

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
 200 OceanGate, Suite 1000
 Long Beach, CA 90802-4302
 (562) 590-5071



Staff: KFS-LB
 Staff Report: July 1, 2004
 Hearing Date: July 14-16, 2004
 Commission Action:

Th16a**STAFF REPORT: APPEALABILITY**

**DISPUTE RESOLUTION
 NUMBER:**

5-04-249-EDD

RECORD PACKET COPY

LOCAL CDP NO.:

02-12

LOCAL JURISDICTION:

City of Huntington Beach

APPLICANT FOR LOCAL PERMIT: Makallon Atlanta Huntington Beach, LLC

PROJECT NAME & LOCATION:

Pacific City
 21002 Pacific Coast Highway
 City of Huntington Beach, Orange County

DESCRIPTION: Public hearing on appealability to the Commission of the City of Huntington Beach's approval of local Coastal Development Permit No. 02-12, which authorizes subdivision of a 31-acre site and development of a mixed-use project consisting of retail, office, restaurant, cultural, and entertainment uses (191,100 sq. ft.); a 400 room, eight-story hotel with spa and health club; 516 condominium units above subterranean parking; a 2.0-acre open space/park and public easement corridor; extension of Pacific Avenue; removal of parking and addition of a traffic lane to Pacific Coast Highway; and associated infrastructure.

SUMMARY OF STAFF RECOMMENDATION:

The City of Huntington Beach contends that their approval of a coastal development permit for the Pacific City project is not appealable to the Coastal Commission. The City bases their determination upon the *Post LCP Certification Permit and Appeal Jurisdiction, City of Huntington Beach* map adopted by the Commission on May 24, 1985, which shows the private land upon which some of the development is occurring as outside of the geographic area in which approved development is automatically appealable to the Coastal Commission. However, in this case, the Executive Director has determined that the approval is appealable because it includes approval of development within Pacific Coast Highway that is located between the first public road and the sea. Furthermore, other factors may render the approval appealable including, but not limited to, the potential presence of wetlands on the site approved for development and that the approval covers development that may constitute a 'major public works' project. Additional information is necessary to evaluate whether these other factors are present and would render the approval appealable. Commission staff recommend that the Commission uphold the Executive Director's determination that the approval is appealable based on Section 30603(a)(1) of the Coastal Act, and direct the City to submit adequate information to the Executive Director to determine whether the site is appealable on the other, unresolved, grounds.

I. STAFF RECOMMENDATION ON APPEALABILITY DETERMINATION:

Staff recommends that the Commission adopt the following findings and resolutions to determine that the City of Huntington Beach's approval of local coastal development permit 02-12 is an action on a coastal development permit appealable to the Commission and that a valid notice of final local action reflecting this status must be submitted.

MOTION: I move that the Commission reject the Executive Director's determination that coastal development permit 02-12 approved by the City of Huntington Beach on June 7, 2004, is appealable to the Coastal Commission under Public Resources Code Section 30603.

Staff Recommendation that City of Huntington Beach Coastal Development Permit No. 02-12 is Appealable:

Staff recommends a NO vote on the motion. Failure of this motion will result in (1) the Commission upholding the Executive Director's determination that (a) the City's approval of CDP 02-12 is an action on a coastal development permit approving development that is appealable to the Commission and that (b) a valid notice of final local action reflecting that the local action is appealable to the Commission must be submitted and an appeal period be opened for this appealable development, and (2) the Commission's adoption of the following resolutions and findings. A majority of the Commissioners present is required to approve the motion.

Resolution:

The Commission hereby (1) finds that (a) it has appeal jurisdiction in this matter pursuant to California Public Resources Code Section 30603(a) because the City's approval of CDP 02-12 is an action on a coastal development permit approving development that is appealable to the Commission and that (b) a valid notice of final local action reflecting that status must be submitted to the Commission and an appeal period be opened for this development and (2) adopts the findings to support its jurisdiction that are set forth in the staff report.

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. BACKGROUND ON CITY ACTION

On June 21, 2004, the Commission received in its South Coast District office notification that the City of Huntington Beach had taken a final action to approve local Coastal Development Permit No. 02-12 with special conditions (Exhibit 3). The City's action authorizes Makallon Atlanta Huntington Beach, LLC, to subdivide a 31-acre site and develop a mixed-use project consisting of retail, office, restaurant, cultural, and entertainment uses (191,100 sq. ft.); a 400 room, eight-story hotel with spa and health club; 516 condominium units above subterranean parking; a 2.0-acre

open space/park and public easement corridor; extension of Pacific Avenue; removal of parking and addition of a traffic lane to Pacific Coast Highway; and associated infrastructure. The 31-acre property is located at 21002 Pacific Coast Highway, City of Huntington Beach, Orange County (Exhibit 1). However, the area of approved development also includes land within the Pacific Coast Highway right-of-way, as well as the rights-of-way of other public streets that bound the area.

The City's June 21st submittal states the City made a determination that their action is non-appealable. This determination was based upon the *Post LCP Certification Permit and Appeal Jurisdiction, City of Huntington Beach* map adopted by the Commission on May 24, 1985 (herein 'appeals map') (Exhibit 2). The City's submittal also states that the City's determination and associated actions were taken in reliance on oral representations made by Commission staff in the Summer of 2003.

B. BACKGROUND ON THE CITY'S APPEALABILITY DETERMINATION

There has been a history of communication between the City and Commission staff about the appealability of the Pacific City project. For instance, in February 2003, comments prepared by Commission staff on the Notice of Preparation of the EIR requested that the City evaluate whether or not the proposed project met any of the criteria of Section 30603(a) of the Coastal Act (Exhibit 4). On March 17, 2004, Commission staff received a public hearing notice from the City that identifies the project as non-appealable to the Coastal Commission. Partly in response to that notice and to provide some other general comments about the proposal, Commission staff wrote a letter to the City dated March 18, 2004, questioning the appealability of the project and requesting that the City have additional discussions with staff about their determination (Exhibit 5). After additional investigation, Commission staff followed up with a letter to the City dated April 13, 2004, indicating that, based on Commission's staff's revised understanding of the scope and details of the project, it would be appealable on certain grounds and requesting additional information to aid in the investigation of whether there were other grounds for appealability as well (Exhibit 6). In absence of a response to that letter, Commission staff sent another letter on June 7, 2004 requesting the City address the issues raised about the appealability of the project (Exhibit 7). Commission staff have spoken with the City as well throughout this period. These communications are discussed below under "Commission Staff's Representations."

Separate from Commission staff's communications with the City, other members of the public have raised questions about both the City's preliminary statements and its most recent determination of appealability of the project and/or aspects of the development that would render the project appealable. For instance, a letter to the Commission from Gaye Churchin dated June 15, 2004 (Exhibit 8), and a letter received by Commission staff on June 24, 2004 (Exhibit 9), from Paul Cross both assert the proposed development is located within 300 feet of the inland extent of the beach. Meanwhile, a letter from Shawn Millbern to the City, copied to the Commission, dated April 1, 2004, raises questions about the presence of wetlands on the project site and the need for the City to investigate whether those wetlands meet the Coastal Act definition of a wetland (Exhibit 10). Finally, a letter to the City dated May 31, 2004, from Mark Bixby states his observations that wetland plant indicator species are present on the site (Exhibit 11).

C. SUMMARY OF COMMISSION RESPONSE TO CITY'S APPEALABILITY DETERMINATION

The Commission finds that the coastal development permit approved by the City is an action on a coastal development permit application appealable to the Commission.

Section 30603 of the Coastal Act provides the basis for appeal of locally issued coastal development permits to the Commission. That section provides, in part, that:

Section 30603

(a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:

- (1) Developments approved by the local government between the sea and the first public road paralleling the sea or 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 the greater distance.*
- (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, within 300 feet of the top of the seaward face of any coastal bluff.*
- (3) Developments approved by the local government not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.*
- (4) Any development approved by a coastal county that ...*
- (5) Any development which constitutes a major public works project or a major energy facility.*

A quick review of the graphic portion of the appeals map could lead to the conclusion that development confined within the boundary of the 31-acre site would not be appealable to the Coastal Commission. The appeals map does not identify the body of the site as being between the first public road and the sea, within 300 feet of the inland extent of the mean high tide line, any beach or bluff, or within 100 feet of any stream or wetland (Exhibit 2). However, the map itself contains a disclaimer which states that "...[t]his plat... may not include all lands where post-LCP certification permit and appeal jurisdiction is retained by the Commission." This disclaimer is present because there may be some components of an approval that would render that approval appealable to the Commission even if outside the appeals "area" and/or there are circumstances that may cause conditions on the ground to change that would change the appeals area and thereby also make the approval appealable. In this case, at least one and perhaps both circumstances are present. In addition, upon closer inspection, the approved development includes development *within* the road, which, as is explained below, is, by definition, between the first public road and the sea.

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Appealability of Pacific City Project
Page 5

1. First Public Road

According to California Code of Regulations, Title 14 ("14 CCR"), Section 13577(i), when the boundary of the Commission's appeals jurisdiction is based on the "first public road," the area extends to the inland boundary of the right-of-way of that road. In this case, the development authorized by Local Coastal Development Permit No. 02-12 includes the elimination of public parking to accommodate the creation of a new traffic lane within the existing Pacific Coast Highway right-of-way, to serve traffic created by the approved development. This work constitutes 'development' as defined in Coastal Act Section 30106 and Section 245.04 (J) of the City's Local Coastal Program. Since development is occurring within the right-of-way, that action is considered to be 'between the first public road and the sea'. Pursuant to Coastal Act Section 30603(a)(1), and Section 245.04 (B) and (C) of the City's LCP, the approval of such development is appealable to the Coastal Commission.

2. Wetlands

There may be other conditions at the site or aspects of the development that would also render the City's action appealable to the Commission. For instance, contrary to indications on the appeals map, there may be wetlands present at the site. The EIR prepared by the City for the project, as well as observations from members of the general public, suggest there are wetland indicators present on the project site. Commission staff requested that the City prepare a wetland delineation for the project site in several letters beginning with their March 18, 2004 comments on the draft EIR. However, no wetland delineation has been submitted for review by the Commission, thus, the Commission is unable to make a definitive determination about the presence of wetlands on the site. Nevertheless, if wetlands are present on the site, this fact would render the City's approval appealable under Section 30603(a)(2).

3. Major Public Works Project

Furthermore, the development within Pacific Coast Highway may be considered a 'major public works' project and thus be appealable under Coastal Act Section 30603(a)(5). Section 30114(b) of the Coastal Act defines "public works" to include all "public transportation facilities, including streets, roads, [and] highways," and 14 CCR Section 13012 defines 'major public works' as follows:

- (a) *"Major public works" and "Major energy facilities" mean facilities that cost more than one hundred thousand dollars (\$100,000) with an automatic annual increase in accordance with the Engineering News Record Construction Cost Index, except for those governed by the provisions of Public Resources Code Sections 30610, 30610.5, 30611 or 30624.*
- (b) *Notwithstanding the criteria in (a), "major public works" also means publicly financed recreational facilities that serve, affect, or otherwise impact regional or statewide use of the coast by increasing or decreasing public recreational opportunities or facilities.*

Since none of the Coastal Act sections listed in subdivision (a) apply, if the cost of the development within the Pacific Coast Highway right-of-way is more than \$100,000 as adjusted based upon the *Engineering News Record Construction Cost Index* the development would be appealable. The Commission requested information from the City about the cost of the development within Pacific Coast Highway, but were not provided with that information. Thus, the

Commission is unable to make a definitive determination about whether the approved development constitutes a major public works project. Nevertheless, if the development does constitute a major public works project, this fact would render the City's approval appealable under Section 30603(a)(5).

4. Distance of Approved Development from the Sandy Beach

The approval will also be appealable under Section 30603(a)(1) of the Coastal Act if the approved development is located within 300 feet of the inland extent of the sandy beach. In this case, there is a roadway, sidewalks, and a wide paved public parking lot between the development and the sandy beach. While the appeals map indicates the private land within which the development is occurring is not within 300 feet of the inland extent of the sandy beach, other development approved by the City may be located within 300 feet, such as that development occurring within Pacific Coast Highway described above.

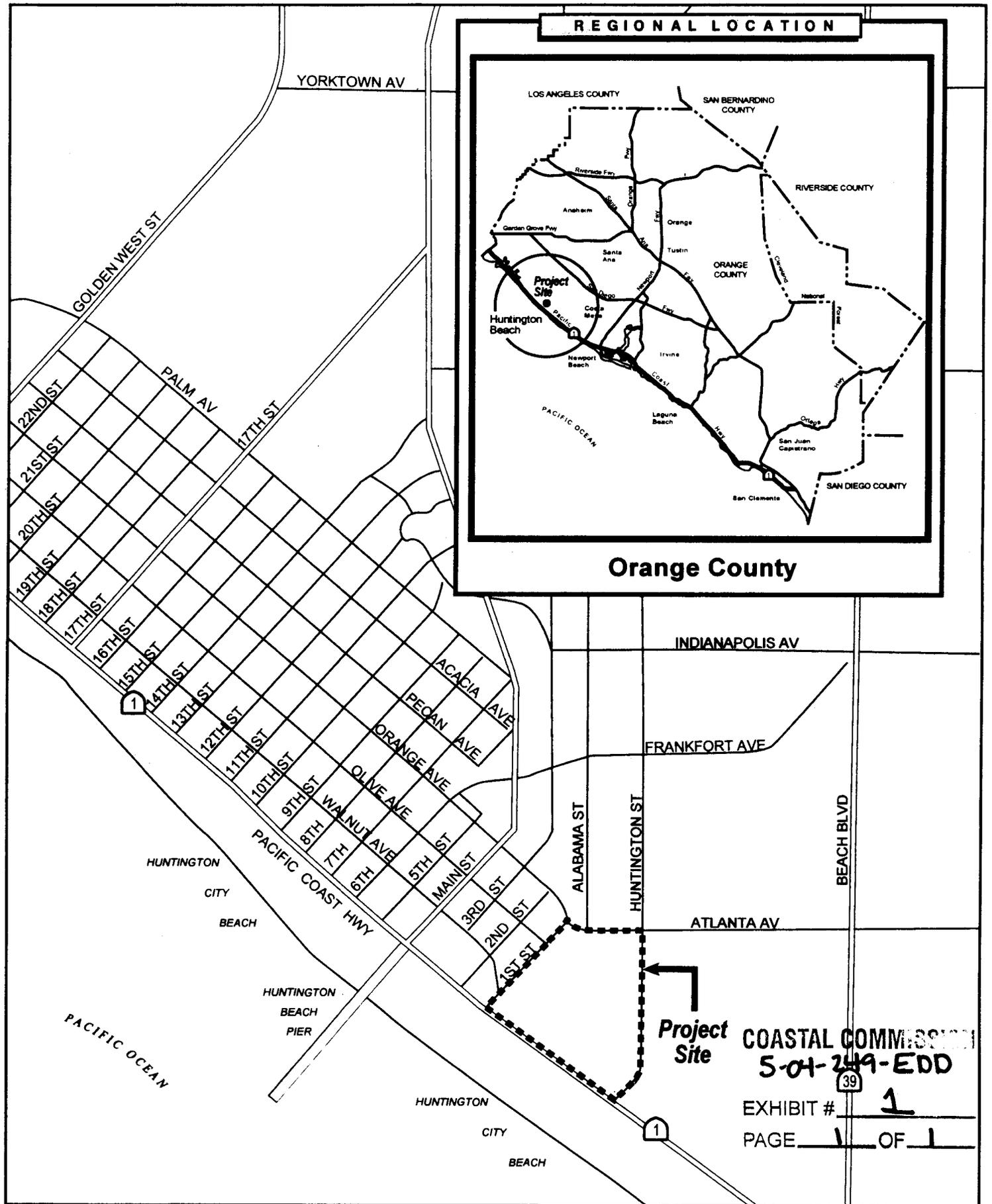
Furthermore, some members of the public assert that some of the private land is also located within 300 feet of the sandy beach (i.e. 275 feet away). Initial evaluations by Commission staff run contrary to this latter assertion. However, this evaluation is based upon resources available to staff, which may lack the resolution necessary in this circumstance to make a positive or negative determination. A more accurate survey, performed by a professional surveyor could demonstrate whether or not the approved development is appealable based on this criterion.

5. Commission Staff's Representations

The City's submittal indicates their appealability determination is partly based upon telephone conversations with Commission staff sometime in June-July 2003. The information conveyed at that time did not amount to a final determination of appealability. During those conversations, Commission staff advised the City, based on the information available to Commission staff at the time, that the site was not within 300 feet of a beach or between the first public road and the sea, and thus the site may not be appealable based on that criterion. However, Commission staff was not advised at the time of those discussions that there may be wetlands on the project site, or that the application being processed by the City included development within the Pacific Coast Highway right-of-way. Both of these aspects of the project render it appealable to the Coastal Commission. On several occasions since June-July 2003, including in the letters dated March 18, 2004, April 13, 2004, and June 7, 2004, Commission staff advised the City there were outstanding questions about the appealability of the City's action, and in fact, requested additional information from the City about these potential avenues for appeal. Moreover, all of the letters listed above were issued before the City took final action on this project. Commission staff never received a formal response to those prior letters.

D. CONCLUSION

Public Resources Code Section 30603(a)(1) confers the Commission with appellate jurisdiction over any development that is between the sea and the first public road paralleling the sea. Therefore, the Commission finds that because the approval authorizes development between the first public road and the sea that approval is appealable to the Commission pursuant to Section 30603(a)(1) of the Coastal Act. Furthermore, other grounds for appealability may exist including the presence of wetlands on the site approved for development, the approval of development that may constitute a 'major public works' project, and that aspects of the project and/or portions of the site may, in fact, be located within 300 feet of the inland extent of the beach. Upon further investigation, if any of these other factors exist, the Commission would concur with a determination by the Executive Director that these other factors render the City's approval appealable to the Coastal Commission as well.



COASTAL COMMISSION
 5-01-249-EDD
 EXHIBIT # 1
 PAGE 1 OF 1

Not to Scale

SOURCE: EIP Associates 2003

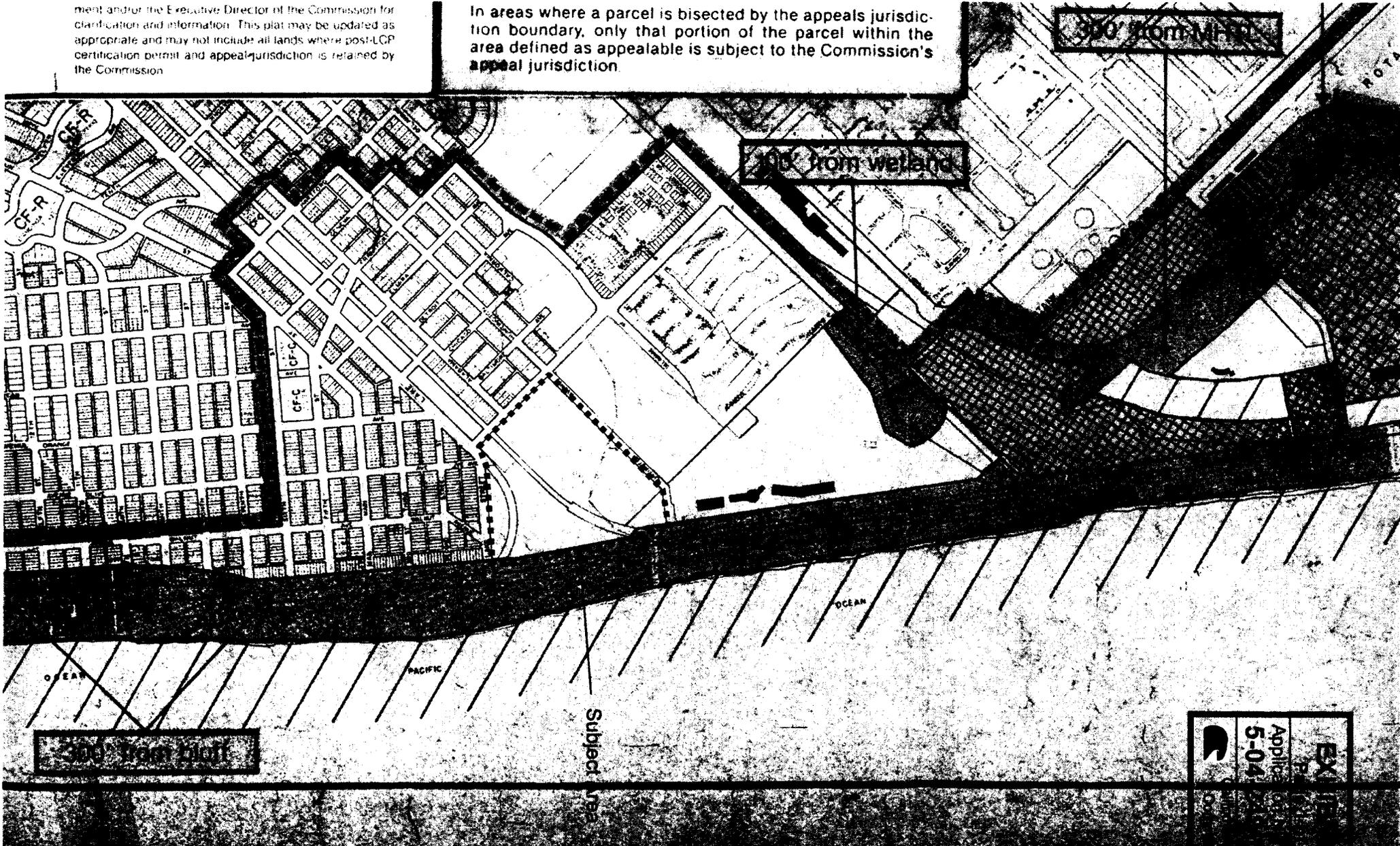


FIGURE 2-1
Project Vicinity & Regional Location Map

City of Huntington Beach • Pacific City EIR

ment and/or the Executive Director of the Commission for clarification and information. This plat may be updated as appropriate and may not include all lands where post-LCP certification permit and appeal jurisdiction is retained by the Commission.

In areas where a parcel is bisected by the appeals jurisdiction boundary, only that portion of the parcel within the area defined as appealable is subject to the Commission's appeal jurisdiction.



	EX # 2
	2
Application Number: 5-04	EDD
Coastal Commission	

Post LCP Certification Permit and Appeal Jurisdiction

City of Huntington Beach



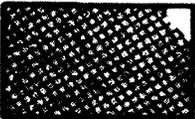
Permit Jurisdiction

This area includes only lands below the mean high tide line and lands where the public trust may exist



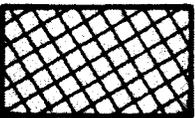
Appeal Jurisdiction

This area includes lands between the sea and the designated first public road paralleling the sea or 300' from the inland extent of any beach or of the mean high tide line if there is no beach, whichever is the greater distance. Also included are lands within 100' of streams and wetlands and lands within 300' of the top of the seaward face of coastal bluff.



Appeal Jurisdiction (P.R.C. § 30613)

This area includes lands where the Commission has delegated original permit jurisdiction to the local government for areas potentially subject to the public trust but which are determined by the Commission to be filled, developed, and committed to urban uses.



L.C.P. not certified



California Coastal Commission



Coastal Zone Boundary



City Boundary



Scale = 1" = 800'

This map has been prepared to show where the California Coastal Commission retains post-LCP certification permit and appeal jurisdiction pursuant to P.R.C. §30519(b), and §30603(a)(1) and (a)(2). In addition, developments may also be appealable pursuant to P.R.C. §30603(a)(3), (a)(4), and (a)(5). If questions arise concerning the precise location of the boundary of any area defined in the above sections, the matter should be referred to the local government and/or the Executive Director of the Commission for clarification and information. This plat may be updated as appropriate and may not include all lands where post-LCP certification permit and appeal jurisdiction is retained by the Commission.

	EXHIBIT#4
	Page 2 of 2
	Application Number: 5-04-249-EDD



CITY OF HUNTINGTON BEACH

2000 MAIN STREET

CALIFORNIA 92648

OFFICE OF THE CITY CLERK

June 18, 2004

California Coastal Commission
200 OceanGate, 10th Floor
Long Beach, CA 90802

Re: NOTICE OF FINAL ACTION – PACIFIC CITY PROJECT

Dear Sirs:

The City Council of the City of Huntington Beach at its regular meeting held Monday, June 7, 2004 took action on the following Public Hearing Appeal: **Public Hearing Part 1 of 2 to Consider Appeals Filed by (1.) The Robert Mayer Corporation and (2.) Lewis Brisbois Bisgaard & Smith, LLP on behalf of South Coast Angus, LLC of the Planning Commission's Approval of the Pacific City Project's Environmental Impact Report (EIR) No. 02-01; AND Public Hearing Part 2 of 2 – To Consider Appeals Filed by (1.) Makar Properties, LLC and (2.) The Robert Mayer Corporation of Tentative Tract Map No. 16338, Conditional Use Permit No. 02-20 with Special Permit No. 02-04, Coastal Development Permit No. 02-12, and Conceptual Master Plan - Pacific City. Applicant/Property Owner: Makallon Atlanta Huntington Beach, LLC, Ethen Thacher. Location: 21002 Pacific Coast Highway.**

The City Council upheld the Planning Commission decision of approval. As part of their approval Council amended the conditions to: 1) require meandering sidewalks along the perimeter of the project; 2) review the City of Irvine's bike rack requirement and specify the number of bike spaces for Pacific City; 3) review traffic calming alternatives to control traffic and decrease speed along Pacific View Avenue; 4) require that 100% of the park land in-lieu fee be paid by the applicant for the project; 5) environmentally sensitive habitat be protected from any significant disruption of habitat values and only uses dependent on those resources shall be allowed in those areas; 6) water quality plan be submitted to Council for review and approval; 7) employee parking be onsite and any parking fees for employees not exceed annual parking pass fee at the beach parking lot.

COASTAL COMMISSION

EXHIBIT # 3a
PAGE 1 OF 2

The Action Agenda and *amended* Findings and Conditions of Approval are enclosed. The June 7, 2004 minutes of the approval of the appeal will be mailed to you following Council approval of the minutes.

This is a final decision. You are hereby notified that pursuant to provisions of Section 1094.6 of the Code of Civil Procedure of the State of California you have ninety days from June 7, 2004 to apply to the court for judicial review.

If you have any questions regarding this matter, please contact my office at (714) 536-5227.

Sincerely,


Joan L. Flynn
City Clerk

Enclosure: Government Code 1094.6
Amended Suggested Findings and Conditions for Approval
Action Agenda Pages 12-18

cc: Penny Culbreth-Graft, City Administrator
Jennifer McGrath, City Attorney
Howard Zelefsky, Planning Director
Scott Hess, Planning Manager
Mary Beth Broeren, Principal Planner
California Coastal Commission – 200 Oceangate, 10th Floor, Long Beach, CA 90802
Pacific City Coalition – 16787 Beach Blvd. #316, Huntington Beach, CA 92647
Appellant – The Robert Mayer Corporation – 660 Newport Center Dr., Ste. 1050, Newport Beach, CA 92660
Appellant – Lewis Brisbois, Bisgaard, Smith, LLP – 650 Town Center Dr., Ste. 1400, Costa Mesa, CA 92626
Appellant – Makar Properties, LLC – 4100 MacArthur Blvd., Ste. 200, Newport Beach, CA 92660

COASTAL COMMISSION

EXHIBIT # 3a
PAGE 2 OF 2



CITY OF HUNTINGTON BEACH

2000 MAIN STREET

CALIFORNIA 92648

OFFICE OF THE CITY CLERK

June 18, 2004

California Coastal Commission
South Coast Area Office
200 Oceangate, 10th Floor
Long Beach, CA 90801-4302

**RE: NOTICE OF FINAL ACTION OF HUNTINGTON BEACH CITY COUNCIL ACTION
ON APPEAL OF PLANNING COMMISSION'S APPROVAL OF COASTAL DEVELOPMENT
PERMIT NO. 02-12 WITHIN A NON-APPEALABLE AREA OF THE COASTAL ZONE
(Pacific City Mixed Use Project – 21002 Pacific Coast Highway)**

Applicant: Makallon Atlanta Huntington Beach, LLC, Ethen Thacher, 4100 MacArthur Blvd., Ste 200, Newport Beach, CA 92660

Appellants: Makar Properties, LLC, 4100 MacArthur Blvd., Ste 200, Newport Beach, CA 92660; and,
The Robert Mayer Corporation, 660 Newport Center Drive, Ste 1050, Newport Beach, CA 92658.

Coastal Development Permit No. 02-12 Request: To permit subdivision and development of a mixed-use project consisting of retail, office, restaurant, cultural, and entertainment uses (191,100 sq. ft.); a 400 room, eight-story hotel with spa and health club; 516 condominium units above subterranean parking; a 2.0-acre open space/park and public easement corridor; Pacific View Ave. extension; and associated infrastructure on a 31-acre site.

Location: 21002 Pacific Coast Highway (Inland side of Pacific Coast Highway bounded by First Street, Atlanta Avenue, and Huntington Street).

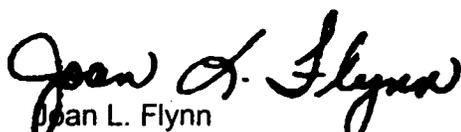
Coastal Zone Status: Non-Appealable Jurisdiction of the Coastal Zone. The City's Post-LCP Certification Commission Jurisdiction Map adopted May 24, 1985 indicates that the project site is not appealable to the Coastal Commission, and Coastal Commission Staff confirmed this in July 2003 based upon their written communication with the Coastal Commission's Mapping Division in their San Francisco Office.

Environmental Status: Environmental Impact Report No. 02-01 was prepared by EIP Associates, a consultant hired by the City to analyze the potential impacts to the project, and certified by the City Council on June 7, 2004.

COASTAL COMMISSION
EXHIBIT # 3b
PAGE 1 OF 2

Action: On June 7, 2004, after hearing a staff report presentation, conducting a public hearing, and discussion, the City of Huntington Beach City Council conditionally approved Coastal Development Permit No. 02-12 with Findings and Conditions of Approval as well as Tentative Tract Map No. 16338, Conditional Use Permit No. 02-20 with Special Permit No. 02-04, and Conceptual Master Plan (Attachment No. 1).

Sincerely,


Joan L. Flynn
City Clerk

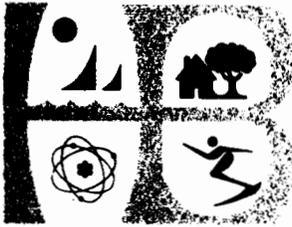
JF: pe

Enclosure: Amended Findings & Conditions of Approval

- cc: The Robert Mayer Corporation - Appellant
Makar Properties, LLC. – Appellant
Makallon Atlanta Huntington Beach, LLC - Applicant
Penny Culbreth-Graft, City Administrator
Jennifer McGrath, City Attorney
Howard Zelefsky, Planning Director
Scott Hess, Planning Manager
Mary Beth Broeren, Principal Planner

COASTAL COMMISSIC..

EXHIBIT # 3b
PAGE 2 OF 2



City of Huntington Beach

2000 MAIN STREET

CALIFORNIA 92648

DEPARTMENT OF PLANNING

Phone 536-5271
Fax 374-1540
374-1648

June 16, 2004

Meg Vaughn
Staff Analyst
South Coast Area Office
200 Oceangate, Ste. 1000
Long Beach CA 90802-4302

Re: PACIFIC CITY PROJECT – NON-APPEALABLE DETERMINATION

Dear Ms. Vaughn:

In response to your June 15, 2004 email message to Scott Hess, Planning Manager, the Notice of Final Action from the City Clerk's office should be mailed out this week.

In terms of project appealability, this was resolved in June-July 2003 when you and Mr. Hess had several conversations about this issue. At that time, we inquired about the appealable map boundary and you requested from our office a copy of the site plan of the Pacific City project. After sending it, you indicated that you were in contact with the San Francisco Coastal Commission mapping division to help make a final determination. After several weeks, you advised Mr. Hess over the phone that the San Francisco office had made a final determination that the Pacific City project was not within an appealable area of the coastal zone. This determination confirmed what the City's Post-LCP Certification Commission Jurisdiction Map adopted May 24, 1985 indicates.

In reliance on your determination, on March 11, 2004 we advertised the project for a public hearing stating it was in a non-appealable area of the coastal zone. The City's certified Local Coastal Program Section 245.14 has the following language with respect to the appealable/non-appealable determinations:

245.14 Determination of Applicable Notice and Hearing Procedures.

- A. At the time a CDP application is submitted, the Director shall determine whether a development project is:
1. Within an area where the Coastal commission exercises original permit jurisdiction; or
 2. Categorically excluded; or
 3. Appealable to the Coastal Commission; or
 4. Non-appealable to the Coastal Commission.

COASTAL COMMISSION

EXHIBIT # 3c
PAGE 1 OF 2

- B. Within 5 days of submitting a CDP application, the applicant or any other person who does not agree with the Director's determination may challenge the determination. If any interested party does not agree with the Director's determination, the matter shall be forwarded to the City Council at the earliest available regularly scheduled meeting to determine whether the project is categorically excluded, non-appealable, or appealable. If such challenge is not resolved and the determination remains disputed, the City shall notify the Coastal Commission (CC) Executive Director by telephone of the dispute/question and shall request the CC Executive Director's opinion. The CC Executive Director may either concur with the Council's determination or forward the request to the Coastal Commission for a final determination.

There was no challenge to the decision that this project was in a non-appealable zone.

I hope this clarifies the issue raised in your email to Mr. Hess. If you should have any other questions, please do not hesitate to call.

Sincerely,



Howard Zelefsky
Director of Planning

- c: Penny Culbreth-Graft, City Administrator
William Workman, Assistant City Administrator
Scott Hess, Planning Manager
Mary Beth Broeren, Principal Planner
Karl Schwing, California Coastal Commission
Michael Gagnet, Makar Properties

COASTAL COMMISSION

EXHIBIT # 3c
PAGE 2 OF 2

CALIFORNIA COASTAL COMMISSION

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



February 25, 2003

Mary Beth Broeren
 Department of Community Development
 2000 Main Street
 Huntington Beach, CA 92648

Re: Pacific City Notice of Preparation
 SCH # 2003011024

Dear Ms. Broeren;

Commission staff received the subject NOP on January 10, 2003. Commission staff understands the project being evaluated proposes to develop the 31.5 acre vacant site bounded by Pacific Coast Highway (PCH), 1st Street, Huntington Avenue, and Atlanta Avenue into a mixed-use visitor serving commercial center together with a residential village. The coastal development permit standard of review for the proposed development is consistency with the City's certified Local Coastal Program. The following comments address the proposed project's consistency with the City's certified Local Coastal Program. The comments contained herein are those of Coastal Commission staff only and should not be construed as representing the opinion of the Coastal Commission itself.

The subject site is located inland of Pacific Coast Highway and appears to be out of the Commission's appeals jurisdiction. However, please note that if it is determined that the project meets any of the criteria described in Section 30603(a) of the Coastal Act, the project would be appealable to the Coastal Commission. An evaluation of whether or not the project meets any of the criteria of 30603(a) of the Coastal Act should be included in the EIR. Section 30603(a) of the Coastal Act states:

(a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:

- (1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is not beach, whichever is the greater distance.*
- (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 900 feet of the top of the seaward face of any coastal bluff.*
- (3) Developments approved by the local government not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.*

COASTAL COMMISSION
 5-04-249-EPD

EX-100-1-000-4
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- (4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).
- (5) Any development which constitutes a major public works project or a major energy facility.

The primary areas of concern potentially raised by the project include: provision of adequate visitor serving uses including lower cost uses; maintaining and enhancing public access, including the provision of adequate public parking, minimizing adverse traffic impacts (especially to PCH), and maximizing access to the beach; maintaining and enhancing water quality, both during construction and over the life of the project; avoiding to the maximum extent feasible any adverse biological impacts; and, preservation and enhancement of public views.

Visitor Serving Use

The Land Use Plan (LUP) portion of the certified LCP contains the following policy regarding the provision of visitor serving uses.

Provide a variety of recreational and visitor commercial serving uses for a range of cost and market preferences.

The subject site falls within the Downtown Specific Plan (DSP), Districts 7 and 8. The Downtown Specific Plan (DSP) is contained within the Implementation Plan portion of the certified LCP states. The proposed commercial development falls within District 7, Visitor Serving Commercial. District 7, Section 4.9.01 Permitted Uses includes the following note:

Visitor-serving commercial uses must be a part of all development proposals in this district, with a minimum requirement that the entire street level be devoted to Visitor-Serving Commercial Uses.

In addition, District 7 allows Professional Office uses, but such use may not exceed fifty (50) percent of total floor area (Section 4.9.01 (a) P).

The NOP describes the proposed visitor serving commercial uses as "upscale-oriented". Discussion of the type and amount of lower cost uses that will be provided by the project should also be included in the Environmental Impact Report (EIR). The NOP description also notes that office uses will be on the second floor. In addition to restricting office uses to the second floor, the limitation to no more than fifty (50) percent of the total floor area should be included in potential use discussion. This analysis is necessary to demonstrate how the proposed development would be consistent with the above referenced LCP provisions.

COASTAL COMMISSION

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PAGES 3-6 Available upon Request

CALIFORNIA COASTAL COMMISSION

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



March 18, 2004

Mary Beth Broeren
 Principal Planner
 City of Huntington Beach
 2000 Main Street
 Huntington Beach, CA 92648

**SUBJECT: Draft Environmental Impact Report (DEIR)—SCH # 2003011024
 Pacific City, Huntington Beach, Orange County**

Dear Ms. Broeren:

Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Pacific City project. We understand that the comment period has passed, but appreciate the opportunity to submit comments prior to City Council action. The project under consideration involves 10.6 net acres of mixed use visitor-serving commercial development, 17.2 net acres of residential village and 3.7 new acres of right-of-way improvements on a vacant site. The comments provided below convey project concerns and questions which Coastal Commission staff believes should be addressed in any final action the City takes on the project.

Wetlands

Section 3.3.2 of the DEIR discusses the regulatory framework for protecting biological resources and provides the various criteria used for identifying and delineating wetlands. The DEIR outlines the criteria used by the USACOE, California Department of Fish and Game (CDFG) and the California Coastal Commission (CCC). As stated in the report, "the CDFG wetland definition and classification system is the delineation methodology generally followed by the CCC." However, in the evaluation provided on pages 3.3-20 through 3.3-22, the analysis applies only the Corps and CDFG criteria when evaluating the presence of wetlands at the subject site.

Please note that the definition that should be used in determining whether wetlands exist on-site should be the LCP definition, which is found in the LUP Glossary (IV-C-154), in Section 216.04 F of the IP, and also in Section 4.0.04 of the DSP. The LCP definition of wetland is:

Wetland. Lands within the Coastal Zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats and fens. Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this classification, wetlands must have one or more of the following attributes:

1. *At least periodically, the land supports predominantly hydrophytes; or*
2. *The substrate is predominantly undrained hydric soil; or*
3. *The substrate is non-soil and is saturated with water or covered by shallow water at some time during the growing season of each year.*

The DEIR states that there are areas within the site where sparse areas of hydrophytic vegetation were temporarily established after the creation of remediation pits. In order to determine the character and function of these areas, additional information should be made available for consideration. The location and extent of these areas should be mapped. In addition, the City

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should fully evaluate the potential that the site historically contained wetlands and whether there is the possibility that these are re-emergent wetlands.

The LUP policies require that adverse impacts to ESHAs and wetland areas be minimized (section C 7.1) and that new development contiguous to wetlands or ESHA include buffer zones (section C 7.1.4). Furthermore, Section C 6.1.20 of the LUP limits diking, dredging, and filling of wetlands to the specific activities outlined in Section 30233 and 30607.1 of the Coastal Act. The DEIR indicates that the remediation pits will be backfilled as part of the project. Please note that any City approval authorizing filling of wetlands for a use that is not specifically outlined in C 6.1.20 of the certified LCP would be problematic. If any wetland area is discovered on site, the preferred alternative is to avoid any adverse impacts. Additionally, if wetlands are determined to exist on site, the project will be considered appealable.

Sensitive Plants

The LCP defines Environmentally Sensitive Habitat as "any area in which plant or animal life or their habitat area rare or especially valuable and which could be easily disturbed or degraded by human activities and developments." Mitigation Measure BIO-1 indicates that special status plant or habitat surveys will be conducted prior to construction if substantial growth of native vegetation or sensitive habitats has occurred on the project site. If special status species are determined to be present, the DEIR states, "appropriate measures may include avoidance of the populations, relocation, or purchase of offsite populations for inclusion to nearby open space areas." Certain sensitive plants known to occur at the subject site may qualify as Environmentally Sensitive Habitat. The LCP requires protection of Environmentally Sensitive Habitat from any significant disruption of habitat values and that only uses dependent on those resources shall be allowed in those areas. The LCP also requires development in areas adjacent to environmentally sensitive areas be sited and designed to prevent impacts that would significantly degrade those areas. As such, a comprehensive survey of sensitive plant species should be completed prior to the approval of a final design for the proposed project. If an Environmentally Sensitive Area is identified on site, the project may have to be redesigned if it is necessary in order to avoid significant impacts. Project redesign should occur prior to the filing of the coastal development permit application.

Parking

Regarding public access to the coast the certified LUP states:

Provide coastal resource access opportunities for the public where feasible and in accordance with the California Coastal Act requirements.

Parking is an integrally related component of public access. Regarding parking the certified LUP states:

Balance the supply of parking with the demand for parking.

And:

Maintain an adequate supply of parking that supports the present level of demand and allows for the expected increase in private transportation use.

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As discussed in Section 3.14 of the DEIR, the parking demand for the project was calculated using a shared parking criteria. The shared parking analysis allows for a reduction in City parking code requirements. The total parking demand for the visitor-serving component of the project is calculated to be 1,535 spaces at peak demand times. The total parking supply is estimated to be 1,543 spaces. As stated in the report, "a theoretical parking surplus of eight spaces is forecasted at peak demand times." This calculation appears to leave a significantly small margin of error. The City should evaluate how a potential parking shortage at the subject site would be addressed.

The project description states that motorists entering from the easterly access from Pacific View can either "drop off their vehicles to be valet parked, or access the subterranean garage." It is unclear whether hotel patrons would have the choice to valet park or self park. A valet parking system may discourage some members of the public from parking at that location. As such, the hotel and commercial should have a self park component.

The DEIR states that existing parallel parking along the north side of PCH will be eliminated under the project and replaced "on-site." To the extent feasible, any parking impacted along PCH as a result of the project (e.g. due to road widening) should be replaced along PCH in approximately the same location. Where such in-kind replacement isn't feasible, these parking spaces should be relocated to a site which is clearly visible to the public traveling along PCH, such as in a surface lot with appropriate signage. The replacement parking should be managed as a separate parking resource, apart from the parking supply for the commercial development.

We note that some on-street parking will be provided on a temporary/interim basis. However, those spaces would eventually be removed. Furthermore, the plans indicate that the residential village will be gated to public vehicular traffic. As such, the streets within the residential village will not be available for use as a public parking resource. To off-set potential adverse impacts resulting from gating the residential development, the City should consider providing permanent on-street parking along the publicly accessible streets within the development area.

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Visual Impacts

Regarding visual resources, the LUP contains the following policies:

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Preserve and, where feasible, enhance and restore the aesthetic resources of the City's coastal zone, including natural areas, beaches, harbors, bluffs and significant public views.

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect public views to and along the ocean and scenic coastal areas.

The DEIR addresses public views in the area, particularly from the beach and pier and along Pacific Coast Highway. It is unclear from the project description and photo simulations whether the proposed 8-story hotel building would be sited on an elevated pad or at current grade level. In order to minimize the visual mass of the development, the City should consider limiting the pad elevation at or near street level. In addition, the commercial and hotel structure(s) should be articulated to reduce the apparent mass and scale of the development from public vantage points. Lower profile, less massive development would be preferred.

Special Permits

The DEIR indicates that "special permits" will be required to allow building encroachment into setback areas along PCH and Pacific View Avenue and to allow the parking garage ramps to exceed the City standard of ten percent. The report states that special permits are required to allow "flexibility regarding design issues in order to promote a better project." It is unclear if any

special permits are to be considered for building heights. The City should evaluate whether the allowance of such special permits is consistent with the certified LCP or would trigger the need for an LCP amendment. To ensure consistency with the currently certified LCP, the City's final approval of the project should limit the extent of special permits to be considered as part of this project.

Parkland and Lower-cost Uses

Issue No. 23 in the certified LUP says "...the City should promote and provide visitor serving and recreational facilities for a variety of market preferences and market ranges. Preference should be given to development providing public recreation opportunities. Lower cost facilities should be protected, encouraged, and, where feasible, provided." The DEIR states that the proposed project would contain privately owned, publicly accessible recreational areas on the site. The largest recreational area is the privately owned 'Village Green' contained within the residential area. Other smaller green space areas and pedestrian walkways and 'paseos' are associated with the residential development and commercial component. The DEIR acknowledges that since these areas aren't proposed to be dedicated as public parkland to the City, the proposal would not be consistent with City parkland dedication requirements, without the payment of an in-lieu fee. Commission staff encourage the City to pursue on-site provision of public parklands, rather than acceptance of an in-lieu fee. If the on-site provision of public parklands is deemed infeasible, we encourage the City and developer to identify off-site areas within the coastal zone suitable for use as public parkland and the acquisition and dedication of that land for public park purposes as part of the project, rather than use of an in-lieu fee. If an in-lieu fee is deemed to be the only feasible alternative, and acceptance of an in-lieu fee can be found consistent with the certified LCP, the in-lieu fees should be designated for use within the coastal zone.

Also, other than pedestrian thoroughfares and private green spaces that are closely affiliated with the residential and commercial components of the project, the development appears to contain few components that could be classified as 'lower-cost'. We encourage the City and developer to provide a lower-cost component (e.g. lower-cost overnight accommodations) as part of the project.

Archaeology/Paleontology

The DEIR describes the presence of two archaeological sites and eight paleontological resources sites, and one of the archaeological sites has been determined to be a unique site for the purposes of CEQA. Please note that avoidance of impacts to these resources is preferred. The last resort should be recovery.

Pedestrian Bridge

The DEIR states, "*although not currently proposed as part of the project, a grade separated pedestrian overcrossing could be constructed in the future, which would be located midway between Huntington Street and First Street to provide a connection from the beach to public areas near the hospitality uses in District No. 7.*" Please note that the pedestrian overcrossing will be appealable, as the seaward side landing will be located between the sea and the first public road.

Development Phasing

The Construction Schedule indicates that hotel construction will not commence until the second phase of residential development. The City should ensure through the permitting process that construction and opening of the public amenities and visitor serving uses are prioritized over what is considered "lower priority" residential development.

Water Quality

The City's LCP contains policies (e.g. C 6.1.6) requiring that new development employ the use of non-structural and structural Best Management Practices (BMP) to minimize the volume, velocity and pollutant load of stormwater runoff, prior to runoff discharge into stormwater conveyance systems, receiving waters or other sensitive areas. The DEIR indicates the development will include post-construction water quality treatment measures consisting primarily of storm water filters to manage water quality impacts caused by the proposed development. The proposed

COASTAL COMMISSION
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measures must be sized and designed to mitigate water quality impacts generated by the development.

In addition to use of storm water filters, Commission staff would encourage implementation of a treatment system that integrates one or more structural best management practices. Using a treatment train approach would include use of filter systems, such as that proposed, which remove gross pollutants, before flowing into a biological filter such as constructed wetlands, wet ponds or grass swales. These BMP trains can be very effective at achieving good water quality and are generally considered superior at removing pollutants such as oils, nutrients, and some pesticides than use of any single approach.

Appeals Area

As noted above, if the subject site contains wetlands, the coastal development permit processed by the City would be appealable to the Commission. Other aspects of the project may also meet the criteria in Section 30603(a) of the Coastal Act regarding appealable development. We recommend additional discussions on this topic in order to determine whether the project is appealable.

Thank you for the opportunity to provide comments regarding the Pacific City project. We apologize for the delay in providing comments and hope that the City can appreciate and accept that we are prioritizing this effort, but are subject to substantial workload constraints and limited staff resources at this time. We look forward to reviewing the final environmental document. If you have any questions, feel free to call me at (562) 590-5071.

Sincerely,



Karl Schwing
Supervisor, Regulation & Planning
Orange County Area

cc: State Clearinghouse, File

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COASTAL COMMISSION

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CALIFORNIA COASTAL COMMISSION

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



April 13, 2004

Scott Hess
Department of Community Development
2000 Main Street
Huntington Beach, CA 92648

Re: Pacific City Appealability

Dear Mr. Hess;

This letter is intended to clarify the Coastal Commission staff position on whether the local action on a coastal development permit for the project known as Pacific City is appealable to the Coastal Commission. In reviewing new and/or more specific information available to staff, the proposal appears to contain development appealable to the Coastal Commission.

For example, pursuant to a wetland delineation based on the Coastal Commission wetland standards, if wetlands are found to exist on the subject site, the project would be appealable to the Coastal Commission. The definition of "wetland" is found in the appendices of the certified Land Use Plan, Section 216.04 F of the City's certified Implementation Plan, and also in Section 4.0.04 of the Downtown Specific Plan. Section 30603(a)(2) of the Coastal Act states that developments approved by local governments that are "within 100 feet of any wetland" are appealable to the Coastal Commission. If wetlands are found to exist on site, an approval of development within 100 feet of those wetlands would be appealable. Please forward any wetland delineation made using the definition of wetland in the certified LCP so that our staff can assist in the evaluation of the appealability of the project based on this factor.

In addition, pursuant to Section 30603(a)(5) of the Coastal Act, approval of a local coastal development permit for "any development which constitutes a major public works project or a major energy facility" is appealable to the Coastal Commission. The project includes widening of Pacific Coast Highway, which may constitute a "major public works" project if it meets the definition of a "major public works" project as defined in Section 13012 of the California Code of Regulations (CCR). Section 13012(a) of the CCR states:

- (a) "Major public works" and Major energy facilities" mean facilities that cost more than one hundred thousand dollars (\$100,000) with an automatic annual increase in accordance with the Engineering News Record Construction Cost Index, except for those governed by the provisions of Public Resources Code Sections 30610, 30610.5, 30611 or 30624.

[Note: The exemptions identified in the PRC Sections above are not applicable in this case.]

COASTAL COMMISSION

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Pacific City Appealability
Page 2

Given the scope of development contemplated, the highway widening aspect of the proposed project likely qualifies as a "major public works" project, and thus the project would be appealable for this reason. Please advise if you believe the cost of the development wouldn't exceed the threshold for it to qualify as a "major public works" project.

In addition, development "between the sea and the first public road paralleling the sea" is appealable to the Coastal Commission. According to Section 13577(i) of the CCR: "When based on a road designated pursuant to this section, the precise boundary of the permit and appeal jurisdiction shall be located along the inland right-of-way of such road." Thus, approval of a coastal development permit for development, such as roadway widening within the road right-of-way, is appealable to the Commission. Furthermore, if the widening of the roadway necessitates the transfer of private land to a public entity (such as the City or Caltrans), the approval of the land division for this conveyance may be appealable to the Coastal Commission.

An approval of the Pacific City project which meets the requirements noted above would be appealable. Accordingly, any public notices pertaining to the coastal development permit application for the project should reflect the appealable nature of the development. Also, please note that all aspects of the project, including off site project related development such as drain pipes or infiltration bubblers on the beach, must be described and evaluated as part of the project review process.

Please do not hesitate to contact me at the above number with any questions regarding this matter.

Sincerely,

[Original Signed by]

Meg Vaughn
Staff Analyst

HNB PcfCty ltr 4.13.04 mv

COASTAL COMMISSION

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CALIFORNIA COASTAL COMMISSION

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



June 7, 2004

Scott Hess
City of Huntington Beach
Department of Community Development
2000 Main Street
Huntington Beach, CA 92648

Re: Coastal Development Permit 02-12, Pacific City

Dear Mr. Hess:

The City Council will be hearing an appeal of the Planning Commission's approval of coastal development permit No. 02-12 (as well as additional, related approvals) for a project commonly known as Pacific City. On April 13, 2004 I sent a letter raising specific questions with regard to the project's appealability to the Coastal Commission. The April 13, 2004 letter is included herein for reference. We have not received a formal response from the City to the questions raised in that letter. Nevertheless, the issue of whether the development is appealable to the Coastal Commission needs to be resolved. Please be sure the record of any action the City takes on this matter contains a clear response to our April 13th letter.

Please do not hesitate to contact me at the above number with any questions regarding this matter.

Sincerely,

[Original Signed by]

Meg Vaughn
Staff Analyst

COASTAL COMMISSION

EXHIBIT # 7

PAGE 1 OF 1

June 15, 2004

16787 Beach Blvd., #316
Huntington Beach, CA 92647

Ms. Meg Vaughn
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802

Re: Appeal of the Pacific City Coastal Development Permit #CDP 02-12

Dear Ms. Vaughn:

It is the position of the Pacific City Action Coalition that the proposed Pacific City project is clearly appealable based upon actual measurement of the distance from the site to the sand. This distance is less than 275 feet, well under the 300 foot guideline governing appealable developments (see enclosed affidavit and photos). We anticipate your decision on the matter soon.

If you have any questions, please call (714) 430-8596.

Sincerely,



Gaye Churchin
Pacific City Action Coalition

COASTAL COMMISSION

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JUN 24 2004

California Coastal Commission
South Coast Area Office
200 Oceangate, 10th Floor
Long Beach, CA 90801-4302

CALIFORNIA
COASTAL COMMISSION

RE: Appeal of Final Action of Huntington Beach City Council Action Approving Coastal Development Permit No. 02-12, and Petition for the Coastal Commission to assume jurisdiction over the matter.

By letter dated June 18, 2004, the city clerk of the city of Huntington Beach notified you of the final action of the city council of Huntington Beach approving Coastal Development Permit No. 02-12, relative to the so called Pacific City project. Enclosed is my appeal of that final action.

The city of Huntington Beach asserts that their action can not be appealed to the Coastal Commission. Pacific City is within 300 feet of the sand and the city's action is not precluded from your review. Further, regardless of the distance of the project from the sand, the city's action violates the scope of its delegation of authority from the Coastal Commission. Accordingly, also presented for your consideration is a petition requesting the Coastal Commission to assert jurisdiction because the final action of the city of Huntington Beach is "ultra vires" in certain material respects.

Paul Cross

Paul Cross
109 Huntington Street, Huntington Beach, CA 92648

Petition Requesting the Coastal Commission to Assume Jurisdiction Over Permit No. 02-12

By your letter dated March 20, 1995, concerning Local Coastal Program Amendment No. 3-94, you adopted certain mandates for the city of Huntington Beach pertaining Pacific City Districts 7 and 8. Among these was a limitation of 30 units per acre on a fully developed block. This requirement is violated because there will be 50 units per acre on a fully developed block identified as residential section 1 of Pacific City. Also, you required dedication of a twenty (20) foot corridor between Atlanta Avenue and PCH which might be waived if an alternative public use is provided. The requirement requires the exercise of discretion and at least entrusts that the city should seek to identify the location of the corridor before giving it away. This was not done. You also approved a height limitation of four stories for the residential buildings measured from the highest adjacent street. The city would allow 25 more feet to be added to the four-story limitation and totally ignores the downward slope of the land.

Other items of city disregard of your requirements exist. The most blatant of these is that your letter approval of Huntington Beach Local Coastal Program Amendment No. 3-94, was preceded by a letter dated November 17, 1994, to the Coastal Commission from Melanie Fallon, H. B. Community Development Director. In that letter the city committed that it would encourage the development of a transportation center in the coastal zone. The Fallon letter was part and parcel of your approval of LCP No. 3-94, which is the predicate for the June 7, 2004, approval action of the H. B. city council here sought to be challenged. Over 150 busses traverse the perimeter of the Pacific City project each day. All of them are virtually empty. No effort has been made by the city to create a transportation center for these busses other than pullouts on PCH. There is no land now available where a terminal arrangement might be created for these under-used busses, or for passengers who might be encouraged to ride them. Pacific City is designed, in fact to discourage bus service, no doubt in major part because the city wants to collect parking fees at downtown and beach locations. Pacific City would soak up all available land needed to create a transportation hub and you should not tolerate such a disregard of your requirements. **HERE KEEP IN MIND THAT TRAFFIC AND PARKING ARE THE TWO MOST UNANSWERED PROBLEMS CONFRONTING THE COASTAL AREA.**

COASTAL COMMISSION

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THE
ROBERT MAYER
CORPORATION

April 1, 2004

BY HAND DELIVERY

City of Huntington Beach
2000 Main Street
Huntington Beach, Ca 92648

Attention: Connie Brockway, City Clerk

Re: Notice of Appeal to City Council
Planning Commission Certification of EIR 02-01 (Pacific City)

Dear Ms. Brockway:

On March 23, 2004, the Planning Commission certified Environmental Impact Report No. 02-01 (the "EIR") for the Pacific City project in Huntington Beach (the "proposed Project"). The Robert Mayer Corporation hereby requests that such certification of the EIR be appealed to the City Council. We believe that the EIR is deficient in a number of respects, including, but not limited to the following: (1) The EIR does not accurately identify and quantify the traffic and parking impacts arising from the proposed Project; (2) it fails to properly identify impacts and mitigation measures relating to the water quality of runoff from the proposed Project onto the public beach; (3) it fails to adequately consider viable alternatives to the proposed Project as required under the California Environmental Quality Act ("CEQA"); (4) it misleads the public by noting the possible existence of wetlands on the site while neglecting to accurately assess such fact, and instead incorrectly states that if such wetlands do exist, they can be mitigated offsite, which under law they cannot; and (5) it fails to adequately address the written comments submitted by this company and others including other public agencies by providing inadequate, dismissive and often inaccurate responses to such comments.

By way of specific examples, such deficiencies and failings include, but are not limited to, the following:

With respect to traffic and parking impacts:

- The EIR improperly assumes significant reductions in total traffic generation that otherwise would be reported for a project of this magnitude based on the combination of

unsupportable "internal capture rate" and "mode-shift" assumptions made by the developer's traffic consultant. *Even the City's own independent review by an outside traffic consultant identified those assumptions as lacking any empirical data or citation of a professional source to support them and called for more data to assure that such assumptions were reasonable, yet none has been provided. Further, the California Department of Transportation, acting in its capacity as a "Responsible Agency" under CEQA also questioned these assumptions noting that they were "too high", and in rebuttal to the EIR's response to their comment asked that "the consultant provide local collected data to substantiate both the internal capture rates and the mode shift rates used in this study". Still, no data has been provided in response to this request.* As a result, the EIR seriously underreports the potential traffic generation arising from the project by approximately 25%-30%.

- The consultant that prepared the above-referenced traffic report for the City that questioned the assumptions made by the developer's traffic consultant was listed in the EIR as a preparer of documents for the EIR. Therefore, that skeptical traffic report was in fact a part of the total EIR documentation. Nonetheless, that report was not included in the documents released to the public or the Planning Commission, contrary to the requirements of CEQA. As a result, a legally sufficient public disclosure of all relevant information was not made in this EIR.
- When assessing the cumulative impact of other foreseeable developments around the proposed Project, *the EIR fails to account for the fact that the 3rd hotel site at The Waterfront project will be developed.* This 3rd hotel site, a mere 500 feet from the proposed Project, is approved by the City for development of up to a 300 room hotel, pursuant to an existing Development Agreement, Disposition and Development Agreement and approved Commercial Master Site Plan. Those agreements provide for time frames of development consistent with the time frame of study within the EIR. It is standard methodology when preparing traffic studies to include all known approved or likely projects in the analysis of cumulative impacts, even when there is a possibility that the project may not be completed precisely within the time frame of study.

Worse still, the EIR's response to our written objection to this incorrect assumption is dismissive, indicating that the preparer took no effort to understand the terms of these agreements or to inquire of the current planning efforts underway by this company. Moreover, it prejudicially fails to consider the reasonable and appropriate assumption that this company will perform under the terms of its agreements, as it has in developing the Hilton Waterfront Beach Resort and the Hyatt Regency Huntington Beach Resort and Spa. The certification of this EIR by the City based on this overtly incorrect assumption, while at the same time being a party to the above-referenced agreements, is wholly unjustifiable and could be construed as an inexcusable attempt to repudiate them. Such action is inconsistent with the doctrine of good faith and fair dealings implicit in those agreements.

- The calculations for parking contained in the EIR greatly underestimate the true needs of the project by employing numerous computational tricks, including reliance on the

previously referenced unsupportable traffic generation assumptions to further reduce baseline assumptions of parking needs; employing other unsupported assumptions in joint-use calculations; making misleading comparisons to City parking codes that serve to mask the true extent of the parking reduction proposed; relying on adjacent beach parking rather than adequate onsite parking as required under City code; relying on the unfounded assumption that an immense number of customers (some 3,000 per weekday) will park in the downtown area and walk ½ mile to the proposed Project rather than considering this project as a primary destination; failing to consider whether there will in fact be excess parking in the downtown area sufficient to allow for the aforementioned assumption; and by failing to consider the actual parking rates experienced by the Hilton Waterfront Beach Resort per a written survey previously submitted to the City. Reliance on any one of these unsubstantiated assumptions is questionable, but reliance on the multiplicative effect of all these assumptions without verifiable, empirical evidence to support each of them is wholly unreasonable, improper and renders the EIR deceptive and inadequate.

- Pacific View Avenue is classified on the Orange County Master Plan of Highways and the City's General Plan as a primary arterial with a design standard of four lanes with a center divider. The EIR fails to adequately address the impacts resulting from the sub-standard proposed design of Pacific View that reduces the number of lanes from four to two, and then worse still places angled parking on the south side that would significantly inhibit the free flow of traffic. This condition is exacerbated by a concentration of entries to both the residential and commercial phases of the project at only two intersections in very close proximity to each other. The entire design is virtually the opposite of that design required by the City and built by this company between Beach Boulevard and Huntington Street, even though the total occupied square footage of The Waterfront and the proposed Project are equivalent. Instead of properly considering the potential impacts of this deficient design, the EIR assumes that at some unknown time in the future Pacific View Avenue would be rebuilt to the proper, ultimate configuration. However, no objective criteria are described in the EIR or elsewhere that would clarify under what conditions the roadway would be widened; nor does it consider the practical realities of the changes to the proposed Project (from setbacks to loss of public parking in the coastal zone) that would occur from such a future change. In truth, the EIR has chosen to analyze a project that is different than the proposed Project, resulting in a misleading conclusion about the real impacts of the proposed Project.

With respect to water quality impacts of runoff from the proposed Project onto the City beach:

- The EIR fails to adequately consider the potential for bacterial contamination on the beach even though the proposed Project plans to alter the drainage patterns of the site such that a large majority of the site's runoff will be redirected to the beach, when previously it was not.
- The EIR fails to adequately identify and require appropriate mitigation measures to deal with the potential for bacterial contamination. In response to **COASTAL COMMISSION** comments, and our submission of expert analysis of the issue, the City revised certain

language in the EIR to indicate that dry season flows from the proposed Project might in the future be diverted from the beach to the Orange County Sanitation District (as is the case now for the whole of the site), but only "at the City's election". The revision in language to indicate the possibility of diversion of the dry season flows is implicit recognition that a significant environmental risk exists (even though such risk is otherwise improperly trivialized in much of the balance of the responses). However, even given that the EIR did at last recognize the environmental risk by suggesting that the diversion would be the solution, it failed to properly identify such diversion as being the mitigation measure that in fact it is. And worse, the EIR then failed to implement that mitigation measure with certainty, as required by CEQA, choosing instead to leave the action to be "at the City's election". Such language is inappropriate and lawfully inadequate.

With respect to the consideration of project alternatives, as required under CEQA:

- The EIR only considers only one reduced-intensity project alternative in detail, that being the "Reduced Project Alternative" wherein the commercial use square footage was reduced from approximately 240,000 sq. feet to 190,000 square feet, but all other phases of the proposed Project remained unchanged. This 50,000 sq. ft. reduction represents only an 8% reduction in the occupied area of the commercial portion of the development, and a mere 3% of the total occupied area of the proposed Project as a whole. It must be noted that the area eliminated consisted of the least desirable 3rd floor retail and office space with little viability in any event, and restaurant use was actually increased by 10,000 sq. ft. Although resulting in a decrease in impacts, this trivial reduction in total project intensity hardly deserves the status of being the only alternative to be studied in detail in the EIR.
- The EIR fails to meaningfully consider a range of other alternatives, such as a reduction in the number of residential units or in the size of the hotel proposed. Such options are dismissed without serious study for two dubious reasons, as follows:
 - o The option would not lessen certain impacts to a less-than-significant level, even though it may significantly reduce certain environmental impacts.

However, restricting consideration to only those options that reduce impacts to a less-than-significant level is a contrived limitation that artificially finds pragmatic alternatives to be unworthy of serious study. Under the rationale used in the EIR, if a proposed project had no significant environmental impacts, then no alternatives would be studied (since only alternatives that reduce impacts to a less-than-significant level are supposedly worthy of consideration). However, in *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, the Supreme Court held that even if all the project's significant impacts will be avoided or reduced by mitigation measures, an EIR must still discuss project alternatives. Therefore, the rationale used **COASTAL COMMISSION** consistent with applicable law and the alternatives analysis is flawed.

- Reasonable information has been presented, and is also referenced in the EIR, that a potential for a significant environmental impact exists by way of the destruction of wetlands. The EIR should properly evaluate this potential, and should not defer evaluation to a later, unspecified date. Under the flawed approach taken by the EIR, any suspected significant impact, be it traffic, cultural resources, air quality, etc. need not be properly evaluated in the EIR, but instead could be left to later study.
- The EIR is flawed by assuming that a generalized mitigation measure, such as an unspecified offsite wetland restoration activity, may be applied in the future. The purpose of the EIR is to properly identify the impact, and to adopt a specific mitigation measure with a factual and analytical basis. No analysis is presented to determine whether the proposed unspecified offsite mitigation activity would in fact mitigate for the impact, if the impact exists.
- Existing law does not allow for the destruction of wetlands in the coastal zone with offsite mitigation in this instance. The EIR errs by considering this alternative to be viable, when in fact it is not. If wetlands do exist at the property, the proposed Project will have to be redesigned to preserve those wetlands, but the EIR fails to even recognize this possibility. Further, in the EIR's response to comments, it repeats this error by defending the potential for offsite mitigation by inaccurately summarizing the applicable case law. The EIR incorrectly asserts that the prohibition against development on wetlands in the coastal zone is limited only to environmentally sensitive habitat areas ("ESHAs"), when in fact, in addition to rulings on ESHAs, *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493 ruled that development of wetlands (not specifically ESHAs) is controlled by Public Resources Code section 30233(a) which limits such development to only certain port, energy, and coastal-dependent industrial uses.

With respect to the responses to comments:

- In response to this company's comment that the EIR's traffic calculations indicate that 3,000 customers per weekday, and 330 people in the evening peak hour, are anticipated to park in the downtown area and walk ½ mile to the proposed Project, which is a wholly incredible assumption likely to render the downtown area virtually vacant of visitors, the EIR response to the comment states that such calculation is correct, but "equates to five people per minute and six people per minute, respectively" as if that is a sufficient justification and explanation for the assumption. Simply converting the statistics from people per day or hour to people per minute is not an adequate response.
- The EIR included an additional "Topical Responses" section that in reference to the suspect assumptions of mode shift and internal capture spends a good deal of words rationalizing the developer's traffic consultant's conclusions; but nowhere does provide the empirical evidence requested by the City's own reviewing traffic consultant or the California Department of Transportation.

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- The EIR's Topical Responses attempt to further explain issues with respect to Water Quality, Traffic and Parking; however, they present a wholly one-sided perspective defending the inadequate analysis in the EIR, rather than properly disclosing the differences of opinions between experts on the issues. Where differences in expert opinions exist, such as between the developer's traffic consultant and the City's review consultant, the EIR should summarize and explain the main points of disagreement. Instead, the EIR only obliquely mentions that "public commentators have identified disagreement with the conclusions" without faithfully disclosing to the reader the nature of those disagreements, particularly those disagreements between experts involved in the preparation of the EIR.

In conclusion, we do not believe that EIR No. 02-01 meets the standards of accuracy and fairness that the City of Huntington Beach should expect and demand for a project of the intensity of the proposed Project. We ask that after a duly noticed public hearing wherein ourselves and others be given adequate time in advance to submit further written comments and to provide oral testimony without cursory time limits, that the City Council act to deny the certification of EIR No. 02-01.

THE ROBERT MAYER CORPORATION



Shawn K. Millbern

Senior Vice President, Development

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May 31, 2004

City of Huntington Beach
City Council
2000 Main Street
Huntington Beach, CA 92648

RE: Pacific City

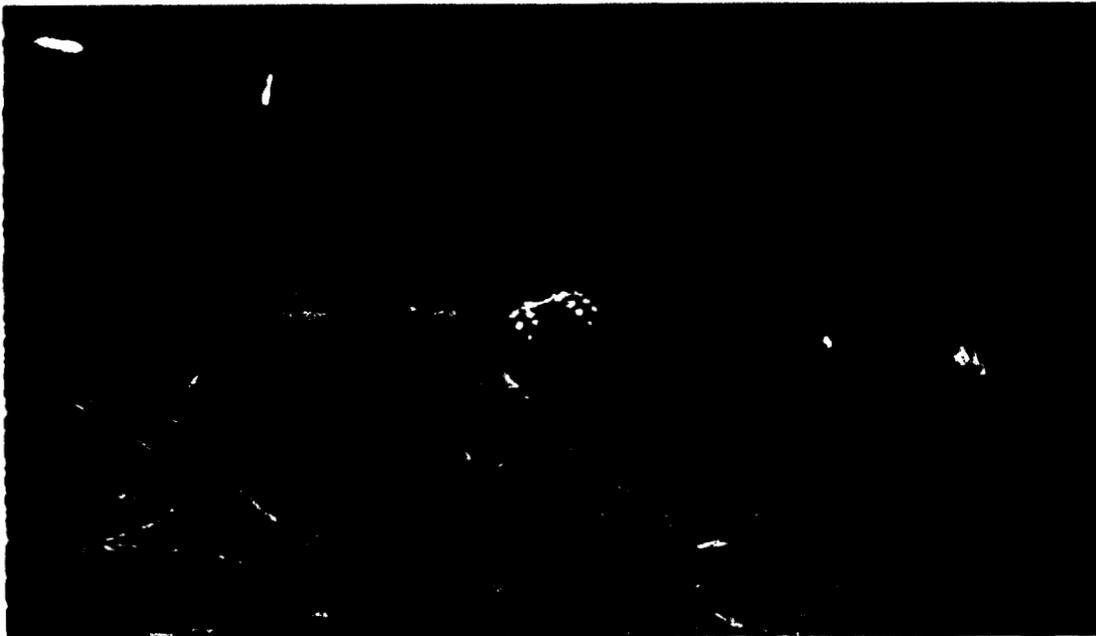
Dear City Council,

Today I made another visit to the Pacific City site in order to report on any new vegetation of note that has appeared since my previous visit on April 26, 2004. The bad-faith vegetation clearing work started by the applicant on Friday, May 28th was still in progress but had not yet reached the area where I do most of my vegetation surveying.

The most significant change over the past month was the appearance of seaside heliotrope (*Heliotropium curassavicum*) in plentiful quantities halfway between the entrance to Pacific Mobile Home Park and Pacific View Ave. Seaside heliotrope is an obligate (OBL) wetland indicator species, which means that 99% or more of locations with this species are considered to be wetlands.

I have seen this high-value wetland indicator species on multiple previous visits to the Pacific City site, and yet this species is not listed in the EIR as being present (except as noted in my DEIR comment letter).

See below for a picture of one of today's white heliotrope blooms:



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Two new plant species were noted today:

- Italian ryegrass (*Lolium perenne ssp. multiflorum*), a facultative (FAC) wetland indicator species, was observed growing in the northeastern portion of the property adjacent to Huntington St.
- Tarweed (*Hemizonia sp.*) was observed growing approximately opposite of the entrance to Pacific Mobile Home Park. The plants are too far away from my observation point on Huntington St. for me to make an exact species determination. I do not think this is the special-status southern tarplant (*Hemizonia parryi ssp. australis*) that is found at Bolsa Chica. However, the applicant's biological consultants should probably make another site visit to pin down the exact species.

The EIR should not be certified because it still does not acknowledge the presence of certain wetland indicator vegetation species that I have seen:

- Alkali mallow (*Malvella leprosa*, FAC) – large quantities
- Italian ryegrass (*Lolium perenne ssp. multiflorum*, FAC) – scattered individuals
- Seaside heliotrope (*Heliotropium curassavicum*, OBL) - plentiful
- Spreading alkaliweed (*Cressa truxillensis*, FACW) – tentative sighting of several large aggregations
- Tree tobacco (*Nicotiana glauca*, FAC) – scattered individuals

There are 17 wetland indicator vegetation species present on the property as documented in the EIR and by my site visits. I believe a strong case exists by virtue of the vegetation alone that portions of the site should be considered to be wetlands (albeit highly degraded). See attached for my previous post-EIR vegetation surveys.

City LCP policies and Section 30233 of the Coastal Act forbid the filling of wetlands for projects such as Pacific City. If this project is allowed to move forward, the CUP should be modified to mitigate for the loss of the highly degraded natural wetlands by requiring the applicant to incorporate the progressive water quality BMP of constructing one or more bio-swales or mini-wetlands as part of the overall WQMP for treating the project's urban runoff.

Yours truly,

Mark D. Bixby

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Attachments

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