

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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Filed: 10/27/98
Staff: RHyman
1st Staff Report: 11/18/98
Addendum :12/7/98
Hearing Date: 12/9/98
Commission Action: Substantial
issue found; permit partially
approved with conditions
This report: 1/13/99
Findings Adoption: 2/3/99

STAFF REPORT: REVISED FINDINGS

LOCAL GOVERNMENT: Monterey County

DECISION: Approval with conditions

APPEAL NO.: **A-3-MCO-98-083**APPLICANT: **Highlands Inn Investors II Ltd. c/o Mark Solit**

AGENT: Anthony Lombardo, Lombardo and Gilles

APPELLANTS: Terry Tydings and Barbara James; Coastal Commissioners
Wan and Nava; Carl LarsonPROJECT LOCATION: Highlands Drive, Carmel Highlands, Carmel area of Monterey
County, AP#s 241-112-012, , 241-121-003, 241-122-006,
241-122-001, 241-122-002, 241-124-002 (see Exhibit 1)DESCRIPTION: Resubdivide 8.59 acres into nine lots; convert 143 hotel units
to condominium units; allow timeshare use of the units
(conditioned by the County for at least 25% of the units -- i.e.,
36 -- to "remain in a transient/hotel use"); realign parking
spaces and add 15 new spaces, install new underground
water tanks, upgrade sewage plant from secondary to tertiary
treatment; allow reclamation of portion of tertiary effluent for
landscaping and irrigation, and install recycling system in on-
site laundry (see Exhibits 3 and 4)FILE DOCUMENTS: Monterey County permit file (96-5376) including Draft and
Final *Highlands Inn Timeshare Conversion EIR*; Monterey
County Local Coastal Program (including *Carmel Area Land
Use Plan* and portions of the County Code); 1983 *Carmel
Area Land Use Plan* findings; 1988 file for approval of *Coastal
Implementation Plan*; 1995 *Coastal Implementation Plan*
amendment file; Title 21 of *Monterey County Code*; coastal
permit file A-3-MCO-91-57 for Pebble Beach Company partial

privatization proposal; summary information of other Coastal Commission actions on timeshares; Interim Ordinance 03950 temporarily prohibiting timeshare conversions; coastal permit file 3-82-227 to Highlands Inn for 38 additional units; *Big Sur Coast Land Use Plan*, *California State Park System Coast Hostel Facilities Plan*; coastal permit 5-90-928.

Commissioners on Prevailing Side: Allen, Armanasco, Dettlof, Flemming, Kehoe, Potter, And Ryan.

SUMMARY OF COMMISSION ACTION

On December 9, 1998 the Commission determined that a **substantial issue** existed with respect to one of the grounds on which the appeal has been filed; namely that the project will reduce available public accommodations in the area. Further discussion of the Substantial Issue question is contained in the Commission's adopted findings. (see Exhibit 2)

The Commission then went on to **approve** all components of the permit; except the resubdivision component which was **denied**. The condominium and timeshare conversion was approved for up to 75%, or 107, of the units. The Commission generally incorporated all of the previous County conditions. Some of these conditions were modified to ensure that compliance was clear and could occur and that the public use components of the facilities and the other mitigations were guaranteed over the long-term. Finally, the Commission required funding a lower-cost visitor-serving facility in the Monterey Peninsula or Big Sur at \$8,000 per condominium unit for 87 units (total fund potential of \$696,000 plus interest) to help mitigate for the lost overnight visitor opportunities at the Highlands Inn. The complete set of conditions is shown in this report beginning on page 4.

Because the Commission action substantially differed from the staff recommendation, the Commission must now adopt revised findings for the coastal permit. Findings are offered in this report to show consistency with Monterey County Local Coastal Program provisions. The recommended findings reiterate the substantial issue findings that there is a significant impact on available public accommodations from the proposed timeshare conversion. They go on to indicate that if mitigation is included, in the form of funding new lower-cost overnight facilities, retaining 25% of the units in traditional hotel use, and a package of guarantees that the non-timeshare portions of the facility remain permanently publicly accessible, then the policies will be satisfied because there will no longer be a significant impact. The findings describe the current status of hostel facilities on the Monterey Peninsula (one underway) and Big Sur (none to date) and how the fund could best be used, consistent with local coastal program policies and the

priorities expressed by Commissioners at the hearing. Finally, the findings note that this approval package addresses a local situation in a manner consistent with one local coastal program, and that it should not be seen as a precedent for allowing hotel conversions to timeshare ownerships elsewhere in the coastal zone.

One issue that the Commission can not fully address is water quality with respect to wastewater discharges. Despite County Land Use Plan policy, this is a Regional Water Quality Control Board matter. However, staff proposes to send a letter to the County and RWQCB urging them to continue to address this matter (see Exhibit 8).

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I. STAFF RECOMMENDATIONS ON COASTAL PERMITS

The staff recommends that the Commission adopt the following resolution and findings in support of its partial approval of the project on December 8, 1998.

Resolution:

Part 1: Approval of the Condominium, Timeshare, Parking, Water, and Wastewater Elements

The Commission hereby **grants** a permit for that portion of the proposed development involving the condominium subdivision, timeshare conversion, parking, water, and wastewater improvements, as modified by the conditions below, on the grounds that, as conditioned, those portions of the development that are approved will be in conformity with the certified Monterey County Local Coastal Program and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act (CEQA).

Part 2: Denial of Subdivision

The Commission hereby **denies** a permit for that portion of the proposed development involving the subdivision of six parcels into nine on the grounds that it would not be in conformity with the provisions of the certified Monterey County Local Coastal Program.

II. ADOPTED CONDITIONS

A. Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date 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.

B. Special Conditions

1. Incorporation of Relevant County Conditions

This coastal development permit is limited to the following development: subdivide units at the Highlands Inn into condominiums (up to 107 units), convert the up to 107 condominiums units to timeshares, realign and add parking spaces, install new underground water tanks, upgrade the existing wastewater treatment facility from secondary to tertiary treatment; allow reclamation of a portion of the tertiary effluent for landscaping and irrigation and install a recycling system in the on-site laundry facility as shown on Exhibit 4. **This approval does not include any subdivision other than for the 107 condominium units.**

This coastal permit may be issued in one or more parts for the parking improvements, water improvements, and/or wastewater improvements, if the applicant wishes to undertake these without proceeding with the condominium subdivision/timeshare conversion. For such a case, **prior to issuance of a coastal development permit for the parking improvements** conditions #1.8, 1.10, 1.11, and 1.32 must be satisfied; **prior to issuance of a coastal development permit for the water improvements** condition #1.16 must be satisfied; and **prior to issuance of a coastal development permit for the parking improvements** conditions #1.17, 1.18, 1.19, 1.20, 1.22, 1.23, 1.24, 1.34, and 1.53 must be satisfied. A subsequent permit could be issued for the condominium subdivision/timeshare conversion, but as the following conditions dictate a separate coastal permit for the condominium subdivision/timeshare conversion can not be issued absent the infrastructure improvements.

Prior to issuance of the coastal development permit for the entire project (or for a condominium subdivision/timeshare conversion subsequent to the completion of all infrastructure improvements), final plans must be submitted and compliance with all the respective conditions listed below must be demonstrated. All condition compliance submittals shall be clear as to the responsibilities of the condominium/timeshare owners vis-à-vis the common owner(s) of the remainder of the facilities on all of the subject parcels, and all documents to be recorded shall be recorded for each separate parcel comprising the current Highlands Inn. All required deed restrictions (which may be combined into one or more documents) shall run with the land, binding all successors and assigns; shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction; and shall not be removed or changed without a Coastal Commission-approved amendment to this permit unless the Executive Director determines that no amendment is required for a minor change. All legal documents (deed restrictions and CC&R's) shall be subject to review and approval by the Executive Director. All other condition compliance will be determined by the Executive Director based on review and approval of sign-offs by the appropriate County officials (generally shown in parentheses) or, if the County official does not exercise such authority, based upon review and approval of acceptable submittals directly from the applicant, except for those conditions shown in italics (which are not Coastal Commission-imposed conditions). Compliance with on-going condition requirements shall be determined by the Executive Director based on an annual compliance report (see condition #50).

- .1 This permit consists of a Combined Development Permit which includes: ~~(1) a Coastal Development Permit and a Standard Subdivision Tentative Map to create nine lots ranging in size from .25 to 1.50 acres;~~ ~~(2) (1) a Coastal Development Permit and Standard Subdivision Tentative Map to allow the conversion of 443 107 hotel units to condominium units;~~ ~~(3) (2) a Coastal Development Permit to allow the conversion of 443 107 condominiums to timeshare units;~~ ~~(4) (3) a Coastal Development Permit to realign and add parking spaces, new underground water tanks, upgrade the existing wastewater treatment facility from secondary to tertiary treatment; allow reclamation of a portion of the tertiary effluent for landscaping and irrigation and a recycling system for an on-site laundry facility;~~ ~~(5) (4) a Variance to allow a reduction in the 10,000 square foot minimum lot size requirement; and (6) (5) a General Development Plan for a change in commercial use.~~ The site is located on Highway One and Highlands Drive, in the Carmel Highlands Area, Assessor's Parcel Numbers 241-124-002, 241-121-003, 241-112-012, 241-122-006, 241-122-001, and 241-122-002. The permit is in accordance with County ordinances and land use regulations subject to the following terms and condition: Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of Planning and Building Inspection. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County

regulations and may result in modification or revocation of this permit and subsequent legal actions. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. (Planning and Building Inspection Department) (on-going)

- .2 *Prior to the filing of the Condominium Map, the subdivider shall submit three prints of the approved tentative map to each of the following utility companies: Pacific Gas & Electric Company and Pacific Bell. Utility companies shall submit their recommendations, if any, to the Director of Public Works for all required easements. (Public Works)*
- .3 *Prior to the filing of the Condominium Map, the subdivider shall pay for all maintenance and operation of private roads, fire hydrants, and storm drainage from time of installation until acceptance of the improvements for the subdivision by the Board of Supervisors as completed in accordance with the agreement, and until a homeowners' association or other agency with legal authorization to collect fees sufficient to support the services is formed to assume responsibility for the services. (Public Works)*
- .4 *Prior to the filing of the Condominium Map, if required, a drainage report containing but not limited to the items listed in Sections 16.08.100B5; 16.12.060b3; and 19.03.010K and L8 of the County Code shall be submitted for all areas contributing to natural drainage channels originating in or running through the subdivision subject to the approval of the Water Resources Agency and the Public Works Department. (Public Works)*
- .5 *All natural drainage channels shall be designated on the final map by easements labeled "Natural Drainage Easements." (Public Works)*
- .6 *A Condominium Map shall be filed showing all right-of-way and easements, drainage, parking, and internal circulation. (Public Works)*
- .7 *Prior to the filing of the Condominium Map, a Homeowners' Association shall be formed for road and drainage maintenance and lighting, etc. (Public Works)*
- .8 *The parking layout shall meet the requirements of the zoning ordinance. (Public Works) (on-going)*
- .9 *Prior to the filing of the final Condominium Map, the applicant shall make a \$100,000.00 contribution for area-wide public works projects. (Public Works)*
- .10 *Prior to the filing of the Condominium Map, the applicant shall submit a parking and traffic management plan, subject to the approval of the Department of Public Works. The plan shall be submitted annually, due on October 14 of each year,*

and shall include methods to provide sufficient parking during events and a monitoring program. (Public Works)

- .11 Prior to the filing of the Condominium Map, a sufficient particular group of parking spaces shall be designated for the guestrooms. (Public Works)
- .12 Design any necessary water system improvements to meet the standards as found in Title 22 of the California Code of Regulations and as found in the Residential Subdivision Water Supply Standards. Submit engineered plans for the water system improvements and any associated fees to the Director of Environmental Health for review and approval prior to installing (or bonding) the improvements. (Environmental Health)
- .13 *Design any necessary water system improvements to meet fire flow standards as required and approved by the local fire protection agency. Submit evidence to the Division of Environmental Health that the proposed water system improvements have been approved by the local fire protection agency prior to installation (bonding) or filing of the final map. (Environmental Health)*
- .14 The developer shall install or bond the water system improvements to and within the subdivision and any appurtenances needed prior to filing the final map. The water improvements shall only be installed or bonded after the engineered designs have been approved by California American Water Co. and the local fire agency. (Environmental Health)
- .15 Submit a draft final map indicating the proposed water distribution, and access easements for the water system to the Director of Environmental Health for review and approval prior to filing the final map. (Environmental Health)
- .16 Water system improvements shall incorporate appropriate backflow designs as per Title 17 of the California Code of Regulations subject to the review and approval of the Director of Environmental Health, prior to the filing of the final Condominium Map. (Environmental Health)
- .17 Wastewater applied for landscape irrigation shall meet or exceed the requirements of "Waste Reclamation Criteria," California Code of Regulations, Title 22, Division 4, adopted September 23, 1978, or subsequently amended rules and regulations of the State Health Department. Specifically, water used for irrigation shall meet the standards of Section 60313(a), requiring adequately oxidized, coagulated, filtered, and disinfected wastewater reclaimed wastewater may be utilized between 50 feet and 15 feet of a residence, visitor unit or food service establishment if subsurface or drip irrigation is used. or if the Regional Water Quality Control Board (RWQCB) determines it may be applied after consultation with and consideration of the requirements of the Monterey County

Environmental Health Department. Irrigation within 15 feet of residences, shall be below grade/subsurface irrigation or aboveground if the RWQCB determines it may be applied after consultation with and consideration of the requirements of Monterey County Environmental Health Department. (Environmental Health)

- .18 Provide evidence to the Director of Environmental Health for review and approval that the applicant has obtained an amended Discharge Permit or waiver from the Regional Water Quality Control Board prior to reclamation of any wastewater. (Environmental Health)
- .19 Submit a completed application and any necessary fees, and provide evidence that the proposed facility will comply with Monterey County Code 15.23. Once approved obtain and maintain a valid permit to operate a discharge facility as required per Chapter 15.23. (Environmental Health)
- .20 Comply with Title 19 of the California Code of Regulations, Subchapter 3 and Health and Safety Code Chapter 6.95 (Hazardous Material Registration and Business Response Plans) as approved by the Director of Environmental Health. (Environmental Health)
- .21 Provide evidence that the subdivision, wastewater treatment plant and reclamation facilities have been annexed into a County Service District/Area or dedicated to a public utility prior to the filing of the Final Map. (Environmental Health)
- .22 An application for water reclamation is required at least six months prior to discharge. The State Board and Regional Boards have entered into an agreement with Department of Health Services (DHS) to implement guidelines for recycled water use. A separate application should be submitted to DHS. ~~Staff will consult with DHS prior to the Board adopting water reclamation requirements.~~ The applicant shall provide any correspondence sent to DHS regarding this project, to the State Board and Regional Board. (Central Coast Regional Water Quality Control Board)
- .23 In accordance with Health and Safety Code Title 22, the applicant must prepare and submit an engineering report to the Executive Officer of the RWQCB and DHS. Following ~~our~~ RWQCB review of the report, ~~County~~ RWQCB staff ~~will~~ may draft water reclamation requirements governing the treatment and use of reclaimed water. The applicant shall comply with these requirements. (Central Coast Regional Water Quality Control Board)
- .24 The applicant shall provide additional clarification of setbacks and proposed areas of reuse for the wastewater system to the RWQCB, to be consistent with # 17 above. (Central Coast Regional Water Quality Control Board)

- .25 *Prior to the filing of the final Condominium Map, building address numbers shall be posted on each individual building. (Carmel Highlands Fire Protection District)*
- .26 *Prior to the filing of the final Condominium Map, smoke detectors shall be interconnected between rooms in each unit. (Carmel Highlands Fire Protection District)*
- .27 *Prior to the filing of the final Condominium Map, no parking signs shall be erected on all public roads within the proximity of the entire development. (Carmel Highlands Fire Protection District)*
- .28 *Prior to the filing of the final Condominium Map, Carmel Highlands Fire Protection District shall review and approve the parking layout for conformance with fire regulations. (Carmel Highlands Fire Protection District)*
- .29 *Prior to the filing of the final Condominium Map, incorporate the use of low water use plumbing fixtures, drought tolerant landscaping, and water efficient irrigation system, in accordance with Monterey County Water Resource Agency Ordinance 3539. (Water Resources Agency)*
- .30 *Prior to the filing of the final Condominium Map, the applicant shall obtain from the Monterey County Water Resource Agency (MCWRA), proof of water availability on the property, in the form of an approved Water Release form. (Water Resources Agency)*
- .31 *Prepare a site plan for the timeshare to be approved by the Director of Planning and Building Inspection. The site plan should: (1) define the building site; (2) establish maximum building dimensions; (3) identify natural vegetation that should be retained; (4) identify landscape screening as appropriate. The approved site plans are to be recorded with the subdivision's CC&R's. A note shall be placed on the map stating that a site plan has been prepared for this subdivision and that the property may be subject to building and/or use restrictions. (Planning and Building Inspection)*
- .32 *Prior to the filing of the final Condominium Map, ~~that~~ the parking layout and circulation shall be reviewed by the Director of Public Works. ~~That~~ The parking requirements shall meet the standards of Title 20 and be approved by the Director of Planning and Building Inspection prior to the issuance of building permits or commencement of the approved use. (Public Works; Planning and Building Inspection)*
- .33 *Pursuant to the State Public Resources Code, State Fish and Game Code, and California Code of Regulations, the applicant shall pay a fee to be collected by the*

County of Monterey in the amount of \$875. This fee shall be paid on or before the filing of the Notice of Determination. Proof of payment shall be furnished by the applicant to the Director of Planning and Building Inspection prior to the recordation of the tentative map, the commencement of the use, or the issuance of building and/or grading permits, whichever occurs first. The project shall not be operative, vested or final until the filing fees are paid. (Planning and Building Inspection)

- .34 Prior to the filing of the final Condominium Map, the applicant shall comply with Chapter 18.44 of Monterey County Code pertaining to Residential, Commercial and Industrial Water Conservation Measures. (Planning and Building Inspection)
- .35 Prior to the filing of the final Condominium Map, no timeshare rights or entitlements shall be sold or offered for sale unless a final subdivision public report has been issued by the Department of Real Estate of the State of California and has been submitted to the Director of Planning and Building Inspection. (Planning and Building Inspection)
- .36 ~~The~~ All restaurant, banquet and wedding facilities shall remain open to the public. In order to implement this condition, the applicant shall record a deed restriction stating that conversion of any portion of the approved facilities to a private 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 prohibited without a new or amended coastal permit. (Planning and Building Inspection)
- .37 In the event the time-share project is not completed pursuant to the approved Combined Development Permit, no use other than visitor serving accommodations shall be made of the property. (Monterey County Planning and Building Inspection)
- .38 At least 25 percent of the units (i.e., 36 units) are not approved to be subdivided into condominiums nor included in the timeshares sales program and shall remain in a transient/hotel use and available for public use. (Monterey County Planning and Building Inspection)
- .39 The operation of the property as a hotel shall continue in conjunction with the timeshare ownership and any units, in addition to 25 percent of the units pursuant to Condition 38 (i.e., 36 units), which are not utilized by the individual timeshare estate owner or other authorized timeshare exchange guest of a timeshare estate owner, shall be available as a hotel unit to the general public. In order to implement this condition, prior to issuance of the coastal development permit, the applicant shall prepare for Executive Director review and approval and shall implement an operational plan which indicates how the hotel operator will maximize rental to the general public when units are not occupied by timeshare owners or members. Any future changes to this plan must be approved by the Executive

Director and may require an amendment to this permit. (Monterey County Planning and Building Inspection)

- .40 Prior to the filing of the final Condominium Map, submit a detailed description of the method proposed to be employed to guarantee the future adequacy, stability and continuity of a satisfactory level of management and maintenance, this management and maintenance plan shall be subject to the approval of the Director of Planning and Building Inspection. The approved plan shall be recorded with the Monterey County Recorders Office. (Monterey County Planning and Building Inspection)
- .41 Prior to the filing of the final Condominium Map a deed restriction shall be recorded that states, "the timeshare use period by any party no matter how many timeshare periods have been purchased shall be for minimum interval periods of up to one week and not more than twenty-nine consecutive days or eighty-nine total days per calendar year." (Monterey County Planning and Building Inspection)
- .42 Prior to the filing of the final Condominium Map, provide evidence to the Director of Planning and Building Inspection, that ridesharing and public transportation information materials have been provided to employees to reduce the number of employees parking on site. This information dissemination shall continue over the life of the project unless a future amendment to this project condition is approved. (Monterey County Planning and Building Inspection)
- .43 Prior to the filing of the final Condominium Map, provide evidence to the Director of Planning and Building Inspection, that an employee shuttle service has been implemented and that employees have been encouraged to use this service. This service shall continue over the life of the project unless a future amendment to this project condition is approved. (Monterey County Planning and Building Inspection) ?
- .44 Prior to the filing of the final Condominium Map, provide evidence to the Director of Planning and Building Inspection that brochures provide information on shuttle and limousine services that are available at the Highlands Inn. Highlands Inn shall encourage guests to use these services. This information dissemination and encouragement shall continue over the life of the project unless a future amendment to this project condition is approved. (Monterey County Planning and Building Inspection) ?
- .45 *Prior to the filing of the Condominium Map, the applicant shall record a deed restriction which states that the timeshare unit shall be in compliance with the uniform building code.* (Monterey County Planning and Building Inspection)
- .46 *The property owner agrees as a condition of the approval of this permit to defend at his sole expense any action brought against the County because of the approval of*

this permit. The property owner will reimburse the County for any court costs and attorneys' fees which the County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of any such action; but such participation shall not relieve applicant of his obligations under this condition. Said indemnification agreement shall be recorded upon demand of County Counsel or prior to the issuance of building permits or use of the property, whichever occurs first. (Planning and Building Inspection)

- .47 *Prior to the filing of the Final Condominium Map, automatic fire sprinkler shall be installed in each unit/building. (Carmel Highlands Fire Protection District).*
- .48 *Prior to or concurrent with recordation of the Final Map or initiation of use, the subdivider shall record Covenants, Conditions & Restrictions (CC&R's). CC&R's shall be submitted to the Director of Planning and Building Inspection Department and County Counsel for approval, prior to the filing of the final map, or initiation of use. (Planning and Building Inspection Department)*
- .49 *The number of trips generated by sales presentations, as indicated in the Higgins and Associates Traffic Report, dated December 2, 1996 shall not exceed 48 trips per day, including trips generated by sales personnel. (Planning and Building Inspection)*
- .50 *Part of the filing of the Final Condominium Map, the applicant shall submit a detailed Management Plan, subject to the approval of the Treasurer/Tax Collector and the Director of Planning and Building Inspection to include provisions for hotel operator as defined in the Monterey County Code Transient Occupancy Tax Ordinance, Chapter 5.40 Monterey County Code, including compliance with all permit conditions. ‡The hotel operator must administer tax collection reporting and record maintenance pertaining to all Highlands Inn condominium units that become available as hotel units to the general public. The plan shall also provide for quarterly accounting and reporting to the County of transient occupancy tax collection for units which are used, rented, leased or otherwise occupied by person or parties other than timeshare estate owners or the guest of the owners.*

The applicant shall submit County-approved annual reports to the Coastal Commission on compliance with all on-going permit conditions and detailing any necessary adjustments to the various operational and management plans required by the conditions. (Planning and Building Inspection)

- .51 *The collection and payment of all property taxes annually due on the locally assessed roll for all leaseheld condominium units at the Highlands Inn shall be the responsibility of the Highlands Inn and their successors in interest. The tax Collector shall annually mail a single tax bill to the Highlands Inn with a*

accompanying breakdown of individual timeshare assessments. (Planning and Building Inspection)

- .52 The property owner agrees as a condition of the approval of this Combined Development Permit; that it will pursuant to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for in Government Code Section 66499.37. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the filing of the final map, whichever occurs first. The County shall promptly notify the subdivider of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the County harmless. (Planning and Building Inspection)
- .53 All runoff water, which results from the irrigation of landscaping and the wash-down of decking around the pool area, shall be diverted to the wastewater treatment plant during the months of June through October, annually if permitted by the RWQCB after consultation with the County Department of Environmental Health. During any storm event, this water shall be diverted away from the plant. All flows shall be recorded and reported to the Regional Water Quality Control Board in the monthly reports. (Environmental Health)
- .54 The property owner shall execute a covenant running with the land, approved as to form by the County Counsel, which provides that the owner of the property shall pay all costs reasonably incurred by the County in monitoring compliance of conditions, prior to commencement of use. (Planning and Building Inspection)
- .55 The applicant shall record a notice which states: "A permit (Resolution 97060) was approved by the Monterey County Board of Supervisors for Assessor's Parcel Number 241-124-002, 241-121-003, 241-112-012, 241-122-006, 241-122-001, and 241-122-002 and modified by Coastal Commission coastal development permit #A-3-MCO-98-83. The final coastal development permit was granted subject to ~~55~~ 58 conditions of approval which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to filing of the parcel map. (Planning and Building Inspection)

2. Previous Conditions

All relevant conditions of previously-issued coastal permits to the Highlands Inn remain in full force and effect.

3. Unified Management

All the condominium/timeshare units shall be managed as one single entity. The applicant shall record a deed restriction to this effect, subject to the approval of the Executive Director (see introduction to condition # 1 for recording procedure).

4. Lower Cost Recreational Component

Prior to the issuance of the coastal development permit, the applicants shall provide evidence that a deed restriction covering each subject parcel, has been recorded, in a form and content approved by the Executive Director, committing the applicant to the following fund. Upon the first sale or lease of each approved condominium/timeshare unit, the applicant shall deposit \$8,000 into an interest bearing account or other account designated by the Executive Director in conjunction with the State Treasurer for lower-cost recreational purposes, as described below. This deposit shall occur no later than 30 days after the close of escrow or the effective date of the lease. The required annual condition compliance monitoring report (see Condition #1.50 above) shall include transaction information from the Assessors' Office to enable verification that this condition is being fulfilled. These deposits shall continue until \$696,000 (for the first 87 units) has been contributed. The California Coastal Commission or other entity designated by the Executive Director shall be named as trustee of this account, with all interest earned payable to the account for the purposes stated below.

The purpose of the account shall be to fund the development of lower-cost overnight accommodations on the Monterey Peninsula or Big Sur coast. The Executive Director may disburse the fund, up to the following amounts, to Hostelling International and/or California Department of Parks and Recreation, upon presentation of evidence of valid permits for (including any necessary coastal permits) and commitment to develop:

- \$696,000 plus interest for a hostel on public land at Point Lobos Ranch and/or Pfeiffer Big Sur State Park;
- \$200,000 for a hostel at Carpenters' Hall in Monterey and/or at Ford Ord or more money for these hostels, if the money is in the form of a short-term loan or if there are already hostels at Point Lobos Ranch and Pfeiffer Big Sur.

Any other request for the use of these funds shall be presented to the Coastal Commission for a determination as to whether the request meets the intent of this condition, as described in the accompanying findings. Any project so funded through this condition shall include a dedication or other attribution at the facility indicating the significant contribution by the Highlands Inn ownership.

III. RECOMMENDED FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Project Description and Location

The owners of the Highlands Inn wish to resubdivide their 8.59 acre holdings into nine lots; subdivide their 143 existing hotel units into condominium units; and allow timeshare use of these units; realign and add parking spaces; add new underground water tanks; upgrade the secondary sewage plant to tertiary treatment; allow reclamation of portion of tertiary effluent for landscaping and irrigation; and install an on-site recycling facility for laundry wastewater (see Exhibits 3 and 4). Although combined under one resolution number, the County approval has divided these proposals into four distinct projects: (1) the subdivision of land; (2) the condominium conversion of hotel units; (3) the timeshare conversion; and (4) all the infrastructure improvements.

The condominium units would be marketed as "timeshare" units. They would be sold in one week increments for 51 weeks of the year (the unit is left vacant the other week for maintenance). The County approval conditioned the project to require that "at least 25 percent of the units shall remain in a transient/hotel use and available for public use" (Condition #1.38). That equates to 36 units. According to the applicant, these 36 units would remain under the ownership of the hotel owner and not be converted to condominiums. This general entity would also own any portions of the timeshared rooms left unsold as well as the restaurants and other common facilities. For the 107 timeshare units, there would be a total of up to 5,457 individual owners. Any of their rooms not booked to timeshare owners, their guests, or vacation club members must be made available to the general public (Condition #1.39). The timeshare facility is proposed to be run by Hyatt Vacation Ownership. Timeshare owners could exchange their entitlement to stay in their Highlands Inn unit for a stay in other of the corporation's vacation facilities, through an intended affiliation with Hyatt Vacation Clubs. The reciprocal would also be true: vacation club member (i.e., those that own timeshares elsewhere would be able to do exchanges to stay at the Highlands Inn.) The permit is also conditioned on formation of a homeowners association (Condition #1.7). The timeshare owners would pay into a maintenance fund for their units and the common areas.

The 8.59 acre site is designated "Recreation and Visitor-Serving" in the *Carmel Area Land Use Plan* and is zoned "Visitor-Serving Commercial VSR(CZ)" in the *Coastal Implementation Plan*. The site is located in Carmel Highlands on Highlands Drive adjacent to but several feet above Highway One landward of the Pacific Ocean. Except for the adjacent 35 unit Tickle Pick Inn, the area is residential. The Inn is a luxury, world-renowned establishment. At the time of the local coastal program preparation in

the early 1980's it had 105 rooms. A major expansion to the current 143 rooms was approved by the Coastal Commission in 1982 (3-82-227). That approval was conditioned on installation of a left turn lane on Highway One, establishment of a limousine/ shuttle service, and preparation of a transportation and parking study after one-year of operation. In terms of providing an affordable component, the applicant deeded a parcel of land west of State Highway One across from the Highlands Inn to the Big Sur Land Trust which could be used for scenic overlook purposes by the general public. Over the years, the Coastal Commission issued 15 other permits to the Highlands Inn for various improvements. To the extent that there are on-going conditions of any previous permits, that are not superseded by this action, they legally remain in full force and effect (condition #2). Other facilities on the site include a lobby/registration area, administrative offices, two restaurants, a gift shop, event/banquet facilities, a pool, a laundry, the wastewater plant, and parking.

The County conditionally approved this project. It was appealed to the Coastal Commission. The Commission found that the County approval raised a substantial issue with regard to the contention that this specific timeshare project will significantly impact publicly-available visitor-serving accommodations, contrary to the visitor-serving policies of the certified local coastal program (see Exhibit 2). Thus, the County approval is voided and the Commission acted on the coastal permit de novo, conditionally approving three of four components and denying one for the following stated reasons. The Commission retained the essence of all conditions that the County had imposed. They are numbered 1.1., 1.2, etc. in this report to distinguish them from the three additional conditions that the Commission added.

B. Analysis of Consistency with Local Coastal Program

1. Timeshares and the Protection of Visitor-Serving Land Uses

a. Relevant Local Coastal Program Provisions

The standard of review for this application is the *Carmel Area Land Use Plan* and the *Monterey County Coastal Implementation Plan* which consists of sections of the *County Code*.

Carmel Area Land Use Plan goals focus on preserving unique scenic resources and fragile ecosystems. The *Plan* focus is thus mainly on how new development, including Coastal Act priority visitor-serving facilities, must be limited and not adversely impact resources. The Section 4.3.1 objective most relevant to the subject proposal states:

Existing recreational and visitor-serving facilities located within the residential communities are considered desirable uses and should be continued where potential or existing conflicts with the surrounding residential community can be adequately mitigated.

There are no *Carmel Area Land Use Plan* provisions that mention timeshares. *Carmel Area Land Use Plan* policy 4.4.3.D.2 provides:

where feasible, retention of existing moderate cost recreation and visitor serving facilities should be encouraged.

Carmel Area Land Use Plan Policy 4.4.3.D.3 requires that low to moderate cost facilities or land suitable for such use be provided where significant expansion of existing high-cost visitor-serving facilities is proposed. Section 20.146.120.B3a of the *Coastal Implementation Plan* amplifies on this requirement with a formula for determining the amount of moderate to low cost facilities that must be provided.

The site in question is designated "Recreation and Visitor Serving Commercial." The *Plan* text (4.5.C) states the uses allowed in this designation:

Moderate to high-intensity uses providing basic support services and accommodations to meet visitor needs associated with coastal recreation and travel are appropriate. Major hotel or inn accommodations are principal uses...

Land Use Plan Policies in Section 4.4.3.I "Commercial" state in part:

1. Commercial land use in the Carmel Coastal Segment shall be restricted to the those location of existing and proposed visitor-serving accommodations shown on the land use plan map or described text...
2. Expansion of existing commercial visitor-serving facilities or development of new facilities shall be approved only where requirements for adequate parking and wastewater disposal and for protection of natural resources can be fully satisfied. Adequate parking shall include all uses on the subject site (e.g. hotel units, restaurant, employee, day use facilities).
3. Renewal of use permits for existing commercial uses or the establishment of new uses will require careful consideration of the impact of the use on the surrounding community. Particularly where commercial activities are in proximity to residences, care must be taken to ensure that noise or visual modification do not affect the peace and tranquillity of existing neighbors.
4. Similarly, new commercial uses or expansion of existing uses will be evaluated for their impact on traffic safety and highway capacity in the area. Parking should be screened from public views from Highway 1 as far as

possible and should in no event create traffic hazards or danger for pedestrians.

With regard to Implementation, the site is zoned Visitor Serving Commercial (VSC) which provides for the following land uses:

20.124.030 ALLOWABLE USES.

A. Principal Uses:

All uses specifically providing services and facilities for the traveling public including:

1. Hotels, motels, automobile courts, hostels inns.
2. Restaurants.
3. Service stations.
4. Recreational vehicle parks (North County, Big Sur, Carmel only).
5. Employee housing, accessory and supporting to a permitted use.
6. Subdivisions.
7. Lot line adjustments.
8. Campgrounds and moderate intensity recreational use, including tent platforms, cabins, parks, stables, bicycle paths, restrooms, and interpretive facilities.

B. Conditional Uses:

1. Other uses of a similar visitor-serving nature and intensity when determined by the Planning Commission to be consistent with the intent of this chapter and applicable land use plan.
2. Retail stores and offices accessory to visitor serving uses.
3. Conditional certificates of compliance.
4. Visitor-serving recreational uses and facilities for recreational activities. (North County only)

Timeshare provisions are found in Section 20.64.110 of the *Coastal Implementation Plan*:

A. Purpose: The purpose of the Section is to establish the standards, regulations and circumstances under which timesharing residential uses may be established. Further, the regulation of the Section are intended to provide for the protection of existing residential uses and neighborhoods through mandatory findings for approval and public hearing processes.

B. Applicability: A timeshare project shall be permissible only in such zones and at the locations therein where a hotel, motel or similar visitor accommodation use would be permitted. No timeshare project shall be allowed in any case wherein covenants, conditions and restrictions expressly prohibit timeshare or other transient uses.

C. A Coastal Development Permit shall be required in accordance with Chapter 20.70 for any timeshare project.

D. TRANSIENT OCCUPANCY TAX APPLICABLE. ...

E. APPLICATION FOR TIMESHARE PROJECT APPROVAL.

An applicant for approval of a proposed timeshare project shall submit a completed application on a form as prescribed by the Director of Planning and Building Inspection, in addition to any other application, information or forms that may be necessary in the particular case as determined by the Director of Planning and Building Inspection. The application shall include:

1. Identification by name of the timesharing project and street address where the timesharing project is situated, including legal description;
2. Identification of the time periods, types of units, and number of units that are in the timeshare project. In order to facilitate orderly planned timeshare projects, the total number of timeshare units anticipated for the project shall be stated and approved although the project may be built, converted or maintained for timeshare purposes in phases convenient to the applicant;
3. A map drawn at the appropriate scale (1"=100' or as otherwise approved by the Director of Planning and Building Inspection), showing the site in relation to surrounding property, existing roads and other existing improvements (in all cases, an engineers scale shall be used);
4. A site plan for the entire anticipated project (whether or not built, converted or maintained in phases) showing proposed improvements, location of structures, vehicular ingress, and egress, landscaping, and floor plans;

F. GENERAL CONDITIONS AND FINDINGS.

The Planning Commission may approve or deny an application for a Coastal Development Permit for a timeshare project. The Commission may impose such conditions as it determines necessary to protect the public safety, health, peace and welfare. If a Coastal Development Permit is granted, the Coastal Development

Permit shall be granted with a condition attached that no timeshare rights or entitlements shall be sold or offered for sale unless, at such time, there then exists a valid final subdivision public report for the sale of such timeshare rights or entitlements, issued by the Department of Real Estate of the State of California. In determining whether, and under what conditions to issue any such Coastal Development Permit, the Commission, among other things, shall consider:

1. The impact of the timesharing project on transient or permanent rental stock;
2. The impact of timesharing on present and future County services;
3. Conformity with current zoning regulations and the General Plan;
4. Conformity with existing uniform building and fire codes;
5. The sign program proposed for the project;
6. The landscaping proposed for the project;
7. Traffic circulation and parking for residents, guests, prospective purchasers and sales program personnel;
8. The applicant's description of the methods proposed to be employed to guarantee the future adequacy, stability and continuity of a satisfactory level of management and maintenance of the timeshare project.
9. The desirability of requiring an office of the managing agent or agency be located locally or on-site, as appropriate.
10. The nature and feasibility of alternative uses in case the sales program for timeshares fails.
11. Any other factors deemed relevant and any other information which the Commission or the applicant considers necessary or desirable to an appropriate and proper consideration of the application.

G. SPECIFIC CONDITIONS AND FINDINGS.

In addition to other considerations of a Coastal Development Permit for a timeshare project, the following shall apply:...

2. Hotel and Motel Conversions. In the event an existing hotel, motel, inn, or bed and breakfast facility is proposed to be converted in whole or in part to a timeshare project, the Planning Commission shall consider, in addition to the considerations in section 20.64.110(F), the following:

- (a) the impact of the conversion on employment opportunities in the planning area of the project;

- (b) the impact of the project on the visitor serving economy of the planning area;
- (c) the impact of the conversion on energy, water and sewer use;
- (d) the impact of the project on the stock of hotel and other visitor accommodations for low and moderate income persons;
- (e) the impact of the project on the stock of hotel and other visitor accommodations for stays of less than one week within the planning area.

H. APPROVAL OF THE TIMESHARE PROJECTS.

No timeshare project shall be approved by the County unless the following findings can be made:

1. That the project is compatible with adjacent land uses and is adequately buffered by open space and/or landscaping from any less intense use.
2. That the development plan is consistent with all goals and policies of the Local Coastal Program.
3. That adequate access for high density dwellings is available or attainable through the conditions of the development.
4. That all structures, existing or proposed, meet presently established minimum structural, health, safety and fire standards.
5. That the project does not significantly adversely impact:
 - (a) water use;
 - (b) sewer use;
 - (c) energy use;
 - (d) traffic;
 - (e) police protection and other county services;
 - (f) fire protection;
 - (g) employment opportunities in the planning area;
 - (h) the visitor serving economy of the planning area;
 - (i) the stock of hotel and other visitor serving accommodations including, but not limited to, that which serves low and moderate income persons;
 - (j) the stock of hotel and other visitor accommodations for stays of less than one week within the planning area.

6. That the project will not have a significant adverse impact on the health, safety, and welfare of the general public.

b. Permit Analysis and Conclusion

To approve a timeshare conversion three questions must be addressed: first, is timeshare conversion permitted?; second, is there a significant impact from the specific timeshare proposal?; and third, if so, are there mitigation measures which would allow it to be approved? The Commission finds that there are affirmative answers to these questions which allow it to approve the project.

(1). Timeshares are a permitted use for the subject site.

The Commission concurs with and accepts the approval findings that the County had made which state:

The property is designated as Visitor Serving Commercial, which allows hotels, motels, hostels, and inns. Chapter 20.64.110 of Title 20 (zoning ordinance) of the Coastal Implementation Plan state that a "timeshare project shall be permissible only in such zones and at the locations therein where a hotel, motel or similar visitor accommodation use would be permitted as an allowed use."

(2). The proposed project has a significant impact on the stock of visitor-accommodations.

The Commission heard two distinct views as to whether the proposed project represented a loss of visitor-serving facilities. One perspective focused on the Monterey Peninsula and even beyond. The other perspective focused on the Carmel Area and the specific site attributes.

The first perspective can be summed up by the following finding the County had made:

Based upon economic data provided by Stephen A. Nukes and Associates, Management strategy and economic consultants, dated May 16, 1997 currently, the total of overnight accommodations in the County of Monterey is in excess of 11,700 with the inventory of rooms on the Monterey Peninsula exceeding 9,300. On the Peninsula, occupancy levels range from 67 percent in 1991 to nearly 75 percent in 1996 with an average occupancy over that period of 69.8 percent. If 69.8 percent of the 9,300 accommodation [units] were occupied, this would leave approximately 2,809 rooms available for overnight use. If 80 percent of the Monterey Peninsula room supply were occupied, it would still leave approximately 1,860 rooms available. Ten major properties in the unincorporated area were surveyed. These ten properties in

the vicinity of the Highlands Inns, have a combined total of 949 guest rooms available. An additional 68 guest rooms are scheduled to come on line in the next two year period. Total available guest rooms will be 1,017. Assuming 80 percent utilization 180 units would be available for transient uses. It is projected that it will take at least five years to sell out the timeshares and during this time all unsold guest rooms will be available for overnight occupancy. The consultant concluded that there is ample supply of overnight accommodations to absorb any and all prospective Highlands Inn guests who may have to stay elsewhere due to the timeshare use. There are seven motels or inns within the Carmel Area Land Use plan area for a total of 269 units. To provide for ample visitor serving accommodations in the Planning Area at least 25 percent of the current units shall be made available to the traveling public and the timeshare project shall be required to be phased. It is projected that an additional 10 percent of the units would be available for overnight accommodations during non-use by timeshare owners.

The other perspective was that the project adversely impacted visitor-serving accommodations by reducing by up to 75% the currently unrestricted *public* availability of hotel rooms at a unique and nationally-significant visitor-serving resource. The 107 units that would no longer be always available to the general public is almost 38% of all units in the Carmel Area planning area. This represents a "significant" impact under the *County Code* test.

The Commission concurs with this latter reasoning, in the absence of a definition of "significance" to the contrary and given the context of the other cited local coastal program provisions. This reasoning is further explained in the findings for substantial issue which are incorporated by reference and attached to these findings as Exhibit 2. Thus, the project could not be approved unless further modified so that there would not be this significant loss.

(3). The project can be made approvable by the inclusion of guarantees of public availability, a compensatory lower-cost recreational component, and retention of some rooms as hotel units.

Approaches to address the noted deficiency include keeping facilities open to the public, providing compensatory overnight visitor opportunities, and, of course, not allowing the conversion to timeshares. For this particular case, given the cited local coastal program provisions, the Commission finds that a package involving these three approaches results in an approvable project.

Permanent public availability: Regarding the first approach, the Commission notes that the facility includes about 8.6 acres, fronting on both sides of existing public streets, with restaurants, meeting, and banquet facilities available to the general public. Timeshares represent a change in ownership from one to a multitude of owners. A

single owner of a visitor-serving facility has a vested interest in maximizing public access to keep the facility profitable. If the owner converts the facility to timeshare and sells the units, the owner has made a profit. The new individual owners, which could number in the thousands, do not have the same interest in maintaining, nor have the wherewithal to maintain, general public accessibility. And indirectly, if they personalize and privatize the appearance and management of their individual units, they may send a signal, intentional or not, to the general public to stay away. If the timeshare owners control the entire grounds they may restrict accessibility.

Since the proposed project includes a condominium component described as distinct from the timeshare component, the applicant could choose to activate only that portion of the permit. This would result in a fewer number of total owners, and hence likely occupants, thus further diminishing the visitor-serving nature of the project.

To be effective, any conditions that address these noted concerns must be written in a legally enforceable manner over the entire life of the project and monitoring must occur over time.

In order to address such concerns, the Commission accepts the intent and some of the wording of several conditions that the County had imposed and further modifies them, as necessary. The applicant testified that the partnership is agreeable to these provisions. These include:

- A Homeowners' Association shall be formed for road and drainage maintenance and lighting, etc (condition #1.7)
- The operation of the property as a hotel shall continue in conjunction with the timeshare ownership and units in addition to 25 percent of the units pursuant to Condition 1.38 which are not utilized by the individual timeshare estate owner or guest of the timeshare estate owner, shall be available as a hotel unit to the general public. In order to implement this condition, the applicant shall record and implement an operational plan which indicates how the hotel operator will maximize rental to the general public when units are not occupied by timeshare owners or members (#1.39).
- All the condominium/timeshare units shall be managed as a single entity.
- A management and maintenance plan consisting of a detailed description of the method proposed to guarantee the future management and maintenance must be prepared and recorded (#1.40).
- Timeshare use period shall be for minimum interval periods of up to one week and not more than twenty-nine consecutive days or eighty-nine total days per calendar year (#1.41).
- The restaurants, banquet and wedding facilities shall remain open to the public (#1.36).

- In the event the time-share project is not completed pursuant to the approved...permit, no use other than visitor serving accommodations shall be made of the property (#1.37).
- Covenants, Conditions & Restrictions (CC&R's) must be recorded (#1.48).
- All condition compliance submittals shall be clear as to the responsibilities of the condominium/timeshare owners vis-à-vis the common owner(s) of the remainder of the facilities on all of subject parcels, and all documents to be recorded shall be recorded for each separate parcel comprising the current Highlands Inn.
- The applicant shall record and implement an operational plan which indicates how the hotel operator will maximize rental to the general public when units are not occupied by timeshare owners or members (#1.39)
- The applicant shall submit County-approved annual reports to the Coastal Commission on compliance with all on-going permit conditions and detailing any necessary adjustments to the various operational and management plans required by the conditions. (#1.50)

These measures help ensure that the timeshare conversion does not further erode the public availability of visitor-serving amenities at the Highlands Inn. However, additional mitigation for the loss of available overnight opportunities is needed.

Lower-cost recreational opportunities: If the applicant were to fund a lower-cost recreational facility that would result in roughly the same amount of visitor-serving availability that the Highlands Inn timeshare would remove, then the project would address the relevant policies in two ways: First, the impact on overnight accommodations would be reduced (Code Section 20.64.110G2e, H5j) and, second, the impact on lower-cost facilities would be positive (Code Section 20.64.110G2d, H5i). The Commission notes that the County timeshare ordinance does not explicitly provide for this type of mitigation. However, when these provisions are read in combination with the other cited County policies and objectives, the approach can be found consistent. The Commission took this approach in a permit to convert the San Clemente Inn to timeshares where the applicant was required to provide a hostel as a replacement for lost public units (coastal permit 5-92-81), one of only three such known conversions that the Commission has approved (see Exhibit 6). This compensatory mitigation approach also responds to the subject, unique local situation, but is not necessarily a precedent for timeshare conversion proposals elsewhere in the coastal zone, Monterey County or beyond.

The Commission accepts information that a certain percentage of timeshare units, in the range of 18% according to figures that the County accepted, are on the average generally available to the public. This translates into an average of 20 available units out of the 107 allowed to convert to timeshare. Subtracting these 20 from the 107 leaves 87 unavailable units for which to provide mitigation. In 1983 and 1988 the Commission required \$5,155 per unit for the lost of low-cost motel units in Santa Monica (5-83-560, 5-88-62). Subsequently, the City of Santa Monica performed a study

showing that it would cost \$8,000 (in 1990 \$) to replicate low cost economy hotel/motel rooms. This became the mitigation fee included in a City ordinance, to be adjusted for inflation. Although that would mean the fee is now over \$10,000 per unit, hostel units should cost less than motel units. Therefore, the Commission finds that \$8,000 per unit is an appropriate mitigation fee for the subject timeshare conversion. As noted, the applicant proposes to divide 107 units into condominiums and then sell (or actually lease for the long-term) these in increments. Thus, at the time of the first sale (or lease) of a unit (for whatever period), the applicant should pay \$8,000 into an account that the Commission will establish for the noted purpose (see condition # 4).

Development of hostels represents the best potential use of this funding since they are by definition lower-cost facilities, yet offer indoor accommodations. The *California State Park System Coast Hostel Facilities Plan* (1978) envisions a string of hostels along the California Coast roughly 30 to 40 miles apart. In the central coast, the nearest hostel to the Highlands Inn is located in Santa Cruz, approximately 50 miles to the north. The next hostel to the south is in San Luis Obispo, about 130 miles away. Thus, there is a 180 mile gap, which could thus use five or six hostels.

To the north of the Carmel Area, a 45-bed hostel is currently being planned for Carpenters' Hall in Monterey (about 40 miles from Santa Cruz, 10 miles from the Highlands Inn). Hostelling International (HI) is in the process of developing cost estimates and securing loans and grants to cover the purchase price and renovation costs. About \$90,000 in estimated needed funds is not yet committed. In the future, adding more hostel beds may be an option. Farther north, in Fort Ord (about four miles from Monterey) State Parks and Recreation Department is sponsoring a Hostelling International application to acquire surplus property for a 50 to 70 bed hostel. No funding is yet committed to remodeling and opening the buildings, which would require an estimated \$430,000.

A very promising candidate location for a new hostel is at Point Lobos Ranch, which is within a mile of the Highlands Inn. Although only about ten miles from Monterey, this site provides a rural, natural setting as opposed to Monterey's urban setting. The *Carmel Area Land Use Plan* provides various options for Point Lobos Ranch. One allows up to two 120 unit hotels. If the hotels are average or high-cost, then lower cost visitor-serving facilities shall be provided in the ratio of at least one unit (e.g., hostel bed, campground space) for every five higher cost units. There is a cap of 276 visitor units, which means the maximum higher cost units could be 230 units (230 high-cost plus 46 (which is one-sixth of 230) low cost = 276). However, most of this property is being purchased by the Big Sur Land Trust for an addition to Point Lobos State Reserve. Therefore, hotels will not likely not be built and hence the source of funding for the lower-cost facilities envisioned in the *Land Use Plan* will not be available. Up to 276 hostel beds could be constructed under the *Land Use Plan*. The land, including some buildings, is being acquired by the State Department of Parks and Recreation in three stages; final acquisition is not until 2002. Before any overnight use could be made of

the area, a General Plan (or amendment to the Point Lobos State Reserve General Plan) would be required. It would be through that process that determination of whether a hostel is appropriate and desired would be made; thus, the decision is several years off.

The territory south of the Carmel Area is governed by the *Big Sur Coast Land Use Plan*. "The establishment of low-cost hostels in Big Sur is encouraged as part of a comprehensive hostel system for the California coast" (policy 5.4.3.C.8). A maximum of 50 beds is allowed. Most parcels greater than 10 acres in size are eligible, provided they meet several specified criteria (policies 5.3.1.2, 5.3.3 Table 1). The most promising candidate site is at Pfeiffer Big Sur State Park. A general plan is currently being prepared for the park. Within the park are some employee housing units that may be suitable for conversion into a hostel. There is no current source of funding for such a development.

This status suggests a priority scheme in which first claim on the money should go to a hostel at Point Lobos Ranch or Pfeiffer Big Sur State Park. While Point Lobos is attractive because it is in close proximity to the Highlands Inn facility being converted, the planning process is not as far along as it is for Pfeiffer and Pfeiffer is more distant from the planned hostel in Monterey. Both sites are (or will be) public which means that the funds could be used for hostel buildings rather than land acquisition. It may be possible to build hostels at both locations with the \$696,000 plus interest, especially if existing structures are renovated.

Spending all the money for a hostel in Monterey or Fort Ord would be lower priority because one is already at least partially funded and there are many more accommodations available there. However, using a portion of the funds (e.g., up to \$200,000) early on to be able to complete the planned Carpenters' Hall or Fort Ord hostels would be beneficial and still preserve options at Point Lobos or Big Sur. If facilities are constructed at both these latter locations and money remains in the fund, then Monterey or Fort Ord would be the next logical location in which to use the money, if it were still needed.

Of course, other opportunities to use the money may emerge, such as in other locations, on private property (which may have to be acquired), or for other types of lower-cost facilities. In this case, the Commission reserves the option of determining whether the money should be so allocated.

In conclusion, the trade off embodied in this "compensatory" approach is that while the number of potential visitors would be vastly greater, because of the lower-cost, the number of people that could be served on a nightly basis would likely be less (by equating for example one hostel bed which sleeps one overnight visitor with one hotel room that could sleep three). Therefore, this mitigation alone is not sufficient to find complete consistency with all of the relevant policies.

Retention of some hotel units: A third approach is to not fully approve the timeshare conversion; in other words retain some units as hotel units that will not be converted into condominiums and will not be sold as time-shares. This approach has two results; first, obviously, these units are then available to the general public. Second, there is reinforcement for managing the entire facility as a hotel. If the entire facility were converted to timeshares, it might be run by an entity sympathetic to a privatization philosophy and even with the conditions noted above, be able to thwart efforts to implement them over the long-term. The Commission accepts the mitigation suggested by the County and the applicant that "at least 25 percent of the units shall remain in a transient/hotel use and available for public use." (The result is that this approval will result in only 107 of the 143 units being converted to condominiums, and then timeshare units.)

Conclusion: With incorporation of all three of these approaches in the permit, the Commission finds that the proposed project will not significantly impact the stock of visitor units in the planning area and will be consistent with all of the cited County policies encouraging visitor-serving opportunities. The Commission makes this finding in the context of examining the entire certified Monterey County Local Coastal Program; other local coastal programs may have different criteria for allowing timeshares or not e.g., see Exhibit 5). This approval does not set an adverse precedent locally because (a) the Highlands Inn guest rooms are already constructed with existing kitchens, sleeping, and living areas, (b) very few if any of the Highlands Inn guests are "drive-in" travelers but rather are visitors who reserve their rooms in advance of their stay, (c) there are presently no other timeshare facilities in the Monterey County Coastal area and other jurisdictions in Monterey County currently prohibit timeshare conversions, and (d) a significant fee (\$8,000 per converted guest room) is collected to create lower-cost visitor serving accommodations on the Monterey-Big Sur coast. The Commission further finds that this approach may not necessarily be a precedent in other areas which do not have certified local coastal programs or have local coastal programs which provide for timeshares differently (see Exhibit 5). In those cases, any timeshare conversions will have to be examined on a case-by-case basis to determine whether they are appropriate at all and, if so, what types and levels of mitigations are appropriate.

2. Timeshares and Transient Occupancy Tax (TOT)

Application of the TOT not only provides the County revenue, it provides verification that units which are supposed to remain visitor-serving in nature, Incorporation of County conditions #1.50 and ensures that the proposed project is consistent with Code Section 20.64.110D.

3. Water Use

a. Relevant Local Coastal Program Provisions

In addition to the timeshare provision cited above, the proposed project must be consistent with Chapter 18.44 of the *County Code* requiring installation of water conservation devices at the time of ownership change.

b. Coastal Permit Analysis

The Commission concurs with and accepts the following finding that the County had made with regard to water use based on a water use study prepared for the proposed project by the engineering firms of Questa Engineering Corporation and Furgo Water Resources, Inc. (March 1998, and May 1998), and a peer review of this report, conducted by Schaaf & Wheeler (May 1998), independent consulting engineer:

The proposed project will not have an impact on water resources. The Highlands Inn currently operates as a 143 room hotel with restaurants, banquet and wedding facilities. The Monterey Peninsula Water Management District formula for allocating water to a luxury hotel is no different than allocating water to a timeshare containing similar amenities. Since the current allocation of water by the water district is based on a 143 room luxury hotel and the current proposal does not affect the number of rooms, the water supply allocation for the Monterey Peninsula is not affected by this project. Further, overall water consumption will decrease through implementation of a water reclamation system for irrigation and a water recycling system for the on-site laundry facility.

The Commission accepts and incorporates conditions that the County had imposed with regard to water systems (#1.12, 1.14, 1.15, 1.29, 1.30) and water conservation (#1.34) in order to be consistent with the above cited policies and subdivision requirements (Chapter 19 of the *County Code*).

4. Wastewater

a. Relevant Local Coastal Program Provisions

In addition to the timeshare provision and policy 4.4.3.1.2 cited above, the proposed project must be consistent with *Carmel Area Land Use Plan* policy 2.4.4.B.7 which states:

The Regional Water Quality Control Board shall review the National Pollution Discharge Elimination System permits for existing private commercial sanitary systems (i.e., package treatment plants). At least four times a year RWQCB shall

undertake inspections of discharge effluent from existing and any new private sanitary system in the Carmel area in order to monitor water quality impacts...

Also, *Carmel Area Land Use Plan* policy 2.4.4.B.8 states:

All new and/or expanding wastewater discharges into the coastal waters of Monterey County shall require a permit from the Health Department. Applicants for such permits shall be required to submit, at a minimum the following information and studies:

A Three years monitoring records...

This latter provision is repeated as Section 20.146.050.E.2 in the Monterey County *Coastal Implementation Plan*.

Chapter 15.23 of the County Code, "Sewage Treatment and Reclamation Facilities" adopted in 1991 is incorporated by reference in the *Coastal Implementation Plan* but is not part of the certified text that the Commission reviews.

b. Coastal Permit Analysis

The proposed project includes wastewater treatment improvements as enumerated below. The Commission concurs with and accepts the following finding that the County had made with regard to wastewater:

The Highlands Inn Wastewater Treatment Plant is located adjacent to Highway 1 at the western boundary of its property and operates under the authority of Regional Water Quality Control Board Order No. 93-44 (MPDES No. CA 0047872). The existing treatment system consists of flow equalization, primary sedimentation; secondary biological treatment and nitrification using a rotating biological contractor, secondary sedimentation; and chlorination/dechlorination. The treatment and disposal system has a maximum daily design capacity of 40,000 gallons.

A Drimad Bag Dewatering System has been installed at the facility. Bagged and dried sludge is trucked to the Monterey Regional Waste Management District's Marina landfill for disposal.

The treated wastewater is discharged to the Pacific Ocean through a land outfall to a 5 foot diffuser pipe. The outfall terminates in the Pacific Ocean in approximately 5 feet of water. The minimum initial dilution of the outfall is 20:1.

The Inn proposes to upgrade the existing Wastewater Facility through the addition of coagulation, filtration and chlorination processes. The equipment necessary for the additional processes will be installed within the area of the existing plant, as shown in the site plan and elevations attached hereto. The treated effluent will be suitable for landscape irrigation in accordance with Section 60313 of Title 22, California Code of Regulations.

The Reclamation Facility will consist of a 2,500 gallon reclaimed water storage tank, coagulation unit, filtration unit, 500 gallon chlorine storage tank, and pumps necessary to deliver water to the irrigation system at the appropriate pressure level. The irrigation system will consist of a drip irrigation system in the landscaped areas surrounding the Inn.

Reclaimed water will not be used for irrigation purposes within 50 feet of any restaurant or food facility. It is anticipated that 50 to 60% of the effluent will be treated to tertiary level, to 15% of the effluent will be reclaimed on an annual basis. The effluent which is treated to tertiary level and not reclaimed will be blended with the secondary effluent and discharged through the ocean outfall. The net result will be an increase to the quality of effluent discharged through the outfall.

The wastewater treatment and laundry facility upgrades will decrease the volume of effluent discharged through the outfall, increase the quality of the effluent discharged through the outfall, and reduce overall water demands.

The project, as described in the application and accompanying materials, conforms with the applicable provisions of the Carmel Area Land Use Plan, Coastal Implementation Plan "Regulation for Development in the Carmel Area Land Use Plan", Monterey County Code relative to Sewage Disposal, Chapter 15.20.

The project was reviewed by the Monterey County Departments of Health and Public Works for conformity with the applicable provisions of the County Code. Appropriate recommendations for the project are contained in File No. 965376 and are conditions of project approval.

To elaborate, this project would benefit the marine environment in two ways. First, the treatment level would be upgraded to "tertiary." This is a very high level of treatment; higher than currently exists at Highlands Inn and higher than the municipal discharges into Monterey Bay. According to information in the *EIR* 50 to 75 % of the wastewater will receive this higher treatment. Some of this tertiary-treated flow will be recycled. The remainder will be blended with the secondary treated flows for ocean disposal.

Second, some of the treated water would be reclaimed and not discharged into the ocean; again reducing any wastewater discharge impacts.

The Commission accepts the concepts embodied in the referenced conditions for installation of backflow devices (#1.16), wastewater irrigation to meet the State Health regulations (#1.17), evidence of an amended RWQCB Discharge Permit (#1.18), compliance with *County Code* Chapter 15.23 (#1.19), compliance with State Health and Waste standards (#1.20), annexation to a county service area or dedicated to a public utility (#1.21), an application to the State Department of Health Services for water reclamation (#1.22), a wastewater engineering report (#1.23), specific locations where irrigation with reclaimed water is to occur (#1.24), compliance with *County Code* Chapter 18.44 Water Conservation (#1.34), and some runoff diverting to the wastewater plant (#1.53). The final condition wording, however, reflects the appropriate authority of the RWQCB vis-à-vis the County Health Department's.

Given that this is not a new nor expanded discharge, it does not fall under the criteria of *Land Use Plan* policies for extra testing. The Regional Water Quality Control Board is responsible for ensuring compliance with wastewater discharge requirements. The Commission urges all parties – the County, concerned citizens, Highlands Inn owners, and the RWQCB – to avail themselves of the established procedures to resolve water quality concerns (see Exhibit 8).

5. Traffic and Parking

a. Relevant Local Coastal Program Provisions

In addition to the timeshare provision and policies 4.4.3.1.2 and 4.4.3.1.4 cited above, the proposed project must be consistent with Section 20.58.040 of the *Coastal Implementation Plan* requiring: 1 parking space per unit; 2 spaces per 3 employees; 1 space per four restaurant seats; and 20 spaces per 100 square feet of meeting space.

b. Coastal Permit Analysis

The Commission concurs with and accepts the following finding that the County had made with regard to traffic:

The proposed project will not have a significant impact on traffic. A traffic study prepared for this project by Keith B. Higgins & Associates, Inc., registered traffic engineers, concludes that the completed timeshare project is anticipated to generate no more traffic than the existing hotel use. The analysis supporting this conclusion has been reviewed and is supported by Barton-Aschman Associates, Inc., registered traffic engineers, Associated Transportation Engineers (ATE), and the Monterey County Department of Public Works.

With regard to parking, the proposed project is for an additional 15 parking spaces (in addition to the 306 which currently exist). This will make it is consistent with the County Code requirements according to the following calculations found in the file:

143 rooms x	1 per room =	143 spaces
60 employees x	2/3 per employee =	40
220 restaurant seats x	1/4 per seat =	55
4140 sq. ft. meeting space x 1 per 50 sq. ft. =		83
Total		321 spaces needed/provided.

Potential traffic and parking impacts could occur from excessive timeshare sales-related trips, employee trips, special events, and non-enforcement or non-compliance with parking regulations. Thus, the Commission accepts and incorporates conditions that the County had imposed regarding annual submittal of a parking and traffic management plan which shall include methods to provide sufficient parking during events and a monitoring program (#1.10); allocation of sufficient spaces for the guestrooms (#1.11); review of the parking layout and circulation by the Director of Public Works and meeting the standards of Title 20 and approval by the Planning Director (#1.6, 1.8, 1.32); no parking on roads (#1.27); encouraging use of a shuttle service (#1.43); providing information to guests on the availability of the shuttle bus and limousine services available through the Highlands Inn (#1.44); encouraging employees to use alternative mode of travel, such as ridesharing, carpooling, shuttle bus, and public transit programs (#1.42). The latter three conditions are only sufficient if they have wording added to ensure that they occur over the life of the project.

6. Air Quality

The Commission concurs with and accepts the following finding that the County had made with regard to air quality:

The Monterey Bay Unified Air Pollution Control District (MBUAPCD) has confirmed that the proposed project will not have a significant impact on air quality in the area. The MBUAPCD has indicated that the Highlands Inn timeshare project is in compliance with the conditions of the existing permit issued for the wastewater treatment facility and the existing permit could be amended for the proposed upgrades. The air quality within the vicinity of the wastewater treatment plant has improved as a result of a previous upgrade to the wastewater treatment plant. These improvements were completed and passed an inspection by the state and local officials. Additional upgrades to tertiary treatment will improve air quality.

7. Drainage

The Commission received some testimony concerned about site runoff. The Commission accepts and incorporates County conditions for drainage plans (#1.4, 1.5, 1.6) with elaboration of what is required under the enabling Code sections. To wit, the drainage plan shall include, but not necessarily be limited to:

- detailed plans of all surface and subsurface drainage devices, walls, cribbing, dams and other protective devices to be constructed with, or as a part of the proposed work, together with a map showing the drainage area and the estimated runoff at the areas served by the drains (Sections 16.08.100.B.5 & 16.12.060.b3 of the *County Code*);
- detailed plans of all...other erosion control measures to be constructed with, or as part of, the proposed work. All measures required under this chapter [16.12 of the *County Code*, "Erosion Control"] shall be shown. Function of erosion control measures shall be consistent with the provision of this chapter [16.12 of the *County Code*, "Erosion Control"] (Section 16.12.060.b3 of the *County Code*);
- the location and size of existing sanitary sewers, water mains, and storm drains. The approximate slope of existing sewers and storm drains shall be indicated (Section 19.03.010.K); and
- the approximate location of all rivers, watercourses, drainage channels, drainage structures, and reservoirs (Section 19.03.010.L8).

8. Other Site Suitability Issues

The Commission accepts and incorporates the following finding that the County had made regarding other potential issues:

There are no physical or environmental constraints such as geologic or seismic hazard areas, environmentally sensitive habitats, or similar areas that would indicate the site is not suitable for the use proposed. Since this is an existing 143 room hotel and no physical improvements are proposed, other than the improvements for the wastewater treatment facilities which will occur within existing disturbed areas, the development will not have adverse impacts on visual, geological, archaeological, forest resources and environmental sensitive habitats. As such, the project as proposed is consistent with policies of the Carmel Area Land Use Plan and regulations of the Coastal Implementation Plan dealing with these resources.

To ensure the validity of this finding, the Commission accepts and incorporate County condition #1.31 requiring preparation of a site plan identifying natural and screening vegetation.

9. Other Procedural Requirements

Although this Commission coastal permit approval supersedes the County's coastal permit approval, the County, pursuant to its general planning and police powers (e.g., through the subdivision process, Health Department review, and Building Inspection review), has appended a number of conditions to the project relevant to public health, safety and similar issues. (Some of these also serve to satisfy the requirements of Sections 20.64.110.H.4, 5(e), 5(f), and 6 of the *County Code* regarding timeshares.) The following County finding addresses this review:

The project as described in the application and accompanying materials was reviewed by the Department of Planning and Building Inspection, Health Department, Public Works Department, and the Water Resources Agency. The respective departments have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood; or the county in general.

This Commission action has no effect on certain conditions imposed by Monterey County pursuant to any of these other authorities. Under the local coastal program, all discretionary approvals are combined under a Combined Development permit with one set of conditions. The remaining conditions not mentioned in one of the above findings can be part of the combined development permit, but are not imposed by, nor would be enforced by, the Coastal Commission. These regard utilities (#1.2, #1.3), contribution for public works projects (#1.9), Fish and Game Code fee requirements (#1.33), fire safety (#1.13, 1.25, 1.26, 1.28, 1.47), tax collection (#1.51), Uniform Building Code (#1.45), hold-harmless provisions (#1.46, 1.52, 1.54), and permit recording (#1.55). They are shown in italics in the list of conditions.

10. Other Required Findings

Pursuant to the following subsections of Section 20.64.110.H of the *County Code* the Commission accepts the essence of the following additional required findings made by the County on topics not covered above and incorporates them into this approval:

1. That the project is compatible with adjacent land uses and is adequately buffered by open space and/or landscaping from any less intense use based on landscaping plans and diagram displaying adjacent properties, prepared by Creegan and D'Angelo, for the Highlands Inn project showing neighboring properties, distances, vegetation, topography, open space, and roads.

3. That adequate access for high density dwellings is available or attainable through the conditions of the development based on the adequacy of existing facilities and the

recommendations of the County Public Works Department and the Carmel Highlands Fire Protection District.

5(c). That the project does not significantly adversely impact energy use given that there is no potential for significant increases in demand on sources for fuel or energy and there is no proposal for new sources of energy.

5(g) That the project does not significantly adversely employment opportunities in the planning area, since it will continue to operate as a visitor-serving accommodation.

5(h) That the project does not significantly adversely impact the visitor serving economy of the planning area because the timeshare occupants would still be short-term visitors to the area.

Furthermore, the record indicates that the County considered all of the factors listed under Section 20.64.110 as required and any necessary resultant conditions are included in this approval.

11. Conclusion: Findings for Partial Approval

As conditioned in all of the ways mentioned in the preceding findings (55 original County conditions fully or conceptually retained plus three additional conditions), the proposed project is consistent with the Monterey County Local Coastal Program, including all of the elements under Timeshare provisions 20.64.110 F, G, and H.

The conditions are worded in a manner that the infrastructure improvements must occur prior to the condominium/timeshare project occurring. If for some reason the applicant decides against pursuing the condominium conversion/timeshare project, the infrastructure improvements could happen independently. Since they would be desirable, the conditions are worded to allow for that possible occurrence.

12. Subdivision Inappropriate: Findings for Partial Denial

Regarding the subdivision proposal on its own, currently there are six lots. Four contain visitor units; one contains the wastewater plant, and one has some parking. Under the proposed subdivision, six of the nine lots would contain visitor units, one would contain the lodge (lobby, restaurants, gift shop), one a parking lot, and one some land on the opposite side of Highlands Drive housing the wastewater plant (see Exhibit 3). According to the applicant, the intent of the request is "to follow road alignments, building locations, and to separate timeshare common area from the hotel buildings which are not part of the timeshare "common area." One parcel line would be adjusted so that it no longer bisects a building. Separate parcels can result in separate ownerships. Separate ownerships of common facilities can be complicated. It makes more sense for the owner of a hotel to also own the hotel's parking lot, treatment plant, lobby, etc. If there were multiple owners of the six inn unit parcels, their relationship(s) among themselves and to the owners of the parcels with the wastewater plants and

hotel lobby with regards to responsibilities could be complicated. Although six legal parcels already exist, approving any additional parcelization would be contrary to the rest of the Commission's action on this proposal with its intent to have a portion of the Highlands Inn retained as a hotel open to the general public. Therefore, the coastal permit for the subdivision is denied as being inconsistent with the aforementioned *Land Use Plan* visitor-serving goals and policies. A better option would be to recombine the six parcels into one. If six parcels were to be maintained, a simple lot line adjustment of the ones bisecting buildings should be requested in order to reconfigure the existing legal lots record to conform with the existing structures, roads, and utilities and the partial timeshare conversion.

C. California Environmental Quality Act

An Initial Study was prepared for this project, followed by a focused environmental impact report (covering circulation, parking, water, and wastewater). No significant adverse environmental impacts from the proposed project were found, and the Commission generally finds none as well. In fact, the infrastructure improvements would benefit the environment, as discussed in the previous findings. However, there are some potential impacts that may arise if all aspects of the project are not carried out according to County regulations or not carried out over time. Thus, there are several conditions of the project approval to ensure compliance. As conditioned, there are no feasible alternatives nor additional mitigation measures available which would substantially lessen any significant adverse impact that the project may have on the environment within the meaning of the California Environmental Quality Act.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

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HEARING IMPAIRED: (415) 904-5200



APPEAL NO.:

A-3-MCO-98-083

APPLICANT:

Highlands Inn Investors II Ltd c/o Mark Solit

ADOPTED FINDINGS AND DECLARATIONS FOR DETERMINING THAT A SUBSTANTIAL ISSUE IS RAISED WITH RESPECT TO THE GROUNDS ON WHICH THE APPEAL HAS BEEN FILED

The Commission finds and declares as follows:

A. Project Description and Location

The owners of the Highlands Inn wish to resubdivide their 8.59 acre holdings into nine lots; subdivide their 143 existing hotel units into condominium units; and allow timeshare use of these units; realign and add parking spaces; add new underground water tanks; upgrade the secondary sewage plant to tertiary treatment; allow reclamation of portion of tertiary effluent for landscaping and irrigation; and install an on-site recycling facility for laundry wastewater (see Exhibits 3 and 4). Although combined under one resolution number, the County approval has divided these proposals into four distinct projects: (1). the subdivision of land; (2). the condominium conversion of hotel units; (3) the timeshare conversion; and (4) all the infrastructure improvements.

The condominium units would be marketed as "timeshare" units. They would be sold in one week increments for 51 weeks of the year (the unit is left vacant the other week for maintenance). The County approval conditioned the project to require that "at least 25 percent of the units shall remain in a transient/hotel use and available for public use" (Condition #38). That equates to 36 units. According to the applicant, these 36 units would remain under the ownership of the hotel owner and not be converted to condominiums. This general entity would also own any portions of the timeshared rooms left unsold as well as the restaurants and other common facilities. For the 107 timeshare units, there would be a total of up to 5,457 individual owners. Any of their rooms not booked to timeshare owners, their guests, or vacation club members must be made available to the general public (Condition #39). The timeshare facility is proposed to be run by Hyatt Vacation Ownership. Timeshare owners could exchange their entitlement to stay in their Highlands Inn unit for a stay in other of the corporation's vacation facilities, through an intended affiliation with Hyatt Vacation Clubs. The reciprocal would also be true: vacation club member (i.e., those that own timeshares elsewhere would be able to do exchanges to stay at the Highlands Inn.) The permit is also conditioned on formation of a homeowners association (Condition #7). The timeshare owners would pay into a maintenance fund for their units and the common areas.

The 8.59 acre site is designated "Recreation and Visitor-Serving" in the *Carmel Area Land Use Plan* and is zoned "Visitor-Serving Commercial VSR(CZ)" in the *Coastal Implementation Plan*. The site is located in Carmel Highlands on Highlands Drive

EXHIBIT NO. 2

APPLICATION NO.
A-3-MCO-98-83

Highlands Inn timeshare
SI Findings

adjacent to but several feet above Highway One landward of the Pacific Ocean. Except for the adjacent 35 unit Tickle Pick Inn, the area is residential. The Inn is a luxury, world-renowned establishment. At the time of the local coastal program preparation in the early 1980's it had 105 rooms. A major expansion to the current 143 rooms was approved by the Coastal Commission in 1982 (3-82-227). That approval was conditioned on installation of a left turn lane on Highway One, establishment of a limousine/ shuttle service, and preparation of a transportation and parking study after one-year of operation. In terms of providing an affordable component, the applicant deeded a parcel of land west of Highway One to the Big Sur Land Trust which could be used for scenic overlook purposes. Over the years, the Coastal Commission issued 15 other permits to the Highlands Inn for various improvements. Other facilities on the site include a lobby/registration area, administrative offices, two restaurants, a gift shop, event/banquet facilities, a pool, a laundry, the wastewater plant, and parking.

B. Analysis of Consistency with Local Coastal Program and Coastal Act

Appellants essentially make two general contentions: (1) that timeshares are not allowed in the Carmel Area and that this specific timeshare project will significantly impact publicly-available visitor-serving accommodations, contrary to the visitor-serving policies of the certified LCP; and (2) that the project will result in an intensification of use beyond the equivalent of the 150 hotel unit maximum stated in the local coastal program. As discussed below, part of the first contention gives rise to a substantial issue. Although the remaining contentions do not, finding at least one substantial issue means that the County approval is voided and the Commission must act on the coastal permit de novo.

1. Timeshares and the Protection of Visitor-Serving Land Uses

a. Appellant's Contentions:

The Commissioner appellants and Carl Larson contend that timeshares are not allowed in the Carmel Area and that the project will reduce available public accommodations in the area. The Commissioner appellants explain in part:

The County approval will cause 107 of the 143 hotel units at the Highlands Inn to convert to timeshare use – a 75% reduction in the number of units available to the general public. The Highlands Inn is one of two visitor-serving facilities in the Carmel Highlands-northern Big Sur areas. Within this area is Point Lobos State Reserve and Garrapata Beach State Park. This scenic area also attracts countless tourists. The nearby Point Lobos Ranch is slated for up to 240 visitor units in the local coastal program; but that is unlikely to happen now that the property has been purchased by the Big Sur Land Trust for conveyance to the State Park system. Thus,

the subject and adjacent (Tickle Pink) sites are the only sites in this area to be designated for visitor-serving uses.

...there is no mention in the *Carmel Area Land Use Plan* of "timeshare." Timeshare uses have some characteristics of visitor-serving uses, in that they do not provide permanent housing for the purchasers of a segment of time, but also have characteristics of private residential use in that the units are, by and large, available only to that very small segment of the public who have bought into the project. Other jurisdictions that allow timeshares do so pursuant to specific coastal land use plans provisions that allow such a use. With such provisions absent in the *Carmel Area Land Use Plan*, and given the initial context of LUP certification, the County approval is inconsistent with the land use plan...

Furthermore, policy 4.4.3.D.2 encourages retention of existing moderate-cost visitor-serving facilities. While the Highlands Inn may not be considered moderate-cost compared to all other hotels on the Monterey Peninsula, as noted it is one of only two facilities in the area and may be affordable on an occasional basis by a majority of the public. Thus, the County approval violates the intent of this policy.

Regulations for timeshares are included in the Implementation portion of the County's local coastal program. However, these are general provisions applicable to all four land use plan segments. Just because regulations for certain uses appear in Implementation, does not mean the use is allowed, if it does not otherwise appear in the Land Use Plan. Furthermore, timeshare uses are not specifically allowed in the "VSC(CZ)" zoning district.

...Within the Carmel Area there are 276 visitor units. This proposal would effectively remove 107 from the market. This is almost 38%, which is a significant percentage. The Commission in a previous action in Monterey County denied a similar privatization proposal of a lesser percentage at either the Pebble Beach Lodge (60 out of 165 units or 36%) or Spanish Bay Resort (60 out of 270 units or 22%)...Furthermore, this approval can be seen as precedential for allowing further conversions to timeshares. (see Exhibit 5b for full contention)

Appellant Larson states,

The trophy treasure Highlands Inn is a stunning unique coastal experience not available in "comparable" units elsewhere in the area. It is incomparable. For many, alternative units are not negotiable.

He cites inconsistencies with Coastal Act Public Access policies 30210, 30211, and 30212(2). He further questions whether the potential availability of timeshares to the general public when not reserved by timeshare owners will actually occur:

There can be the occasional extra facilities for the friends of guests of the current owner/member in residence; the occasional call to accommodate a colleague or customer; revisiting occasions for the owner/member during the one year of occupancy visit; the extra needs of the corporate timeshare owner/member when holding meetings; the complimentary invitation for the potential owner/member to see the potential purchase... (see Exhibit 5c for full contention)

Appellants Tydings and James contend that there are no low-cost facilities being provided.

b. Local Government Action:

The County approval findings state:

The property is designated as Visitor Serving Commercial, which allows hotels, motels, hostels, and inns. Chapter 20.64.110 of Title 20 (zoning ordinance) of the Coastal Implementation Plan state that a "timeshare project shall be permissible only in such zones and at the locations therein where a hotel, motel or similar visitor accommodation use would be permitted as an allowed use."

To maximize public use within this context, the permit was conditioned as follows:

- At least 25 percent of the units shall remain in a transient/hotel use and available for public use (the result is that approved will result in 107 of the 143 units being converted to timeshare units.) (condition # 38).
- The operation of the property as a hotel shall continue in conjunction with the timeshare ownership and units in addition to 25 percent of the units pursuant to Condition 38 which are not utilized by the individual timeshare estate owner or guest of the timeshare estate owner, shall be available as a hotel unit to the general public (#39)
- The timeshare use period shall be for minimum interval periods of up to one week and not more than twenty-nine consecutive days or eighty-nine total days per calendar year (#41)
- The restaurant, banquet and wedding facilities shall remain open to the public (#36).
- In the event the time-share project is not completed pursuant to the approved...permit, no use other than visitor serving accommodations shall be made of the property (#37).

Findings for approval cited a study that demonstrated compliance with all the items required under Section 20.64.110 to allow timeshares:

Based upon economic data provided by Stephen A. Nukes and Associates, Management strategy and economic consultants, dated May 16, 1997 currently, the total of overnight accommodations in the County of Monterey is in excess of 11,700 with the inventory of rooms on the Monterey Peninsula exceeding 9,300. On the Peninsula, occupancy levels range from 67 percent in 1991 to nearly 75 percent in 1996 with an average occupancy over that period of 69.8 percent. If 69.8 percent of the 9,300 accommodation [units] were occupied, this would leave approximately 2,809 rooms available for overnight use. If 80 percent of the Monterey Peninsula room supply were occupied, it would still leave approximately 1,860 rooms available. Ten major properties in the unincorporated area were surveyed. These ten properties in the vicinity of the Highlands Inns, have a combined total of 949 guest rooms available. An additional 68 guest rooms are scheduled to come on line in the next two year period. Total available guest rooms will be 1,017. Assuming 80 percent utilization 180 units would be available for transient uses. It is projected that it will take at least five years to sell out the timeshares and during this time all unsold guest rooms will be available for overnight occupancy. The consultant concluded that there is ample supply of overnight accommodations to absorb any and all prospective Highlands Inn guests who may have to stay elsewhere due to the timeshare use. There are seven motels or inns within the Carmel Area Land Use plan area for a total of 269 units. To provide for ample visitor serving accommodations in the Planning Area at least 25 percent of the current units shall be made available to the traveling public and the timeshare project shall be required to be phased. It is projected that an additional 10 percent of the units would be available for overnight accommodations during non-use by timeshare owners.

The County found that, "with an average room rate of approximately \$250 per day, the Highlands Inn property does not qualify as a local accommodation serving low and most moderate income persons." The County also found the proposal consistent with *Carmel Area Land Use Plan* policy 4.4.3.I cited below.

c. Relevant Coastal Act and Local Coastal Program Provisions

The Coastal Act Public Access policies cited by one appellant are:

30210: In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people

consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

30211: Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

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,

Carmel Area Land Use Plan goals focus on preserving unique scenic resources and fragile ecosystems. The *Plan* focus is thus mainly on how new development, even visitor-serving facilities which are a priority under the Coastal Act, must be limited and not adversely impact resources. The Section 4.3.1 objective most relevant to the subject proposal states:

Existing recreational and visitor-serving facilities located within the residential communities are considered desirable uses and should be continued where potential or existing conflicts with the surrounding residential community can be adequately mitigated.

There are no *Carmel Area Land Use Plan* provisions that mention timeshares. *Carmel Area Land Use Plan* policy 4.4.3.D.2 provides:

where feasible, retention of existing moderate cost recreation and visitor serving facilities should be encouraged.

Carmel Area Land Use Plan Policy 4.4.3.D.3 requires that low to moderate cost facilities or land suitable for such use be provided where significant expansion of existing high-cost visitor-serving facilities is proposed. Section 20.146.120.B3a of the *Coastal Implementation Plan* amplifies on this requirement with a formula for determining the amount of moderate to low cost facilities that must be provided.

The site in question is designated "Recreation and Visitor Serving Commercial." The *Plan* text (4.5.C) states the uses allowed in this designation:

Moderate to high-intensity uses providing basic support services and accommodations to meet visitor needs associated with coastal recreation and travel are appropriate. Major hotel or inn accommodations are principal uses...

Land Use Plan Policy 4.4.3.1 states;

Commercial land use in the Carmel Coastal segment shall be restricted to those locations of existing and proposed visitor-serving accommodations shown on the land use plan map or described text.

With regard to Implementation, the site is zoned Visitor Serving Commercial (VSC) which provides for the following land uses:

20.124.030 ALLOWABLE USES.

A. Principal Uses:

All uses specifically providing services and facilities for the traveling public including:

1. Hotels, motels, automobile courts, hostels inns.
2. Restaurants.
3. Service stations.
4. Recreational vehicle parks (North County, Big Sur, Carmel only).
5. Employee housing, accessory and supporting to a permitted use.
6. Subdivisions.
7. Lot line adjustments.
8. Campgrounds and moderate intensity recreational use, including tent platforms, cabins, parks, stables, bicycle paths, restrooms, and interpretive facilities.

B. Conditional Uses:

1. Other uses of a similar visitor-serving nature and intensity when determined by the Planning Commission to be consistent with the intent of this chapter and applicable land use plan.
2. Retail stores and offices accessory to visitor serving uses.
3. Conditional certificates of compliance.
4. Visitor-serving recreational uses and facilities for recreational activities. (North County only)

Timeshare provisions are found in Section 20.64.110 of the *Coastal Implementation Plan*:

A. Purpose: The purpose of the Section is to establish the standards, regulations and circumstances under which timesharing residential uses may be established. Further, the regulation of the Section are intended to provide for the protection of existing residential uses and neighborhoods through mandatory findings for approval and public hearing processes.

B. Applicability: A timeshare project shall be permissible only in such zones and at the locations therein where a hotel, motel or similar visitor accommodation use would be permitted. No timeshare project shall be allowed in any case wherein covenants, conditions and restrictions expressly prohibit timeshare or other transient uses.

C. A Coastal Development Permit shall be required in accordance with Chapter 20.70 for any timeshare project.

D. TRANSIENT OCCUPANCY TAX APPLICABLE. ...

E. APPLICATION FOR TIMESHARE PROJECT APPROVAL.

An applicant for approval of a proposed timeshare project shall submit a completed application on a form as prescribed by the Director of Planning and Building Inspection, in addition to any other application, information or forms that may be necessary in the particular case as determined by the Director of Planning and Building Inspection. The application shall include:

1. Identification by name of the timesharing project and street address where the timesharing project is situated, including legal description;

2. Identification of the time periods, types of units, and number of units that are in the timeshare project. In order to facilitate orderly planned timeshare projects, the total number of timeshare units anticipated for the project shall be stated and approved although the project may be built, converted or maintained for timeshare purposes in phases convenient to the applicant;

3. A map drawn at the appropriate scale (1"=100' or as otherwise approved by the Director of Planning and Building Inspection), showing the site in relation to surrounding property, existing roads and other existing improvements (in all cases, an engineers scale shall be used);

4. A site plan for the entire anticipated project (whether or not built, converted or maintained in phases) showing proposed improvements, location of structures, vehicular ingress, and egress, landscaping, and floor plans;

F. GENERAL CONDITIONS AND FINDINGS.

The Planning Commission may approve or deny an application for a Coastal Development Permit for a timeshare project. The Commission may impose such conditions as it determines necessary to protect the public safety, health, peace and welfare. If a Coastal Development Permit is granted, the Coastal Development Permit shall be granted with a condition attached that no timeshare rights or entitlements shall be sold or offered for sale unless, at such time, there then exists a valid final subdivision public report for the sale of such timeshare rights or entitlements, issued by the Department of Real Estate of the State of California. In determining whether, and under what conditions to issue any such Coastal Development Permit, the Commission, among other things, shall consider:

1. The impact of the timesharing project on transient or permanent rental stock;
2. The impact of timesharing on present and future County services;
3. Conformity with current zoning regulations and the General Plan;
4. Conformity with existing uniform building and fire codes;
5. The sign program proposed for the project;
6. The landscaping proposed for the project;
7. Traffic circulation and parking for residents, guests, prospective purchasers and sales program personnel;
8. The applicant's description of the methods proposed to be employed to guarantee the future adequacy, stability and continuity of a satisfactory level of management and maintenance of the timeshare project;
9. The desirability of requiring an office of the managing agent or agency be located locally or on-site, as appropriate.
10. The nature and feasibility of alternative uses in case the sales program for timeshares fails.
11. Any other factors deemed relevant and any other information which the Commission or the applicant considers necessary or desirable to an appropriate and proper consideration of the application.

G. SPECIFIC CONDITIONS AND FINDINGS.

In addition to other considerations of a Coastal Development Permit for a timeshare project, the following shall apply:...

2. Hotel and Motel Conversions. In the event an existing hotel, motel, inn, or bed and breakfast facility is proposed to be converted in whole or in part to a timeshare project, the Planning Commission shall consider, in addition to the considerations in section 20.64.110(F), the following:

- (a) the impact of the conversion on employment opportunities in the planning area of the project;
- (b) the impact of the project on the visitor serving economy of the planning area;
- (c) the impact of the conversion on energy, water and sewer use;
- (d) the impact of the project on the stock of hotel and other visitor accommodations for low and moderate income persons;
- (e) the impact of the project on the stock of hotel and other visitor accommodations for stays of less than one week within the planning area.

H. APPROVAL OF THE TIMESHARE PROJECTS.

No timeshare project shall be approved by the County unless the following findings can be made:

1. That the project is compatible with adjacent land uses and is adequately buffered by open space and/or landscaping from any less intense use.
2. That the development plan is consistent with all goals and policies of the Local Coastal Program.
3. That adequate access for high density dwellings is available or attainable through the conditions of the development.
4. That all structures, existing or proposed, meet presently established minimum structural, health, safety and fire standards.
5. That the project does not significantly adversely impact:
 - (a) water use;
 - (b) sewer use;
 - (c) energy use;
 - (d) traffic;
 - (e) police protection and other county services;
 - (f) fire protection;
 - (g) employment opportunities in the planning area;

- (h) the visitor serving economy of the planning area;
- (i) the stock of hotel and other visitor serving accommodations including, but not limited to, that which serves low and moderate income persons;
- (j) the stock of hotel and other visitor accommodations for stays of less than one week within the planning area.

6. That the project will not have a significant adverse impact on the health, safety, and welfare of the general public.

d. Substantial Issue Analysis and Conclusion

Appellants contend (1) that timeshares are not permissible in the Carmel Area of the Monterey County coastal zone; and (2) that even if they were, the Highlands Inn proposal is inconsistent with Monterey County's *Coastal Implementation Plan* Section 20.64.110, which provides specific criteria for the consideration of timeshare uses. As discussed in detail below, while the Commission finds that timeshares may be considered a permissible use under the Carmel Area segment of the Monterey County Local Coastal Program, it also finds that the Highlands Inn timeshare proposal fails to meet the specific criteria of CIP Section 20.64.110 that addresses impacts to visitor-serving accommodations, and is inconsistent with the general policies of *the Carmel Area Land Use Plan*. In particular, the Highlands proposal will significantly and adversely impact visitor-serving accommodations by reducing by up to 75% the currently unrestricted *public* availability of hotel rooms at a unique and nationally-significant visitor-serving resource. In addition, this loss of visitor-serving units is a significant change to the allocation of visitor-serving uses in the Carmel Area, originally certified as consistent with Coastal Act section 30222. To reach this determination, it is important to first understand the Commission's implementation of the Coastal Act with respect to the protection of visitor-serving uses and timeshare uses, and the specific local coastal program that governs in this case.

(1) Timeshare Conversions and the Protection of Visitor-serving Facilities

The Coastal Commission has a long history of regulating timeshare uses, particularly conversions, to protect the public availability of visitor-serving facilities along the California coast. The Coastal Act in Sections 30001.5 and 30210 establishes as state policy that "maximum access . . . and recreational opportunities shall be provided for **all the people**" [emphasis added]. Additionally, Section 30222 provides for the priority of public visitor serving uses:

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 residential, or general commercial development... [emphasis added].

Because hotels and motels are the major form of overnight facilities for most people, the Commission has examined closely any timeshare conversion policies or specific proposals that may effectively decrease public access to the coast by reducing the availability of overnight accommodations. As explained below, as opposed to hotels and motels, which are open to the general public on a daily basis, timeshares generally restrict access to those that have purchased a share in a particular project.

Nature of Alternatives to Conventional Hotels

Conventional overnight visitor serving facilities are owned and operated by a single entity. All rooms are available to the general public on a "first come, first served" basis. Over the last twenty years alternatives to the traditional hotel/motel model have appeared which offer financing options to developers of hotel and resort properties and new investment opportunities to that segment of the public interested in ensuring their ability to periodically visit a particular property. Two alternative methods of achieving these results have emerged. One method is the condominium-hotel approach, the other is the timeshare program.

The *condominium-hotel method* allows an individual to buy a unit in a resort or hotel development. The entire project is a condominium subdivision. The owner of the unit has an exclusive fee interest in the unit and, ordinarily an undivided interest in the public and common areas of the development. The owner of the unit may then make whatever use he or she pleases of the unit unless there are restrictions on that use in the CC&Rs. The developer of the project typically retains control over the management of the public areas, maintenance, and provides a reservation check-in service to market the rooms that the owners are not using to the general public. This method of financing spreads the financial risk of development of recreational facilities and, according to developers, encourages the development of properties that might otherwise remain vacant.

Timeshare programs also involve the sale of individual units. Unlike condominium-hotels, however, each unit is sold in usually one week increments to a number of buyers. The purchaser pays a substantial sum that entitles him or her to stay in a unit for the purchased increment forever or for a fixed number of years (in which case the property interest conveyed is essentially a leasehold). These timeshares are typically tied to a vacation club, enabling owners to swap time in their unit with another timeshare owner at another property. Public availability of the units is less certain than it is for condominium-hotels, because rental to the public has the lowest priority in this program. First priority for the units obviously goes to the timeshare owner. If the owners all decide to stay in their units for their allotted time periods, then the units would be

available to only that very small segment of the public. Second priority goes to other vacation club members, who must also own timeshares somewhere. The third priority for use of the units goes to members of the general public. As with condominium-hotels, developers usually maintain that spreading the financial risk of development among timeshare participants often encourages the construction of new projects that might otherwise not be built. In this case, the capital improvements already largely exist and thus the sale of shares in this case may not encourage any additional new units at the Highlands.*

Commission Consideration of Timeshare Uses

Over the last twenty years, the Commission has reviewed a wide variety of projects and local coastal program policies concerning condominium and timeshare projects along the coast. Overall, this implementation history illustrates an on-going concern for the potentially negative impact of timeshare uses on the public availability of visitor-serving amenities in the coastal zone. Significantly, the specific context of these projects and policies has been central to the Commission's application of the visitor-serving protection policies of the Coastal Act, and its conclusions about whether a particular proposal was inconsistent with these policies. Another critical distinction in these actions is whether a proposal constitutes a net gain or loss of visitor-serving resources.

In general, when approving condominium and timeshare developments over the last ten years, the Commission has consistently maintained that these condominium-hotels or timeshares are a type of visitor-serving use, but only a quasi- or low priority one because of their essentially private character. The Commission has acted both on individual applications (where there is no certified local coastal program or on appeal), and on local coastal programs that contain regulations on these uses. In the latter situation, the Commission has certified a variety of ways to ensure that these quasi-visitor-serving uses do not preclude other more traditional public visitor accommodations and instead that they appropriately fit in the mix of various visitor-serving uses. Approaches have included not allowing them (e.g. Santa Cruz County), allowing them in only certain areas, and allowing only a percentage of visitor units to be timeshare or condominium hotels (e.g., Santa Cruz County LCP Amd 1-87; Encinitas, LCP Amd 2-97).

For the construction of new hotels or resorts financed in the *condominium* ownership manner the Commission has developed a consistent approach regarding public/private use of the individual units. The coastal permit is conditioned to limit owner use of the unit to no more than 25% of the time (90 days a year). Of this time, no more than two weeks can be scheduled during the summer months. The developer of the project is

* This project may generate up to \$109 million in revenues (assuming a cost of \$20,000 per one week share, for 5457 shares).

also required to provide a reservation service and advertise availability of the units to the general public. The Commission has approved coastal permits or local coastal program amendments for several of these types of visitor accommodations (for example, 3-95-48, Pacific Plaza Resort, Oceano; 3-90-46, Marchant, Half Moon Bay; Santa Cruz County LCP Amd. 1-87, Seascape Resort). It is important to note that all of the approved condominium-hotel projects have been for *new* construction and thus it can be found that even though 25% of the units are not available to the general public, there is a net *gain* in units represented by the 75% which are available.

A proposal to convert an existing hotel to condominium type ownership in Pismo Beach was approved with the conditions described above. This conversion was permitted because the applicant contended that the hotel was failing financially and could only be retained if condominium financing was approved. The Commission also found that, as conditioned, and because of the facts of this particular project, the conversion would not diminish its visitor serving nature (the motel had very low occupancy rates; see A-4-PSB-90-039).

Although the *timeshare* use is somewhat different than the condominium use, questions about the relative restrictions on general public availability remain. The Commission's review of such projects and local coastal program amendments to allow timeshares have thus raised similar concerns as those described in the preceding paragraphs. For example, a review of Commission action on timeshares reveals that *new projects* are approved in areas where there is already an abundance of visitor accommodations (for example, Encinitas LCP Amendment 2-97) or, as in the case of the amendment to the Orange County: Irvine Coast local coastal program (LCP Amd. 1-96), in areas where no new overnight accommodations can apparently be financed other than as timeshares. In other cases, the Commission has denied timeshare proposals because there was not an abundance of existing units (for example, Kaul, 6-81-55-A-1; Winners Circle, 6-81-112). Most of the Commission action on timeshares has related to new developments. Again, with *new* projects, the Commission can find that although the number of units available to the public may be substantially limited, any percentage that are available represents a net *increase* in overnight accommodations. In order to ensure that there would be some net gain, the Commission has included local coastal program provisions to require that a specific percentage shall be set aside for the general public (see, for example Encinitas LCP Amd 2-97). Finally, the Commission has certified LCPs that simply do not allow timeshare uses (e.g., the Santa Cruz County LCP).

In the case of the conversion of an existing conventional hotel/resort to timeshare, there is of course only a net *loss* of units and the issue becomes how many, if any, can be taken out of the pool of overnight accommodations available to the public in a particular area. Historically, the Commission has looked most closely at such proposals precisely because of this potential loss of existing visitor-serving uses.

As discussed in more detail in the next section, it is not clear whether the timeshare use was contemplated by the Commission when it certified the Monterey County LCP, and the subject proposal is the first such timeshare conversion in the Central Coast to be considered by the Commission (in part because few local governments in the area would even allow them). However, there was a proposal in Del Monte Forest that raised similar issues concerning the application of the Coastal Act's visitor-serving protection policies. A proposed project to convert what are publicly available tee times and hotel rooms at Pebble Beach to private membership club use, similar to the timeshare concept, was found to be clearly inconsistent with the *Del Monte Forest Land Use Plan* as well as the relevant public access and recreation policies of the Coastal Act, and was denied on appeal (see A-3-MCO-91-57).

Conclusion

The Commission has consistently raised concerns about the potential impacts of timeshare uses on visitor-serving amenities in the coastal zone. This concern, though, has always been shaped by the particular contexts at issue, including such factors as whether a project was for a new use or was a conversion of an existing use; and the particular characteristics of both an area's existing visitor-serving economy, and the specific use proposed for conversion.

(2) Timeshares in Monterey County and the Carmel Area

All governments within the Coastal Zone are required to prepare local coastal programs in order to resume primary authority for regulating development in this geographic area (Coastal Act Section 30500). All local coastal programs are subject to a certification process by the Commission before they become effective. Local coastal programs consist of land use plans and implementing ordinances. These local coastal programs, typically tailored to meet the unique situation in each locality, must, however, provide adequate protection for the coastal resources identified in Chapter 3 of the Coastal Act, including the visitor-serving uses for the public discussed earlier.

In order to ensure that coastal resources are adequately protected, the Commission's regulations applicable to local coastal programs preparation indicate that "the kind, location and intensity of land uses ..." must be analyzed. (California Code of Regulations 13511(a)). The Coastal Act (Section 30108.5) defines a Land Use Plan as that portion of the General Plan or coastal element which indicates the kind, location and intensity of land uses. Section 30523 of the Coastal Act requires that each local coastal program be sufficiently specific to ensure that coastal resources are protected and that the requirements for content described in Section 30108.5 are met. Implementation plans must be consistent with and adequate to carry out land use plans. In summary, the Coastal Act and Regulations require that the local coastal programs

identify land uses clearly enough so that their effects on coastal resources can be adequately analyzed in the Commission certification process applied to each plan. As discussed below, the need for visitor-serving facilities was specifically addressed in the certification process for the Carmel Area LCP segment, including the importance of existing resources such as the Highlands Inn. The record on the specific use of timeshares, though, is less clear.

Carmel Area Land Use Plan Development

The *Carmel Area Land Use Plan* was developed in the early 1980's. At the time most of the area under the *Plan's* jurisdiction was comprised of residential neighborhoods designated for continued residential use. The amount of potential new development in the planning area was limited due to various Coastal Act policies, as well as natural constraints. Thus, providing for visitors, which is a Coastal Act priority, proved challenging. The *Plan* responded by either placing existing visitor-serving facilities in an exclusive visitor zone (see Section 4.5.C quoted above for the allowed uses) or permitting them to remain in residential zones by policy language (see Exhibit 6). One additional area at Point Lobos Ranch was also designated for new visitor-serving accommodations. One facility, Mission Ranch, was allowed to convert to residential use. In approving the *Plan* the Commission found:

Four existing hotel sites are designated "Visitor Serving" with expansions permitted. [Carmel River Inn, Highlands Inn, Grovsenor, Lincoln Green] The Flatlands of Point Lobos Ranch is reserved for up to two hotels with a total of 240 units (4.4.3F4a). Although residential development is an option, some form of recreational use is still required (4.4.3E9). Two smaller establishments – the 4 unit Lincoln Green and the 11 unit Grovsenor Inn could conceivably convert to residential uses because they are in a residential zone. However, the higher maximum permitted visitor density is an incentive to remain commercial. The existing 26 visitor unit Mission Ranch will also be allowed to convert to residential use, but comparably priced units must be provided elsewhere in Monterey County's coastal zone...

Even if all three establishments convert and no replacement occurs within the Carmel area, 197 existing visitor-units would remain on designated visitor-serving sites within this approximately 7 mile long segment [including at that time 105 units at Highlands Inn]. An additional 90 units could be built on these sites. *Together with the permitted Point Lobos Ranch development*, sufficient visitor-serving facilities will be provided in the areas consistent with Section 30222...(emphasis added)

As noted earlier, the Highlands Inn has since expanded by 38 units. The Carmel River Inn expansion anticipated at the time of certification never occurred, although an EIR was prepared. In addition, a *Land Use Plan* amendment has since allowed the Mission Ranch to expand to 31 units. However, most of the portion of Point Lobos Ranch

designated for overnight accommodations has been purchased by the Big Sur Land Trust for conveyance to the State Parks Department. The source of funding was State money to preserve mountain lion habitat, rendering it very unlikely that the Department will seek to develop the overnight uses contemplated with the *Land Use Plan* was certified.

At bottom, certification of the Carmel Area Land Use Plan balanced various land uses within a constrained context that did not allow for extensive planning of new visitor-serving uses. Because of this, the existing visitor-serving uses, including the Highlands Inn, played a central role in enabling the Commission to find that the Carmel Area Land Use Plan was consistent with the visitor-serving policies of Coastal Act section 30222. In short, the 75% conversion of the Highlands Inn from a hotel to a timeshare is potentially a significant change to the certified allocation of visitor-serving uses in the Carmel Area.

Monterey County History Regarding Timeshares

The *Carmel Area Land Use Plan* (LUP) portion of the local coastal program was certified in 1983. The *Coastal Implementation Plan* was later prepared and became effective in 1988. Primary permit authority was returned to Monterey County at that time.

The *Implementation Plan* contains zoning designations and maps. The subject property is "Visitor-Serving Commercial." Timeshares are not specifically mentioned as permitted uses (see Section 20.124.030 quoted above).

The timeshare provisions are instead found in a general section of the *Coastal Implementation Plan* (see Section 20.64.110 quoted above). Timeshare provisions were first adopted by Monterey County in 1984 and placed in the zoning chapter of the *County Code*. Development of the *Coastal Implementation Plan* involved writing specific zoning provisions for each of the four segments as well as writing some specific coastal permit procedures. Additionally, to complete the *Coastal Implementation Plan*, existing general zoning provisions were included. These included, for example, regulations for bed and breakfast operations, senior citizen units, and timeshares. The timeshare provision stated that it applied only in certain districts, none of which were in the coastal zone at that time:

A time-share project shall be permissible only in such zones and at the locations therein where a hotel use would be permitted as hereinafter provided. Unless otherwise provided elsewhere in this zoning chapter, the zones in which such projects are permissible are the R-3, R-4, C-1, C-2, CR, PC, H-1, SC. No time-share projects shall be allowed in any case wherein covenants, conditions and restrictions expressly prohibit timeshare or other transient uses (see Exhibit 7).

A handwritten note on an earlier review copy suggests that the Coastal Commission staff asked the County whether they wanted to include any coastal zone districts, since none of the enumerated districts were in the coastal zone. There was not a formal written comment (among the more than 200 that staff made) on this subject, and the final County text retained the original language. The *Coastal Implementation Plan* was approved as submitted. The Coastal Commission staff report makes no mention of the timeshare chapter other than listing it in an attached "Table of Contents."

The general zoning provisions were revised by Monterey County in 1991 for areas outside of the coastal zone. The time share provisions were changed slightly. The mention of specific districts was eliminated. Since the revisions were for areas outside of the coastal zone, these provisions were not reviewed by the Coastal Commission.

In 1995 the *Coastal Implementation Plan* was revised. The updated versions of those portions of the *Coastal Implementation Plan* that were derived from the general regulations were included in the submittal to the Coastal Commission. Included were the 1991 timeshare revisions, noted above, prepared and approved by the County for outside the coastal zone. The only further change made was a substitution of the need to obtain a coastal permit for the need to obtain a use permit. The Coastal Commission findings for approving the *Coastal Implementation Plan* amendment (#1-95) enumerated all significant changes between the certified and the revised coastal implementation program provisions. The only change noted with regard to timeshares was that a coastal permit would now be required. The deletion of the specific district references was not mentioned.

(3) Analysis of Highlands Inn Proposal

Are Timeshares Permissible under the Carmel Area Land Use Plan?

The threshold contention of the appellants is that timeshares are not a permissible use under the *Carmel Area Land Use Plan*. As discussed above, the timeshare use is not specifically mentioned in the *Land Use Plan*. Nor is the timeshare use mentioned as a permitted use in the visitor-serving commercial zone, which is the zoning of the Highlands Inn (CIP Section 20.124.030). More generally, where the Commission has allowed timeshares, it has generally done so through the Land Use Plan, not just the zoning (e.g. Oceanside LCP). Similarly, in the previously-mentioned Pebble Beach privatization proposal in the Del Monte Forest, also in Monterey County, the Commission examined the land use plan hearing certification record and found the proposed conversion to a private membership club use inconsistent with the *Del Monte Forest Land Use Plan*.

It also appears that the timeshare language in the original *Coastal Implementation Plan* would preclude timeshares in the Carmel Area because none of the districts mentioned as allowing timeshares existed in the coastal zone. (Similar districts existed but with

new names.) There are other examples of the County including provisions in its *Implementation Plan* that would not be in effect. For example, the County placed an Agricultural Industrial zoning district in its *Implementation Plan* years before there were any areas so zoned. The County indicated that they wanted the regulations in place in case any areas were so designated in the future. Another example includes regulations for Airport Approaches zoning amended into the *Coastal Implementation Plan* in 1995. Again, there are no such zones in the unincorporated County's coastal zone at this time.

While these arguments are somewhat persuasive, other actions that the Commission has taken would give the County the benefit of the doubt. Foremost, the Commission did certify the timeshare language in the *Coastal Implementation Plan*, without any specific findings saying that it was inoperable. Zoning regulations typically offer more detail than land use plans. The 1995 amendment removed the caveat limiting the ordinance to the obsolete zoning districts. The Commission certified the amended language requiring a coastal permit. In addition, the land use plan and zoning district language is broad enough to encompass a variety of visitor-serving uses, including timeshares, without specifically mentioning them. As discussed above, the Commission generally has maintained that "timeshares" are a type of visitor-serving use, albeit a less public type. Moreover, in a recent local coastal program amendment for Encinitas, the Commission found a zoning-only change sufficient to allow for timeshares. Finally, Commission staff has informed the County during its deliberations on this project that the above cited Code Section 20.64.110 is operative. In sum, although the question of whether timeshares are permitted in the Carmel Area has never been explicitly addressed by the Commission, the weight of the evidence supports a finding of no substantial issue on this threshold claim.

Does the Highlands Proposal Meet the Criteria for Timeshare Conversion?

Having found that the *Implementation Plan's* operational language is sufficient to allow for a timeshare application to be considered in the Carmel Area, the Commission must consider whether the Highlands Inn proposal raises a substantial issue with respect to its consistency with the policies of the Carmel Area Land Use Plan and the specific tests of CIP Section 20.64.110. As discussed below, the evidence available for this particular proposal supports a finding of substantial issue. Specifically, the stock of available visitor accommodations is unacceptably reduced, inconsistent with the goals of the *Carmel Area Land Use Plan* and CIP section 20.64.110(j).

The Highlands Inn Visitor-Serving Resource: To evaluate the consistency of the County's approval of the Highlands Inn timeshare proposal, it is important to understand the specific significance of the Highlands Inn for visitor-serving amenities in the Carmel Area. At the County level, this was not thoroughly considered. Rather, the applicants prepared a study on the impacts of the proposed conversion that used the entire

Monterey Peninsula (including Carmel Valley and Big Sur) as the "planning area." Finding some 9,000 other rooms available in this larger area, the applicants' consultants concluded that the effect of the Highlands Inn timeshare conversion would be insignificant. Fairbank, Maslin, Maullin & Associates also surveyed patrons of the Highlands Inn who indicated other establishments that they would stay in on the Monterey Peninsula if Highlands Inn were no longer available ("Highlands Inn Recent Guest Survey," August 1996). The consultants concluded that former patrons would still return to the general area if the Highlands Inn was unavailable. The survey did not ask patrons if they had an opinion on the proposed conversion to timeshare or if they considered these other locations to be an equivalent recreational experience.

It is true that the original background reports to the Monterey County local coastal program used the larger area of the Monterey Peninsula as one factor in considering the adequacy of visitor-serving uses in the Carmel Area. However, as discussed earlier, the certification of the Carmel Area LUP as meeting the visitor-serving policies of the Coastal Act was premised primarily on the existence of certain visitor-serving uses in the Carmel Area, including the Highlands Inn. Essentially, the Commission treated the much larger pool of surrounding visitor-serving on the Peninsula and up Carmel Valley as a "mitigating" factor for finding that there was adequate visitor-serving within the specific, already constrained, planning area. This did not mean that the loss of or removal of the existing resources within the planning area was appropriate. Indeed, at the time of certification, the Commission anticipated that there would be an additional 240 units at Point Lobos – units which are now unlikely to occur.

The significance of the proposed diminution of Highlands Inn availability thus should not be evaluated within the broad Monterey Peninsula setting. Rather, as it has done in previous Commission reviews of timeshare proposals, the Commission must examine the more localized Carmel Highlands context, and the unique setting and character of the Highlands Inn itself, to evaluate the impact of the Highlands Inn timeshare proposal.

More specifically, the Monterey Peninsula is much more than just the forest-mantled headland that juts forward to define the southern limit of Monterey Bay. In modern usage it refers to an extremely varied collection of distinct communities within an approximate 10 mile radius of the old Spanish capitol at Monterey. Each of these communities has its own special character which, in a number of cases, makes it a visitor destination of statewide or greater significance. Some are within incorporated municipalities, some are not. Well known examples include the village of Carmel-by-the-Sea, Old Monterey, Pebble Beach, Cannery Row, and the Pacific Grove Retreat district.

The Carmel Area comprises the unincorporated coastal zone area south of Pebble Beach and north of the Big Sur Coast; thus, encircling incorporated Carmel-by-the-Sea. The Carmel Area serves as a gateway to the Big Sur coast. Included within is Carmel Highlands, another distinct community, best known for two nationally-recognized

features: Highlands Inn and Point Lobos State Reserve, which marks the northern edge of the largely residential community. Like the village of Carmel-by-the-Sea several miles to the north, the Highlands was settled by a variety of artists and creative individualists who appreciated the area's rugged scenic beauty. Like Pebble Beach, it features many beautiful homes on spacious lots facing the sea. As in both its neighbors, a continuous mantle of native Monterey pine forest has been maintained and even extended. In contrast to its neighboring communities, Carmel Highlands straddles the Big Sur Coast Highway. It is the last developed gateway to the spectacular Big Sur coast, providing the last southbound opportunity for gasoline, sundries and overnight (inn) accommodations for the next 24 miles.

Aside from its function of providing overnight accommodations for Big Sur Coast visitors, though, the Highlands Inn is a highly acclaimed destination in its own right and the opportunity to stay in it should not be diminished. Stair-stepping up the granite cliffs and through the native pine forest high above Highway 1, its public spaces offer exceptional views looking over the southern shoreline of Pt. Lobos State Reserve – vistas not available elsewhere. These highly scenic outdoor views are complemented by indoor displays spotlighting the landscape photography of Carmel Highlands residents – which have included Ansel Adams and the Westons.

The following quote perhaps best sums up its special attributes and amenities:

The Highlands Inn welcomes those seeking to experience the adventure, recreation, and romance of the dramatic Monterey Peninsula. Just south of Carmel at the Gateway to Big Sur, the landscape has been formed by nature's hand. Hillsides are strewn with wildflowers, and black tidal rocks form dramatic settings with the Pacific as a backdrop. Here, nestled among towering Monterey pines, is Highlands Inn. Commanding one of the world's most stunning displays of natural beauty, Highlands Inn has been world famous since 1916. A multi-million dollar renovation has restored and enhanced its rustic charm. Bleached oak flooring, custom wool rugs, continuous skylights, and the original granite fireplaces all combine to create an atmosphere of casual elegance. It's the perfect choice for a romantic weekend or a corporate retreat. Award-winning Pacific's Edge restaurant, with spectacular 180 degree views of the rugged Pacific coastline, serves contemporary regional cuisine and offers an award-winning wine list. Delightful, deli-style California Market offers al fresco dining, plus Lobos Lounge and Sunset Lounge for cocktails, entertaining and conversation. Valet parking, concierge service, room service, and a host of pampering room amenities. Year-round heated outdoor pool, three outdoor ocean view hot tubs, complimentary mountain bikes, and nature trails for jogging and hiking. The Highlands Inn is a member of the Small Luxury Hotels of the World, a unique collection of finely appointed, individually owned hotels dedicated to maintaining an exceptionally high

standard of service. Each property is distinguished by its intimate size and is committed to providing outstanding accommodation, cuisine, decor, and amenities. The hotel has been awarded the Wine Spectator "Grand Award" Wine List. Guests enjoy unparalleled design excellence at the Highlands Inn, which was awarded first place awards by the American Society of Interior Designers, The American Institute of Architecture, and the General Electric Company.*

Overall, the appropriate framework within which to evaluate the consistency of the Highlands Inn timeshare is one that recognizes the unique significance of the Highlands Inn as a specific, highly valuable, coastal resource, within the context of the Carmel Area Land Use Plan.

Significance of the County Approval: As noted previously, the County conditioned the Highlands project to lessen the scope of the timeshare conversion, limiting it to no more than 75%, or 107, of the units. (According to the applicant, the other 36 units would remain under the ownership of the hotel owner and not be converted to condominiums, although the permit conditions do not directly state this). Furthermore, with respect to continuing availability of some visitor use, the County record indicates that up to 18% of timeshares are typically available to the general public, an industrywide figure derived from a combination of unsold units and owners deciding not to use their units. While there is no evidence to suggest a different experience for Highlands Inn or that the owners of Highlands Inn would not always aggressively market vacant units, there is no guaranteeing this 18%. The Highlands Inn is a unique, world famous resort and thus industry averages may not apply. An argument could certainly be made that because of its year-round popularity (unlike a ski resort, for example), the number of units available to the general public may be substantially less than the industry average. In addition, although it is difficult to predict whether the other types of uses (e.g., by friends, colleagues, meeting goers, prospective purchasers) that appellant Larson alleges may actually occur, the potential for such or similar occurrences can not be ruled out. Nevertheless, even if they do not occur and if non-owner marketing is maximized, the best case that can be made for the Highlands conversion proposal is that more than one-half of the units will disappear from the unrestricted visitor pool (100% - 25% non-timeshare - 18% not used by timeshare owners = 57% no longer available). The worst case is that three quarters of the units will disappear from the unrestricted visitor pool.

The question is, therefore, what are the implications of this change in status for more than half of the Highlands Inn rooms, in terms of impacts to the visitor-serving uses? Currently, any party who can afford a one night or longer stay at the Highlands Inn can

* website of Travelweb:

http://www.travelweb.com/TravelWeb/init.html?p_page_type=START&p_brand=000052&p_pid=5066.

for a deluxe room. Nevertheless, the Commission agrees with the appellants that this might be affordable to moderate income persons for special occasions.

Under the County-approved proposal, this situation ceases to exist. First priority (for 107 of the units) goes to timeshare owners of the Highlands Inn who have paid thousands of dollars for a week share (a maximum of 5457 owners). * Second priority goes to other timeshare owners within the same timeshare network. Although there are over a million members worldwide in the Hyatt network which Highlands Inn plans to affiliate with, this universe is a very small percentage of the total vacationing population. To join this universe one must be able to afford to purchase a timeshare unit (generally costing between \$10,000 and \$20,000) and to have made such a commitment of resources. Obviously, the number of people who could afford such a purchase is vastly less than the number who could afford a one-night stay. And, the number of people who would desire and be able to make such a long-term vacation expenditure commitment is even further limited.

Because of these substantial restrictions on public availability that the timeshare arrangement would put in place, the Commission concurs with the appellants that the diminished availability of 75% of the unique Highlands Inn units is a significant impact. This significance is furthered by the extreme unlikelyhood of any other hotels being built in the vicinity. To the north, Point Lobos Ranch, where the only new hotels in the Carmel Area were allowed, has been largely purchased for mountain lion habitat. To the south, the *Big Sur Coast Land Use Plan* has provisions for only one 24 unit hotel, north of Big Sur Village, which is approximately 20 miles south of Highlands Inn. As noted above, other additional hotel opportunities in both Big Sur and the Carmel Area are very limited. This is not to suggest that any new offsetting hotel construction in the area would render the loss of availability of the Highlands Inn to timeshares acceptable. Moreover, the loss of the Highlands experience certainly could not be compensated for by directing the public to other hotels in Monterey County, as is suggested by the applicant's survey. While the Commission recognized that the Monterey Peninsula could satisfy some of the future visitor demand for overnight accommodations so that they would not have to be sited in fragile part of the Carmel Area, the Commission did not intend to have this area substitute for existing facilities in the Carmel Area when it certified the *Land Use Plan*.

In addition to there being little prospect of compensating for the loss that the proposal represents (assuming it could be found appropriate), the appellants are also correct in being concerned that the County approval with its findings would set an adverse precedent. Monterey County has established a temporary moratorium on any further conversions to timeshares until it has an opportunity to further study and consider possible amendments to County ordinances and regulations addressing issues implicated in such time-share conversions. However, the moratorium expires on December 9, 1998 and no amendment is yet forthcoming (the moratorium may be

* The applicant estimates that shares will be sold in the \$18,000-\$20,000 range.

extended). According to the certified *EIR* (p. 3-7), none of the other visitor-serving facilities in the Carmel Area except the Mission Ranch have large enough sized rooms and the necessary amenities required for a successful timeshare project. It also states that none have enough units to create an economically viable timeshare project. However, the Commission has reviewed and approved smaller timeshare projects. There would be no apparent way to distinguish Tickle Pink if it too decided to apply for a conversion to timeshare once Highlands Inn were approved.

Finally, in addition to the significance question, Section 20.124.030H requires a finding of consistency with all the goals and policies of the local coastal program. A reading of the *Carmel Area Land Use Plan*, as a whole, along with the record approving it outlined above, supports retaining the Highlands Inn as publicly available overnight accommodations. The focus of the document preparers and the Commission was on trying to accommodate even more visitors given the various constraints, acknowledging that all demand could not, nor necessarily should, be satisfied. To allow a significant erosion of existing visitor opportunities, beyond what was specifically allowed for in the *Plan* (e.g., that Mission Ranch could convert to residential use), would be antithetical to the goals of the *Plan*.

(4) Conclusion

In conclusion, a substantial issue is raised because the County has not convincingly made the case that there will be no impact on the stock of hotel and other visitor accommodations for stays of less than one week within the planning area nor that proposed timeshare is consistent with the goals of the *Carmel Area Land Use Plan*. While recognizing the quasi-visitor-serving nature of the proposed timeshare (and noting that if not sold or committed to members, they would be available to the general public), the Commission finds that the proposal constitutes a significant diminution of available units (107) to the general travelling public. More important, given the unique value of the Highlands Inn and its place in the Carmel Area, the project would significantly, adversely impact the stock of hotel and other visitor accommodations for stays of less than one week within the planning area and is not consistent with the goals of the *Carmel Area Land Use Plan* and section 20.64.110G(2)(e) and 20.64.110H(2) and (5).

2. Intensity of Use

a. Appellant's Contentions:

Appellants Tydings and James contend that the project will result in an intensification of use beyond the equivalent of the 150 hotel unit maximum stated in the local coastal

program. They base this contention on applicant-provided information of an average of 2.2 persons currently staying in each unit of the Highlands Inn and a unit occupancy rate of 80%. They then look at figures from other sources for timeshare occupancies noting expected occupancies per unit of from 3.2 to 3.8 people on the average and unit occupancy rates up to 90%. They present a table of future occupancy scenarios ranging from 63% to 94% higher than current occupancy levels.

With regard to **wastewater**, appellants Tydings and James contend:

The effects of the wastewater discharge on the marine environment are not minimized as required by the local coastal program.

They support their contention with information showing that Regional Water Quality Control Board wastewater discharge standards have been exceeded in the past. They also present evidence of apparently recently polluted water running off of the Highlands Inn property.

With regard to **parking**, appellants Tydings and James contend that the project will not provide the number of parking spaces required by the local coastal program. They present information claiming inadequate clearance for emergency vehicles, space sizes below County standards for even compact cars, parking space usurpation of space used and needed for trash, etc, insufficient spaces for peak periods, and unfeasibility of the alternatives making use of shuttles.

b. Local Government Action:

The County found that the likely occupancy of the units would be three people and one would likely be a child. This was based on a review of other timeshare occupancy patterns and the sizes (primarily one-bedroom) of the Highlands Inn units.

With regard to **wastewater**, the coastal permit approval includes an upgrade of the existing treatment facility from secondary to tertiary and allows some landscaping irrigation. The permit is conditioned for installation of backflow devices (#16), wastewater irrigation to meet the State Health regulations (#17), evidence of an amended RWQCB Discharge Permit (#18), compliance with County Code [Chapter] 15.23 (#19), compliance with State Health and Waste standards (#20), annexation to a county service area or dedicated to a public utility (#21), an application to the State Department of Health Services for water reclamation (#22), a wastewater engineering report (#23), specific locations where irrigation with reclaimed water is to occur (#24), compliance with County Code Chapter 18.44 Water Conservation (#34), and some runoff diverting to the wastewater plant (#53).

Findings for approval quote from the certified *Environmental Impact Report*:

Increase in wastewater discharge resulting from the timeshare component for the proposed project will not result in the need for additional wastewater discharge capacity for the project site or additional wastewater utilities. The project is anticipated to have no adverse impact on water quality, including but not limited to temperature, dissolved oxygen, or turbidity. The project will create a benefit [beneficial?] impact by increasing the quality of the wastewater effluent...

With regard to **parking**, the County approval is for an additional 15 parking spaces (in addition to the 306 which currently exist). The permit is further conditioned upon annual submittal of a parking and traffic management plan which shall include methods to provide sufficient parking during events and a monitoring program (#10) and allocation of sufficient spaces for the guestrooms (#11). The permit is also conditioned for a review of the parking layout and circulation by the Director of Public Works and meeting the standards of Title 20 and approval by the Planning Director (#32). Also use of a shuttle service is encouraged (#44).

c. Relevant Local Coastal Program Provisions

Policy 4.4.3D4 of the *Carmel Area Land Use Plan* states in part:

Maximum intensity for "Recreation and Visitor-Serving" sites not specified elsewhere in the Plan are as follows:

...150 visitor units and 12 employee units for Highlands Inn.

With regard to **wastewater**, *Carmel Area Land Use Plan* policy 2.4.4.B7 states:

The Regional Water Quality Control Board shall review the National Pollution Discharge Elimination System permits for existing private commercial sanitary systems (i.e., package treatment plants). A least four times a year RWQCB shall undertake inspections of discharge effluent from existing and any new private sanitary system in the Carmel area in order to monitor water quality impacts...

Also, *Carmel Area Land Use Plan* policy 2.4.4.B8 states:

All new and/or expanding wastewater discharges into the coastal waters of Monterey County shall require a permit from the Health Department. Applicants for such permits shall be required to submit, at a minimum the following information and studies:

A Three years monitoring records...

This latter provision is repeated as Section 20.146.050.E.2 in the Monterey County *Coastal Implementation Plan*.

Chapter 18.44 of the Coastal Implementation Plan requires installation of water conservation devices at the time of ownership change.

Chapter 15.23 of the County Code, "Sewage Treatment and Reclamation Facilities" adopted in 1991 is incorporated by reference in the *Coastal Implementation Plan* but is not part of the certified text that the Commission reviews.

With regard to **parking**, Section 20.58.040 of the *Coastal Implementation Plan* requires 1 space per unit; 2 spaces per 3 employees; 1 space per four restaurant seats; and 20 spaces per 100 square feet of meeting space.

d. Substantial Issue Analysis and Conclusion

The appellants' contentions are based on their belief that the project will result in an intensification of use. The resulting intensification of use is not as great as they predict and it is acceptable under the local coastal program.

There is evidence in the County record refuting the appellants' contentions of unit occupancy above an average of three persons per unit. This is largely based on the sizes of the units and the amount of beds in them. The size breakdowns are such that they would not physically accommodate more than two or three people:

- one-bedroom units of approximately 616 square feet;
- studio units of approximately 336 square feet;
- only 4 two-bedroom units of approximately 850 square feet.

Currently, unit occupancy rates are 80%. Information in the County record indicates that much higher rates are not likely. Thus, under most likely scenarios, total occupancy would increase somewhat after the timeshare conversion, but not as much as the appellants project.

The appellants' contention is based on a faulty premise: that is, equating one allowable visitor-serving unit to its historic occupancy level. Put another way, the appellants believe if occupancy increases above historic levels, then the units involved equate to greater than single visitor-units. The cap on the number of visitor-serving units at Highlands Inn is 150. There are currently 143 units. Thus, under the appellants' contentions, an occupancy increase of more than 5% over historic levels would be inconsistent with the allowed maximum. There is no evidence to support this line of reasoning. There are no provisions in the local coastal program which equate visitor units with a less than 100% occupancy. A review of the background to the local coastal

program and to the staff report for approval does not reveal any indication that the maximums shown in the local coastal program were predicated on a certain occupancy rate other than 100%. In approving the permit to expand to 143 rooms from 105, the Commission did not discuss less than 100% occupancy as any mitigating circumstance (i.e., the Commission did not assert that it could approve 143 units only because it was known that not all would be always occupied).

Currently, and as would remain under the permit, there would be 143 units. There is no change in the physical number of units, which is key. In fact while the Commission does not support this timeshare conversion for the reasons listed above, it has no objection to any increased occupancy per se. Increased occupancy is only a problem if it entails adverse impacts. Then, the tests under Section 20.64.110H might not be met. But with the two issues that the appellants are most concerned about -- wastewater and parking -- the proposal will lessen impacts.. Therefore, no substantial issue is raised by this contention, because the *Land Use Plan's* cap on the number of units is not exceeded.

With specific regard to **wastewater** impacts, the appellants' contentions are not supported. This project would benefit the marine environment in two ways. First, the treatment level would be upgraded to "tertiary," This is a very high level of treatment; higher than currently exists at Highlands Inn and higher than the municipal discharges into Monterey Bay. According to information in the *EIR* 50 to 75 % of the wastewater will receive this higher treatment. Some of this tertiary-treated flow will be recycled. The remainder will be blended with the secondary treated flows for ocean disposal. Second, some of the treated water would be reclaimed and not discharged into the ocean; again reducing any wastewater discharge impacts. Given that this is not a new nor expanded discharge, it does not fall under the criteria of *Land Use Plan* policies for extra testing. The Regional Water Quality Control Board is responsible for ensuring compliance with wastewater discharge requirements. If, as appellants contend, these requirements are not currently being met, complaints are appropriately directed the enforcement staff at the Regional Board. Thus the timeshare conversion is not really relevant, except with regard to future responsibility to provide wastewater service, which is now the responsibility of the single hotel owner. The permit is conditioned for the Highlands Inn to be annexed into a County Service District or Area or a public utility for purposes of wastewater collection and treatment (condition #21). This would relieve the multitude of individual timeshare owners from direct responsibility to operate the treatment plant. Furthermore, as enumerated, the County has placed numerous other conditions on the wastewater aspects of this project to ensure compliance with local and state regulations. Additionally, it has addressed the runoff concerns of the appellants (the runoff may or may not be sewage) by requiring some runoff to be treated. Thus, no substantial issue is raised by this contention. The Commission urges the Highlands Inn owners to comply with all water quality requirements and to make the proposed wastewater improvements.

With regard to **parking**, the appellants' contentions do not give rise to a substantial issue, either. The evidence presented indicates that the project is consistent with the County Code requirements. The following calculations were presented:




142 rooms x	1 per room =	142 spaces
60 employees x	2/3 per employee =	40
220 restaurant seats x	1/4 per seat =	55
4140 sq. ft. meeting space x	1 per 50 sq. ft. =	83
Total		320 spaces needed.

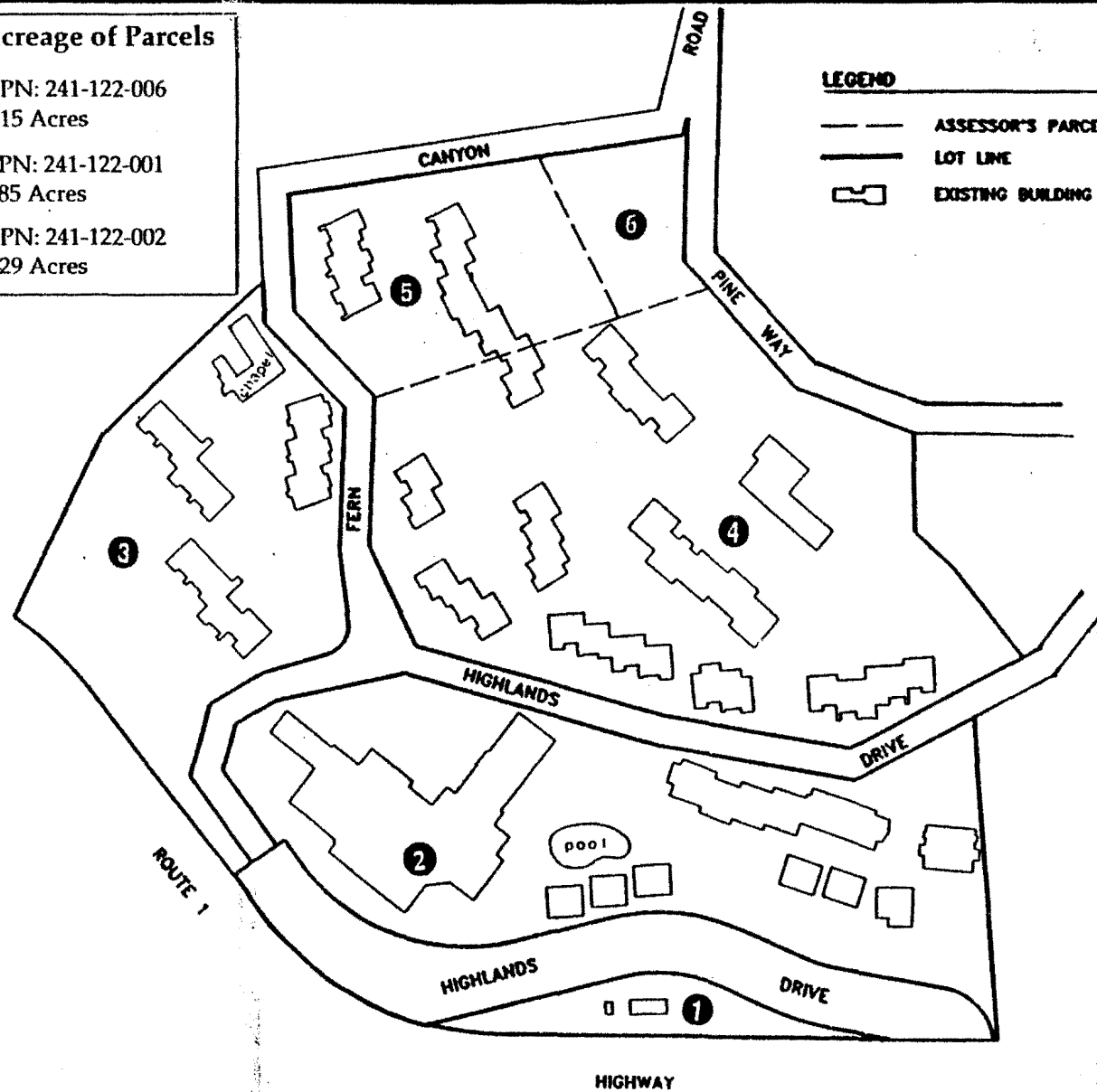
(Note: there are actually 143 rooms, so the total requirement is for 321 spaces, which is the number being provided.) Although the conditions leave final parking plan sign-offs to County staff, the record contains considerable detail as to how the applicant will comply, demonstrating feasibility (see Exhibit 3). According to Associated Transportation Engineers, the satisfactory operation of the parking for the project site is dependent upon a rigorous valet parking program. The use of tandem, valet parking and shuttles could be cause for some concern, but this is a matter of local, not statewide, significance. If there is any lack of parking it will not impact visitors to the area. The neighborhood streets that would be subject to overflow parking do not provide access to the shoreline; they are narrow, winding streets inland of Highway One. Given the sensitive setting, undertaking measures that minimize paving such as valet and tandem parking, are worthy. County responses in the permit file indicate that the compact spaces are adequate and the valet parking need not comply with parking space size standards. Additionally, trash facilities are being relocated out of the area needed for parking, and adequate emergency corridors are provided. As designed and as conditioned, the coastal permit adequately addresses parking and, therefore, no substantial issued by the appellants' contentions. Again the Commission urges the Highlands Inn owners to undertake the proposed parking improvements.

Assessor's Parcel Map and Acreage of Parcels

- | | |
|----------------------------------|----------------------------------|
| 1 APN: 241-121-002
0.25 Acres | 4 APN: 241-122-006
3.15 Acres |
| 2 APN: 241-121-003
2.45 Acres | 5 APN: 241-122-001
0.85 Acres |
| 3 APN: 241-112-012
1.59 Acres | 6 APN: 241-122-002
0.29 Acres |

LEGEND

-  ASSESSOR'S PARCEL LINE
-  LOT LINE
-  EXISTING BUILDING



1 + D'Angelo



Highlands Inn Timeshare Conversion EIR Assessor's Parcel Map

Figure
3

EXHIBIT NO. 3a

APPLICATION NO.
A-3-MCO-98-83

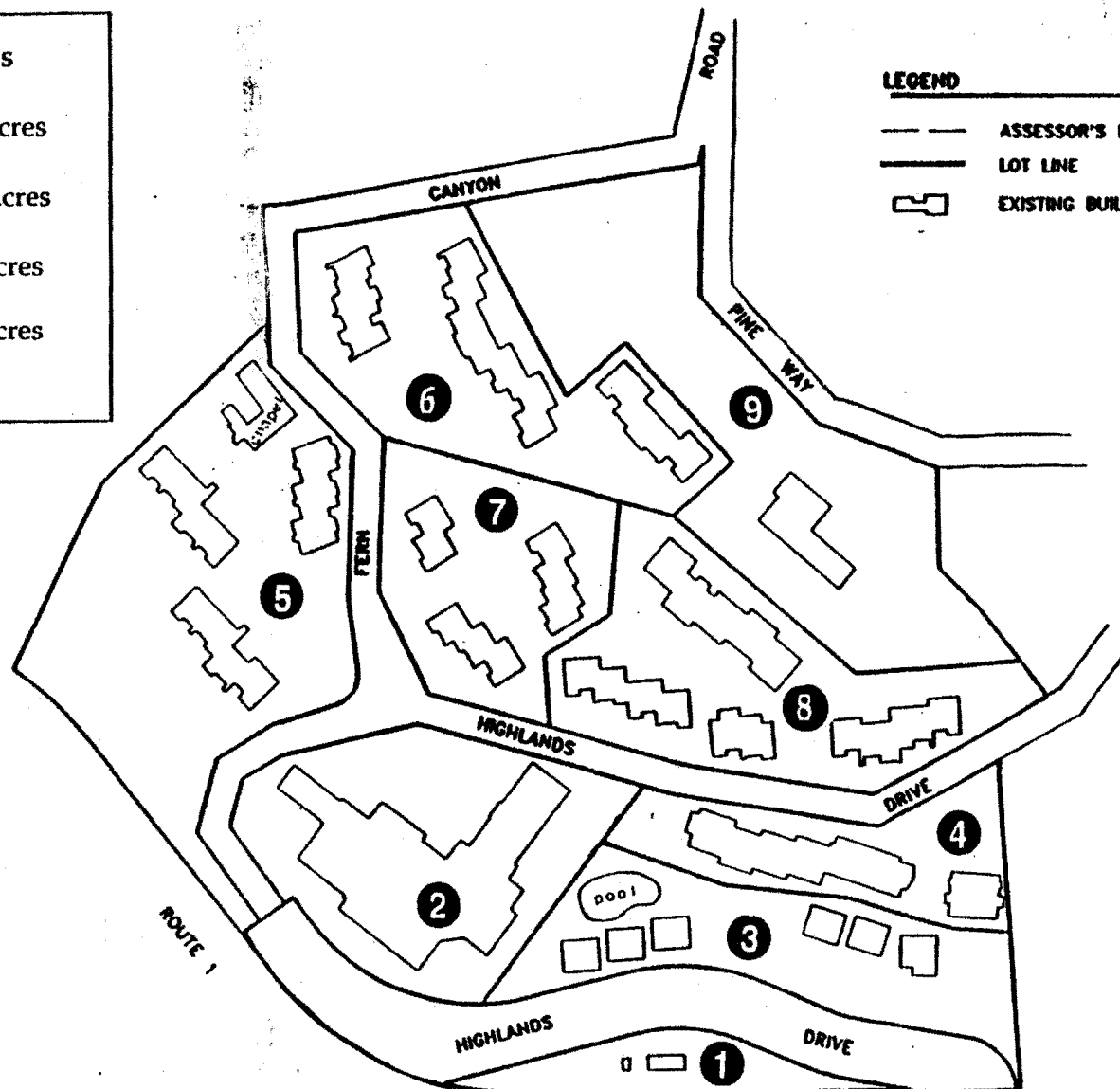
Highlands Inn Timeshare
Existing Lots + Units

Proposed Lot Size in Acres

- | | |
|--------------|--------------|
| 1 0.25 Acres | 6 1.06 Acres |
| 2 1.10 Acres | 7 0.73 Acres |
| 3 0.50 Acres | 8 1.05 Acres |
| 4 0.55 Acres | 9 1.46 Acres |
| 5 1.59 Acres | |

LEGEND

- ASSESSOR'S PARCEL LINE
- LOT LINE
- EXISTING BUILDING



No Scale

an + D'Angelo



DENIED

Highlands Inn Timeshare Conversion Proposed Tentative Map

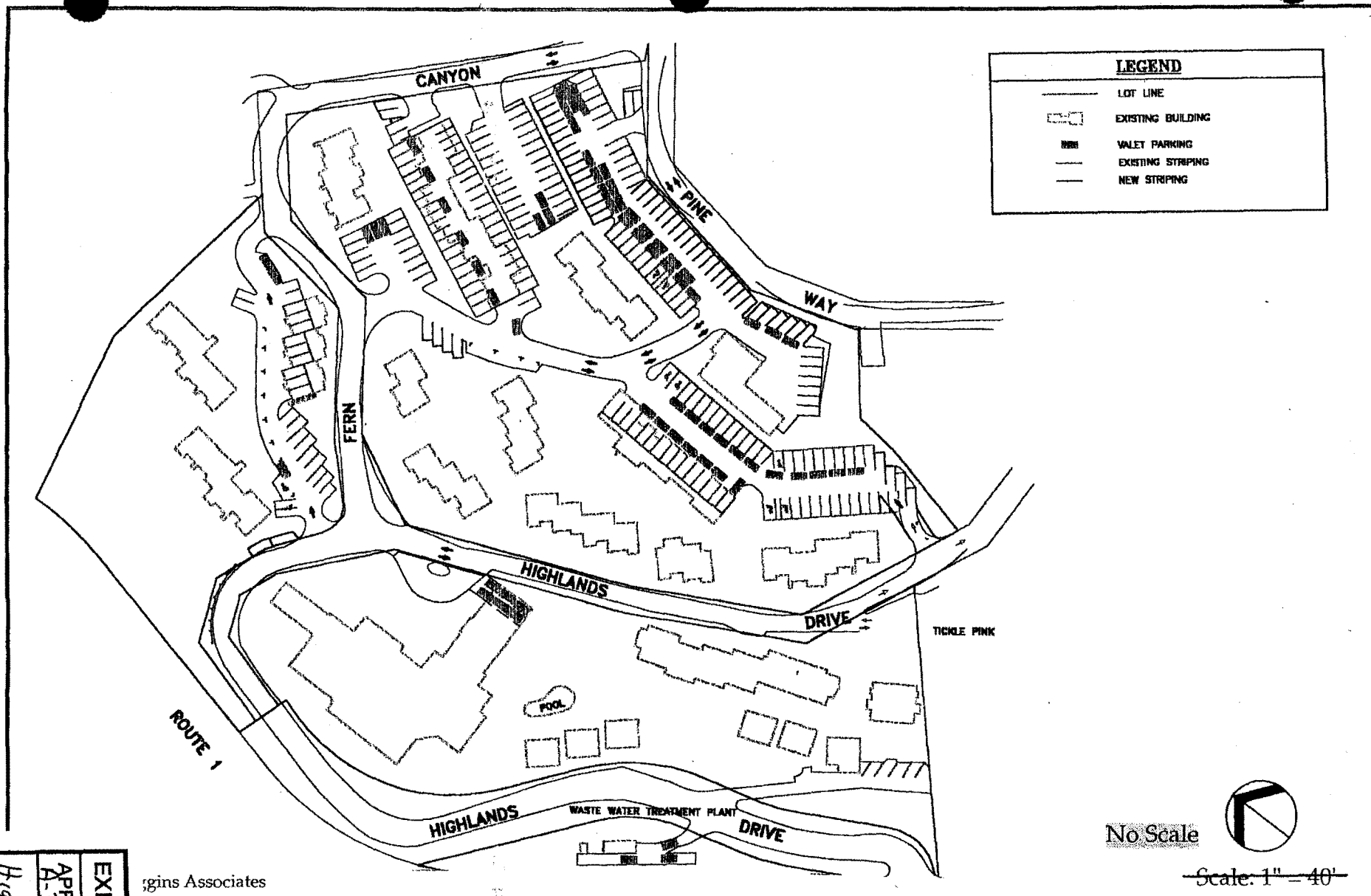
Figure

7

EXHIBIT NO. 3b

APPLICATION NO.
A-3-MCO-98-93

Highlands Inn Timeshare
Proposed Subdivision



No Scale



Scale: 1" = 40'

gins Associates

Planning
Group Inc.
Planning
1 Firm

Highlands Inn Timeshare Conversion Proposed Parking Layout

Figure
8

EXHIBIT NO. 4a

APPLICATION NO.
A-3-MCA-98-83

Highlands Inn Timeshare

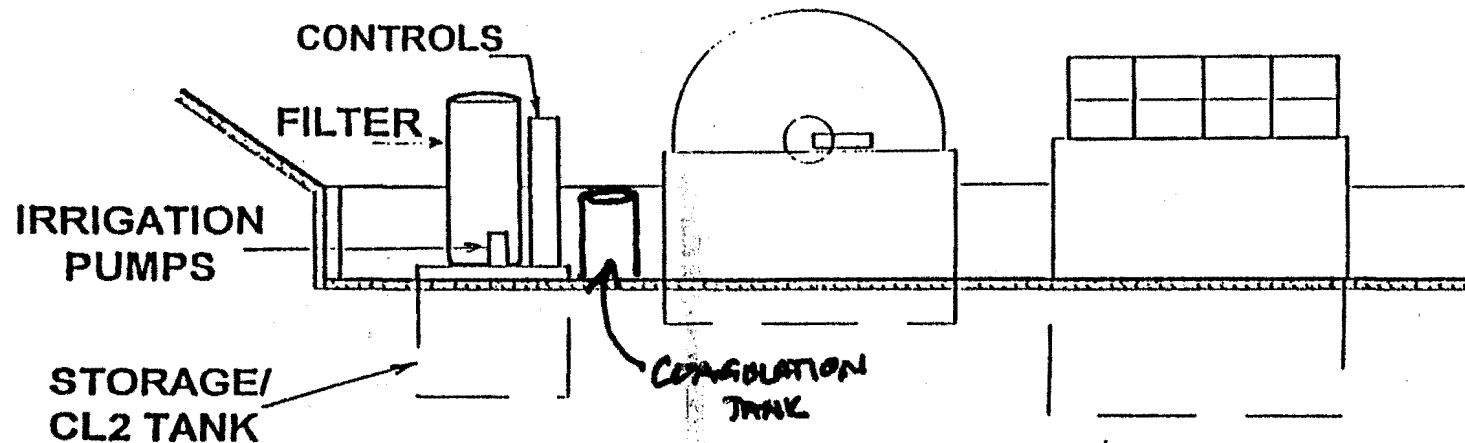
Proposed Plans: Parking

TERTIARY
TREATMENT FACILITIES

EXISTING
TREATMENT FACILITIES

RBC

CLARIFIERS



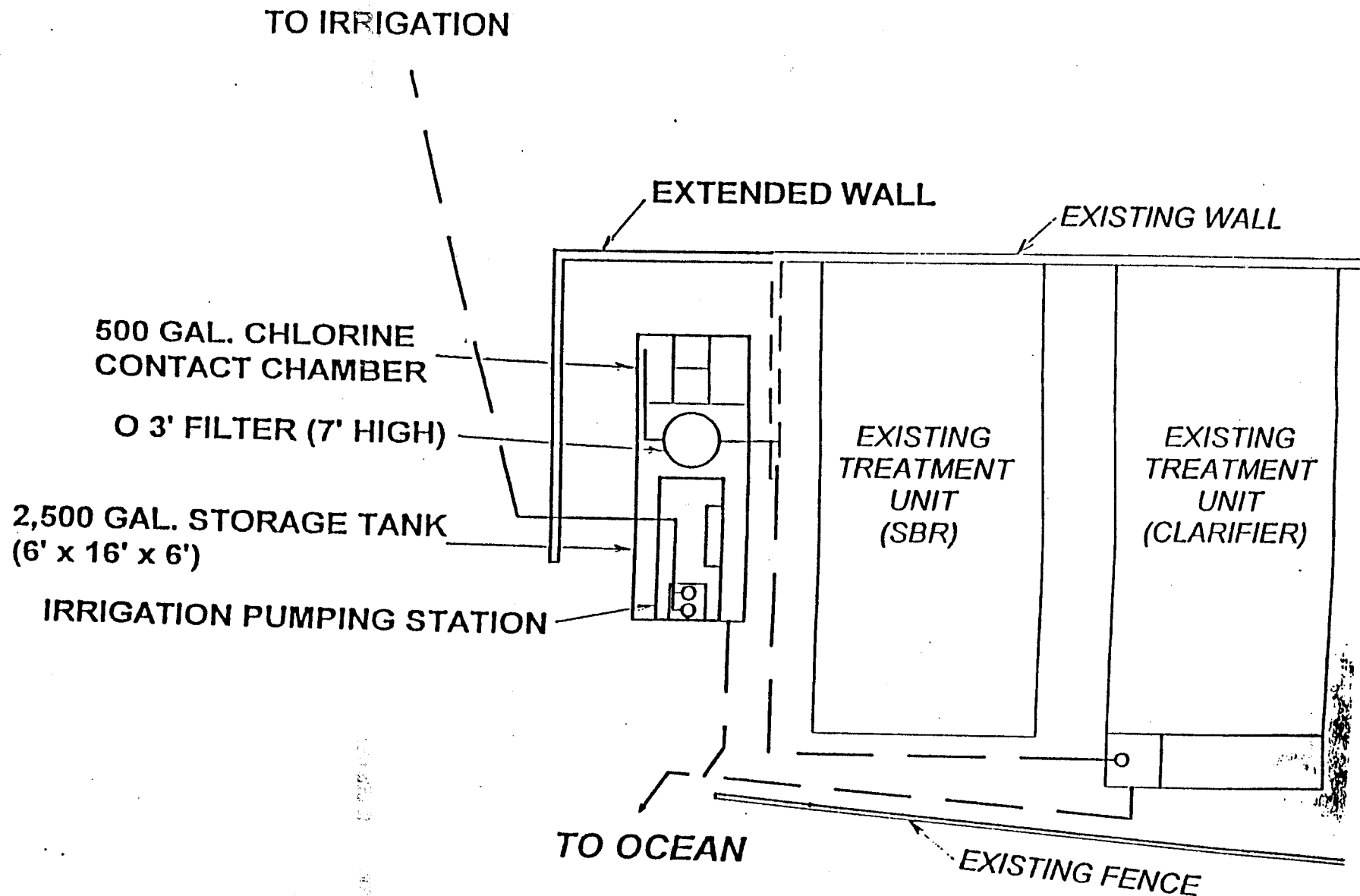
CONCEPTUAL VIEW

1/8" = 1'

EXHIBIT NO. 4b

APPLICATION NO.
A-3-MCO-98-83

Highlands Inn Timeshare
Proposed Plans: Wastewater



CONCEPTUAL SITE PLAN

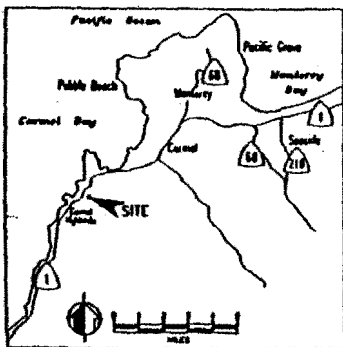
1/8" = 1'

EXHIBIT

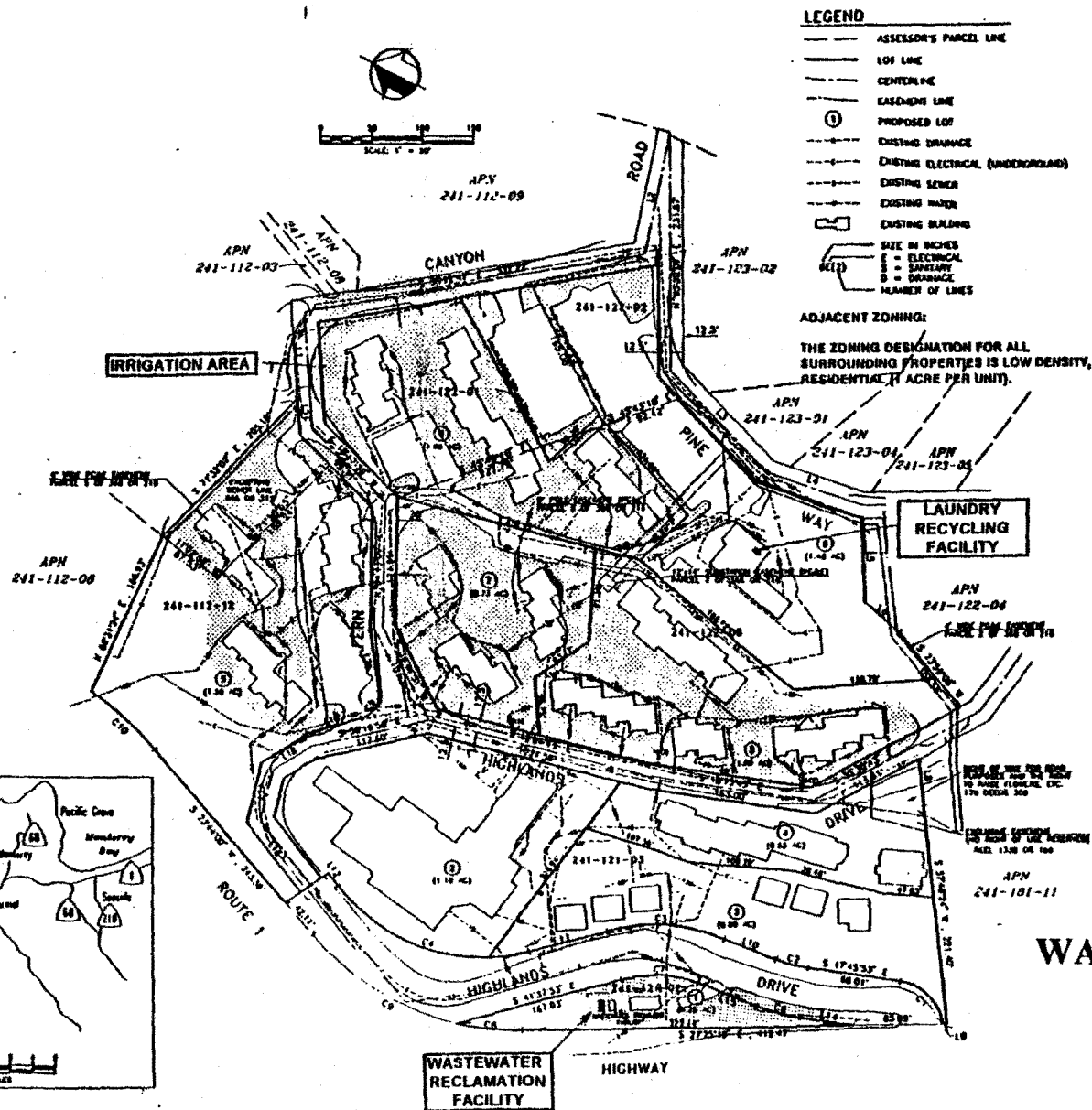
46 cont

A-3-MCO-98-83 P.2

EXHIBIT 4 b cont



FUOG WATER RESOURCES



WATER RECYLING PLAN FOR HIGHLANDS INN

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(408) 427-4863



HEARING IMPAIRED: (415) 904-5200

EXHIBIT 5. TIMESHARE/CONDOMINIUM HOTEL LCP POLICIES

Jurisdiction	Allowable Use Policy	Stay Restrictions	Other Restrictions
<i>Santa Cruz County</i>			
<i>Monterey County</i>	<ul style="list-style-type: none"> Timeshares allowed as type of visitor-serving use (convert or new) 	13. None	Criteria for approvals, including analysis of impact on visitor-serving resources in planning area
<i>San Luis Obispo County</i>	<ul style="list-style-type: none"> Timeshares not allowed except in Ocean 	<ul style="list-style-type: none"> Overall: 21% Private (84 days/year, 29 consecutive days) 	14 total days limitation between Memorial Day and Labor Day
<i>City of Carmel</i>	<ul style="list-style-type: none"> Timeshares not allowed 	N/A	LCP not certified
<i>Pacific Grove</i>	<ul style="list-style-type: none"> Timeshares not allowed 	N/A	IP not certified
<i>City of Pismo Beach</i>	<ul style="list-style-type: none"> Condominium Hotels allowed in Resort Commercial District 	8% Private (30 days/year, 30 consecutive days)	
<i>Sand City</i>	<ul style="list-style-type: none"> Timeshares allowed in visitor-serving districts 	<ul style="list-style-type: none"> 21-25% Private (84-90 days/year, 29 consecutive days) 	
<i>Orange County (Irvine Coast)</i>	<ul style="list-style-type: none"> Timeshares allowed in two Tourist Commercial planning areas 	Up to 84% Private (84% of units can be timeshare; available units must be advertised to public)	1997 LCP Amendment raised restriction from 21% to 84%;
<i>City of Oceanside</i>	<ul style="list-style-type: none"> Timeshares allowed in designated district 	LUP policy to reserve maximum proportion of units for residential units only	previous to LCP Amendment 25% reservation for public required
<i>City of Encinitas</i>	<ul style="list-style-type: none"> Timeshares allowed in Visitor Districts 	Reserve 25% of units for general public (private stays maximum 60 days/year, 30 consecutive days)	

EXHIBIT 6. COMMISSION ACTIONS ON TIMESHARE/CONDOMINIUM PERMITS*

Jurisdiction	Proposed Use	Stay Restrictions	Comments
Monterey County	<ul style="list-style-type: none"> CONVERT 75% (107) of Highlands Inns hotel units to timeshare (A-3-MCO-98-83) CONVERT 2 condo units to timeshare (Bungay, P-80-224) CONVERT house to monthly timeshare (Evraiff & Lubin, 3-81-113) CONVERT portion of Pebble Beach Lodge or Spanish Bay to private membership use (A-3-MCO-91-57) 	<p>Up to 75% Private (maximum 89 days/year, 29 consecutive days)</p> <p>DENIED</p> <p>No restrictions</p> <p>DENIED</p>	<p>All units subject to rental when not owner-occupied; \$8,000 per each of 87 units in lieu fee for a hostel</p>
Santa Cruz County	<ul style="list-style-type: none"> NEW Seascape Resort: 280 condo-hotel units (A-3-MCO-90-85) 	<p>25% Private (maximum 90 days/year, 29 consecutive days)</p>	<p>All units subject to rental when not owner-occupied</p>
San Luis Obispo County	<ul style="list-style-type: none"> NEW 56 Unit Condominium Hotel (3-95-48) 	<p>23% Private (84 days/year, 29 consecutive days)</p>	<p>14 total days limitation between Memorial Day and Labor Day</p>
Marina	<ul style="list-style-type: none"> NEW Marina Dunes: 33 Vacation Club and 30 Hotel units (A-3-MAR-96-94) NEW Gullwing Inn: 228 Timeshare Condominium (Varga, A-3-MAR-84-4) 	<p>25% Private (90 days/year, 29 consecutive days)</p> <p>DENIED</p>	<p>Time limits apply to vacation club units only</p> <p>Property purchased for public park</p>
City of Pismo Beach	<ul style="list-style-type: none"> CONVERT 138 unit motel to 70 unit condominium hotel (Smith, A-4-PSB-90-39) 	<p>23% Private (84 days/year, 29 consecutive days)</p>	<p>Only 7 consecutive days in summer; Had low off-season occupancy</p>

* After 1982, conversions of multiple residences to timeshares were exempt from coastal permit requirements)

Jurisdiction	Proposed Use	Stay Restrictions	Comments
<i>San Mateo County</i>	<ul style="list-style-type: none"> NEW 3 condo units (Jacobsen, A-3-SMC-96-25) 	23% Private (84 days/year, 29 consecutive days)	
<i>City of Half Moon Bay</i>	<ul style="list-style-type: none"> NEW 54 unit condominium hotel (Marchant, 3-90-46) 	25% Private (90 days/year, 29 consecutive days)	All units subject to rental when not owner-occupied. Original approval as hotel only; condo ownership allowed prior to construction for financing purposes
<i>Carlsbad</i>	<ul style="list-style-type: none"> NEW 78 unit timeshare resort (Continental Commercial, 6-94-157) NEW 161 timeshare & 90 hotel units (Grand Pacific, 6-CII-97-35) NEW 132 Condo & 66 Hotel units (Collwood Pines 6-84-221) 	No Restrictions Approved , conditions unavailable Approved , conditions unavailable	Previously zoned for Office Use
<i>Buenaventura</i>	<ul style="list-style-type: none"> NEW timeshare to function as hotel (Parrish, A-4-81-415) 	Approved , conditions unavailable	
<i>San Diego</i>	<ul style="list-style-type: none"> CONVERT 14 one bedroom units to timeshare condos (Coats, 6-81-192) 	Approved , conditions unavailable	LUP/IP designation was Residential; Previously Denied
<i>Mission Beach</i>	<ul style="list-style-type: none"> CONVERT motel to timeshare (Kaul, 6-81-55-A-1) 	DENIED	
<i>Laguna Beach</i>	<ul style="list-style-type: none"> Hotel San Marren, 5-82-198 CONVERT motel to timeshare (Nixon, 5-82-75) 	Approved , conditions unavailable DENIED (project approved as a new motel)	Proposal was for demolition of motel and construction of new timeshare

Jurisdiction	Proposed Use	Stay Restrictions	Comments
<i>Encinitas</i>			
<i>San Clemente</i>	<ul style="list-style-type: none"> NEW 27 unit timeshare (Montesinos, 5-98-208) CONVERT 96 unit hotel/motel to timeshare (San Clemente Inn, 5-92-81) 	<p>No restrictions</p> <p>Mitigation Required</p>	<p>Had to provide 50-60 bed Hostel (only 70 of 96 units needed mitigation due to disrepair and off-season apt. use)</p>
<i>Solano Beach</i>			Became timeshare after 1982
<i>Oceanside</i>	<ul style="list-style-type: none"> CONVERT Apt/Motel (30 seasonal, 46 unfinished units) to part timeshare (Phelan, 6-81-178) 	15 Units to stay motel	
<i>Others</i>	<ul style="list-style-type: none"> CONVERT Seasonal Hotel to Timeshares (Wavecrest, A-167-81) CONVERT Apt/Motel to Timeshare (Keno, F4368-A-2) CONVERT Residential units to timeshare (Mission Trust, F9044) CONVERT Apt. to Timeshare (Subbiondao, 4-81-170) NEW Timeshare (Boatel, 4-81-415) 	<p>Mitigation Required</p> <p>DENIED</p> <p>Approved, conditions unavailable</p> <p>Approved, conditions unavailable</p> <p>Approved, conditions unavailable</p>	<p>In lien fee for each unit sold; dedicate access trail</p>

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(408) 427-4863

HEARING IMPAIRED: (415) 904-5200



EXHIBIT 7

CORRESPONDENCE RECEIVED SINCE HEARING

12/10/98 Letter from appellant Barbara James:

One request (#3) is incorporated in the revised findings. Her other requests involve certain conditions. Unfortunately, the conditions were acted on at the December 8, 1998 hearing and cannot be altered. The essence of some of her suggestions (#1, #4, #6, #7, #8, and #11) is included in the conditions as revised at the meeting. Some of her other suggestions were not mandated by the Commission; namely:

- some units to say in hotel use be the larger ones (#2)
- timeshare owners not have preferential reservations (#5)
- Highlands Inn Investors retain wastewater treatment responsibility (#9)
- independent third party wastewater monitor (#10)
- third party to hire for wastewater and drainage work (#12)

12/18/98 Letter from Ronald Gurries family

This request is to use the funds to construct a hostel on their property. This is not one of the priorities in the condition as it is not public property in Big Sur village. Yet, under the adopted permit condition the Commission could consider funding it. As noted in the findings, the *Big Sur Coast Land Use Plan* encourages and provides for hostels. Whether this site would qualify under the Plan's criteria would have to be determined through a review of written information and field work, including whether it meets the Plan's viewshed policy.

12/14/98 & 1/12/99 Letters from Hostelling International

The information contained in these letters has been used in the findings and to formulate condition 4, regarding the contribution for lower-cost accommodations.



Barbara James
27407 Schulte Rd
Carmel, CA 93923

December 10, 1998

RECEIVED

JAN 04 1998

Rick Hyman
California Coastal Commission
725 Front Street Suite 300
Santa Cruz CA 95060

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Dear Rick,

Thank you for the fine work you and Diane put in on the Highlands Inn case. While the outcome was obviously not the one the staff found best, the choice wasn't the result of lack of effort or sound reasoning, and the result contains some improvements over the initial proposal.

I was particularly heartened by some of the Commissioners' concern that conditions be crafted that have teeth. In previous permits, attempts to mitigate damage due to Highlands Inn expansion activities have been ignored with impunity. I hope you can draft conditions that are not ignorable this time.

I am enclosing some possible conditions that I drafted before the hearing, in case I was asked if I had any conditions to offer. Since, as Mr. Nava mentioned on the record, the negotiation over lunch that produced the conditions that the Commission adopted was not open to public participation and I had no opportunity to speak after lunch, I had no chance to provide our input into the hearing process.

The applicant is clearly not shy about lobbying for its point of view, and will no doubt be providing you with their view of the unspecified conditions.

In these conditions, I would particularly like to see a drainage plan condition that is required before the final go-ahead is given, and that recognizes and fixes the runoff problems. It should include runoff that affects the land and cliffs on the sea side of Highway 1 and require the construction of suitable structures to cure the erosion problems.

EXHIBIT NO. 7
APPLICATION NO. R-3-MCo-98-83
Highlands Inn timeshare
New Correspondence

I also would like to see that 25% of the actual accommodations be reserved as hotel, rather than 25% of the units which would probably only be the studio units. Not only do I think this is fair, but I also think it would be more consonant with the Commission's intent. My conditions to achieve this are number 1 and 2.

About the rationale for achieving a decision without creating precedent, I do not believe it can be done. I would bet Mr. Lombardo doesn't think it can be done either. He is undoubtedly happier about that than I am. Mr. Potter's suggestion would give any developer a permit to convert any high-end hotel to timeshares if the developer is willing to cough up a very small percentage of the profits for low-income accommodations. Mr. Nava's figures are realistic. In this case it amounts to about .7% of the potential profits. Pretty cheap.

I got a sense from a number of the Commissioners that they saw the opposition as a bunch of rich people that just want to keep riff raff out of their neighborhood. To some extent, of course, that's true. The Pritzkers' profit will partly be offset by devalued property around the site, and some of the people who own the devalued property worry most about that.

However, I am not rich. I inherited a portion of a wonderful house that my grandfather happened to build when the Inn was a cottage, and I have to rent it to keep my mother in the care facility that she needs.

The Inn has intruded on our property over the years. It built view units that loom over our garden and house, and installed a spotlight that shines in our bedroom windows. We have been its sewage dump for more than half a century. These irritations would have been a lot less galling if the Inn had been serving some more egalitarian social purpose.

Personally, I would have been delighted if the Investors had been given a permit to convert 107 units at the Inn to a hostel. Just in case you wondered.

If I can be of any use in this process, please feel free to call me.
Thanks again for a great job!

Barbara James

Conditions to Provide Public Access

(Any conversion from hotel to timeshare is a loss of public accommodation. Tight conditions would be needed to halt further erosion of the supply of public accommodations)

CLARITY

- 1) **The permit should specify particular units to be converted. Designated hotel units should be reserved for the public.**
If this is not done, the managers would have a significant incentive to rely on statistical average vacancy predictions for providing the hotel function. No public units would ever be available at the times when the Inn's accommodations are most wanted.
- 2) **The designated units should include a mix of the 3 types of hotel units: studio, one bedroom and two bedroom in proportion to the existing mix. For instance, there are four 2-bedroom units. One of them should be designated Hotel, as well as 26 one bedroom and 9 studio units .**
If this is not done, the designated hotel units would likely turn out to be 36 of the studio units. These units cannot lawfully hold more than 1 person.
- 3) **Reasoning should be included in the permit to explain that the particular unique circumstances of this case which allow a partial conversion to timeshare use but do not create a precedent for future similar conversions.**

Otherwise, the Highlands Inn Investors will have a significant financial incentive to continue to press for total privatization. The short term profits are very large. This proposal was envisioned and partially implemented 15 years ago, but the 1982 AOG rejected timeshares as a public use. The current and future owners are not going to be satisfied until the rest of the units are converted.

Any approval that does not negate the precedent would also allow the only other facility in the area to privatize its 35 units.

- 4) Deed restrictions, should forbid any use other than hotel for the remaining facilities, including the hotel units designated in this permit.
- 5) A condition should at least set forth the principle that timeshare owners should not be able to monopolize the publicly available units by preferential reservation policies or other means.
- 6) The county board conditions include one that says the restaurant should stay open. This is unenforceable, and not even addressed to the owners of the restaurant. A deed restriction on the restaurant facilities requiring that they be dedicated to restaurant use only might be more effective.

Accountability for Impacts

- 7) The responsibility for maintenance and compliance with all permit conditions on an ongoing basis. should be explicitly assigned to the Highlands Inn Investors in the permit. Ambiguity in assignment of responsibility between the HII and the Homeowners Association will make protective conditions unenforceable.
- 8) The traffic and parking monitoring and reporting conditions in the 1982 permit should be reissued. They were not complied with. Until they are satisfactorily complied with, only a portion of the units should be allowed to be sold. The review of the monitoring results and study should include solicitation of public comment and input. The permit should be rescinded as to unsold units if the monitoring and study show unacceptable impacts.
- 9) The responsibility for the sewage treatment plant and auxilliary facilities must remain with Highlands Inn Investors or their successors. The operation should be performed by an independent third party with the authority to shut down the Inn's operations if the sewage cannot be adequately handled. The operator's expenses and the capital for any needed

repairs or upgrades should be the Highlands Inn Investors' (and their successors') responsibility.

- 10) An independent third party should take over the responsibility for monitoring the sewage treatment plant and reporting to the RWQCB and other regulatory bodies. These reports should be filed at the Highlands Fire Department and available to the public at that site, or some other suitable local site.
- 11) Adequate drainage studies that address the erosion of land downhill from the Inn due to runoff should be performed by an independent party and filed with the Director of Public Works. A copy of all such studies should be available to the public at the Fire station or other suitable local site. Any facilities found to be needed in the report should be constructed before the permit becomes operative.
- 12) The Highlands Inn Investors should place the money for the sewer and drainage work in a blind trust, with the trustee to hire the work done. I'm not sure how to work this, but the point is that consultants hired directly by the Inn management or investors are not independent. Some method of hiring unbiased consultants, operators and monitors is vital.

RONALD J. GURRIES

RECEIVED

DEC 21 1998

AK Original LO
CC: TG
CL

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

3540-C HECKER PASS
GILROY, CALIFORNIA 95020
(408) 842-2838
December 18, 1998

Tami Grove- Exec. Director
c/o Costal Commission
725 Front Street
Santa Cruz, CA 95060

RE: Highlands Inn Timeshare
and proposed siting of
replacement units.

Dear Ms. Grove:

Our family has owned the parcel highlighted on the enclosed map since 1967. In 1982, we had an application for a forty unit motel (each unit with two bedrooms, two baths and a sitting room) with a certified E.I.R. The project was not approved at the Coastal Commission level (due principally to opposition by then Supervisor Peters). The Highlands Bixby Advisory Committee had unanimously approved the project.

The property is approximately 21.2 acres; is next to Garrapata State Park; across the road from Garrapata State Beach; has had development and commercial zoning and uses in the past; has safe access from Highway 1 and an ocean view; has water and septic capabilities and, I repeat, a certified E.I.R. that can be updated. Rocky Point Restaurant is approximately one mile south of our property and is supplied water from wells on our land (Garrapata Water Co.). The APN for the parcel is 243-301-030-000.

Our family would be pleased to meet with you and show you the property. We feel it to be ideal as a receiver site for the units desired by the Costal Commission and hope that you agree.

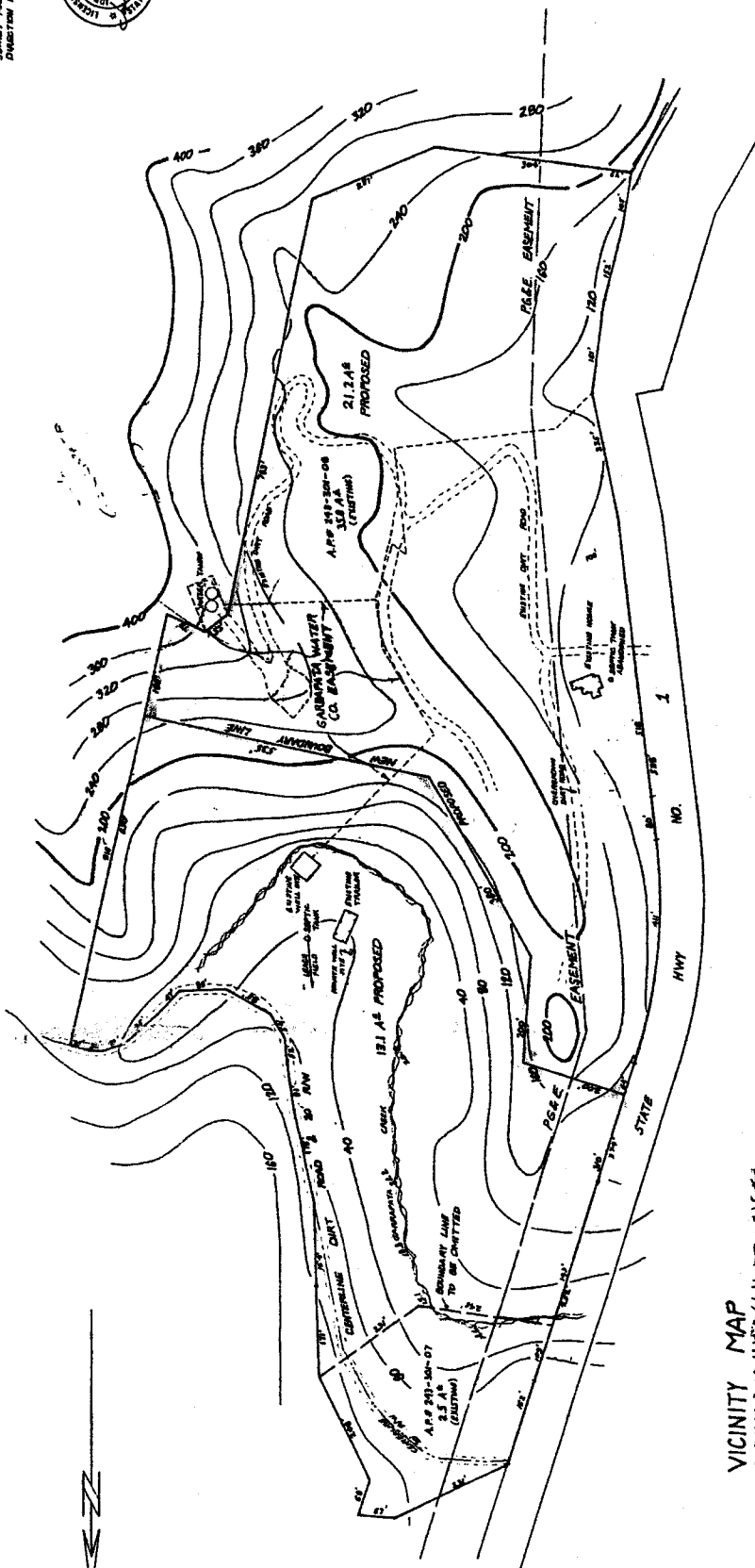
Best wishes for the New Year,



Ronald Gurries
Yolanda Gurries
Glen Gurries
Kent Gurries
Keith Gurries

Ex 7 cont
Highlands

THIS MAP CORRECTLY REPRESENTS A
SURVEY MADE IN 1984 BY
DANIELSON IN SAN JOSE, CALIF.



TENTATIVE MAP

OF A PROPOSED LOT LINE ADJUSTMENT OF
ALLEGED PARCELS 241-304-07 & 08,
MONTESITE COUNTY, CALIFORNIA

PREPARED BY:
RONALD GURRIES
3400 HIGHER ROAD
SAN JOSE, CALIF. 95135
(408) 941-1839

PREPARED BY:
JOHN D. DANIELSON
14000 LAND SURVEYOR
3570 PINNACLE WAY
SAN JOSE, CALIF. 95138
(408) 241-1222

SCALE 1"=100' W.D. 10/84 AUGUST, 1984

NOTES:
ELEVATION DATA & CONTOUR LINES OBTAINED
ON U.S.G.S. MAP ENTITLED "SERRANO POINT
QUADRANGLE"

VICINITY MAP



SCALE 1"=2000'



American Youth Hostels

Central California Council

P.O. Box 3645, Merced, CA 95344-3645
(209) 383-0686 E-mail: HIAYHCCC@aol.com

Dietrich von Dohlen, President

1161 E. Campbell Ave.

Campbell, CA 95008-2403

(408) 371-9118 E-mail: dietrichvd@aol.com

December 14, 1998

David Armanasco, Member
Coastal Commission
456 Washington St.
Monterey, Ca 93940

Dear Mr. Armanasco:

The Central California Council of American Youth Hostels, Inc. (CCC/AYH) was pleased to see the article in the December 8th, 1998, *Monterey Herald* newspaper on the proposed funds for a hostel-like facility along the southern Monterey coastal area.

We have been trying to acquire a hostel in the Big Sur area for the past 15 years and the last prospect was using some buildings at Pfeiffer State Park, near Big Sur as suggested by Mary R. Wright, District Superintendent, Monterey District of California Department of Parks and Recreation. Could those possible funds that may be coming from the Highlands Inn be directed to such a project? If so, our Council is very interested in finding all guidelines needed to be in the main stream of communications and be flagged as a participating party in acquiring a hostel in the Carmel/Big Sur area.

CCC/AYH is a non-profit 501c(3) Corporation in the State of California, established to offer an understanding of the world through travel for people of all ages, especially the young. I hope that we can make the hostelling experience available to all of the public in the Southern Monterey County area. Any assistance will be appreciated.

Sincerely yours;

Dietrich von Dohlen, President
CCC/AYH, Inc.

cc: David Potter, Supervisor, County of Monterey
Rusty Areias, Chairman, Coastal Commission
Coastal Commission Staff, Sacramento
Mary R. Wright, District Superintendent for Monterey District, Calif. State Parks

**HOSTELLING
INTERNATIONAL****American Youth Hostels
Central California Council**P.O. Box 3645, Merced, CA 95344
(209) 383-0686 E-Mail: HIAYHCCC@aol.com**MEMO**

TO: Rick Hyman
California Coastal Commission
725 Front St., Santa Cruz, CA 95060

DATE: 01/12/99

FROM: Peter Kambas
Monterey Hostel Development Coordinator

RE: Monterey Peninsula Hostel Development

This is a follow-up on our discussion of hostel development for the Monterey Peninsula. As you know there is presently no hostel facility between Santa Cruz and San Luis Obispo. Our coastal hostel development plan within the Central California Council of AYH region includes two or more hostels in the Monterey City vicinity to accommodate up to 120 hostellers, a hostel in the Big Sur area to accommodate approximately 60 hostellers, and hostels in Cambria and somewhere halfway between Big Sur and Cambria accommodating 40 to 60 hostellers each.

In the Monterey vicinity we are currently in the process of acquiring buildings at two different sites for a total capacity of 110 beds. The highest priority is the purchase and remodeling of the old Carpenters Hall at 778 Hawthorne St. into a 45 bed hostel. We estimate that it will cost about \$270,000 to get this building open as a hostel by late summer of 1999. At present we have funding commitments for \$180,000 and we are applying for \$60,000 to \$80,000 from the Coastal Conservancy. This will yield a shortfall of between \$10,000 and \$30,000 which we hope to raise through fundraising and in-kind donations. Our long range plan for this building over the next 10 years includes adding a wing onto the existing building for an additional 5 beds, staff quarters and meeting space at a projected cost of \$250,000.

The second site in the Monterey area includes excess property and buildings at the former Ft. Ord that we have applied for through sponsorship of the California State Parks & Recreation Department. This will be a phased project over 5 years at a remodeling cost of approximately \$430,000 to develop a 50 to 70 bed sustainable living center hostel. We expect to raise these funds by applying for grants, donations, and loans.

Thanks for your support and interest in hostel development for the Monterey Peninsula. If you need any more information please call me at (831) 459-9442.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(98) 427-4863

DRIVING IMPAIRED: (415) 904-5200



February 8, 1998

Monterey County Board of Supervisors
P.O. Box 1728
Salinas, CA 93902

Subject: **Wastewater Discharge at Highlands Inn**

Dear Supervisors,

As part of the Highlands Inn timeshare appeal deliberations, wastewater treatment issues arose. *Carmel Area Land Use Plan* policy 2.4.4.B.7 states:

The Regional Water Quality Control Board shall review the National Pollution Discharge Elimination System permits for existing private commercial sanitary systems (i.e., package treatment plants). At least four times a year RWQCB shall undertake inspections of discharge effluent from existing and any new private sanitary system in the Carmel area in order to monitor water quality impacts...

Unfortunately, this must be considered to be an advisory policy because the County does not have the authority to mandate RWQCB's inspection system and neither does the Coastal Commission. Therefore, the final coastal permit approved by the Commission can not and does not implement this policy. However, the County could, possibly with the participation of the Highlands Inn, discuss with RWQCB a mutually agreeable inspection level and how it would be financed. The Coastal Commission urges all parties - the County, concerned citizens, Highlands Inn owners, and the RWQCB - to avail themselves of established procedures to resolve water quality concerns.

Sincerely,

Charles Lester
District Manager
Central Coast District Office

Cc: Roger Briggs, Regional Water Quality Control Board

EXHIBIT NO. 8

APPLICATION NO.
A-3-MCO-98-83

Highlands Inn timeshare
Letter on Waste Discharge

