

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA

SOUTH CALIFORNIA ST., SUITE 200

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Staff: CAREY

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STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE**LOCAL GOVERNMENT:** City of Oxnard**DECISION:** Approval with Conditions**APPEAL NO.:** A-4-OXN-00-172**APPLICANT:** Suncal Companies**PROJECT LOCATION:** South of Wooley Road and east of Reliant Energy Canal,
Oxnard, Ventura County

PROJECT DESCRIPTION: Development of the "Westport at Mandalay Bay" project on a 58.3-acre site, including removal of prime agricultural soil, creation of channels and waterways, subdivision, and the construction of 95 single family residences (83 with private boat docks), 35 residential duplex units, 88 townhouse condominiums, mixed-use development with 140 multi-family residential units and 14,000 sq. ft. of visitor-serving commercial uses, and 7-acres of public park area with trail system.

APPELLANTS: Commissioners Sara Wan and Cecilia Estolano

SUBSTANTIVE FILE DOCUMENTS: City of Oxnard Local Coastal Program, City of Oxnard Coastal Development Permit PZ 99-5-61 and Tentative Subdivision Map PZ 99-5-62

SUMMARY OF STAFF RECOMMENDATION: SUBSTANTIAL ISSUE EXISTS

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which the appeal has been filed.

The appeal contends that the approved project is not consistent with policies and provisions of the three planning documents that comprise the Local Coastal Program for the project site: the Mandalay Bay Specific Plan; the Coastal Zoning Ordinances; and the Coastal Land Use Plan. The appeals asserts that the project is not consistent with the Mandalay Bay Specific Plan with respect to the following provisions: permitted land uses as depicted on the land use map; required linear park and pedestrian/bicycle path as shown on park/circulation plan maps; public access provisions, both lateral and vertical access; single family residential use; residential net density; public boat slips; building height; and soil transfer program. The appeal further states that the project does not conform to policies of the Coastal Zoning Regulations with regard to coastal development permit procedures, recordation of easements and dedications, and visitor-serving commercial uses. Finally, the appeal states that the project is not consistent with the policies of the Land Use Plan relative to preservation of prime agricultural land.

Staff Note:

Appeal A-4-OXN-00-172 (Westport at Mandalay Bay) was originally scheduled for a substantial issue determination at the Commission's September 2000 hearing. The applicant requested a postponement of the substantial issue hearing. The applicant retained an agent shortly before the hearing and requested additional time to meet with staff to discuss the appeal.

Staff met with the applicant and their agent on September 27, 2000 to discuss the appeal. New information and additional explanation of several issues was provided to staff. Where applicable, this information is discussed in the findings below.

I. Appeal Jurisdiction.

The project site is located adjacent to the Reliant Energy Canal (formally the Edison Canal), a waterway that extends from Channel Islands Harbor northward to the Reliant Energy Plant at Mandalay Beach (Exhibit 1). The Post LCP Certification Permit and Appeal Jurisdiction map certified for the City of Oxnard (Adopted April 10, 1996) indicates that the appeal jurisdiction for this area is the first row of parcels or 300 feet from the mean high tide line, whichever is the greater distance. As such, the City's coastal development permit for the subject project is appealable to the Commission.

[Staff would note that revisions were made to the Post LCP Certification map for the City of Oxnard in 1996 to correct a mapping error that existed with regard to the permit and appeal jurisdiction areas in the Ormond Beach area. Additionally, modifications were made to reflect current conditions on the ground in the Channel Islands Harbor area. Specifically, approximately 6.1-acres of channels were dredged for Phase I of the Mandalay Bay Specific Plan Development. The Post LCP Certification Map was updated to reflect that these channels were lying below the Mean High Tide Line (MHTL) and within the Commission's retained permit jurisdiction. Additionally, lands within 300 feet of the MHTL in these channels are subject to the Commission's appeal jurisdiction. None of these changes to the Post LCP Certification Map affect the project site considered herein.]

A. Appeal Procedures.

The Coastal Act provides that after certification of Local Coastal Programs (LCPs), a local government's actions on Coastal Development Permits in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of its coastal permit actions. During a period of ten working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

1. Appeal Areas.

Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea, within 300 feet of the inland extent of any beach or of the mean high-tide line of the sea where there is no beach, whichever is greater, on state tidelands, or along or within 100 feet of natural watercourses. (Coastal Act Section 30603[a]) Any development approved by a County that is not designated as a principal permitted use within a zoning district may also be appealed to the Commission irrespective of its geographic location within the Coastal Zone. (Coastal Act Section 30603[a][4]) Finally, developments which constitute major public works or major energy facilities may be appealed to the Commission. (Coastal Act Section 30603[a][5])

2. Grounds for Appeal.

The grounds for appeal for development approved by the local government and subject to appeal to the Commission shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in Division 20 of the Public Resources Code. (Coastal Act Section 30603[a][4])

3. Substantial Issue Determination

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that a substantial issue exists with respect to the grounds of the appeal, substantial issue is deemed to exist unless three or more Commissioners wish to hear arguments and vote on substantial issue. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three (3) minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. It takes a majority of Commissioners present to find that substantial issue is raised by the appeal.

4. De Novo Permit Hearing

If a substantial issue is found to exist, the Commission will consider the application de novo. The de novo permit may be considered by the Commission at the same time as the substantial issue hearing or at a later time. The applicable test for the Commission to consider in a de novo review of the project is whether the proposed development is in

conformity with the certified Local Coastal Program and the public access and public recreation policies of the Coastal Act. If a de novo hearing is held, testimony may be taken from all interested persons.

B. Local Government Action and Filing of Appeal.

On July 18, 2000, the Oxnard City Council approved a coastal development permit (PZ 99-5-61) and an associated tentative subdivision map (PZ 99-5-62) for development of the Westport at Mandalay Bay project. Commission staff received the Notice of Final Action for the coastal development permit on July 19, 2000. A ten working day appeal period was set and notice provided beginning July 20, 2000 and extending to August 2, 2000.

An appeal of the City's action was filed by Commissioners Wan and Estolano during the appeal period, on August 1, 2000. Commission staff notified the City and the applicant of the appeal and requested that the City provide its administrative record for the permit. The administrative record was received on August 8, 2000.

II. Staff Recommendation on Substantial Issue

MOTION: *I move that the Commission determine that Appeal No. A-4-oxN-00-172 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-4-oxN-00-172 presents a substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

III. Findings and Declarations for Substantial Issue.

The Commission hereby finds and declares:

A. Background.

1. Local Coastal Program Certification.

The Commission certified with suggested modifications the City of Oxnard's Land Use Plan (LUP) in July 1981. The City accepted modifications and the Land Use Plan was effectively certified in May 1982.

The City's Implementation Ordinances (Coastal Zoning Ordinance) was approved with Suggested Modifications in January 1985. The City accepted modifications and the Implementation Ordinances were effectively certified in March 1985.

Both the LUP and the Implementation Ordinances call for a specific plan to be approved for a 220-acre site identified as the Mandalay Bay site (the subject 58-acre project site is part of the overall 220-acre Mandalay Bay site). Both plans give specific policies and standards by which any specific plan would be evaluated. The approval of such a specific plan was required prior to any approval for individual development or subdivision within the 220-acre project area. The Mandalay Bay Specific Plan (MBSP) was developed by the owners of the 220-acre site and approved by the City in 1984. The City submitted the Mandalay Bay Specific Plan for consideration by the Commission concurrently with the Implementation Ordinances. The Mandalay Bay Specific Plan was approved with suggested modifications by the Commission as part of the Implementation Ordinances in January 1985. Effective certification of the specific plan took place in March 1985.

2. Past Commission Appeals.

The Commission has previously considered an appeal of a City of Oxnard coastal development permit for a project on the same 58-acre project site considered herein. In July 1992, the City approved a coastal development permit (City File No. 91-2) and tentative subdivision map (City File No. 4799) for the development of 156 single-family residential parcels with boat docks fronting five channels and a parcel for future commercial and recreation development, including a park site. The applicant of this project was Voss construction.

In its 1992 actions, the City acknowledged that a project with single family residences, private boat docks without continuous lateral public access was not consistent with the provisions of the Mandalay Bay Specific Plan. Because of the inconsistencies, the City approved an amendment to the MBSP at the same time as the coastal development and subdivision permits were approved. This amendment modified the Illustrative Plan,

Land Use Plan, Park Plan, Height Zone Map, Circulation Plan, and Phasing Plan in order to accommodate the Voss project as approved by the City. The amendment modified these plans in order to reconfigure the waterways, increase the open water area, reduce the lateral public access required along the waterways, reconfigure the required park area, and modify building heights. In approving the amendment, the City acknowledged that the existing specific plan required lateral access along all the waterways and that the specific plan did not provide for single family residences in the area of the approved project. The staff report to the City Council for the amendment and permits (6/16/92) states that:

Under the previous land use concept which included attached dwellings with common open areas, public access to the water was to be principally provided by "lateral" access along the waterways on the edge of the peninsula, similar to the existing Harbour Island Plan. This concept has not worked as well as originally anticipated. With the proposed amendment public access will be aggregated to the public access areas including the park, which has been moved to a more prominent location, and by lateral access in the mixed-use commercial area.

While the City provided notice of its final approval of Coastal Development Permit No. 91-2, the amendment to the MBSP was never submitted to the Commission for certification as a modification to the City's certified LCP.

An appeal [A-4-OXN-92-11 (Voss Construction)] of this project was filed with the Commission. Staff recommended to the Commission that substantial issue existed with regard to the public access/recreation, recreational boating, and agricultural policies of the LCP. In particular, the staff report discusses the issue of lateral access and its link to the development of 156 single family residences where the specific plan only provided for a very limited number of single family homes. The report states that:

The Specific Plan allows exceptions to the requirements of continuous lateral access throughout the development for limited single family waterfront home development, where adequate access exists nearby. Since the exception to the access requirements applies only to single family development, it is obvious that an increase would likely reduce public access overall. The project more than doubles in a single phase the number of single-family units contemplated by the certified LCP/Specific Plan for the entire 220-acre project.

The staff report noted that while the City had approved an amendment to the Mandalay Bay Specific Plan that accommodated the Voss project, the City did not submit this amendment to the Commission for certification. The staff report states that the City had a mistaken understanding that the specific plan was not part of the certified LCP and did not require certification by the Commission.

The appeal was scheduled for a substantial issue determination in August 1992. The Commission found that there was substantial issue raised by the appeal with regard to the Voss project's conformity with the City's certified Local Coastal Program (LCP). The

project applicant requested that the Commission's de novo consideration of the project be continued until such time as the LCP amendment had been submitted and considered by the Commission. The LCP amendment was never submitted to the Commission for certification. The Voss project was never considered de novo by the Commission. In October 1993, the project applicant requested that the permit application be withdrawn.

3. Staff Comments.

Staff has met with the project applicant to discuss the project as it was being developed and considered by the City. Staff expressed concern with regard to the provision of public access as well as visitor-serving commercial recreation uses. Staff related to the applicant the Voss permit and appeal history on the site (as discussed above).

In November 1999, Commission staff reviewed the Draft Supplemental Environmental Impact Report for the subject project and provided comments to the City (11/30/99 letter attached as Exhibit 11). Comments provided include discussion of the permit and appeal history on the site. Additionally, staff noted that the project considered in the DEIR was not consistent with various provisions of the LCP/Specific Plan. The inconsistencies relate to land use, public access and single family residential uses. Staff noted that the townhouse/duplex uses proposed were located within the area designated by the specific plan for mixed-use development, that the single family project with private boat docks occupied much of the area designated for linear park, and that the provided park areas appeared smaller than those on the land use map. Additionally, staff stated that the public access required in the LCP/Specific Plan was not provided in the project. Finally, staff commented that single family residences were not permitted in this portion of the specific plan area.

The City's EIR consultant did respond to the staff's concerns (Exhibit 12). The response states that the City determined that the project is consistent with the MBSP as well as the LCP because the MBSP is "illustrative" in nature and intended to provide flexibility for creative and marketable solutions to individual projects.

B. Local Coastal Program Provisions.

As described above, the coastal development policies and standards that apply to the subject project site are found in the three documents that make up the City's LCP, namely the Land Use Plan, Coastal Zoning Ordinance, and the Mandalay Bay Specific Plan.

1. Land Use Plan.

There are several policies and discussions in the LUP that specifically address development on the 220-acre Mandalay Bay site. These policies generally relate to agriculture, development, public access, and visitor serving commercial recreation.

In order to understand the intent of these policies, it is important to know the background of certification of the LUP. One of the key issues considered by the Commission in certifying the City's LUP was the protection of prime agriculture on the Oxnard Plain. The Mandalay Bay site was recognized as containing prime agricultural soils and as being continuously in agricultural production. The City made the case that there were urban conflicts (trespass, vandalism, theft, neighbor's objections to spraying) that adversely affected the continuation of agricultural production on the site. The City also maintained that development of the Mandalay Bay site would complete a logical, viable neighborhood and serve to stabilize the urban/rural limit line. Finally, the City proposed, through the LUP, to implement a program to transfer the prime soils from the Mandalay Bay site to agricultural sites with non-prime soils in order mitigate the loss of prime agricultural land by preserving its soils.

In approving urban use for the Mandalay Bay site, the Commission found that the experimental technique of soil transfer, if proven, could potentially be utilized in other areas as mitigation for the loss of prime agricultural soils, and as such could be considered to serve broader interests.

Further, the Commission agreed with the City's contention that the visitor serving and public recreational facilities to be included in the project area provide public benefits. The Commission's findings for LUP certification (July 9, 1981) state that:

If the issue were merely whether the agricultural land could be converted for such recreational uses, the answer would be clear. PRC Section 30222 clearly assigns priority for use of private lands to agriculture over public opportunities or coastal resources (this includes agricultural lands). In finding that the 220-acre parcel may be converted and developed as proposed, the Commission does not find that the recreational benefits of the project have priority over agricultural uses. It does, however, count these benefits in its decision and accord them some weight commensurate with their value under the Coastal Act.

Thus, although the substantial public access and recreational opportunities provided by the LUP designations and other policies of the LUP did not have priority over agricultural use of the Mandalay Bay site, the Commission did give great weight to the public benefit of such uses in certifying the LUP.

With regard to the subject Westport site, which is part of the overall Mandalay Bay site, the land use map shows three land use designations for the subject project site: "Planned Unit Development Residential"; "Mixed Use (Commercial/Residential)"; and "Recreation Area". The map is shown on Exhibit 3. As shown on this map, the LUP designates the area along all of the waterways for recreation. A large area adjacent to Wooley Road is designated for "mixed use" (commercial/residential), and the remainder of the site is designated for residential use.

In addition to the land use designations, there are several policies that specifically address the development of the Mandalay Bay site (Text of policies is attached as Exhibit 4). Policy No. 4 addresses methods to provide a buffer between development south of the urban-rural boundary (Wooley Road) and agricultural uses north of the boundary.

Policy No. 5 requires that, as a condition of approval for any development within the Mandalay Bay site, a "prime agricultural land maintenance program" (prime soils transfer) must be developed and implemented. This policy establishes the elements that must be part of the soil transfer program including size, location, and soil characteristics of soil recipient site(s), procedures for use of soil on the recipient site(s), timing for transfer, recordation of agricultural easements on recipient sites, and monitoring.

Policy No. 45 requires the development of a specific plan for the Mandalay Bay site and details the provisions it must contain. This policy sets forth the public access requirements that must be included in the specific plan. Policy No. 45 states that:

The lateral access requirement shall be a minimum of 50 percent of the total linear waterfront frontage and shall be dedicated and available for public access. Exceptions to continuous lateral public access shall be allowed only for limited single family waterfront home development where adequate alternative access exists nearby.

The combined vertical access frontage on the water is required to be at least 10 percent of the development's total waterfront linear footage. Recreation areas are to be distributed throughout the project area and linked by pedestrian and bike paths. Policy No. 45 also requires common recreational areas for the residents of permitted residential projects. This policy also sets forth the land uses that may be permitted and the percentage of the overall Mandalay Bay acreage that each land use may occupy. Policy No. 45 further addresses the development of an open body of water as well as public and private boat dock facilities. Finally, this policy requires a program of signage for public access and recreation facilities, the dedication of such areas and the development of public improvements with each phase.

Finally, Policy No. 72 of the LUP requires public access to and along the shoreline and the Inland Waterway for all new development. One exception is provided for the Mandalay Bay area:

For Mandalay Bay inland water development, exceptions to the requirement of continuous lateral public access may be made for single-family waterfront development, but in no case shall the total public lateral access be less than 50 percent of the total shoreline frontage of the project. All vertical access shall be located and designed to minimize impacts on surrounding residential areas (reference Policy No. 45)

2. Coastal Zoning Ordinances.

The coastal zoning map (Exhibit 5) shows one zone designation for the entire 220-acre Mandalay Bay site, which includes the subject project site. The designation is "Coastal Planned Community" Zone (CPC). The CPC zone applies only to the Mandalay Bay site. This zoning would allow only for agriculture/aquaculture uses or passive recreation uses on the property, unless a specific plan was developed and adopted prior to the approval of any coastal development permit for any other uses.

The CPC zone (The text of this zone is attached as Exhibit 6) details the components required to be included in the specific plan. Eight components are called out that must be included in the specific plan:

1. Access and recreation component which identifies the locations, standards, and quantification of the amount of land provided for lateral and vertical access;
2. Soil transfer program for relocation of the prime agricultural soils on the site;
3. Project and use map that shows the specific uses and densities for the land and water areas of the site;
4. Circulation plan which identifies streets, bike paths, and public parking areas;
5. Buffering and setback component that establishes building setbacks and agricultural buffers;
6. Urban design and landscape component to identify relationships between major design elements which establish the character of the development;
7. Utility and drainage facility component that shows sewer and storm water drainage facilities and street improvements;
8. Phasing component that indicates the phasing sequence for development and public access dedication and improvements.

In addition to the CPC zone, the Coastal Zoning Ordinances contain the development standards for the zones that are permitted in the MBSP, which are as follows:

- | | |
|---------|--|
| • R-W-1 | Single-Family Water Oriented |
| • R-W-2 | Townhouse, Water Oriented |
| • R-2-C | Coastal Low Density Multiple-Family |
| • R-3-C | Coastal Medium Density Multiple-Family |
| • CNC | Coastal Neighborhood Commercial |
| • CVC | Coastal Visitor-Serving Commercial |
| • RC | Coastal Recreation |

Finally, the Zoning Ordinance contains general provisions that apply to the Mandalay Bay site including coastal development permit requirements, and recordation of easements and dedications.

3. Mandalay Bay Specific Plan.

As required by the policies of the LCP, the owners of the Mandalay Bay property developed a specific plan for the whole site. The City considered and approved the Mandalay Bay Specific Plan for development of this property, finding it consistent with the provisions of the LCP. The staff report for the City's action approving the MBSP states that:

The Specific Plan document contains text and graphics which portray the result of the guidelines as established in the Specific Plan and Coastal Land Use Plan. Although the building site configurations shown are illustrative only, the waterway, park, open space, accessway, and street patterns will be implemented very closely to what is described in the plan document. The final configuration and amount of these factors would be established through the approval of tract maps and development permits (Coastal Development and Development Review Permits).

The staff report further states that the City's intention was for the MBSP to be consistent with the provisions of the Coastal Zoning Ordinance and that new development would be regulated by the development standards of the ordinance. The Commission considered the MBSP and certified it with suggested modifications along with the zoning ordinances.

As required by the LCP, the Mandalay Bay Specific Plan contains a land use map (Exhibit 7), park plan (Exhibit 8), height zone map (Exhibit 10), circulation plan (Exhibit 9), urban/rural buffer provisions, phasing plan, utilities and drainage component, and soil transfer program. The MBSP designates the land within the 220-acre site for four different land uses: "Residential", "Visitor Serving Commercial", "Mixed Use (Commercial/Residential)", and "Park". The Park Plan shows a linear park along the waterways, and pocket parks of varying size throughout the area. The Circulation Plan shows public and private drives of varying width and a pedestrian/bicycle path throughout the linear park areas.

As discussed above, the LCP recognizes that there can be conflicts between single family residential development and the provision of lateral public access. Policy No. 72 of the City's LUP provides that exceptions to continuous lateral public access in the Mandalay Bay area can be made for single family residential uses if adequate access exists nearby. The MBSP resolves this issue by only providing for a small area along Hemlock Street (located in the southeast area of the MBSP area) where single family residences may be approved. The MBSP states that single family residences may be provided in this area only as a transition between existing single family development adjacent to the MBSP area and the higher density uses allowed in the remainder of the MBSP area. In this area only, no linear park or pedestrian/bike path is required on the Land Use Map, the Park Plan Map, or the Circulation Plan. Continuous lateral public access along all waterways is required by the MBSP throughout the remainder of the specific plan area.

The land use map certified in the MBSP designates the Westport site for three uses: "Residential", "Mixed-Use", and "Park". As shown on this map, the MBSP designates the area along all of the waterways for "park". A large area adjacent to Wooley Road is designated for "mixed use" (commercial/residential), and the remainder of the site is designated for "residential" use. The park areas include a linear park along all the waterways that provides public access via a pedestrian/bike pathway within the park. This park area is also shown on the park plan certified in the MBSP, and the pedestrian/bicycle path is called out on the circulation plan.

C. Project Description.

The City's coastal development permit approved the "Westport at Mandalay Bay" project for the development of a 58.3-acre site (the site plan is shown as Exhibit 2). This project includes:

- Removal of prime agricultural soil from the project site;
- Creation of channels and waterways;
- Land division;
- Construction of 95 single family residences (83 with private boat docks), 35 residential duplex units, 88 townhouses;
- Construction of a mixed-use development with 140 multi-family residential units and 14,000 sq. ft. of visitor-serving commercial uses; and
- Development of 7-acres of public park area with trail system.

The project site is located adjacent to and south of Wooley Road, inland of the Reliant Energy Canal (Exhibit 1 shows the vicinity). This canal extends from Channel Islands Harbor north to the Reliant Energy Mandalay power plant. The canal is used to provide water for cooling at the plant. The canal itself is subject to the original permit jurisdiction of the Commission. The applicant has indicated their intention to submit a Coastal Commission permit application for canal improvements necessary to implement the subject development. The applicant has applied for a U.S. Army Corps of Engineers permit for improvements to the canal.

D. Appellant's Contentions.

The appeal filed by Commissioners Wan and Estolano is attached as Exhibit 13. The appellants contend that the project, as approved by the City of Oxnard, is inconsistent with various policies of the certified Local Coastal Program, which includes the Land Use Plan, Coastal Zoning Regulations, and the Mandalay Bay Specific Plan. In large measure, the appellant's assertions relate to the provision of public access and recreation opportunities as required by the LCP.

The appeal contends that the approved project is not consistent with the Mandalay Bay Specific Plan with respect to the following provisions: permitted land uses as depicted

on the land use map; required linear park and pedestrian/bicycle path as shown on park/circulation plan maps; public access provisions, both lateral and vertical access; single family residential use; residential net density; public boat slips; building height; and soil transfer program. The appeal further states that the project does not conform to policies of the Coastal Zoning Regulations with regard to coastal development permit procedures, recordation of easements and dedications, and visitor-serving commercial uses. Finally, the appeal states that the project is not consistent with the policies of the Land Use Plan relative to preservation of prime agricultural land.

E. Analysis of Substantial Issue.

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the project's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the appellants did not cite the public access policies of the Coastal Act as a ground for appeal, although the public access policies of the LCP were cited. However, should the Commission find Substantial Issue based on the grounds that are cited, the public access of the Coastal Act would be addressed in the de novo review of the project.

A substantial issue does exist with respect to each of the grounds on which the appeal has been filed with one exception. The sole exception is the ground relating to the building height of the "mixed-use" development. As described in Section 1h below, additional information has shown that the height of the "mixed use" buildings is consistent with the MBSP. The approved project is inconsistent with other policies of the City of Oxnard Local Coastal Program for the specific reasons discussed below.

1. Mandalay Bay Specific Plan:

a. Land Use Map.

The appellants contend that the development, as approved by the City, does not conform to the land uses designated on the Land Use Map certified in the Mandalay Bay Specific Plan.

The land use map (Exhibit 7) depicts "park", "mixed use", and "residential" uses for the project site. It would be necessary to map the Specific Plan land uses on the site plan to definitively determine the exact areas where the project is not consistent with the permitted land uses. However, staff has made a comparison of the designated land uses on the Land Use Map with the approved site plan.

It is clear that the area of single family residences with private boat docks does not conform to the designation of linear park and pocket parks shown on the land use map along all waterways. Additionally, the marina area located adjacent to the mixed-use

area is significantly reduced in the approved site plan. A larger land area approved for single family residences is located there instead. Linear and pocket park areas shown adjacent to the mixed-use area do not appear to be provided in the approved site plan. The applicant has stated that a lateral public accessway is to be provided along the waterway between the "mixed use" development and the marina. This may be the intent of the applicant and the City, but this accessway is not clearly shown on the approved plans nor is it called out in the City's CDP.

Finally, the area in the approved project devoted to "mixed-use" development is significantly reduced from the area so designated on the Land Use Map. Most of the townhouse units and some of the duplex residential areas are located within this area designated for mixed-use residential/ visitor-serving commercial uses. The applicant has stated that the townhouse development can be considered part of the "mixed-use" development since residents of the townhouses can also utilize the commercial uses. However, the MBSP requires that: "Mixed-use will be considered as an appropriate land use, containing Neighborhood or Visitor Serving support commercial uses within the same complex or structure with residential uses". The townhouse development cannot be considered "within the same complex or structure", as it is a separate locked-gate community. Further, staff would note that even the reduced area of the development that is characterized as "mixed-use", (incorporating visitor-serving commercial uses with apartment uses), contains a very small area (less than 10 percent of total building area) devoted to commercial uses which would presumably be made available to the general public. As such, the Commission finds that the appellants' contentions raise substantial issue with respect to the grounds that the development, as approved by the City, does not conform to the land uses designated for the project site under the Mandalay Bay Specific Plan.

b. Park Plan and Circulation Plan Maps.

The appeal states that the project does not comply with the Park Plan or Circulation Plan Maps of the Mandalay Bay Specific Plan particularly with regard to the provision of the designated linear park with bike/pedestrian path along all waterways.

The park plan map (Exhibit 8) depicts public park areas of varying sizes as well as a linear park along all of the waterways, with the exception of the area where single family residences are permitted along Hemlock Street in the far southern portion of the specific plan area. The circulation plan map provided in the MBSP (Exhibit 9) indicates a pedestrian/bicycle path along all of the waterways. The portion of the Westport project approved for single family residences with private boat docks does not conform to the designation of park contained in the park plan map nor does it provide the pedestrian/bicycle path shown in the circulation plan. The Commission finds that this contention does raise substantial issue with respect to the grounds that the project, as approved by the City, is not consistent with the park or circulation plans of the specific plan.

c. Lateral Access.

The appellants assert that the project does not meet the requirements of the Mandalay Bay Specific Plan with regard to the provision of lateral public access.

The text of the Specific Plan states that:

The primary public access to the waterfront of this project is satisfied by a linear park which extends throughout the entire project, except where single family residences are proposed along Hemlock Street. This waterfront park will provide approximately 21,000 linear feet of lateral access for the public.

As described above, the park plan and circulation plan maps show this access extending continuously along the waterways. The portion of the project approved for single family residences with private boat docks does not provide this linear park. Additionally, it does not appear that the linear park has been provided in the mixed-use area of the approved project. The applicant has stated that a lateral public accessway is to be provided along the waterway between the "mixed use" development and the marina. This may be the intent of the applicant and the City, but this accessway is not clearly shown on the approved plans nor is it called out in the City's CDP. Therefore, the project as approved in the City's CDP does not conform to the lateral access requirement of the specific plan. Further, as detailed below, the City's CDP does not contain conditions that require easements or dedication of the lateral access in the linear park area that is provided by the project. The Commission finds that this assertion of the appellants raises substantial issue with respect to the grounds that the approved project does not meet the lateral access requirements of the specific plan.

d. Vertical Access.

The appellants additionally assert that the project does not meet the requirements of the Mandalay Bay Specific Plan with regard to the provision of vertical public access.

The text of the Specific Plan states that: "Vertical public access for vehicular, pedestrian, and bicycle access text and maps shall not be less than 10% of total linear waterfront access as depicted in the specific plan and use map (page 5)". The findings and conditions for the City's CDP approval do not address the provision of vertical access. It is unclear from the project plans whether this requirement is met. Further, the plan specifies that if the vertical access is not a public thoroughfare it must be legally restricted (by deed restriction or easement) for public use. The City's CDP approval contains no conditions that require easements or dedication of any vertical access to a public agency. Thus, the Commission finds that the appellants' assertion raises substantial issue with regard to the grounds that the project, as approved by the City, does not comply with the vertical access requirements of the Mandalay Bay Specific Plan.

e. Single Family Residential Use.

The appeal affirms that the project is at odds with the specific plan with regard to the approval of 95 single-family residences.

The text of the Mandalay Bay Specific Plan states that:

Approximately 30 single-family waterfront homes will be provided along the existing Hemlock Street to provide a comfortable transition between the existing single-family development to the south and the more intense uses contained within this plan. Two residential islands and a peninsula will accommodate higher density residential clusters with heights possibly varying from two or three stories to as much as ten stories.

As such, the specific plan does not provide for single family detached residences in the North/South Peninsula areas where the Westport project site is located. The project does not conform to this provision of the specific plan as it includes 95 single-family residential parcels (83 with private boat docks).

The applicant has stated that the MBSP provides for a maximum density and that since the approved Westport project is far less dense than the maximum allowed, it is therefore consistent. Staff acknowledges that typically implementation ordinances (or LUPs) establish a maximum allowable density or range of density and development may be approved which is less than the maximum. (Reduced levels of density may even be presumed to have fewer impacts.) However, in this case, the allowable density must be considered in concert with the pattern of development, location of the only single family residences allowed in the MBSP (Hemlock Street), and required public access.

The LCP recognizes that there can be conflicts between single family residential development and the provision of lateral public access. As described above, the City's LUP provides that exceptions to continuous lateral public access in the Mandalay Bay area can be made for single family residential uses if adequate access exists nearby. The MBSP resolves this issue by only providing for a small area along Hemlock Street (located in the southeast area of the MBSP area) where single family residences may be approved. In this area only, no linear park or pedestrian/bike path is required on the Land Use Map and the Park Plan Map. Continuous lateral public access is required by the MBSP throughout the remainder of the specific plan area.

Therefore, in this case, the residential product type (multi-family versus single-family) is not particularly important with regard to land use density. However, it is critical with regard to the intent of the MBSP to provide continuous lateral public access along all the waterways. The areas permitted for single family residential use provide only for private access to the waterways. The Commission finds that the appeal raises substantial issue with regard to the contention that the project is not consistent with this provision of the specific plan.

f. Residential Net Density.

The appellants state that the project does not comply with Mandalay Bay Specific Plan provisions regarding residential density.

The specific plan sets forth the total number of residential units (not including any mixed-use residential units) that can be approved within the plan area (960 total). Additionally, it provides a breakdown of the maximum number of units, unit type, acreage, and density for each potential phase (area) of the overall project. For the phase containing the proposed project site (South Peninsula, North Peninsula, and Northeast Shore Phase), the plan specifies a maximum of 218 **attached** dwelling units. The approved project includes 218 residential units (excepting the apartment units included in the mixed-use component of the project). However, the plan does not provide for **detached** single family residential units in this area of the specific plan. Again, the issue of the type of residential use permitted under the specific plan is not particularly important with regard to land use density as the density approved for the Westport project is less than the maximum allowed by the MBSP. However, it is critical with regard to the provision of the public access/recreational opportunities required by the specific plan (described above). Therefore, the Commission finds that there is substantial issue raised by the appeal with respect to the appellants' contention that the project does not conform to this requirement of the specific plan.

g. Public Boat Slips.

The appeal maintains that it is unclear whether the City approval conforms to the requirements of the Mandalay Bay Specific Plan with regard to the provision of public boat slips.

The plan states that:

The Specific Plan incorporates a minimum of 795 boat slips in the Specific Plan area. Thirty are allocated to the 30 single-family residential lots. One-half of the remaining will be available to the public.

The findings and conditions for the City's CDP approval do not address the number or public/private status of any boat slips to be provided by the project, with the exception of the 83 private boat docks associated with single-family residences. The site plan for the project shows a boat dock easement area in the channel adjacent to the "mixed-use" development. A more detailed plan provided by the applicant (Exhibit 14) shows 68 docks contained within this public marina area (although no information is provided regarding how the docks will be made available to the public). Based on this plan, of the 151 total docks approved as part of the project, 68 docks (45%) would be for public use. The applicant indicates that 10 to 20 additional public boat slips could be provided in the marina. If 15 additional public slips were provided, then there would be the same number (83) of public and private slips. However, the City's CDP contains no discussion

of the number of approved or potential public boat slips, nor does it contain conditions or other provisions to assure that such slips would remain available to the public. Therefore, the Commission finds that a substantial issue is raised with respect to the appellants' contention that the project does not meet the public boat dock requirement of the specific plan.

h. Building Height.

The appeal contends that it is unclear whether the approved project is consistent with the height standards and design concept of the specific plan.

The Mandalay Bay Specific Plan establishes a design concept for the islands and peninsulas of the plan area whereby views to and across the site would be accentuated. The plan states that:

Height zones have been established above grade as a part of the urban design concept to assure that project scale and massing conform to and accentuate the waterscape and island concepts. Buildings on the perimeter of the islands and peninsula will be restricted to three stories in height (45') while buildings on the interior may increase in height from five stories (75') to as much as ten stories (130').

There is also a "Height Zone" Map (Exhibit 10) within the plan that shows the heights allowed for each area. In the area of the project site, residential along the edges of the peninsula are allowed up to 3 stories and residential at the center of the peninsula would be allowed to extend up to 10 stories. Finally, there is a height zone applied to the mixed-use (residential/commercial) area, which is called "mixed height commercial". Unfortunately, the plan does not denote the range of heights that are allowed in the mixed height commercial area.

The single-family, duplex, and townhome residential uses would all be below 3 stories and 35 feet in height. Therefore, these uses are consistent with the heights allowed in the specific plan. However, the City's staff report for the coastal development permit indicates that the mixed-use portion of the project located at the northern edge of the peninsula was permitted at 4 stories (44', 10"). As part of the administrative record for the permit, the City provided full-sized plans of the project. These plans show that the "mixed use" project contains three stories of multi-family/commercial uses with one semi-subterranean story of parking garage below. Based on these plans, it is clear that the height of the "mixed use" project at three stories and just under 45 feet, is consistent with the requirements of the LCP. Therefore, the Commission finds that the appellants' contention does not raise substantial issue with regard to the consistency of the approved project with the height and design provisions of the Mandalay Bay Specific Plan.

i. Soil Transfer.

The appellants assert that the approved project does not meet all of the requirements of the Mandalay Bay Specific Plan with regard to the agricultural soil transfer program.

The specific plan requires a soil transfer program which implements Policy 5 of the Coastal Land Use Plan (discussed further below). The plan is required to address several parameters, including the acreage, soils characteristics, and location of the site(s) to receive the prime soil, as well as the method and timing of soil placement. Finally, the plan is required to provide a program for monitoring agricultural production on the recipient site. The findings and conditions for the City's CDP approval address the requirement for soil transfer. A site has been identified to receive the transferred soil and the applicant has applied for permits from the County of Ventura. However, there is no discussion of the applicant's development of a soil transfer program, especially with regard to any monitoring program. As such, the Commission finds that substantial issue exists with regard to the project's consistency with the agricultural soil transfer policies of the specific plan.

2. Coastal Zoning Regulations

a. Coastal Development Permit Requirement.

The appeal affirms that the approved coastal development permit did not include approval of aspects of the project for which a coastal permit is required under the Coastal Zoning Ordinance. These aspects include a land division, dredging or construction of waterways, and construction of seawalls and revetments.

The Coastal Zoning Ordinance states that:

A coastal development permit is required for all conditionally permitted uses, lot splits, and subdivisions within the individual coastal zones requiring a discretionary decision by the city as well as all projects meeting the definition of appealable developments... (Sec. 37-5.3.2)

The City concurrently considered a coastal development permit (PZ 99-5-61) and a tentative subdivision map (PZ 99-5-62) for the subject project. The two permit actions were addressed in one staff report to the Planning Commission. However, a separate resolution was adopted for the coastal development permit (CDP) and the tentative subdivision map. The project description, findings, and conditions of the City's CDP approval do not include the subdivision, dredging or construction of waterways, or construction of seawalls and rip-rap slope protection, all of which are integral to the approved project. This development would require the approval of a coastal development permit. The Commission finds that this contention of the appeal represents a substantial issue with respect to the grounds that the project is not consistent with the coastal permitting requirements of the Coastal Zoning Ordinances.

b. Recordation of Easements and Dedications.

The appellants contend that the project, as approved by the City, does not conform to the zoning ordinance with regard to easements or dedications for public recreational amenities.

The Coastal Zoning Ordinance states that:

Offers for or the execution of dedications or easements for coastal access, recreation, or open space purposes shall be recorded prior to or simultaneously with the recordation of the related land division. Where no land division is involved or required, such easements and dedications shall be recorded prior to the issuance of building permits or initiation of use, whichever comes first. (Sec. 37-1.4.14)

The approved project includes approximately 7-acres of public park, including a trail system. There are conditions of the City's CDP approval which require that certain equipment and amenities be provided at various areas of the parkland. However, there are no conditions that require easements or dedication of the property to a public agency.

The applicant has stated that a development agreement between the developer and the City provides for such public dedications. The development agreement does state that the monetary value of the 7.62-acres of public recreation areas included in the Westport project shall be credited towards any park fee obligation required by the City under the Quimby Act. The development agreement does not address the timing or method by which this land will be dedicated for public use. Further, staff would note that the development agreement could be revised in the future by agreement between the City and the applicant. As such, even if the development agreement required the dedication of public access and recreation, the City's CDP does not assure public availability of the approved access/recreation areas as required by the zoning ordinance. The Commission therefore finds that the appellants' assertion that the approved project is not consistent with this provision of the Coastal Zoning Ordinances does raise a substantial issue.

c. Visitor-Serving Commercial Uses.

The appeal states that it is unclear whether the uses permitted in the mixed-use project are consistent with the uses allowed by the Coastal Zoning Regulations. It further states that the City's approval does not include any condition that limits the uses to only those allowable under the zoning.

As detailed in the Coastal Zoning Regulations (and the Mandalay Bay Specific Plan), mixed-use development may be approved on the project site which includes the commercial uses provided for in the "Coastal Neighborhood Commercial Zone" (CNC)

and/or the "Coastal Visitor-serving Commercial Zone" (CVC) in combination with residential use.

The principal permitted uses allowed in the CNC zone include neighborhood services such as financial (banks), personal (barber, beauty shop, health spa, etc.), professional (real estate, medical), and public uses (park, library, etc.) as well as neighborhood sales such as eating and drinking (restaurant, café), retail (market, pharmacy, florist, etc.). Secondary uses in the CNC zone include commercial recreation, entertainment, service station, and restaurant.

The principal permitted uses allowed in the CVC zone include visitor-serving services such as commercial recreation (skating rink, campground, boat rentals, etc.), entertainment (theater, night club), service station, and tourist (hotels, convention facilities, vacation timeshares) as well as visitor-serving sales such as restaurants, and marina facilities (boat launching, yacht and boat sales, bait and tackle sales, etc.). Secondary uses allowed in the CVC zone include financial, personal, and professional services, public uses, drive-through restaurants, specialty shops and general retail.

The findings and conditions for the City's CDP approval characterize the 14,000-sq. ft. of commercial space contained in the mixed-use component of the project as "visitor-serving" uses. The findings provide a breakdown of the commercial space into three categories: restaurant (3,000 sq. ft.); retail (2,000 sq. ft.); and office (9,000 sq. ft.). However, there is no discussion of the specific uses approved. General office use is not permissible under the CNC or CVC zones. It is unclear whether the approved commercial project would conform to the uses allowed in these zone categories. Finally, the City's CDP approval does not include any condition limiting the future uses to be provided in the commercial portion of the mixed-use project.

Additionally, staff would note that although this portion of the development is characterized as "mixed-use", incorporating visitor-serving commercial uses with residential uses, the portion of the project devoted to commercial uses which would presumably be made available to the general public is a very small percentage of the total building area approved (less than 10 percent). The Commission finds that this contention does raise substantial issue with respect to the grounds that the project, as approved by the City, is not consistent with the allowable uses under the Coastal Zoning Ordinances.

3. Coastal Land Use Plan

a. Prime Agricultural Land Maintenance Program.

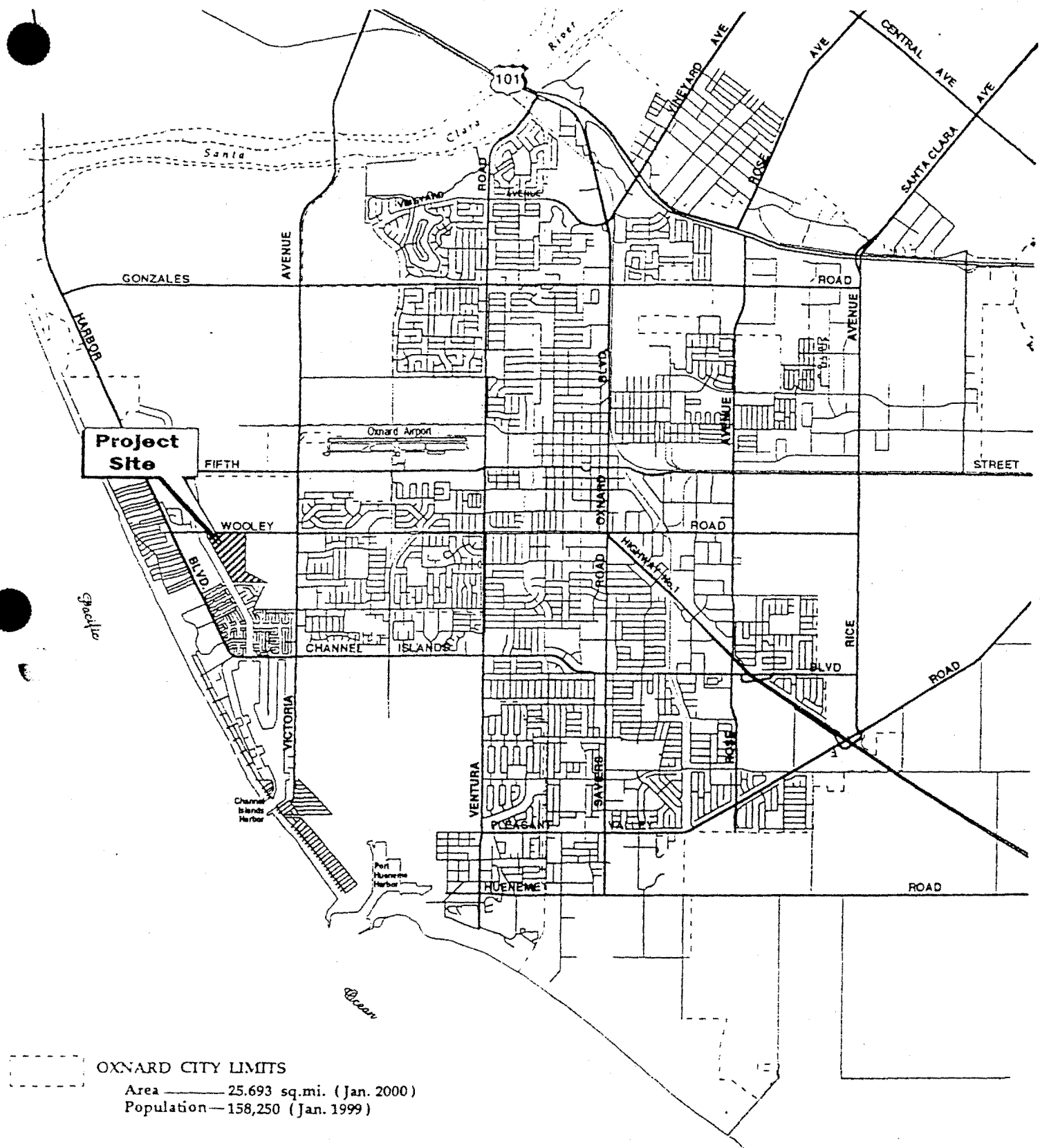
Finally, the appellants contend that the approved project does not meet all of the requirements of the Coastal Land Use Plan with regard to the agricultural soil transfer program.

Policy No. 5 of the Land Use Plan (LUP) requires that development on the Mandalay Bay property mitigate the loss of prime agriculture on the site by transferring the prime soils from the project site to a site on the Oxnard plain which does not contain prime soils. This policy requires conditions of approval for development of the Mandalay site that address, at a minimum, five parameters. These parameters include the acreage, soils characteristics, and location of the site(s) to receive the prime soil, as well as the method and timing of soil placement. Finally, this policy requires that the applicant establish and implement a monitoring program in order to track the success of the soil transfer.

The findings and conditions for the City's CDP approval address the requirements of Policy No. 5 of the LUP. A site has been identified to receive the transferred soil and the applicant has applied for permits from the County of Ventura. Condition # 97 of the City's CDP states that:

Consistent with Policy #5 of the Coastal Land Use Plan, this permit is granted subject to approval of a coastal development permit by the County of Ventura for the recipient site for the agricultural soil transfer program.

The City does not address whether the recipient site meets the requirements of the LUP. The LUP requires the City to make a determination as to whether the five parameters identified above have been satisfied. There is no evidence in the record that the City addressed these parameters. Additionally, there is no discussion or condition regarding the required monitoring program. As such, the Commission finds that substantial issue exists with regard to the project's consistency with the agricultural soil transfer policies of the Land Use Plan.



OXNARD CITY LIMITS

Area — 25,693 sq.mi. (Jan. 2000)

Population — 158,250 (Jan. 1999)

City of
Oxnard

PLANNING AND
ENVIRONMENTAL
SERVICES

File No.

PZ 99-05-61

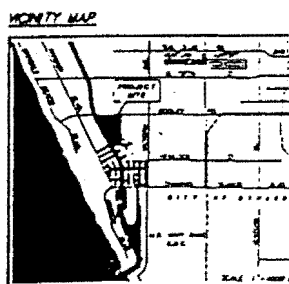
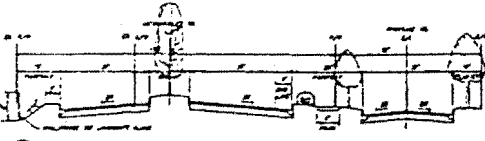
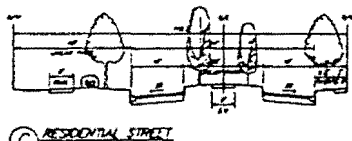
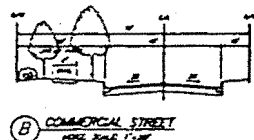
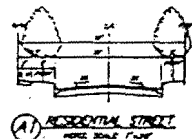
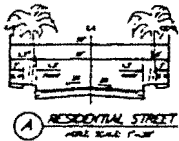
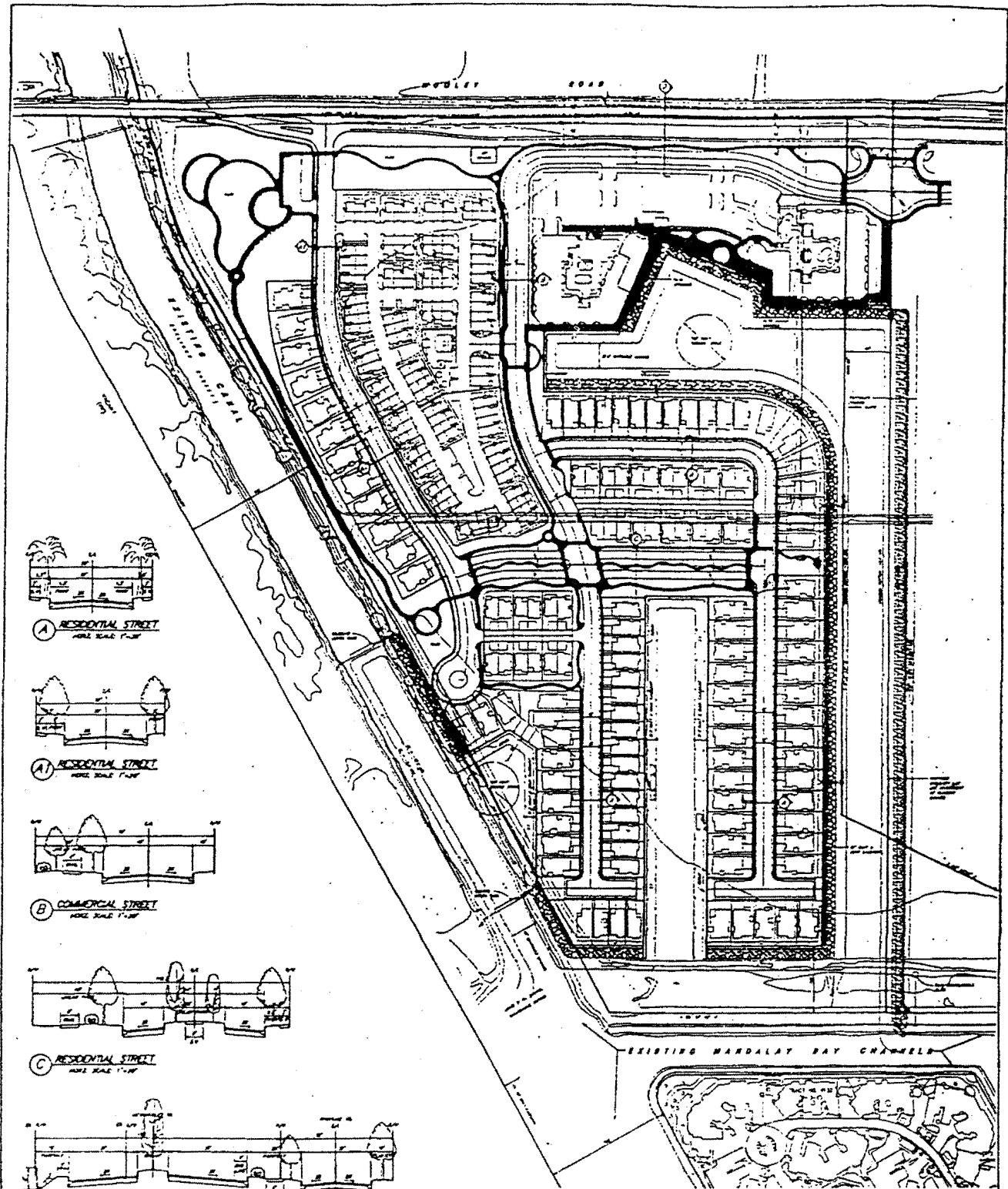
Date: 05-27-99

Prepared By: E. Carrillo

EXHIBIT 1

A-4-oxn-00-172

Vicinity Map



1" = 100' 0"

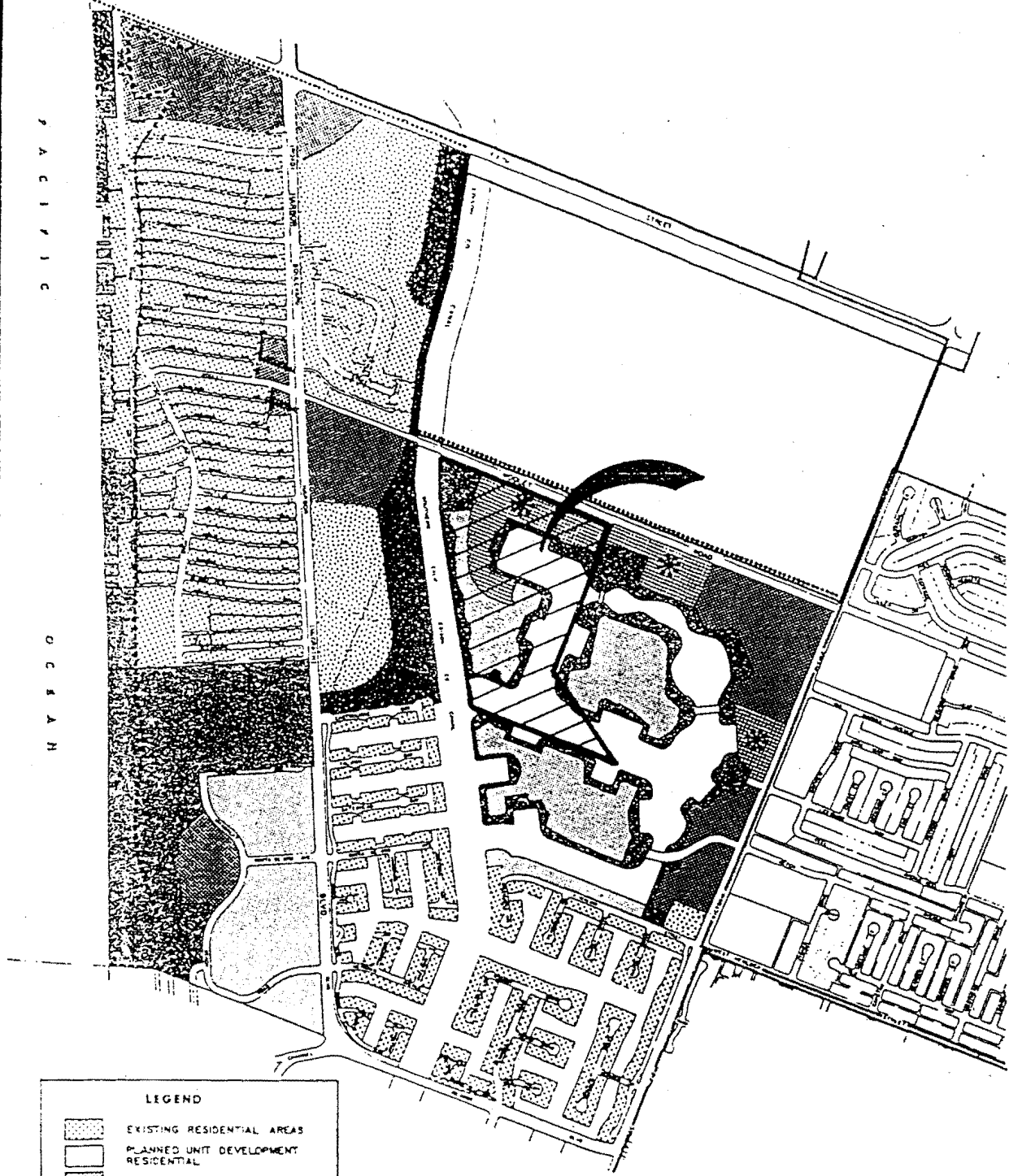
Westport at Mandalay Bay SITE PLAN



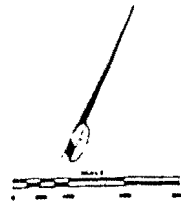
DESIGNED BY JENSEN OREGON DESIGN ASSOCIATES, INC. 1000 Commercial Avenue, Suite 100, Portland, Oregon 97204

EXHIBIT 2
A-4-oxn-00-172
Site Plan

COASTAL PLAN LAND USE MAP



LEGEND	
[Pattern: Dotted]	EXISTING RESIDENTIAL AREAS
[Pattern: Horizontal Lines]	PLANNED UNIT DEVELOPMENT
[Pattern: Vertical Lines]	RESIDENTIAL
[Pattern: Diagonal Lines]	MOBILE HOME PARK
[Pattern: Cross-hatch]	VISITOR SERVING COMMERCIAL
[Pattern: Stippled]	RECREATION AREA
[Pattern: Star]	MIXED USE (COMMERCIAL / RESIDENTIAL)
[Pattern: Dotted]	PUBLIC FACILITY
[Pattern: Stippled]	RESOURCE PROTECTION AREA
[Line: Solid]	COASTAL ZONE BOUNDARY
[Line: Dashed]	100 YEAR FLOOD LINE (NATIONAL FLOOD INSURANCE)
[Line: Dotted]	URBAN RURAL BOUNDARY
[Line: Solid]	OXNARD CITY LIMITS



OXNARD SHORES

EXHIBIT 3

A-4-oxn-00-172

PZ 99-05-61

Local Coastal Policies

3. All urban development shall be restricted to the area within the urban-rural boundary, as defined by Map 1 and the Land Use Map.
4. The agricultural lands bordering the urban-rural boundary will require buffer measures in addition to the designated adjacent buffer-land uses in order to adequately protect their viability. Design features for the improvements required on Wooley Road as a result of urbanization to the south of Wooley Road shall include mitigation measures to buffer the urban uses from the agricultural lands. Possible design techniques which will provide the necessary mitigation measures include the following:
 - a. All widening shall occur on the south side of Wooley Road;
 - b. A grade difference shall be created between the road and the agricultural fields, with a drainage ditch located along the north side of the road;
 - c. There shall be no provision of turn-out areas or on-street parking, minimal shoulders and construction of a curb along the northern edge of the roadbed;
 - d. All sidewalks and bicycle paths shall be located only on the south side of Wooley Road; and
 - e. A hedge or tree row, combined with an eight foot fence, shall be located on the crop side, on the north side of Wooley Road.
5. This policy shall apply only to that single, specific 220-acre property located north of Hemlock Street, south of Wooley Road, east of the Edison Canal, and west of Victoria Avenue, commonly known as the Mandalay Bay project. The purpose of this condition is, in part, to assure that the long-term agricultural productivity in the Oxnard area is not reduced. As a condition of development of prime agricultural soils, a "prime agricultural land maintenance program" shall be undertaken to assure that the overall amount of prime agricultural land is not reduce by urbanization. Therefore, prior to issuing any authorization for a planned unit development ("PUD") on the subject parcel, the City shall make written findings that the applicant for the PUD has obtained rights to deposit on a like amount of non-prime agricultural land, the prime soils to be taken from the subject site. The conversion of the prime agricultural soil on the Mandalay Bay site to urban uses is conditioned upon the approval of a planned unit development which satisfies all requirements of Policy 45 of this land use plan.

Conditions of project approval shall, at a minimum, consist of the following actions and restrictions:

- a. The acreage of the recipient area shall equal or exceed the converted prime agricultural lands. If the recipient area consists of two or more parcels, each site shall contain a minimum of 40 contiguous acres to which the soil shall be applied. All acreage within the

EXHIBIT 4

A-4-OXN-00-172 (Westport)

LUP Policies (6 Pages)

recipient sites shall consist of non-prime agricultural soils at the time of the approval and actual application of the soil transfer program.

- b. The recipient areas must be west of State Route 1, within that agricultural area directly influenced by coastal climatic conditions on the Oxnard Plain. Land to be upgraded located within the coastal zone must be identified for agricultural use within the Land Use Element of the applicable LCP. Land identified for upgrade status which is outside the coastal zone must be designated for agriculture in the applicable General Plan. The recipient area shall be restricted to exclusively agricultural use for a minimum of 25 years from the date of receipt of the transferred soil. This shall be accomplished by an agricultural easement in favor of the State of California, or a deed restriction.
- c. The City shall require that the following procedures be used on all recipient sites of the prime agriculture soil transferred from the Mandalay Bay project donor site.
 - 1) Clear recipient site of all debris
 - 2) Level land to desired farming and irrigation grade which shall be the final elevation.
 - 3) Uniformly overlay site with 12 inches below projected new surface.
 - 4) Slip plow or deep disc to 28 inches below projected new surface.
 - 5) Uniformly overlay site with 12 inches of imported soil
 - 6) Farmer to subsoil and landplane as desired for intended crop
 - 7) There shall be no stockpiling of transferred prime soils which shall be moved directly from the donor site to the recipient sites. Procedures shall be undertaken in such a way as to prohibit compacting of the newly deposited soils by heavy equipment and to otherwise protect their capabilities.
- d. Concurrent with the commencement of construction of each phase, the prime soils shall have been transferred to suitable recipient sites and returned to cultivation. As an alternative, a performance bond shall be posted to assure the transfer of soils and the restoration of the recipient sites.
- e. The applicant for the PUD permit shall establish a program for monitoring agricultural production on the recipient sites, and reporting resulting data to the Coastal Commission and the U.S. Soil Conservation Service (SCS). The SCS shall be consulted in the design of the monitoring and reporting program. The program shall continue for at least 10 years from the date of transfer of the soils and shall be fully funded by the applicant. The program shall develop and monitor data on all soil characteristics, crop types, and yields, irrigation requirements, and the agricultural productivity of each donor site.

As discussed in Chapter 2, the Land Use Map designates uses for these areas. The policies in this section are designed to further define the designations.

Local Coastal Policies

45. The Mandalay Bay project site, a 220-acre property located north of Hemlock Street, south of Wooley Road, and between the Edison Canal and Victoria Avenue, has been designated Planned Development. The purpose of the designation is to ensure the well-planned development of this large area which is proposed for water-oriented development. The following policies apply specifically to this development area:

- a. The entire site shall be planned as a unit. A specific plan showing the ultimate development of the site shall be required prior to any project or subdivision approval.
- b. Overall densities shall not exceed those established in the land use plan. The site design shall include expansions of the existing Inland Water/Edison Canal system. Residences, both single-family or multiple units, shall be oriented to the waterway, and private docking facilities may be provided. Public vertical access to the waterway shall be required; the combined public vertical access frontage on the water shall not be less than 10 percent of the development's total linear waterfront footage, unless adequate access is provided nearby, and shall be included in the specific plan. The lateral access requirement shall be a minimum of 50 percent of the total linear frontage and shall be dedicated and available for public access. Exceptions to continuous lateral public access shall be allowed only for limited single-family waterfront home development where adequate alternative access exists nearby. All public accessways and facilities shall be provided in accordance with Policy 72. Recreational areas shall be distributed throughout the project with pedestrian and bicycle linkages between pocket parks, play areas, overlooks and other small-scale public areas offering the public and residents of the project recreational opportunities. No project on this site shall be approved without concurrent approval of all components of the "prime agricultural land maintenance program."

(Please refer to Policy 5 of this Plan)

- c. Common (non-public) open space shall be required for all multiple-family or attached units, and shall include, but is not limited to, recreational facilities intended for the residents' use, including swimming pools, tennis courts, playgrounds, community gardens, or common landscaped areas. Street, driveways and parking lots shall not be considered as a common open space.
- d. Public open space shall include, but is not limited to, public parks other than identified neighborhood and community parks, beaches, parking lots for public use and access corridors, including pedestrian paths and bikeways. Streets, property for private use, sensitive habitat areas and other non-usable areas shall not be considered as public open space.

- e. At least 20 percent of the net area of the site shall be designated for common open space for multiple-family or attached-unit developments, unless adequate facilities are provided nearby. Not less than 20 percent of the net area of the site for all areas designated Planned Development on the land use map shall be public open space, unless adequate open space is provided nearby. Areas designated by the LCP as neighborhood or community parks shall not be included in the site area, and may not be counted towards the required percentage of public open space. The area of the waterway may be included in the tabulations.
- f. Land uses shall consist of a mix of visitor-serving commercial, residential and public recreational areas oriented to an expansion of the existing Inland Waterway. The visitor-serving commercial, public recreation and open water shall comprise at least 50 percent of the overall project area. At least 12.5 percent of the total project area shall be public recreation areas, and at least 12.5 percent of the total project area shall be visitor-serving commercial. Water area shall comprise the remaining 50 percent of the visitor-serving commercial and public recreation area.
- o Total Project Site: 220 acres (100 percent)
- o Area required for visitor-serving commercial, public recreation and open water: 110 acres (50 percent)
- o Area for residential development: 110 acres (50 percent)

BREAKDOWN OF PUBLIC AND VISITOR SERVING AREAS

<u>Element</u>	<u>Minimum Acreage</u>	<u>Percent Of Public Area</u>	<u>Percent of Total Project</u>
Visitor-serving, Commercial Public Recreation, and Open Water	110.0	100%	50.0%
a. Visitor-serving Commercial	27.5	25%	12.5%
b. Public Recreation	27.5*	25%	12.5%
c. Open Water**	55.0	50%	25.0%

* Must all be on land

** Up to 10 percent of open water may be devoted to public marinas, or boat slips available to the public

- g. The development of an open body of water shall be an integral part of this land use designation. The development of this water area, however, may only proceed consistent with the other policies of this plan. A public launching ramp and boat docks for day use will also be provided. Fifty percent of the docking facilities provided in the project other than those provided with single-family residences shall be available for use by people not residing within the project. Full and unimpaired public access to and use of all open water areas,

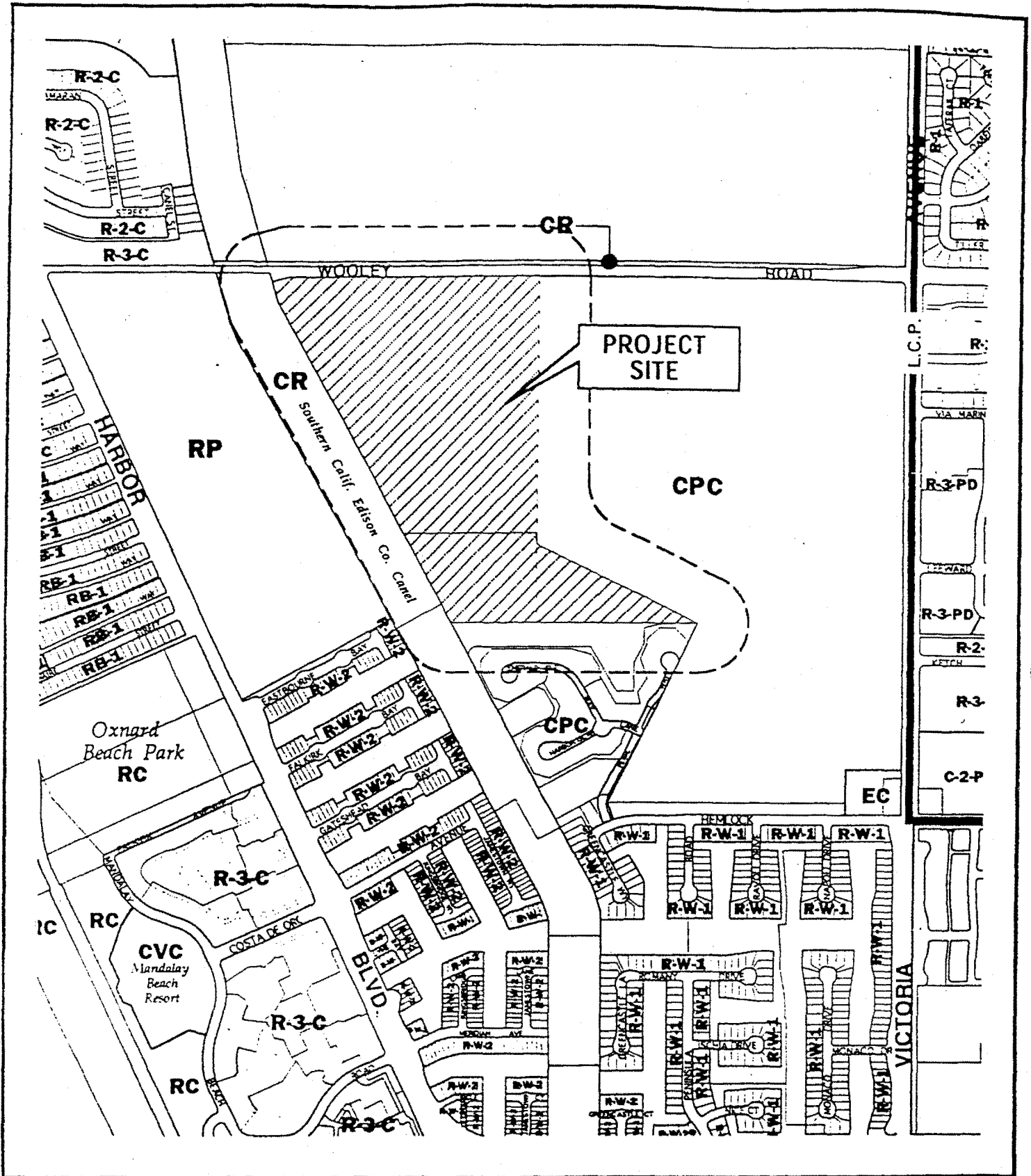
consistent with security and safety requirements, shall be assured. The location of and design of all development shall provide for public access and use of the project's water and immediate shore area.

- h. The project design shall also provide for significant buffer areas within the project, not including active public or visitor-serving uses, which will effectively protect all adjacent agricultural land uses from conflicts with urban uses and activities.
- i. For all PUD projects, the following requirements are imposed:
 - 1) A program of signing shall be developed and implemented to inform and direct the public as to the access and recreational opportunities, and the public obligations and constraints. Public recreational areas shall be located and designed to provide for ready access and identification by the public.
 - 2) All public areas shall be offered for dedication for public use prior to issuance of a permit for development.
 - 3) Public improvements required of a development shall be developed concurrently and shall be completed prior to completion of the final project phase.
- 46. Areas designated for visitor-serving commercial uses shall be planned and designed to maximize aesthetics, have a common theme and blend with surrounding uses. Permitted uses include motels, hotels, restaurants and visitor-oriented retail commercial. Where designated, neighborhood convenience commercial may also be permitted, provided that the commercial uses remain predominantly visitor-oriented.
- 47. The Ventura County Air Quality Management Plan (AQMP) is incorporated into the LCP by reference. All new development located within the coastal zone shall occur in a manner consistent with the AQMP.
- 48. Avoidance is the preferred mitigation in all cases where a proposed project would intrude on the known location of a cultural resource. Therefore, proposed project areas should be surveyed by a qualified archaeologist and resulting findings taken into account prior to issuing discretionary entitlements.

Should any object of potential cultural significance be encountered during construction, a qualified cultural resources consultant shall be contacted to evaluate the find and recommend any further mitigation needed. All potential impacts shall be mitigated to the maximum extent feasible.

Any unavoidable buried sites discovered during construction shall be excavated by a qualified archaeologist with an acceptable research design. During such site excavation, a qualified representative of the local descendants of the Chumash Indians shall be employed to assist in the study, to ensure the proper handling of cultural materials and the proper curation or reburial of finds of religious importance or sacred meaning.
- 49. The Colony, a 115-acre planned development site located between Harbor Boulevard and the Pacific Ocean, north of Channel Islands Boulevard and south of Falkirk Avenue, is a recognizable residential and resort facility.

70. The City shall support and encourage the State's expansion plans for McGrath State Beach Park, including the new bicycle path, the provision of day-use facilities and a bicycle camp, restriction of access to the Santa Clara River mouth and the new entrance to the park.
71. On vacant oceanfront lots in the Oxnard Shores Neighborhood, the City shall, in its permit process, ensure that evidence of public use is protected according to PRC 30211. In the event prescriptive rights are not fully established by a court of law, funds shall be sought for acquisition of these lots through the Transfer of Development Rights program. As funds designated for beach acquisition become available, the City shall attempt to acquire these vacant lots for public beach purposes. Once acquisition of the vacant lots is complete, the city may complete the linear park by acquiring the developed lots and removing the structures.
72. Public access to and along the shoreline and the Inland Waterway shall be required as a condition of permit approval for all new developments between the shoreline and the first public roadway inland from the shore, except as provided below:
- Exceptions may be made when access would be inconsistent with public safety, military security, the protection of fragile coastal resources, or when agriculture would be adversely affected.
- Exceptions for vertical accessways may be made when adequate vertical access exists nearby (500 feet).
- For Mandalay Bay inland water development, exceptions to the requirement of continuous lateral public access may be made for single-family waterfront development, but in no case shall the total public lateral access be less than 50 percent of the total shoreline frontage of the project. All vertical access shall be located and designed to minimize impacts on surrounding residential areas (reference Policy No. 45).
- Offers to dedicate public accessways and public facilities shall be recorded prior to the issuance of the permit and they shall be developed concurrently with the project. However, public access facilities need not be open to the public until a public agency or private association agrees to accept the responsibility for maintenance and liability of the access. Recorded offers of dedication shall not be revocable for 20 years.
73. Adequate public parking shall be provided in all new development with dedicated public access areas, and shall be in addition to the parking required for the new development, unless adequate facilities are provided nearby. All facilities shall be located and designed to avoid impacts on surrounding residential areas.
74. Bicycle routes shall be required in new developments wherever appropriate.
75. A bus route from the downtown area out Fifth Street, past the airport to the new City/County Park at Fifth and Harbor, and on to McGrath State Beach Park, would provide excellent low-cost access to a more remote



City of
Oxnard

PLANNING
AND
ENVIRONMENTAL SERVICES

File No.:

PZ 99-05-61

Date:

5-24-99

Prepared By:

E. Canillo

EXHIBIT 5

A-4-oxn-00-172 (Westport)

Coastal Zoning Map

Sec. 37-2.6.0 CPC (Coastal Planned Community) Zone

Sec. 37-2.6.1 Purpose

The purpose of the CPC zone is to provide a method which will ensure the orderly development of a large-scale mixed-use planned development on property located in an area bounded by Wooley Road on the north, Edison Canal on the west, Hemlock Street on the south, and Victoria Avenue on the east in accordance with the provisions of the Oxnard Coastal Land Use Plan. The provisions of this zone shall apply exclusively to the property zoned CPC as designated on the official Oxnard Shores Land Use Map of the certified Oxnard Coastal Land Use Plan.

The CPC zone is further intended to provide for the integration of residential, and visitor-serving commercial, and public recreational and open space uses consistent with the certified Oxnard Coastal Land Use Plan and provide for appropriate public access to the extensions of the Inland Waterway; and to provide a development which will optimize the utilization of property to conserve energy and promote the efficient use of limited resources.

Sec. 37-2.6.2 Permitted Uses

1. Agriculture and aquaculture
2. Passive recreation uses both on land and water

Sec. 37-2.6.3 Other Uses - Coastal Development Permit or Development Permit Review Required

Residential, visitor-serving commercial, public passive and active recreation uses may be permitted subject to the adoption of a specific plan for the planned unit development which shall establish the development pattern for the project site. Permitted and conditionally permitted uses shall then be allowed subject to the provisions of the Oxnard Coastal Land Use Plan and the general provisions of this chapter. Permitted and conditionally permitted uses shall be only those allowed in the R-W-1, R-W-2, R-2-C, R-3-C, CNC, CVC, and RC zones.

Sec. 37-2.6.4 Specific Plan Required

Pursuant to the policies of the Oxnard Coastal Land Use Plan, a specific plan for the entire property designated PUD-C shall be prepared and adopted prior to the issuance of any development permits and land divisions for development on the project site. The specific plan shall provide for development of the property in accordance with Policies 4, 5, and 24 of the Oxnard Coastal Land Use Plan specifically and with other general policies of the LUP.

Sec. 37-2.6.5 Specific Plan Contents

A. The specific plan shall contain the following components:

1. Access and recreation component

The specific plan shall contain a component which identifies the location of standards for improvements, and quantification of the amount of land area provided for lateral

EXHIBIT 6

A-4-OXN-00-172 (Westport)

CPC Zone Text (4 Pages)

public recreation, and open space facilities and areas, including parks, beaches, public marinas, and bikeways. All access shall be in accordance with the certified Oxnard Coastal Land Use Plan.

2. Soil transfer program

The specific plan shall require the provision of a soil transfer program upon submittal of the tentative map for each phase as required by Policy 5 of the Oxnard Coastal Land Use Plan.

3. Project and use map

The specific plan shall contain a map of the location and amount of specific uses and densities for land and water areas as for the entire CPC designated property required by the Oxnard Coastal Land Use Plan. Uses within water areas shall also be quantified.

4. Circulation component

The specific plan shall contain a circulation plan which identifies all public streets which will support the proposed project. The circulation plan shall also identify the location of bike paths and other alternative circulation improvements including those related to public transportation. An accompanying text shall identify the types of street and intersection improvements that are necessary. Street cross sections shall be provided, and the location of all required or proposed public parking areas serving public accessway shall be shown.

5. Buffering and setback component

The specific plan shall contain illustrations and text establishing the nature and location of building setbacks from thoroughfare and collector streets and from the waterway. In addition, the plan shall include descriptions and cross sections of urban use buffers as required for the project by the Oxnard Coastal Land Use Plan in accordance with Policy 4.

6. Urban design and landscape component

The specific plan shall contain illustrations and text as necessary to identify the relationships between major design elements which shall establish the character of the development. Elements to be identified shall include but not be limited to: view corridors; access and circulation corridors; public recreation use area and facilities (including beaches, plaza, boardwalks, etc.); overall project landscaping character; overall project architectural character; preliminary streetscape plan; project entries; and gateways.

7. Master utility and drainage facility component

The specific plan shall contain illustrations and text indicating the preliminary proposals and phasing for interim and ultimate sewer and storm water drainage facilities, and street improvements.

8. Phasing component

The specific plan shall contain illustrations and text indicating the phasing sequence for development and public access dedication and improvements.

- B. The specific plan for the planned unit development shall consist of text and illustrations providing adequate data and criteria to fully express the proposed standard and character of development.

Sec. 37-2.6.6 Land Use and Access

The specific plan for the planned unit development shall provide for the amounts of visitor-serving commercial, public recreation and water use areas as required by Policy 24 of the Oxnard Coastal Land Use Plan. The specific plan shall also provide for the amount of vertical and lateral access in accordance with Policy 24 of the Coastal Land Use Plan and consistent with the access provisions of this chapter.

Sec. 37-2.6.7 Findings

In addition to those findings contained in Sec. 37-5.3.0, the specific plan for the planned unit development may be approved only if the following findings of fact can be made:

1. The specific plan for the planned unit development provides the appropriate percentage of visitor-serving commercial, public recreation and water area as required by the Oxnard Coastal Land Use Plan.
2. The specific plan for the planned unit development provides the appropriate amount area of vertical and lateral access as required by the Oxnard Coastal Land Use Plan.
3. The specific plan for the planned unit development contains a soil transfer program consistent with the policies of the Oxnard Coastal Land Use Plan.
4. The specific plan for the planned unit development is consistent with all other applicable and general policies of the Oxnard Coastal Land Use Plan.

Sec. 37-2.6.8 Permits Required

No new development or initiation of any conditionally permitted use shall be allowed on any area covered by the planned unit development until the following actions have occurred:

1. The property proposed for development has been zoned CPC.

2. A specific plan in accordance with the provisions of this article and the policies of the Oxnard Coastal Land Use Plan has been prepared and adopted for the entire property designated CPC.
3. A coastal development or development permit review has been granted by the City in accordance with the provisions of this article.

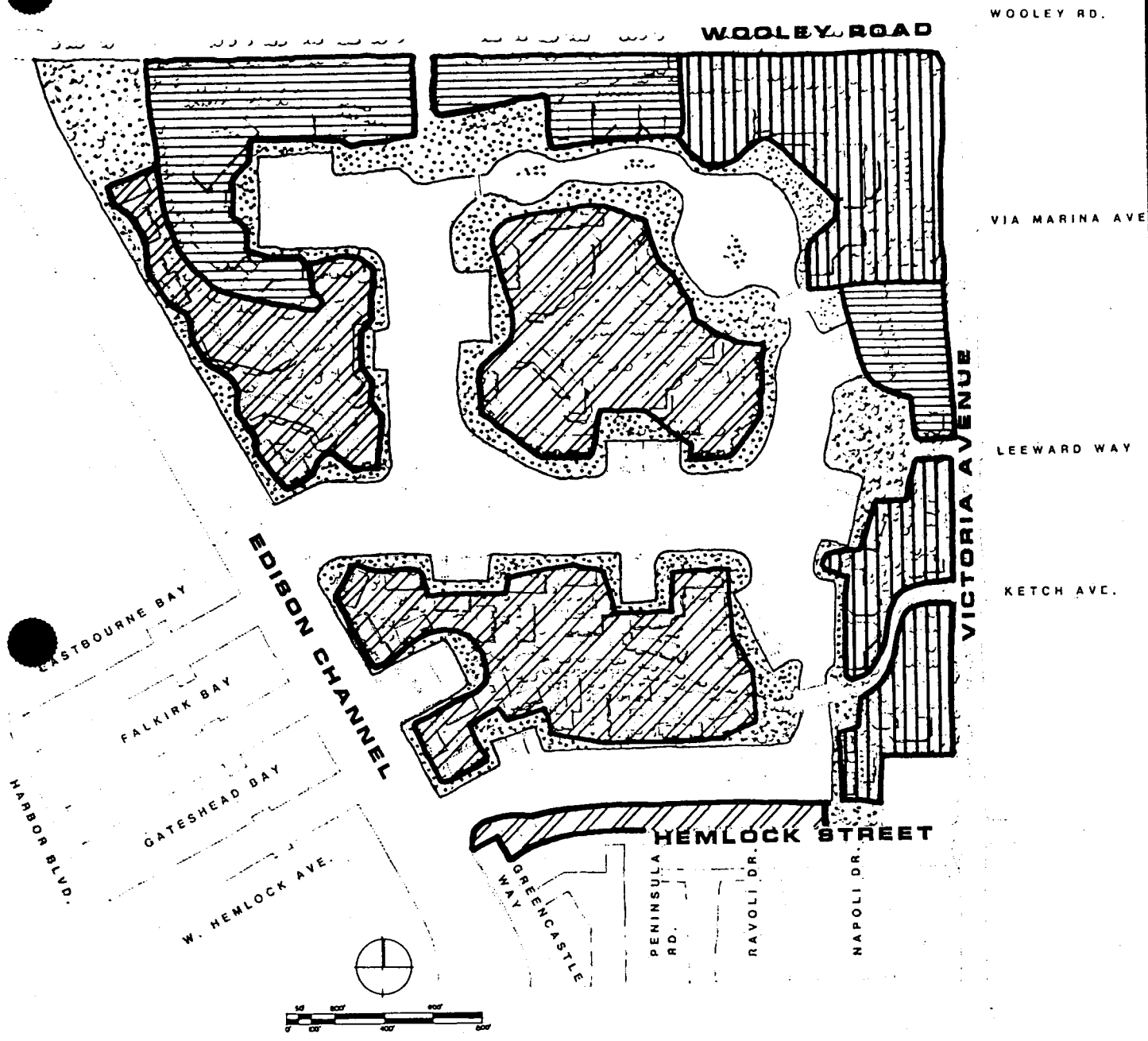
Sec. 37-2.6.9 Application of Planned Unit Development

Concurrent with any application for a land division, or as required above, a coastal development permit shall be approved which shall serve as the application for a Planned Unit Development (PUD). Development standards and regulations which differ or vary from the standards of the coastal zones to be applied may be proposed and adopted as provisions of the coastal development permit.

Sec. 37-2.6.10 Applicable Regulations

All uses shall be subject to the applicable regulations of Chapter 37, including standards which are located in the following sections:

1. Sec. 37-1.4.0 General requirements
2. Article 3 Specific coastal development and resource standards
3. Article 4 General coastal development and resource standards
4. Article 5 Administration



-  **RESIDENTIAL**
-  **VISITOR SERVING
COMMERCIAL**
-  **MIXED USE
(COMMERCIAL/RESIDENTIAL)**
-  **PARK**

EXHIBIT 7
A-4-oxN-00-172
MBSP Land Use Map

LAND USE

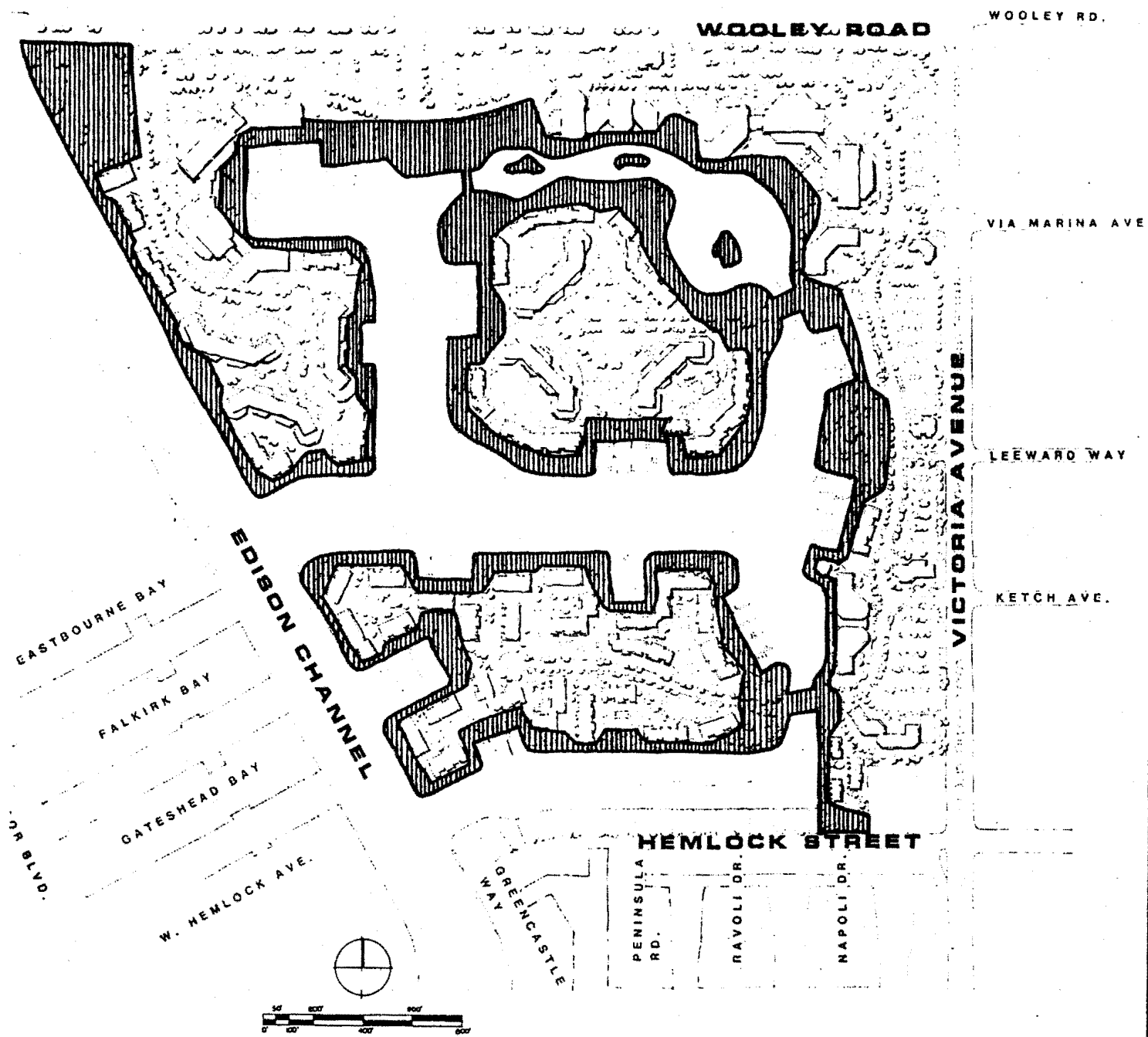
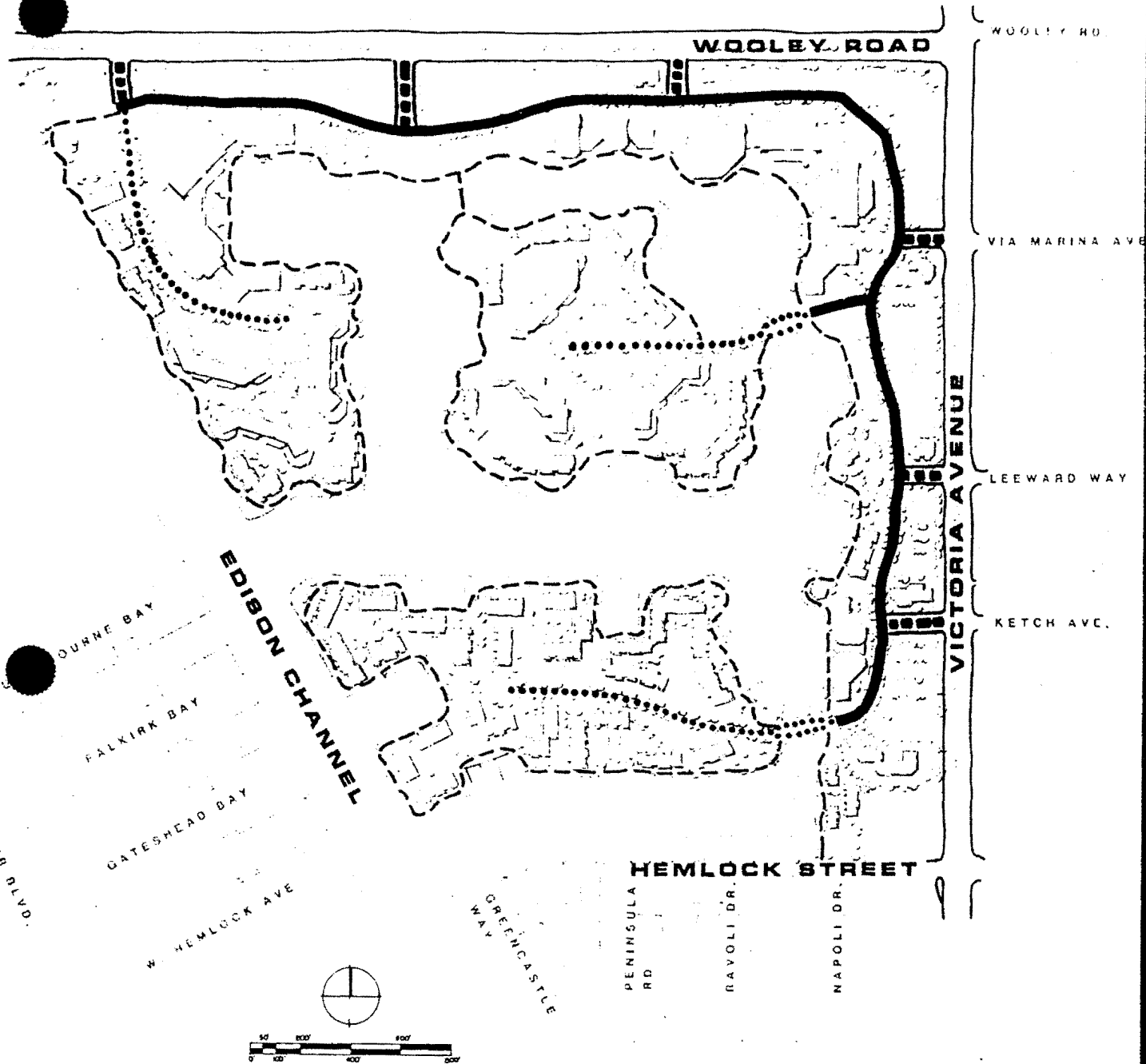


EXHIBIT 8
A-4-oxN-00-172
MBSP Park Map

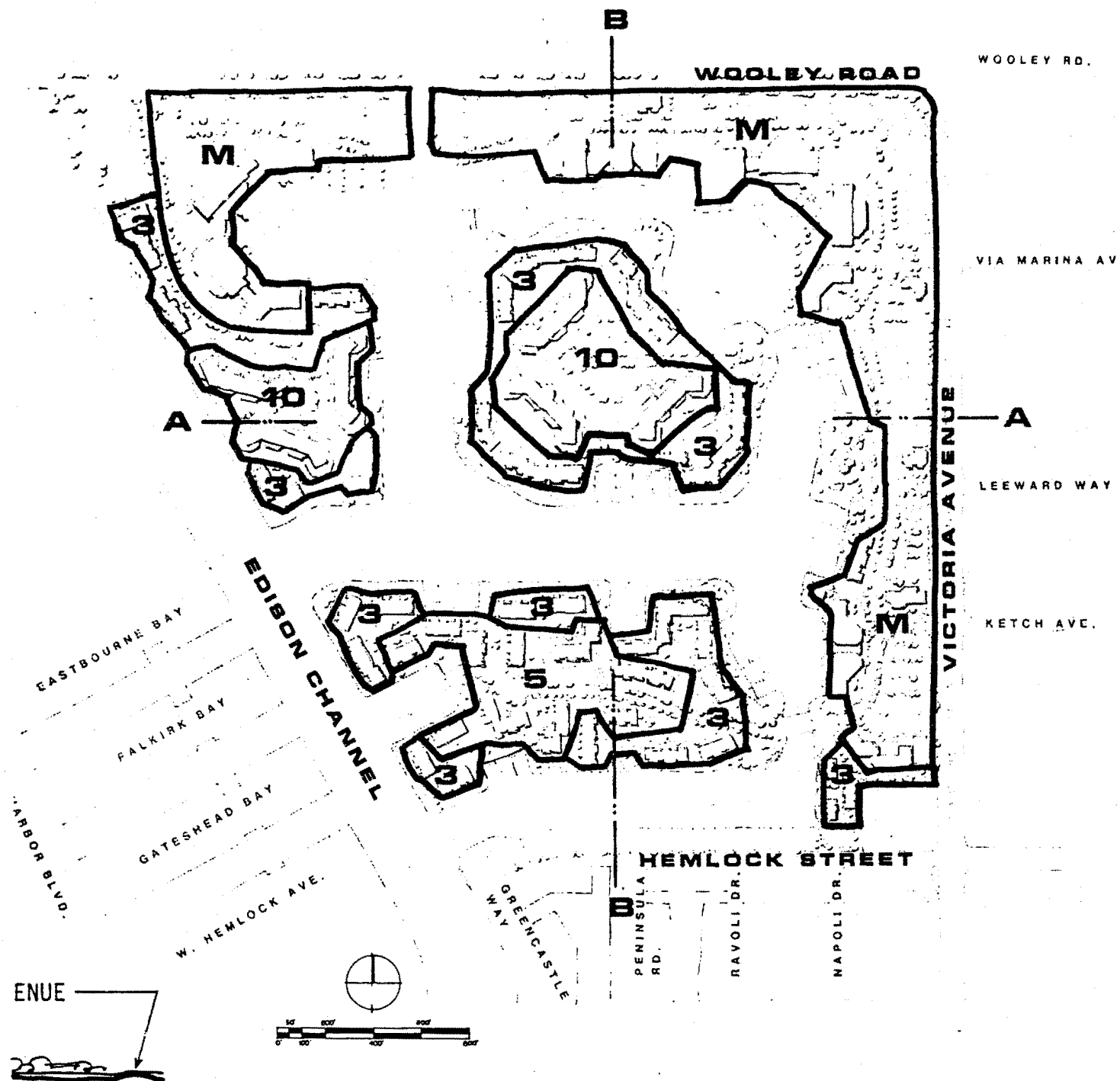
PARK PLAN



- MEDIANED ENTRIES
- 32' WIDE PUBLIC DRIVE
-** 25' WIDE PRIVATE DRIVE
- - - -** PEDESTRIAN/BICYCLE

EXHIBIT 9
A-4-oxN-00-172
MBSP Circulation Map

CIRCULATION



HEIGHT ZONES

EXHIBIT 10

A-4-oxN-00-172 (Westport)

MPSP Height Zone Map

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641-0142



November 30, 1999

Susan Martin, Associate Planner
Planning and Environmental Services
City of Oxnard
305 West Third Street
Oxnard, CA 93030

Subject: Draft Supplemental Environmental Impact Report for Tentative Subdivision
Map No. 5196 (State Clearinghouse No. 99041067)

Dear Ms. Martin:

Commission staff has reviewed the subject environmental document for the development of a 58.3-acre parcel bounded by Wooley Road and the existing Reliant Energy Canal. This project would apparently consist of 95 single family residences, 35 duplex units, 88 townhouse units, mixed use development containing 14,000 sq. ft of visitor serving commercial uses and 140 multi-family residential units; park, construction of waterways and 151 boat slips. Based on our review of the Draft Supplemental EIR (SEIR), we would like to offer the following comments at this time.

Introduction

Section 1.0 of the SEIR provides background on earlier environmental documentation prepared for the subject project site, including an EIR certified for the entire Specific Plan in 1982, as well as a Supplemental EIR certified in 1990 for the Voss Harbour Pointe project proposed for the same 58-acre parcel now being considered. The City approved a coastal development permit (CDP 91-2) and certified a SEIR for the Voss project, as well as approving an amendment to the Mandalay Bay Specific Plan, a component of the City of Oxnard Local Coastal Program (LCP). The amendment included modifications to the linear public access required along all waterfront areas, increasing the total water area, and the relocation of a public park site.

However, the permit for this development was never final. It should be noted that the City's decision on the CDP for this project was appealed to the Coastal Commission (Appeal No. A-4-OXN-92-11). The Coastal Commission found that there was substantial issue raised by the appeal with regard to the Voss project's conformity with the City's certified Local Coastal Program (LCP). The applicant (Voss Construction) requested that the Commission's "De Novo" consideration of the project be continued until such time as the Commission had considered the City-approved amendment to the LCP. However, the City never submitted the LCP amendment to the Commission for certification. The applicant subsequently withdrew the "De Novo" permit from

EXHIBIT 11

A-4-OXN-00-172 (Westport)

Comment Letter (4 Pages)

consideration by the Commission. As such, while the City may have certified a SEIR for the Voss project, final permit approval was never obtained for this development.

Project Description.

As described in Section 2.0, the title of the project considered in the subject environmental review references Tentative Subdivision Map 5196 only. The project description includes residential, commercial, recreation, roads and waterway components. It is unclear whether the City intends the subject document to serve as the environmental review for the actual construction of these uses (e.g. for coastal development permits and other necessary permits) or whether subsequent environmental review is contemplated for the physical development of the site. This should be clarified.

Additionally, as noted in the SEIR, development within the Mandalay Bay Specific Plan area is subject to the requirement of a "soil transfer program" whereby prime soils from the site are removed and transported to recipient sites subject to various criteria. This required soil transfer should be included as part of the description of the project considered in the SEIR. There may well be impacts to the environment from such a program, including but not limited to pesticide contamination, and increased truck traffic.

Further, this section reaches the conclusion that the proposed project is consistent with the: "overall residential buildout and structural intensity identified in the Specific Plan for (sic) and falls within the range of the uses permitted in the Plan". However, for the reasons discussed in detail in the Land Use comments below, the proposed project does not appear to be consistent with all criteria contained in the Specific Plan.

Finally, under Section 2.5, there is a description of the discretionary actions required for the proposed project to proceed. This list should be expanded to include approval of a Local Coastal Program/Specific Plan Amendment.

Land Use

The City's Initial Study for the proposed project concluded that the proposal would have no impacts on Land Use or Planning. This study states that:

The Coastal Plan contemplates urban development at the project site of the same land use types (residential, commercial, and public open space) as are part of the proposed project. These uses are further defined by the 1985 Mandalay Bay Specific Plan. The proposed project is consistent with the 1985 illustrative Specific Plan, and reflects the same ratios of land uses as those identified in the 1985 illustrative Specific Plan. Therefore, the proposed project is consistent with the Mandalay Bay Specific Plan and the Coastal Plan.

Based on this determination that the project would be consistent with the existing plans, the Draft SEIR does not include any supplemental analysis of Land Use or Planning Issues.

However, staff has identified inconsistencies between the proposed project and criteria contained within the Local Coastal Program/Specific Plan. The noted inconsistencies include, but are not limited to, the following:

Land Uses. The land use map included in the Mandalay Bay Specific Plan and also included in the Coastal Land Use Plan shows park, mixed use, and residential uses for the proposed project site. It would be necessary to map the LCP/Specific Plan land uses on the proposed site plan to definitively determine the areas where the project is not consistent with the permitted land uses. However, it appears from a comparison of the land use map and the project map that at least some of the townhouse and duplex residential areas are located within the area designated for mixed-use residential/commercial uses. Additionally, the proposed project shows the area designated for park along the waterway in the LCP/Specific Plan as single family residences with private boat docks. Finally, other park areas in the proposed project shown appear to be smaller in size than the park areas shown on the land use map.

Public Access. The LCP/Specific Plan specifies requirements for the provision of public access, both lateral (along the water) and vertical (from roadways to the water). The plan states that:

The primary public access to the waterfront of this project is satisfied by a linear park which extends throughout the entire project, except where single-family residences are proposed along Hemlock Street.

In addition to the linear park, other park areas ranging from 1/3-acre to 3-acres were required to be provided. Finally, vertical public access was required to be provided for not less than 10% of the total linear waterfront access. The Park Plan in the Specific Plan shows these park areas. The proposed project does not include the provision of the linear park along all of the waterways. Rather, most of this area is proposed to be developed with single family residences with private boat docks.

Single Family Residences. The LCP/Specific Plan provides for only approximately 30 detached single-family residences along Hemlock Street in order to provide a transition between the pre-existing uses developed south of the Specific Plan area and the higher-density residential uses allowed in the rest of the area. The LCP/Specific Plan does not provide for single family detached residences in the North/South Peninsula areas where the proposed project would include 95 single family residential parcels with private boat docks.

The SEIR should address the potential impacts resulting from these conflicts with the certified Local Coastal Program/Specific Plan.

Ms. Susan Martin
November 30, 1999
Page 4

Thank you for the opportunity to review the subject Draft Supplemental Environmental Impact Report. If you have any questions, please feel free to contact me.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'B. Carey', written in a cursive style.

Barbara J. Carey
Coastal Program Analyst

Letter 1

COMMENTOR: Barbara J. Carey, Coastal Program Analyst, California Coastal Commission

DATE: November 30, 1999

RESPONSE:

Response 1A

The commentor presents additional background information about the history of the Voss Harbour Pointe Project. This information is now incorporated into the Final EIR and is a part of the public record. As stated in the comment the City did certify the Final EIR for the Voss Harbour Pointe Project and approved a coastal development permit for that project.

Response 1B

The commentor requests clarification as to whether the environmental document prepared for the project, Tentative Subdivision Map No. 5196, commonly known as Westport at Mandalay Bay, is for approval of the tentative subdivision map only or for the physical development of the site. The environmental document has analyzed the impacts associated with the physical development of the site including the construction phase and operation of the proposed project. Therefore, the intent of this document is to serve as the environmental documentation not only for the approval of the tentative subdivision map but also for other necessary approvals, allowing physical development onsite.

Response 1C

The commentor requests that the details of the soil transfer program be added to the project description. In response a description of the soil transfer program has been added as part of Section 2.5.b. Project Construction as noted in the Addenda/Errata Section above. It should be noted that the impacts of the soil transfer program with regards to air quality were considered in the Draft SEIR.

Response 1D

The commentor states the opinion that the proposed project does not appear to be consistent with all of the criteria contained within the Specific Plan, but does not give any specific examples where this occurs. The opinion is noted. Also, please see Response 1F below.

Response 1E

The City of Oxnard has determined that the proposed project is consistent with the adopted Mandalay Bay Phase IV Specific Plan, and subsequently the Local Coastal Plan (LCP). Therefore, a LCP/Specific Plan amendment would not be discretionary actions required for the proposed project.

EXHIBIT 12

A-4-OXN-00-172 (Westport)

City Response (3 Pages)

City of Oxnard

Response 1F

The commentor states the opinion that the land use map included in the Mandalay Bay Specific Plan and the proposed project are not consistent with each other, specifically citing the location of townhouse and duplex residences in areas planned for mixed use development. However, as stated throughout the adopted Specific Plan document, the Specific Plan is intended to be illustrative in nature and is intended to provide flexibility for creative and marketable solutions to individual projects.

The land use plan graphic on Page 2 of the Specific Plan is entitled "Illustrative Plan." On the same page, the second Objective, Section II.B., states that that intent is "to provide a plan which assures quality and the flexibility necessary to meet varying market demands, thus assuring more timely implementation."

The Specific Plan goes on to state that:

"the Specific Plan utilizes conceptual graphics and illustrations to describe the intended character of the ultimate development. It should be emphasized that these illustrations are conceptual in nature and are not intended to fix dimensions or locations of buildings or features other than general land uses and water areas, unless otherwise noted."

A review of the currently proposed Tentative Subdivision Map indicates that it corresponds generally to the illustrative plan. The commentor is correct in noting that some multi-family housing is located in the mixed-use residential/commercial areas. These uses are not inconsistent, since residential uses are allowed within the mixed use residential/commercial area.

Public park uses appear to meet the general intent of the Specific Plan, through the provision of 7.28 acres of parks in linear and recreational formats. Public access would be provided at planned parking lots at both the large park and in the mixed-use commercial component. Total park acreage needs have been met. The public has access to approximately 70% of the existing Reliant Energy Channel. New waterway access is limited to locations within the subdivision at the end of stub-out roads and at the mixed-use commercial area. The lack of access along each linear foot of the waterways results from the introduction of a housing type that plans single-family houses with private docks.

The Specific Plan calls for 27.5 acres of public recreation and access area, including public parking. This represents 12.5% of the total Specific Plan land area of 220 acres. The proposed project represents 26.5% of the overall Specific Plan area. Therefore, 7.28 acres would suffice to meet the requirement. Additional public access is provided through the mixed-use area waterfront walkways and through any parking in the mixed-use area used by coastal access visitors.

The question regarding the single-family use goes to the interpretation of flexibility allowed in the Specific Plan. Since the higher-density housing types developed as part of earlier phases of the Specific Plan were considered economically unsuccessful and since their building intensity was considered less desirable by many in the community, the applicants have developed a lower intensity plan. This change is consistent with the intent of the Specific Plan, as cited

above. This lower density and lower profile development will be environmentally superior in areas of public services aesthetics, public infrastructure, and traffic.

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641 - 0142

**APPEAL FROM COASTAL PERMIT DECISION
OF LOCAL GOVERNMENT****SECTION I. Appellant(s)**

Name, mailing address and telephone number of appellant(s):

Chair Sara Wan and Commissioner Cecilia Estolano
California Coastal Commission
45 Fremont Street, #2000
San Francisco, CA 94105
(415) 904-5200

SECTION II. Decision being appealed.

1. **Name of local government/port:** City of Oxnard
2. **Brief Description of development being appealed:** Westport at Mandalay Bay project for the development of 58.3-acre site including removal of prime agricultural soil, creation of channels and waterways, subdivision, and construction of 95 single family residences (83 with private boat docks), 35 residential duplex units, 88 townhouses, mixed-use development with 140 multi-family residential units and 14,000 sq. ft. of visitor-serving commercial uses, and 7-acres of public park area with trail system.
3. **Development's location (street address, assessor's parcel no., cross street, etc.):** South of Wooley Road and east of Reliant Energy Canal, Oxnard [APN No. 188-110-405, 188-110-415, and 188-110-425]
4. **Description of decision being appealed:**
 - a. Approval with no special conditions: _____
 - b. Approval with special conditions: X
 - c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

EXHIBIT 13
A-4-OXN-00-172 (Westport)
Appeal (9 Pages)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by:

- a. ☐ Planning Director/Zoning Administrator
- b. ☒ City Council/Board of Supervisors
- c. ☐ Planning Commission
- d. ☐ Other _____

6. Date of Local Government's decision: 7/18/00

7. Local Government's file number (if any): PZ 99-5-61

SECTION III. Identification of Other Interested Persons

Give the names and address of the following parties (Use additional paper if necessary):

a. Name and mailing address of permit applicant:

Suncal Companies, Attn: Mr. Bill Rattazzi
21601 Devonshire Blvd., #116
Chatsworth, CA 91311

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) _____
- (2) _____
- (3) _____

SECTION IV. Reasons supporting this appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attached.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: *[Signature]*
Appellant or Agent

Date: 8/1/00

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attached.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.



Signature of Appellant(s) or
Authorized Agent

Date 8/1/00

NOTE: If signed by agent, appellant(s)
must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date _____

Section IV. Reasons Supporting this Appeal:

Coastal Development Permit PZ 99-5-61 does not conform to policies and standards set forth in the City's certified Local Coastal Program. Following is a discussion of the non-conforming aspects of the development.

Mandalay Bay Specific Plan:

1. **Land Use Map.** The land use map included in the Mandalay Bay Specific Plan (attached) depicts "park", "mixed use", and "residential" uses for the project site. It would be necessary to map the Specific Plan land uses on the site plan to definitively determine the areas where the project is not consistent with the permitted land uses. However, it is clear that the area of single family residences with private boat docks does not conform to the designation of park shown on the land use map along all waterways. Further, it appears from a comparison of the land use map and the project map that at least some of the townhouse and duplex residential areas are located within the area designated for mixed-use residential/ visitor-serving commercial uses.
2. **Park Plan and Circulation Plan Maps.** The park plan map provided in the Mandalay Bay Specific Plan (attached) depicts public park areas of varying sizes as well as a linear park along all of the waterways, with the exception of the far southern portion of the specific plan area (Hemlock Street). The circulation plan map provided in the plan (attached) indicates a pedestrian/bicycle path along all of the waterways. The portion of the project approved for single family residences with private boat docks does not conform to the designation of park contained in the park plan map nor does it provide the pedestrian/bicycle path shown in the circulation plan.
3. **Lateral Access.** The text of the Specific Plan states that:

The primary public access to the waterfront of this project is satisfied by a linear park which extends throughout the entire project, except where single family residences are proposed along Hemlock Street. This waterfront park will provide approximately 21,000 linear feet of lateral access for the public.

As described above, the portion of the project approved for single family residences with private boat docks does not provide this linear park. As such, the approved project does not conform to the lateral access requirement of the specific plan.
4. **Vertical Access.** The text of the Specific Plan states that: "Vertical public access for vehicular, pedestrian, and bicycle access text and maps shall not be less than 10% of total linear waterfront access as depicted in the specific plan and use map (page 5)". The findings and conditions for the City's CDP approval do not address the provision of vertical access. It is unclear from the project plans whether this requirement is met. Further, the plan specifies that if the vertical access is not a public thoroughfare it must be legally restricted (by deed restriction or easement) for

public use. The City's CDP approval contains no conditions that require easements or dedication of any vertical access to a public agency.

5. Single Family Residential Use. The text of the Mandalay Bay Specific Plan states that:

Approximately 30 single-family waterfront homes will be provided along the existing Hemlock Street to provide a comfortable transition between the existing single-family development to the south and the more intense uses contained within this plan. Two residential islands and a peninsula will accommodate higher density residential clusters with heights possibly varying from two or three stories to as much as ten stories.

As such, the specific plan does not provide for single family detached residences in the North/South Peninsula areas. The project does not conform to this provision of the specific plan as it includes 95 single family residential parcels (83 with private boat docks).

6. Residential Net Density. The specific plan sets forth the total number of residential units (not including any mixed-use residential units) that can be approved within the plan area (960 total). Additionally, it provides a breakdown of the maximum number of units, unit type, acreage, and density for each potential phase (area) of the overall project. For the phase containing the proposed project site (South Peninsula, North Peninsula, and Northeast Shore Phase), the plan specifies a maximum of 218 **attached** dwelling units. The approved project includes 218 residential units (excepting the apartment units included in the mixed-use component of the project). However, as discussed above, the plan does not provide for detached single family residential units in this area of the specific plan. As such, the inclusion of 95 single family residences does not conform to this requirement of the specific plan.

7. Public Boat Slips. The plan states that:

The Specific Plan incorporates a minimum of 795 boat slips in the Specific Plan area. Thirty are allocated to the 30 single-family residential lots. One-half of the remaining will be available to the public.

The findings and conditions for the City's CDP approval do not address the number or public/private status of any boat slips to be provided by the project, with the exception of the 83 private boat docks associated with single-family residences. It is unclear from the project plans whether this requirement is met.

8. Building Height. The Mandalay Bay Specific Plan establishes a design concept for the islands and peninsulas of the plan area whereby views to and across the site would be accentuated. The plan states that:

Height zones have been established above grade as a part of the urban design concept to assure that project scale and massing conform to and accentuate the waterscape and island concepts. Buildings on the perimeter of the islands and peninsula will be restricted to three stories in height.

(45') while buildings on the interior may increase in height from five stories (75') to as much as ten stories (130').

There is also a "Height Zone" Map within the plan that shows the heights allowed for each area. In the area of the project site, residential along the edges of the peninsula are allowed up to 3 stories and residential at the center of the peninsula would be allowed to extend up to 10 stories. Finally, there is a height zone applied to the mixed use (residential/commercial) area which is called "mixed height commercial". Unfortunately, the plan does not denote the range of heights that are allowed in the mixed height commercial area.

The single-family, duplex, and townhome residential uses would all be below 3 stories and 35 feet in height. Therefore, these uses are consistent with the heights allowed in the specific plan. However, the mixed use portion of the project located at the northern edge of the peninsula was permitted at 4 stories (44', 10"). While the plan does not provide a range of heights permitted in the mixed height commercial zone, it does envision a gradient of heights with lower heights on the outer areas of the peninsula and greater heights allowed in the center. As the mixed use area is at the outer portion of the peninsula adjacent to the 3 story residential area, it is not consistent with the intent of the height zone contained in the specific plan to permit the mixed use development to be higher than 3 stories.

9. **Soil Transfer.** The specific plan requires a soil transfer program which implements Policy 5 of the Coastal Land Use Plan (discussed further below). The plan is required to address several parameters, including the acreage, soils characteristics, and location of the site(s) to receive the prime soil, as well as the method and timing of soil placement. Finally, the plan is required to provide a program for monitoring agricultural production on the recipient site. The findings and conditions for the City's CDP approval address the requirement soil transfer. A site has been identified to receive the transferred soil and the applicant has applied for permits from the County of Ventura. However, there is no discussion of the applicant's development of a soil transfer program, especially with regard to any monitoring program. As such, the project does not conform to this requirement of the specific plan.

Coastal Zoning Regulations

10. **Coastal Development Permit Requirement.** The Coastal Zoning Ordinance states that:

A coastal development permit is required for all conditionally permitted uses, lot splits, and subdivisions within the individual coastal zones requiring a discretionary decision by the city as well as all projects meeting the definition of appealable developments... (Sec. 37-5.3.2)

The City concurrently considered a coastal development permit (PZ 99-5-61) and a tentative subdivision map (PZ 99-5-62) for the subject project. The two permit actions were addressed in one staff report to the Planning Commission. However, a separate resolution was adopted for the coastal development permit (CDP) and the tentative

subdivision map. The project description, findings, and conditions of the City's CDP approval do not include the subdivision, dredging or construction of waterways, or construction of seawalls and rip-rap slope protection. This development would require the approval of a coastal development permit.

11. Recordation of Easements and Dedications. The Coastal Zoning Ordinance states that:

Offers for or the execution of dedications or easements for coastal access, recreation, or open space purposes shall be recorded prior to or simultaneously with the recordation of the related land division. Where no land division is involved or required, such easements and dedications shall be recorded prior to the issuance of building permits or initiation of use, whichever comes first.

The approved project includes approximately 7-acres of public park, including a trail system. There are conditions of the City's CDP approval which require the certain equipment and amenities be provided at various areas of the parkland. However, there are no conditions that require easements or dedication of the property to a public agency. As such, the project does not assure public availability of the approved access/recreation areas as required by the zoning ordinance.

12. Visitor-Serving Commercial Uses. As detailed in the Coastal Zoning Regulations (and the Mandalay Bay Specific Plan), mixed use development may be approved on the project site which includes the commercial uses provided for in the "Coastal Neighborhood Commercial Zone" (CNC) and/or the "Coastal Visitor-serving Commercial Zone" (CVC) in combination with residential use.

The principal permitted uses allowed in the CNC zone include neighborhood services such as financial (banks), personal (barber, beauty shop, health spa, etc.), professional (real estate, medical), and public uses (park, library, etc.) as well as neighborhood sales such as eating drinking (restaurant, café), retail (market, pharmacy, florist, etc.). Secondary uses in the CNC zone include commercial recreation, entertainment, service station, and restaurant.

The principal permitted uses allowed in the CVC zone include visitor-serving services such as commercial recreation (skating rink, campground, boat rentals, etc.), entertainment (theater, night club), service station, and tourist (hotels, convention facilities, vacation timeshares) as well as visitor-serving sales such as restaurants, and marina facilities (boat launching, yacht and boat sales, bait and tackle sales, etc.). Secondary uses allowed in the CVC zone include financial, personal, and professional services, public uses, drive-through restaurants, specialty shops and general retail.

The findings and conditions for the City's CDP approval characterize the 14,000 sq. ft. of commercial space contained in the mixed-use component of the project as "visitor-serving" uses. The findings provide a break-down of the commercial space into three categories: restaurant (3,000 sq. ft.); retail (2,000 sq. ft.); and office (9,000

sq. ft.). However, there is no discussion of the specific uses approved. General office use is not permissible under the CNC or CVC zones. It is unclear whether the approved commercial project would conform to the uses allowed in these zone categories. Finally, the City's CDP approval does not include any condition limiting the uses to be provided in the commercial portion of the mixed-use project.

Coastal Land Use Plan

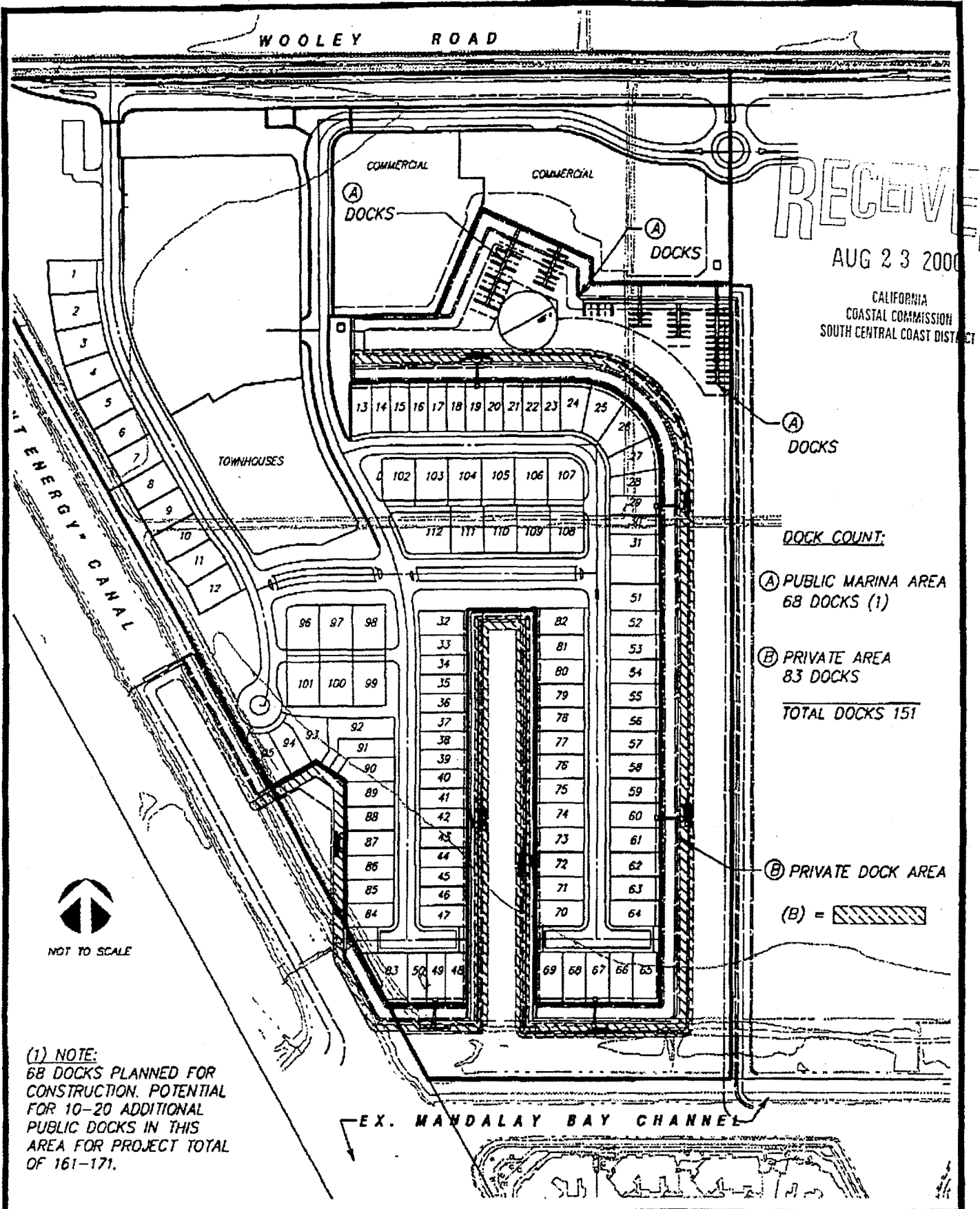
13. Prime Agricultural Land Maintenance Program. Policy 5 of the Land Use Plan (LUP) requires that development on the Mandalay Bay property mitigate the loss of prime agriculture on the site by transferring the prime soils from the site to a site on the Oxnard plain which does not contain prime soils. This policy requires conditions of approval for development of the Mandalay site that address, at a minimum, five parameters. These parameters include the acreage, soils characteristics, and location of the site(s) to receive the prime soil, as well as the method and timing of soil placement. Finally, this policy requires that the applicant establish and implement a monitoring program in order to track the success of the soil transfer.

The findings and conditions for the City's CDP approval address the requirements of Policy 5 of the LUP. A site has been identified to receive the transferred soil and the applicant has applied for permits from the County of Ventura. Condition # 97 of the City's CDP states that:

Consistent with Policy #5 of the Coastal Land Use Plan, this permit is granted subject to approval of a coastal development permit by the County of Ventura for the recipient site for the agricultural soil transfer program.

However, there is no discussion or condition regarding the required monitoring program. As such, the project does not conform to the requirements of Policy 5 of the LUP.

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Westport at Mandalay Bay

DOCK LAYOUT

EXHIBIT 14
A-4-OXN-00-172 (Westport)

