

## CALIFORNIA COASTAL COMMISSION

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Th29a



Prepared August 5, 2008 (for August 7, 2008 hearing)

**To:** Commissioners and Interested Persons  
**From:** Dan Carl, District Manager  
Jonathan Bishop, Coastal Planner  
**Subject:** STAFF REPORT ADDENDUM for Th29a  
Appeal A-3-GRB-07-051 (Pacific Coast Hotel)

In the time since the release of the above-referenced staff report, staff has identified some minor corrections that will help clarify and make explicit certain aspects of the staff recommendation with respect to the condominium hotel component of the proposed project. These corrections do not alter the basic premise of the staff recommendation, rather they merely clarify certain aspects of it related to ensuring that the project adequately protects and provides for general public overnight use of the units in question. Special condition 8, starting on page 9 of the staff report, is replaced in its entirety as follows:

**8. Hotel.** The hotel component of the project consists of hotel areas (i.e., lobby, front desk, offices, washing areas, maintenance areas, etc.) that will be owned by the hotel owner(s), and individual condominium hotel units and common areas that will be owned by unit owners. The hotel component of the project shall be subject to the following:

**a. Hotel Plans.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit for Executive Director review and approval two copies of plans and documentation materials (hotel plans) that clearly identify: all elements of the hotel component of the project (together the “hotel”); the manner in which ownership will be applied to each element of the hotel, including hotel areas, common areas, and individual units; a hotel operator responsible for managing the hotel, including the booking of reservations for all units; the hotel lobby area configuration and operational parameters; and the mechanism by which the individual units are to be booked, including at a minimum provisions for a reservation data base to be managed by the hotel operator. As used in herein and in this condition, the terms “book”, “booked”, and “booking” shall mean the confirmation of a reservation request for use of an individual unit by either the owner of the unit, the owner’s permitted user, or by a member of the public, and the entry of such confirmation in the hotel operator’s reservation data base.

The hotel shall be maintained in its approved state, and shall be managed and operated consistent with the approved hotel plans.

**b. Unit Owner Occupancy Limitations.** Each unit owner, including any individual, family, group, or partnership of owners for a given unit (no matter how many owners there are) may use their unit for no more than 84 days in any calendar year, and no more than 14 total days between the



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Saturday of the Memorial Day weekend through the Monday of the Labor Day weekend, with no stay exceeding 29 consecutive days of use during any 60 day period. Such occupancy limitations shall be unaffected by multiple owners of an individually owned unit or the sale of a unit to a new owner or new owners during the calendar year, meaning that all such owners of any given unit shall be collectively subject to the occupancy restrictions as if they were a single, continuous owner. Whenever any unit is not occupied by its owner(s), that unit shall be available for use by the general public on the same basis as a traditional hotel room.

- c. **Rental Agent Allowed.** Each owner of a unit shall have the right, at its sole discretion, to engage a rental agent of his or her choice to serve as the rental agent for their unit, but any engagement of such agent other than the hotel operator shall be on a non-exclusive basis. Whether or not the hotel operator is selected as an owner's exclusive rental agent, the hotel operator shall manage the booking and the reservation of all units in the hotel. The hotel operator shall have the right and obligation to offer any unit for general public use during all time periods not reserved by a unit owner for his or her personal use, or for the use of an owner's permitted user, or reserved for use by a public renter procured by an owner's rental agent who is not the operator. As more fully described herein, unit owners shall report and personally certify the rental rate and terms of any rental of the owner's unit made independently of the hotel operator, and the hotel operator shall book all unit reservations in the operator's reservation database, a service for which the hotel operator may charge the unit owner a reasonable fee.

If the hotel operator is not serving as the exclusive rental agent for a unit, then the hotel operator shall nevertheless have the right, working through the unit owners or their designated rental agent, to book any unoccupied room to fulfill public demand. The owner or an owner's rental agent may not withhold units from use unless they have already been reserved for use by the owner, consistent with the length of occupancy limitations identified above. In all circumstances, the hotel operator shall have full access to the unit's reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder.

- d. **Unit Marketing.** The hotel operator shall market all units to the general public. Owners of individually owned units may also independently market their units. Unit owners shall not discourage rental of their units nor create disincentives meant to discourage rental of their units
- e. **Hotel Management.** The hotel operator shall manage all aspects of the hotel, including but not limited to reservation booking, mandatory front desk check-in and check-out, maintenance, and cleaning services (including preparing units for use by guests/owners, a service for which the operator may charge unit owners a reasonable fee). All unit keys shall be electronic and shall be newly created by the hotel operator upon each change in user occupancy for any unit. All units shall be rented at a rate similar to that charged for traditional hotel rooms of a similar class or amenity level in the California coastal zone.



**f. Marketing and Sale of Condominium Interests.** All documents related to the marketing and sale of condominium interests in units (including marketing materials, sales contracts, deeds, CC&Rs and similar documents, etc.) shall notify potential buyers of the following:

1. Each owner of any unit is jointly and severally liable with the hotel owner(s) and the hotel operator for any violations of the terms and conditions of coastal development permit A-3-GRB-07-051 with respect to the use of that owner's unit; and
2. The occupancy of a unit by its owner(s) and their guests is restricted to a maximum of 84 days per calendar year, a maximum of 14 total days between the Saturday of the Memorial Day weekend through the Monday of the Labor Day weekend, and a maximum of 29 consecutive days of use during any 60 day period. When not in use by the owner, the unit shall be made available for rental by the hotel operator to the general public pursuant to the terms of coastal development permit A-3-GRB-07-051, which permit and the CC&Rs applicable to the unit contain additional restrictions on use and occupancy; and
3. Each owner of a unit who does not retain the operator of the hotel as his or her rental agent shall be obligated by the governing documents of the hotel to truthfully report to the hotel operator (and to certify each such report) each effort, if any, he or she has made to rent his or her unit to a member of the public, and the terms and conditions of any such offer, and the terms and conditions of each rental offer which has been accepted by a member of the public.

Prior to the sale of an individual unit, the unit's seller and the hotel operator (and any successors-in-interest) shall obtain a written acknowledgement from the buyer indicating that they understand, acknowledge, and accept each of the above marketing and sale restrictions.

**g. Conversion Prohibited.** The conversion of the approved units to other types of limited use overnight visitor accommodation units (e.g., timeshare, fractional ownership, etc.) or to full-time occupancy condominium units or to any other units with use arrangements that differ from the approved project shall be prohibited.

**h. Occupancy and Use Monitoring and Recording.** The hotel operator and any successors-in-interest shall monitor and record hotel occupancy and use by the general public and the owners of individual units throughout each year. Such monitoring and record keeping shall include specific accounting of owner usage for each individual unit; rates paid for hotel occupancy and for advertising and marketing efforts; and transient occupancy taxes (TOT) for all units, services for which the hotel operator may charge unit owners a reasonable fee. The records shall be sufficient to demonstrate compliance with the restrictions set forth in Sections 8(a) through 8(g) above. All such records shall be maintained for ten years and shall be made available to the Executive Director upon request and to any auditor required by Section 8(i) below. Within 30 days of commencing hotel operations, the hotel operator shall submit notice to the Executive Director of commencement of hotel operations.



- i. **Audit.** WITHIN 120 DAYS OF THE END OF THE FIRST CALENDAR YEAR OF HOTEL OPERATIONS, the hotel operator shall retain an independent auditing company, approved by the Executive Director, to perform an audit to evaluate compliance with this special condition regarding occupancy restrictions, marketing and sale restrictions, management requirements, recordkeeping, and monitoring by the hotel owner(s), the individual unit owners, and the hotel operator. The hotel 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 the first year of hotel operations.-

Within 120 days of the end of each succeeding calendar year, the hotel operator shall submit a report identifying compliance with this special condition regarding occupancy restrictions, marketing and sale restrictions, management requirements, recordkeeping, and monitoring by the hotel owner(s), the individual unit owners, and the hotel operator to the Executive Director. The audit required after the first year of operations and all subsequent reports shall evaluate compliance by the hotel operator and owners of individual units during the prior one-year period. After the first five calendar years of hotel operations, the one-year reporting period may be extended to two years upon written approval of the Executive Director if each of the previous reports reveal compliance with all restrictions imposed by this special condition. The Executive Director may, by written notice to the hotel operator, require a third party audit regarding the subject matter of the reports required in this section for the prior three or fewer calendar years if he or she reasonably believes that the foregoing submitted reports are materially inaccurate. The hotel owner(s), each individual unit owner, and the hotel operator shall fully cooperate with and shall promptly produce any existing documents and records which the auditor may reasonably request. The expense of any such audit shall be borne by the hotel owner(s) and/or the hotel operator.

- j. **Compliance Required.** The hotel owner(s) and hotel operator or any successors-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. The hotel owner(s) and the hotel operator shall be jointly and severally responsible for ensuring compliance with the requirements described in this condition and/or recorded against the property, as well as jointly and severally liable for violations of said requirements. Each owner of an individual unit is also jointly and severally liable with the hotel owner(s) and hotel operator for all violations of said requirements and for any and all violations of the terms and conditions coastal development permit A-3-GRB-07-051 with respect to the use of that owner's unit. Violations of this coastal development permit can result in penalties pursuant to Public Resources Code Section 30820.
- k. **CC&R Declaration of Restrictions.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit for the review and approval of the Executive Director text a



declaration of restrictions in a recordable covenants, conditions, and restrictions (CC&R) form (CC&R Declaration of Restrictions) which shall include:

1. All the specific restrictions listed in Sections 8(a) through 8(j) above;
2. Acknowledgement that these same restrictions are independently imposed as condition requirements of coastal development permit A-3-GRB-07-051;
3. A statement that the provisions of the CC&R Declaration of Restrictions that reflect the requirements of Sections 8(a) through 8(j) above, cannot be changed without approval of a coastal development permit amendment, unless it is determined by the Executive Director of the Coastal Commission that such an amendment is not legally required. If there is a section of the CC&Rs 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 CC&Rs related to amendments.

The approved CC&R Declaration of Restrictions described above shall be recorded against all individual property titles simultaneously with the recordation of the subdivision map for the approved project.

- I. Implementation Plan.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit for Executive Director review and approval a plan specifying how the requirements of this condition will be implemented. The plan must include, at a minimum, the form of the sale, deed and CC&R terms and restrictions that will be used to satisfy these special condition requirements and the form of the rental program agreement to be entered into between the individual unit owners, the hotel owner(s), and the hotel operator. The plan shall demonstrate that the Permittee will establish mechanisms that provide the hotel owner(s) and hotel operator and any successor-in-interest hotel owner(s) and hotel 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 terms and conditions required by this condition, including deed restrictions and CC&Rs, shall be prohibited without an amendment to coastal development permit A-3-GRB-07-051, unless it is determined by the Executive Director that an amendment is not legally required.



## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
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Th29a



Appeal filed:	10/5/2007
Substantial Issue Found:	11/16/07
Staff report prepared:	7/24/2008
Staff report prepared by:	Jonathan Bishop
Staff report approved by:	Charles Lester
Hearing date:	8/7/2008

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## APPEAL STAFF REPORT - DE NOVO HEARING

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**Application number** .....A-3-GRB-07-051, Pacific Coast Hotel

**Applicant**.....IGIT Inc. (Attn: Ron Perkins)

**Appellants** .....Commissioners Patrick Kruer and April Vargas

**Local government** .....City of Grover Beach

**Local decision** .....Approved with conditions (September 17, 2007).

**Project location** .....105 West Grand Avenue, at the corner of Highway One and West Grand Avenue adjacent to Meadow Creek, in the City Grover Beach (APN 060-201-009).

**Project description**.....Construct a mixed-use 20 unit condominium hotel/commercial development with a 37 space underground parking garage, including associated landscaping and drainage improvements.

**File documents**.....City of Grover Beach certified Local Coastal Program (LCP); City of Grover Beach Final Local Action Notice and related information associated with City of Grover Beach Application Number 05-025(including a Mitigated Negative Declaration (Resolution No. 07-85), a Specific Development Plan (Resolution No. 07-86), the Coastal Development Permit (Resolution No. 07-87), Site and Architectural Plans (Resolution No. 07-88), and the Tentative Tract Map (Resolution No. 07-89).

**Staff recommendation** ...Approve with Conditions

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**Summary of Staff Recommendation:** The City of Grover Beach approved a coastal development permit allowing construction of a mixed-use 20 unit condominium hotel/commercial development with a 37-space underground parking garage, including associated landscaping and drainage improvements. The project is located adjacent to Meadow Creek at the corner of Highway One and West Grand Avenue, in the LCP's Coastal Planned Commercial (C-P-C) Zoning District.

Staff recommends that the Commission approve the project subject to special conditions that are conducive to fostering public access and visitor-serving recreation at the site. The primary way this is achieved is through a Public Access Plan that describes the manner in which general public access to the site is to be managed and provided, with the objective of maximizing public access to certain common



areas of the site, including site walkways, the lower level plaza, the observation tower, and the roof deck (Special Condition 7). All such common areas are to be available to the general public free of charge. Education/interpretation features will be provided on the site in coordination with California State Parks.

To ensure that the condominium units remain available primarily to the general public and retain a visitor-serving element, limitations have been placed on the units (Special Condition 8). In sum, the occupancy of the units by the owner is restricted to 84 days per calendar year, with a maximum of 29 consecutive days of use within any 60 day period and with no stay exceeding 14 consecutive days between Memorial Day and Labor Day. When not in use by the owner, the units shall be made available for rental to the general public. Management provisions for the units and liability provisions are also included in the special conditions.

To protect environmentally sensitive creek resources, special conditions require application of the LCP’s required 50-foot riparian setback in conjunction with comprehensive habitat restoration and storm runoff provisions (Special Conditions 1 through 6). To further address LCP creek protection requirements, special conditions also require that an open space/conservation deed restriction be recorded over the riparian habitat and buffer area (Special Conditions 9 and 11), and require native landscaping, restoration, and maintenance to enhance and protect riparian resource values that occur within this area in perpetuity. These measures are consistent with the Commission ecologist’s recommendation for protecting these resources.

Motions and resolutions to approve the project subject to the staff recommendation can be found on page 3 of this report.

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- IV. Exhibits
  - Exhibit A: Project Vicinity Map and Site Aerial Photo
  - Exhibit B: City Final Local Action Notice
  - Exhibit C: Appeal of Coastal Commissioners Patrick Kruer and April Vargas

Click on the link at left to go to the exhibits.



- Exhibit D: City-approved Site Plans and Project Elevations
- Exhibit E: Chart of Allowable Uses in C-P-C District
- Exhibit F: Correspondence
- Exhibit G: Graphic Depiction of Allowable Development Envelope; Required Meadow Creek Setback; and Habitat Restoration Area

## I. Staff Recommendation on CDP

Staff recommends that the Commission, after public hearing, approve a coastal development permit for the proposed development subject to the standard and special conditions below.

**Motion.** I move that the Commission approve Coastal Development Permit Number A-3-GRB-07-051 pursuant to the staff recommendation.

**Staff Recommendation of Approval.** Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development 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 a CDP.** The Commission hereby approves the coastal development permit on the ground that the development as conditioned, will be in conformity with the provisions of the City of Grover Beach certified Local Coastal Program and the Public Access and Recreation policies of Chapter 3 of the Coastal Act. Approval of the coastal development 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.

The Commission finds and declares as follows:

## II. Conditions of Approval

### A. 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.

## B. Special Conditions

1. **Final Site Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of Final Site Plans to the Executive Director for review and approval. The Final Site Plans shall be substantially in conformance with the site plans submitted to the Coastal Commission (*Specific Development Plans For: Pacific Coast Hotel* by Garcia Architecture + Design dated June 10, 2008) but shall show the following changes to the project:

- (a) **Meadow Creek Setback Area.** Other than approved subterranean project features (i.e., parking garage and stormwater facilities) and habitat restoration related development (see Special Condition 2 below), all development, including but not limited to above ground retaining walls, fencing, decking, pedestrian pathways, and parking ingress/egress shall be set back a minimum distance of 50 feet from the upland edge of Meadow Creek riparian vegetation (Meadow Creek Setback Area). The upland edge of Meadow Creek riparian vegetation is delineated as matching the western fenceline of the adjacent accessway to the west (see Exhibit G for a graphic depiction of the required 50-foot Meadow Creek Setback Area).
- (b) **Approved Development Envelope.** All areas of the site outside of the Meadow Creek Setback Area, and the approved subterranean project features (see part (a) of this special condition), shall be demarked as the Approved Development Envelope (see Exhibit G for a graphic depiction of the Approved Development Envelope).
- (c) **Meadow Creek Riparian Habitat Restoration Area.** The area of the site outside of the Approved Development Envelope shall be demarked as the Meadow Creek Riparian Habitat Restoration Area (see Exhibit G for a graphic depiction of the Meadow Creek Riparian Habitat Restoration Area), where development and uses shall be limited to restoration, enhancement, and protection of Meadow Creek and its riparian habitat (see also Special Conditions 2 and 8).
- (d) **Public Common Areas.** All public common areas (e.g., site walkways, the lower level plaza, the observation tower, and the roof deck, etc.) shall be clearly noted on the Final Site Plans.



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

**2. Final Habitat Restoration and Enhancement Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of a Final Habitat Restoration and Enhancement Plan (FHREP) to the Executive Director for review and approval. The FHREP shall provide for riparian corridor habitat restoration and enhancement in the Meadow Creek Riparian Habitat Restoration Area (see Special Condition 1), with the goal of enhancing and restoring this area to a self-sustaining natural habitat state. The FHREP shall be prepared by a qualified restoration ecologist, and shall take into account the specific condition of the site (including soil, exposure, temperature, moisture, wind, etc.), as well as restoration and enhancement goals. At a minimum, the plan shall provide for the following:

- (a) A baseline assessment, including photographs, of the current physical and ecological condition of the restoration and enhancement area.
- (b) A description of the goals and measurable success criteria of the plan, including, at a minimum, the requirement that success be determined after a period of at least three years wherein the site has been subject to no remediation or maintenance activities other than weeding, and that this condition be maintained in perpetuity.
- (c) Removal of invasive and non-native plant species.
- (d) Planting of native species of local stock appropriate to the Meadow Creek riparian corridor. Non-native and/or invasive plant species, such as those listed on the California Invasive Plant Council's Inventory of Invasive Plants, shall be prohibited.
- (e) Monitoring and maintenance provisions including a schedule of the proposed monitoring and maintenance activities to ensure that success criteria are achieved.
- (f) Provision for submission of annual reports of monitoring results to the Executive Director, beginning the first year after completion of the restoration effort and concluding once success criteria have been achieved. Each report shall document the condition of the site area with photographs taken from the same fixed points in the same directions, shall describe the progress towards reaching the success criteria of the plan, and shall make recommendations, if any, on changes necessary to achieve success.

The Permittee shall undertake development in accordance with the approved Final Habitat Restoration and Enhancement Plan.

The Final Habitat Restoration and Enhancement Plan shall be implemented during construction as directed by a qualified restoration ecologist, and initial site preparation, planting and invasive plant removal shall be completed prior to the occupancy of the approved project.

**3. Non-Native and Invasive Plant Species Prohibited.** Landscaped areas within the Approved Development Envelope (see Special Condition 1) shall consist only of native plants of local stock



that are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be so identified from time to time by the State of California, and no plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be planted or allowed to naturalize or persist on the property.

**4. Final Drainage, Erosion, and Sediment Control Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of Final Drainage, Erosion, and Sediment Control Plans to the Executive Director for review and approval. The Final Plans shall include the following:

**(a) Implementation of Best Management Practices During Construction.** The Drainage, Erosion and Sediment Control Plans shall identify the type and location of the measures that will be implemented during construction to prevent erosion, sedimentation, and the discharge of pollutants during construction. These measures shall be selected and designed in accordance with the California Storm Water Best Management Practices Handbook. Among these measures, the plans shall limit the extent of land disturbance to the minimum amount necessary to construct the project; designate areas for the staging of construction equipment and materials, including receptacles and temporary stockpiles of graded materials, which shall be covered on a daily basis; provide for the installation of silt fences, temporary detention basins, and/or other controls to intercept, filter, and remove sediments contained in the runoff from construction, staging, and storage/stockpile areas; and provide for the hydro seeding (with native plants) of disturbed areas immediately upon conclusion of construction activities in that area. The plans shall also incorporate good construction housekeeping measures, including the use of dry cleanup measures whenever possible; collecting and filtering cleanup water when dry cleanup methods are not feasible; cleaning and refueling construction equipment at designated off site maintenance areas; and the immediate clean-up of any leaks or spills.

The plans shall indicate that PRIOR TO THE COMMENCEMENT OF GRADING, the Permittee shall delineate that the approved construction areas with fencing and markers to prevent land-disturbing activities from taking place outside of these areas.

**(b) Permanent Drainage and Erosion Control Plan.** The plans shall include a permanent drainage and erosion control plan that shall clearly identify all permanent measures to be taken to control and direct all site runoff, and that shall clearly identify a drainage system designed to collect all on-site drainage (in gutters, pipes, drainage ditches, swales, etc.) for use in on-site irrigation, infiltration, and/or habitat enhancement, and/or to be directed to storm drain systems. The plan shall be prepared by a licensed engineer with experience in low impact development techniques and water quality protection systems, and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater and other runoff associated with the property. The plan shall include all supporting calculations and documentation for all BMPs clearly demonstrating compliance with this condition. Such drainage and erosion control plan shall at a minimum provide for:

1. The drainage system shall be designed to filter and treat (i.e., to remove typical urban runoff



pollutants) the volume of runoff produced from irrigation and from each and every storm and/or precipitation event up to and including the 85th percentile 24-hour runoff event for volume-based BMPs and/or the 85th percentile, 1-hour runoff event (with an appropriate safety factor) for flow-based BMPs, prior to its use for on-site infiltration, landscape irrigation, habitat enhancement, and/or discharge offsite. All filtering and treating mechanisms shall be clearly identified, and supporting technical information (e.g., brochures, technical specifications, etc.) shall be provided.

2. Runoff from the roofs, driveways, parking lots, and other impervious surfaces shall be collected and directed into pervious areas on the site for infiltration to the maximum extent practicable in a non-erosive manner.
3. Post-development peak runoff rates and volumes shall be maintained at levels similar to, or less than, pre-development conditions.
4. All runoff shall be directed away from the creek/riparian habitat area unless proven appropriate for habitat enhancement purposes.
5. All drainage system elements shall be permanently operated and maintained.

The Permittee shall undertake development in accordance with the approved Final Drainage, Erosion, and Sediment Control Plans.

- 5. Construction Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of Construction Plans to the Executive Director for review and approval. The Construction Plan shall identify the specific location of all construction areas, all staging areas, all storage areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to minimize impacts to Meadow Creek and its riparian habitat area. The Plan shall specify all construction methods to be used, including all methods to be used to keep construction areas separated from these areas, and shall include a final construction schedule. All erosion control/water quality best management practices to be implemented during construction and their location shall be noted. Silt fences, or equivalent apparatus, shall be installed at the perimeter of the allowable construction area to prevent construction related runoff and/or sediment from entering Meadow Creek and its riparian habitat area. The Construction Plan shall, at a minimum, include the following required criteria specified via written notes on the Plan. Minor adjustments to the following construction requirements may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

- (a) All work shall take place during daylight hours. Lighting of the creek and riparian area is prohibited.
- (b) Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.



- (c) Major ground disturbing activities (e.g., excavation for basement parking, grading, and slope contouring) shall only occur between May 1<sup>st</sup> and November 1<sup>st</sup>.

The Applicant shall notify planning staff of the Coastal Commission's Central Coast District Office at least 3 working days in advance of commencement of construction, and immediately upon completion of construction.

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

**6. Construction Site Documents & Construction Coordinator. DURING ALL CONSTRUCTION:**

- (a) **Construction Site Documents.** Copies of the signed coastal development permit and the approved Construction Plan shall be maintained in a conspicuous location at the construction job site at all times, and such copies shall be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the coastal development permit and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.

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

- 7. Public Access Plan.** PRIOR TO OCCUPANCY OF THE APPROVED PROJECT, the Permittee shall submit two copies of a Public Access Plan to the Executive Director for review and approval. The Plan shall clearly describe the manner in which general public access to the site is to be managed and provided, with the objective of maximizing public access to certain common areas of the site (including all site walkways, the lower level plaza, the observation tower, and the roof deck; all of which shall be clearly shown on the Plan). All such common areas shall be available to the general public free of charge during normal hours of operation for the retail and visitor serving components of the approved project. The Plan shall identify all signs, handouts, brochures, and any other project elements and management mechanisms that will be used to facilitate, manage, and provide such public access to the site, including identification of all public education/interpretation features that will be provided on the site (educational displays, interpretive signage, etc.). The Plan shall be submitted with evidence of California State Parks review and approval for all such public education/interpretation features.



All public access amenities identified in the approved Public Access Plan (including but not limited to walkways, signs, public education/interpretation features, etc.), shall be installed and available for public use prior to occupancy of the approved project. The Permittee shall undertake development in accordance with the approved Public Access Plan, which shall govern all general public access to the site pursuant to this coastal development permit.

**8. Hotel Condominium Units.** The hotel condominium units are subject to the following limitations:

- a. Each unit owner, including any individual, family, group, or partnership of owners for a given unit (no matter how many owners there are) may use his/her/their unit for no more than 84 days in any calendar year with no stay exceeding 29 consecutive days of use during any 60 day period or exceeding 14 consecutive days between the Saturday of the Memorial Day weekend through the Monday of the Labor Day weekend.
- b. The hotel owner/operator shall retain control through ownership, lease, easements, or other legal means, of all structural elements, recreational amenities, meeting space, restaurants, “back of house” and other non-guest unit facilities. “Hotel Owner/Operator” is defined as the entity that owns and operates the condominium hotel. If the hotel operator is separate from the hotel owner, both shall be jointly and severally responsible for ensuring compliance with the requirements described in this condition (8) and/or recorded against the property, as well as jointly and severally liable for violations of said requirement and restrictions.
- c. The Condominium Hotel facility shall have an on-site hotel operator to manage booking of all guestrooms/units. Whenever any individually owned hotel unit is not occupied by its owner(s), that unit shall be available for use by the general public, either through the operator or a rental agent other than the operator, on the same basis as a traditional hotel room. As used herein, the term “to book” or “booking” shall mean the confirmation of a reservation request for use of a Condominium-Hotel unit by either the owner of the unit, the owner’s permitted user or by a member of the public, and the entry of such confirmation in the operator’s reservation data base.

Each owner of a Condominium-Hotel unit shall have the right, in its sole discretion, to engage either the operator or a rental agent of his or her choice to serve as the rental agent for their unit, but any engagement of a rental agent other than the operator shall be on a non-exclusive basis. The operator shall have the right and obligation to offer for public rental all time periods not reserved by a Condominium-Hotel unit owner for his or her personal use, or for the use of an owner’s permitted user, or reserved for use by a public renter procured by an owner’s rental agent who is not the operator. Whether or not the hotel operator is selected as an owner’s exclusive rental agent, the operator shall manage the booking and the reservation of all units in the Condominium-Hotel. All Condominium-Hotel unit owners, and their rental agents, must comply with the following restrictions:

- i. Condominium-Hotel unit owners shall not discourage rental of their units or create disincentives meant to discourage rental of their units;



- ii. As more fully described herein, Condominium-Hotel unit owners shall report and certify the rental rate and terms of any rental of the owner's unit made independently of the operator, and the operator shall book all unit reservations in the operator's reservation database, a service for which the operator may charge the Condominium-Hotel unit owner a reasonable fee;
  - iii. Based on its own rentals and also those certified by those owners who have reported rentals made by them directly or by another rental agent they have selected, pursuant to section 8(s) below, the operator shall maintain records of usage for all units and the rental terms of such usage, and shall be responsible for reporting Transient Occupancy Taxes for all units, services for which the operator may charge the Condominium-Hotel unit owner a reasonable fee.
- d) The hotel operator shall market all rooms to the general public. Owners of individually owned hotel units may also independently market their units, but all booking of reservations shall be made by and through the hotel operator.
  - e) The hotel operator shall manage all guestrooms/units as part of the hotel inventory of the Condominium Hotel, which management will include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing guestrooms/units for use by guests/owners, a service for which the operator may charge the unit owner a reasonable fee.
  - f) If the hotel operator is not serving as the exclusive 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 public demand. The owner or an owner's rental agent may not withhold units from use unless they have already been reserved for use by the owner, consistent with the owner's maximum use right, as set forth in (a) above. In all circumstances, the hotel operator shall have full access to the unit's reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder.
  - g) 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) All units shall be rented at a rate similar to that charged for the traditional hotel rooms of a similar class or amenity level in the California coastal zone.
  - i) The occupancy limitations identified in Section (a) above, shall be unaffected by multiple owners of an individually owned hotel unit 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 occupancy restriction as if they were a single, continuous owner.



j) No portion of the condominium hotel units shall be converted to full-time occupancy condominiums, any other type of Limited Use Overnight Visitor Accommodation (e.g. timeshare, fractional ownership) or other project that differs from the approved Condominium-Hotel.

k) Any future revisions to the use or terms of the hotel condominium units shall require a coastal permit amendment, unless the Executive Director determines that no amendment is legally required.

l) All documents related to the marketing and sale of the condominium interests, including but not limited to marketing materials, sales contracts, deeds, CC&Rs and similar documents, shall notify buyers of the following:

1. Each owner of any individual condominium unit is jointly and severally liable with the property management company and/or owner manager 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. The occupancy of the units by owner(s) is restricted to 84 days per calendar year, with a maximum of 29 consecutive days of use during any 60 day period and no stay exceeding 14 consecutive days between the Saturday of the Memorial Day weekend through the Monday of the Labor Day weekend. When not in use by the owner(s), the unit shall be made available for rental to the general public pursuant to the terms of the coastal development permit.

m) **Prior to issuance of the coastal development permit**, the applicant shall execute and record a deed restriction(s), subject to the review and approval of the Executive Director of the Coastal Commission, which prohibits the conversion of the approved condominium hotel units to any other type of Limited Use Overnight accommodation (e.g. timeshares, fractional ownership) without an approved Coastal Development Permit. The deed restriction shall run with the land, shall be executed and consented to, through recordation of a lease restriction, by any existing lessee(s) of the affected property(ies) and shall be binding on the landowner(s) and any lessee(s), and on all successors and assigns of the landowner(s) and any lessee(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, unless it is determined by the Executive Director of the Coastal Commission that such an amendment is not legally required.

n) **Prior to issuance of a coastal development permit**, Applicant shall submit for the review and approval of the Executive Director of the Coastal Commission, a Declaration of Restrictions or CC&Rs (Covenants, Conditions & Restrictions) which shall include:





1. All the specific restrictions listed in Sections 8(a) through 8(m) above;
  2. Acknowledgement that these same restrictions are independently imposed as condition requirements of the coastal development permit;
  3. A statement that provisions of the CC&Rs (Declaration of Restrictions) that reflect the requirements of Sections 8(a) through 8(m) above, cannot be changed without approval of a coastal development permit amendment, unless it is determined by the Executive Director of the Coastal Commission that such an amendment is not legally required. If there is a section of the CC&Rs (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 CC&Rs (Declaration of Restrictions) on amendments.
- o) The CC&Rs (Declaration of Restrictions) described above shall be recorded against all individual property titles simultaneously with the recordation of the subdivision map for the Condominium Hotel.
- 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 guestroom/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.
- 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 Condominium 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. The occupancy of a Condominium Hotel unit by its owner(s) and their guests is restricted to 84 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period and with no stay exceeding 14 consecutive days between the Saturday of the Memorial Day weekend through the Monday of the Labor Day weekend of use, and when not in use by the owner, the unit shall be made available for rental by the hotel operator to the general public pursuant to the terms of the coastal development permit and that the coastal development permit contains additional restrictions on use and occupancy; and



3. Each owner of a Condominium Hotel unit who does not retain the operator of the hotel as his or her rental agent shall be obligated by the governing documents of the Condominium Hotel to truthfully report to the operator (and to certify each such report) each effort, if any, he or she has made to rent his or her unit to a member of the public, and the terms and conditions of any such offer, and the terms and conditions of each rental offer which has been accepted by a member of the public.
- r) The hotel owner/operator and any successor-in-interest hotel owner or 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 84 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period and with no stay exceeding 14 consecutive days between the Saturday of the Memorial Day weekend through the Monday of the Labor Day weekend, 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&Rs (Declaration of Restrictions).
  - s) The hotel owner/operator and any successor-in-interest hotel owner or operator shall monitor and record hotel occupancy and use by the general public and the owners of individual hotel guestrooms/units throughout each year. The monitoring and record keeping shall include specific accounting of owner usage for each individual Condominium Hotel guestroom/unit. The records shall be sufficient to demonstrate compliance with the restrictions set forth in Sections 8(a) through 8(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 Executive Director of the Coastal Commission upon request and to any auditor required by Section 8(t) below. Within 30 days of commencing hotel operations, the hotel owner/operator shall submit notice to the Executive Director of the Coastal Commission of commencement of hotel operations.
  - t) **Within 120 days of the end of the first calendar year of hotel operations**, the hotel operator shall retain an independent auditing company, approved by the Executive Director of the Coastal Commission, to perform an audit to evaluate compliance with the special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring by the hotel owner/operator. The hotel 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 of the Coastal Commission upon request, within six months after the conclusion of the first year of hotel operations.–

Within 120 days of the end of each succeeding calendar year, the hotel operator shall submit a report regarding compliance with the special conditions of the coastal development permit



which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of the Condominium Hotel to the Executive Director of the Coastal Commission. The audit required after the first year of operations and all subsequent reports shall evaluate compliance by the hotel operator and owners of individual Condominium Hotel guestrooms/units during the prior one-year period. After the initial five calendar years, the one-year reporting period may be extended to two years upon written approval of the Executive Director, if each of the previous reports reveal compliance with all restrictions imposed above. The Executive Director may, by written notice to the operator, require a third party audit regarding the subject matter of the reports required in this section for the prior three (3) or fewer calendar years if he or she reasonably believes that the foregoing submitted reports are materially inaccurate. The governing documents for the Condominium Hotel shall require the operator and each owner of a condominium to fully cooperate with and to promptly produce any existing documents and records which the auditor may reasonably request. The expense of any such audit shall be payable by the owner's association for the Condominium Hotel project.

- v) If the hotel owner and the hotel operator are or 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, and for reporting material non-compliance to the Executive Director. If the hotel owner and hotel operator are or become separate entities, they shall be jointly and severally liable for violations of the terms and conditions (restrictions) identified above.
- w) **Prior to Issuance of the Coastal Development Permit**, the applicant shall submit a plan to the Executive Director for review and approval specifying how the requirements of this condition (8) will be implemented. The plan must include, at a minimum, the form of the sale, deed and CC&Rs (Declaration of Restrictions) that will be used to satisfy the requirements and the form of the rental program agreement to be entered into between the individual unit owners and the hotel owner/operator. The plan must demonstrate that the applicant will establish mechanisms that provide the hotel operator and any successor-in-interest hotel operator adequate legal authority to implement the requirements of this condition (8). Any proposed changes to the approved plan and subsequent documents pertaining to compliance with and enforcement of the terms and conditions required by this condition, including deed restrictions and CC&Rs (Declaration of Restrictions), shall not occur without an amendment to the coastal development permit, unless it is determined by the Executive Director of the Coastal Commission that an amendment is not legally required.

**9. Meadow Creek Riparian Habitat Restoration Area.** Development, as defined in Zoning Regulations Section 9148.1 of the City of Grover Beach Local Coastal Program, shall be prohibited in the Meadow Creek Riparian Habitat Restoration Area (see Exhibit G for a graphic depiction of the Meadow Creek Riparian Habitat Restoration Area) described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for:



- (a) Restoration, enhancement, management, and protection of riparian habitat consistent with the terms of the approved Final Habitat Restoration and Enhancement Plan pursuant to coastal development permit A-3-GRB-07-051;

PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT, the Permittee shall submit for review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, which shall include all of the Meadow Creek Riparian Habitat Restoration Area as described in Special Condition 1 and generally depicted in Exhibit G.

- 10. Incorporation of City Conditions.** All conditions of approval imposed on the project by the City of Grover Beach (City of Grover Beach Application Number 05-025; see Exhibit C) are incorporated as conditions of this approval. Any of the incorporated City conditions requiring materials to be submitted to the City and/or otherwise requiring City approval (such as Development Director approval), shall also require the same materials to be submitted to, and/or the same approvals granted by, the Executive Director under the same review and approval criteria as specified in the City conditions. For future condition compliance tracking purposes, such incorporated City conditions shall be considered subsections of this Special Condition 10. To the extent any such incorporated City conditions conflict with these conditions (i.e., standard conditions 1 through 5, and special conditions 1 through 9, and 11), such conflicts shall be resolved in favor of these conditions.
- 11. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the Permittee has executed and recorded 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 (hereinafter referred to as the “Standard and Special Conditions”; and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the subject property. The deed restriction shall include a legal description of the entire subject property. 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 of the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

### III. Coastal Development Permit Determination

In a de novo review of the proposed CDP application, the standard of review is the City of Grover Beach certified LCP and the Chapter 3 public access and recreation policies of the Coastal Act.



## A. Project Location and Description

The proposed development is located at the northwest corner of Highway One and West Grand Avenue, in the LCP's Coastal Planned Commercial (C-P-C) Zoning District and LCP designated Beach Neighborhood area of Grover Beach. The vacant property is disturbed and occupied by non-native grasses. Meadow Creek is located west of the property, beyond an approximately 16 to 20 foot wide private accessway serving an adjacent flag lot. The site of the potential future State Parks Beachfront Lodge is located west of Meadow Creek. Other features in the area include the vehicle access ramp to Pismo State Beach, paved public parking, restrooms, a restaurant, and the southern entry to the back dune pedestrian boardwalk. Seaward of these features are the back dunes of the City's shoreline area. To the north, and also adjacent to the site, is the La Sage Riviera Mobile Home Park and nearby the Pismo State Beach Golf Course. Historically, the project site was developed and operated as a service station. According to the City, the service station was demolished in 1991 and the site is currently undeveloped and vacant. See Exhibit A for a location map and aerial photo of the site and the surrounding area.

The City approved project includes construction of mixed-use condominium hotel and commercial development on a roughly 1/2-acre parcel (approximately 26,270 square feet). The project includes 20 condominium hotel units (20,149 square feet of lodging space) and 2,855 square feet of commercial retail space. The project is designed as a two and three-story structure with a 37-space underground parking garage. The City approved project also includes landscaping and associated drainage improvements. In addition to the coastal development permit (City Council Resolution No. 07-87), the City approved a mitigated negative declaration under CEQA (Resolution No. 07-85), a specific development plan (Resolution No. 07-86), site and architectural plans (Resolution No. 07-88), as well as a tentative tract map to subdivide the parcel into twenty-eight condominium units and one common area lot (Resolution No. 07-89), all to allow for the construction of the mixed-use commercial/condominium hotel. See Exhibit B for the City's Final Local Action Notice, which includes the City Council resolutions, adopted findings, and special conditions of approval for the project. See Exhibit D for the City-approved site plans and project elevations.

In the time since the Commission found Substantial Issue, the Applicant has submitted revised plans that respect the 50-foot Meadow Creek setback requirement for all above-grade elements of the project. While the underground parking garage remains within the delineated riparian setback, it will be capped with soil and planted with native vegetation. The Applicant has also agreed to enhance the resource value of the riparian buffer area through implementation of a comprehensive Habitat Restoration Plan. In addition, the Applicant has indicated willingness to deed restrict the property to include public use of common areas (e.g., walkways, the central courtyard area, rooftop deck, and observation tower, including access to interpretive signage and educational displays). These areas are to be open to the public at no cost.

## B. Public Access and Visitor-Serving Recreation

### 1. Applicable Policies

The LCP provides a table showing uses permitted within the City's commercial districts.



**LCP Table 1 (Uses Permitted Within Commercial Districts).** See attached as Exhibit F.

In addition to the permitted uses within commercial districts shown in Table 1 (attached), the LCP includes a specific zoning ordinance related to allowable uses, which is aimed at fostering public access opportunities in the C-P-C Zoning District, and states:

**Zoning Ordinance Sections 9122.14: Development Standards (C-P-C).** *All development plans and subsequent construction shall implement the following standards:*

*(M) That all development in this area be required to maintain or enhance public access to and along the shoreline based on the development's impact on public access.*

New development in this area must also be found consistent with the Coastal Act Public Access and Recreation policies. Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea “shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3.” This includes maximizing public access and recreation opportunities through visitor-serving amenities, including lower-cost visitor-serving amenities.

The proposed project is located seaward of the first through public road (Highway One). Coastal Act Sections 30210 through 30213 and 30221 specifically protect public access and recreation. In particular:

**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.*

**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.*

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

**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.*

Coastal Act Section 30240(b) also protects parks and recreation areas, such as the adjacent beach area. Section 30240(b) states:

**30240(b).** *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*



These overlapping policies protect the beach (and access to and along it) and offshore waters for public access and recreation purposes, including lower-cost access and recreational opportunities.

## 2. Analysis of Consistency

### Allowable Uses

The proposed condominium hotel project is located in the LCP designated C-P-C Zoning District and Beach Neighborhood. The LCP intends that these areas maintain and enhance public access to and along the shoreline and provide for visitor-serving needs. The LCP zoning regulations description of the C-P-C zoning district states:

*The C-P-C District is intended to provide for the visitor-serving needs in a manner that is sensitive to the environmental, visual and archaeological resources within and adjacent to the boundaries of the District by sensitively siting and designing structures.*

The LCP description of the Beach Neighborhood designation states:

*The focus is on visitor-services and recreation uses, such as the golf course, state beach, and multi-modal transportation facility.*

LCP Zoning Regulations Table 1 (Uses Permitted Within Commercial Districts) provides additional specificity as to the types of uses permitted within each zoning district. Within each commercial district, uses are listed as “P” – Permitted; “UP” – Permitted subject to obtaining approval of a Use Permit; “AUP” – Permitted subject to obtaining approval of an Administrative Use Permit; “TUP” – Permitted subject to obtaining approval of a Temporary Use Permit; or, “NP” – Not Permitted. Under LCP Table 1 mixed-use developments that combine dwelling units with commercial uses are not permitted in the C-P-C Zoning District (see Exhibit F, Table 1 – Uses Permitted Within Commercial Districts).

The City’s Zoning Regulations defines the term “Dwelling” as:

*A building or portion thereof designed exclusively for residential occupancy, including one-family, two-family, three family dwellings or apartments, multiple-family dwellings, but not including hotels, motels or boarding houses.*

The proposal for a condominium hotel raises important issues regarding the types of uses allowed in the C-P-C zoning district and the Beach Neighborhood designation. It is the intent of the LCP to ensure the public’s ability to use and access the shoreline in this area. In some instances, such as for the State Parks Beach Lodge and Conference Center, the LCP strictly prohibits the private ownership of overnight units (Private Visitor-Serving and Recreational Facilities Policy 1.a(11)). However, these same provisions do not appear to apply to this site. In this case, the applicant has pointed out that the project is not a condominium in the classic sense, but rather a small hotel project requiring condominium financing. The Applicant asserts that this type of financing, including that all 20 units need a condominium component, is necessary for the project to succeed. Because a dwelling unit is specifically designated for permanent occupancy, and are not to be used for transient occupancy, it is important to provide terms of use for the



project that make the facility non-exclusively residential (see Condition 8). These terms include limitations on the length of stay by any unit owner, and comprehensive management and liability provisions to assure adequate compliance and enforcement of the general visitor-serving requirements of the approval. Only with these provisions, and as described in greater detail below, can the proposed project be allowed in the C-P-C Zoning district.

Regarding this issue, it should be noted that the proposed development will mostly provide a new coastal priority, visitor-serving use that will also include amenities to support public access and recreation. With respect to the unit limitations included in the project approval, rooms will be available to the public 77% of the time. During the summer peak season a larger percentage would be available. During the 128 day peak period (between Memorial Day and Labor Day) unit owners would only be permitted a total of 14 days. If every room was always available to the public, the facility would have 2650 days of hotel usage rather than 2,280 days, for a difference of 370 days. Under these conditions, the rooms would still be available to the public during the peak beach season 86% of the time.

#### Lower-Cost Visitor-Serving Recreational Facilities

Information has been provided regarding the existing stock and pricing of overnight accommodations in the immediate vicinity of the project. According to the Applicant, between Grover Beach, Pismo Beach, and Oceano (all communities in the immediate vicinity of the project) there are 2,705 hotel rooms available that could accommodate roughly 10,820 additional daily visitors based on room occupancy of two adults and two children. Of these hotel units, the Applicant indicates that approximately 1,461 offer rooms for less than \$100 a night off-season. Thus, a substantial number of the available overnight accommodations in the area are lower or moderately-priced. When available camping is also considered, there are considerably more lower-cost overnight stay options. These numbers indicate that there appears to currently be a sufficient stock and ample opportunity for visitors in the Grover Beach vicinity to secure lower and moderate-cost accommodations.

The Commission acknowledges the applicant's efforts to provide lower-cost visitor-serving facilities available to the public in conjunction with the project, including dedication and use of the outdoor lower level plaza, the educational observation tower, and access to the roof deck. It is also important to note that the City of Grover Beach recently approved a 134-room Hilton Garden Inn in the Coastal Zone that will provide traditional overnight accommodations at mid-range rates. In addition, the City and State Parks are working on a future beach lodge project that will contain rooms not allowed to be privately owned and always available to the public.

The Applicant has stated that the project will consist of moderately priced units. Given that this project will provide new priority visitor-serving rooms at a moderate rate, and that the project includes a significant public access and recreation component, the Commission is not requiring an in-lieu fee. With the inclusion of free facilities and other amenities available to the public, the project meets the intent of LCP and Coastal Act in this case.

### 3. Conclusion

As conditioned, the proposed project will provide for lower cost visitor-serving and public access and





recreation facilities consistent with the public access and recreation provisions of the LCP and Coastal Act. Permit conditions secure free public access to certain common areas of the site, including access to interpretive displays and other planned visitor-serving and educational elements of the project. As so conditioned, the project is consistent with the LCP and the Coastal Act public access and recreation provisions.

## C. Environmentally Sensitive Habitat Area (ESHA)

### 1. Applicable Policies

The LCP has multiple provisions that protect Meadow Creek and its riparian corridor. Applicable LCP policies include:

***LUP Policy 5: Meadow Creek (Western Branch).*** That there shall be a minimum of a 50 foot buffer, or other appropriate buffer established by a habitat restoration plan approved by the Department of Fish and Game, on both sides of the portion of Meadow Creek north of Grand Avenue. The purpose of this buffer is to protect and enhance the habitat values and filtration capabilities of Meadow Creek while recognizing that for most of its length north of Grand Avenue there is existing development on both sides of the creek.

***Zoning Ordinance Sections 9122.14: Development Standards (C-P-C).*** All development plans and subsequent construction shall implement the following standards:

***(E)*** That native plant material shall be the major theme in all landscape designs.

***(F)*** That all roads, parking lots, and structures shall be sited and designed to prevent impacts which would significantly degrade the adjacent environmentally sensitive area.

***(I)*** That areas of significant natural vegetation be protected and enhanced where feasible.

***(J)*** That the existing habitat value of Meadow Creek be protected and enhanced by the use of buffer zones, additional native landscaping, sediment/oil control devices and controlled and limited pedestrian access to buffer zone areas.

### 2. Analysis of Consistency

The proposed project is located adjacent to the western branch of Meadow Creek, which is considered to be ESHA per the LCP. The LCP requires the protection and enhancement of Meadow Creek and its riparian corridor, including requiring minimum buffer distances. The City approved project locates new development in close proximity to these sensitive habitat areas, and the City's approval lacks adequate measures to avoid impacts and significant disruptions to the resources as required by the LCP (such as adequate buffers, native landscaping, water quality protection facilities, screening and attenuation for noise, lights, and activities, etc.).

Meadow Creek Habitat



Meadow Creek is a perennial stream with top of bank located approximately 25 feet west of the property boundary. The reach of Meadow Creek near the property has been channelized for flood control purposes. The creek channel is filled with tules and rushes. The riparian habitat associated with Meadow Creek occurs approximately 18 feet west of the western property boundary. The riparian corridor is narrow with willows occupying roughly 70 percent of the eastern bank bordering the accessway that adjoins the property. While this stretch of the creek has been disturbed and currently provides little in the way of habitat value, it nonetheless is identified as ESHA in the LCP and requires protection.

#### Impacts and LCP Consistency

LCP Sections 9122.14(F), (I), and (J) require that all structures be sited and designed to prevent impacts which would significantly degrade the adjacent environmentally sensitive area. In addition to these broad resource protection provisions, LCP Policy 5 prescribes a specific setback standard for projects adjacent to the western branch of Meadow Creek. The LCP requires a minimum buffer distance of 50 feet (or other appropriate buffer established by a habitat restoration plan approved by the Department of Fish and Game (CDFG)). The City approved the project based on a 50-foot creek setback measured from the centerline of the creek; there is no evidence in the record of CDFG review. Nevertheless, setbacks are meant to be measured from the resource being buffered, and in this case the top of bank/edge of riparian vegetation defines the creek

Creek buffers are a particularly important tool for ensuring that impacts from development (including the noise, lights, and activities that would be associated with the mixed-use development proposed) do not adversely impact creek resources. This is particularly important with respect to Meadow Creek at this location given it flows directly into a larger and more significant habitat area across Grand Avenue, and acts as a wet habitat corridor adjacent to the back dunes (located seaward of the site). The approved project includes drainage apparatus within approximately 20 feet of top of bank and approximately 12 feet from the upland edge of riparian vegetation, and includes the main building itself within approximately 35 feet of the top of bank and approximately 25 feet from the upland edge of riparian vegetation. These setback distances are well less than the minimum required by the LCP. The approved structures and development impinge on the creek setback area, and do not appear appropriately sited to avoid significant degradation of the creek resource in this regard. It can be reasonably expected that the proposed development would lead to adverse impacts on the creek ESHA given such proximity, inconsistent with the LCP protections that apply to this resource. Commission staff ecologist Jonna Engel visited the site and confirmed that the Meadow Creek buffer distance (and method of measurement used by the City) is inadequate to protect Meadow Creek ESHA. In sum, the City approved project locates new development within the LCP required Meadow Creek/ESHA buffer area in such a way that degradation and disruption of this resource is expected, inconsistent with the LCP.

Even with the required buffers applied, commercial development in the approved development envelope could have impacts on the nearby creek/riparian ESHAs. Such impacts, associated with increased activity, noise and light from the commercial and hotel use of the property, could affect wildlife; potentially introduce non-native species into the riparian corridor; and could impact riparian species due to domestic animals and other unintentional human uses in the buffer areas. As discussed below, siting



and design requirements and habitat restoration, including the removal of invasives, will avoid these impacts and appropriately mitigate for those that are unavoidable.

#### Project Modifications Required for an Approvable Project

In order to approve the project consistent with the LCP, the Commission must apply several special conditions designed to protect and preserve the creek riparian ESHA as required by the LCP. The foundation for these conditions is Special Condition 1 that requires that the Applicant submit a revised site plan for the project showing all above-grade development outside the 50-foot habitat setback area. In other words, the condition allows for the site to be developed, including encroachment of the underground parking garage into the setback. Nevertheless, the special condition allows sensitive habitat areas be avoided and appropriately buffered.

Building upon Special Condition 1, Special Condition 2 requires implementation of a habitat restoration plan designed to enhance and restore riparian vegetation and related habitat outside of the developable area to ensure that the development does not disrupt these habitat resources, and to ensure that habitat and buffer area resource values are enhanced. This restoration and enhancement plan is meant primarily as a vegetation planting and removal (i.e., for non-natives and invasives) plan, where success must be documented over time (see Special Condition 2). Building upon this restoration/enhancement requirement and to help facilitate its success, Special Condition 3 limits planting on the property, including within the allowed development area, to natives plants and prohibits invasive species (see Special Condition 3). Special Conditions 9 and 11 provide assurance that development in the ESHA setback area of the site will be limited to habitat restoration, enhancement, and management, through application of a development prohibition and a deed restriction.

To further protect the sensitive habitat, Special Condition 4 requires a Drainage, Erosion and Sedimentation Control Plan that details the best management practices to be used on site during construction, as well as the permanent improvements required to collect, filter, and treat runoff from the project to avoid drainage problems and enhance water quality. Similarly, Special Conditions 5 and 6 provide explicit construction requirements to protect creek and riparian ESHA.

Finally, certain of the City's previously applied conditions as listed in Special Condition 10 are incorporated as conditions of this permit in order to provide additional protection to the habitat resources on the site.

### 3. Conclusion

Meadow Creek and its riparian corridor are considered ESHA by the LCP. A 50-foot setback as measured from the upland edge of the riparian corridor is required by the LCP to adequately protect these resources. The Commission's staff ecologist has visited the site and evaluated the information submitted relevant to the Meadow Creek riparian corridor, and has concluded that the 50-foot minimum required LCP setback is appropriate to protect these resources in this case if accompanied by aggressive restoration and enhancement in the resource areas for the portion of the property in the 50-foot buffer area. The Commission finds that the project, as conditioned, is consistent with the LCP's Meadow Creek



ESHA protection policies. The Special Conditions applied to this permit approval together modify the project sufficiently to comply with the applicable policies and protect and enhance creek riparian ESHA.

## D. Water Quality

### 1. Applicable Policies

***LUP Policy 2: Meadow Creek (Western Branch).*** Approval of developments in areas draining into Meadow Creek shall be conditioned upon provision of on-site ponding basins or other means of regulating runoff water. Retention facilities should be capable of retaining the first two hours of a fifty-year frequency storm.

***LUP Policy 3: Meadow Creek (Western Branch).*** The existing sediment filtering capabilities of Meadow Creek as it passes through the Coastal Planned Commercial area shall be maintained and where feasible it shall be enhanced through the use of “stilling devices” to filter out additional oils and sediment.

***LUP Policy 3: General.*** All new development shall include all applicable Best Management Practices (BMPs) for control of polluted runoff, including, but not necessarily limited to, those identified in the California Storm Water Best Management Practice handbooks (March 1993), in order to prevent polluted runoff from reaching Meadow Creek and the ocean.

***Zoning Ordinance Sections 9122.14: Development Standards (C-P-C).*** All development plans and subsequent construction shall implement the following standards:

***(C)*** That all development be sited and designed to protect and enhance where feasible the filtration capabilities of Meadow Creek.

***(H)*** That drainage systems be designed to insure that all silts and oils are removed prior to the water entering a natural drainage.

### 2. Analysis of Consistency

The LCP requires that new development be sited and designed to protect and enhance water quality, including that of Meadow Creek, and including requiring that drainage be filtered and treated to remove urban pollutants prior to any discharge. In addition, retention basins must be capable of retaining the first two hours of a fifty-year storm (LCP Policy 2, 3, and Action Standard #1 for the western branch of Meadow Creek and Zoning Sections 9122.14(C) and (H)).

The City approved project includes a “Rainstore” brand stormwater detention facility to handle runoff. In addition to surface runoff, the project plans show that the sub-surface parking garage is also to be served by a pump system to convey any and all runoff into the detention facility. Commission staff has evaluated the proposed detention facility details, including the degree the units approved are capable of appropriately filtering and treating runoff in this situation (including the mixing of rainwater with urban pollutants typically associated with parking garages). And finds that the facility is adequate to ensure that site runoff can be adequately controlled, filtered, and treated. and can protect marine resource and coastal water quality consistent with the LCP.



### 3. Conclusion

To ensure that potential water quality impacts are comprehensively addressed, setbacks have been incorporated by special condition into the project approval to keep urban development away from the biological resources on the ground (see previous ESHA finding). In addition, conditions to assure protection of water quality are required for LCP water quality policy conformance. The project as conditioned will adequately prevent any harmful runoff effects by locating the project at an appropriate distance from the creek, and collecting, filtering, and treating all site runoff per the conditions of this approval. In order to comply with the erosion and sedimentation policies, the Applicant is also required to have a qualified professional prepare an erosion and sedimentation control plan. This plan will allow the approved project to minimize harmful impacts to riparian and related ESHA resources that may result from increased run-off, erosion or sedimentation. The project is also conditioned to provide a plan for controlling erosion and sedimentation associated with construction. See Special Conditions 4, 5, and 6. As conditioned the project is consistent with the water quality protection standards of the LCP.

## E. Scenic Resources and Community Character

### 1. Applicable Policies

*LUP Policy 1 (Area 3). As the Coastal Planned Commercial area west of Highway 1 redevelops into consistent visitor serving uses, the allowed development shall be sited and designed to protect the existing view corridors perpendicular to Highway One, along Grand Avenue and Le Sage Drive, and create one to three additional view corridors perpendicular to Highway 1 north of La Sage Drive. The development in this area shall be complimentary and subordinate to the character of the shoreline and dune setting to the fullest extent feasible.*

*LUP Policy F.1.b (Private Visitor-Serving and Recreational Facilities). The City should ensure that the appearance of private commercial structures within the Coastal Zone contribute to an attractive, beach-oriented, visual theme which enhances the quality of the recreational experience within the Coastal Zone.*

*Zoning Ordinance Sections 9122.14: Development Standards (C-P-C). All development plans and subsequent construction shall implement the following standards:*

*(A) That all development in this area be sited and designed to protect existing view slots or corridors from Highway 1 and upland areas to the dunes and shoreline.*

*(B) That all development in this area be sited and designed to enhance or create new view slots from Highway 1 to the dunes and shoreline.*

*(G) That the architectural theme of development in this area shall generally follow the criteria set forth in the adopted Advisory Architectural Design Guidelines and additionally said architectural theme shall be compatible and complimentary to the existing natural vegetation and land forms. The architecture and site design shall include the following characteristics, in order to reduce massing and reduce the sense of verticalness of structures:*



- (1) Use of structural, architectural design elements, i.e., corridors, heavy beams, posts, arches, columns, colonnades, canopies, cornices, etc.*
- (2) Strong textured look, using woods, tiles, pavers, stuccos, stones, blocks and bricks, colors, plant material, recesses, etc.*
- (3) Strong feeling of overhead treatment such as roof overhangs, balconies, or dark facias.*
- (4) Earthen colors. Colors with warm, natural tones. Colors range from whites, yellows, browns, clays, slates, etc.*
- (5) Wall relief (graphics, three dimensional design, landscaping, heavy textured stucco, wood tiles, etc.)*
- (6) Strong window statement (treatment of frame, mullions, border, etc.)*
- (7) The minimum distance separating buildings shall be equal to the sum of the height of any two adjacent buildings divided by two, but in no case less than 10 feet between buildings.*

## 2. Analysis of Consistency

The LCP requires that new development in this area be designed compatible and complimentary to the existing natural vegetation and landforms, and that it contribute to an attractive, beach-oriented, visual theme which enhances the quality of the recreational experience within the Coastal Zone (LCP Policy F.1.b, and Zoning Sections 9122.14(A), (B), and (G)). Policy 1 for Area 3 requires that new development in this area be complimentary and subordinate to the character of the shoreline and dune setting to the fullest extent feasible.

The project is located in a visually sensitive area by virtue of its shoreline location, including the shoreline dunes and Meadow Creek directly seaward, and its visibility from Highway 1 and other major public view corridors. This site is located at the major gateway into the City's beach area. The project has both 2-story and 3-story elements and features a large 40-foot tower at the corner of the highly visible intersection.

The Applicant has provided a number of project revisions that improve the visual and scenic characteristics of the project. Earthtone colors and project features such as stone and wood have been added to make the project appear more consistent with the backdune environment. Pitched roofs were added to avoid a "boxlike" appearance and native landscaping have been added to further temper the mass and scale of the structures. To address the LCP requirement to provide additional shoreline views, the project has incorporated a public observation tower that will provide a new view not otherwise available to the public. In addition, the western extent of the project has been pulled back away from Meadow Creek, which clusters the buildings into a tighter configuration.

In previous meetings with the City, Commission staff has commented that the design of this project should be coordinated with other developments envisioned for the C-P-C zoning district and Beach



Neighborhood, such as the City/State Parks Lodge and Conference Center that is being planned next to this project. In addition to creating a consistent beach oriented theme for the visitor-serving commercial area, looking at the C-P-C zoning district as a whole rather than solely on this individual project, will aid in implementing all LCP development standards.

### 3. Conclusion

The Commission finds that the revised design of the project adequately protects scenic resources and community character consistent with the provisions of the LCP.

## F. Public Services

### 1. Applicable Policies

**LUP Policy 2: Water Supply.** *Development throughout the City shall be phased and planned so that at least 20 percent of the City’s total annual water supply capacity is reserved and available to new and existing land uses within the City’s portion of the Coastal Zone. In compliance with Section 30254 of the Coastal Act, the following annual allocations of the Coastal Zone share of the City water capacity shall be made:*

*Recreation-oriented uses: 17 percent of Coastal Zone capacity*

*General Commercial uses: 1 percent of Coastal Zone capacity*

*Residential uses: 80 percent of Coastal Zone capacity*

*Industrial uses: 2 percent of Coastal Zone capacity*

**LUP Policy 2: Sewer Service.** *Development throughout the city shall be phased and planned so that at least 20 percent of the City’s total average daily sewer treatment capacity and 20 percent of the City’s total peak flow capacity are available to new and existing land uses within the Coastal Zone. Of these amounts, the following allocations of average daily and peak flow capacities shall be made:*

<i>Use</i>	<i>Average Daily</i>	<i>Peak Flow</i>
<i>Recreation-oriented</i>	<i>10 percent</i>	<i>12 percent</i>
<i>General Commercial</i>	<i>2 percent</i>	<i>1 percent</i>
<i>Residential</i>	<i>83 percent</i>	<i>83 percent</i>
<i>Industrial</i>	<i>5 percent</i>	<i>4 percent</i>

### 2. Analysis of Consistency

The LCP places requirements on the manner in which public services are distributed within the City. Specifically, the LCP requires that at least 20 percent of the City’s total annual water supply capacity and 20 percent of the City’s total average daily sewer treatment capacity be reserved and available for new and existing land uses within the City’s portion of the coastal zone. Within the City’s portion of the



coastal zone, additional sub-allocations are required for water supply based on the type of use proposed. In addition, specific allocations of average daily and peak flow sewer capacities must be made depending on the type of use proposed.

The Mitigated Negative Declaration adopted by the City includes findings of sufficient water supply and wastewater capacity to serve the project. With respect to water supply, information has been provided by the applicant showing that the City has available water supply through 2010 at 2,328 afy. Current consumption is 2,120 afy and the project is projected to use up to 3.88 afy. Regarding wastewater capacity, the community is served by the South San Luis Obispo County Sanitation District. A representative from the City sits on the Board of Directors, however, sewer collection determinations are made by the District and not the City. According to information provided by the applicant, the projected average daily flow of wastewater would be 73% of current capacity in the year 2020. In addition, the City Engineer has also provided a letter indicating that the City has capacity in both its water and sewer systems to serve the project (see Exhibit G).

### 3. Conclusion

The larger issues regarding water supply/wastewater allocations in the coastal zone of Grover Beach are unresolved. Clearly, a comprehensive review of uses and public service allocations is needed. That said, these larger planning issues are beyond the ability of this single applicant to resolve. In this case, the Applicant received the necessary commitment to serve the project from the City. As such, the proposed project can be found consistent with the LCP's public service water and wastewater requirements in this case.

### G. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of 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.

The City, acting as the lead CEQA agency, approved a Mitigated Negative Declaration pursuant to Public Resources Code Section 21000 et seq. and California Code of Regulations Section 15000 et seq., on September 17, 2007.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The Commission has reviewed the relevant coastal resource issues with the proposed project, and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference.





The Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA. As such, there are no additional feasible alternatives nor feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. If so modified, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

