

# ITEM Tu 17a

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

GRAY DAVIS, Governor

## CALIFORNIA COASTAL COMMISSION

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

### RECORD PACKET COPY

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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.

## **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.]

### **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 project 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 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 December 1984. 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 subject project site. In July 1992, the City approved a coastal development permit and tentative subdivision map for the development of 156 single-family residential parcels fronting five channels and a parcel for future commercial and recreation development, including a park site.

The City also approved an amendment to the Mandalay Bay Specific Plan at the same time as these permits were approved. This amendment would have modified the Illustrative Plan, Land Use Plan, Park Plan, Height Zone Map, Circulation Plan, and Phasing Plan. These plans would have been modified in order to reconfigure the waterways, increase the open water area, reduce the lateral public access provided along the waterways, reconfigure park area, and modify building heights. The City did not submit this Specific Plan amendment to the Commission for certification.

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 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 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 5). Comments provided include discussion of the permit and appeal history on the site. Additionally, staff noted inconsistencies between the project considered in the DEIR and the LCP/Specific Plan. The inconsistencies relate to land use, public access and single family residential uses.

### **B. 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 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.

**C. Appellant's Contentions.**

The appeal filed by Commissioners Wan and Estolano is attached as Exhibit 6. 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.

**D. 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 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 the grounds on which the appeal has been filed. The approved project is inconsistent with 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 areas where the project is not consistent with the permitted land uses. However, staff has made a comparison of the designated land uses 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. Single family residences are located in the reduced area instead. Linear and pocket park areas shown adjacent to the mixed-use area do not appear to be provided in the approved site plan. Finally, the area designated for mixed-use development is significantly reduced. 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. Further, staff would note that even the reduced area of the development that is characterized as "mixed-use", (incorporating visitor-serving commercial uses with residential 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 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 far southern portion of the specific plan area (Hemlock Street). The circulation plan map provided in the plan (Exhibit 9) 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. 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 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. As such, the approved project does not conform to the lateral access requirement of the specific plan. 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. 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 issue of the type of residential use permitted under the specific plan is especially important with regard to the provision of public access/recreational opportunities required by the specific plan (described above). 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, as discussed above, the plan does not provide for detached single family residential units in this area of the specific plan. The issue of the type of residential use permitted under the specific plan is especially important 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 (Exhibit 10) 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 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 11) 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. In the subject case, the gradient of heights from the 4-story mixed-use development to the 3-story residential development would be in reverse from the design concept contained in the specific plan. Therefore, the Commission finds that the appellants' contention raises 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. As such, the project 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.**

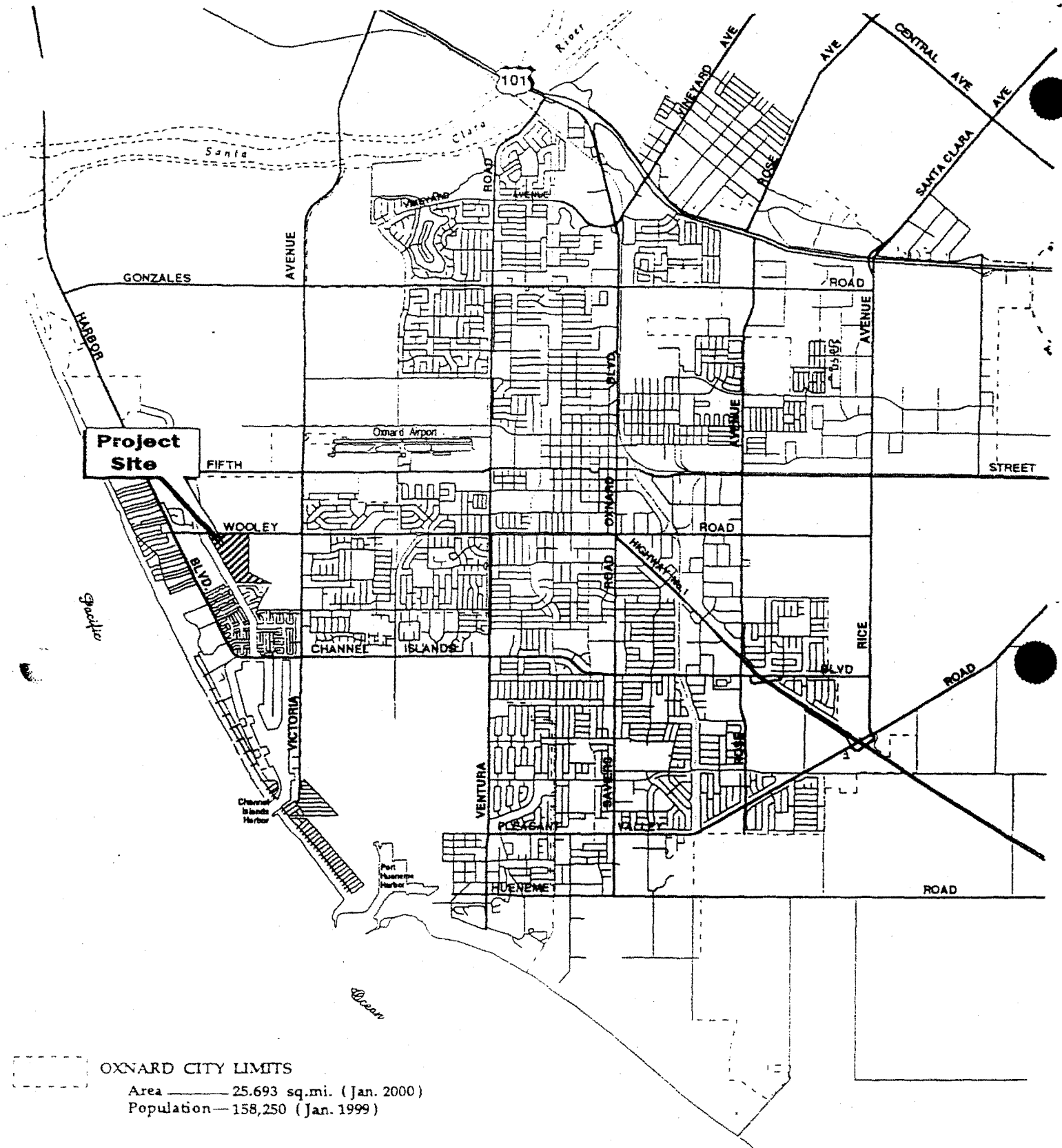
Finally, the appellants contend that the approved project does not meet all of the requirements of the Coastal Land Use Plan with regard to the agricultural soil transfer program.

Policy 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 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 staff report does not address whether the recipient site meets the requirements of the LUP. 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.



City of **Oxnard**

**PLANNING AND ENVIRONMENTAL SERVICES**

File No.  
**PZ 99-05-61**

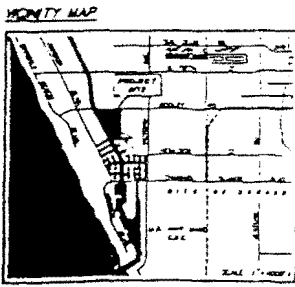
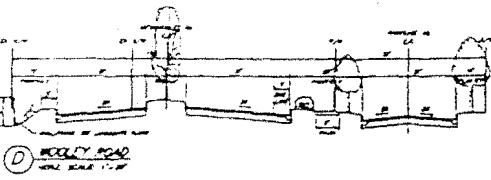
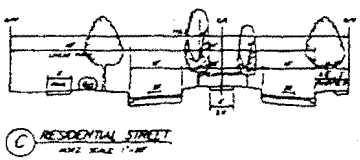
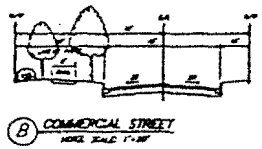
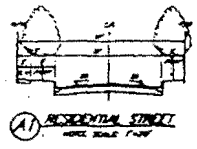
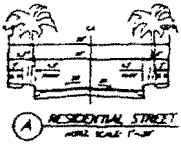
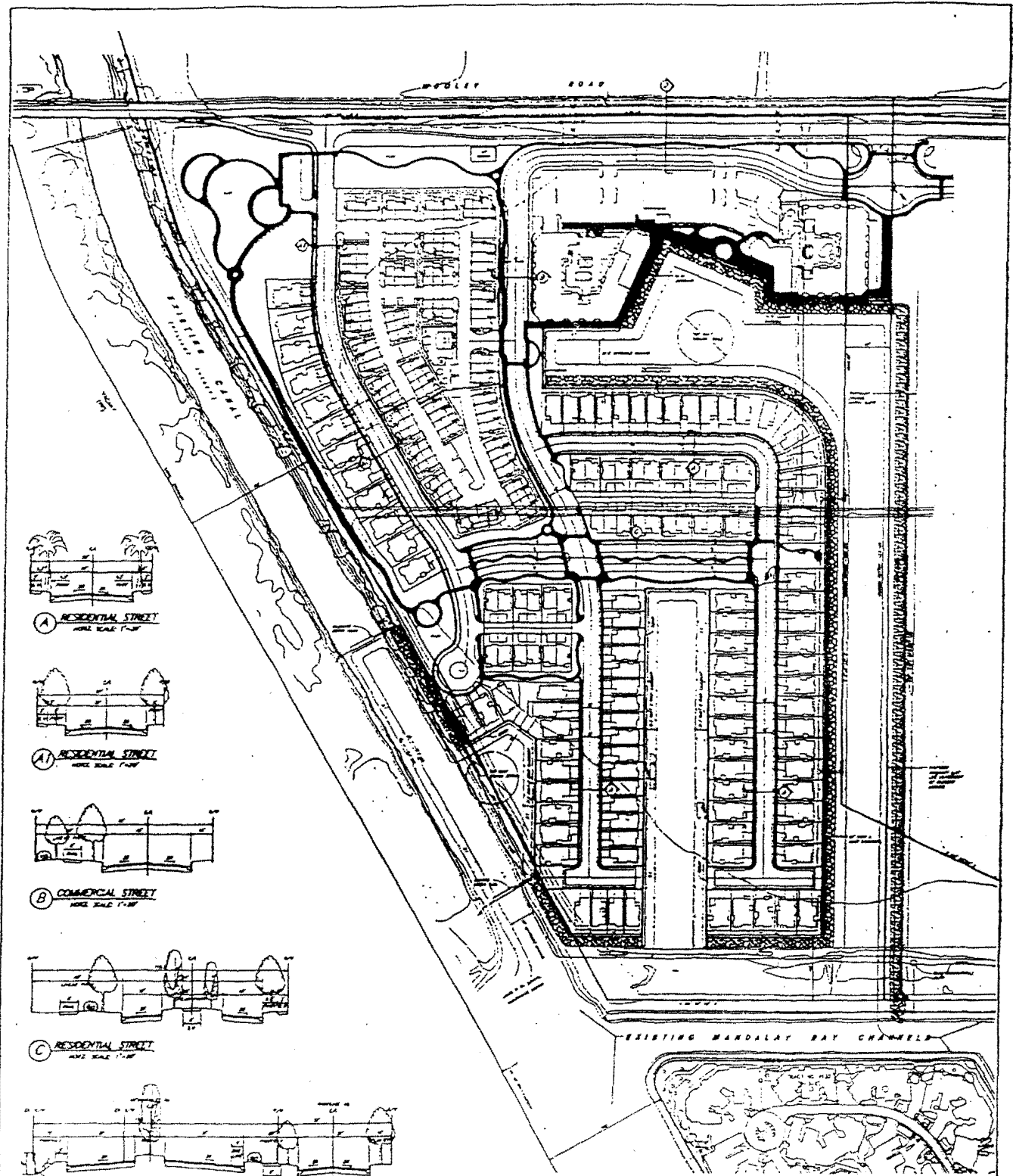
Date: **05-27-99**

Prepared By: **E. Canillo**

**EXHIBIT 1**

**A-4-oxn-00-172**

**Vicinity Map**



SCALE: 1" = 100'

# Westport at Mandalay Bay

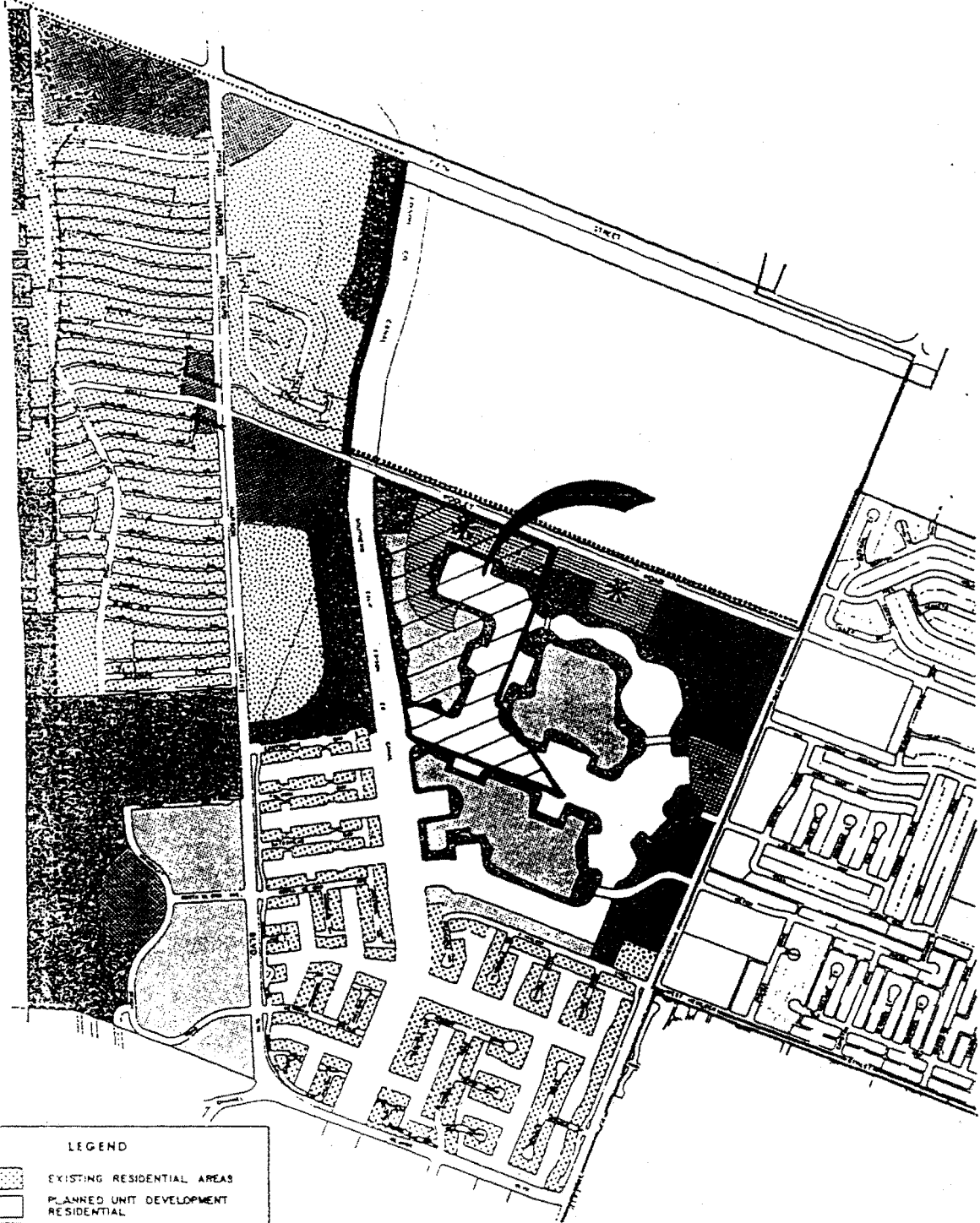
## SITE PLAN

DESIGNED BY JENSEN CORP. PREPARED FOR OWNER AND ARCHITECT

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

# COASTAL PLAN LAND USE MAP

PACIFIC OCEAN



## LEGEND

- EXISTING RESIDENTIAL AREAS
- PLANNED UNIT DEVELOPMENT RESIDENTIAL
- MOBILE HOME PARK
- VISITOR SERVING COMMERCIAL
- RECREATION AREA
- MIXED USE (COMMERCIAL / RESIDENTIAL)
- PUBLIC FACILITY
- RESOURCE PROTECTION AREA
- COASTAL ZONE BOUNDARY
- 100 YEAR FLOOD LINE (NATIONAL FLOOD INSURANCE)
- URBAN RURAL BOUNDARY
- OXNARD CITY LIMITS

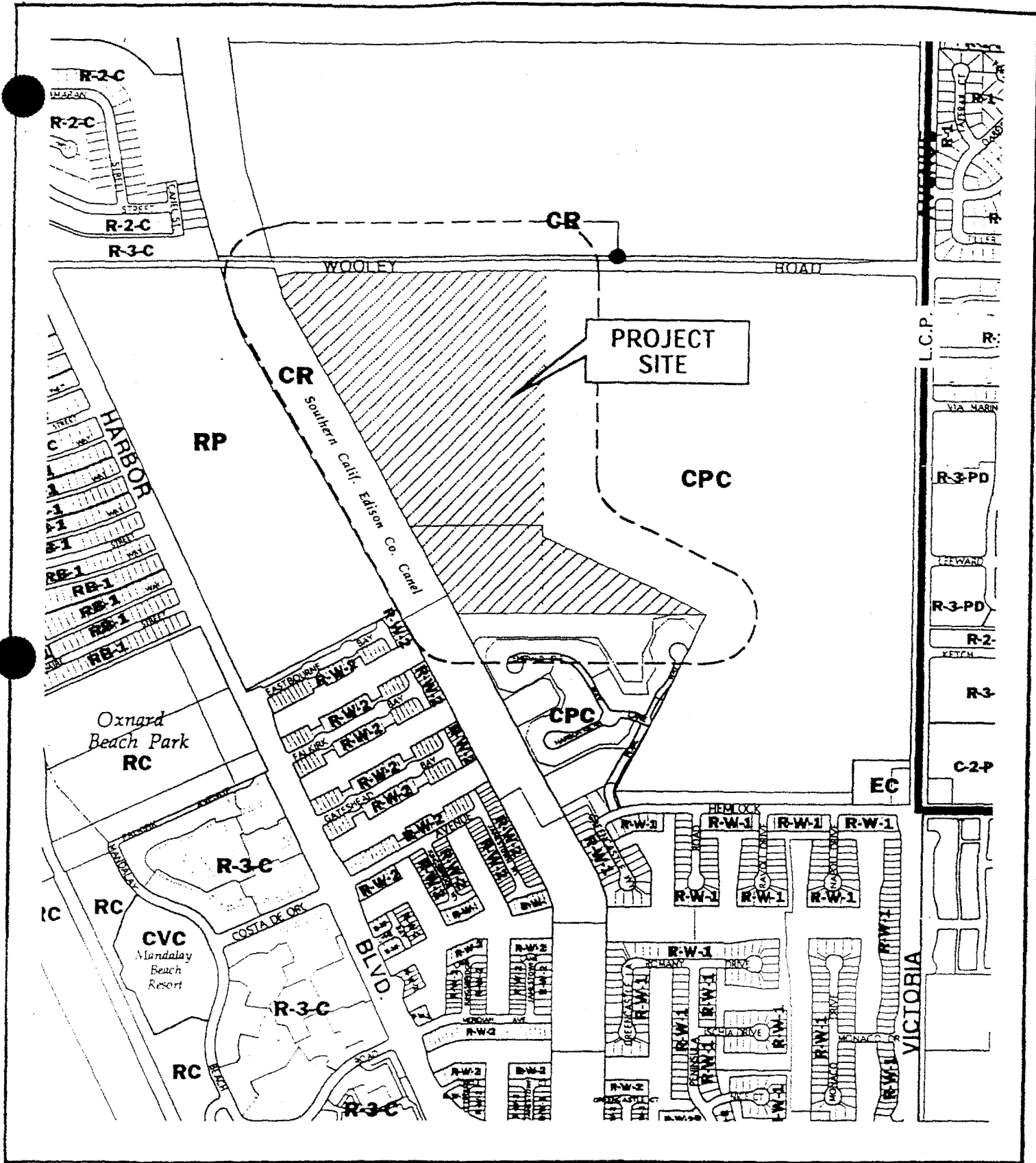
**OXNARD SHORES**

**EXHIBIT 3**

**A-4-oxn-00-172**

**Land Use Plan Map**

**PZ 99-05-61**



City of  
**Oxnard**  
 PLANNING  
 AND  
 ENVIRONMENTAL SERVICES

File No.:  
 PZ 99-05-61

Date:  
 5-24-99

Prepared By:  
 E. Canillo

EXHIBIT 4  
 A-4-oxn-00-172  
 Zoning 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 5****A-4-OXN-00-172****Comment Letter**

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 "Barney" or "Barney J. Carey", written in a cursive style.

Barbara J. Carey  
Coastal Program Analyst

**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 6****A-4-oxN-00-172****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.

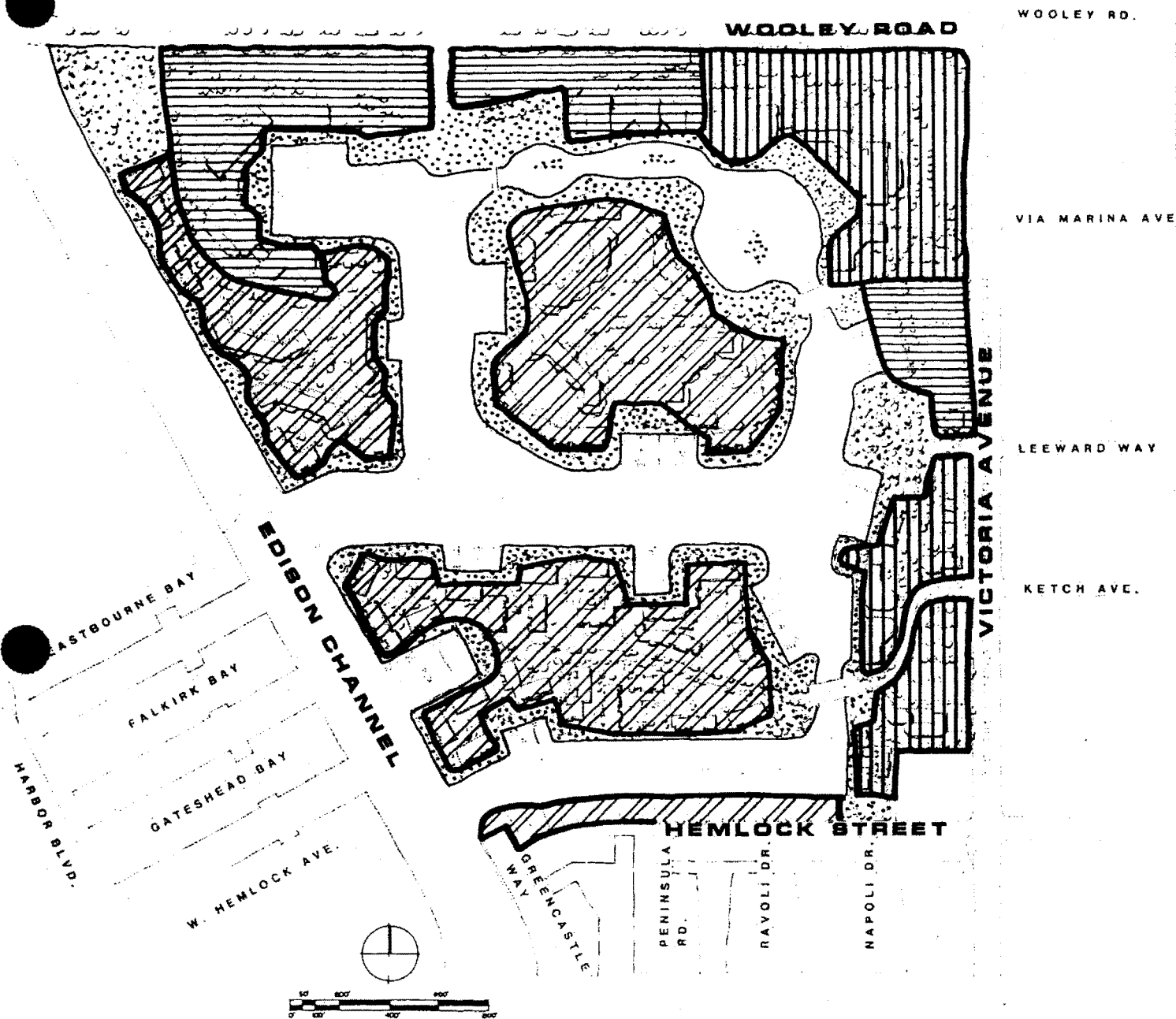
### **Coastal Land Use Plan**

**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.



RESIDENTIAL



VISITOR SERVING  
COMMERCIAL



MIXED USE  
(COMMERCIAL/RESIDENTIAL)



PARK

EXHIBIT 7

A-4-OXN-00-172

MBSP Land Use Map

LAND USE

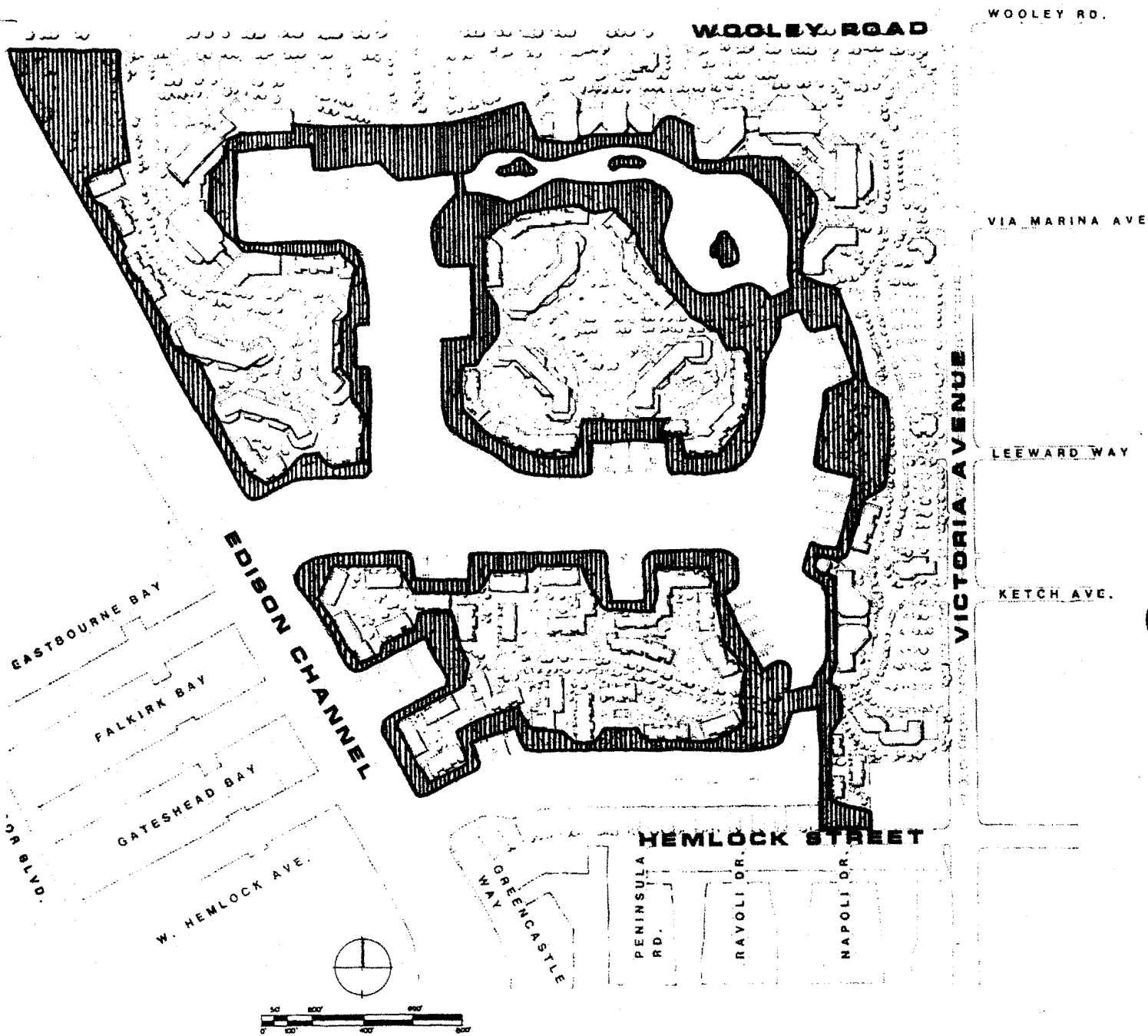
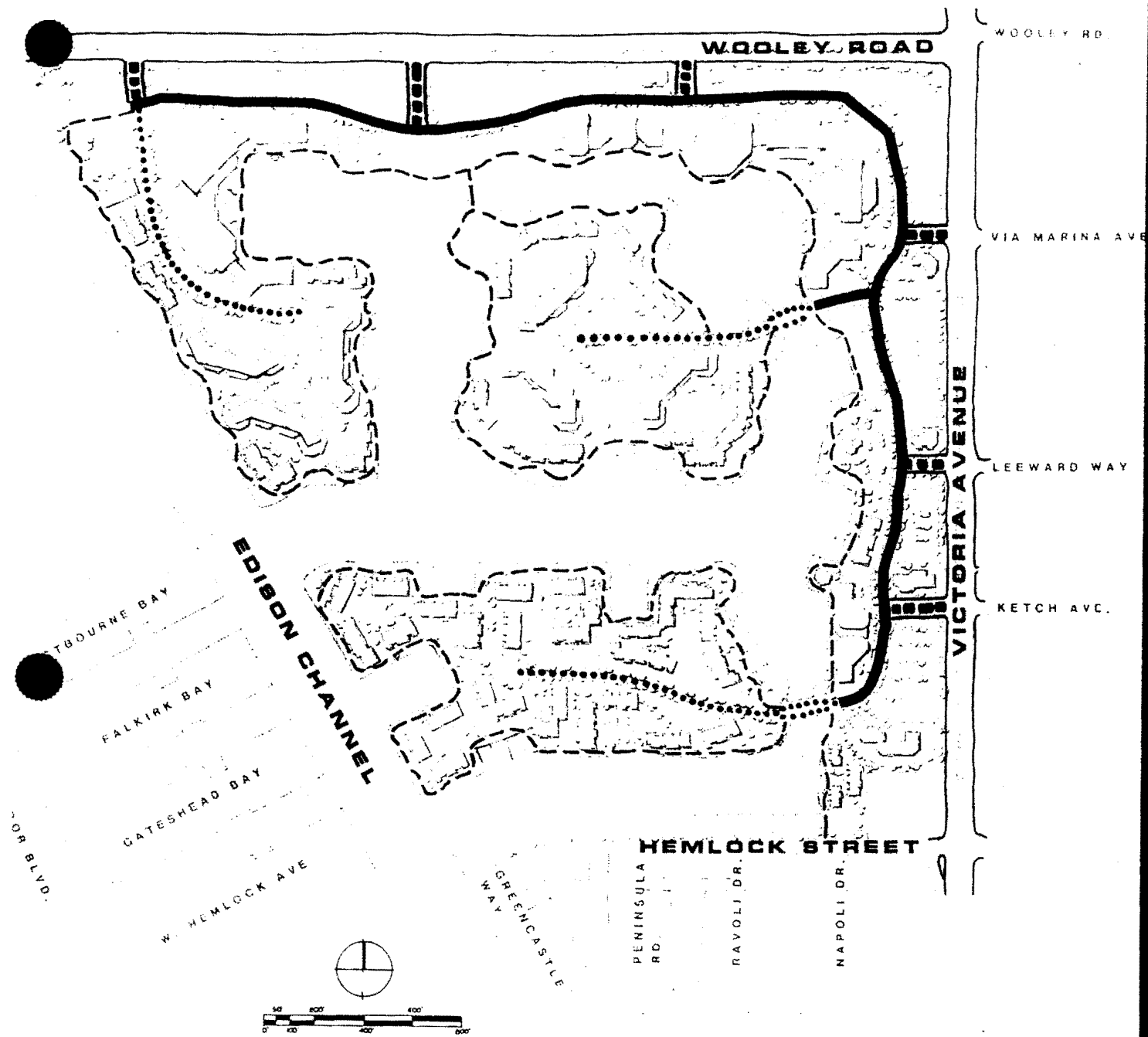


EXHIBIT 8
A-4-oxN-00-172
MBSP Park Map

**PARK PLAN**

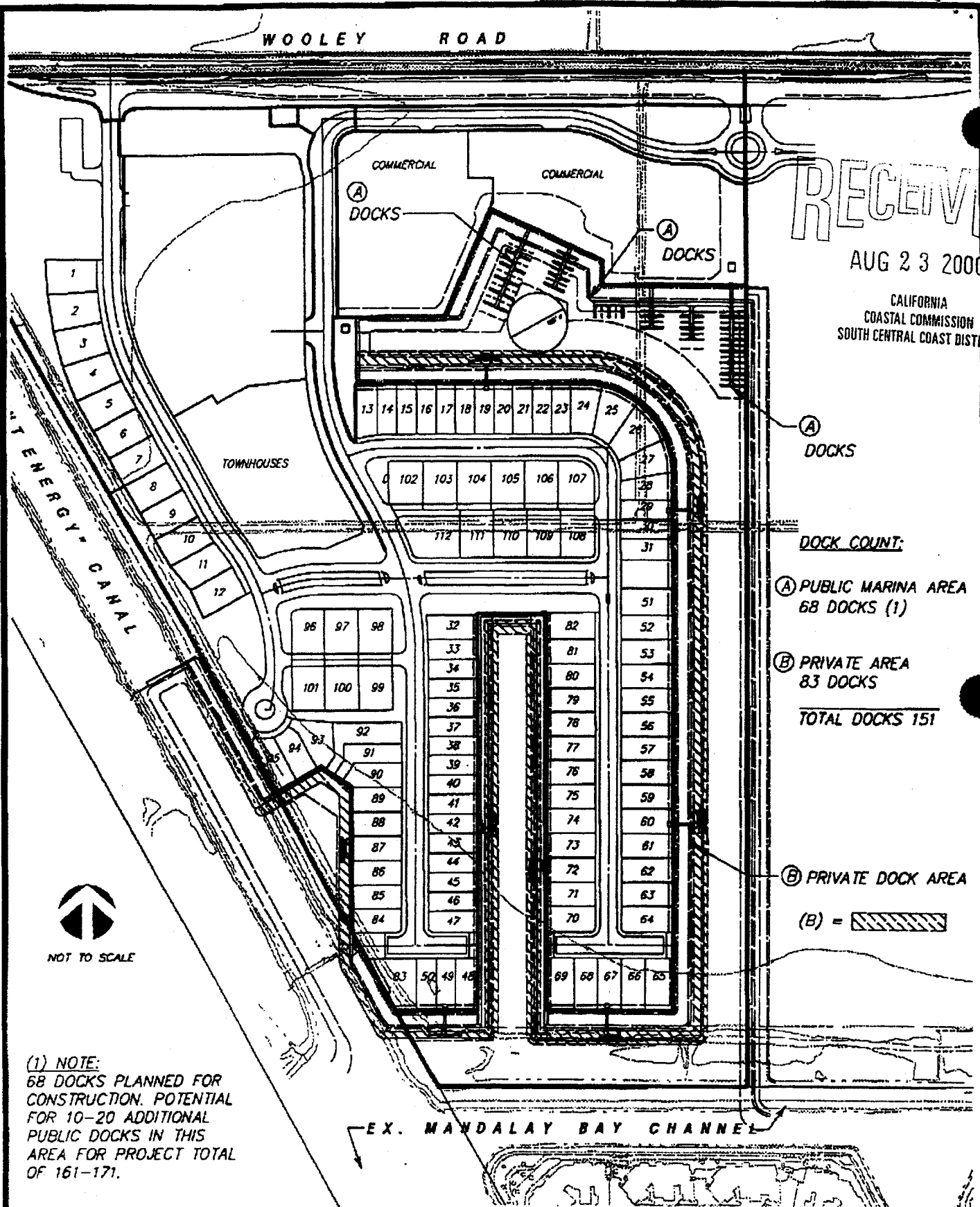


-  MEDIANED ENTRIES
-  32' WIDE PUBLIC DRIVE
-  25' WIDE PRIVATE DRIVE
-  PEDESTRIAN/BICYCLE

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

**CIRCULATION**

J:\Sun12993\2993 TENTATIVE\2993 dock EXHIBIT.dwg Aug 15, 2000, 1:33pm david



(1) NOTE:  
68 DOCKS PLANNED FOR  
CONSTRUCTION. POTENTIAL  
FOR 10-20 ADDITIONAL  
PUBLIC DOCKS IN THIS  
AREA FOR PROJECT TOTAL  
OF 161-171.



**LB/L Suncal Mandalay, LLC.**

21601 Devonshire Blvd., Ste. 116  
Chatsworth, CA 91311  
Phone: (818) 772-2077  
Fax: (818) 772-2067

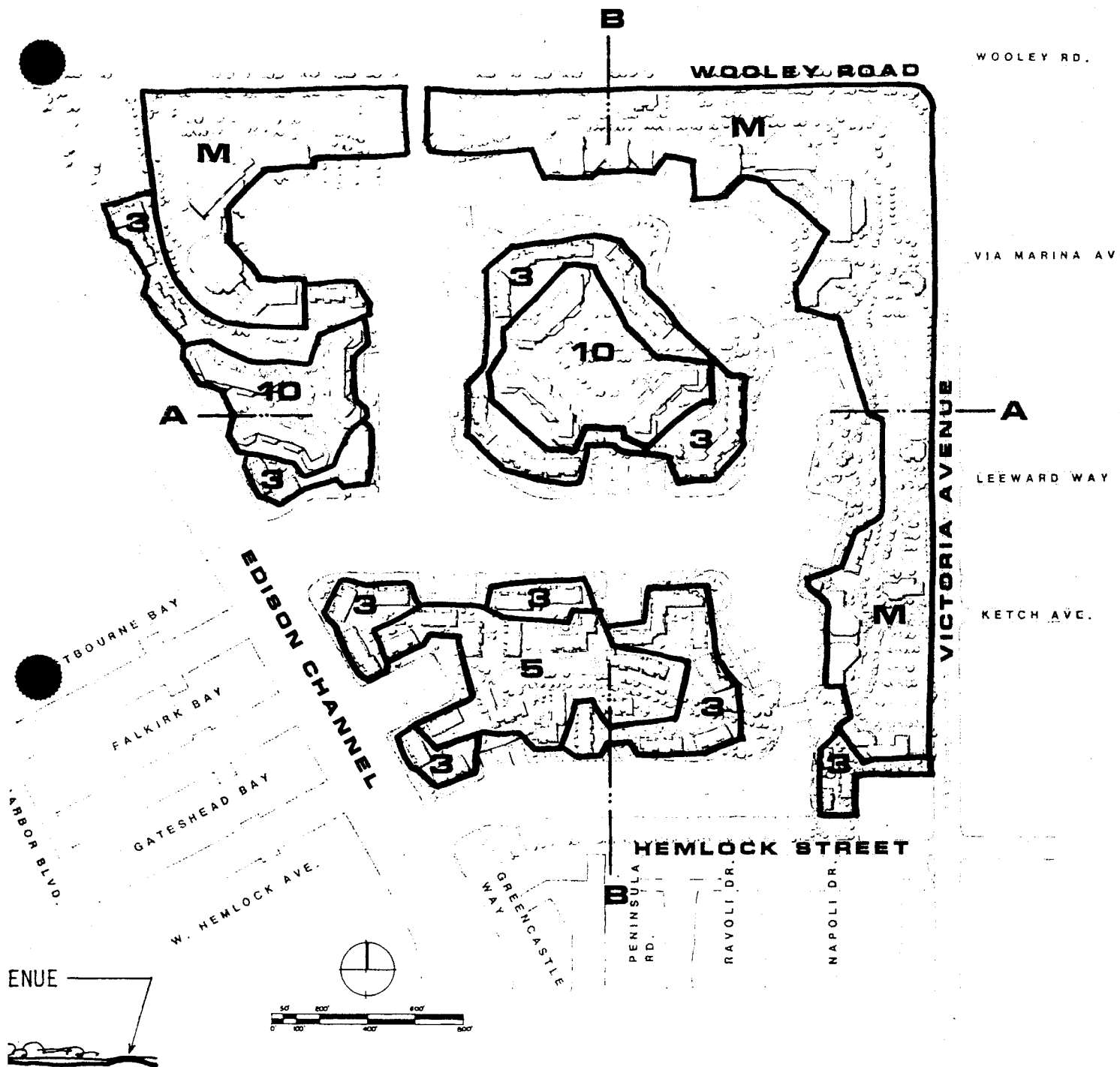
*Westport at Mandalay Bay*

**DOCK LAYOUT**

**EXHIBIT 10**

**A-4-OXN-00-172**

**Boat Dock Plan**



## HEIGHT ZONES

