of the business community while respecting the City's suburban character.

1. Signs should be restrained in character and no larger than necessary for adequate identification.
2. Information bits should be limited and design and colors chosen to ensure legibility to passing traffic.
3. A sign should relate in message, location and character to the business conducted or product offered at that site.
4. Signs should relate in character, material, size, shape, height, placement and color to the sites and buildings of which they are a part.
5. Pole signs and roof signs shall be prohibited.

6. Monument signs shall not exceed 8 ft. in height.

#### **D-8 Project Design**

a. The design of development projects should respect, work with and enhance the natural features of the land.

- Natural scenic amenities such as mature trees; watercourses and views should be integrated into the project design
- Structures should be oriented and constructed so they may take advantage of the beneficial features of the climate and be protected from the negative ones in order to reduce energy consumption and increase the enjoyment of the residents.

b. Projects should be designed so there is a harmonious relationship with adjoining uses.

- The pattern of existing neighborhoods should be respected. A development should be integrated with the adjacent neighborhood if the project size or natural boundaries dictate, or the design should create one or more separate and strong neighborhood identities.
- Structures should relate to neighborhood structures both within and adjacent to the development and not create a harsh contrast of scale, style or color.
- Areas of noisy activity and areas of quieter use should be separated by space or buffers, both within and between projects.
- Lighting and signs should be designed, located and directed so as not to disturb adjacent uses.

The proposed project will increase public views across the site from Dunes Park to north (see Exhibit #4). Because the project is greater than 3-stories in height, the LCP requires preparation of a specific plan, which was prepared for the proposed project. The project is consistent with the 40-foot height limit. The proposed project provides an improved pedestrian-scale streetscape along Seacoast Drive. No roof or pole signs are proposed. No monument signs greater than 8 feet in height are proposed.

The development is located within an existing developed area and will be compatible with the character and scale of the surrounding area. Therefore, the Commission finds that the development conforms to the certified LCP policies governing visual quality.



7. Parking. LUP Policy C-22 states:

**Parking**

Parking for both residents and visitors shall be provided as part of new development. Implementation actions shall include:

**a. Seacoast Drive**

The use of in lieu parking fees, off-site parking facilities and shared parking shall be encouraged for properties located west of Seacoast Drive and on Seacoast Drive. The intent of this policy is to encourage a more pedestrian atmosphere near the beach and develop properties near the ocean with commercial and recreational uses rather than parking lots.

Section 19.27.150 allows that with a Specific Plan, existing hotel parking requirements may be reduced to one parking space per unit with a site-specific parking study, taking into account the demand for parking associated with ancillary uses such as conference area and restaurants.

The City of Imperial Beach typically requires hotels to provide 1 parking space per room or 1.5 spaces per room with kitchens. However, as noted, a no less than 1 space per unit ratio is permitted with a site-specific parking study, which was performed for the proposed project. The proposed development will provide 111 parking spaces for the 78 hotel units (all of which have kitchens), restaurant and conference space, which is an approximately 1.4 space per room ratio. The site-specific parking study performed for the project notes that the restaurant and meeting rooms are expected to have different peak hours, and should be able to share parking spaces. A 1.4 space per room ratio is well within the typical amount of parking provided for a full service hotel. The amount of parking provided is consistent with the requirements of the LCP, and no adverse impacts to public access are anticipated.

Currently, there is on-street parking in front of the hotel and on Date Street, some of which will be eliminated by the proposed redesign. Overall, 19 existing on-street public parking spaces would be eliminated. However, in addition to the 111 underground parking spaces, the project includes construction of 14 new on-street parking spaces on Date Avenue. Five on-street parking spaces would be provided on the Seacoast Drive frontage. Therefore, there would not be any loss of public parking. A traffic study performed for the project determined that the project would not have any significant impacts.

In summary, the proposed development will not have an adverse impact on public access to the coast or to nearby recreational facilities as adequate on-site parking is provided and the development will not result in the loss of any of public street parking spaces. As conditioned, the proposed development conforms to the previously cited Sections 30210 through 30214, Sections 30220 through 30224, and Section 30604(c) of the Coastal Act, and the parking and access policies of the certified LCP.

8. Local Coastal Planning. As described above, the proposed project has been conditioned to avoid impacts on visitor-serving accommodations and public access, and will be consistent with the certified LCP as it relates to the Seacoast Commercial Zone. Therefore, the Commission finds that approval of the conversion of the hotel to a condominium hotel, as conditioned, will not prejudice the ability of the City of Imperial Beach to continue to implement its certified LCP.

9. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit or amendment to be supported by a finding showing the permit or permit amendment, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

As described above, the proposed project has been conditioned to avoid adverse environmental impacts. Mitigation measures including ~~a mitigation fee~~, ensuring the condo-hotel units will operate like a traditional hotel, and requiring monitoring and reporting of usage patterns, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

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.

(G:\San Diego\Reports\Appeals\2007\A-6-IMB-07-131 Seacoast Inn Rev Findngs.doc)

APPROXIMATE MEAN HIGH TIDE LINE  
PER MISCELLANEOUS MAPS 401 AND 431

BUILDING ENCRACHES 1.09'  
ONTO PUBLIC RIGHT OF WAY

LAMPPOST  
ST. LIGHT  
BOX

SEWER L

S90°00'00"W 343' +/-

14.65 TOP  
OF POLES

9.05

Existing  
Seawall

15.39

SAND

3RD FLR.

15.94'FF

3RD FLOOR  
3RD FLOOR OUTLINE

Existing  
Building

(VACATED)

15.30

BLOCK WALL  
W/ DECORATIVE  
FENCE ON TOP

9.46

9.95

STAIRS

30.3'

OCEAN BLVD.

211.7'

15' FLR.

16.32'FF

2ND FLR.

25.91'FF

HOTEL ROOMS  
2 STORY

12.5'

16.95'

GATE

3.0' DEEP

POOL

13.9'

7.5'

CONCRETE

WALKWAY

46.2'

1.3'

8.8'

HOTEL ROOMS  
2 STORY

7.12'

24.3'

48.2'

Area to  
be  
dedicated

Proposed  
Seawall

1.0' SUPPORT  
POLES (TYP)

SAND

14.91

8.31

14.65 TOP  
OF POLES

BUILDING ENCRACHES  
0.45' ONTO PUBLIC  
RIGHT OF WAY

14.71TC

14.23FL

SIDEWALK

LAMPPOST

13.85TC

13.33FL

DAI

WOOD  
BARRICADE

THIS PROPERTY LINE IS A  
MEANDERING LINE AND CHANGES  
(IT IS TO A SET ELEVATION OF  
4.98', BEING THE MEAN HIGH TIDE)  
PER NATIONAL OCEANIC &  
ATMOSPHERIC ADMINISTRATION

EXHIBIT NO. A

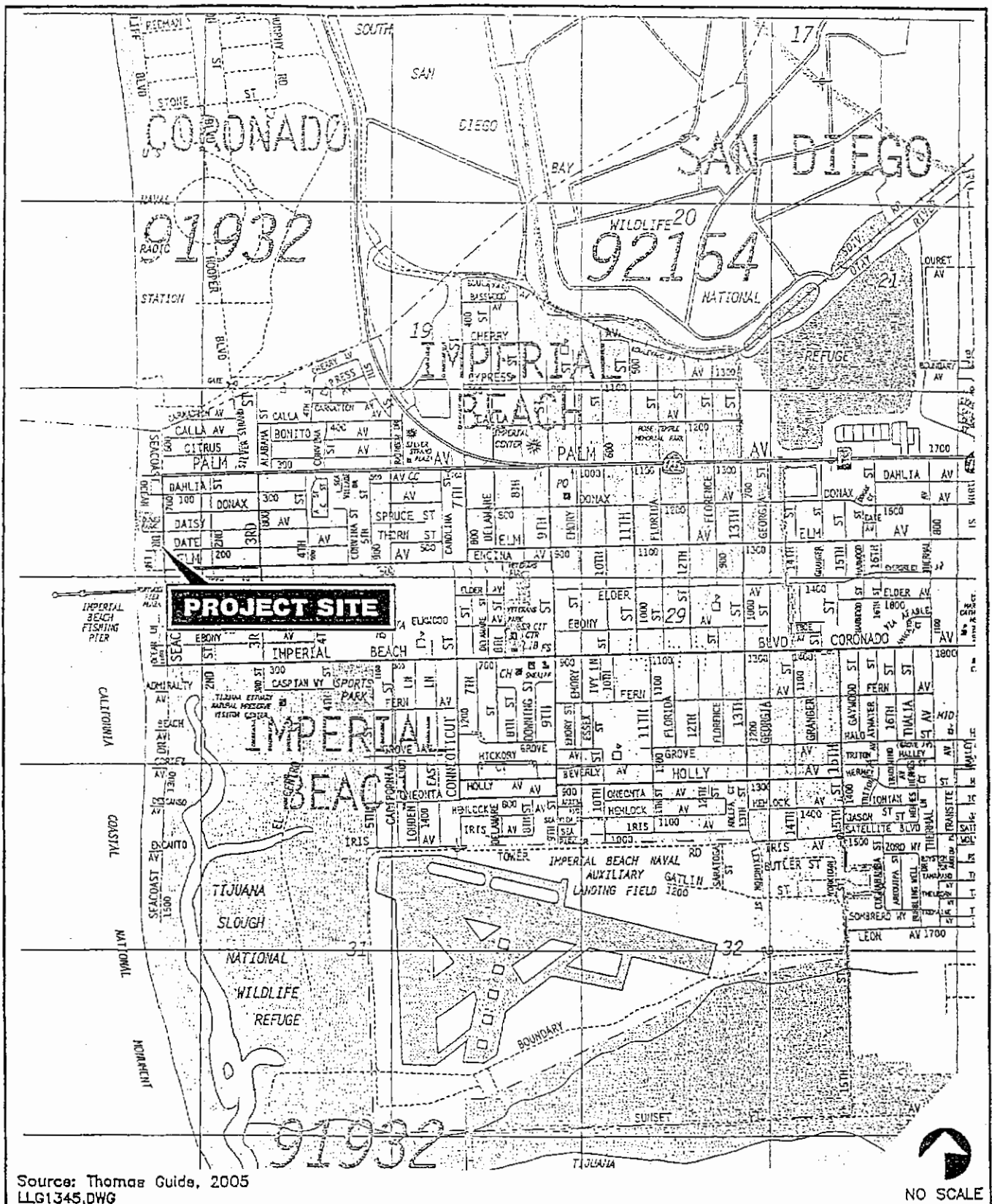
APPLICATION NO.

A-6-IMB-07-131

Lateral Access

Dedication Area

California Coastal Commission



Source: Thomas Guide, 2005  
LLG1345.DWG

**LINSCOTT  
LAW &  
GREENSPAN**  
engineers

**EXHIBIT NO. 1**  
**APPLICATION NO.**  
**A-6-IMB-07-131**  
**Location Map**

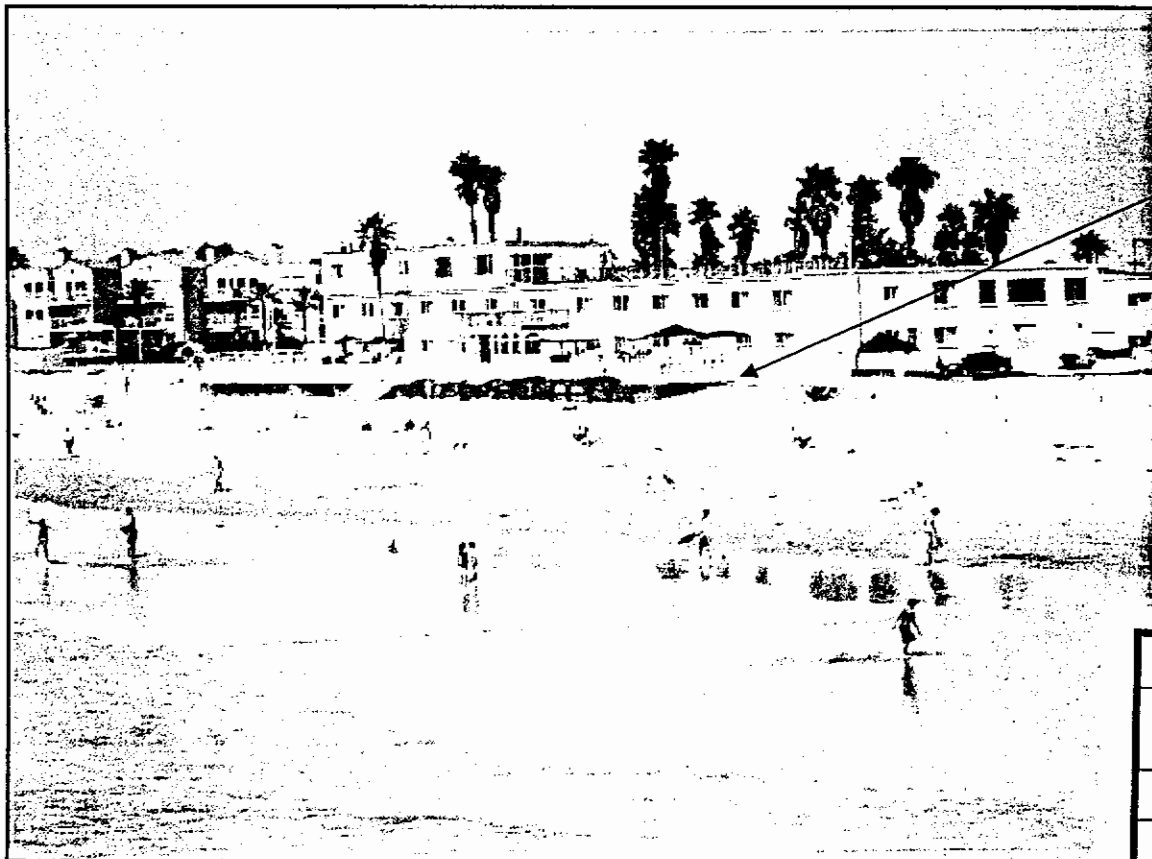
California Coastal Commission





View from Public Beach Looking Southeast

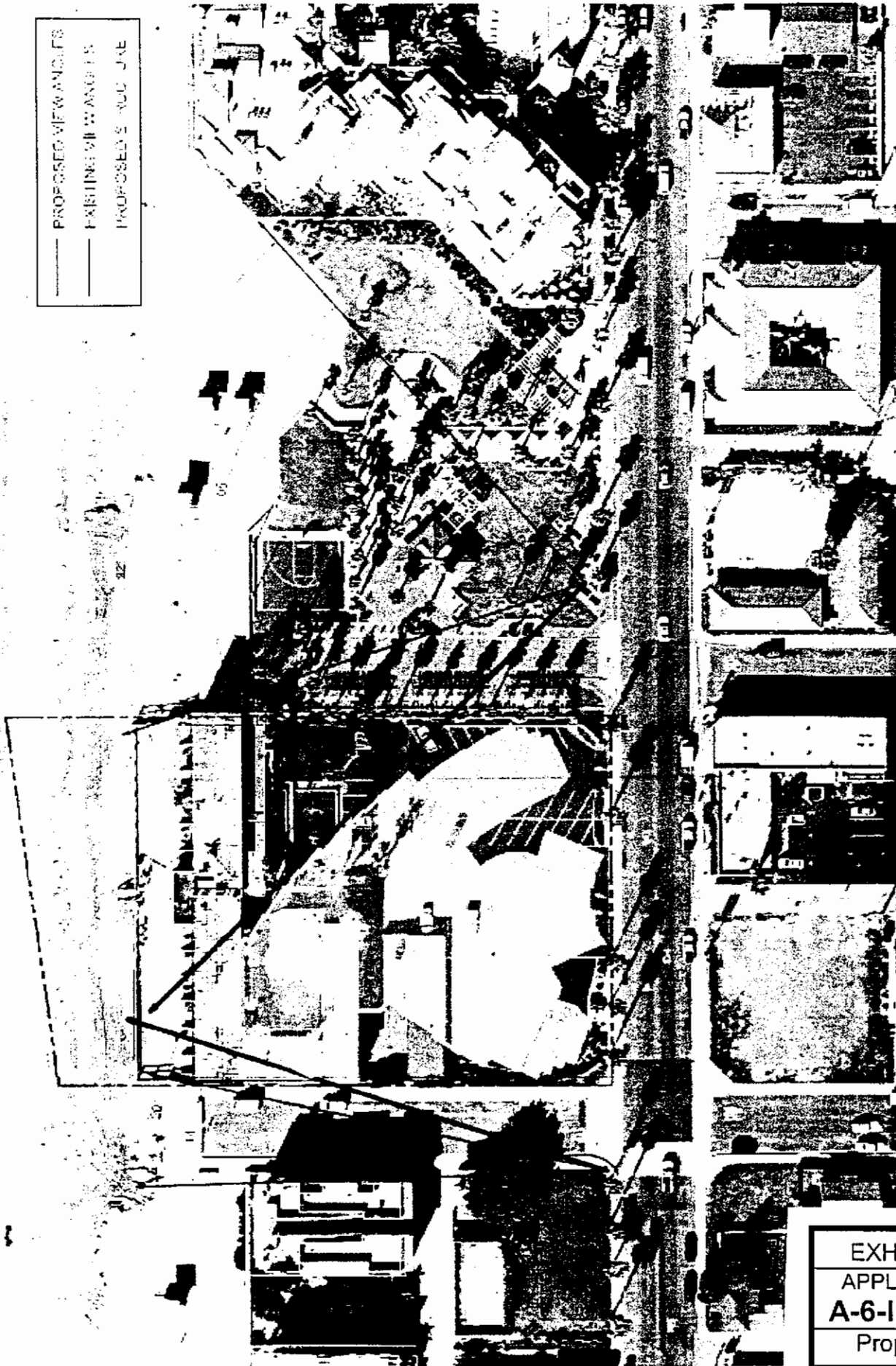
Existing Beach  
Encroachment  
To be Removed



View from Imperial Beach Pier Looking Northeast

EXHIBIT NO. 3
APPLICATION NO.
<b>A-6-IMB-07-131</b>
Existing Hotel
Encroachments
 California Coastal Commission

— PROPOSED VIEW AND LOTS  
 — EXISTING VIEW AND LOTS  
 — PROPOSED SEASIDE JAY

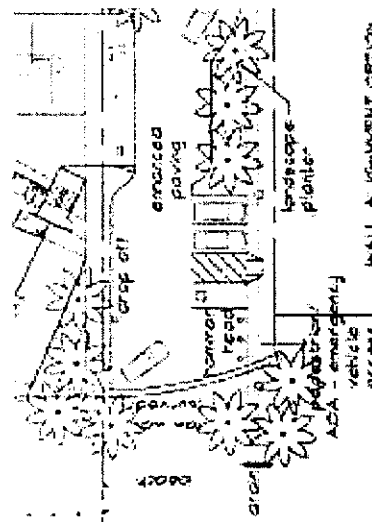
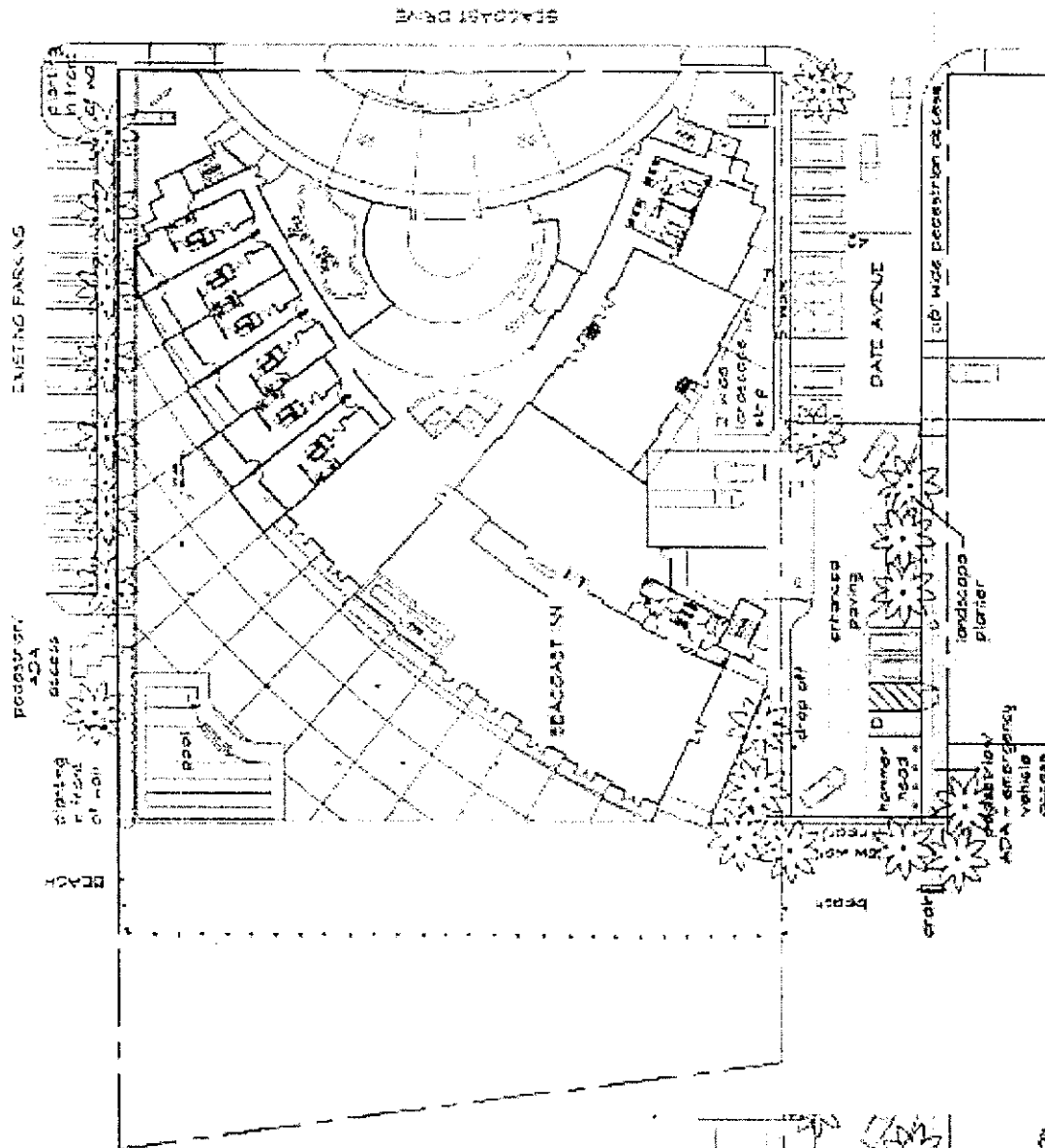


esign 2007

Figure 3.2-12  
 View Corridors from Seacoast Drive

EXHIBIT NO. 4
APPLICATION NO.
<b>A-6-IMB-07-131</b>
Proposed View
Corridors
 California Coastal Commission





**Figure 2.**  
**Date Avenue Street End Improvements**  
**and Public Open Space Concept**

EXHIBIT NO. 5
APPLICATION NO.
<b>A-6-IMB-07-131</b>
Proposed Public
Street Improvements
California Coastal Commission

IMPERIAL BEACH  
CITY COUNCIL  
RESOLUTION NO. 2007-6559

**RESOLUTION NO. 2007-6559**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, APPROVING REGULAR COASTAL DEVELOPMENT PERMIT (CP 03-091), DESIGN REVIEW (DRC 03-094), SITE PLAN REVIEW (SPR 03-093), TENTATIVE MAP (TM 03-092), AND ENVIRONMENTAL IMPACT REPORT (EIA 04-034) FOR THE DEMOLITION OF THE EXISTING 38-ROOM SEACOAST INN AND CONSTRUCTION OF A 4-STORY, 78-ROOM HOTEL WITH A SEAWALL, 111 PARKING SPACES, A RESTAURANT, A MEETING ROOM AND RELATED DATE AVENUE STREET END IMPROVEMENTS LOCATED AT 800 SEACOAST DRIVE IN THE C-2 (SEACOAST COMMERCIAL) ZONE. MF 661**

**APPLICANT: PACIFICA COMPANIES**

**WHEREAS**, on November 21, 2007 and on December 5, 2007, the City Council of the City of Imperial Beach held duly advertised public hearings to consider the merits of approving or denying an application for a Specific Plan (03-095), Regular Coastal Permit (CP 03-091), Design Review (DRC 03-091), Site Plan Review (SPR 03-093), Development Agreement, Tentative Map (TM 03-092), and Environmental Impact Report (EIA 03-034) to demolish an existing 3-story, 38-room Seacoast Inn Hotel and timber seawall, and to redevelop the site as a 4-story, 78-guest room hotel, 40-feet high with 111 parking spaces in a subterranean garage, a restaurant, swimming pool, meeting rooms, and a new vertical seawall to be located 35 feet east of the existing timber seawall. The new hotel would be located landward of the new seawall. Currently private property on the beach to the mean high tide line is proposed to be dedicated as a public beach. The proposed project is located on 1.39 acres (APN 625-262-01-00) at 800 Seacoast Drive in the C-2 (Seacoast Commercial Zone) and is legally described as follows:

Lots 1 to 15, inclusive, in Block 7, in South San Diego Beach, in the City of Imperial Beach, County of San Diego, State of California, according to Map Thereof No. 1071, filed in the Office of the County Recorder of San Diego County, July 6, 1907.

Also all that certain alley in said Block 7 lying and being east of and adjacent to Lots 1 and 7, inclusive, in said Block and West of and adjacent to Lots 8 and 12 in said Block, and also all of the other certain alley of said Block, lying between Lots 8, 9, 10 and 11 on the south and Lots 12, 13, 14 and 15 on the north.

Also all that portion of Ocean Boulevard described as follows:

Commencing at the Southwest Corner of Said Block 7, and running thence Northerly along the West line of said Block as shown upon said Map to the Northwest Corner Thereof; Thence at right angles westerly to the high tide line of said Pacific Ocean; Thence Southerly along said high tide line to a point opposite and directly West of the Southwest Corner of said Block; Thence East to said Southwest Corner of said Block and being all that point of said boulevard lying between said Block 7 and the high tide of Pacific Ocean, and extending in a general Northerly direction from said south line of said Block projected Westerly to said high tide line, to the North line of said Block projected Westerly to said high tide line. Said alleys and said portion of Ocean Boulevard were vacated and closed to public use on December 9, 1908, by an order of the Board of Supervisors of San Diego County, recorded in Book 27, Page 432 and Page 433 of the records of said Supervisors Office.

Except any portion thereof lying below the Mean High Tide Line of the Pacific Ocean.

Together with the reversionary rights, if any, to the centerline of Seacoast Drive, Daisy Avenue, and Date Avenue adjacent Thereto.

Lots 18 and 19, Block 7, Silver Strand Beach Gardens Addition to Imperial Beach, in the City of Imperial Beach, County of San Diego, Sate of California, according to map thereof No. 1902, filed in the Office of the County Recorder of San Diego County, March 25, 1926; Excepting therefrom any portion therefore heretofore or now lying below the ordinary high tide of the Pacific Ocean; and,

**WHEREAS**, on October 18, 2007, the Design Review Board of the City of Imperial Beach held a duly noticed public meeting and recommended approval of this application for Design Review (DRC 03-094) for to demolish an existing 3-story, 38-room Seacoast Inn Hotel and timber seawall, and to redevelop the site as a 4-story, 78-guest room hotel, 40-feet high with 111 parking spaces in a subterranean garage, a restaurant, swimming pool, meeting rooms, and a new vertical seawall to be located 35 feet east of the existing timber seawall in the C-2 (Seacoast Commercial) Zone, on a site at 800 Seacoast Drive; and

**WHEREAS**, the City Council of the City of Imperial Beach hereby finds that the project is consistent with the General Plan and the project design of the 78-guest room hotel, 40 feet high is compatible in use with surrounding commercial and residential developments in the vicinity which consist of multiple-story multiple-family residential developments to the north and south, and commercial buildings to the north and east, and, therefore, would be consistent with Policy D-8 of the Design Element of the General Plan which promotes project design harmonious with adjoining residential and surrounding uses; and

**WHEREAS**, in compliance with the provisions of AB 32, The California Climate Solutions Act of 2006, the potential impacts of the Seacoast Inn project were, to the extent that such impacts were, as directly associated with the project conditions, evaluated in the Draft and Final EIR for the project (reference- Section 3.12 of said EIR). The project applicant has agreed to incorporate: solar panels for direct use, hot water production and other specific measures discussed in the EIR, and

**WHEREAS**, in compliance with Section 15063 of the California Environmental Quality Act (CEQA) Guidelines, an Environmental Impact Report (EIR) has been prepared for this project and routed for public review from August 15 to October 1, 2007, and submitted to the State Clearinghouse (SCH # 2005101113) in accordance with the requirements of the (CEQA) for agency review, and

**WHEREAS**, the City Council has considered and heard any and all public testimony regarding the potential environmental impacts associated with this project, and hereby determines that:

- 1) the Final Environmental Impact Report (SCH # 2005101113) reflects the decision-making body's independent judgment and analysis;
- 2) the decision-making body has, pursuant to CEQA Guidelines Section 15074(b), considered the information contained in the Draft and Final Environmental Impact Reports (SCH # 2005101113) and the written comments received during the public review period;

- 3) revisions in the project plans or proposals made by or agreed to by the project applicant, pursuant to CEQA Guidelines Section 15070(b)(1), would avoid the effects or mitigate the effects to a point where no identified significant effects would occur;
- 4) Upon review of the EIR, the City Council has determined that the submitted Final Environmental Impact Report, inclusive of the Draft EIR and written comments received during the public review period, shall be certified based on substantial evidence, in light of the whole record. This determination is based on the EIR information that the proposed project impacts will not cause a significant effect on the environment as proposed, as conditioned, or as revised; and
- 5) a Statement of Overriding Considerations is hereby adopted, by the City Council of the City of Imperial Beach, for short-term construction noise levels associated with pile driving and vibration effects. These short-term construction noise impacts, as identified in the Draft and Final EIR, will remain significant and unavoidable.

The City Council hereby finds and determines that these short-term construction noise level impacts shall be mitigated, to the extent possible as specified in the adopted Mitigation Monitoring & Reporting Plan and according to the conditions herein specified, in compliance with Section 15070 of CEQA.

The economic and social benefits of this proposed project as described in the Seacoast Inn Specific Plan outweigh the unavoidable but temporary adverse effects of the project and the effects are found to be acceptable.

**WHEREAS**, the City Council further finds and offers the following in support of its decision to conditionally approve the project:

**SITE PLAN REVIEW FINDINGS:**

1. **The proposed use does not have a detrimental effect upon the general health, welfare, safety and convenience of persons residing or working in the neighborhood, and is not detrimental or injurious to the value of property and improvements in the neighborhood.**

The applicant proposes the demolish of an existing 3-story, 38-room hotel and redevelop the site as a 4-story, 78-guest room hotel, 40-feet high with 111 parking spaces in a subterranean garage, a restaurant, swimming pool, meeting rooms, and a new vertical seawall to be located 35 feet east of the existing timber seawall. The new hotel would be located landward of the new seawall. Currently private property on the beach to the mean high tide line is proposed to be dedicated as a public beach. Enhanced street end improvements to Date Avenue along with its new vertical seawall are also proposed.

The 1.39 acre property (APN 625-262-01-00) is located at 800 Seacoast Drive and designated C-2 (Seacoast Commercial Zone) by the General Plan/Local Coastal Plan construction of a 4-story, full service 78-guest room hotel with an underground parking garage.

The project includes the placement of the new hotel buildings and a seawall system that will be installed a minimum of thirty-five (35) feet landward (east) of the applicant's existing timber seawall. A new seawall system will be constructed as a part of the proposed hotel building and conform to the stringline north and south of the subject

property. The height of the building will be required to be no higher than 40 feet, based on average grade methodology, above mean sea level. Coastal engineering reports prepared by Moffatt & Nichol dated November 2005 with an update dated February 2006 provide information regarding wave runup conditions, seawall design, beach sand erosion, scouring, and the avoidance of adverse impacts on neighboring properties. A geotechnical analysis was prepared by TGR Geotechnical date December 24, 2002 with an update dated May 18, 2005. Based on this engineering information, no adverse impacts to adjacent properties would occur.

The proposed hotel use is similar to the other hotel operations within the region, and compatible with other residential uses established nearby. The current timber seawall configuration is further seaward than the adjoining structures both north and south. This existing condition may be impacting the up-and-down coast properties by acting as a barrier for the longshore transport of sediments. The new proposed seawall location is to be located thirty-five (35) feet landward of the existing seawall and should be more in line to an existing seawall north of Dunes Park. The landward shift of the existing seawall should create greater uniformity for shoreline protection. Constructing the new seawall thirty-five (35) feet landward of the existing timber seawall will decrease the encroachment onto the public beach area that currently exists. As such, the project is not expected to have a detrimental effect upon the health, welfare, safety and convenience of persons residing or working in the neighborhood. The on-site parking for the proposed hotel conforms to the requirements specified by the City's Specific Plan Ordinance for off-street parking.

The project building footprint has been set back from its west property line to be more consistent with the City's established stringline of the beach area and thereby, providing enhanced public lateral and horizontal access along the coast. The project is being required to re-dedicate a private beach area for public use and access.

The project building footprint has replaced an existing asphalt parking with a "grand entryway" design element and features that enhances the street level perspective of the project, and provides greater public view access from Dunes Park and properties to the south by its proposed building orientations on the property.

**2. The proposed use will not adversely affect the General Plan/Local Coastal Plan.**

The subject site is located within the Seacoast Commercial (C-2) Zone and land use designation. This zoning classification and land use designation provides for the development of a new hotel development based on Specific Plan requirements pursuant to the City's Specific Plan Ordinance. The Specific Plan Ordinance will permit the construction of a hotel with a maximum roof level height of forty (40) feet and off-street parking, design standards, full-service facilities inclusive of a public restaurant and meeting rooms. This project has provided various technical studies and environmental analysis in compliance with the Specific Ordinance, including an off-street parking study, visual analysis, market-demand analysis, specific design standards, and full-service facilities. Additionally, the maximum building height shall be fifty-four (54) feet from an average grade of fourteen (14) feet from mean sea level. Therefore, the project is determined to be consistent with the City's General/Local Coastal Plan.

**3. The proposed use is compatible with other existing and proposed uses in the neighborhood.**

The subject site is located in the "Seacoast Commercial Area" which encompasses beachfront development along Seacoast Drive from Palm Avenue south to Imperial Boulevard. Within this area, generally commercial and residential developments dominate, and structural types and residential densities vary in character, bulk and scale. The proposed project is compatible with the established two-story and three-story residential and commercial beachfront developments along Seacoast Drive.

The project design relates in bulk, setback and scale to similar multiple-family residential projects developed along Seacoast Drive, north of Imperial Beach Boulevard. The proposed building design provides a visual link with similar existing commercial and high density residential beachfront developments, north and south that incorporate seawalls, beachfront decks, upper level balconies, stucco or wood exterior finish, glass and concrete tile roof materials in their designs. As such, the project is compatible with commercial and residential developments along the City's developed beachfront, Imperial Beach Boulevard to Palm Avenue, and complies with the requirements of the City's Specific Plan Ordinance.

4. **The location, site layout and design of the proposed use properly orients the proposed structures to streets, driveways, sunlight, wind and other adjacent structures and uses in a harmonious manner.**

The proposed hotel buildings will enhance view corridors to the ocean as shown and described in the Final EIR shadow analysis section. No adjacent structures or uses are affected by the proposed building orientation for sunlight, wind or views. Most guest rooms and public areas of the proposed hotel provide views toward the ocean. This project thereby demonstrates proper orientation.

5. **The combination and relationship of one proposed use to another on the site is properly integrated.**

The project represents a redevelopment development on a beachfront site that is predominantly commercial and visitor serving in character. As a visitor serving facility, the hotel provides an important link and relationship to the City's plan for eco-tourism visitor serving facilities, and for the revitalization/redevelopment efforts planned within the Palm Avenue's commercial area. The project is not a mixed-use development; therefore, this finding is not applicable.

6. **Access to and parking for the proposed use will not create any undue traffic problems.**

The hotel's planned subterranean garage provides sufficient parking, per the submitted traffic study analysis provided by the applicant, to meet the peak demands generated by the project. There is adequate back-out area for the cars to maneuver for access/egress onto Date Avenue and Seacoast Drive. Ocean Lane is a low volume local access road. The project proposes to provide 1.43 parking spaces per guest room as recommended by the submitted traffic study, prepared by Linscott, Law & Greenspan Traffic Engineers, and evaluated in the EIR. This meets the parking requirements as specified in the City's Specific Plan Ordinance.

**COASTAL PERMIT FINDINGS:**

**1. The proposed development conforms to the Certified Local Coastal Plan including Coastal Land Use Policies.**

Shore Processes and Shore Protection

The subject site is situated within the Silver Strand Littoral Cell (SSLC), representing a coastal compartment which contains a complete cycle of littoral (beach) sedimentation, including sand sources, transport pathways and sediment sinks. Recent Army Corps of Engineers studies indicate that erosion problems are most noticeable in Imperial Beach and at Playas de Tijuana. A detailed description of coastal conditions and processes for this project is provided in the coastal engineering reports prepared by Moffatt & Nichols, dated November 2005.

The City of Imperial Beach has approximately 17,600 feet of shoreline, approximately 12,000 feet or 68% of which is either publicly owned or has direct vertical or lateral access. This includes 6,000 linear feet of sandy beach owned by the State of California within the Border Field State Park in the extreme southwest corner of the City. The project represents infill development where shore protection is provided by seawalls and rock revetment, both authorized and unauthorized. However, in 1994, the City of Imperial Beach incorporated new language in its Local Coastal Program that established the construction of vertical seawalls north of Imperial Beach Boulevard. Such shore protection must be shown to be necessary to protect the infill development and must not extend seaward of the western property limits.

The proposed project represents the material impact of this new language on infill development north of Imperial Beach Boulevard. A seawall is proposed to be constructed entirely on the subject site and a minimum of thirty-five (35) feet landward of the existing timber seawall, and in accordance with design standards described in the coastal engineering reports prepared by Alan Alcorn of Moffatt & Nichols dated November 2005. The project is not expected to alter lateral beach access or any portion of beach area for public recreation uses consistent with the certified Local Coastal Plan.

Policy S-11 of the Safety Element of the General Plan/Local Coastal Plan states that new development fronting on Seacoast Drive north of Imperial Beach Boulevard shall incorporate an engineered vertical seawall in its design if it is determined that shoreline protection is necessary. Such a seawall shall be located within the private property of the development and shall be sufficient to protect the development from wave runup and flooding during combined design storm and high tide events. The coastal engineering study presents the justification for the seawall, designed to withstand the 1982-83 winter storms.

Public Access

The subject site is located between the ocean and the first public road, which is Seacoast Drive. Date Avenue is a fifty-three (53) foot wide public street that runs in an east-west direction and intersects Seacoast Drive. Date Avenue also provides public access to the beach area at the existing street end. Public access to the beach is provided from Dunes Park to the north. The hotel project will provide public access to the existing north and south public accessway.

The certified Local Coastal Program contains policies that address street-end improvement standards designed to facilitate beach access. These planned



improvements will include enhanced landscaping and more parking spaces with an ADA space. Given this, and the fact that improved beach street ends are programmed adjacent to the project site, it can be found that there is adequate and enhanced vertical access to the shoreline. Additionally, adequate on-site parking for the hotel will be provided to serve the needs of the development.

The project is in conformity with the public access and public recreation policies in the certified Local Coastal Program and Chapter 3 of the Coastal Act, commencing with Section 30200, because:

- a) improved public access to the beach and shoreline is readily available adjacent and to the south and north of the subject site;
- b) improved lateral and horizontal coastal access is being provided by having this project set back away from the beach in conformance with the Coastal Commission's stringline development policy, and the project is being required to re-dedicate a private beach area from mean high tide to the new building seawall and associated buildings for public use and access;
- c) the new development will be located entirely on private property upland (landward) of the sandy beach;
- d) the project protects public access parking opportunities through the provision of 111 on-site parking spaces, as required by the certified Local Coastal Program and in conformance with the City's Specific Plan Ordinance requirements.

#### Coastal View Access

The beach is not entirely visible from Seacoast Drive given some of the existing hotel development. Public viewing areas are provided at the street ends to the south of the site and from Dunes Park to north. From a position on the beach seaward of the subject site, the proposed hotel seawall, patio, swimming pool, outdoor restaurant area and guest room balconies appear similar to other buildings on this frontage. Additionally, enhanced lateral and horizontal coastal access is being provided by having this project set back away from the beach in conformance with the Coastal Commission's stringline development policy and the re-dedication of the private beach area for public use and access.

Refer to Site Plan Review Finding No. 2 for land use consistency, incorporated here by reference.

Scenic Views: The seawall and the proposed hotel project will not be significantly out of scale with the height of nearby structures. Refer to photo simulation and shadow analysis study in the Draft and Final EIR.

2. **For all development seaward of the nearest public highway to the shoreline, the proposed development meets standards for public access and recreation of Chapter Three of the 1976 Coastal Act and regulations promulgated thereunder.**

The subject site is located between the ocean and the first public road, which is Seacoast Drive. Date Avenue is a fifty-three (53) foot wide public street that runs intersects Seacoast Drive and the beach. The existing hotel development does not allow public access to the beach area. The property owner will provide lateral and horizontal coastal access by having this project set back away from the beach in

conformance with the Coastal Commission's stringline development policy and re-dedicating the private beach for public use.

The certified Local Coastal Program contains policies that address street-end improvement standards designed to facilitate beach access. Given this, and the fact that improved beach street ends are programmed near the site, it can be found that there is adequate horizontal and lateral access to the shoreline. Additionally, adequate on-site parking will be provided to serve the needs of the development.

Section 30252 of the Coastal Act addresses public access, and states in part, "The location and amount of new development should maintain and enhance public access to the coast by providing adequate parking facilities..." This project will provide 111 off-street parking spaces as required by the Specific Plan Ordinance. Additionally, fourteen (14) on-street parking spaces are planned for Date Avenue to replace spaces from Seacoast Drive and provide more parking spaces on Date Avenue than currently exist.

3. **The proposed development meets the minimum relevant criteria set forth in Title 19, Zoning.**

Refer to Site Plan Review findings No.3, 4 and 5 incorporated herein.

4. **For all development involving the construction of a shoreline protective device, a mitigation fee shall be collected which shall be used for beach sand replenishment purposes. The mitigation fee shall be deposited in an interest bearing account designated by the Executive Director of the California Coastal Commission and the City Manager of Imperial Beach in lieu of providing sand to replace the sand and beach area that would be lost due to the impacts of any protective structures.**

The project includes the construction of a vertical seawall. Therefore the project is conditioned to provide the fee in compliance with Section 19.87.050 of the City of Imperial Beach Municipal Code. However, due to an interpretation by the Coastal Commission, this project may not need to pay a fee since the seawall will be placed on private property.

#### **DESIGN REVIEW FINDINGS:**

1. **The project is consistent with the City's Design Review Guidelines.**

The design of the project and the landscaping improvements are consistent with the City's Design Review Guidelines as per Design Review Compliance checklist and the findings adopted by the Design Review Board per their Resolution No. 2007-09.

**NOW, THEREFORE, BE IT RESOLVED**, that Regular Coastal Permit (CP 03-091), Design Review (DRC 03-094), Site Plan Review (SPR 03-093), Tentative Map (TM 03-091) Environmental Impact Report (EIA 04-034) to demolish an existing 3-story, 38-guest room hotel and construct a 4-story, 78-guest room full service hotel, 40-feet-high to roof level height with a new vertical seawall on a 1.39 acre lot at 800 Seacoast Drive in the C-2 (Seacoast Commercial) Zone, are hereby **approved** by the City Council of the City of Imperial Beach subject to the following:

#### **CONDITIONS OF APPROVAL:**

**A. PLANNING:**

**General Conditions:**

1. Final building permit plans shall indicate and the site shall be developed substantially in accordance with the approved conceptual plans on file in the Community Development Department as of November 1, 2007 and with the conditions adopted herein.
2. The applicant shall submit a licensed surveyor's certificate upon completion of the foundation work that demonstrates proper placement of the structure relative to building setbacks from property lines and a certificate upon completion of framing that demonstrates and ensures that the building does not exceed the maximum roof level height of 40 feet above an average grade of 14 feet mean sea level grade.
3. Approval of this request shall not waive compliance with any portion of the Uniform Building Code and Municipal Code in effect at the time a building permit is issued.
4. Mechanical equipment, including solar collectors and panels or other utility hardware on the roof, ground, or buildings shall be screened from public view with materials harmonious with the building, and shall be located so as not to be visible from any public way. (19.83).
5. No improvements, structural or non-structural, may be placed on the roof deck. Only personal property, which does not obstruct views, is permitted on the roof deck while authorized person(s) are actually present on the roof deck.
6. All landscaped areas, including any in the public right-of-way, shall be maintained, at all times, in a healthy condition, free from weeds, trash, and debris.
7. It shall be the applicant's responsibility to assure that shoreline protection structures on adjacent properties are not damaged during construction on the subject site, and to repair any damage to the adjacent property's shoreline protection structures that may be caused by the construction on the subject site. The construction of temporary slopes shall be shored in compliance with CAL-OSHA requirements.
8. All sand excavated from the project site shall be analyzed for suitability as beach nourishment material. If determined to be suitable, any sand in excess of that required to provide berming along the first level wall shall be used for beach nourishment at such locations as may be determined appropriate by the City for compliance with sand nourishment programs. Local sand, cobbles or armor stones shall not be used for backfill or construction materials. Additionally, the applicant shall remove from the beach and seawall area any and all debris that result from the construction period and dispose of such materials in an acceptable landfill site.
9. Within 60 days following project completion, the applicant shall submit certification by a registered civil engineer verifying that the seawall has been constructed in conformance with the final approved plans for the project.
10. Construction materials or equipment shall not be stored on the beach seaward of the western property line. Equipment shall be removed from the beach at the end of any given work day.
11. A Registered Engineer shall supervise the construction of the seawall.
12. The property owner shall be responsible for maintenance of the permitted seawall. Any debris or other materials which become dislodged after completion through weathering and coastal processes, which impair public access, shall be removed from the beach.

Any future additions or reinforcements may require a coastal development permit. If after inspection it is apparent that repair and maintenance is necessary, the applicant shall contact the City to determine whether such a permit is necessary.

13. The applicant or applicant's representative shall, pursuant to Section 711.4 of the California Fish and Game Code, pay by certified or cashier's check payable to the San Diego County Clerk \$2,500 plus a \$50 documentary handling fee at the time the Notice of Determination is filed by the City, which is required to be filed with the County Clerk within five working days after project approval becomes final (Public Resources Code Section 21152).
14. Applicant shall pay off any unpaid negative balances in the Project Account Numbers (03-91/03-92/03-93/03-94/03-95/04-034) prior to issuance of building permit and prior to final inspection/certificate of occupancy.
15. The applicant or applicant's representative shall read, understand, and accept the conditions listed herein and shall, within 30 days, return a signed affidavit accepting said conditions.
16. The applicant shall comply and conform to the requirements, specifications, mitigation measures and conditions provided, by separate action or as specified herein, for the City Council approved Development Agreement applicable to this project, the certified Final EIR and Mitigation Monitoring & Reporting Plan, and the Specific Plan applicable to this project.
17. Building design and architectural treatment/style, project amenities and features shall conform and comply with the standards and requirements specified by the Seacoast Inn Specific Plan as adopted by the City Council. No deviation or modification shall be allowed unless prior approval for modifications have been granted by public hearing action by the City Council.

**Prior to the Issuance of Construction or Grading Permits or Commencement of Site Work:**

18. The applicant shall dedicate an easement over, under, along and across that portion of the property west (seaward) of the proposed seawall from the mean high tide line to the new seawall to the City of Imperial Beach for public use and access by City maintenance and emergency vehicles to the beach.
19. The applicant shall provide the City Community Development Department with a construction schedule in order to commence any site work. All construction activity on the beach shall be scheduled during low tides.
20. The applicant shall submit final plans for the shoreline protection device consistent with the recommendations contained in the Wave Runup engineering report prepared by Moffatt & Nichols dated November 2005 with an update dated February 14, 2006, and a Geotechnical Study report prepared by TGR Geotechnical December 24, 2002 with an update dated May 18, 2005.
21. The applicant shall submit plans showing the locations, both on and off site that will be used as staging or storage areas for materials and equipment during the construction phase of the project. The staging/storage plan shall be subject to review and written approval of the Community Development Director. The plan shall also note that no work requiring encroachment on the public beach shall be allowed on weekend days between Memorial Day and Labor Day, and during predicted grunion runs, of any year.

Disturbance to the beach more than 10 feet seaward of the existing hotel seawall during construction shall be prohibited except for beach replenishment. Construction activity up

to 10 feet seaward of the existing seawall shall be allowed only for demolition of the existing seawall and for beach restoration. Beach replenishment will be allowed only under conditions stated in the Environmental Impact Report, Section 2.6, or in a beach replenishment program permitted by the U.S. Army Corps of Engineers. During grunion spawning periods forecasted by the California Department of Fish and Game, no construction activity shall be allowed seaward of the new seawall.

22. The applicant shall submit a traffic control plan for the diversion of traffic on Ocean Lane during construction. Ocean Lane shall remain open, except at intersection with Date Avenue, for vehicular traffic, including emergency vehicles during construction of the project. If traffic must be impeded, the applicant must submit a traffic control plan to the Public Works Director for approval at least 10 days prior to closure of Date Avenue and Ocean Lane intersection or closure of Date Avenue at Seacoast Drive.
23. The landowner, if required, shall execute and record a deed restriction in a form and content that is acceptable to the Community Development Director which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from waves during storms and from erosion or flooding, and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the City of Imperial Beach and agrees to indemnify and hold harmless the City of Imperial Beach relative to its approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.
24. The applicant shall pay a sand mitigation fee if required which shall be used for beach sand replenishment purposes, in lieu of providing sand to replace the sand and beach area that would be lost due to the impacts of the proposed shoreline protection structure. The mitigation fee shall be deposited in an interest-bearing account designated by the Executive Director of the California Coastal Commission and the City Manager of the City of Imperial Beach. The mitigation fee shall be determined in accordance with Section 19.87.050 of the City of Imperial Beach Municipal Code, in consultation with the California Coastal Commission technical staff.
25. Form 7-B shall be submitted with the Building Permit Application.
26. Identify all BMPs on the site plan or a separate landscape or drainage plan in compliance with Form 7-B of the Storm Water Management Plan.
27. Provide this note on the plans: "All construction wastes shall be collected, stored and disposed of in an approved manner per Caltrans Storm Water Quality Handbook." Show the location of your waste container or dumpster on site. If you intend to set a dumpster in the public right of way an Encroachment Permit is required.
28. Show proposed drainage pattern with high point elevation and flow-lines elevation every 25'.
29. Provide a final soils report from a licensed soils engineer.
30. Locate on the site plan the sewer line for the new dwellings.
31. A final grading / Improvement plan is required for this project and shall be approved by the City Of Imperial Beach Engineer prior to permit issuance.
32. Provide this note on the plans: "BMPs shall be maintained through final inspection. If the building Inspector finds that BMPs are not in place during a regularly scheduled inspection, the inspection will not be complete and a re-inspection fee may be assessed at the discretion of the Building Official."

33. Project building plans shall show and ensure that the hot water tank P.T. discharge pipe is directly connected to the sanitary sewer system or the landscape area. A design that has the water discharge directly into the storm drain conveyance system onto an impervious surface that flows to a public street shall be avoided and would be in violation of the Municipal Storm Water Permit – Order 2001-01.
34. No building roof or landscape water drains may be piped to the street or onto impervious surfaces that lead to the street. A design that has these water discharges directly into the storm drain conveyance system (onto an impervious surface that flows to the street) is in violation of the Municipal Storm Water Permit – Order 2001-01.
35. Require the building foundation elevation be at least 1 foot above gutter line to minimize flooding during storm conditions.
36. Ensure construction design includes adequate storage for trash containers for regular trash, recycled waste, green waste as required by the City Public Works Director.
37. Install survey monuments, as specified and required by Public Works Director, on all property lines and/or adjacent to the property line. Record same with county office of records.
38. Applicant shall incorporate into project design and implement pre- and post construction Best Management Practices (BMPs), inclusive of site design, source control and treatment controls, and verify maintenance provisions through a legal agreement, covenant, CEQA mitigation requirement, and/or the conditions as required by the City Public Works Director.
39. Applicant shall submit for review and approval a Storm Water Pollution and Prevention Plan (SWPPP), project is greater than 1-acre in size, by City Public Works Director.
40. For alley, sidewalk or curb and gutter replacement ensure compliance with San Diego Regional Standard Drawing G-11 in that the "Area to be removed [must be] 5' or from joint to joint in panel, whichever is less." The distance between joints or score marks must be a minimum of 5 feet. Where the distance from "Area to be removed" to existing joint, edge or score mark is less than the minimum shown, "Area to be removed" shall be extended to that joint, edge or score mark.
41. For any work to be performed in the street submit a traffic control plan for approval by Public Works Director a minimum of 10 working days in advance of street work. Traffic control plan is to be per Regional Standard Drawings or Caltrans Traffic Control Manual.

**Prior to Final Map Approval for Recordation:**

42. The applicant shall dedicate an easement over, under, along and across that portion of the property west (seaward) of the proposed seawall from the mean high tide line to the new seawall to the City of Imperial Beach for public use and access by City maintenance and emergency vehicles to the beach.

**Expiration Date:**

43. Approval of Regular Coastal Permit (CP 03-091), Design Review (DRC 03-094), Site Plan Review (SPR 03-093), Tentative Map (TM 03-092) and Environmental Impact Report (EIA 04-034) is valid for three years from the date of final action, to **expire on December 5, 2010**, unless an appeal is filed to or by the California Coastal Commission. Any such appeal will stay the expiration date until the case is resolved and the permit will expire 3 years from the date the Commission acts on the appeal. In the event that no appeal is filed, conditions of approval must be satisfied, building permits issued, and substantial construction must have commenced prior to the expiration date, **or** unless a time extension is granted by the City pursuant to such a request for extension by the applicant. The applicant is responsible for tracking these expiration dates and shall, if necessary, file a written request for a time extension at least 45 days prior to said expiration dates, either the Coastal Commission decision or the City Council of the City of Imperial Beach Notice of Decision(s).

**B. ENVIRONMENTAL CONDITIONS OF APPROVAL:**

**General:**

All mitigation measures, as specified in the Draft and Final EIR Mitigation Monitoring and Reporting Plan (MMRP), shall, at a minimum be initiated or completed, by designated responsible parties.

The following conditions shall also be incorporated into the project as additional requirements to assure conformance or compliance with City regulations, and are in addition to required EIR Mitigation Measures:

**Air Quality:**

Temporary impacts to air quality associated with construction activities are anticipated. Implementation of the following conditions during construction operations shall be required:

44. Water all active construction areas at least twice daily.
45. Cover all trucks hauling soil, sand, and other loose materials, or require trucks to maintain at least 2 feet of free board.
46. Pave/apply water three times daily, or apply nontoxic soil stabilizers, on all unpaved access roads, parking areas, and staging areas at the construction sites.
47. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction site.
48. Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
49. Hydroseed or apply nontoxic soil stabilizers to inactive construction areas. Inactive construction areas are areas that have been previously graded and are inactive for 10 days or more.
50. Install sandbags, silt fences or other erosion control measures to prevent silt runoff to public roadways.
51. Replant vegetation in disturbed areas as quickly as possible.
52. Suspend excavation and grading activity when wind gusts exceed 25 MPH.



### **Biological Resources:**

The following conditions shall be implemented to reduce potential impacts to the Pismo clam and grunion. Although not listed as an endangered or threatened species, the City has implemented a standard protocol for the protection of the Pismo clam and grunion associated with construction activities by incorporating the following:

53. Impacts to Pismo clam shall be mitigated by avoiding vehicle use in the lower intertidal zone, and minimizing vehicle use in the middle intertidal zone (or conduct a survey at the time of construction to verify their absence); and
54. Disturbance to the beach below the high tide line (Mean Higher High Water) during construction shall be prohibited except for beach replenishment. Beach replenishment will be allowed only under conditions stated in the Environmental Impact Report, Section 2.6, or in a beach replenishment program permitted by the U.S. Army Corps of Engineers. During grunion spawning periods forecasted by the California Department of Fish and Game, no construction activity shall be allowed seaward of the new seawall.

### **Geology:**

The following geotechnical conditions shall be required in the planning and implementation of the project:

55. A comprehensive geotechnical evaluation, including development-specific subsurface exploration and laboratory test, shall be conducted prior to design and construction if previous studies need to be updated. The purpose of the subsurface evaluation shall evaluate the subsurface conditions in the area of the proposed structures and to provide information pertaining to the engineering characteristics of earth materials at the project site. From the data, recommendations for grading/earthwork, surface and subsurface drainage, foundations, pavement structure sections, and other pertinent geotechnical design considerations shall be formulated and submitted to City Building Official for approval.
56. Vibration induced settlement due to driving of sheet piles may occur during the construction of the seawalls. Nearby structures and pavement may experience distress due to the induced settlements. A vibration monitoring plan, in accordance with 2007 California Building Code requirements, shall be developed and implemented during construction of the sheet pile seawalls. The purpose of the plan would be to document construction induced vibrations and is subject to the approval of the City Building Official and/or Public Works Director prior to issuance of building or grading permits.
57. A baseline geotechnical reconnaissance shall be performed at each of the nearby structures to document pre-construction distress features, if any. Such an evaluation may include manometer surveys, crack measurements, and photographic/video documentation.
58. During construction, nearby structures shall be monitored for distress and/or settlement that may occur as a result of construction. Upon completion, a final evaluation of the nearby structures shall be performed, and the results compared with the initial baseline findings.
59. Liquefiable soils may be present on the site. The confirmation of their presence (or absence) shall be done through subsurface exploration (e.g. drilling) and laboratory testing.



60. Loose surficial soils that are not suitable for structural support in their current state are present on the sites. The loose surficial soils shall be mitigated by their removal during site grading. Much of the soils should be suitable for reuse as compacted fill.
61. The project has a potential for strong ground motions due to earthquakes. Accordingly, the potential for relatively strong seismic accelerations shall be considered in the design of proposed improvements.

#### **Hydrology and Water Quality:**

The potential for impacts to water quality would primarily occur as a result of construction activities. The following measures shall be implemented prior to initiation of construction activities:

62. Prior to City approval of construction permits, the final grading and drainage plans will be reviewed for compliance with SUSMP.
63. The proposed project includes a subterranean parking garage; therefore, excavation below the street level elevation may intercept the groundwater table. An updated geotechnical report shall be required prior to construction to ensure the appropriate measures are implemented. Temporary construction dewatering may be required during excavation. The applicant shall be responsible for obtaining an appropriate permit(s) for construction dewatering.
64. Project shall adhere to the Water Pollution Control Plan (WPCP) prepared by Landmark Consulting Engineers as conditioned and approved by the City of Imperial Beach including Construction and Permanent Best Management Practices (BMP) and other requirements pursuant to the City's Standard Urban Storm Water Mitigation Plan (SUSMP).
65. In order to provide the appropriate protection to the project site in case of a flood event, the applicant shall be required to Implement Flood Hazard Reduction Standards established for construction in order to assure protection from flooding (Imperial Beach Municipal Code 15.50.160).
66. In addition to building permits, a flood hazard area development permit may need to be obtained from the City Engineer prior to commencement of any construction (Imperial Beach Municipal Code 19.32.020).

#### **Noise:**

It is anticipated that the project will create temporary noise impacts associated with construction activities. During construction, equipment and material transport will generate temporary noise, which could be a significant increase in levels for the adjacent residents. Therefore, the following conditions shall also be incorporated into the project as additional requirements to assure conformance or compliance with City regulations, and are in addition to required EIR Mitigation Measure:

67. To further deter construction noise from adjacent properties, the applicant shall be responsible for notifying residents and businesses within a 300-foot radius prior to shoring or pile driving activities.
68. Additionally, construction activities associated with implementation of pile driving shall be limited to the hours of 8 a.m. to 5 p.m., Monday through Friday.
69. The applicant shall notify all residents within 500 feet of the project site prior to pile driving activities. The applicant shall also incorporate the best available technology acoustical dampening features during pile driving or drilling, including but not limited to

the installation of a ten (10) foot high sound attenuating wall at the property perimeters. Other Best Management Practices for construction noise abatement shall be employed, to the extent feasible, by the contractor throughout the construction phase, including limiting equipment warm-up to no more than fifteen (15) minutes prior to start of daily construction activities.

**C. BUILDING:**

70. This project is subject to all Model Codes, State Codes and City Ordinances adopted by the City of Imperial Beach, including but not limited to the applicable 2007 California Building and Mechanical Code requirements for building design, ADA access for swimming pool and all areas of the hotel, garage ventilation, building sprinkler systems, alarm system, elevator access and controls.
71. Applicant shall submit a complete set of construction documents for building permit review including complete architectural, structural, civil, mechanical, electrical, plumbing, energy calculations and landscape/irrigation plans.
72. The project shall be fully fire sprinklered in accordance with NFPA 13 requirements and include an alarm system in conformance with NFPA 72 requirements and Knox box located near the main entry or specified by the Fire Department.
73. Building design shall comply with the Uniform Fire Code or the IFC requirements, if adopted by the City and applicable to this project.
74. Building design plans shall note that all elevator sizes and controls shall comply with the 2007 California Building Code requirements.
75. Building design and amenities shall conform to the requirements and specifications as adopted by the City Council for the Seacoast Inn Specific Plan, Development Agreement and EIR Mitigation Monitoring & Reporting Plan for this project.

**D. PUBLIC WORKS:**

76. For alley, sidewalk or curb and gutter replacement ensure compliance with San Diego Regional Standard Drawing G-11 in that the "Area to be removed [must be] 5' or from joint to joint in panel, whichever is less." The distance between joints or score marks must be a minimum of 5 feet. Where the distance from "Area to be removed" to existing joint, edge or score mark is less than the minimum shown, "Area to be removed" shall be extended to that joint, edge or score mark.
77. Relocate and replant, to the extent possible, existing Palm trees out of the public rights-of-way, including Seacoast Drive and/or Date Avenue. Applicant may incorporate any removed Palm trees into the landscape design for Seacoast Drive or Date Avenue.
78. Applicant shall remove sidewalk on Seacoast Drive frontage and construct an 8-foot-wide sidewalk with a design that conforms to the constructed sidewalk adjacent to Dunes Park and to the proposed improvements for Date Avenue. These sidewalk improvements must comply with applicable ADA accessibility requirements and applicable design criteria.
79. Remove existing driveway approach on Seacoast Drive and replace with new curb, gutter, and sidewalk, wherever not coincident with the new driveway approach, per Regional Standard drawings G-2 and G-7.
80. Applicant shall install new driveway approach(es) on Seacoast Drive in accordance with Regional Standard Drawing G-14A or an alternative meeting ADA accessibility requirements and as approved by City Public Works Director. Asphalt cuts for said installation shall conform to the requirements and satisfaction of the City Public Works Director.

81. All street work construction requires a Class A contractor to perform the work. Street repairs must achieve 95% sub soil compaction. Asphalt repair must be a minimum of four (4) inches thick asphalt placed in the street trench. Asphalt shall be AR4000 ½ mix (hot).
82. In accordance with I.B.M.C. 12.32.120, applicant must place and maintain warning lights and barriers at each end of the work site, and at no more than 50 feet apart along the side thereof from sunset of each day until sunrise of the following day, until the work is entirely completed. Barriers shall be placed and maintained not less than three feet high.
83. Advise the property owner that he/she must institute "Best Management Practices" to prevent contamination of storm drains, ground water and receiving waters during both construction and post construction. The property owner or applicant must provide the following documents to the City of Imperial Beach following before project may begin work:
  - A certification of intent to comply with storm water requirements – Form 7-A.
  - A checklist of selected BMPs and location of the BMPs on project plans for review by the City – Form 7-B and Table 7-3
  - Certification of intent to maintain selected BMPs – Form 7-B.
  - A Storm Water Management Plan –Form 7-B.
84. Additionally these BMP practices shall include but are not limited to:
  - Contain all construction water used in conjunction with the construction. Contained construction water is to be properly disposed in accordance with Federal, State, and City statutes, regulations and ordinances.
  - All recyclable construction waste must be properly recycled and not disposed in the landfill.
  - Water used on site must be prevented from entering the storm drain conveyance system (i.e., streets, gutters, alley, storm drain ditches, storm drain pipes).
  - All wastewater resulting from cleaning construction tools and equipment must be contained on site and properly disposed in accordance with Federal, State, and City statutes, regulations, and ordinances.
  - Erosion control - All sediment on the construction site must be contained on the construction site and not permitted to enter the storm drain conveyance system. Applicant is to cover disturbed and exposed soil areas of the project with plastic-like material (or equivalent product) to prevent sediment removal into the storm drain system
85. Any disposal/transportation of solid waste/construction waste in roll-off containers must be contracted through EDCO Disposal Corporation unless the hauling capability exists integral to the prime contractor performing the work.

**E. PUBLIC SAFETY:**

86. **Provide a note on the plans stating:** "Approved numbers or addresses shall be provided for all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property and from any alley that fronts the property. Lettering shall be a minimum of four (4) inches high, with a minimum ¾ inch stroke, on a contrasting background." CFC Section 901.4.4
87. **Provide a note on the plans stating:** "All electric, gas, and water meters shall be clearly marked to indicate the unit or portion of the building they serve."

88. No on-street parking shall be allowed in Ocean Lane, south of Date Avenue.

**Appeal Process under the California Code of Civil Procedure (CCP):** The time within which judicial review of a City Council decision must be sought is governed by Section 1094.6 of the CCP. A right to appeal a City Council decision is governed by CCP Section 1094.5 and Chapter 1.18 of the Imperial Beach Municipal Code.

**PROTEST PROVISION:** The 90-day period in which any party may file a protest, pursuant to Government Code Section 66020, of the fees, dedications or exactions imposed on this development project begins on the date of the final decision.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Imperial Beach at its regular meeting held on the 5<sup>th</sup> day of December 2007, by the following roll call vote:

<b>AYES:</b>	<b>COUNCILMEMBERS:</b>	<b>MCLEAN, MCCOY, WINTER, JANNEY</b>
<b>NOES:</b>	<b>COUNCILMEMBERS:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>COUNCILMEMBERS:</b>	<b>NONE</b>
<b>DISQUALIFIED:</b>	<b>COUNCILMEMBERS:</b>	<b>BRAGG (DUE TO POTENTIAL CONFLICTS OF INTEREST)</b>

*James C. Janney*

**JAMES C. JANNEY, MAYOR**

**ATTEST:**

*Jacqueline M. Hald*

**JACQUELINE M. HALD, CMC  
CITY CLERK**

I, City Clerk of the City of Imperial Beach, do hereby certify the foregoing to be a true and correct copy of Resolution No. 2007-6559 – A Resolution of the City of Imperial Beach, California, APPROVING REGULAR COASTAL DEVELOPMENT PERMIT (CP 03-091), DESIGN REVIEW (DRC 03-094), SITE PLAN REVIEW (SPR 03-093), TENTATIVE MAP (TM 03-092), AND ENVIRONMENTAL IMPACT REPORT (EIA 04-034) FOR THE DEMOLITION OF THE EXISTING 38-ROOM SEACOAST INN AND CONSTRUCTION OF A 4-STORY, 78-ROOM HOTEL WITH A SEAWALL, 111 PARKING SPACES, A RESTAURANT, A MEETING ROOM AND RELATED DATE AVENUE STREET END IMPROVEMENTS LOCATED AT 800 SEACOAST DRIVE IN THE C-2 (SEACOAST COMMERCIAL) ZONE. MF 661.

Signature on File

CITY CLERK

DATE

12/07/07

IMPERIAL BEACH  
CITY COUNCIL  
ORDINANCE NO. 2007-1061 WITH  
DEVELOPMENT AGREEMENT

Received  
DEC 13 2007  
Imperial Beach Commission  
San Diego County

EXHIBIT NO. 7
APPLICATION NO.
<b>A-6-IMB-07-131</b>
Ordinance & Develop.
Agreement pg. 1 of 49

ORDINANCE NO. 2007-1061

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH AND IMPERIAL COAST LIMITED PARTNERSHIP OF A GENERAL PARTNERSHIP OF PACIFICA HOSPITALITY GROUP, INC. MF 661

**WHEREAS**, the California Government Code, Section 65864 et seq. authorizes local agencies to enter into a property development agreement with any person having a legal or equitable interest in real property for development of such real property in order to establish certain development rights in the real property; and

**WHEREAS**, on July 7, 2004, the City Council of the City of Imperial Beach adopted Chapter 19.89 enacting procedures and requirements for the consideration of Development Agreements pursuant to Section 65864; and

**WHEREAS**, the City Council of the City of Imperial Beach ("City") desires to enter into this Development Agreement ("Agreement") with Imperial Coast Limited Partnership ("Developer") for the purpose of and related to the development of real property known as the "Seacoast Inn Development Project" ("Project"); and

**WHEREAS**, the Developer is a corporation organized under the laws of the State of California and owns in fee that real property, 1.39 acres, more specifically described as Assessor's Parcel Number 625-262-01, located at 800 Seacoast Drive (the "Site") in the City of Imperial Beach; and

**WHEREAS**, the Developer intends to develop the real property as a seventy-eight (78) guest suite full-service resort hotel on an existing 1.39 acres site located at 800 Seacoast Drive in compliance with land use policies and regulations as set forth in the City's General Plan and in the project Specific Plan (GPA 03-093), and with the terms and conditions set forth in this Ordinance and the related Development Agreement document; and

**WHEREAS**, a Final Environmental Impact Report ("EIR") SCH 2005101113 has been prepared for the Project and certified by the City Council of the City of Imperial Beach on December 5, 2007 in accordance with the provisions and requirements of the California Environmental Quality Act (CEQA); and

**WHEREAS**, this Final EIR having been certified by the City Council of the City of Imperial Beach did identify significant effects on the environment of the proposed hotel project, and indicated the manner in which those significant effects are to be mitigated to a level of insignificance or avoided whenever feasible to do so; and

**WHEREAS**, a Statement of Overriding Considerations was adopted by the City Council of the City of Imperial Beach for short-term construction noise levels associated with pile driving and vibration effects that would not be mitigated to a level below significance; and

**WHEREAS**, this certified Final EIR includes a Mitigation Monitoring & Reporting Program, as required by CEQA, specifying mitigation measures to be completed and responsible parties for purposes of monitoring and reporting of each Mitigation Measure; and

**WHEREAS**, the Developer and City have agreed to enter into this Agreement for purposes of providing additional terms, conditions and enforcement provisions for the Project development and implementation of project-related mitigation measures or conditions of approval related to the Project; and

**WHEREAS**, environmental effects associated with the Project, which are also applicable to this Agreement, have been identified, evaluated and mitigated per CEQA requirements in the Final EIR (SCH 2005101113) and based on applicable findings herein.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** This Development Agreement (attached as Exhibit A) by and between the City Council of the City of Imperial Beach and Imperial Coast Limited Partnership of a General Partnership of Pacifica Hospitality Group, Inc. is adopted, subject to the following findings, terms and conditions to read as follows:

**FINDINGS:**

**Development Agreement:** The City Council, hereby, determines that the Agreement, complies with the findings set forth herein:

**Finding:**

1. Consistent with the objectives, policies, general land uses and programs specified in the general plan, the local coastal plan and any applicable specific plan;

**General Plan and Local Coastal Plan Consistency:** The City Council has, based on recommendations of the City's Community Development Director and City Manager, determined that the Development Agreement is consistent with the Goals and Objectives of the City's General Plan. This determination is made based on the following:

The City's Land Use Element of the General Plan specifies Goals and Objectives that the Seacoast Drive Commercial Corridor (C-2/MU-2) shall serve as a visitor-serving pedestrian-oriented commercial area.

The Project is a redevelopment and expansion of an existing 38 guest room hotel into a full-service, 78 guest room resort hotel. This expanded guest room capacity will provide new opportunities for visitor/tourism services to the City, and will complement the City's adopted eco-tourism strategies that will enhance opportunities for the in-town Federal Preserve and State Park facilities.

**Finding:**

2. Compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located.

The Land Use Element of the General Plan and the Local Coastal Plan specify that the Seacoast Drive Commercial Corridor should provide a stimulus for the

revitalization of commercial developments along the corridor and enhance the overall design features and appearance in a manner consistent with the "classic California Beach Community" theme and motif.

The Project is proposing the redevelopment and expansion of an existing 38 guest room hotel into a full-service, 78 guest room resort hotel, which has been reviewed by the City's Design Review Board and determined to be consistent with a California Beach Community architectural style and appearance. The Project increases opportunities for visitor-serving facilities and usage by increasing the number of rooms and providing new public and visitor serving facilities.

The Project is providing enhancement to beach and coastal access, horizontal and vertical, through a re-dedication of a private beach area for public benefit and use and by coordinating private development improvements with public street end improvements for Date Avenue, including sidewalks and parking spaces.

**Finding:**

3. Provides for the public convenience and will not adversely affect the health, safety and general welfare or the orderly development of the property or the preservation of property values.

The Land Use Element of the General Plan specifies that the Seacoast Drive Commercial Corridor should provide a stimulus for the revitalization of commercial developments along the corridor and enhance the overall design features and appearance in a manner consistent with the "classic California Beach Community" theme and motif.

The Project applicant has prepared a Specific Plan in accordance with State and City regulations. The Project is consistent with Specific Plan regulations by providing for a general plan consistency analysis, a set of policies, an environmental review, design review and a set of requirements and diagrams based on various technical studies that support the Specific Plan for the subject property and its proposed development as a full-service hotel operation, with the dedication of a private beach area for public benefit and use, by providing design and architectural features that reduce carbon footprints in accordance with State public policy as described by AB 32, and improvement of existing property value by new building construction and development as a full-service hotel to serve the community of Imperial Beach.

**Environmental Review:**

**Finding:**

4. There are no new significant or unavoidable environmental impacts, and no new information concerning environmental impacts applicable to this Agreement.

The Final EIR (SCH 2005101113) has been certified by the City Council with specific findings and a Statement of Overriding Consideration for the Project. This Final EIR evaluated impacts for traffic and parking, land use, noise, aesthetics, biological resources, cultural resources, hydrology, water quality, hazardous materials, climate change, air quality, geology and coastal process and public services. Furthermore,



the Final EIR contained an analysis of project alternatives, cumulative impacts and a detailed Mitigation Monitoring & Reporting Program for the Project applicable to this Agreement. The City Council has independently considered and certified with specified findings at a City Council public hearing on December 5, 2007, the Final EIR (SCH 2005101113) for the Project and determined that any environmental impacts associated with this Agreement are the same as those evaluated for the Project.

CEQA regulation, Section 15153, specifies that a Lead Agency may use a single EIR prepared for another project, such as the subject Agreement, when such circumstances and impacts are essentially the same as those described and evaluated in an earlier EIR.

The City has reviewed an Initial Study for this Agreement and has determined that there are no changes in the environmental setting, in any significant impacts, any alternatives and any mitigation measures related to this Agreement that would require additional environmental analysis.

#### **TERMS AND CONDITIONS:**

The terms and conditions specified in the Development Agreement are hereby incorporated by reference. All terms and conditions of said Agreement shall be completed as specified unless otherwise modified or amended by action(s) of the City Council at a public hearing conducted in accordance with procedures and requirements specified by State law and City Ordinance.

**Recordation:** Within ten days after the City enters into the development agreement, the City Clerk shall have the agreement recorded with the County Recorder.

If the parties to the agreement or their successors in interest amend or cancel the agreement as provided in Government Code Section 65868, or if the City terminates or modifies the agreement as provided in Government Code Section 65865.1 for failure of the applicant to comply with good faith with the terms or conditions of the agreement, the City Clerk shall have notice of such action recorded with the County Recorder. (Ord. 2004-1018 § 1 (part), 2004)

**SECTION 2:** The City Council of the City of Imperial Beach hereby declares that should any section, paragraph, sentence, phrase, term or word of this Ordinance, hereby adopted, be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this Ordinance irrespective of any such portion declared invalid.

**SECTION 3:** The City Clerk is directed to prepare and have published a summary of this ordinance no less than five days prior to the consideration of its adoption and again within 15 days following adoption indicating votes cast.

**EFFECTIVE DATE:** This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of Imperial Beach shall cause this Ordinance to be published pursuant to the provisions of Government Code section 36933.

**INTRODUCED AND FIRST READ** at a regular meeting of the City Council of the City of Imperial Beach, California, held the 21<sup>st</sup> day of November 2007; and thereafter **PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Imperial Beach, California, held on the 5<sup>th</sup> day of December 2007, by the following roll call vote:

<b>AYES:</b>	<b>COUNCILMEMBERS:</b>	<b>MCLEAN, MCCOY, WINTER, JANNEY</b>
<b>NOES:</b>	<b>COUNCILMEMBERS:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>COUNCILMEMBERS:</b>	<b>NONE</b>
<b>DISQUALIFIED:</b>	<b>COUNCILMEMBERS:</b>	<b>BRAGG (DUE TO POTENTIAL CONFLICTS OF INTEREST)</b>

*James C. Janney*

**JAMES C. JANNEY, MAYOR**

**ATTEST:**

*Jacqueline M. Hald*

**JACQUELINE M. HALD, CMC**  
**CITY CLERK**

**APPROVED AS TO FORM:**

*James P. Lough*

**JAMES P. LOUGH**  
**CITY ATTORNEY**

I, City Clerk of the City of Imperial Beach, do hereby certify the foregoing to be a true and correct copy of Ordinance No. 2007-1061 – An Ordinance of the City Council of the City of Imperial Beach, California, APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH AND IMPERIAL COAST LIMITED PARTNERSHIP OF A GENERAL PARTNERSHIP OF PACIFICA HOSPITALITY GROUP, INC. MF 661.

Signature on File

CITY CLERK

12/6/07  
DATE

**EXHIBIT A**  
**to Ordinance No. 2007-1061**

**RECORDING REQUESTED BY**  
**CITY OF IMPERIAL BEACH**

(Exempt from Recording Fees  
Pursuant to Government Code  
Section 27383 - Benefits City)

**AND WHEN RECORDED MAIL TO:**

CITY CLERK  
CITY OF IMPERIAL BEACH  
825 IMPERIAL BEACH BOULEVARD  
IMPERIAL BEACH, CALIFORNIA 91932

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SPACE ABOVE THIS LINE FOR RECORDERS USE

**DEVELOPMENT AGREEMENT BY AND BETWEEN THE**  
**CITY OF IMPERIAL BEACH AND**  
**IMPERIAL COAST LIMITED PARTNERSHIP**  
**RELATIVE TO THE DEVELOPMENT KNOWN AS**  
***THE SEACOAST INN DEVELOPMENT PROJECT***

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into this \_\_\_\_\_ day of December, 2007 (the "Effective Date"), by and between Imperial Coast Limited Partnership, a California limited partnership ("Developer"), and the City of Imperial Beach, a municipal corporation ("City"), pursuant to the authority of Sections 65864 through 65869.5 of the Government Code of the State of California.

**RECITALS:**

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864 et seq. of the California Government Code (the "Development Agreement Legislation").

B. The Development Agreement Legislation authorizes the City to enter into a property development agreement with any person having a legal or equitable interest in real property for the development of such real property in order to establish certain development rights in the real property.

C. This Agreement is voluntarily entered into in consideration of the benefits to and the rights and obligations of the parties on the basis of the facts cited herein, understanding and intentions of the parties and in reliance upon the various representations and warranties contained herein.

D. Developer is a limited partnership organized under the laws of the State of California and is in good standing thereunder.

E. Developer owns in fee that certain parcel of land (the "Project Site" or "Subject Property") as more specifically described in Exhibit "A", attached hereto.

F. Developer intends to develop the Project Site as a seventy-eight (78) guest suite, beach resort hotel.

G. The Project Site is located in the City and consists of a total of approximately 1.39 acres of land.

H. The Project Site is located at 800 Seacoast Drive, Imperial Beach, California (APN No. 625-262-01-00).

I. The General Plan designates the area in which the Subject Property is located as Seacoast Commercial (C-2). The Seacoast Inn Specific Plan ("Specific Plan") provides for the Subject Property to be developed for hotel and ancillary uses under the guidelines established in the Specific Plan, adopted concurrently with this Agreement by Ordinance No. 2007-1060.

J. Developer seeks to comply with conditions of approval and develop the Subject Property in accordance with the anticipated land use policies and regulations set forth in the City's General Plan, the Specific Plan, and with the terms and conditions of this Agreement.

K. Developer shall not receive any density increases for the Project (hereinafter defined), and the City has approved this Project in a manner consistent with existing rules and regulations governing maximum density and hotel unit totals established by the Specific Plan for the Project for the term of this Agreement, thus ensuring that appropriate facilities and services are planned and implemented.

L. Pursuant to California Government Section 65865 of the Development Agreement Legislation, a City may establish procedures and requirements for the consideration of development agreements. The City, under Imperial Beach Municipal Code ("IBMC") Chapter 19.89 ("Development Agreement Ordinance") has adopted such procedures and requirements and the parties hereto desire to enter into such a development agreement pursuant thereto.

M. For the reasons recited herein, the City has determined that the Project is a development for which this Agreement is appropriate under the Development

## Agreement Legislation and Enacting Ordinance.

N. This Agreement will eliminate uncertainty in planning for and securing orderly development of the Project Site, assure progressive installation of necessary improvements, provide public services appropriate to each stage of development of the Project Site, ensure attainment of the maximum effective utilization of resources within the City at the least economic cost to its citizens, and otherwise achieve the purposes for which the Development Agreement Legislation was enacted.

O. In exchange for the benefits to the City, contained herein, the City has taken or will take all reasonable actions required so that Developer may begin and consummate development of the Project, including the approval, adoption or issuance of necessary development permits, and the future ministerial approval of building plans and ministerial issuance of final maps, appropriate building permits, lot line adjustments, and other necessary or desired approvals and entitlements which are consistent with the development requirements of the Project (collectively, the "Ministerial Approvals").

P. In exchange for the benefits to City, Developer desires to receive the assurance that it may proceed with the Project in accordance with the existing land use ordinances, including the Specific Plan, subject to the terms and conditions contained in this Agreement and to secure the benefits afforded Developer by Government Code Section 65865.3.

Q. It is the intent of the parties that all acts referred to in this Agreement shall be accomplished in such a way as to fully comply with CEQA, the Development Agreement Legislation, the Development Agreement Ordinance and conditions of the various Development Approvals required for this Project.

R. The terms of this Agreement support the vital and best interests of the City by insuring the development of the Project, which will provide additional sales tax and transient occupancy tax revenue for the City.

S. The City has an expressed interest in ensuring the provisions of regional and community level infrastructure, and in pursuing the use of development agreements as a method whereby a level of assurance can be achieved concerning the service demands within the Seacoast Commercial Zone and surrounding areas impacted by the Development so that long-range plans for needed infrastructure can be developed and implemented.

T. This Agreement is made and entered into in consideration of the mutual covenants and in reliance upon the various representations and warranties contained herein. The parties acknowledge that, in reliance on the agreements, representations and warranties contained herein, Developer will take certain actions, including making substantial investments and expenditures of monies, relative to the Project Site and the development thereof.

U. City and Developer desire to enter into a binding agreement for purposes of (i) identifying the terms, conditions, and regulations for the construction of the Project, certain components of which constitute a Planned Development (as defined in Civil Code Section 1351(k); (ii) setting forth a payment schedule for the Developer's payment to the City of certain amounts designed to compensate the City for lost transient occupancy tax ("TOT") during the construction phase of the Project; (iii) setting forth a payment schedule for the Developer's payment to the City of TOT and payments made in lieu of TOT that the City would receive based on expected hotel occupancy as defined hereunder; (iv) payments made to mitigate impacts of the Project on the community; (v) setting forth the extent to which Developer may construct, develop, use and operate the Project and (vi) setting forth Developer and City obligations.

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Legislation, and in consideration of the mutual covenants and promises of the parties herein contained, the parties agree as follows:

## **AGREEMENT:**

### **SECTION 1. GENERAL ACKNOWLEDGMENTS.**

The parties acknowledge that: (a) the City, which has an adopted General Plan, has entered into this Agreement pursuant to the Development Agreement Legislation and its police power in order to address public health and safety and general welfare concerns including those relating to the amount, density, intensity and timing of development within the Subject Property and the need for public facilities and infrastructure in connection with the Subject Property and other property in the area; (b) there is a certain authority under the police power to address public health and safety concerns that cannot be legally relinquished or restricted by this Agreement and that such authority intended to be reserved and hereby is reserved to City hereunder, provided that to the extent possible it shall be construed as to provide Developer with the assurances intended by this Agreement; and (c) nothing herein shall be construed to limit or restrict the exercise by the City of its power of eminent domain.

### **SECTION 2. GENERAL PROVISIONS.**

**2.01 Property Description.** The legal description of the Subject Property is specifically set forth on Exhibit "A" attached hereto and made a part hereof.

**2.02 Location of Subject Property.** The Subject Property is located in the City and consists of a total of approximately 1.39 acres.

**2.03 Effective Date.** This Agreement has been entered into by the parties as of the date and year first above-written, and shall be effective as of such date ("Effective Date"); provided, however, that if a referendum election is duly and lawfully held on the Enacting Ordinance and said ordinance is disapproved, this Agreement shall be null

and void as of the date of the final declaration by the City Council of the disapproval by the referendum election of the Enacting Ordinance.

**2.04 Term.** The term of this Agreement shall commence upon the Effective Date and shall extend thirty-five (35) years thereafter, unless said term is otherwise terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the parties. The City and Developer agree that the term of this Agreement is necessary in order to permit the orderly and planned development of the Project.

**2.05 Expiration of Term.** Following the expiration of said term, this Agreement, except for those terms and provisions that are specified to survive the termination of this Agreement, shall be deemed terminated and has no further force and effect without the need of further documentation from the parties hereto.

**2.06 Time Is of the Essence.** Time is of the essence of this Agreement and of each and every term and condition hereof.

**2.07 Enforceability of Agreement.** City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter in any of the "Existing Rules" (defined in Section 4.04 infra) which changes, alters or amends the Existing Rules applicable to the development of the Project Site at the time of the approval of this Agreement as provided by Government Code Sections 65866 and 65867.5. This Agreement shall not prevent City from denying or conditionally approving any subsequent development project application by a third party not a successor-in-interest hereto on the basis of such existing or new rules, regulations and policies.

**2.08 Further Assurances.** Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

**2.09 Singular and Plural; Gender.** As used herein, and except where the context requires otherwise, the singular of any word includes the plural and vice versa, and pronouns inferring the masculine gender shall include the feminine gender and vice versa.

**2.10 Covenants Run With The Land.** All of the terms, provisions, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors, and assigns, and all other persons or entities acquiring all or any portion of the Subject Property, or any interest therein, whether by operation of law or in any manner whatsoever, and the rights thereof shall inure to the benefit of such parties and their respective heirs, successors and assigns.

**2.11 Enforcement of Covenants.** All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including but not limited to, Section 1468 of the Civil Code of the State of California.

**2.12 Constructive Notice.** Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or the Subject Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Subject Property.

### **SECTION 3. DEFINITIONS.**

Reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term.

**3.01 Approvals.** Any and all permits or approvals of any kind or character required under the terms of this Agreement to develop the Subject Property in the manner as described herein.

**3.02 Building Ordinances.** Those building standards, of general application and not imposed solely with respect to the Subject Property, in effect from time to time that govern building and construction standards, including, without limitation, the City's building, plumbing, electrical, mechanical, grading, underground parking, sign, and fire codes.

**3.03 CEQA.** CEQA means the California Environmental Quality Act, California Public Resources Code section 21000, et seq., and the State CEQA Guidelines, (California Code of Regulations, title 14, section 15000, et seq.), as each is amended from time to time.

**3.04 City.** City of Imperial Beach, County of San Diego, State of California.

**3.05 Development.** The subdivision or improvement of the Subject Property for purposes of constructing the structures, improvements and facilities comprising the Project including, without limitation: grading, the construction and installation of infrastructure and public facilities related to the Project whether located within or outside the Subject Property; the construction of structures and buildings; and the installation of landscaping; but not including the maintenance, repair, reconstruction or redevelopment of any structures, improvements or facilities after the construction and completion thereof. As part of the development review process, the structures to be constructed at the Subject Property shall be measured to determine height by using the average grade of the parcel as set out in the Specific Plan applicable to the Subject Property. The measurement method established in IBMC Section 19.04.400 shall not be applicable to the Subject Property.



**3.06 Development Agreement Legislation.** Sections 65864 through 65869.5 of the California Government Code, as it exists on the Effective Date.

**3.07 Development Approval(s).** Site-specific permits and other entitlements to use of every kind and nature approved or granted by the City in connection with the Development including, but not limited to: subdivision approvals (including tentative maps, vesting tentative maps, final maps, parcel maps and map waivers), development permits, conditional use permits, specific plans, coastal permits, variances, grading permits, building permits and occupancy permits.

**3.08 Development Fees.** All City adopted fees and monetary exactions that are designed to pay for new or expanded public facilities needed to serve, or to mitigate the adverse effects of a given development project and that are imposed by the City as a condition of approval of discretionary or ministerial permits for, or in connection with the implementation of, that development project. The term "development fees" does not include processing fees and charges as described in this Agreement. The term "development fees" also does not include requirements that development be served by a public utility even if that public utility imposes a capital improvement fee or similar charge as a condition of providing service. All development fees shall be deposited in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, and shall be spent solely for the purpose for which the fee was collected, pursuant to California Government Code Section 66006.

**3.09 Director.** The "Director" is the Director of the Community Development Department of the City of Imperial Beach.

**3.10 Enacting Ordinance.** The "Enacting Ordinance" is Ordinance No. 2007-1061 enacted by the City Council on December 5, 2007, approving this Agreement. The Enacting Ordinance is adopted pursuant to IBMC Chapter 19.89, governing development agreement procedures. IBMC Chapter 19.89 is attached hereto and incorporated herein by reference as Exhibit "B".

**3.11 Exactions.** To the extent any exactions are authorized for this Project and in addition to the development fees set out above in Section 3.08, all project-specific exactions, in-lieu fees or payments, dedication or reservation requirements, obligations for on-site or off-site improvements, construction requirements for public improvements, facilities, or services imposed in connection with the development of or construction on the Subject Property, whether such requirements constitute subdivision improvements, mitigation measures in connection with environmental review of any project, or impositions made under any applicable ordinance or in order to make a project approval consistent with the anticipated land use policies of the City's General Plan, including the Certified Local Coastal Plan.

**3.12 Existing Land Use Ordinances and Plans.** The Land Use Ordinances

in effect as of the Effective Date of this Agreement are attached hereto and incorporated herein by reference as Exhibit "C".

**3.13. General Plan.** The City of Imperial Beach General Plan as duly adopted by the City Council. The General Plan also includes the certified Local Coastal Plan as approved by the City Council.

**3.14 Land Use Ordinances.** The ordinances, resolutions, codes, rules, regulations and official policies of City, governing the development of the Subject Property, including but not limited to, the permitted uses of land, the density and intensity of use of land, exactions, and the timing of development, all as applicable to the development of the Subject Property. Specifically, but without limiting the generality of the foregoing, Land Use Ordinances shall include the City's General Plan, the Local Coastal Plan, the City's Zoning Code, the applicable Specific Plan and the City's Subdivision Code. The term Land Use Ordinances does not include Regulations relating to the following: the conduct of business, professions and occupations generally; taxes and assessments; the control and abatement of nuisances; Owners' Association Covenants, Conditions and Restrictions and other permits and the conveyances of rights and interests that provide for the use of or entry upon public property; and any exercise of the power of eminent domain.

**3.15 Owner-Investor.** A person who owns one or more units or unit interests of the Project hotel pursuant to purchase from the Developer. "Owner-Investor" includes the assignees and successors-in-interest of an original purchaser, subject to the condition that the assignment or transfer of the unit(s) or unit interest(s) complied with the terms and conditions of this Agreement and the applicable covenants, conditions, and restrictions ("CC&Rs"). Unit ownership may be of specific units (guest rooms) in fee or of units in general, such as in the form of a property interest in a unit that is not of a specific unit but otherwise provides the same rights and obligations as if the Owner-Investor owned a specific unit ("unit interest").

**3.16 Persons.** As used herein, any reference to or use of the word "person" shall mean, in addition to a natural person, any governmental entity and any partnership, corporation, joint venture or any other form of business entity.

**3.17 Project.** The condominium-hotel and conference center commercial development and associated amenities, and on-site and off-site improvements, contemplated by or embodied within the Specific Plan to be constructed on the Subject Property, as the same may hereafter be further refined, enhanced or modified pursuant to the provisions of this Agreement, as shown in the Specific Plan.

**3.18 Project Site.** Shall have the same meaning as "Subject Property".

**3.19 Regulations.** Constitutions, statutes, City ordinances and codes, City resolutions and official policies of the City that are applicable to the Project shall constitute the Regulations applicable to the Project.

**3.20 Subject Property.** That real property described in Exhibit "A" attached hereto and made a part hereof. Shall also have the same meaning as "Project Site".

**3.21 Certain Other Terms.** Certain other terms shall have the meanings set forth for such terms in this Agreement.

#### **SECTION 4. GENERAL DEVELOPMENT OF THE PROPERTY.**

**4.01 Project.** The Project is defined and described in the Specific Plan which specifies all of the following aspects of the Project: (i) proposed uses of the Subject Property, (ii) height and size of buildings to be constructed on the Subject Property, (iii) density and intensity of use of the property, and (iv) requirements for reservation or dedication of portions of the Subject Property for public purposes.

**4.02 General Development.** Any Development of the Project on the Project Site shall be conducted in accordance with the terms and conditions of this Agreement.

**4.03 Future Approvals.** The City hereby agrees that land uses set forth in the New Development Permits are approved or will be approved pursuant to the terms of this Agreement, provided that Developer satisfactorily complies with all preliminary procedures, actions, payments and criteria applicable as of the Effective Date and generally required of developers by the City for processing applications for developments at such time. City agrees to grant and implement the necessary land use, zoning, site plan or subdivision approvals and to grant other approvals and permits, including the Ministerial Approvals, that will accomplish or facilitate development of the Project Site for the uses and to the density or intensity of development described and shown in the New Development Permits and/or this Agreement pursuant to those rules, regulation policies and conditions in force on the Effective Date.

**4.04 Applicable Rules, Regulations and Official Policies.** Except as otherwise provided in this Agreement, the rules, regulations, official policies, and conditions of approval governing the permitted uses of the Project Site, the density or intensity of use, and the design, improvement, construction, building and occupancy standards and specifications applicable to the Project and the Project Site shall be those in force on the Effective Date ("Existing Rules"). The City shall have the right to impose reasonable conditions in connection with such subsequent discretionary permit actions which are not deemed Ministerial Approvals, but such conditions and actions shall not prevent development of the Project as contemplated by this Agreement and the Development Approvals, or place burdensome or restrictive measures on Developer in connection with the development of the Project.

**4.05 Amendment to Applicable Ordinances.** In the event the City Zoning Code is amended by the City in a manner, which provides more favorable site development standards than those in effect as of the Effective Date, Developer shall have the right to notify City in writing of its desire to be subject to the new standards for

the remaining term of this Agreement. If City agrees, by resolution of the City Council or by action of a City official whom the City Council may designate, such new standards shall become applicable to the Subject Property. Should City thereafter amend such new standards, upon the effective date of such amendment, the original new standards shall have no further application to the Subject Property, but Developer may notify City and City may agree by resolution to apply such amended new standards to the Subject Property.

**4.06 Application of New Rules, Regulations and Policies.** This Agreement shall not prevent City in subsequent actions applicable to the Subject Property from applying new rules, regulations and policies which do not conflict with those rules, regulations, and policies applicable to the Subject Property and set forth herein; nor shall this Agreement prevent City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies.

**4.07 Approval of Subsequent Tentative and Final Maps.** Although the Existing Land Use Ordinances and Plans shall determine the standards for granting or withholding approval of tentative, vesting tentative and final tract maps, the procedures for processing approval of all such maps shall be governed by such ordinances and regulations as may be applicable at the time of submission of such maps to the City.

**4.08 Changes in State and Federal Rules and Regulations.** Nothing in this Agreement shall preclude the application to the development of the Subject Property of changes in the City's laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in state or federal laws or regulations as provided in Government Code Section 65869.5.

**4.09 Processing Fees.** This Agreement shall not be construed to limit the authority of the City to charge processing fees for land use approvals, building permits or other similar permits or entitlements which are in force and effect on a City-wide basis at the time application is made for such permits or entitlements.

## **SECTION 5. PERIODIC REVIEW.**

**5.01 Annual Review.** City shall conduct a review of this Agreement in the manner set forth in Section 5 (Periodic Review). City shall review the extent of good faith compliance by Developer with the terms of this Agreement at least once every 12-month period from the Effective Date.

**5.02 Procedure.** Such annual review shall be conducted in accordance with the City's duly adopted development agreement procedures ("Development Agreement Procedures"), found in IBMC Chapter 19.89, as amended, which are attached hereto as Exhibit "B".

**5.03 Notice.** City shall notify Developer in writing of the date of review at least

thirty (30) days prior thereto.

**5.04 Good-faith Compliance.** During each annual review, Developer is required to demonstrate good faith compliance with the terms of this Agreement.

**5.05 Production of Documents and Other Evidence.** Developer agrees to furnish such reasonable evidence and adequate documentation of good faith compliance as the City, in the exercise of its reasonable discretion, may require.

**5.06 Cost of Annual Review.** The actual costs incurred by City in connection with the annual review shall be borne by Developer.

## **SECTION 6. RIGHTS AND OBLIGATIONS OF DEVELOPER.**

**6.01 Contributions.** In consideration of City entering into this Agreement, Developer has agreed to comply with the applicable provisions of the Specific Plan in developing the Project and to perform certain obligations and provide certain contributions set forth therein, which City acknowledges will have an overall benefit to the public and surrounding area, including but not limited to those benefits set out under this Section 6 (Rights and Obligations of Developer).

**6.02 Certain Conditions of Development and Off-site Improvements.** The Project is subject to the following conditions of development, in addition to the Conditions of Approval, which are set forth in Exhibit "E", attached hereto:

### **Public Improvements:**

(a) Developer shall, upon the earlier of the issuance of building permits or filing of the final map, convey and dedicate to the City for public beach access and use a portion of Ocean Lane (Boulevard) extending easterly from the high tide line of the Pacific Ocean to the seawall of the new hotel, which will be located thirty-five (35) feet east (landward) of the existing seawall.

(b) Developer shall, upon the earlier of the issuance of building permits or filing of the final map, convey and dedicate to the City sufficient right-of-way necessary to accommodate the proposed Date Avenue street end improvements. Balconies fronting Date Avenue shall be allowed to project over the dedicated right-of-way, and beyond the newly established property line, a distance equal to the width of the required right-of-way dedication.

(c) Developer shall provide and construct required public right-of-way improvements on Seacoast Drive and shall also provide recessed stairways and/or access ways to Date Avenue and to Dunes Park as designed and shown in the approved Site Plan (Exhibit "D") to allow for improved public access to the beach. Improvements along Seacoast Drive shall be designed to be compatible with and to compliment the existing sidewalk improvements at Dunes Park to the north of the

project and the public improvements proposed for Date Avenue. Landscaping shall be provided along the Seacoast Drive frontage as shown on the approved Landscape Plan component of the Specific Plan. Every effort shall be made by the Developer to save and reuse the existing palm trees currently located on Seacoast Drive within the on-site landscaping of the project. Off-site Improvements shall include construction of curb, gutter, driveways and sidewalk of eight (8) feet in width meeting applicable Regional Standard Drawings. All such improvements shall meet applicable Americans with Disability Act (ADA) requirements as well as the recommendations of the Landscape Design Guidelines for Seacoast Drive (dated October 4, 1999) and the Seacoast Drive Phase III Street Improvement Project with respect to lighting, landscaping and sidewalk improvements. If additional right-of-way is necessary to construct ADA compliant driveways along Seacoast Drive, the applicant shall dedicate the necessary right-of-way to construct these driveways. All proposed off-site improvements shall be incorporated into off-site improvement drawings (D-sheets) and shall be submitted to the City for review and approval by the City Engineer, the Public Works Director and the Community Development Director prior to issuance of a building permit.

(d) Developer shall be required to construct new shoreline protection devices at locations approved by the City Engineer and City Council.

(e) Developer shall eliminate any existing encroachments into public rights-of-way on the north and south property lines.

#### Hotel Facilities:

(f) Developer shall provide an expanded visitor serving hotel facility with a minimum of 78 guest rooms, and ancillary uses, such as a full service fine dining restaurant, and conference center open to the public and hotel guests. Said facilities shall be accessible to the public from the primary hotel access from Seacoast Drive, the beach area and Date Avenue.

(g) Developer shall ensure and provide for operation of the hotel as a full-service visitor serving facility, which is inclusive of but not limited to: maid service, room service, year-round centralized room reservation system for all guests and Owner-Investors, conference facilities, restaurant and ancillary services.

(h) Owner-Investor room stays shall be governed by terms and conditions specified in this Agreement and the Specific Plan.

(i) Hotel design and construction shall incorporate "green building" development concepts, inclusive of but not limited to: bio-filtration of storm water runoff areas, energy conservation measures, rooftop design treatments or landscaping to minimize or eliminate heating and cooling losses and use of solar panels as may be required by the City and State law.

(j) The Developer shall, in accordance with Section 6.09 of the Agreement, record Covenants, Conditions and Restrictions ("CC&Rs") against the Subject Property. All hotel guest rooms shall be bound by a single set of CC&Rs as well as the conditions of approval set forth in this Agreement, and those of the California Coastal Commission ("CCC") if any, to ensure that guest rooms will function as traditional guest rooms under hotel management. The restrictions shall be recorded on or against every deed, title, or interest for every guest room and cannot be altered or removed without approval from the City and from CCC, if CCC staff determines CCC approval is warranted.

(k) The Developer shall make reasonable efforts to coordinate advertising of the hotel in a manner consistent with the City's established Eco-tourism Program.

(l) The Developer or any successor-in-interest as hotel owner-operator shall maintain the legal ability to ensure compliance with the conditions of this Section at all times in perpetuity and shall be responsible in all respects for ensuring that all parties subject to these conditions comply. Each Owner-Investor is jointly and severally liable with the hotel owner-operator for violations of the conditions herein.

(m) All documents related to the marketing and sale of the condominium interests, including marketing materials, sales contracts, deeds, CC&R's and similar documents, shall notify potential buyers that Owner-Investors are jointly and severally liable with the hotel owner-operator for any violations of the conditions in this Section.

(n) The Developer, any successor-in-interest as hotel owner-operator, and each future Owner-Investor shall obtain, prior to sale of individual guest rooms or unit interests, a written acknowledgement from the buyer of the limitation on occupancy, use, and reservation of the guest rooms or unit interests.

(o) The Developer and any successor-in-interest as hotel owner-operator shall monitor and record hotel occupancy and use by the general public and the owners of individual hotel units throughout each year. The records shall be sufficient to demonstrate compliance with the restrictions and requirements set forth in Section 6.09 of the Agreement regarding hotel operations and guest room use and occupancy. The Developer and any successor-in-interest as hotel owner-operator shall also maintain documentation of rates paid for hotel occupancy and of advertising and marketing efforts. All such records shall be maintained for ten (10) years and shall be made available to the auditor named below and, upon request, to the Director, and the CCC Executive Director—if his action is warranted as determined by CCC—if the CCC has determined its involvement is warranted. Within thirty (30) days of commencing hotel operations, the Developer and any successor-in-interest as hotel owner-operator shall submit notice of commencement of hotel operations to the Director, and the CCC Executive Director—if his action is warranted as determined by CCC.



(p) On the first anniversary of the commencement of hotel operations, and exactly every year thereafter, the Developer and any successor-in-interest as hotel owner-operator shall retain an independent auditing company to perform an audit to evaluate compliance with the restrictions and requirements set forth in Section 6.09 of the Agreement regarding hotel operations and guest room use and occupancy. The audit shall evaluate compliance by the hotel owner-operator and Owner-Investors during the prior one-year period. The Developer and any successor-in-interest as hotel owner-operator shall obtain written approval from the Director, and the CCC Executive Director—if his action is warranted as determined by CCC—of the independent auditor before the auditor is retained. Such approval shall be sought at least three (3) months before the deadline for retaining an auditor (the first anniversary of hotel operations). The Developer and any successor-in-interest as hotel owner-operator shall require the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Director and the CCC Executive Director—if warranted as determined by CCC—within six (6) months after the conclusion of each one-year period of hotel operations. After five (5) years, the one-year audit period may be extended to two (2) years upon written approval of the Director and the CCC Executive Director—if warranted as determined by CCC. The Director, and the CCC Executive Director—if his action is warranted as determined by CCC, may grant such approval if each of the previous audits revealed compliance with the relevant restrictions and requirements of Section 6.09.

(q) Developer and any successor-in-interest as hotel owner-operator shall submit a quarterly report to the City documenting that the project is in conformance with the City's TOT requirements.

(r) If the hotel owner and hotel operator at any point become separate entities, the hotel owner and the hotel operator shall be jointly and severally liable for violations of the conditions of this Section.

(s) PRIOR TO OCCUPANCY OF THE APPROVED UNITS, the Developer and any successor-in-interest as hotel owner-operator shall submit for review and written approval by the Director, and the CCC Executive Director—if his action is warranted as determined by CCC, a plan specifying how the Developer and any successor-in-interest as hotel owner-operator will implement the requirements herein. The plan must include, at a minimum, the sale contract, grant deed, CC&Rs and the rental program agreement entered into between Owner-Investors and the hotel owner-operator that will be used to satisfy the conditions. The plan must demonstrate that the Developer has established mechanisms that provide the Developer and any successor-in-interest as hotel owner-operator adequate legal authority to implement the requirements of this condition. Any proposed changes to the approved plan and subsequent documents pertaining to compliance with and enforcement of the conditions of this Section including deeds and CC&R's shall be reported to the Director, and the CCC Executive Director—if his action is warranted as determined by CCC. No change to any documents noted above pertaining to compliance with and enforcement of the conditions of this Section shall occur without the written approval of the Director, and



the CCC Executive Director—if his action is warranted as determined by CCC.

**6.03 Nexus/Reasonable Relationship Challenges.** After reviewing the Certified Environmental Impact Report and accompanying approvals, the Developer consents to, and waives any rights it may have now or in the future to challenge the legal validity of, the conditions, requirements, policies or programs required by the Existing Land Use Regulations or this Agreement including, without limitation, any claim that they constitute an abuse of the police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

**6.04 Cooperation By Developer.** Developer will, in a timely manner, provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder, and cause Developer's planners, engineers, and all other consultants to submit in a timely manner all required materials and documents therefore.

**6.05 Other Governmental Permits.** Developer shall apply in a timely manner for such other permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Subject Property as may be required for the development of, or provision of services to, the Project. The City will use reasonable efforts to assist the Developer in securing necessary permits and entitlements from other public entities with jurisdiction over this Project.

**6.06 Reimbursement for City's Efforts on Behalf of Developer.** To the extent that City, on behalf of and when requested by Developer, attempts to enter into binding agreements with other entities (e.g. San Diego Unified Port District) in order to assure the availability of certain permits and approvals or services necessary for development of the Project as described in this Agreement, Developer shall reimburse City for all costs and expenses incurred in connection with seeking and entering into any such agreement. Any fees, assessments or other amounts payable by City pursuant to any such agreement described herein shall be borne by Developer except where Developer has notified City in writing, prior to City entering into such agreement, that it does not desire for City to execute such agreement. City shall use its best efforts to notify Developer fifteen (15) days prior to entry of an agreement or expending funds on behalf of the Developer under this Section.

**6.07 Right to Develop.** Subject to the terms, conditions, and covenants of the Agreement, including the Schedule of Performance set forth in Exhibit "F" attached hereto, Developer's right to develop the Project in accordance with the Specific Plan shall be deemed vested upon the Effective Date, which vesting shall expire upon the earliest of the following occurrences: (a) termination of this Agreement; (b) an uncured default by Developer of this Agreement; (c) the issuance of a certificate of occupancy for the Project; or (d) the date set forth in the Schedule of Performance in which the Developer was required to have completed the development of all improvements for the Project. Except for the expiration set forth in clause (a) of the preceding sentence, the

expiration of the vesting right set forth in the preceding sentence shall not terminate the obligations of Developer under this Agreement.

The development fees and exactions applicable to the Project are those that are in effect as of the Effective Date, as modified by Section 10.02, which are the following: (i) sewer capacity fees (IBMC Chapter 13.05) and (ii) school impact fees (IBMC Chapter 15.46). The imposition of the school impact fees is subject to the determination by the appropriate school districts that the fees are applicable to the Project. No new development fees or exactions adopted after the Effective Date shall be applicable to the Project unless required to be imposed by State or Federal law.

Notwithstanding anything in this Agreement to the contrary, the Project shall remain subject to:

- (a) the Existing Rules;
- (b) all amendments or modifications to Existing Rules after the Effective Date and all ordinances, regulations, rules, laws, plans, policies, and guidelines of the City and its City Council and all other City commissions, and committees enacted or adopted after the Effective Date (collectively "New Laws"), except such New Laws which would materially impair Developer's ability to develop the Project in accordance with the Specific Plan unless such New Laws are adopted by the City on a City-wide basis and applied to the Site in a non-discriminatory manner, such New Laws are required by a non-City entity to be adopted by or applied by the City (or if optional the failure to adopt or apply such non-City law or regulation would cause City to sustain a loss of funds or loss of access to funding or other resources), or are New Laws the City reserves the right to apply under this Agreement, including but not limited to Sections 6.08 (Additional Applicable Codes and Regulations) and 10.04 (Other Fees and Charges);
- (c) all subsequent development approvals and the conditions of approval associated therewith, including but not limited to site development permits, project tract maps and building permits; and
- (d) the payment of all development fees and exactions in the categories and in the amounts as required at the time such fees and exactions are due and payable which may be at the time of issuance of the building permits, or otherwise as specified by applicable law, as existing at the time such fees are due and payable.

**6.08 Additional Applicable Codes and Regulations.** Notwithstanding any other provision of this Agreement, City also reserves the right to apply the following to the development of the Project:

- (a) Building, electrical, mechanical, fire and similar building codes based upon uniform codes adopted in, or incorporated by reference into the Imperial Beach Municipal Code, as existing on the Effective Date or as may be enacted or

amended thereafter, applied on a City-wide basis.

(b) In the event of fire or other casualty requiring partial or total reconstruction of any building, nothing herein shall prevent the City from applying to such reconstruction the requirements of the City's building codes in a manner consistent with IBMC Section 19.76.050, to the extent applicable to all development projects in the City.

**6.09 Recordation of Covenants, Conditions and Restrictions and Establishing the Seacoast Inn Owners' Association.** Prior to, and as a condition of, the City's issuance of any building permits for the Development, the Developer shall submit to the City, obtain approval thereof, and record, Covenants, Conditions and Restrictions ("CC&Rs") against the Subject Property which, in addition to the obligations set forth in the Conditions of Approval, shall (i) establish an association of Owner-Investors (the "Seacoast Inn Owners' Association"); (ii) provide for the Seacoast Inn Owners' Association's payment of the City's Transient Occupancy Tax; (iii) provide for the rental of each of the units in the Project on behalf of Seacoast Inn Owners' Association members, through a centralized reservation system; and (iv) contain a prohibition against the conversion of any units into residences allowing residential occupancy on the Subject Property. In addition, the CC&Rs shall include the following requirements:

(a) No portion or fraction of the Project may be converted to a time-share, full-time occupancy condominium, apartment, or any other type of project that differs from the proposed 78 guest room hotel. Owner-Investors and hotel operator guarantee that the Subject Property shall remain in usage and operations as a commercial hotel and shall not be converted to time-share or full-time occupancy condominium, apartment, or other similar form of residential use. This requirement will survive the termination of this Agreement.

(b) The hotel operator shall market and advertise all 78 units of the Project to the general public. The Seacoast Inn Owners' Association will utilize a centralized reservation system under the operation of a unified on-site hotel operator to manage the reservations for all guest rooms. Pacifica Host, Inc., the hotel operation division of Pacifica Companies and its successors in interest will operate this system. City shall have the reasonable right to approve any new operator of the centralized reservation system to be assured that the Project remains in operation as a commercial hotel.

(c) The Project's proposed restaurant and conference center will be available for use to the general public, as well as to hotel guests, subject to the hotels' schedule of charges that are in effect at the time of usage.

(d) The Seacoast Inn Owners' Association shall provide for room and maid service to all guest rooms.

(e) Each guest room/unit interest shall be restricted so as to limit its

reservation, use, or occupancy by an Owner-Investor to a maximum of ninety (90) days in any calendar year, with no stay exceeding twenty-five (25) consecutive days and which stay must be immediately preceded by a fifty (50) day period during which the guest room/unit interest is not reserved or used by an Owner-Investor. Furthermore, this use period limitation shall be unaffected by multiple owners or the sale of a guest room/unit interest to a new owner during the calendar year, meaning that all such owners of any given guest room/unit interest shall be collectively subject to the use restriction as if they were a single, continuous owner.

(f) When not reserved, used, or occupied by Owner-Investor(s), guest rooms shall be available for rental by the hotel operator on the same basis as traditional hotel rooms and room availability shall not be conditioned on a renter's willingness to rent any additional guest room.

(g) Owner-Investors shall not discourage rental of their guest rooms or create disincentives meant to discourage rental of their guest rooms.

(h) All guest rooms, regardless whether Owner-Investor-owned, shall be rented at the same or comparable rate to that charged by the hotel operator for hotel rooms of a similar class or amenity level.

(i) The hotel operator's management duties shall include the booking of reservations through the rental agent, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing the units for use by guests/Owner-Investors. The keys shall be electronic and created upon each new occupancy to control the use of the guest rooms.

(j) The Seacoast Inn Owners' Association shall be required to pay to the City the Transient Occupancy Tax ("TOT") for all units that are occupied, regardless of the occupant (i.e. whether Owner-Investor or hotel guest).

(k) The Seacoast Inn Owners' Association or hotel operator shall maintain records of usage by Owner-Investors and renters and rates charged for all guest rooms, and shall be responsible for reporting TOT based on records of use for all guest rooms.

(l) The hotel operation, including its physical components, shall be owned by a viable hotel operator, and if sold, then only to a viable hotel operator.

(m) The City shall be a third party beneficiary to the CC&Rs and shall have the right to enforce the provisions of the CC&Rs referenced herein.

(n) Any amendments or modifications to the CC&Rs shall require City approval, which approval the City has the right to reasonably withhold. Amendments or modifications shall be subject to approval by the California Coastal Commission in the manner found in Section 6.02(j).

Developer shall develop CC&Rs, subject to approval by the City and the State of

California Department of Real Estate that will be recorded against all individual properties and property interests. Any hotel operating agreement entered into by the Developer or the Seacoast Inn Owners' Association shall include all of the conditions listed in this section. This Section shall survive the termination of this Agreement.

**6.10 Owner-Investor Development Prospectus.** Developer will provide a copy of the Owner-Investor development prospectus to the City prior to commencement of the guest room sales program.

## **SECTION 7. OBLIGATIONS OF CITY.**

In consideration of Developer entering into this Agreement, City has agreed to the following with respect to the development of the Project Site:

**7.01 Processing.** Upon satisfactory completion by Developer of all required preliminary actions and payments of appropriate processing fees, if any, City shall promptly commence and diligently proceed to complete all required steps necessary for the implementation of this Agreement and the development by Developer of the Project Site in accordance with the Specific Plan, Coastal Development Permit, Site Plan Review and Design Review Permits, including, but not limited to, the following:

- (a) the holding of all required public hearings; and
- (b) the processing and approval of all Ministerial Approvals and related matters as necessary for the completion of the development of the Project. In this regard, Developer will, in a timely manner, provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder as required by the Existing Rules and shall cause Developer's planners, engineers and all other consultants to submit in a timely manner all required materials and documents.

**7.02 Standard of Review.** The rules, regulations and policies that apply to any Ministerial Approvals that must be secured prior to the construction of any portion of the Project shall be the Existing Rules. The City shall approve any Ministerial Approval, including without limitation a building permit, within a reasonable period of time after application is made therefore.

**7.03 Contract Services.** If requested by Developer, at Developer's expense, City shall obtain outside contractual services as necessary to ensure prompt processing of all development approvals.

## **SECTION 8: AMENDMENTS.**

**8.01 Amendment by Mutual Consent.** This Agreement may be amended from time to time by mutual consent of the original parties or their successors in interest, with City's costs payable by amendment applicants, in accordance with the provisions of Government Code Sections 65867 and 65868 and provided that: (i) any amendment to this Agreement which does not relate to the term, permitted uses, density or intensity of

use, height or size of buildings, provisions for reservation and dedication of land, conditions, terms, restrictions and requirements relating to subsequent discretionary actions, monetary contributions by Developer or any conditions or covenants relating to the use of the Subject Property, shall not require notice or public hearing before the parties may execute an amendment hereto; and (ii) any other amendment of this Agreement shall follow the City's adopted procedures and requirements for the consideration of development agreements.

**8.02 Amendment Exemptions.** Any amendment of the City's land use regulations that, pursuant to this Agreement, is applicable to the property, including, but not limited to, an amendment to the General Plan and zoning ordinances, shall not require an amendment to this Agreement. Instead, any such amendment shall be deemed to be incorporated into this Agreement at the time that such amendment is approved.

**8.03 Amendment of Development Permits.** Upon the written request of Developer, the Development Permits described in 7.01, above, may from time to time be amended or modified in the manner set forth in this Agreement and applicable State and City laws.

## **SECTION 9. TRANSFERS AND ASSIGNMENTS.**

**9.01 City's Intent.** Developer has demonstrated, and the City finds that Developer possesses, the experience, reputation and financial resources to develop and maintain the Subject Property in the manner contemplated by this Agreement. It is because of such qualifications, which assure the development of the Subject Property to a high quality standard contemplated by the General Plan that the City is entering into this Agreement. Accordingly, restrictions on the right of Developer to assign or transfer the rights and privileges contained in this Agreement are necessary in order to assure the achievement of the objectives of the City's anticipated General Plan and this Agreement.

**9.02 Developer's Right to Assign or Transfer.** Developer may assign or transfer any of its rights or interests under this Agreement subject to consent of City, which consent shall not be unreasonably withheld, delayed or conditioned except as specifically described in this Section 9.

**9.03 Restriction on Assignment Does Not Constitute an Unreasonable Restraint on Alienation.** Developer agrees that the restriction on its right to transfer any of its rights or interests under this Agreement is not repugnant or unreasonable in that such a restriction is a material inducement to the City to enter into this Agreement since the restriction reserves for the City the power to prevent the transfer of any of the rights and obligations hereunder to an unreliable party.

**9.04 Restriction on Assignment Shall Not Prevent Developer From Conveying the Subject Property.** The parties agree that the restriction on assignment

without consent is limited solely to those certain vested rights created under this Agreement and such restriction shall not affect Developer's right to convey the Subject Property itself.

**9.05 Request Procedure.** City shall administer the provisions of this Section through its Director. Developer shall notify the Director and the City Manager in writing of its request for City's consent to an assignment or transfer under this Section, together with a statement that if the Director does not notify Developer within forty-five (45) days of receipt of the request, the request will be deemed approved.

**9.06 45 Day Period.** If, within such 45-day period the Director does not so notify Developer, the request for consent shall automatically be deemed approved and no further action by Developer or the City shall be necessary. If, within such 45-day period, the Director notifies Developer that the request will be considered and acted upon by City, Developer shall furnish such additional information as the Director may reasonably request at the time of such notice, and City shall proceed to consider and act upon the Developer's request for City's consent to the proposed assignment or transfer. Except as provided in Section 9.07, failure by the City to act within thirty (30) days of giving such notice or of receiving the additional requested information shall automatically be deemed an approval of the request.

**9.07 City Council Approval.** In the event the Director determines that the assignment or transfer should be acted upon by the City Council, and the Director so notifies Developer within fifteen (15) days of giving the notice or receiving the information described herein, the matter shall be referred to the City Council. The City Council shall have forty-five (45) days from the date of such notice to approve or deny the requested transfer or assignment. Failure of City to act within the forty-five (45) day period shall automatically be deemed an approval of the request.

**9.08 Assignment.** The management control and responsibility of Developer and the expertise, competence, and financial strength of Developer are integral components of the consideration for City entering into this Agreement. In order to preserve such consideration for City and for City to receive full value, the parties hereto agree that the occurrence of any of the following events constitute, for purposes of this provision, an assignment:

(a) A change in the composition of ownership interests in and control of Developer, the result of which diminishes Ashok (Ash) Israni's ownership interest to less than fifty-one percent (51%).

(b) A change in the composition of ownership interests in and control of the Subject Property such that Developer's legal interest or equity in the Subject Property is reduced to less than fifty-one percent (51%), excluding individual investor interest transfers.

**9.09 Minor Assignments.** The following transfers shall be considered minor

assignments, which shall not require City consent: changes in the composition of ownership interests in and control of Developer, the result of which does not diminish Ashok (Ash) Israni's ownership interest to less than fifty-one percent (51%).

**9.10 Notice of Proposed Assignment.** Developer must provide City with adequate evidence that the proposed assignee, buyer or transferee is qualified using the standards and conditions described in this Section, and ability to comply with these standards and conditions will be the test of reasonableness.

**9.11 Conditions and Standards.** The conditions and standards referred to above are as follows:

(a) Such assignee or transferee possesses the experience, reputation and financial resources to cause the Subject Property to be developed and maintained in the manner contemplated by the City's General Plan and this Agreement;

(b) Such assignee or transferee enters into a written assumption agreement, in form and content satisfactory to the City Attorney, expressly assuming and agreeing to be bound by the provisions of this Agreement;

(c) Such assignment or transfer will not impair the ability of City to achieve the objectives of its general Plan and this Agreement;

(d) Good cause exists for Developer to make such assignment or transfer. For purposes of this subsection, good cause shall include but is not limited to such causes as business reorganizations, financing arrangements for the development of the Subject Property, and exigent circumstances creating the need to generate capital to offset material business losses.

**9.12 Financing Exemption.** Mortgages, deeds of trust, sales and lease-backs, or other forms of conveyance required for any reasonable method of financing requiring a security arrangement with respect to the Subject Property are permitted without the consent of the City, provided the City receives prior notice of such financing (including the name and address of the lender and the person or entities acquiring any such secured interest) and Developer retains the legal and equitable interest in the Subject Property and remains fully responsible hereunder. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development.

**9.13 Notice of Assignment.** Upon receiving approval of an assignment, Developer shall provide City with written notice of such assignment and as part of such notice the assignee must execute and deliver to City an assumption agreement in which the name and address of the assignee is set forth and the assignee expressly and unconditionally assumes the obligations of all the provisions set forth in the Agreement.

**9.14 Unapproved Assignments.** If City reasonably makes the determination



not to consent to the assignment or transfer of the rights and privileges contained in this Agreement, and Developer conveys the Subject Property to a third party, in whole or in part, Developer shall remain liable and responsible for all of the duties and obligations of this Agreement.

**9.15 Notice of Sale of Subject Property.** Developer shall give written notice to the city, within ten (10) days after close of escrow, of any sale or transfer of any portion of the Subject Property required herein, specifying the name or names of the purchaser, the purchaser's mailing address, the amount and location of the land sold or transferred, and the name and address of a single person or entity to whom any notice relating to this Agreement shall be given.

## **SECTION 10. PAYMENTS TO CITY BY DEVELOPER.**

**10.01 General.** During the term of this Agreement, Developer or the Seacoast Inn Owners' Association shall make the payments to City described in this Section 10.

**10.02 Sewer Capacity Fee.** Developer shall pay to the City a sewer capacity fee in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) per equivalent dwelling unit (EDU) for the cost of the Project's impacts on the environment and sewer system infrastructure.

**10.03 Transient Occupancy Tax (TOT) Offset.** During construction, Developer shall be required to pay to the City an offset fee that is the equivalent of the lost TOT that would have been otherwise paid to the City. The amount of the offset fee shall be the average TOT paid for the applicable quarter (*i.e.* January – March) of the previous three (3) years. The offset fee shall be paid for each day throughout the period of construction, commencing from the time of application for demolition permit up to the time a Certificate of Occupancy is issued.

**10.04 Other Fees and Charges: Assessment Appeals.** Except for the development fees and exactions set forth in Section 6, above, nothing set forth in this Agreement is intended or shall be construed to limit or restrict the City's authority to impose its existing, or any new or increased fees, charges, levies, or assessments for the development of the Project Site, or to impose or increase, subject to the required procedure, any taxes applicable to the Project Site including but not limited to transient occupancy taxes, provided nothing set forth herein is intended or shall be construed to limit or restrict whatever right Developer might otherwise have to challenge any fee, charge, levy, assessment, or tax imposed. Developer shall timely pay all applicable fees, charges, levies, assessments, and special and general taxes validly imposed in accordance with the Constitution and the laws of the State of California.

## **Section 11. DELAYS IN PERFORMANCE.**

**11.01 Permitted Delays.** In addition to any other provisions of this Agreement with respect to delay, Developer and City shall be excused for performance of their obligations hereunder during any period of delay caused by acts of God or civil

commotion, riots, strikes, picketing, or other labor disputes, shortage of materials or supplies, or damage to or prevention of work in process by reason of fire, floods, earthquake, or other casualties, litigation, acts or neglect of the other party, or restrictions imposed or mandated by governmental or quasi-governmental entities, enactment of conflicting provisions of the Constitution or laws of the United States of America or the State of California or any codes, statutes, regulations or executive mandates promulgated thereunder.

However, with respect to Developer's obligation under Section 10.03 (payment of TOT offset fee), the following shall not constitute a Permitted Delay: strikes, picketing, or other labor disputes, or shortage of materials or supplies.

**11.02 Third Party Actions.** Any court action or proceeding brought by any third party to challenge this Agreement, or any other permit or approval required from City or any other governmental entity for development or construction of all or any portion of the Project, whether or not Developer is a party to or real party in interest in such action or proceeding, shall constitute a Permitted Delay under this Section.

**11.03 Notice of Permitted Delays.** If written notice of such delay is given to either party within (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

## **SECTION 12.        DEFAULT.**

**12.01 Events of Default.** Subject to any extensions of time by mutual consent in writing, and subject to the provisions of the Section regarding Permitted Delays, the failure or unreasonable delay by either party to perform any material term or provision of this Agreement for a period of thirty (30) days after the dispatch of a written notice of default from the other party shall constitute a default under this Agreement. If the nature of the alleged default is such that it cannot reasonably be cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

**12.02 Notice of Default.** Any Notice of Default given hereunder shall specify in detail the nature of the alleged Event of Default and the manner in which such Event of Default may be satisfactorily cured in accordance with the terms and conditions of this Agreement.

**12.03 Cure Period.** During the time periods herein specified for cure of an Event of Default, the party charged therewith shall not be considered to be in default for purposes of termination of this Agreement, institution of legal proceedings with respect thereto, or issuance of any building permit with respect to the Project.

**12.04 General Default Remedies.** After notice and expiration of the 30-day period without cure, the non-defaulting party shall have such rights and remedies

against the defaulting party as it may have at law or in equity, including, but not limited to, the right to terminate this Agreement pursuant to Government Code Section 65868 or seek mandamus, specific performance, injunctive or declaratory relief.

**12.05 Remedies Cumulative.** Any rights or remedies available to non-defaulting party under this Agreement and any other rights or remedies that such party may have at law or in equity upon a default by the other party under this Agreement shall be distinct, separate and cumulative rights and remedies available to such non-defaulting party and none of such rights or remedies, whether or not exercised by the non-defaulting party, shall be deemed to exclude any other rights or remedies available to the non-defaulting party. The non-defaulting party may, in its discretion, exercise any and all of its rights and remedies, at once or in succession, at such time or times as the non-defaulting party considers appropriate.

**12.06 Legal Action.** Either party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy a default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation hereof, or enforce by specific performance the obligations and rights of the parties hereto.

**12.07 No Damages Relief.** The parties acknowledge that City would not have entered into this Agreement had it been exposed to damage claims from Developer for any breach thereof. As such, the parties agree that in no event shall either party be entitled to recover monetary damages against the other party for breach of this Agreement.

**12.08 Developer Default.** No building permit shall be issued or building permit application accepted for any structure on the Subject Property after Developer is determined by City, to be in default of the terms and conditions of this Agreement, and until such default thereafter is cured by the Developer or is waived by City.

**12.09 Waiver.** All waivers must be in writing to be effective or binding upon the waiving party, and no waiver shall be implied from any omission by a party to take any action with respect to such Event of Default. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party shall not constitute waiver of such party's right to demand strict compliance by such other party in the future.

**12.10 Scope of Waiver.** No express written waiver of any Event of Default shall affect any other Event of Default, or cover any other period of time specified in such express waiver.

**12.11 Attorneys' Fees.** Should legal action be brought by either party for breach of this Agreement or to enforce any provision herein, the prevailing party in any such suit or proceedings shall be entitled to a reasonable award of attorneys' fees and costs in addition to any other award made in such suit or proceeding. Reasonable attorneys' fees of either party shall be based on comparable fees for private attorneys

practicing in San Diego County.

**12.12 Venue.** In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the State courts of the County of San Diego or where appropriate, in the United States District Court, Southern District of California, San Diego, California.

### **SECTION 13. TERMINATION.**

**13.01 Effect of Termination.** Upon termination of this Agreement, the rights, duties and obligations of the parties hereunder shall, subject to the following provisions, cease as of the date of such termination.

**13.02 Termination by City.** If City terminates this Agreement because of Developer's default, then City shall retain any and all benefits, including money or land received by City hereunder.

### **SECTION 14. RELATIONSHIP OF PARTIES.**

**14.01 Project as a Private Undertaking.** It is specifically understood and agreed by and between the parties hereto that the development of the Project Site is a separately undertaken private development.

**14.02 Independent Contractors.** The parties agree that the Project is a private development and that neither party is acting as the agent of the other in any respect hereunder.

**14.03 No Joint Venture or Partnership.** City and Developer hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Developer joint venturers or partners.

**14.04 No Third Party Beneficiaries.** The only parties to this Agreement are Developer and City. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit, or be enforceable by any other person whatsoever.

**14.05 Ambiguities or Uncertainties.** The parties hereto have mutually negotiated the terms and conditions of this Development Agreement and this has resulted in a product of the joint drafting efforts of both parties. Neither party is solely or independently responsible for the preparation or form of this agreement. Therefore, any ambiguities or uncertainties are not to be construed against or in favor of either party.

### **SECTION 15. APPLICABLE LAW.**

This Agreement shall be construed and enforced in accordance with the laws of

the State of California.

**SECTION 16. SUPERSEURE OF SUBSEQUENT LAWS OR JUDICIAL ACTION.**

The provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with any new law (including any laws of the City, when so required by state or federal law) or decision issued by a court of competent jurisdiction, enacted or made after the Effective Date which prevents or precludes compliance with one or more provisions of this Agreement. Immediately after enactment of any such new law, or issuance of such decision, the parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement other than all new laws enacted by the City.

**SECTION 17. COOPERATION IN THE EVENT OF LEGAL CHALLENGE.**

In the event of any legal or equitable action or other proceeding instituted by any third party (including a governmental entity or official) challenging the validity of any provision of this Agreement or potential subsequent development approvals, should any be obtained, the parties hereby agree to cooperate in defending said action or proceeding.

**SECTION 18. HOLD HARMLESS AGREEMENT.**

Developer hereby agrees to, and shall defend, save and hold City and its elected and appointed boards, commissions, officers, agents, and employees harmless from, any and all claims, costs and liability for any damages, personal injury or death, which may arise, directly or indirectly, from Developer's or Developer's contractors', subcontractors', agents or employees' operations under this Agreement, whether such negligent operations be by Developer or by any of Developer's contractors, subcontractors, agents or employees. City shall retain the right to select the attorney of its choice to defend any action requiring a defense under this section.

**SECTION 19. INDEMNIFICATION.**

Developer shall defend, indemnify and hold harmless City and its agents, officers and employees against and from any and all liabilities, demands, claims, actions or proceedings and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees), which any or all of them may suffer, incur, be responsible for or pay out as a result of or in connection with any challenge to the legality, validity or adequacy of any of the following: (i) this Agreement; (ii) the environmental impact report prepared in connection with the adoption of the Project; and (iii) the proceedings undertaken in connection with the adoption or approval of any of the above. City shall retain the right to select the attorney of its choice to defend any action requiring a defense under this section.

## SECTION 20. NOTICES.

Any notice or communication required hereunder between City or Developer shall be in writing, and may be given either personally or by registered mail, return-receipt requested. Notice, whether given by registered mail or personal delivery, shall be deemed to have been given and received on the actual receipt by any of the addresses designated below as the party to whom notices are to be sent. Any party hereto may at any time, upon written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

### To City:

Community Development Director  
City of Imperial Beach  
825 Imperial Beach Boulevard  
Imperial Beach, California 91932

(Notices to City Manager can be  
sent to the same address)

### To Developer:

Imperial Coast Limited Partnership  
1785 Hancock Street, Suite 100  
San Diego, California 92110  
Attn: Deepak Israni

## SECTION 21. EXHIBITS.

**21.01 Designation of Exhibits.** The reference to a specified Exhibit in this Agreement is a reference to a certain one of the exhibits listed below, as determined by the accompanying letter designation.

<u>Exhibit Designation</u>	<u>Description</u>
Exhibit A	Property Description of the Subject Property
Exhibit B	Development Agreement Procedures Ordinance
Exhibit C	Existing Land Use Ordinances
Exhibit D	Site Plan
Exhibit E	Conditions of Approval
Exhibit F	Schedule of Performance

**21.02 Incorporation by Reference.** All exhibits are deemed incorporated by reference into this Agreement.

**SECTION 22. SEVERABILITY.**

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

**SECTION 23. RECORDATION.**

In order to comply with Section 65868.5 of the Development Agreement Legislation and the Enacting Ordinance, the parties do hereby direct the City Manager to cause a copy of this Agreement to be recorded with the County Recorder of the County, within ten (10) days after passage by the City of the Enacting Ordinance.

**SECTION 24. ENTIRE AGREEMENT.**

This Agreement and the Exhibits attached hereto contain all the representations and the entire agreement between the parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement and the Exhibits hereto, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits hereto.

**SECTION 25. COUNTERPARTS.**

This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

**The Rest of This Page is Intentionally Left Blank**

Executed at Imperial Beach, California on \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement for the Seacoast Inn Development Project to be executed as of the date written above.

City of Imperial Beach

Imperial Coast Limited Partnership  
*\*see notes below*

By: \_\_\_\_\_  
Jim Janney, Mayor

By: \_\_\_\_\_  
[Name of Officer, Title]

By: \_\_\_\_\_  
[Name of Officer, Title]

APPROVED AS TO CONTENT:

By: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
James P. Lough, City Attorney

ATTEST:

By: \_\_\_\_\_  
Jacque Hald, City Clerk

\*Notes: If the Developer is a Corporation, then this document must be executed by the Corporation's Chief Executive Officer, President or Vice-President, on the one hand, and the Corporations' Chief Financial Officer, Treasurer, Assistant Treasurer or Secretary on the other hand. Developer's signature must be notarized.



## EXHIBIT "A"

### PROPERTY DESCRIPTION

#### LEGAL DESCRIPTION FOR SEACOAST INN PROPERTY—800 SEACOAST DRIVE

Lots 1 to 15, inclusive, in Block 7, in South San Diego Beach, in the City of Imperial Beach, County of San Diego, State of California, according to Map Thereof No. 1071, filed in the Office of the County Recorder of San Diego County, July 6, 1907.

Also all that certain alley in said Block 7 lying and being east of and adjacent to Lots 1 and 7, inclusive, in said Block and West of and adjacent to Lots 8 and 12 in said Block, and also all of the other certain alley of said Block, lying between Lots 8, 9, 10 and 11 on the south and Lots 12, 13, 14 and 15 on the north.

Also all that portion of Ocean Boulevard described as follows:

Commencing at the Southwest Corner of Said Block 7, and running thence Northerly along the West line of said Block as shown upon said Map to the Northwest Corner Thereof; Thence at right angles westerly to the high tide line of said Pacific Ocean; Thence Southerly along said high tide line to a point opposite and directly West of the Southwest Corner of said Block; Thence East to said Southwest Corner of said Block and being all that point of said boulevard lying between said Block 7 and the high tide of Pacific Ocean, and extending in a general Northerly direction from said south line of said Block projected Westerly to said high tide line, to the North line of said Block projected Westerly to said high tide line. Said alleys and said portion of Ocean Boulevard were vacated and closed to public use on December 9, 1908, by an order of the Board of Supervisors of San Diego County, recorded in Book 27, Page 432 and Page 433 of the records of said Supervisors Office.

Except any portion thereof lying below the Mean High Tide Line of the Pacific Ocean.

Together with the reversionary rights, if any, to the centerline of Seacoast Drive, Daisy Avenue, and Date Avenue adjacent Thereto.

## **EXHIBIT "B"**

### **CHAPTER 19.89 DEVELOPMENT AGREEMENT PROCEDURES IN EFFECT ON NOVEMBER 21, 2007**

Title 19 ZONING

Chapter 19.89. DEVELOPMENT AGREEMENT PROCEDURES

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#### 19.89.010. Applications.

- A. Authority for Adoption. These regulations are adopted under the authority of Government Code Sections 65864 through 65869.5.
- B. Forms and Information.
  - 1. The Community Development Director shall prescribe the form for each application, notice and document provided for or required under these regulations for the preparation and implementation of development agreements.
  - 2. The Community Development Director may require an applicant to submit such information and supporting data, as the Community Development Director considers necessary to process the application.
- C. Fees. The City Council shall by separate resolution fix the schedule of fees and charges imposed for the filing and processing of each application and document provided for or required under these regulations.
- D. Qualification as an Applicant. Only a qualified applicant may file an application to enter into a development agreement. A qualified applicant is a person who has legal or equitable interest in the real property, which is the subject of the development agreement. Applicant includes authorized agent. The Community Development Director shall require an applicant to submit proof of his interest in the real property and of the authority of the agent to act for the applicant. Before processing the application, the Community Development Director shall obtain the opinion of the City Attorney as to the sufficiency of the applicant's interest in the real property to enter into the agreement.
- E. Proposed Form of Agreement. Each application shall be accompanied by the form of development agreement approved by the City. This requirement may be met by designating the City's standard form of development agreement and including specific

proposals for changes in or additions to the language of the standard form.

- F. Review of Application. The Community Development Director shall endorse on the application the date it is received. He shall review the application and may reject it if it is incomplete or inaccurate for processing. If he finds that the application is complete, he shall accept it for filing. The director shall review the application and determine the additional requirements necessary to complete the agreement. After receiving the required information, he shall prepare a staff report and recommendation and shall state whether or not the agreement proposed or in an amended form would be consistent with the general plan and any applicable specific plan. (Ord. 2004-1018 § 1 (part), 2004)

#### 19.89.020. Notices and hearing.

- A. Duty to Give Notice. The Community Development Director shall give notice of intention to consider adoption of development agreement and of any other public hearing required by law or these rules.
- B. Requirements for Form and Time of Notice of Intention to Consider Adoption of Development Agreement.
1. Form of Notice. The form of the notice of intention to consider adoption of development agreement shall contain:
    - a. A time and place of the hearing;
    - b. A general explanation of the matter to be considered, including a general description of the area affected; and
    - c. Other information required by specific provisions of these regulations or which the planning director considers necessary or desirable.
  2. Time and Manner of Notice. The time and manner of giving notice is by:
    - a. Publication or Posting. Publication at least once in a newspaper of general circulation, published and circulated in the City of Imperial Beach, or if there is none, posting in at least three public places in the City of Imperial Beach.
    - b. Mailing. Mailing of the notice to all persons shown on the last equalized assessment roll as owning real property within five hundred feet of the property, which is the subject of the proposed development agreement. If the number of owners to whom notice is to be mailed is greater than one thousand, the Community Development Director may, as an alternative, provide notice in the manner set forth in Section 65091 as amended of the Government Code.
  3. Additional Notice. The City Council may direct that notice of the public hearing to be held before it shall be given in a manner that exceeds the notice requirements prescribed by State law.
  4. Declaration of Existing Law. The notice requirements referred to in subsections (B)(2)(a) through (b) of this section are declaratory of existing law. (Government Code Section 65867 as amended and as incorporated by reference). If State law

prescribes a different notice requirement, notice shall be given in that manner.

- C. Failure to Receive Notice. Lack of receipt by any person entitled to notice required by law or these regulations do not affect the authority of the City to enter into a development agreement.
- D. Rules Governing Conduct of Hearing. The public hearing shall be conducted as nearly as may be in accordance with the procedural standards adopted under Government Code Section 65804 for the conduct of zoning hearings and applicable local procedural rules established by the City Council. Each person interested in the matter shall be given an opportunity to be heard. The applicant has the burden of proof at the public hearing on the proposed development agreement.
- E. Irregularity in Proceedings. No action, inaction or recommendation regarding the proposed development agreement shall be held void or invalid or be set aside by a court by reason of any error, irregularity, informality, neglect or omission ("error") as to any matter pertaining to petition, application, notice, finding, record, hearing, report, recommendation, or any matters of procedure whatever, unless after an examination of the entire case, including the evidence, the court is of the opinion that the error complained of was prejudicial and that by reason of the error, the complaining party sustained and suffered substantial injury, and that a different result would have been probable if the error had not occurred or existed. There is no presumption that error is prejudicial or that injury was done if error was shown. (Ord. 2004-1018 § 1 (part), 2004)

19.89.030. Standards of review, findings and decision.

- A. Determination by the City Council. After the hearing by the City Council, the City Council shall make its decision to approve or deny the proposed development agreement. The approval shall include the City Council's determination whether or not the development agreement proposed:
  - 1. Is consistent with the objectives, policies, general land uses and programs specified in the general plan, the local coastal plan and any applicable specific plan;
  - 2. Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located;
  - 3. Is in conformity with public convenience, general welfare and good land use practice;
  - 4. Will not be detrimental to the health, safety and general welfare; and
  - 5. Will not adversely affect the orderly development of the property or the preservation of property values.
- B. Approval of the Development Agreement. If the City Council approves the development agreement, it shall do so by the adoption of an ordinance.

After the ordinance approving the development agreement takes effect, the City Council may enter into the agreement. (Ord. 2004-1018 § 1 (part), 2004)

19.89.040. Amendment and cancellation of agreement by mutual consent.

- A. Initiation of Amendment or Cancellation. For an existing development agreement, either party may propose an amendment to or cancellation in whole or in part.
- B. Procedure. The procedure and notice requirements for proposing an adoption of an amendment to or cancellation in whole or in part of the development agreement is the same as the procedure for entering into the agreement in the first instance. (Ord. 2004-1018 § 1 (part), 2004)

19.89.050. Recordation of development agreement, amendment or cancellation.

- A. Within ten days after the City enters into the development agreement, the City Clerk shall have the agreement recorded with the County Recorder.
- B. If the parties to the agreement or their successors in interest amend or cancel the agreement as provided in Government Code Section 65868, or if the City terminates or modifies the agreement as provided in Government Code Section 65865.1 for failure of the applicant to comply with good faith with the terms or conditions of the agreement, the City Clerk shall have notice of such action recorded with the County Recorder. (Ord. 2004-1018 § 1 (part), 2004)

19.89.060. Periodic review.

- A. Time for and Initiation of Review. The City shall review the development agreement every twelve months from the date the agreement is entered into. The time for review may be modified either by agreement between the parties or by initiation in one or more of the following ways:
  - 1. Recommendation of the Community Development Department;
  - 2. Affirmative vote of at least three members of the City Council;
- B. Notice of Periodic Review. The Community Development Director shall initiate the review proceeding by giving notice to the property owner that the City intends to undertake a periodic review of the development agreement. He or she shall give the notice as provided in Government Code Section 65091(a)(1) and (2).
- C. Hearing. The City Council shall conduct a hearing at which the property owner must demonstrate good faith compliance with the terms of the agreement. The burden of proof on this issue is upon the property owner.
- D. Findings Upon Hearing. The City Council shall determine, upon the basis of substantial evidence, whether or not the property owner has, for the period under review, complied in good faith with the terms and conditions of the agreement.
- E. Procedure Upon Findings. If the City Council finds and determines on the basis of substantial evidence that the property owner has complied in good faith with the terms and conditions of the agreement during the period under review, the review for that

period is concluded, and a notice of that determination shall be published and mailed as provided in subsection B of this section. If the City Council finds and determines on the basis of substantial evidence that the owner has not complied with the terms and conditions of the agreement, the City Council may set the matter for modification or termination of the agreement under the procedures set forth in Section 19.89.070 of this chapter. (Ord. 2004-1018 § 1 (part), 2004)

#### 19.89.070. Modification or termination.

- A. Proceedings Upon Modification or Termination. If, upon a finding, under Section 19.89.060(E) of this chapter, the City determines to proceed with modification or termination of the agreement, the City shall give notice as provided in Section 19.89.060(B) of this chapter to the property owner of its intention so to do. The notice shall contain:
  - 1. The time and place of the hearing, which shall be conducted by the City Council;
  - 2. A statement as to whether or not the City proposes to terminate or to modify the development agreement; and
  - 3. Other information that the City considers necessary to inform the property owner of the nature of the proceeding.
- B. Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, the property owner shall be given an opportunity to be heard. At the hearing, the City Council shall make a determination as to whether the development agreement should be terminated or modified. If, as a result of the hearing, the City Council finds and determines that the applicant or successor in interest has not complied in good faith with the terms and conditions of the agreement, the City may terminate or modify the agreement. The City Council may also modify or suspend the provisions of the development agreement if the City Council finds and determines implementation of the agreement poses a health or safety risk to the community. The City Council may refer the matter back to the Community Development Department for further review or for report and recommendation. The City Council may impose those conditions to the action it takes as it considers necessary to protect the interests of the City and/or the surrounding community. The decision of the City Council is final. (Ord. 2004-1018 § 1 (part), 2004)

#### 19.89.080. Issuance of building permit.

- A. A building permit may not be issued for any project approved pursuant to the development agreement process, if at the time for issuance the development agreement has been terminated.
- B. If at the time a building permit is requested for any project approved pursuant to the development agreement process there is a hearing pending to determine the existence of default by the property owner or any obligor under the terms of the development agreement, then in such case no building permit may be issued without written approval of the City Manager. (Ord. 2004-1018 § 1 (part), 2004)

## **EXHIBIT "C"**

### **EXISTING LAND USE ORDINANCES AND PLANS**

Title 19 of the Imperial Beach Municipal Code and Ordinance No. 2007-1060 are on file with the City Clerk.

## **EXHIBIT "D"**

### **SITE PLAN**

**The Site Plan (SPR 03-093) is on file with the City Clerk.**



## EXHIBIT "E"

### CONDITIONS OF APPROVAL

#### A. PLANNING:

##### General Conditions:

1. Final building permit plans shall indicate and the site shall be developed substantially in accordance with the approved conceptual plans on file in the Community Development Department as of November 1, 2007 and with the conditions adopted herein.
2. The applicant shall submit a licensed surveyor's certificate upon completion of the foundation work that demonstrates proper placement of the structure relative to building setbacks from property lines and a certificate upon completion of framing that demonstrates and ensures that the building does not exceed the maximum roof level height of 40 feet above an average grade of 14 feet mean sea level grade.
3. Approval of this request shall not waive compliance with any portion of the Uniform Building Code and Municipal Code in effect at the time a building permit is issued.
4. Mechanical equipment, including solar collectors and panels or other utility hardware on the roof, ground, or buildings shall be screened from public view with materials harmonious with the building, and shall be located so as not to be visible from any public way. (19.83).
5. No improvements, structural or non-structural, may be placed on the roof deck. Only personal property, which does not obstruct views, is permitted on the roof deck while authorized person(s) are actually present on the roof deck.
6. All landscaped areas, including any in the public right-of-way, shall be maintained, at all times, in a healthy condition, free from weeds, trash, and debris.
7. It shall be the applicant's responsibility to assure that shoreline protection structures on adjacent properties are not damaged during construction on the subject site, and to repair any damage to the adjacent property's shoreline protection structures that may be caused by the construction on the subject site. The construction of temporary slopes shall be shored in compliance with CAL-OSHA requirements.
8. All sand excavated from the project site shall be analyzed for suitability as beach nourishment material. If determined to be suitable, any sand in excess of that required to provide berming along the first level wall shall be used for beach nourishment at such locations as may be determined appropriate by the City for compliance with sand nourishment programs. Local sand, cobbles or armor stones shall not be used for backfill or construction materials. Additionally, the applicant shall remove from the beach and seawall area any and all debris that result from the construction period and dispose of

such materials in an acceptable landfill site.

9. Within 60 days following project completion, the applicant shall submit certification by a registered civil engineer verifying that the seawall has been constructed in conformance with the final approved plans for the project.
10. Construction materials or equipment shall not be stored on the beach seaward of the western property line. Equipment shall be removed from the beach at the end of any given work day.
11. A Registered Engineer shall supervise the construction of the seawall.
12. The property owner shall be responsible for maintenance of the permitted seawall. Any debris or other materials which become dislodged after completion through weathering and coastal processes, which impair public access, shall be removed from the beach. Any future additions or reinforcements may require a coastal development permit. If after inspection it is apparent that repair and maintenance is necessary, the applicant shall contact the City to determine whether such a permit is necessary.
13. The applicant or applicant's representative shall, pursuant to Section 711.4 of the California Fish and Game Code, pay by certified or cashier's check payable to the San Diego County Clerk \$2,500 plus a \$50 documentary handling fee at the time the Notice of Determination is filed by the City, which is required to be filed with the County Clerk within five working days after project approval becomes final (Public Resources Code Section 21152).
14. Applicant shall pay off any unpaid negative balances in the Project Account Numbers (03-91/03-92/03-93/03-94/03-95/04-034) prior to issuance of building permit and prior to final inspection/certificate of occupancy.
15. The applicant or applicant's representative shall read, understand, and accept the conditions listed herein and shall, within 30 days, return a signed affidavit accepting said conditions.
16. The applicant shall comply and conform to the requirements, specifications, mitigation measures and conditions provided, by separate action or as specified herein, for the City Council approved Development Agreement applicable to this project, the certified Final EIR and Mitigation Monitoring & Reporting Plan, and the Specific Plan applicable to this project.
17. Building design and architectural treatment/style, project amenities and features shall conform and comply with the standards and requirements specified by the Seacoast Inn Specific Plan as adopted by the City Council. No deviation or modification shall be allowed unless prior approval for modifications have been granted by public hearing action by the City Council.

**Prior to the Issuance of Construction or Grading Permits or Commencement of Site Work:**

18. The applicant shall dedicate an easement over, under, along and across that portion of the property west (seaward) of the proposed seawall from the mean high tide line to the new seawall to the City of Imperial Beach for public use and access by City maintenance and emergency vehicles to the beach.

19. The applicant shall provide the City Community Development Department with a construction schedule in order to commence any site work. All construction activity on the beach shall be scheduled during low tides.
20. The applicant shall submit final plans for the shoreline protection device consistent with the recommendations contained in the Wave Runup engineering report prepared by Moffatt & Nichols dated November 2005 with an update dated February 14, 2006, and a Geotechnical Study report prepared by TGR Geotechnical December 24, 2002 with an update dated May 18, 2005.
21. The applicant shall submit plans showing the locations, both on and off site that will be used as staging or storage areas for materials and equipment during the construction phase of the project. The staging/storage plan shall be subject to review and written approval of the Community Development Director. The plan shall also note that no work requiring encroachment on the public beach shall be allowed on weekend days between Memorial Day and Labor Day, and during predicted grunion runs, of any year.

Disturbance to the beach more than 10 feet seaward of the existing hotel seawall during construction shall be prohibited except for beach replenishment. Construction activity up to 10 feet seaward of the existing seawall shall be allowed only for demolition of the existing seawall and for beach restoration. Beach replenishment will be allowed only under conditions stated in the Environmental Impact Report, Section 2.6, or in a beach replenishment program permitted by the U.S. Army Corps of Engineers. During grunion spawning periods forecasted by the California Department of Fish and Game, no construction activity shall be allowed seaward of the new seawall.

22. The applicant shall submit a traffic control plan for the diversion of traffic on Ocean Lane during construction. Ocean Lane shall remain open, except at intersection with Date Avenue, for vehicular traffic, including emergency vehicles during construction of the project. If traffic must be impeded, the applicant must submit a traffic control plan to the Public Works Director for approval at least 10 days prior to closure of Date Avenue and Ocean Lane intersection or closure of Date Avenue at Seacoast Drive.
23. The landowner, if required, shall execute and record a deed restriction in a form and content that is acceptable to the Community Development Director which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from waves during storms and from erosion or flooding, and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the City of Imperial Beach and agrees to indemnify and hold harmless the City of Imperial Beach relative to its approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.
24. The applicant shall pay a sand mitigation fee if required which shall be used for beach sand replenishment purposes, in lieu of providing sand to replace the sand and beach area that would be lost due to the impacts of the proposed shoreline protection structure. The mitigation fee shall be deposited in an interest-bearing account designated by the Executive Director of the California Coastal Commission and the City Manager of the City of Imperial Beach. The mitigation fee shall be determined in accordance with

Section 19.87.050 of the City of Imperial Beach Municipal Code, in consultation with the California Coastal Commission technical staff.

25. Form 7-B shall be submitted with the Building Permit Application.
26. Identify all BMPs on the site plan or a separate landscape or drainage plan in compliance with Form 7-B of the Storm Water Management Plan.
27. Provide this note on the plans: "All construction wastes shall be collected, stored and disposed of in an approved manner per Caltrans Storm Water Quality Handbook." Show the location of your waste container or dumpster on site. If you intend to set a dumpster in the public right of way an Encroachment Permit is required.
28. Show proposed drainage pattern with high point elevation and flow-lines elevation every 25'.
29. Provide a final soils report from a licensed soils engineer.
30. Locate on the site plan the sewer line for the new dwellings.
31. A final grading / Improvement plan is required for this project and shall be approved by the City Of Imperial Beach Engineer prior to permit issuance.
32. Provide this note on the plans: "BMPs shall be maintained through final inspection. If the building Inspector finds that BMPs are not in place during a regularly scheduled inspection, the inspection will not be complete and a re-inspection fee may be assessed at the discretion of the Building Official."
33. Project building plans shall show and ensure that the hot water tank P.T. discharge pipe is directly connected to the sanitary sewer system or the landscape area. A design that has the water discharge directly into the storm drain conveyance system onto an impervious surface that flows to a public street shall be avoided and would be in violation of the Municipal Storm Water Permit – Order 2001-01.
34. No building roof or landscape water drains may be piped to the street or onto impervious surfaces that lead to the street. A design that has these water discharges directly into the storm drain conveyance system (onto an impervious surface that flows to the street) is in violation of the Municipal Storm Water Permit – Order 2001-01.
35. Require the building foundation elevation be at least 1 foot above gutter line to minimize flooding during storm conditions.
36. Ensure construction design includes adequate storage for trash containers for regular trash, recycled waste, green waste as required by the City Public Works Director.
37. Install survey monuments, as specified and required by Public Works Director, on all property lines and/or adjacent to the property line. Record same with county office of records.
38. Applicant shall incorporate into project design and implement pre- and post construction Best Management Practices (BMPs), inclusive of site design, source control and treatment controls, and verify maintenance provisions through a legal agreement, covenant, CEQA mitigation requirement, and/or the conditions as required by the City Public Works Director.

39. Applicant shall submit for review and approval a Storm Water Pollution and Prevention Plan (SWPPP), project is greater than 1-acre in size, by City Public Works Director.
40. For alley, sidewalk or curb and gutter replacement ensure compliance with San Diego Regional Standard Drawing G-11 in that the "Area to be removed [must be] 5' or from joint to joint in panel, whichever is less." The distance between joints or score marks must be a minimum of 5 feet. Where the distance from "Area to be removed" to existing joint, edge or score mark is less than the minimum shown, "Area to be removed" shall be extended to that joint, edge or score mark.
41. For any work to be performed in the street submit a traffic control plan for approval by Public Works Director a minimum of 10 working days in advance of street work. Traffic control plan is to be per Regional Standard Drawings or Caltrans Traffic Control Manual.

**Prior to Final Map Approval for Recordation:**

42. The applicant shall dedicate an easement over, under, along and across that portion of the property west (seaward) of the proposed seawall from the mean high tide line to the new seawall to the City of Imperial Beach for public use and access by City maintenance and emergency vehicles to the beach.

**Expiration Date:**

43. Approval of Regular Coastal Permit (CP 03-091), Design Review (DRC 03-094), Site Plan Review (SPR 03-093), Tentative Map (TM 03-092) and Environmental Impact Report (ELA 04-034) is valid for three years from the date of final action, to **expire on December 5, 2010**, unless an appeal is filed to or by the California Coastal Commission. Any such appeal will stay the expiration date until the case is resolved and the permit will expire 3 years from the date the Commission acts on the appeal. In the event that no appeal is filed, conditions of approval must be satisfied, building permits issued, and substantial construction must have commenced prior to the expiration date, **or** unless a time extension is granted by the City pursuant to such a request for extension by the applicant. The applicant is responsible for tracking these expiration dates and shall, if necessary, file a written request for a time extension at least 45 days prior to said expiration dates, either the Coastal Commission decision or the City Council of the City of Imperial Beach Notice of Decision(s).

**B. ENVIRONMENTAL CONDITIONS OF APPROVAL:**

**General:**

All mitigation measures, as specified in the Draft and Final EIR Mitigation Monitoring and Reporting Plan (MMRP), shall, at a minimum be initiated or completed, by designated responsible parties.

The following conditions shall also be incorporated into the project as additional requirements to assure conformance or compliance with City regulations, and are in addition to required EIR Mitigation Measures:

### **Air Quality:**

Temporary impacts to air quality associated with construction activities are anticipated. Implementation of the following conditions during construction operations shall be required:

44. Water all active construction areas at least twice daily.
45. Cover all trucks hauling soil, sand, and other loose materials, or require trucks to maintain at least 2 feet of free board.
46. Pave/apply water three times daily, or apply nontoxic soil stabilizers, on all unpaved access roads, parking areas, and staging areas at the construction sites.
47. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction site.
48. Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
49. Hydroseed or apply nontoxic soil stabilizers to inactive construction areas. Inactive construction areas are areas that have been previously graded and are inactive for 10 days or more.
50. Install sandbags, silt fences or other erosion control measures to prevent silt runoff to public roadways.
51. Replant vegetation in disturbed areas as quickly as possible.
52. Suspend excavation and grading activity when wind gusts exceed 25 MPH.

### **Biological Resources:**

The following conditions shall be implemented to reduce potential impacts to the Pismo clam and grunion. Although not listed as an endangered or threatened species, the City has implemented a standard protocol for protection of Pismo Clams and Grunion, associated with construction activities by incorporating the following:

53. Impacts to Pismo clam shall be mitigated by avoiding vehicle use in the lower intertidal zone, and minimizing vehicle use in the middle intertidal zone (or conduct a survey at the time of construction to verify their absence); and
54. Disturbance to the beach below the high tide line (Mean Higher Water) during construction shall be prohibited except for beach replenishment. Beach replenishment will be allowed only under conditions stated in the Environmental Impact Report, Section 2.6, or in a beach replenishment program permitted by the U.S. Army Corps of Engineers. During grunion spawning periods forecasted by the California Department of Fish and Game, no construction activity shall be allowed seaward of the new seawall.

### **Geology:**

The following geotechnical conditions shall be required in the planning and implementation of the project:

55. A comprehensive geotechnical evaluation, including development-specific subsurface exploration and laboratory test, shall be conducted prior to design and construction if previous studies need to be updated. The purpose of the subsurface evaluation shall evaluate the subsurface conditions in the area of the proposed structures and to provide information pertaining to the engineering characteristics of earth materials at the project site. From the data, recommendations for grading/earthwork, surface and subsurface drainage, foundations, pavement structure sections, and other pertinent geotechnical design considerations shall be formulated and submitted to City Building Official for approval.
56. Vibration induced settlement due to driving of sheet piles may occur during the construction of the seawalls. Nearby structures and pavement may experience distress due to the induced settlements. A vibration monitoring plan, in accordance with 2007 California Building Code requirements, shall be developed and implemented during construction of the sheet pile seawalls. The purpose of the plan would be to document construction induced vibrations and is subject to the approval of the City Building Official and/or Public Works Director prior to issuance of building or grading permits.
57. A baseline geotechnical reconnaissance shall be performed at each of the nearby structures to document pre-construction distress features, if any. Such an evaluation may include manometer surveys, crack measurements, and photographic/video documentation.
58. During construction, nearby structures shall be monitored for distress and/or settlement that may occur as a result of construction. Upon completion, a final evaluation of the nearby structures shall be performed, and the results compared with the initial baseline findings.
59. Liquefiable soils may be present on the site. The confirmation of their presence (or absence) shall be done through subsurface exploration (e.g. drilling) and laboratory testing.
60. Loose surficial soils that are not suitable for structural support in their current state are present on the sites. The loose surficial soils shall be mitigated by their removal during site grading. Much of the soils should be suitable for reuse as compacted fill.
61. The project has a potential for strong ground motions due to earthquakes. Accordingly, the potential for relatively strong seismic accelerations shall be considered in the design of proposed improvements.

#### **Hydrology and Water Quality:**

The potential for impacts to water quality would primarily occur as a result of construction activities. The following measures shall be implemented prior to initiation of construction activities:

62. Prior to City approval of construction permits, the final grading and drainage plans will be reviewed for compliance with SUSMP.

63. The proposed project includes a subterranean parking garage; therefore, excavation below the street level elevation may intercept the groundwater table. An updated geotechnical report shall be required prior to construction to ensure the appropriate measures are implemented. Temporary construction dewatering may be required during excavation. The applicant shall be responsible for obtaining an appropriate permit(s) for construction dewatering.
64. Project shall adhere to the Water Pollution Control Plan (WPCP) prepared by Landmark Consulting Engineers as conditioned and approved by the City of Imperial Beach including Construction and Permanent Best Management Practices (BMP) and other requirements pursuant to the City's Standard Urban Storm Water Mitigation Plan (SUSMP).
65. In order to provide the appropriate protection to the project site in case of a flood event, the applicant shall be required to Implement Flood Hazard Reduction Standards established for construction in order to assure protection from flooding (Imperial Beach Municipal Code 15.50.160).
66. In addition to building permits, a flood hazard area development permit may need to be obtained from the City Engineer prior to commencement of any construction (Imperial Beach Municipal Code 19.32.020).

**Noise:**

It is anticipated that the project will create temporary noise impacts associated with construction activities. During construction, equipment and material transport will also generate temporary noise, which could be a significant increase in levels for the adjacent residents. Therefore, the following conditions shall also be incorporated into the project as additional requirements to assure conformance or compliance with City regulations, and are in addition to required EIR Mitigation Measure.

67. To further deter construction noise from adjacent properties, the applicant shall be responsible for notifying residents and businesses within a 300-foot radius prior to shoring or pile driving activities.
68. Additionally, construction activities associated with implementation of pile driving shall be limited to the hours of 8 a.m. to 5 p.m., Monday through Friday.
69. The applicant shall notify all residents within 500 feet of the project site prior to pile driving activities. The applicant shall also incorporate the best available technology acoustical dampening features during pile driving or drilling, including but not limited to the installation of a ten (10) foot high sound attenuating wall at the property perimeters. Other Best Management Practices for construction noise abatement shall be employed, to the extent feasible, by the contractor throughout the construction phase, including limiting equipment warm-up to no more than fifteen (15) minutes prior to start of daily construction activities.

**C. BUILDING:**

70. This project is subject to all Model Codes, State Codes and City Ordinances adopted by



the City of Imperial Beach, including but not limited to the applicable 2007 California Building and Mechanical Code requirements for building design, ADA access for swimming pool and all areas of the hotel, garage ventilation, building sprinkler systems, alarm system, elevator access and controls.

71. Applicant shall submit a complete set of construction documents for building permit review including complete architectural, structural, civil, mechanical, electrical, plumbing, energy calculations and landscape/irrigation plans.
72. The project shall be fully fire sprinklered in accordance with NFPA 13 requirements and include an alarm system in conformance with NFPA 72 requirements and Knox box located near the main entry or specified by the Fire Department.
73. Building design shall comply with the Uniform Fire Code or the IFC requirements, if adopted by the City and applicable to this project.
74. Building design plans shall note that all elevator sizes and controls shall comply with the 2007 California Building Code requirements.
75. Building design and amenities shall conform to the requirements and specifications as adopted by the City Council for the Seacoast Inn Specific Plan, Development Agreement and EIR Mitigation Monitoring & Reporting Plan for this project.

**D. PUBLIC WORKS:**

76. For alley, sidewalk or curb and gutter replacement ensure compliance with San Diego Regional Standard Drawing G-11 in that the "Area to be removed [must be] 5' or from joint to joint in panel, whichever is less." The distance between joints or score marks must be a minimum of 5 feet. Where the distance from "Area to be removed" to existing joint, edge or score mark is less than the minimum shown, "Area to be removed" shall be extended to that joint, edge or score mark.
77. Relocate and replant, to the extent possible, existing Palm trees out of the public rights-of-way, including Seacoast Drive and/or Date Avenue. Applicant may incorporate any removed Palm trees into the landscape design for Seacoast Drive or Date Avenue.
78. Applicant shall remove sidewalk on Seacoast Drive frontage and construct an 8-foot-wide sidewalk with a design that conforms to the constructed sidewalk adjacent to Dunes Park and to the proposed improvements for Date Avenue. These sidewalk improvements must comply with applicable ADA accessibility requirements and applicable design criteria.
79. Remove existing driveway approach on Seacoast Drive and replace with new curb, gutter, and sidewalk, wherever not coincident with the new driveway approach, per Regional Standard drawings G-2 and G-7.
80. Applicant shall install new driveway approach(es) on Seacoast Drive in accordance with Regional Standard Drawing G-14A or an alternative meeting ADA accessibility requirements and as approved by the City Public Works Director. Asphalt cuts for said installation shall conform to the requirements and satisfaction of the City Public Works Director.
81. All street work construction requires a Class A contractor to perform the work. Street

repairs must achieve 95% sub soil compaction. Asphalt repair must be a minimum of four (4) inches thick asphalt placed in the street trench. Asphalt shall be AR4000 ½ mix (hot).

82. In accordance with I.B.M.C. 12.32.120, applicant must place and maintain warning lights and barriers at each end of the work site, and at no more than 50 feet apart along the side thereof from sunset of each day until sunrise of the following day, until the work is entirely completed. Barriers shall be placed and maintained not less than three feet high.
83. Advise the property owner that he/she must institute "Best Management Practices" to prevent contamination of storm drains, ground water and receiving waters during both construction and post construction. The property owner or applicant must provide the following documents to the City of Imperial Beach following before project may begin work:
  - A certification of intent to comply with storm water requirements – Form 7-A.
  - A checklist of selected BMPs and location of the BMPs on project plans for review by the City – Form 7-B and Table 7-3
  - Certification of intent to maintain selected BMPs – Form 7-B.
  - A Storm Water Management Plan –Form 7-B.
84. Additionally these BMP practices shall include but are not limited to:
  - Contain all construction water used in conjunction with the construction. Contained construction water is to be properly disposed in accordance with Federal, State, and City statutes, regulations and ordinances.
  - All recyclable construction waste must be properly recycled and not disposed in the landfill.
  - Water used on site must be prevented from entering the storm drain conveyance system (i.e., streets, gutters, alley, storm drain ditches, storm drain pipes).
  - All wastewater resulting from cleaning construction tools and equipment must be contained on site and properly disposed in accordance with Federal, State, and City statutes, regulations, and ordinances.
  - Erosion control - All sediment on the construction site must be contained on the construction site and not permitted to enter the storm drain conveyance system. Applicant is to cover disturbed and exposed soil areas of the project with plastic-like material (or equivalent product) to prevent sediment removal into the storm drain system
85. Any disposal/transportation of solid waste/construction waste in roll-off containers must be contracted through EDCO Disposal Corporation unless the hauling capability exists integral to the prime contractor performing the work.

**E. PUBLIC SAFETY:**

86. Provide a note on the plans stating: "Approved numbers or addresses shall be provided for all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property and from any alley that fronts the property. Lettering shall be a minimum of four (4) inches high, with a minimum ¾ inch stroke, on

a contrasting background.” CFC Section 901.4.4

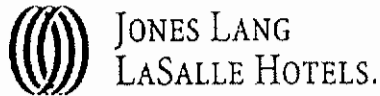
87. Provide a note on the plans stating: “All electric, gas, and water meters shall be clearly marked to indicate the unit or portion of the building they serve.”
88. No on-street parking shall be allowed in Ocean Lane, south of Date Avenue.

## **EXHIBIT “F”**

### **SCHEDULE OF PERFORMANCE**

The following Project milestones and corresponding deadlines are material terms and conditions of the Agreement and are binding upon Developer:

<b><u>Milestone</u></b>	<b><u>Deadline</u></b>
1. Submittal of construction plans to City for review	Within 270 days from date of approval by California Coastal Commission
2. Commencement of construction	Within 180 days from issuance of building permits or grading permits, whichever is earlier
3. Completion of construction of on-site and off-site improvements	400 days from commencement of construction



JONES LANG  
LASALLE HOTELS.

Jones Lang LaSalle Hotels  
355 South Grand Avenue, Suite 3100  
Los Angeles, CA 90071  
tel +1 213 680 7900 fax +1 213 680 4933

www.joneslanglasallehotels.com

4 February 2008

Mr. Ash Israni  
Pacifica Companies  
1785 Hancock Street, Suite 100  
San Diego, CA 92110

Dear Mr. Israni:

We have updated our analysis of the Seacoast Inn, as of February 4, 2008. The original report was prepared by us in March 20, 2002.

Based on our analysis we have drawn the following conclusions:

- A renovated and expanded 78-room hotel that was built-out and "finished" to a consistent three-star quality level could achieve occupancy of 63% - 65% at an average daily rate of \$135 - \$140.
- Without a substantial subsidy by the City of Imperial Beach, we do not believe there is any economic justification for building a four-star quality level.
- Since the rate ceiling is imposed by the location (not the physical asset) there is not likely to be an appreciable difference between the rates for a renovated hotel versus an all-new construction.
- We understand that the cost to deliver the building in the architectural renderings shown to us would be a minimum of \$25 million, at \$321,000 per key, if all-new construction. In order to make the project economically viable, it will be necessary to sell units off in a condo-hotel ownership format or to obtain a subsidy from the City.

### **Imperial Beach**

Long known for its affordable, Navy-base proximate housing, the City of Imperial Beach was characterized by its rough atmosphere and seedy beachfront. Over the past decade, the City has undergone a significant makeover and has become more visitor-friendly, commercially viable and overall more aesthetically pleasing. However, the City is still a low-status beach community, due mainly to the beach water quality problems.

The revitalization may also have suffered a set-back as the featured location in a television show "John from Cincinnati". The one season duration of the show and the effect of the image that the show conveys of the Imperial Beach are still unknown. So long as the image is of a "rundown surfing community", the City's image should not be impaired.

### **Beach Water Quality**

In 1997, a \$260 million sewage treatment facility was opened to address the sewage spills emanating from Tijuana. This brought down the water contamination, but the beaches in the South Bay continue to be one of the most polluted in the country.

EXHIBIT NO. 8
APPLICATION NO.
<b>A-6-IMB-07-131</b>
Applicant's Analysis of
Proposed Room Rate

The sewage contamination in the Tijuana River that moves from the estuary mouth and north along the coast result in contamination and closures of the south San Diego county beaches. As a result, water quality at these impacted beaches is extremely poor.

Between April 2006 and March 2007, San Diego experienced 25 closures due to sewage. Out of this there were 17 beach closures between Imperial Beach and the Mexican border.

Winter season rains overwhelm the border sewage treatment facility each year. From April 2007 till date, various beaches in Imperial Beach were closed for a total of 42 days, with an average close period of 10.5 days. As a point of reference, various Coronado beaches experienced a total of 30 days of closure, Mission Bay a total of 6 days of closure and Oceanside experienced a total of 11 days of closure.

#### Beach Closures from Sewage Spills

Beach	No. of Events	Total Days Closed	Average Closed Days
Imperial Beach	4	42	10.5
Coronado Beach	3	30	10.0
Mission Bay	1	6	6.0
Oceanside	2	11	5.5

Source: [www.healthebay.com](http://www.healthebay.com)

#### Redevelopment

The City of Imperial Beach is now implementing a community redevelopment plan to improve the aging portions of the commercial corridor along Palm Avenue and Seacoast Drive. In 2005, the Redevelopment Agency and City Council adopted the Five Year Implementation Plan that includes the following projects:

- Redevelopment of 9th and Palm Avenue Commercial Property;
- Façade Improvement Program;
- Old Palm Avenue Revitalization Project;
- Residential Rehabilitation Loan Program; and
- Rehabilitation of low-income units.

#### Housing

In 2007, home sale prices for new homes have declined by 5.6% in Central San Diego County. Imperial Beach was no exception the median resale price for a single family house in Imperial Beach fell by 7.4% over last year to \$451,000. During the same period the median resale price for condos decreased by 9.1% over last year to \$400,000.

#### Median House Prices

Place	Zip	Resale						New			All Home Sales		
		Single-Family			Condominiums			All Combined New			All Combined		
		Sales	Median	% Chg	Sales	Median	% Chg	Sales	Median	% Chg	Sales	Median	% Chg
Imperial Beach	91932	83	\$451,000	-7.4%	46	\$400,000	-9.1%	54	\$257,500	-25.4%	183	\$425,000	-10.5%
Mission Bch, Pacific Bch	92109	205	\$850,000	-2.3%	269	\$500,000	-8.0%	101	\$577,000	48.3%	575	\$650,000	-3.7%
Oceanside S	92054	229	\$540,000	0.0%	141	\$408,500	9.7%	117	\$406,500	4.8%	487	\$469,000	-4.2%
Oceanside N	92057	498	\$470,000	-7.8%	182	\$256,500	-16.9%	158	\$599,500	-8.3%	838	\$450,000	-4.7%
Central San Diego County	5012		\$540,000	0.9%	3958	\$390,000	-6.9%	2728	\$375,500	3.2%	11698	\$452,000	-5.6%

Not surprisingly, Imperial Beach still lags most other beach communities in housing values.

Although Imperial Beach's stringent code enforcement has created a beach zone that is more aesthetically appealing than Pacific Beach, it would not be reasonable to assume that a hotel in Imperial Beach would obtain the same average daily rate as in Pacific Beach or Mission Beach. We believe that, for the foreseeable future, Imperial Beach will continue to attract value-conscious guests who cannot or will not pay the rates currently being obtained in Pacific Beach or more prestigious San Diego addresses.

### **Oceanside Hotel Project Stalls Out**

Oceanside, a previously oft-maligned beach community, commenced its urban renewal program approximately 30 years ago. Despite the fact that the City and State spent more than \$100 million on a 375-acre area of downtown Oceanside, the City has been unable to effect the successful development of a traditional hotel near its pier.

The most recent developer selected to develop a hotel proposed a 302-room hotel with 72-time share units and a \$9.9 million subsidy. The most recent proposal calls for 336-room hotel with 48-time share units and a \$27 million subsidy. The two-block convention oriented hotel is slated to cost \$187 million or \$430,000 per key. This project has been delayed twice due to the lack of financing.

### **Extrapolation from Oxnard/Ventura**

Like Imperial Beach, Oxnard and Ventura are greatly influenced by the presence of the U.S. Navy. In Ventura County, the Navy employs 16,300 people.

Imperial Beach's renewal will most likely enable it to achieve a "status-neutral" position, much like the beach resorts in working class Oxnard/Ventura.

These waterfront properties are summarized below:

Hotel	Year Opened	No. of Rooms
Marriott Ventura Beach	1986	285
Four Points Ventura Harbor	1984	105
Crowne Plaza Ventura Beach	1972	258
Casa Sirena Marina	1971	176
Embassy Suites Mandalay Beach	1986	248
<b>Total</b>		<b>1,072</b>

Presented in the following table is a summary of the performance of the five best-quality oceanfront hotels in the Oxnard/Ventura Beach area.

Oxnard/Ventura Beach Comparables					
Year	Rooms Available	Occupancy %	Rooms Sold	Average Daily Rate	Room Yield
2003	447,516	56.5%	252,981	\$107.51	\$60.78
2004	451,140	54.9%	247,519	\$113.92	\$62.50
2005	445,345	56.8%	252,823	\$119.23	\$67.69
2006	401,699	62.4%	250,584	\$127.02	\$79.24
2007	391,280	62.5%	244,730	\$137.52	\$86.01

Source: Smith Travel Research

Our occupancy and ADR forecast for the Seacoast Inn, stated in 2007 dollars is presented below:

$$64\% \times \$137 = \$87.68$$

#### Extrapolating from Mission Bay

We tested the reasonableness of these results by studying the actual results for new hotels in the Pacific Beach area and attempted to quantify the "discount" for an Imperial Beach address. As Mission Bay had a history of occasional water problems, while most Mission Bay sites tested by Surf riders received "A" scores, the beaches were closed for 12 days in the last year for water quality issues.

Presented below is a summary of the recent performance of the Mission Bay market:

#### Mission Bay Hotel Performance

Year	Rms Available	Occ %	Rooms Sold	ADR	Room Yield
2005	890,965	76.60%	682,100	\$160	\$123
2006	899,725	78.50%	706,300	\$170	\$133
2007	899,725	75.60%	680,000	\$183	\$138

Source: PKF Consulting Inc.

The median home price (single and multi-family) in the 92109 zip code was \$705,000 as compared to \$425,000 in Imperial Beach. In housing, there is an approximately 40% discount.

If we apply this 40% discount to the RevPAR for the Mission Bay hotels, the RevPAR for a comparable quality hotel in the Imperial Beach is suggested as \$83.40, as follows:

$$\$139 \times (1 - 40\%) = \$83.40$$

Because of the remoteness of the area's midweek demand generators and the subject's winter beach closures, we believe that a three-star hotel in Imperial Beach will function with relatively lower occupancy levels and a relatively higher ADR. Our occupancy and ADR forecast, stated in 2007 dollars is presented below:

$$\$83.40 = 65\% \times \$128$$

**Conclusion**

We are of the opinion that a moderate tier hotel at the subject site would achieve stabilized year occupancy of 63% – 65% and average daily rate of \$135 - \$140. These room revenue results are not likely to produce a net operating income that would be sufficient to support the cost of construction for this hotel, estimated at \$25 million at \$321,000 per key. As a traditional hotel the subject property is not feasible.

This consulting report is subject to the attached Assumptions and Limiting Conditions. If you should have any further questions, please do not hesitate to call.

Best regards,

Karen Johnson, MAI  
Executive Vice President



John Snyder  
7400 Boston Court  
La Mesa, CA 91941

March 10, 2003

Dear Sir,  
Coastal Commission  
California Coastal Commission  
7700 MacArthur Blvd., Suite 100  
San Diego, CA 92121

Dear Mr. [redacted]:

As a former member of the City of Imperial Beach, I am aware that the Coastal Commission has heard an appeal on the construction of a new Strand Inn and is about to add my name to the list of the project.

From the year 1997 to 2002, I resided within the jurisdiction of this project and as a local resident, I truly believe the proposed improvements will be a great addition to the Imperial Beach Community and the local economy. I am on the California Coastal Commission as a citizen member and in my opinion, the proposed "grand" design improves coastal access, meets the goals and mission of the Coastal Commission.

Thank you for your time and attention to this project.

Sincerely,


  
John Snyder

EXHIBIT NO. 9
APPLICATION NO.
<b>A-6-IMB-07-131</b>
Letters of Support



<http://californiayachtsales.com>

California Yacht Sales  
2040 Harbor Island Drive  
San Diego, CA 92101, USA

Tel 619-295-9669  
Fax 619-295-9909  
Email [ian@californiayachtsales.com](mailto:ian@californiayachtsales.com)

February 27, 2008

Diana Lilly, Coastal Planner  
California Coastal Commission  
San Diego Coast District  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108

Received

MAR 10 2008

Re: New Seacoast Inn in Imperial Beach

California Coastal Commission  
San Diego Coast District

Dear Ms. Lilly:

Your comments at February's Coastal Commission meeting missed the point completely.

How can it be that I understood that the proposed hotel needs to be 100% condo financed to be viable in our community? It should not be difficult for you to recognize that it will take some incentive for a developer to take the risk of investing in the Imperial Beach market. After many public hearings and discussions, I believe everybody understood that the hotel would be 100% condo financed.

I respect the fact that you are charged with the responsibility of protecting public access to both the beach and that you want access to lower cost accommodations. I agree with your comments: " *There are many positive aspects of the applicant's proposal but it shouldn't come at the expense of removing existing hotel rooms. It is clear from the public input on this project that the public wants a hotel on this site. A hotel is what they should get.* "

I would argue that we are not removing hotel rooms with the approach of funding via 100% condo financing, rather, the net result will be more rooms available. The current structure has 38 units or a maximum of 13,870 "hotel days" per year. The proposed hotel will have 78 rooms or 28,470 total days per year. I expect that even if the investors in the condos use their privileges to the fullest and at peak times there will still

be more rooms available to the public – 28,470 less 7020 for a total of 21,450 days available to the public. A net increase of 7,580 days. Further, the hotel will deed a significant stretch of the beach to the public. Yes, room rates are likely to be higher than currently charged – would you book into the Seacoast Inn in its present state? It is not an option for me or my clients. The proposed hotel will have a restaurant and conference facilities available to the public and I agree with you: *"It is entirely appropriate to upgrade this facility at this time"*

Ms. Lilley, your position needs to be re-visited.

Sincerely,

Signature on File

-----  
Ian Bossenger  
Owner, California Yacht Sales Inc.  
Residence: 168 Imperial Beach Blvd.  
Imperial Beach, CA 91932

CC: Greg Wade, Community Development Director

Receiver  
MAR 10 2008  
California Coastal Commission  
San Diego Coast District

26  
RECEIVED

MAR 06 2008

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

February 28, 2008

Diana Lilly, Coastal Planner  
California Coastal Commission  
San Diego Coast District  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108

Re: New Seacoast Inn in Imperial Beach

Dear Ms. Lilly:

I was disappointed to hear about your comments at February's Coastal Commission meeting. Specifically, I find your comments to be misleading when you stated, "Attached to your staff report you will find many letters in support of a new beachfront hotel in Imperial Beach. Staff is in full agreement with this sentiment, however, that is not the project that is before you today."

I emphatically do support and continue to support exactly the hotel before the Commission in February. After many public hearings and discussions, I believe everybody understood that the hotel wants to be 100% condo financed.

I should emphasize the unique economic conditions of Imperial Beach and the higher risks taken by a developer in the Imperial Beach market that is problematic at best. Therefore 100% condo financing is needed.

I fully understand and completely support the following:

1. The hotel wishes to use 100% condo financing.
2. The 78 room hotel will provide more rooms to the public than the current hotel even if the condo investors use their rooms for the maximum of 90 days per year.
3. The hotel has many energy and resource saving features that should please the Commission.

4. The hotel will deed a significant stretch of the beach to the public.
5. The hotel will have a restaurant and conference facilities available to the public.
6. The room rates to be charged by the new hotel will be very reasonable and one of the best, most affordable, rates on the California coast.
7. The current hotel is barely fit for human habitation, and therefore the loss of today's units is not a loss.

In summary, I fully support this hotel and its 100% condo financing.

Sincerely,

Signature on File

Executive Director  
Imperial Beach Health Center

Paul Brown  
Job Corps Center

RECEIVED

MAR 0 9 2008

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

February 28, 2008

RECEIVED

MAR 0 5 2008

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Diana Lilly, Coastal Planner  
California Coastal Commission  
San Diego Coast District  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108

Re: New Seacoast Inn in Imperial Beach

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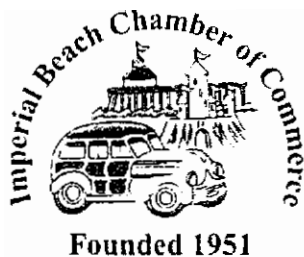
Sincerely,

signature on File

signature on File

*Pres. Friends of the Library*

*- 1017 Hemlock Ave., Imp. Bch.*



RECEIVED

MAR 04 2008

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

February 28, 2008

Ms. Diana Lilly  
Coastal Program Analyst  
California Coastal Commission -- San Diego District  
7575 Metropolitan Dr., Suite 103  
San Diego, CA 92108-4402

Dear Ms. Lilly,

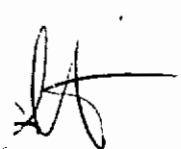
This letter is submitted to specifically clarify previous information provided in our letter of January 8, 2008.

The Imperial Beach Business Improvement District (BID) supports the redevelopment project for the Seacoast Inn as previously stated. Moreover, the BID further supports the developer's condo-hotel financing plan. Imperial Beach is negatively impacted economically in the development of visitor serving infrastructure required for support and improvement of beach recreation and eco-tourism opportunities for the general public. Coupled with the negative impact of cross-border pollution, Imperial Beach urgently "needs a break." Resolved, "100 per cent condo financing" of hotel operations is not a perfect arrangement in most coastal cities. We strongly believe, however, that Imperial Beach has very different circumstances and challenges than other Southern California beach towns.

In summary, the developer's finance plan for the Seacoast Inn redevelopment should be approved on a one-time, limited basis and allowed due to the unique economic impacts facing the city.

Thank you for your kind consideration in this matter.

Sincerely,

  
<ignature on File

Jack Van Zandt  
Co-Chairman, Imperial Beach Business Improvement District  
702 Seacoast Drive, Suite A  
Imperial Beach, CA 91932

702 Seacoast Drive  
Imperial Beach, CA 91932  
Phone 619-424-3151 - Fax 619-424-3008  
E-mail: [ibchamber@yahoo.com](mailto:ibchamber@yahoo.com) [www.IB-Chamber.com](http://www.IB-Chamber.com)



RECEIVED

MAR 06 2008

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

February 28, 2008

Diana Lilly, Coastal Planner  
California Coastal Commission  
San Diego Coast District  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108

Re: New Seacoast Inn in Imperial Beach

Dear Ms. Lilly:

I was disappointed to hear about your comments at February's Coastal Commission meeting. Specifically, I find your comments to be misleading when you stated, "Attached to your staff report you will find many letters in support of a new beachfront hotel in Imperial Beach. Staff is in full agreement with this sentiment, however, that is not the project that is before you today."

I emphatically do support and continue to support exactly the hotel before the Commission in February. After many public hearings and discussions, I believe everybody understood that the hotel wants to be 100% condo financed.

I should emphasize the unique economic conditions of Imperial Beach and the higher risks taken by a developer in the Imperial Beach market that is problematic at best. Therefore 100% condo financing is needed.

I fully understand and completely support the following:

1. The hotel wishes to use 100% condo financing.
2. The 78 room hotel will provide more rooms to the public than the current hotel even if the condo investors use their rooms for the maximum of 90 days per year.
3. The hotel has many energy and resource saving features that should please the Commission.

4. The hotel will deed a significant stretch of the beach to the public.
5. The hotel will have a restaurant and conference facilities available to the public.
6. The room rates to be charged by the new hotel will be very reasonable and one of the best, most affordable, rates on the California coast.
7. The current hotel is barely fit for human habitation, and therefore the loss of today's units is not a loss.

In summary, I fully support this hotel and its 100% condo financing.

Sincerely,

Signature on File

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MAR 04 2008

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

February 28, 2008

Diana Lilly, Coastal Planner  
California Coastal Commission  
San Diego Coast District  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108

Re: New Seacoast Inn in Imperial Beach

Dear Ms. Lilly:

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7. The current hotel is barely fit for human habitation, and therefore the loss of today's units is not a loss.

In summary, I fully support this hotel and its 100% condo financing.

Sincerely,

 (citizen 13)  
Signature on File

Connie A Boyle  
221 Donax ave #5  
Imperial Beach ,California

RECEIVED

FEB 26 2008

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

To the Coastal Commission,

I am writing this letter in support of the Seacoast Inn. I do not know why it should be so hard to make some amazing differences to Imperial Beach by improving an obvious sore spot on the beach. What are people thinking?? I live in IB and bought there because of the proximity to the ocean. I have come to realize that there are a lot of people that are building some beautiful places there and we need to have growth to equal the growth of the houses being renovated. I for one think the hotel is an eyesore, and people who oppose it have to get out of the 1960's. There is going to be growth and we can make IB a proud place to be. I am tired of the endless delays that have gone on for many years. The rooms will be at reasonable rate, the design features the green design and it will be such a conquest for IB. We need to start seriously revitalizing the city. I do not know why there is so much opposition to this design. Let us do this right and get things going in the right direction.

Connie Boyle

Signature on File

-----

February 6, 2008

Diana Lilly, Coastal Planner  
California Coastal Commission  
San Diego Coast District  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108

Dear California Coastal Commission:

As resident of Imperial Beach we would like to express our strong support for the new Seacoast Inn hotel development. This project will clearly enhance coastal access and services for the citizens of Imperial Beach and tourists alike who want to spend a few days in an affordable beach town.

We can't imagine a better project in terms of providing a beachfront hotel that everyone can enjoy. If you have seen the current Seacoast Inn you would understand what a vast improvement this project will bring to our coastline. Without a doubt this hotel will attract more people to our coast by providing more rooms to stay in, more beach to play on, and an ocean front restaurant for everyone to enjoy.

The City and Developer have worked for years in designing a project that fits within the character of our small town and they have succeeded! This project respects our coastal environment by opening up view corridors, returning beach front to the public domain, and in designing a "green" hotel that eco-tourists will want to stay in while visiting one of the best birding areas in Southern California.

The City's agreement with the developer ensures the new Seacoast Inn will remain a hotel forever to the benefit of the City, local businesses, and the people who will work there. This is one of those rare projects that has community wide support and deserves your support as well.

Please vote in favor of the new Seacoast Inn as approved by the City of Imperial Beach.

Sincerely,

Signature on File

Signature on File

Richard "Tad" and Melinda Wolicki  
1384 Seacoast Drive  
Imperial Beach, CA 91932  
(619) 575-7070

Received

FEB 11 2008

California Coastal Commission  
San Diego Coast District

*✓*

Johanna Bot & Tim Thomas  
1632 Seacoast Drive #E,  
Imperial Beach, CA 91932

**RECEIVED**  
FEB 08 2008  
CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Diana Lilly,  
Project Manager,  
San Diego District Coast Office,  
7575 Metropolitan Avenue, Suite 103,  
San Diego, CA 92108-4402

January 27, 2008

Dear Ms. Lilly,

We own a beachfront condo in Imperial Beach (address shown above) and have plans to visit our home there on a frequent basis. We are excited to hear about the new Seacoast Inn project bringing added vitality to this community.

We see talented and innovative entrepreneurs opening businesses near the I.B. pier and this new project will bring much-needed traffic and tourism to the area to help support their efforts and keep their businesses viable.

It is a great shame that there has been such a delay in the approval of such a worthy project. We hope that things may move along speedily now that the project has been thoroughly investigated. We really like the concept of underground parking, the eco-tourism aspects, the dedication of 35 feet of beach for public use and many other well-thought and attractive features.

We look forward to hearing more news soon.

Yours sincerely,  
Johanna Bot & Tim Thomas

*Thomas*  
Signature on File

*[Signature]*



RECEIVED

MAR 07 2008

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

March 4, 2008

Ms. Diana Lilly  
Coastal Program Analyst  
California Coastal Commission – San Diego District  
7575 Metropolitan Dr., Suite 103  
San Diego, CA 92108-4402

Dear Ms. Lilly,

This letter is submitted to specifically clarify support for the Seacoast Inn redevelopment project in Imperial Beach. The Imperial Beach Chamber of Commerce membership strongly recommends approval for the developer's project, as well as the 100 percent condo-hotel financing plan.

The property will function as a traditional hotel, but requires specialty financing to produce a viable construction plan due to the economic circumstances found in Imperial Beach.

The new hotel design is a model for coastal compliance initiatives. The increase in the number of available rooms ensures that the hotel will offer more opportunity to coastal visitors, not less. The proposed operation directly supports improvement of visitor serving activities, eco-tourism opportunities and is responsive to city development initiatives.

Imperial Beach suffers from the "Broken Window Theory." The existing unsatisfactory condition of the Seacoast Inn is a major contributor to the worn and run-down image we struggle with as an impacted beach town. Poor economic growth, low sales and transient occupancy tax revenue, unmaintained absentee-owned property along Seacoast Drive and the stigma of cross border pollution all distract from normal initiative to improve visitor-serving opportunities. Clearly, approval of a 100 percent condo-hotel financing strategy is not appropriate for coastal development in Coronado or La Jolla. For Imperial Beach, it means the beginning of financial sustainment and improvement of eco-tourism and public beach recreation opportunities in a more visitor friendly and safer environment.

We most strongly recommend with utmost urgency that the commission approve a one-time, special circumstance to allow the developer's financing plan for the Seacoast Inn to go forward at the soonest possible time.

Thank you for your attention in this matter.

Sincerely,

Signature on File

Cynthia Melcher  
President  
Imperial Beach Chamber of Commerce



March 10, 2008

Diana Lilly - Coastal Planner  
California Coastal Commission  
San Diego Coast District  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108

Re: Seacoast Inn Project in Imperial Beach

Dear Ms. Lilly:

I wrote to you prior to the February appeal hearing, and I also attended the appeal hearing. I must say that I was deeply disappointed in both your staff report presentation you made to the commission as well as the outcome of the hearing.

I completely understand the fear and concern of the commission in regards to 100 percent condo hotel financing and how it may limit the public access to beach areas. However, in the case of the Seacoast Inn, it is imperative that this be allowed. And I, as one of the many Imperial Beach residents who feel this way, am completely in support of and completely understand that this project would be 100 percent condo hotel financed.

Why do I support this and why do I feel that the commission needs to allow this? Due to the economy and housing market such as it is, this is the only feasible way to improve the old, dilapidated Seacoast Inn and actually provide MORE public access to our beach by providing a decent hotel, which will include additional rooms, as well as additional beach space which the developer will be giving back to the public. Your concern that the public won't be getting a hotel is completely off base. We WILL be getting a hotel. The Seacoast Inn will operate completely as a traditional hotel despite it's financing mechanism.

Moreover, if your concern is that the owners of the units will use their units all the time and therefore not allowing the public to be able to use them, that is way off base. One of the stipulations in the Developer Agreement is limited use with large time frames in between the use. Even if they wanted to, they would only be able to stay, at the most three weeks during the summer months. That is less than one third of the summer month time span of June, July and August. Also, in this depreciated housing market, someone could outright purchase a condo or home here in Imperial Beach within blocks of the beach and stay year round if they choose to. People who are going to purchase with the Seacoast Inn project are really doing it as an investment, more than likely, not for personal use.

This project will help stimulate the economy of Imperial Beach. It will help with eco-tourism through promotion of, green features and accessibility to the coast line and the Estuary. The Coastal Commission should take this opportunity to showcase a project that

Receiver

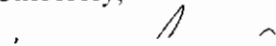
MAR 12 2008

meets all of their requirements, even if it includes 100 percent condo hotel financing. Again, this financing mechanism is the only way to build a hotel of this kind in this type of city, which include the type of stipulations and limitations that have been written into the Development Agreement. Even if this hotel were to sell to another owner, the Development Agreement stays in place, which includes the limitations set on condo owners.

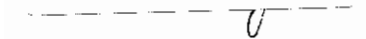
I implore that the commission approve this project, with it's 100 percent condo hotel financing, even if for a one time special circumstance, and allow the Seacoast Inn to move forward and become the beautiful showcase it can be.

Thank you for your time and attention in this matter.

Sincerely,



signature on File



Tina Barclay  
1061 11<sup>th</sup> St.  
Imperial Beach, CA 91932

**JANICE WINEKE**  
8130 Second Street  
Downey, CA 90241-3624  
(562) 862-5300 \* FAX (562) 862-0053

February 27, 2008

Diana Lilly, Coastal Planner  
California Coastal Commission  
San Diego Coast District  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108

Re: New Seacoast Inn in Imperial Beach

Dear Ms. Lilly:

I wrote you previously in support of the new Seacoast Inn and was disappointed to hear about your comments at February's Coastal Commission meeting. Specifically, I find your comments to be misleading when you stated, "Attached to your staff report you will find many letters in support of a new beachfront hotel in Imperial Beach. Staff is in full agreement with this sentiment, however, that is not the project that is before you today."

I emphatically did support and continue to support exactly the hotel before the Commission in February. After many public hearings and discussions, it is inconceivable that you would even hint that a member of the public didn't understand what he or she was supporting.

I should emphasize the uniquely low socio-economic status of Imperial Beach and the higher risks taken by a developer to build a new hotel in a market that is problematic at best. Therefore 100% condo financing is needed.

I fully understand and completely support the following:

1. The hotel wishes to use 100% condo financing.
2. The 78 room hotel will provide more rooms to the public than the current hotel even if the condo investors use their rooms for the maximum of 90 days per year.
3. The hotel has many energy and resource saving features that should please the Commission.

**Received**

**MAR 17 2008**

4. The hotel will deed a significant stretch of the beach to the public.
5. The hotel will have a restaurant and conference facilities available to the public.
6. The room rates to be charged by the new hotel will be very reasonable and one of the best, most affordable, rates on the California coast.
7. The current hotel is barely fit for human habitation, and therefore the loss of today's units is not a loss.

In summary, I fully support this hotel and its 100% condo financing.

I trust you will not misinterpret my support in the future.

Sincerely,

Signature on File

\_\_\_\_\_

CC: Greg Wade, Community Development Director

Diana Lilly  
California Coastal Commission  
7575 Metropolitan Dr. Suite #103  
San Diego, CA 92108

Receiver  
MAR 21 2008  
California Coastal Commission  
San Diego Coast District

March 19, 2008

Dear Ms. Lilly,

I am writing you in regards to, and still in support of, The Seacoast Inn project in Imperial Beach. I am aware of your statements at the Coastal Commission Hearing on February 7<sup>th</sup> of this year, and for my part I would like to apologize for not being clearer in the letter that I sent to you dated January 12, 2008. I was working under the assumption that by voicing my support for the project, I was giving my full go ahead to all aspects of the project – including the financing. I understand how very easily you may have taken my response to mean limited support to the project, so I would like to clear that up now.

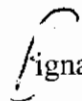
I can see why one might have reservations on 100% condo/hotel financing, I had them myself. Then I looked deeper into what the developer was planning. The unique curved design of the hotel, the underground parking and the deeding back of such a large amount of property are great features that will add value to the beach front and the community; however, these extra aspects will add significantly to the cost of construction for this project. In addition the downward trending market and the lag time to “get the word out” after completion of construction are adding to the difficulties of an already complicated project.

Throughout, the developer has taken strides towards quality and benefit to the community – from choice of materials to energy and resource saving features. It is this attention to detail, in conjunction with the desire for a quality project that has put me so much in support of the financing plan. If you knew me, that would have a greater impact as I am considered old-fashioned in regards to business and conservative (at best) in regards to finance. By the way, I am only 42 in case that sounded like my father. That said, when I reviewed all this in my head, I was reminded that the developer is entitled to adequate compensation. We do not want to make this so burdensome that it becomes impossible for them to give it their okay. This has all the earmarks of a good project.

Ms. Lilly, I don't know how much you know about our area here, or how big of an impact this project can have on its surroundings, and I don't mean to insult you if you are well versed, but the difference can be enormous. I have a brother who stayed at the existing hotel at the beginning of February. I asked him about the hotel, he had nothing to say (as his nature is "if you can't say something good, don't say anything at all). He only continued by speaking of the proximity to the ocean. We have before us the opportunity to have a hotel that is as exciting as the view it will offer. It will help the pride and dignity of the city as well as its residents, who have backed it with unprecedented support, and can become a focal point for the city and future development.

I thank you for your time in reading this letter as well as dealing with this matter. If you find that you cannot support it, I ask that you at least not impede it. I also want to reiterate that I do not want to keep the existing hotel and that I am in support of 100% hotel/condo financing and the project as a whole.

Respectfully,

 Signature on File

CC: Greg Wade, Imperial Beach Community Development Director  
Allison Rolfe, Pacifica Companies Representative

■ ■ ■ THE  
■ ■ SECURITIES  
■ CENTER, INC.

245 "E" Street, Chula Vista, California 91910-2942

(619) 426-3550

March 12, 2008

Diana Lilly, Coastal Planner  
California Coastal Commission  
San Diego District Office  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4421

Re: Seacoast Inn in Imperial Beach, CA

Dear Ms. Lilly,

I wrote to you previously, in my letter of January 22, in support of the new Seacoast Inn and I was dumbfounded to hear about your comments at the February Coastal Commission meeting when you said, "Attached to your staff report you will find many letters in support of a new beachfront hotel in Imperial Beach. Staff is in full agreement with this sentiment, however, that is not the project that is before you today."

I completely understood the hotel project that was proposed both then and now. And I continue to support the construction of the property as a condo-hotel as it was proposed and presented to the public. I have also recently met with Imperial Beach Councilman Fred McLean and it is inconceivable that you are impeding this project; not over some environmental issue, or over the esthetic value of the property or it's economic value to the surrounding neighborhood and businesses, but over the method of financing. The City of Imperial Beach is seeking to improve it's socio-economic status and this developer is seeking the best risk/reward approach to making this property add value to the community.

When built, this hotel will have more room nights available to the public than the current hotel property even if the condo investors use their rooms to the maximum. The proposed hotel has many energy and resource saving features that should be considered a great plus to your approval of this development. The Seacoast Inn will deed a significant stretch of the beach to the public. This property will have both restaurant and conference facilities available to the public. The room rates will be very reasonable and affordable. Maybe most importantly, the existing hotel property needs to be replaced as it is barely habitable and will not be redeveloped.

Receiver

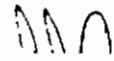
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California Coastal Commission


Yes, I fully support this hotel being built as a condo-hotel and, yes, I don't understand you impeding the collective strong will of the City of Imperial Beach, it's unanimous City Council, and the many citizens of Imperial Beach that I have personally spoken to that favor bringing this positive change to the Imperial Beach beachfront.

It is not your role to misrepresent or misinterpret their interests or mine. I would be pleased to meet with you personally or with the entire Commission if you choose.

Thank you for the opportunity to address this important issue.

Sincerely, 

Signature on File

 James E. Biddle  
President

cc: City of Imperial Beach, Greg Wade, Community Development Director  
Pacifica Companies





SWIA

RECEIVED

MAR 24 2008

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

March 21, 2008

Diana Lilly, Coastal Planner  
California Coastal Commission  
San Diego Coast Office  
7575 Metropolitan Drive, Suite 103  
San Diego, CA  
FAX # 619-767-2384

**RE: SUPPORT Seacoast Inn Project**

Dear Ms. Lilly,

The Southwest Wetlands Interpretive Association (SWIA), based in Imperial Beach, is a 501(c)(3) non-profit organization founded in 1979. SWIA is dedicated to education in and acquisition, preservation and restoration of coastal wetlands.

As stated in our original letter of support, dated January 15, 2008, SWIA has long supported the concept of eco-tourism and the benefits derived from not only the education gained by visiting eco-tourists but the economic benefits gained by our host community, the City of Imperial Beach. Additionally we described our City's struggle to offer decent overnight accommodations or a venue that could support larger tour groups, meetings, or small conferences.

The owner of the Seacoast Inn is challenged by the low socio-economic status of Imperial Beach and the inherent risks associated with developing a new hotel in a problematic market. The proposed 100% condo financing is certainly appropriate and necessary to meet these challenges.

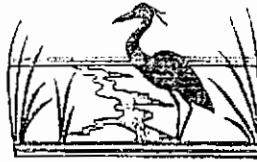
The increase in rooms available to the public at a very reasonable rates, availability of conference space, return of private beach to the people of California and numerous "green" building elements incorporated into this project are factors that also weigh heavily in its favor.

After careful review and understanding of all of the proposed project elements, including the 100% condo financing funding mechanism, it has earned our unreserved support.

Sincerely,

Signature on File

Fred Cagle  
President



SWIA

March 21, 2008

Diana Lilly, Coastal Planner  
California Coastal Commission  
San Diego Coast Office  
7575 Metropolitan Drive, Suite 103  
San Diego, CA  
FAX # 619-767-2384

**RE: SUPPORT Seacoast Inn Project**

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The owner of the Seacoast Inn is challenged by the low socio-economic status of Imperial Beach and the inherent risks associated with developing a new hotel in a problematic market. The proposed 100% condo financing is certainly appropriate and necessary to meet these challenges.

The increase in rooms available to the public at a very reasonable rates, availability of conference space, return of private beach to the people of California and numerous "green" building elements incorporated into this project are factors that also weigh heavily in its favor.

After careful review and understanding of all of the proposed project elements, including the 100% condo financing funding mechanism, it has earned our unreserved support.

Sincerely,

Signature on File

Fred Cagle  
President

**RECEIVED**

MAR 24 2008

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

# PACIFICA

C O M P A N I E S

March 19, 2008

Chairperson Patrick Kruer and Members of the  
California Coastal Commission  
San Diego District Coast Office  
Deborah Lee, District Manager  
Diana Lilly, Coastal Planner  
7575 Metropolitan Avenue, Suite 103  
San Diego, CA 92108-4402

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MAR 21 2008

RE: Seacoast Inn Appeal – De Novo Hearing

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Dear Chairperson Kruer and Members of the Commission:

Please find enclosed the additional information requested at our Substantial Issue hearing in February.

As we have stated previously, the Seacoast Inn requires condo hotel financing in order to be feasible. In the past we have said that we need 100% condo hotel financing, however, that was a misstatement. Although we would like to have 100% of the rooms sold to individuals who will participate in the realization of this hotel, 100% participation does not equal the total cost of the project. Therefore, even with 100% condo-hotel participation, Pacifica Companies must still make up the financial gap required to finance the project. In other words, 100% condo hotel financed does not equal a 100% financed project.

Attachment #1 is a Preliminary Construction Cost Estimate for the Seacoast Inn. As you will see the total costs, including soft costs and the value of the land (at today's cost), are expected to be more than \$34,000,000. If we sell all 78 hotel rooms at the anticipated price of \$345,000 each, we will raise \$26,910,000, leaving a gap of \$7,840,660.

Attachment #2 is our operating pro-forma. You will find three scenarios. The first shows the revenues we would expect under a traditional hotel financing structure, the second assumes that we have 50% condo-hotel participation, and the third assumes 100% condo-hotel participation.

1785 Hancock Street, Suite 100 • San Diego, CA 92110  
(619) 296-9000 • Fax (619) 296-9090

EXHIBIT NO. 10
APPLICATION NO.
<b>A-6-IMB-07-131</b>
Applicant's Analysis of
Condo Financing Need

The assumptions made on developing the three pro-formas are as follows:

1. 0% Condo Participation – Hotel construction and development is completely financed by developer. Hotel achieves a 63.8% occupancy rate and an average rate of \$125.01. Revenues subtracted from operating costs do not come close to covering the very large debt service.
2. 50% Condo Participation – With 50% participation, the debt service is reduced by approximately \$500,000. Hotel revenues would decline however, as many of the room nights sold would be consumed by condo owners rather than transient tourists paying the higher rate. However, since the restrictions on condo ownership prohibit more than 25 of the owners' nights to be used during summer, a majority of the usage would be in the slower off-season and not displace revenue. Additionally, those off-season rooms would increase food and beverage revenue. At 50% participation, we project a 68.6% occupancy (more rooms sold to ownership during winter season) but an average rate of \$105.36 (lower rate as rooms are consumed at zero rate by owners). All told, total revenue would go down approximately \$200,000, a much less significant decrease than the corresponding decrease in debt service. In this case, revenues come closer to covering the large debt service, but a large gap still exists.
3. 100% Condo Participation - With 100% participation, the debt service is reduced by approximately another \$500,000. Hotel revenues would decline however, not as dramatically as debt. At 100% participation, we project a 73.4% occupancy (more rooms sold to ownership during winter season) but an average rate of \$88.31 (lower rate as rooms are consumed at zero rate by owners). All told, total revenue would go down approximately another \$200,000 against debt dropping \$500,000, leaving an additional \$300,000 to cover operational expenses. This scenario brings the revenues up and the debt service down making it the most feasible scenario although the net income is still negative in the early years.

The bottom line is that because of the restriction in usage for condo owners to 25 consecutive days during high season, the impact of selling condo units decreases revenue at a much slower rate than it decreases the debt, thereby improving the chances of achieving profitability. Please refer to Attachment #3 for a graphic representation of this point.

Although the Seacoast Inn project has high costs and low projected revenues, Pacifica Companies can make it work because we bought the land many years ago at a much reduced rate. High rates of condo participation remain essential, however.

Most importantly, even with the 100% condo-hotel participation scenario Pacifica must also participate substantially in the financing of the hotel and assume the associated risk. Additionally, Pacifica will continue to own the common areas of the hotel and has a vested interest in the long-term success of the Seacoast Inn.

Please contact me if you have any questions or comments. I can be reached at 619-296-9000 x118.

Thank you very much.

Sincerely,

Signature on File

A handwritten signature in black ink, appearing to read 'Allison Rolfe', written over a dashed line.

Allison Rolfe  
Project Manager

Attachments Enclosed

# ATTACHMENT 1

SEACOAST INN @ IMPERIAL BEACH  
Preliminary Construction Cost Estimate

3/19/08

	Quantity	Cost/SF/Unit	Extended Cost
<b>CONSTRUCTION COST ESTIMATE</b>			
Design & Engineering Fees	Lot		\$785,000
Demolition	Lot		\$100,000
Sitework Landscaping & drives	Lot		\$300,000
Earthwork/Excavation	16,000	\$20	\$320,000
Soils Mitigation Allowance	Lot		\$500,000
Water Features	2	\$50,000	\$100,000
Underground Garage Construction - 111 Cars	42,752	\$50	\$2,137,600
Service & Maintenance Areas	2,705	\$120	\$324,600
Parking Control Equipment	Lot		\$25,000
Shoring Allowance	Lot		\$450,000
Dewatering Allowance	Lot		\$350,000
Function Rooms/Restaurant/Kitchen/Lobby/Administration	18,858	\$250	\$4,714,500
Guestrooms & Circulation	65,532	\$155	\$10,157,460
Guestroom Decks/Patios	6,815	\$100	\$681,500
Outdoor Terrace	9,000	\$25	\$225,000
Pool & Spa Allowance	Lot		\$100,000
Construction Contingency			<u>\$200,000</u>
Design & Construction Subtotal			\$21,470,660
<b>FURNITURE, FIXTURES &amp; EQUIPMENT (FF&amp;E)</b>			
Guestrooms	78	\$15,000	\$1,170,000
Restaurant Kitchen	Lot		\$150,000
Laundry & Guest Laundry	Lot		\$85,000
Function Rooms, Restaurant, & Public Areas	Lot		\$300,000
Signs	Lot		\$45,000
FF&E Contingency			\$80,000
FF&E Subtotal			\$1,830,000
TOTAL			<u>\$23,300,660</u>
SOFT COSTS (architect, permits, pre-opening costs, etc.)			\$3,450,000
LAND COSTS (today's cost)			\$8,000,000
GRAND TOTAL			\$34,750,660

ATTACHMENT 2  
SEACOAST INN  
TRADITIONAL FINANCING



	TOTAL	January	February	March	April	May	June	July	August	September	October	November	December
JE													
ROOMS	2,276,765	72,540	96,135	136,375	150,579	143,629	236,925	411,302	411,302	261,495	184,493	99,450	72,540
FOOD	278,598	11,346	12,115	14,844	15,688	19,596	30,025	49,300	49,700	30,225	21,695	12,568	11,496
BEVERAGE	34,780	967	1,131	1,451	1,521	1,451	3,510	8,705	8,705	3,510	1,693	1,170	967
TELEPHONE	4,553	242	283	363	380	363	439	544	544	439	423	293	242
OTHER	15,728	980	1,079	1,270	1,313	1,270	1,453	1,706	1,706	1,453	1,416	1,102	980
REVENUE	2,610,424	86,075	110,743	154,303	169,481	166,309	272,352	471,557	471,957	297,122	209,720	114,582	86,225
MENTAL EXPENSES													
ROOMS	501,569	32,004	33,419	38,663	39,328	38,881	46,806	56,706	56,706	47,543	45,157	34,351	32,004
FOOD	298,570	16,011	16,490	18,795	19,751	26,947	32,532	40,446	40,688	28,616	24,540	17,327	16,426
BEVERAGE	30,132	1,038	1,036	1,163	2,812	2,871	3,329	4,757	4,757	3,329	2,934	1,068	1,038
TELEPHONE	7,558	401	469	602	631	602	728	903	903	728	702	486	401
OTHER	9,835	522	611	783	821	783	948	1,175	1,175	948	914	632	522
PT EXPENSES	847,665	49,977	52,026	60,007	63,344	70,085	84,343	103,987	104,229	81,165	74,248	53,864	50,391
MENTAL PROFIT	1,762,760	36,099	58,717	94,296	106,137	96,224	188,008	367,569	367,727	215,957	135,472	60,718	35,834
RIBUTED EXP													
ADMIN & GEN	244,508	17,992	16,529	17,914	20,139	18,238	20,997	28,400	26,491	21,666	23,330	16,737	16,076
MARKETING	107,496	8,958	8,958	8,958	8,958	8,958	8,958	8,958	8,958	8,958	8,958	8,958	8,958
REPAIRS & MAINT	156,746	13,120	12,889	13,120	13,004	13,120	13,004	13,120	13,120	13,004	13,120	13,004	13,120
UTILITIES	136,615	10,026	10,430	11,219	11,393	11,219	11,970	13,010	13,010	11,970	11,816	10,526	10,026
DIST EXP	645,365	50,095	48,806	51,211	53,494	51,535	54,930	63,488	61,579	55,598	57,224	49,226	48,179
OPERATING PROFIT	1,117,394	-13,997	9,911	43,085	52,642	44,689	133,079	304,081	306,149	160,359	78,248	11,493	-12,345
CHARGES													
MANAGEMENT FEES	91,071	2,902	3,845	5,455	6,023	5,745	9,477	16,452	16,452	10,460	7,380	3,978	2,902
LAND RENT	0	0	0	0	0	0	0	0	0	0	0	0	0
EQUIP LEASE	5,400	450	450	450	450	450	450	450	450	450	450	450	450
PROPERTY TAXES	247,500	20,625	20,625	20,625	20,625	20,625	20,625	20,625	20,625	20,625	20,625	20,625	20,625
TAXES-OTHER	0	0	0	0	0	0	0	0	0	0	0	0	0
INSURANCE	69,600	5,800	5,800	5,800	5,800	5,800	5,800	5,800	5,800	5,800	5,800	5,800	5,800
INTEREST EXP	1,545,000	128,750	128,750	128,750	128,750	128,750	128,750	128,750	128,750	128,750	128,750	128,750	128,750
RENOVATION HOLD	91,071	2,902	3,845	5,455	6,023	5,745	9,477	16,452	16,452	10,460	7,380	3,978	2,902
ED EXPENSES	2,049,641	161,428	163,316	166,535	167,671	167,115	174,579	188,529	188,529	176,545	170,384	163,581	161,428
HOME	-932,247	-175,425	-153,405	-123,450	-115,029	-122,426	-41,500	115,552	117,620	-16,186	-92,136	-152,088	-173,773
AVAILABLE	28,548	2,418	2,262	2,418	2,340	2,418	2,340	2,418	2,418	2,340	2,418	2,340	2,418
OCCUPIED	18,213	967	1,131	1,451	1,521	1,451	1,755	2,176	2,176	1,755	1,693	1,170	967
ANCY %	63.8%	40.0%	50.0%	60.0%	65.0%	3%	75.0%	90.0%	90.0%	75.0%	70.0%	50.0%	40.0%
RE RATE	\$125.01	\$75.00	\$85.00	\$94.00	\$99.00	\$99.00	\$135.00	\$189.00	\$189.00	\$149.00	\$109.00	\$85.00	\$75.00

ATTACHMENT 2  
SEACOAST INN 50% CONDO-  
HOTEL PARTICIPATION

	TOTAL	January	February	March	April	May	June	July	August	September	October	November	December
ROOMS	2,062,983	72,525	96,135	136,394	150,579	143,649	236,925	301,644	307,125	261,495	184,537	99,450	72,525
FOOD	290,222	12,670	13,441	16,171	17,013	21,437	30,025	49,296	49,696	30,225	23,538	13,893	12,820
BEVERAGE	36,147	1,138	1,302	1,622	1,692	1,622	3,510	8,704	8,704	3,510	1,864	1,341	1,138
TELEPHONE	4,895	285	326	406	423	406	439	544	544	439	466	335	285
OTHER	16,549	1,083	1,181	1,373	1,415	1,373	1,453	1,706	1,706	1,453	1,518	1,205	1,083
REVENUE	2,410,796	87,700	112,384	155,965	171,122	168,486	272,352	361,894	367,775	297,122	211,923	116,224	87,850
MENTAL EXPENSES													
ROOMS	508,576	33,679	35,097	40,343	41,006	40,561	46,806	53,414	53,578	47,543	46,840	36,029	33,679
FOOD	302,988	16,514	16,994	19,299	20,255	27,647	32,532	40,445	40,687	28,616	25,240	17,831	16,929
BEVERAGE	30,487	1,082	1,081	1,208	2,857	2,915	3,329	4,757	4,757	3,329	2,978	1,113	1,082
TELEPHONE	8,126	472	540	673	702	673	728	903	903	728	774	557	472
OTHER	10,574	615	703	876	914	876	948	1,175	1,175	948	1,007	724	615
TOTAL EXPENSES	860,750	52,362	54,415	62,399	65,733	72,672	84,343	100,694	101,100	81,165	76,839	56,253	52,777
MENTAL PROFIT	1,550,046	35,338	57,970	93,566	105,389	95,814	188,008	261,200	266,675	215,957	135,085	59,971	35,073
CONTRIBUTED EXP													
ADMIN & GEN	239,118	18,036	16,573	17,959	20,184	18,297	20,997	25,439	23,678	21,666	23,390	16,781	16,120
MARKETING	107,496	8,958	8,958	8,958	8,958	8,958	8,958	8,958	8,958	8,958	8,958	8,958	8,958
REPAIRS & MAINT	156,746	13,120	12,889	13,120	13,004	13,120	13,004	13,120	13,120	13,004	13,120	13,004	13,120
UTILITIES	139,992	10,447	10,852	11,642	11,815	11,642	11,970	13,010	13,010	11,970	12,239	10,948	10,447
LIST EXP	643,352	50,561	49,272	51,679	53,961	52,017	54,930	60,526	58,765	55,598	57,707	49,692	48,645
OPERATING PROFIT	906,693	-15,223	8,697	41,888	51,429	43,797	133,079	200,674	207,909	160,359	77,378	10,279	-13,572
CHARGES													
MANAGEMENT FEES	82,519	2,901	3,845	5,456	6,023	5,746	9,477	12,066	12,285	10,460	7,381	3,978	2,901
LAND RENT	0	0	0	0	0	0	0	0	0	0	0	0	0
EQUIP LEASE	5,400	450	450	450	450	450	450	450	450	450	450	450	450
PROPERTY TAXES	247,500	20,625	20,625	20,625	20,625	20,625	20,625	20,625	20,625	20,625	20,625	20,625	20,625
TAXES-OTHER	0	0	0	0	0	0	0	0	0	0	0	0	0
INSURANCE	69,600	5,800	5,800	5,800	5,800	5,800	5,800	5,800	5,800	5,800	5,800	5,800	5,800
INTEREST EXP	1,035,150	86,263	86,263	86,263	86,263	86,263	86,263	86,263	86,263	86,263	86,263	86,263	86,263
RENOVATION HOLD	82,519	2,901	3,845	5,456	6,023	5,746	9,477	12,066	12,285	10,460	7,381	3,978	2,901
DED EXPENSES	1,522,689	118,940	120,828	124,049	125,184	124,629	132,092	137,269	137,708	134,057	127,900	121,094	118,940
OME	-615,995	-134,163	-112,131	-82,161	-73,755	-80,832	987	63,405	70,202	26,302	-50,523	-110,815	-132,511
AVAILABLE	28,548	2,418	2,262	2,418	2,340	2,418	2,340	2,418	2,418	2,340	2,418	2,340	2,418
OCCUPIED	19,581	1,138	1,302	1,622	1,692	1,622	1,755	2,176	2,176	1,755	1,864	1,341	1,138
ANCY %	68.6%	47.1%	57.6%	67.1%	72.3%	%	75.0%	90.0%	90.0%	75.0%	77.1%	57	47.1%
FE RATE	\$105.36	\$63.73	\$73.84	\$84.09	\$88.99	\$88.56	\$135.00	\$138.62	\$141.14	\$149.00	\$99.00	\$74.16	\$63.73

ATTACHMENT 2  
SEACOAST INN 100% CONDO-  
HOTEL PARTICIPATION

Pacifica Host Budget 2008

	TOTAL	January	February	March	April	May	June	July	August	September	October	November	December
ENUE													
ROOMS	1,849,224	72,525	96,135	136,394	150,579	143,649	236,925	197,505	197,505	261,495	184,537	99,450	72,525
FOOD	301,782	13,987	14,758	17,488	18,331	23,264	30,025	49,296	49,696	30,225	25,366	15,210	14,137
BEVERAGE	37,507	1,308	1,472	1,792	1,862	1,792	3,510	8,704	8,704	3,510	2,034	1,511	1,308
TELEPHONE	5,235	327	368	448	466	448	439	544	544	439	509	378	327
OTHER	17,365	1,185	1,283	1,475	1,517	1,475	1,453	1,706	1,706	1,453	1,620	1,307	1,185
AL REVENUE	2,211,113	89,332	114,016	157,597	172,754	170,628	272,352	257,755	258,155	297,122	214,065	117,856	89,482
ARTMENTAL EXPENSES													
ROOMS	515,504	35,347	36,764	42,011	42,673	42,229	46,806	50,290	50,290	47,543	48,508	37,696	35,347
FOOD	307,381	17,015	17,495	19,799	20,755	28,341	32,532	40,445	40,687	28,616	25,935	18,331	17,429
BEVERAGE	30,841	1,126	1,125	1,252	2,901	2,960	3,329	4,757	4,757	3,329	3,023	1,157	1,126
TELEPHONE	8,691	543	611	744	773	744	728	903	903	728	844	627	543
OTHER	11,308	706	795	968	1,005	968	948	1,175	1,175	948	1,098	816	706
DEPT EXPENSES	873,724	54,737	56,790	64,774	68,108	75,241	84,343	97,569	97,811	81,165	79,408	58,627	55,151
ARTMENTAL PROFIT	1,337,389	34,595	57,227	92,823	104,646	95,387	188,008	160,185	160,343	215,957	134,658	59,228	34,330
DISTRIBUTED EXP													
ADMIN & GEN	233,727	18,080	16,618	18,003	20,228	18,355	20,997	22,627	20,718	21,666	23,447	16,826	16,164
MARKETING	107,496	8,958	8,958	8,958	8,958	8,958	8,958	8,958	8,958	8,958	8,958	8,958	8,958
REPAIRS & MAINT	156,746	13,120	12,889	13,120	13,004	13,120	13,004	13,120	13,120	13,004	13,120	13,004	13,120
UTILITIES	143,349	10,867	11,272	12,062	12,234	12,062	11,970	13,010	13,010	11,970	12,659	11,368	10,867
UNDIST EXP	641,318	51,024	49,736	52,142	54,425	52,494	54,930	57,715	55,805	55,598	58,184	50,156	49,109
SS OPERATING PROFIT	696,071	-16,430	7,491	40,681	50,222	42,893	133,079	102,471	104,538	160,359	76,473	9,072	-14,778
D CHARGES													
MANAGEMENT FEES	73,969	2,901	3,845	5,456	6,023	5,746	9,477	7,900	7,900	10,460	7,381	3,978	2,901
LAND RENT	0	0	0	0	0	0	0	0	0	0	0	0	0
EQUIP LEASE	5,400	450	450	450	450	450	450	450	450	450	450	450	450
PROPERTY TAXES	247,500	20,625	20,625	20,625	20,625	20,625	20,625	20,625	20,625	20,625	20,625	20,625	20,625
TAXES-OTHER	0	0	0	0	0	0	0	0	0	0	0	0	0
INSURANCE	69,600	5,800	5,800	5,800	5,800	5,800	5,800	5,800	5,800	5,800	5,800	5,800	5,800
INTEREST EXP	509,850	42,488	42,488	42,488	42,488	42,488	42,488	42,488	42,488	42,488	42,488	42,488	42,488
RENOVATION HOLD	73,969	2,901	3,845	5,456	6,023	5,746	9,477	7,900	7,900	10,460	7,381	3,978	2,901
FIXED EXPENSES	980,288	75,165	77,053	80,274	81,409	80,854	88,317	85,163	85,163	90,282	84,125	77,319	75,165
INCOME	-284,217	-91,594	-69,563	-39,593	-31,187	-37,961	44,762	17,308	19,375	70,077	-7,652	-68,246	-89,943
MS AVAILABLE	28,548	2,418	2,262	2,418	2,340	2,418	2,340	2,418	2,418	2,340	2,418	2,340	2,418
MS OCCUPIED	20,941	1,308	1,472	1,792	1,862	1,792	1,755	2,176	2,176	1,755	2,034	1,511	1,308
OCCUPANCY %	73.4%	54.1%	65.1%	74.1%	79.6%	74.1%	75.0%	90.0%	90.0%	75.0%	84.1%	3%	54.1%
RAGE RATE	\$88.31	\$55.45	\$65.31	\$76.11	\$80.87	\$80.16	\$135.00	\$90.77	\$90.77	\$149.00	\$90.73	\$5.82	\$55.45

## ATTACHMENT 3

# SEACOAST INN - REVENUE TO DATE

