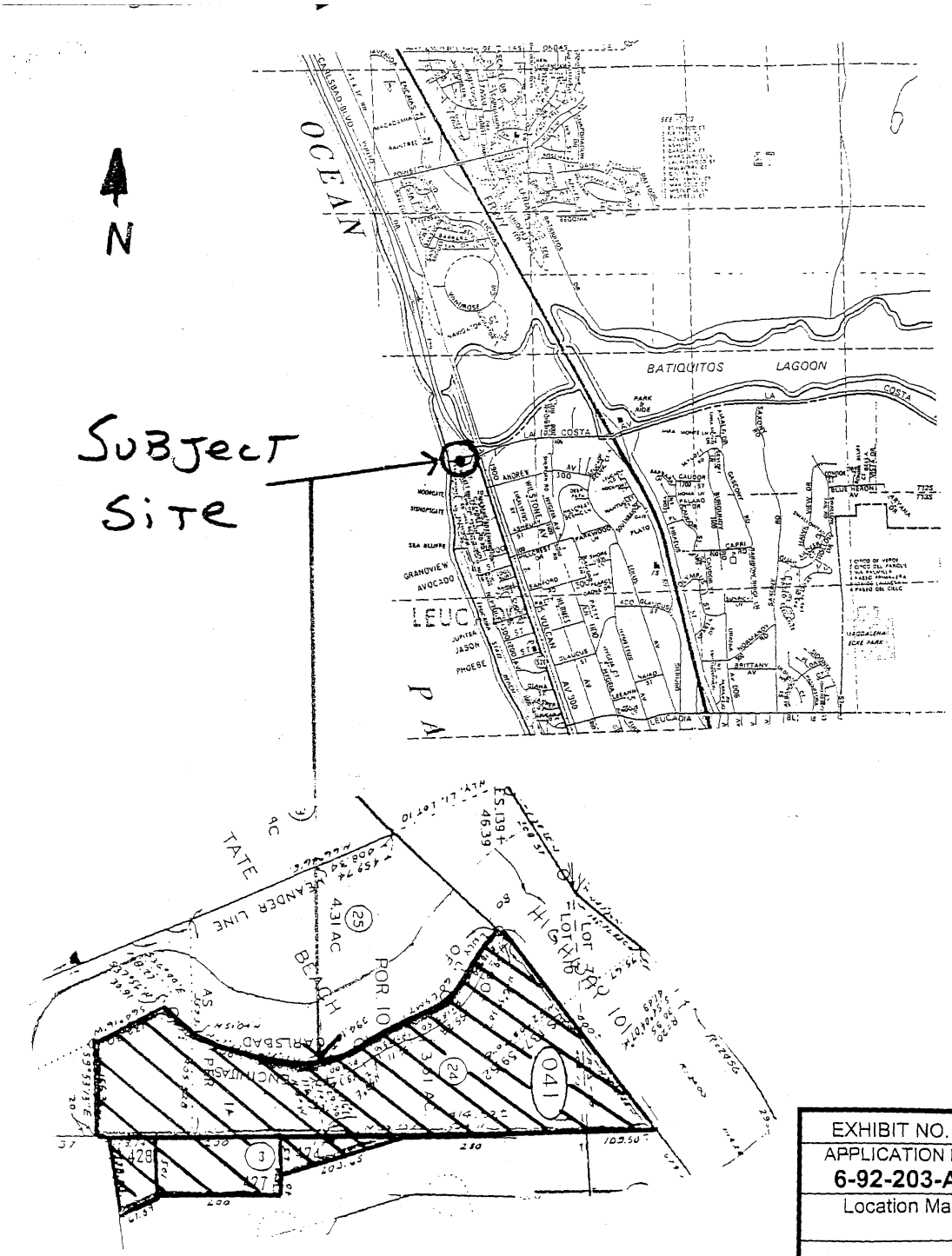


EXHIBIT NO. 1
APPLICATION NO.
6-92-203-A4
Location Map

California Coastal Commission

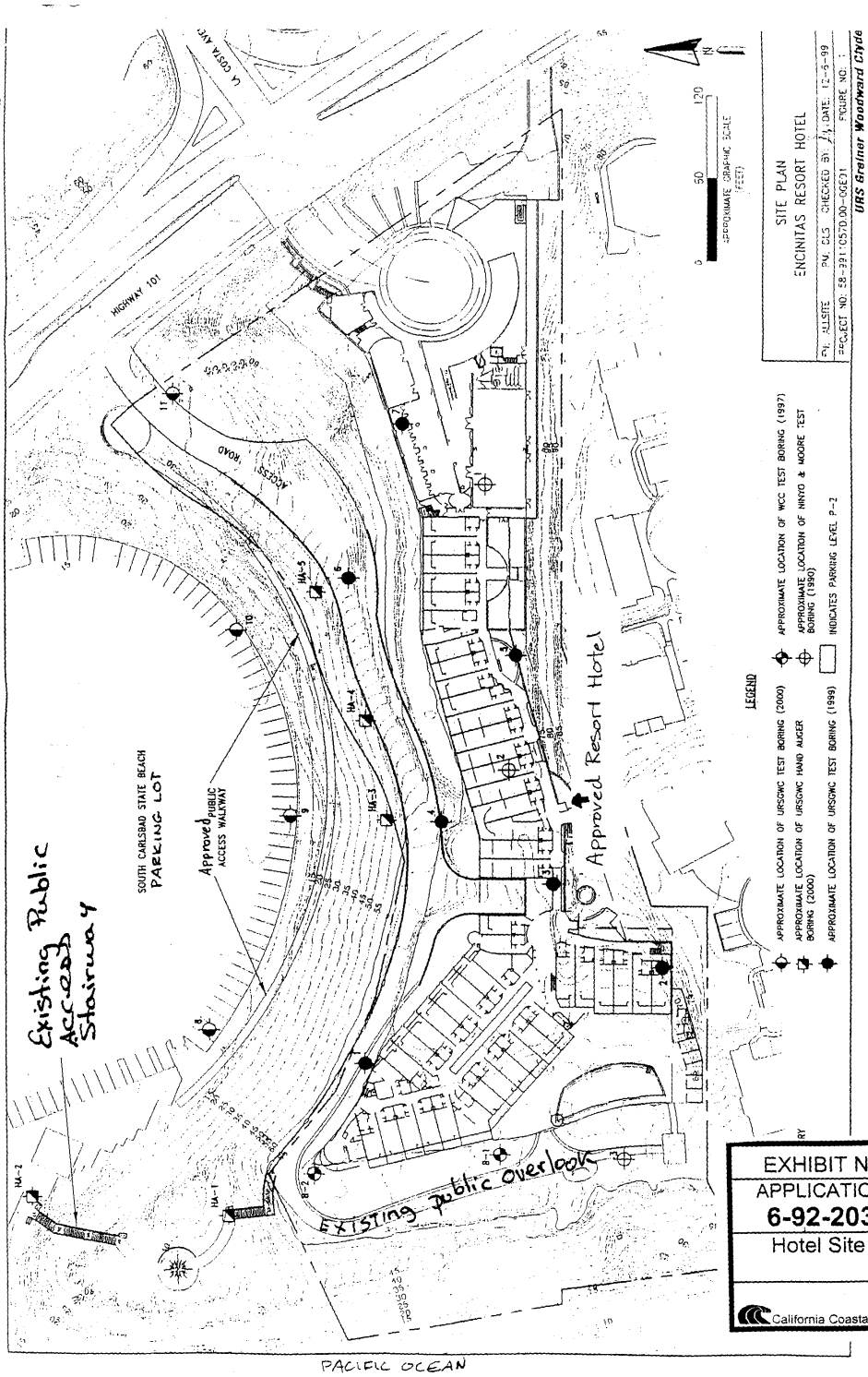


EXHIBIT NO. 2
APPLICATION NO.
6-92-203-A4
Hotel Site Plan

California Coastal Commission

'ATE OF CALIFORNIA – THE RESOURCES AGENCY
GRAY DAVIS, Governor

:ALIFORNIA COASTAL COMMISSION
AN DIEGO AREA
575 METROPOLITAN DRIVE, SUITE 103
AN DIEGO, CA 92108-4402
519) 767-2370

AMENDED COASTAL
DEVELOPMENT PERMIT NO. 6-92-203-A1
Page 1 of 11

On December 10, 1992 and as amended on July 11, 2000, the California Coastal Commission granted to Encinitas Resort Corporation this permit for the development described below, subject to the Attached Special Conditions.

Original Description: Demolition of 3 single-family residences, relocation of 7 mobile homes and the construction of an approximately 138,460 sq. ft., two-story, 130-unit resort hotel complex with banquet facilities, a restaurant, public access amenities, and 230 space underground parking garage on 4.3 acre blufftop site. Also proposed are the consolidation of 4 lots into 1 lot and the vacation of 2 public access easements totaling .67 acres.

Proposed Amendment: Construction of a public beach access stairway on a coastal bluff from the bluff top to the adjacent State Parks parking lot, as required by special condition #2 of the original permit.

Site: 2100 North Highway 101, Leucadia, Encinitas, San Diego County. APN 216-041-24, 254-043-02, 03, 04

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS
Executive Director
and

Diana Gilly

RECEIVED
NOV 1 7 2000
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

EXHIBIT NO. 3
APPLICATION NO.
6-92-203-A4
Original Coastal Development Permit
Page 1 of 11
California Coastal Commission

AMENDMENT TO COASTAL DEVELOPMENT PERMIT NO. 6-92-203-A1
Page 2 of 11

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT AND ANY SUBSEQUENT AMENDMENTS THEREOF WITH THE SIGNED ACKNOWLEDGEMENTS HAVE BEEN RETURNED TO THE COMMISSION OFFICE.

ACKNOWLEDGEMENT

The undersigned permittee acknowledges receipt of this permit as amended, and agrees to abide by all terms and conditions thereof.

11/16/00 _____
Date Signature of Permittee

SPECIAL CONDITIONS:

This amended permit is subject to the following special conditions:

1. Final/Revised Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final/revised site, building, and foundation plans that have been approved by the City of Encinitas and shall incorporate the following:

a. A revised site plan indicating a minimum 25-ft. setback for all structures from the inland bluff edge as shown on Exhibit #3 attached. The inland bluff edge is generally described as the 60-ft. topographic contour from the western limit and ascending to the 78-ft. topographic contour adjacent to the proposed restaurant site and eastern limit of the inland bluff. In addition, the revised site plan shall indicate that the connecting access path, as described in Special Condition #2 below, has been revised to follow the inland bluff edge, to the north of the proposed restaurant and extending to the hotel entrance at Highway 101. The plan shall indicate that the only structures permitted within the 25-foot setback shall include the public access pathways.

b. Said plans shall have received design review approval from the City of Encinitas and verify that no structure shall exceed 2 stories or 30 feet in height as measured from the lower of natural or finished grade.

2. On/Off-site Public Access Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, detailed plans which shall incorporate each of the following access features:

a. Blufftop Overlook. A blufftop scenic overlook for hotel guests and the visiting public along the western portion of the site. Said overlook shall include a safety rail or barrier, which does not interfere with public views, and benches for the visiting public. No structures are to be located within 5 ft. of the bluff edge. The overlooks structural features shall be designed to facilitate relocation as needed to respond to potential bluff erosion. The public area shall include at a minimum the area of 55 ft. from the top of the bluff (approximately 60-ft. topographic contour) as indicated on the site plan dated January 13, 1992.

b. Public Parking. The hotel parking lot shall be available for use by the general public.

c. Public Access Stairway/State Park Overlook. A stairway that extends for the top of the coastal bluff at the northwestern corner of the site, off-site in a northward direction down the bluff to the State Beach parking lot below. Said stair structure shall provide a public viewing area/rest platform halfway down that includes seating and a shade structure for the visiting public.

d. Connecting Access Path. A paved sidewalk or pedestrian access path for public use, at least 8 feet in width, that connects the seabluff overlook and Highway 101 and follows along the top of the inland bluff, as depicted on the revised site plan required under Special Condition #1 above.

e. Pedestrian Access Road. A paved pedestrian/handicapped access path for public use that extends from Highway 101 and the adjacent State Parks parking lot (off-site) to the connecting path (d. above) on-site at the top of the inland hillside.

f. Signage. Access routes, overlooks and blufftop access stair shall be clearly marked for public use with a minimum of one sign located along Highway 101 at the entrance to the hotel and at the entrance to the pedestrian access road; at the base and top of the access stairway; at the blufftop overlook and in the parking garage. Said signage shall indicate the provision of public access through the site, the availability of public parking and the location of the blufftop overlook and access stair. In addition, signage shall be located at the adjacent State Beach parking lot (the placement and design to be acceptable to the State Department of Parks and Recreation) that directs the public to the access trails and blufftop overlook at the proposed hotel site. The text, design and location of such signs, which shall be clearly visible, shall be subject to review and approval of the Coastal Commission prior to issuance of the permit.

g. Continual Access. No structures shall be constructed or placed that would impede use of the public accessways or blufftop overlook by the general public.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall apply for and obtain a separate coastal development permit for the proposed off-site public access stairway/state park overlook. Approval shall first be obtained from the State Department of Parks and Recreation. The plans shall indicate the access structures shall be constructed prior to or concurrent with the hotel construction, and shall be completed prior to occupancy of the hotel. All plans shall be first be reviewed and approved by the City of Encinitas.

3. Implementation of the On-site and Off-site Access Programs. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, applicant shall record a restriction against the subject property, free of prior liens and encumbrances, except for tax liens, and binding on the permittee's successors in interest and any subsequent purchasers of any portion of the real property. The restriction shall state that the applicant shall agree to construct and maintain the public access facilities on-site and off-site as depicted on the plans required and approved pursuant to Special Condition #2 of the permit. The applicant shall agree to construct the access features prior to or concurrent with the hotel construction, and that the access improvements shall be completed prior to occupancy of the hotel. The applicant shall also agree to maintain said access improvements in perpetuity regardless of whether the required access easements are accepted by a public agency or private association. The recording document shall be in a form and content acceptable to the Executive Director. Evidence of recordation of such restriction shall be subject to the review and written approval of the Executive Director.

4. Offer to Dedicate Public Access. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall record an irrevocable offer to dedicate to a public agency, or to a private association acceptable to the Executive Director, easements for passive recreational use and public access to and along the shoreline, as applicable. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Said easements shall encompass the access features required and approved pursuant to Special Condition No. 2 of coastal development permit #6-92-203, except where the features are located on existing public lands, and as depicted in concept on Exhibit #5 attached. The document shall include legal descriptions of both the applicant's entire parcel(s) and the easement areas. The offer shall be irrevocable for a period of 21 years, shall run in favor of the People of the State of California, binding successors and assigns of the applicant and/or landowners, and shall be recorded prior to all other liens and encumbrances, except tax liens. The offer to dedicate shall be in a form and content acceptable to the Executive Director.

5. Low Cost Recreational Facilities/In lieu Fee. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall comply with the following, subject to review and written approval of the Executive Director:

The applicant shall provide through a financial instrument subject to Executive Director approval, the amount of not less than $156,000 payable to the California Coastal Commission. Such deposit shall be available for distribution to a public agency or a private non-profit association designated in writing by the Executive Director of the Coastal Commission (including, but not limited to, the California Department of Parks and Recreation or the American Youth Hostel Association) for the acquisition of land and/or construction of a low-cost visitor serving overnight accommodations within San Diego County. Such funds shall be deposited, beginning with 10% of the total due prior to the issuance of the coastal development permit ($15,600); and the balance due prior to occupancy of the hotel ($140,400).

6. Prohibition on Conversion to Exclusive Use. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPLMENT PERMIT, the applicant shall submit evidence for review and approval in writing by the Executive Director, that a deed restriction has been recorded for the hotel site which indicates that this coastal development permit authorizes the development of a 103-unit resort hotel complex with banquet and meeting facilities and a restaurant, which is a proposed visitor serving use exclusively available to the general public. Furthermore, the deed restriction shall specify that conversion of any portion of the approved facilities to a private or member only use or the implementation of any program to allow extended or exclusive use or occupancy of the facilities by an individual or limited group or segment of the public is specifically not authorized by this permit and would require a amendment to this permit of a new permit in order to become effective. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances, except tax liens, and binding on the permittee's successors in interest and any subsequent purchasers of any portion of the real property.

7. Offer to Dedicate Open Space Easement. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall record an irrevocable offer to dedicate to a public agency, or to a private association acceptable to the Executive Director, an open space easement over the area shown on the attached Exhibit "#4" and generally described as the coastal bluff face from approximately the 60 ft. topographic contour to the toe of the bluff and the inland bluff face from the top of the bluff (approximately the 60 ft. topographic contour, except for the eastern most portion of the site where it ascends to the 78 ft. contour) to the northern property line. The document shall include legal descriptions of both the applicant's entire parcel(s) and the easement area. Said open space easement shall prohibit any alteration of landforms, placement or removal of vegetation, or erection of structures of any type, except as approved in coastal development permit #6-92-203.

The offer shall be irrevocable for a period of 21 years, shall run in favor of the People of the State of California, binding successors and assigns of the applicant and/or landowners, and shall be recorded prior to all other liens and encumbrances, except tax liens. The offer to dedicate shall be in a form and content acceptable to the Executive Director.

8. Revised Landscaping Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a detailed final landscape plan indicating the type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features. Drought tolerant native or naturalizing plant materials shall be utilized to the maximum extent feasible. In addition, said plans shall indicate the following:

a. All areas of the inland bluff that have been disturbed by grading historically or by grading for the proposed project shall be replanted with native species. Vegetation shall also be planted for purposes of screening the proposed retaining walls and potential de-silting basin located along the pedestrian access road.

b. The placement of at least 40-specimen size trees (minimum 24-inch box) along the northern and northeastern facing areas of the site (as alternatives or in addition to the proposed palms). Said trees shall be of a species with sufficient height and canopy to break-up the north facing building façade and effectively screen the north facing areas of the proposed development from views from Highway 101, the beach and and the lagoon. This may include landscaping on the off-site portions of the inland hillside, subject to approval by the State Department of Parks and Recreation.

c. Minimal landscaping shall be permitted within the geologic setback area (55 feet from the edge of the bluff). Any proposed landscape screening along the western limits of the hotel buildings shall occur outside the 55-setback area.

d. No permanent irrigation system shall be allowed within the geologic setback area (55 ft. from the coastal bluff), within 25 feet of the inland bluff, or on any bluff face.

e. Prior to occupancy of the hotel, all required plantings shall be in place. In addition, the applicant shall submit a written commitment that all required plantings shall be maintained in good growing condition, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape screening requirements.

Said plan shall first be approved by the City of Encinitas and State Department of Parks and Recreation, and shall be submitted to, reviewed and approved in writing by the Executive Director.

9. Exterior Treatment. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval of the Executive Director, a color board or other indication of the exterior materials and color scheme to be utilized in the construction of the proposed hotel facility. Said materials shall be consistent with those described in the following, which shall be recorded as a deed restriction against the property that states:

Any future modifications to the exterior surfaces of the hotel shall be implemented with building materials of natural earthen tones, including deep shades of green, brown and grey, with no white or light shades, and no bright tones, except as minor accents, to minimize the development's contrast with the surrounding scenic areas, and consistent with those approved under Coastal Development Permit #6-92-203, on file in the San Diego Commission Office.

10. Sign Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a comprehensive sign program for all proposed signage, including access signage as required in Special Condition #2 above, documenting that only monument signs, not to exceed eight (8) feet in height, or facade signs are proposed. No tall, freestanding pole or roof signs shall be allowed. Said plans shall be subject to the review and written approval of the Executive Director.

11. Assumption of Risk. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant [and landowner] shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from shoreline erosion, structural failure, earthquakes and related seismic hazards and other geologic conditions and the (b) applicant hereby waives any future claims of liability against the Commission or its successors in interest for damage from such hazards. The document shall run with the land, binding all successors and assigns.

12. Disposal of Graded Spoils. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall identify the location for the disposal of graded spoils. If the site is located within the coastal zone, a separate coastal development permit or permit amendment shall first be obtained from the California Coastal Commission or its successors in interest. In addition, any material found suitable for beach use by the State Department of Parks and Recreation shall be reserved for placement on the beach. Applicable permits/review/approval from the Army Corps of Engineers and/or California Department of Parks and Recreation or other public agency shall be obtained prior to placement on the beach.

13. Removal of Riprap. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit detailed plans for removal of the approximately 60 ft. of riprap along the base of the bluff for review and approval in writing by the Executive Director. Said plans shall indicate the location of access corridors to the construction site and staging area. Access corridors and staging areas shall be located in a manner that has the least impact on public access via the maintenance of existing public parking areas and traffic flow on coastal access routes (Highway 101 and La Costa Avenue, in this instance). Use of public parking areas for staging/storage areas shall not be permitted. Disturbance to sand and intertidal areas shall be minimized. Beach sand excavated shall be redeposited on the beach. In addition, said plans shall also indicate that removal shall not occur during the summer months (Memorial Day weekend to Labor Day) of any year. The applicant shall submit

photographic evidence to document that the riprap has been removed and that the removal shall occur prior to occupancy of the hotel. In addition, the applicant shall identify the disposal site for the removed rock. If said deposition site is located within the Coastal Zone, approval of a coastal development permit shall be required. However, if further geotechnical evidence is submitted by the applicant for review and written approval of the Executive Director, which clearly documents that removal of the riprap would itself cause erosion and bluff stability concerns, then the riprap shall be allowed to remain.

14. Grading and Erosion Control. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final grading, drainage and runoff control plans, which incorporate the following:

a. All runoff from impervious surfaces shall be collected and directed appropriately away from the bluff edge.

b. The drainage and runoff control plans shall be designed by a licensed engineer qualified in hydrology and hydraulics, which would assure no increase in peak runoff rate from the developed site over runoff that would occur from the existing undeveloped site, as a result of a ten-year frequency storm over a six-hour duration (10 year, 6 hour rainstorm). Runoff control shall be accomplished by such means as on-site detention/desilting basins. Energy dissipating measures at the terminus of outflow drains shall be constructed.

c. Said plans shall indicate that storm water discharge from the project site, including the underground parking area, shall be subjected to a filtering system which will insure that sediment and potential pollutants (i.e., oil and grease) are filtered prior to discharge.

d. All grading activity shall be prohibited between October 1st and April 1st of any year. In addition, all areas disturbed by grading shall be planted within 60 days of the initial disturbance and prior to October 1st with temporary or permanent (in the case of finished slopes) erosion control methods. Said planting shall be accomplished under the supervision of a licensed landscape architect, shall provide Adequate coverage within 90 days, and shall utilize vegetation of species compatible with surrounding native vegetation, subject to Executive Director approval.

e. All permanent runoff and erosion control devices shall be developed and installed prior to or concurrent with any on-site grading activities.

f. All areas disturbed, but not completed, during the construction season, shall be stabilized in advance of the rainy season. The use of temporary erosion control measures, such as bergs, interceptor ditches, sandbagging, filtered inlets, debris basins and silt traps shall be utilized in conjunction with plantings to minimize soil loss from the construction site.

Said plans shall be first reviewed and approved in writing by the City of Encinitas, the State Department of Fish and Game, the State Department of Parks and Recreation and the Regional Water Quality Control Board.

15. State Lands Commission Review. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall obtain a written determination from the State Lands Commission that:

a. No State lands are involved in the development; or,

b. State lands are involved in the development, and all permits required by the State Lands Commission have been obtained; or,

c. State lands may be involved in the development, but pending a final determination, an agreement has been made with the State Lands Commission for the project to proceed without prejudice to that Determination.

16. Public Rights. By acceptance of this permit, the applicant acknowledges, on behalf of him/herself and his/her successors in interest, that issuance of the permit shall not constitute a waiver of any public rights, which may exist on the property. The applicant shall also acknowledge that issuance of the permit and construction of the permitted development shall not be used or construed to interfere with any public prescriptive or public trust rights that may exist on the property.

17. Off-site Improvement Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final plans, approved by the City of Encinitas for all proposed off-site improvements. Said plans shall include, but are not limited to, signalization at La Costa Avenue/Highway 101, northbound left-turn lane from Highway 101 into the project site, a right-turn/deceleration lane at the southbound approach to the Highway 101/La Costa Avenue intersection, driveway improvements, sidewalk improvements and bus stop.

18. La Costa Avenue/I-5 Interchange Improvements. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall be required to submit to the Executive Director for review and written approval evidence of contribution to the City of Encinitas of a pro-rata share for the construction of interchange improvements at the La Costa Avenue/I-5 Interchange. Said improvements are not a part of this permit and will be subject to review and approval under a separate coastal development permit.

19. Prior to Occupancy. Prior to receipt of an occupancy permit from the City of Encinitas, and pursuant to Special Condition Nos. 5, 8 and 13 above, it shall be the applicant's responsibility to submit required documentation/evidence of compliance with these conditions to Commission staff.

20. Traffic Mitigation Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, a traffic mitigation plan for the intersection of the pedestrian access road and Highway 101. Said plan shall indicate redesign of this intersection as necessary to allow for safe ingress and egress and the plan shall first be approved by the City of Encinitas Traffic Engineer and implemented prior to the occupancy of the hotel.

The following conditions apply only to the amended portion of the project.

21. Prior Conditions of Approval. All special conditions adopted by the Coastal Commission as part of the original permit action or any subsequent amendments, except as specifically modified or replaced herein, remain in full force and effect, including conditions requiring that the subject stairway be constructed prior to or concurrent with the hotel construction, and shall be completed prior to occupancy of the hotel. Construction of the stairway is not permitted until release of the original permit.

22. Assumption of Risk. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from erosion and wave damage and the applicant assumes the liability from such hazards; and (b) the applicant unconditionally waives any claim of liability on the part of the Commission or its successors in interest for damage from such hazards and agrees to indemnify and hold harmless the Commission, its officers, agents, and employees relative to the Commission's approval of the project (as identified in CDP Amendment No. 6-92-203-A1) for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

23. Construction Schedule/Staging Areas. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, detailed plans identifying the location of construction and staging areas, and a final construction schedule. Said plans shall include the follow criteria specified via written notes on the plan:

a. No work in the South Carlsbad Beach parking lot shall occur during the summer months (start of Memorial Day weekend to Labor day) of any year.

b. Use of public parking areas shall be limited to a maximum of 15 parking spaces in the South Carlsbad Beach parking lot with the written approval of the Department of Parks and Recreation.

The permittee shall undertake development in accordance with the plans and construction schedule. Any proposed changes to the approved plans or the stated criteria shall be reported to the Executive Director. No changes to the plans or schedule shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

24. California Department of Parks and Recreation Permit. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a copy of a permit from the California Department of Parks and Recreation for the development herein approved. Any mitigation measures or other changes to the project required through said permit shall be reported to the Executive Director and shall become part of the project. Such modifications, if any, may require an amendment to this permit or a separate coastal development permit.

25. Maintenance Activities/Future Alterations. Any debris, rock or materials, which become dislodged through weathering after completion of the stairway that impairs public access, shall be removed from the beach and public parking lot. If after inspection, it is apparent repair or maintenance of the stairway is necessary; the applicant should contact the Commission office to determine whether permits are necessary.

26. Exterior Treatment. Consistent with the color samples submitted for coastal development permit application #6-92-203-A1, the exterior of the stairway shall be constructed and maintained with earthen tone materials.

(\\TIGERSHARK\groups\San Diego\PERMITS\6-92-203-A1 amended cdp.doc)

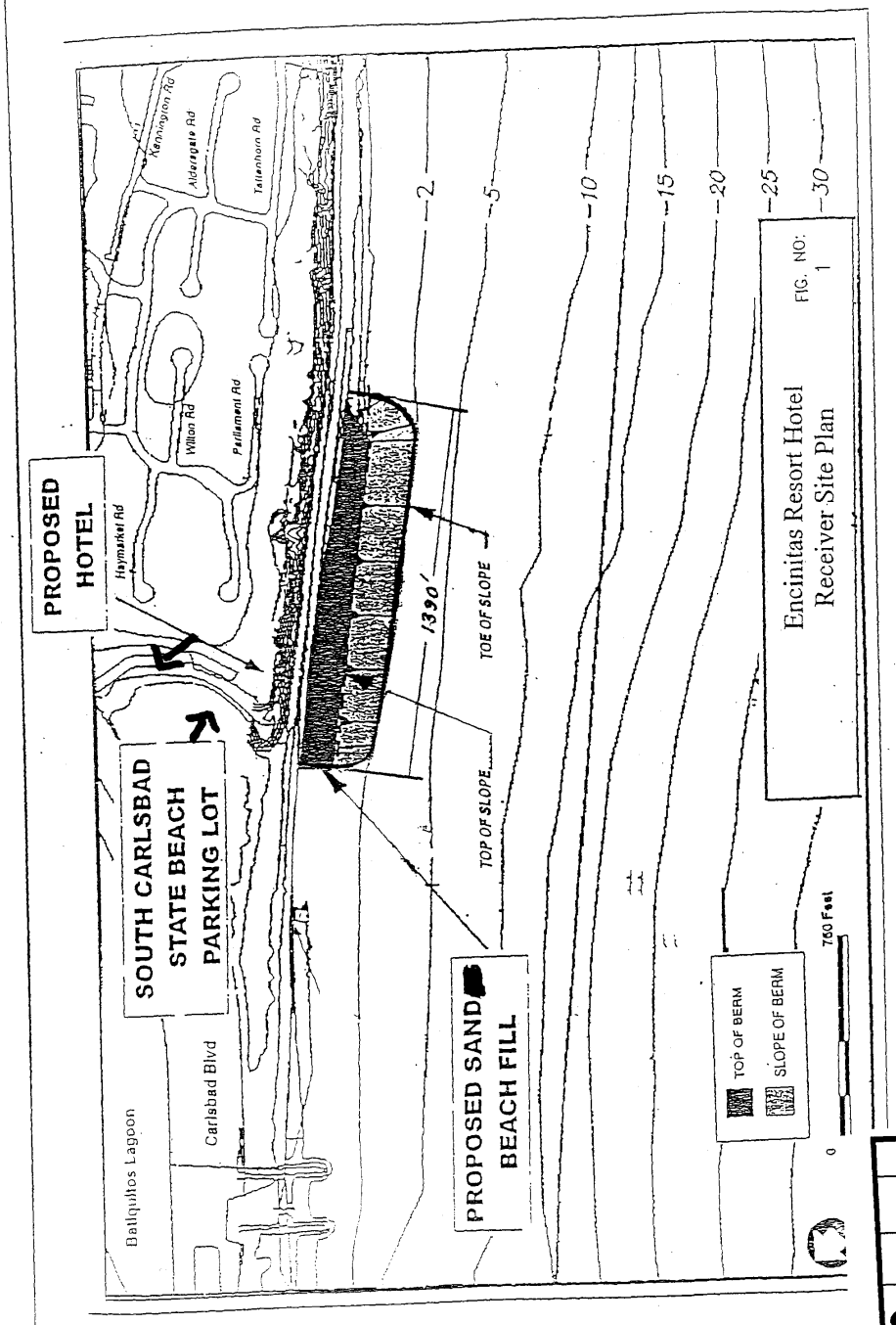
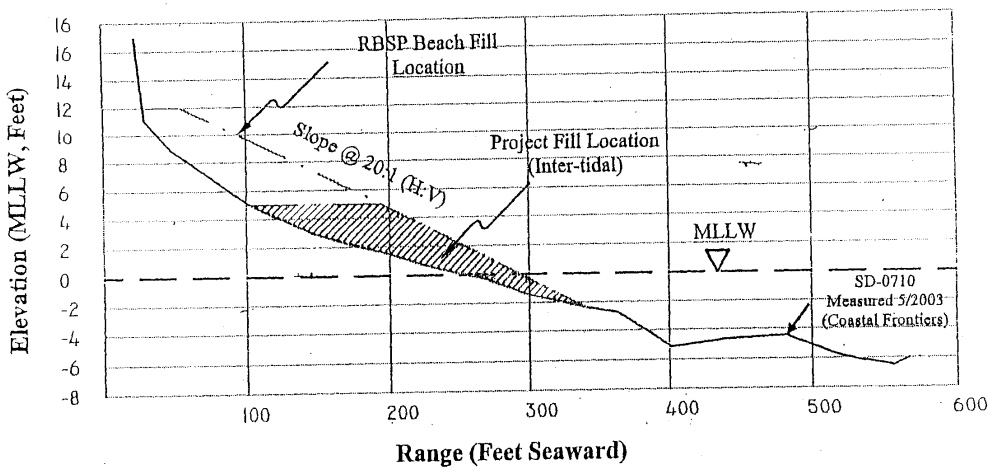


EXHIBIT NO. 4
APPLICATION NO.
6-92-203-A4
Beach Sand
Receiver Site

California Coastal Commissio

Batiquitos Reciever Site Fill Placement: Cross Sectional View
Figure 2



Vertical Scale: 1" = 10'
Horizontal Scale: 1"=100'

EXHIBIT NO. 5
APPLICATION NO.
6-92-203-A4
Sand Fill
Cross-Section
California Coastal Commission

JUL 2 2000
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Mitigated Negative Declaration

CITY OF ENCINITAS
Engineering Services Department
505 South Vulcan Avenue
Encinitas, CA 92024
760-633-2770

COASTAL DEVELOPMENT PERMIT

SUBJECT: Leucadia/Batiquitos Beaches Sand Replenishment. COASTAL DEVELOPMENT PERMIT AMENDMENT for placement of approximately 50,000 cubic yards of sand on intertidal beach areas of Leucadia and Batiquitos Beaches in the Cities of Encinitas and Carlsbad. Applicant: City of Encinitas Engineering Services/ KSL Development Corporation.

I. PROJECT DESCRIPTION: See attached Initial Study.

II. ENVIRONMENTAL SETTING: See attached Initial Study.

III. DETERMINATION:

The City of Encinitas conducted an Initial Study, which determined that the proposed project could have a significant environmental effect in the following area(s): Biological Resources and Recreation. Subsequent revisions in the project proposal create the specific mitigation identified in Section V of this Mitigated Negative Declaration. The project as revised now avoids or mitigates the potentially significant environmental effects previously identified, and the preparation of an Environmental Impact Report will not be required.

IV. DOCUMENTATION:

The attached Initial Study documents the reasons to support the above Determination.

V. MITIGATION, MONITORING AND REPORTING PROGRAM:

Biology

Loading, hauling, dumping and spreading shall be limited to the non-breeding and nesting bird season of 15 August to 15 February, or in the event of such activities during the bird breeding and nesting season a biological survey for occupied nests in the immediate area shall be conducted and necessary noise and night lighting attenuation measures taken to

COMMENTS RECEIVED ON DRAFT MITIGATED NEGATIVE DECLARATION

The following comments on the Draft Mitigated Negative Declaration were received by e-mail from Eric Munoz of the City of Carlsbad Planning Department.

1. Surf breaks are not shown on Attachment 2 (Figure 3) as referenced in the text on page 3 of the Initial Study.

2. As part of the public access and safety program the City of Carlsbad would like to be formally notified of Encinitas' approval of such program.

3. Please reference that the City of Carlsbad letter indicating that Encinitas has permit and CEQA authority for the project as well as sand placement on the beach.

RESPONSES TO COMMENTS

Responses to comments on the Draft Mitigated Negative Declaration follow.

1. The Draft Mitigated Negative Declaration has been revised by deleting the reference to Attachment 2 (Figure 3) for location of surf breaks.

2. The City of Encinitas will provide the public access and safety program to the City of Carlsbad prior to commencement of hauling activities.

3. The Draft Mitigated Negative Declaration has been revised to reference the City of Carlsbad letter. The letter itself is attached herewith.

CITY OF ENCINITAS
ENGINEERING SERVICES
505 South Vulcan Avenue
Encinitas, CA 92024-3633
(760) 633-2770

INITIAL STUDY
COASTAL DEVELOPMENT PERMIT AMENDMENT

SUBJECT: Leucadia/Batiquitos Beaches Sand Replenishment. COASTAL DEVELOPMENT PERMIT AMENDMENT for placement of approximately 50,000 cubic yards of sand on intertidal beach areas of Leucadia and Batiquitos Beaches in the Cities of Encinitas and Carlsbad. Applicant: City of Encinitas Engineering Services/ KSL Development Corporation.

I. PURPOSE AND MAIN FEATURES:

Permitting, Replenishment Footprint, and Source Material

Coastal Development Permit Amendment to place approximately 50,000 cubic yards (cy) of sand on intertidal beach of Leucadia and Batiquitos Beaches. Additional permits include U.S. Army Corps of Engineers 33CFR, California Regional Water Quality Control Board 401, California State Parks PEF, and California State Lands Commission Lease Agreement.

The receiver site sand replenishment footprint would be approximately 50 feet in width for a length of 1390 feet in the intertidal zone between approximately +5 and –2 feet Mean Low Low Water (MLLW) elevations (Attachments 1 & 2). This footprint is within the area established for previous beach replenishment projects at this location.

The sand source would be material excavated to construct a subterranean parking garage as part of the City of Encinitas and Coastal Commission approved Encinitas Hotel located on the coastal bluff adjacent to the project site and South Carlsbad State Beach parking lot. Grain size analysis of the material has determined it to be from 90 to 99 percent sand, which is light yellowish brown in color. This grain size is consistent with sand placed on the local beaches during previous sand replenishment projects. The color is the same as material constantly eroding from the sea cliffs and upper bluffs and deposited on local beaches. In addition, any contrast with existing beach material would be eliminated over time by wave action, exposure to the sun, and seasonal mixing. Consequently, the source material is expected to meet U.S. Army Corps of Engineers grain size and color criteria for beach sand nourishment.

Material would either be deposited directly into dump trucks or spreaders or stockpiled at the conveyor/slide termination point for loading into dump trucks or scrapers. This option has been rejected for engineering reasons. As material is excavated from the source site in phases (layers), each progressive phase becomes lower in elevation than the previous one making the conveyor/slide increasingly difficult, and eventually impossible to reach with conventional methods and equipment.

Trucking the sand to the Moonlight Beach receiver site would incur additional hauling costs as well as create inconvenience and safety issues for motorists along the North Coast Highway haul route. In addition, no sand replenishment would occur on the beach in front of the source site which is undesirable in terms of amenities provided to future hotel guests. The same circumstances would apply to trucking the sand to the Cardiff receiver site, with an even greater hauling distance involved.

"No project" would involve hauling the excavated source material to an inland location. Currently there are several approved projects in San Diego County needing imported fill material which would either accept it without paying hauling costs, pay for the cost of hauling, or in some situations pay for hauling and the material itself. With this alternative no replenishment sand would be placed on the beach at any location

II. ENVIRONMENTAL SETTING:

Receiver Site

The project receiver site is located within the intertidal beach areas of Leucadia and Batiquitos Beaches in the Cities of Encinitas and Carlsbad (Attachment 2). Leucadia Beach, also referred to as Leucadia State Beach, is situated along the coastline at the western toe of a residentially developed coastal bluff. Batiquitos Beach, which is the southern reach of South Carlsbad State Beach, lies west of and adjacent to the Coast Highway, which separates the beach from Batiquitos Lagoon.

Jurisdictionally, sovereign land of Leucadia and Batiquitos Beaches is controlled by the California State Lands Commission (CSLC). Being State beaches, these lands are also part of the State park system. Within Encinitas, Leucadia and Batiquitos Beaches are operated by the City. Within Carlsbad, Batiquitos Beach is operated by the California Department of Parks and Recreation.

Technical information regarding the receiver site in the following discussion is based on the Final Environmental Impact Report for the San Diego Regional Beach Sand Project (SANDAG, 2000). Leucadia and Batiquitos Beaches are in the Oceanside Littoral Cell which experiences a net southerly sediment transport at rates ranging between approximately 0 to 550,000 cy per year, with the average being approximately 250,000 cy per year. The beaches are located on a low terrace, which lies in front of coastal cliffs and Batiquitos Lagoon. The receiver site consists mostly of sand deposited during the

The haul route is within the City of Carlsbad. Subsequent to consultation with Carlsbad, it has been agreed to that the City of Encinitas will pursue the necessary permits for, and field inspection of activities related to the project.

Immediate Surrounding Areas

Based on technical information in the EIR for the San Diego Regional Beach Sand Project, inshore and intertidal surfgrass beds occurred in 1999 at the Leucadia Beach receiver site near Grandview Street, and at several locations south of the site near Jason Street, Diana Street, Leucadia Street, and El Porto Street. Nearshore habitats along the beach were mostly low-relief, scattered reef immediately seaward, with patches of high-relief reef, starting about 700 feet offshore. In 1997, the low-relief reef was covered with scattered surfgrass, feather boa kelp, and giant kelp. In 1999, the high-relief reef patches were vegetated with giant kelp, feather boa kelp, surfgrass, and sea palms. Kelp canopy was observed in 1997 about 925 feet seaward but none was observed in 1999. The nearest California least tern and western snowy plover nesting sites were, and are now, nearly one-half mile away at Batiquitos Lagoon.

In 1999, nearshore habitats off Batiquitos Beach were characterized by mostly sandy bottom, with an area of low-relief, scattered reef, starting about 625 feet offshore, and a smaller patch of high-relief reef starting approximately 750 feet offshore, at the southern end of the receiver site. The low-relief reef was covered with scattered surfgrass and feather boa kelp. Although not present in 1999, a kelp canopy was observed about 1,875 feet offshore in 1997.

Batiquitos Lagoon inlet, protected by riprap groins, is located north of the Batiquitos Beach reach of the receiver site. Sand dunes overlying mounded cobble are situated above the Batiquitos Beach back beach south of the inlet along the Coast Highway. The unimproved highway shoulder is utilized for beach access vehicle parking. Batiquitos Lagoon itself is across the coast highway to the east. The lagoon is managed as a State Ecological Reserve by the California Department of Fish and Game. The primary habitat is estuarine open water followed by coastal salt marsh. Nesting islands, one of which lies immediately east of the highway, and approximately 500 feet from the receiver site, support endangered California least terns and the threatened western snowy plover. The lagoon also functions as habitat for marine and estuarine species of invertebrates and fish.

Vegetation communities within the nature preserve adjacent to and extending north of the State Beach parking lot include southern foredunes, cismontane alkali marsh, southern willow scrub, mule fat scrub, and exotic plantings. The wetland habitats and southern foredunes are considered sensitive habitats. Three sensitive plants have been observed including Nuttall's lotus, coast wooly-heads, and southwester spiny rush. Sensitive wildlife known or expected to occur are California brown pelican, Gabb's tiger beetle, sandy beach tiger beetle, oblivious tiger beetle, salt marsh skipper, and silvery legless lizard.

Recreation/Public Safety and Access

The presence and operation of heavy equipment on the beach during hauling and placement of replenishment material could be dangerous to persons accessing other nearby locations for recreational or other purposes. The City of Encinitas shall implement a public safety and access program consisting of truck and equipment operation control personnel posted at the beach access road, and on the beach in the project area to ensure that the public on foot, as well as beach maintenance vehicles, emergency vehicles, and personnel on foot have safe access to and along the beach during the hauling and placement operations.

V. RECOMMENDATION:

On the basis of this initial evaluation:

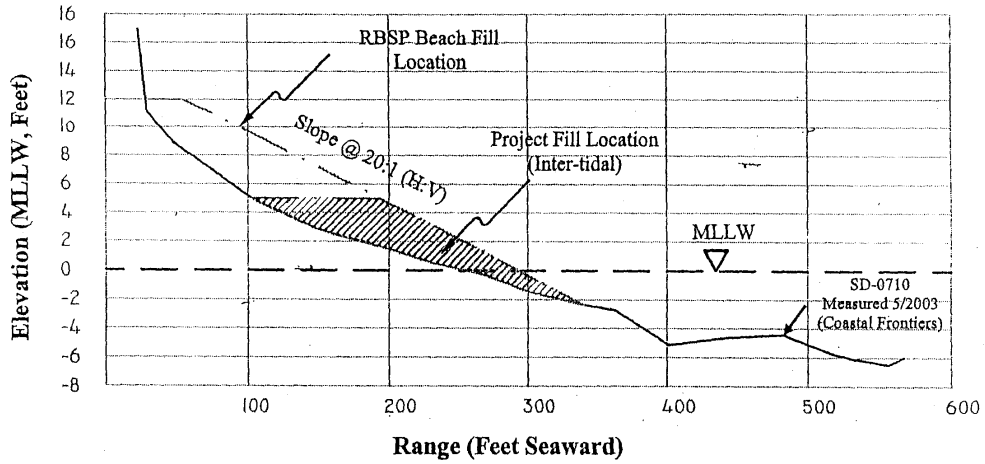
___ The proposed project would not have a significant effect on the environment, and a NEGATIVE DECLARATION should be prepared.

_X_ Although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described in Section IV above have been added to the project. A MITIGATED NEGATIVE DECLARATION should be prepared.

___ The proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT should be required.

Attachments:
Attachment 1: Site Plan
Attachment 2: Cross Section
Attachment 3. Vicinity Map
Attachment 4: Initial Study Checklist

Batiquitos Reciever Site Fill Placement: Cross Sectional View
Figure 2



Vertical Scale: 1" = 10'
Horizontal Scale: 1"=100'

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway? (Source #1, 2, 3, 4, 8, 10, 11, 15: No scenic resources of this type on site.)	☐	☐	☐	☒
c) Substantially degrade the existing visual character or quality of the site and its surroundings? (Source #1, 2, 3, 8, 10, 11, 15: Replenished beach height, width, and length comparable to and compatible with underlying and surrounding beach area; replenished beach sand (light yellowish brown) expected to meet Army Corps color criteria and is identical to adjacent continuously eroding seacliff and upper bluff material; any contrast with existing beach material would be eliminated over time by wave action, exposure to the sun, and seasonal mixing; visual presence of loading, hauling, and spreading equipment would be short-term.)	☐	☐	☒	☐
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area? (Source #1, 2, 3, 8, 10, 11, 15: Proposed project would not produce substantial long-term light or glare; any loading, hauling, and spreading equipment night lighting would be short-term)	☐	☐	☒	☐
II. AGRICULTURE RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? (Source #1, 2, 3, 4, 8, 10, 11, 15: Project site is intertidal beach not mapped as farmland.)	☐	☐	☐	☒
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract? (Source #1, 2, 3, 4, 8, 10, 11, 15: Project site is not under Williamson Act contract).	☐	☐	☐	☒

ATTACHMENT 4

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
equipment; suppression techniques would be implemented to control fugitive dust emissions.)				
e) Create objectionable odors affecting a substantial number of people? (Source #1, 2, 3, 7, 8, 10, 11, 13, 15: Proposed project would not generate objectionable odors.)	☐	☐	☐	☒
IV. BIOLOGICAL RESOURCES -- Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? (Source #1, 2, 3, 4, 8, 10, 11, 15, 19: No direct impacts to marine life, grunion or other sensitive biological resources; no serious negative effects related to offshore sedimentation; replenishment sand would be dry hauled, dumped, and spread in intertidal areas resulting in turbidity within acceptable limits for nearshore ocean waters; replenishment sand consistent in grain size with previous beach sand replenishment projects and expected to meet Army Corps grain size criteria. Short-term loading, hauling, and spreading equipment noise and night lighting could indirectly disturb sensitive wildlife species breeding or nesting near the beach, or in dune, nature preserve and possibly, Batiquitos Lagoon habitat. Mitigation by limiting loading, hauling, and spreading operations to bird non-breeding season or nesting survey with necessary noise and lighting attenuation during breeding and nesting season; placement of a temporary eight-feet high solid plywood barrier between the nature preserve and haul route.)	☐	☒	☐	☐
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service? (Source #1, 2, 3, 8, 10, 11, 15, 19: Same impacts and mitigation described above.)	☐	☒	☐	☐
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of	☐	☒	☐	☐

ATTACHMENT 4

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
geologic feature? (Source #1, 2, 3, 4, 8, 10, 11, 15: Replenishment sand would be placed over existing intertidal beach areas and not involve underlying geologic formations with possible paleontological resources.)				
d) Disturb any human remains, including those interred outside of formal cemeteries? (Source #1, 2, 3, 4, 8, 10, 11, 15: No known human remains present.)	☐	☐	☐	☒
VI. GEOLOGY AND SOILS – Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42. (Source #1, 2, 3, 8, 10, 11, 15: No mapped faults.)	☐	☐	☐	☒
ii) Strong seismic ground shaking? (Source #1, 2, 3, 8, 10, 11, 15: Site subject to seismic shaking from quakes along regional faults; liquefaction, ground failure, sand volcanoes, and seaward slumping same as areas without replenishment.)	☐	☐	☒	☐
iii) Seismic-related ground failure, including liquefaction? (Source #1, 2, 3, 8, 10, 11, 15: Impacts same as above.)	☐	☐	☒	☐
iv) Landslides (Source #1, 2, 3, 8, 10, 11, 15: Replenished beach not prone to landslides.)	☐	☐	☐	☒
b) Result in substantial soil erosion or the loss of topsoil? (Source #1, 2, 3, 8, 10, 11, 15: Replenished beach sand subject to normal beach erosion processes including littoral transport and seasonal cross-shore movement; replenished beach sand consistent with previous beach replenishment projects and expected to meet Army Corps grain size criteria.)	☐	☐	☒	☐
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on-	☐	☐	☒	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
hazardous materials site.)				
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area? (Source #1, 2, 3, 4, 7, 8, 10, 11: Project site not located near an airport.)	☐	☐	☐	☒
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area? (Source #1, 2, 3, 4, 7, 10, 11: Project site not located near an airstrip.)	☐	☐	☐	☒
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan? (Source #1, 2, 3, 4, 7, 8, 9, 10, 11: Project would not interfere with emergency response or evacuation plans.)	☐	☐	☐	☒
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands? (Source #1, 2, 3, 4, 8, 9, 10, 11: Project located adjacent to wildland areas. Controlled by fire code restrictions and regulations for fire suppression.)	☐	☐	☒	☐
VIII. HYDROLOGY AND WATER QUALITY – Would the project:				
a) Violate any water quality standards or waste discharge requirements? (Source #1, 2, 3, 4, 5, 8, 10, 11, 14, 15: Replenishment sand would not exceed California Ocean Plan criteria for bacteria, dissolved oxygen, contaminates and sulfides, nutrients and pH; replenishment sand would be dry hauled, dumped, and spread in intertidal areas resulting in turbidity within acceptable limits for nearshore ocean waters; replenishment sand consistent with previous beach replenishment projects and expected to meet Army Corps grain size criteria.)	☐	☐	☒	☐
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-	☐	☐	☐	☒

ATTACHMENT 4

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
structures which would impede or redirect flood flows? (Source #1, 2, 3, 4, 5, 8, 10, 11, 14, 15: Project does not involve structures.)				
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam? (Source #1, 2, 3, 4, 5, 8, 10, 11, 14, 15: No exposure to levee or dam failure.)	☐	☐	☐	☒
j) Inundation by seiche, tsunami, or mudflow? (Source #1, 2, 3, 4, 5, 8, 10, 11, 14, 15: No exposure to seiche or mudflow; although rare along the coast, directly exposed to tsunami with the same anticipated affects as an unreplenished beach)	☐	☐	☒	☐
IX. LAND USE AND PLANNING -- Would the project:				
a) Physically divide an established community? (Source #1, 2, 3, 4, 8, 10, 11, 15: Project site along perimeter and not physically dividing established communities; replenished beach height, width, and length fully accessible to beach users.)	☐	☐	☐	☒
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? (Source #1, 2, 3, 4, 8, 10, 11, 15: Replenished beach consistent with San Diego Coastal State Park System General Plan, Encinitas General Plan and Carlsbad General Plan; consistent with California Coastal Act and Encinitas and Carlsbad LCP's; consistent with California Ocean Plan)	☐	☐	☐	☒
c) Conflict with any applicable habitat conservation plan or natural community conservation plan? (Source #1, 2, 3, 4, 8, 10, 11, 15: Proposed residential development consistent with draft MHCP.)	☐	☐	☐	☒
X. MINERAL RESOURCES -- Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the	☐	☐	☐	☒

ATTACHMENT 4

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
XII. POPULATION AND HOUSING -- Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)? (Source #1, 2, 3, 4, 8, 10, 11, 15: Proposed project does not involve residential or commercial development or population growth.)	☐	☐	☐	☒
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere? (Source #1, 2, 3, 4, 8, 10, 11, 15: Proposed project does not involve housing.)	☐	☐	☐	☒
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere? (Source #1, 2, 3, 4, 8, 10, 11, 15: Proposed project does not involve housing.)	☐	☐	☐	☒
XIII. PUBLIC SERVICES				
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services: (Source #1, 2, 3, 4, 8, 10, 11, 15: Project site served by existing public beach infrastructure and facilities; no substantial impacts to existing or proposed public services anticipated.)				
Fire protection?	☐	☐	☐	☒
Police protection?	☐	☐	☐	☒
Schools?	☐	☐	☐	☒
Parks?	☐	☐	☐	☒
Other public facilities?	☐	☐	☐	☒
XIV. RECREATION --				

ATTACHMENT 4

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? (Source #1, 2, 3, 8, 10, 11: No necessary street improvements.)	☐	☐	☐	☒
e) Result in inadequate emergency access? (Source #1, 2, 3, 8, 9, 10, 11: Project would not interfere with emergency access; subject to requirements of city's Uniform Fire Codes.)	☐	☐	☐	☒
f) Result in inadequate parking capacity? (Source #1, 2, 3, 8, 10, 11: Minor short-term loss of beach parking during non-peak season along hauling route through State Beach parking lot.)	☐	☐	☒	☐
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)? (Source #1, 2, 3, 8, 10, 11, 12: Project consistent with SANDAG Regional Transportation Plan policies and programs.)	☐	☐	☐	☒
XVI. UTILITIES AND SERVICE SYSTEMS -- Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board? (Source #1, 2, 3, 7, 8, 10, 11, 14: Proposed project does not involve wastewater treatment.)	☐	☐	☐	☒
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? (Source #1, 2, 3, 7, 8, 10, 11: Proposed project does not involve water or wastewater treatment facilities.)	☐	☐	☐	☒
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? (Source #1, 2, 3, 4, 5, 8, 10, 11: Proposed project does not involve construction of storm water drainage facilities.)	☐	☐	☐	☒
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements	☐	☐	☐	☒

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
humans.)				

Information Sources

(1)City of Encinitas, 1989 as amended. Encinitas General Plan and Zoning Code. Encinitas: City of Encinitas.

(2)Cotton/Beland/Associates Inc., 1988 updated. Master Environmental Assessment, City of Encinitas. Encinitas: City of Encinitas.

(3)Cotton/Beland/Associates Inc., 1988 updated. Final Environmental Impact Report for the Encinitas General Plan and Zoning Ordinance, City of Encinitas. Encinitas: City of Encinitas.

(4)City of Encinitas, 1989 updated. "Encinitas General Plan Program Land Use Policy Map" and "Encinitas Zoning Map." Blackline/Blueline maps prepared for the City of Encinitas, Encinitas, California.

(5)City of Encinitas, 1993. Municipal Code Chapter 23.24(Ordinance No.88-16) Relating to Grading, Erosion, and sediment Control. City of Encinitas, Encinitas, California.

(6)City of Encinitas, 1993. Municipal Code Chapter 9.32, Noise Abatement and Control. City of Encinitas, Encinitas, California.

(7)City of Encinitas, 1993. Municipal Code Chapter 30.40, Performance Standards Relating to Noise, Toxic Materials, Drainage/Grading/Erosion Control, and Airborne Pollutants. City of Encinitas, Encinitas, California.

(8)Curtis Scott Englehorn and Associates, 2003. Field reconnaissance of project site and surroundings.

(9)Encinitas Fire Protection District, 1990 revised. "Encinitas Fire Protection District Strategic Plan." Prepared for Encinitas Fire Protection District, Encinitas, California.

(10)Engineering Services, 2003. Permit Application for Coastal Development Permit. Prepared for submittal to California Coastal Commission, San Diego, California.

(11)Engineering Services, 2003. Sand Replenishment Site Plan. Blackline plan prepared for submittal to California Coastal Commission, San Diego, California.

(12)San Diego Association of Governments [SANDAG] 2000. "2010 Regional Transportation Plan." Prepared by SANDAG, San Diego, California.

RECEIVED
JUL 01 2005
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

February 10, 2004
SCH#: 2003111025

Addendum to Mitigated Negative Declaration Document

This addendum has been added to the Encinitas Resort Hotel Opportunistic Beach Nourishment MND document to address comments that were received after the public review period. These comments involved only minor alterations to the project and are listed below:

1. A comment was received via phone conversation with Jane Smith of the California State Lands Commission in regards to Figures 1 and 3 (plan view and vicinity map respectively). The depiction of the linear reach of the receiver site project area in the figures was greater than the distance that was referred to in the MND document. The figures showed a distance of approximately 2,100 feet while the MND document referenced a proposed distance of 1,390 feet. Figure 1 was taken from SANDAGs original RBSP EIR document and was not modified. This figure's scale was found to be incorrect and has since been modified and attached as part of this addendum. The footprint was changed to accurately represent the project area to be utilized. Figure 3 has also been modified, however, this figure is intended for only conceptual use and not for engineering purposes.

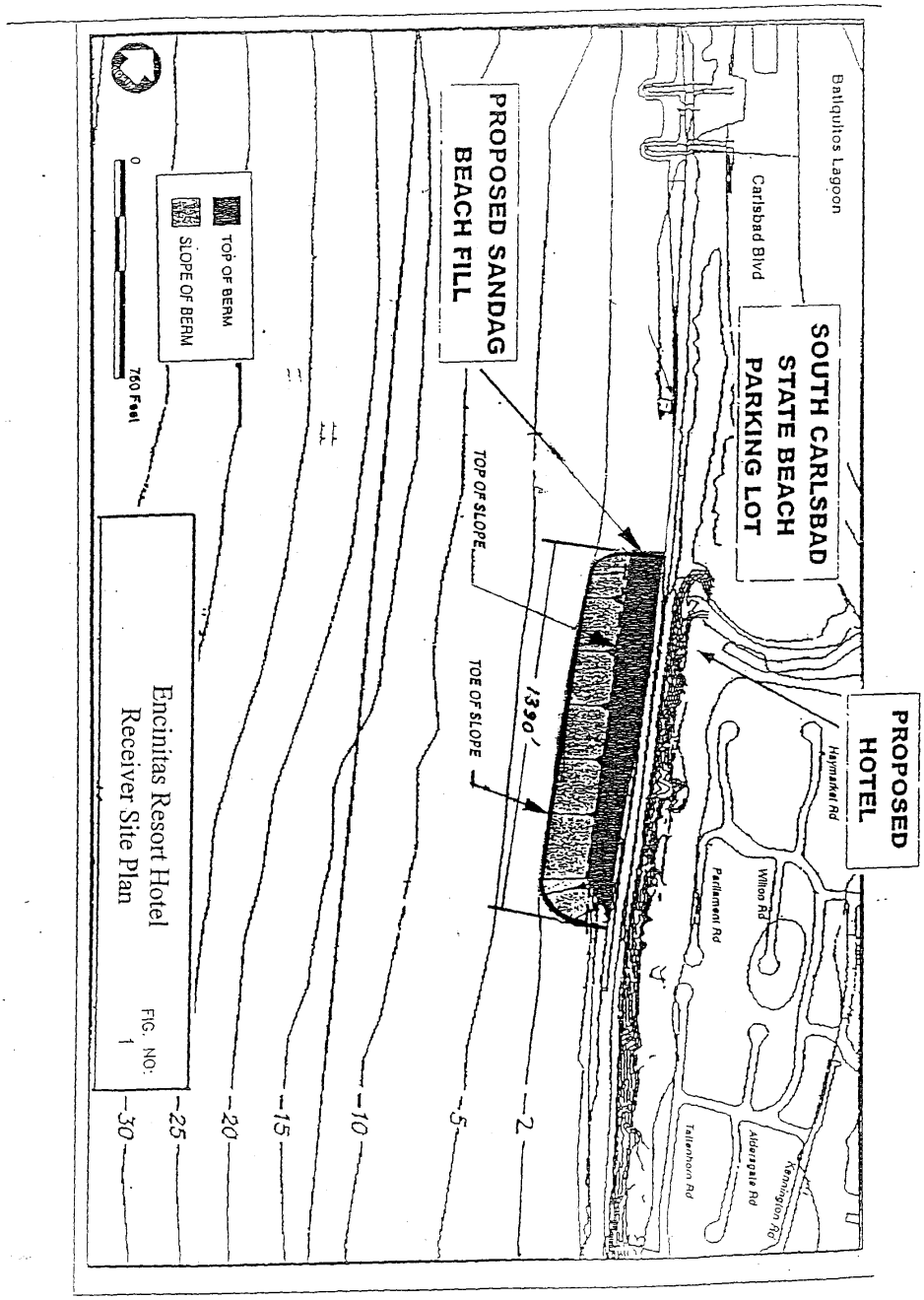
2. Letter received from California Department of Fish and Game regarding project timing and possible maintenance requirements for the Batiquitos Lagoon. A meeting took place on February 10, 2004 with representatives Marilyn Fluharty and Tim Dillingham to discuss the letter's contents (attached). The following was determined:

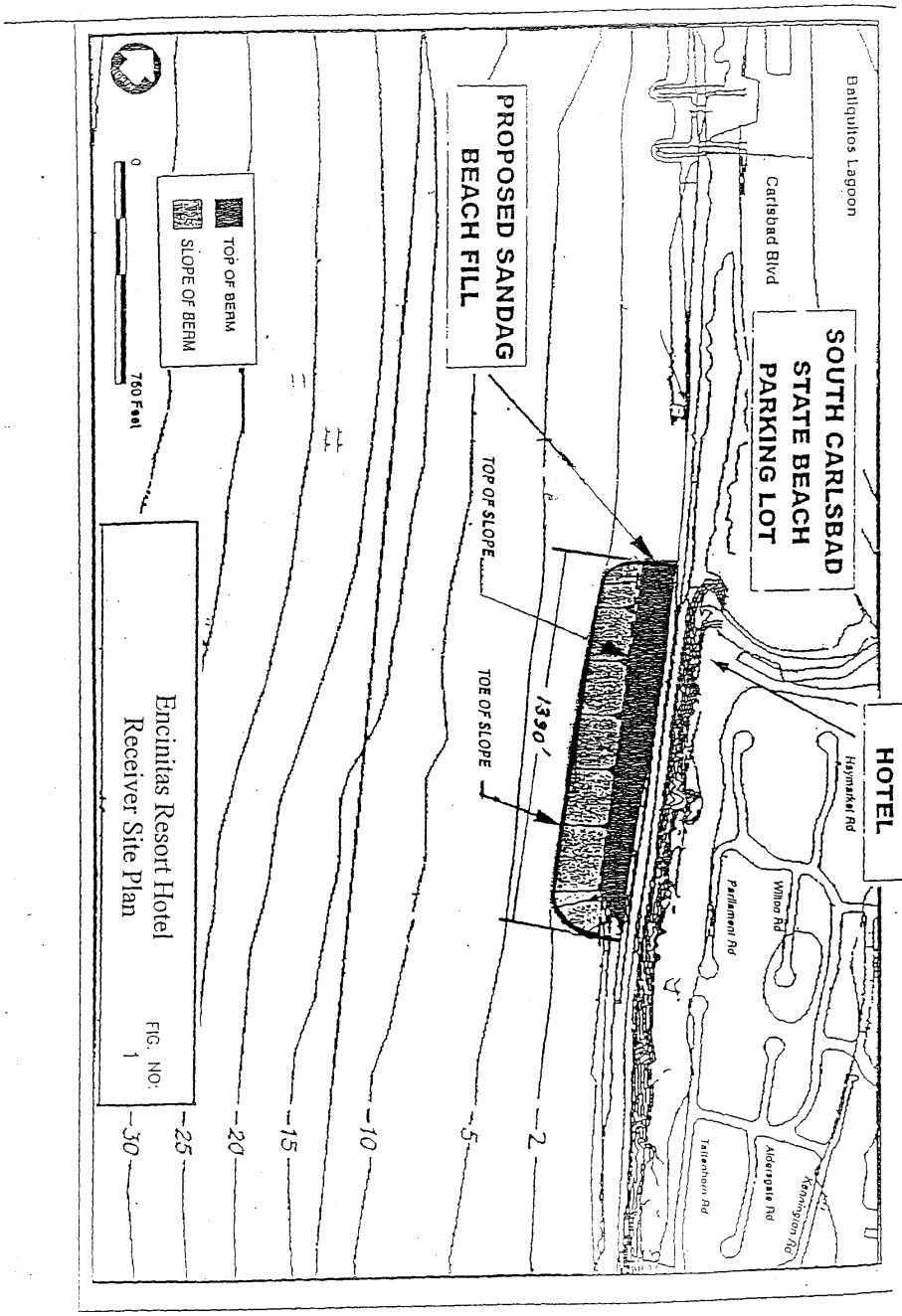
   - Project timing will be shifted from August 15 to February 15 to September 15 to February 15. This change in project timing addresses all of the agencies mentioned biological concerns.

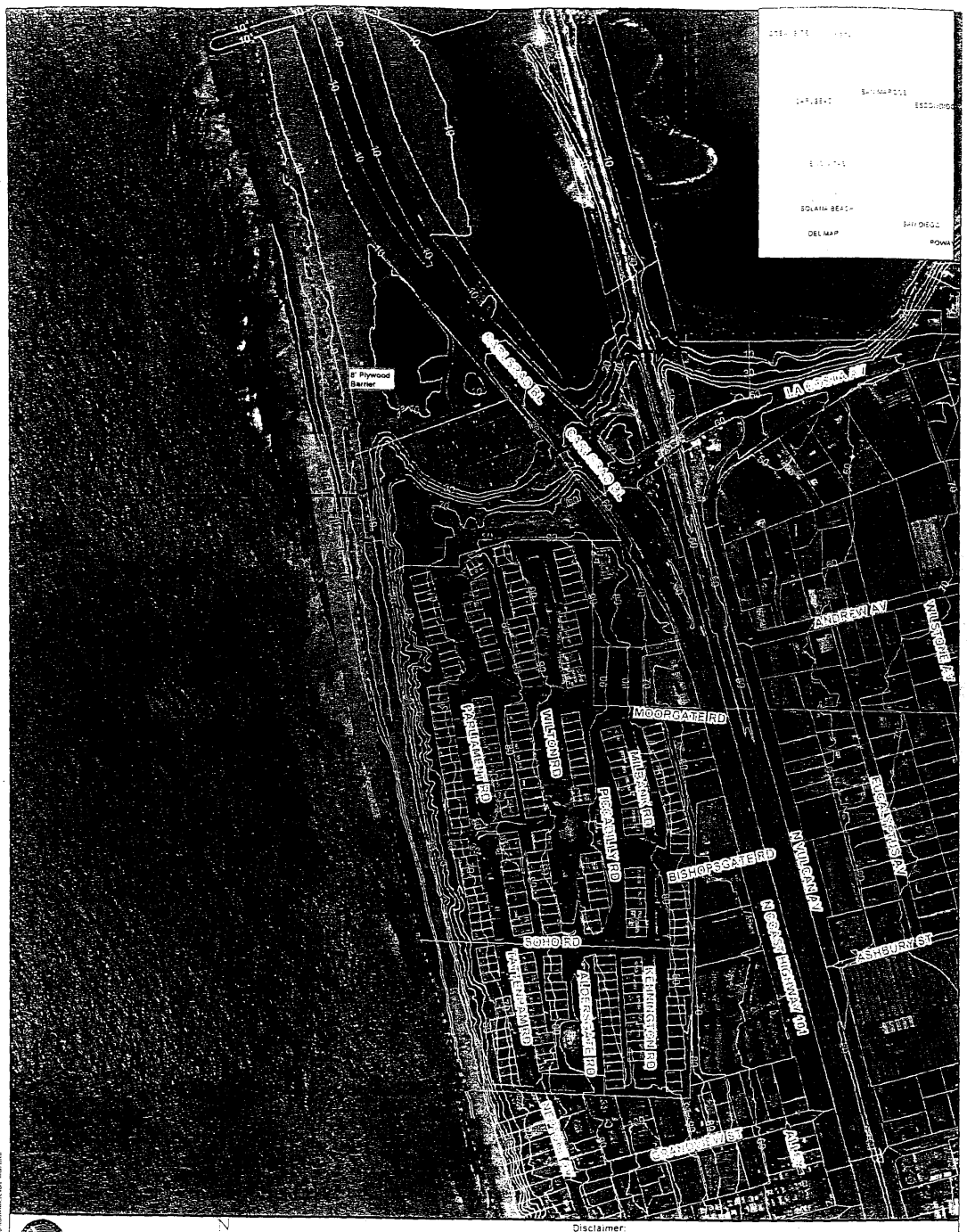
   - In order to address project impacts to the Batiquitos Lagoon, a mitigation endowment will be made available to the Department of Fish and Game in support of the next maintenance dredging project. Mr. Dillingham had estimated that 8.8% of material placed on the project's receiver site will be deposited into the flood shoal of the lagoon. This estimate was gathered from previous beach nourishment on the proposed site from Batiquitos Lagoon maintenance dredging. These dredging projects were stated to take place approximately every three years.

Given the amount of material to be placed on the receiver site is approximately 50,000 cubic yards (cy), the proposed project would deposit approximately 4,400 cy of material into the flood shoal of the lagoon. The cost of this 4,400 cy of material to be removed during the next maintenance dredging of the lagoon will be funded by the City as a mitigation measure for the project's impact to the lagoon. This mitigation will be made available with the condition that the material will be placed on the beach on the south side of the Ponto Jetty. This project is to be coordinated with the Ecological Reserve Manager at the Department of Fish and Game and the City of Carlsbad at a later date.

Peter Cota-Robles, Director of Engineering
Engineering Services Department


Batiquitos Lagoon
Carlsbad Blvd
SOUTH CARLSBAD
STATE BEACH
PARKING LOT
PROPOSED
HOTEL
Haymarket Rd
Willow Rd
Parliament Rd
Kensington Rd
Aldersgate Rd
Tallenhom Rd
PROPOSED SANDAG
BEACH FILL
TOP OF SLOPE
TOE OF SLOPE
1390'
2
5
10
15
20
25
30
TOP OF BERM
SLOPE OF BERM
0
760 Feet
Encinitas Resort Hotel
Receiver Site Plan
FIG. NO:
1


PROPOSED HOTEL
Haymaker Rd
Willow Rd
Parliament Rd
Aldersgate Rd
Tattenham Rd
Kensington Rd
Batiquitos Lagoon
Carlsbad Blvd
SOUTH CARLSBAD STATE BEACH PARKING LOT
PROPOSED SANDAG BEACH FILL
TOP OF SLOPE
TOE OF SLOPE
1390'
2
5
10
15
20
25
30
TOP OF BERM
SLOPE OF BERM
0
750 Feet
Encinitas Resort Hotel
Receiver Site Plan
FIG. NO: 1



Date of Map Production
October, 2003

N

1 inch equals 450 feet

Orthophotos, flown July 200

Disclaimer:

Every reasonable effort has been made to assure the accuracy of the data provided. Nevertheless, some information may not be accurate. The City of Encinitas assumes no responsibility arising from the use of this information.

Vicinity Map

Figure 3

State of California - The Resources Agency ARNOLD SCHWARZENEGGER, Governor
DEPARTMENT OF FISH AND GAME
MARINE REGION
20 Lower Ragsdale Drive, Suite 100
Monterey, California 93940
(831) 649-2870
http://www.dfg.ca.gov

January 6, 2004

Mr. Brian Lesley
City of Encinitas
505 South Vulcan Avenue
Encinitas, California 92024

Subject: Comments on the Leucadia/Batiquitos Beaches Sand Replenishment Project Draft Mitigated Negative Declaration, SCH No. 2003111025

Dear Mr. Lesley:

The Department of Fish and Game (Department) has reviewed the City of Encinitas' (City) Draft Mitigated Negative Declaration (DMND) for the Leucadia/Batiquitos Beaches Sand Replenishment Project, San Diego County, California. The proposed project would place 50,000 cubic yards (cy) of sand on an intertidal beach area of Leucadia State Beach and Batiquitos Beach (approximately 900 feet south of the Batiquitos Lagoon inlet). The receiver site would be approximately 50 foot in width and 1,390 foot in length in the intertidal zone between +5 and -2 feet Mean Lower Low Water. The sand would come from excavation of a subterranean parking garage for the approved Encinitas Hotel on a coastal bluff adjacent to the fill site. Grain size analysis has determined that the sand source is 90 to 99 percent sand. Material would be transported by 10 cy capacity dump trucks which would require approximately 5,000 truck trips. Sand would be dumped on the beach and dispersed with loaders, scapers, and bulldozers. If sand could not be dumped and spread (e.g., unfavorable tide and wave conditions) a stockpile site would be created. To preclude impacts to sensitive bird species, loading, hauling, and dumping is expected to take place between August 15 and February 15. Alternatives to this project included trucking the sand to Moonlight Beach, trucking sand to a Cardiff receiver site, and hauling the sand to an inland location. The proposed project alternative was selected to provide additional sand to future hotel guests.

The Department is a Trustee Agency and a Responsible Agency pursuant to the California Environmental Quality Act (CEQA), Sections 15386 and 15381, respectively. Pursuant to Section 1802 of the Fish and Game Code, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. As a Trustee Agency, the Department must be consulted by the Lead Agency during the preparation and public review for

project-specific CEQA documents if there are potential impacts to biological resources. Under the California Endangered Species Act (CESA), it is the Department's charge to conserve, protect, restore, and enhance any endangered species or any threatened species and its habitat (Section 2052 of the Fish and Game Code).

The DMND fails to discuss impacts to Batiquitos Lagoon from placement of sand in the intertidal zone. The Department is responsible for dredging Batiquitos Lagoon. A portion of sand from this project will ultimately be transported into the Lagoon. This will increase the maintenance required on the Lagoon. Since accounts to maintain the Lagoon were based on the "at-time" conditions, any additional sediment would negatively impact the Department's efforts meet dredge specifications. According to the document, the footprint of the fill is within the area established for previous beach replenishments projects at this location. However, previous beach replenishment projects provided mitigation to address this issue. The San Diego Association of Government's (SANDAG) Regional Beach Sand Project, which is referenced numerous times in the DMND, provided provisions to offset the additional sand in the Lagoon. Provisions to offset increased maintenance dredging of the Lagoon will need to be incorporated into this project. This issue needs to be further discussed with the Department's Region 5 personnel.

The Department is also concerned about potential impacts to sensitive nesting bird species. The DMND states that "loading, hauling, and spreading shall be limited to the non-breeding and nesting bird season of 15 August to 15 February." However, it further implies that activities could occur during the nesting season. The state and federally listed endangered California least tern (*Sterna antillarum brownii*), the federally listed threatened western snowy plover (*Charadrius alexandrinus nivosus*) and the state listed endangered Belding's savannah sparrow (*Passerculus sandwichensis beldingi*) nest at Batiquitos Lagoon and may forage at the project site. The DMND mentions a biological survey and noise and light attenuation measures if activities extend into the bird nesting season, February 15 to August 15. However, details on these "measures" are not provided and it appears that the discretion to use such measures would be left up to the City Engineer. We find this unacceptable. It should also be mentioned that August 15 is not necessarily the end of the bird nesting season. The nesting season for the western snowy plover may extend through August 31 while the nesting season for least terns may extend through September 15. The City would need to contact the Department and the U.S. Fish and Wildlife Service to consult on this issue if activities are planned past February 15 or prior to September 15.

The proposed project could also impact California grunion (*Leuresthes tenuis*) if activities occurred in March through August. California grunion are a recreational and ecological important nearshore species and, although current

population numbers appear to be at a near constant level, this species is not considered abundant. Grunion spawn on the beach from March through August during the highest tides of the month. The females deposit their eggs in the sand where they are fertilized, then incubated and kept moist until they hatch during the next high tide series, 10 to 15 days later. If grunion have spawned just prior to initiating project activities or grunion spawn during sand placement, the beach building activities would destroy the incubating eggs. To minimize impacts to grunion, we recommend that the project does not schedule beach deposition activities from March through August. If this is not feasible, we recommend that any sand be disposed of in areas above the reach of the tides. Alternatively, predicted grunion spawning runs in March and August could be monitored, by a Department approved biological monitor, based on the Department's grunion spawning run schedule. If there was no grunion spawning activity then beach replenishment activities could commence. The Department understands that beach replenishment will ultimately benefit grunion by providing suitable spawning habitat.

In conclusion, we believe the DMND does not effectively address impacts to all biological resources, nor does it provide detailed mitigation measures. We recommend our above mentioned comments be incorporated into the final MND.

Department personnel are available to discuss our comments, concerns, and recommendations in greater detail. To arrange for a general discussion, please contact Ms. Marilyn Fluharty, Environmental Scientist, at (858) 467-4231. To discuss Batiquitos Lagoon please contact Mr. Tim Dillingham, Associate Wildlife Biologist, at (858) 467-4204, California Department of Fish and Game, 4949 Viewridge Avenue, San Diego, CA 92123

Sincerely,

ERIC J. LARSON
Northern California Marine Manager
Bays and Estuaries Ecosystem
Coordinator
Marine Region-Belmont

cc: Scott Morgan
State Clearinghouse (original sent to Lead Agency)
PO Box 3044
Sacramento, CA 95812-3044

Marilyn Fluharty
4949 Viewridge Avenue
San Diego, CA 92123

Tim Dillingham
Region 5
4949 Viewridge Avenue
San Diego, CA 92123

Martin Kenney
USFWS
6010 Hidden Valley Road
Carlsbad, CA 92009

Robert Hoffman
NOAA Fisheries
501 West Ocean Boulevard
Ste 4200
Long Beach, CA 90802-4213

ex parte e-mail
from Dan B. Secord

received 1/6/06

From: Cara Vallier [mailto:cvallier@mccabeandcompany.net]
Sent: Friday, January 06, 2006 12:01 PM
To: Secord, Dan
cc: Susan McCabe
Subject: Ex Parte

Dan,

Today's conference call was with Bill Dodds of KSL Encinitas, Susan McCabe and Cara Vallier regarding the permit amendment for the KSL Encinitas project (Item 9c, January 12). This a request by KSL Encinitas Resort Co., LLC to amend the permit for a 135-room hotel to convert to a condominium hotel, and place up to 50,000 cu.yds. of excavated sand from site onto adjacent public beach, at 2100 North Highway 101, Leucadia, Encinitas, San Diego County.

The applicant is in agreement with staff and the conditions proposed in the staff report. It was discussed how the project will be open to the general public and will operate as a hotel. Staff is preparing an addendum to address minor concerns by the applicant, as well as to add a "no future seawall" condition, which the applicant accepts.

Let me know if you have any questions.

Thanks,
Cara

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SAN DIEGO COAST DISTRICT

EXHIBIT NO. 7
APPLICATION NO.
6-92-203-A4
Ex-Parte
Communication
Page 1 of 5
California Coastal Commission

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

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SAN DIEGO COAST DISTRICT

Name or description of project, LPC, etc.: __Tue 22a - condo hotel, Encinitas____

Date and time of receipt of communication: _____3/3/06 @ 12:00 p.m.

Location of communication: _____via phone ____

Type of communication (letter, facsimile, etc.): __via phone with staff, Allison Rolfe ___

Person(s) initiating communication: ___Molly Rhodes, HERE Local 30 ___

Detailed substantive description of content of communication:

The following comments were made: KSL said no to a card check neutrality agreement for this hotel project. The Union is still hopeful that it could be tied into La Costa Resort where the Hotel Employees and Restaurant Employees Local 30 have a labor contract.

7 March 2006
Date

Signature of Commissioner

Staff crw

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FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc.: Tue 22a - condo hotel, Encinitas

Date and time of receipt of communication: 3/3/06 @ 3:00 p.m.

Location of communication: Mayor's Conference Room

Type of communication (letter, facsimile, etc.): in person

Person(s) initiating communication: Susan McCabe

Detailed substantive description of content of communication:

Attendees: Susan McCabe, William Dodds (KSL Resort), Lynne Heidel (Allen Matkins Law Firm), Jeffrey Russel (Allen Matkins Law Firm)

The following comments were made: Look for article in today's North County Times. This is hotel project that is being financed as a condominium hotel (needs an underlying subdivision). Changed ownership in 2001. In 1992 permit was issued for the hotel. The permit amendment in front of the Commission relates to the financing, no other changes. This mechanism is increasingly popular for financing hotels. Worked with CCC staff a lot to come up with a number of conditions that resulted in staff recommending approval of the hotel in January. At the hearing Peter Douglas said that he wasn't comfortable with it. Gary Cannon had to write the staff report with no new info. Peter Douglas doesn't like this approach, and isn't open to it. At the hearing, David Allgood asked Peter when he decided this was an issue. Susan McCabe talked to Peter Douglas about two weeks ago. The current application does not differ from the original permit. The private owners will pay TOT. Operates just like a hotel. CCC has approved other projects like this. (Old staff reports on this project were given to Commissioner Padilla.) Studies show that owners really don't use the rooms that often. Denial of this amendment will have a chilling affect on approval of hotels in the coastal zone. No evidence that room owners will have to stay a minimum of 90 days to receive the tax benefit. Lots of safeguards to make sure this 90-day limit is enforceable. Key card access, for example, is programmed to prohibit over 90 days total. The kitchens are tiny kitchenettes with small refrigerators. The fact that there are different corporate owners is probably the reason there is no card check neutrality agreement for this hotel. Divorce between owners is not an issue because the first thing the court would look at is the CC&R's. The city has done a study of hotels and room rates. They have huge vacancy rates. This was already approved in 1992. Would be willing to attach a consumer price index calculator to it and pay that now. Look at conditions in the first staff report that are very good. Would be willing to withdraw and then resubmit by letter. Can be approved at hearing though with the previous conditions and the CC&R's (that have to go past the City and Coastal Commission) if they get changed. Consider leading the charge on this as the San Diego representative.

7 March 2006
Date

Signature of Commissioner

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FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LCP, etc.: The 22A - [redacted] - Encinitas Beach Hotel

Date and time of receipt of communication: 3/1/06 - 9AM

Location of communication: Santa Rosa, CA

Type of communication (letter, facsimile, etc.) Phone call

Person(s) initiating communication: Susan McCabe

Person(s) receiving communication: Mike Reilly

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

Conference call w/ Susan McCabe, Cora Valliter, Bill Dodds, Lynn Heidle + Jeff Russell representing Encinitas Beach Hotel. Opposed to new staff finding and denial recommendation that condo hotel financing violates public access provisions of coastal act + LCP. Cites approved projects - Long point, Half Moon Bay + Hermosa Beach. Also discussed mitigation - advocated previously approved mitigation + CPI adjustment.

3/4/06
Date

Mike Reilly
Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

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FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

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SAN DIEGO COAST DISTRICT

Name or description of project, LCP, etc. #6-92-203-A4 (KSL Encinitas

Date and time of receipt of communication: Recd) 2/24/06

Location of communication: Manhattan Beach

Type of communication (letter, facsimile, etc.) Oral

Person(s) initiating communication: Susan McCabe / Bill Dodds (KSL)

Person(s) receiving communication: Larry Clark

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

Background History of KSL Hotel Project in Encinitas including Financing Mechanism & Public Amenities.

3/7/06
Date

Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

MONEY & INVESTING
SATURDAY/SUNDAY, FEBRUARY 25 - 26, 2006
THE WALL STREET JOURNAL.

New Twist in Vacation Homes

Hotels Go Into the Business Of Selling Units as 'Condos'; Room Service and a Mortgage

By MICHAEL CORKERY

HOPING TO CASH IN on Americans' appetite for vacation properties, hotels are increasingly selling something new: a piece of the hotel.

In the past few years, developers have started aggressively marketing "condo hotels," which look and feel like regular hotels with one difference—you can buy an individual room. Owners can use that room whenever they want, and they also share in any income when the hotel rents it out to other guests.

Properties like these aren't entirely a new concept: Real-estate mogul Donald Trump developed an early one 14 years ago. However, today the number is rising. As of December, condo-hotel rooms made up 11% of the roughly 113,170 new hotel rooms under construction in the U.S., according to Smith Travel Research, based in Hendersonville, Tenn.

At one San Diego property, the Hard Rock Hotel, scheduled to open next year, all 420 units will be condo-hotel rooms. Last summer, developers Mr. Trump, **Bayrock Group** and New York developer Roy Stillman announced they are building a 298-unit condo hotel in Fort Lauderdale, Fla. Actor George Clooney is a co-developer with Related in Las Vegas in a project to build a casino and 926 condo-hotel units.

Projects like these are different from timeshares, which typically don't generate income, and limit owners to only a few weeks' use a year.

Condo-hotels are popular among developers because selling units to individual buyers lets them cut the cost of maintenance and utilities. Prices of units at the San Diego property range from a $400,000 "studio suite," with a kitchen area and one bathroom, to a $2.3 million two-bedroom property that's more akin to an actual condo than a hotel room.

For investors, the advantages aren't as clear-cut. The owner gets income only if their room is

Please Turn to Page B4, Column 4

Crystal Springs Cottages (top photos); The Trump Cottage (right); Fontainebleau Resort (right photos)

Condo hot
New Jersey
by the sam
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in Miami E
some condo

EXHIBIT NO. 8
APPLICATION NO.
6-92-203-A4
Wall Street Journal Article from 2/25/06
California Coastal Commission

3/9

Buy a Room in the Hotel; Share Profit and Risk

Continued From Page B1

rented: If bookings at the hotel drop, so does the room owner's income. Meantime, the owner still has to cover real estate taxes and often a mortgage, as well as monthly maintenance fees. Those fees—much like regular condo-association assessments—cover things like maintenance and general repairs to the building.

Resale values are also uncertain. "We have no data on whether you can sell it for more in five to ten years" says John Vogel Jr., a permanent adjunct professor at the Tuck School of Business at Dartmouth College. It's a particular concern amid signs that the overall real-estate market may be cooling. Condo-hotels are "a complicated and risk-filled asset class" that lack a long-term track record, says Mark Lunt, a lodging analyst at Ernst & Young in Miami.

On top of everything, for a room owner, it can be tricky to decide when to rent it out and when to use it yourself. After all, if you use your room during peak vacation season—the time you'd most likely want to—you can miss out on earning the highest seasonal room rates.

Proponents of condo hotels say one advantage is that the owner can use the property more often than a typical timeshare or fractional-share property. Since condo-hotels also have prospects for generating rental income, some are also purchased as investments.

"We thought of it as the best of both worlds—having other people's money buy our second home," says Kimberly Hartke, who three years ago bought a $700,000 unit with one bedroom and a living area at the Fontainebleau resort on the oceanfront in Miami Beach. Ms. Hartke, who lives in Reston, Va., says her family used it about 30 days last year. She and her husband paid for most of the unit up front and took out a relatively small mortgage. She says on average the rental income has covered about 35% of their expenses, but she expects the income will increase as the hotel gets more popular.

Some experts warn that condo hotels shouldn't be viewed as simply an investment. "I would be very cautious about buying," says Ken Rosen, chairman of the Fisher Center for Real Estate and Urban Economics at the University of California, Berkeley. "It is certainly not the best way to invest in real estate. You should buy it to use it; if the investment works out, even better."

Condo hotels are the latest attempt by developers to slice and dice the second-home market.

Second homes can be a good investment if they are in an area where residential real estate is appreciating quickly and there's a strong rental market. The downside is that the owner is responsible for all the upkeep, from cutting the grass to finding a plumber.

That's helped drive the market for a wide array of "fractional ownership" programs. Typically in those arrangements, buyers pay for the right to use a condo or villa. That cuts their ownership costs, but they're also typically limited to using the unit just a few weeks a year.

Timeshares often let users have access to numerous properties nationwide and overseas. But they have a mixed history when it comes to resale values. Fractional ownership is a variation on timeshares in which a buyer often gets use of a property for a longer period of time. In addition, they've tended to show stronger resale values partly because they are often located in more upscale communities where it's tougher to buy in general.

Timeshares can be tough to resell because they tend to lose value over time, it costs money to market them and it can be hard for a prospective buyer to get financing for an older timeshare. Overall, "No piece of a unit is going to resell as much as a whole unit," says Robert J. Webb, a senior partner in the hospitality practice in the Orlando office of the law firm Baker & Hostetler.

When shopping for a condo-hotel property, the first thing to realize is that you're actually shopping for a hotel: A condo-hotel room has the best shot at being a successful investment if it's a prime property located somewhere with heavy demand for hotel rooms. "If it doesn't work as a hotel, it won't work as a condo hotel," says Mr. Webb.

However, hotels can be a fickle form of real estate, since they can they be sensitive to even slight shifts in the economy and even the weather. And projecting rental income can be surprisingly difficult. Many developers say buyers shouldn't expect to make a profit from renting their room—but they avoid giving specifics.

One reason: They say they are afraid of triggering the Securities and Exchange Commission to regulate sales of the units as if they are a security. Mr. Webb says many developers are taking their cue from a November 2002 letter that the SEC sent to Vancouver-based Intrawest Corp., a developer of condo hotels. In the letter, the SEC suggested it wouldn't take enforcement action if the company sold the condo hotels under certain conditions. One condition was not to provide prospective buyers with projections of income or expected occupancy.

There are ways around it. Some developers set up a "rental office," separate from the "sales" office, to provide information about the broader rental and hotel market in the area. For instance, when deciding whether to buy their Fontainebleau unit, Ms. Hartke and her husband, Keith, studied rates and occupancy at an existing hotel nearby.

Without information like this, says Mr. Lunt of Ernst & Young, "It's kind of like buying a stock without checking the prospectus."

A newly formed group, the National Association of Condo Hotel Owners (www.nacho.us), is in the process of creating a service to assess different projects for potential buyers, by studying such things as the cost of operations, rental programs and potential competitors.

One important test of a project is whether an experienced hotel company is operating the building, since that could give the building an edge in attracting nightly guests. A number of brand-name hotels, such as Starwood Hotels & Resorts Worldwide Inc. and Marriott International Inc., are managing condo-hotel projects across the U.S.

Currently, the vast majority of condo hotels—212 projects—according to Smith Travel Research, are being developed by independent developers (though that doesn't mean they won't affiliate with hotel brands in the future). There are only a couple dozen or so projects now affiliated with a major hotel company, according to Smith Travel Research, although of course a brand name alone isn't a guarantee of success.

Location is also key. Experts say it helps if the condo-hotel is in a year-round resort or a popular city where demand for hotel rooms is strong. Properties in second-tier markets that aren't heavily traveled spots might be risky.

The tax issues surrounding condo hotels can be complex. Tax laws vary depending on how many vacation properties someone owns, how often they use the units and the legal structure of the ownership. Mr. Webb says a condo hotel cannot be used as a tax shelter—meaning buyers can't use losses from a failing hotel development to reduce their income taxes.

3/9

Comparing Vacation Properties

Comparing the many ways you can get your hands on a vacation property.

Condo Hotel

How it works: You buy a room in a hotel. The hotel operator can rent out your room to guests when you aren't using it, and you share that revenue.

■ **Advantages:** You can use the property when you want, and get some rental income at other times which can cover part of your expenses, such as maintenance and a mortgage. Condo hotels have the amenities of a hotel, such as room service.

■ **Disadvantages:** You can suffer from the vagaries of the hotel business: If your room isn't rented out, then you don't collect income. In many cases, you can't decorate your own unit. How much condo hotels will appreciate—if at all—is unclear.

Timeshare

How it works: You buy the right to occupy a vacation property for a few weeks of the year.

■ **Advantages:** You can reduce the cost of a vacation since properties such as these can sometimes be less costly than staying in a hotel.

■ **Disadvantage:** Unlike condo hotels, you don't get any income from a timeshare. They also have a mixed history when it comes to resale, and some have been resold at a loss.

Fractional ownership

How it works: Like a timeshare, you buy the right to occupy a vacation property, though typically you can use it for a longer period of time than a timeshare.

■ **Advantages:** You can stay in an often upscale vacation spot for less money than buying a home there. The resale value has been fairly strong in high-end markets.

■ **Disadvantages:** You have to share the property with other people. They aren't typically rented out so there's no chance for you to get a bit of extra income.

Second Home

How it works: You go out and buy a second home, or a regular condo or apartment, somewhere you'd like to vacation or retire.

■ **Advantages:** You can use that property whenever you want, and unlike some of the other options here, you get to decorate it as you wish. Resale prices have been strong, especially in many traditional vacation markets.

■ **Disadvantages:** You're responsible for all of the upkeep, from mowing the lawn to cleaning the gutters. And if you want to rent it out, finding tenants can cause extra headaches.

Source: WSJ research

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CPP BRIEFING REPORT

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SAN DIEGO COAST DISTRICT

KSL ENCINITAS RESORT COMPANY, LLC
CASE #04-268
ENCINITAS BEACH RESORT
COMMUNITY PARTICIPATION PROGRAM
BRIEFING (SEABLUFF RESIDENTS)

Thursday, February 17, 2005
La Costa Resort and Spa/Veranda Room
6:30 PM

Total Attendance – 36
Total Addresses Represented – 27 (See attached)
Total Comments/Concerns Forms Submitted – 7 (See attached)

AGENDA: (See attached)

I. Welcome –
Mr. Dodds, KSL Vice President called the briefing to order at 6:45 PM and thanked attendees for coming to this evening's meeting.

II. **Introductions –**
Mr. Dodds introduced himself and KSL Community Affairs Liaison Doug Yavanian. He also introduced and thanked Seabluff HOA President Gail Sanders for all of her help in assisting KSL keeping Seabluff residents apprised and current on project developments.

III. **House Keeping Matters –**

A. *Mr. Dodds asked all those present to be sure and sign the Sign-In-Sheets prior to leaving if they haven't already done-so.*
B. *Those present were asked to fill out a green Comments/Concerns form and return to Mr. Yavanian*
C. *It was noted that this evening's Briefing was part of KSL's Community Participation Program as defined by the City of Encinitas. A Briefing report, list of attendees, and the green forms will be submitted to the City.*

IV. Who Are We?

CPP BRIEFING REPORT 02 17 05v2

EXHIBIT NO. 9
APPLICATION NO.
6-92-203-A4
Community Meeting Handout Prepared by Applicant in 2005
California Coastal Commission

Mr. Dodds provided a brief background on KSL noting the following:

1. *KSL is a 13 year old privately held Resort owner and hotel management company headquartered in La Quinta, California.*
2. *KSL owns and operates the La Costa Resort and Spa, Hotel Del Coronado and the proposed beach hotel site in Encinitas.*
3. *KSL has long term hotel management relations for the following properties: La Quinta Resort & Club and PGA WEST in the Coachella Valley; the Arizona Biltmore Hotel; and the Grand Wailea on the Island of Maui.*
4. *Previously owned and operated Miami's Doral Resort and the California Bay Area's Claremont Hotel and Spa.*
5. *The La Costa Resort and the Encinitas beach properties were acquired in November 2001.*

V. Project Overview/Status –

Mr. Dodds provided those present with a project status and overview noting the following:

1. *There is no intent to change the original conditions of the permits previously granted by the California Coastal Commission or the City of Encinitas. It is the intent of KSL to develop the boutique hotel with numerous amenities including meeting facilities and restaurant as currently entitled and approved.*
2. *KSL has submitted an application to the City of Encinitas requesting the project be developed under a condominium map which allows KSL to construct the hotel through equity financing. The hotel rooms/ units will be sold as whole ownership to third party buyers. The project is not a timeshare or fractional ownership development.*
3. *There will be use restrictions placed on owners as stipulated by the City of Encinitas. We propose a 90-day maximum annual owner use limitation with a maximum use of 25 consecutive owner use days. TOT revenues will be collected for each room night use as required by the city's transient occupancy tax ordinance.*
4. *The condo map request will not change anything previously approved (footprint of the building, height, set-back, # of rooms, etc.) merely provides an economical, alternate means of financing. Resort and Hotel financing is difficult in today's economy. The proposed financing method has been used by KSL at its La Quinta Resort and*

will be used in the development of the recently approved Villas at the La Costa Resort and Spa. Many developers of four and five star hotels from throughout the United States are using equity financing (or condo hotels) to finance the development of new hotel properties.

5. *KSL is currently working with the City of Encinitas and various state and federal agencies to set in motion a plan that will allow for the removal of 40,000 cubic yards of high quality sand and put into a comprehensive beach replenishment effort (on Encinitas beach areas). The required approvals for this effort should be completed in the Fall of 2005. It is estimated that construction would commence within 12 months of the sand placement approvals.*

   Other major components of this project include underground parking and signalization at the intersection of La Costa and Highway 101.

6. *The City of Encinitas informed KSL that it would require one exclusive rental management entity to handle all of the hotel operating activities, including the rental of all units owned by third parties. This is noted as a change from the project description included with the Notice for this CPP meeting.*

Question and Answers -

The following questions regarding condo hotels were asked at the meeting, with a brief summary of the answers given:

Will TOT be collected 365 days per year? TOT will be collected whenever the unit is occupied. There is no minimum occupancy requirement.

How will the units be managed? The City of Encinitas will require an exclusive hotel operator to manage the units.

Will KSL be the hotel operator for this project? KSL fully intends to be the hotel operator for this project.

Are there alternatives to this type of equity financing? There are other ways to finance the project, but this is a typical and acceptable method of financing.

Do you plan to pre-sell units? If no one buys the units, what assurances are there that the hotel will be built? No pre-sales are currently planned. KSL will obtain a construction loan to complete the hotel and will not start without full financing in place. KSL will then use the proceeds from the condo hotel sales to pay the construction loan.

Who is the target market for condo hotels? Mostly individual buyers for investment purposes and/or for limited use as vacation homes.

What is the target price for these units and what is included? The pricing has not been determined. However, it is typically modeled based upon adjacent property values. In the Seabluff community where there is not a lot of turnover, oceanfront units between 1000-1250 square feet sell for $1-1.2 million. Our equity financed units will average about 1000 square feet and include all the amenities of a hotel, including maid service and room service. Owners, when occupying their units, can avail themselves of such services for a fee.

Can someone buy a fractional interest? No. A group of individuals may purchase a unit; however, they will be treated as a single owner for occupancy limitation purposes. .

Who sets the room rental rates? The City will require that the hotel operator manage the rooms and the market will determine the rates.

How will the revenue be split amongst the unit owners? Each unit will participate in the rental revenue for their particular unit.

What kind of secondary market is there for condo hotels? KSL's experience with its other condo hotel properties is that there is a strong secondary market with a positive impact on property values.

Is this project affiliated with the timeshare across the street? – No, this is not a timeshare project.

The following general questions about the previous approvals and construction were asked at the meeting, with a brief summary of the answers given:

What is the approval and construction process? This meeting is part of the community outreach process required by the City. Kerry Kusiak is the City planner for the project who is reviewing the application. The City has approving authority over the map waiver. The California Coastal Commission has the final approving authority over the permit to move sand. After the required approvals are in place, the first step will be to actually move the sand, which cannot be done during the summer months. KSL anticipates construction would not start until Spring 2006, at the earliest.

Are the original approvals being changed? The project will be built as originally approved. 260,000 total square feet, 130 keys, with the keys combined and sold as condo suites with kitchenettes. The development will comply with the regulatory conditions of the original approvals.

Doesn't this change in land use require an amendment to the General Plan and/or the prior approvals? The proposal is not a change in land use. The units will still be visitor serving and function as hotel rooms. These are not residential condominiums.

What public improvements will be constructed? Some intersection and signalization improvements will be performed as part of the project. Improvements to the I-5 off ramp at La Costa have already been completed.

What types of banquet/restaurant facilities are planned? About 12-15 thousand square feet of banquet/restaurant space is planned but no detail is available, as the plans are not yet finalized.

How many parking spaces will there be and will they be assigned? The project is providing approximately 250 spaces in a two level underground garage. Parking spaces will not be assigned and will be available for hotel guests, owners, and the general public. Valet will be available and utilize tandem parking to maximize parking spaces.

What arrangements will be made for special event parking? If a special event were planned, KSL would make arrangements for additional offsite parking with shuttles. A good example is the way the La Costa Resort handles parking requirements associated with the Acura Match Play Golf Tournament.

How much sand will be moved? Approximately 40 thousand cubic yards of sand will be moved from the site to the beach as part of the sand replenishment project.

As a good neighbor, would KSL be willing to replace the story poles to remind the community what the height of the buildings will be? Perhaps. It is difficult to protect the story poles from vandals, but KSL will consider it.

What type of dust relief measures will be employed during construction? Per the City's requirements, a dust management plan will be in place, as well as a storm water management plan and other similar plans.

Thompson (traffic concerns) -
Traffic concerns were addressed in the original approval process. The proposed condo map is a financing vehicle for the development of the previously approved hotel. The condo map does not affect the approved hotel development program parameters.

Mills (bluff stability & noise/traffic concerns - Traffic and bluff stability concerns were addressed in the original approval process. The proposed condo map is a financing vehicle for the development of the previously approved hotel. The condo map does not affect the approved hotel development program parameters.

Simms (bluff stability/property damage concerns) - Bluff stability concerns were addressed in the original approval process. Property damage during construction is a concern for the adjacent property owners as well as the hotel developer. Such concerns will need to be addressed once the method of construction is finalized.

9/9

Appropriate safeguards typical for such construction activities will be required of the general contractor.

Lydecker & LaTouche (sale of units) -
Whether the units sell or not, the property would operate as a hotel.

City of
Encinitas

Tue 22a

February 27, 2006

Chair Meg Caldwell
California Coastal Commission
San Diego Coast District
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

REF: Agenda Item **Tue 22A**, Permit Number 6-92-203-A4
KSL Encinitas Resort Co, LLC

Dear Chair Caldwell and California Coastal Commissioners:

On March 7, 2006, the Coastal Commission will consider a request by KSL Encinitas Resort to amend a permit for a 135 room hotel to convert to condominium hotel ownership and place 50,000 cubic yards of excavated sand from the site onto the adjacent beach. The City of Encinitas encourages your support of this request.

It is our understanding that Coastal staff will be recommending denial of this request. The City is very concerned with this recommendation. Coastal Commission staff recently expressed concerns that the City of Encinitas does not have enough visitor-serving uses. Based on this concern they recommended that the City continue to allow visitor-serving uses (short-term vacation rentals) in residential zones, which we believe to be an inappropriate zone for commercial uses. Now a visitor-serving use (Encinitas Resort hotel) is being proposed in a Visitor-Serving Commercial zone, which is an appropriate zone for commercial uses, and Coastal staff is recommending denial.

The applicant is requesting a change in the type of ownership. This will enable the developer to obtain financing in order to construct the hotel and necessary public improvements. The use of the hotel will remain a hotel. It will not become a residential condominium use. The City of Encinitas wanted to ensure that the primary use of the site remains a hotel, and, as such, we imposed conditions with the project. (See attachment for a listing of these conditions.) This type of ownership is not new; similar projects are being operated successfully as hotels.

The beach access that was constructed on the site is well used by our residents and visitors to the Ponto State Beach in neighboring Carlsbad. The road improvements to North Highway 101 and La Costa Avenue will provide better access for the beach going

Letters of Support

TEL 760-633-2600 | FAX 760-633-2627

recycled paper

public. The construction of the hotel itself will provide a quality destination point for visitors. In addition, the sand that will come from the construction site will enhance the beaches in the area and serve to further protect against beach erosion. The project provides coastal access in the following ways:

- ✓ Overnight lodging for the general public.
- ✓ Enhances lateral beach access and the overall enjoyment of the beach with sand replenishment.
- ✓ Protects against beach erosion with sand replenishment.
- ✓ Provides public access from Hwy 101 to the bluff top through the project.
- ✓ Establishes lateral bluff top public access for the entire length of the property.
- ✓ Creates a public vista point on the bluff top.
- ✓ Connects the vista point and lateral bluff top access to Ponto State Beach with a stairway.
- ✓ Improves coastal access with road improvements to Hwy 101, both vehicular and pedestrian.

This project is a wonderful addition not only to the Encinitas coastline but to the California coastline, providing coastal access in a variety of ways for the public to enjoy. We look forward to the ultimate construction and enjoyment of the Encinitas Resort, and encourage your support of their request.

Sincerely,

Patrick S. Murphy
Director of Planning and Building

cc: Patrick Kruer, Vice-Chair
Dr. William Burke, Commissioner
Mike Reilly, Commissioner
Dave Potter, Commissioner
Sara Wan, Commissioner
Mary Shallenberger, Commissioner
Bonnie Neely, Commissioner
Steven Kram, Commissioner
Dan Secord, Commissioner
Larry Clark, Commissioner
Steve Padilla, Commissioner
Deborah Lee, Sr Deputy Director
Sherilyn Sarb, District Manager

Attachment.

CITY OF ENCINITAS
APPROVAL OF 04-268 TPM
(NOTICE OF DECISION PBD 2005-32)

SELECTED CONDITIONS TO ENSURE HOTEL OCCUPANCY BY THE GENERAL PUBLIC

SCF The permitted development shall be operated as a limited-term occupancy hotel condominium to the satisfaction of the Planning and Building Director. No portion of the project shall be converted to a time-share, full-time occupancy condominium, apartment or other type of project that differs from the approved limited-term occupancy hotel condominium without an approved amendment to this approval and an approved amendment to any permit or approval required by other agencies.

SCG Owners of hotel occupancy units shall not be allowed to occupy their hotel occupancy units for more than 25 consecutive days and no more than 90 days per year, unless otherwise approved by the Planning and Building Director with consideration given to approval by other necessary agencies.

SCH All hotel occupancy units shall be available to the general public when not occupied by the hotel occupancy unit owner.

SCI An on-site hotel management agent shall manage all hotel occupancy units with such management services to include, but not be limited to, check-in and check-out services, reservation services, issuance of key cards to control access to rooms, and collection and remittance of transient occupancy tax (TOT).

SCJ All occupants of the hotel occupancy units, including hotel occupancy unit owners, shall pay the transient occupancy tax (TOT) in accordance with Section 3.12 of the Municipal Code.

SCK Prior to issuance of any certificate of occupancy for the project, the applicant shall submit to the City two (2) copies of the proposed covenants, conditions, and restrictions (CC & Rs) and any other covenants related to the operation of the limited-term occupancy hotel condominium. The proposed CC & Rs and other covenants shall be reviewed by the City and shall not be recorded until and unless the Planning and Building Director determines that the CC & Rs and other covenants properly and adequately incorporate the terms and conditions set forth by this approval. The CC & Rs and other covenants shall stipulate that the portions of the CC & Rs and other covenants pertaining to the terms and conditions set forth herein shall not be amended or revised without review and approval by the Planning and Building Director of said amendments or revisions.

SEACOAST PRESERVATION ASSOCIATION

FACSIMILE TRANSMITTAL SHEET

TO: Gary Cannon	FROM: Susan Steele
COMPANY: California Coastal Commission	DATE: 3/2/2006
FAX NUMBER: 619.767.2384	TOTAL NO. OF PAGES INCLUDING COVER: 3
PHONE NUMBER: 619.767.2370	SENDER'S REFERENCE NUMBER:
RE: Tue 22a	YOUR REFERENCE NUMBER:

URGENT

NOTES/COMMENTS:

Dear Gary,

Please find attached two letters to the Commissioners regarding Tue 22a.

The first letter is a copy of the original letter we sent in September 2005.
The second letter is a new letter indicating our support of the KSL project as they have proposed.

If there is any problem, I would appreciate a call.

Thanks so much,

Sue Steele

Sue Steele
760.632.8649
Secretary
Seacoast Preservation Association

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MAR 2 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Seacoast Preservation Association, Inc.
P.O. BOX 232692
ENCINITAS, CALIFORNIA 92023

September 23, 2005

California Coastal Commission
7575 Metropolitan Dr. Suite 103
San Diego, CA 92108
Attn: Mr. Gary Cannon

Dear Mr. Cannon,
The Seacoast Preservation Association has followed with great interest the proposed hotel development at the LaCosta Ave. and Highway 101 crossroads. We share with the Coastal Commission the goal of safe, accessible and attractive beaches. To that end, the addition of sand, whether through replenishment action or opportunistic placement, promotes the well-being of the strand.
We urge the Coastal Commissioners to approve the request from Bill Dodds and the Encinitas Resort Project to place the sand excavated from this site on the beach below the property. What a great opportunity to place sand opportunistically onto the beach, literally only a few feet away.
We have been party to the various discussions raised at SANDAG about sand quality and the need to match in granule size and color the sand placed on the beach. Surely the sand from the bluff directly above the shore where it will be placed would not differ so greatly so as to prevent this action. Please allow the hotel's request for this opportunistic sand placement. There is nothing more vital to the protection of the bluffs than the level of sand below them.
Thank you for your consideration.

Sincerely,

Susan Steele
Secretary
Seacoast Preservation Association

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MAR 2 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Seacoast Preservation Association, Inc.
P.O. BOX 232692
ENCINITAS, CALIFORNIA 92023

March 2, 2006

California Coastal Commissioners
7575 Metropolitan Dr. Suite 103
San Diego, CA 92108
Attn : Mr. Gary Cannon
Re: Tue 22a

Dear Commissioners,

As a group of Encinitas property owners who are directly impacted by the development of KSL resort hotel in the city's northern beach area, we are urging the Commission to allow this project to proceed as proposed by KSL. We have attended the meetings over the course of the years since the proposal and believe strongly this development is in the best interests of the local community as well as the people of California. As the only Encinitas beach front hotel, this project will allow many visitors to the area public access to our beautiful beaches.

Secondarily, we urge the Commission to approve the placement of the opportunistic sand onto the beach directly below the hotel site. We believe this sand is of immense importance to the health and safety of the beach. Keeping the beaches safe and free of revetment devices by supplying more sand is the goal of all groups in beach communities, and one which the Coastal Commission champions, no doubt.

KSL Development has already built the Commission required public improvements; ie stairway. There will be increased public use of that Encinitas/Leucadia beach and great access to the rooms in this hotel structure. Public meeting rooms, banquets will all be available. In other communities in the US where shared ownership of these types of hotels have been built, it has been a boon to everyone involved.

We ask the Commissioners to approve the KSL plan as the Encinitas Resort Company has proposed.

Thank you for your attention to this matter.

Sincerely,

Susan Steele
Susan Steele
Secretary
Seacoast Preservation Association

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MAR 2 2006
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SAN DIEGO COAST DISTRICT

01 2006 11:48AM OPPER FILMS 8584814189 p.1

Tue 22a

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MAR 1 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

March 1, 2006

California Coastal Commission
San Diego CA

Re: KSL Encinitas Resort Co., LLC---Application No: 6-92-203-A4

Honorable Commissioners and Staff,

I read the entire Staff Report and Preliminary Recommendation pertaining to the KSL Encinitas Resort Co., LLC Project and I strongly agree with Staff's recommendation to deny the conversion of the proposed Hotel to a Hotel Condominium. A conversion to condominium ownership would result in a conversion of the use to a "quasi-residential" use and has the potential to reduce the number of hotel rooms available to the public, which is inconsistent with the public access and recreation policies in Chapter 3 of the Coastal Act.

I recognize that "condotels" are a growing trend and that they do have a place in some markets. However, "condotels" do not belong in small coastal cities where visitor-serving accommodations are often already limited. The staff report accurately points out, "...there remains the potential for owners to use their unit for vacation purposes during the summer when hotel rooms for the general public are in highest demand " and "...up to ¼ of the hotel units will be unavailable over a 1-year time period." Please take into consideration the fact that most, if not all coastal businesses, including hotels/motels, rely heavily on the income they generate during the summer peak season. It stands to reason that "condotels" will not only limit the number of available overnight accommodations to visitors but they also have the potential to reduce the viability of the business itself by limiting the income generated during the high season.

In light of staff's recommendation it is foreseeable that the KSL group will resubmit a modified proposal for this site---such as a 50% condo 50% hotel use. I respectfully request that the Coastal Commission deny any future proposal that includes a residential component for this visitor serving commercial site. I submit that ANY number of "limited term occupancy" units constitutes a residential component. Any condominium project proposed for this site will require a subdivision of the land originally intended to be utilized as visitor serving commercial.

I commend staff on its detailed analysis of this issue. I urge the Commission to deny the change in ownership of this 130-unit hotel to a limited term occupancy hotel condominium form of ownership. Please consider scheduling future KSL hearings in San Diego.

Respectfully,

Gerri Retman
225 South Granados Avenue
Solana Beach, CA 92075

Letters of Opposition

Tue 22a

Gary Cannon

From: Gerri Retman [gerriretman@oppersports.com]
Sent: Monday, February 27, 2006 2:26 AM
To: Gary Cannon
Subject: RE: KSL Encinitas Project

Mr. Cannon,

I have read the entire staff report pertaining to the KSL Encinitas Project and I strongly agree with the California Coastal Commission Staff recommendation to deny the conversion of the proposed KSL Hotel to a Hotel Condominium. I recognize that "condotels" are a growing trend and that they do have a place in some markets however they DO NOT belong in small coastal cities where public access is often already limited.

I commend the staff on its detailed analysis of this issue. However, there is one issue that I did not see addressed in the report. It is my understanding that the owners of individual condotel units would not be required to pay Transient Occupancy Tax (TOT), during the time they reside in their condominium as TOT could amount to a double tax (considering owners are already paying property tax). If TOT cannot be charged to these owners then cities will reap far less TOT than they would from a traditional hotel. Further the staff's report accurately points out that owners are most likely going to occupy their coastal condominiums during the peak summer months. Coastal cities are known to experience an influx of visitors during the summer and many coastal businesses rely heavily on the income they generate during this high season. Condotels will not only limit the number of available overnight accommodations to visitors but they also have the potential to reduce the viability of the business by limiting the income generated during the high season.

I have further comments and would like to send a letter or email to the Commissioners that will hopefully be included in their agenda packet. What is the final date for such letters or emails to arrive in order to be included in the staff report update? Are emails an accepted? If so, to what specific address should they be sent to?

Thank you
Gerri Retman
225 South Granados
Solana Beach, CA 92075

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FEB 27 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

LETTER of Opposition

Lila Scarlato
514 North Granados Avenue
Solana Beach, California 92075

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MAR 1 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

March 1, 2006

Coastal Commission - Via Facsimile 619-767-2384

RE: Condo Hotel - KSL Encinitas Resort Co, LLC.

Costal Commission:

I strongly am in favor of the Staff's position that conversion of hotel ownership to a condominium form of ownership can result in a reduction of the number of hotel rooms available to the public, which is inconsistent with the public access and recreation policies in Chapter 3 of the Coastal Act. I have had a chance to go over the staff report and preliminary recommendations prepared by the Coastal Commission for the KSL Encinitas Resort Co, LLC.

PLEASE DENY THIS CONDOMINIUM HOTEL! I am begging the Commission to Deny the change in ownership to a limited term occupancy hotel with condominium form of ownership.

The conversion of a hotel to condominium ownership results in a conversion of the use to a "quasi-residential" use. This is especially important in areas where there are few visitor-serving uses, and where unique bluff-top locations provide public access and significant public views to the beach.

Thank you,

Lila Scarlata

MAR-1-2006 13:48 FROM: 760-753-2227 TO:16197672384 P.1

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MAR 1 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

LETTER TO THE EDITOR OF THE NORTH COUNTY TIMES
March 1, 2006

QUESTIONABLE REPRESENTATION

Nothing coming from the Encinitas City Council should shock me anymore, but Mayor Guerin's unmitigated gall and chutzpah takes the cake. In the council's effort to selectively grant short-term rental profits only to corporate sponsors, we read in the March 1 issue of the NCT that "Mayor Christy Guerin said she plans to fly to Monterey next week to testify on behalf of KSL" against Coastal Commission recommendations that oppose the hotel chain's plans for building a time-share condo-hotel on sensitive beach bluffs.

Since when are elected public servants authorized to represent special corporate interests in a public forum? We elect city officials to work with the Coastal Commission, not to fight this State agency appointed by the public for protecting public resources. Mayor Guerin's remarks may be a slip of the tongue, but remember that Duke Cunningham is going to jail for getting caught and similarly admitting his loyalty to corporate over public interests.

Guerin's further statement that the community would benefit from "an already-built stairway" to the beach is equally misguided. A stairway for public beach access has existed there for as long as I can remember and is not a benefit provided by KSL.

Dietmar Rothe
Cardiff

ph.: 760-753-6827

TO Gary Cannon
CAL. COASTAL COMMISSION

FYI
see attached NCT article

MAR-1-2006 13:48 FROM: 760-753-2227 TO:16197672384 P.2

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MAR 1 2006
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COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

WEDNESDAY, MARCH 1, 2006 VOL. 122, NO. 060 AN EDITION OF THE NORTH COUNTY TIMES

Report sees flaws in Encinitas bluff plan

Planner: Private ownership would lessen hotel's value

ADAM KAYE
STAFF WRITER

ENCINITAS — Citing concerns over the availability of lodgings to the public, a California Coastal Commission staff report is recommending that the commission deny a hotelier's application to sell all 130 rooms of a planned hotel as condominiums.

Officials from KSL Encinitas Resort Co. Inc. have said the bluff-top resort proposed at North Coast Highway 101 and La Costa Avenue would look and feel like a hotel, even though the rooms would be owned privately. The owners would have to agree to occupy the rooms for no more than 90 days annually and for no longer than 25 days within a 50-day period, they said.

KSL officials could not be reached for comment Tuesday.

KSL, which operates La Costa Resort and Spa and Hotel del Coronado, has applied to divide the equity of the long-planned Encinitas resort to secure financing. Officials from the company have said banks and lenders favor owner participation to finance hotels since the post-

➤ REPORT, A-7

➤ REPORT

Continued from A-1

9/11 tourism slump.

Changing the ownership structure would amount to subdividing the 4.1-acre site on the city's northwestern-most corner.

The commission must approve what is called a "limited-term occupancy condominium hotel" because it represents a change from the corporate-owned hotel that the commission approved in 1992.

The commission is scheduled to consider the ownership proposal when it meets Tuesday in Monterey.

A second proposal, to place 50,000 cubic yard of excavated sand from the hotel site onto the beach, also is up for consideration, with a recommendation for approval.

As a condominium-hotel, up to a quarter of the rooms at the Encinitas resort would be unavailable to the public year-round because they would be occupied by the owners, according to the report by Gary Cannon, a planner with the commission's San Diego office.

Even fewer rooms would be available to the public during peak season should the owners choose to use their allotted time during that period.

That's a problem, Cannon said Tuesday, because the property is zoned for facilities that serve visitors.

"What's being proposed to us lessens that value," Cannon said.

Residences are prohibited within the "limited visitor-serving commercial" zone, which exists at four places in the city. The hotel site is the only one of them on the beach. The other three are along the Interstate 5 corridor.

The 6.1-mile-long Encinitas shoreline has no hotels right on the beach.

The commission postponed taking action on the ownership proposal at its January meeting so that its staff could investigate how the proposal might compromise the availability of coastal lodgings, Cannon said.

Commissioners were concerned that occupancy restrictions placed upon 130 owners would be difficult to enforce, he said.

KSL acquired the bluff-top property in Encinitas when it purchased La Costa Resort and Spa in 2001. KSL officials have said rates at the Encinitas hotel would probably range from $400 to $600 a night.

Owners would check into the hotel, use card keys and receive guest services like any other guest. The hotel's office alone would handle reservations and bookings of the rooms. Owners would keep half of any rents.

The recommendation against the condo-hotel proposal has caused some frustration at City Hall, where officials last month withdrew an application before the Coastal Commission to ban new short-term vacation rentals in the city.

The commission's staff, in a report, had recommended denial of the short-term rental ban.

Mayor Christy Guerin said she plans to fly to Monterey next week to testify on behalf of KSL. She said the community could make good use of conference rooms, public parking and an already-built stairway the hotel would provide.

"We heard comments (from the commission) on short-term rentals saying we don't have enough (hotel rooms), and here they are telling us we can't have this," Guerin said.

Contact staff writer Adam Kaye at (760) 943-2312 or akaye@nctimes.com. To comment, go to nctimes.com.

Date: March 1st 2006

To: California Coastal Commission
San Diego CA 92106-4421

From: Irina Gronborg
424 Del Court
Solana Beach, CA 92075

RECEIVED
MAR 1 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Re: KSL Encinitas Resort-- Application #6-92-203-A4

Honorable Commissioners,

I support the California Coastal Commission Staff Report and Preliminary Recommendation to deny the KSL Encinitas Resort Co., LLC request to convert ownership of the 130-unit hotel to a limited term occupancy hotel condominium form of ownership.

I also agree with staff's assessment that the conversion of a hotel to condominium ownership results in a conversion of the use to a "quasi-residential" use. No portion of the KSL project should be converted to condominium ownership, as the result will decrease the number of rooms available to the public----especially during the busy summer months.

Please accept staff's recommendation to deny the change in ownership to a limited term occupancy hotel condominium form of ownership. In addition I would like to request that future hearings on the KSL project be held in San Diego.

Thank you.
Irina Gronborg

MAR. 1. 2006 1:00PM AMEC SAN DIEGO NO. 9990 P. 1/1

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MAR 1 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

March 1, 2006

California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego CA 92106-4421

Re: KSL Encinitas Resort Co, LLC Application #6-92-203-A4

Dear Commissioners and Staff:

I am writing in support of the Staff Report and Preliminary Recommendations to deny conversion of hotel ownership to a condominium form of ownership for the KSL Encinitas Resort Co, LLC. I agree with Staff's position that this type of ownership structure can result in a lessening of the number of hotel rooms available to the public. I understand that this would create a situation that is inconsistent with the public access and recreation policies in Chapter 3 of the Coastal Act. The conversion of a hotel to condominium ownership results in a conversion of the use to a "quasi-residential" use. This is especially important in areas where there are few visitor-serving uses, and where unique bluff-top locations provide public access and significant public views to the beach.

I urge the Commission to Deny the Change in ownership to a limited term occupancy hotel condominium form of ownership.

Sincerely,

Cynthia Archer
2059 Sea Village Circle
Cardiff, CA 92007

RECEIVED
MAR 1 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

February 28, 2006

California Coastal Commission
San Diego, CA

Re: Opposition to KSL Encinitas Resort Co, LLC conversion to condominium ownership

Dear Commissioners:

I strongly urge the Commission to support Staff's position to deny the KSL Encinitas Resort Co., LLC request to convert the ownership of their future hotel to a condominium form of ownership.

A typical hotel always makes its rooms available to the public, provides public access and provides opportunities for public recreation. A condominium hotel is simply not always available for public use and enjoyment. By its very nature, a condominium hotel is privately owned. Chapter 3 of the Coastal Act gives priority to visitor-serving commercial recreational facilities over private residential development. It is very important to maintain full public access to all of the hotel rooms on the KSL Encinitas site because there are no similar bluff-top hotels with beach access and lovely ocean views in the immediate area. Allowing condominium ownership on the KSL Encinitas site will reduce the number of hotel rooms available to the public throughout the year and in turn will restrict access to this lovely site.

I respectfully request that the Commission DENY KSL Encinitas Co, LLC application to change ownership to a limited term occupancy condominium form of ownership.

Sincerely yours,

Tricia A. Smith
1745 Rubenstein Drive
Cardiff, California 92007

03/01/06

To: California Coastal Commission
Fax: 619/767-2384

Re: KSL Resort Co. In Solana Beach

I agree with your staff's position against "condominization" of this project. We don't need more condos in this town. We could use more hotel rooms.

We could also use this unique, precious piece of coastal property over which all north bound drivers on Hwy 101 enjoy a magnificent surf view.

Please protect us from more condos. Thank you.

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MAR 1 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Berend (2)

Bruce & Mary Berend
435 N. Granados Ave.
Solana Beach, CA 92075

Tel. 858/755-8078

Opper Sports Inc.
P.O. Box 732
Solana Beach, CA 92075
TEL: 858 481-7283
FAX: 858 481-4189
ira@oppersports.com

Fax

To:	California Coastal Commission	**From:**	Ira Opper
Fax:	(619) 767-2384	**Pages:**	1
Phone:		**Date:**	2/28/06

Honorable California Coastal Commission,

I support the California Coastal Commission's Staff Report to recommend denial to KSL Encinitas Resort Co., LLC for a request to convert ownership of the 130-unit hotel to a limited term occupancy hotel condominium form of ownership.

Condotel is a term used to describe private ownership of public access. This coastal development project will only be available to a select few. Please support your staff's recommendation and vote for denial of the conversion and continue promoting public access to our coast.

Thank you,

Ira Opper
President, Opper Sports Inc.

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COAST LAW GROUP LLP

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SAN DIEGO COAST DISTRICT

169 Saxony Road
Suite 204
Encinitas, CA 92024

Tel 760-942-8505
Fax 760-942-8515
www.coastlawgroup.com

Delivered Via Facsimile and Mail

February 28, 2006

California Coastal Commission
Gary Cannon
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421
Fax # (619) 767-2384

Item 22a
Tuesday
Support Staff Recommendation
Opposition to Project

Re: Permit No. 6-92-203-A4 (KSL Hotel to Condominium Conversion)

Honorable Coastal Commission:

I am a member of the Advisory Board of the San Diego Chapter of the Surfrider Foundation. This letter is submitted in opposition to the proposed Condominium/Hotel to be located at the north part of Encinitas. We urge the Coastal Commission to deny the project.

We agree with the Staff assessment of the impacts of converting the proposed hotel into a condominium. It is our concern that Encinitas currently has a very limited supply of hotel rooms directly on the coast. The KSL development is intended to increase Encinitas' supply. By allowing the hotel to be converted to condominiums, tourists will be adversely affected in their ability to acquire short term seashore accommodations. In essence, the proposed hotel will be turned into a private residential complex.

Such change could have an adverse affect on the character and feel of Ponto Beach. Currently there is substantial public access at the south end of "Ponto Beach". This includes a look-out that is commonly used by surfers to check the waves at Ponto, Tomato Patch and Grand View. If a private condominium residence is built, it is likely that the public will feel less welcome to enjoy the views from the elevated lookout currently at the site. While a hotel is visitor serving, and generally considered public, a private condominium may discourage people from enjoying the public views.

Thank you very much for your consideration.

Sincerely,

Todd T. Cardiff

Todd T. Cardiff, Esq.
Advisory Board Member
San Diego Chapter
Surfrider Foundation

To: Coastal Commission (619 [illegible]7.2384)
Re: Magellan Hotel Project: Rej[illegible]ction
Date: 2/28/06
from: Tamar + JAMES Crou[illegible] Rd
863 E Del mar Dow[illegible]
Solana Beach, CA

Please DENY the propose[illegible] Hotel to be converted to a condote[illegible] in Leucadia.

We do not want to se[illegible] a condotel on the Magellan s[illegible] (located @ the north end of town nex[illegible] to the San Elijo lagoon)

We support the coasta[illegible] Commission staff's recommendation to denial this proposal.

James E C[illegible]
Tamar Cr[illegible]

RECEIVED
FEB 28 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

02/28/06 14:02 FAX 858 558 3526 LIAI 001

Re:Application no.: 6-92-203-A4 California Coastal Commission

RECEIVED
FEB 2 8 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

RE: Application No.: 6-92-203-A4

California Coastal Commission,

I support the California Coastal Commission Staff Report to recommend denial to KSL Encinitas Resort Co., LLC for a request to convert ownership of the 130-unit hotel to a limited term occupancy hotel condominium form of ownership.

I do not agree with placing any structure near the San Elijo Lagoon that would disturb the eco-system that is already working well the way it is.

Thank you,

Kim Ware
Kim Ware
1038 Santa Queta, Solana Beach, CA 92075

FEB-28-2006 13:39 FROM:KEEP CALIFORNIA BEAU 8585059940 TO:16197672384 P.1/1

RECEIVED
FEB 2 8 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

February 27, 2006

To: California Coastal Commission

RE: Application No.: 6-92-203-A4

As a citizen of Encinitas, I am appalled that there is even a second of consideration to not accept the CCC Staff Report regarding KSL Encinitas Resort Co's request to build a condotel next to the San Elijo lagoon.

I support the California Coastal Commission Staff Report to recommend denial to KSL Encinitas Resort Co., LLC for a request to convert ownership of the 130-unit hotel to a limited term occupancy hotel condominium form of ownership.

Thank you.

Marlene Mariani
1820 Forestdale Drive
Encinitas, CA 92024

760-753-2330

FEB. 27. 2006 10:30AM AMEC SAN DIEGO NO. 9960 P. 1

RECEIVED
FEB 2 7 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

RE: Application No.: 6-92-203-A4

California Coastal Commission,

I support the California Coastal Commission Staff Report to recommend denial to KSL Encinitas Resort Co., LLC for a request to convert ownership of the 130-unit hotel to a limited term occupancy hotel condominium form of ownership.

Condominium hotels do not belong in small coastal cities where public access is often already limited.

Thank you,

Victoria Cypherd

Victoria Cypherd
207 N. Acacia Avenue
Solana Beach, CA 92075
858.350.1236

Janie C. DeCelles
Long Term Care Planning Specialist
LONG-TERM CARE RESOURCES
1631 Glasgow Avenue - Cardiff by the Sea, CA 92007
Phone: (760)436-0361 Fax:(760)943-8310 CA# 0B34588 jdecelles@cox.net

RECEIVED
FEB 27 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

VIA FAX TO: 619-767-2384

RE: Application No.: 6-92-203-A4

California Coastal Commission,

I support the California Coastal Commission Staff Report to recommend denial to KSL Encinitas Resort Co., LLC for a request to convert ownership of the 130-unit hotel to a limited term occupancy hotel condominium form of ownership.

I do not believe that this type of ownership is appropriate for property such as this.

Thank you for your support,

Janie DeCelles

Janie DeCelles

Feb. 28. 2006 6:09AM No. 8007 P. 1

California Coastal Commission

Re; application # 6 92 203 A4

I understand the application requests a conversion of allowable use per zoning from Hotel to "Condotel" use ? This seems inappropriate for many reasons, including a potential increase in road and foot traffic in the area and on the beaches. Note; I feel hotels in this location, also, to be inappropriate.

I support Staff's recommendation to DENY the application.

I urge you and the City involved to consider ways to realize the urgent need to utilize properties, like this one, so close to sensitive estuaries and beaches in more environmentally coherent ways.

Brett Gobar Realty
B.S. Envronmental Water Quality
San Jose State University

RECEIVED
FEB 27 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

27 February 2006

RE: Application No.: 6-92-203-A4

To: California Coastal Commission,

I support the California Coastal Commission Staff Report to recommend denial to KSL Encinitas Resort Co., LLC for a request to convert ownership of the 130-unit hotel to a limited term occupancy hotel condominium form of ownership.

As a resident of North Coastal San Diego County, I am concerned about inappropriate coastal development, and the proposed conversion from a conventional hotel to a "limited term condominium form of ownership" is not appropriate for North San Diego County.

Thank you,

James Ballard
735 Seabright Lane
Solana Beach, CA 92075

RECEIVED
FEB 27 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRIC

FACSIMILE MESSAGE – OP

To: California Coastal Commission
Fax: 619.767.2384

February 27, 2006

RE: Application No.: 6-92-203-A4

Dear Members of the California Coastal Commission:

Please act in accordance with the California Coastal Commission Staff Report re the captioned matter and **DENY** KSL Encinitas Resort Co., LLC's request to convert ownership of a 130-unit hotel to a limited term occupancy hotel condominium form of ownership.

Thank you for consideration,

Daniel M. Chambers
658 Marsolan Avenue
Solana Beach, CA 92075-1931

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FEB 2 8 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

RECEIVED
FEB 2 7 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Renita Greenberg
327 Pacific Avenue
Solana Beach CA 92075
858 481 3002

February 27, 2006

Via FAX 619 767 2384

Re: Application No. 6-92-203-A4

California Coastal Commission

Dear Members:

The proposal to create a hotel condo complex of 130 units in Leucadia would limit the use of the public of beach areas and views. Please deny the request by KSL Encinitas Resort Co. LLC.

Thank you for your consideration.

Renita Greenberg

FROM : B2BDATACORP FAX NO. : 18582590104 Feb. 27 2006 08:09PM P2

27 February 2006

California Coastal Commission
Fax: 619-767-2384

RE: Application No.: 6-92-203-A4

Dear CCC Staff,

We whole-heartedly support the California Coastal Commission Staff Report to recommend denial to KSL Encinitas Resort Co., LLC for a request to convert ownership of the 130-unit hotel to a limited term occupancy hotel condominium form of ownership.

Thank you

James and Debra Rust

720 Seabright Lane
Solana Beach, CA 92075
858-259-9449

RECEIVED
FEB 2 8 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

February 27, 2006

FAX TO : California Coastal Commission
619-767-2384

From: 858-481-9449

RE: Deny a request to allow HOTEL to be converted to a CONDOTEL

RECEIVED
FEB 2 8 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Re: KSL Encinitas Resort Co., LLC

Please submit my recommendation to deny the KSL Encinitas Resort Company's change in ownership to a limited term occupancy hotel condominium form of ownership.

Sincerely,

Shirley Gresham
232 Pacific Ave.
Solana Beach, CA 92075

Shirley Gresham
(858) 481-5129

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MAR 2 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Feb 28 2006 10:19AM OPPER FILMS 8584814189 p 1

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FEB 2 8 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Coastal Commission

I have read the Staff Report and Preliminary Recommendations for the KSL Encinitas Resort Co, LLC. I agree with Staff's position that conversion of hotel ownership to a condominium form of ownership can result in a reduction of the number of hotel rooms available to the public, which is inconsistent with the public access and recreation policies in Chapter 3 of the Coastal Act. The conversion of a hotel to condominium ownership results in a conversion of the use to a "quasi-residential" use. This is especially important in areas where there are few visitor-serving uses, and where unique bluff-top locations provide public access and significant public views to the beach.

I urge the Commission to Deny the Change in ownership to a limited term occupancy hotel condominium form of ownership.

Thank you,
Gerri Slaughter
1374 Eolus Ave.
Leucadia, CA 92024

The Commission has Received 38 other identical letters signed by individuals.

February 28th, 2006

RE: Application No.: 6-92-203-A4

California Coastal Commission,

I support the California Coastal Commission Staff Report to recommend denial to KSL Encinitas Resort Co., LLC for a request to convert ownership of the130-unit hotel to a limited term occupancy hotel condominium form of ownership.

Thank you,

Donna Todd
858 481 2040

The Commission has received 30 additional copies of this letter signed by individuals.

RECEIVED
FEB 2 8 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, *Governor*

CALIFORNIA COASTAL COMMISSION
SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370

April 20, 2006

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Materials Submitted During Commission Hearing Concerning 6-92-203-A4/KSL

The following attached materials were items that were submitted during the Commission Hearing of March 7, 2006.

Tue 22a

Allen M
www.allenmatkins.com

Allen Matkins Leck Gamble & Mallory LLP
Attorneys at Law
501 West Broadway, 15th Floor | San Diego, CA 92101-3541
Telephone: 619.233.1155 | Facsimile: 619.233.1158

Lynne L. Heidel
E-mail: lheidel@allenmatkins.com
Direct Dial: 619 235 1542 File Number: K6018-002/SD642595.01

RECEIVED
MAR 0 3 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

March 3, 2006

VIA MESSENGER

Chairperson Meg Caldwell and Members of the
California Coastal Commission
San Diego District Coast Office
Deborah Lee, Senior Deputy Director
Sherilyn Sarb, District Manager
7575 Metropolitan Avenue, Suite 103
San Diego, CA 92108-4402

THIS WRITTEN MATERIAL IS SUBMITTED TO THE CALIFORNIA COASTAL COMMISSION IN ACCORDANCE WITH THE EX PARTE COMMUNICATION REQUIREMENTS OF PUBLIC RESOURCED CODE SECTIONS 30319-30324. THIS MATERIAL IS A MATTER OF PUBLIC RECORD AND HAS BEEN SUBMITTED TO ALL COASTAL COMMISSIONERS, THEIR ALTERNATIVES, AND THE COASTAL COMMISSION STAFF

Re: KSL Encinitas Beach Resort, No. 6-92-203-A4
Permit Amendment Hearing -- Tuesday March 7 2006 Item 22a

Dear Chairperson Caldwell and Members of the Commission:

We represent KSL Encinitas Resort Company, LLC ("KSL") with respect to the above-referenced application. KSL seeks to finance construction of the already-approved 130 room hotel through an equity-financing, or condotel structure. This mechanism entails ownership of hotel rooms by individuals rather than a single entity. Other than this change to the ownership structure, the proposed Encinitas Beach Resort ("Resort Hotel") will be identical to the originally approved hotel.

In December 2005 staff recommended approval of the project with special conditions. This staff report can be found behind **Tab 1**. Subsequent to the initial staff recommendation, staff requested a continuance in order to perform research to determine how the condotel structure of financing was impacting visitor serving uses in other coastal states. Neither the revised staff report nor our conversations with staff have indicated that new information was gleaned from any research. Nevertheless staff changed its recommendation to denial. While staff has not provided new information, we have provided staff with additional information responsive to the questions raised by Commissioners at the January 2006 hearing. A copy of our responses can be found behind **Tab 2**.

Our research indicates that equity financing through sale of hotel guestrooms to individuals is a growing trend. This trend, far from reducing visitor serving uses, increases public access to the coastal area by enabling the construction of more hotels. The staff's revised recommendation is based on an unfounded belief that the sale of guestrooms to individuals transforms the rooms to residential units. This is simply not true as evidenced by the information compiled in the attached guide titled *An Overview of the Hotel and the Equity Financing Method*. Accordingly we request you approve the requested amendment as recommended in the staff report of December 2005, and at long last allow this hotel to be built.

I.

THE RESORT HOTEL WILL ALLEVIATE A SHORTAGE OF VISITOR ACCOMMODATIONS IN THE AREA AND PROVIDE PUBLIC ACCESS BENEFITS

1. Fill a Void of Full Service Hotel Rooms

According to a recent Commission staff report, a "minimal area of the City's coastal zone (is) devoted to visitor serving zoning." (Encinitas LCP Amendment No. 2-05) The report specifies that "only approximately 14.5 acres of the approximately 41 acres zoned for visitor-serving use are located west of Highway 101 close to the shoreline." The Resort Hotel will be located on four acres west of Highway 101, and with 130 hotel rooms open to the public in perpetuity, it will alleviate the shortage of visitor lodging underscored by the Commission.

The Resort Hotel will be the first full service hotel in the City, and will provide much needed mid-market accommodations to visitors to the area. According to a recent survey of tourist accommodations in Encinitas, there is an ample supply of low-cost accommodations in the area: there are 881 hotel rooms in the City with average rates ranging from $80 to $130, and 393 campsites within a five-mile radius of the hotel site.

2. Provide Other Public Benefits

The Resort Hotel will also provide a number of public benefits and incorporate public access features, including:

- 130 hotel guestrooms
- 233 parking spaces available to hotel guests as well as the public, approximately 100 spaces more than required by the City's Municipal Code
- A 331-seat restaurant and lounge open to the public
- Staircase and pathway from the adjacent State Beach to the Hotel's bluff overlook with seating and view terraces on the bluff
- Public pathways directly from Highway 101 to the bluff overlook and beach
- Approximately 50,000 cubic yards of sand to replenish the adjacent beach

II.

THE AMENDMENT IS NECESSARY TO FINANCE CONSTRUCTION OF THE ALREADY APPROVED HOTEL

The hotel was originally approved by the Commission in 1992. After the terrorist attacks on September 11, 2001 and ensuing collapse of the tourist industry, securing financing from a single lender for construction of the hotel became virtually impossible. A 2005 *New York Times* article observed that "in a

post-9/11 environment, hotel and resort developers have found it extremely difficult to secure loans for new construction or renovations." In the wake of over 13 years of active efforts to secure financing, KSL now proposes to finance construction by distributing ownership of the guest rooms to individuals while keeping control of the hotel operation in KSL's own hands. This financing method requires approval of a subdivision which will create guestroom condominiums. The vast majority of the hotel space (approximately 70%) will remain in KSL's ownership/control.

All guestrooms will be bound by a single set of Conditions, Covenants and Restrictions ("CC&Rs") as well as the conditions of approval from the City and the Commission to ensure that the guestrooms will function as guestrooms under hotel management. The restrictions will be recorded on the deed for every guestroom and cannot be altered or removed without approval from the City and Commission. With these controls there will virtually be no difference with the hotel approved in 1992. KSL has experience operating other well-known resorts such as the La Quinta Resort and Spa, La Costa Resort and Spa, Grand Wailea Resort and the Arizona Biltmore, and intends to operate the Resort Hotel in a similar manner to those properties.

III.

THE RESORT HOTEL WILL BE IDENTICAL TO THE ORIGINALLY APPROVED HOTEL IN EVERY RESPECT EXCEPT FOR THE FINANCING STRUCTURE

The design, operation and appearance of the Resort Hotel are identical to the hotel approved by the Commission in 1992. To a hotel guest, the Resort Hotel will look and feel just like any other full-service hotel. Ownership of the hotel guestrooms by individuals does not make them residential or quasi-residential. Pursuant to the governing legal documents listed above, constraints on the hotel rooms include:

- Room Access: Typical of most hotels, access is provided via a computerized keycard system managed by hotel operator. Owners and guests access the guestrooms using this keycard system, and such keys "expire" at the end of reserved stay.
- Permitted Use Period: Hotel guests may stay at the hotel for a *longer* period of time than owners will be permitted to stay. Owners are limited to a stay of more than 25 consecutive days and 90 days per year. Typical transient occupancy allows one month of stay, and there are no limits on the number of days per year a guest can occupy a hotel room.
- Room Availability: Rooms must remain available to the general public when not occupied by the owner.
- Transit Occupancy Tax ("TOT"): Owners and guests must pay TOT for each night of their stay, which is remitted to the City on a monthly basis.
- Reservations: On-site hotel operator will manage all hotel rooms, including reservations, check-in and check-out, issuance of keycards and collection of TOT
- Room Décor: Hotel operator controls the design and furnishings the interior of every room as well as exterior of the hotel.

Owners may use their guestrooms just as any member of the public may, with identical benefits and constraints.

IV.

THE PROPOSED EQUITY FINANCED HOTEL IS CONSISTENT WITH THE GENERAL PLAN DESIGNATION, LOCAL COASTAL PROGRAM ("LCP") AND ZONING FOR THE SITE

The project site is designated *Visitor-Serving Commercial* (VSC) use by the Land Use Plan/LCP, and is zoned for *Limited Visitor-Serving Commercial* (L-VSC) use. According to the Municipal Code, L-VSC "is intended to provide for hotel/motel uses as the primary use and ancillary uses specifically intended to serve the needs of persons visiting the City" (§30.08.010(B)). The General Plan Land Use Plan, LCP and Zone all intend the site to be used for a hotel. The LCP and zoning for the site also allow timeshare projects, a use that could exclude rooms from public occupancy for up to 75% of the year.

As described in great detail in the attached guide, the Encinitas Beach Resort will be a full service hotel. Following are some of the distinguishing attributes of the hotel:

- The hotel will contain all of the standard accoutrements of a full service hotel, including a front desk, lobby, bar, restaurant, concierge service, meeting rooms and a swimming pool.
- Guestrooms will be built to transient lodging building standards, not residential building standards.
- While individuals will own the guestrooms, the vast majority of the hotel will be owned/controlled and operated by the hotel operator.
- The governing legal documents restrict owner occupancy of the guestrooms to a period of time shorter that a guest could stay: no more than 25 consecutive days, no more than 25 days within any 50-day period and no more than 90 days per year.
- The rooms will remain available to the public for transient occupancy when not occupied by owners and will be legally obligated as such by the CC&Rs that are recorded on the deed of every hotel room. The CC&Rs cannot be amended without prior authorization from the City of Encinitas and the Commission.

V.

EQUITY FINANCED HOTELS ARE BECOMING THE INDUSTRY STANDARD, AND HAVE A PROVEN TRACK RECORD OF VISITOR-SERVING USE IN THE COASTAL ZONE

Over 2,600 hotel rooms financed in this manner are in the construction pipeline in California, and nearly 37,000 rooms are in the pipeline nationwide. Major brand hotel chains such as Hilton, Sheraton and

Radisson are opening new locations financed as condotels. KSL has experience operating equity-financed guestrooms in resorts such as the La Costa Resort, La Quinta Resort and Arizona Biltmore.

This concept is not new to the Commission. The Commission approved two hotels financed in this manner nearly ten years ago, the Conservatory Hotel in Half Moon Bay (CDP 3-90-46-A1) and the Sea View Hotel in Hermosa Beach (CDP 5-96-282). Both hotels today are extremely successful visitor serving hotels. Owner usage data from the Sea View Hotel reveals that no more than 6% of rooms are occupied by owners during any given month, experience that is corroborated by information from equity-financed rooms operated by KSL. While the staff report asserts that there are tax incentives for owners to occupy their rooms for 90 days, the reverse is true: owners will be motivated to occupy their rooms for as little time as possible in order to 1) write off depreciation of the room as a rental property, and 2) earn income that is derived from rental of the room to paying guests.

VI.

WE URGE YOU TO APPROVE THE REQUESTED AMENDMENT WITH THE CONDITIONS AND FINDINGS RECOMMENDED BY STAFF IN THEIR DECEMBER STAFF REPORT

There is a shortage of visitor-serving accommodations in Encinitas, and KSL seeks to alleviate that shortage by constructing a 130 room hotel. The hotel will provide a number of public benefits and access features, and operate as a hotel in perpetuity. As the proposed amendment will facilitate financing for construction of the hotel, but will not create residential units or otherwise alter any elements of the originally approved hotel, we urge you to approve the amendment with the conditions of approval initially recommended by staff in their December report.

Very truly yours,

Lynne L. Heidel

Jeffrey A. Russell

LLH: JAR

Enclosure and Attachments

EXHIBIT 1

STATE OF CALIFORNIA – THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, *Governor*

CALIFORNIA COASTAL COMMISSION
SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370

Thu 9c

Filed: July 7, 2005
49th Day: August 8, 2005
180th Day: December 28, 2005
Extension Request: December 28, 2005
Length of Extension: 90 Days
Final Date for
Commission Action: March 28, 2006
Staff: GDC-SD
Staff Report: December 22, 2005
Hearing Date: January 11-13, 2006

AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-92-203-A4

Applicant: KSL Encinitas Resort Co., LLC

Agents: Lynne Heidel and McCabe and Company

Original Description: Demolition of 3 single-family residences, relocation of 7 mobile homes and the construction of an approximately 138,460 sq. ft., two-story, 130-unit resort hotel complex with banquet facilities, a restaurant, public access amenities, and 230 space underground parking garage on 4.3 acre blufftop site. Also proposed are the consolidation of 4 lots into 1 lot and the vacation of 2 public access easements totaling .67 acres.

Previously Approved Amendment: Construction of a public beach access stairway on a coastal bluff from the bluff top to the adjacent State Parks parking lot, as required by special condition #2 of the original permit.

Proposed Amendment: Change in ownership of the 130 unit hotel to a limited term occupancy hotel condominium form of ownership and the placement of approximately 50,000 cu. yds. of sand onto the beach west of the hotel site.

Site: 2100 North Highway 101, Leucadia, Encinitas, San Diego County. APN 216-041-26-00.

STAFF NOTES:

The standard of review for the two aspects of this amendment differ. The standard is the City's certified LCP and the public access and recreation policies of Chapter 3 of the Coastal Act (for the change in ownership structure) and all of the Chapter 3 policies of the Coastal Act (for the sand placement).

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the applicant's request to convert the type of hotel ownership into a limited-term occupancy condominium hotel with conditions to assure all hotel rooms when not occupied by individual owners will be fully available to the public and will operate as a hotel. Special Conditions have been attached to assure the hotel continues to operate as a conventional hotel.

Staff is also recommending approval of the request to place up to 50,000 cu. yds. of beach quality sand on the beach near the proposed hotel site. The proposed receiver site is one of the same approved sand replenishment sites where the San Diego Association of Government's placed approximately 118,000 cu. yds. of sand in 2001. With conditions to limit the work to outside of the summer season, to require submission of constructions staging plans to specified criteria, and for approval by other agencies, impacts to marine resources will be eliminated or mitigated to the maximum extent possible and consistent with the Local Coastal Program and the public access and recreation policies in Chapter 3 of the Coastal Act.

Substantive File Documents: City of Encinitas Certified LCP; Notice of Decision PBD 2005-32; 04-268 TPM (Dodds); Mitigated Negative Declaration SCH#2003111025, 12/16/03 and Addendum 2/10/04; Draft "Declaration of Covenants, Conditions and Restrictions for the La Costa Beach Resort" received on 10/20/05; CDP Nos. 6-92-203/Sports Shinko, 5-96-282/Seaview Hotel and 3-90-46-A1/Marchant Enterprises, A-5-RPV-02-324-A3/Long Point Dev.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: ***I move that the Commission approve the proposed amendment to Coastal Development Permit No. 6-90-203 pursuant to the staff recommendation.***

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment 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 PERMIT AMENDMENT:

The Commission hereby approves the coastal development permit amendment, as amended and subject to conditions, on the ground that the change in ownership will be in conformity with the policies of the Local Coastal Program and the access and recreation policies of Chapter 3 of the Coastal Act, and the sand placement will be in conformity with all of the policies of Chapter 3 of the Coastal Act. Approval of the permit amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. Special Conditions.

This permit amendment is subject to the following conditions:

The following Special Conditions (#1 and #2) relate to that part of the amendment request involving the conversion of the hotel to condominium hotel ownership:

1. Hotel Restrictions. The permitted development shall be operated as a limited occupancy hotel condominium. The following restrictions shall apply:

   a. The project shall have an on-site hotel operator to manage rental of the 130 units. Whenever any unit is not occupied by its owner(s) during prescribed use times listed in #c below, that unit shall be available for hotel rental by the general public on the same basis as a conventional hotel room.

   b. If unit owners choose to offer to rent their respective units through a party other than the hotel operator, the hotel operator and unit owners must comply with the following restrictions:

      1. Marketing and advertisement of such units must be the same or comparable to marketing and advertisement of units by the hotel operator;

      2. Unit owners shall not discourage rental of their unit or create disincentives meant to discourage rental of their unit;

3. Such units shall be rented at the same or comparable rate to that charged by the hotel operator for rooms of a similar class or amenity level;

4. The unit owner shall inform the hotel operator of all rental reservations made independent of the hotel operator. The hotel operator shall book all unit reservations, including reservations elicited by unit owners who offer to rent their respective units through a party other than the hotel operator, in the hotel operator's reservation database, a service for which the hotel operator may charge the unit owner a reasonable fee;

5. The hotel operator shall maintain records of usage for all units, and shall be solely responsible for reporting Transient Occupancy Taxes for all units, services for which the hotel operator may charge the unit owner a reasonable fee.

c. Each hotel unit shall be used by its owner(s) for no more than 90 days per calendar year with a maximum of 25 days use during any immediately preceding 50-day time period.

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

e. No portion of the project may be converted to time-share, full-time occupancy condominium, apartment, or any other type of project that differs from the approved limited term occupancy condominium resort hotel without an approved amendment to this coastal development permit.

2. CC&R's Modification. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit for review and written approval of the Executive Director, the Encinitas Resort Hotel's Declaration of Restrictions or CC&R's that include all the specific restrictions listed in Special Condition #1 above and include an acknowledgment that these same restrictions are independently imposed as condition requirements of Coastal Development Permit Amendment #6-92-203-A4. The CC&R's as approved by the Executive Director must be recorded against all individual property titles. The CC&R's shall not be changed without a Coastal Commission-approved amendment to this coastal development permit, unless it is determined by the Executive Director that an amendment is not legally required.

The following Special Conditions (#3 to #8) relate to that part of the amendment request involving the placement of beach quality sand onto the beach:

3. Timing of Construction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT Amendment #4, the applicant shall submit to the Executive Director for review and written approval, a construction schedule that conforms to the following restriction:

a. The work shall only occur between September 15 and February 15 of any year but not including weekends or holidays.

The applicant shall undertake the development in accordance with the approved construction schedule. Any proposed changes to the approved schedule shall be reported to the Executive Director. No change to the schedule shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is required.

4. Beach Sand Monitoring. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a detailed beach sand monitoring program for shore and nearshore monitoring at or near the receiver sites. Monitoring at and adjacent to the receiver site shall address the following concerns:

- Whether the as-built project is at the location and of the size and extent proposed and approved by the Commission and if not, what are the changes;
- Seasonal and interannual changes to the receiver sites, in width and length of dry beach, subaerial and nearshore slope, offshore extent of nourished toe, and overall volume of sand in the profile;
- Rate and extent of transport of material up- and down-coast from the receiver site;
- Time period over which the beach benefits related to the project can be identified as distinct from background conditions.

a. At a minimum this information shall be provided through field surveys of the receiver site and adjacent areas. Unless otherwise indicated, all profiles shall be from an upland fixed location or monument, across the beach, through the nearshore, to closure depth. Profiles shall be prepared immediately prior to the project, immediately upon completion of the project (this survey may be terminated offshore at the toe of the project rather than going to closure), 3 months after the project, 6 months after the project and every 6 months thereafter until two separate surveys show that the material from the project is undetectable. Timing for the every-6-month survey efforts may be adjusted to coincide with the schedule that has been developed for the San Diego Regional Monitoring Program.

b. There shall be a minimum of one profile through the receiver site, and at least one profile up coast and one profile down coast of the receiver site. To the maximum

extent practicable, these should occupy the profile locations currently being used in the San Diego Regional Monitoring Program.

c. Monitoring information shall be analyzed regularly for any changes that have occurred at the receive site. To the extent practicable, these reports should incorporate information from the San Diego Regional Monitoring Program on both historic changes at the receiver site and on-going regional shoreline trends.

The applicant shall undertake the development in accordance with the approved monitoring program. Any proposed changes to the approved program shall be reported to the Executive Director. No change to the program shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is required.

5. Final Staging Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT #4, the applicant shall submit to the Executive Director for review and written approval, final plans that identify the following:

a. The minimum number of public parking spaces that are required for the staging of equipment, machinery and employee parking, without using space on the sandy beach. The number of public parking spaces utilized shall be the minimum necessary to implement the project.

b. During the construction stages of the project, the permittee shall not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery shall be placed, stored or otherwise located in the intertidal zone at any time, except for the minimum necessary to implement the project. Construction equipment shall not be washed on the beach or in the beach parking lots.

The applicant shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No change to the program shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is legally required.

6. Other Permits. Prior to commencement of construction, the applicant shall provide to the Executive Director copies of all other required state or federal discretionary permits for the development herein approved. The applicant shall inform the Executive Director of any changes to the project required by such permits. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

7. U.S. Army Corps of Engineers Permit. Prior to commencement of construction, the applicant shall provide to the Executive Director a copy of a U.S. Army Corps of Engineers permit, or letter of permission, or evidence that no Corps permit is necessary. The applicant shall inform the Executive Director of any changes to the project required by the U.S. Army Corps of Engineers. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

8. Mitigated Negative Declaration. The proposed approximately 50,000 cu. yds. of sand placement project approved herein shall be implemented in accordance with the project description and mitigation measures identified in the Mitigated Negative Declaration approved by the City of Encinitas on 12/16/05 and its Addendum approved on 2/110/05.

Any proposed changes to the sand placement project as approved herein shall be reported to the Executive Director. No change to the project implementation shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is required.

III. Findings and Declarations.

The Commission finds and declares as follows:

1. Project History/Amendment Description. The proposed amendment involves two requests. The first request involves a change in the type of ownership of the 130 hotel units to a limited term occupancy hotel condominium form of ownership enabling the hotel owner to sell each hotel unit to an individual buyer. The hotel is proposed to still operate as a fully functional hotel available to the general public, but the applicants assert that the change in type of ownership is necessary to finance the construction of the hotel complex. The second amendment request is for the placement of approximately 50,000 cu. yds. of beach quality sand that will be excavated from the hotel site and placed on the beach just west of the hotel site. The original permit required that any graded spoils that are suitable for beach placement be reserved for placement onto the beach and that any necessary permits first be obtained for its placement.

The original project consisted of the demolition of three single-family residences, the relocation of seven mobile homes, and the construction of an approximately 138,460 sq.ft., two-story plus basement level, 30-foot high, 130-unit resort hotel. Also included is the construction of a 5,128 sq. ft. restaurant, a 420 sq. ft. retail shop, 1,600 sq. ft. of meeting rooms, 4,072 sq. ft. of floor area devoted to banquet facilities, a 3-level, 320-space subterranean parking garage, a swimming pool with cabanas, and approximately 92,000 cubic yards of excavation. As proposed, all structures will be set back 55 feet from the edge of the coastal bluff. No structure on the site is permitted to exceed 2 stories or 30 feet in height, and landscaping and color and signage restrictions were included in the original project approval. In addition, the approved development includes

the consolidation of 4 lots into 1 lot and the vacation of two public access easements on the site that area no longer viable.

The 4.3-acre bluff-top lot is located along the west side of Highway 101, just south of Batiquitos Lagoon in the northernmost portion of the City of Encinitas. The site is bounded by South Carlsbad State Beach Parking Lot to the north, Highway 101 to the east, a large condominium development and restaurant to the south and the beach and Pacific Ocean to the west.

The project was approved by the Commission on December 10, 1992 with a number of special conditions including revised plans to include a 25-foot inland blufftop setback, an extensive public access program including construction of a blufftop overlook, a new public access stairway, and dedication of a public access easement, and a minimum $156,000 fee for the acquisition of land and/or construction of low-cost visitor serving overnight accommodations.

As originally approved, the project provided for the installation of several public access amenities that included a blufftop overlook, public access through the site, and a stairway to the state park parking lot. Special Condition #2 of the original permit specifically required construction of a stairway; however, there was insufficient information at the time the project was approved to give final approval of a stairway; therefore, the condition also required that a separate coastal development permit for the stairway be obtained. The amendment for the stair was approved in July of 2000 and the stairway has subsequently been constructed (Ref. 6-92-203-A1/Encinitas Resort Hotel). Another amendment involving the placement of the proposed 50,000 cu. yds. of the sand was withdrawn by the applicant in 2004 (Ref. 6-92-203-A3/City of Encinitas).

The City of Encinitas has a certified Local Coastal Program (LCP), however, the applicant is amending a previously-approved permit issued by the Commission prior to certification of the City's LCP and as such, the proposed improvement falls under the Commission's purview. The standard of review is the City's certified LCP and the public access and recreation policies of Chapter 3 of the Coastal Act.

A. Conversion of Hotel to Hotel Condominium

The proposed conversion to limited term occupancy condominium hotel requires a permit because it involves a subdivision of land. The proposed development lies between the first public road (Highway 101) and the sea and, therefore, pursuant to Coastal Act section 30604(c), can only be approved if it is found to be consistent with the following public access and recreation policies of the Coastal Act as well as to the following policies of the City's certified LCP:

Coastal Act
Section 30210.

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

Section 30211.

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

Section 30213.

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

Section 30221.

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

Section 30222.

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

Land Use Policies of the Certified LCP:

POLICY 1.13: The visitor-serving commercial land use shall be located where it will not intrude into existing residential communities. This category applies in order to reserve sufficient land in appropriate locations expressly for commercial recreation and visitor-serving uses such as:

- tourist lodging, including campgrounds (bed and breakfast facilities may be compatible in residential areas)
- eating and drinking establishments
- specialty shops and personal services
- food and beverage retail sales (convenience)
- participant sports and recreation
- entertainment

The above listed uses and other uses specifically intended to serve the needs of visitors shall be the principal uses allowed within the visitor-serving land use designation. All other permitted or conditionally permitted uses specified in the Zoning Code for areas zoned as visitor-serving commercial, shall be considered as ancillary uses to the allowable principal uses. Ancillary or non-principal uses and required off-street parking shall not occupy or utilize more than 30% of the ground floor area.

POLICY 1.14: The City will maintain and enhance the Hwy 101 commercial corridor by providing appropriate community-serving tourist-related and pedestrian-oriented uses.

Visitor-Serving Commercial

The Visitor-Serving Commercial designation specifically applies to those commercial activities that serve persons visiting the City. Land uses within this category are an important source of sales tax revenue for the City. This designation is also important in implementing Coastal Act policies that call for the identification of hotels, resorts, and other establishments that serve visitors utilizing the City's coastal amenities. The maximum permitted floor area ratio for uses in this category is up to 1.0.

Implementation Plan Requirements of the Certified LCP

Section 30.08.010(B) . . .

L-VSC: Limited Visitor Serving Commercial is intended to provide for hotel/motel uses as the primary use and ancillary uses specifically intended to serve the needs of persons visiting the City. . . .

The applicant has identified that the proposed conversion of the hotel to a limited term occupancy condominium hotel is necessary for financing purposes. Following sale of the units, the applicant will be better able to finance the construction of the hotel which will be designed as a luxury resort hotel. Conversion to residential use is not proposed.

As previously described, in 1992 the Commission approved the construction of an approximately 138,460 sq.ft., 130-unit resort hotel that includes meeting and banquet facilities, a restaurant and retail shop on an approximately 4.3 acre blufftop lot overlooking the Pacific Ocean in Encinitas. The project is located on a site designated by the Land Use Plan for Visitor-Serving Commercial (VSC) use and zoned as Limited Visitor Serving Commercial (L-VSC). The subject site is the only L-VSC site located adjacent to the beach in Encinitas. As cited above, L-VSC "is intended to provide hotel/motel use as the primary use". Because of its proximity to the shoreline and it's designation as L-VSC, it is critical that the hotel/motel use of the site be protected from a change to residential or exclusive use that would lessen its visitor-serving function. In

addition, as cited above, the Coastal Act provides that visitor and recreation serving facilities shall be given priority over other private uses such as residential, general industrial or general commercial particularly on oceanfront land such as the subject site.

In approving the hotel in 1992, the Commission recognized the importance of protecting the visitor-serving commercial function of the hotel and included a number of special conditions to the permit to encourage and enhance visitor-serving use, public access and recreational opportunities. These included a Public Access Program with provisions that included among other things, public access paths, a stairway to the beach, public parking, an offer to dedicate public access to and along the shoreline and public access signage (Ref. Exhibit #2). The permit also prohibited the conversion of the hotel or its associated facilities to exclusive use (Ref. Special Condition #6 on Exhibit #2) without an amendment. The hotel as approved by the Commission was not proposed as a low-cost visitor serving hotel but rather as a luxury hotel with room rates that were estimated in 1992 to be between $200 to $300 dollars per night. However, to enhance and encourage low-cost visitor and recreational use consistent with Section 30213 of the Coastal Act, the Commission also required that the applicant provide an in-lieu fee of $156,000 to be used for land acquisition and/or construction of a low cost visitor serving accommodation such as a hostel or campground facility. In addition, the hotel includes facilities that are open to the public as well as hotel guests such as the restaurant, retail shop, public parking and beach access stairways.

The concern raised by the proposed hotel conversion to a condominium form of ownership is whether the hotel will continue to operate as a conventional hotel affording the same visitor-serving use anticipated by the Commission when it approved the hotel originally. The applicant asserts that the change in ownership will have no effect on the operation of the hotel especially with the safeguards they propose as part of the Covenants, Conditions and Restrictions (CC&R's) that apply to each unit.

The applicant proposes that each hotel unit owner will be restricted to use of their unit for no more than 90 days per year and for no more than 25 days within any preceding 50 day time period. When the units are not occupied by the owners, the applicant asserts that the unit will be made available for use by the general public. However, if all 130 owners decided to use their units for the full 90 days per year, with potentially two 25-day periods occurring over the summer months, it is possible the number of hotel units available to the public would be substantially diminished particularly during the summer peak period.

While this is a theoretical concern, the applicant has provided documentation that indicates the use of these units by the owners will likely be limited such that the hotel will operate generally as a conventional hotel. The buyers of the units will not be purchasing them for residential use but rather as an investment with the owners receiving income from the rental of their units. Therefore, the more the owners use the units personally, the less their income. To support this contention, the applicant has submitted documentation of use rates by owners of the Beach House Inns in Hermosa Beach and Half Moon Bay, hotels previously approved by the Commission as limited term

occupancy condominium hotels (Ref. CDP Nos. 5-96-282/Seaview Hotel and 3-90-46-A1/Marchant Enterprises). According to this information, no more than 6% of the owners use their unit during the peak summer months with a yearly monthly range from a low of 1.5% in January to 5.7% in August. Assuming this pattern holds for the proposed hotel, at least 122 of the 130 hotel units would be available to the general public even throughout the peak summer months.

In terms of operation as a luxury resort hotel, the hotel will function entirely like a hotel. All reservation of the units by the public or the owners must go through the hotel's reservation system. Owners will need to check into their rooms the same as hotel guests using the hotel's electronic key system, and the same guest services will be available to hotel unit owners and the general visiting public. While most of the marketing and advertising of the hotel rooms will likely be performed by the hotel operator, each individual owner would retain the right to market or advertise their unit on their own. This raises a concern that a hotel unit owner might want to avoid renting their unit to the general public and, therefore, might not advertise or market it. The applicant indicates that this is particularly unlikely since the primary purpose of purchasing the units is for rental income. However, the applicant asserts that the CC&R's can include provisions to prohibit the owners from avoiding poor marketing and advertising or from creating disincentives such as high rental rates. Specifically, the applicant proposes that the CC&R's include requirements that any marketing/advertising be comparable to that done by the hotel operator, and the rental rates be similar and that no disincentives be created.

As previously identified, the Commission has reviewed and approved similar requests in other areas of the state for conversion of a previously approved hotel to the condominium form of ownership in Rancho Palos Verdes (Ref. A-5-RPV-02-324-A3/Long Point Dev. and Half Moon Bay (Ref. CDP 3-90-46-A1/Marchant Enterprises). In addition, the Commission approved the construction of a limited term occupancy condominium hotel in Hermosa Beach (Ref. CDP 5-96-282/Seaview Hotel). In each case, the Commission expressly required special conditions of approval, similar to those proposed herein, to assure the condominium hotels continue to function as conventional hotels. In addition, based on the information supplied by the subject applicant, these hotels are operating as conventional hotels with no more than 6% of the units during any month being occupied by the owners.

While the Commission has some concern that the conversion of the hotel to a hotel condominium form of ownership may reduce the supply of hotel units to the general public when owners make use the of units, in this case, the applicant has demonstrated the effect to the general public may be negligible based on how the units historically have been used in other condominium hotels. Because these hotel units are purchased as an investment that depend on public rental of the units, it is unlikely overuse of the hotel units by the owners will occur. The applicants have also demonstrated that few owners use their units even during the peak summer months. However, to mitigate any potential conflict with public use of the hotel, the following conditions have been attached:

Special Condition #1 has been attached which places several restrictions upon the operation of the hotel and the owners of the individual hotel units. Special Condition 1a requires that one hotel operator be responsible for rental of all 130 hotel units and requires that when the units are not occupied by their individual owners they must be made available to the general public. With this condition, an individual owner will be prohibited from not otherwise renting their unit to the general public.

Special Condition #1b assures that any marketing or advertising done by the hotel unit owner is at the same level and effectiveness as that done by the hotel operator. The condition clarifies that all room rates advertised shall be the same or comparable as that charged by the hotel operator and that all reservations and usage control of the units must be the sole responsibility of the hotel operator.

Special Condition #1c prescribes the usage periods for each hotel unit owner to be no more than 90 days per year with no more than 25 days use during any immediately preceding 50-day period.

Special Condition #1d clarifies that if a new owner purchases a unit during a particular year, the use periods identified in Special Condition #1c will be unaffected. In other words, the former owner and new owner's combined use periods during the calendar year could not exceed the limits identified in Special Condition #1c. In addition, if an "owner" consist of more than one individual, the use periods cannot be extended because more than one individual owns the unit.

Special Condition #1e has been attached to emphasize that no other change in use of the hotel units can occur without an additional amendment to this permit. In particular, the condition prohibits conversion of the units to timeshare, residential condominium or apartment without an amendment. This condition assures that all 130 rooms will continue to be used for hotel use.

Finally, Special Condition #2 requires that the applicant incorporate all requirements of Special Condition #1 into the development's CC&R's which cannot be revised unless approved through a subsequent amendment request.

As conditioned, the Commission finds the conversion of the hotel to a limited term occupancy condominium form of ownership will not adversely affect the operation of the hotel as originally approved by the Commission in 1992. The hotel will continue to operate as a conventional hotel available to the general public throughout the year, consistent with Policy 1.13's primary use listing and Policy 1.14's tourist-orientation requirement, and will provide significant visitor serving facilities including the hotel, restaurant, meeting rooms, public parking and beach access. As conditioned, the proposed development is consistent with public access and recreation policies of the Coastal Act as well as with all policies of the City's certified LCP relating to visitor serving use.

B. Placement of Sand on the Beach

The second part of the subject amendment request involves the placement of approximately 50,000 cu. yds. of beach quality sand that will be excavated from the hotel site and placed on the beach just west of the hotel site. The proposed placement of sand will occur on and across the public beach within the Commission's coastal development permit jurisdiction. Therefore, the standard of review for the placement and transportation of the sand is the Coastal Act. (The grading onsite of the hotel has already been approved by the original permit, CDP #6-92-203/Sports Shinko.)

Public Access. The following Coastal Act policies are most applicable to the proposed development and state, in part:

Section 30210

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

Section 30211

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

Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby...

Section 30213

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

Section 30214(a)

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

Section 30220

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

In addition, Section 30604(c) of the Coastal Act requires that a specific access finding be made in conjunction with any development located between the sea and the first public roadway, indicating that the development is in conformity with the public access and public recreation policies of Chapter 3. In this case, such a finding can be made.

As previously described, the applicant is requesting to place approximately 50,000 cu. yds. of excavated beach quality sand onto the public beach. The original permit required that any graded spoils that are suitable for beach placement be reserved for placement onto the beach (Ref. Special Condition #12 of CDP #6-92-203, attached as Exhibit #2). The proposed hotel will be located on an approximately 4.3 acre site immediately south of Batiquitos Lagoon and immediately east of the beach that is managed by the City of Encinitas. The sand material will be extracted from the site during the excavation for the hotel's subterranean garage. The receiver site is identified as being approximately 50 ft. in width and 1,390 ft. in length in the intertidal zone between +5 and –2 feet Mean Lower Low Water and approximately 900 feet south of the Batiquitos Lagoon inlet. The receiver site is the same site used by the San Diego Association of Government's (SANDAG) sand replenishment project of 2001 that placed approximately 2 million cu. yds. of sand on 12 local San Diego County beaches (Ref. 6-00-38/SANDAG). Approximately 118,000 cu. yds. of sand was placed on the subject receiver site in 2001 by the SANDAG project.

The applicant proposes to perform the grading and place the sand on the beach sometime between September 15, 2006 and February 15, 2007 so as not conflict with the summer vacation period. Although the work will occur outside of the summer months, activity

associated with the project will temporarily affect public access to and along the shoreline along the haul route and at the receiver site. The applicant estimates that the hauling process and sand placement may take two months to complete. The removal of the approximately 50,000 cu. yds. of sand will necessitate the transport of the sand in 35-ton dump trucks and the use of paddlewheel scrappers and bulldozers to distribute the sand. It is estimated that approximately 5,000 trips will be required to transport the sand from the hotel site, across a public parking lot and across the beach to the receiver site. The applicant is not proposing to access Highway 101 or other public streets as part of the sand placement. The haul route is identified in the City approved Mitigated Negative Declaration (SCH#2003111025 dated 12/16/03) as being from the northeast corner of the hotel site, across the State Beach paved parking lot to the beach. The use and public access of the South Carlsbad State Beach parking lot will be somewhat limited during the hauling operation. Neither the applicant nor State Parks is proposing closure of the entire parking lot, but will propose blockage of the haul route as a safety measure.

The proposed project will provide benefits to the public in the form of additional sand that can be used for public access and recreation. Additional sand may also provide some additional protection to upland development from the effect of marine erosion. However, the proposed sand placement will result in temporary impacts to public access. Therefore, the Commission must weigh these temporary impacts against the benefits provided by the sand. To assure that whatever limited, temporary impacts to public access are effectively reduced, Special Condition #3 has been attached which limits the project construction period to September 15 of any year, to February 15 of the subsequent year to assure no work will occur during the summer months. Special Condition #4 has been attached to require submittal of information about the as-built design and post-construction monitoring of sand retention and movement to provide information on project benefits and efficacy of design. In addition, Special Condition #5 has been attached which requires that the applicant provide the Executive Director final staging and construction schedule that includes identification of all public parking spaces within South Carlsbad State Beach that are needed for construction activity and that limits those spaces to the minimum necessary to implement the project. The applicant and State Parks do not anticipate the need to close South Carlsbad State Beach parking lot entirely, however, Special Condition #5 also requires that such closure periods be identified and that any closure be the minimum necessary to perform the work. Although the Department of Parks and Recreation supports the project, Special Condition #6 has also been attached to require submission of any other state or local permits that might be required to assure that any conditions imposed by those permits do not conflict with the subject amendment. With these conditions, any temporary impacts to public access and recreation will be mitigated to maximum extent possible.

In summary, the proposed project will have short-term impacts on public access and recreation, which have been minimized by conditions requiring that construction be scheduled outside of the summer season and that minimum public parking be affected. The project overall will have a positive impact on public access and recreation. Therefore, as conditioned, the proposed project can be found consistent with the public access and recreation policies of the Coastal Act.

Biological Resources/Water Quality. Section 30230 of the 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 Act states in part:

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...

Section 30233 of the Act states in part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

[...]

Section 30240 of the Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those 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 those areas, and shall be compatible with the continuance of those habitat and recreation areas.

These Coastal Act policies require the Commission to address the impacts on marine resources by considering the timing of the deposition of the material on the beach, the location of the receiver beach and the presence of environmentally sensitive resources. Deposition of material onto the beach can affect marine life through the burial of organisms on the beach and in the nearshore environment, and by increasing turbidity in adjacent waters.

The Mitigated Negative Declaration (MND) for the project reviewed the potential project impacts from the direct placement of sand, from turbidity and from long-term sediment transport. The MND relied on the research performed before and after the SANDAG project as well as comments from the Department of Fish and Game (DFG) to assure any adverse impacts to environmentally sensitive resource are eliminated or adequately mitigated. The applicant proposes to perform the grading and place the sand on the beach sometime between September 15, 2006 and February 15, 2007. This period has been chosen so as not to impact the breeding and nesting periods of the California least tern, western snowy plover and Belding's savannah sparrow which inhabit the nearby Batiquitos Lagoon or the spawning period of grunion.

One of the effects of the placing of the graded sand material onto the beach where it will make contact with the ocean is the resulting turbidity around the contact point. Turbidity can indirectly impact plankton, fish, marine mammals, birds, vegetated reefs, and benthic invertebrates. Turbidity results from suspended particles in the water column that can reduce ambient light levels, which can impact primary production of plankton and inhibit kelp and algae growth. However, in this case, the amount of turbidity is expected to be minimal and will not exceed the turbidity levels of the previously approved SANDAG replenishment project which occurred on the proposed receiver site in 2001. However, to assure that the turbidity level does not exceed the levels Army Corps of Engineer set for the larger SANDAG project, the California Regional Water Quality Control Board (CRWQCB) issued an Order for Low Impact Certification which requires daily monitoring of the turbidity plumes and weekly submission of the monitoring to assure the turbidity does not exceed the limits set on the previous SANDAG project (Ref. CRWQCB File 03C-124). Therefore, the project herein approved will be monitored by the applicant consistent with the requirements of the CRWQCB which will minimize or eliminate all adverse water quality impacts consistent with Section 30231 of the Coastal Act. Special Condition #6 requires that any changes required by other state or federal action shall be reported to the Executive Director in order to determine if an amendment to this permit will be required.

In addition, the Army Corps of Engineers (ACOE) has reviewed the grain size sampling data and color characteristics of the sand that is proposed for disposition and has generally concluded that the size and color is consistent with the requirements of the ACOE. Special Condition #7 requires that the final approval or determination by ACOE of the grain size and color be submitted for Executive Director review prior to commencement of construction.

Based on the SANDAG monitoring of the sand placement at the subject receiver site in 2001, the only other potential adverse affect resulting from the placement of sand at this location involves the amount of the sand that ultimately becomes deposited by the ocean onto the flood shoal of Batiquitos Lagoon. The DFG estimates that approximately 8.8% of the proposed 50,000 cu. yds. of sand will ultimately be deposited by the ocean into the flood shoal of Batiquitos Lagoon since that is the percentage that was estimated to have resulted from the SANDAG project. The DFG has routinely performed dredging operations of the lagoon as part of a Batiquitos Lagoon enhancement project. Since the City of Encinitas and its beach visitors will be the beneficiaries of this proposed sand placement by the hotel, the City has agreed as part of it's approval of the Mitigated Negative Declaration (Ref. MND, 12/16/05 and as amended 2/10/04) to pay for the cost of dredging the approximately 4,400 cu. yds. (8.8%) from the lagoon at a future date through a separate coastal development permit process.

Although the City approved the Mitigated Negative Declaration for the proposed sand project, the City did not require any additional discretionary action that would have required implementation of the findings and assumptions made in the Mitigated Negative Declaration. To assure the project proposed by the applicant is implemented consistent

with the description and assumptions of the MND, Special Condition #8 has been attached. Special Condition #8 requires the project approved by the Commission is implemented in the manner described in the MND and that any change in the project as described in the MND or as approved herein will require an amendment to this permit unless the Executive Director determines an amendment is unnecessary.

Construction equipment used for the project has the potential to contaminate the sand and/or ocean waters. Special Condition #5 prohibits the storage of construction material in the surf zone, and washing vehicles on the beach. As conditioned, no significant impacts to water quality are expected.

Special Conditions #7 and #8 require the applicant to submit a copy of any other state or federal permits required, including the Army Corps of Engineers permit for the project, to ensure any additional mitigation required is incorporated in the subject permit. However, mitigation measures that resulted in a substantial change to the project would require an amendment to this permit.

The proposed project has been designed to avoid significant adverse impacts on biological resources. As conditioned, the Commission finds that the proposed project will ensure that all environmental impacts are minimized and adequately mitigated. Therefore, the proposed project can be found consistent with resource protection policies of the Coastal Act.

3. Local Coastal Planning. In November of 1994, the Commission approved, with suggested modifications, the City of Encinitas Local Coastal Program (LCP). Subsequently, on May 15, 1995, coastal development permit authority was transferred to the City. The project site is located within the City's permit jurisdiction, therefore, the standard of review is the City's LCP.

As described above, the proposed project, as conditioned will not have an adverse impact on public access or recreation and has been found to be consistent with consistent with the City's certified LCP as it relates to protection of visitor-serving uses. Therefore, the Commission finds that approval of the proposed conversion of the hotel to limited term occupancy condominium hotel and the placement of approximately 50,000 cu. yds. of sand on the beach will not prejudice the ability of the City of Encinitas to continue to implement its certified LCP.

4. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permit Amendments to be supported by a finding showing the permit amendment, as conditioned, 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 proposed project has been conditioned in order to be found consistent with the public access and visual resource policies of the Coastal Act and the visitor serving commercial use requirements of the LCP. Mitigation measures, including conditions addressing timing of construction and public access, restrictions on use of the hotel by its various owners will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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EXHIBIT 2

Responses to Questions Asked By Commissioners at January 2006 Hearing

Encinitas Beach Resort
3/3/06

I. Project History

Q: When and how was the original project approved by the Commission?
A: The Commission approved construction of a 130-room hotel in December, 1992. At the time the site was owned by Sports Shinko. (*See §II(a)*)

Q: Why hasn't the hotel been built in the 13 years since it was approved?
A: Despite two different owners and numerous attempts, construction of the hotel cannot be financed through traditional methods. Sports Shinko was unable to secure financing for construction of the hotel. KSL Resorts purchased the property from Sports Shinko in 2001. After the World Trade Center attacks on September 11, 2001, the tourist industry collapsed. Traditional financing mechanisms for hotel construction virtually disappeared because of the perception that they hotels are a high-risk venture. The terrorist attacks, according to a *New York Times* interview of a hospitality industry expert, "were disastrous for the hotel industry and also made it difficult to build new full-service hotels … there's an element of risk that didn't exist before." (*See §II(b); Attachment 1*)

Q: Why does the Encinitas Beach Resort need another Coastal Development from the Commission?
A: In the wake of over 13 years of active efforts to build the approved hotel with traditional financing mechanisms, KSL now proposes to finance construction of the hotel through individual investors rather than a single entity. Known as an Equity-financing, this approach requires that hotel rooms are sold to individual investors, creating what are often called "condotel" units. This process that requires approval of a map pursuant to the Subdivision Map Act, a "development" under the Coastal Act that requires a Coastal Development Permit. (*See §II(c)*)

Q: Will this method of financing affect the design, operation or appearance of the originally approved hotel?
No. The Encinitas Beach Resort is identical to the originally approved hotel in every respect except for the financing structure. KSL is a leading hotel operator that has experience managing other well-known destination resorts such as the Grand Wailea Resort, La Quinta Resort and Spa, Arizona Biltmore Resort and Spa and La Costa Resort and Spa. (*See §II(c)*)

II. What is an Equity-Financing / Condotel?

Q: Aren't condominiums residential units?
A: No. Condominium units are customary in many types of land uses. There are industrial condominiums, commercial condominiums, retail condominiums and office condominiums. "Condominium" simply means that units in a multi-unit building are owned by individuals rather than a single entity. Other than that, condominiums still must comply with underlying zoning, conditions of approval and any other applicable local, state and federal laws. (*See §III(a)*)

Q: I have heard about apartments that are converted to residential condominiums. Can this happen with the hotel condominiums at the Encinitas Beach Resort?
A: No. Conversion of a hotel condominium would require a rezone, General Plan amendment, LCP amendment and a new Coastal Development Permit. (*See §III(a)*)

Q: Can the owners of Condotel rooms "live" in their hotel rooms?
A: No. Just as owners of office condominiums would not be allowed to live in their offices, owners of hotel condominiums cannot live in their hotel room. A condotel owner is allowed to stay in her room on a transient basis, just as any paying guest can. The owner's stay is limited by the City's conditions of approval and conditions requested by Commission staff to a time period that is *shorter* than the City's defined transient occupancy period. Also, owners must pay Transient Occupancy Tax (TOT) for each night of their stay. (*See §III(c)*)

Q: Why is an Equity-Financing/Condotel an attractive method of financing hotel construction?
A: Equity-financing has become a prevalent method to finance construction of hotels that would otherwise be infeasible. As the above-mentioned *Times* article observed, financing construction of full-service hotels is a risk that most lenders no longer want to take. By splitting ownership among a number of individuals rather than consolidating it in a single entity, risk that would pose an insurmountable obstacle to a single owner is diffused at an acceptable level among several parties. (*See §III(b)*)

Q: Who else is financing hotel construction in this manner?
A: Condotels are becoming the industry standard to finance construction of full service hotels in California and nationwide. Major brand hotel chains such as Hilton, Sheraton and Radisson are opening up new locations financed as condotels. According to a market study, over 36,000 condominium hotel rooms are in the pipeline nationwide; 2,600 of those are in California. (*See §III(d)*)

Q: Has the Commission approved other hotels that are financed in this manner?
Yes. While Equity-Financing has just recently emerged as a significant financing mechanism for hotel construction, condotels have existed for a number of years and the Commission has previously approved them in the Coastal Zone. The Sea View Inn in Hermosa Beach and the Conservatory in Half Moon Bay were approved by the Commission nearly *ten years* ago. In both cases, the Commission granted approval with special conditions to ensure that the hotels remained visitor-serving uses. Those conditions are similar to, and in some cases less restrictive than those proposed by Commission staff for the Encinitas Beach Resort. (*See §III(e)*)

Q: Are the Condotels that the Commission previously approved still functional hotels?
A: Yes – roughly ten years since receiving approval from the Commission, the Sea View Inn and Conservatory Hotel are extremely successful examples of visitor-serving hotels in the Coastal Zone. The passage of time has proven that equity-financing does not affect the operation, appearance or visitor-serving capacity of a hotel. Both of these hotels remain completely open to the general public. Owner usage statistics demonstrate that owners occupy their rooms less than a typical guest would; at the Sea View Hotel in Hermosa, owner occupancy did not exceed 6% at any given month during 2005. All hotel room owners made their rooms available through the hotel operator, and owners have not violated the conditions of approval prescribed by the City or the Commission. According to the hotel operator, room owners are entitled to market their rooms independently of the hotel operator, but none have exercised that option. (*See §III(f)*)

III. What Are the Constraints on the Encinitas Beach Resort?

Q: What legal constraints are in place to ensure that the Encinitas Beach Resort will operate as a visitor-serving hotel?

A: The Encinitas Beach Resort will be bound by the following constraints to ensure that it will operate as a hotel in perpetuity:

1) *General Plan, Local Coastal Program ("LCP") and Zoning*: Encinitas' General Plan, LCP and zoning intend the project site to be used for construction of a hotel. Residential units are not a permitted use on the project site under any of these documents. Conversion of the hotel rooms to residential units, or any other use, will require a General Plan amendment, LCP amendment, amendment to the Coastal Development Permit and a rezone. (*See §IV(a)*)
2) *City Conditions of Approval:* The City applied a number of specific conditions to its approval of the parcel map and map waiver for the Encinitas Beach Resort. Specifically, the conditions require that:
   - Hotel rooms shall not be converted to any other use
   - Owner stay is strictly limited
   - Rooms must remain available to the public when not occupied by owner
   - Hotel manager shall manage all rooms, including reservations and room access
   - All room occupants, including owners, must pay Transient Occupancy Taxes ("TOTs")

   (*See § IV(b)*)
3) *Proposed Coastal Development Permit ("CDP") Conditions of Approval:* As a result of over six months of negotiations with the applicant, Commission staff proposed that the following special conditions apply to approval of the Encinitas Beach Resort's CDP amendment:
   - Hotel must have an on-site operator
   - Hotel rooms must be available to the public when not occupied by owners
   - Independent rental of rooms to the general public is strictly regulated
   - Owner stay is strictly limited
   - Permitted owner use periods are unaffected by changes in hotel room ownership
   - No portion of the Encinitas Beach Resort may be converted to any use other use, including timeshares or residential units

   (*See §IV(d)*)
4) *Proposed CC&Rs*: The proposed CC&Rs will implement all conditions of approval that apply to the project by recording those conditions on the deed of each room. The proposed CC&Rs require that:
   - Hotel rooms cannot be used for any purpose other than short-term transient occupancy
   - All hotel rooms are subject to the City's TOT, whether occupied by a guest or owner
   - Hotel operator controls access to rooms via keycards
   - Owner stay is strictly limited
   - Room owners who fail to vacate their rooms by the end of their reserved stay are subject to stiff penalties and legal action
   - Hotel operator maintains full control over exterior and interior design and furnishing

   (*See §IV(c)*)

IV. Enforceability Issues

Q: How will these restrictions be enforced against room owners who decide to use their rooms as residences?
A: Since the hotel operator will manage reservations and keycard access for every room, the hotel operator can ensure that owners as well as guests do not stay beyond their reserved occupancy period by causing the computerized keycard to expire at the end of that period. Owners and guests will not be able to enter their room beyond after the reserved occupancy period lapses.

If the owner fails to leave his room after his reserved stay is over, he would be subject to legal recourse just as a guest would who unlawfully detains his hotel room. Violation of any of the conditions of approval would also violate the CC&Rs that are recorded on the deed of every room. Therefore, the hotel operator or any other party to the CC&Rs or Development Permits could institute legal action against the wrongful occupant. That action can include a request for a court order to forcefully evict the occupant. Pursuant to the CC&Rs, wrongful occupants are also liable for liquidated damages equal to 200% of the Fair Rental Value per day of occupancy and any costs incurred in curing the wrongful occupancy.

Q: Is there any way that the restrictive provisions in the CC&Rs can be amended by room owners, for example if an owner or group of owners decides to "buy out" the hotel operator?
A: No. The CC&Rs are recorded on the deed for every room and are binding on the owner of each room *in perpetuity*. Amendment of CC&R provisions that effect the conditions of approval requires prior written authorization from the City and the Commission.

Q: Who will take responsibility for enforcement of the provisions in the CC&Rs if they are violated?
A: The hotel operator would be the party that is most immediately harmed by violation of the provisions in the CC&Rs. The hotel operator has a vested interest in maintaining the property as a hotel since room rental charges from guests constitute the primary revenue source for the hotel operator. The hotel operator cannot generate income if rooms are wrongfully occupied by owners, so the hotel operator will be highly motivated to enforce the provisions of the CC&Rs against owners who violate them.

The City would also be detrimentally affected by violation of usage restrictions in the CC&Rs. The City approved the Encinitas Beach Resort for *transient occupancy*, and whether the transient occupant is the room owner or a guest they still must pay TOTs. The Encinitas Municipal Code requires that TOTs and a full accounting of rents are provided by the hotel operator to the City on a monthly basis, and the City will rely on the revenue stream from TOTs. Failure to pay TOTs on a monthly basis, account for rents or discrepancies in either duty would create a basis for an enforcement action by the City, which could also pursue injunctive relief in addition to civil and/or criminal charges for noncompliance.

The Commission would also have authority to enforce the conditions of approval in the CDP. Upon learning of any noncompliance, the Commission could issue a Cease and Desist Order and proceed with legal action upon prolonged noncompliance.

The Encinitas Beach Resort
A 130 Room Hotel
Encinitas, CA

An Overview of the Hotel and the Equity Financing Method

March, 2006

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Encinitas Beach Resort

A 130-Room Hotel
Encinitas, CA
March, 2006

I. Introduction 1

II. Project History 2
a. December 1992: Commission approves 130-room hotel
b. November 2001-Present: KSL actively seeks financing for approved hotel
c. July 2005: KSL submits application to Commission for approval of an equity-financing/Condotel method to finance construction of approved hotel

III. What is an Equity-Financing/Condotel? 3
a. A Condominium is a form of ownership
b. Condotel hotel rooms are a viable and growing method of financing hotel construction
c. Condotels are not residential units
d. Condotels are a significant financing mechanism for hotel construction in California
e. The Commission has previously approved Condotels in the Coastal Zone
f. Previously-approved Condotels have a proven track record of Visitor-Serving Use...

IV. What are the constraints on the Encinitas Beach Resort? 7
a. Land Use Plan and zoning designate the Encinitas Beach Resort Site for *Hotel* use...
b. The City's Conditions of Approval require the Encinitas Beach Resort to operate as a hotel in perpetuity
c. The proposed CC&Rs will ensure that the Encinitas Beach Resort will only operate as a visitor-serving hotel
d. The proposed CDP Conditions of Approval will ensure that the Encinitas Beach Resort operates as a visitor-serving hotel in perpetuity

V. How will these restrictions be enforced? 10
a. Land Use Designation and Zoning
b. City Conditions of Approval
c. Payment of TOT
d. Proposed CC&Rs
e. Proposed CDP Conditions of Approval

VI. Encinitas needs hotel rooms 11

VII. Would registering the hotel rooms as securities enhance the "Visitor-Serving" character of the Encinitas Beach Resort? 12

VIII. Attachments
1) Terry Pristin, *A Room of Your Own (When the Hotel Isn't Renting It),* N.Y. Times, October 27, 2004.
2) Charles Passey, *A Keys Resort Sells A Piece of the Nest*, N.Y. Times, January 28, 2005.
3) "Condotel Hotels – Construction Pipeline Summary," *Lodging Econometrics,* February 9, 2006.
4) CDP No. 5-96-282 and staff report for Sea View Hotel, Hermosa Beach
5) Staff report for CDP No. 3-90-46-A1, Conservatory Hotel, Half Moon Bay
6) City of Encinitas Notice of Decision, May 16, 2005
7) City of Encinitas Municipal Code, §3.12.030 (Definitions)
8) Hotel/Motel Room Rates – City of Encinitas (2005 Survey)

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I. Introduction

The Encinitas Beach Resort ("Beach Resort") will be a visitor-serving hotel open to the general public that will alleviate a shortage of visitor accommodations in San Diego's North County Coastal area. No residential units are proposed in the project. The Beach Resort will operate in perpetuity as a hotel open to the general public, and is obligated to do so as it will be bound by the City of Encinitas' ("City") General Plan and Local Coastal Program ("LCP") designations, Conditions of Approval of the Tentative Map and Parcel Map Waiver, the Coastal Development Permit ("CDP") and the proposed Covenants, Conditions and Restrictions ("CC&Rs").

Construction of the Beach Resort will be financed through an equity-financing, also known as a Condotel. This process entails the sale of individual guestrooms to purchasers as non-residential condominiums. This approach does not affect the visitor-serving capability or "purity" of the hotel. From the perspective of a visitor or guest, the Beach Resort will be indistinguishable from any other hotel: guests will make reservations to stay for a specified number of nights and will enjoy the amenities that are standard at similar full-service resort hotels. The property will be run by an on-site, professional management company to ensure that quality and consistency of accommodations and service are maintained. Although owners may occupy their guestrooms within the pre-established limitations, they must reserve their stay in advance, and must obtain their key card from the front desk. The hotel manager will maintain full control over interior and exterior treatments and furnishings so that the hotel guestrooms have a consistent look and feel. Owner usage is restricted to a time period shorter than a transient guest may stay: owners may only occupy their guestroom up to 90 days per year, cannot occupy their guestrooms for more than 25 consecutive days, and cannot occupy their guestrooms more than 25 days within any 50-day period. Owners as well as hotel guests will pay Transient Occupancy Taxes (TOTs) for the length of their respective stays.

The Condotel concept is not new to the Commission. Two hotels financed as Condotels were approved by the Commission nearly ten years ago, and both are successful examples of visitor-serving hotels open to the general public today. Both of these hotels, described in greater detail below, were conditioned by the Commission in a manner identical to the conditions that apply to the Beach Resort, except that the Beach Resort's owner use period of 25 days is shorter than the 29 day period allowed at these hotels. Experience at the previously approved Condotels suggests that owners do not take advantage of their entire use period: owner use data from the hotel operator reveals that no more than 6% of owners occupy their guestrooms at any time during the year.

The Encinitas Beach Resort will operate within the parameters of the underlying land use restrictions and conditions of approval applied by the City and the Commission. These conditions will be imposed on hotel guestroom owners through the CC&Rs, which will be recorded on the deed of every hotel guestroom. The applicable sections of the CC&Rs cannot be modified without prior written consent from the City and the Commission. The CC&Rs will apply to each hotel guestroom no matter who owns the guestroom or who operates the hotel, and are not affected by sale or foreclosure of the guestrooms. Conversion of any hotel guestroom into a residential unit, withholding any unit from public use, or *any other action that does not*

comply with the underlying restrictions and conditions will subject the violating party to an enforcement action with potential legal repercussions.

II. History of the Encinitas Beach Resort Project

A. December 1992 – Coastal Commission Approves 130 Room Hotel

In December 1992, the Coastal Commission approved construction of a 130 room hotel on the site (CDP 6-92-203), located on the west side of Highway 101 at the north end of Encinitas. At the time the site was owned by Sports Shinko, a Japanese company. Sports Shinko demolished existing single-family residences on the site and relocated seven mobile homes, but was unable to finance construction of the approved hotel. Sports Shinko sold the site in November 2001 to KSL Resorts, operator of destination resorts such as the La Costa Resort and Spa. KSL subsequently constructed a number of improvements on the site to enhance public access and recreation opportunities, including a staircase from the neighboring state park to the top of the bluff, two scenic overlook terraces and a public access path from Highway 101 (CDP 6-92-203-A1).

B. November 2001- Present – KSL Actively Seeks Financing for Approved Hotel

Similar to the experience of Sports Shinko, KSL found financing the approved hotel to be inordinately difficult. After the World Trade Center attacks on September 11, 2001, and subsequent collapse of the tourist industry, securing traditional financing for the hotel became virtually impossible. The terrorist attacks, according to a *New York Times* interview of a hospitality industry expert in 2004, "were disastrous for the hotel industry and also made it difficult to build new full service hotels … there's an element of risk that didn't exist before." (*See Attachment 1*) A 2005 *Times* article observed that "In a post-9/11 environment, hotel and resort developers have found it extremely difficult to secure loans for new construction or renovations." (*See Attachment* 2) Since purchasing the site in 2001, KSL has spent the last four years actively pursuing a number of different financing mechanisms to no avail.

C. July 2005 – KSL Submits Application for Condotel

In the wake of over 13 years of active efforts to build the approved hotel with traditional financing mechanisms, KSL now proposes to finance construction of the hotel through individual purchasers rather than a single entity. This equity financing approach requires that hotel guestrooms are sold to individual purchasers. Sale of the hotel in this manner requires approval of a map waiver pursuant to the Subdivision Map Act, and thereby qualifies as a development that requires approval of the Coastal Commission. The proposed Encinitas Beach Resort is identical to the originally approved hotel in every respect except for the ownership structure. The architecture, site plan and internal operating configuration are identical to the project approved in 1992. The hotel will be operated by KSL Resorts, a leading hotel operator that has experience managing other well-known resorts such as the Grand Wailea Resort, La Quinta Resort and Spa, Arizona Biltmore Resort and Spa and La Costa Resort and Spa. KSL will operate the Encinitas Beach Resort in a similar manner to those hotels, and the property will be

indistinguishable from a traditional hotel in the eyes of visitors. A more detailed description of the Beach Resort follows below.

III. What is an Equity-Financing/Condotel?

The term "Condotel" is used to describe a variety of lodging arrangements. It has been used to describe hotels that contain a blend of standard hotel guestrooms and exclusively residential units, hotels that contain fractional ownership or vacation club rooms, and in a few cases hotels that are converted to exclusively residential buildings. The Condotel concept proposed by KSL for the Encinitas Beach Resort is none of these. "Condotel" as used in this paper refers to a method of financing where hotel guestrooms are sold as non-residential condominiums to individuals to finance construction of the hotel. This method, also known as Equity-Financing, results in hotel guestrooms that are owned by a number of individuals rather than a single entity. However, the vast majority of the hotel (approximately 70%) will be owned and controlled by the hotel operator. There are no residential, fractional ownership or timeshare elements in the Encinitas Beach Resort. The equity-financing/Condotel approach is described in a greater detail below.

A. A Condominium is a Form of Ownership

A condominium is a "single real estate unit in a multi-unit development in which a person has both separate ownership of a unit and a common interest, along with the development's other owners, in the common areas." (*Black's Law Dictionary,* Second Pocket Edition). The most familiar form of condominiums are residential. However, condominium ownership is customary in other uses as well: there are retail condominiums, office condominiums and industrial condominiums, among others. Condominiums are real property interests, the creation of which requires compliance with the Subdivision Map Act.

Condominium units must comply with the underlying zone, conditions of development approvals and any other applicable local, state and federal laws. Financing construction of a property by selling individual units as condominiums does not evade compliance with the Municipal Code, development regulations or conditions of approval. A hotel condominium unit cannot be converted into a residential condominium unit, or for that matter a retail or industrial condominium unit, without discretionary approvals from all governing jurisdictions and agencies that granted approval for the hotel condominium in the first place.

B. Condotel Guestrooms – A Viable Method to Finance Hotel Construction

While not as widespread as other forms of condominiums, Condotels have become a viable method of financing hotels that would otherwise be infeasible. As the 2004 *Times* article observed, financing of hotel construction is a risk that most lenders no longer want to take. By splitting ownership among a number of individuals rather that consolidating it in a single entity, risk that would pose an insurmountable obstacle to that single entity is diffused at an acceptable level among a number of parties.

Financing hotel construction through sale of hotel guestrooms provides the enhanced capital necessary to build hotels that require particularly steep initial investments. For example, hotels that offer a full range of visitor services such as restaurants, gyms, public parking and public meeting areas require significantly higher initial capital investments than limited service hotels. Similarly, hotels that are located on unique sites such as beachfront bluffs entail a significantly higher cost per guestroom than hotels located in an inland location. There are a number of reasons for this: beachfront property presents natural obstacles (such as bluffs or an odd shape) to an efficient site plan, local and state agencies impose more stringent development restrictions and require dedication of public open space, and local municipalities require extra parking. A combination of any of these factors creates a situation where each hotel room requires a substantially higher investment than a traditional lender may be willing to bear. Sale of individual guestrooms means that the hotel operator will forsake a share of the revenue from guestroom rentals, but it also reduces the burden of debt.

C. Condotels Are Not Residential Units

Condotels do not create residential interests in the hotel guestrooms. Just as owners of an office condominium would not be allowed to live in their offices, owners of Condotels are not allowed to live in their hotel guestrooms. While owners will be allowed to stay in their guestrooms, their stay is limited to a period of time shorter than a traditional hotel guest could stay. In most jurisdictions, "transient occupancy" is defined as stay limited to one month or less. This project is conditioned to limit an owner's stay to 25 days or less. While owners do not pay room rates during their stay, they are identical to a traditional visitor in *every other regard*. The owners must pay TOTs for each night they stay in their guestroom. They must pay for room service, cleaning and linen replacement. The guestrooms are subject to the underlying zoning regulations and approved use, which allow only transient occupancy. They are also subject to any conditions of approval enacted by governing bodies, and violation of those conditions would ultimately lead to revocation of the approval just as it would for any other use.

There are a number of other fundamental differences between condotels and residential condominiums in addition to those mentioned above. As the 2005 *Times* article observed, "units cannot be customized or decorated to an owner's taste." Condotels are identical to single-owner hotels in every regard except for ownership structure. Figure 1 on the next page contrasts residential condominiums with condotels and single-owner hotels.

Figure 1: Comparison of Residential Condominiums, Condotels and Single-Owner Hotels

	Residential Condominium	**Condotel**	**Single-Owner Hotel**
ACCESS	Key held only by owner and owner-authorized users	Computerized card-key system operated by hotel manager where keys "expire" and do not function after reserved time period expires, applies to owners and guests	Computerized card-key system operated by hotel manager where keys "expire" and do not function after reserved time period expires
PERMITTED USE PERIOD	Unlimited and exclusive use by owner	Owner may not stay in guestroom any longer than a paying visitor may, as determined by the governing jurisdiction. Typically transient occupancy is limited to one month, and most jurisdictions impose additional usage restrictions (ie. 90 days total per year)	Typically transient occupancy is limited to one month, although there are no limits on number of days per year that a guest can stay in a hotel
TRANSIENT OCCUPANCY TAX (TOT)	Owner does not pay TOTs	Owners and guests pay TOTs for each night of their stay	Guests pay TOTs for each night of their stay
ROOM DÉCOR/ HOTEL TREATMENTS	Owner has full control over every aspect of exterior and interior design	Pursuant to the CC&Rs, the hotel operator controls design and furnishings of the interior of every guestroom and the exterior of the hotel, and owners/guests cannot modify décor or treatments	The hotel operator controls design and furnishings of the interior of every guestroom and the exterior of the hotel, and guests cannot modify décor or treatments
US MAIL/VOTING PRIVILEGES	Acceptable location for mail delivery or voter registration as a primary or secondary residence	Hotel will only accept mail as it would for any hotel guest. The hotel cannot be considered a primary or secondary residence in violation of the underlying zone or development approvals	Hotel will only accept mail as it would for any hotel guest. The hotel cannot be considered a primary or secondary residence in violation of the underlying zone or development approvals
SCHOOLS	New developments must pay residential school impact fees in order to finance construction of local schools to accommodate new residents	Condotel developer does pay residential school impact fees since guestroom owners cannot establish residency for the purpose of enrollment in the local school district	Hotel developer does pay residential school impact fees since guestroom owners cannot establish residency for the purpose of enrollment in the local school district

D. Condotels Are a Significant Financing Mechanism for Hotel Construction in California

Condotels are becoming the industry standard to finance construction of hotels in California and nationwide. Over 2,600 hotel guestrooms financed as Condotels are in the construction pipeline in California, and nearly 37,000 Condotel guestrooms are in the pipeline nationwide, according to a report by the leading industry source of market data (*See Attachment 3*). According to the same report, nearly 10,000 of those guestrooms are located near the coast. Major brand hotel chains such as Hilton, Sheraton, Radisson and Ritz Carlton are opening new locations financed as Condotels. Starwood Hotels and Resorts, operator of brands such as Westin, Sheraton, Four Points by Sheraton, St. Regis and W Hotels, plans to construct over 2,600 hotel guestrooms financed as Condotels by 2008.

E. Commission Has Previously Approved Condotels in the Coastal Zone

While Condotels have just recently emerged as a significant method to finance hotel construction, they have existed for a number of years and the Commission has previously approved construction of Condotels in the Coastal Zone. Two of these Condotels, the Conservatory Hotel in Half Moon Bay (CDP 3-90-46-A1) and the Sea View Hotel in Hermosa Beach (CDP 5-96-282), were approved by the Commission approximately ten years ago. In both cases, the Commission granted approval with special conditions to ensure that they remained visitor-serving uses. (*See Attachments 4 & 5*)

F. Previously Approved Condotels Have a Proven Track Record of Visitor-Serving Use

Roughly ten years since gaining approval from the Commission, both the Conservatory Hotel and the Sea View Hotel remain full-service visitor-serving hotels consistent with their respective development permits. The Commission limited owner usage at both hotels to 90 days per year and no more than 29 consecutive days. The City of Encinitas and Commission staff propose a stricter use period for the Encinitas Beach Resort: no more than 25 consecutive days, no more than 25 total days within any 50 day period, and no more than 90 days per year. Owner usage data from the Sea View Hotel for 2005 is below. As the table indicates, on any given month no more than **6%** of the hotel rooms are occupied by room owners.

	January	February	March	April	May	June	July	August	September	October	November
Average Percentage of Guestrooms Occupied by Owners	1.5%	3%	4%	2.8%	4%	4.3%	5.2%	5.7%	3.4%	3.7%	3.0%

The appearance, service and operation of an equity-financed hotel, or Condotel, is identical to that of a hotel financed by a single entity. Hotel operators are motivated to ensure that the rooms will be used as hotel guestrooms in perpetuity since they can only

derive income from the guestrooms if they are occupied by paying guests. The Sea View Hotel and Conservatory Hotel are extremely successful examples of visitor-serving Condotels in the Coastal Zone today. As detailed above, guestrooms are open to the general public at all times and are rarely used by their owners.

That experience is corroborated by information from equity-financed hotel guestrooms operated by KSL. The La Costa Resort in Carlsbad, La Quinta Resort in Palm Springs and the Arizona Biltmore in Phoenix all contain equity-financed hotel guestrooms. An average of **8.5%** of the guestrooms at the La Quinta Resort are occupied by owners during any given month. An average of **4.5%** of the guestrooms at the Arizona Biltmore are occupied by owners during any given month. Equity-financing does not affect the appearance or visitor capacity of any of these resorts -- all remain fully operational and functional hotels that are completely open to the public and are indistinguishable from hotels financed in the traditional single-entity manner.

IV. What are the Constraints on the Encinitas Beach Resort?

A. Land Use Plan and Zoning Designate the Encinitas Beach Resort Site for Hotel Use

The project site is designated *Visitor-Serving Commercial* (VSC) use by the Land Use Plan/LCP, and is zoned for *Limited Visitor-Serving Commercial* (L-VSC) use. According to the Municipal Code, L-VSC "is intended to provide for hotel/motel uses as the primary use and ancillary uses specifically intended to serve the needs of persons visiting the City" (§30.08.010(B)). The General Plan Land Use Plan, LCP and Zone all intend the site to be used for a hotel. Residential units are *not a permitted use* in the L-VSC zone. Conversion of the hotel condominium guestrooms in the Encinitas Beach Resort to residential condominiums would require a General Plan amendment, LCP amendment and a rezone.

B. The City's Conditions of Approval Require the Encinitas Beach Resort to Operate as a Hotel in Perpetuity

To ensure that the Encinitas Beach Resort will operate as a traditional visitor-serving hotel, the City applied a number of specific conditions to its approval of the project's map waiver. These conditions address owner occupancy, TOT collection and hotel management, among other issues. The conditions of approval also prohibit conversion of the hotel to any other use, including a time-share, residential condominium or apartment complex. A summary of the City's relevant conditions follows: (*See Attachment 6*)

- **No Conversion of Hotel Rooms**

  The permitted development shall be operated as a limited-term occupancy hotel condominium subject to the satisfaction of the Planning and Building Director. No portion of the project shall be converted to a time-share, full-time occupancy condominium, apartment or other type of project that differs from the approved limited-term occupancy hotel condominium without an approved amendment to this

approval and an approved amendment to any permit or approval required by other agencies.

- **Owner Stay is Limited**

  Owners of hotel occupancy units shall not be allowed to occupy their hotel occupancy units for more than 25 days and no more than 90 days per year, unless otherwise approved by the Planning and Building Director with consideration given to approval by other necessary agencies.

- **Rooms Must Remain Open to General Public When Not Occupied by Owner**

  All hotel occupancy units shall be available to the general public when not occupied by the hotel occupancy unit owner.

- **Hotel Operator Shall Manage All Rooms, Including Reservations and Room Access**

  An on-site hotel management agent shall manage all hotel occupancy units with such management services to include, but not limited to, check-in and check-out services, reservation services, issuance of key cards to control access to rooms, and collection and remittance of transient occupancy tax.

- **All Room Occupants, Including Owners, Must Pay TOTs**

  All occupants of the hotel occupancy units, including hotel occupancy unit owners, shall pay the transient occupancy tax in accordance with Section 3.12 of the Municipal Code.

C. The Proposed CC&Rs Ensure that the Encinitas Beach Resort Will Only Operate as a Visitor-Serving Hotel

The CC&Rs for the Encinitas Beach Resort will ensure that the Encinitas Beach Resort operates as a full service visitor-serving hotel in perpetuity. The CC&Rs incorporate the requirements in the City's Conditions of Approval, reinforce KSL Resort's interest in maintaining control of the hotel guestrooms and can also address any requirements the CDP may contain. Following is a summary of the relevant provisions in the CC&Rs.

- **Hotel Guestrooms Cannot Be Used for Any Purpose Other Than Transient Occupancy**

  The CC&Rs prohibit use of the hotel guestrooms for any purpose other than short-term transient occupancy, whether by owners or visitors. The CC&Rs explicitly preclude conversion of the hotel guestrooms to timeshares, vacation clubs or any other fractional interest arrangement.

- **All Hotel Guestrooms are Subject to the City's TOT, Whether Occupied by a Visitor or the Owner**

  When a guestroom is occupied by its owner, the owner must pay TOT for each night of his stay. TOT is calculated using the average nightly rate for comparable hotel guestrooms occupied by guests during that period.

- **The Permitted Owner Use Period is Shorter Than the City's Transient Occupancy Period**

  The City defines "Transient Occupancy" as occupancy of a hotel room for 30 consecutive days or less. There is no limit on the number of days a traditional visitor may occupy a room per year. Owner usage, meanwhile, is limited to no more than 25 consecutive days, no more than 25 days within any 50 day period, and no more than 90 days per year.

- **If an Owner Fails to Vacate His Guestroom by the End of His Reserved Stay, He Will be Subject to Stiff Penalties and Legal Action**

  Owners who occupy their rooms beyond their reserved stay, which cannot exceed the owner use period, will be subject to liquidated damages in the amount of 200% of fair rental value per day and legal action seeking a court order for the owner to vacate his guestroom.

- **The Hotel Maintains Full Control of Exterior and Interior Design and Furnishings**

  Owners may not make alterations or improvements to the hotel rooms. The hotel operator maintains sole approval over design and furnishings.

- **Owners Who Independently Rent Their Guestrooms to the General Public are Strictly Regulated**

  An owner may elect to rent his guestroom to visitors independent of the hotel operator. However, owners who do so must rent their guestrooms at rates comparable to those charged by the hotel operator. Guests who reserve rooms through owners are required to check-in at the Hotel's front desk.

D. The Proposed CDP Conditions of Approval Will Ensure that the Encinitas Beach Resort Operates as a Visitor-Serving Hotel in Perpetuity

As the result of over six months of discussion with the project applicant, Commission staff proposed a number of Special Conditions to the CDP that will supplement the City's Conditions of Approval and the proposed CC&Rs to ensure that the Encinitas Beach Resort remains a visitor-serving hotel open to the general public.

Following is a summary of the relevant proposed Special Conditions from the Commission staff report.

- **Hotel Must Have an On-Site Operator, and Hotel Guestrooms Must Be Available for Rental by the General Public When Not Occupied by Owner**

- **Hotel Guestroom Owners Who Elect to Rent Their Unit Through a Party Other Than the Hotel Operator Must Comply With the Following Restrictions:**

  1) Marketing and advertisement of such units must be the same or comparable to marketing and advertisements of units by the hotel operator;

  2) Unit owners cannot discourage rental of their unit or create disincentives meant to discourage rental;

  3) Units must be rented at the same or comparable rate to that charged by the hotel operator for a similar room;

  4) The hotel operator must book all room reservations in a central reservation database;

  5) The hotel operator must maintain records of usage for all units and is responsible for reporting TOTs for all units.

- **Owners may not occupy their hotel rooms for more than 90 days per year, with a maximum of 25 days in any 50 day period**

- **Owner use periods are unaffected by changes in hotel room ownership**

- **No portion of the Encinitas Beach Resort can be converted to any other use, including timeshares or residential units**

V. How Will These Restrictions Be Enforced?

The issue of how the constraints on the Encinitas Beach Resort will be enforced was raised by Commissioners at the hearing in January. Specifically, one Commissioner questioned whether an owner buyout of the hotel operator would threaten the visitor-serving nature of the hotel. No matter who owns the hotel or how it is financed, the restrictions imposed by the governing documents listed above control and endure unless otherwise modified by the City and Commission. Failure of the hotel operator or guestroom owners to comply with any of these restrictions will subject the violating party to enforcement actions that could culminate in legal proceedings to enforce compliance.

A. Land Use Designation and Zoning

As described above, the City's Land Use Plan and Zoning designate the project site for *Hotel* use. Residential dwelling units are not allow in the L-VSC zone. If the hotel guestrooms at the Encinitas Beach Resort are used for any purpose other than short-

term transient occupancy, the City can initiate a code enforcement action which can result in criminal charges for prolonged noncompliance.

B. City Conditions of Approval

The City applied a number of specific conditions to its approval of the tentative map and map waiver, as described above. The Encinitas Beach Resort is required to operate as a hotel pursuant to Specific Condition "F." The Encinitas Municipal Code defines "hotel" as any structure with three or more units occupied or intended or designed for occupancy by transients (§3.12.030). The Municipal Code defines "transient" as any person who exercises occupancy for a period of thirty days or less (§3.12.030). (*See Attachment 7*) Operation of the Encinitas Beach Resort or occupancy of hotel guestrooms in a manner contrary to this or any of the special conditions or the Municipal Code will result in a code enforcement action which can result in criminal charges for prolonged noncompliance.

C. Payment of TOT

All occupants of hotel guestrooms at the Encinitas Beach Resort, owners and hotel guests alike, are required to pay TOT for the length of their stay pursuant to the City's Specific Condition "J" as well as proposed CC&Rs. The Municipal Code requires payment and accounting of rents and TOTs on a monthly basis, and retention of all records related to tax liability for a period of three years (§3.12.060, 80). The City will monitor operation and use of the hotel guestrooms at the Encinitas Beach Resort through the monthly TOT statements. Failure to comply with the City's TOT requirements carries stiff financial penalties, and may also result in criminal charges.

D. Proposed CC&Rs

The final CC&Rs will be recorded on the deed for every hotel guestroom. Pursuant to Section 15.3 of the CC&Rs, provisions in the CC&Rs that effect the terms and conditions in the City's or Coastal Commission's approval cannot be amended or altered without prior written approval from the City and Commission. Failure of any guestroom owner or the hotel operator to comply with any provision of the CC&Rs can subject the violating party to legal action.

E. Proposed CDP Conditions of Approval

The Conditions of Approval that apply to the CDP for the Encinitas Beach Resort will be implemented through the hotel's CC&Rs, which will in turn be recorded on the deed of every hotel guestroom. As stated above, provisions in the CC&Rs that effect the conditions of the Commission's approval cannot be altered without the Commission's prior written consent. Failure of any guestroom owner to comply with the provisions of the CC&Rs can subject the violating party to legal action.

VI. Encinitas Needs Hotel Rooms

The Beach Resort will be the first full service resort in the area, providing substantial TOT income to the City. According to a recent survey of Encinitas tourist accommodations, there is a total of 881 hotel rooms in the City, with average rates ranging from $80 to $130. (*See Attachment 8*) Neighboring South Carlsbad State Beach provides 222 campsites and San Elijo State Beach, approximately 4.5 miles to the south, contains 171 campsites. There is an ample supply of low-cost visitor accommodations in the area. The Encinitas Beach Resort is the first opportunity for a four star, mid-market hotel in the City of Encinitas.

VII. Would Registering the Hotel Guestrooms as Securities Enhance the Visitor-Serving Capability of the Encinitas Beach Resort?

Registering the hotel guestrooms as securities will not enhance the visitor-serving capability of the Encinitas Beach Resort. The hotel operator, like the City and the Coastal Commission, has a stake in maintaining the property as a full-service hotel occupied by paying guests. The City's conditions of approval as well as the proposed CC&Rs and CDP Conditions of Approval contain a number of provisions to guarantee that the Encinitas Beach Resort will operate as a hotel in perpetuity, that owner stay is limited to a period equal to or shorter than a paying guest and that guestrooms are open to the public when not occupied by owners. Registering the guestrooms as securities would only affect how the guestrooms can be sold and how dividends from guestroom rentals are distributed to owners.

There are a number of procedural and substantive restrictions involved in securities filings that make the process irreconcilable with the sale and operation of condominium hotel rooms. If the guestrooms are not registered and publicly traded, then resale is strictly limited. The pool of prospective purchasers would be limited to accredited investors, and general advertisements of the sale are prohibited. Sale and resale of the guestrooms would require involvement of registered securities broker dealers rather than real estate brokers. The initial filing and periodic disclosure reports would be cost-prohibitive for a hotel operator that has little if any experience managing securities and complying with state and federal securities laws.

1

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BUSINESS/FINANCIAL DESK

COMMERCIAL REAL ESTATE; A Room of Your Own (When the Hotel Isn't Renting It)

By TERRY PRISTIN (NYT) 1513 words
Published: October 27, 2004

CHICAGO - Just south of the Loop, three buildings in the historic Printing House Row district that together housed a fading Hyatt Regency are being transformed into this city's newest boutique hotel. But in contrast to most other hotels, the majority of the rooms will be owned by individual investors.

Named the Morton because one of the buildings, completed in 1896, originally served as the headquarters of the Morton Salt Company, the new hotel will be operated by Kimpton Hotels and Restaurants, a San Francisco company known for upscale pet-friendly properties in urban downtowns.

But unlike other Kimpton-managed hotels, the Morton will be a condominium hotel, which means that most of its 162 rooms and suites will be owned by individuals, who will get a portion of the rental proceeds. So far, 102 units have been sold, for prices ranging from $175,000 for a single room to $480,000 for a two-bedroom suite, said Robert D. Falor, the president of the Falor Companies, which bought the property in July.

Condo hotels have been around for more than two decades, but until a few years ago, the concept was generally applied only to beach and ski resort areas. But now it is spreading to urban locations, especially in this city, where three other projects that include condo hotels are planned, including one with 227 units that is being developed by the Trump Organization on the site of the recently vacated Sun-Times building along the Chicago River. Unlike a participant in a fractional ownership arrangement, the buyer of a condo hotel room owns the unit and is free to sell it. The hotel unit can be rented out daily, unlike a residence condo.

In recent months, Falor, which was founded here in 1983 by Mr. Falor's father, David, has been on a buying spree, acquiring nine properties for conversion to condo hotels, with five more under contract. Most of these hotels are in Florida, including the Tides, Edison and Breakwater hotels in South Beach and the Cheeca Lodge and Spa in Islamorada, but the company has also just closed on its $2.3 million purchase of a 1919 office building at the corner of State and Adams Streets, which will be gutted and turned into a condo hotel called the Century.

From January 2004 through next March, the company expects to close on $1 billion worth of condo hotels, including properties in Los Angeles, San Francisco, Washington and Boston, Mr. Falor said. "We have found there is a huge pent-up demand for this product," he said.

Urban condo hotels are being marketed to suburban residents, business travelers and other people who regularly visit a particular city but do not spend enough time there to own a pied-à-terre, which would sit empty when they were not in town. With income from a unit in a condo hotel, buyers hope to defray some of their carrying costs and perhaps make some money, either from rental income or appreciation.

They may also gain some tax benefits through depreciation.

In exchange, they pay a premium over regular condo prices and agree not to decorate the space or stay in it beyond an agreed-upon number of nights.

Condo hotels are still rare enough that no one has yet calculated the number of such properties nationwide, said R. Mark Woodworth, the executive vice president of PKF Consulting, a company that specializes in hotels.

But he said that selling units to individual investors is becoming a popular form of financing hotel construction, particularly as developers find it increasingly difficult to get public subsidies for these projects. In addition, he said, the terrorist attacks three years ago were disastrous for the hotel industry and also made it difficult to build new full-service hotels. "Since 9/11," Mr. Woodworth said, "there's an element of risk that didn't exist before."

David C. Pisor, the managing partner of the Elysian Development Group, which is developing a 60-story hotel and condominium residence project near this city's Magnificent Mile shopping district, said that selling hotel units to investors would enable him to create an ultraluxurious brand with amenities like kitchenettes concealed behind cabinets and armoires holding personal possessions that can be rolled into the room when the owner stays there.

"This will be an incredible hotel asset with no debt," said Mr. Pisor, who has sold 82 units ranging from 800 to 1,000 square feet at prices from $650,000 to $900,000. The project, at Rush and Walton Streets, will have 171 hotel rooms and 50 condominium residences.

So just how much income can a prospective hotel condo buyer expect to earn when the unit is rented out? Developers and brokers are not allowed to answer this question; if they do, they must register the property as a security subject to the regulations of the Securities and Exchange Commission.

They are also barred from pooling the hotel revenue, which means that the owner is paid only when the actual unit is occupied. Brokers who sell condo hotel units have to guard against running afoul of securities laws because if the project runs into trouble, the buyer may use that violation to break the contract, said Gary Saul, a partner in the Miami office of the law firm of Greenberg Traurig.

Joel Greene, the president of the Condo Hotel Center, a brokerage firm in North Miami, Fla., that handles condo hotel sales around the country, said buyers could expect to cover most of their costs or perhaps even earn a small annual profit on their investment if the condo hotel was in a good location, had good management and was part of a strong brand. "Primarily, you focus on appreciation," Mr. Greene said.

The terms of the rental agreement vary according to the developer. Falor, for example, takes 10 percent off the top and splits the rest with the owner, who also must pay a monthly maintenance fee and the unit's share of the insurance premium and real estate taxes. Another 4 percent is deducted so that the bedspread, say, can be replaced when necessary.

Other condo hotels assess the owners as the need arises. At the Trump International Hotel at Columbus Circle in Manhattan, where all 167 hotel rooms and suites are condos, the owners recently had to pay for a $12 million upgrade. For a one-bedroom suite facing Broadway, that worked out to about $35,000, said Douglas Russell, a vice president and director of Brown Harris Stevens Residential.

Completed in 1996, the Trump building may be the only urban condo hotel with a track record. Mr. Russell said that in 2000, a very profitable year for the hotel industry, owners of a one-bedroom suite without a mortgage had a net gain of about $35,000 from rentals; in 2002, their income dropped to about $10,000.

As for appreciation, Mr. Russell said he paid $385,000 for a 691-square-foot one-bedroom suite in 1996 and could sell it today for $585,000. During that period, however, prices in the building's residential tower have doubled. "We haven't seen quite the appreciation that the tower has," said Mr. Russell, referring to the condo hotel. "Any time you put a restriction on something, you do to some degree hold back appreciation."

Owners of Trump hotel condo units in New York are not allowed to live there full time, because that portion of the project received a 12-year tax abatement. The Trump International Hotel in Chicago, priced from $700,000 for one 608-square-foot room to $3 million for a 2,000-square-foot suite, has no such restrictions on occupancy. Buyers are charged $40,000 a room for the furniture, Mr. Russell said. The 90-story building is expected to be finished in 2007.

Even with all these new projects, Bob Waun, a vice president at Paramount Bank in Birmingham, Mich., said his bank was one of only five across the nation willing to write mortgages for buyers of hotel condo units. The rate is generally one percentage point higher than a traditional loan, he said.

But Paramount Bank is cautious, Mr. Waun said. A borrower can get only one loan in a particular project and is expected to look upon the property more as a second home than as an investment. "We like them to have some commitment to it, to go there," he said. "We don't want it to be a pure investment play." Borrowers who feel some attachment to a property are less likely to default, he said.

As a second home, however, a condo hotel may have some shortcomings. Mr. Falor was asked what would happen if the owner called at the last minute to reserve the unit. "If you call tonight, and the unit's not occupied, it's yours," he said. And if it is occupied? You are welcome to another room, he said, at "the best available rate."

Photo: Robert D. Falor, president of the Falor Companies, in front of the Morton in Chicago. (Photo by Peter Thompson for The New York Times)

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2

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January 28, 2005

JOURNEYS; A Keys Resort Sells A Piece of the Nest

By CHARLES PASSY

ROGER BERNSTEIN has long considered the Cheeca Lodge & Spa, a tropical-themed resort on this famed Florida Keys getaway, a kind of home away from home, an upscale retreat he visits every few months to "drink lots of fruity drinks" and work on his tennis game. So, this last year, Mr. Bernstein, a Miami lawyer, decided to take his passion for the place to the next level.

He bought it.

Well, at least a small piece of it. Mr. Bernstein purchased a $355,000 studio unit -- one of 92 "resort residences" the decades-old Cheeca is selling as part of its conversion from a traditional resort into a condominium hotel. It's a decidedly different sort of second-home ownership: Mr. Bernstein and his wife, Erica, and two children -- a third is on the way -- won't get to personalize their unit or even put in a washing machine. And they can only use it 28 days a year; the rest of the time, they will be required to place it into the resort's rental pool.

Still, he and his family get to swim in the resort's lagoon, get mud wraps in the spa and play golf on the nine-hole par 3 course. Mr. Bernstein is also betting that his property will appreciate. In the Florida Keys, where there's a limited availability of real estate because of restrictions on development, housing prices have soared -- more than 30 percent in 2003, according to Monroe County officials. "My philosophy is investing in something you can enjoy," he said.

He is not alone. In recent years, one of the hottest trends among luxury resorts has been to develop some kind of ownership program, offering high-end "fractionals" (fancy time-shares), condominiums or even houses. Some projects mirror the Cheeca model -- a legendary property converting part of its rooms to condos. Others are being built from the ground up as condo hotels. Among the resorts in Florida alone that have condo projects in the works are Miami Beach's Fontainebleau Hilton, the Venetian Grand Resort in Orlando and Fort Myers Beach's Pink Shell Beach Resort. But the phenomenon has spread to other locales, including Las Vegas (MGM Grand Hotel) and Chicago (Trump International Hotel). Even the 200-year-old Greenbrier, in West Virginia, is getting into the ownership game, establishing the Greenbrier Sporting Club, a luxury development connected to the property that will eventually include 500 homes; lots range from $400,000 to $2 million.

Even before its recent renovation, Cheeca was distinct among Keys properties for its size -- a roomy 27 acres -- and the fact it offered hard-to-find amenities on this slender chain of islands like a golf course designed by Jack Nicklaus and a sandy beach built up on the notoriously rocky shoreline. Then there's the blue-green water that has always beckoned snorkelers, scuba divers and sport fishermen to the Keys.

The location "is an hour and a half away from Miami Beach, but it's like being on a Caribbean island," said Cecilie Jorgensen, who with her husband, Kent, bought two adjoining units at the hotel for $1.1

million last year. Adding to the feeling of remoteness is the fact that there's only one road that connects the Keys to the mainland. Which may explain why some Cheeca buyers opt to arrive on the resort's helicopter, which lands on the golf course.

THE lodge, now managed by RockResorts, was built in the early 1960's after a hurricane destroyed its predecessor, the Olney Inn, where Harry S. Truman was once a guest. The name was derived from a merger of the names of the two new owners, Cynthia (better known as Che-Che) and her husband, Carl Twitchell (an heir to the A.& P. supermarket fortune).

The resort soon took on something of a celebrity cachet. Frequent guests included Sam Snead, Ted Williams and Bing Crosby. More recently, former President George Bush has often been a guest -- so much so that the resort holds an annual bonefish tournament in his honor.

But in the last decade, as luxury resorts proliferated and spent millions trying to top each other with new amenities, it also became clear that Cheeca was no longer meeting the high-end standard. You can tell as much today when you step into one of the resort's remaining unrenovated rooms: the yellow wallpaper would be more appropriate in a Florida motel room of the mid-50's than in an upscale resort of the new century.

The rest of Cheeca, however, tells a much different story.

With an architectural style that blends West Indian and Floridian influences, the resort, consisting of a main lodge, several two-level buildings and beach bungalows, has a relaxed feel -- what Cheeca executives refer to as "barefoot elegance." And they mean it. Even though a weekend stay here during peak season can easily run $1,000 or more -- for nonowners, that is -- the dress code consists of little more than sandals and shorts (or a one-piece and sarong). And the otherwise formal dining room does not require jackets for men.

The renovated rooms have been done up with mahogany furniture in the bedrooms, Italian marble in the bathrooms and a 42-inch plasma television for every guest's viewing pleasure. The spa -- added in 2001 -- has an adult-only pool, with cabanas that rent by the day. The 1,200-foot beach is lined with hammocks, perfect for a midday siesta.

Best of all is a pier that extends 525 feet into the Atlantic -- so far out that you'll feel you're already on one of the resort's rental miniboats.

CHEECA'S makeover and its conversion to a condo-hotel property are inextricably tied to each other. In a post-9/11 environment, hotel and resort developers have found it extremely difficult to secure loans for new construction or renovations. So, they've sought another way: selling off their properties room by room to individuals. While it means forsaking a share of the revenue, it also reduces the burden of debt.

Jerry Johnson, the managing partner of the group that owns Cheeca, said that the bill for renovations would hit "at least" $40 million. "It wouldn't be economically feasible to do that" running Cheeca as a "straight hotel," he said.

Buyers, of course, get a portion of the income from their rooms -- rates run from $295 to $795 a night, depending upon the season. There are downsides, too. For starters, condo-hotel living means hotel living, so items like extra closets and washers and dryers are out of the question. Units cannot be customized or decorated to an owner's taste. And there is no predicting the long-term income potential. "This is not for the faint of heart," said Bill Dougherty, sales director for the Cheeca condo operation.

Still, he has already sold more than 60 of the 92 available units, with little more marketing effort than a few mailings to former guests at Cheeca. Mr. Dougherty suspects a number of buyers just like owning a piece of a classic resort like Cheeca -- in the same way they might have liked owning a piece of a winery or a prize-winning thoroughbred in years past. "It's an ego thing," he said.

Or, in the case, of Mike Miller, an entrepreneur based in Ohio, it's simply an attractive business proposition. Having already bought condo-hotel units elsewhere in Florida, he decided to add to his portfolio and buy one at Cheeca -- sight unseen -- with a business partner.

Then, Mr. Miller finally got around to seeing the resort in November when he came on a vacation with his wife. After a few days walking up and down the beach and lounging in those oceanside hammocks, there seemed only one thing left for the couple to do. "We liked it so much," he said, "we bought another unit for ourselves."

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3

LODGING Econometrics THE INDUSTRY AUTHORITY FOR HOTEL REAL ESTATE

CONDO HOTELS
CONSTRUCTION PIPELINE SUMMARY

At 4th Quarter 2005

	CONSTRUCTION PIPELINE [1]																													
	Under Construction							Starts Next 12 Months							Early Planning							Total Pipeline								
	Total Projs.	Hotel Rooms	Condo Units	Private Res	T-Share Units	Fract'al Units	Total Units	Total Projs.	Hotel Rooms	Condo Units	Private Res	T-Share Units	Fract'al Units	Total Units	Total Projs.	Hotel Rooms	Condo Units	Private Res	T-Share Units	Fract'al Units	Total Units	Total Projs.	Hotel Rooms	Condo Units	Private Res	T-Share Units	Fract'al Units	Total Units
CONDO HOTELS — WITH ROOMS IN A RENTAL PROGRAM																														
NEW HOTEL CONSTRUCTION																														
All Hotel Rooms Selling As Condo Units	22		6,764				6,764	21		6,812	407			7,219	11		2,940				2,940	54		16,516	407			16,923
Some Hotel Rooms Selling As Condo Units	14	2,351	5,309	497	28		8,185	16	4,757	6,046	871	21	20	11,715	6	2,407	915	250			3,572	36	9,515	12,270	1,618	49	20	23,472
OPEN HOTELS																														
All Hotel Rooms Converting to Condo Units	18		4,275				4,275	6		960				960	3		461				461	27		5,696				5,696
Some Hotel Rooms Converting to Condo Units	5	454	852	191			1,497	5	1,135	1,292	227			2,654	1	178	150				328	11	1,767	2,294	418			4,479
TOTAL CONDO HOTELS	59	2,805	17,200	688	28		20,721	48	5,892	15,110	1,505	21	20	22,548	21	2,585	4,466	250			7,301	128	11,282	36,776	2,443	49	20	50,570
LEADING COMPANIES																														
Starwood Hotels & Resorts	5	692	741	209			1,642	2	2,000	2,511				4,511								7	2,692	3,252	209			6,153
Hilton Hotels	4	298	799				1,097	1		163				163								5	298	962				1,260
Carlson Hospitality	1		80				80	1	140	57	23			220								2	140	137	23			300
All Other Companies	44	1,815	12,273	429	28		14,545	40	3,114	9,423	1,025	21	20	13,603	20	2,313	4,180	250			6,743	104	7,242	25,676	1,704	49	20	34,891
SUB TOTAL	54	2,805	13,893	638	28		17,364	44	5,254	12,154	1,048	21	20	18,497	20	2,313	4,180	250			6,743	118	10,372	30,227	1,936	49	20	42,604
Casinos	5		3,307	50			3,357	4	638	2,956	457			4,051	1	272	286				558	10	910	6,549	507			7,966
TOTAL CONDO HOTELS	59	2,805	17,200	688	28		20,721	48	5,892	15,110	1,505	21	20	22,548	21	2,585	4,466	250			7,301	128	11,282	36,776	2,443	49	20	50,570
TOP MARKETS																														
Las Vegas, NV	7	1,000	5,562	50			6,612	5	2,300	5,495	1,086			8,881	2	1,772	286				2,058	14	5,072	11,343	1,136			17,551
Orlando, FL	7		2,153				2,153	5	140	2,823	23			2,986	1		654				654	13	140	5,630	23			5,793
Fort Lauderdale, FL	9	512	1,931	238			2,681	1		349				349								10	512	2,280	238			3,030
Miami Beach, FL	5		511				511	4		785	95			880	1		300				300	10		1,596	95			1,691
West Palm Beach, FL	2		319	66			385	3		399	46			445								5		718	112			830
Southern California Coast	2		459				459	1		206				206	1		130				130	4		795				795
SUB TOTAL	32	1,512	10,935	354			12,801	19	2,440	10,057	1,250			13,747	5	1,772	1,370				3,142	56	5,724	22,362	1,604			29,690
All Other Markets	27	1,293	6,265	334	28		7,920	29	3,452	5,053	255	21	20	8,801	16	813	3,096	250			4,159	72	5,558	14,414	839	49	20	20,880
TOTAL CONDO HOTELS	59	2,805	17,200	688	28		20,721	48	5,892	15,110	1,505	21	20	22,548	21	2,585	4,466	250			7,301	128	11,282	36,776	2,443	49	20	50,570

[1] Projects in this chart represent Condo Hotels in the Industry's Construction Pipeline that are being actively pursued by Developers as of September 30, 2005. Caution should be used when forecasting the number of projects that will actually come to fruition. Based on historical experience, the attrition rate for projects Scheduled to Start Next 12 months can be up to 25% and for projects in Early Planning up to 60%. As successful projects move forward, the number of planned units frequently decreases. During difficult financing periods, time lines can lengthen, too.

[2] "Condo Hotels" is defined as a newly constructed hotel, or an already open and operating hotel, that sells all or some of the guestrooms as condominiums, and then provides purchasers the opportunity to place their units in a rental program managed by the Hotel.

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LODGING Econometrics THE INDUSTRY AUTHORITY FOR HOTEL REAL ESTATE

CONDO HOTELS
CONSTRUCTION PIPELINE SUMMARY

At 4th Quarter 2005

CONSTRUCTION PIPELINE [1]

	Under Construction							Starts Next 12 Months							Early Planning							Total Pipeline						
	Total Projs.	Hotel Rooms	Condo Units	Private Res	T-Share Units	Fract'al Units	Total Units	Total Projs.	Hotel Rooms	Condo Units	Private Res	T-Share Units	Fract'al Units	Total Units	Total Projs.	Hotel Rooms	Condo Units	Private Res	T-Share Units	Fract'al Units	Total Units	Total Projs.	Hotel Rooms	Condo Units	Private Res	T-Share Units	Fract'al Units	Total Units
BY SEGMENT TIER																												
Private Residence Club	1		333				333	2	186	57	50			293								3	186	390	50			626
Luxury	9	918	1,890	237			3,045	10	3,857	5,525	709			10,091	2	272	311				583	21	5,047	7,726	946			13,719
Quality	40	1,887	10,967	299	28		13,181	28	1,165	6,077	184	21	20	7,467	18	2,313	3,859	250			6,422	86	5,365	20,903	733	49	20	27,070
Moderate	4		703	102			805	4	46	495	105			646	1		296				296	9	46	1,494	207			1,747
SUB TOTAL	54	2,805	13,893	638	28		17,364	44	5,254	12,154	1,048	21	20	18,497	21	2,585	4,466	250			7,301	119	10,644	30,513	1,936	49	20	43,162
Casinos	5		3,307	50			3,357	4	638	2,956	457			4,051								9	638	6,263	507			7,408
TOTAL CONDO HOTELS	59	2,805	17,200	688	28		20,721	48	5,892	15,110	1,505	21	20	22,548	21	2,585	4,466	250			7,301	128	11,282	36,776	2,443	49	20	50,570
BY BRAND																												
Best Value Inn	1		230				230															1		230				230
Doubletree Hotel	1		231				231															1		231				231
Fairmont Hotel								2	446	182	27			655								2	446	182	27			655
Hampton Inn								1		163				163								1		163				163
Hilton Hotel	3	298	568				866															3	298	568				866
Hyatt Hotel	1	1,000	2,000				3,000	1		250				250								2	1,000	2,250				3,250
Luxury Collection	1		239	66			305															1		239	66			305
Quality Suites	2		416				416															2		416				416
Ramada Inn								1	40	48				88	1		96				96	2	40	144				184
Regent Hotel	1		80				80	1	140	57	23			220								2	140	137	23			300
Renaissance Hotel															1		300				300	1		300				300
St. Regis	2	346	101	54			501															2	346	101	54			501
W Hotel	1	346	171				517	2	2,000	2,511				4,511								3	2,346	2,682				5,028
Westin Hotel	1		230	89			319															1		230	89			319
Total Branded Projects	14	1,990	4,266	209			6,465	8	2,626	3,211	50			5,887	2		396				396	24	4,616	7,873	259			12,748
Independent Hotels	40	815	9,627	429	28		10,899	36	2,628	8,943	998	21	20	12,610	18	2,313	3,784	250			6,347	94	5,756	22,354	1,677	49	20	29,856
Casinos	5		3,307	50			3,357	4	638	2,956	457			4,051	1	272	286				558	10	910	6,549	507			7,966
TOTAL CONDO HOTELS	59	2,805	17,200	688	28		20,721	48	5,892	15,110	1,505	21	20	22,548	21	2,585	4,466	250			7,301	128	11,282	36,776	2,443	49	20	50,570

[1] Projects in this chart represent Condo Hotels in the Industry's Construction Pipeline that are being actively pursued by Developers as of September 30, 2005. Caution should be used when forecasting the number of projects that will actually come to fruition. Based on historical experience, the attrition rate for projects Scheduled to Start Next 12 months can be up to 25% and for projects in Early Planning up to 50%. As successful projects move forward, the number of planned units frequently decreases. During difficult financing periods, time lines can lengthen, too.

[2] "Condo Hotels" is defined as a newly constructed hotel, or an already open and operating hotel, that sells all or some of the guestrooms as condominiums, and then provides purchasers the opportunity to place their units in a rental program managed by the Hotel.

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LODGING Econometrics THE INDUSTRY AUTHORITY FOR HOTEL REAL ESTATE

CONDO HOTELS
CONSTRUCTION PIPELINE SUMMARY

At 4th Quarter 2005

CONSTRUCTION PIPELINE [1]

	Under Construction							Starts Next 12 Months							Early Planning							Total Pipeline						
	Total Projs.	Hotel Rooms	Condo Units	Private Res	T-Share Units	Fract'al Units	Total Units	Total Projs.	Hotel Rooms	Condo Units	Private Res	T-Share Units	Fract'al Units	Total Units	Total Projs.	Hotel Rooms	Condo Units	Private Res	T-Share Units	Fract'al Units	Total Units	Total Projs.	Hotel Rooms	Condo Units	Private Res	T-Share Units	Fract'al Units	Total Units
BY LOCATION																												
Oceanside	28	512	6,645	421			7,578	13	500	2,259	141			2,900	8	217	1,066				1,283	49	1,229	9,970	562			11,761
Urban Areas	3	589	1,092				1,681	6	535	718	30			1,283	3	418	608	250			1,276	12	1,542	2,418	280			4,240
Theme Park Areas	7		2,153				2,153	5	140	2,823	23			2,986	1		654				654	13	140	5,630	23			5,793
Casino Destinations	7	1,000	5,562	50			6,612	7	2,938	6,142	1,086			10,166	3	1,772	586				2,358	17	5,710	12,290	1,136			19,136
Ski Areas	6	406	727	115	28		1,276	1		90		21		111								7	406	817	115	49		1,387
Lakes and Rivers	4	298	514	102			914	3	1,006	1,154	105			2,265								7	1,304	1,668	207			3,179
Mountains and Natural Settings	1		238				238	6	733	762	85		20	1,600			200				200	7	733	1,200	85		20	2,038
Golf Resorts	2		57				57	3		457				457	1	178	258				436	6	178	772				950
Suburban and Regional	1		212				212	4	40	705	35			780	5		1,094				1,094	10	40	2,011	35			2,086
TOTAL CONDO HOTELS	59	2,805	17,200	688	28		20,721	48	5,892	15,110	1,505	21	20	22,548	21	2,585	4,466	250			7,301	128	11,282	36,776	2,443	49	20	50,570
BY STATE																												
Florida	31	647	6,667	421			7,735	17	540	5,112	164			5,816	4		1,319				1,319	52	1,187	13,098	585			14,870
Nevada	7	1,000	5,562	50			6,612	5	2,300	5,495	1,086			8,881	3	1,772	586				2,358	15	5,072	11,643	1,136			17,851
California	4		927	89			1,016	4	976	603	27			1,606	4		1,078				1,078	12	976	2,608	116			3,700
Hawaii	5		2,503				2,503															5		2,503				2,503
New Jersey	2		389		28		417	2	100	457		21		578	1		115				115	5	100	961		49		1,110
SUB TOTAL	49	1,647	16,048	560	28		18,283	28	3,916	11,667	1,277	21		16,881	12	1,772	3,098				4,870	89	7,335	30,813	1,837	49		40,034
All Other Markets	10	1,158	1,152	128			2,438	20	1,976	3,443	228		20	5,667	9	813	1,368	250			2,431	39	3,947	5,963	606		20	10,536
TOTAL CONDO HOTELS	59	2,805	17,200	688	28		20,721	48	5,892	15,110	1,505	21	20	22,548	21	2,585	4,466	250			7,301	128	11,282	36,776	2,443	49	20	50,570

[1] Projects in this chart represent Condo Hotels in the Industry's Construction Pipeline that are being actively pursued by Developers as of September 30, 2005. Caution should be used when forecasting the number of projects that will actually come to fruition. Based on historical experience, the attrition rate for projects Scheduled to Start Next 12 months can be up to 25% and for projects in Early Planning up to 60%. As successful projects move forward, the number of planned units frequently decreases. During difficult financing periods, time lines can lengthen, too.

[2] "Condo Hotels" is defined as a newly constructed hotel, or an already open and operating hotel, that sells all or some of the guestrooms as condominiums, and then provides purchasers the opportunity to place their units in a rental program managed by the Hotel.

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LODGING Econometrics THE INDUSTRY AUTHORITY FOR HOTEL REAL ESTATE

CONDO HOTELS
CONSTRUCTION PIPELINE FORECAST

At 4th Quarter 2005	NEW OPENINGS						PROJECTED OPENINGS [1]																																			
	2005						2006							2007											2008 & Beyond																	
	Total Projs.	Hotel Rooms	Condo Units	Private Res	T-Share Units	Fract'al Units	Total Units	Total Projs.	Hotel Rooms	Condo Units	Private Res	T-Share Units	Fract'al Units	Total Units	Total Projs.	Hotel Rooms	Condo Units	Private Res	T-Share Units	Fract'al Units	Total Units	Total Projs.	Hotel Rooms	Condo Units	Private Res	T-Share Units	Fract'al Units	Total Units
CONDO HOTELS — WITH ROOMS IN A RENTAL PROGRAM																																										
NEW HOTEL CONSTRUCTION																																										
All Hotel Rooms Selling As Condo Units	5		984			984	14		3,032			3,032	14		4,572			4,572	26		8,912	407		9,319
Some Hotel Rooms Selling As Condo Units							6	669	898	28	28	1,623	10	428	1,355	519	21	20	2,343	20	8,418	10,017	1,071		19,506
OPEN HOTELS																																										
All Hotel Rooms Converting to Condo Units	1		220			220	16		3,040			3,040	7		1,907			1,907	4		749			749
Some Hotel Rooms Converting to Condo Units							7	589	745	132		1,466	2	178	437	191		806	2	1,000	1,112	95		2,207
TOTAL CONDO HOTELS	6		1,204			1,204	43	1,258	7,715	160	28	9,161	33	606	8,271	710	21	20	9,628	52	9,418	20,790	1,573		31,781
LEADING COMPANIES																																										
Starwood Hotels & Resorts							1	166	34	28		228	3	180	536	181			897	3	2,346	2,682			5,028
Hilton Hotels							3	102	705			807	2	196	257				453						
Carlson Hospitality							1		80			80								1	140	57	23		220
All Other Companies	6		1,204			1,204	36	990	5,973	132	28	7,123	26	230	6,326	529	21	20	7,126	42	6,022	13,577	1,043		20,642
SUB TOTAL	6		1,204			1,204	41	1,258	6,792	160	28	8,238	31	606	7,119	710	21	20	8,476	46	8,508	16,316	1,066		25,890
Casinos							2		923			923	2		1,152				1,152	6	910	4,474	507		5,891
TOTAL CONDO HOTELS	6		1,204			1,204	43	1,258	7,715	160	28	9,161	33	606	8,271	710	21	20	9,628	52	9,418	20,790	1,573		31,781
TOP MARKETS																																										
Las Vegas, NV							3		1,178			1,178	2		1,152				1,152	9	5,072	9,013	1,136		15,221
Orlando, FL							5		1,166			1,166	3		1,774				1,774	5	140	2,690	23		2,853
Fort Lauderdale, FL							5	166	1,055	28		1,249	3		705	210			915	2	346	520			866
Miami Beach, FL	3		802			802	4		412			412	3		261				261	3		923	95		1,018
West Palm Beach, FL							1		80			80	3		500	112			612	1		138			138
Southern California Coast							1		60			60	1		420				420	2		315			315
SUB TOTAL	3		802			802	19	166	3,951	28		4,145	15		4,812	322			5,134	22	5,558	13,599	1,254		20,411
All Other Markets	3		402			402	24	1,092	3,764	132	28	5,016	18	606	3,459	388	21	20	4,494	30	3,860	7,191	319		11,370
TOTAL CONDO HOTELS	6		1,204			1,204	43	1,258	7,715	160	28	9,161	33	606	8,271	710	21	20	9,628	52	9,418	20,790	1,573		31,781

[1] Projects in this chart represent Condo Hotels in the Industry's Construction Pipeline that are being actively pursued by Developers as of September 30, 2005. Caution should be used when forecasting the number of projects that will actually come to fruition. Based on historical experience, the attrition rate for projects Scheduled to Start Next 12 months can be up to 25% and for projects in Early Planning up to 60%. As successful projects move forward, the number of planned units frequently decreases. During difficult financing periods, time lines can lengthen, too.

[2] "Condo Hotels" is defined as a newly constructed hotel, or an already open and operating hotel, that sells all or some of the guestrooms as condominiums, and then provides purchasers the opportunity to place their units in a rental program managed by the Hotel.

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LODGING Econometrics THE INDUSTRY AUTHORITY FOR HOTEL REAL ESTATE

CONDO HOTELS
CONSTRUCTION PIPELINE FORECAST

At 4th Quarter 2005

	NEW OPENINGS							PROJECTED OPENINGS [1]																														
	2005							2006							2007						2008 & Beyond																	
	Total Projs.	Hotel Rooms	Condo Units	Private Res	T-Share Units	Fract'al Units	Total Units	Total Projs.	Hotel Rooms	Condo Units	Private Res	T-Share Units	Fract'al Units	Total Units	Total Projs.	Hotel Rooms	Condo Units	Private Res	T-Share Units	Fract'al Units	Total Units	Total Projs.	Hotel Rooms	Condo Units	Private Res	T-Share Units	Fract'al Units	Total Units
BY SEGMENT TIER																																						
Private Residence Club								1		333				333	1	46		27			73	1	140	57	23			220
Luxury								4	392	462	28			882	5	180	702	255			1,137	12	4,475	6,562	663			11,700
Quality	6		1,204				1,204	31	826	5,246	30	28		6,130	22	374	5,970	323	21	20	6,708	33	4,165	9,687	380			14,232
Moderate								5	40	751	102			893	3	6	447	105			558	1		296				296
SUB TOTAL	6		1,204				1,204	41	1,258	6,792	160	28		8,238	31	606	7,119	710	21	20	8,476	47	8,780	16,602	1,066			26,448
Casinos								2		923				923	2		1,152				1,152	5	638	4,188	507			5,333
TOTAL CONDO HOTELS	6		1,204				1,204	43	1,258	7,715	160	28		9,161	33	606	8,271	710	21	20	9,628	52	9,418	20,790	1,573			31,781
BY BRAND																																						
Best Value Inn								1		230				230														
Doubletree Hotel								1		231				231														
Fairmont Hotel															1	46		27			73	1	400	182				582
Hampton Inn															1		163				163							
Hilton Hotel								2	102	474				576	1	196	94				290							
Hyatt Hotel																						2	1,000	2,250				3,250
Luxury Collection															1		239	66			305							
Quality Suites								2		416				416														
Ramada Inn								1	40	48				88								1		96				96
Regent Hotel								1		80				80								1	140	57	23			220
Renaissance Hotel																						1		300				300
St. Regis								1	166	34	28			228	1	180	67	26			273							
W Hotel																						3	2,346	2,682				5,028
Westin Hotel															1		230	89			319							
Total Branded Projects								9	308	1,513	28			1,849	6	422	793	208			1,423	9	3,886	5,567	23			9,476
Independent Hotels	6		1,204				1,204	32	950	5,279	132	28		6,389	25	184	6,326	502	21	20	7,053	37	4,622	10,749	1,043			16,414
Casinos								2		923				923	2		1,152				1,152	8	910	4,474	507			5,891
TOTAL CONDO HOTELS	6		1,204				1,204	43	1,258	7,715	160	28		9,161	33	606	8,271	710	21	20	9,628	52	9,418	20,790	1,573			31,781

[1] Projects in this chart represent Condo Hotels in the Industry's Construction Pipeline that are being actively pursued by Developers as of September 30, 2005. Caution should be used when forecasting the number of projects that will actually come to fruition. Based on historical experience, the attrition rate for projects Scheduled to Start Next 12 months can be up to 25% and for projects in Early Planning up to 50%. As successful projects move forward, the number of planned units frequently decreases. During difficult financing periods, time lines can lengthen, too.

[2] "Condo Hotels" is defined as a newly constructed hotel, or an already open and operating hotel, that sells all or some of the guestrooms as condominiums, and then provides purchasers the opportunity to place their units in a rental program managed by the Hotel.

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2/22/06

LODGING Econometrics THE INDUSTRY AUTHORITY FOR HOTEL REAL ESTATE

CONDO HOTELS
CONSTRUCTION PIPELINE FORECAST

At 4th Quarter 2005

| | NEW OPENINGS | | | | | | PROJECTED OPENINGS [1] | | | | | |

4

STATE OF CALIFORNIA • THE RESOURCES AGENCY PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

Page: 1 of 6
Date: May 15, 1997
Permit No: 5-96-282

COASTAL DEVELOPMENT PERMIT

On **14 March 1997**, the California Coastal Commission granted to **Seaview Hotel** Coastal Development Permit **5-96-282**, subject to the attached Standard and Special Conditions, for development consisting of: construction of a 30-foot high, 3 story, 96-unit limited-term occupancy condominium hotel consisting of two separate buildings connected by a pedestrian bridge, with 3,050 square feet of meeting rooms with catering kitchen, workout room, laundry, garden spa, valet guest parking service, and public street improvements. The project will be constructed in two phases: Phase I will include one building with 56 units, 1,482 square feet of meeting rooms and 54 on-site parking spaces; Phase II will include a second building with 40 units, 1,568 square feet of meeting rooms. The project includes the provision of 100 off-site parking spaces leased from the City within the City's 480 parking space parking structure that the City intends to build adjacent to the project site. More specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 1302-1340 The Strand, Hermosa Beach.

Issued on behalf of the California Coastal Commis . on May 15, 1997.

PETER DOUGLAS
Executive Director

By:
Title: Coastal Program Analyst

ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance . . . of any permit . . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 CAL. ADMIN. CODE SECTION 13158(a).

COASTAL DEVELOPMENT PERMIT

Date

Signature of Permittee

Please sign and return one copy of this form to the Commission office at the above address.

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. Compliance. All development must occur in strict compliance with the proposal set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.

6. 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.

7. 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.

COASTAL DEVELOPMENT PERMIT

SPECIAL CONDITIONS:

1. Occupancy Restriction

The permitted development shall be operated as a limited occupancy resort condominium. Owners shall not occupy their units for more than 29 consecutive days and no more than 90 days per year. The project shall have an on-site rental agency to manage rental of units. All units shall be available for rental to the general public when not occupied by the unit owner. No portion of the project may be converted to time-share, full-time occupancy condominium, apartment, or other type of project that differs from the approved limited occupancy project without an approved amendment to this coastal development permit.

2. Owner Occupancy/CC&Rs

Prior to recordation of the final subdivision map the permittee shall submit two copies of the proposed covenants, conditions and restrictions (CC&Rs) for the condominium subdivision to the Executive Director for review and approval. The CC&rS must be in substantial conformance with the draft CC&Rs submitted to the Coastal Commission on January 27, 1997. The CC&Rs as approved by the Executive Director must be recorded against all individual property titles. The approved CC&Rs shall not be revised or amended without first obtaining an amendment to this Coastal Development Permit.

3. Transient Occupancy Tax Audit

Three months after the date on which occupancy of all or part of the Phase I building begins, and continuing on a quarterly basis thereafter, the permittee shall submit an audit report indicating that the project is in conformance with the City's room occupancy requirements and the owner occupancy restrictions (i.e. 90 days per year, no more than 29 consecutive days). The report shall include the Phase II building three months after occupancy of that building commences. The report shall include a statement as to whether the City is in agreement with the report.

4. Parking for Occupants/Guests Before and During Construction of Phase II

   a. The permittee shall insure that 54 parking spaces are available to occupants/guests of the Phase I building before and during construction of the Phase II building. Prior to construction of the Phase II building, those parking spaces shall be provided on-site in accordance with the project description. During construction of the Phase II building, the 54 parking spaces must be either within walking distance of the Phase I building or made available through a free shuttle or valet service. The parking spaces shall not include any

spaces that are currently designated for public beach parking or required parking for another use.

b. The permittee shall no commence construction of the Phase II building until the City of Hermosa Beach has commenced construction on the municipal parking structure on City parking Lot "C".

c. Prior to issuance of this permit the applicant shall submit, for review and approval by the Executive Director, a draft plan for providing parking to occupants/guests of the project during construction of the Phase II building. The draft plan shall identify all parking lots/spaces that could potentially be used to provide the 54 parking spaces required by condition 4.a. above.

d. Prior to commencement of construction of Phase II the permittee shall submit, for review and approval by the Executive Director, a final plan for provision of 54 occupant/guest parking spaces during the construction of Phase II. The final plan shall indicate which of the potential parking lots/spaces identified in the approved draft parking plan have been leased, purchased or otherwise acquired for exclusive use of the occupants/guests of the Phase I building. The final plan shall also demonstrate that the 54 spaces will be available for the entire duration of the construction of the Phase II building. The final plan shall demonstrate that the 54 parking spaces are accessible to occupants/guests and employees of the hotel by walking or, if not within walking distance, a free shuttle or valet service. The plan must be reviewed and approved by the City of Hermosa Beach.

5. Parking for Occupants/Guests Upon Completion of Both Phases

a. Upon completion of the Phase II building, the permittee shall provide a total of 100 parking spaces for exclusive use by occupants/guests of the entire project (54 spaces for the building built during Phase I and 46 spaces for the building built during Phase II).

b. Within 90 days after the issuance of the permit the applicant shall submit, for review and approval by the Executive Director, a long term parking agreement signed by the applicant and the City for the leasing of no less than 100 spaces for the exclusive use of the hotel within the City's planned parking structure located on the City owned parking lot (Lot "C") adjacent to the project site. Said agreement shall run for the life of the hotel.

Additional time to comply with this condition may be granted by the Executive Director for good cause, but in no event shall construction

commence on Phase II of the hotel until the applicant/landowner has satisfied this condition.

c. Prior to commencement of construction of the Phase II building, the permittee shall submit either (1) evidence that the City of Hermosa Beach parking structure at Lot "C" is complete and available for use by the project's occupants/guests, or (2) a plan to provide 100 alternative parking spaces until the City's parking structure becomes available. The parking plan shall be subject to review and approval of the Executive Director. The parking plan shall demonstrate that 100 spaces are available for exclusive use of the project. The 100 parking spaces shall be either within walking distance of the project or accessible by a free shuttle or valet service. The plan shall also include evidence that the City has approved the parking plan.

6. Encroachment Permit for Fourteenth Court Right-of-Way

Prior to issuance of the permit the applicant shall submit, for review and approval of the Executive Director, an encroachment permit or other legal document indicating that the applicant has a legal right to temporarily use Fourteenth Court Right-of-Way as part of Phase I parking.

7. Air Right Encroachment Permit for Ocean Drive

Prior to issuance of the permit the applicant shall submit, for review and approval of the Executive Director, an air right encroachment permit or other legal document, that has been reviewed and approved by the City, for the pedestrian bridge to be constructed over Ocean Drive to connect the two separate buildings.

8. Signage Plan

Prior to issuance of the permit the applicant shall submit a signage plan, for review and approval by the Executive Director, showing the wording, size and location of signs to be posted. The signs to be posted shall indicate that the terminus of Fourteenth Street and Thirteenth Street are public beach access and designate the turn-out area as a public beach drop-off. The signs shall be located in conspicuous locations. The plans shall conform to the City's signage program and ordinance and shall be reviewed and approved by the City.

9. Street Treatment Plans

Prior to the issuance of the permit the applicant shall submit, for review and approval by the Executive Director, street treatment plans for Fourteenth Street and Beach Drive. The plans shall ensure that the street treatment will appear visually separate and distinct from the hotel and clearly indicate the street's availability as a public street. Furthermore, the plans shall indicate that parking along the turn-out

COASTAL DEVELOPMENT PERMIT

at the terminus of Fourteenth Street is prohibited. Parking shall be prohibited by red curbing and/or by appropriate City approved signage.

10. Notice of Construction Phase II

The applicant/landowner shall notify the Commission in writing of the construction start date for Phase II. Such notice shall be submitted at least 30 days prior to the construction start date of Phase II.

AJP:bll

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STATE OF CALIFORNIA—THE RESOURCES AGENCY PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION ON 3/14/97

SOUTH COAST AREA
245 W. BROADWAY, STE. 380
P.O. BOX 1450
LONG BEACH, CA 90802-4416
(310) 590-5071

☑ Approved as Recommended
☐ Denied as Recommended
☐ Approved with Changes
☐ Denied
☐ Other

Filed: 1/27/97
49th Day: 3/17/97
180th Day: 7/26/97
Staff: AJP-LB
Staff Report: 2/12/97
Hearing Date: 3/11-14/97
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-96-282

APPLICANT: Seaview Hotel AGENT: The Landau Partnership

PROJECT LOCATION: Hermosa Beach

PROJECT DESCRIPTION: Construction of a 30-foot high, 3 story, 96-unit limited-term occupancy condominium hotel consisting of two separate buildings connected by a pedestrian bridge, with 3,050 square feet of meeting rooms with catering kitchen, workout room, laundry, garden spa, valet guest parking service, and public street improvements. The project will be constructed in two phases: Phase I will include one building with 56 units, 1,482 square feet of meeting rooms and 54 on-site parking spaces; Phase II will include a second building with 40 units, 1,568 square feet of meeting rooms. The project includes the provision of 100 off-site spaces leased from the City within the City's 480 parking space parking structure that the City intends to build adjacent to the project site.

Lot area:	.72 acres
Building coverage:	23,155 square feet
Pavement coverage:	5,160 square feet
Landscape coverage:	2,651 square feet
Parking spaces:	Phase I: 54; Phase II: 100
Zoning:	C-2, Restricted Commercial
Plan designation:	General Commercial
Ht abv fin grade:	30 feet

LOCAL APPROVALS RECEIVED: Approval by Resolution #96-5841: Conditional Use Permit; Development Plan, Parking Plan; Vesting Tentative Tract Map No. 52158

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permits No. 5-96-212, 5-92-177, 5-84-236, 5-82-251A (City of Hermosa Beach); A-3-MAR-96-094; 3-95-48; Final Environmental Impact Report.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission approve the proposed project with special conditions. To ensure that the project operates as a visitor-serving use as proposed by the applicant special condition is required to limit the occupancy of the units and to require that the applicant submit transient occupancy tax audit to demonstrate compliance with the occupancy restrictions. To ensure that support parking is provided during all phases of the project special conditions are necessary to require the designation of off-site lots and the submittal of lease agreements for those lots. The permit is also conditioned

to require the applicant to submit all encroachment permits and access signage and street treatment plans. As conditioned the proposed project is consistent with the access policies of the Coastal Act.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

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. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.

6. 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.

7. 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. Occupancy Restriction

The permitted development shall be operated as a limited occupancy resort condominium. Owners shall not occupy their units for more than 29 consecutive days and no more than 90 days per year. The project shall have an on-site rental agency to manage rental of units. All units shall be available for rental to the general public when not occupied by the unit owner. No portion of the project may be converted to time-share, full-time occupancy condominium, apartment, or other type of project that differs from the approved limited occupancy project without an approved amendment to this coastal development permit.

2. Owner Occupancy/CC&Rs

Prior to recordation of the final subdivision map the permittee shall submit two copies of the proposed covenants, conditions and restrictions (CC&Rs) for the condominium subdivision to the Executive Director for review and approval. The CC&Rs must be in substantial conformance with the draft CC&Rs submitted to the Coastal Commission on January 27, 1997. The CC&Rs as approved by the Executive Director must be recorded against all individual property titles. The approved CC&Rs shall not be revised or amended without first obtaining an amendment to this Coastal Development Permit.

3. Transient Occupancy Tax Audit

Three months after the date on which occupancy of all or part of the Phase I building begins, and continuing on a quarterly basis thereafter, the permittee shall submit an audit report indicating that the project is in conformance with the City's room occupancy requirements and the owner occupancy restrictions(i.e. 90 days per year, no more than 29 consecutive days). The report shall include the Phase II building three months after occupancy of that building commences. The report shall include a statement as to whether the City is in agreement with the report.

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b. The permittee shall not commence construction of the Phase II building until the City of Hermosa Beach has commenced construction on the municipal parking structure on City parking Lot "C".

c. Prior to issuance of this permit the applicant shall submit, for review and approval by the Executive Director, a draft plan for providing parking to occupants/guests of the project during construction of the Phase II building. The draft plan shall identify all parking lots/spaces that could potentially be used to provide the 54 parking spaces required by condition 4.a. above.

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5. Parking for Occupants/Guests Upon Completion of Both Phases

a. Upon completion of the Phase II building, the permittee shall provide a total of 100 parking spaces for exclusive use by occupants/guests of the entire project (54 spaces for the building built during Phase I and 46 spaces for the building built during Phase II).

b. Prior to the issuance of the permit the applicant shall submit, for review and approval by the Executive Director, a long term parking agreement signed by the applicant and the City for the leasing of no less than 100 spaces for the exclusive use of the hotel within the City's planned parking structure located on the City owned parking lot (Lot "C") adjacent to the project site. Said agreement shall run for the life of the hotel.

c. Prior to commencement of construction of the Phase II building, the permittee shall submit either (1) evidence that the City of Hermosa Beach parking structure at Lot "C" is complete and available for use by the project's occupants/guests, or (2) a plan to provide 100 alternative parking spaces until the City's parking structure becomes available. The parking plan shall be subject to review and approval of the Executive Director. The parking plan shall demonstrate that 100 parking spaces are available for exclusive use of the project. The 100 parking spaces shall be either within walking distance of the project or accessible by a free shuttle or valet service. The plan shall also include evidence that the City has approved the parking plan.

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Prior to issuance of the permit the applicant shall submit, for review and approval of the Executive Director, an encroachment permit or other legal document indicating that the applicant has a legal right to temporarily use Fourteenth Court Right-of-Way as part of Phase I parking.

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Prior to issuance of the permit the applicant shall submit, for review and approval of the Executive Director, an air right encroachment permit or other legal document, that has been reviewed and approved by the City, for the pedestrian bridge to be constructed over Ocean Drive to connect the two separate buildings.

8. Signage Plan

Prior to the issuance of the permit the applicant shall submit a signage plan, for review and approval by the Executive Director, showing the wording, size and location of signs to be posted. The signs to be posted shall indicate that the terminus of Fourteenth Street and Thirteenth Street are public beach access and designate the turn-out area as a public beach drop-off. The signs shall be located in conspicuous locations. The plans shall conform to the City's signage program and ordinance and shall be reviewed and approved by the City.

9. Street Treatment Plans

Prior to the issuance of the permit the applicant shall submit, for review and approval by the Executive Director, street treatment plans for Fourteenth Street and Beach Drive. The plans shall ensure that the street treatment will appear visually separate and distinct from the hotel and clearly indicate the street's availability as a public street. Furthermore, the plans shall indicated that parking along the turn-out at the terminus of Fourteenth Street is prohibited. Parking shall be prohibited by red curbing and/or by appropriate City approved signage.

IV. Findings and Declarations.

A. Project Description and Background

The applicant proposes to construct a 30-foot high, 3 story building that would operate as a limited-term occupancy resort condominium. The project will consist of two separate buildings connected by a pedestrian bridge across Beach Drive. The two buildings will contain a total of 96 units, 3,050 square feet of meeting rooms with catering kitchen, workout room, laundry, garden spa, valet guest parking, and public street improvements along the terminus of 13th Street and 14th Street and along Ocean Drive (see Exhibit #1-4).

Owners of each unit would be limited to occupying their unit for a total of 90 days per year and no more than 29 consecutive days. The units would be available for rent when not occupied by the owner(s). The applicant would establish an on-site rental management agency to operate on-site facilities and rental services.

To provide parking for the entire project, the applicant proposes to lease 100 parking spaces within a parking structure that the City intends to build. The City is in the process of obtaining necessary permits to construct a 480 parking space structure at Lot "C" that is adjacent to the proposed site.

The applicant proposes to construct the project in two phases. Phase I will include the first building consisting of 56 units, 1,482 square feet of meeting rooms and 54 guest parking spaces on-site and on Fourteenth Court right-of-way pursuant to an agreement with the City of Hermosa Beach. A portion of the 54 parking spaces will be provided within a portion of Fourteenth Court right-of-way that abuts the Phase II parcel. The applicant will temporarily lease from the City approximately 80 linear feet of the 20-foot right-of-way. The lease agreement will terminate and the right-of-way will revert back to the City upon commencement of Phase II construction.

Once Phase I is completed the applicant will start on Phase II. The Phase II building would be constructed on the site of the on-site parking spaces, excluding the City's right-of-way. Phase II will include the construction of the second building consisting of 40 units, 1,568 square feet of meeting rooms. During the construction period the applicant proposes to provide 54 parking spaces required as guest parking for the Phase I building in an alternative off-site location. Upon completion of Phase II, all parking needs of the project will be met through the lease of 100 parking spaces in the City's parking structure.

The proposed project is located on two separate vacant parcels totalling .72 acres in area. The two parcels will be subdivided for condominium purposes only. The two parcels are separated by Beach drive, the first public road paralleling the sea. The project site is adjacent to and inland of The Strand (pedestrian walkway and bikeway) and between Fourteenth Street to the north, and Thirteenth Street to the south.

Surrounding uses include a City landscaped park, commercial and residential uses, public parking lot and public beach. The proposed site is located approximately one block north of the Municipal Pier. The project site is zoned C-2, General Commercial. Under the General Commercial designation hotel and parking uses are permitted.

The City of Hermosa Beach is located in the South Bay area of Los Angeles County between Manhattan Beach to the north and Redondo Beach to the south. The City of Hermosa Beach provides approximately .75 miles of beachfront.

B. Site History

The proposed site was once known as the Biltmore site. The approximately 2.9 acre area was once developed with the Biltmore hotel, that was demolished in 1969, and retail buildings. The Commission, in November of 1984, approved a 5-story, 260 room hotel, commercial and conference center complex (#5-84-625). Under this permit several buildings were demolished. Construction of the hotel was never started.

In 1989 the Commission approved the construction of a 35-foot high, 4-story, 172 room hotel within two separate buildings of 118,040 square feet, over 3 levels of parking for 236 parking spaces [5-89-1150 (Hermosa Beach Investment

Co.)] on the currently proposed .72 acre site. The project also included 5,000 square feet of restaurant and kitchen space and 3,100 square feet of meeting rooms. The permit was subsequently amended (5-89-1150A3) to reduce the hotel rooms to 171; allow the combining of rooms to create no more than 25 suites; reduce restaurant area to 3,484 square feet of service area; reduce meeting room area to 2,448 square feet; and reduce parking to 215 parking spaces, as required by the Hermosa Beach City Code. Under this permit the remaining retail buildings were demolished but the project was never constructed.

C. Visitor-Serving Facilities

Section 30222 of the Coastal Act encourages the use of private lands suitable for visitor-serving uses over other non-priority uses. Specifically, Section 30222 states:

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

Section 30213 states in part:

> Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided....The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility....

As stated the proposed site was once a portion of a larger site that was known as the Biltmore site where a hotel known as the Biltmore Hotel existed. According to the LUP the site has been an on-going City concern for development alternatives for over 15 years. The LUP states that the subject site has the potential to set a tone and become a focal point for revitalizing the downtown/commercial area. In 1984 the City amended their LUP to provide specific planning standards for the Biltmore site. In reference to the Biltmore site the LUP states that:

> The Biltmore site is a vital asset of the people of Hermosa Beach which will play a substantial role in maintaining the City as a financially feasible entity. The City has determined that the most beneficial, economic and environmental coastal use for this site is a hotel/conference use.

The proposed project will be developed as a condominium with individual suites sold to investors for individual ownership. According to the applicant (CC&R's) each investor or group of investors will be limited to a occupancy of no more than 90 days during a calendar year with no more than 29 consecutive days. The City has also conditioned their permit to limit the duration of owner occupancy as currently proposed by the applicant. All units not occupied by owners would be rented by an on-site rental management agency (although owners will be permitted to rent their units without using the on-site service).

Due to the nature of the project's operation the project is considered a visitor-serving development. However, the project will not be a lower-cost facility. According to the applicant and City the hotel is designed and will operated as a AAA Four Star hotel. The over-night rental rates are projected to range between $170 to $250.

The City does not have a large number of over-night facilities. The City currently has four hotels/motels (see Exhibit #7). Two of the hotels/motels are located within the Coastal Zone. The rates vary between $49 to $69 per night. Such rates are considered to be low-cost rates for a beach city within the south bay area.

In addition to the lower-cost over-night facilities currently available the City provides a number of lower-cost visitor and recreational facilities. The City has .75 miles of public beach and a municipal pier which provide swimming, sunbathing, fishing and volleyball activities. The City has a 20 foot wide promenade (The Strand) that runs along the entire length of the of the City's beachfront. The Strand allows strolling, bicycling, skating, and jogging. The City also has a number of visitor-serving commercial facilities, such as restaurants, beach equipment rental and sale retail shops within the downtown visitor serving area and along a portion of the Strand. In addition, the City provides an improved jogging path along the old railroad right-of-way located approximately 1/2 miles from the beach. The City is also in the process of constructing streetscape improvements, such as installing benches, landscaping and street furniture, along Lower Pier Avenue.

Although the proposed hotel is not a lower-cost facility the City provides a number of lower-cost facilities including over-night facilities. As designed the proposal is a visitor-serving facility and will enhance public opportunities for coastal recreation. As currently proposed the 94 individual units will be available to the general public approximately 75% of the year.

Section 30221 of the Coastal Act requires that oceanfront land suitable for recreational use shall be protected for recreational use and development. Furthermore, Section 30222 identifies the use of private lands suitable for visitor-serving commercial recreational facilities as a priority use. If the project was to operate or be converted to a non-priority residential complex the project would not enhance public opportunities for coastal recreation. Moreover, as a residential project the parking demand would be greater than a hotel and will cause greater access impacts to the beach and visitor-serving downtown area. As a residential project the project would be inconsistent with the Coastal Act. Therefore, to ensure that the project will operate as a visitor-serving facility consistent with the applicant's proposal the permit is conditioned to require that owner occupancy of any unit is restricted to a total of 90 days per year, with no owner occupancy for more than 29 consecutive days; that all units shall be available for rent to the general public when not occupied by the unit owners; that conversion of the facilities to any other use is not permitted by this permit; and that the permittee shall submit an audit report indicating that the project conforms with the City's room occupancy requirements. As a condition of this permit, the applicant is also required to record covenants, conditions and restrictions (CC&Rs) that conform to the draft CC&Rs that the applicant submitted on January 27, 1997. The draft CC&Rs demonstrate that the project will be operated as limited-occupancy resort condominium with an on-site rental management agency. Since the CC&Rs provide notice of use restrictions to all future condominium owners, it is important that the recorded CC&Rs must first be

approved by the Commission as amendments to this permit. Although changes to the CC&Rs could not authorize owners to operate the project inconsistent with this permit,such changes could result in owners not being aware of the requirements of this permit. Four example, if the 90 day occupancy restriction was removed form the CC&Rs, future condominium owners would be unaware that occupancy is limited by this permit. Thus, the conditions of this permit require that changes to the CC&Rs be first approved by the Commission through amendment of this permit. The Commission therefore, finds that only as conditioned will the proposed project be consistent with Section 30213 and 30222 of the Coastal Act.

D. Parking

Section.30252 of the Coastal Act states in part:

> The location and amount of new development should maintain and enhance public access to the coast by... (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation....

In addition the Parking policy C.1. states:

> That the City should not allow the elimination of existing on-street parking or elimination of existing on-street parking or off-street parking spaces within the coastal zone. Future residential and commercial construction should provide the actual parking necessary to meet the demand generated.

As stated the proposed project is being constructed in two phases. The first phase will consist of 56 units with 1,482 square feet of meeting rooms and provide 54 parking spaces on-site (on the site of the future Phase II building). Phase II will consist of 40 units and 1,568 square feet of meeting rooms. Once construction for Phase II commences the applicant proposes to relocate the 54 on-site parking spaces off-site onto a yet unnamed site. When all 96 units are completed the applicant will provide a total of 100 parking spaces within the City's planned parking structure.

The applicant and City have entered into an agreement where the applicant has agreed to lease 100 spaces within the City's 480 space parking structure that the City intends to build. The City has submitted an application for the 480 space parking structure (application #5-97-011, scheduled for the April Commission hearing). Construction is planned to start once all approvals have been received and a contractor selected. The construction period for the parking structure is estimated to last approximately 12-18 months.

The City's general parking standards require hotel projects to provide parking at the following ratios:

Hotel

1 space per room for first 50 rooms
1 space per 1.5 rooms for next 50 rooms
1 space per 2.0 rooms after 100 rooms

Meeting Room

1 space per 50 square feet

Based on this general requirement the 96 room hotel plus 3,050 square feet of meeting rooms would require 180 parking spaces. Using the Commission's established parking ratios the project would require 163 parking spaces or 17 parking spaces less than the City's requirement. The applicant is proposing to provide 100 spaces or 80 less than City's general hotel parking requirements. In the City's Land Use Plan amendment 1-94, as modified by the Commission and accepted by the City, the LUP allows projects within the City's downtown area a parking adjustment to account for local walk-in traffic by persons who are already parked elsewhere. The LUP states:

> New development, including expansions and intensifications of use, shall provide parking consistent with requirements elsewhere in the City unless the following findings are made. If the following findings are made, the exceptions described in Section 2 may be granted.
>
> 1. Findings
>
> Before granting the exceptions below, the Planning Director shall certify:
>
> (a) That fewer than 96,250 square feet of commercial development, including new buildings, expansions and/or intensification of uses, in the DED has received a CDP since November 1, 1994
>
> (b) That there is currently adequate parking to support the development and provide adequate beach parking.
>
> (c) That the City council has approved an interim parking study for the DED that shows the occupancy of the parking spaces in the DED is 90% or less during daylight hours on summer weekends.
>
> (d) That no more than 24,063 square feet of commercial development in the DED has received CDP's since the last interim parking study was approved by the City Council.
>
> 2. Exceptions
>
> i. When parking is required, for projects on lots exceeding 10,000 square feet and/or 1:1 F.A.R, parking in excess of that existing on the site at the time of the proposal shall be provided at 65% of the current parking requirement.
>
> ii. Because of the physical constraints to providing parking and the desire to promote a pedestrian orientation in the Downtown Enhancement District, for projects on lots less than 10,000 square feet and less than 1:1 F.A.R., no parking other than the parking existing on the site at the time of the proposal shall be required.

According to a recent report submitted by the City less than 24,063 square feet of commercial development in the DED has received CDP's since the last interim parking study and less than 96,250 square feet of commercial development in the DED has received a CDP since November 1, 1994 (see Exhibit #8).

The parking standard for the downtown area was developed according to a

parking study completed by the City. The 65% figure was based on a City survey which found that only 65% of commercial customers drove to the downtown area. The following is some background information as submitted by the City for the LUP amendment 1-94:

> The existing regulations that require parking for all new development or intensification of uses makes it costly, if not impossible, for property owners to improve or enhance their existing properties. However, in reducing parking requirements on small lots, the city realizes that some limits need to be established to assure that over-development, or lack of parking is not the result. as such, the standard of a 1:1 floor area to lot area ratio is used as a maximum. This method simply uses an easily recognizable standard--the amount of commercial land area--as the maximum amount of development prior to absolutely requiring added parking supply.
>
> This part of the proposal(the small lot exemption up to a 1:1 F.A.R.) is similar to the parking standard used by the city of Manhattan Beach for its similarly situated coastal downtown district. The basic premise is that a certain scale of development can be accommodated by existing "collective" parking facilities spread throughout a district. Further contributing factors that apply in both cities are as follows: (a) both commercial districts are surrounded by medium and high density residential districts making walking and biking to commercial destinations a realistic and feasible alternative to automobiles, and; (b) many of the commercial activities (restaurants, beach rentals, beachwear clothing shops) are interdependent with the use of the public beach and the Strand. As such, suburban parking standards which assume most customers drive, and that separate uses are exclusive, should not apply.
>
> Based on the above, it logically follows that when parking is required (for the area over a 1:1 F.A.R. or development on larger lots) the standard that apply to other commercial areas should not apply in the coastal downtown district. Therefore, based on surveys of the City's downtown which found that about 65% of respondents drove to the area, it is proposed that parking be required at 65% of the standard which applies elsewhere in the city. This is further supported by studies on mixed use
>
> commercial shopping centers which generally show that only 40-75% of required parking is needed when different uses with different peak time demands share the same parking.

Because the project is located within the Downtown Enhancement District (DED) the project would only be required to provide 65% of the required parking if all the necessary LUP DED findings are made. Based on City's Downtown Enhancement District's parking adjustment factor of 65%, the 96 unit hotel with 3,050 square feet of meeting area would require 100 parking spaces. However, the Commission finds that the project does not qualify for the DED reduced parking standard because the total project will exceed the threshold of a total of 96,250 square feet for commercial development in the DED. Therefore, the project does not meet all of the required findings to allow the downtown parking adjustment. However, the threshold was established based on the City's existing parking supply for the downtown area and the amount of surplus parking during a typical summer weekend. Concurrent with this hotel project the City is planning to construct a new parking structure and increase the amount of available parking within the downtown district. The amount of additional public parking that will be added within the downtown district is

380 spaces. Based on the City's calculations the 380 spaces could accommodate approximately an additional 146,300 square feet of new commercial development based on 65% of current zoning requirements.

Although the project will not conform to the LUP's parking standard for the LUP no new development will be approved without adequate parking to support it. Since additional parking is being added to the downtown district the threshold for commercial development would be increased, thus, allowing additional development to occur without adversely impacting the public parking within the downtown area. Furthermore, according to the FEIR the hotels peak period occurs in the evening hours. If the projects parking demand exceeds the hotels parking supply, which would occur during hotels evening peak period, the impact to beach access will be insignificant since general public beach use is during the day.

The project will meet the City's parking requirement for Phase I by providing 54 spaces (51 spaces plus three tandem spaces) on-site with valet service. The 54 spaces will be located on the Phase II site, which is located across of Ocean Drive. A portion of the Phase II site will include the use of 80 linear feet of Fourteenth Court right-of-way to provide adequate area for all 54 parking spaces. The applicant will temporarily lease the right-of-way from the City. According to the City's permit conditions the lease agreement is to terminate once construction for the Phase II building commences. To ensure that the applicant has a legal right to use a portion of Fourteenth Court the applicant shall submit an encroachment permit or other legal document for the temporary use of Fourteenth Court.

After Phase I is completed the applicant plans to construct Phase II and temporarily relocate the 54 Phase I parking spaces off-site. Once Phase II is completed the applicant will provide all 100 required parking spaces that are necessary to support Phase I and II within the City's planned parking structure.

The applicant has submitted a tentative list of potential lots that may be used for the 54 parking spaces required to support the Phase I building during construction of Phase II and for potential use if the City's parking structure is not completed in time for the hotel use (see Exhibit #5). The applicant has also submitted a lease agreement with an owner of one of the listed lots for use of the lot for parking once construction starts on Phase II (see Exhibit #6). However, it is uncertain if these lots are allowed to be used for parking based on their designated zoning and are physically capable of supporting parking. Therefore, as a condition of this permit, the applicant must provide, prior to issuance of the permit, a draft parking plan showing the potential sites for the 54 parking spaces that has been reviewed and approved by the City of Hermosa Beach. The plan must show that there are potential sites that can be accessed either by walking or by a shuttle or valet service provided by the applicant. Then, prior to commencement of construction of the Phase II building, the applicant must submit a final plan indicating where the 54 spaces will be located. The plan shall include ingress and egress locations and parking layout. Based on the tentative information submitted by the applicant it appears that there are a number of potential sites within close proximity of the project site.

Construction of the City's parking structure is planned to occur during construction of Phase I of the hotel and will be completed by the time Phase

II is ready for occupancy. However, although the City's intent is to commence construction on the parking structure immediately once all necessary approvals have been received and have the parking structure completed and available to provide support parking for all 94 units (Phase I and II) there are no guarantees that the construction and completion will stay on schedule. The City is aware of this possible situation and has conditioned their approval so that the applicant must provide an alternate parking area to provide all the hotel's required parking. Condition no. 46 of the City's permit states that:

> In the event that the City parking structure is not completed prior to occupancy of Phase Two, the applicant shall secure adequate off-site parking by covenant, lease, easement or other agreement acceptable to the City Attorney for the interim period.

Because the applicant is providing parking for Phase I and construction for Phase I is estimated to take approximately one year the applicant, at this time, has not secured any lots for future use to support the 100 parking space requirement of the hotel once all 96 units have been completed in the event that the parking structure is not completed. Because of the length of time between Phases and the uncertain need for an alternate parking site it would be impractical and place an unnecessary burden on the applicant to require the alternate parking site(s) at this time. However, due to the fact that Hermosa Beach is an older Community and most of the area is built-out, potential parking sites that will be adequate to support the hotel are limited in the area. Allowing the construction of Phase II to commence and be completed prior to securing an alternate parking site will cause undue pressure on the City and the Commission to permit the hotel to operate with limited or no parking. Such a situation will create significant impacts to public beach parking.

Based on the tentative list of potential parking sites submitted by the applicant it appears that there are sites available to support the project in the event that the City's parking structure is not completed by the time Phase II is completed. However, special conditions are necessary to ensure that these lots are designated for and physically cabable of supporting parking. A condition of this permit requires that prior to commencement of construction of Phase II the applicant shall secure a site, that has been reviewed and approved by the City, that will provide all required parking spaces for the hotel as approved by this permit. Furthermore, to ensure that there will be permanent parking within the City's parking structure for the hotel once Phase II is completed, a special condition is required to ensure that construction of Phase II shall not be permitted unless the City has commenced construction on the parking structure and that a lease for 100 parking spaces within the parking structure has been submitted for review and approval by the Executive Director. In the event that the parking structure is not completed by the time Phase II is completed the applicant shall demonstrate that 100 parking spaces are available within a remote lot for the exclusive use of the project.

Furthermore, as a hotel use within the DED the project is allowed to provide only 65% of the required parking under the certified LUP. As a residential use, such as a condominium, the project would not be granted such a parking adjustment and would be required to provide parking at the Commission established two parking spaces per unit plus guest parking. Providing parking for 96 residential units to support such a demand would be problematic and would adversely impact beach access. Therefore, a special condition

restricting the project to a limited-term occupancy condominium will ensure that the project operates as a visitor-serving facility and enhance public access to the area.

In addition to ensuring that there is adequate parking to protect public beach access the proposed improvements to the surrounding public streets should be designed so not to prohibit public access along those streets. To ensure that improvements to Fourteenth and Thirteenth Street and Beach Drive are designed to improve public access and the streets will not be perceived as part of the hotel, special conditions requiring the posting of signs designating the areas for public access and the submittal of street treatment plans, for review and approval by the Executive Director, are necessary. The Commission, therefore, finds that the project only as conditioned is consistent with Section 30252 of the Coastal Act.

E. Traffic and Circulation

According to the FEIR all presently signalized downtown intersections are operating at Level of Service A. All non-signalized intersections operate at LOS B, except for Valley Drive and Pier Avenue and Ardmore Avenue and Pier Avenue which operate at LOS F. The FEIR further states the proposed project will not change the LOS of any intersection and the vehicle/capacity does not appreciably change for any intersection. Because intersection Vehicle to Capacity (V/C) does not appreciably change due to the project and the LOS does not change for any intersection the FEIR concludes that the additional traffic generated by the project will not have a significant impact. However, the FEIR indicates that because the project will add some increment of traffic to intersections that are already impacted the City and applicant, based on fair share contributions, will improve the intersections along Pacific Coast Highway and Pier Avenue-14th Street. These intersections are outside of the coastal zone.

Based on the traffic study conducted for the FEIR the traffic generated by the proposed project will not adversely impact any of the intersections within the Coastal Zone. As proposed the project does not subtract substantially from the ability of the public to get to the beach. The Commission, therefore, finds that the project is consistent with Section 30252 of the Coastal Act.

F. Visual Quality

Section 30251 of the Coastal Act states:

> The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The proposed project area is characterized by medium to high density urban

development. A public park is located to the north of the proposed site across Fourteenth Street on the former Biltmore Hotel site. To the east there are three single-family residential dwellings and the City surface parking Lot "C" (planned site of the parking structure). To the south of the site there is a small restaurant, retail uses, and an apartment complex. To the west is the adjacent promenade known as The Strand and beach area.

The area presents a mix of building heights that vary from one to three stories. The FEIR states that:

> While there is lower scale development along The Strand to the south of the Phase I Hotel site, the residential buildings and the hotel to the north of the site range in height from approximately 30 to 40 feet. The tallest building in close proximity to the site is the Bijou Theater [located to the east along Hermosa Avenue] with a height of 45 feet.

Since the site is vacant, views of the beach are available along the adjacent streets as well as intermittent views from Hermosa Beach, which is one block to the east. Because the site is between the first public road and the sea and fronts on The Strand development of the site will impact the views available along the adjacent street. However, although these streets provide some views to the beach they are not designated as scenic highways or scenic corridors.

The proposed project will conform to the City's 30 foot height limit and is consistent with the scale and character of the surrounding area. The visual impact of the proposed project will be insignificant due to the existing development in the area and the availability of public views to and along the beach from adjacent public areas, such as The Strand, Pier Avenue and the Pier. The Commission, therefore, finds that the project as proposed is consistent with Section 30251 of the Coastal Act.

G. Geologic Hazards

Section 30253 of the Coastal Act states in part that:

> New development shall:
>
> (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
>
> (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs....

According to the foundation reports, prepared by Converse Consultants West, the site consists primarily of dense to very dense sands and silty sands. Dense sands are expected to provide adequate support for conventional shallow spread footings supporting the three-story hotel building with a concrete slab on grade.

The site is not within a currently designated Alquiest-Priolo Special Studies Zone. However, due to the presents of thin strata of silty sands there is a potential for liquefaction at this site. However, according to the foundation study settlement due to liquefaction during a large magnitude earthquake is predicted to range from approximately one-half to one inch at the site. This potential has been taken into consideration by the design of the structure and will not pose a problem for the structure. The Commission finds, therefore, that the project as designed will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area and is consistent with Section 30253 of the Coastal Act.

H. Local Coastal Program

(a) Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

On September 1981, the Commission certified, with suggested modifications, the land use plan portion of the Hermosa Beach Local Coastal Program. The certified LUP contains polices to guide the types, locations and intensity of future development in the Hermosa Beach coastal zone. Among these polices are those specified in the preceding section regarding public access, visual resources and geologic hazards. Furthermore, the LUP provided that visitor serving uses, such as hotels, be considered along the beachfront. Subsequently, in 1984 the Commission processed an amendment for a Specific Plan for this and an adjacent site. The LUP, as amended, specifically provides for a hotel as an appropriate use for the proposed site. The Commission's action on the LUP proposal found that the development of the proposed site with a hotel was consistent with the Coastal Act. The proposed development, as conditioned, is consistent with the policies of the certified LUP. As proposed the project will not adversely impact coastal resources or access. The Commission, therefore, finds that the proposed project will be consistent with the Chapter 3 policies of the Coastal Act and will not prejudice the ability of the City to prepare a Local Coastal Program implementation program consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

I. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications 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)(i) 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 impact which the activity may have on the environment.

There are no negative impacts caused by the proposed development which have not been adequately mitigated. Therefore, the proposed project is found consistent with CEQA and the policies of the Coastal Act.

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DL 7/28/95

STATE OF CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST AREA OFFICE
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Filed: 07/21/95
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180th Day: 01/17/96
Staff: LO/cm
Staff Report: 07/21/95 1705P
Hearing Date: 08/09/95
Commission Action: w/conditions

STAFF REPORT: PERMIT AMENDMENT

W15a

on consent 8/9/95
Culver City

APPLICATION NO.: 3-90-46-A1

APPLICANT: MARCHANT ENTERPRISES, INC.
c/o Robert Marchant

PROJECT LOCATION: Seaward side of Hwy. 1 at 4100 N. Cabrillo Hwy., Half Moon Bay, San Mateo County (APN's 047-252-300,-310,-320,&-330)

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: 3-story, 54-unit hotel; water supply well; 800 ft. portion of water main extension; highway widening for turn lanes; pedestrian accessway.

DESCRIPTION OF AMENDMENT: Request to modify project to provide for condominium form of ownership; includes subdivision to create a condominium hotel comprised of 54 condo-rooms and one common area encompassing the balance of the site. Amendment also requires modification of Special Condition no. 5 of the permit, regarding use limitations, and minor adjustments in the building design.

Lot area:	1.58 acres
Zoning:	C-3
Plan designation:	Recreational Commercial/Commercial Visitor Serving

LOCAL APPROVALS RECEIVED: Site & Design Permit #PSD-13-88; ARC approval 6/6/88; CEQA Negative Declaration, 1/12/89 (original approvals for hotel). Vesting Tentative Map #SUB-01-95, 6/20/95; Site Plan review #PSD-04-95, 5/11/95; Negative Declaration, 6/20/95 (new approvals for condominium hotel).

SUBSTANTIVE FILE DOCUMENTS: Certified Half Moon Bay LCP Land Use Plan; Environmental Impact Report and Addendum for Pillar Point East Harbor Master Plan; Coastal Development Permits 3-90-46 (Marchant) and 3-95-48 (Elias/Hotel Oceano); San Luis Obispo County LCP Amendment 2-92.

SUMMARY OF STAFF RECOMMENDATION: Staff recommends that the Commission approve the proposed amendment to the coastal development permit, subject to modification of Special Condition no. 5 and additional use limitations as detailed below. The hotel project as originally approved was conditioned to insure that future use of the building would always be visitor-serving rather than residential; the Coastal Act specifies priority for such visitor-serving uses — especially on beach-front sites and where infrastructure capacity is limited. Condition 5, accordingly, limited guest room rentals to a maximum of one week occupancy, and precluded "conversion to time-share or condominium ownership without amendment to this permit."

According to permittee, changing economic circumstances will require innovative financing to get the hotel built. Therefore, the condominium-hotel approach is sought. The number of guest units (54) will not change, and the project will still be operated by a single management entity in the same manner as a conventional beach hotel. The recommended conditions will assure that all of the rooms at various times will be available to the general public for at least three quarters of the calendar year. By limiting owner occupancy to a maximum of 29 consecutive days and a total of 90 days per calendar year, the project will be consistent with a similar project approved by the Commission earlier this year (3-95-48 Elias, a 56 unit condominim hotel in Oceano, San Luis Obispo County).

As a visitor serving development, the proposed kind of use is consistent with the certified Half Moon Bay LUP and is considered a priority use under the Coastal Act.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. APPROVAL WITH CONDITIONS.

The Commission hereby approves the amendment to the coastal development permit, subject to the conditions below, on the grounds that the development with the proposed amendment is consistent with the requirements of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. STANDARD CONDITIONS: See Exhibit A, attached.

III. SPECIAL CONDITIONS:

1. Condominium Hotel allowable. Previously-adopted Special Condition No. 5 is amended as follows, with deletions shown by strike-throughs (////) and additions by underscoring:

5. Use Limitations

PRIOR TO OCCUPANCY OF THE PERMITTED DEVELOPMENT, OR RECORDATION OF THE FINAL SUBDIVISION MAP, whichever is first, permittee shall execute and record a document, in a form and content acceptable to the Executive Director, restricting the allowable uses of the hotel structures constructed pursuant to this permit. Such restrictions shall:

a. Limit restaurant use to hotel overnight and conference guests (including condominium unit owners, if applicable) only, unless a parking management plan for such use has been approved by the City of Half Moon Bay, San Mateo County Harbor District, and the Executive Director of the California Coastal Commission; the purpose of such parking management plan is to insure that parking for the restaurant use will not displace off-site parking spaces needed for public beach access and ocean-dependent harbor uses;

b. Limit guest room rentals to short-term ~~(one night to one week)~~ occupancy only, with length of stay not to exceed twenty-nine consecutive days; and,

c. Preclude conversion to time-share or condominium ownership ~~without amendment~~ except pursuant to the terms of this permit as amended.

The document shall be recorded as a covenant running with the land binding all successors and assigns in interest to the subject property, and evidence of recording shall be provided to the Executive Director.

2. Special Condominium Hotel Provisions. In event of conversion to condominium ownership, PRIOR TO RECORDATION OF THE FINAL MAP the permittee shall submit two copies of the proposed covenants, conditions and restrictions (CC&Rs) for the condominium subdivision to the Executive Director for review and approval. The final map shall not be recorded until the Executive Director approves the CC&Rs in writing. The CC&Rs shall be recorded against all individual property titles and shall provide for the following (in addition to the other use limitations recorded pursuant to Coastal Development Permit No. 3-90-46):

a. Establishment of a property owners association to administer the CC&Rs;

b. A management entity to operate the hotel and to have sole responsibility for providing room accommodation services and bed tax reporting. No owner or owners holding separate interest in a hotel unit shall rent or lease that unit or otherwise offer accommodations to any other person or persons, except through the designated managment entity.

c. A limitation on occupancy of condominium units by owners, so that owner occupancy is restricted to a total of 90 days per calendar year, with no more than 29 consecutive days of occupancy at any one time.

d. A requirement that during those periods when the units are not occupied by their respective owners, they shall be available for short-term rental to the general public on the same basis as conventional hotel rooms.

IV. Findings and Declarations.

The Commission hereby finds and declares:

1. Background -- Project History. The Commission approved Coastal Development Permit no. 3-90-46 on May 8, 1990, subject to 11 special conditions; see adopted conditions attached as Exhibit 1. Special Condition no. 4 required revision of plans for scenic resource protection, which were submitted for review and approved by the Commission on Sept. 11, 1990.

Because this is a prime beach-front location, and because only limited water and sewer capacity are available in the San Mateo County Coastside area, it was considered imperative to observe the Coastal Act requirements that such sites be reserved for priority uses. For this particular site, visitor-serving development was determined to be an appropriate priority use. A primary concern was that in approving a hotel building for this site, the structure might be vulnerable to conversion to non-priority (i.e., residential) use in the future. Accordingly, Special Condition no. 5 was included in the terms of approval. This condition limits guest room rental to a maximum occupancy of one week, and precludes "conversion to time-share or condominium ownerships without amendment to this permit."

A portion of the permit, for utility extensions to serve the property, has already been issued. These extensions have now been installed, along with a portion of the Coastside lateral access trail required to satisfy permit conditions concerning public access. However, the site remains essentially vacant.

2. Amendment Description. Because permittee has not been able to secure the necessary financing for the hotel buildling, an alternative approach through sale of condominium units is desired. The size, general configuration, and number of guest units (54) will remain the same. The hotel would still be operated by a single management entity, which would handle reservations, operation of common areas, maintenance, etc., in the same manner as a conventional hotel. Owners of individual units would be limited to 90 days occupancy per year. A more thorough description was provided to the City of Half Moon Bay by the permittee, and is attached as Exhibit 2 ("The Conservatory Hotel").

The amendment is needed because a change to the condominium form of ownership requires subdivision pursuant to the Subdivision Map Act, which requires a coastal development permit for coastal zone locations. Minor adjustments in the building footprint, entry treatment and parking/landscape layout are also proposed but are immaterial and will be addressed through the condition compliance process regarding submittal of final plans. However, changes in the existing permit Special Condition no. 5 are requested in support of the

condominium form of ownership. Specifically, these include opening the restaurant to the condominium unit owners and the general public; and expanding the maximum length of "short-term" guest room rentals from one week to 29 consecutive days.

3. Coastal Act Recreation Policies. Applicable policies include:

a. Section 30213

"Lower cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided....The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other visitor-serving facility...."

The proposed development will provide 54 overnight rooms with limited kitchen facilities. Other accommodations nearby include camping at Half Moon Bay State Beach and several smaller motels. However, Half Moon Bay does not presently have a large number of motel rooms, and none are located on shoreline. This proposal would result in the creation of 54 beach-front hotel rooms available to the general public approximately 75 percent of the year.

To insure a reasonable turnover of occupancy, and therefore maximize visitor rental opportunities, the conditions of this permit amendment limit continuous occupancy by either owners or guests to less than one month (29 days). Total annual occupancy by owners is limited to 90 days. Given that the condominium form of ownership appears necessary to get this project built, that existing accommodations open to the public are quite limited in this area, that this project will provide additional visitor accommodations, that Section 30213 does not allow the Commission to set room rental rates for privately owned hotels, the project as conditioned is consistent with section 30213 of the Coastal Act.

b. Section 30222:

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

This proposal is on private non-agricultural land lying adjacent to Pillar Pt. Harbor; the proposal is visitor-serving; and by its nature and location on the beach, will enhance public opportunities for coastal recreation. Permittee's proposal to allow the restaurant to be open to the general public will expand the availability of commercial visitor services, and is approved by this

amendment subject to the availability of parking on the adjacent San Mateo County Harbor District lot (or elsewhere) in a manner which will not displace parking needed for public beach access and ocean-dependent uses.

Permit conditions requiring a single management entity, and limited terms of occupancy parallel those previously adopted by the Commission for the Hotel Oceano condominium hotel project in San Luis Obispo County (Coastal Development Permit No. 3-95-48 Elias, approved 6/14/95). The Commission approved similar limitations in its certification of San Luis Obispo County LCP Amendment 2-92 (which allowed the County's portion of the 56-unit Hotel Oceano); and Santa Cruz County LCP Amendment No. 1-87 (which allowed the 280-unit Seascape Resort hotel-condominium).

These conditions will assure that the rooms will remain available, at least 75% of the time, as public recreational opportunities -- and will not in fact or in practice become exclusively private residential condominiums. As such, the proposal is consistent with Coastal Act section 30222.

4. CEQA/LCP. The Land Use Plan (LUP) portion of the City of Half Moon Bay Local Coastal Program (LCP) has been certified by the Commission, but the implementing ordinances have not yet been submitted. The proposed visitor accommodation is consistent with the LUP designation for the site. As conditioned to insure that the rooms, even when divided into condominium ownership, will remain available at least 75% of the year for short-term rental to the general public, this visitor-serving function will be preserved. Therefore, approval of this amendment, as conditioned, will not prejudice the ability of the City to complete its LCP in conformity with the policies of Chapter 3 of the Coastal Act.

The City has met California Environmental Quality Act (CEQA) requirements through the appropriate environmental review process for the condominium subdivision, and has adopted a Negative Declaration for the development. Accordingly, as conditioned, the project will not cause any significant adverse environmental impacts within the meaning of CEQA.

EXHIBITS ATTACHED:

1 -- Previously adopted permit conditions
2 -- "The Conservatory Hotel -- Project Overview" submitted by permittee
A -- Standard Conditions
B -- Location Map

1705P

4/26/90

STATE OF CALIFORNIA—THE RESOURCES AGENCY

GEORGE DEUKMEJIAN, Governor

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST AREA OFFICE
140 CAPITOLA ROAD
SANTA CRUZ, CA 95062

Filed: 04/06/90
49th Day: 05/25/90
180th Day: 10/05/90
Staff: LO/cm
Staff Report: 04/19/90 1160P
Hearing Date: 05/08/90
Commission Action: Approval

ADOPTED

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 3-90-46

APPLICANT: MARCHANT ENTERPRISES, INC. c/o Robert Marchant AGENT: Paul Davis, Sr., AIA

PROJECT LOCATION: Seaward side of Hwy. 1 at 4100 N. Cabrillo Hwy., Half Moon Bay, San Mateo County (APN's 047-252-300,-310,-320,&-330)

PROJECT DESCRIPTION: 3-story, 54-unit hotel; water supply well; 800 ft. portion of water main extension; highway widening for turn lanes; pedestrian accessway.

Lot area:	1.58 acres
Building coverage:	38,372 sq. ft.
Pavement coverage:	19,644 sq. ft.
Landscape coverage:	34,445 sq. ft.
Parking spaces:	63
Zoning:	C-3
Plan designation:	Recreational Commercial/Commercial Visitor Serving
Project density:	33 units/acre
Ht abv fin grade:	35 ft.

LOCAL APPROVALS RECEIVED: Site & Design Permit #PSD-13-88; ARC approval 6/6/88; CEQA Negative Declaration, 1/12/89

SUBSTANTIVE FILE DOCUMENTS: Certified Half Moon Bay LCP Land Use Plan; Environmental Impact Report and Addendum for Pillar Point East Harbor Master Plan

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SUMMARY OF STAFF RECOMMENDATION: Staff recommends that the Commission find the site suitable for a hotel development, and that approval be granted subject to project modifications as required to protect public access, dune and wetland habitat, and scenic resources. The proposed 54-unit hotel is to be located on a narrow blufftop site between Highway 1 and the open waters of Pillar Pt. Harbor. The recommended conditions provide for increased setback from the bluff edge and deed restriction for lateral access (or establishment of alternate accessway on adjacent Harbor Dist. lands), to protect an existing blufftop access route. The conditions also provide for resiting of the project in order to maintain at least 50% of the existing blue water public view across the site. As a visitor serving development, the proposed kind of use is consistent with the certified Half Moon Bay LUP and is considered a priority use under the Coastal Act.

EXHIBIT NO.
APPLICATION NO. 3-90-46
STAFF REPORT

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions. See Exhibit A, attached.

III. Special Conditions.

1. Public Access Plans and Deed Restriction for Lateral Access Easement

PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, permittee shall submit the following (unless the San Mateo County Harbor District has already commenced the installation of an alternate accessway in accordance with Special Condition No. 2, below), for review and approval by the Executive Director:

a. Revised site plan, approved by the City of Half Moon Bay, showing increased blufftop setbacks for both Building A and Building B, sufficient to accommodate the following (as measured from top of bluff/top of bank): a vegetated 3 ft. safety buffer; a pedestrian path, 5 ft. in width; a paved bicycle path, 8 ft. in width; and any additional width desired by applicant for privacy buffer between the public access features and the hotel buildings. The total minimum width shall not be less than 16 feet. The public access paths shall generally follow the existing blufftop footpath, and shall run continuously from the southeasterly (downcoast) boundary of the property to the northwesterly (upcoast) boundary. If the revised plans show restoration of the eroded bluff edge at the southeasterly corner of the site, the restored (rather than existing) bluff edge may be used as the basis for setback measurement subject to the Executive Director's review and approval.

b. A deed restriction which guarantees that the lateral access paths described above will be made available for public use. Accordingly, the landowner shall execute and record a deed restriction in a form and content acceptable to the Executive Director which provides for lateral public access and passive recreational use along the blufftop. The document shall specify that the recordation of such deed restriction shall not be used or construed to allow anyone to interfere with any rights of public access acquired through use which may exist on the property. Such deed restricted area shall be located along the entire width of the

EXHIBIT 4

property from the seaward edge of the coastal bluff, to a line at least 16 feet inland from the seaward edge of the coastal bluff. The deed restriction shall also apply to any portion of any vertical accessway which may be located on permittee's property seaward of the lateral accessway. The recorded document shall include legal descriptions of both the applicant's entire parcel and the deed restricted area. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the purpose of the deed restriction. The document shall be recorded as a covenant running with the land in favor of the People of the State of California, binding all successors and assignees, and evidence of recording shall be provided to the Executive Director.

2. Installation of Public Accessway

PRIOR TO OCCUPANCY OF THE PERMITTED DEVELOPMENT, permittee shall install, to the satisfaction of the Executive Director, the lateral access pedestrian and bicycle pathways described in Special Condition No. 1 above. Upon completion, permittee shall also have prepared and submitted for approval by the Executive Director, a management plan for the accessway. Such plan shall detail maintenance responsibilities, hours and conditions of use, text of signs (both interim and permanent), and other matters necessary to the upkeep and operation of the accessway.

In the alternative, this condition may also be satisfied by provision of a comparable lateral access facility on San Mateo County Harbor District lands seaward of permittee's site. A satisfactory alternative accessway will:

a. Be reviewed and approved by the Executive Director;

b. Have all permits and approvals from the Harbor District, San Mateo County, City of Half Moon Bay, State Lands Commission, Calif. Dept. of Fish and Game, Coastal Commission and Corps of Engineers, as may be applicable and required;

c. Satisfactorily complete environmental review pursuant to the Calif. Environmental Quality Act (CEQA); such review may be in the form of a supplement to the existing Environmental Impact Report for the Pillar Point East Harbor Master Plan, for the purposes of evaluating and mitigating the impacts of pathway construction and public use in the low dune and ephemeral wetland area between the bluff and the beach northerly from the outer breakwater;

d. Be designed to avoid significant degradation of the dune and wetland habitat areas seaward of the coastal bluff, to preclude inundation in event of subsidence (or a rise in sea level) of up to 6 feet, to provide a baserock or wood surface for pedestrian use at least 5 ft. in width, and a paved or wood surface for bicycles at least 8 ft. in width (submit plans and sections; widths and materials subject to modification as required to protect environmentally sensitive habitat);

e. Extend from at least the shoreward end of the outer breakwater to the northerly (upcoast) extremity of the City of Half Moon Bay, at the Moon Garden Restaurant site;

EXHIBIT 1

f. Include appropriate signage and fencing (submit text, locations, fence design plans);

g. Demonstrate, by letter or other instrument, that the cost for that portion of the alternate accessway which benefits permittee is borne in full by permittee, such that public funds needed for other harbor and access improvements are not expended to relieve permittee of his obligation to provide on-site lateral access between the outer breakwater parking area and upcoast destinations; and,

h. Be available for public use PRIOR TO OCCUPANCY of the permitted hotel development.

3. Hotel to Beach Accessway

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, permittee shall submit, for review and approval by the Executive Director, detailed construction plans for the walkway between the permitted hotel and the beach seaward of the hotel development site. Such plans shall include:

a. Sections and plans for stairs and boardwalk, having a treated wood surface 5 ft. or more in width, with fencing or railing if needed to direct pedestrian traffic and/or minimize impacts on sensitive dune/wetland habitat;

b. Identification of a wheelchair access route from the hotel to beach (may be provided via Harbor Dist. parking facility); and,

c. Any necessary approvals from the City of Half Moon Bay, the San Mateo County Harbor District, and other agencies, including supplementary environmental review, pursuant to the California Environmental Quality Act, with respect to the dune and wetland habitat area located seaward of the permitted hotel and northerly (upcoast) from the outer breakwater of Pillar Pt. Harbor.

This accessway shall be open to public use in accordance with the terms identified in the access management plan prepared pursuant to Special Condition No. 2, above. The portion landward of the coastal lateral accessway may be limited to hotel guests only. This vertical accessway shall be installed and ready for use PRIOR TO OCCUPANCY of the permitted hotel development. The route for wheelchair access between the hotel and the beach shall be identified with appropriate signage and ready for use at the same time.

4. Plan Revision for Scenic Resource Protection

PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, permittee shall submit, for review and approval by the Commission,

revised site plan, grading plan, landscape plan, drainage plan, elevations, and sections showing that 1) the southbound observer on Highway 1 will have an unobstructed view from a point perpendicular to the mid-point of the site's landward property line, to the entire southeasterly (downcoast) boundary of the property; and 2) the north-bound observer on Highway 1 will have an unobstructed view from a point perpendicular to the property's northeasterly corner, to at least 50% of the blufftop parallel to the site's seaward property line (see Exhibit H for illustration). Such revised plans shall also provide for a minimum setback distance of 16 feet from the seaward edge of the coastal bluff.

The submittal shall be accompanied by:

a. Photo overlays, comparable to those previously submitted by applicant, showing revised structure(s) in perspective from both northbound and southbound Highway 1 vantage points; and,

b. All City of Half Moon Bay discretionary approvals that may be required for the revised project.

5. Use Limitations

PRIOR TO OCCUPANCY OF THE PERMITTED DEVELOPMENT, permittee shall execute and record a document, in a form and content acceptable to the Executive Director, restricting the allowable uses of the hotel structures constructed pursuant to this permit. Such restrictions shall:

a. Limit restaurant use to hotel overnight and conference guests only;

b. Limit guest room rentals to short-term (one night to one week) occupancy only; and,

c. Preclude conversion to time-share or condominium ownership without amendment of this permit.

The document shall be recorded as a covenant running with the land binding all successors and assigns in interest to the subject property, and evidence of recording shall be provided to the Executive Director.

6. Assumption of Risk

PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall execute and record a deed restriction or other document in a form and content acceptable to the Executive Director which shall provide: (a) that the applicant understands that the project site may be subject to extraordinary natural and manmade hazards including but not limited to seismic hazards and other geologic conditions; and, (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission approval of the project for any damage caused by the project and/or due to natural or manmade hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.

EXHIBIT 1

7. Erosion Control and Landscape Plans

PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for review and approval by the Executive Director, a revised landscape plan. Such plan shall include:

a. Revision of species list and plans to include appropriate bluff stabilization plantings, deletion of invasive exotic pest species, deletion of plantings which would block seaward views from Highway 1, intensification of plantings which will minimize the visual impact of the permitted buildings, maximum use of native species adjacent to Highway 1, and substitution of drought resistant, coastally-adapted native species for exotic palms and water intensive species;

b. Revision of the erosion control plan to relocate the temporary snow fence from the bluff face to the bluff edge, and to replace exotic pest species (European dune grass, Sea fig) with appropriate native materials which will not invade the adjacent dune habitat;

c. Sufficient highway screening within the property line so that visual mitigation will remain effective after any future widening of Highway 1; the density of trees along the Highway 1 frontage shall be increased to provide a continuous screen (except for driveways), and tree height shall be 25 to 30 ft. at maturity; and,

d. Revision of all plans for consistency and to specifically preclude spoils disposal on, or over, the blufftop.

Plant materials will be installed prior to occupancy and permanently maintained in good condition.

8. Spoils Disposal

PRIOR TO COMMENCEMENT OF GRADING, permittee shall identify the location and methods for disposal of excess excavation spoils; such disposal site and methods shall require an amendment to this permit, if located within the Coastal Zone.

[Note: Wording changed per Commission action at 5/8/90 meeting.]

9. Final Plans

PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall submit the following for the Executive Director's review and approval:

a. Engineered foundation and grading plans, including a seismic shaking letter report update pursuant to data from the Oct. 17, 1989 earthquake. These plans shall be prepared in accord with the Soil and Foundation Study for the project site by JCP-Engineers & Geologists, Inc., Dec., 1988. Evidence of review and approval by the project engineer/geologist and the City Engineer shall accompany the submittal. The revised grading plan shall not include placement of fill or berming on the face of the bluff, except for landform restoration work at the eroded southeasterly corner.

EXHIBIT 1

b. Final sign and lighting plans. The sign program shall include evidence of approval by the City Planning Department. All exterior lighting shall be low-glare, indirect lighting and shall receive prior approval from the City Public Works Department.

c. Samples of exterior surfaces (chips by color and material). Exterior finishes shall be earthen tone colors. All windows shall be non-reflective, low-glare and all window frames shall be bronze anodized or wood.

10. Archaeologic Mitigation

Permittee is responsible for compliance with the following mitigation measures:

a. Construction personnel, supervisors, and inspectors shall be informed that this is an archaeologically sensitive area;

b. If during the proposed construction project on the property any archaeologic evidence is uncovered or encountered, all excavations within 10 meters/30 feet should halt long enough to call in a qualified archaeologist to assess the situation and prepare appropriate mitigation measures using standards of the State Historic Preservation Office;

c. The proposed mitigation measures shall be subject to review and approval by the State Historic Preservation Office and the Executive Director, and upon approval, shall be fully implemented.

Upon completion of excavations, a report verifying compliance with this condition shall be submitted for confirmation by the Executive Director.

11. Interim Well

PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide;

A. (1) That the permittee understands that the installation of an interim domestic water well may be subject to potential hazards due to contamination from bacteria, iron, manganese and, or nitrates, and, therefore, the interim well water may not be suitable for domestic use without treatment, now or in the future, and the applicant assumes the liability from these potential hazards; and (2) that the permittee unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to potential contamination. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.

EXHIBIT 1

B. That the permittee understands the installation of a domestic water well on this property within the City of Half Moon Bay is on an interim basis pending the availability of imported public water supply, which is scheduled to begin flowing in 1992; and, that the interim water wells must be drilled, installed and later abandoned in adherence to specified health and safety criteria established by the City of Half Moon Bay.

C. That the project shall connect to and use the public water supply of Coastside County Water District within 30 days of availability. When the project is connected to Coastside County Water District, and the interim well has been sealed in accordance with proper abandonment procedures, the permittee will no longer be subject to the provisions in Special Condition 11.A(1).

IV. Findings and Declarations.

The Commission hereby finds and declares:

1. Site description. The rectangular site comprises four adjacent lots on the coastal terrace facing Pillar Pt. Harbor, in the northerly extremity of the City of Half Moon Bay. This property is bounded by State Highway Route 1 along the landward side. The site is generally flat, vacant and treeless, with a steep bluff about 12 to 20 ft. in height along the seaward edge.

At the toe of the bluff are low-lying dunes, ephemeral wetland vegetation and a quiet beach, all located within the San Mateo County Harbor District's area of responsibility. These Harbor District lands, formerly submerged, have accreted since the completion of the Harbor District's outer breakwater in 1960. Adjacent to the downcoast side of the project is a coastal recreation site owned by the Harbor Dist. Originally conceived as a recreational vehicle park, it now functions as an informal parking area for coastal access to the adjacent beach, blufftop and breakwater.

On the upcoast side of applicant's property are several small vacant parcels and a site developed with two restaurants (The Anchorage Restaurant and the Moon Garden Restaurant). On the inland side of Highway 1 is a strip of vacant land, some of which belongs to the Harbor District; beyond lies the unincorporated residential community of El Granada, in San Mateo County.

2. Project description. Applicant proposes a 3-story, 54-unit seaside hotel. Serving the hotel will be a 63-space parking area, a water supply well, a water main extension (about 800 feet of which falls within City limits), and widening of Highway 1 to accommodate turn lanes. Applicant also hopes to provide a stairway down the bluff for guest access to adjacent Harbor District lands, for beach access purposes.

EXHIBIT 1

Balance of report

6

City of Encinitas
PLANNING AND BUILDING DEPARTMENT
505 So. Vulcan Ave.
Encinitas, CA 92024
(760) 633-2710

NOTICE OF DECISION
PBD 2005-32

May 16, 2005

This letter is to inform you that the Planning and Building Director has approved your application for the following:

04-268 TPM (Dodds) - The applicant requests approval of a Tentative Parcel Map and parcel map waiver to allow the conversion of an approved 130-room resort hotel to a limited-term occupancy condominium hotel. The proposed conversion would be a change in the form of ownership only. No changes are proposed to the previously approved project and all previous conditions of approval would remain in full force and effect. Since the original Coastal Development Permit (CDP) for the resort hotel was issued directly by the Coastal Commission, the CDP required for the condominium conversion must be reviewed and approved by the Coastal Commission. The project site is located at 2100 North Coast Highway 101 in the N-VSC (North 101 Corridor Specific Plan – Visitor Serving Commercial) zone and within the Coastal Zone. (APN 216-041-26)

Project Description and Discussion: The proposed project is a request for a Tentative Parcel Map (TPM) and parcel map waiver to convert an approved 130-unit resort hotel to a limited-term occupancy hotel condominium. The conversion will create not more than 130 hotel occupancy units and at least one (1), but not more than 50, resort operational units. Room occupation by hotel occupancy unit owners will be limited to 25 consecutive days, with a cumulative maximum of 90 days per year. Rooms would be available to the general public when not occupied by unit owners. Transient occupancy tax (TOT) will be collected at any time the unit is occupied. The resort operational units will consist of operations such as front desk/lobby, food and beverage service, banquet/meeting rooms, restaurants, commercial/retail space, parking, etc. The condominium hotel will be managed by an on-site agent, whom will manage and coordinate the rental/owner occupation of hotel occupancy units and the operation of the facilities and services through the resort operational units. The hotel manager will be selected by the owner of the resort operational units and will conduct hotel operations without any control of the individual hotel occupancy unit owners.

The proposed resort hotel was originally proposed in 1989 and, after implementation of modifications required by the Coastal Commission, the City ultimately approved the major use permit, tentative parcel map, design review and variance request on December 15, 1993. An extension of time of the tentative parcel map, Case No. 99-001 TE, and confirmation that the design review, major use permit, and variance had not expired, was granted by the Planning

Commission and upheld on appeal to the City Council on June 23, 1999. The subject application requests a change of form of ownership only and no modifications or additions are proposed to the previously approved project. All of the existing conditions of approval of City Council Resolution No. 99-41, dated June 23, 1999, will remain in full force and effect.

Pursuant to Section 24.60.050 of the City of Encinitas Municipal Code, a parcel map waiver may be applied to condominium conversions when no new units or lots are being created. The previously approved resort hotel is located on one existing legal lot, and no new lots are proposed by this application.

To ensure the operation of the condominium hotel as a typical hotel and to maintain the public appearance of the same, several conditions of approval related to the operational parameters discussed above will be applied to this approval. These conditions will address owner occupancy, TOT, and hotel management, among others. Covenants, conditions, and restrictions (CC & Rs) related to the condominium hotel occupancy units, and any additional covenants related to the resort operational units, must be reviewed and found to adequately and properly address the conditions of this approval by the Planning and Building Department prior to CC & R and/or covenant recordation and prior to occupancy of the hotel. The project will be restricted to use as a limited-term occupancy condominium hotel and shall not be converted to any other use, including a time-share, a full-time occupancy condominium, or apartments. Completion of the condominium conversion and tentative parcel map waiver will require the recordation of a certificate of compliance. An application and the applicable processing fee must be submitted to the Planning and Building Department. Applications are accepted by appointment only. Please call (760) 633-2710 to schedule a submittal time.

Coastal Development Permit: The Coastal Commission reviewed and approved the Coastal Development Permit (CDP) for the originally proposed resort hotel. Therefore, the CDP required relative to the condominium conversion for the project will remain under the Coastal Commission's coastal permitting authority. The applicant must secure approval of a Coastal Development Permit for the proposed conversion prior to recordation of the certificate of compliance.

The applicant conducted a Citizen Participation Program (CPP) in accordance with Municipal Code Chapter 23.06. According to the CPP final report submitted by the applicant, 36 people attended the CPP meeting, held on February 17, 2005. Attendees posed many questions to the applicant, chiefly regarding aspects of the previously approved project. The applicant also fielded questions regarding the operation of the proposed condominium hotel. As noted above, the subject request does not propose any revision or modification of the previously approved project and will not affect the existing approval or any conditions of approval. The applicant's discussion regarding project operation in the CPP final report accurately represents the project discussed above.

A standard public notification was issued for the Tentative Parcel Map/Parcel Map Waiver request, which allowed for a 20-day comment period. Staff received several phone calls regarding the project and several people visited the public counter to inquire about the proposed hotel. Several individuals reviewed the approved project drawing for the resort hotel. Staff received no comments regarding the proposed condominium conversion.

This approval is based on the following **findings:**

FINDINGS FOR A PARCEL MAP WAIVER

STANDARD: Section 24.60.050 of the Municipal Code provides that the authorized agency must make the following finding of fact in order to approve a parcel map waiver:

The proposed subdivision and each of the lots proposed to be created comply with requirements as to area, on-site improvements, design, access, floodwater drainage control, adequate boundary monumentation, dedications of right-of-way, payment of development fees, appropriate improved public streets and other off-site improvements, sanitary disposal facilities, water supply availability, fire protection facilities, environmental review and protection, grading, and any and all other requirements of this Title and the State Subdivision Map Act which would be applicable to review and approval of a tentative parcel map.

Facts/Discussion: The proposed project is a request to convert a previously approved resort hotel to a limited-term occupancy condominium hotel. The condominium hotel would consist of not more than 130 hotel occupancy units and at least one (1), but not more than 50, resort operational units. The approved development is located on one existing legal lot, and no new lots are proposed by this application. The existing approval addresses all necessary on- and off-site improvements as conditions of approval required prior to various stages of construction. All utilities and services are in place for the development or will be placed in conjunction with the aforementioned standing conditions of approval. An Environmental Impact Report (EIR) was prepared and certified for the previously approved resort hotel. An addendum to the EIR addressing the condominium conversion has been prepared in accordance with Section 15164 of the California Environmental Quality Act Guidelines and will be adopted with this approval.

Conclusion: Planning and Building Department staff has performed an analysis of the application in relationship to Municipal Code and Subdivision Map Act requirements applicable to the conversion of residential property and finds that all applicable provisions are met.

Environmental Review: The City of Encinitas has reviewed the current project and has determined that there are no new significant environmental impacts not considered in the previous Environmental Impact Report (EIR); no substantial changes have occurred with respect to the circumstances under which the project is undertaken; and there is no new information of substantial importance to the project. Therefore, in accordance with Section 15164 of the California Environmental Quality Act (CEQA) Guidelines, an addendum to the EIR has been prepared and is hereby adopted with this approval.

This approval is subject to the following **conditions:**

SC1 **SPECIFIC CONDITIONS:**

SC4 Approval of the Tentative Parcel Map and all associated permits will expire on May 16, 2007 at 5:00 p.m., two (2) years after the approval of this project, unless the conditions have been met or an extension of time has been approved pursuant to the Municipal Code.

SC6 This project is conditionally approved as set forth on the application and project drawings stamped received by the City on December 6, 2004, consisting of a one- (1) sheet Parcel Map Waiver Plat designated as approved by the Planning and Building Director on May 16, 2005, and shall not be altered without express authorization by the Planning and Building Department.

SCA All terms and conditions of City Council Resolution No. 99-41, dated July 14, 1999, that have not been completed or fulfilled to the satisfaction of the City shall remain in full force and effect except as specifically modified herein.

SCB Completion of this tentative parcel map/parcel map waiver and condominium conversion shall require the recordation of a certificate of compliance. An application and the applicable processing fee shall be submitted to the Planning and Building Department. The application submittal shall include a plat of the subject property and legal description that conforms to the lot lines approved in the parcel map waiver application. Upon confirmation that these instruments are in substantial conformance with the parcel map waiver application as approved, the Director shall have prepared and recorded a certificate of compliance for the parcel map waiver.

SCC The following statement shall appear in the recorded certificate of compliance: "This project is a common interest subdivision consisting of a limited-term occupancy hotel condominium consisting of not more than 130 hotel occupancy units and at least one (1), but not more than 50, resort operational units pursuant to Section 1351 of the California Civil Code."

SCD Prior to recordation of the certificate of compliance, the applicant shall cause a covenant regarding real property to be recorded. Said covenant shall set forth the terms and conditions of this grant of approval and shall be of a form and content satisfactory to the Planning and Building Director.

SCE Prior to recordation of the certificate of compliance for the parcel map waiver, the applicant shall secure approval of a Coastal Development Permit (CDP) for the proposed condominium conversion from the California Coastal Commission. A copy of the approved Coastal Development Permit shall be submitted to the City. If the conditions of the CDP are contradictory to these Conditions of Approval, the Conditions of Approval herein may be modified to be consistent with the conditions of the CDP without further public review provided the Planning and Building Director determines that the modifications do not substantially alter the integrity of this approval and the conditions thereof. Should the

Director determine that modification of these conditions of approval for consistency with the CDP would substantially alter the integrity of this approval or the conditions thereof, an application to modify the conditions must be submitted, reviewed, and approved. A Citizen Participation Plan (CPP) and public notice would be required prior to consideration for approval.

SCF The permitted development shall be operated as a limited-term occupancy hotel condominium to the satisfaction of the Planning and Building Director. No portion of the project shall be converted to a time-share, full-time occupancy condominium, apartment or other type of project that differs from the approved limited-term occupancy hotel condominium without an approved amendment to this approval and an approved amendment to any permit or approval required by other agencies.

SCG Owners of hotel occupancy units shall not be allowed to occupy their hotel occupancy units for more than 25 consecutive days and no more than 90 days per year, unless otherwise approved by the Planning and Building Director with consideration given to approval by other necessary agencies.

SCH All hotel occupancy units shall be available to the general public when not occupied by the hotel occupancy unit owner.

SCI An on-site hotel management agent shall manage all hotel occupancy units with such management services to include, but not be limited to, check-in and check-out services, reservation services, issuance of key cards to control access to rooms, and collection and remittance of transient occupancy tax (TOT).

SCJ All occupants of the hotel occupancy units, including hotel occupancy unit owners, shall pay the transient occupancy tax (TOT) in accordance with Section 3.12 of the Municipal Code.

SCK Prior to issuance of any certificate of occupancy for the project, the applicant shall submit to the City two (2) copies of the proposed covenants, conditions, and restrictions (CC & Rs) and any other covenants related to the operation of the limited-term occupancy hotel condominium. The proposed CC & Rs and other covenants shall be reviewed by the City and shall not be recorded until and unless the Planning and Building Director determines that the CC & Rs and other covenants properly and adequately incorporate the terms and conditions set forth by this approval. The CC & Rs and other covenants shall stipulate that the portions of the CC & Rs and other covenants pertaining to the terms and conditions set forth herein shall not be amended or revised without review and approval by the Planning and Building Director of said amendments or revisions.

G1 STANDARD CONDITIONS:

CONTACT THE PLANNING AND BUILDING DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITIONS:

M1 This approval may be appealed to the City Council within 10 calendar days from the date of this approval pursuant to Chapter 1.12 of the Municipal Code.

G5 Approval of this request shall not waive compliance with any sections of the Municipal Code and all other applicable City regulations in effect at the time of Building Permit issuance unless specifically waived herein.

This notice constitutes a decision of the Planning and Building Department only. Additional permits, including Building Permits, may be required by the Building Division, other City Departments, or other agencies. It is the property owner's responsibility to obtain all necessary permits required for the type of project proposed.

In accordance with the provisions of Municipal Code Section 1.12, this decision may be appealed to the City Council within ten (10) calendar days of the date of this determination. The appeal must be filed, accompanied by the appropriate filing fee, prior to 6:00 p.m. on the 10th calendar day following the date of this notice of decision.

If you have any questions regarding this determination, please contact Kerry Kusiak at the Planning and Building Department by telephoning (760) 633-2719.

Bill Weedman for
Patrick Murphy
Planning and Building Director

7

CHAPTER 3.12

TRANSIENT OCCUPANCY TAX

3.12.010 Taxable Event.

A. For the privilege of occupancy in any hotel, each transient shall pay a tax in the amount of eight percent (8%) of the rent charged by the operator. In addition, each hotel guest shall pay an additional tax of 2% of the rent charged by the hotel operator which shall be used only for beach sand replenishment and stabilization projects. The transient satisfies this tax obligation by paying the tax to the operator. (Ord. 98-28)

B. The tax is payable at the time that rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The balance of the tax shall be due upon the transient's ceasing occupancy in the hotel.

C. If sufficient funds are not paid to the operator by the transient to pay the tax in full, the tax administrator may commence an action against the transient to recover the amount of the tax. (Ord. 86-22)

3.12.020 Exemptions. No tax under this Chapter shall be imposed upon:

A. Any person as to whom, or any occupancy as to which, it is beyond the power of the City to impose the tax herein provided.

B. Any federal or State of California officer or employee when on official business.

C. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

No exemption shall be granted except upon a claim therefore made at the time rent is collected and under penalty of perjury upon a form prescribed by the tax administrator.

3.12.030 Definitions. For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Hotel. Any structure or any portion of any structure which has three or more units occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, including any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location or other.

Occupancy. The use or possession or the right to the use or possession of any room or portion thereof in any hotel for dwelling, lodging or sleeping purposes.

Operator. The person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. Where the operator performs his functions through a managing agent or any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this Chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

Rent. The consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever.

Transient. Any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy; provided, that any person who actually occupies the same premises for a period of thirty-one (31) or more consecutive days shall be deemed exempt from the tax imposed by this Chapter on that specific occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this Chapter may be considered.

3.12.040 Collection of Tax.

A. It shall be unlawful for an operator to fail to collect from the transient the tax imposed by this Chapter at the same time as the rent is collected from the transient.

B. The operator shall deliver to the transient a receipt for payment which states the amount of the tax separately from the amount of the rent charged.

C. No operator shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that the tax will not be added to the rent, or that, if added, any part will be refunded except in a manner provided in this Chapter.

8

Draft

Hotel / Motel Room Rates
City of Encinitas
2005 Survey

	Lodging	# of Rooms	# of Rooms Wt of Hwy 101 or w/in 5 min. walk to beach	Low	High
1.	Best Western**	94	94	$100	$150
2.	Cardiff by the Sea**	17	17	$140	$285
3.	Comfort Inn	101	0	$90	$100
4.	Days Inn**	124	124	$70	$129
5.	Econo Lodge*	30	30	$65	$65
6.	Holiday Inn	101	0	$89	$149
7.	Leucadia Beach*	20	20	$70	$89
8.	Leucadia Inn*	7	7	$99	$149
9.	Moonlight Beach*	24	24	$75	$89
10.	Motel Villa Mar*	15	15	$60	$60
11.	Ocean Inn*	51	51	$59	$152
12.	Portofino Beach*	45	45	$69	$159
13.	Pacific Surf*	27	27	$55	$65
14.	Royal Motor Inn*	9	9	0	0
15.	Seabreeze B&B**	5	5	$80	$175
16.	San Elijo Campground*	171	171		
17.	Short-term Rentals*	150	135***		
Total Rooms		**991**	**774**		
Average Room Rate				**$80**	**$130**
Future Lodging					
19	Potential Short-Term Rentals in Com. Zones*	332	299***		
20	La Costa Resort*	131	131		
21	Time share**	7	7		
Total all Rooms		**1461**	**1211**		

* Hotels / Motels west of Highway 101. (Short-term vacation rentals estimate is based on a survey of the Web sites, most of which were located west of Hwy 101.)
** Within 5 minute walk to beach.
*** Estimate 90% of total dwellings ("potential short-term rentals") to be west of Hwy 101.

Packet submitted @ hearing 3/7/06

Tu 22a

City of Encinitas

February 27, 2006

Chair Meg Caldwell
California Coastal Commission
San Diego Coast District
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

REF: Agenda Item **Tue 22A**, Permit Number 6-92-203-A4
KSL Encinitas Resort Co, LLC

Dear Chair Caldwell and California Coastal Commissioners:

On March 7, 2006, the Coastal Commission will consider a request by KSL Encinitas Resort to amend a permit for a 135 room hotel to convert to condominium hotel ownership and place 50,000 cubic yards of excavated sand from the site onto the adjacent beach. The City of Encinitas encourages your support of this request.

It is our understanding that Coastal staff will be recommending denial of this request. The City is very concerned with this recommendation. Coastal Commission staff recently expressed concerns that the City of Encinitas does not have enough visitor-serving uses. Based on this concern they recommended that the City continue to allow visitor-serving uses (short-term vacation rentals) in residential zones, which we believe to be an inappropriate zone for commercial uses. Now a visitor-serving use (Encinitas Resort hotel) is being proposed in a Visitor-Serving Commercial zone, which is an appropriate zone for commercial uses, and Coastal staff is recommending denial.

The applicant is requesting a change in the type of ownership. This will enable the developer to obtain financing in order to construct the hotel and necessary public improvements. The use of the hotel will remain a hotel. It will not become a residential condominium use. The City of Encinitas wanted to ensure that the primary use of the site remains a hotel, and, as such, we imposed conditions with the project. (See attachment for a listing of these conditions.) This type of ownership is not new; similar projects are being operated successfully as hotels.

The beach access that was constructed on the site is well used by our residents and visitors to the Ponto State Beach in neighboring Carlsbad. The road improvements to North Highway 101 and La Costa Avenue will provide better access for the beach going

LETTER FROM City in SUPPORT

public. The construction of the hotel itself will provide a quality destination point for visitors. In addition, the sand that will come from the construction site will enhance the beaches in the area and serve to further protect against beach erosion. The project provides coastal access in the following ways:

- ✓ Overnight lodging for the general public.
- ✓ Enhances lateral beach access and the overall enjoyment of the beach with sand replenishment.
- ✓ Protects against beach erosion with sand replenishment.
- ✓ Provides public access from Hwy 101 to the bluff top through the project.
- ✓ Establishes lateral bluff top public access for the entire length of the property.
- ✓ Creates a public vista point on the bluff top.
- ✓ Connects the vista point and lateral bluff top access to Ponto State Beach with a stairway.
- ✓ Improves coastal access with road improvements to Hwy 101, both vehicular and pedestrian.

This project is a wonderful addition not only to the Encinitas coastline but to the California coastline, providing coastal access in a variety of ways for the public to enjoy. We look forward to the ultimate construction and enjoyment of the Encinitas Resort, and encourage your support of their request.

Sincerely,

Patrick S. Murphy
Director of Planning and Building

cc: Patrick Kruer, Vice-Chair
Dr. William Burke, Commissioner
Mike Reilly, Commissioner
Dave Potter, Commissioner
Sara Wan, Commissioner
Mary Shallenberger, Commissioner
Bonnie Neely, Commissioner
Steven Kram, Commissioner
Dan Secord, Commissioner
Larry Clark, Commissioner
Steve Padilla, Commissioner
Deborah Lee, Sr Deputy Director
Sherilyn Sarb, District Manager

Attachment.

CITY OF ENCINITAS
APPROVAL OF 04-268 TPM
(NOTICE OF DECISION PBD 2005-32)

SELECTED CONDITIONS TO ENSURE HOTEL OCCUPANCY BY THE GENERAL PUBLIC

SCF The permitted development shall be operated as a limited-term occupancy hotel condominium to the satisfaction of the Planning and Building Director. No portion of the project shall be converted to a time-share, full-time occupancy condominium, apartment or other type of project that differs from the approved limited-term occupancy hotel condominium without an approved amendment to this approval and an approved amendment to any permit or approval required by other agencies.

SCG Owners of hotel occupancy units shall not be allowed to occupy their hotel occupancy units for more than 25 consecutive days and no more than 90 days per year, unless otherwise approved by the Planning and Building Director with consideration given to approval by other necessary agencies.

SCH All hotel occupancy units shall be available to the general public when not occupied by the hotel occupancy unit owner.

SCI An on-site hotel management agent shall manage all hotel occupancy units with such management services to include, but not be limited to, check-in and check-out services, reservation services, issuance of key cards to control access to rooms, and collection and remittance of transient occupancy tax (TOT).

SCJ All occupants of the hotel occupancy units, including hotel occupancy unit owners, shall pay the transient occupancy tax (TOT) in accordance with Section 3.12 of the Municipal Code.

SCK Prior to issuance of any certificate of occupancy for the project, the applicant shall submit to the City two (2) copies of the proposed covenants, conditions, and restrictions (CC & Rs) and any other covenants related to the operation of the limited-term occupancy hotel condominium. The proposed CC & Rs and other covenants shall be reviewed by the City and shall not be recorded until and unless the Planning and Building Director determines that the CC & Rs and other covenants properly and adequately incorporate the terms and conditions set forth by this approval. The CC & Rs and other covenants shall stipulate that the portions of the CC & Rs and other covenants pertaining to the terms and conditions set forth herein shall not be amended or revised without review and approval by the Planning and Building Director of said amendments or revisions.

03/06/06 MON 11:45 FAX 310 372 6186 CITY OF HERMOSA BEACH 002

Tue 22a

City of Hermosa Beach

Civic Center, 1315 Valley Drive, Hermosa Beach, California 90254-3885

March 6, 2006

Chairperson Meg Caldwell and Members of the
California Coastal Commission
San Diego District Coast Office
Deborah Lee, Senior Deputy Director
Sherilyn Sarb, District Manager
7575 Metropolitan Avenue, Suite 103
San Diego, CA 92108-4402

Re: Encinitas Beach Resort

Dear Chairperson Caldwell and Members of the Commission:

I am writing on behalf of the City of Hermosa Beach to express our experience with the Beach House, a 96 room hotel condominium with ownership of individual units, which was approved by the Coastal Commission in 1997.

Located adjacent to the beach, the Beach House site is designated for hotel use by the General Plan and Local Coastal Program and is zoned C-2, Restricted Commercial. Both the land use designation and zoning intend the site for hotel use. The City Council approved the Beach House in 1996 with a number of special conditions to ensure that the property will operate exclusively as a hotel open to the public (see attached). Relevant conditions include:

- The project shall be operated as a hotel with full-time staff, who shall manage reservations and room occupancy for the life of the project
- All units are subject to TOT (Transient Occupancy Tax) for a minimum of nine months per calendar year
- Owners cannot occupy their rooms for more than 29 consecutive days nor more than 90 days per year
- The project cannot be altered or reconstructed to preclude its use for transient occupancy as a hotel
- The Hotel shall be audited by the City for conformance with room occupancy requirements on a quarterly basis

642700.01/SD
K6018-002

The Beach House has complied with all conditions of approval since its inception. All rooms are available for use by visitors when not occupied by owners, and the hotel provides all required reports to verify that owners do not occupy their units for longer than their permitted stay period.

The City just completed an audit of all hotels in the City and found no exceptions with respect to the Beach House.

If you have any questions, please do not hesitate to contact me Monday through Thursday at 310-318-0225.

Sincerely,

Viki Copeland
Finance Director

642700.01/SD
K6018-002

- Low emission on-site mobile construction equipment shall be employed; and
- All construction shall be maintained in tune per manufacturer's specifications; and
- Electric, gasoline-powered and methanol-powered equipment shall be substituted for diesel-powered construction equipment where feasible; and
- The construction contractor shall not permit equipment to be left idling for prolonged periods (i.e., more than two minutes); and
- All construction activities shall cease during Stage 2 smog alerts; and
- Existing power sources shall be used at the Project site where feasible. The Applicant shall avoid using temporary power generators; and
- Construction activities shall be planned and undertaken to minimize obstruction of through traffic lanes.

H. SECTION IV - HOTEL OPERATION

53. The project shall be operated as a hotel with daily linen service, central lobby, front desk check in, valet parking service and central guest registration with management available on a 24-hour basis pursuant Chapter 17.04 of the Zoning Ordinance.

54. The hotel shall be staffed with full time staff consisting of the following; General Manager, Assistant Manager, Front Desk supervisor, front desk clerks, building engineer, housekeeping supervisor, housekeeping staff, account staff clerk, night auditor, valet attendants, sales manager, catering manager, reservation clerks.

55. Daily linen services shall be provided during Phase One development with contract linen/laundry services provide from an off-site vendor. Linen/laundry services will be provided on-site in Phase Two of project development.

56. Hotel occupancy shall be managed and controlled through a central reservation system and central management company for the life of the project.

57. All units are subject to City of Hermosa Beach Transient Occupancy Tax for a minimum of nine months per calendar year.

58. Units shall not be occupied by owners for more than 29 consecutive days

nor more than 90 total days in any calendar year.

59. The project shall be audited by the City for conformance to room occupancy requirements on a quarterly basis. The audit shall be prepared by a financial auditor selected by the City utilizing room occupancy records provided by the applicant.

60. The applicant/owner shall furnish 100% of funds to cover the costs of quarterly audits for the purpose of establishing project Transient Occupancy Taxes as required by the Director of Finance.

61. The project shall not be altered or reconstructed to preclude its use for transient occupancy as a hotel.

62. Collection of Transient Occupancy Taxes shall be provided by centralized management operations of the hotel.

63. Trash service and storage shall be provide in an enclosed structure pursuant to the requirements of the Municipal Code.

64. Pursuant to Mitigation Measure 4.5-1(a) of the EIR, to prevent impacts on the use of the Strand, the hotel management shall inform owners and guests, and provide visible signage, that access to the beach and The Strand is only permitted from 13th Street, 14th Street or via the hotel lobby. For the safety of their visitors and the general public the hotel management shall be responsible for enforcing this policy.

65. Pursuant to Mitigation Measure 4.8-5(b) of the EIR, the hotel shall incorporate facilities for collection, compaction, and pick-up of recyclable materials including the following:

- Receptacles in the common areas of the hotel for the collection of aluminum cans, glass and plastic bottles and paper;
- A central refuse disposal and storage area designed to accommodate separate receptacles for recyclable materials to allow for participation in the City's residential recycling program.

66. Pursuant to Mitigation Measure 4.8-5(c) of the EIR, information regarding recycling opportunities provided by the hotel shall be posted in common rooms of the hotel

in order to encourage guests and hotel employees to recycle.

67. Adequate storage space and truck access loading/unloading for recycling bins shall be provided for use by the hotel occupants.

68. An annual report of the amount and type of solid waste disposed and diverted by the construction and operation activities of the proposed project shall be provide to the Community Development Department. The report will also require the identification of the final disposal and recycling facilities used.

69. Hotel management and contractors must use the services of the City's exclusive franchise waste hauler for disposal of all non-hazardous wastes. Hotel management and contractors shall work with the waste hauler to obtain tonnage and volume date for the annual waste reports.

70. Pursuant to Mitigation Measures 4.5-4(b) & (c) of the EIR, bicycle storage facilities shall be incorporated into the design of the hotel or adjacent pedestrian plazas to provide complimentary bikes or bike rental.

I. CONDOMINIUM ORDINANCE - COMMERCIAL

71. The project shall meet all requirements of the Commercial Condominium provisions of the Zoning Ordinance pursuant to Section 17.22.90 - 17.22.140 of the Municipal Code.

72. Covenants, Conditions and Restrictions (CC&Rs) in compliance with Section 17.22.90 Commercial/Industrial Condominiums shall be submitted to the Community Development Department for review and approval prior to the issuance of building permits.

73. Proof of recordation of approved CC&Rs shall be submitted to the Community Development Director six (6) months after recordation of the Final Map.

J. CERTIFICATIONS

74. An acceptance of conditions form shall be executed by the Applicant and any

From:Encinitas Chamber of Commerce 7607536270 03/03/2006 11:51 #325 P.001/001

Tue 22a

ENCINITAS CHAMBER OF COMMERCE

March 2, 2006

Mr. Gary Cannon, Project Manager
California Coastal Commission
7575 Metropolitan Drive., Ste 103
San Diego, CA 92108-4421

RE: Application No. 6-92-203-A4
Encinitas Beach Hotel Project

Dear Mr. Cannon:

The Government Affairs Committee of the Encinitas Chamber of Commerce is in favor of and urges your support for the above referenced project. On March 07, 2006, the applicant, KSL, is seeking an amendment to their permit to reflect the change in ownership of the 130-unit hotel to a limited term occupancy hotel condominium and the placement of 50,000 cubic yards of sand onto the beach west of the hotel site.

No other project of this scope and caliber exists in our city and the hotel condominium element is precisely the type of housing and hotel accommodations our community needs. It will attract a desirable clientele to Encinitas and will provide appealing surroundings for events and activities that can be enjoyed by residents and visitors alike. With erosion of our beaches, the sand replenishment aspect of this project is also of great importance. At build-out the project would roughly double the current transient occupancy tax in our community. These visitor dollars can be utilized by the City to fund critical visitor services as well as address residential needs throughout the City. We firmly believe this will be an ideal addition to our seaside city.

We look forward to this project becoming a reality. It is for these reasons that we believe the KSL project merits approval by the California Coastal Commission. Thank you for your consideration of their application.

Sincerely,

Caroline Thompson
Chair, Government Affairs

Keith Turner
CEO

cc: Steve Padilla, 619/476.5379
Bill Dodds, 619/522.8505
Doug Yavanian, 760/929.6329

Tue 22a

Leucadia-Encinitas Hwy 101 Main Street Association
Dedicated to the historic preservation and revitalization of Leucadia's North Hwy 101 Corridor

March 2, 2006

California Coastal Commissioners
Mr. Gary Cannon, Project Manager
California Coastal Commission
7575 Metropolitan Dr., Suite 103
San Diego, CA. 92108-4421

RE: Application No. 6-92-203-A4
Encinitas Beach Hotel Project

Dear California Coastal Commissioners and Mr. Cannon:

The Board of Directors of Leucadia-Encinitas Hwy 101 Mainstreet Association would once again like to submit its vote of support for the above noted project and strongly urge the California Coastal Commission to support this application as well.

The sand removal aspect of this application will assist our community's beach sand replenishment efforts. More sand on the beach makes a more attractive and usable beach, and therefore, increases public use of the beach by both San Diego County residents as well as tourists coming from other areas to enjoy our beautiful beaches and surrounding communities.

It is also our understanding that the applicant has requested a change from a standard hotel to a hotel-condominium designation. In either case, this project will enhance the annual collection of Transient Occupancy Taxes. We are motivated to support this project, as it will be a significant anchor catalyst in the much needed development and renovation of the Leucadia North Coast Hwy 101 Corridor of the City of Encinitas.

We anticipate the partnership amongst this applicant; the City of Encinitas and our Association to be most advantageous for our community's continued development, and we look forward to this project finally becoming a reality. We are excited about the prospects of this project and encourage your support. Thank you for your attention, and the best to you in your deliberations.

Sincerely,

Patricia Bell

Patricia Bell, President
Leucadia-Encinitas Hwy 101 Mainstreet Association

Cc: William J. Dodds

216 N. Coast Hwy 101
Encinitas, CA 92024

Phone/Fax: (760) 436-2320
Web Site: www.leucadia101.com

Tue 22a

Seacoast Preservation Association, Inc.
P.O. BOX 232692
ENCINITAS, CALIFORNIA 92023

March 2, 2006

California Coastal Commissioners
7575 Metropolitan Dr. Suite 103
San Diego, CA 92108
Attn : Mr. Gary Cannon
Re: Tue 22a

Dear Commissioners,

As a group of Encinitas property owners who are directly impacted by the development of KSL resort hotel in the city's northern beach area, we are urging the Commission to allow this project to proceed as proposed by KSL. We have attended the meetings over the course of the years since the proposal and believe strongly this development is in the best interests of the local community as well as the people of California. As the only Encinitas beach front hotel, this project will allow many visitors to the area public access to our beautiful beaches.

Secondarily, we urge the Commission to approve the placement of the opportunistic sand onto the beach directly below the hotel site. We believe this sand is of immense importance to the health and safety of the beach. Keeping the beaches safe and free of revetment devices by supplying more sand is the goal of all groups in beach communities, and one which the Coastal Commission champions, no doubt.

KSL Development has already built the Commission required public improvements; ie stairway. There will be increased public use of that Encinitas/Leucadia beach and great access to the rooms in this hotel structure. Public meeting rooms, banquets will all be available. In other communities in the US where shared ownership of these types of hotels have been built, it has been a boon to everyone involved.

We ask the Commissioners to approve the KSL plan as the Encinitas Resort Company has proposed.

Thank you for your attention to this matter.

Sincerely,

Susan Steele
Secretary
Seacoast Preservation Association

RECEIVED
MAR 2 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Tue 22a

San Diego NORTH
AUTHENTIC. DIVERSE. CALIFORNIA.

March 6, 2006

OFFICERS:
Chairman
Tim Fennell, CEO
Del Mar Fairgrounds

Vice Chairman
Bob Heckenpaugh, Resort Manager
Rancho Bernardo Inn

Vice Chairman
Robert Rauch, General Manager/Partner
Homewood Suites San Diego/Del Mar

Treasurer
Robert McClure, Director
San Diego Zoo's Wild Animal Park

Secretary
James S. Farley, Attorney At Law
James S. Farley Law Offices

Member-at-Large
Robert Moore, General Manager
Hilton Garden Inn Carlsbad Beach

DIRECTORS:
Janet Brennis, General Manager
Harrah's Rincon Casino & Resort

Bruce Brainerd, General Manager
Hyatt Regency La Jolla

Paul Corsinia, General Manager
San Diego Marriott La Jolla

John Daley, Owner
101 Cafe, Oceanside

Patrick Duffy, General Manager
Hilton La Jolla Torrey Pines

Julian Duval, Executive Director
Quail Botanical Gardens

Jennifer Hayes
California State University San Marcos

Nigella Hillgarth Ph.D.
Executive Director
Birch Aquarium at Scripps

John Jakobsen, General Manager
LEGOLAND California

Chris Jennewein
Director of Internet Operations
The San Diego Union-Tribune/
SignOnSanDiego.com

Linda Manley, General Manager
San Diego Marriott Del Mar

Laura McDonald
Public Affairs Manager
San Diego Gas & Electric Co.

Nancy Tweddick, Director of Sales
Four Seasons Resort Aviara

Paul Van Ekkeren, Managing Broker
McMillin Realty Commercial

Tammie Wheatley, General Manager
Radisson Suite Hotel
Rancho Bernardo

Carl Winston, Program Director
San Diego State University

EX OFFICIO:
Jonathan Jacobs, Managing Partner
Radisson Suite Hotel
Rancho Bernardo

Rick Maurer
Senior Vice President of Operations
J.T. Resorts, Inc.

President & CEO
Carni Mattson

Mr. Gary Cannon, Project Manager
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

RE: Application No. 6-92-203-A4
Encinitas Beach Hotel Project

Dear Mr. Cannon:

The San Diego North Convention & Visitors Bureau supports the Encinitas Beach Hotel Project and requests the support of the California Coastal Commission for its application.

Tourism is the third largest industry in San Diego and is critical to the economic stability and community vitality of our region. The sand replenishment on Encinitas beaches from the sand removal of this project is just one community benefit. Hotel tax also adds resources to the City of Encinitas to pay for quality-of-life services for its residents.

We understand that the applicant has requested a change from a standard hotel to a hotel-condominium designation. This is a current and common practice among hotel development today. It does not change the project benefit to visitors, residents, or the City of Encinitas. This upscale development will also add quality aesthetics to the development of north Leucadia. In turn, it can serve as a catalyst for other renovations and smart growth enhancing this same corridor.

Again, we ask that the California Coastal Commission unanimously support this project.

Most sincerely,

Carni Mattson

Carni Mattson, President & CEO
San Diego North Convention & Visitors Bureau

Cc: William J Dodds

SAN DIEGO NORTH CONVENTION & VISITORS BUREAU
Executive Office: 360 N. Escondido Boulevard, Escondido, California 92025-2600
Located At California Center For The Arts, Escondido
Voice: 760-745-4741 800-848-3336 Fax: 760-745-4796
Sales Office: 6120 Paseo Del Norte, Suite L-1, Carlsbad, California 92009-1118
Voice: 760-603-1690 800-848-3336 Fax: 760-603-9570
www.sandiegonorth.com

Tue 22a

LAW OFFICES OF
CHARLES MARVIN III
A PROFESSIONAL CORPORATION

CARDIFF OFFICE
120 BIRMINGHAM DRIVE, SUITE 200
CARDIFF-BY-THE-SEA, CALIFORNIA 92007-1753
TELEPHONE (760) 944-0123
FAX (760) 942-6176
E-MAIL cmarvin@covad.net

IDYLLWILD OFFICE
54701 NORTH CIRCLE DRIVE
IDYLLWILD, CALIFORNIA 92549
TELEPHONE (909) 659-0142
FAX (909) 659-0142
E-MAIL cmarvin@covad.net

PLEASE REPLY TO CARDIFF OFFICE

March 3, 2006

Via Fax

Meg Caldwell, Chair
and Members of the
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Application No. 6-92-203-A4
Applicant: KSL Encinitas Resort Co., LLC
Site: 2100 N. Coast Highway 101, Leucadia, Encinitas
Encinitas Beach Hotel Project

Dear Ms. Caldwell and Members of the Coastal Commission:

I am writing to strongly urge the members of your Commission to not follow Coastal Commission staff's recommendation of denial of the above-referenced Application. To do so would constitute a violation of the basic premise of the California Coastal Act – to bring visitors to the California beaches.

My wife and I are the owners of two commercial properties located on N. Coast Highway 101 in the proximity of the subject site. I am also one of the original founders and a current member of the Board of Directors of The Leucadia-Encinitas Highway 101 MainStreet Association ("Leucadia 101"). The main objective of Leucadia 101 is to promote tourist development along N. Coast Highway 101 in Encinitas which, as you are aware, is located only one block from the Encinitas beaches.

I am writing in support of this project because to deny the project will cause grievous economic damage to the entire N. Coast Highway 101 corridor in its 6-mile run through our City of Encinitas. The Applicant's project would be one of the strongest marketing tools that would exist for our city in bringing tourists to our beaches. Having a high-end resort as a northern anchor of N. Coast Highway 101 is critical for the future economic development of the Leucadia and Encinitas beach areas.

LAW OFFICES OF
CHARLES MARVIN III

To deny this Application will result in the subject property not being developed to provide tourist lodging. Contrary to the ephemeral conclusion of the Staff Report that a denial will automatically result in a hotel being built at the site, it is my understanding that that tourist-serving lodging ***will not be built***.

The citizens of Encinitas have been patiently waiting for 12 years for this site to be developed. As staff points out in the Report, it is one of the premier sites in all of our City. Having said that, however, for the site to remain vacant for the next decade as well does not lead to your Commission carrying out its duties to the citizens of the State of California to bring visitors to the beach.

My wife and I are the owners of a 21-unit motel that is located about a third of a mile south of the KSL site on N. Coast Highway 101 in Leucadia. Those who are not knowledgeable about this subject might assume that my wife and I would much prefer not to have the competition for our Inn which would result from the construction of the KSL destination resort. That conclusion is flawed. For the following reasons we strongly support the construction of this project:

- This development will put Leucadia and Encinitas on the tourist map. When combined with KSL's La Costa Resort, which is approximately 3 miles away, it will offer one of the premier tourist destinations in Southern California.

- The number of visitors who will come to our area because of the existence of this resort will have an enormous ripple effect throughout the other tourist-serving commercial properties along the N. Coast Highway 101 corridor in Encinitas.

- Staff evinces a concern about the availability of lodging for tourists visiting our local beaches. What staff does not acknowledge (probably because staff is not aware of this fact) is that the existing local lodging in Encinitas is grossly underutilized. By bringing more tourists to our City, and specifically to the N. Coast Highway 101 corridor, all of the restaurants, retail establishments and hotels/motels will benefit. For example, our motel, because it is located on the underdeveloped portion of N. Coast Highway 101, has a much lower occupancy rate than you would expect in a beach area. Guests who go to the KSL Resort will spend time looking around the area and will realize that there are other much less expensive lodging options available only a block from the beach. Visitors to the KSL project may well decide that on their next visit to the area, they are going to stay in our Inn or other local lodging along the Highway 101 corridor where the cost may be 50% to 75% lower than in the KSL project. However, if they never

LAW OFFICES OF
CHARLES MARVIN III

come to the KSL project, because your Commission has denied the developer's Application, that opportunity will not be available to the rest of the visitor serving commercial enterprises along the Highway 101 corridor.

I'm also respectfully requesting your Commission's approval of this project on behalf of all of the merchants along the N. Coast Highway 101 corridor as a member of the Board of Directors of Leucadia 101. Our reasons are:

- Our Association was formed specifically to enhance the experience of visitors along our historic beach corridor.
- Leucadia 101 has been in operation for two years. We have had a number of successful public events which have encouraged visits to the corridor and our local beaches.
- From our inception as a MainStreet Association, we have waited with great anticipation the construction of the KSL project. All of the local businesses fully understand and appreciate the very positive impact that the KSL development will have on the corridor and all of the businesses along that corridor.
- The businesses along the N. Coast Highway 101 corridor serve beach-going visitors. It is your responsibility to enhance and encourage visits to our local beaches. By denying this project, it will have the reverse effect.

Local Impacts of Project Denial

If you follow your staff's ill-informed recommendation, it will result in:

- A substantial reduction in the Encinitas transient occupancy tax. Ten percent of that tax is used for sand replenishment purposes on our beaches.
- On the subject of sand replenishment, I can't imagine why the developer would, as staff suggests, go forward with a "donation" of 50,000 cubic yards of sand to the adjacent beach without having an approved commercial project to build. It won't happen! Staff thinks sand replenishment is a capital idea. We couldn't agree more. However counterintuitive it may be, staff then suggests that the primary portion of the Application, the construction of the hotel condominium complex,

LAW OFFICES OF
CHARLES MARVIN III

be denied. Although I know it's improper in correspondence of this nature, I just have to say: "Staff – get a grip!"

- Most of the retail businesses along N. Coast Highway 101 are just barely hanging on. I have been a local resident for 35 years and I've watched the businesses come and go with very high frequency because of the lack of a strong tourist business. This is an opportunity to solidify and enhance those local tourist-serving businesses. To vote No on this project can only hurt the future economic viability of our beloved Leucadia N. Coast Highway 101 corridor and your opportunity to bring more visitors to our City's wonderful beaches.

Summary

If I have conveyed no other thought with this letter, I would like to leave you with one consideration. There aren't many opportunities on the part of your Commission to do something that not only will meet the statutory requirements of the Coastal Act, but also have a very beneficial long-term impact on an area which primarily exists to serve the needs of beach-going visitors.

I respectfully request, personally and on behalf of Leucadia 101, that you approve the KSL Application in its entirety.

Thank you for your consideration.

Sincerely,

CHARLES MARVIN III, A.P.C.

Charles Marvin III

CM3/nvn
cc: Doug Yavanian, KSL Development
Bill Dodds, V.P., KSL Development
Lynne L. Heidel, Esq.
Christy Guerin, Mayor, City of Encinitas
James Bond, Deputy Mayor, City of Encinitas

LAW OFFICES OF
CHARLES MARVIN III

Jerome Stocks, Encinitas City Council Member
Maggie Houlihan, Encinitas City Council Member
Dan Dalager, Encinitas City Council Member
Patrick Murphy, Encinitas Community Development Director
Patricia Bell, Leucadia 101
Paula Kirpalani, Leucadia 101
Leucadia 101 Board of Directors
Peder Norby, Downtown Encinitas MainStreet Association
Adam Kaye, *North County Times*

Tue 22a

Michael L Conley
1300 Neptune Ave
Encinitas, California 92024

Chairperson Meg Caldwell and Members of the California Coastal Commission
San Diego District Coast Office
Deborah Lee, Senior Deputy Director
Sherilyn Sarb, District Manager
7575 Metropolitan Avenue, Suite 103
San Diego, CA 92108-4402
Re: Tue 22a

Dear Chairperson Caldwell and Commissioners,

As an Encinitas resident living less than an mile from the KSL project, I urge the Commission to approve the KSL resort hotel project. I believe this project is in the best interests of the community and the visiting public. The restrictions the project will impose on its condo owners seem to satisfy the concern of limited public access. We have no other beach front hotel. This project will bring people and increase business to the northern end of Encinitas.

The proposed placement of sand onto the beach is just another added benefit. Placement of sand onto the beach will improve the health of the beach and seems like just good sense. Fortunately the local agencies understand and have already given their tentative approval.

The KSL project has already funded and built the public access stairs. The project will provide public meeting rooms and access to the beach by our visitors. I ask the Commissioners to approve the KSL plan as they have proposed.

Sincerely,

Mike Conley

Mike Conley
1300 Neptune

Tue 22a

March 3,2006

Chairperson Meg Caldwell and Members of the California Coastal Commission
San Diego District Coast Office
Deborah Lee, Senior Deputy Director
Sherilyn Sarb, District Manager
7575 Metropolitan Avenue, Suite 103
San Diego, CA 92108-4402

Chairperson Caldwell and Members,

As a resident of Encinitas and a concerned member of the public enjoying the rights to the beaches in California, I support the KSL project for a condominium hotel in the northern sector of Leucadia/Encinitas. While the concern exists by some members of the surrounding communities that the prices of these hotels rooms and the nights of availability are limiting factors for the city, I do not agree with this position. Many smaller hotels line the Highway 101 corridor and non are ocean front. They will fill rapidly as more people are drawn to our local beaches. Encinitas/Leucadia strongly needs the completion of this already started project. The public stairway required by the Coastal Commission some years ago and subsequently erected by KSL is a great boon to that area of beach. Please do not impose any additional restrictions on the developer! This project has languished too long as it is.

Sincerely,

Betty & Harry Fund
1802 Parliament Road
Encinitas, CA 92024

Tue 22a

March 3, 2006

Chairperson Meg Caldwell and Members of the California Coastal Commission
San Diego District Coast Office
Deborah Lee, Senior Deputy Director
Sherilyn Sarb, District Manager
7575 Metropolitan Avenue, Suite 103
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Sincerely,

Ann Dunham
310 Neptune

Tue 22a

March 3,2006

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San Diego District Coast Office
Deborah Lee, Senior Deputy Director
Sherilyn Sarb, District Manager
7575 Metropolitan Avenue, Suite 103
San Diego, CA 92108-4402

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Sincerely,

David N. Pino
720 Fourth St. #1
Encinitas, CA 92024

Tue 22a

Seacoast Preservation Association, Inc.
P.O. BOX 232692
ENCINITAS, CALIFORNIA 92023

California Coastal Commission
7575 Metropolitan Dr. Suite 103
San Diego, CA 92108
Attn: Mr. Gary Cannon

September 23, 2005

Dear Mr. Cannon,

The Seacoast Preservation Association has followed with great interest the proposed hotel development at the LaCosta Ave. and Highway 101 crossroads. We share with the Coastal Commission the goal of safe, accessible and attractive beaches. To that end, the addition of sand, whether through replenishment action or opportunistic placement, promotes the well-being of the strand.

We urge the Coastal Commissioners to approve the request from Bill Dodds and the Encinitas Resort Project to place the sand excavated from this site on the beach below the property. What a great opportunity to place sand opportunistically onto the beach, literally only a few feet away.

We have been party to the various discussions raised at SANDAG about sand quality and the need to match in granule size and color the sand placed on the beach. Surely the sand from the bluff directly above the shore where it will be placed would not differ so greatly so as to prevent this action. Please allow the hotel's request for this opportunistic sand placement. There is nothing more vital to the protection of the bluffs than the level of sand below them.

Thank you for your consideration.

Sincerely,

Susan Steele
Secretary
Seacoast Preservation Association

614
522 8885

Tue 22a

March 3,2006

Chairperson Meg Caldwell and Members of the California Coastal Commission
San Diego District Coast Office
Deborah Lee, Senior Deputy Director
Sherilyn Sarb, District Manager
7575 Metropolitan Avenue, Suite 103
San Diego, CA 92108-4402

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Sincerely,

Brian Yui

614
522 8585

Tue 22a

March 3,2006

Chairperson Meg Caldwell and Members of the California Coastal Commission
San Diego District Coast Office
Deborah Lee, Senior Deputy Director
Sherilyn Sarb, District Manager
7575 Metropolitan Avenue, Suite 103
San Diego, CA 92108-4402

Chairperson Caldwell and Members,

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Sincerely,

Brian Yui

Tue 22a

March 3,2006

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San Diego District Coast Office
Deborah Lee, Senior Deputy Director
Sherilyn Sarb, District Manager
7575 Metropolitan Avenue, Suite 103
San Diego, CA 92108-4402

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Sincerely,

Michael J. Noll

Michael J. Noll
610 Neptune
Leucadia Ca. 92024

Tue 22a

March 3,2006

Chairperson Meg Caldwell and Members of the California Coastal Commission
San Diego District Coast Office
Deborah Lee, Senior Deputy Director
Sherilyn Sarb, District Manager
7575 Metropolitan Avenue, Suite 103
San Diego, CA 92108-4402

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Sincerely,

PAUL ARNDT
1686 NEPTUNE AVE
LEUCADIA CA 92024-1001

UNOFFICIAL TRANSCRIPT PREPARED BY THE APPLICANT

Coastal Commission Hearing 3/7/06

Deborah Lee:

That brings us to Item No. 22A. This is the final item on the San Diego agenda for today. This is an amendment request from KSL Encinitas Resort Company to convert a previously approved conventional hotel to one with limited term occupancy. The 4.3 acre site is along the west side of North Highway 101 at the northern entrance to the City of Encinitas. The ocean lies to the west, a State parking lot, beach facility to the north and Batiquitas Lagoon to the northeast.

I want to talk a little bit about the history on this item. The project was originally approved in 1992. There were provisions for extensive public amenities, a public overlook, public access way. The applicant and successor-in-interest returned to the Commission to separately receive approval for the access way that has been installed on the property. This applicant is not proposing any changes to those public amenities or public benefits, but is seeking the change from having a traditional hotel to one that would have limited-term occupancy. Their assertion is that the hotel operator will remain on site and will work with the individual owners to operate the rooms. The room will in all aspects appear to be similar to a conventional hotel operation.

In terms of addendum, we've circulated to you one item from Staff that was a revision, the applicant's response and then there have been several letters of support and opposition that have also been distributed to you separately. The one other note before get into the merits of the proposal: at this Commission meeting it does require action. The applicants already requested and have been granted the 90-day extension. So the Commission needs to proceed at this hearing.

In terms of the merits of the subject proposal, as identified in your Staff report, one of the concerns that we have with this application is that it is one of three sites reserved exclusively for hotel and motel development in the entire city. It is the only one that's immediately along the shoreline. The hotel was originally approved as a conventional hotel and the City does not have large complement of hotel rooms. In addition, this project seeks complete conversion of the entire inventory of the hotel project. There's only 130 rooms being proposed on the site and the applicant's amendment request would convert all 130 of those rooms to the limited-term occupancy arrangement.

For those reason alone, Staff reconsidered its recommendation and feels that at this time the fact that this is one of only a few sites that was designated for hotel and motels and the fact that there isn't a large complement of hotel rooms in the area, and also looking back to the City's now withdrawn amendment request to restrict vacation rentals, we think approval of this project from a conventional hotel to one of limited-term occupancy raises serious questions with the Coastal Act.

Looking beyond this specific proposal though and the precedent that it might establish, we have a number of concerns about these entities and operations. First, with regarding to financing: The assertion has been made that this mechanism is the only means to either develop or remodel other hotels. But we find that that's unclear. We certainly understand why this form of equity financing is attractive, certainly to the developer and to the lender. But it raises questions in

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TRANSCRIPT EXHIBIT
APPLICATION NO.
6-92-203-A4
Unofficial Transcript prepared by Applicant of March 7, 2006 Hearing

terms of whether or not in the long run it is the mechanism that is necessary to protect and preserve hotel rooms in the Coastal Zone. We included in the addendum and article from The Wall Street Journal that stated that only about 11% of all hotels that were under development in the December of last year utilized this funding. So it does not appear to be the only way to finance hotel construction. In addition, there's many studies showing now that given the return to the tourist industry, it may be more a case of just not enough money to go around with the tremendous demand that there is for hotel room development. More rooms are being developed than there's money to support them. So we do not believe, contrary to the assertion being made by the applicant, that this financing mechanism is the only way to get these hotel rooms developed,

With regard to the provision of either condo-hotels or the conversion of existing hotels to some form of condominium or limited-term occupancy, we do believe the ultimately, even the narrowest sense of the 14-day, the 30-day stay, the 90-day stay limit, there will be a reduction in the hotel rooms that are available to the general public. When those owners utilize their privileges for the owner-occupation. Many other conversion of existing hotels that we've seen in numerous articles that we have been looking at result in few units being offered at all. Even though this financing mechanism is being touted as a way to retrofit and remodel older hotels, it comes at many times at the cost of combined units and fewer units being made available. In this case, applicant has also indicated that some units may be combined as suites, and owners may purchase more than one unit, again resulting in a net reduction of available hotel rooms for the public.

Another concern is that given that many of these condo-hotels allow owners to stay up to 90 days, they then provide tax benefits to the owner as a second residence. Again, this quasi-residential element may undermine the hotel operation in the long run.

Another concern that we've seen with the proposal is that these applicants and other proponents assert that these entities will function like a hotel, and the casual observer couldn't distinguish the difference. But there's little track record on these operations, given their recent development. Although Staff has requested and sought additional information on theses uses, there's been little evidence submitted. The one that has been provided is citations regarding the one project in Hermosa Beach. But if there are really that many others out there, there's been little evidence to show what the owner usage really is. Again, the concern is, given their recentsy and novelty of these kinds of developments, there's very little track record, again, to substantiate that in the long run these visitor amenities will remain protected for the public.

We believe that the Commission needs to take this longer view and assure the continued provision of hotel rooms and visitor amenities. The Commission at the last hearing in December ask us to look into legal challenges. We've done that—none have been readily identified—the Commissioners have expressed concerns about whether or not there is any outstanding litigation or conflicts with the homeowner associations that are established with these entities. Again, while none were easily found, the future effects of bankruptcies, divorces, other legal actions on these operations is unknown, again raising questions and concerns about the long-term protection of visitor amenities.

We have had question raised about enforceability and the applicants will assert that there are numerous means for enforceability, both through the City and the Commission's action if you were to approve this. But we've considered this and find it's extremely difficult to really enforce, given the need for day-to-day oversight. Numerous articles have suggested that owners can bring in roll-in armoires. They can change personal décor and amenities of the unit. They can combine units. All of the things require a transparency to detect such nuances and it's going to be very difficult for any governmental entity to get that kind of transparency and oversight. Having one versus multiple owners is only going to exacerbate any enforcement effort, should it become necessary. Ultimately, if the project is allowed to convert, and there's problems that become evident, there's no reversal ability to the traditional hotel once the Commission were to take action.

In some of the articles that we have researched, there were also evaluation that are beginning to look at possible secondary impacts to these kinds of conversion, i.e., the transition from tourist to a more resident population and what that might mean for either community character or employment basis.

With regard to precedent and cumulative impacts, we think this is very serious. Already, just since this application had become on file and we have also one other pending at the Terranea Resort in Rancho Palos Verde, in San Diego County we have three proposals already on line, one in Oceanside, one in Solana Beach, one in Imperial Beach. In Orange County there have been newspaper articles suggesting that both the Headlands and Pacific City and Huntington Beach are considering this form of financing, and then again in LA County the Terranea proposal.

All these raise concerns about these different entities and the kinds of proposals that this Commission see up and down the coast, much less in the southern part of the state. There is simply too little known about the long-term operation of this new and what we see as an ever-evolving proposal. Each one come in with a slightly modified proposal instead of benefits. Little evidence has been provided to substantiate that the security of the visitor accommodations and amenities will be either in the long term. The Commission may consider this mechanism in other situations or site where there is a substantial commitment or retention of conventional hotel units or adequate visitor-use acreage. But that is not the case here.

Again, we think that this is extremely important because it's only one of three sites reserved for hotels in the City of Encinitas. It's the only one on the coast and the proposal seeks to construct all as the condo-hotel units rather than traditional hotel accommodations. The City has a small inventory of rooms and we believe it would set a very dangerous precedent for numerous other proposals, given the lack of track record and evidence on how this funding and operation will assure the long-term protection of critical visitor facilities.

Peter Douglas:

Let me just supplement what Deborah just said here. For one thing, I think its clear in terms of timing, the Commission does need to take action today but you feel that there are issues that we not adequately researched or you have more questions on which you would like more information before making a decision of this importance, the applicant can always withdraw the matter and refile if you waive the time limit so they can come back and refile tomorrow, if they

wish. So there is a way to provide more time if you feel that there's additional information that's necessary.

But in our view, as we started to look into this, and looking at what's happening around the country, what's happening on our coast, as we see more and more of these proposals coming forward, there is no doubt that in our view this is a slowly incremental conversion to residential uses as opposed to visitor-serving. The way that these are structured clearly does provide for a residential use, buy a unit, it's a condominium unit, you get your tax write-offs as a residential unit that you own, that you get to deduct mortgage payments, that you get to deduct costs for improvements because it's also incoming-producing property. So, clearly, it's an investment in real estate and it is a very profitable one, certainly for the owners who are trying to sell these condominium units.

How the development is financed and whether that's good or bad or too much money is being made is really irrelevant for purposes of the Commission looking at the Coastal Act. But, the fact that these are being converted to residential, quasi-residential uses, is not irrelevant. That's extremely important because the fundamental issue is exclusivity. What you end up with when you have a condominium is that you have an exclusive right to utilize that property for yourself for a limited number of days, but at the same time, you have the control of who may also use it. So if you decide whose going to rent your unit while you're not in, it could be limited to friends, business associates or business employees or executives of a particular company or whatever. But it does not continue the unit as visitor-serving, available to anybody who drops in who wants to rent a room kind of use. That's what visitor-serving is all about. So as we look down the road hear, we clearly see a precedent that is so significant and a wave of these coming toward us. (I personally have had inquiries from a number of people, including representatives for the hotel in Huntington Beach, that was just mentioned, who are also interested in the conversions as well as others that are spread throughout the coast.) So, this is extremely significant. You will hear, and yes the Commission has approved several of these—I think it's three—but that's before we knew that the cumulative effect and the growing concerns are about these kinds of conversions. And just because we lack the information to bring to you what we now think is the correct recommendation, at that time, we don't think that a reason to perpetuate now that we know better and more a trend that we think in the long run is going to be very adverse and detrimental to the public visiting the coast.

The management of these units is another issue that we raise that individuals who own the condominiums have the ability to hire somebody—some management firm—to actually do the renting of the units—yes they have to do through the hotel—so it's not the hotel, the single owner that's in control of that. It's the owner of the condominium.

So clearly there is a change here in the kind of use that we're looking at. It's moving it away from visitor-serving to residential, and this is one of the most significant case, frankly, that I can recall in recent past that has come to this Commission. It's an extremely consequential decision you're being asked to make and if anything is in doubt here, I would really suggest that you give us direction, get additional information if you feel that that's important and we haven't given you enough; but I can't stress enough how important I think this decision is for the future of the coast the public who comes to visit.

That completes our recommendation.

Chairwoman:

Ex parte communications on this side? Starting with Commissioner Reilly

Mr. Reilly:

Thank you, Madame Chair. I had a discussion earlier today with Mark Messara [?] from Sierra Club who's is support the Staff position on this particular item and we talked about the particular ins and outs of hotel operations and occupancy rates and those sorts of things; and my other ex parte on file.

Chairwoman:

Commissioner _____[?]

Mr._____:

Thank you. My ex parte is on file which was basically a conversation with Susan McCabe about the project and it was faxed in to Chris.

Chairwoman:

Commissioner Kram?

Mr. Kram:

I had a very brief conversation with Mark Messara just about the project, looking at it more as a condo than a hotel, and the zoning on the site.

Chairwoman:

Commissioner Potter?

Mr. Potter:

I'm on file.

Chairwoman:

Commissioner Shallenberger?

Ms. Shallenberger:

I met on February 28, I believe, in Susan McCabe's office in Sacramento. On the phone were Bill Dodds, Lynne Heidel, Jeff Russell and Kara Valier. They explained to me, they gave me the documents that since have arrived to all of us, all the commissioners and Staff as background. They described that the condo hotel operator sells the rooms but not the common area, that the

hotel is over 200,000 square feet with 75,000 square feet being private rooms. They described the owner use restrictions: that it is restricted to 90-days use per year and not more than 25 days within a 50-day period. They explained that the hotel operator would market it but in order to avoid the SDCC requirements, that a room owner could opt out and do the marketing him or herself. They asserted that the only way to finance hotels these days is through this mechanism, otherwise it is not financially feasible. They said the executive director had in fact not done any research on this, which he had been directed to do by the Commission, but he feels strongly about it. He was prepared to meet with them before his accident of a few weeks ago, but that he said he would meet with them, but nothing would change his position on this.

Chairwoman:

Commissioner Padilla?

Mr. Padilla:

Thank you, Madame Chair. I met with the Organization of Regional Coastal Activists (ORCA) on Friday, the 3rd in Chula Vista. Dave _____ Hunter were in attendance. They urges support of the Staff recommendation and indicated they felt it was potentially a bad precedence. That afternoon of the same date, I met with Susan McCabe, William Dodds, Lynne Heidel and Jeffrey Russell on the same issue in my office. They expressed opposition to the Staff recommendation, arguing the amendment results in no change in hotel operations and simply addresses the financing. They reference the original facts reasoning by Staff for the January docketed Staff recommendation and report. This morning briefly I had a telephone conversation with Christy Garren, Mayor of Encinitas, on the telephone with regard to much the same points that were raised by Ms. McCabe and I had a brief conversation with Mr. Mark Messara during lunch in which he expressed his concerns about the negative precedence with a potential not support the Staff recommendation.

Chairwoman:

Commissioner Clark?

Mr. Clark:

Thank you, Madame Chair. On the 24th February I met with Susan McCabe and Bill Dodds in Manhattan Beach near my office to basically get a history of this project and the current ownership. During the lunch period today, I met with the Mayor of the City of Encinitas, Christy Garren, the Director of Planning and Building, Patrick Murphy for the City of Encinitas, William Dodds from KSL, Jeffrey Russell and Lynne Heidel from Allen Matkins, Attorneys at Law, Susan McCabe and Kara Valier. Again, going over the current proposal with respect to this project and the issues of financing and many of the topics that Commissioner Shallenberger raised in her ex parte.

Chairwoman:

Commissioner Wright?

Mr. Wright:

I met yesterday with the same parties, Bill Dodds, Susan McCabe, Christy Garren, Lynn Heidel and Jeff Russell on the same topics of financing mechanism and the operation as it relates to ownership.

Chairwoman:

Commissioner Kruer?

Mr. Kruer:

Yes, I did get a phone call this morning early at the hotel here from Jerome Stokes from Washington whose on the City Council of the City of Encinitas. We discussed briefly some of the issues in regard to this on the financing and the City of Encinitas needs this hotel space, etc. I discussed some of the concerns that I had with 100% of the units having this happen, and under Encinitas' zoning in place now. I don't know how they do that, to do to a residential use, but I talked about the financing with them, and it is achievable to get financing on hotels. It's just a matter of how much equity you have to put in versus this type of financing; and just some concerns I had and the precedence that this would set.

Chairwoman:

Now, I think we're ready to go to the public hearing. I have to speaker slips on behalf of the applicant from Bill Dodds and Lynne Heidel, and I assume you have an organized presentation for us. If you can state your name for the record and how much time you need for that.

Ms. Heidel:

Lynne Heidel representing KSL. May we have 20 minutes?

Chairwoman:

Sure, you can take what 18 and probably two for rebuttal.

Ms. Heidel:

Sure, probably less than that. Whatever is left over for it.

Chairwoman:

All right, very well.

Ms. Heidel:

Thank you, Madame Chair, and members of the Commission. As I said, Lynne Heidel representing KSL Resorts.

Chairwoman:

Before you begin, may just indicate, there are several individuals who have indicated that they oppose the project and I don't know if you're organized or not. But if you are, the organized opposition is permitted to have an equal amount of time. So you can put yourself together, if that's necessary.

Ms. Heidel:

Well, you've have heard what the fundamental issue is. I just want to go back and repeat that I represent KSL Resorts. They are a resort management company. They operate resorts. They are not residential developers. I have discussed this with a lot people, with Staff; we've set forth out position in a packet that we have had delivered to all of you, and we've discussed in the beginning whether or not this is a residential use or a visitor-serving use. Then we discussed a whole bunch of issues in the middle about whether there are SEC rules, what's the zoning, what are the restrictions, etc., and when you answer all those question, down at the back end you come out with the same questions you started with, and that is: Is this a visitor-serving use or not?

And we could not disagree on Staff more on that. This is NOT a conversion to a residential use. As I said, KSL is in the business of operating and managing resorts. That's what they do. Their income comes from the rental of hotel rooms. They are incentivized by the rental hotels. They need the financing to construct the hotel in the first place, but it is in their best interest to operate it as a hotel because they benefit by that income strain. Ironically, the issue of what the zone is in this particular case is used on both side too. You hear Staff saying that well this is a visitor-serving zone and therefore you can't have residential. We're saying we agreed. It's in a visitor-serving zone and you can't have residential. So this is not a residential use; it is a hotel use. It will remain a hotel use by virtue of the CC&Rs that we have agreed to put on the property. The fact that those CC&Rs cannot be changed unless the Coastal Commission agrees to change it and the City of Encinitas agrees to those changes, and it can't be changed to a residential use because the zoning won't allow that. You would need LCP amendment and a rezone in order to convert this to residential ownership. There is some mentioning in the Staff report of this being a unique zone, the LVC Zone. Whereas in Hermosa Beach, where this Commission approved a similar project, it was a commercial or general commercial zone. Well, it had a different nomenclature, it was called the C2 Zone. But in effect, it had the same limitation that we have. We are not allowed to have residential units. That zone did not allow residential units. That's is why we continue to tell you that this IS a visitor-serving—these are hotel rooms. The hotel will remain with a front desk, with restaurants, with meeting rooms similar to this hotel—a full-service hotel. In fact one of the reasons that I think that the City of Encinitas is so support of this is because this is the first full-service hotel that city is going to have. All those uses are going to remain in place.

In addition, all of the public access amenities are going to remain in place: the stairway, the extra 100 parking spaces that we don't need for our use but are available and open to the public to use, where the public can come and park in our parking lot, get out of their car, come up to the hotel buy a picnic lunch and then take the stairway that we built down to the beach and enjoy the beach. If this isn't visitor-serving, we don't know how else to describe visitor-serving. We need this type of financing in order to construct this hotel so that we can make sure that City of Encinitas has this visitor-serving use.

Now, another thing that troubles me a little bit is some notion that by changing ownership, you change use. I think most of you know that you can have office condominiums or industrial condominiums. The fact that you sell or buy your own office doesn't mean it becomes your residence. You don't live in your office—well, some of us feel like we do—but it doesn't not become residence. No one would ever accuse an office condominium of being a residence. And the same applies here. You can't decorate these rooms. You're not allowed to decorate these rooms. You can't bring in any armoire—I don't know where the armoire thing came from. The 90-day limitations don't just apply to you, it applies to your guests, your corporate employees or who ever wants to use it, those all count against your own 90 days. So, this isn't a matter of being able to tie up these rooms for 90 days only for you and your friends.

The other thing is that owners are visitors too. This is serving visitors. If you own it and you're from Minnesota and you come here and you want to stay here for 25 days in the middle of winter, you're not using it as a residence, you're a visitor like anyone else from Minnesota who may want to come and stay out of the cold for 25 days. You don't pay taxes from here, your kids don't go to school from here. This is not your legal mailing address. You can't vote from this room. It is not a residence, it's a hotel room.

In addition, when you come in, you bring your luggage. You can't put up pictures of your kids—I suppose you could but you'd have to take them down. In addition, our owners as well as guests pay TOT. That's why the City wants this zoned, so badly; because, whether you're an owner or non-owner guest, you have to pay TOT. I'm going to let Bill get into the actual operation of it because that's really his bailiwick. I think I've mentioned most of the things I needed to. I'd like to clarify a couple of things: the limitation on 90 days that was mention by Staff and is in the Staff report, we have not been able to find any regulation that would indicate that somehow, some magic number is triggered at 90 days and then you write it off for income tax purposes. So I don't know what that has to do with anything. It doesn't become a second home and fall into that category after 90 days. With respect to bankruptcy, [sic] so divorce and bankruptcy, etc., will not have an impact and specifically, if it goes into foreclosure, our CC&Rs say that the CC&Rs stay in place. So we think there are plenty of restrictions on there.

I wanted to bring up one example of the City of Hermosa Beach where we do have one of the hotels that your Commission has approved. We have a letter that's in your packet from them. They seemed very pleased with it. It has been in operation since 1997 and according to this letter, the Beach has complied with all the conditions of approval that were set at the inception of the project. So here is a very concrete example.

One of the reasons, we haven't necessarily—we do have other information on the length of stays in other of these types of hotels—but they're not all apples to apples. Restrictions that are put on these by your Coastal Staff in your other examples—and of course we're embracing the restrictions that we saw in your other—that's why we came forward with the 90 days and the 25-day limitation. Those certainly are open for discussion. But, they're not always the same in other jurisdictions or in inland areas. So there's such a variation on how these condominium projects work and whether they are more residential or less residential. It's very hard to always be comparing apples to apples. So, we've tried to just compare coastal zone condo-hotels with other coastal zone condo-hotels.

Finally, what I'm urging to approve the project as Staff recommended it in December, I'm asking you to do that in order to actually encourage and create a new visitor-serving amenity in the City of Solana Beach, far from restricting visitor-serving uses. We are enabling a visitor-serving use to the City. (I'm sorry, Encinitas. I know that there are people here from Solana Beach who are opposing another project.)

Mr. Dodds:

I would to thank you for the opportunity to speak here this afternoon. My name is Bill Dodds. I am vice president with the applicant, KSL. We are an owner/operator of resort hotel properties. For the record we operate two hotels in San Diego County, La Costa Resort & Spa, and Hotel Del Coronado.

I would like to review some of the slides, cite photos and graphics to help describe what this hotel looks like.

This is the subject site. The highlighted in white area is the site in question. It is four and a half acres. To the south is a residential area, to the north of the site is the Pontus State Beach parking lot; bounded on the east is Highway 101 and to the very bottom of screen and to the right you can see La Costa Avenue which dead ends into the front of the site. This photograph was actually taken shortly before we started the construction of the staircase beach access that allows access for the public from the beach area where the parking lot is located up the bluff and to a bluff overlook seating area on our property.

This is a site photograph basically in the last couple of weeks. The site is essentially totally vacant other than a few public access improvements. A lot of those improvements will be fully defined or fully built out with the construction of the hotel.

This is the resort itself. This is La Costa Avenue here. This is Highway 101. This is the entry, the main arrival sequence into the hotel itself. Guests will arrive here. The parking is all below grade, underneath the hotel. It is two levels of below-grade parking structure and a series of three-story and two-story hotel accommodations. Those accommodations would include front lobby area, retail area, small retail zone, a restaurant open to the pubic, meeting spaces also open to the public, a lounge bar area also open to the public. The parking is essentially over-parked by about 100 stalls which provides for additional public parking. Lynne made reference to the fact the visitors and people can actually come and parking property even if they are not hotel guests, grab a picnic basket and head toward the beach for the day. We're looking at additional things to augment that such as renting boogey boards or renting whatever beach type toys to go and enjoy the day at the beach. As we move further along, the guest room zone is basically through here. It's two and three levels of guests rooms. It's a 133 keys in total. We make no proposal to modify that. It will remain with 133 keys. Typically the way that the rooms are structured is that there are interconnected doors so, a good example would be mom and dad are in one room and the kids in the next room. It has a interconnecting door so you don't have to go out in the hallway to monitor your children. Basically, all the rooms are pair up like that, but the total number of keys is still 133. Each key can be rent separately to guests so it gives the hotel maximum flexibility as to how to operate the hotel.

Some of the other amenities are the public amenities. There is public access—today the only public access that is on the site is there is a seating area here. There's a temporary walkway here, a temporary walkway from Highway 101 along the northern edge. The only permit construction is a staircase here, which has been constructed, another staircase up to the top of the bluff. Here you can see the variation you can see the variation in bluff which sits about 50 feet above the sea level. All the additional improvements—public access improvements which will be made with the construction of the hotel—there is a signalization improvements here on La Costa Avenue, sidewalk access, public access either along this northern walkway along the property or through this small medallion communion access along the State parking lot all the way out to the area where you can access the beach. Again, you can access here along the northern walkway; you can either go down the staircase or spend time here along the bluff overlook.

In terms of the site, there's a sand aspect of this project also. The sand area is actually in this medium zone here, of approximately 40,000 cubic yards of sand which will be deposited. The way it gets to the beach basically is through a section here of the State parking lot, and this is the receiver site on this side of the property. Again, approximately 40,000 cubic yards of sand to be replenished.

What does the hotel operator provide? Under the January 2006 Commission Staff Report, the following conditions are required for all guest rooms. The hotel operator staffs and provides for check in and check out of all the front desk services. The electronic key card access so everybody who comes in to the hotel only access the guest rooms through key card. Guest room reservations are all handled through the hotel operator. Collection and remittance of TOT and monthly occupancy reports for all guest rooms is submitted to the City of Encinitas. All these are typical services provided by the hotel operator, which will be provided also by this hotel operator. The entire site is approximately 260,000 square feet of total built space. The guest rooms themselves are approximately 75,000-76,000 square feet of space. So the preponderance of the facility will still be owned and operated by the hotel for hotel purposes.

Staff recommended use restrictions of 90-days per year and no more than 25 days within a 50-day roll-in period, as well as certain marketing requirements to make sure the guest rooms are promoted. If this 90 day, as Lynne indicated, is a recurring thing, 90 days basically is what other Coastal Commission or accepted or provided for condominium hotels in the Coastal Zone have been using.

The Staff also indicated there will be CC&Rs that will recorded on title as Lynne mentioned. I think the key to that really is how are those restrictions enforced. There are basically several levels of enforcement. First, the CC&Rs themselves are recorded against ever guest room, and CC&Rs provide from some penalties and enforcement powers by other guest room owners as well as the hotel operator. Substantial penalties will include 200% room rate penalty for every day that the guest stays longer than they are allowed to do, as wells as unlawful detainer provisions, which is typical for any hotel operator, if a guest overstays.

A hotel operator has an economic incentive to make sure they're monitoring the guest room access for all owners. The hotel operator provides monthly reports to the City as well as the City itself is monitoring the reports to confirm that the TOT is collected and the owners do not

overstay. And finally, this Commission itself also has a cease and desist powers; so there are several layers in which these can be monitored.

And with that, I will say thank you and be happy to answer any additional questions.

Chairwoman:

Thank you. You have able a minute and a half for your rebuttal. Christy Garren and then Patrick Murphy

Ms. Garren:

Madame Chair and Commissioners: My name is Christy Garren. I have the honor of serving as Mayor for the beautiful City of Encinitas. I'm here today on behalf of the City. With my council member's full support and direction regarding the KSL Resort amendment request as before you. The City has spent many years processing the site to bring a first-class resort hotel to Encinitas and we're deeply concerned with Staff's recommendation of denial. The development process was extensive and we required the developers to facilitate citizen participation planning meetings to address concerns on several occasions. This approval has gone through many council members and many councils since it started in 1992. Most of the opposition letters you have received are not Encinitas citizens. However, you do have many letters of support from my community. Another concern for us is that recently, Coastal Commission Staff expressed concerns that Encinitas does not have enough visitor-serving commercial areas, and that we should continue to allow certain commercial uses in residential zones which we believe is inappropriate as a council. Now we have this opportunity to acquire a first-class resort hotel and in appropriate visitor-serving commercial zone and Staff has recommending denial. I have to tell you we're confused. This is very frustrating mixed message and quite frankly it doesn't make any sense to us. Commercial is okay in neighborhoods, but commercial is not okay in commercial.

The precedent has already been set here by the other approvals that this Commission has made and our City is not the first. This hotel is very important to the City, and we have researched this ownership amendment and we are convinced that the hotel will remain a hotel. This is a financing tool that many hotels have turned to recently. Our city's finance staff, planning staff have reviewed this and because it is so important to us to ensure that the primary use of this site remains a hotel, we have imposed conditions with the approval of the project.

The Coastal Commission is a guarding of public access to our beaches and the City of Encinitas is committed to that goal and we have shown our commitment. That is why this hotel is important to both us with the many coastal benefits it will bring; benefits such as a badly needed public access stairway that the resort has already built for us. In addition, the construction will put thousands of cubic yards of sand on our beaches to protect against erosion. Parking has been a problem in that area for beach visitors for a long time. They have given us 100 additional parking spaces. It isn't the only sand replenishment opportunity either because with the significant increase in TOT funding a percentage is guaranteed in our City by the formula to sand replenishment.

Many community organizations such as our Chamber of Commerce and our Downtown Encinitas Main Street Association support the building of this hotel, not only for the sand replenishment and beach access but for the addition of community meeting rooms and banquet facilities that always in bad need in our city.

In closing, I ask the Commission to please consider that this amendment is only a financing tool and allow Encinitas to acquire this first-class hotel. Please approve the KSL request so that the public and our citizens have this newest opportunity to enjoy coastal access.

Thank you for your time and consideration. I'll be here for questions.

Mr. Murphy:

I'm Patrick Murphy, Director of Planning and Building, City of Encinitas.

Honorable Chair and Commissioners: The City Encinitas encourages your support for the Encinitas Resort request to establish a hotel condominium form of ownership. When KSL approached the City with this financing mechanism, we too were unclear and concerned. Why? We wanted to ensure that a hotel was built on that property. Through various meetings and revealing previously approved projects, we have concluded that the project could remain a hotel. Conditions were established to ensure this. The concerns seem to focus on what this project is: a hotel or a residential use. In order to answer this, the City turned to the City's certified LCP to tell us what this project really is. Let the certified LCP tell us whether this project is a residential use or a hotel. When contrasting the definitions of a residential dwelling with a hotel you find that a residential dwelling in the LCP is defined as: " . . . shall remain as a building or portion thereof designed exclusively for residential occupancy." Conversely, a hotel defined by the LCP as: ". . . a room is occupied on a transient basis." The LCP further defines "transit habitation" by saying ". . . intended exclusively for occupancy for a period of 30 consecutive days or less." The project does not allow any room to be occupied exclusively for residential use and restricts occupancy to no more than 25 consecutive days. We may not like it and may disagree with the LCP, but the LCP defines this project not as a residential use in any form, but defines it as a hotel use.

The Encinitas Resort Hotel provides coastal access in several ways: overnight lodging for the general public, enhances lateral beach access through sand replenishment, provide beach and bluff protection through sand replenishment, provides public access from Highway 101 to the bluff top through the project, provides parking for the public, establishes lateral beach or bluff-top access for the entire length of the property, creates a public vista on the bluff-top, connects the vista point and lateral bluff-top access to Pacco State Beach and improves coastal access with road improvements to Highway 101 for both residential and vehicular. This project is wonderful addition not only to the City of Encinitas coastline, but to the California coastline, providing coastal access in a variety of ways for the public to enjoy both overnight and day visitors. We look forward to the ultimate construction and enjoyment of the Encinitas Resort and encourage your support of their request.

Thank you for your time and energy in this matter.

Mr. Abrahams:

I'm Jim Abrahams, president of the California Hotel and Lodging Association. I'm here to talk about two particular issues without any regard to whether you approve or disapprove this particular project, or any other. Our goal here is to provide a resource of background information and to help clarify some issue which obvious, I think the Staff and a lot of other people, have that might cause some confusion in how you deal with this.

First of all, I think the issue that has been raise by Staff and many others is that the condominium hotel and particularly its use as a financing tool is something that's new. In fact, it is not. The first condominium hotel in California is the Silverado Resort in Napa which many of you might have had the pleasure of visiting, and this is strictly a financing mechanism that does not have anything at all whatsoever to do with the nature of the project as a hotel, if it's structured properly. I think Staff has very well laid out what could happen without the proper checks and balances that are present a particular project. I don't know much about this project, but the proponents have told you of all the conditions, the CC&Rs, the Coastal Plan, the Conditional Use Permit, and other things that will force this to stay a hotel, should you choose to approve it.

The financing issue in question, on page of 6 of the Staff Report, if you could look at this and this needs to be looked at in retrospect, this starts on 1997 and it shows the lighter-colored line which is REVPAR which is Revenue Per Available Room, which is a rule of thumb that hotel business uses. It's how much you're actually making. If you're charging the right rates, you REVPAR is going be in a positive trend. The black line, the darker line is the cost of construction per square foot, and if you will notice going back to 1997, REVPAR, the money you make out of a hotel room has exceeded the cost of building that hotel room on a square foot basis. In 2001, we had 9/11, you saw the dramatic downturn, and after that point in time, although no one was building hotels, obviously—they were shutting them down—you saw that the cost of construction continued to go up slightly, REVPAR went way, way down. In starting in about 2003, you saw that the money you could make from hotels again exceed the cost of building them. Under those kinds of scenarios, if people aren't building at all or if they make enough money out of the hotel use to pay for the financing, then this type of equity financing is not as attractive, is not as necessary as it has become lately if you look, starting in about late 2003-early 2004; you start to see a decrease in the REVPAR and a rapid increase in the cost of construction, since about midway through 2004, the cost of construction has rapidly outpaced what you get from selling a room. So people need to raise money. There is now an upsurge in the economy. People want to build new hotels; they want to renovate existing hotels, so there is—and I think Staff pointed out quite rightly—there is competition for money. So the traditional funding sources, debt financing or large institutional financing, has gone away. So the difference has to be made up in some way and that's what this is designed to do. This hotel is subject to all the innkeeper guest laws that apply to any hotel, as the laws apply across the board.

Chairwoman:

I have several speaker slips. What order would you like to appear in? Are all of you part of the same group or is there one of you by themselves . . .?

Ms. Safford:

Two of use came together from Solana Beach but the four of us are in opposition.

Chairwoman:

So you organized yourselves into a 20-minute presentation.?

Ms. Safford:

Yes.

Chairwoman:

Fabulous and your name for the record?

Ms. Safford:

My name is Victoria Safford and live in Solana Beach. I came here today to urge the Coastal Commission to deny KSL's request to convert their previously approved traditional hotel project to a limited-term occupancy hotel for the reasons that Staff clearly detailed in Section 30.2.2.2. I ask you to uphold the Coastal Act and to protect uses that truly and exclusively serve visiting public by providing year-round overnight accommodations in all hotel rooms. Condotels are becoming increasing popular to developers, looking to ease their financial burden by spreading the cost of development among a larger number of owners. In many situations and locations, I might have no objection to a hotel conversion, but not in the case of Encinitas and KSL, where KSL is asking to convert the city's only bluff-top hotel to private, to what essentially to me, is private ownership. This will further reduce overnight accommodations for the public on land that is specifically designated as visitor-serving.

KSL may say that the 90-day restriction for owners to occupy their units protects public access, but in all likelihood the condotel owners will choose to visit this coastal location during the summer months, further restricting the general public's access as this peak travel time. Realistically, to me, there is no way to truly enforce this 90-day rule. As we know, people can always find ways to work around these kinds of restrictions. Will there be hotel code police knocking on doors and with no penalties? There can be no enforcement.

Please consider this cumulative effect of the increasingly popular condotel trend as it continues to inch its way along our already limited and precious coastline. I ask you to maintain the integrity of the Coastal Act by protecting the public access to our bluffs and beaches.

Thank you for your consideration.

Chairwoman:

Next.

Ms. Rattman:

I'm Jeri Rattman. I'm from Solana Beach as well. I just wanted you to know that I got up at 4 a.m. to come up here, and I would be here at midnight waiting to speak, so thank you for this opportunity.

I wanted to make a quick comment Mayor Garren mentioned that I am sure has confused and inferred that the Staff was telling them that they couldn't build a hotel; but I believe the hotel is already approved, it's the financing mechanism that we're questioning today.

I know that there are lots of attorneys and lobbyists using eloquent arguments to promote their client's agendas, but I'm here just as a private citizen to support Staff's recommendation; because I think they got it right. We had an attorney actually look at the Staff Report and they were quite impressed with the detail involved in it.

Nobody is opposing a hotel on the bluff. The concern, like I said, is the ownership structure. No matter how you look at this, converting visitor-serving commercial property to any form residential will limit the number of overnight accommodations to the general public, and as Staff has clearly detail, this is inconsistent with the Coastal Act. Owners will clearing want to use their condos during the summer and, in general, that's when the public is most likely to want to use the same services. There's no real way, as Vicki said, to enforce or police any mandates, so we're kind of setting up a fox guarding the hen house situation.

I am also very concerned about the cumulative effect that the condo-hotels will have on the availability of accommodations along the coast and I predict that within one year, Lynne Heidel will be standing this same Commission asking to approve another condotel, this time in Solana Beach. I haven't had the plan and some copies of the website of a proposal—and they already are suggesting on their website—they are going to be selling these. So clearly, the decision you make today could set some form of a precedent. I also ask that you accept Staff's recommendation to deny the change in ownership of this 130 unit hotel to a limited-term occupancy hotel condominium form of ownership. Thank you

Chairwoman:

Thank you. Next.

Mr. Forrester:

I'm Gilbert Forrester, P.O. Box 333, Cardiff-by-the-Sea, California. Madame Chair, Commissioners and Staff. The Staff Report on this request to amend is thorough and it addresses the majority of the concerns on the conversion to hotel condominium type of ownership in a limited VSC Zone. Although the Commission has on occasion approved conversion to hotel condominium form of hotel ownership, for the most part these conversions were limited to locations on general commercial or visitor-serving commercial zones. The conversion is proposed for a limited visitor-serving commercial parcel where hotel/motel use is the primary use. The SEC regulations that require these hotel condominium units to be marketed for sale as luxury condominium vacation units and will therefore cause these units being purchased to be used for both vacations, probably for the full 90-day period by the buyers. As proposed by the applicant, the perspective owners could use those units for 90 days a year, and then possibly write off mortgage interest and other expenses; and 90 days isn't a point but it's a point where the IRS might very well allow it. This would seem to infer that hotel condominium form of ownership IS quasi-residential use, and as such would not be consistent with the primary hotel use required in this limited use zone. When the Commission approved this hotel in 1992,

numerous conditions were included to permit and encourage visitor-serving use, public access and recreational opportunities. They included public access, pass stairways and public parking to name a few. As part of that 1992 approval, the Commission specifically prohibited the conversion of the hotel or its facilities to exclusive use, indicating the importance of preserving this hotel location for a conventional hotel facility. If the Commission authorizes this conversion to condominium form of ownership and 130 units are sold, it would impossible for the Commission to require the hotel to convert back to conventional form of ownership if the special conditions prove to be ineffective, or too difficult to enforce.

As the Commission is well aware of, enforcing violations of permit condition are and can be difficult when a single applicant is involved. This amendment would have the Commission eventually dealing with 130 owners plus the hotel condominium operator. Enforcement could prove to be so difficult that ultimately the primary provision of the limited visitor-serving zone would be compromised.

Our city, the City of Encinitas, of which Cardiff is part, has minimal areas devoted to providing high priority limited visitor-serving uses. One of the remaining visitor-serving parcels—not this one but one of the other ones—is currently being considered for a new fire station. So, we're going to down to where we have even less. This zone is the only property zoned limited visitor-serving commercial along the entire Encinitas, Highway 101 corridor, and the only parcel adjacent to the beach. Because our city has minimal areas devoted to high priority LVC uses and coupled with the City's continuing attempts to prohibit all vacation rental city-wide, this would further restrict the number of available units for public overnight accommodations and access to the coastal zone in the City of Encinitas.

The site plan is very nice. The parking spaces that they are referring to, if we sell 130 units and use 130 of those parking space for the people who have bought the units, and if you stay for 25 days, you're much more likely to have friends come visit you because you're staying for 25 days and you're essentially a resident. Whereas, if you're really a transient and passing through, you're not going to have people come and visit you while you're staying there. You're passing through, so those 100 parking spaces will be made available to the public. I'm afraid with condominium type of ownership those spaces may not be available. So, it's not like Hermosa Beach. It's not like the others. It's not apples to apples, as the attorney said, it's completely different.

I would respectfully request the Commission to support Staff's recommendations and deny Part 2 of the amendment request to convert to hotel condominium type ownership. Thank you.

Chairwoman:

Thank you sir. Next.

Mr. Messara:

Madame Chair, Commissioners. I'm Mark Messara. I represent Sierra Club's coastal programs. At the outset and in order to clarify the confusion of local government and behalf of Sierra Club, I want to say that we support a hotel at this site, and in fact, YOU support a hotel at this site. You approved a hotel at this site over ten years ago, and now we're just waiting for this to be built. There's virtually nothing else you can do in your capacity to make this happen. But that

said and looking at these plans and reviewing what happened in 1993, it's absolutely imperative that no matter what you do today, you get a prohibition on future seawalls related to this site.

From what I heard, the plan is to hollow out this bluff and dump the sand on the beach and parking underneath these structures in an area that is notoriously unstable. You need to assure yourselves that there's not going to be a seawall at this site come a decade or even less.

With that and with respect to the proposal to subdivide the hotel site, we support your Staff and ask that you deny the proposal. In our minds, no good can possibly come to the Coastal Act, coastal resources or the public from this amendment. In essence, it seeks to gut the visitor-serving land use category in all but name only, and would send this Commission and the public down a very slippery slope in which visitor-serving zoned districts could be used to subdivide hotels; not just in Encinitas but throughout the California coastal zone. The question is not whether you can sit here and design conditions to protect this one project from becoming increasingly residential, but whether you allow financing and banking consideration to wag the Coastal Act. If you open that door, you can be assured that soon all hotel projects will be required to finance in this same way, or whatever way is most convenient for the financial markets and banking. This does not protect the public. It incrementally increases residential encroachment into visitor-serving zone districts, and assures you that you'll see more of the same in the future. Once subdivided, you can never go back on this property. Encinitas and other communities throughout the Coastal Zone will lose even the promise of these visitor-serving designations. As to the question of precedent involving these other instances in which this Commission has approved time shares, I just want to say on the record that Sierra Club is opposed to every single one of these, even the ones where we had enormous mitigation imposed; because what we learned is that that mitigation never suffices to replace the visitor-serving accommodations that are lost as a result of this process.

So with that, we urge you to deny the amendment. Thank you.

Chairwoman:

Thank you. I have another speaker slip from a Mr. Sims.

Mr. Sims:

Madame Chairman and Commissioners. My name is Bill Sims and I'm at 1876 Haymarket in Encinitas. I live very close to the property.

I'm not a lawyer or a zoner or an expert. I'm just an old guy who likes to walk on the beach, and I'm concerned about the proposed ownership change here. I think we are replacing a strong management ownership structure with a weak one. I think that is diametrically opposite of what we should do. The site is a beautiful site. It has special problems. I walk the beach almost every day. Bluff over the last 15 years, the coastal bluff, is eroded. It's going to need constant care and attention, not just occasionally, but constant. The beach is even a bigger issues. Ten years, that was a cobblestone beach—these guys right here, wall to wall as far as you could see, cobblestones. In the late 1990's they put a lot of sand on the beach and then again in 2001 more sand. In both instances, when that sand was put on there, that helped a lot, and made a very nice beach summer and winter. Then, you know, the ocean rearranges things and puts it back where

it wants it to be. Right now, December, two months ago, the beach looked very lousy. A lot of these little dudes were showing up again. I find it hard to believe that there'll be a lot of people paying big bucks to stay on a cobblestone beach; so I think it is very important to have a strong ownership structure and management because they are going to need to interact constantly with local and state governments; and if all else fails, they'll have to have deep pockets.

The beach's survival, I think, is essential for this project, this visitor-serving commercial to work. Otherwise, I think it will not work. Now, I'm sure Mr. Dodds is a good guy and he can build a good hotel and the sand that he takes out of that hotel site and dumps it on the beach will make the beach look great long enough for him to sell the hotel rooms to individual investors. I'm worried about the long-term. The long-term we need strong people, not fractionated ownership. We all know that if you want a good manager, you want a manager with skin in the game, you want somebody with ownership interest, a lot of ownership interest.

With regard to the owners, we know how hard it is to get a homeowner's association to get 65 or 100 people lined up marching in one direction to achieve a goal, particularly if it involves work or money. So, in conclusion, I think the proposal replaces a strong management leadership team like Mr. Dodds has, with a weak one. I think that's the wrong way to go. I think your Staff has done a great job with their report. I read it. I liked it. I urge you strongly to support your Staff and vote up on the sand—hey, we need all the grains of sand we can get—and down on the hotel condo concept. Thank you.

Chairwoman:

Thank you sir. Now the applicant has a minute and a half.

Mr. Dodds:

We do have skin in the game. I think that's very important to understand. A hotel operator will control still the majority of this property and has an economic interest in making sure that thing functions and operates just like a hotel. That's the economic incentive for the hotel operator, to keep this as a hotel.

Financing is available. For an economy or a limited service or budget type hotels, there is more financing out there, and that certainly came back after the 9/11. The issue has been this specific site that a small, new-built, full-service hotel that has been conditioned with all the conditions, the conditions from the previous permits back in 1992, it is extremely difficult to finance. The prior owner spent over eight years trying to finance this development. KSL since acquisition 4½ years ago has also been unsuccessful in doing that. The underriding issues includes those overall costs to the project. What was conditioned on the project originally and the amount of services that are provided—Encinitas is looking for a full-service hotel—there's a niche in the market in Encinitas for this type of product, it would be the only full-service hotel in Encinitas, and we look forward to building it. Thank you.

Chairwoman:

Thank you. Staff?

Mr. Faust:

Yes, Madam Chair I wanted to make a few preliminary Staff responded to the testimony that you've received. Commissioners may have particular questions and I'm not going to try too much to anticipate them, but I wanted to make a few comments.

I think it's fair to say first that the legislature when they adopted the Coastal Act and created a preference for visitor-serving use in the Coastal Zone did not specifically anticipate condotels. I think it was probably a simpler time then when people either owned property or owned a condominium or they drove up in the station wagon with kids in the back and luggage in the back and looked for a room somewhere. Those were probably the concepts at that time. You're presented with a more difficult choice and in the end I think it's a policy choice for this commission. You have to interpret what the Coastal Act means. What the visitor-serving use means when you make a decision such as this. There was testimony about this process that it's not really a change in use; it's just an investment tool. I think it's really fair to say that this is not just an investment tool. It's not just an investment; it's not just something that provide financing. The reason being that if it was, then they could sell these interest, whatever the interests might be, and expect the people who purchase the interest, as people who purchase other economic interests, to sit back and await their economic return. But that's not the way they are marketed and I assume that's true, because the ultimately decided they couldn't market them that way. They material does in fact giving something in order to make these investments more attractive, and the thing they give is precisely what creates the decision point for your, because the thing they give is a right to 90 days of occupancy in the course of any given year. It's that 90 days of occupancy that creates a friction with what traditionally was thought to be the visitor-serving use; and that's what creates the tension for you. Is this 90 days of occupancy, this control and exclusive use for that period of time, something that changes the visitor-serving use or is it really a fulfillment of the visitor-serving use. Ultimately, you're deciding, I think, who is visitor, and Ms. Heidel raised that on behalf of the applicant. Who is a visitor? Who as not a permanent resident of any place isn't a visitor. It's an interesting question. Is somebody who is the owner of a second unit, who spends 90 days a year at that second unit, are they a visitor at that place? Are they something more than a visitor? These are the kinds of issues that you are going to have to decide upon when you make this decision, because you're giving meaning to what visitor-serving use is. This hotel was approved as a visitor-serving hotel This hotel would not have been approved in this place, this scale of development, except for the fact that it was a visitor serving use. So, in order to honor that decision, you need to make this difficult policy decision, and it IS a difficult policy decisions.

I to want to say two specific things that relate to legal concerns about this as you consider this One is that I think the enforcement issue is a genuine issue. It is a serious issue. If something goes awry here. Whatever that may be. If there are changed circumstances, if the economy—God forbid-has a serious collapse, if anything happens to change the situation enforcement against this kind of multiple ownership is going to be very difficult. If enforcement can somehow be obtained against the owner-operator, period, so that call the Commission's concerns can be secured, that is a better outcome; but whether that can, in fact, happen that leads to the second question: If the Commission is inclined as a matter of policy to approve this Amendment to allow this Plan to go forward, then I can't emphasize enough that the devil is in the details, and the details are the Conditions. I do not think—my respect to Staff but I need to say this—I do

not think that Staff in January when they wrote their initial report gave sufficient consideration to the language of the Conditions and to the specific situations that needs to be anticipate when those Conditions were written. So I think that this Commission should decide, the applicants asking to approve it using the Conditions that Staff recommended in January. This commission should look at that pretty carefully and decide to make sure that the issue that it once dealt with are adequately dealt with in the Conditions, if it is going to approve it; because without those Conditions, your enforcement is just impossible. You won't have anything to show for this new form of visitor-serving use that you're being asked to allow.

Madame Chair, that concludes my remarks at this time.

Chairwoman:

Thank you. Just a couple of other points. When the City indicate that this would be first full-service hotel in the city, we agreed. But we think that that underscores the importance of ensuring that it will be a bona fide hotel for the long term. Because even taking the argument that the operation will appear and be a conventional hotel in most respects, the bottom line and the net result is that still there will be fewer rooms available to the general public at the time when the owners receive or exercise their right to use. There is an exclusivity of use that is incompatible with the primary directive of the Coastal Act, to encourage public access and support coastal visitors and recreation. We have identified the vagaries that we think are related to the enforcement, given the multiple owners, the lack of transparency that would be difficult for Staff or even the City to assure that the visitor amenities are maintained, and just for lack of track record and experience that we have with these operations. So again, we think these entities may be fine in other settings but we believe that there is a substantial riff and an unknown for the Coastal Zone, given the number of projects that we're seeing and their evolving nature for the State.

I also was negligent in clarifying for the Commission that the Staff recommendation before you is a two-part recommendation: one being to deny the proposed conversion to the Limited Term Occupancy, but approve the Sand Replenishment. Those Conditions were recommended and believe they were in agreement, but I just wanted to clarify that point.

And again, in closing, though I see Peter reaching for the microphone, I think it is important also to recognize that given the precedence and the concern we see with these proposals, as Ralph alluded to, if you make this change, there's no turning back. If problems develop, if concerns arise, the conversion has occurred.

Peter Douglas:

I think the final point I would make is to underscore what Debra said and what Ralph pointed out a member of the public who testified, that in terms of management, we have lots of experience with owners of property that are not in compliance with the law, and where we have an enforcement issue, we have issues relative to how we deal with a particular project. When you have multiple ownership, it makes it extremely difficult, if not impossible, to correct those situations. Single ownership makes a very significant difference, as we've noticed with a number of hotels and larger projects that have multiple ownership versus single ownership. And then to

underscore the precedent and the exclusivity here, we strongly recommend that you adopt the Staff recommendation and are prepared to answer any questions you may have.

Chairwoman:

Commissioner Kruer?

Mr. Kruer:

Thank you, Madame Chair, I would like to start and say that I think this particular site—and I've followed it for a long time, it's certainly a good hotel site and I would like to say KSL is a very well-known developer and they're very good at what they do, whether it's management or ownership—my concern on this Part 2 is that when we talked about doing this before, to me I could never agree to do a 100% transfer and go from hotel, under this designation the way it is now; because, first, unless keys[?], like we did in Long Beach or something else, even on general, makes a lot more sense to me, and the reason is that, yes it does help on financing, but I do believe the marketplace has changed dramatically in the last four or five years in regard to conventional hotel finance, especially in a location like this. San Diego County is number one in the country, right now, and the hotel owners I've talked to tell me that they've never seen rates move so much; they've never seen hotel occupancy greater. It's has just shocked everybody. It has really changed and turned around and is a really good market. Again, the concerns I asked myself are: would this proposal as a condominium ownership result in the same amount of hotel rooms if you it were available to the general public at all times. I think if you really look at that, that's really is the question under the cold slack[?] for me and I don't know you could ever say that that would be the same amount of hotel rooms. Because if you have 90 days and you have 25% of your project during the year whereas a homeowner will basically look at it as a secondary house. You get 130 tax bills and the assessor sends it to them, whatever, you are not going to have the same turnover you would be have in a hotel even if you occupancy is 80% or whatever. You're going to have a lot more people on the average stay, a lot more visitors serving that and I don't care where they're from, Arizona, Minnesota, whatever, you just can't get around that fact. You're going to have less visitors, in this visitor-serving area, and I could see this being used as a finance mechanism and a project that isn't on the coast, where this is by Ponto Beach, this is an incredible site. It 's one of the only sites or the only site adjacent to the water in the City of Encinitas. I'd like to see Encinitas get their hotel. I believe they're going to get it either way.

The problem is when you start and then change the direction and you says it's okay, this will create a terrible preference. Because, as a developer, I'll tell you something: this is a bonanza to get 100% of the units. You sell those units off and if I'm the developer I have a lot less incentive to manage that project than anybody else because I gotten back all my equity. I've gotten back all my money. What happens is--there's another effect--and it happened to us in condos and condo conversions, once you go down that road you can't build apartments any more because the residual land value becomes so valuable, these things become a financing mechanisms and they become a profit making thing. What happens is that you can only have your equity in there for three or four years and your return on investment changes drastically. because if you're selling units to pay off your construction loan, that a little bit different, and you have a little bit different commitment, that you would have. KSL I think is excellent and they certainly have some nice

hotels and do a good job. But I will tell you that you will have an avalanche—speaking as a developer—if you approve this type of thing under the Coastal Act and you have 100% amount to turn these particulars into keys and let them sell that. That is something I tell you is going to come back and bite us. It is not a very good idea at all. I don't know what that percentage is, again I haven't seen all their economic numbers, but I can tell you this, if we approve this here today, we double the value of that property, etc., and what we get out of it. What I'm saying is you just got to be careful here, because it changes the whole way people do business. If we need to provide financing, I'm having a terrible time looking at it and thinking why on this site you could have people lined up now where hotels are going, and even if they used a limited amount of keys or went conventional financing. There's no way that I can say to myself that this would create the same amount of business serving as you would have if it was all a hotel. I don't think anybody can make that finding. It just isn't going to happen. If you've got 25% of the time where owners are have a chance to use their units, there's no way anyone's going to ever convince me that you're going to have the same amount of people.

I think what we should do and I'd like to hear from the other commissioners, I think the enforcement issues are really big issue also. I don't think the Conditions that they talked about previously would totally protect us the way they're drafted right now, and I think Mr. Faust is right. If we're going to approve this today, whatever the percentage is, then we should make sure that those Conditions, etc.—and I'll leave time for those Commissioners—it's a terrible precedent and I'm not going to vote **ever** for a 100% of any hotel being converted under this thing and still calling it a hotel.

Chairwoman:

Commissioner Secord?

Mr. Secord:

Thank you, Madame Chair. I don't think there's anybody here who wants to see this turn into residential. I don't think KSL wants and I don't think this Commission wants to. I think that there's a lack of visitor-serving uses in this particular area and we had a glimpse of that last month, I believe, there was this business about the vacation rentals. So, this area, as the Mayor tells us, needs a hotel. If this hotel gets built, and it hasn't been built since 1992, and they tell us that's because of financial issues; so if that so and the hotel gets built and there will be 130 more visitor-serving units than there are today. It strikes me that the hotel is a good thing for the City and is a good thing for visitor-serving and the question is to dance between the rain drops here and try to figure out a way to finance the thing. The conventional financing that they have sought has been problematic, according to them. I don't know if that condition is going to continue, and I don't think they do either. The project has languished since 1992 and would provide more visitor-serving than there is today. I share the concerns about residential conversion. I would wonder if we could condition the project so as to strike some sort of a balance where you sell, say 100 of the units to condominium use, and retain 30 so as to keep the hotel as more of an incentive. I think the hotel would own the space in between all the units but if they were restricted to sell fewer units then possibly we could have it both ways. I think the area needs the hotel rooms and I think there is adequate measures in the project to prevent abuse of that but I would agree that a single owner could tie the project up for 90 days per year with

diminution in visitor-serving; but this is not low-cost visitor-serving. This is high-cost visitor serving; so if a person is paying $500 a day for a hotel room, and they don't find a vacancy, they'll simply go to some other place where it exists. We were talking today at lunch today about hotel rooms in Cabo San Lucas that were a $1,000 per day. So, it's amazing what's happening. I think there is a compromise in here that can be approved that can get this project off the ground which is where the City wants to be and reduce the anxiety of the Staff with respect to residential conversion.

Thank of for your time.

Chairwoman:

Commissioner Reilly?

Mr. Reilly:

Thank you, Madame Chair. I just want start by saying that whenever it comes to matters of development and financing, I almost always differ to Commissioner Kruer on those issues. I have great respect for his opinions on this.

I'm always concerned when we get 180° different Staff recommendation under the same Coastal Act in a two-month period without any information. That is something that does cause me some concern. I understand what Peter is saying and what his concerns are, but it doesn't seem to me that Staff has done research that would provide us hard data to suggest some of the concerns that have been expressed have been realized anywhere in reality. We have got almost 10 years of experience with some of the hotels or condo/hotels that we have permitted, and we haven't seen the kinds of problems that people are expressing concern about under the Coastal Act. The only research that we really have has come from the applicant where they indicate that they have come kind of 6% usage of owners on these kinds of properties down there. Commissioner Kruer talks about some percentage and I would tend to agree with him. I don't think 100% is a good idea for us to be doing this. If some lesser percentage provides the financing to provide a hotel at this site, but if you look at 14 years where a permit has been in place and there's no hotel, it doesn't make sense that if there was financing and it was profitable and it pencils, why someone wouldn't have moved forward with that on a conventional basis before now. So if there's some percentage, if there's a hybrid, I'm certainly willing to take a look at that. I am concerned, and I go to page 23 in the Staff Report at the beginning of the page where it says, "The change in ownership to condominium form of ownership will have the effect of reducing the number of hotel rooms available to the public. The extent of the reduction cannot be determined, but any reduction would be inconsistent with the LCP and the Public Access and Recreation Policies in Chapter 3."

Now, that's the kind of finding the doesn't just relate to this project. That's a finding that relates to any other project that comes before the Commission at any time in the future, and I've got some real difficulty with that particular language, that this is a violation of Chapter 3. I don't think it is, nor is in long point which we just approved, and I don't think it is in the Hermosa Beach and Half Moon Bay situations. I think there is a balance point here but it just seems to me

that we have to recognize somehow that having rooms is better than not having rooms, and we haven't had rooms out there 14 years. But they've had a permit to go ahead to build a hotel.

Under the current proposal, 75% of the rooms would be controlled by the hotel operator annually. If only half of those rooms were allowed for condo/hotel, then you're talking about 87.5% being available for visitor-serving annually. I don't know too many hotels in California that have higher occupancy rates. I don't if you can really say that it necessarily is going to keep people out, when occupancy is running somewhere around 60%-70% for most of the hotels that I'm aware of. It seems that would be well within the parameters of this particular formula. As Commissioner Kruer said, I'll be glad to hear what the other Commissioners think about this, but I think there is a project here and frankly I'd like to see us walk out of here today with a project that can actually get built and serve people on the coast in Encinitas.

Chairwoman:

Commissioner Padilla?

Mr. Padilla:

Madame Chair, I don't think that standard here is necessarily, and has we have probably gathered here, not simple. I don't think that it necessarily is one where you can say that one particular private ownership structure vis-à-vis another necessarily at all times or in call cases is going to result in one higher net level of average room availability to the public than another. I think there's some good testimony in evidence in the record that individual owners can be visitors as well. I don't think there is evidence in the record to say that an individual versus a blanket corporate or a single individual ownership of a private property that is rented is going to promote any greater degree of exclusivity all the time to the degree that it undermines the intend of the visitor-serving provisions in the Coastal Act. In other words, the question here isn't, or the standard isn't, even if you have the same exact number of available units for the public that you otherwise would have under a different traditional corporate structure. The question is whether or not you are achieving and allowing to achieve the intent of providing visitor-serving commercial; or put another way, whether or not what is suggested adversely impacts the ability to provide that availability to the public in any material or significant way.

In order to make that determination you have to look to the facts in the record. You have to say what is different that shows as a matter of fact that we're going to lose that capacity to any specific measurable amount. Where or not you can say that here's the formula how you determine it and here's how many you going to lose. And to tack on to what Mr. Reilly said, and understand exactly where Staff is going and why, and I respect them greatly, I am greatly disturbed by referring to the Staff Report that was on the docket in January—one that cites a number of similarly situated applications and do appreciate the argument about precedent and new information—but our decision making, as long as it's consistent with LCP and the Coastal Act as we apply those facts decision by decision. Our precedence are important, they are relevant, and if you're going to change a decision or recommendation within just a few weeks of one another I need to see some facts in the record that are significant, that are different, that would support a change.

It was clear just a few weeks ago that Staff had concluded that with regard to the initial approval, we have acquired specific conditions, and while there were concerns about the ability to function as a conventional hotel based on information supplied by the applicant. They're operating as a conventional hotels with no more than 6% of the units in the month being occupied by the owners. The applicant has demonstrated that the effect to the general public may be negligible based on how the units have historically been used. What I'm looking for is something in the record that says that there's new significant piece of information that turns that 180° on its head. My evaluation of the Report in the record indicates that I haven't heard it yet.

The best evidence that the argument by the applicant that there's been difficulties with convention financing is a fact that you have a permit and nobody doing a development in that location in San Diego County right on the coast. That's the best evidence that there should be some weight given to the assertion by the applicant. There is no currently no visitor-serving commercial on that site. The inventory is zero. It's not that we have 130 units that are available to the public now and somehow we're negatively impacting them. It's zero.

The facts don't demonstrate to me that there's anything significant that would show that this undermines the intent of that component of the Act. It's consistent with adopted LCP language that talks about the definition of what is vis-à-vis residential. It's bringing as incidental benefit mitigation against erosion and sand replenishment. It's bring additional public access and additional visitor-serving commercial opportunities that are not in the inventory right now. All of those have to be weighed. In terms of precedence setting, I believe we set precedent potentially with every decision we make. We condition and structure those decisions all the time. The CC&Rs that have been proposed by the applicant clear indicate when the owner/investor is not in occupancy the management and the decision making as to who, what and when can occupy that unit outside the timeframe is left to the management and not to the individual owner. I don't see any reason why there can't be additional conditions that deal with the enforcement issue as well. So for me, Madame Chair, the issue is not the structure of the private ownership, but whether or not in fact that structure has a demonstrable negative impact on the ability to provide visitor-serving commercial in this location in the way that material or negative, and if there were evidence in the record that said absolutely you're undermining that provision, I would not be willing to support this. But it is clear to me that the evidence is devoid of that. In fact, the record, in my opinion is quite strongly in the opposite direction, and I believe the applicant is deserving of our support.

Chairwoman:

Commissioner Potter?

Mr. Potter:

I tend to concur with Commissioners Reilly and Padilla. Having the same concerns about the lack of hard data supporting the Staff's position. The Staff Report is rife with "possibles, mights, could become, impact unknown." I think that we all would like to see a project here. I spend an immense amount time in hotels—this hotel is my club house—and Commissioner Reilly brings up occupancy factors as an important fact in the hotel world; and I can tell that the last week in this hotel the occupancy factor was about 10%. It was ghost town; there was nobody in the

lobby, there was nobody in the gym, the bar was very lonely. And I'm also the County's rep to the Monterey County Convention and Visitor's Bureau, so I'm pretty familiar with the state-wide data on tourism in California. Sixty percent is a great occupancy number. It's only Pebble Beach that manages to maintain anything close to 100% in this entire peninsula and that's a world-class destination which is very unique product on this market.

One of the things that was brought up was the possibilities that people might be having guests come and stay them in their hotel. I don't go to high-end resorts to have my friends come and sleep over. I prefer to recreate alone or with my family, but I'm not going to have my friends come and pull out a hide-away couch and spend a period of time. These owners are, frankly, visitors. They're just staying for an extended period of time. It seems to me that there's two things that we want to get out of here tonight that we can do, and one is either we can tweak the number of days or the length of time that you get to stay. The proposal right now is 90 days per year and for no more than 25 days within any preceding 60-day period. You could downsize the length of that stay from 25 to 15 days and stay within the conversion at the same 100%; or you could change the conversion percentage to something else, somewhere between 50% and 100%; or you could mix the two of them. I stayed a total of 12 times in San Francisco last year and it's usually two or three days at a time, so I'm getting well up into double-digit stays, but I don't come near to considering myself as a resident of San Francisco. If you mix in a high vacancy factor which is common feature in the hotel industry, you recognize that these people are making an investment for which they're going to get a return, but I don't think they are going to want to stay for 90 days in one location; and I don't think that even if you did it doesn't constitute a residency. So, I think we ought to pick a halfway point or decide what we want to do with the numbers; but I think there's merit in the project. I think Commissioner Reilly makes a very good point about right now there's 100% of nothing. There's nothing going on there visitor-wise.

Chairwoman:

Commissioner Clark?

Mr. Clark:

Thank you, Madame Chair. First of all, I'm going to be redundant to a number of comments made by my colleagues, particularly my loquacious Commissioner local elected official on my right who happens to also be left handed. But I will say, and he stole my thunder earlier from the Staff perspective because I wrote it in my notes and I've got four pages of notes from today's hearing on this matter, the devil is in the details. Our retiring chief counsel said that. I think that it's fundamentally the crux of where we are. Clearly we have a Staff who is passion in their point of view of perspective this. They see it linked to well beyond this particular matter before us today. And to that end, let me say in sidebar, I would recommend that the Commission as a matter of course support a motion for a workshop in the future on these matters of limited term occupancy fractional ownership hotel projects and entities. I think it is well deserved. I think the case has been strongly made by Staff and we think we need to do that.

Putting that aside, it seems to me that, and it has been signaled by several Commission members already, that with the right conditions, there is project here. I would agree with that. The question is: do we craft those conditions tonight. I think part of it obviously centers around the

number of hotel rooms that are converted to ownership, and as Commissioner Potter said, the number of days of occupancy. Do we craft in work conditions tonight at this hour, or I would propose that we trail this item so that we give some direction to Staff and the developer and trail this item, or continue this items until later in our Commission meeting this week to work through the areas that we see, with input from us, and see if we can approve this project with a conversion. I think that's the rational to head. I support that there is a project here. I appreciate the Mayor of Encinitas coming out and speaking passionately and appropriately in conveying the importance. I also respect the point of view of those who have spoken from neighboring cities and from the Sierra Club in current opposition. I believe that we can have a win, win here, with a refinement of the Conditions of the project.

Chairwoman:

Commissioner Shallenberger?

Ms. Shallenberger:

I have a couple of things and I would like to end with a question to the Staff. It has been said that there is nothing on the record that indicates why this would reduce the visitor-serving as it is currently proposed. Our legal counsel said that there's a policy decision before us about what is visitor-serving and I just have to say for me: by definition—and this is just for me—if somebody owns something, that they own property, they are not visitors. There's a difference. I understand that you could argue that they are, but I would assert that, for me, if Commissioner Potter actually owned property in San Francisco, and spent 25 days there, I don't think he is just a visitor. It's a different status. I do think by changing the financing structure to individual ownership, it's not the same. They're not all visitors to me. Having said that, 25% of the time owners could be in this facility. In a worse case scenario, half of them could decide to take 25 days in July and the half could decide to take 25 in August and then first half decided to come for 25 days in September (and I am painting a worse case picture, I absolutely understand that) but we need to think about the worse case situation what could be. In that situation, you would have only half the rooms available for non-ownership visitors. That may have not been said so clearly, but to me, I guess I needed to put the math on the record, because that, for me, is the record of why—I agree I would like to walk out of here with a project; I think there is a project here, I also agree with what a number of Commissioners have said is that for me in order to support a project—it will have to significantly reduce both the days that an owner can be there and the number of rooms that are being financed this way. That's where I am on the ownership question and the financing.

I would like to ask Staff about the fact that there hasn't been much talk about what was raises during the public testimony about the eroding bluff and the need for a sea wall in the future. Is this something that we need to be paying a little more attention to. I absolutely do not want to approving a project which is going to have us in a position a few years down the road where we end up with a request for a sea wall it is needed in order to protect the structure; that is the structure which is not there today. So today is the time to think about that.

Chairwoman:

Commissioner Shallenberger, it would be our recommendation if you were going to approve that it would include a shoreline protection waiver for a bluff and shoreline improvements in the future that those would not be authorized.

Ms. Shallenberger:

And just to be sure I understand what that means: that means that we would put a special condition in here saying that they were agreeing that they would never come back for a shoreline protection device.

Chairwoman:

That's correct.

If there's no other Commissioner who wants to speak at this time, I wanted to follow up on comments that our legal counsel made and that have been referenced by other Commissioners that somewhat obliquely, in addition to the sea wall issue, we have talked about the problem of enforceability and how we really can ensure that whatever conditions may be imposed on this applicant, if the project moves forward, that they are complied with so this project actually meets the findings that would be made by the Commission. So, how do you enforce whatever condition you impose on length of stay and how do you enforce whatever condition you impose percentage of conversion to a fractional ownership. Then looking at the conditions of approval that were drafted in January, which of those condition, Mr. Faust, do you believe require additional attention?

Mr. Faust:

I think that the conditions need to be re-thought in terms of whatever this Commission decides that it wants to do with respect to the various issues that it has identified and that it is still moving toward some consensus on in terms of the amount of condominium type ownership that it intends allow and the amount of use it intends to allow. So I think the Conditions need to be rewritten to do that. I think that my principal concern, and the area that I would most urge the Commission and Staff to consider, is that at the end of the day, the Commission needs to be sure that the Conditions are adequate to ensure that there is one entity—and I'll assume for the sake of argument that it's going to be the owner/operator—that is completely responsible to this Commission for compliance with the project description and all of the terms and conditions of the permit. All of the legal documents that are created in any way with respect to the this financing maneuver, whether it's the offers for sale or deeds, whatever they are—and I quite frankly don't know enough about such financing matters to anticipate what all those documents are—but the Conditions should reflect that all those documents (and so all of the ownership rights of whoever these purchasers are) make clear that the owner/operator is responsible for compliance; and that any ownership rights that are obtained are subordinate to the duties of the owner/operator to comply with all of the terms and conditions of the permit so that there can't be an argument at some point in the future that any owner of a portion interest has any right to resist any of the terms or Conditions that this Commission chooses to impose. I cannot craft language to do that other than to tell you the concept right now that it can be done. Your legal staff can do it; probably your legal staff working with the attorneys for the applicant can do it. I don't have a

sense from prior conversations with the applicant's representatives that they have a problem with this. I think that this is something that needs to be affirmed, and more importantly it needs to be in all of the documents that create whatever ownership rights are created. So there can't be any doubt in the future how this going to play out with respect to enforcement.

Peter Douglas:

Madame Chair, if I may: Seeing and hearing the conversation and discussion, I think in terms of how we get through is tonight, let me try to clarify it for you or focus it.

You have been asked to approve this by the applicant with the Conditions that the Staff had recommended the last time. We know what those are; that's clear. If you are inclined to approve it, there are, I believe, five additional conditions that we would recommend that you consider—you'll have to have a motion, of course, but let me just suggest them at this point—they are—Deborah, why don't you read those just to mention them.

Deborah Lee:

It's actually only four: One would be the inclusion of a shoreline protection waiver; the second would be to modify the low-cost recreational facilities in lieu of fee to bring it up to at least current dollars (and that would be a mitigation fee of $220,490); the third new condition would be to have the public parking that is being proposed be free or at the same rate as the state parking facility on the adjoining property; and the fourth one would be to address Mr. Faust's concern about enforcement and expressing the hotel owner/operator as the key party responsible for all monitor and relation with the Coastal Commission.

Peter Douglas:

If the Commission is so inclined that at the appropriate point we would read that language and as Mr. Faust indicated that the Commission is going to approve this, that we could work out the fine points on that language working with the attorneys for the applicant and then bring that back as part your revised findings which you would obviously have to do. The fundamental question that remains is the percentage or division, and I don't think trailing this really helps us. I think that's a decision you have make, so really you need to give us your direction in terms of how you would like to handle that. If you can resolve that, then with these other conditions, you would have a package to vote on tonight.

Chairwoman:

Commissioner Secord?

Mr. Secord:

I would move that the Commission approve this project using a portion of the motion on page 3 and modifying it according to Staff with the five additional features of one being the determination that there would be no application ever for a future shoreline device, that the modification of the in-lieu fee with the respect to the low-cost visitor-serving be changed; that the public parking fee be the same as the State rate for parking, or free—I think they ought to be

the same, frankly—that the fourth one is enforcement against the hotel operator acting as the general partner for a series of other partners that—I'm not quite sure how to phrase that but I would assume that it can be crafted, and the fifth one—I'm going to try this one to see what happens—there's a 133 rooms in this hotel. I would like to restrict the sale to 100 of those rooms for the purpose of trying to mitigate the concern that the conversion would reduce the visitor-serving potential of this structure. That's my motion.

Chairwoman:

Okay. So that was a motion per Staff with an additional condition of a limit of 100 rooms available for conversion to ownership.

Mr. Secord:

And then maybe if you wanted we could look at it in a year or two and see how things were going; because there's other hotels that have done this. We don't know what the facts are with respect to these other spots but if the Commission wanted to look at it as to those other hotels and this one in a period of, say, two years, to see what was happening.

[Unidentified 1]:

I'll second, Madame Chair, and I have a clarification question: Are we also adopting, including then all of the Conditions that Staff suggested also in January?

Mr. Secord:

I believe the Conditions in January were satisfactory, to me.

Chairwoman:

They just weren't thorough enough.

[Unidentified 1]:

Well, I just wanted to be sure that's part of the motion.

Mr. Secord:

That's part of the motion.

Chairwoman:

Any discussion of the motion? Commissioner Shallenberger.

Ms. Shallenberger:

I have an amending motion: The amendment I would like is that only half of the rooms would be converted and that the maximum number of days in any one year that an owner could stay there would be 45 days.

[Unidentified 1]:

Can I ask the maker of the motion to separate those two questions? I think the votes may be different on them.

Ms. Shallenberger:

I move, as an amending motion, that only half the rooms would be converted to ownership.

[Unidentified 1]:

I'll second that.

[Unidentified 2]:

Question, Madame Chair.

Chairwoman:

Commissioner Shallenberger or Reilly do you want to speak to that motion?

Ms. Shallenberger:

I do only in the sense the we do—everybody seems to have acknowledged that we're moving into new ground here—I think we need to move into new ground cautiously and I think, from what I heard from Commissioner Kruer who I put great weight on his business understanding of development and of hotel building and things like that, that this is in fact a financially viable proposal and that's the reason for my amendment.

Chairwoman:

Commissioner Reilly, did you want to speak to that motion?

Mr. Reilly:

Just briefly, Madame Chair. I'm comfortable with that and I think it's going to get the project done on this. I'm more comfortable—I don't know how you get half of 133; you might want to discuss that one—I'm more comfortable with that restriction [sic—tape end]. It makes more sense to limit the number of condominiums that go out than to limit the number of days.

Chairwoman:

Commissioner Clark?

Mr. Clark:

Thank you, Madame Chair. I have a question for I guess for Commissioner Secord. In terms of your proposed number of rooms limited to conversion, was there any sort of basis to that, and

kind of calculation you did to kind of unpin it? Because it isn't clear, other than the fact that it's a number out of the air what its related to.

Mr. Secord:

It was arbitrary and capricious.

Mr. Clark:

It thought so. Now, if I can continue . . .

Chairwoman:

Oh that's terrific!

Mr. Clark:

The question . . . By the way, I thought . . .

Chairwoman:

Commissioner Secord would like to take a break now . . .?

Mr. Clark:

Yeah. I thought Commissioner Reilly underpinned during the Commission discussion a rationality for 50% tied to room availability and rental. The question really, though, is for the developer. At what point is this a viable project in terms of the equation of financing the mix between debt financing and capital financing on this.

Chairwoman:

Your name for the record, sir?

Mr. Dodds:

My name's Bill Dodds.

Chairwoman:

And just to that question.

Mr. Dodds:

In terms of feasibility for the split in our analysis of that is that we would need to sell all the guest rooms. There's a couple of reasons if I could go into those. No? Okay.

Chairwoman:

Thank you sir. Commissioner Padilla?

Mr. Padilla:

Thank you, Madame Chair. That was asked and answered. I just wanted to support the motion with a couple of exceptions. My concern is that before we get into apportioning a percentage of what can be converted to ownership, we don't have the data from the applicant and I wanted to hear from the applicant whether that was even feasible to finance the project. Again, I go back to the statement earlier that it isn't about the financing scheme or the ownership structure, it's about the operating impact on visitor-serving commercial. I agree with Dr. Secord's request that there be some formal mandatory review at some point because there are some broader policies to the questions here that are being implicated to. Obviously, based on the applicant's testimony, it may be problematic.

Chairwoman:

Commissioner Kruer?

Mr. Kruer:

I think on balance the amendment I would support the 50%. I think it does create what I call a true financing mechanism and it does keep the hotel owner and people in play more and there is a question that they will probably have more equity in it at that time. I certainly think, again because of the visitor serving and under the Coastal Act I think its very, very important that we be careful on this and that we – 100% in my opinion would be a very, very bad precedence to set here today. I would support the 50%.

Chairwoman:

Commissioner Kram?

Commissioner Kram:

I think I would support the 50% also provided there was not a restriction on the number – reduction on the number of nights.

Chairwoman:

Right, this is just on the 50%

Commissioner Kram:

Well, I'm just explaining my position, but I would like to here from the applicant about the feasibility of it because we maybe wasting our time if its unfinancable. Well, he was in the middle of explaining that he had to get 100% of the units sold in order to finance this. I think? But maybe he could finish that.

Chairwoman:

So, Commissioner Kram you would like to have the explanation that was about to be given. Alright, sir?

Mr. Dodds:

Thank you my name is Bill Dodds the applicant. In terms of the financing the entire property again is about 260,000 sq. ft. The guest room area is only 75,000-76,000 sq. ft. so the preponderance of the area is still owned and controlled by the hotel operator financial incentive for the operator to continue operating and to operate it profitably is a multiple that is earned on what the hotel operator earns by operating this hotel and so dissimilar to what a residential developer does which is build and then leave a community. A hotel operator in this sense, wants to stay and wants to operate and wants to be fully involved and committed to that property so it's a little bit different. In terms of splitting Long Point I think is a good example where certain areas were sold off. They were distinct and isolated more from the main hotel if you will. It's a lot more different or difficult in – and I'm afraid what we're doing and this is our internal discussion what we talked about is we create some serious conflicts between the hotel operator and the folks that are purchasing these guest rooms in the area of Long Point those units were significantly different than the balance of the hotel and so they had a different product type that they were selling. Here this is a monolith building effectively all one structure. The guest rooms are essentially all identical and therefore what we've done is we've split those units into two different ownership groups as you have a hotel operator who people may think or the appearance would be that they would be biased in who they're renting to instead of an even playing field so if all of the guest rooms were sold to third parties the hotel operator has no incentive to rent his units first. He goes through and there's computer programs that handle this in terms of reservations whose room comes up next so you go basically through the line of the 130 guest rooms as to who operates those. Again, the skin in the game is still the majority of this property is still owned by the hotel developer operator in splitting that we would be, Commissioner Potter indicating some split in reduction potentially, in a number of these days that would be more agreeable and workable for the applicant vs. splitting the units themselves. I hope I answered your question.

Chairwoman:

Alright. Commissioner Clark?

Commissioner Clark:

Thank You, Madame Chair. In some respects I find the applicant's answer a little disappointing. I think I understand where he's coming from, from a financial standpoint, but you know if it looks like a duck, walks like a duck, it's a duck. And it's hard to sell, I think not only to this commission but to the California public in general a hotel in which every room is being sold off at least for partial use by private owners. That has the smell, look and feel of a residential component. Now, I don't believe this is a residential component. I think we've had strong testimony today to suggest it, but to suggest to this Commission that a 100% of the rooms have to remain as sellable. I don't think is an equation that works.

Chairwoman:

Alright, any other discussion on the amending motion.

Commissioner Potter:

Well, I'm prepared to offer a substitute motion. We can vote this up and down, but I'll offer a substitute motion that we keep it at 90 days per year. No more than 15 days at a time with a 50 day separation between rentals as proposed originally.

Chairwoman:

Well, no. We need to go with the motion …

Commissioner ?:

That's not a substitution. If I might, with great respect to a veteran such as Commissioner Potter. The subject of that motion is different than the subject of the motion that is presently pending so I would recommend that you deal with the one that's pending and then move on to the other concept.

Commissioner Potter:

Thank you , Commissioner _____. I was cleverly trying to get out the concept of the pending motion.

Chairwoman:

I see that. You did an effective job. So if there are no further comments on the amended motion which is would condition the approval on version of more than ½ of the rooms in this project to fractional ownership. The mover and the seconder is seeking a yes vote. Can we have roll call please Commissioner Padilla?

Commissioner Padilla:

Thanks a lot, no.

Chairwoman:

Commissioner Potter?

Commissioner Potter:

No.

Chairwoman:

Commissioner Reilly?

Commissioner Reilly:

Yes.

Chairwoman:

Commissioner Secord?

Commissioner Secord:

No.

Ms. Gayla:

Commissioner Shallenberger? Commissioner Burke? Commissioner Clark? Commissioner Kram? Commissioner Kruer? Commissioner Wright? Chairman Caldwell?

Chairman Caldwell:

Yes.

Ms. Gayla:

aye 5.

Chairwoman:

So the motion fails. Okay, we're back. We have a main motion which is for approval in no more than 100 rooms available for conversion to fractional ownership.

Commissioner ?:

And the other four conditions.

Chairwoman:

Yes, the other staff recommendation. Any comments on that. Should we have a roll call vote on that? The mover and the seconder—

Commissioner ?:

Recommend a yes vote.

Commissioner ?:

Is it possible that the applicant even understands what's going on?

Commissioner ?:

Madame Chair, I'd like clarification _____.

Chairwoman:

Commissioner Potter?

Commissioner Potter:

I'd like a clarification and then I'd like to see if the applicant understands the clarification.

Mr. Dodds:

If you could, I would appreciate it.

Chairwoman:

Okay, so as I understand it the main motion for staff recommendation which includes a waiver against any future shoreline protection for the project. That there be modified low cost in lieu fee of $220,490 that the public parking be at the same rate as the state rate as the parking lot next door and that the enforcement protections which are staff has referred to that would make it clear that there's one entity the management entity is completely responsible for compliance and all legal documents that are used to accomplish the financing scheme your proposing make it clear that the owner operator is responsible and any ownership rights are subordinate to the duties and responsibilities that would be proposed under this permit. And finally, that no more than 100 rooms would be available to fractional ownership conversions. That is the motion.

Mr. Dodds:

Thank you, Madam Chair. Just a point of clarification. The parking it is actually cost at what the same as the state parking.

Chairwoman:

Free or at the same rate?

Mr. Dodds::

Whatever the rate is.

Chairwoman:

Yes.

Mr. Dodds:

Is a new concept so it's more expensive to operate this type of parking because it's ventilated. It's underground so there are other costs associated with maintaining that parking area vs. what a state parking areas is which is less costly to maintain. In terms of--

Chairwoman:

I can't believe you're arguing about the parking rate. But that's all right. It defies logic.

Mr. Dodds:

Well, I live - the shoreline we understanding and agree to – 100 it's just the public parking aspect… it's just 100.

Chairwoman:

That's right.

Mr. Dodds:

Thank you Madam.

Chairwoman:

Thank you very much.

Commissioner ?:

Madam Chair, can I ask the applicant if he can live the 100 units for sale?

Chairwoman:

He said he just accepted.

Commissioner ?:

He did? I'm sorry. I didn't see that.

Commissioner ?:

You need to ask your fellow commissioners.

Chairwoman:

Mr. Dodds, is that your name?

Mr. Dodds:

Yes, Ma'am.

Chairwoman:

There's a question being posed. You understand the condition regarding no greater than 100 rooms allowed for conversion of fractional ownership vs. 130 which is what your proposal was?

Mr. Dodds:

Yes.

Chairwoman:

And you consent to that?

Mr. Dodds:

Yes.

Chairwoman:

Okay, very good. So that is the main motion and I'm not going to restate it because I did it once and I thought I did a good job that one time. So any need for a roll call vote on this motion?

?:

Yes.

Chairwoman:

Alright, Ms. Gayla can you call the roll, please? The maker and the seconder are seeking a yes vote.

Ms. Gayla:

Commissioner Potter? Commissioner Potter?

Yes.

Ms. Gayla:

Commissioner Reilly?

Commissioner Reilly:

No.

Ms. Gayla:

Commissioner Secord?

Commissioner Secord:

Aye.

Ms. Gayla:

Commissioner Shallenberger?

Commissioner Shallenberger:

No.

Ms. Gayla:

Commissioner Clark?

Commissioner Clark:

Yes.

Ms. Gayla:

Commissioner Kram?

Commissioner Kram:

No.

Ms. Gayla:

Commissioner Kruer?

Commissioner Kruer:

No.

Ms. Gayla:

Commissioner Wright?

Commissioner Wright:

Yes.

Ms. Gayla:

Commissioner Padilla?

Commissioner Padilla:

Yes.

Ms. Gayla:

Chairmen Caldwell?

Chairwoman:

Yes.

Ms. Gayla:

6, 4.

Chairwoman:

Okay, the motion carries. The permit is approved as conditioned.

?:

So, Madam Chair, I believe the only thing left is the reports and the view whether you want to trail them. We could trail them the first thing in the morning?

Chairwoman:

That's true, we could. We are meeting here at 8:30. Is that correct?

?:

Yes, we are before the field trip we want to make a brief presentation just in terms of what you're going to see, but we could trail—

Chairwoman:

What's the pleasure of the Commission? You want to trail--

?:

Let's trail _____

Chairwoman:

Okay, very good.

?:

Okay, we'll bring them back first thing in the morning.

Chairwoman:

Thank you.

?:

And they'll be short.

Chairwoman:

Alright.