:

CALIFORNIA COASTAL COMMISSION

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

Th 17 b

Staff: MV-LB Staff Report: 1/27/05 Hearing Date: 2/16-18/05

Commission Action:



STAFF REPORT: REVISED FINDINGS

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: Revised findings in support of the Commission's decision that the City of Huntington Beach's approval of local Coastal Development Permit No. 02-12 is not appealable. The project involves 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; and associated infrastructure.

DATE OF COMMISSION ACTION:

July 15, 2004

COMMISSIONERS ON PREVAILING SIDE: Commissioners Burke, Iseman, Kram, Neely, Peters, Potter, and Chairman Reilly.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following revised findings in support of the Commission's action of July 15, 2004, in which the Commission found that the City's approval of local coastal development permit 02-12 was not an action appealable to the Coastal Commission. The question of whether the local government action was appealable turned on four potential bases for appeal, pursuant to Section 30603(a) of the Coastal Act. The four potential bases for appealability raised at the hearing were: 1) whether the site is located between the first public road and the sea; 2) whether the site is within 100 feet of wetlands; 3) whether a portion of the project constitutes a major public works project; and, 4) whether the site is within 300 feet of a sandy beach. However, after a public hearing on the matter, the Commission found that the project did not qualify as appealable under any of the bases raised.

REVISED FINDINGS

Executive Director Dispute Resolution 5-04-249-EDD
Appealability of Pacific City Project
Page 2

I. MOTION AND RESOLUTION:

MOTION: I move that the Commission adopt the revised findings in

support of the Commission's action on July 15, 2004 concerning

ž

Dispute Resolution No. 5-04-249-EDD.

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the July 15, 2004 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

Commissioners Eligible to Vote: Burke, Iseman, Kram, Neely, Peters, Potter, and Reilly.

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below on its determination that Coastal Development Permit 02-12 approved by the City of Huntington Beach is not appealable on the ground that the findings support the Commission's decision made on July 15, 2004 and accurately reflect the reasons for it.

STAFF NOTE:

These revised findings are solely intended to reflect the action taken by the Commission on July 15, 2004 and the reasons for that action, and are therefore limited to describing the rationale for the action and to the specific issues raised at the hearing. Comments from the public concerning the findings will be limited to discussion of whether the findings reflect the action of the Commission.

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. BACKGROUND ON CITY ACTION

On June 7, 2004 the Huntington Beach City Council conditionally approved local coastal development permit No. 02-12. 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-

REVISED FINDINGS Executive Director Dispute Resolution 5-04-249-EDD Appealability of Pacific City Project

Page 3

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; and associated infrastructure. The 31-acre property is located at 21002 Pacific Coast Highway, City of Huntington Beach, Orange County (Exhibit 1).

The notice of the City's approval indicated that the action was not an action appealable to the Coastal Commission. Questions were raised, both by Commission staff and by members of the general public, about the City's determination that the action on the local coastal development permit was not appealable. Section 30603(a) of the Coastal Act identifies the types of development that may be appealed to the Commission after a municipality's local coastal program has been certified by the Commission. The City's action was alleged to be appealable because the City-approved project allegedly included development that: 1) is located between the first public road and the sea; 2) is within 100 feet of wetlands; 3) constitutes a major public works project; and, 4) is within 300 feet of a sandy beach.

In order to secure a final determination on the appealability of the local government action, Commission staff scheduled the matter for Commission review at the July 15, 2004 public hearing. At that hearing, the Commission found that none of the alleged bases for appealability applied with respect to the City's approval.

B. APPEALABILITY DETERMINATION

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.

REVISED FINDINGS

Executive Director Dispute Resolution 5-04-249-EDD Appealability of Pacific City Project Page 4

- (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.

The appealability of the City's action on local coastal development permit 02-12 was called into question on four separate grounds. These are each discussed below.

1. First Public Road

Pursuant to Section 30603(a)(1), developments approved by the local government that are located between the sea and the first public road paralleling the sea are appealable. In the project vicinity, Pacific Coast Highway is the "first road paralleling the sea." 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.

Some allegations contended that Local Coastal Development Permit No. 02-12 authorized 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. The allegations contended that this work constitutes "development" as defined in Coastal Act Section 30106 and Section 245.04(J) of the City's Local Coastal Program and that since development is occurring within the right-of-way, the City's action approved development located "between the first public road and the sea" and, thus, would be appealable.

However, written and oral testimony was presented at the public hearing by Commission staff, and by the project applicant. While the work identified above is planned to occur, the testimony indicated that the highway widening was not part of the development authorized under City approved Coastal Development Permit 02-12. Rather, the highway widening is a Caltrans project that was previously approved by the Commission in the 1980s. Thus, there is no development authorized by City-approved Coastal Development Permit 02-12 located between the sea and the first public road paralleling the sea, and therefore the City-approved permit is not appealable under Section 30603(a)(1) of the Coastal Act on that ground.

2. Wetlands

Pursuant to Section 30603(a)(2), development approved by a local government that is located within 100 feet of a wetland is appealable. Allegations were made that wetlands are present on the subject site and that development authorized by City-approved Coastal Development Permit 02-12 is located within 100 feet of those wetlands.

REVISED FINDINGS Executive Director Dispute Resolution 5-04-249-EDD Appealability of Pacific City Project Page 5

At the public hearing both oral and written testimony was presented by the City, the project applicant, and members of the general public. The testimony presented included both assertions that wetlands do exist on the site, as well as assertions that no wetlands exist on the site. In addition, evidence was submitted in written form prior to the hearing.

The environmental document used by the City to approve the project (EIR) concluded that no wetlands existed at the site. Among the information supporting the conclusions in the EIR were two biological surveys conducted at the subject site. These are dated February 28, 1998 and February 6, 2002 and both were prepared by BonTerra Consulting. In addition, the City recently obtained a limited field reconnaissance of the subject property that was conducted by P & D Consultants on July 14, 2004. All of these biological studies concluded there were no wetlands present on the site. The site was previously used for oil drilling, commercial and residential uses and has also been the subject of two recent, previous coastal development permits. In 1999 and 2000, coastal development permits were issued by the City and the Commission did not object to the City's determination of the appealability of the development identified in those approvals. Since that time, a remediation project has been on-going at the site pursuant to those previous authorizations. Finally, maps of sensitive habitat contained within the certified LCP, while not intended as a comprehensive catalog of the location and extent of all wetlands present within the City, do not identify this site as one containing wetlands.

Members of the public submitted photos and personal observations of wetland indicator species. These photos and statements, however, were not determinative of the presence of wetlands because they merely showed the possibility of the presence of certain indicator species at the site, which at the time was disturbed by soil remediation activities. The members of the public did not submit professional, quantitative surveys of the wetland indicator species they observed. Accordingly, although this evidence provided some indication of the existence of hydrophytic vegetation, there was no evidence presented regarding whether such vegetation predominated. Furthermore, the Commission's biological expert was not able to investigate the presence of wetlands at the site. Thus, no evidence submitted established the presence of wetlands pursuant to the Commission's definition.

The Commission reviewed all the evidence that was before it, and it concluded that, on balance, in this particular case, the evidence provided an insufficient basis for a determination that wetlands were present. Therefore, the Commission finds that the Cityapproved Coastal Development Permit 02-12 is not appealable under Section 30603(a)(2) of the Coastal Act.

Major Public Works Project

Pursuant to Section 30603(a)(5), development approved by a local government that constitutes a "major public works" project is appealable. Section 30114(b) of the Coastal Act defines "public works" to include all "public transportation facilities, including streets,

REVISED FINDINGS

Executive Director Dispute Resolution 5-04-249-EDD
Appealability of Pacific City Project
Page 6

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.

Allegations were made that the widening of Pacific Coast Highway (and the associated removal of on-street public parking spaces) constitutes a "major public works" project. In this case, none of the provisions listed in subdivision (b) applies to that widening of Pacific Coast Highway. Moreover, as described previously, the highway widening is part of a Caltrans project previously approved by the Commission in the 1980s, and is not part of the City-approved development. Thus, the highway widening is not part of the development authorized under City approved Coastal Development Permit 02-12. Therefore, because the highway widening is not part of the City-approved Coastal Development Permit it does not provide grounds for appeal as a "major public works" project under Section 30603(a)(5) of the Coastal Act.

4. Distance of Approved Development from the Sandy Beach

Pursuant to Section 30603(a)(1) of the Coastal Act, development approved by a local government is appealable if the approved development is located within 300 feet of the inland extent of the sandy beach. In this case, there are a roadway, sidewalks, beach level bike path and a wide paved public parking lot between the development and the sandy beach. The *Post LCP Certification Permit and Appeal Jurisdiction, City of Huntington Beach* map adopted by the Commission on May 24, 1985 (herein "post-cert map") indicates the private land within which the development is occurring is not within 300 feet of the inland extent of the sandy beach.

At the public hearing both oral and written testimony was presented by Commission staff, the project applicant, and members of the general public. The testimony presented included both assertions that the site was within 300 feet of the sandy beach and that it was not. However, the information and materials presented to the Commission prior to or at the time of its action, which asserted that some development was located within 300 feet of the sandy beach, did not compel the Commission to find that the City-approved coastal development permit authorized development located within 300 feet of the inland extent of the sandy beach. Rather, the Commission found more persuasive the testimony that its mapping staff, which has specific expertise in this area, had evaluated the situation and,

REVISED FINDINGS Executive Director Dispute Resolution 5-04-249-EDD Appealability of Pacific City Project Page 7

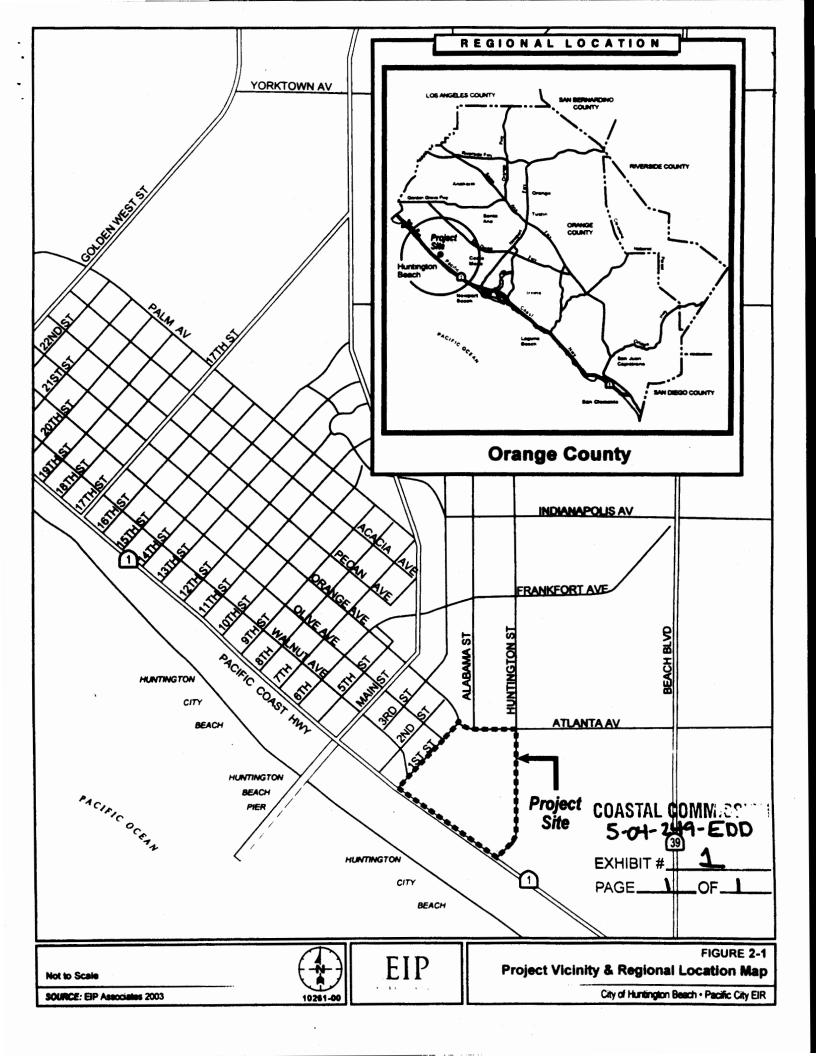
consistent with the post-cert map, determined that the project site is more than 300 feet from the inland extent of the sandy beach. Thus, the Commission finds the development authorized by City-approved Coastal Development Permit 02-12 is located in an area that is not appealable under Section 30603(a)(1) of the Coastal Act.

C. CONCLUSION

Section 30603(a) of the Coastal Act describes the types of developments that may be appealed to the Coastal Commission after certification of a local government's Local Coastal Program. Questions were raised as to whether the development approved by the City under local Coastal Development Permit 02-12 was appealable based on four possible grounds. As described above, the Commission found that none of the possible bases for appeal are applicable to City-approved Coastal Development Permit 02-12.

Therefore, for all the reasons outlined above, the Commission finds that the City's approval of local Coastal Development Permit 02-12 is not a development appealable to the Coastal Commission.

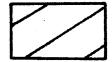
5-04-249 EDD RF2.05 mv



ment and/or the Executive Director of the Commission for 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 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 appeal jurisdiction

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 wellands: and lands within 300' of the top of the seaward face of coastal bluff.



City Boundary

800. 400

Scale



800

1600

800'



Appeal Jurisdiction (P.R.C.§30613)

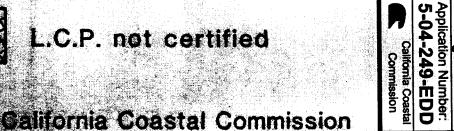
This area includes lands where the Commission has delegated original permit jurisdiction to the local government for areas potentially subject to the public trust but which are determined by the Commission to be filled, developed, and committed to urban uses.



L.C.P. not certified



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 palso be appealable pursuant to P.R.C. \$30603(a)(3), (a)(4), and (a)(5). If questions arise concerning the precise tocation 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



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: <u>Public Hearing Part 1 of 2</u> 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 <u>Public Hearing Part 2 of 2</u> — 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.

| LATREAC | COMMICSION | |
|---------|------------|---|
| UGASIAL | | J |

EXHIBIT : 39
PAGE 1 CF 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,

Enclosure:

City Clerk

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.

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

<u>Coastal Zone Status</u>: 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 3510N consultant hired by the City to analyze the potential impacts to the project, and certified by the City Council on June 7, 2004.

g:/followup/appeal/coastal.comm/cdp.00-15.doc

TXHISIT # 3b PAGE 1 1 OF 2 <u>Action</u>: 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,

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 # 36 PAGE 2 OF 2



City of Huntington Beach

2000 MAIN STREET

CALIFORNIA 92648

DEPARTMENT OF PLANNING

Phone Fax

536-5271

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 <u>not</u> 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.

CCASTAL COMMISSION

| EXHIBIT #_ | <u> </u> |
|------------|----------|
| PAGE | _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.

Sinceraly.

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 100 feet of the seaward face of any coastal bluff. 5-04-349-EDD
 - (3) Developments approved by the local government not the discontinuous paragraph (1) or (2) that are located in a sensitive coastal resource area.

Pacific City NOP Page 2

- (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

PAGE 2 OF 2

AGES 3-6 Available Mon Read

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 hydrophytiquegethimission 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 5

DEIR Comments—Pacific City Page 2 of 5

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.

COASTAL COMMISSION

| EXHIBIT | # | _5 | · |
|---------|---|----|---|
| PAGE | 2 | OF | 5 |

DEIR Comments—Pacific City Page 3 of 5

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 TOTASTAL COMMISSION

Visual Impacts

Regarding visual resources, the LUP contains the following policies:

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

DEIR Comments—Pacific City Page 4 of 5

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 inlieu 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 the MMISSION 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 expects 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

DEIR Comments—Pacific City Page 5 of 5

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,

Supervisor, Regulation & Planning

Orange County Area

cc: State Clearinghouse, File

H.\Letters\CEQA\EIR\Pacific City-HB.doc

COASTAL COMMISSION

EXHIBIT # 5

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.]

EXHIBIT # 6
PAGE 1 OF 2

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,

[Ondival Sidwed by]

Meg Vaughn Staff Analyst

HNB PcfCty Itr 4.13.04 mv

COASTAL COMMISSION

EXHIBIT # 6

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 Stemp by]

Meg Vaughn Staff Analyst

COASTAL COMMISSION

| EXHIBIT #. | | 7 | |
|------------|---|-----|--|
| PAGE | 1 | _OF | |

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

EXHIBIT # 8

South Coast Region

JUN 2 4 2004

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

109 Huntington Street, Huntington Beach, CA 92648

Paul Canss

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 their 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 COASTAL COMMILLION CONFRONTING THE COASTAL AREA.

| EXHIBIT# | 9 |
|----------|-------|
| PAGE | LOF_L |



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 application of ISSICN

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 of the structure.

| EXHIBIT #_ | 10 |
|------------|--------|
| PAGE | L OF 6 |

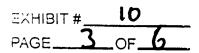
City Clerk of the City of Huntington Beach Appeal of Certification of EIR No. 02-01 Page 3 of 7

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 substandard 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 **COASTAP** (ON 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 CEOA:

- 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.

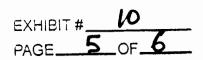
However, restricting consideration to only those options that reduce impacts to a less-than-significant level is a contrived limitation that artificially finds pragmatic alternatives to be unworthy of serious study. Under the rationale used in the EIR, if a proposed project had no significant environmental 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 COASTAIRCOMORSSION consistent with applicable law and the alternatives analysis is flawed.

EXHIBIT # W
PAGE 4 OF 6

- 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.
- o 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.



City Clerk of the City of Huntington Beach Appeal of Certification of EIR No. 02-01 Page 7 of 7

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

Spain K Miller

COASTAL COMMISSION

EXHIBIT # 10
PAGE 6 OF 6

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:



COASTAL COMMISSION

| EXHIBIT#_ | | |
|-----------|------|---|
| PAGE | LOF_ | 2 |

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

Mark D. Bixby 17451 Hillgate Ln Huntington Beach, CA 92649-4707 714-625-0876 mark@bixby.org

Attachments

COASTAL COMMISSION

EXHIBIT # 11
PAGE 2 OF 2



Jennifer McGrath City Attorney

OFFICE OF CITY ATTORNEY

P.O. Box 190 2000 Main Street Huntington Beach, California 92648

Telephone: (714) 536-5555 Facsimile: (714) 374-1590 Paul D'Alessandro, Assistant City Attorney Scott Field, Assistant City Attorney Lee Burke, Deputy City Attorney John Fujii, Deputy City Attorney Leonie Mulvihill, Deputy City Attorney Sarah Sutton, Deputy City Attorney

July 1, 2004

RECEIVED South Coast Region

JUL 0 6 2004

CALIFORNIA COASTAL COMMISSION

Long Beach, CA 90802-4302

South Coast Area Office 200 Oceangate, Suite 1000

Dear Mr. Schwing:

Mr. Karl Schwing

California Coastal Commission

I have reviewed your letters to Mr. Howard Zelefsky dated June 23 and 25, 2004, regarding the City's approval of Coastal Development Permit 02-12 ("CDP 02-12"). In your letters, you claim that the City's Notice of Final Action ("NOFA") on CDP 02-12 is deficient because it does not state that the approval of CDP 02-12 is appealable to the Coastal Commission ("the Commission"). You request that the City issue a new NOFA stating that CDP 02-12 is appealable. You state that the "deficiencies must be resolved before the notice of final action can be accepted." You argue that the project is appealable because: 1) it is within the Commission's appealable jurisdiction; 2) the site contains wetlands; and 3) the project may contain development within the Pacific Coast Highway right-of-way.

As will be more fully explained below, the City strongly disagrees with your assertions regarding the NOFA. Further, the City does not intend to issue a new NOFA indicating the project is appealable. The City believes the NOFA is adequate as a matter of law, and that the issuance of a new NOFA that changes the appealability of the approval, as you have urged, would violate the Huntington Beach Zoning and Subdivision Ordinance ("HBZSO") and the City's certified Local Coastal Program ("LCP"). The City will not assist you in what appears to be an attempt by the Commission staff to illegally circumvent the HBZSO and the certified LCP.

1. Your Request to Change the Non-Appealable Status of the Project Is Untimely.

Your primary assertion is that the NOFA is deficient because it does not identify the City's approval as appealable to the Commission. Quite simply, the NOFA does not identify the CDP as appealable because the City has previously determined it is **non-appealable**. Pursuant to the Commission's own regulations, local agencies are required to make a determination about appealability upon project submittal. (Cal. Code of Regulations Section 13569.) There is no authority in either the Coastal Act or the Commission's Regulations for the Commission to revisit this issue after a project has been fully approved. Rather, this issue must be determined

COASTAL COMMISSION 5-04-249-EDD

1

early in the process, so that the notices for the project can accurately inform the public as to whether the project is appealable to the Commission.

To implement the Coastal Act and the regulations, the City has adopted a similar requirement as part of its certified LCP. Pursuant to HBZSO 245.14, the determination of appealability is required to be made by the Planning Director at the time the project is submitted. An administrative appeals process exists to challenge this determination. (HBZSO Section 245.14.) After the Director made the determination regarding this project, no timely challenge (in fact, no challenge at all) was made. The time period to challenge the determination has long since expired. Any challenge is now legally precluded due to failure to exhaust the available administrative remedies set forth in the certified LCP.

Even if the time to challenge the determination was extended to much later in the process, for instance, until when the Commission received notice of the project's non-appealability in January of 2003 as part of the Notice of Preparation of the environmental impact report, or when the Commission again received notice of the project's non-appealability on March 11 and 18 of 2004 as part of the Notice of Public Hearings on the CDP, there was still no challenge to the determination in the manner approved by the Commission in the certified LCP.

Thus, even if any of the assertions in your letters were correct, which they are not, it is now too late as a matter of law to challenge the City's determination of non-appealability. To the extent your letter attempts to challenge this determination, it is untimely. To the extent you have attempted to manufacture a dispute regarding the appealability of CDP 02-12, or if the Commission intends to hold some sort of a hearing on this matter, such actions are *ultra vires* and have no legal effect.

2. The Project Is Located Outside the Commission's Appealable Jurisdiction.

The simple fact is that the project site is located beyond 300 feet from the beach, and therefore is outside the appealable jurisdiction of the Commission. No evidence has ever been presented to the contrary. Moreover, the Commission's staff has already concurred with this conclusion. On January 10, 2003, Commission staff received the Notice of Preparation of the EIR for CDP 02-12. Long after the close of the 14-day comment period, on February 26, 2003, the City received a letter from the Commission staff confirming that the project "appeared to be outside the Commission's appeal jurisdiction." (Letter from Meg Vaughn to Marybeth Broeren, dated February 25, 2003.)

Mr. Scott Hess of the City staff subsequently contacted Ms. Vaughn on March 24, 2003, to definitively verify that the project was outside the Commission's appealable jurisdiction. Ms. Vaughn wrote to the Commission's San Francisco mapping division to confirm that the project was located outside the Commission's appealable jurisdiction. On June 7, 2003, Ms. Vaughn contacted Mr. Hess and again confirmed that the project was, in fact, located in the non-appealable area. In accordance with the HBZSO and the certified LCP, all subsequent notices

COASTAL COMMISSION

EXHIBIT # 12
PAGE 2 OF 4

identified the project as non-appealable. Thus, it is clear that the project is located outside the Commission's appealable jurisdiction.

3. The Project Site Does Not Contain Wetlands.

Next, you argue that the project is appealable because the site may contain wetlands. This assertion is incorrect. There are no wetlands on the site, as fully documented in the certified environmental impact report for the project, EIR No. 02-01. In addition, for at least 50 years, the project site has been previously developed with a variety of uses, including oil recovery operations, restaurants, mobile homes, parking lots, and other uses. Also, the City's certified LCP, which identifies the wetlands areas within the coastal zone, has never identified the site as containing wetlands or having any other environmentally sensitive habitat areas.

Notice of the Comment Period for the Draft Environmental Impact Report (DEIR) for the project was sent to the Commission on October 14 and 16, 2003. The 45-day comment period expired on December 3, 2003. No comments on the DEIR from the Commission staff were received during the comment period.

On January 26, 2004, almost two months after the close of the comment period, you requested a second copy of the DEIR, which was provided to you. On March 19, 2004, fully three and one-half months after the close of the comment period, you submitted a comment letter claiming that the site "might" contain wetlands, despite the fact that the lack of wetlands on the site was fully documented and analyzed in the DEIR.²

To now argue that CDP 02-12 is appealable to the Coastal Commission based on the presence of wetlands on the site is not only disingenuous, but a gross misstatement of the facts as determined by numerous approved environmental documents.

4. The Project Does Not Include Development in the Pacific Coast Highway Right of Way.

Finally, you argue that the project includes removal of parking spaces along Pacific Coast Highway ("PCH") for the addition of a traffic lane thereto, and that this action constitutes development within the PCH right-of-way, which renders the project appealable to the Commission. Again, this assertion is incorrect. The project description does not include the removal of any parking spaces from PCH, nor does the project approved by CDP 02-12 contemplate any such action. Instead, the boundaries of the project are as defined by Tentative Tract Map No. 16338, of which you were provided a copy as part of the project documents.

EXHIBIT # 12
PAGE 3 OF 4

¹ It is worth noting that the City and Commission have consistently held that the site is outside the Commission's appealable jurisdiction. Most recently, in December of 2000, the City issued Conditional Use Permit ("CUP") 00-36 and CDP 00-09 relating to soils remediation on the same site. Pursuant to the HBZSO and the certified LCP, the City determined that the project was non-appealable. The Commission had full notice of this action. No one, including the Commission, ever challenged the determination of non-appealability.

² Two years previously, CDP 00-09 arrived at the same conclusion regarding the absence of any wetlands, and authorized removal and remediation of 30,000 cubic yards of soils on the same site. The Commission did not challenge this determination.

COASTAL COMMISSION

In fact, the widening of PCH is a CALTRANS project approved in 1986 that is not a part of CDP 02-12. As part of the 1986 approval, the Commission determined that the widening project was consistent with the Coastal Act.

5. Conclusion.

When the City Council adopted the HBZSO, it established the process for determining whether a CDP was appealable to the Commission. When the Commission certified the City's LCP, it approved this process. In order to comply with your request, the City would have to circumvent the procedures set forth its own Zoning Ordinance and the certified LCP as approved by the Commission. Since you have essentially requested the City to perform an illegal act, your request is rejected.

The City considers CDP 02-12 to have been properly processed and approved. Assuming that the conditions contained in the entitlements are satisfied, and absent a court order to the contrary, the City intends to issue building permits for the project upon request.

Please contact me at your earliest convenience if you have any further questions regarding this matter.

JENNIFER MCGRATH

City Attorney

Copies To:

Honorable Chair Riley and Members of the Coastal Commission

Honorable Mayor Green and Members of the City Council Peter Douglas, Executive Director, Coastal Commission

City Administrator Penelope Culbreth-Graft Asst. City Administrator William Workman

Planning Director Howard Zelefsky

Planning Manager Scott Hess

Assistant City Attorney Paul D'Alessandro Deputy City Attorney Leonie Mulvihill

John Erskine

COASTAL COMMISSION

PAGE OF 4

Mr. Karl Schwing California Coastal Commission 200 Oceangate, Suite 1000 Long Beach, CA 90802-4302

Dear Mr. Schwing:

RECEIVED
South Coast Region

JUL 0 7 2004

CALIFORNIA COASTAL COMMISSION

Reference...

- Appealability of Pacific City Project
 - Coastal Development Permit No. 02-12
 - Public Comments / Input (originally ignored by City Council)
 - John Sisker...
 - Pacific Mobile Home Park Resident / Representative &
 - Co-Founder: Pacific City Action Coalition

The Pacific City Project is within the Coast Commission's jurisdiction, yet the City of Huntington Beach publicly stated (orally and in writing) that the City Council's decision was not appealable. Therefore, they refused to address any of the forgoing. Not only should this hearing be re-opened, but the general public really needs to be heard.

This information and my personal comments are in reference to how the Pacific City Project will ultimately impact Pacific Mobile Home Park and the surrounding neighborhoods. This also is to take into consideration the total project build-out and impacts to areas outside the project boundaries itself in accordance with state and federal requirements. In addition, any and all know and future impacts to the residents Pacific Mobile Home Park must be reveals as part of the disclosure requirements, along with the role other agencies, such as Cal-Trans and the City would have during or after final build-out.

Likewise, and in spite of what the residents of Pacific Mobile Home Park have been told, the Pacific City Environment Impact Report (EIR) itself reveals the fact that the Delaware Street extension, south of Atlanta Avenue, will indeed need to be part of the ultimate build-out plan for the Pacific City. This appears to take place sometime between the years 2008 and 2020. This would in essence eliminate Pacific Mobile Home Park. Yet, no disclosure or other type acknowledgement has been coming forth at all by the Park Owners, Park Management Company, the City, and/or Makar Properties. Currently, the residents of Pacific Mobile Home Park are relying on seemingly conflicting verbal information from the developer and city itself, and are therefore replacing existing mobile homes with new manufactured housing, as part of our 'upgrade the park' program.

| COASTAL COMMISSION 5-04-249-EDD | \ |
|------------------------------------|---|
| EXHIBIT # | |
| PAGE/OF | |

Encroachment, Traffic and Density

The development involves a 400-room hotel and a project 197,000 square feet of commercial/retail space on 10 acres coupled with 516 condominiums on 17 acres. At an average of 30 dwelling units per acre, this is the maximum density allowed by the city for residential development and more than three times that of the pending residential development behind the Hyatt hotel.

In addition to the unanswered questions as to how Pacific City's density and increased traffic will impact the surrounding neighborhoods, one looming issue pertains to the future of nearby Pacific Mobile Home Park.

How will the Project Impact both the Pacific Mobile Home Park and the Surrounding Neighborhoods?

(Issues involving Pacific Mobile Home Park, Surrounding Streets and Potential Wetlands)

These comments address the Pacific City project impacts to Pacific Mobile Home Park and the Draft EIR's failure to analyze the ultimate outcome during and after build-out of Pacific City to Pacific Mobile Home Park. This would include the Delaware Street extension, which the EIR seems to indicate would eliminate the mobile home park and the widening of Atlanta Avenue between Huntington Street and Delaware Street.

According to Councilmember Connie Boardman, the City has been meeting with the owners of Pacific Mobile Home Park, Mark Hodgson and his brothers as to the impact Pacific City will have on the park and the residents.

Any and all known future impacts to this mobile home park and the residents must be disclosed. The residents have been told, both directly and indirectly, that the present owners of this park intend to keep said property as a mobile home park well into the future. Residents, acting upon this information, are putting in new homes as well as fixing up existing ones. The Environmental Impact Report fails to address the project's impact on the park.

THE FOLLOWING CONCERNS HAVE NOT BEEN ADDRESSED BY THE EIR:

- TOTAL AND ULTIMATE IMPACT(S) TO PACIFIC MOBILE HOME PARK:
 Regarding Huntington Street, Atlanta Avenue, Delaware Street (extension), and Pacific
 View Avenue...
 - Precise alignments and/or improvements
 - Mobile home park entrance/exit
 - Total number and identification of mobile homes to be displaced

| EXHIBIT # | 13 |
|-----------|-------|
| PAGE 2 | _or_8 |

- Ingress/egress from Huntington Street and Atlanta Avenue into Pacific City and/or Pacific Mobile Home Park
- Number of inlets and outlets
 - · Set back requirements on street, restricted flow of traffic
 - · Intended land use if not a mobile home park
 - Time frame
 - Known factors by park owners/management company

• ULTIMATE EXTENSION OF DELAWARE STREET:

Regarding the Master Plan of Arterial Highways and City Circulation Element from Atlanta Avenue to Pacific View / Huntington Street

- Will eliminate Pacific Mobile Home Park
- Time frame

THE TAKING (POSSIBLE EMINENT DOMAIN) OF ANY OR ALL OF PACIFIC MOBILE HOME PARK:

- Compensation to residents / landowner
 - Market value
 - Time frame

• THIRTEEN, TEN AND/OR SIX FOOT EASEMENT(S) INTO PACIFIC MOBILE HOME PARK:

- Parallels Huntington Street
- City and/or Edison easement
- Effects on mobile home park
- Time frame

PACIFIC VIEW / HUNTINGTON STREET:

- Designated for signalized intersection
- When and what configuration
- Eliminate connect to pacific view/dead end Huntington Street
- Time frame

THE PRECISE WIDENING / REALIGNMENT OF HUNTINGTON STREET, ATLANTA AVENUE, AND 1ST STREET AND RELATED INTERSECTIONS:

- All projected / future circulation elements and traffic flow patterns
- Configuration for all curbs, gutters, sidewalks, pedestrian paths, bikeways, onstreet parking, underground utilities and other infrastructure needs; curb cuts, bus routes, ingress / egress into development and/or surrounding communities
- Needs to be determined for both sides of each street
- Time frame

| EXHIBIT #_ | 13 |
|------------|---------------|
| PAGE 3 | OF_ <u>රි</u> |

• THE EIR FAILS TO ADDRESS HOW THE PACIFIC CITY SITE AND/OR OTHER ADJACENT PROPERTIES WILL BE USED FOR ANY FUTURE PARKING ISSUES:

- The Waterfront Hilton/Hyatt seemingly not providing adequate parking for guests and/or employees
- Has no on-site parking areas for tour buses and/or moving vans for convention equipment
- Hotel employees still required to park off-site at peak times, and have been since the early 1990's, on the Pacific City site itself
- Impact to surrounding neighborhoods when Pacific City site is no longer available for overflow Waterfront parking
- It is believed Waterfront hotel employees are being charged if they do park within the hotel parking areas that were supposed to be part on the approved on-site employees parking management plan
- Some employees parking within the beach public parking lot instead, and before hours to avoid being charged

• POSSIBLE TAKING OF HOUSES / PROPERTY ALONG DEVELOPED SIDE OF ATLANTIA AVENUE:

- Possibly through future eminent domain
 - Any improvements to existing road circulation
 - Time frame

IMPACT ON THE CITY OF NEWPORT BEACH:

- With the addition of a projected 3,000 cars per day to the Pacific City site alone, the City of Newport Beach anticipates that at least half these cars will end up in their city
- This will cause increased traffic on already congested Pacific Coast Highway and other roads within their city
- Concerns about the proposed 19th Street bridge across the Santa Ana River what if the bridge isn't built? How will traffic be handled in this case?

• POSSIBLE SIGNIFICANT WETLANDS VEGETATION AND/OR PONDING ON SITE:

- Potential wetlands vegetation and ponding identified by Mark Bixby was not adequately addressed in the EIR
- Developer Makar Properties was stopped twice in September of 2003 for grading without a permit immediately after Bixby's presentation on this subject to the City Planning Commission

| EXHIBIT #_ | . 13 |
|------------|------|
| PAGE | OF8 |

PROPOSED MITIGATIONS

- The widening of Huntington Street, from Pacific View Drive to Atlanta Avenue, for proper traffic flow for north / south circulation (including right- and left-hand turn pockets, center landscaping, bicycle lanes) using the Pacific City developers property. We oppose any encroachments into surrounding neighborhoods including that of Pacific Mobile Home Park.
- The widening of Atlanta Avenue from Huntington Street to Delaware Street, to eliminate the bottleneck, and to be configured so that no existing mobile homes will be effected within Pacific Mobile Home Park.
- Elimination of the decades-old realigned plans and proposed Delaware Street extension, as currently projected on both the City and County master traffic plans. The extension is intended to connect Delaware Street with Huntington Street at Pacific View Drive, thus eliminating Pacific Mobile Home Park according to the Pacific City Environmental Impact Report (EIR).
- Full and complete disclosure from the owners and property management company regarding impacts to Pacific Mobile Home Park.
- Reducing the proposed density of 516 residential units, as this will cause major traffic and parking impacts in the region, particularly during the summer months.
- Maintaining as many existing view corridors for all residents in the surrounding neighborhoods.
- Perform a totally new and updated traffic study using today's actual traffic flow, street congestion, parking issues, etc., which would then be the basis for any future traffic projections because of Pacific City.
- Pacific Mobile Home Park, and/or other adjacent properties, not to be used as a solution for future parking and/or other related issues, by Makar Properties, the Robert Mayers Corporation, and/or the City.

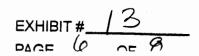
PACIFIC CITY ACTION COALITION DRAFT EIR COMMENTS

- The EIR does not adequately address amplified noise from the commercial portion of the development. Significant impact has been experienced in the neighborhoods surrounding the Hyatt as they frequently have outdoor amplified concerts/events that intrude on the generally low level noise of a residential area.
- The EIR does not adequately outline "public access" to the bridge over PCH that is
 proposed. If the measure of "public access" experienced at the Hyatt project is an
 indicator, this would be deemed unacceptable. Public access and utility should include.
 COASTAL COMMISSION

| 5 0 8 | EXHIBIT#_ | 13 |
|--------------|-----------|------|
| PAGE J UE UE | PAGE 5 | OF 8 |

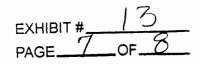
consideration of useful route, maximum width, clear signage or views indicating access, no limits/obstructions on public access i.e. events/restrictions on common beach access modalities such as bikes/roller blades/wagons. Access should be clear and functional for all these modes.

- The EIR does not adequately address light contamination that results from significant
 use of "up" lighting as demonstrated by the Hyatt. Impact on surrounding neighborhoods
 is significant at night and intolerable during the frequent foggy weather we experience
 near the beach.
- Erosion control was poorly managed at the Hyatt development and the residential
 project to the North of it despite fines and significant community/public works/water
 quality board involvement. There needs to be clearly outlined process with active city
 involvement, oversight and significant negative impacts to the developer should erosion
 control fall out of substantial compliance. The city public works department was unable
 to change the gross inconsideration and impact of silted storm drainage into neighboring
 communities and our wetlands/ocean.
- The timeline proposed is unacceptable. If the developer is hindered by finance concerns
 (as experienced by the Hyatt project) perhaps a more stable, more aptly funded
 developer should be considered. IF such a timeline is unavoidable, the impacted
 residents should be afforded EXTRAORDINARY accommodation in minimizing intrusion
 and impacts (noise blankets, temporary relocation, monitoring of air/noise/storm drain
 quality).
- Alternatives to the proposed density were not adequately explored in the EIR. Current development at the Waterfront residential project is not as dense, yet the EIR states that lower densities would not meet current planning goals.
- Pedestrian access in and around the project is not adequately address in the EIR. If this
 project were to be an asset to the community and not just to the developers that sell it,
 pedestrian issues would be a primary consideration. Sidewalks on all borders and
 throughways to the property, clear rights of way for pedestrian and bicycle/roller blade
 traffic would create a project open to area residents and facilitating access to
 commercial, pier, beach and downtown venues by paths other than PCH. The
 "commercial" aspects of the Hyatt project were oversold to the community and remain
 primarily hotel oriented. Sidewalks on one side of the street and not the other create an
 uninviting environment for local pedestrian traffic... a major source of revenue in the offpeak seasons.
- The balance of commercial to residential space is too far toward residential. If this
 project and the city are to seek destination status, there needs to be a greater draw than
 very dense resident traffic/consumption. This city could use a few more active cash
 registers in the primary tourism areas adjacent to the coast. High quality dining absent
 the pricing and limitations of a hotel venue are the first opportunities that come to mind.
- Parking, while it may be in compliance with code, is inadequate for a "destination" project, and does not consider the downtown area as having been built prior to COASTAL COMMISSION



generation of current parking codes. Parking for residential and commercial uses is inconvenient and inadequate. Multi level garage parking may put money in the pockets of some and "adequately" manage focused concerns, but ample street and single level parking creates the feeling of open space and quality of life that the pier/downtown area is worthy of. It is of interest to note that the Hyatt directs its employees to park in the adjacent communities when holding large events ... presumably because the parking designed is inadequate to accommodate both employees and guests. The downtown area can ill afford this impact.

- Increased traffic in the area is inevitable. While traffic studies in the EIR don't suggest a
 traffic light at the intersection of Atlanta and Huntington, common sense does. As
 frequent travelers to this intersection confidently state, summer traffic is already a
 concern, without the proposed development. Without a timed break in traffic, access to
 downtown areas becomes tenuous and crossing Atlanta via the crosswalk at Delaware
 to access the local park quite hazardous due to the incline, lines of sight and speed
 along the wide Atlanta corridor.
- Significant unavoidable impact on traffic at PCH and Warner creates a question of air quality impact on the Bolsa Chica. Idling traffic can already be a problem as commuter traffic backs up from Warner south along PCH. There is no consideration of air quality impact due to idled traffic for this avian sanctuary or for the wetland areas south of the development that will experience increasing traffic loads and idle time.
- Significant conflicting messages exist regarding traffic concerns as they relate to the
 county plan. Most proximate is the extension of Delaware to the south. Is this being
 proposed and used in traffic projections? Are the traffic projections considering the 19th
 street bridge over the Santa Ana River? These two issues are contentious and are not
 reliably prone to inclusion or exclusion when projecting traffic impact.
- Impact on local schools should be considered WITH projected impacts of current and planned future development in the downtown area.
- Height or number of stories above curb height should be portrayed. The 4 story limitation
 presented for the Hyatt was misleading to the public as the project resulted in a final
 height far above that presented publicly when soil compaction and parking garage
 additions to height were added.
- Traffic impacts to the south including nearest freeway access to the 55 are not addressed in the EIR draft.
- The contaminated soil, along with the conflicting reports from both Makar Properties (Chevron Oil Company) and the Hyatt Regency (Robert Mayers Corporation in reference to the 1999 soil transport from the Pacific City Site to the Hyatt Site has yet to be truthfully addressed.
- A Deed Restriction and/or Conditional Use Permit that is final and permanent, needs to be in place so the public access through the Pacific City Project itself, in accordance with COASTAL COMMISSION



Coastal Commission requirements, cannot simply be voted out at some future time by the Pacific City Homeowners Association - or other such entity.

Summary

- WIDEN HUNTINGTON STREET INTO THE DEVELOPER'S PROPERTY to ease traffic flow to and from Pacific Coast Highway, including right-and left-hand turn pockets and bicycle lanes.
- ELIMINATE THE PROPOSED DELAWARE STREET EXTENSION FOR THE LIFE OF THE PACIFIC MOBILE HOME PARK as currently projected on both the City and County master traffic plans.
- REDUCE TRAFFIC IMPACTS BY REDUCING THE RESIDENTIAL DENSITY IN KEEPING WITH THE SURROUNDING NEIGHBORHOODS.
- FULLY ADDRESS AND RESOLVE THE OTHER ISSUES AND CONCERNS that affect Pacific Mobile Home Park and the surrounding communities.
- DISCLOSE ANY AND ALL KNOWN, AND FUTURE, IMPACTS TO PACIFIC MOBILE HOME Park and other adjacent areas.

Sincerely,

John Sisker

80 Huntington St., #266

Huntington Beach California 92648

(714) 536-3850

COASTAL COMMISSION

EXHIBIT # 15

LAW OFFICES

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

WALTER L NOSSAMAN (1886-1964)

WILLIAM E GUTHNER, JR (1932-1999)

SAN FRANCISCO THIRTY-FOURTH FLOOR 50 CALIFORNIA STREET SAN FRANCISCO, CA 94111-4799 (415) 398-3600

LOS ANGELES THIRTY-FIRST FLOOR 445 SOUTH FIGUEROA STREET LOS ANGELES, CA 90071-1602 (213) 612-7800

SUITE 1800 18101 VON KARMAN AVENUE IRVINE, CALIFORNIA 92612-0177 TELEPHONE (949) 833-7800 FACSIMILE (949) 833-7878

July 8, 2004

JOHN T KNOX WARREN G ELLIOTT OF COUNSEL

WASHINGTON, D.C./VIRGINIA SUITE 600 2111 WILSON BOULEVARD ARLINGTON, VA 22201-3052 (703) 351-5010

SACRAMENTO **SUITE 1000** 915 L STREET (916) 442-8888

SACRAMENTO, CA 95814-3705

JUL 1 2 2004

REFER TO FILE NUMBER 270932-0001

VIA DELIVERY AND CERTIFIED MAIL

COASTAL COMMISSION

Chairman Mike Reilly California Coastal Commission South Coast Area Office 200 Oceangate, Suite 1000 Long Beach, CA 90802-4302

Th16a

Dispute Resolution No. 5-04-249-EDD Hearing re: Re:

Pacific City Appealability; Staff Report Dated July 1, 2004

Dear Chairman Reilly:

This firm represents the Pacific City (the "Project") applicant, Makallon Atlanta Huntington Beach LLC ("Makar Properties") with respect to the certification of EIR No. 02-01 and related City of Huntington Beach project entitlement applications, including Coastal Development Permit No. 02-12 ("CDP"). We have reviewed the above-referenced Coastal Commission staff report for the July 16, 2004 hearing on Pacific City Appealability "Dispute Resolution" No. 5-04-249-EDD, as well as the City of Huntington Beach City Attorney's letter, dated July 1, 2004, responding to prior Commission staff letters on the same subject, sent to the City on June 23 and June 25, 2004.

The points developed more fully below can be briefly summarized as follows:

- (1) The appeal is untimely, given the time constraints imposed by section 13569 of the California Code of Regulations (Title 14) and the procedure described in the City's certified LCP, at Zoning Code section 245.14.
- **(2)** There are no wetlands on the property: the pooling of groundwater in a remediation pit is not a "wetland," and there is no evidence in the two certified LCPs (1985, 2001) of any wetlands on the property. **COASTAL COMMISSION**

242712 2.DOC

EXHIBIT# PAGE___I

- (3) The roadway widening of PCH is a *Caltrans* project, already certified by the Commission, and partially completed along other sections of PCH, which will occur with or without Pacific City.
- (4) The widening of PCH, at the *inland* side of the road, cannot reasonably be argued to constitute a development "between the sea and the first public road paralleling the sea."
- (5) The Project is not a major public works project, since the roadway widening will not cost more than \$100,000, as adjusted in accordance with the Engineering News Record Construction Cost Index.
- (6) Even if the Commission decides to assert jurisdiction, the assertion would have no point, since the only issue to be decided is whether the project conforms to the certified LCP. Since the roadway widening has already been determined by the Commission to be consistent with the Coastal Act, a determination incorporated into the Commission-certified LCP, the roadway widening can hardly be inconsistent with the LCP.

Makar Properties concurs with the City Attorney's position that the Project is located outside the Commission's "appeal jurisdiction" and that, in any event, assertion of such appeal jurisdiction is untimely raised based on the procedures set forth in California Code of Regulations section 13569 and the City's certified LCP appeals procedure (Zoning Code section 245.14). As the Coastal Commission is aware, the Pacific City EIR was certified, and the Conditional Use Permit, Tentative Tract Map and CDP for the Project approved, by the Huntington Beach City Council on June 7, 2004. Among other findings, the City Council, after careful review of the facts on the record, adopted a finding that the Project conformed to the development standards approved by the Coastal Commission in 2001, when it certified the LCP for the area designated as District 7 and District 8a in the Downtown Specific Plan. All public notices for the Planning Commission and City Council hearings on the Pacific City EIR and Project land use applications contained the statement that the project was non-appealable. There is absolutely no authority in the Coastal Act, the implementing Code regulations, the City's LCP or case law that would allow the Commission to revisit this issue after a project has been fully approved. Therefore, as a threshold matter, this proceeding is not properly before the Commission.

Notwithstanding the procedurally improper "dispute resolution" hearing, this transmittal will provide members of the Commission, the Executive Director and staff with additional information regarding the background/record of the City's determination that Pacific City was non-appealable, and provide, on behalf of the Project applicant, a substantive response

COASTAL COMMISSION

EXHIBIT # 14
PAGE 2 OF 12

on each of the grounds within section 30603 of the Coastal Act, asserted as the potential basis for appeal of CDP No. 02-12.

(1) THE COASTAL COMMISSION STAFF REPORT "BACKGROUND" OMITS KEY FACTS.

The "Background on the City's Appealability Determination" in Section B. (pg. 3) of the Coastal Commission Staff Report fails to accurately or completely describe the record of the City's early efforts to definitively verify Coastal Commission staff's position that the project was non-appealable, and omits key facts in the body of the staff report germane to the Commission's resolution of the "appealability dispute." These facts include:

(A) Development on the Pacific City Site Was Approved Through Issuance of Two Prior CDPs in the Last 5 Years, Noticed As Non-Appealable, a Determination not Challenged by the Commission in either case.

Coastal Development Permit No. 99-1 (for export of 226,000 cubic yards of dirt from the Pacific City Site) was issued to the Robert Mayer Corp. in June 1999, and Coastal Development Permit No. 00-36 (Pacific City Site remediation) was issued to Chevron Corp. in December 2000. Both of these CDP's were issued after noticed public hearings; the notices indicated that the Project (31 acres) was in the Non-Appealable Jurisdiction of the Coastal Zone/Not Appealable to the Coastal Commission. These public Notices of Action (the relevant pages are provided herewith as Attachment A; copies of the complete documents will be provided upon request) were forwarded to the Coastal Commission and the non-appealability determination stated on each "Notice of Action" was never challenged by the Commission or any other interested person.

(B) The Commission's Prior Comment Letters State That the Project "Appears to Be Out of the Appeal Jurisdiction."

The Th16a Commission staff report (pg. 3) contains the statement that "in February 2003, comments prepared by Commission staff on the Notice of Preparation of the EIR requested that the City evaluate whether the project met (appeal) criteria of Section 30603(a) of the Coastal Act." But this same staff report omits the key conclusion set forth in the referenced February 23, 2003 Commission staff letter to City Planner, Mary Beth Broeren.

Commission staff analyst Meg Vaughn's February 23, 2003 letter to the City states very clearly on page 1, second paragraphASTAL COMMISSION

EXHIBIT # 14
Page 3 OF 12

242712 2.DOC

> "The Subject Site (Pacific City) is located inland of Pacific Coast Highway and appears to be out of the Commission's appeals jurisdiction."

The Commission staff report also conveniently omits any details of the City's follow-up telephone call by City Planning Manager Scott Hess with Meg Vaughn on March 24, 2003, the purpose of which was to definitively verify that the project was outside the Commission's appealable jurisdiction. Importantly, Ms. Vaughn advised Mr. Hess on June 7, 2003 and Mr. Hess subsequently informed Makar Properties that, after referring the City's request for verification re appealability to the Commission's San Francisco mapping division, the Commission had concluded that the project was, in fact, located in the *non-appealable* area.

Both the City and the applicant subsequently proceeded, in good faithreliance on this Commission determination, to design and process
entitlement applications for the Project so that it completely conformed to
the development standards set forth in the certified LCP for the Downtown
Specific Plan This reliance was justified not only because of City
planners consultation with the Commission, but because of the
uncontested non-appealability of the Coastal Development Permits
previously issued on the Pacific City site, and the pre-development
activity already occurring thereon.

The July 1 Coastal Commission staff report also misleadingly characterizes a March 18, 2004 Commission EIR Comment letter sent almost 1 year after City staff's consultation with Commission staff on appealability and over 3 months after the end of the EIR review period, as a letter "questioning the appealability of the project." We would point out that this DEIR Comment letter devotes over 4 pages to specific DEIR comments, and only 3 sentences at the end of the letter on the appeal issue, stating merely that "if the subject site contains wetlands, the CDP processed by the City would be appealable to the Commission," and "other aspects of the project may also meet the criteria in Section 30603a..." (Emphasis added.)

The Administrative Record of the City's careful review of the "other aspects of the project" that "may" have met section 30603, subdivision (a) criteria are set forth below.

EXHIBIT # 14

See City Attorney letter to Karl Schwing, Coastal Commission, Orange County Area Supervisor, dated July 1, 2004.

COASTAL COMMISSION

Finally, as stated above, we question the Commission's legal authority to schedule a "dispute resolution" hearing before the Commission, long after the time period set forth in California Code of Regulations section 13569 for such dispute resolution procedures has expired. No new credible evidence was submitted by the project opponents mentioned in the Commission staff report (Churchin, Cross, Millbern and Bixby) that was not already evaluated and responded to in the extensive Pacific City EIR Response to Comments Section or evaluated and responded to on the record by either City staff or the City's environmental consultant, or the City Council itself, during the June 7, 2004 City Council hearing.

It is also worth noting that members of the City Council, several of whom are long-time members of the City's environmental community, stated on the record their conclusions that the claims regarding existence of wetlands on the site, or other Project deficiencies asserted by Bixby, Cross and Churchin, were adequately addressed in the EIR or without merit. With respect to the April 1, 2004 letter from Shawn Millbern of the Robert Mayer Corp., we are advised that the Mayer Corp. has decided not to appeal and will not challenge the Pacific City project in any way.

(2) REVIEW OF SECTION C "SUMMARY OF COMMISSION RESPONSE TO CITY'S APPEALABILITY DETERMINATION."

As stated above, we strongly challenge the Commission staff's finding that the CDP approved by the City is an "action . . . appealable to the Commission," and we urge a "yes" vote on the staff-recommended motion which will reject the Executive Director's determination that the Pacific City CDP is appealable. Notwithstanding our belief that the scheduled "dispute resolution" hearing is improper, our specific response to Commission staff's overreaching attempt to find Coastal Act section 30603 criteria to apply to the Pacific City CDP is set forth below.

(A) Pacific City Is Not Appealable Based on the First Public Road.

The staff report claims that the development "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" and that this work constitutes "development" "between the first public road and the sea." This claim is unfounded, as explained below.

The widening of PCH and removal of parking is a Caltrans project and is not required to serve the project. As explained fully in the EIR, Caltrans has prepared a Route Concept Report for PCH; that report and the COASIAL COMMISSION

EXHIBIT # 14
PAGE 5 OF 12

242712 2.DOC

County of Orange Master Plan of Arterial Highways set the standards for PCH. And, these improvements have already been found to be consistent with the Coastal Act. The Commission has previously determined that the "development" in question, specifically the PCH street widening, was consistent with the Coastal Act. In July of 1986 the Commission adopted Consistency Certification No. CC-23-86, a certification reaffirmed by Charles Damm in letters to the City Administrator for the City of Huntington Beach dated June 9 and June 13, 1994, and reaffirmed by Theresa Henry, in her August 29, 1997 letter to Robert E. Eichblatt, City Engineer for the City of Huntington Beach.

The improvements planned as part of the Pacific City project are the projects' contribution to the regional improvements already planned by Caltrans and the County of Orange. The Project itself does not require the elimination of public parking on PCH. Rather, the Project provides additional parking to make up for the loss of parking that will occur in any event as a result of Caltrans' proposed and approved widening of PCH.

No "development" will occur within the existing inland boundary of PCH that has not already approved and found to be consistent with the Coastal Act. All improvements that the Project will implement relative to PCH are improvements that have already been approved by the Coastal Commission in 1986, separately from the Pacific City project. Furthermore, the Pacific City project could be developed without any changes being made to PCH on the existing inland boundary, simply by dedicating the necessary right-of-way for future widening of PCH. But, obviously, it makes more sense and provides a benefit to the public, for the Pacific City project to implement the PCH widening improvements at that location.

The Project conditions to be performed at the edge of the future PCH right-of-way are all outside of and beyond the existing inland boundary of PCH. The existing inland boundary is the limit of the appealable area; thus, no Pacific City improvements are within the appealable area based on the "first public road" criteria.

Finally, and perhaps even more fundamentally, even if the Commission were able to legitimately find that there is a lawful basis for asserting jurisdiction, there would be no point to the assertion: the only issue to be decided, should the Commission consider the merits of the appeal, is whether the "development" conforms "to the standards set forth in the COASIAL COMMISSION

242712 2.DOC

certified local coastal program or the public access policies set forth in this division." (Pub. Resources Code, § 30603, subd. (b)(1).)

The Commission staff has invoked the Commission's own Post-LCP Certification appeals map for the City of Huntington Beach, to argue in the staff report that the boundaries established by the appeals map may change. The staff, however, fails to quote another portion of the same map, which states:

"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." (Exh. 2 to Staff Report.)

This legislative enactment is in full force and effect, and means that in the unlikely event that appealability exists for the "first public road," only the PCH widening project is subject to the Commission's appeal jurisdiction. Is it seriously the position of staff that a roadway widening determined by the Commission to be consistent with the Coastal Act, a certification repeatedly affirmed, and incorporated into the Commission-certified City LCP, is inconsistent with the LCP?

The roadway widening and removal of parking spaces is a *Caltrans* project, the ultimate configuration of which is to be decided by government agencies -- not Makar Properties. Caltrans and the City of Huntington Beach will decide the nature and placement of the PCH street improvements, which, as stated above, is already the subject of a favorable consistency determination by the Commission. Putting aside the fact that there is no conceivable merit to the appeal, Commission staff has failed to demonstrate that the Pacific City project itself contemplates development between the sea and the first public road paralleling the sea as required by section 30603, subdivision (a)(1).

(B) All Environmental Documentation of the Pacific City Site Concludes That No Wetlands Exist on the Site.

The Pacific City site is located in a core portion of the City's Redevelopment Project Area and has been carefully evaluated pursuant to the requirements of CEQA, California Planning and Zoning Law and Redevelopment Law for over 20 years. Prior certified EIRs or other

COASTAL COMMISSION

EXHIBIT # LL

environmental documents² have been prepared that cover the 31-acre site. None of the planning documents (General Plan, Downtown Specific Plan, Redevelopment Plan) or applicable environmental documents or specialized environmental studies have identified the presence of any wetlands on the site, and neither Coastal Commission staff nor any resource agency has ever suggested that there were any indicia of wetlands within the project boundaries.

The current LCP for the site was certified by the Coastal Commission on June 14, 2001. The LCP covering the 31-acre site was originally certified in 1985. The LCP for Pacific City consists of the Coastal Element of the City of Huntington Beach General Plan, and District 7 and District 8a of the Downtown Specific Plan, and the specific coastal-related policies governing development in the Coastal Zone are set forth in those approved documents. The LCP does not contain any wetland-related maps, graphics or policies which would delineate or suggest in any way the existence of wetlands, hydric soils or wetlands indicator species on the project site. LCP Figure C-21 is titled "Environmentally Sensitive Habitats as Depicted by the Department of Fish and Game." The LCP refers to the wetlands depicted in Figure C-21 as those identified and approved as wetland areas by the Commission in 1985. No wetlands are shown on any map in Figure C-21. Figure C-21 remains in the 2001-certified LCP as set forth in 1985. Thus, in 1985, and again in 2001, the Commission had already determined that there were no wetlands on the Project site, and approved the development standards for the entire 31-acre site.

A copy of the Pacific City Draft EIR was provided to the Coastal Commission on October 17, 2003 for the 45-day public review. The Pacific City Draft EIR, reviewed by the Commission, clearly documented that the 31-acre project site has been fully developed since the early 1900's with multiple land uses including single family homes, lumber mill, ice house, railroads, oil operations, mobile home park, motel and restaurants. The specific prior developments and land uses on the site are described in the Draft EIR, on page 3.9-1 and 3.9-2.

The certified Final Pacific City EIR No. 02-01 describes current conditions onsite, including ongoing soil remediation activities as approved through issuance of CDP 00-09 and Conditional Use Permit

EXHIBIT# 14

See Section 1.2 Pacific City EIR. These documents include (1) The Huntington Beach Downtown Specific Plan EIR 82-2 and Addendum to SEIR 82-2; (2) the Huntington Beach General Plan Update EIR 94-1; (3) the Huntington Beach Redevelopment Project EIR 96-2.

COASTAL COMMISSION

> 00-36. These soil remediation activities include removal and remediation of soil within the groundwater table. During the ongoing soil remediation activities there was some minor growth of hydrophytic vegetation within the remediation pits described in the FEIR. This minor vegetation growth was a direct result of the remediation pits extending into the groundwater table, which resulted in groundwater seepage into remediation pits. These pits are currently being recompacted per the City-approved Remediation Plan for the property. CDP-00-09 and Conditional Use Permit 00-36 were issued by the City following the City's determination that the Remediation Plan conformed to the LCP. The Coastal Commission staff has never questioned this prior determination or the validity of CDP 00-09 and Conditional Use Permit 00-36. Contrary to the Commission Staff Report's implication, the Pacific City EIR concluded that the remediation pits were characterized by sparse vegetation, which was poorly developed and had extremely low-to-no habitat value (Draft EIR, page 3.3-7). Therefore, as amplified at the City Council hearing by the City's environmental consultant, and as found by the City Council, no wetlands were determined to exist on the site.

On June 7, 2004 the Huntington Beach City Council also approved the Pacific City CDP No. 02-12 and Conditional Use Permit No. 02-20. Pacific City CDP No. 02-12 and Conditional Use Permit No. 02-20 includes a condition of approval (Condition of Approval 4), which states: "If any environmentally sensitive habitat is found on the site it will be protected from significant disruption, and only uses dependent on those resources shall be allowed in those areas."

As previously mentioned, CDP No. 99-1, issued to the Robert Mayer Corporation for export of approximately 226,000 cubic yards of dirt from the Pacific City site in June 1999 and CDP No. 00-09, issued to Chevron Environmental Management Company to excavate, temporarily stockpile, and remediate on-site approximately 30,000 cubic yards of contaminated soil in December 2000, were recently issued for development activity on the Pacific City site. In both cases, CEQA analysis was performed and no wetlands were identified on the site.

Since 1998, three biological surveys have been conducted on the Pacific City site, including a biological survey in 1998 by BonTerra Consulting prior to the issuance of CDP 99-1; a second biological survey by BonTerra consulting in February 2002 by BonTerra Consulting for the Pacific City EIR; and a third biological survey in September 2003 Construction EIR (and the results are incorporated into the EIR Biological Resources

EXHIBIT# 14
PAGE 9 OF 12

section which is attached). In all three surveys no wetlands were identified on site. Copies of each of those surveys/EIR sections are attached to this letter as Attachment B.

Contrary to the statement in the staff report, the EIR does not suggest there are wetland indicators present on the project site. The EIR states "wetlands do not exist on the site." (See Draft EIR, pages 3.3.20-3.3.21 and City of Huntington Beach Request for Action for June 7, 2004 City Council meeting, Attachment 6, pages D-4a-97-98.)

Regarding the Commission staff request for a wetland delineation, a delineation was not conducted for two reasons: 1) existing studies, as summarized above, do not identify the existence of any wetlands onsite, and 2) current site conditions do not constitute "normal circumstances," and any delineation conducted prior to returning the site to its normal condition would be meaningless.

Thus, the environmental record of the Pacific City site documents beyond debate that no wetlands have been identified to exist on site, and that the previously-observed vegetation in the remediation pits or elsewhere on the disturbed site are *not* part of the normal, at-grade, conditions of the property.

(C) Pacific City Does Not Constitute a Major Public Works Project.

The Pacific City development does not constitute a major public works project. The roadway widening will **not** cost more than \$100,000, as adjusted in accordance with the *Engineering News Record Construction Cost Index*. The \$100,000 threshold set forth as adjusted, equates to approximately \$300,000 through 2005, with the estimated cost to widen PCH calculated to be \$250,000 or less. The roadway widening, therefore, does not constitute a "major public works project," and, in any event, as explained above, implements a Caltrans project already certified by the Commission.

(D) The Pacific City Project Development Site Is 300 Feet From Sandy Beach; Current Development Standards for the Project Have Already Been Reviewed and Approved by the Commission in 2001 Through Certification of the City's LCP; The City Council's June 7, 2004 Approval Included Findings That the Project Conforms to the City's LCP.

The Commission staff report (pg. 6) states in Section 4:

EXHIBIT # 14
PAGE 10 OF 12

COASTAL COMMISSION

242712_2.DOC

"While the appeals map indicates the private land within which the development is occurring is <u>not</u> within 300 feet of the inland extent of the Sandy Beach, other development approved by the City <u>may</u> be located within 300 feet, such as that development occurring within Pacific Coast Highway described above." (Emphasis added.)

The July 1, 2004 Commission staff report marks the third occasion on which Coastal Commission staff has advised that the Pacific City site is outside the 30603 (a)(1) 300-foot appealable criteria, yet continues to focus on the City's requirement that the applicant cooperate in implementing the 1986 Commission-certified PCH widening project. (Consistency Certification No. CC-23-86). As discussed above, the PCH widening is provided for in the Circulation Element of the City's General Plan, the Coastal Element (LCP) of the City's General Plan, the Downtown Specific Plan (LCP Implementation Program), and the County's Master Plan of Arterial Highways (MPAH), which is incorporated into the City's Circulation Element.

As previously stated, all of these City planning documents have been previously reviewed and approved by the Commission. Furthermore, it is abundantly clear that any right-of-way dedication or parking relocation ultimately required of the project applicant will merely implement the Commission-certified, Caltrans PCH widening project referenced above, and will conform completely to the public access and circulation policies contained in the certified LCP.

(E) Commission Staff's Representations.

We have reviewed, as stated above, the City's letter to the Commission of July 1, 2004. We are confident that the City has correctly represented the record in its July 1st letter, and that the Commission, on several occasions, advised the City that the Pacific City project is non-appealable. The Commission staff's argument to the contrary is based on two significant errors of fact: (1) the belief that there are wetlands on the project site

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

July 8, 2004 Page 12



(demonstrated above to be mistaken), and (2) the assertion that Makar's project includes development within the PCH right-of-way (also demonstrated above to be untrue). The Commission's affirmation of non-appealability occurred, in any event, long after the Commission certified the consistency of the roadway widening with the Coastal Act. It is disingenuous, to say the least, for Commission staff to suggest that the roadway widening is new information, previously unknown to the Commission.

3. CONCLUSION.

On behalf of Makar Properties, we hope this transmittal demonstrates to the Commission that there are no legal grounds for the Commission staff's assertion of jurisdiction over any portion of the Pacific City project. We will be in attendance at the Commission's meeting of July 16, 2004, along with representatives of Makar Properties, and will be prepared to provide additional evidence to support our position on this matter. Please do not hesitate to contact myself or John Erskine of this firm if we can address any questions or provide additional information.

John J. Flynn III

of NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

JJF/skd

Attachments

cc: Members of the California Coastal Commission

Mayor Green and Members of the Huntington Beach City Council
Peter M. Douglas, Executive Director, California Coastal Commission
Deborah Lee, California Coastal Commission
Karl Schwing, California Coastal Commission
Jennifer McGrath, City Attorney
Howard Zelefsky, Planning Director
Michael Gagnet, Makar Properties, LLC
Sandy Weissbard, Makar Properties, LLC

COASTAL COMMISSION

PAGE 12 OF 12



8954 RIO SAN DIEGO DRIVE, SUITE 610 SAN DIEGO, CALIFORNIA 92108 (619) 291-1475 (619) 291-1476 FAX www.pdconsultants.com

July 14, 2004

Chairman Mike Reilly California Coastal Commission South Coast Area Office 200 Oceangate, Suite 1000 Long Beach, CA 90802-4302

RE: Dispute Resolution No 5-04-249 EDD Hearing re: Pacific City Appealability; Staff Report dated July 1, 2004 Item 16a

Dear Mr. Reilly,

P&D Environmental conducted a limited field reconnaissance of the subject property on July 14, 2004 to ascertain the presence of wetlands as defined in the Local Coastal Plan (LCP). Betty Dehoney conducted the field reconnaissance and her qualifications include over 25 years of experience in environmental services. She has a B.A. and M.S. in Biology. Ms. Dehoney works extensively with wetlands and regulatory permits. Her coastal projects have included Carlsbad Golf permitting, LaCosta Avenue road widening (Batiquitos Lagoon), Jefferson Street Bike Path (Buena Vista Lagoon), Cannon Road (Aqua Hedionda Lagoon) and Batiquitos Lagoon Enhancement Project. She has taught Management of Coastal Resources at UCSD Extension. Based upon the field reconnaissance and my expert review, the site does not contain wetlands as discussed in the following.

The LCP defines wetlands as having 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."

During the field reconnaissance the site conditions were specifically reviewed in respect to the above-referenced criteria. The site conditions included an extensively degraded condition, with active construction activities. An analysis of the site conditions as to applicability to these attributes is presented below:

Criteria 1: At least periodically, the land supports predominantly hydrophytes

The site has been graded and supports almost no vegetation coverage. As noted in the attached photograph, more than 99% of the site is devoid of vegetation. Some

| EXHIBIT #_ | 15 | |
|------------|----|----------|
| PAGE | OF | e |

predominantly non-native vegetation is located on the upper fringe area adjacent to the fence; however, this does not meet the criteria of "supporting hydrophytes."

Criteria 2: The substrate is predominantly undrained hydric soil

As noted previously, the site is an active construction site. There was no evidence of ponded or saturated soil conditions. A water truck was noted "spraying water" presumably for dust suppression. Even with the artificial application of water, the site did not have any ponded areas. Soil conditions were "damp" in areas immediately after application of water. The site also appears to have erosion control measures to convey water from off site properties. These erosion control measures are plastic sheeting where culverts enter the property and appear to be designed to direct any flow from the culvert through the property site. All of the areas were dry indicating that no substantive water is being directed from off-site properties (through natural conditions or nuisance water) under existing conditions.

Criteria 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 site is soil, it is not saturated (even with the artificial application of water from the water trucks) nor covered with any water.

Thus, based upon the field conditions noted in the field reconnaissance, the site does not meet any of the wetland attributes in the LCP definition.

P&D also reviewed the biological constraints identified on the site prior to continuation of the remediation on the site to determine if wetlands had been present historically. Bonterra Consulting completed a constraints analysis on the subject property in 1998 (see attached copy of letter dated February 26, 1998). As noted in that reconnaissance "The project site is dominated by barren ground, non-native grasslands, ornamental landscape areas, and disturbed areas which do not have the potential to support rare, threatened, or endangered plant or wildlife species. Due to the lack of these resources onsite, no biological constraints are present regarding the development of this area." Thus, it is concluded that previous to the remedial action, the site would not normally have supported wetlands.

COASTAL COMMISSION

EXHIBIT # OF O

In conclusion, the site does not currently support wetlands and does not appear to have supported wetlands under normal conditions prior to the remedial activities.

Sincerely,

P&D Environmental Inc.

Betty Dehoney

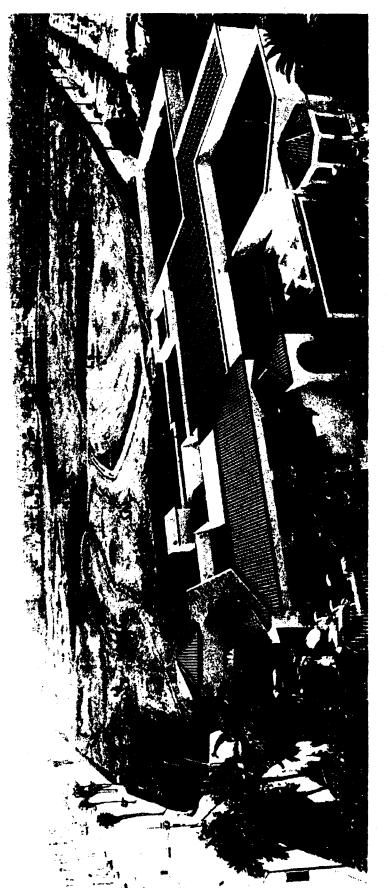
Director, Environmental Services

to Dehons

cc:

Members of the California Coastal Commission
Peter M. Douglas, Executive Director, California Coastal Commission
Deborah Lee, California Coastal Commission
Karl Schwing, California Coastal Commission
Howard Zelefsky, City of Huntington Beach Planning Director
Carollyn Lobell, Nossaman, Guthner, Knox & Elliott, LLP
Ethen Thacher, Makar Properties, LLC

Attachment: Photograph, BonTerra 1998

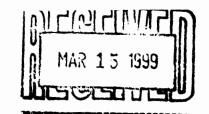


Pacific City Site, Huntington Beach - July 12, 2004

COASTAL COMMISSIO

EXHIBIT# 5
PAGE OF 6

BonTerra Consulting



An Environmental Planning/Resource Management Corporation

February 26, 1998

Timothy E. Hamilton Capital Pacific Holdings, Inc. 4100 MacArthur Blvd., Suite 200 Newport Beach, CA 92658-7150

Subject: Biological Constraints Study for 31-Acre Site in Huntington Beach, California

Dear Mr. Hamilton:

This letter report presents the findings of a biological constraints surveys for a 31-acre site located in Huntington Beach, California. The project site is bordered on the west by Pacific Coast Highway, on the north by 1st Street, on the east by Atlanta Avenue, and on the south by Huntington Street. The purpose of the survey was to evaluate potential biological constraints for the 31-acre site. The site contains commercial development in the northwestern corner (restaurant and hotel), while the remainder of the site appears to be left in a "rough grade" condition. Mass grading on the project site has occurred within the last year and a significant portion (approximately 60-percent) of the site is barren ground.

SURVEY METHODS

BonTerra Consulting conducted a search of the available literature to identify special status plants, wildlife, or habitats known to occur in the vicinity of the project site. The California Natural Diversity Data Base (CNDDB 1997), California Native Plant Society's Inventory of Rare and Endangered Vascular Plants of California (CNPS 1998), and compendia of special status species published by the U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Game (CDFG) were reviewed.

The site survey was conducted on February 25, 1998 by Ann M. Johnston, Senior Ecologist with BonTerra Consulting, to describe the vegetation and evaluate the potential of the habitat to support special interest plant and wildlife species. Because the timing (winter) of the survey was not conducive to identifying all the plant and wildlife species that may occur on the site, the focus of the survey was to evaluate the habitat suitability. All plant and wildlife species observed were recorded in field notes. Plant species were identified in the field or collected for future identification. Plants were identified using keys in Hickman (1993), Munz 1974 and Abrams (1923). Taxonomy follows Hickman (1993) for scientific and common names. Roberts (1998) was used for common names when none was listed in Hickman (1993).

SURVEY RESULTS

Vegetation

The vegetation on the site consists primarily of non-native grasses and fits the description of the non-native grassland community of Holland (1986) and the annual grassland series of Sawyer and Keeler-Wolf (1994). The dominant non-native species on the site include common ripgut grass (*Bromus diandrus*), wild oat (*Avena* sp.), and Italian ryegrass (*Lolium multiflorum*). Other species

Timothy Hamilton February 26, 1998 Page 2

present include cheese weed (Malva parviflora), wild radish (Raphanus sativa), bur-clover (Medicago polymorpha), common sow-thistle (Sonchus oleraceous), and sour-grass (Oxalis pescaprae).

Ornamental landscaping ground cover, shrubs, and trees are also common at the edges of the project site. Non-native, ornamental species present include sea-fig (*Carpobrotus aequilaterus*), gazania (*Gazania* sp.), myoporum (*Myoporum* sp.), natal plum (*Carissa macrocarpa*), castor bean (*Ricinus communis*), acacia (*Acacia* sp.), and various species of palm trees.

Wildlife Habitat

Wildlife resource on the project site are expected to be limited due the high level of disturbance the site has seen over the years. Those wildlife species observed or expected in low numbers on the site include the side-blotched lizard (*Uta stansburiana*), western fence lizard (*Sceloporus occidentalis*), mourning dove (*Zenaida macroura*), California gull (*Larus californicus*), ring-billed gull (*Larus delawarensis*), American crow (*Corvus brachyrhynchos*), house mouse (*Mus musculus*), California ground squirrel (*Spermophilus beecheyi*), domestic dog (*Canis familiaris*), Norway rat (*Rattus norvegicus*), and domestic cat (*Felix catus*).

Special Interest Habitats, Plants, and Wildlife Species

Special interest habitats are those habitats that are known to support numerous plant and animal species that are listed as rare, threatened, or endangered by the state and federal resource agencies. No special interest habitats are present on the project site

Plants or animals may be considered "special interest" due to declining populations, vulnerability to habitat change, or restricted distributions. The grasslands, ornamental landscape areas, and disturbed areas on the site do not provide the habitat required for any plant or wildlife species that is considered rare, threatened, or endangered. Therefore, impacts to species listed as threatened or endangered are not expected by the development of the project site.

CONCLUSION

The project site is dominated by barren ground, non-native grasslands, ornamental landscape areas, and disturbed areas which do not have the potential to support rare, threatened, or endangered plant or wildlife species. Due to the lack of these resources onsite, no biological constraints are present regarding the development of this area.

If you have any comments or questions, please call Ms. Johnston at (714)475-9520.

Sincerely,

BonTerra Consulting

Ann Johnston

Senior Ecologist/Project Manager

COASTAL COMMISSION

PAGE_ OF U

R.\Projects\CP\f\J002Report-22698