

CALIFORNIA COASTAL COMMISSION

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Filed: 4/13/2010
49th Day: 6/1/2010
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Staff: Charles Posner - LB
Staff Report: 4/21/2010
Hearing Date: May 12, 2010
Commission Action:



W4a

STAFF REPORT: CONSENT CALENDAR

APPLICATION NUMBER: 5-10-019

APPLICANT: Santa Catalina Island Company

AGENT: Jared Ficker, California Strategies, LLC

PROJECT LOCATION: Descanso Bay, City of Avalon, Santa Catalina Island, County of Los Angeles.

PROJECT DESCRIPTION: Establish a commercial underwater tourist attraction (Sea Trek) that utilizes a floating dock seaward of the mean high tide line at Descanso Bay. The Sea Trek underwater tourist attraction will provide a guide service to lead small groups of customers (with air hoses for breathing) on underwater walks on the seafloor to observe marine life.

LOCAL APPROVAL: City of Avalon Local Coastal Development Permit, Case No. PC-2388, 9/30/2009.

SUBSTANTIVE FILE DOCUMENTS:

1. City of Avalon certified Local Coastal Program (LCP), May 21, 1981.
2. Marine Biological Survey Report and Project Impact Assessment for the Descanso Beach Sea Trek Underwater Walking Tour, Santa Catalina Island, California, by Coastal Resources Management, Inc., 10/7/2009.

SUMMARY OF STAFF RECOMMENDATION

A coastal development permit is required from the Commission because the proposed project involves a change of intensity of water use within the Commission's area of original jurisdiction. Staff is recommending **APPROVAL** of the coastal development permit with special conditions relating to the protection of public access and the marine resources of Descanso Bay. The recommended conditions require the permittee to monitor the impacts of the underwater walking tours on the marine habitat for three years, and to obtain a new Commission approval after three years of monitoring. Special conditions also prohibit interference with public access in the project area and require compliance with the requirements of the resource agencies. **See Page Two for the motion necessary to carry out the staff recommendation.**

STAFF NOTE:

Pursuant to Section 30519 of the Coastal Act, development located within the Commission's area of original jurisdiction requires a coastal development permit from the Commission. The Commission's area of original jurisdiction includes tidelands, submerged lands, and public trust lands, whether filled or unfilled. The proposed project is situated on submerged lands within the Commission's area of original jurisdiction. The Commission's standard of review for the proposed development in its area of original jurisdiction is the Chapter 3 policies of the Coastal Act. The City of Avalon certified LCP is advisory in nature and may provide guidance. The proposed project does not conflict with the City of Avalon certified LCP.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution to **APPROVE** the coastal development permit application with special conditions:

MOTION: *"I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations."*

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. An affirmative vote by a majority of the Commissioners present is needed to pass the motion.

I. Resolution: Approval with Conditions

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. 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 this permit is reported to the Commission. 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.

III. Special Conditions

1. Permit Time Limit – Three Years

The Commission's approval for the Sea Trek underwater tourist attraction shall expire three years after the date of the Commission's approval, unless the Commission approves a permit amendment to extend the time limit. If the permittee submits a permit amendment request before expiration of the time limit, the Executive Director may authorize the program to continue as authorized by this coastal development permit until the Commission can act on the future amendment request. If the Commission does not approve a permit amendment granting an extension of this time limit, the Sea Trek underwater tourist attraction shall be discontinued. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions. Any deviation from the proposal as approved by the Commission must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is required pursuant to the requirements of the Coastal Act and the California Code of Regulations.

2. Monitoring of the Marine Habitat

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director in consultation with the U.S. Department of Fish and Game and the Fish and Wildlife Service as appropriate, a final detailed monitoring program designed by a qualified marine biologist for monitoring of the project site. The monitoring program shall at a minimum include the following:

- A. Provisions for monitoring the intertidal and subtidal areas where the underwater guided tourists walk along the seafloor, including quantitative surveys of the physical characteristics and benthos biology along permanent transects every half meter. The surveys shall be conducted at least two times per year, once at the beginning of the summer season, and again at the end of the summer season.
- B. Provisions assessing the initial biological and ecological status of the project site prior to the initiation of the approved underwater tourist attraction, in accordance with the final detailed monitoring program. The assessment shall include an analysis of the attributes that will be monitored pursuant to the program.

- C. Provisions for monitoring of the project site in accordance with the approved final mitigation program for a period of three years.
- D. Provisions for submission of annual reports of monitoring results to the Executive Director for the duration of the required monitoring period, beginning the first year after submission of the initial biological and ecological assessment. Each report shall include copies of all previous reports as appendices. Each report shall also include an "Evaluation" section where information and results from the monitoring program are used to evaluate any changes to the project site over time.
- E. Provisions for submission of a final monitoring report prepared by a qualified marine biologist to the Executive Director at the end of the three-year reporting period. The final report must evaluate whether changes to the project site have occurred over time and whether the underwater guided walking tours have adversely affected the marine biology. The report must address all of the monitoring data collected over the three-year period.

3. Public Access

The permittee and the approved development shall not interfere with public access along the shoreline or in the project area.

4. Conformance with the Requirements of the Resource Agencies

The permittee shall comply with all requirements, requests and mitigation measures from the California Department of Fish and Game, Regional Water Quality Control Board, California State Lands Commission, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The proposed project involves the establishment of a commercial tourist attraction (Sea Trek) seaward of the mean high tide line in Descanso Bay. Sea Trek operators propose to provide a guide service to lead small groups of customers with air hoses on underwater walks on the seafloor to observe marine life. The underwater walking tour would be along a 260-foot long pre-designated trail situated in waters about fifteen feet deep, about 100-to-200 feet from the shoreline (Exhibit #4).

After paying their guide fees, each group of four-to-six tourists will be given underwater helmets and a safety and environmental briefing, and then transported by skiff to a floating dock anchored about sixty feet from the rocky beach in Descanso Bay. The applicant states that the anchors for the floating dock are already in place, and the float (approximately 10'x 10') has been removed and reattached seasonally in prior years. As part of the proposed project, the floating dock would be modified to include a canopy, a ladder, and the air hoses which will provide air to the underwater tourists wearing special helmets (Exhibit #5).

Once on the floating dock, the group will use a ladder to climb down from the dock and onto the seafloor. With the land-based air hoses providing more than the necessary amount of air to their helmets, the tourists will walk along the pre-designated trail which is limited to the parts of the seafloor comprised of only sand and cobble, but near the rocky reefs. A certified Sea Trek guide will accompany every group. Each underwater walking tour takes about thirty minutes. The applicant expects to guide up to 200 visitors per week at Sea Trek during the summer, and about 1200-1500 visitors annually.

The Marine Biological Survey Report prepared for the proposal concludes that the footsteps of the tourists and guides will result in localized turbidity and minor habitat disruption to marine plants, invertebrates and fish, but these impacts will be minor and less-than-significant [Marine Biological Survey Report and Project Impact Assessment for the Descanso Beach Sea Trek Underwater Walking Tour, Santa Catalina Island, California, by Coastal Resources Management, Inc., 10/7/2009]. The applicant has agreed to avoid kelp beds and reefs by keeping the tours on a pre-designated trail which is limited to the parts of the seafloor comprised of only sand and cobble. Although no long term impacts to marine resources are anticipated, the applicant has proposed to retain a marine biologist to conduct surveys to assess the impacts of the proposed underwater guided walking tours. The California Department of Fish and Game has reviewed the Sea Trek proposal and has no objections as long as the best management practices (BMPs) and monitoring provisions listed in the Biological Survey Report are implemented as part of the project. The suggested BMPs are attached as Exhibit #6.

Except for the improvements associated with the floating dock, the proposed project includes no physical development seaward of the high tide line. The applicant has obtained approval for the landside improvements associated with Sea Trek (e.g., ticket booth, restrooms, cabanas, retail space, patio and walkways) from the City of Avalon pursuant to Local Coastal

Development Permit No. PC-2388. A new pier planned for the project area will be the subject of a separate permit application.

B. Marine Resources – Water Quality

The Coastal Act contains policies that address development in or near coastal waters. The proposed project is located in the coastal waters of Descanso Bay at Catalina Island (See Exhibits). The standard of review development proposed in coastal waters is the Chapter 3 policies of the Coastal Act, including the following marine resource policies. Sections 30230 and 30231 of the Coastal Act require the protection of biological productivity, public recreation and marine resources. Section 30240 of the Coastal Act requires that the proposed project shall be sited and designed to prevent impacts which would significantly degrade environmentally sensitive habitat areas. The intertidal and subtidal areas of Descanso Bay contain environmentally sensitive habitat areas, which shall be protected from the adverse impacts of development. The permit is conditioned to protect these marine resources.

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(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 such areas, and shall be compatible with the continuance of such habitat areas.

Bottom disturbance that will occur as groups of tourists and guides walk along the seafloor will increase in water turbidity and result in temporary habitat disruptions. According to the Marine Biological Survey Report, these impacts are not expected to be significant. The applicant has

agreed to avoid kelp beds and reefs by keeping the walking tours on a pre-designated trail which is limited to the parts of the seafloor comprised of only sand and cobble. The applicant has also proposed to retain a marine biologist to conduct surveys to assess the impacts of the proposed underwater guided walking tours. The Marine Biological Survey Report's suggested BMPs are attached as Exhibit #6.

Special Condition Two requires the applicant to monitor the marine habitat for three years in order to determine whether the underwater guided walking tours have adversely affected the marine biology at the project site. **Special Condition One** limits the term of the permit to three years so the Commission will be able to analyze the results of the monitoring plan before deciding whether to extend the proposal for another term. **Special Condition Four** requires the permittee to comply with all permit requirements and mitigation measures of the California Department of Fish and Game, California State Lands Commission, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Only as conditioned will the proposed project ensure that marine resources and water quality be protected as required by Sections 30230, 30231 and 30240 of the Coastal Act.

C. Public Access and Recreation

One of the basic goals stated in the Coastal Act is to maximize public access and recreation along the coast. The proposed project is conditioned to conform with the following Coastal Act policies which protect and encourage public access and recreational use of coastal areas.

Section 30210 of the Coastal Act states:

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

Section 30213 of the Coastal Act states:

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

Section 30224 of the Coastal Act states:

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

The public currently has access to the shoreline at Descanso Bay, although visitors walking to Descanso Bay Beach may be asked by the applicant to pay a fee for being on private property. The proposed project will provide unique access to the underwater environment and will provide public recreational opportunities at Catalina Island. The proposed project will not adversely affect the Casino Point scuba diving area. The designated scuba area on the north side of Casino Point in Descanso Bay is located further seaward than the project site. **Special Condition Three** prohibits the applicant and the development from interfering with public access along the shoreline or in the project area. Exclusive use of the project area is not permitted. Only as conditioned can the proposed project be found consistent with the public access and recreation policies of the Coastal Act.

D. California Environmental Quality Act (CEQA)

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

The City of Avalon the lead agency for the purposes of CEQA review and found the Sea Trek proposal to be exempt from CEQA. The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and complies with the applicable requirements of the Coastal Act to conform to CEQA.

E. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program (LCP) which conforms with Chapter 3 policies of the Coastal Act. A coastal development permit is required from the Commission for the proposed development because it is located within the Commission's area of original jurisdiction. The Commission's standard of review for the proposed development is the Chapter 3 policies of the Coastal Act. The City of Avalon certified LCP is advisory in nature and may provide guidance.

The Commission certified the City of Avalon LCP on May 21, 1981. The City of Avalon certified Land Use Plan (LUP) designates the project area as a Resort Recreational District. The certified LCP states that the Resort Recreational District is established "for the purpose of stimulating and allowing a variety of uses associated with the resort character of Avalon." The principal use of the Resort Recreational District is that of resort hotel uses and associated activities. The proposed project, which supports public recreation, is consistent with the Resort Recreational land use designation.

The City of Avalon certified LCP sets forth the following relevant policies:

Access Policy 2: Any development which takes place in Descanso Canyon shall assure that the beach and accessway from Casino Way be made available for public use.

Access Policy 6: At Descanso and Hamilton Coves, the public walkway shall be extended from Casino Point in a feasible location.

Recreation Policy 1: Descanso Beach and Hamilton Cove shall provide visitor-serving facilities.

Recreation Policy 3: Development on City Tidelands shall be restricted to visitor-serving or recreational uses.

Recreation Policy 4: Public facilities shall be constantly upgraded and maintained.

Recreation Policy 6: Casino Point shall be designated as a public park, and for swimming and scuba diving.

Marine Resource Policy 1: Identify and control existing sources of runoff into the harbor and surrounding coves.

Marine Resource Policy 2: Require new developments adjacent to the water to use the best mitigation measure available for controlling runoff.

ESHA Policy 3: Existing air and water quality in Avalon shall be a primary concern in any new development or potentially impacting activity.

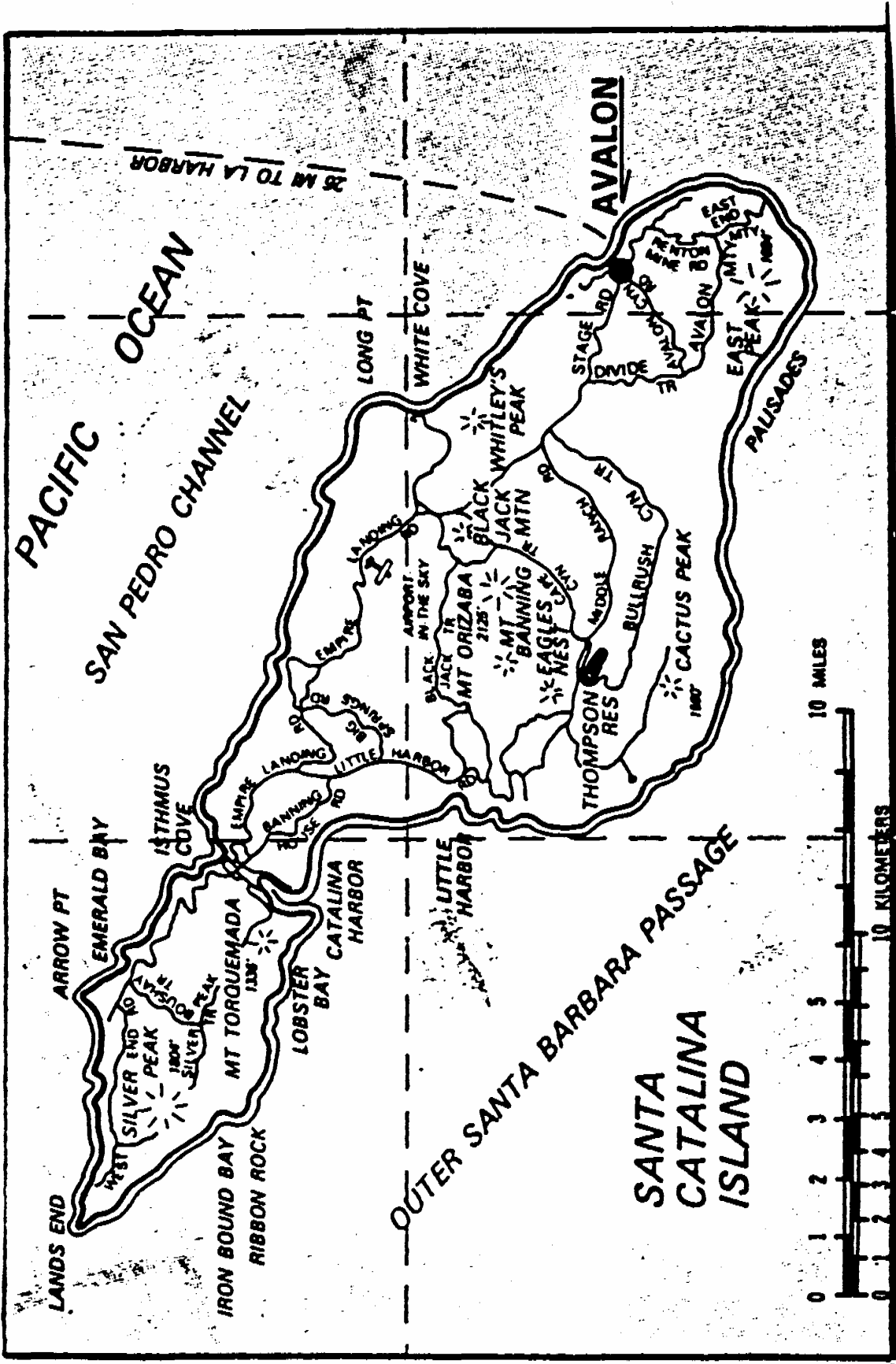
Hazard Policy 3: Locate new developments to avoid hazards.

New Development Policy 5: Give priority to affordable housing and visitor-serving facilities if infrastructure limitations become restrictive.

Visual Resource Policy 3: Continue to preserve the scale and charm of existing development through the adoption of design criteria and height and bulk restrictions.

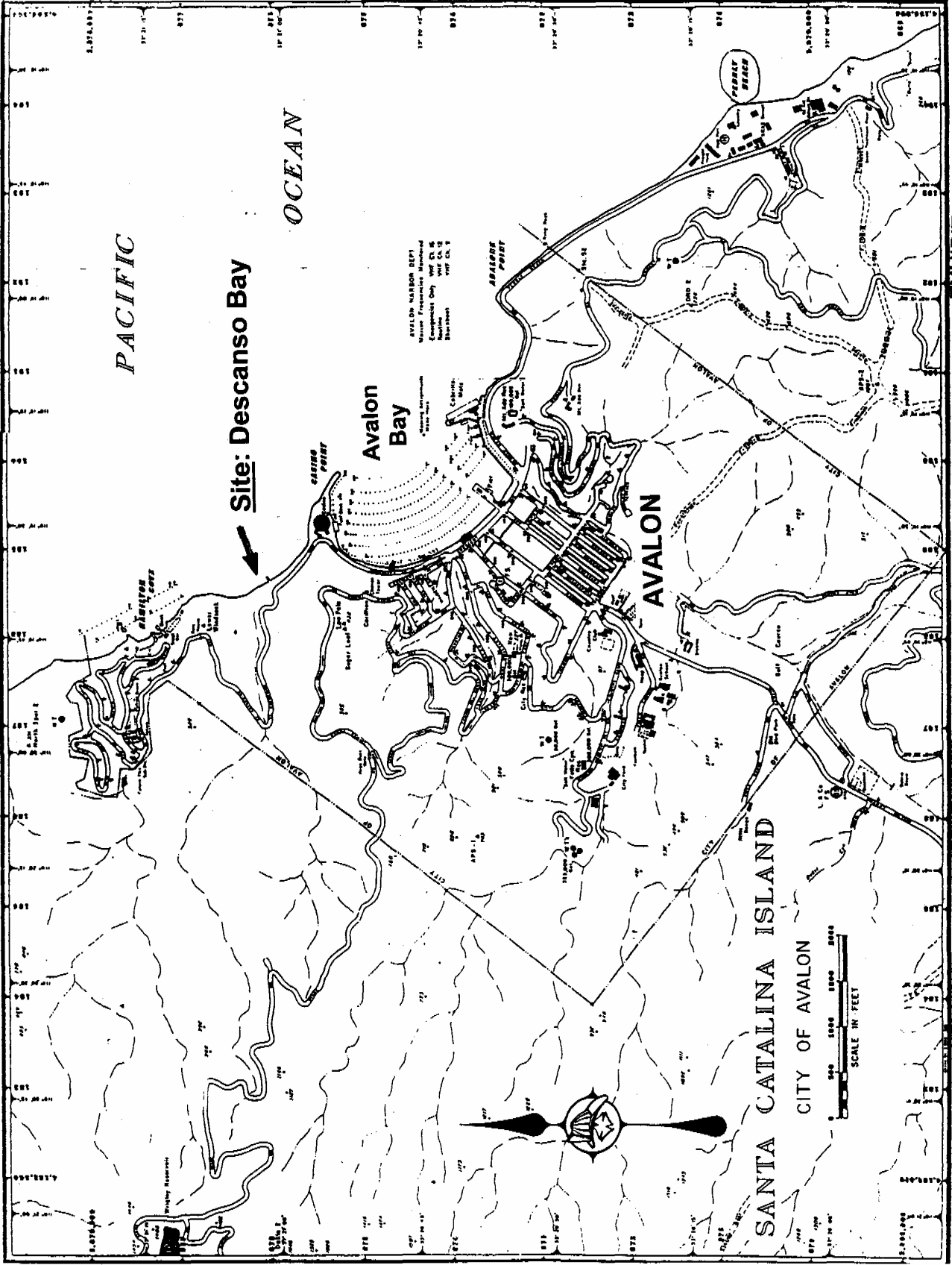
Visual Resource Policy 4: Allow no development along the shoreline which in any way restricts the view of the water from the adjacent pedestrian walk.

As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and the certified LCP for the area.



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EXHIBIT # 1
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Descanso Beach

Sea Trek Project Site

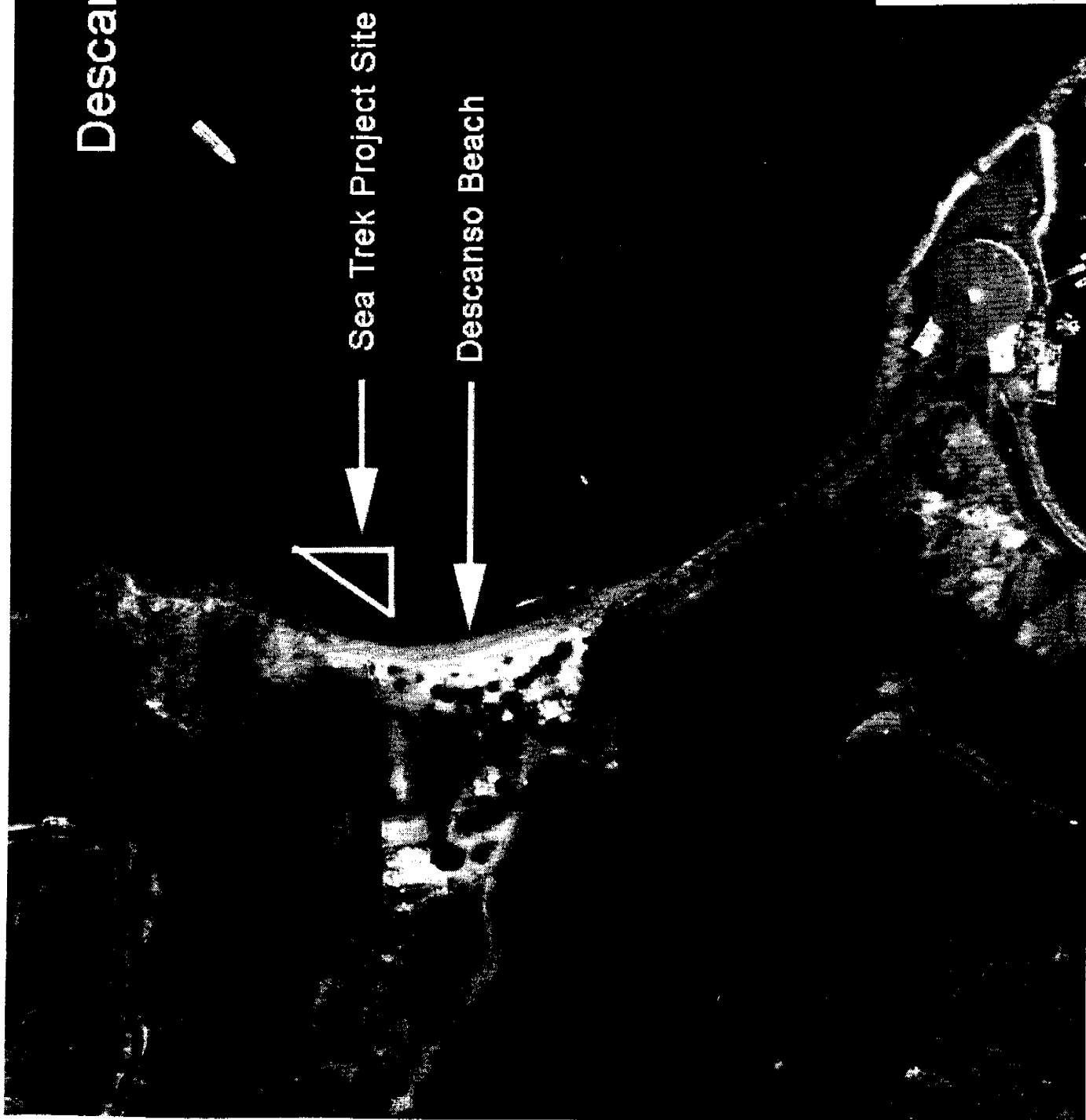
Descanso Beach

COASTAL COMMISSION

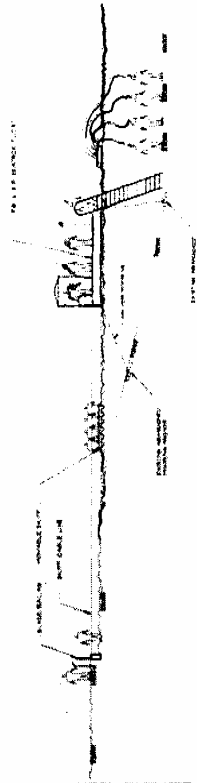
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EXHIBIT # 3

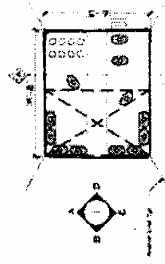
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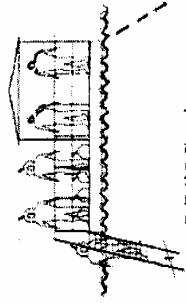
Site Plans. Source: Santa Catalina Island Company



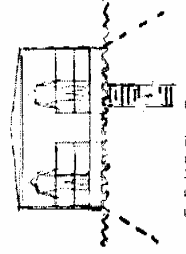
FLOAT CONCEPT



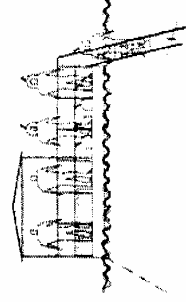
FLOOR PLAN



ELEVATION 1A



ELEVATION B



ELEVATION 1C

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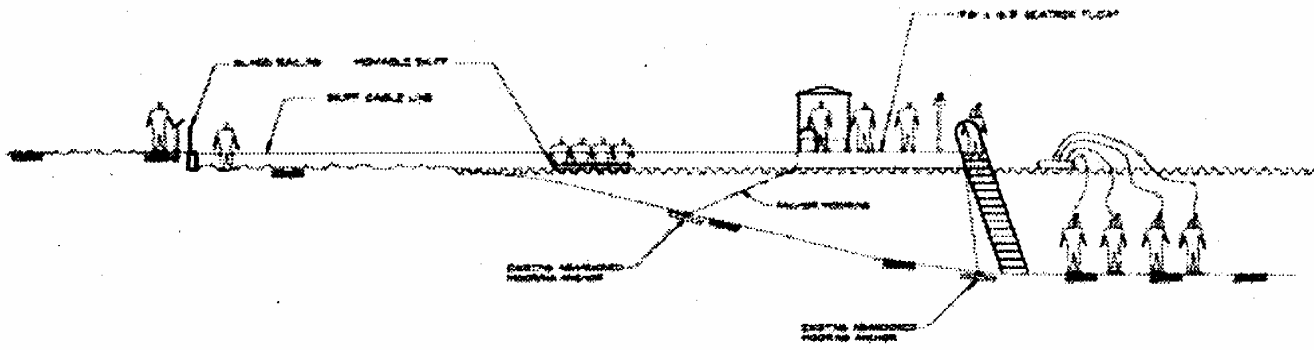
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Sea Trek Plan

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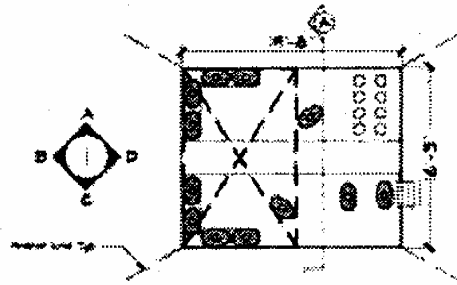
EXHIBIT # 4

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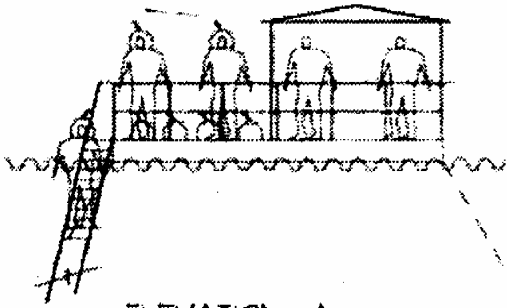


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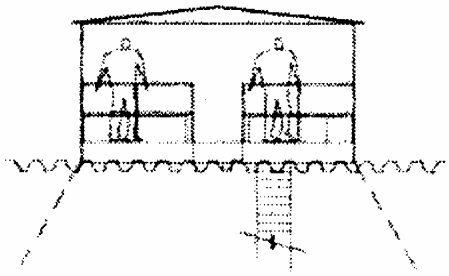
Sea Trek



FLOAT PLAN



ELEVATION -A



ELEVATION -B

Floating Dock Plan

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 EXHIBIT # 5
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5.0 SUGGESTED BEST MANAGEMENT PRACTICES

- Adhere to local and/or State of California Regional Water Quality Control Board Section 401(b) requirements that provide not-to-exceed water quality limits for turbidity and conform to County of Los Angeles Stormwater Runoff Guidelines.
- Implement Best Management Practices to contain and minimize the spread of any construction-related turbidity plume resulting from the project, including, but not limited to using silt curtains when repositioning mooring anchors if necessary.
- Prohibit the discard of construction and trash debris into the intertidal zone or the nearshore waters during construction or Sea Trek operations
- Maintain all construction-related equipment and fuel pier operation equipment in good working order to minimize the potential for hazardous waste spills. Maintain current hazardous material spill prevention and cleanup plans on site.
- Implement a single-file, underwater walking plan to limit aerial damage to soft bottom subtidal habitat
- Use small floats attached to earth anchors that are positioned one meter above the seafloor around the perimeter of the walking pathway to reduce the areal impact of any sea-trekking operations on soft-bottom habitat
- Avoid reefs and patch reef outcrops. Pre-set, designated underwater walking route should be accompanied by a buffer zone around reef habitat, that will keep underwater walkers five meters away from reef and kelp bed habitat, including isolated patch reef habitat over sandy/silt habitat.
- To minimize entanglements of air supply hoses with kelp, , air supply hose lines should be kept away from any kelp canopy. If required for the safety of the Sea Trekkers, cutting a portion of the surface canopy or stipes is recommended. Whole kelp plants should not be torn away or removed.
- Implement a plan to remove the invasive *Sargassum filicinum* from the reefs within the Sea Trek project area during the operation of Sea Trek operations to enhance species diversity with the assistance of the Catalina Conservancy and the Department of Fish and Game. Actively control the population of this invasive species.
- Provide educational materials to customers prior to their underwater excursion to promote the protection of the underwater natural resources of the project site and Catalina Island.



City of Avalon

Santa Catalina Island

March 17, 2010

Mr. Charles R. Posner
Coastal Program Analyst
California Coastal Commission
200 OceanGate, Suite 1000
Long Beach, CA 90802

RECEIVED
South Coast Region

APR 13 2010

CALIFORNIA
COASTAL COMMISSION

Subject: Sea Trek activity on Catalina Island Avalon, CA; CDP Application 5-10-019

Dear Mr. Posner:

The City of Avalon is the State Lands Grantee for the tidelands adjacent to the City, namely Avalon Bay and Descanso Bay. The City has discussed CDP Application 5-10-019 with the applicant, the Santa Catalina Island Company (SCICo). SCICo expressed that the City must be invited to be a co-applicant for this coastal development permit. The City sees no need to be a co-applicant. The proposed Sea Trek activity was reviewed and approved as part of the Descanso Beach plan last year. Notice of Final Action was submitted to the Coastal Commission last year. This information was included in SCICo's coastal development permit application.

The Descanso Beach plan included a number of modest visitor-serving improvements. Basic supporting infrastructure for the Sea Trek activity was included in the plan. The Sea Trek activity proposed in Descanso Bay is a temporary underwater visitor experience, similar to SCUBA diving, but guided. Since it is guided, it will offer an experience to novice visitors that might otherwise struggle with SCUBA-related experiences. SCICo conducted a detailed marine biological survey related to the proposed Sea Trek activity which was subsequently reviewed and accepted by the Department of Fish and Game.

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EXHIBIT # 7
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The City has long been a proponent of providing unique visitor-serving experiences in a special coastal environment like Catalina Island. Visitors to Avalon often seek out an underwater experience through our famous glass-bottom boats, snorkeling, resort SCUBA diving, and as certified SCUBA divers. Sea Trek fulfills a special niche of underwater experience desired by visitors. It offers this experience in a controlled way to ensure safety and protect resources.

We are aware of the SCICo efforts to proceed with Sea Trek and appreciate the Coastal Commission's desire to learn more. However, we see no actual proposed "coastal development" that is not already permitted. We encourage the Coastal Commission to approve the Sea Trek activity through an exemption or waiver. We are rapidly approaching the tourism season here and Sea Trek is the kind of unique experience that attracts visitors to the Avalon. The City has worked closely with SCICo to make a number of visitor-serving improvements to provide unique experiences for our visitors.

If you have any questions related to Sea Trek and the City's role or jurisdiction please do not hesitate to contact me.

Sincerely,



Steven Hoefs
City Manager

Cc: Randy Herrel, Santa Catalina Island Company
Bob Kennedy, Mayor
Scott Campbell, City Attorney
Gary Timm, California Coastal Commission
Jack Ainsworth, California Coastal Commission

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