

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036



Staff: DL-SD
 Staff Report: January 14, 1999
 Hearing Date: February 3-5, 1999

STAFF REPORT: EXTENSION REQUEST

Application No.: 6-92-203-E2 **RECORD PACKET COPY**

Fr 9a

Applicant: Encinitas Resort Corporation Agent: James Hirsch
 (Sports Shinko)

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 is the consolidation of 4 lots into 1 lot and the vacation of 2 public access easements totaling .67 acres.

Lot Area	189,055 sq. ft.
Building Coverage	48,260 sq. ft. (25%)
Pavement Coverage	24,756 sq. ft. (14%)
Landscape Coverage	77,744 sq. ft. (41%)
Unimproved Area	38,295 sq. ft. (20%)
Parking Spaces	230
Zoning	VSC
Plan Designation	Limited Visitor Serving Commercial
Ht abv fin grade	30 feet

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

Substantive File Documents: Substantive File Documents: Certified City of Encinitas Local Coastal Program (LCP); CDP #6-83-198-G; Evaluation of Seacliff Erosion and Stability by Woodward-Clyde, dated August 1992; City of Encinitas Resolution Nos. PC 91-38 and 92-12; Final Environmental Impact Report and Appendixes for a Coastal Resort Hotel by Recon, dated September 3, 1991 and February 21, 1991.

STAFF NOTES:

1. Staff Recommendation: Staff is recommending that the extension be granted, as there are no changed circumstances that would affect the project's consistency with the certified Local Coastal Program.

2. Extension Request Procedures. In general, an approved coastal development permit will expire after two years unless development has commenced. Standard Condition #2, which is attached to all permits, establishes this expiration date. If development does not commence within the two year time period, the permittee may seek an extension. The Commission's regulations allow it to grant one-year extensions.

When an extension request is made, Section 13169 of the Commission's Code of Regulations requires the Executive Director to make a determination as to whether or not there have been "changed circumstances" which affect the proposed project's consistency with the Coastal Act or, if applicable, a certified LCP. If the Executive Director determines that there are no "changed circumstances", the Executive Director must notify interested persons of this determination. If no member of the public submits a written objection within 10 days, the extension is approved.

If the Executive Director determines that there are "changed circumstances" or any member of the public objects to the Executive Director's notice of a determination of "no change in circumstances," the extension request is referred to the Commission to determine whether there are changed circumstances that may affect the development's consistency with the Coastal Act or certified LCP. If there is no objection to the extension by at least three Commissioners, the extension is automatically granted. If however, three or more Commissioners object to the extension, the development must be scheduled for a hearing to determine how the changed circumstances have affected the project's consistency with the Coastal Act or LCP.

In the subject case, the Executive Director has determined that there are no "changed circumstances". However, during the notice period, written objections were received regarding this determination and the extension request has therefore been referred to the Commission.

3. Project History/Proposed Project. The subject project was approved by the Commission on December 10, 1992. In 1994, the coastal development permit was automatically extended for two years (until December 10, 1996) by legislation which provided for the extension of all permits issued by a state agency for projects which included a tentative subdivision map or parcel map if both the permit and the map were unexpired on the date the statute went into effect. In 1994, the Encinitas LCP was certified. The LCP became effective in early 1995. In 1996, the coastal development permit was again automatically extended for one year (until December 10, 1997) also by legislation affecting projects including a tentative subdivision map or parcel map. On November 7, 1997, the Executive Director extended the project one year until December 10, 1998, after surrounding properties were noticed for a ten working-day period and no objections to the extension were received.

On September 30, 1998, the permittee again submitted an extension request. On December 4, 1998, notice of the proposed extension was sent to surrounding property owners. Two letters of objection were received (see Exhibit #3). Therefore, this

extension has been referred to the Commission to determine whether there are changed circumstances that may affect the project's consistency with the certified LCP.

The subject project consists of the demolition of three single-family residence and the relocation of seven mobile homes to allow for 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, approximately 92,000 cubic yards of excavation. The proposal also provides for the installation of several public access amenities that include a state park overlook, a blufftop overlook, a stairway to the state park parking lot, and public access through the site. In addition, the proposed development will include the consolidation of 4 lots into 1 lot and the vacation of 2 public access easements.

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 Ponto 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 with a number of special conditions including revised plans to include a 25-foot 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. 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 (see Exhibit 4, Notice of Intent).

4. No Change in Circumstances. The Commission finds that no changed circumstances exist which affect the project's consistency with the certified Local Coastal Program. The objections submitted by interested parties simply repeat issues raised during the original hearing on the project and do not identify any changed circumstances that may affect the project's consistency with the certified LCP.

The City of Encinitas' Local Coastal Program was approved by the Commission on November 17, 1994. Since that time, a total of seven amendments to the LCP have been approved by the Commission. The first four involved specific parcels of land and/or minor revisions unrelated to the subject site or development.

The fifth amendment involved adoption of the North Highway 101 Corridor Specific Plan as the implementing ordinances for the North Highway 101 corridor, which includes the project site. The amendment did not change the land use designation of the subject site, which is designated Limited Visitor-Serving Commercial, consistent with the proposed hotel. This amendment, as well as the previous amendments were reviewed by the

Executive Director in 1997 at the time of the last extension request, and determined not to effect the proposed project's consistency with the Coastal Act. Thus, the project was extended until December 10, 1998.

Two amendments have been approved since the last extension was granted. These amendments do not constitute changed circumstances that may affect consistency of the project with the LCP. Local Coastal Program Amendment 2-97 involved a number of revisions to various components of the City's Implementation Plan including allowing time-share projects as a conditionally-permitted use within the various visitor-serving commercial zoned areas. This amendment would apply to the subject hotel project, which is located in a visitor-serving commercial zone. However, this amendment merely allows for time-share projects as well as typical hotels—it does not require time-share projects. Therefore, the consistency of the subject permit with the LCP is not affected by the LCP amendment.

The other amendment approved since the last extension, LCPA 3-97, involved changes to the Encinitas Ranch Specific Plan, which does not include the project site. Therefore, there have been no changes to the LCP which would effect the project's consistency with the LCP. Further, there are no other changed circumstances that may affect the project's consistency with the LCP.

The two letters of objection to the proposed extension which were received raise issues regarding the subject project's size, density, and private view blockage. All of these issues were addressed by the Commission in its original approval of the project. At that time, the Commission made extensive findings regarding the project's visual impact and consistency with community character, and revised the project's bulk, orientation, scale, size and siting, particularly in regard to views from the beach, lagoon and Highway 101. The letters of objection do not identify any changed circumstances that would affect the consistency of the project's approved size, scale, orientation, siting, or density with the certified LCP.

The two letters of objection also raise concerns that two public access easements will be vacated as part of the subject project. At the time of the Commission's action, the Commission reviewed in detail the history of these two public service easements on the southwest portion of the site which extend down the bluff face to the beach. The past holder of the easements, the California Department of Parks and Recreation had traded the access road leading to the two easements for money and beach property, leaving the two easements "landlocked". As subsequent holder of the easements, the City of Encinitas approved the vacation of the easements in exchange for a number of public access improvements including a seabluff overlook, public access through the site, a state park overlook and stairway down the bluff to the state park parking lot. As noted above, a condition of approval, the Commission required the applicants to record deed restrictions ensure that the public access improvements would be constructed and required the prepare a detailed public access program that includes the blufftop overlook, and public accessways, as well as access signage, and public parking at the hotel. As conditioned, the Commission found the project was consistent with the public access

policies of the Coastal Act. Thus, the vacation of the two easements is not a changed circumstance which has occurred since the project's approval.

No objections have been raised to the proposed extension which were not addressed by the Commission in its original approval. The subject project was previously found consistent with the visual impacts/community character policies of the Coastal Act, as well as with the public access, recreation, geologic stability, and drainage/runoff/sensitive resource policies of the Act. There have been no changes to the certified Local Coastal Program or other changes in surrounding land uses or conditions, which would affect the project's continued consistency with the certified LCP. Therefore, since there no information which would indicate that changed circumstances have occurred affecting the project's consistency with the certified Local Coastal Program, the Commission finds that the extension request should be granted.

(\\TIGERSHARK\groups\San Diego\Reports\1999\6-92-203-E3 Sports Shinko stfprpt.doc)



SUBJECT SITE

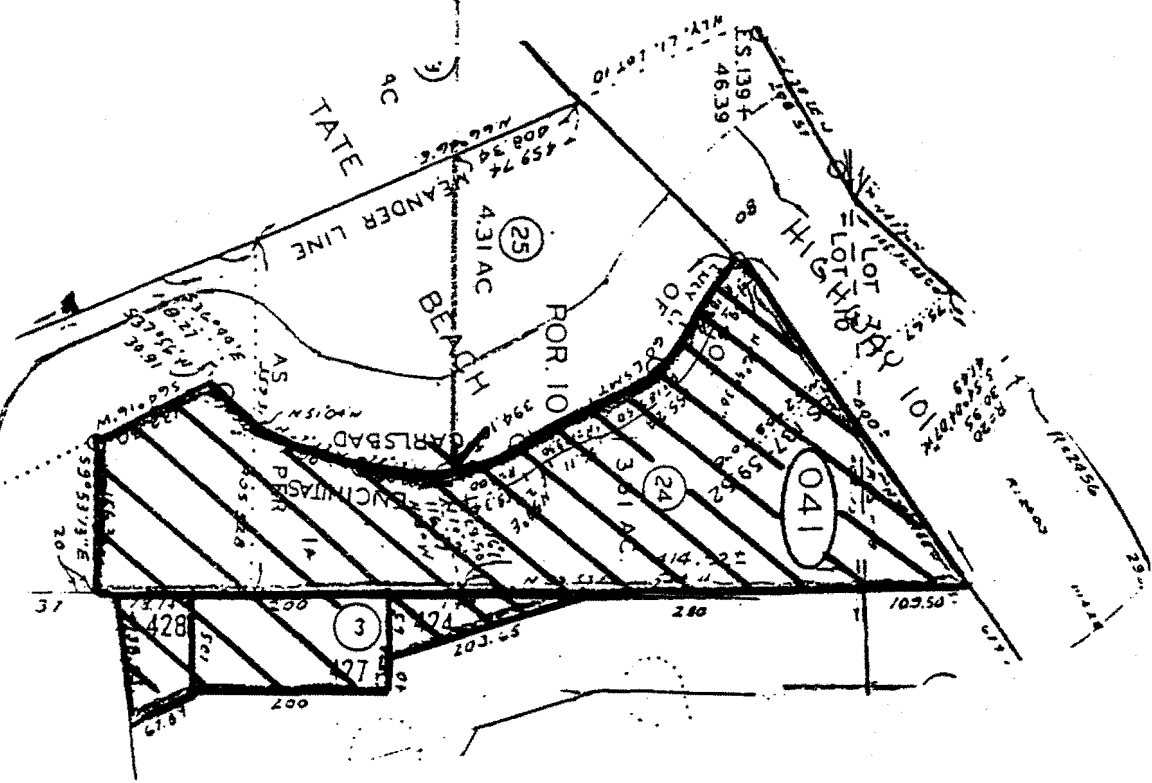
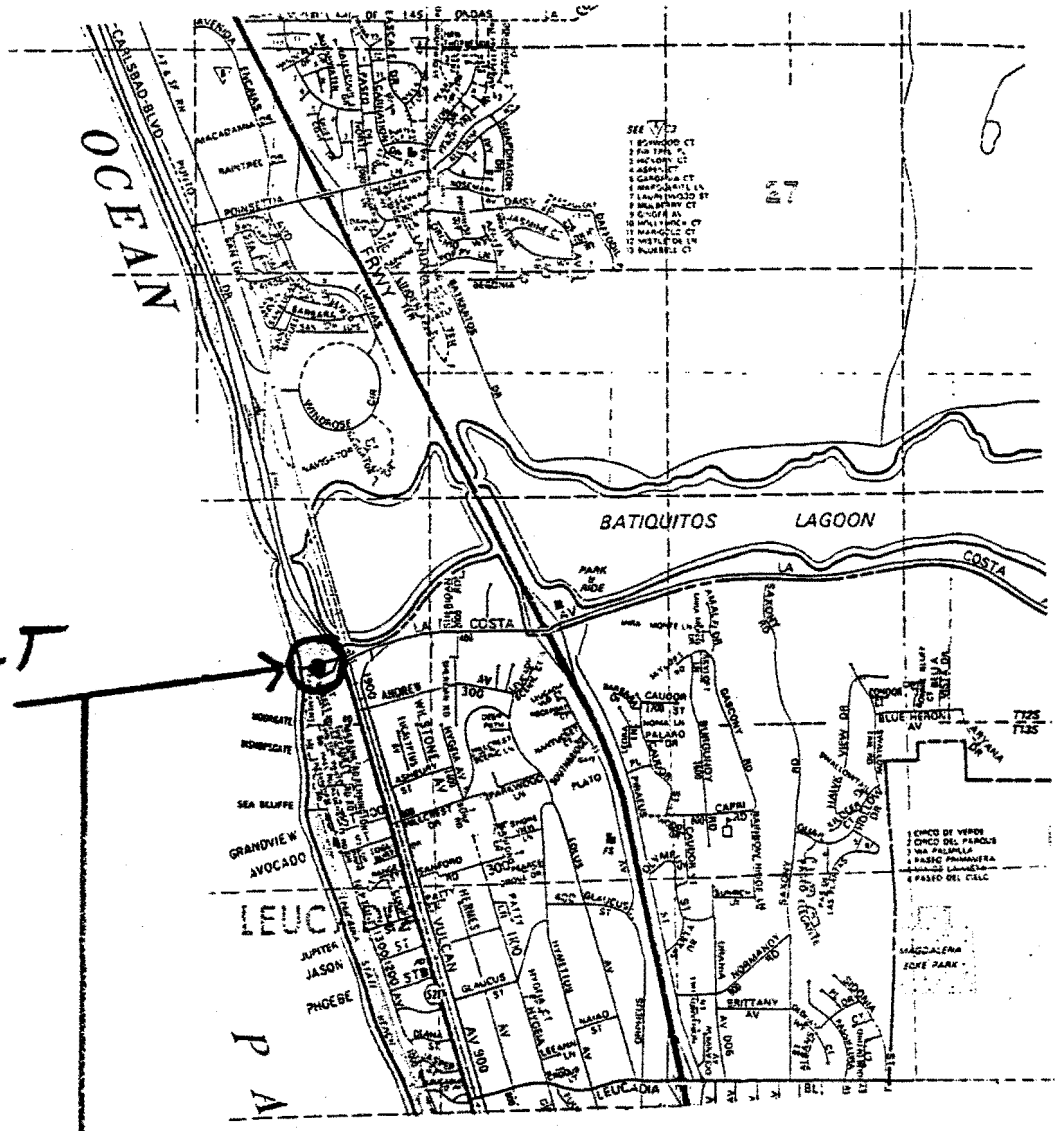


EXHIBIT NO. 1
APPLICATION NO. 6-92-203-E3
Location Map
California Coastal Commission

- LEGEND**
- 12" DIA. TREE (10' HGT.)
 - 18" DIA. TREE (15' HGT.)
 - 24" DIA. TREE (20' HGT.)
 - 30" DIA. TREE (25' HGT.)
 - 36" DIA. TREE (30' HGT.)
 - 42" DIA. TREE (35' HGT.)
 - 48" DIA. TREE (40' HGT.)
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 - 138" DIA. TREE (115' HGT.)
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 - 162" DIA. TREE (135' HGT.)
 - 168" DIA. TREE (140' HGT.)
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 - 180" DIA. TREE (150' HGT.)
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 - 744" DIA. TREE (620' HGT.)
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 - 768" DIA. TREE (640' HGT.)
 - 774" DIA. TREE (645' HGT.)
 - 780" DIA. TREE (650' HGT.)
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 - 888" DIA. TREE (740' HGT.)
 - 894" DIA. TREE (745' HGT.)
 - 900" DIA. TREE (750' HGT.)
 - 906" DIA. TREE (755' HGT.)
 - 912" DIA. TREE (760' HGT.)
 - 918" DIA. TREE (765' HGT.)
 - 924" DIA. TREE (770' HGT.)
 - 930" DIA. TREE (775' HGT.)
 - 936" DIA. TREE (780' HGT.)
 - 942" DIA. TREE (785' HGT.)
 - 948" DIA. TREE (790' HGT.)
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 - 1008" DIA. TREE (840' HGT.)
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 - 1020" DIA. TREE (850' HGT.)
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 - 1104" DIA. TREE (920' HGT.)
 - 1110" DIA. TREE (925' HGT.)
 - 1116" DIA. TREE (930' HGT.)
 - 1122" DIA. TREE (935' HGT.)
 - 1128" DIA. TREE (940' HGT.)
 - 1134" DIA. TREE (945' HGT.)
 - 1140" DIA. TREE (950' HGT.)
 - 1146" DIA. TREE (955' HGT.)
 - 1152" DIA. TREE (960' HGT.)
 - 1158" DIA. TREE (965' HGT.)
 - 1164" DIA. TREE (970' HGT.)
 - 1170" DIA. TREE (975' HGT.)
 - 1176" DIA. TREE (980' HGT.)
 - 1182" DIA. TREE (985' HGT.)
 - 1188" DIA. TREE (990' HGT.)
 - 1194" DIA. TREE (995' HGT.)
 - 1200" DIA. TREE (1000' HGT.)

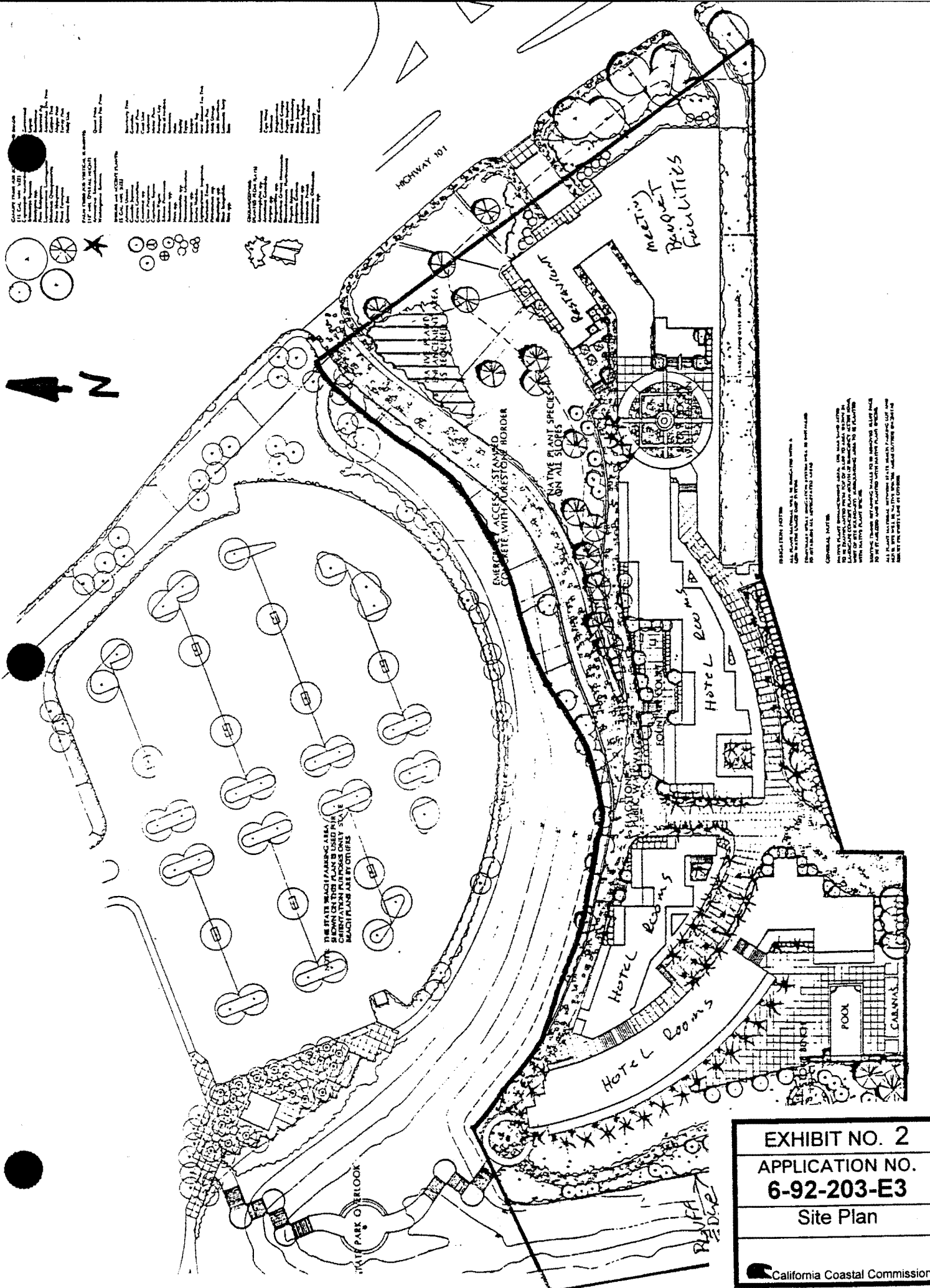


EXHIBIT NO. 2
APPLICATION NO.
6-92-203-E3
Site Plan

December 14, 1998

1878 Haymarket Road
Leucadia, CA 92024

RECEIVED

DEC 15 1998

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Mr. Peter M. Douglas
Executive Director
California Coastal Commission
3111 Camino Del Rio North, Suite 200
San Diego, CA 92108-8036

RE: Permit No: 6-92-203-E3


Dear Mr. Douglas,

I am a property owner in Sea Bluff in Leucadia which is directly impacted by the proposed hotel being considered by the Encinitas Resort Corporation.

Please consider this letter my strong objection to the development. As my unit is directly on the property line on north side of Sea Bluff, this proposed hotel is unacceptable. The 130 rooms, a 200 seat restaurant, banquet space and parking garage adds absolutely too much density to the small area, not to mention the fact that the proposal as it stands now eliminates public access easements which may have provided some buffer to a development that is quite literally outside my window.

I also wish to bring to your attention the fact that several years ago the city did approve the development of a restaurant directly east of Sea Bluff with a view up the coast. It was never a successful property, and after changing owners many times, it now stands rather dilapidated and unkempt--a sad entry to such a beautiful strip of coastline as one enters off La Costa Boulevard.

I urge you to seriously consider any plans for development of this property to be sure that they complement the openness of this part of the coast. Your agency is charged with the responsibility of overseeing these last pieces of California's most stunning landscape.

EXHIBIT NO. 3
APPLICATION NO. 6-92-203-E3
Letters of Objection
 California Coastal Commission

California Coastal Commission
Mr. Peter M. Douglas
Page 2

In addition to registering my absolute objection to the project as a whole, I do wish to bring to your attention the fact that I was not even notified of the extension request. I heard about it from a neighbor only two days ago, and called your office for a copy of the proposal . As the development impacts my property directly, I find this quite unsettling. In the future, I do request ANY correspondence regarding this proposed development be copied to me.

You may reach me any time at (619)756-3627.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dorothy A. Phillips".

Dorothy A. Phillips

December 14, 1998

cc: Diana Lilly

1873 Haymarket Rd.
Leucosth, Ca. 92024
9 December 1998

RECEIVED
10
DEC 09 1998

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

DL
BC
Calif. Coastal Comm.
San Diego Coast Area
3111 Camino del Rio North #200
San Diego, Ca. 92108-1725

Re: Notice Extension Request for Coastal
Development Permit - Encinitas Resort Corp
(Sports Shores)
Permit # 6-92-203-E3

Dear Mr. Douglas:

As per my objections sent to you in 1996 and 1997
this huge structure should not be built as the
play stands today. It is too large a structure
for the bluff and too large for amount of land.

This permit should never have passed the Encinitas
City Council and definitely not the Calif Coastal
Commission - a shock to many.

Through politics they (think) were able to reacquire
the 25 foot easement that should exist between their
property and Sea Cliff. Therefore, the hotel
pitched will be right outside my bedroom
window. Further personal reason my property
value will decrease half as the structure
completely eliminates my view.

I hope your Commission will reconsider this
hazard to many other neighbors and the bluff
itself.

Sincerely,
E. Thomas D. Newman

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA
 3111 CAMINO DEL RIO NORTH, SUITE 200
 SAN DIEGO, CA 92108-1725
 (619) 521-8036

Date January 5, 1993Application No. 6-92-203Page 1 of 10NOTICE OF INTENT TO ISSUE PERMIT

On December 10, 1992, the California Coastal Commission approved the application of Sports Shinko (USA), subject to the attached standard and special conditions, for the development described below:

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 is the consolidation of 4 lots into 1 lot and the vacation of 2 public access easements totaling .67 acres.

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Zoning	VSC
Plan Designation	Visitor Serving Commercial
Ht abv fin grade	30 feet

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

The permit will be held in the San Diego District Office of the Commission, pending fulfillment of Special Conditions 1 - 15, 17, 18 & 20. When these conditions have been satisfied, the permit will be issued.

CHARLES DAMM
 DISTRICT DIRECTOR
 BY

EXHIBIT NO. 4
 APPLICATION NO.
6-92-203-E3
 Notice of Intent

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. 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 as 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 development during construction, 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.

SPECIAL CONDITIONS:

The permit is subject to the following conditions:

1. Final/Revised Plans. Prior to the 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

SPECIAL CONDITIONS, continued:

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 the 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 overlook's 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 from 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

SPECIAL CONDITIONS, continued:

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 the 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 the issuance of the coastal development permit, the 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 this 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 the 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

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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 the 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 the issuance of the coastal development 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 130-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 an amendment to this permit or 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.

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7. Offer to Dedicate Open Space Easement. Prior to the issuance of a 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 the 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 facade and effectively screen the north facing areas of the proposed development from views from Highway 101, the beach 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.

SPECIAL CONDITIONS, continued:

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 the 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.

Said restriction shall be recorded in a form and content acceptable to the Executive Director. The document shall be recorded against the subject property, free of all 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.

10. Sign Program. Prior to the 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, free-standing 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 the 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,

SPECIAL CONDITIONS, continued:

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 the 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 the 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 areas. 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 the 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

SPECIAL CONDITIONS, continued:

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 berms, 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 the 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.

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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 the 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 the 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 the 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.

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