

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
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**W6a****RECORD PACKET COPY**

Request Submitted: 03/28/05  
Staff: SC  
Staff report prepared: 04/21/05  
Hearing date: 05/11/05

**APPEAL OF EXECUTIVE DIRECTOR'S DETERMINATION**

**Project Name** ..... Ocean View Plaza

**Applicant** ..... Cannery Row Marketplace, LLC

**Action Being Appealed** .. Executive Director's Determination to Reject the Submittal of a Permit Application

**Project location** ..... 465, 457, 470, 484, 565, & 570 Cannery Row, City of Monterey (Monterey County)

**Project description** ..... Mixed use project consisting of 87,362 sq. ft. of retail and retail support use, including 30,000 sq. ft. of restaurant space; 8,408 sq. ft. of coastal/community use; 38 market-rate condominiums; 13 inclusionary housing units; 377 parking spaces; construction of an on-site desalination plant; rehabilitation of San Xavier Fish Reduction Plant; reconstruction of San Xavier Warehouse; replication of utility bridge; development of a community park

**File documents** ..... Coastal Act; certified Cannery Row Land Use Plan; Ocean View Plaza EIR.

**Staff recommendation** ... **Denial of the Appeal; Concurrence with the Executive Director's Determination**

**Staff Note:** This staff report is different from the typical staff reports reviewed by the Commission because it has been prepared to obtain direction from the Commission on an issue that is usually addressed at staff level: whether an application can be accepted for processing without the applicant having obtained all necessary local approvals as required by the application form. This issue is being referred to the Commission at the request of the applicant (letter of request and appeal contentions attached as Exhibit 1). As detailed below, staff has determined that the application cannot be accepted until a proposed Community Services District to operate the proposed desalination plant is formed. The formation of a Community Services District to serve the project requires City of Monterey, County of Monterey, and LAFCO approvals. In addition, the proposed desalination plant also requires Monterey County Department of Environmental Health approval. The applicant has previously been informed that an application for the project may be submitted to our office when these local approvals have been obtained, but that the materials thus far delivered to the Central Coast District office do not constitute a formal application submittal that can be accepted for processing (see Exhibits 4, 6, & 8).

**Summary of Staff Recommendation:** Staff recommends that the Commission deny the applicant's



**California Coastal Commission**  
**May 2005 Meeting in Palo Alto**

Staff: S. Craig Approved by: *[Signature]*

appeal and recommends that the Commission **concur** with the Executive Director's determination that the application does not meet the threshold standards for a formal application submittal as outlined in CCR Sections 13056 and 13053.5.

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## I. Staff Recommendation

Staff recommends that the Commission, after public hearing, **concur** with the Executive Director's determination that the application received does not meet the threshold standards for a formal application submittal as outlined in CCR Sections 13056 and 13053.5 because the proposed project has not yet received the necessary local approvals to create a Community Services District to construct, operate, and maintain the proposed desalination plant for the project.



**Motion.** I move that the Commission determine that the application received for the Ocean View Plaza project meets the threshold standards for a formal application submittal as outlined in CCR Sections 13056 and 13053.5.

Staff recommends a **NO** vote on the motion. A majority of the Commissioners present is required to pass the motion.

## **II. Recommended Findings and Declarations**

The Commission finds and declares as follows:

### **A. City of Monterey Local Coastal Program Status**

The proposed Ocean View Plaza project that is the subject of this appeal is located on Cannery Row in the City of Monterey. The City of Monterey has segmented its Land Use Plan (LUP) into five area components, including a Cannery Row Land Use Plan component. The Cannery Row LUP was certified in 1981. However, several other components of the Local Coastal Program (LCP) (including one land use segment and the implementation plan) are not yet certified. Thus, the City does not have a fully certified LCP. Therefore, the Cannery Row LUP at this stage of the certification process is advisory only and the standard of review for projects in the City's coastal zone is the Coastal Act.

### **B. Monterey Peninsula Water Supply Status**

The largest water distribution system in the Monterey Peninsula is operated by the California-American Water Company, which provides water to nearly 95 percent of the approximately 112,000 residents in the Monterey Peninsula Water Management District (MPWMD). Cal-Am provides water to its users through groundwater extractions and diversions from the Carmel River via the Los Padres Dam. Both of these sources are currently being used at near or above their sustainable yield. Two threatened species, the California red-legged frog (*Rana aurora draytonii*) and the steelhead (*Oncorhynchus mykiss*), are found in the Carmel River.

In 1995, State Water Resources Control Board Order 95-10 reduced the amount of water Cal-Am could take from the Carmel River aquifer by 20 percent in the near-term and up to 75 percent in the long-term. The MPWMD requested relief through the courts, but the Monterey County Superior Court upheld the 20 percent reduction in water use specified by the order. Since that time, the jurisdictions along the Monterey Peninsula, including the City of Monterey, have been under strict conservation measures, and have focused their efforts on improving water conservation programs while working on other water supply augmentation proposals that will garner community support and help Cal-Am attain the goals established by the Order.



State Order 95-10 also mandates that Cal-Am maintain production below 11,285-acre feet/year of diversion from the Carmel River. A maximum of 4,000 acre-feet/year from the Seaside basin is allowed by MPWMD. Thus, Cal-Am production is limited to 15,285 acre-feet/year. All of this water is already allocated to current users or proposed construction that has already been approved, and no additional water source is presently available to serve Cal-Am customers within the district. For this reason, no water is available to be allocated by City of Monterey planning staff at this time. The City of Monterey currently has a waiting list for new water hookups and residential remodels.

At this time, no new supply of water is on the immediate horizon. Cal-Am and the MPWMD, however, are currently searching for additional water supplies. Possible alternative strategies include implementation of groundwater injection (e.g., storage of excess water from the Carmel River in the Seaside Coastal Basin during winter months), desalination of seawater, wastewater recycling (i.e., using reclaimed wastewater for irrigation purposes), and additional water conservation efforts that include retrofitting or replacing water-using appliances and fixtures and drought-resistant landscaping.

### **C. Coastal Act Requirements Regarding Water Supply**

Section 30250 of the Coastal Act states, in relevant part:

*(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources...*

This policy provides that if an urban area lacks critical infrastructure - e.g., water, sewer, or road capacity - to support further urban development, then new development must be delayed until the capacity of the limited service can be increased, through a comprehensive urban planning process, in order to support it. It does not mean that urban uses should proceed incrementally, using what are essentially rural-level services (e.g., private wells and septic systems). The proliferation of rural services within an urban area causes practical problems (e.g., wells run dry, lot sizes are too small to accommodate septic systems) and planning problems. Ultimately, incremental development without comprehensive planning may lead to serious environmental resource impacts such as groundwater overdraft, polluted groundwater, degraded riparian habitat, and so on.

The City of Monterey is highly urbanized. As stated above, Coastal Act Section 30250(a) requires that new development be located in areas with adequate public services. Cal-Am (which is regulated by the Monterey Peninsula Water Management District) is the water company authorized to provide water in the urban service area of the City of Monterey and regulate the orderly connection of water service for new development. Since water supplies are limited, the City administers a water waiting list for additional connections beyond those that can presently be served. Authorization of private wells or private desalination facilities within this public service area, whether for potable water or supplemental non-potable water for irrigation purposes, could lead to potential cumulative impacts that could



undermine Cal-Am's ability to provide adequate water supplies to existing service connections within the Monterey Peninsula Water Management District. For this reason, the Commission's 2003 approval of the Del Monte Beach LUP and Harbor LUP components of the City's LCP included policies requiring that development be served by an adequate *public* water supply, as well as a prohibition on private water supplies to serve existing and new development within the City of Monterey. Additional policies in those LUP's allow for development of public desalination facilities, provided any adverse environmental impacts are mitigated. These policies derive from one of the most fundamental principles of the Coastal Act, as well as modern urban and environmental planning: *the establishment and maintenance of stable urban/rural boundaries for the protection of sensitive resources and to provide for the rational planning of public services to support new urban development.*

As discussed above, the City of Monterey does not have a certified LCP. Therefore, the standard of review for projects within the City's coastal zone is the Coastal Act. Coastal Act Section 30250(a) requires that adequate public services be available to serve new development. The proposed Ocean View Plaza project will require approximately 25.6 acre-feet of water per year upon completion. Given the extremely limited availability of water in the City for the foreseeable future, the applicant has proposed development of a desalination plant to serve the proposed project (discussed further below). The City and the applicant understand the Coastal Act requirement that the water supply for the proposed project be provided for by a public entity. Therefore, the applicant is proposing the creation of a Community Services District, to construct, operate, and maintain the proposed desalination plant that will provide water for the Ocean View Plaza project.

## **D. Ocean View Plaza Application History**

### **1. Previous Application History**

The draft environmental impact report (EIR) for the proposed project was completed in April 2001. At that time, the proposed project included 101,366 square feet of commercial retail and restaurant uses, 377 parking spaces, 26 on-site market-rate residential condominiums, and 4 moderate-income residential units. The proposed project's expected water demand was estimated at 25.6 acre-feet of water per year. The draft EIR noted that the City of Monterey was at that time using most of its full allotment of water as allocated by the Monterey Peninsula Water Management District (MPWMD) (MPWMD manages the public drinking water supply in the Monterey area; the California-American Water Company [Cal-Am] is the retail water purveyor in the Monterey area). Given that there was no public water available for the project from the City's water allotment, the EIR evaluated a number of alternative water supply sources for the project and determined that a seawater desalination plant was the only feasible alternative. The EIR noted that County regulations stipulate that the desalination facility be owned and operated by a public entity. The draft EIR also noted that Cal-Am had expressed a willingness to assume such responsibility. MPWMD staff, however, expressed concerns regarding the appropriateness of Cal-Am being the owner-operator of the desalination plant. The final EIR included a letter from the applicant's representative stating that instead of Cal-Am operating and maintaining the desalination plant, that the applicant would instead form a mutual water company to oversee these duties regarding the desalination



plant, but had not yet done so. The City's approval of the project in 2002 reduced the commercial retail and restaurant uses to 91,984 square feet and increased the number of parking spaces to 381. The number of residential units remained unchanged. The City approved the desalination plant for the project and noted that the applicant proposed to form a mutual water company to construct, operate, and maintain the desalination plant.

The applicant first submitted an application for the Ocean View Plaza project to the Commission on January 16, 2003. Commission staff accepted the application and responded with a status letter on February 14, 2003 regarding additional information required in order for staff to file the application as complete, including the need for detailed desalination plant plans. That letter also stated that staff would retain the application in the Central Coast District office for six months, but noted that if the requested information was not received by August 14, 2003, the application would be returned to the applicant's representative. After receiving two letters from the applicant's representative regarding the information needed to file the application, Commission staff wrote another letter on July 24, 2003 to the applicant's representative stating that the additional information provided did not adequately address the filing requirements and that the application would be returned on September 14, 2003 if the required information for filing was not received by that date. On August 12, 2003, Commission staff (including Deputy Director Charles Lester) met with the applicant and his representative to discuss the application and the materials still needed to meet our filing requirements. In a phone discussion with the applicant several weeks following this meeting, the applicant assured Commission staff that he would submit the additional required information by October 24, 2003. The additional required information was not received by that date. On December 2, 2003 Commission staff wrote another letter to the applicant's representative stating that we would hold the application in our office until December 16, 2003, but that if the required additional information was not received by that date, that this would constitute withdrawal of the application and that the application materials would be returned at that time to the representative's office. In response to this correspondence, the applicant's representative requested an extension of this deadline, which was granted by the Central Coast District Manager, as noted in a December 17, 2003 letter from the applicant's representative. In that letter, the applicant's representative stated that the materials/information needed to file the application would be submitted by February 16, 2004 (see Exhibit 14 for all correspondence referenced in this paragraph).

In early March 2004, Commission staff learned that on September 23, 2003 (six months prior), a County Superior Court judge had ruled that the EIR for the proposed Ocean View Plaza project did not meet State standards because it failed to analyze reasonable alternatives to the proposed project. The City did not appeal this ruling. Instead, the City Council had vacated the certification of the EIR and its approval of the Ocean View Plaza project. City planning staff was, in March 2004, already developing a supplemental EIR. Thus, since September 2003, the project no longer had local approval. Neither the applicant nor the applicant's representative had informed Commission staff of this information, even though communication between the two had taken place between September 2003 and March 2004. Given all the above, Commission staff returned the unfiled application to the applicant's representative on March 3, 2004 (see Exhibit 14, pg. 8).





The supplemental EIR, which was released in mid-March 2004, evaluated seven project alternatives to the previously approved (but now vacated) project. On June 1, 2004, the City Council approved Alternative #4, which includes a redesign of the project, a reduction in the amount of retail/restaurant square footage, and an increase in the number of housing units.

## **2. Current Application History**

The current application, which is the subject of this appeal, is for the revised project approved by the City in June 2004, which includes a reduction in the amount of retail/restaurant square footage, and an increase in the number of housing units compared to the first application submittal in January 2003. On December 9, 2004 the applicant's representative met with Commission staff and expressed the applicant's intention to submit an application for the revised Ocean View Plaza project. At that meeting, the representative informed staff that the applicant no longer planned to form a mutual water company to operate the desalination plant for the project, but instead was seeking to create, pursuant to Government Code §§ 61000 *et seq.*, a Community Services District (CSD) to construct, operate, and maintain the proposed desalination plant (the purpose of a CSD is to provide a community with various needed public services, such as an adequate water supply, trash collection and disposal, fire and police protection, etc.). The creation of a CSD to construct, operate, and maintain the proposed desalination plant would require additional approvals (that have not yet been obtained) from the City of Monterey, the County of Monterey, and, pursuant to Government Code section 61107, the Local Area Formation Commission (LAFCO) of Monterey County (LAFCOs were created in each county in California by the Legislature in 1963; this initial legislation was replaced by the Cortese-Knox Local Government Reorganization Act of 1985 (Government Code §§ 56000 *et seq.*)); LAFCOs were created to discourage urban sprawl and encourage the orderly formation and development of local government agencies.) Specifically, LAFCO of Monterey County is responsible for coordinating logical and timely changes in local governmental boundaries, including annexations and detachments of territory, incorporations of cities, formations of special districts, and consolidations, mergers, and dissolutions of districts, as well as reviewing ways to reorganize, simplify, and streamline governmental structure.

At the December 9, 2004 meeting Commission staff informed the applicant's representative that staff would not accept an application submittal for the project until all local approvals have been obtained, specifically the approvals still needed for the proposed Community Services District to provide water for the proposed project. Staff's main concern was that there is no guarantee that the City, the County, and LAFCO would approve the creation of a Community Services District to serve not a community but a single project. Also, until a Community Services District is established, there is no entity to take responsibility for the future construction and operation of the facility and its discharge. Staff followed up that conversation with a letter the following day (Exhibit 4). Given the fundamental lack of a public entity to take responsibility for construction, operation, and maintenance of the proposed desalination plant, the applicant's representative was informed that staff would not accept an application until this issue was resolved.



### 3. Appeal Contentions

See Exhibit 1 for the letter dated March 25, 2005 that contains the applicant's contentions.

#### Contentions:

##### **Page 1 of Exhibit 1 states:**

*"...we are hereby filing an appeal of the Executive Director's refusal to process CRM's application for a coastal development permit filed over three months ago for the Ocean View Plaza project." [emphasis added]*

##### **Page 2 of Exhibit 1 states:**

*After the City's approval, CRM proceeded to file an application with the Coastal Commission for a coastal development permit for the project. [emphasis added]*

**Analysis:** As stated in staff's letter to the applicant's representative dated December 10, 2004 (Exhibit 4), staff never accepted the application for processing due to the fundamental lack of the required local approvals regarding creation of the proposed Community Services District to construct, operate, and maintain the proposed desalination plant. In that letter, the applicant's representative was informed that an application could be submitted when the appropriate local approvals were obtained. Additional letters to the applicant's representative dated December 24, 2004 and February 7, 2005 further elaborate the reasons that the application could not be accepted (Exhibits 6 & 8). Specifically, these letters state that in order for an application to be accepted for filing or completeness review under CCR Section 13056, the application must first *meet the basic requirements of a formal application submittal*. In this case, the application presented fails this initial test because it lacks evidence of necessary governmental approvals for the creation of a Community Services District needed to construct, operate, and maintain the proposed desalination plant that will provide the water supply that is a basic and fundamental component of the proposed project. Additionally, CCR Section 13056(a) requires an application to be submitted on the form issued pursuant to section 13053.5. The Commission's application form (Exhibit 2) states on the first page that, if relevant, as is the case here, "other public agency approvals" are required for an application to be *accepted* for processing. Given that the required "other agency approvals" regarding the fundamental components of construction, operation and maintenance of the proposed desalination plant have not yet been given to the applicant, it is premature for the applicant to submit an application for the proposed project.

In conclusion, the contentions above stating that the application has been filed are untrue given that the application submittal has never been accepted because of the lack of fundamental local approvals for the water supply component of the project.





**Contention:**

**Page 2 of Exhibit 1 states:**

*The Executive Director through its Commission staff has informed us that they will not process CRM's application until after CRM first obtains final approvals from all responsible agencies even though these responsible agencies have insisted that this should not be required.*

**Analysis:** The contention above references two letters, one from the California Regional Water Quality Control Board (RWQCB) and one from the City of Monterey (see Exhibits 9 & 10). No correspondence from the County of Monterey or LAFCO is provided. Thus, there is no evidence that the County or LAFCO have "insisted that [final approvals] should not be required." Additionally, contrary to the above contention, the letter from RWQCB states "Since the project has not yet received City, County, LAFCO, and Coastal Commission approval, we cannot be certain what changes these entities will require and how they may affect the discharge. More fundamentally, until the Community Services District is established, there is no entity to take responsibility for the operation of the facility or its discharge." Nowhere in this letter does RWQCB staff state that final approvals from all responsible agencies should not be required.

**Contention:**

**Page 2 of Exhibit 1 states:**

*The Executive Director's refusal to accept and process CRM's application is contrary to Section 13052 of the Commission's regulations.*

The applicant contends that it has secured the necessary final approvals for the Ocean View Plaza project as required under Coastal Commission Regulations (CCR) Section 13052 (see Exhibit 1 pp. 2-3 for the complete appeal contention and CCR Section 13052 language). Section 13052 states that an application shall not be accepted for filing by the Executive Director unless other state and local governmental agencies have granted at a minimum their preliminary approvals for the development. This section also states, in part:

*An applicant shall have been deemed to have complied with the requirements of this Section when the proposed development has received approvals of any or all of the following aspects of the proposal, as applicable: [emphasis added]*

Subsections 13052(a-k) provide a list of required approvals that the applicant states has been met. However, as noted in letters dated December 24, 2004 and February 7, 2005 (Exhibits 6 & 8), the Executive Director disagrees with the applicant's interpretation of Section 13052. Specifically, the Executive Director interprets this section to mean that providing evidence of the granting of the approvals listed in subsections (a) - (k) will satisfy the requirements of section 13052 to the extent and *only to the extent* that all of the governmental approvals that a proposed development project will require are in fact identified in that listing, i.e., if any governmental approvals that a project will require *are not*



listed in subsections (a) – (k), submittal of evidence of the granting of only those approvals listed in subsections (a) – (k) will *not* satisfy the requirements of 13052. Thus, because the required local approvals for the creation of a Community Services District to construct, operate, and maintain the proposed desalination plant have not been given, the applicant has not complied with the requirements of CCR Section 13052.

**Contention:**

**Page 4 of Exhibit 1 states:**

*Sections 13056 and 13053.5 of the Commission's regulations also do not provide any authority for the Commission staff to delay processing CRM's application.*

See Exhibit 1 pp. 4-5 for the complete language of the applicant's contention. See Exhibit 13 for CCR Sections 13056 and 13053.5. The applicant contends that Section 13056(a) does not contain any language either requiring an applicant to obtain, or authorizing the Executive Director to require, final approvals from responsible agencies. In order for an application to be accepted for filing or completeness review under Section 13056, the application must first meet the basic requirements for a formal application submittal. The current submittal for the Ocean View Plaza project fails this initial determination because it lacks evidence of necessary governmental approvals for a critical aspect of the project: specifically, the formation of a Community Services District to construct, operate, and maintain the proposed desalination plant. The first page of the Commission's application form (Exhibit 2) states that, if relevant, as is the case here, "other public agency approvals" are required for an application to be accepted for processing. Commission staff has never asserted that section 13056(a) of the Commission's regulations *by itself* requires an applicant to obtain final approvals, but rather has asserted that it is the applicable provision in the Commission's application form (as referenced in Section 13056(a)) that imposes this requirement.

CCR Section 13053.5 provides for application form and information requirements (Exhibit 13). The applicant contends that the Coastal Commission application form does not identify any other additional requirements for "categories of development," as stated in CCR Section 13053.5(e). In this case, the specific Ocean View Plaza project is representative of a specific category of development, i.e., a project that is proposing to rely on a proposed (but not yet created) Community Services District to construct, operate, and maintain a proposed desalination plant. In other words, Section 13053.5(e) allows the Executive Director to elaborate upon and clarify how the requirements of the current application form apply to a specific project proposal, such as the Ocean View Plaza project.

The applicant also references Commission staff's March 2004 report entitled "Seawater Desalination and the California Coastal Act," which states the report is meant to be "informational only" and "does not create new regulations or guidelines for reviewing proposed desalination facilities" (Exhibit 12). The applicant contends that additional requirements based on the proposed desalination facility are completely unwarranted. As discussed above, CCR Section 13053.5(e) provides for the Executive Director to clarify how the requirements of the application form apply to specific categories of



development, such as the proposed development that relies upon a desalination facility that in turn requires the creation of a Community Services District to construct, operate, and maintain the facility. Thus, the references to the Commission's March 2004 desalination report are not relevant.

**Contention:**

**Page 5 of Exhibit 1 states:**

*The Commission staff's refusal to process CRM's application is inconsistent with the Commission's longstanding practice.*

See Exhibit 1 pp. 5-6 for the complete language of the applicant's contention. The applicant contends that it has been the Commission's longstanding practice to process coastal development applications without requiring final approvals from responsible agencies before processing an application. The applicant references the Beardsley project (CDP 3-04-009), which was approved by the Commission in 2004 (see Exhibit 11 for findings and conditions regarding this approval). The Beardsley project includes 5 residential condominium units, 674 square feet of retail commercial space, and 5 basement parking spaces on a 4,750 square foot lot on Cannery Row in the City of Monterey. When constructed, the Beardsley project will require 0.135 acre feet of water per year for the 674 square foot ground-floor commercial use and 0.840 acre feet to support the 5 residential condominium units, for a total of 0.975 acre-feet of water per year. The water will be supplied by Cal-Am, which is regulated by the Monterey Peninsula Water Management District. As discussed above, there is no water available for new residential or commercial development in the City of Monterey. The Beardsley staff report notes that the applicant has been placed on the City's Water Waiting List. The City of Monterey evaluates the Water Waiting List periodically and allocates water as it becomes available due to new sources or when previously approved projects do not go forward and the water from those projects is re-allocated. The Beardsley staff report notes that the City has had a water waiting list for approximately the past five years. Over that time, the waiting list has been cleared twice (pers. comm. with City staff). The Beardsley project was conditioned to provide evidence of water availability prior to issuance of the coastal development permit. The findings regarding water in the Beardsley staff report note that in the event that the permit is not issued within the next two years, and an extension is requested, the absence of a water assignment may constitute a changed circumstance in light of the water constraints in the Monterey Peninsula area.

There are major differences between the Beardsley project and the proposed Ocean View Plaza project. The scale of the Beardsley development (5 residential condominium units and 674 square feet of retail space requiring 0.975 acre-feet of water/year) is relatively small compared to the proposed Ocean View Plaza project (87,362 sq. ft. of restaurant/retail and retail support use and 51 residential units requiring approximately 25.6 acre-feet of water/year). In addition, the Beardsley project has been assigned to the City's water waiting list. When the project clears the water waiting list, Cal-Am (which is regulated by the Monterey Peninsula Water Management District) will provide water to the project. The large-scale Ocean View Plaza project, however, will rely on a separate water supply (desalination plant) that will need to be constructed, operated, and maintained by an entity (Community Services District) that does



not yet exist and whose creation depends upon the future actions of LAFCO and other local governmental agencies. Thus the applicant's comparison of the Beardsley project to the proposed Ocean View Plaza is not relevant.

The applicant again contends that other agencies, including the City of Monterey, the County of Monterey, and the Regional Water Quality Control Board (RWQCB) have expressed that the Coastal Commission has sufficient information necessary to proceed with this application. Other than the letter from the City (Exhibit 10), the applicant's representative provides no evidence for this contention regarding the County or LAFCO. Additionally, as discussed above and contrary to the above contention, the letter from RWQCB (Exhibit 9) states "Since the project has not yet received City, County, LAFCO, and Coastal Commission approval, we cannot be certain what changes these entities will require and how they may affect the discharge. More fundamentally, until the Community Services District is established, there is no entity to take responsibility for the operation of the facility or its discharge." Nowhere in this letter does RWQCB staff state that the Coastal Commission has sufficient information necessary to proceed with this application.

The applicant also asserts that CCR Section 13053(e) (which in turn references Government Code/PSA Section 65941(c)) imposes a mandatory duty to waive otherwise required local approvals for the project described in the subject application (see Exhibit 13 for these references). Section 65941(c) requires that a responsible agency "commence processing a permit application for a development project prior to final action on the project by a lead agency..." However, the requirements imposed by staff pertain not to approval(s) by the lead agency, the City of Monterey, but to approvals by other responsible agencies. Also, the evident purpose of Section 65941(c) is to prevent a responsible agency that has determined an application for a development project to be *complete* under Government Code/PSA Section 65943 from refusing to process that application on the basis of Gov't Code/PSA Section 65952(a)(1), which provides that the period within which a responsible agency must render a decision on an application does not begin to run until "the lead agency has approved the project." As discussed above, the application submittal has never been accepted in by Commission staff because of the lack of fundamental local approvals for the project. Therefore, Section 65941(c) has no applicability to the current situation in which the Commission, as a responsible agency, has made no determination of application completeness.



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A COPY OF THIS LETTER HAS BEEN SENT  
TO EACH COMMISSIONER AND A COPY HAS  
BEEN SENT TO MR. PETER DOUGLAS  
AT THE STATE COASTAL COMMISSION OFFICE  
IN SAN FRANCISCO

File No. 1145.000

March 25, 2005

VIA FACSIMILE AND OVERNIGHT MAIL

RECEIVED

MAR 25 2005

CALIFORNIA  
COASTAL COMMISSION

Meg Caldwell, Chair  
and Members of the Coastal Commission  
California Coastal Commission  
Central Coast District Office  
725 Front St., Ste. 300  
Santa Cruz, CA 95060-4537

Re: Cannery Row Marketplace LLC, Application for Coastal Development Permit

Dear Chair Caldwell and Members of the Coastal Commission:

On behalf of our client, Cannery Row Marketplace LLC (CRM), we are hereby filing an appeal of the Executive Director's refusal to process CRM's application for a coastal development permit filed over three months ago for the Ocean View Plaza project. Pursuant to Section 13056(d) of the Commission's regulations, we respectfully request that the Coastal Commission place CRM's appeal on its next April 13-15 agenda.<sup>1</sup>

In June 2004, the City of Monterey approved the Ocean View Plaza project, a mixed commercial and residential use project located along Cannery Row in Monterey. The City of Monterey also certified an environmental impact report (EIR) prepared for the project. The Ocean View Plaza project includes a desalination facility to supply water to the project, which was analyzed in the Ocean View Plaza EIR and determined to result in a less than significant impact.

<sup>1</sup> Section 13056(d) of the Commission's regulations provides that an appeal to the commission of a determination by the executive director that an application is incomplete shall be scheduled for the next commission hearing or as soon thereafter as practicable. The commission may overturn the executive director's determination and/or direct the executive director to prepare a different determination reflecting the commission's decision.

Meg Caldwell, Chair  
and Members of the California Coastal Commission  
March 25, 2005  
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After the City's approval, CRM proceeded to file an application with the Coastal Commission for a coastal development permit for the project. (See letter to Commission staff, Susan Craig dated December 9, 2004 attached as Exhibit A hereto, and complete application submittal on file with the Coastal Commission.) The Executive Director through its Commission staff has informed us that they will not process CRM's application until after CRM first obtains final approvals from all responsible agencies even though these responsible agencies have insisted that this should not be required. The Commission staff has chosen to ignore both the City of Monterey and other responsible agencies requests that the Coastal Commission staff proceed with processing CRM's application. (See January 19, 2005 letter from City of Monterey Mayor Albert; see also February 25, 2005 letter from Regional Water Quality Control Board attached as Exhibits B and C.)

As shown below, the Executive Director's refusal to accept and process CRM's application is contrary to Section 13052 of the Commission's regulations. Moreover, Commission staff's position is inconsistent with the Coastal Commission's longstanding practice of processing coastal development applications, which have not required such final approvals from responsible agencies before processing of an application, but rather after the Coastal Commission takes final action through the imposition of conditions of approval in approving a project.

**THE EXECUTIVE DIRECTOR'S REFUSAL TO ACCEPT AND PROCESS CRM'S APPLICATION IS CONTRARY TO SECTION 13052 OF THE COMMISSION'S REGULATIONS.**

The language of Section 13052 of the Commission's regulations states:

When development for which a permit is required pursuant to Public Resources Code Section 30600 or 30601 also requires a permit from one or more cities or counties or other state or local governmental agencies, a permit application shall not be accepted for filing by the Executive Director unless all such governmental agencies have granted at a minimum their preliminary approvals for said development, except as provided in Section 13053. An applicant shall have been deemed to have complied with the requirements of this section when the proposed development has received approvals of any or all of the following aspects of the proposal, as applicable:

- (a) tentative map approval;
- (b) planned residential development approval;
- (c) special or conditional use permit approval;
- (d) zoning change approval;
- (e) all required variances, except minor variances;
- (f) approval of a general site plan;

**CCC Exhibit 1**  
**(page 2 of 6 pages)**



Meg Caldwell, Chair  
and Members of the California Coastal Commission  
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Page 3

- (g) a final EIR including (1) the explicit consideration of any proposed grading; and (2) explicit consideration of alternatives to the proposed development; and (3) all comments and supporting documentation submitted to the lead agency;
- (h) Approval of dredging and filling of any water areas;
- (i) Approval of general uses and intensity of use proposed for each part of the area covered by the application as permitted by the applicable local general plan, zoning requirements, height, setback, or other land use ordinances;
- (j) In geographic areas specified by the Executive Director of the Commission, evidence of a commitment by local government or other appropriate entity to serve the proposed development at the time of completion of the development, with any necessary municipal or utility services designated by the Executive Director of the Commission;
- (k) A local government coastal development permit issued pursuant to the requirements of Chapter 7 of these regulations.

(California Code of Regulations, Title 14, Section 13052)

Consistent with Section 13052, CRM has secured final approvals from the City of Monterey for the Ocean View Plaza project including approvals for a tentative map, a conditional use permit for the desalination facility, and certification of the Ocean View Plaza project EIR. Thus, CRM has satisfied numerous of the above approval categories under Section 13052, rendering CRM's application in compliance with Section 13052. Each of these approvals alone requires the Executive Director to accept our client's application for processing under Section 13052.

However, following CRM's submittal of its application, Commission staff has taken numerous conflicting positions regarding the interpretation of Section 13052. On December 10, 2004, Commission staff wrote a letter to applicant's counsel, incorrectly stating that CRM was required under Section 13052 to obtain all approvals from responsible agencies before CRM's application could even be submitted to the Coastal Commission. (See letter from Susan Craig dated December 10, 2004 attached as Exhibit D.) On December 24, 2004, in response to our letter to Commission staff dated December 20, 2004, Commission staff acknowledged that their reliance on Section 13052 to require such approvals was incorrect. (See letter from Lombardo & Gilles dated December 20, 2004 attached as Exhibit E, see also letter from Diane Landry dated December 24, 2004 attached as Exhibit F; "reference to section 13052 is misplaced".)

Yet, a few months later, Commission staff attempted to again rely on Section 13052, this time asserting that the approvals listed in subsections (a)-(k) of Section 13052 would not satisfy the requirements of Section 13052 where other governmental approvals not listed under Section

Meg Caldwell, Chair  
and Members of the California Coastal Commission  
March 25, 2005  
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13052 were otherwise required for the project.<sup>2</sup> (See Diane Landry letter dated February 7, 2005 attached as Exhibit G.) The Executive Director's most recent interpretation of Section 13052 is not only unprecedented, but is also absurd since all projects essentially require additional approvals from responsible agencies that are not listed in subsections (a)-(k). Section 13052 clearly provides that final approvals of any of the categories listed in (a)-(k) not only suffice, but are deemed as compliance with Section 13052 for processing of an application filed with the Coastal Commission. The Executive Director's interpretation would essentially contradict and render this express language meaningless.

**SECTIONS 13056 AND 13053.5 OF THE COMMISSION'S REGULATIONS ALSO DO NOT PROVIDE ANY AUTHORITY FOR THE COMMISSION STAFF TO DELAY PROCESSING CRM'S APPLICATION.**

Commission staff also asserts that Sections 13056 and 13053.5 of the Commission's regulations provides authority for Commission staff to require final approvals from responsible agencies before processing CRM's application. (See Diane Landry letter dated December 24, 2004: "Although the application form itself does not identify specific government approvals, the receipt of which are a prerequisite for the application to be accepted for processing, section 13053.5(e) authorizes the Executive Director of the commission to request this type of specific information as part of the application submittal process.") Commission staff's interpretation is again unsupported by the language of Sections 13056 and 13053.5.

Section 13056(a) simply states that "a permit application shall be submitted on the form issued pursuant to Sections 13053.5 and 13053.6, together with all necessary attachments and exhibits, and a filing fee pursuant to section 13055." This section does not contain any language either requiring an applicant to obtain or authorizing the Executive Director to require final approvals from responsible agencies, nor as acknowledged by Ms. Landry does the Coastal Commission application form itself identify any such requirement.

Similarly, Section 13053.5(e) simply states that an application must contain "any additional information deemed to be required by the commission or the commission's executive director for *specific categories of development* or for development proposed for *specific geographic areas*" [emphasis added]. We had requested that the Executive Director specify what "categories of

---

<sup>2</sup> Not only does Commission staff assert that these additional approvals must first be obtained from responsible agencies, but also that the responsible agencies' preliminary approvals of the project are insufficient to satisfy Section 13052. Even though no other approvals are required under Section 13052, the responsible agencies have nonetheless provided their preliminary approval of the project both during the environmental review process conducted by the City of Monterey and subsequent to the City's final approval, and have also specifically indicated that the Coastal Commission should proceed with CRM's application. Commission staff has chosen to ignore these responsible agencies asserting that the Commission staff will not accept representations made by agency staff, but only by the agency's full decisionmaking board at a duly noticed hearing. Again, Commission staff's interpretation is unprecedented, and as indicated by the responsible agencies, this has never been required by the Coastal Commission.

Meg Caldwell, Chair  
and Members of the California Coastal Commission  
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development", or what "specific geographic areas", which Commission staff is relying upon<sup>3</sup>, however, Commission staff was unable to provide an adequate response, but merely stated:

"[We] required information "additional" to that described in the general provisions of the application form for the "category of development" of which the Ocean View Plaza project is a representative example".

(See letter dated February 7, 2005 from Diane Landry attached as Exhibit G)

Again, the Coastal Commission application form does not identify any requirement to obtain final approvals from responsible agencies, or any other additional requirements for "categories of development" and "geographic areas", that would apply to the Ocean View Plaza project. Moreover, the Commission staff's March 2004 report reveals that there are no new regulations or guidelines for processing applications involving desalination facilities. Attached as Exhibit I is page 5 from the Coastal Commission staff's report entitled "Seawater Desalination and the California Coastal Act dated March 2004, which expressly states that this report is "meant to be informational only" and "does not create new regulations or guidelines for reviewing proposed desalination facilities." Thus, to the extent Commission staff seeks additional requirements to be placed on CRM's application based on the proposed desalination facility, such requirements are completely unwarranted.

#### **THE COMMISSION STAFF'S REFUSAL TO PROCESS CRM'S APPLICATION IS INCONSISTENT WITH THE COMMISSION'S LONGSTANDING PRACTICE.**

The Commission staff's refusal to process CRM's application is inconsistent with how the Coastal Commission has always processed coastal development permit applications, and constitutes a violation of our client's due process and equal protection rights. The Coastal Commission's longstanding practice of processing coastal development applications has never been to require final approvals from responsible agencies before processing of an application. Rather, the Coastal Commission has consistently required such approvals after the Coastal Commission takes final action on a project through the imposition of conditions of approval in approving a project. (See for example, the Coastal Commission's determination on the Beardsley project attached hereto as Exhibit J. The Beardsley project is located on 201 Cannery Row, which the Coastal Commission approved just six months ago subject to a special condition that the project applicant submit evidence of adequate water and obtain all relevant agency approvals.)

We have provided Commission staff with contacts at the Regional Water Quality Control Board, City of Monterey, Monterey County Health Department, and other agencies all of whom have expressed that the Coastal Commission has sufficient information necessary to proceed with this application, and that the Coastal Commission absolutely should not delay the processing of this application. In fact, the Coastal Commission has regulations, which impose a mandatory

<sup>3</sup> See letter dated January 11, 2005 from Lombardo & Gilles attached as Exhibit H.

Meg Caldwell, Chair  
and Members of the California Coastal Commission  
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obligation on the Executive Director to process an application before final approvals are obtained by a lead agency and also without any preliminary approvals from responsible agencies. Section 13053(e) states "the executive director shall waive the requirement for preliminary approval when required pursuant to Government Code section 65941(c). Section 65941 (c) in turn states: "Consistent with this chapter, a responsible agency shall, at the request of the applicant, commence processing a permit application for a development project prior to final action on the project by a lead agency to the extent that the information necessary to commence the processing is available."

Here, the Coastal Commission has the City of Monterey's final approval for the Ocean View Plaza project, the responsible agencies' preliminary approval, and all of the information necessary to proceed with this application. However, Commission staff continues to refuse to review this information, ignoring the City of Monterey and responsible agencies' urging that the Coastal Commission proceed with processing CRM's application.

### CONCLUSION

It has been almost nine months since the City of Monterey approved the Ocean View Plaza project in June 2004. The project site is in deteriorating condition and has been subject to repeated acts of vandalism rendering the site a coastal eyesore. The City has strongly urged the Commission staff to proceed with processing CRM's application to no avail. (See letter from City Mayor dated January 19, 2005, Exhibit B.)

The Executive Director's refusal to process CRM's application directly violates Sections 13052, 13056(a) and 13053.5(e), and is inconsistent with the Coastal Commission's longstanding practice. Based on the foregoing, we respectfully request that the Coastal Commission instruct Commission staff to immediately process CRM's application.

Sincerely,

Lombardo & Gilles, PC



Jacqueline M. Zischke

JMZ/ltl

Enclosures

cc: Peter M. Douglas, Executive Director  
Diane Landry, District Manager  
Charles Lester, Deputy Director

**CCC Exhibit** 1  
(page 6 of 6 pages)

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

(831) 427-4863

HEARING IMPAIRED: (415) 904-5200


**Coastal Development Permit Application Instructions**

A completed application includes the application for coastal development permit, the appendices to the application, and all required attachments. Please answer ALL questions; if a question is not applicable to your project, indicate "N.A." All exhibits and materials submitted must be legible. Please note that incomplete applications will NOT be accepted for filing.

The following checklist is provided for the convenience of applicants in gathering the necessary application materials; it is not a complete statement of filing requirements. Please refer to pages 6 and 7 of the application, as indicated, for a more complete description of the items listed below.

- ☐ **Property ownership.** A copy of any of the following (demonstrating applicant's legal interest in the property where development is proposed) will be acceptable: current tax bill, recorded deed, lease, easement, or current policy of title insurance. Preliminary title reports will not be accepted for this purpose. The identity of all persons or entities which have an ownership interest in the property superior to that of the applicant must be provided. (See also page 6, number 1.)
- ☐ **Locational maps.** Copies of (a) general location maps(s) (e.g., Thomas Brother's map, road map, etc.) with the project site clearly marked, and (b) assessor's parcel map(s) showing the proposed development site and all adjacent properties within 100 feet of the property boundary. (See also page 7, numbers 2 & 6.)
- ☐ **Project plans.** Two full sets of project plans (including site plans, floor plans, elevations, grading and drainage plans, landscape plans, and septic plans) and one set of reduced (8½" x 11") site plans and elevations. For demolitions, please also submit photos of the structure proposed for demolition. For development on a bluff face, bluff top, or in any area of high geologic risk, please also submit a comprehensive, site specific geology and soils report. (See also page 7, numbers 7 & 11.)
- ☐ **Local project approvals.** Copies of required local approvals and all local staff reports for the proposed project (including zoning variances, use permits, etc.) as noted on Appendix B of the application (Local Agency Review Form). Note that Appendix B must be completed and signed by the local government in whose jurisdiction the project site is located. In addition, please also submit copies of any environmental documents prepared for the proposed project (Draft and/or Final EIRs, EISs, Negative Declarations, etc.). (See also page 7, numbers 3 & 9, and page 10, Appendix B.)
- ☐ **Other public agency approvals.** Verification of all other permits, permissions or approvals applied for and/or granted by other public agencies (e.g., Department of Fish and Game, State Lands Commission, U.S. Army Corps of Engineers, Monterey Bay National Marine Sanctuary, etc.). Septic system proposals must be accompanied by approval from the County or the Regional Water Quality Control Board. Please note that for projects located on or near state tidelands or public trust lands (for example, shoreline protective work projects such as seawalls and revetments), applications must also include a State Lands Commission determination. (See also page 7, numbers 8 & 10.)
- ☐ **Stamped envelopes for noticing.** Envelopes addressed to: (a) each applicant and each applicant's representative (two envelopes for each); (b) each property owner and occupant of property situated within 100 feet of the property lines of the project site (excluding roads); (c) all other parties known to be interested in the proposed development (e.g., persons expressing interest at local government hearings, etc.), and (d) your local government permit contact. The envelopes must be accompanied by a list containing the names, addresses and assessor's parcel numbers of all addressees. The envelopes must be plain (i.e., no return address), regular business size (9½" x 4½"), and stamped with first class postage (metered postage is not acceptable). (See also page 7, numbers 4 & 5.)
- ☐ **Posting notice.** The proposed project must be completely described in the blank spaces provided in the Notice of Pending Permit form (provided at the back of this application package) and, subsequently, the completed notice must be conspicuously posted at the proposed development site. As proof of posting the notice, you must sign, date, and return Appendix D, Declaration of Posting. (See also page 13, Appendix D.)
- ☐ **Filing fee.** Please consult the permit application fee schedule (Appendix E) and submit the appropriate fee. You will be notified after submittal if the incorrect fee amount was submitted (and if a refund or additional fee is necessary). (See also page 13, Appendix E.)
- ☐ **Signature.** The application must be signed by the applicant and/or the agent (as appropriate) on pages 9, 10 and 13.

**CCC Exhibit 2**  
(page 1 of 1 pages)

 If you have any questions regarding this application, please contact the Central Coast District Office at 725 Front Street, Suite 300, Santa Cruz, CA 95060 (831) 427-4863.

Anthony L. Lombardo  
Jeffery R. Gilles  
Derinda L. Messenger  
James W. Sullivan  
Jacqueline M. Zischke  
Steven D. Penrose  
E. Soren Diaz  
Sheri L. Damon  
Virginia A. Hines  
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Paul W. Moncrief  
Anthony W.E. Cresap  
Bradley W. Sullivan  
Miriam Schoket



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888-757-2444 (MONTEREY)  
831-754-2011 (FAX)

225 Sixth Street  
Hollister, CA 95023  
831-630-9444

File No. 1145.000

December 9, 2004

VIA HAND DELIVERY

Ms. Susan Craig, Coastal Planner  
California Coastal Commission  
Central Coast District Office  
725 Front St, Ste 300  
Santa Cruz CA 95060-4537

Re: Cannery Row Marketplace LLC  
Application for Coastal Development Permit

Dear Ms. Craig:

On behalf of our client, Cannery Row Marketplace LLC, we are pleased to submit the attached completed application for a coastal development permit for the development of the Ocean View Plaza project including the Ocean View Plaza desalination facility. These application materials include the following:

1. Three (3) copies of Completed Application form with all required attachments including the project plans, site plans, and other plans and reports detailed below;
2. The Environmental Impact Report ("EIR") prepared and certified by the City of Monterey for the Ocean View Plaza project. The EIR is comprised of: (1) the Draft Environmental Impact Report (DEIR); (2) Appendices to the Draft Environmental Impact Report; (3) the Final Environmental Impact Report (FEIR); (4) the Supplement to the Final EIR; and (5) the Responses to Comments on the Supplement to the Final EIR; (5) Draft Supplemental Environmental Impact Report Alternatives Analysis, and (6) Final Supplemental Environmental Impact Report Alternatives Analysis;
3. Envelopes addressed to owners and occupants situated within 100 feet of the property, and other parties known to be interested in the project. We have metered postage on these envelopes without a date, which you indicated was acceptable;
4. Three (3) copies of Design Plans 70% Submittal for the desalination facility;
5. Three (3) copies of Design Memorandum 70% Submittal for the desalination facility; and

ccc Exhibit 3  
(page 1 of 4 pages)



Ms. Susan Craig, Coastal Planner  
California Coastal Commission  
December 9, 2004  
Page 2

6. Three copies of September 2004 Effluent Mixing Zone and Dilution Analysis Report, prepared by Marine Resource Consultants. This report discusses the results of numerical modeling of the effluent that will be discharged by the Ocean View Plaza desalination facility.

Your office had returned the prior application submitted for the Ocean View Plaza project after the Monterey County Superior court set aside the City of Monterey's October 2002 approval of the project. Since this time, the City of Monterey prepared additional environmental review of project alternatives as directed by the Court, and ultimately approved one of these project alternatives for the Ocean View Plaza project. The City of Monterey's approval includes a smaller project that provides for a large community park, a bayside history center, coastal public access, and increased affordable housing. The City's approval documents including the Notice of Determination (see Exhibit 3) and Local Agency Form (see Appendix B of the application.

During the previous application submittal, your office had requested certain information relating to the project, which have been addressed as follows:

**Construction Within Tidelands.** You inquired about any lease arrangements that may be necessary with the City of Monterey in order to construct the desalination pipes in the tidelands. Condition No. 26 of the City of Monterey's approval of the project requires that prior to any construction, the project applicant must obtain review and approval from the Housing and Property Manager. The State Lands Commission has confirmed that the City owns the tidelands where the source water intake and brine discharge pipes will be constructed. (See attached email from State Lands Commission). We have already contacted the City of Monterey's HCD Coordinator in Real Estate, Robert Cea, who has instructed that the City of Monterey will finalize negotiations with our client for the tidelands lease upon the City's approval of the final map. (See attached letter from Robert Cea to Lombardo & Gilles dated August 29, 2003.) The City of Monterey will not approve the final map until all conditions of approval have been satisfied including obtaining the necessary permit approvals from the Coastal Commission.

**Public Access.** You requested that the plans identify all proposed public access improvements, and that we also identify the mechanisms that will be used to assure this public access. The attached project plans identify such public access, and Condition No. 3 of the City of Monterey's approval specifies that dedicated public access easements are to be provided (1) from the Recreation Trail to Cannery Row Street through the Community Park; (2) from Cannery Row Street to the waterfront between Buildings A and B including the entire Historic Plaza; and (3) the Coastal Promontory and lateral access along the shoreline between Chart House Restaurant and El Torito Restaurant.

**CCC Exhibit 3**  
(page 2 of 4 pages)

**Geological/Geotechnical Reports.** You requested that we submit geological/geotechnical reports addressing wave impacts. Enclosed with this application is a copy of the two reports both of which were previously submitted to you. However, I am providing another copy to you

Ms. Susan Craig, Coastal Planner  
California Coastal Commission  
December 9, 2004  
Page 3

since you indicated that all documents in your office had been returned to us. The first report is entitled "*Geotechnical Investigation Report Ocean View Plaza Project, Monterey California*" dated December 16, 2003 prepared by MACTEC Engineering and Consulting. The second report is entitled "*Wave Impacts On Ocean View Plaza, Monterey California*" prepared by Edward B. Thornton dated October 17, 2003.

**Stormwater Pollution Prevention Plan.** You had requested that we provide you with a stormwater pollution prevention plan. Enclosed please find the document entitled "*Construction Storm Water Pollution Prevention Plan (SWPPP) Ocean View Plaza Project, Monterey California*" prepared by MACTEC dated December 16, 2003. Again, this report was previously submitted, however, we are providing another copy since we understand these materials were also returned to our office. This plan identifies a description of the project, potential storm water contaminants, and storm water management controls.

**Treatment for Maintenance of Desalination Facility.** You inquired about the treatment for the maintenance of the desalination facility. The membranes will be cleaned by a CIP (Clean In Place) Unit. The operation is described in Section 5.1 Operational Features in the "Ocean View Plaza Development Design Memorandum for Reverse Osmosis Desalination Facilities" 70% Submittal, dated November 2004 enclosed herewith. The chemicals that are to be used are citric acid to remove the accumulated calcium carbonate and sodium hydroxide to remove any organics, silt or bacterial slime. After each cleaning the membrane system is flushed with fresh water to remove any residual materials prior to placing the unit back into operation. The cleaning solutions would then be neutralized and sent to the drain, and pumped into the sewer system and not the brine discharge.

**Other Application Submittals.** We are also enclosing a copy of the numerous applications that have been submitted with various agencies including the Army Corps of Engineers, Monterey County Health Department and Regional Water Quality Control Board. We believe it is necessary that our client's application with the Coastal Commission be processed concurrently with the processing of the various other permits required from other agencies in order to secure timely compliance of the conditions of approval of the City of Monterey's permit for the Ocean View Plaza project, and to avoid expiration of the City's permit. During our last telephone conversation, you indicated that you and Diane Landry would meet with me to discuss the processing of this application, and would also review these application materials and determine what, if any, additional information is required for the processing of this application. In the meantime, we will post notice of this application, and will submit the completed notice of posting to you within the next few days.

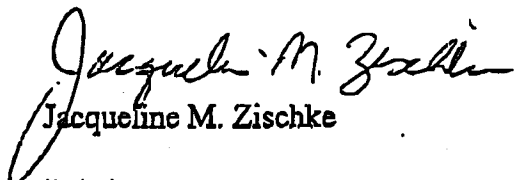
Lastly, we understand that your office is still holding the application fees previously submitted for this permit application, and that there are no additional fees. If this is not correct, please give me a call.

Ms. Susan Craig, Coastal Planner  
California Coastal Commission  
December 9, 2004  
Page 4

Thank you for your attention to this matter, and I look forward to discussing these issues with you and Ms. Landry.

Sincerely,

Lombardo & Gilles, PC

  
Jacqueline M. Zischke

JMZ/prs

Enclosures

cc: Client

REC'D DEC 14 2004

R

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4883



December 10, 2004

Jacqueline Zischke  
c/o Lombardo & Gilles  
P. O. Box 2119  
Salinas, CA 93901-2119

Subject: *Ocean View Plaza Materials*

Dear Jackie,

I enjoyed meeting with you yesterday to discuss the status of the Ocean View Plaza project. As we discussed yesterday, we cannot accept an application submittal for the project until all local approvals have been obtained, pursuant to CCR Section 13052. Specifically, it is our understanding that the creation of a Community Services District to operate the proposed desalination plant requires City of Monterey, County of Monterey, and LAFCO approvals. In addition, the proposed desalination plant also requires Monterey County Department of Environmental Health approval. An application for the project may be submitted to our office when these local approvals have been obtained.

We will review the project plans you delivered to our office with respect to the questions raised in our previous comment letters regarding the proposed project. We will hold on to the remainder of the items you delivered for six months, pending submittal of evidence that all local approvals have been obtained for the project. Please respond to this letter in writing to state that you understand that the materials you delivered to our office do not constitute an application submittal.

Sincerely,

Susan Craig  
Coastal Planner  
Central Coast District Office

CCC Exhibit 4  
(page 1 of 1 pages)

Anthony L. Lombardo  
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Derinda L. Messenger  
James W. Sullivan  
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*\*Certified by the State Bar  
of California Board of Legal  
Specialization as a  
Specialist in Estate Planning,  
Trust and Probate Law.*

File No. 1145.000

December 20, 2004

Ms. Susan Craig, Coastal Planner  
California Coastal Commission  
Central Coast District Office  
725 Front St, Ste 300  
Santa Cruz, CA 95060-4537

**Re: Cannery Row Marketplace LLC  
Coastal Development Permit**

Dear Ms. Craig:

I received your letter dated December 10, 2004, and as you requested, I am writing this letter to confirm the discussions during our last meeting. I would like to thank both you and Diane Landry for staying late at the office to meet with me.

During our meeting, Diane Landry informed that the Coastal Commission will not accept Cannery Row Marketplace LLC's application materials as a formal application submittal until final approval is secured from LAFCO for the creation of the Community Services District to operate the desalination facility, as well as final approval from the Health Department for the construction of the desalination facility. Ms. Landry indicated that you could review our application materials to determine if any additional information is required, without treating it as a formal application submittal.

Since our meeting, I have reviewed California Code of Regulations Section 13052 cited in your letter, and this regulation generally requires that "preliminary" approvals, not final approvals from state and local governmental agencies of the project development before an application will be accepted for filing. More significantly, Section 13052 also lists categories of approvals, which approvals of "any or all" such categories are deemed to satisfy the requirements of Section 13052. Your instruction that Cannery Row Marketplace must first secure "all" final permit approvals is contrary to the language "any or all" contained in Section 13052, and also ignores the "preliminary approval" language contained in this section.

**CCC Exhibit 5**  
**(page 1 of 3 pages)**

Ms. Susan Craig, Coastal Planner  
California Coastal Commission  
December 20, 2004  
Page 2

The language of California Code of Regulations Section 13052 states:

"When development for which a permit is required pursuant to Public Resources Code Section 30600 or 30601, also requires a permit from one or more cities or counties, or other state or local governmental agencies, a permit application shall not be accepted for filing by the Executive Director unless all such governmental agencies have granted at a minimum their preliminary approvals for said development, except as provided in section 13053. An applicant shall have been deemed to have complied with the requirements of this section when the proposed development has received approvals of any or all of the following aspects of the proposal, as applicable:

- (a) tentative map approval;
- (b) planned residential development approval
- (c) special or conditional use permit approval
- (d) zoning change approval
- (e) all required variances, except minor variances
- (f) approval of a general site plan
- (g) a final EIR including (1) the explicit consideration of any proposed grading; and (2) explicit consideration of alternatives to the proposed development; and (3) all comments and supporting documentation submitted to the lead agency.
- (h) Approval of dredging and filling of any water areas;
- (i) Approval of general uses and intensity of use proposed for each part of the area covered by the application as permitted by the applicable local general plan, zoning requirements, height, setback, or other land use ordinances;
- (j) In geographic areas specified by the Executive Director of the Commission, evidence of a commitment by local government or other appropriate entity to serve the proposed development at the time of completion of the development, with any necessary municipal or utility services designated by the Executive Director of the Commission;
- (k) A local government coastal development permit issued pursuant to the requirements of Chapter 7 of these regulations."

Our client, Cannery Row Marketplace LLC has secured final approvals from the City of Monterey for at least three of the above approval categories, and therefore our client has complied with Section 13052. Cannery Row Marketplace LLC has received approvals for a tentative map thus satisfying subsection (a), a conditional use approval for the desalination facility satisfying subsection (c), and certification of the Ocean View Plaza EIR satisfying subsection (g). Each of these approvals alone requires the processing of the Coastal Commission application for Ocean View Plaza under Section 13052.



Ms. Susan Craig, Coastal Planner  
California Coastal Commission  
December 20, 2004  
Page 3

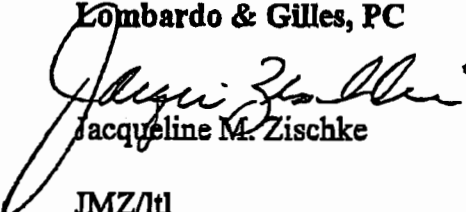
We remain concerned that by waiting until after all final approvals from other agencies are secured before beginning the processing of the Coastal Commission application, the City of Monterey's permits issued this year would expire. Although Ms. Landry mentioned that the City of Monterey may extend such permits, the City of Monterey cannot provide any assurances that this will occur. Moreover, it is clear that the Coastal Commission regulations were written to allow timely processing before the Coastal Commission in a manner that would avoid expiration of significant permits that have already been approved for a project.

Given the above analysis, we respectfully request that you reconsider your determination under Section 13052, and consider our application as submitted so that it can be processed concurrently with other remaining permit applications. In the meantime, we will keep you apprised of our progress in securing approvals from the Monterey County Health Department and the Regional Water Quality Control Board, and other agencies.

Thank you for your courtesy and attention to this matter.

Sincerely,

Lombardo & Gilles, PC



Jacqueline M. Zischke

JMZ/ttl

cc: Client

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863



REC'D DEC 27 2004

December 24, 2004

Jacqueline Zischke  
Lombardo and Gilles  
318 Cayuga Street  
Salinas, CA 93902-2119

Subject: *Cannery Row Marketplace Application*

Dear Ms. Zischke,

I am writing in response to your letter dated December 20, 2004 to Susan Craig regarding acceptance of your client's recent submittal of various materials as a formal application submittal for a Coastal Development Permit for the Cannery Row Marketplace project in the City of Monterey. You have cited California Code of Regulations (CCR) Title 14, Section 13052 as support for accepting this application for review and processing under the Commission's administrative regulations and the Permit Streamlining Act (PSA). The reference to section 13052 is misplaced because the issue raised by your submittal is not whether the project materials are sufficient for filing as complete but whether the submittal meets the threshold standards for a formal application submittal as outlined in CCR Sections 13056 and 13053.5.

In order to determine whether an application can be accepted for filing or completeness review under section 13056, it must first be determined that the application meets the basic requirements for a formal application submittal. The application you have submitted for the Cannery Row Marketplace fails this initial determination because it lacks evidence of necessary governmental approvals for the desalination plant that will provide the water supply that is a basic component of the proposed development. Section 13056(a) requires an application for a CDP to "be submitted on the form issued pursuant to section 13053.5..." The Commission's application form states on the first page that, if relevant, as is the case here, "other public agency approvals" are required for an application to be accepted for processing.

Although the application form itself does not identify specific governmental approvals, the receipt of which are a prerequisite for the application to be accepted for processing, section 13053.5 (e) authorizes the Executive Director of the Commission to request this type of specific information as part of the application submittal process. Pursuant to this authority, Commission staff has previously advised you that evidence of *all* other public agency approvals required for the desalination plant is necessary in order for the application for a CDP for the proposed development to be accepted for processing. In fact, an earlier application was returned to you for this reason. Other governmental approvals for the desalination plant include, but may not be limited to: 1) LAFCO approval of the formation of the necessary Community Services District, 2) Regional Water Quality Control Board, 3) approval by the Monterey County Health Department, and; 4) approval by the Monterey Bay National Marine Sanctuary, if required.<sup>1</sup>

<sup>1</sup> Contrary to the suggestion in your letter to Susan, the requirement of evidence of receipt of the referenced approvals is not inconsistent with the provisions of section 13052 of the Commission's regulations. The specific listing of approvals in sections 13052(a) - (k) does not limit the requirement that "all...cities or counties or other state or local governmental agencies...[must] have granted at a minimum their preliminary approvals for [the proposed] development..." Whether with respect to any particular governmental approval "preliminary" as opposed to final approval may suffice is a determination that can only be made on the basis of an individual, case-by-case evaluation of the specific circumstances under which the particular approval is granted.

Jacqueline Zischke  
Cannery Row Marketplace  
December 24, 2004  
Page 2

To avoid any misunderstanding about the status of this permit application, I am returning it to you. If, as we originally discussed at our recent meeting, you would like to have Susan review the project materials *prior* to submittal and as her time permits, you may return the file but it must be accompanied by a letter from you that clearly states the file is not being submitted as an application for a Coastal Development Permit.

Sincerely,



Diane Landry  
District Manager

Central Coast District Office

cc: Susan Craig  
Phil Taylor

CCC Exhibit 6  
(page 2 of 2 pages)

Anthony L. Lombardo  
Jeffery R. Gilles  
Dorinda L. Messenger  
James W. Sullivan  
Jacqueline M. Zischke  
Steven D. Penrose  
E. Soren Diaz  
Sheri L. Damon  
Virginia A. Hines  
Patrick S.M. Casey  
Paul W. Moncrief  
Anthony W.E. Cresap  
Bradley W. Sullivan  
Miriam Schokor



318 Cayuga Street  
P.O. Box 2119  
Salinas, CA 95022-2119  
831-754-2444 (SALINAS)  
888-757-2444 (MONTEREY)  
831-754-2011 (FAX)

225 Sixth Street  
Hollister, CA 95023  
831-630-9444

File No. 1145.000

January 11, 2005

**VIA HAND DELIVERY**

\* Certified by the State Bar  
of California Board of Legal  
Specialization as a  
Specialist in Estate Planning,  
Trust and Probate Law.

Diane Landry, District Manager  
California Coastal Commission  
Central Coast District Office  
725 Front St., Ste. 300  
Santa Cruz, CA 95060-4537

**Re: Cannery Row Marketplace LLC  
Coastal Development Permit**

Dear Ms. Landry:

I am in receipt of your letter dated December 24, 2004 and as you requested, we are submitting this written confirmation that we would like to have your staff, Susan Craig, review the project materials that we previously submitted as Ms. Craig's time permits. We are therefore returning these materials to your office, and we agree that such submittal will not be treated as a formal application at this time, and until we are able to resolve this matter.

In your letter, you state that reference to Section 13052 in my letter dated December 20, 2004 is misplaced. You stated that *"the issue you raised by your submittal is not whether the project materials are sufficient for filing as complete [under section 13052] but whether the submittal meets the threshold standards for a formal application submittal as outlined in CCR Sections 13056 and 13053.5."* However, Ms. Craig's response letter to our application submittal dated December 9, 2004 did not cite to either Sections 13056 or 13053.5; but only to Section 13052. Nonetheless, I have reviewed Sections 13056 and 13053.5, and neither of these sections contain any language that requires or provides authority for the Coastal Commission staff to require final approvals from all other local and state agencies to be obtained before the Coastal Commission will allow the processing of an application for a coastal development permit.

Specifically, your letter cites to Section 13056(a) and to a statement on the first page of the Coastal Commission's application form, as authority that "other public agency approvals" may be required before an application may be accepted for processing. You then cite to Section 13053.5(e) as authorizing the Executive Director to require certain governmental approvals before processing our client's application. To the contrary, Section 13056(a) simply states that "a permit application shall be submitted on the form issued pursuant to Sections 13053.5 and

**CCC Exhibit** 7  
(page 1 of 3 pages)

Diane Landry, District Manager  
California Coastal Commission  
January 11, 2005  
Page 2

13053.6, together with all necessary attachments and exhibits, and a filing fee pursuant to section 13055." This section does not contain any language requiring an applicant to obtain final approvals. Moreover, Section 13053.5(e) requires "any additional information deemed to be required by the commission or the commission's executive director for specific categories of development or for development proposed for specific geographic areas". We are unaware of any "specific categories of development" or "specific geographic area" that the Executive Director or Coastal Commission has directed any additional information, which would apply to the Ocean View Plaza project. If the Coastal Commission and Executive Director has issued such direction for certain categories of development or specific geographic areas which apply to this project, please provide me with that information.

Finally, your interpretation of Sections 13056(a) and 13053.5(e) is inconsistent with the language of Section 13052. You indicate in your letter that the specific listing of approvals in section 13052(a)-(k) does not limit the requirement under section 13052 that "all cities or counties or other state or local governmental agencies...have granted at a minimum their preliminary approvals for the development." Section 13052, however, states that "an applicant shall have been deemed to have complied with the requirements of this Section when the proposed development has received approvals" of any or all of the approvals listed in sections 13052(a)-(k). It is clear from this language that final approval of any of the categories listed in (a)-(k) not only suffice, but are deemed as compliance with Section 13052 for processing of an application filed with the Coastal Commission.

Nonetheless, as I've indicated to you previously, the City of Monterey circulated the EIR and provided notice to each of the agencies regarding the project including the Regional Water Quality Control Board and Monterey County Environmental Health Department. Through such process, these agencies have provided their preliminary approval of the project based on the comments or the lack of any objections from these agencies. In addition, I have spoken with the agency staff from the Regional Water Quality Control Board, Monterey County Health Department, and the City of Monterey all of whom have indicated that they do not perceive a problem with my client's project, and have indicated that the Coastal Commission should proceed with its application. Thus, since our submittal with the Coastal Commission, we have received yet another confirmation of the various agencies' preliminary approval of the Ocean View Plaza project.

You should also be aware that the Coastal Commission also has adopted regulations that impose a mandatory obligation on the Executive Director to process an application even before preliminary approvals are obtained where the Commission has the necessary information to commence processing. Section 13053(e) states "the executive director shall waive the requirement for preliminary approval when required pursuant to Government Code section 65941(c). Section 65941 (c) in turn states: "Consistent with this chapter, a responsible agency shall, at the request of the applicant, commence processing a permit application for a development project prior to final action on the project by a lead agency to the extent that the information necessary to commence the processing is available." Here, the Coastal Commission,

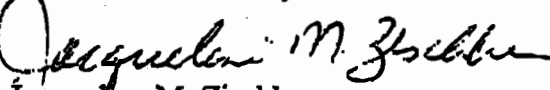
Diane Landry, District Manager  
California Coastal Commission  
January 11, 2005  
Page 2

has all of the information necessary to proceed with this application. Again, agency staff including Mr. Scott Phillips from the Regional Water Quality Control Board has informed me that he does not believe the Coastal Commission needs to wait until final approval from the RWQCB is secured before the Coastal Commission begins processing its application. Mr. Phillips phone number is (805) 549-3550, and Mr. Phillips has indicated that he would be happy to discuss this matter with you. I have also spoken with Bill Wojtkowski from the City of Monterey and Cheryl Sandoval from the County Health Department staff, who have also expressed that the Coastal Commission should be able to proceed with this application. We are hopeful that after you have spoken with the staff from the various agencies working on the remaining permits that are required for this project, that you will determine that the Cannery Row Marketplace LLC's application for a coastal development permit should not only be treated as a formal submittal, but also should be determined complete.

Overall, the mandatory language contained in Sections 13052 and 13053(e) renders a failure to process our client's application subject to litigation. We would be happy to schedule any meetings with various state and local agency staff so we can all coordinate and discuss this matter. Please give me a call to discuss.

Sincerely,

Lombardo & Gilles, PC

  
Jacqueline M. Zischke

JMZ/tl

Enclosure

cc: Client



STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

(831) 427-4863



February 7, 2005

Jacqueline M. Zischke, Esq.  
Lombardo & Gilles, PC  
P.O. Box 2119  
Salinas, CA 93902

Re: Cannery Row Marketplace CDP Application

Dear Ms. Zischke:

I am writing in response to your January 11 letter to me, which in turn was in response to my letter of December 24, 2004, to you, in regard to the above-referenced CDP application.

In your letter you assert that section 13056(a) of the Commission's regulations "does not contain any language requiring an applicant to obtain final approvals." We never said that it did. Our letter is clear that it is an applicable provision in the Commission's application form (as referenced in section 13056(a)) that imposes this requirement.

You next question whether the Executive Director of the Commission has, under the authority of section 13053.5, required "any additional information" for "any 'specific categories of development'...", which would apply to the Ocean View Plaza Development." Our December 24 letter to you did precisely what section 13053.5(e) authorizes the Executive Director<sup>1</sup> to do. Namely, it required information "additional" to that described in the general provisions of the application form<sup>2</sup> for the "category of development" of which the Ocean View Plaza project is a representative example.

You also express your disagreement with the interpretation of section 13052 set forth in our December 24 letter. However, your quotation of language from section 13052 that introduces subsections (a) - (k) omits the critically important phrase, "as applicable." In other words providing evidence of the granting of the approvals listed in subsections (a) - (k) will satisfy the requirements of section 13052 to the extent and only to the extent that all of the governmental approvals that a proposed development project will require are in fact identified in that listing. If any governmental approvals that a project will require are not listed in subsections (a) - (k), submittal of evidence of the granting of only those approvals listed in those subsections will *not* satisfy the requirements of 13052.

You also assert that section 13053(e) (which in turn references Government Code/PSA sec. 65941(c)) imposes a mandatory duty to waive otherwise required local approvals for the project described in the subject application. Section 65941(c) requires that a responsible agency "commence processing a permit application for a development project prior to final

<sup>1</sup> Section 13032(b) of the Commission's regulations authorizes the Executive Director to "delegate the performance of his or her functions" to subordinate staff.

<sup>2</sup> More correctly, our letter provides a specific interpretation of how a general requirement contained in the application form for the application to be accompanied by "other public agency approvals" that the project must obtain pertains specifically to the "Ocean View Plaza project."

Jacqueline Zischke  
Cannery Row Marketplace Project  
February 7, 2005  
Page 2

action on the project by a lead agency...." For both of the following reasons, section 65941(c) has no applicability to the requirements imposed in our December 24 letter. First, the specified requirements pertain not to approval(s) by the lead agency, the City of Monterey, but to approvals by other responsible agencies. Second, the evident purpose of section 65941(c) is to prevent a responsible agency that has determined an application for a development project to be complete under Gov't Code/PSA section 65943 from refusing to process that application on the basis of Gov't Code/PSA section 65952(a)(1), which provides that the period within which a responsible agency must render a decision on an application does not begin to run until "the lead agency has approved the project." Section 65941(c) has no applicability to a situation, like the present one, in which the Commission as a responsible agency has made no determination of application completeness.

Finally you ask that we act in accordance with the subjective opinions of staff members of certain other public agencies who have approval authority over the Ocean View Plaza project "that they do not perceive a problem with [said] project" and "that the Coastal Commission should proceed with [the processing of the] application" for a CDP therefore. We disagree with your characterization of these subjective opinions by agency staff members, as expressed through the CEQA comment process or otherwise, as constituting the "preliminary approval" of the Ocean View Plaza project by the agencies that are the employers of these staff members. We are all familiar with situations in which, on the basis of information presented at a public hearing or otherwise, the decision-making authority of a particular agency has taken action on a project that was before it in a manner at variance with the views or recommendations of its staff. We also note that the public officials who supposedly hold these views do not include staff members of one of the agencies that have approval authority over this project and that, accordingly, we identified in our letter, namely, the Monterey County LAFCO.

Sincerely,



Diane Landry  
District Manager  
Central Coast District Office



Alan C. Lloyd, Ph.D.  
Agency Secretary

# California Regional Water Quality Control Board

## Central Coast Region



Internet Address: <http://www.waterboards.ca.gov/centralcoast>  
895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906  
Phone (805) 549-3147 • FAX (805) 543-0397

Arnold Schwarzenegger  
Governor

February 25, 2005

Jaqueline Zischke  
Lombardo & Gillis  
P.O. Box 2119  
Salinas, CA 93902-2119

Dear Ms. Zischke:

### INCOMPLETE REPORT OF WASTE DISCHARGE - OCEAN VIEW PLAZA SEAWATER DESALINATION FACILITY, CITY OF MONTEREY, MONTEREY COUNTY

We received your December 7, 2004 Report of Waste Discharge for the Ocean View Plaza on Cannery Row, in the City of Monterey. The EIR for the project was finalized by the City of Monterey on June 2, 2004. While we consider the application and EIR to be complete, several steps remain before we can prepare and present a draft permit for the facility's discharge to our Board. Since the project has not yet received City, County, LAFCO, and Coastal Commission approval, we cannot be certain what changes these entities will require and how they may affect the discharge. More fundamentally, until the Community Services District is established, there is no entity to take responsibility for the operation of the facility or its discharge.

Barring any significant problems along the way, and once the above steps are complete, our permitting process will take about 4 to 6 months. This entails the time for drafting the Order, time for public comment, incorporation of public comment into the final draft Order, Board consideration at a public hearing, and finally, Board approval.

We look forward to working with you throughout this process. Please feel free to contact Scott Phillips at (805) 549-3550 ([sphillips@waterboards.ca.gov](mailto:sphillips@waterboards.ca.gov)) or Harvey Packard at (805) 542-4639 with any questions or comments.

Sincerely,

  
Harvey Packard  
Roger W. Briggs  
Executive Officer

Enclosures

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CCC Exhibit 9  
(page 1 of 1 pages)



January 19, 2005

RECEIVED  
JAN 20 2005  
BY: *[Signature]*

Mayor:  
DAN ALBERT

Councilmembers:  
CHUCK DELLA SALA  
LISBY DOWNEY  
JEFF HARMAN  
CLYDE ROBERSON

City Manager:  
FRED MEURER

Ms. Meg Caldwell, Chair  
and Coastal Commissioners  
c/o California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Subject: Requiring Community Services District for Ocean View Plaza  
Desalinization Plant Before Processing Application

Dear Chairperson Caldwell and Members of the Coastal Commission:

The developer of the Ocean View Plaza Project on Monterey's Cannery Row has recently informed us that the Coastal Commission staff is refusing to process their application until a community services district is formed to provide public ownership of the desalinization plant.

While the City of Monterey is willing to process their application for the formation of the community services district, we believe it is imperative that the Coastal Commission move forward now with review and analysis, and ultimate project approval with appropriate conditions of the Ocean View Plaza project. If the Coastal Commission finds there is a Coastal Act or Constitutional reason that the desalinization project must be publicly owned, that would be an appropriate condition. We do not believe it is appropriate to force the developer to create the district prior to the Commission even reviewing the project.

This large land area in the middle of Monterey's historic Cannery Row is a liability to our community, a liability to our tourist business, and a liability to our collective efforts to implement the Coastal Act. We need your help to transform this parcel into a coastal asset from its current status as a coastal eyesore. We believe that the current approach unnecessarily exposes the Commission to litigation for failure to properly process an application, and would probably be found by the courts to be abusive.

The subject project has been through City review and had its Environmental Impact Report completed. We have been challenged in court and documentation was found to be sufficient. Please help us complete this essential part of the Cannery Row Coastal Plan.

Sincerely,

*[Signature of Dan Albert]*

Dan Albert  
Mayor

CCC Exhibit 10  
(page 1 of 1 pages)

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863

**W12b**

Filed: 04/28/04  
180<sup>th</sup> day: 10/25/04  
Staff: SC  
Staff report prepared: 06/24/04  
Approved w/cond.: 07/15/04  
Revised Findings: 08/11/04

**COASTAL DEVELOPMENT PERMIT REVISED FINDINGS**

Application number .....3-04-009, Beardsley Mixed-Use Project

Applicant.....Gregory P. Beardsley (represented by George Ash, Architect)

Project location .....201 Cannery Row, City of Monterey (Monterey County)

Project description .....Construction of 5 residential condominium units, 674 square feet of retail commercial space, and 5 basement parking spaces on a 4,750 square foot lot.

Local approval.....City Council approval 1/6/04.

File documents.....Approved Mitigated Negative Declaration 1/6/04; Preliminary Archaeological Reconnaissance for Assessor's Parcel 001-032-005, in Monterey, Monterey County California (Doane and Breschini, 3/31/2003)

Staff recommendation ...Approval

Commissioners Eligible to Vote: Reilly, Burke, Potter, Orr, Albert, Kruer, Caldwell, Kram, Neely, Iseman, Peters

Summary: On July 15, 2004, the Commission approved this mixed use project on Cannery Row in the City of Monterey with one change to Special Condition #1. The Commission approved the Applicant's proposal to construct 5 residential units, rather than limiting the number to 3 units as originally recommended by staff. Revisions to the Findings to reflect this Commission action are on page 3 (Special Condition #1), and pages 8 and 9.

**CCC Exhibit** 11  
(page 1 of 5 pages)



California Coastal Commission  
August 11, 2004 Meeting in San Pedro

Staff: S. Craig Approved by:

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7.22.04.doc

**3-04-009 (Beardsley Mixed Use) revised fndgs 7.22.04.doc****3**

development permit complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the amended development on the environment.

## **II. Conditions of Approval**

### **A. Standard Conditions**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### **B. Special Conditions**

1. **MODIFIED PROJECT PLANS. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the Applicant shall submit revised plans to the Executive Director for review and approval. The revised plans shall include a maximum of 5 residential condominium units in the project, 674 square feet of ground-floor commercial space, and 5 on-site parking spaces.
2. **EVIDENCE OF WATER AVAILABILITY. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the Applicant shall submit written evidence to the Executive Director for review and approval that adequate water, which shall be provided only by and



California Coastal Commission

**CCC Exhibit** 11  
(page 2 of 5 pages)

4

3-04-009 (Beardsley Mixed Use) revised findgs 7.22.04.doc

★ through the municipal water distribution system regulated by the California American Water Company in the City of Monterey according to the allocation procedures of the City and the Monterey Peninsula Water Management District (or its successor), is available for the project. All relevant agency approvals, including approval from the Monterey County Public Health Department, if required, shall be provided.

3. **STORM DRAIN MAINTENANCE. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the Applicant will submit to the Executive Director for review and approval a maintenance plan for the two storm drains located in the underground garage. This maintenance plan shall ensure that these drainage devices continue to function as designed and intended for the life of the project. The plan shall provide for inspection, cleaning and repairing of the two storm drains annually prior to the start of the rainy season. Additional inspections shall occur after storms as needed throughout the rainy season. Repairs, modifications, or installation of additional filtering devices, as needed, shall be carried out prior to the next rainy season.
4. **DRAINAGE PLANS. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the Applicant shall submit to the Executive Director a drainage plan that provides for onsite retention of building runoff that meets low-impact design standards. All retained runoff shall be used onsite. Examples of onsite use include, but are not limited to, development of a rooftop garden and/or installation of cisterns, from which collected rainwater will be used for onsite landscaping or other onsite use. This onsite drainage system shall be maintained for the life of the project.

### III. Recommended Findings and Declarations

The Commission finds and declares as follows:

#### A. Project Description

##### 1. Project Location & Description

The proposed project is located at the inland southwest corner of Cannery Row and Reeside Avenue in the City of Monterey (see Exhibits 1-2). The proposed four-story project consists of five residential condominium units, 674 square feet of retail commercial area, and five basement parking spaces on a 4,750 square foot lot (the City granted a parking adjustment to waive two additional required parking spaces). The project also calls for the removal of two acacia trees. See Exhibit 3 for project plans. The breakdown of the development is as follows:

CCC Exhibit 11  
(page 3 of 5 pages)





8

3-04-009 (Beardsley Mixed Use) revised fndgs 7.22.04.doc

beyond 30 units per acre. The letter also points out that two projects have been approved on vacant and/or underdeveloped parcels that were used to determine the limit of 183 residential units along Cannery Row, and that these approved projects include a residential density much less than 30 units per acre. The implication in the letter is that because these other sites do not include a maximum of 30 residential units per acre, that the proposed project should be able to exceed the maximum allowable density. There are, however, a number of problems with this argument. First, although the two properties have received local approvals (and in one case, Coastal Commission approval in January 2000), no development has taken place on either site and thus the examples provided are for projects that have not yet been developed and may never be built. Also, the LUP's density regulations apply to each particular parcel; thus, each proposed development should not exceed the required density standard regardless of what other residential densities have been approved for other sites. For example, typical planning and zoning standards would not permit a landowner to build a house with 100% site coverage in a zone that allows 50% site coverage because two of the property owner's neighbors had built homes that covered only 25% of the site. The maximum allowable density of 30 residential units per acre is not a requirement in the LUP, nor is it an entitlement, i.e., there is no requirement that each residential project approved along Cannery Row include a residential density of 30 units per acre. Finally, the findings for the 1997 LUP amendment (see Exhibit 7, pg. 8) note that the 183 units is an area wide maximum, as opposed to a site-specific maximum, and that specific mixed use projects will be required to conform to the 30-unit per acre density standard, as well as not exceeding a cumulative total of 183 units within the Cannery Row coastal zone.

As discussed above, the 30-unit per acre residential density regulation and the parking standards were required by the Commission to protect access to this highly visited recreational area. Nonetheless, given the small scale of this project (five units), and the fact that no residential units have yet been built towards the ultimate limit of 183 total residential units in the Cannery Row planning area, this project is not inconsistent with the basic intent of the *advisory* LUP policy for mixed-use development, and Coastal Act sections 30213, 30221, and 30222.<sup>2</sup> In addition, the parking deficiency is minimal (2 spaces) and the City did require that the applicant pay an in-lieu fee to go to supporting alternative parking and transportation management, such as the WAVE shuttle (see Exhibit 5, condition #11). Thus, the project is consistent with Coastal Act section 30252.



## 2. Water Supply

Section 30250 of the Coastal Act states, in part:

*(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources...*

<sup>2</sup> In particular, it should be noted that the difference between the number of units being proposed by the applicant (5) is less than 2 additional units beyond that number actually allowed on the site per the LUP (3.3).



**3-04-009 (Beardsley Mixed Use) revised fndgs 7.22.04.doc****9**

Section 30254 states, in part:

*...Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.*

Cannery Row LUP Development Policy 1. states:

*New development is to be approved only where available supplies of water, parking, and circulation capacities are shown to exist.*

The Monterey Peninsula Water Management District (MPWMD) allocates water to all of the municipalities on the Monterey Peninsula. The actual water purveyor is the California American Water Company (Cal Am). Each municipality allocates its share of the water to various categories of development, such as residential, commercial, industrial, etc. At this time, there is no water available for new residential or commercial development in the City of Monterey.

The Applicant has been placed on the City's Water Waiting List. The project, as approved by the City, would require 0.135 acre feet of water per year for the 674 square foot ground-floor commercial use and 0.840 acre feet to support 5 residential condominium units. The City of Monterey evaluates the Water Waiting List periodically and allocates water as it becomes available due to new sources or when previously approved projects do not go forward and the water from those projects is re-allocated. The City has had a water waiting list for approximately the past five years. Over that time, the waiting list has been cleared twice (personal communication with City staff).

Coastal Act Section 30250 directs development to be located in or near an area with sufficient resources to accommodate it. The residential/commercial lot is located in an area serviced by the Cal Am Water Company. The Applicant has applied and is on the City's Water Waiting List. Given that the list has cleared twice in the last five years, it is possible that the City will be able to grant the Applicant a water permit within the two-year time period of this permit. However, evidence of such a water assignment is required prior to issuance of the permit in order to comply with Section 30250. With the inclusion of Special Condition #2, which requires evidence of water availability prior to issuance of the coastal development permit, the project is consistent with Coastal Act Section 30250 regarding water supply. In the event that the permit is not issued within the next two years, and an extension is requested, the absence of a water assignment may constitute a changed circumstance in light of the water constraints in the Monterey Peninsula area.

**CCC Exhibit** 11  
(page 5 of 5 pages)



**SEAWATER DESALINATION AND THE CALIFORNIA COASTAL ACT**  
**- MARCH 2004 -**

**EXECUTIVE SUMMARY**

In view of evolving issues relating to adequacy of water supplies to meet the state's projected population growth, desalination will obviously be an important part of California's water future. The question is not whether, but rather how, where, when, by whom, and under what conditions will desalination projects be designed, built, and operated.

There is growing interest and concern about seawater desalination along the California coast. The interest is due in large part to recent technological developments that reduce the costs and energy requirements of producing desalinated water. Additionally, many water agencies and purveyors are interested in reducing their dependence on imported water supplies and view desalination as providing a reliable and local source of water. The concerns about desalination are due primarily to its potential to cause adverse effects and growth that are beyond the capacity of California's coastal resources.

There are currently about two dozen seawater desalination facilities being proposed along the California coast, including some that would be the largest in the U.S. The state does not have a great deal of recent experience or expertise in evaluating the environmental impacts or the public resource issues associated with desalination, and this report is meant to identify many of the elements that will likely be a part of these upcoming evaluations.

The California Coastal Commission will be involved in nearly all coastal desalination proposals, either through planning, permitting, permit appeals, or other forms of review. This report from Commission staff is meant to help with those reviews in several ways:

- It provides general information for the Commission, applicants, and the interested public about the issues related to desalination along the California coast, and desalination's possible effects on coastal resources and coastal uses;
- It describes the status of seawater desalination in California and the proposed facilities now being planned;
- It identifies and discusses Coastal Act policies most likely to apply to proposed desalination facilities; and,
- It identifies much of the information likely to be required during coastal development permit review for proposed facilities.

Additionally, the report is based on several key points:

- *It is meant to be informational only:* The report does not create new regulations or guidelines for reviewing proposed desalination facilities. Rather, it describes desalination issues as they relate to existing Coastal Act policies, and discusses how these policies are likely to apply to a proposal.

2. Amendment of subsection (a) filed 8-14-81; effective thirtieth day thereafter (Register 81, No. 33).
3. Repealer of subsection (b) and subsection relettering filed 9-20-99; operative 10-20-99 (Register 99, No. 39).

### § 13053.5. Application Form and Information Requirements.

The permit application form shall require at least the following items:

(a) An adequate description including maps, plans, photographs, etc., of the proposed development, project site and vicinity sufficient to determine whether the project complies with all relevant policies of the Coastal Act, including sufficient information concerning land and water areas in the vicinity of the site of the proposed project, (whether or not owned or controlled by the applicant) so that the Commission will be adequately informed as to present uses and plans, both public and private, insofar as they can reasonably be ascertained for the vicinity surrounding the project site. The description of the development shall also include any feasible alternatives or any feasible mitigation measures available which would substantially lessen any significant adverse impact which the development may have on the environment. For purposes of this section the term "significant adverse impact on the environment" shall be defined as in the California Environmental Quality Act and the Guidelines adopted pursuant thereto.

(b) A description and documentation of the applicant's legal interest in all the property upon which work would be performed, if the application were approved, e.g., ownership, leasehold, enforceable option, authority to acquire the specific property by eminent domain.

(c) A dated signature by or on behalf of each of the applicants, attesting to the truth, completeness and accuracy of the contents of the application and, if the signer of the application is not the applicant, written evidence that the signer is authorized to act as the applicant's representative and to bind the applicant in all matters concerning the application.

(d) In addition to full size drawings, maps, photographs, and other exhibits drawn to scale, either one (1) copy of each drawing, map, photograph, or other exhibit approximately 8 1/2 in. by 11 in., or if the applicant desires to distribute exhibits of a larger size, enough copies reasonably required for distribution to those persons on the Commission's mailing lists and for inspection by the public in the Commission office. A reasonable number of additional copies may, at the discretion of the Executive Director, be required.

(e) Any additional information deemed to be required by the commission or the commission's executive director for specific categories of development or for development proposed for specific geographic areas.

(f) The form shall also provide notice to applicants that failure to provide truthful and accurate information necessary to review the permit application or to provide public notice as required by these regulations may result in delay in processing the application or may constitute grounds for revocation of the permit.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30601.5 and 30620, Public Resources Code.

#### HISTORY

1. Amendment of subsections (a), (d) and (e) filed 8-14-81; effective thirtieth day thereafter (Register 81, No. 33).
2. Amendment of subsection (b) filed 4-22-82; effective thirtieth day thereafter (Register 82, No. 17).
3. Amendment of subsections (a) and (d) filed 9-20-99; operative 10-20-99 (Register 99, No. 39).

### § 13053.6. Amendment of Application Form.

The executive director of the commission may, from time to time, as he or she deems necessary, amend the format of the application form, provided, however, that any significant change in the type of information requested must be approved by the commission.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

#### HISTORY

1. Amendment filed 8-14-81; effective thirtieth day thereafter (Register 81, No. 33).

## Article 3. Applicant's Notice Requirements

### § 13054. Identification of Interested Persons/Submission of Envelopes/Posting of Site.

(a) For applications filed after the effective date of this subsection, the applicant shall provide names and addresses of, and stamped envelopes for adjacent landowners and residents, and other interested persons as provided in this section. The applicant shall provide the commission with a list of:

(1) the addresses of all residences, including each residence within an apartment or condominium complex, located within one hundred (100) feet (not including roads) of the perimeter of the parcel of real property of record on which the development is proposed,

(2) the addresses of all owners of parcels of real property of record located within one hundred (100) feet (not including roads) of the perimeter of the parcel of real property of record on which the development is proposed, based upon the most recent equalized assessment roll, and

(3) the names and addresses of all persons known to the applicant to be interested in the application, including those persons who testified at or submitted written comments for the local hearing(s).

This list shall be part of the public record maintained by the commission for the application.

(b) The applicant shall also provide the commission with stamped envelopes for all addresses on the list prepared pursuant to subsection (a) above. Separate stamped envelopes shall be addressed to "owner," "occupant," or the name of the interested person, as applicable. The applicant shall also place a legend on the front of each envelope including words to the effect of "Important. Public Hearing Notice." The executive director shall provide an appropriate stamp for the use of applicants in the commission office. The legend shall be legible and of sufficient size to be reasonably noted by the recipient of the envelope. The executive director may waive this requirement for addresses identified under subsection (a)(1) and (2) above and may require that some other suitable form of notice be provided by the applicant to those interested persons pursuant to section 13063(b) of these regulations.

(c) If at the applicant's request, the public hearing on the application is postponed or continued after notice of the hearing has been mailed, the applicant shall provide an additional set of stamped, addressed envelopes that meet the requirements of section 13054(b). The additional set of stamped, addressed envelopes shall be submitted within ten days of the commission's decision to postpone or continue the hearing.

(d) At the time the application is submitted for filing, the applicant must post, at a conspicuous place, easily read by the public which is also as close as possible to the site of the proposed development, notice that an application for a permit for the proposed development has been submitted to the commission. Such notice shall contain a general description of the nature of the proposed development. The commission shall furnish the applicant with a standardized form to be used for such posting. If the applicant fails to sign the declaration of posting, the executive director of the commission shall refuse to file the application.

(e) Pursuant to Sections 13104 through 13108.5, the commission shall revoke a permit if it determines that the permit was granted without proper notice having been given.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

#### HISTORY

1. Amendment to subsections (a) and (c) filed 6-10-77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment of subsection (a) filed 8-22-77 as an emergency; effective upon filing (Register 77, No. 35).
3. Amendment of subsection (a) filed 9-30-77, effective thirtieth day thereafter (Register 77, N 40). Amendment subsection (a) (c) filed 8-81; effective thirtieth day thereafter (Register 81, No. 5).
4. Amendment filed 8-14-81; effective thirtieth day thereafter (Register 81, No. 33).
5. Amendment filed 8-14-81; effective thirtieth day thereafter (Register 81, No. 33).

6. Amendment of article heading, section heading and section filed 9-20-99; operative 10-20-99 (Register 99, No. 39).

## Article 4. Schedule of Fees for Filing and Processing Permit Applications

### § 13055. Fees.

(a) Permit filing and processing fees shall be as follows:

(1) Two hundred dollars (\$200) for any development qualifying for an administrative permit.

(2) For a single-family residence, the fee shall be based on the square footage of the proposed residence as shown in the following table:

Square Footage of Proposed Residence	Fee
1500 or less	\$250
1501 to 5000	\$500
5001 or more	\$1000

(3) Six hundred dollars (\$600) for lot line adjustments, or for divisions of land where there are single-family residences already built and only one new lot is created by the division or for multi-family units up to four (4) units.

(4) Two thousand dollars (\$2,000) or one hundred twenty dollars (\$120) per unit, whichever is greater, but not to exceed twenty thousand dollars (\$20,000) for multi-unit residential development greater than four (4) units.

(5) All residential projects (whether single or multi-unit) that include more than 75 cubic yards of grading shall be subject to an additional fee of two hundred dollars (\$200). This fee does not apply to residential projects that qualify for administrative permits.

(6) For office, commercial, convention, or industrial development, the fee shall be based upon gross square footage as shown in the following table:

Gross Square Footage of Proposed Development	Fee
1000 or less	\$500
1001 to 10,000	\$2,000
10,001 to 25,000	\$4,000
25,001 to 50,000	\$8,000
50,001 to 100,000	\$12,000
100,001 or more	\$20,000

(7) Twenty thousand dollars (\$20,000) for major energy production and fuel processing facilities, including but not limited to, the construction or major modification of offshore petroleum production facilities, tanker terminals and mooring facilities, generating plants, petroleum refineries, LNG gasification facilities and the like.

(8) For changes in intensity of use; for office, commercial, convention or industrial development not otherwise identified in this section; and for all other development not otherwise identified in this section; the fee shall be based on the development cost as shown in the following table:

Development Cost	Fee
\$100,000 or less	\$600
\$100,001 to \$500,000	\$2,000
\$500,001 to 1,250,000	\$4,000
\$1,250,001 to 2,500,000	\$8,000
\$2,500,001 to 5,000,000	\$12,000
\$5,000,001 or more	\$20,000

(9) Two hundred dollars (\$200) for immaterial amendments to coastal development permits, and fifty percent (50%) of the permit fee that would currently apply to the permitted development for material amendments to coastal development permits.

(10) Two hundred dollars (\$200) for emergency permits. A fee paid for an emergency permit shall be credited toward the fee charged for the follow-up coastal development permit.

(11) Two hundred dollars (\$200) for extensions and reconsiderations of coastal development permits for single family dwellings.

(12) Four hundred dollars (\$400) for extensions and reconsiderations of all other coastal development permits.

(13) Two hundred dollars (\$200) for a "de minimis" waiver of a coastal development permit application pursuant to section 30624.7 of the

Coastal Act and for a waiver pursuant to sections 13250(c) and 13253(c) of these regulations.

(14) One hundred dollars (\$100) for a second continuance and any subsequent continuance requested by the applicant and approved by the commission. There is no fee charged for the first continuance requested by the applicant.

(15) Five hundred dollars (\$500) for temporary events that require a permit, unless the application is scheduled on the administrative calendar, in which case the fee shall be two hundred dollars (\$200).

(b) Fees for after-the-fact permits shall be doubled unless such added increases are waived by the Executive Director when it is determined that the permit could be processed by staff without significant additional review time resulting from the processing of the violation.

(c) Where a development consists of land division, each lot shall be considered as one single-family residence for the purpose of calculating the application fee. If an application includes both subdivision and the construction of residences, the fee shall be based upon the construction of the proposed residences with no additional fee for the subdivision. Conversion to condominiums shall be considered a division of the land.

(d) Except as provided in subsection (c) above, if different types of developments are included in one permit application, the fee shall be the sum of the fees that would apply if each development was proposed in a separate application. However, in no case shall the fee for such application exceed twenty thousand dollars (\$20,000).

(e) In addition to the above fees, the commission may require the applicant to reimburse it for any additional reasonable expenses incurred in its consideration of the permit application, including the costs of providing public notice.

(f) The executive director shall waive the application fee where requested by resolution of the commission.

(g) The required fee shall be paid in full at the time an application is filed. However, applicants for an administrative permit shall pay an additional fee after filing if the executive director or the commission determines that the application cannot be processed as an administrative permit. The additional fee shall be the amount necessary to increase the total fee paid to the regular fee. The regular fee is the fee determined pursuant to sections (a)(2)-(15), (b)-(f) above. The additional fee shall be paid before the permit application is scheduled for hearing by the commission. If the fee is not paid prior to commission action on the application, the commission shall impose a special condition of approval of the permit. Such special condition shall require payment of the additional fee prior to issuance of the permit.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

### HISTORY

1. Amendment filed 6-10-77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment of subsections (a) and (b) filed 1-28-81; effective thirtieth day thereafter (Register 81, No. 5).
3. Amendment of subsection (d) filed 8-14-81; effective thirtieth day thereafter (Register 81, No. 33).
4. Amendment filed 5-30-91 as an emergency; operative 5-30-91 (Register 91, No. 31). A Certificate of Compliance must be transmitted to OAL by 9-27-91 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 5-30-91 order transmitted to OAL 9-18-92 and filed 10-21-92 (Register 92, No. 43).
6. Amendment filed 9-20-99; operative 10-20-99 (Register 99, No. 39).

## Article 5. Determination Concerning Filing

### § 13056. Filing.

(a) A permit application shall be submitted on the form issued pursuant to sections 13053.5 and 13053.6, together with all necessary attachments and exhibits, and a filing fee pursuant to section 13055. The executive director shall file the application only after reviewing it and finding it complete. The executive director shall cause to be affixed to all applications for permits:

**CCC Exhibit 13**  
(page 2 of 4 pages)  
Register 99, No. 24; 9-24-99

- (1) A date or receipt reflecting the date they are received; and  
 (2) A date of filing reflecting the date it is filed.

(b) The executive director shall make the filing determination in writing within ten (10) working days, if feasible, but in no event later than thirty (30) calendar days after the date it is received in the offices of the commission during its normal working hours. The executive director shall mail the filing determination to the applicant.

(c) If the executive director finds the application incomplete, he or she shall specify those parts of the application which are incomplete, and describe the specific materials needed to complete the application. Not later than thirty (30) calendar days after receipt of the requested materials, the executive director shall determine whether the submittal of the requested materials is complete and transmit that determination in writing to the applicant.

(d) An applicant may appeal to the commission a determination by the executive director that an application is incomplete. The appeal shall be submitted in writing. The executive director shall schedule the appeal for the next commission hearing or as soon thereafter as practicable but in no event later than sixty (60) calendar days after receipt of the appeal of the filing determination and shall prepare a written recommendation to the commission on the issues raised by the appeal of the filing determination. The commission may overturn the executive director's determination and/or direct the executive director to prepare a different determination reflecting the commission's decision. Otherwise, the executive director's determination shall stand. The executive director shall issue any such different determination that the commission may direct no later than sixty (60) calendar days after receipt of the appeal of the filing determination.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code; and Sections 65943 and 65952, Government Code.

#### HISTORY

1. Amendment filed 6-10-77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8-14-81; effective thirtieth day thereafter (Register 81, No. 33).
3. Amendment filed 8-2-89; operative 9-1-89 (Register 89, No. 32).
4. Amendment of section and NOTE filed 9-20-99; operative 10-20-99 (Register 99, No. 39).

#### § 13056.1. Reapplication.

(a) Following a withdrawal of or a final decision upon an application for a coastal development permit, no applicant or successor in interest to an applicant may reapply to the commission for a development permit for substantially the same development for a period of six (6) months from the date of the prior withdrawal or final decision. The executive director shall decide whether an application is for "substantially the same" development as that which was withdrawn or upon which a final determination has been rendered within the filing determination period set forth in section 13056.

(b) If the executive director determines, on a case-by-case basis, that an application is for substantially the same development as that which was withdrawn or upon which the commission has rendered a final decision within the previous six months, the executive director shall reject the application for filing.

(c) If the executive director determines, on a case-by-case basis, that an application is not for substantially the same development as that which was withdrawn or upon which the commission has rendered a final decision within the previous six months, the application shall be treated as a new application.

(d) The applicant or the successor in interest to an applicant may appeal to the commission the determination of the executive director in the manner provided in section 13056. The commission may vote to overturn the determination of the executive director. Otherwise the executive director's determination shall stand.

(e) The commission or the executive director may waive the six-month waiting period provided in this section for good cause.

#### HISTORY

1. Renumbering and amendment of former section 13109 to new section 13056.1 filed 9-20-99; operative 10-20-99 (Register 99, No. 39).

## Article 6. Staff Reports

#### § 13057. Preparation of Staff Reports.

(a) The executive director shall prepare a written staff report for each application filed pursuant to section 13056, except as provided for in section 13058 (consolidated staff reports), section 13150 (administrative permits) and section 13238.1 (waivers of permit application). The staff report shall include the following:

(1) An adequate description, including legible and reproducible maps, plans, photographs, etc. of the proposed development, project site and vicinity sufficient to determine whether the proposed project complies with all relevant policies of the Coastal Act;

(2) A summary of significant questions of fact;

(3) A summary of the applicable policies of the Coastal Act;

(4) A copy or summary of public comments on the application;

(5) A summary of any issues of the legal adequacy of the application to comply with the requirements of the Coastal Act;

(6) Staff's recommendation, including specific findings, prepared in accordance with subsection (c).

(b) The staff report shall also include as applicable:

(1) A copy or summary of the Environmental Impact Report or Environmental Impact Statement as it relates to the issues of concern to the commission, or if no such report was prepared, any negative declaration or finding of no significant impact;

(2) A discussion of related previous applications;

(c) The staff's recommendation required by subsection (a)(6) above shall contain:

(1) Specific findings, including a statement of facts, analysis, and legal conclusions as to whether the proposed development conforms to the requirements of the Coastal Act including, but not limited to, the requirements of Public Resources Code section 30604.

(2) Specific findings evaluating the conformity of the development with the requirements of section 21080.5(d)(2)(A) of the Public Resources Code.

(3) Responses to significant environmental points raised during the evaluation of the proposed development as required by the California Environmental Quality Act.

(4) A recommendation as to whether the commission should grant the application, with or without conditions, or deny the application.

(5) In the case of a recommendation of approval with conditions, identification of the specific conditions recommended by the executive director and a discussion of why the identified conditions are necessary to ensure that the development will be in accordance with the Coastal Act.

(d) Notwithstanding the requirement of subsection (a)(6) hereof, with respect to any application, the executive director may elect to prepare first a partial staff report that does not contain the recommendation required by subsection (c)(4) and (c)(5) where he or she determines that public comment and commission discussion would facilitate preparation of such recommendation. The executive director shall comply with all other procedures applicable to staff reports including procedures for the distribution of staff reports and for the noticing of hearings.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 21080.5, 30604, 30607 and 30620, Public Resources Code.

#### HISTORY

1. Amendment filed 6-10-77; effective thirtieth day thereafter (Register 77, No. 24).
2. New NOTE filed 8-14-81; effective thirtieth day thereafter (Register 81, No. 33).
3. Repealer and new article heading and section filed 9-20-99; operative 10-20-99 (Register 99, No. 39).

65941. (a) The information compiled pursuant to Section 65940 shall also indicate the criteria which the agency will apply in order to determine the completeness of any application submitted to it for a development project.

(b) If a public agency is a lead or responsible agency for purposes of the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, that criteria shall not require the applicant to submit the informational equivalent of an environmental impact report as part of a complete application, or to otherwise require proof of compliance with that act as a prerequisite to a permit application being deemed complete. However, that criteria may require sufficient information to permit the agency to make the determination required by Section 21080.1 of the Public Resources Code.

(c) Consistent with this chapter, a responsible agency shall, at the request of the applicant, commence processing a permit application for a development project prior to final action on the project by a lead agency to the extent that the information necessary to commence the processing is available. For purposes of this subdivision, "lead agency" and "responsible agency" shall have the same meaning as those terms are defined in Section 21067 of the Public Resources Code and Section 21069 of the Public Resources Code, respectively.

**CCC Exhibit 13**  
**(page 4 of 4 pages)**



## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863



February 14, 2003

Todd Bessire,  
c/o Lombardo & Gilles  
P. O. Box 2119  
Salinas, CA 93901-2119

Subject: *Coastal Development Permit Application Number 3-03-010 (Ocean View Plaza)*

Dear Mr. Bessire,

The purpose of this letter is to inform you of the status of the above-referenced coastal development permit application. Unfortunately, the application, as submitted, does not contain adequate information for us to file it as complete. We would appreciate your response to the following information requests:

**Desal Plant Plans:** The submitted plans show the location of the 960-square foot desal plant in Building B. The submittal, however, does not include specific design plans for the desal plant. To file the application, we will require the actual plans and specifications for the desal plant and also the plans for the two 75,000 gallon reservoirs.

A number of agencies, including the California Regional Water Quality Control Board, Monterey County Environmental Health Department, Monterey Bay National Marine Sanctuary, and the U.S. Army Corps of Engineers, are required to give permits for the desal facility. Also, the California Regional Water Quality Control Board intends to develop an NPDES permit specifically to address the discharge from the desal plant. This NPDES permit must be circulated for public comment and adopted by the Regional Board before discharge may occur. Prior to filing the application, we will require evidence that the necessary permits from all other agencies have been obtained.

We understand that the desal plant will not be operated by Cal-Am, but that instead the developer proposes to form a water company for the purpose of constructing, operating, maintaining, and repairing the water system. Please cite the legal authority and process for forming a mutual water company within an established water district and how these requirements will be met. Also, we will require the submittal to include the appropriate approvals for the creation of the mutual water company for this project.

We also require the following detailed additional information regarding the desal plant: 1) According to the DEIR, the potable water system would be connected to the Cal-Am water system to provide an emergency backup supply. Is there an agreement with Cal-Am to return any water to Cal-Am that is used during an emergency? If so, please submit evidence of this agreement and how such returns will be accomplished; 2) Please submit the California Public Utility Commission's regulation that requires Cal-Am to provide water to "potential customers" for as long as the emergency lasts, as well as the definition of a "potential customer (see page 218 of DEIR);" 3) Please supply information on how much water will be required on site during construction and who will provide this water; 4) Please supply the State regulations that govern potable water supplies (see page 223 of DEIR); 5) Please submit information regarding any

**CCC Exhibit 14**  
**(page 1 of 8 pages)**

anti-scaling or membrane-cleaning chemicals that will be used in conjunction with the desal plant, and the concentrations of such chemicals expected in the discharge; 6) Please submit a detailed discussion of measures that will be taken to mitigate impingement and entrainment of marine organisms by the seawater intake.

**Water Quality:** The submittal lacks specific information regarding water quality impacts due to development of the project, and proposed mitigations for these impacts. Please submit the following: 1) A comprehensive description/plan of the water quality and drainage aspects of the project, including a list of integrated Best Management Practices and a description of how the project shall:

- Limit impervious surfaces or collect excess runoff to decrease the need for additional runoff control measures;
- Maximize opportunities to direct drainage from parking areas, restaurant and hotel services areas and other high use areas through on-site filtration to remove sediment, oils and grease and other pollutants from runoff;
- Protect receiving waters, beaches and sensitive marine habitats from urban pollutants.

This description may be in the form of a Stormwater Pollution Prevention Plan if that Plan thoroughly describes the above issues and provides drawings and technical information regarding:

- (a) Hydrologic computations, including drainage area maps depicting predevelopment and post-development runoff flow volume and path;
- (b) Structural Best Management Practice sizing computations according to a California design manual which meets the Numeric Design Standard;
- (c) Structural and construction details for all components of the proposed drainage system or systems and stormwater management facilities;
- (d) Location of all Best Management Practices;
- (e) Data for total site area, disturbed area, new and total impervious area;
- (g) A maintenance schedule;
- (h) Certification by the owner/developer that all stormwater management construction will be done according to this plan;

Regarding the contaminated sediment issues, the applicant should provide evidence that they have completed the necessary actions or obtained the appropriate regulatory approvals prior to applying for a coastal development permit. In addition the applicant should provide documentation from the regulatory agency providing oversight of the contaminant investigation that all investigation and cleanup activities at the site have been complete, or that no further action is necessary. Any deed restrictions on the use of the property developed as part of the cleanup remedy selection must be provided. In addition, some cleanup remedies may require

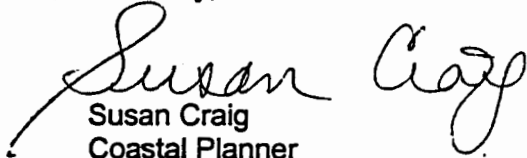
long-term operation and maintenance activities on the property (groundwater remedial systems, capped areas of residual contamination, etc.) that need to be identified.

**Public Access:** Please provide plans that clearly show all proposed unrestricted (i.e., not private or dependent upon being a customer or a patron) public access improvements for each level of the project and describe the mechanism that will be used to assure this public access (i.e., easements, etc.).

**Hazards:** Regarding hazards from storm waves and tsunami, the DEIR states that the project shall incorporate engineering design and construction materials and methods to withstand wave impacts from a 100-year storm event. Please submit a description of the specific designs and materials that will be used to withstand these storm impacts, as well as relevant geotechnical reports.

Thank you for your anticipated cooperation in meeting our information needs. As a courtesy, we will retain the application in our office for six months from the date of this letter. If we have not received the requested information by August 14, 2003, we will return the application to you. If you have any questions, or wish to discuss these matters further, please contact me at (831) 427-4863. For questions regarding the water quality and contaminated sediment requirements, please contact Ross Clark of our Water Quality Department at the same telephone number.

Sincerely,

  
Susan Craig  
Coastal Planner  
Central Coast District Office

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863



July 24, 2003

Todd Bessire  
C/o Lombardo & Gilles  
P.O. Box 2119  
Salinas, CA 93901-2119

Subject: **Coastal Development Permit Application No. 3-03-010 (Ocean View Plaza)**

Dear Todd,

This letter is in response to two letters from your law office dated June 25, 2003, which responded to our initial status letter of February 14, 2003 regarding the Ocean View Plaza application. The additional information provided in those letters does not adequately address the filing requirements presented in our February 14<sup>th</sup> letter and thus the application may not yet be filed as complete. Specifically:

**Desal Construction Plans:** Your letter states that it is not possible to provide specific design plans and specifications for the desal plant and the two 75,000 gallon reservoirs. Over the years, Coastal Commission staff has reviewed applications for desal plants, with subsequent approval of some of these desal plants by the Commission. In each of these cases, specific project plans for *all* aspects of the desal facility were provided to Commission staff as part of the application. We are mystified as to why this is not possible in this case. Perhaps the applicant needs to do additional research to find a company that is capable of developing these plans. Again, we reiterate that submission of a specific desal plant design plan is required in order to file the application.

**Other Discretionary Permits: Monterey County Health Department:** In addition, Monterey County Health and Safety § 10.72.020 regarding the Health Department's Construction Permit Application Process for desal plants also requires that an application be submitted with **specific** detail engineering, construction plans, and specifications of the proposed facility. Pursuant to CCR § 13052(j), we will require evidence of discretionary approval from the Monterey County Health Department regarding construction of the desal plant prior to filing the submitted application. In addition, we will need evidence of discretionary approval from the Monterey County Health Department regarding formation of a mutual water company to serve the proposed development.

**Regional Water Quality Control Board:** We will require evidence of discretionary approval from the Regional Water Quality Control Board regarding the NPDES permit.

**City of Monterey/State Lands Commission:** The City of Monterey currently leases tidelands off Cannery Row from the State Lands Commission. The source water intake and brine discharge pipelines will be constructed in this leased area. Please provide evidence from the City of Monterey that it approves of a sublease to the Applicant of this tidelands area. Also provide evidence that development of the pipelines is allowed under the terms of the State Lands lease.

**CCC Exhibit** 14  
(page 4 of 8 pages)

Todd Bessire  
Ocean View Plaza  
July 24, 2003  
Page 2

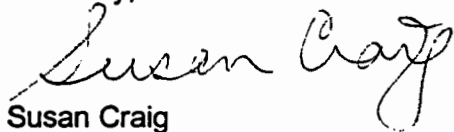
**Water Quality:** You are correct that Commission staff would condition the project to require an appropriate Storm Water Pollution Prevention Plan, as set forth in the U.S. Environmental Protection Agency and California State Water Resources Control Board guidelines. Please note that it is likely that submission of this plan would be required prior to issuance of the Coastal Development Permit rather than prior to construction. Also note that in the process of developing staff's recommendation, additional requirements regarding water quality may be required as conditions.

**Public Access:** Again, please provide plans that clearly show all proposed **unrestricted** (i.e., not private or dependent upon being a customer or patron) public access improvements for each level of the project and describe the mechanism(s) that will be used to assure this public access (i.e., easements, etc).

**Hazards:** Your letter states that a geological/geotechnical report will be prepared to address various issues regarding hazards, including predicted maximum mean water elevations, predicted maximum wave height, predicted maximum runup elevation from a tsunami, predicted splash heights from waves acting against vertical walls, predicted maximum wave forces from waves acting on structures, and a geotechnical characterization of the shoreline portions of the property that could be affected by wave action and runup. Submission of this report is required prior to filing the application. In addition, your letter states that the project designers will use this report to mitigate the potential impacts of storm waves and tsunamis. Please submit the development plans that detail how the potential impacts of storm waves and tsunamis will be mitigated.

We will hold your client's application until September 14, 2003 pending receipt of these materials. After all of the above-listed materials have been received, your client's application will again be reviewed and will be filed if all is in order (Government Code Section 65943(a)). Please submit all of the requested materials at the same time. Please note that there may be additional materials necessary for filing purposes depending upon the nature of the information provided pursuant to the above-listed materials, particularly the geotechnical and desal plan information.

Sincerely,



Susan Craig  
Coastal Planner  
Central Coast District Office

CCC Exhibit 14  
(page 5 of 8 pages)

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863



December 2, 2003

Todd Bessire,  
c/o Lombardo & Gilles  
P. O. Box 2119  
Salinas, CA 93901-2119

Subject: ***Coastal Development Permit Application No. 3-03-010 (Ocean View Plaza)***

Dear Mr. Bessire,

The application for the Oceanview Plaza project was received in our office on January 16, 2003. A status letter, which requested additional information necessary to file the application, was sent to you as the Applicant's representative on February 14, 2003. This letter stated that if we had not received the requested information by August 14, 2003, that we would return the application to you. We received two letters from your office in response to the 2/14/03 letter; however, the information contained in these two letters did not adequately address the filing requirements presented in our 2/14/03 letter and thus the application was not filed as complete. An additional status letter was sent to your office on July 24, 2003, again reiterating the specific information still required to file the application, with the promise to hold your client's application until September 14, 2003 pending receipt of the requested materials.

On August 12, 2003 Charles Lester and I met with the Applicant and Tony Lombardo to discuss the application and the materials still necessary to meet our filing requirements. In a phone discussion with the Applicant in the weeks following this meeting, the Applicant assured me that he would submit the additional required information, specifically regarding the proposed desal plant, by October 24, 2003. No such information has been received as of this date.

We will hold the application in our office until Tuesday December 16, 2003. If the required additional information is not received by that date, this will constitute a withdrawal of the application and the application materials will be returned to your office.

Sincerely,

A handwritten signature in cursive script that reads "Susan Craig".

Susan Craig  
Coastal Planner  
Central Coast District Office

CCC Exhibit 14  
(page 6 of 8 pages)

Anthony L. Lombardo  
Jeffery R. Gilles  
Derinda L. Messenger  
James W. Sullivan  
Jacqueline M. Zischke  
Todd D. Bessire  
Steven D. Penrose  
E. Soren Diaz  
Aaron P. Johnson  
Sheri L. Damon  
Virginia A. Hines  
Patrick S.M. Casey  
Paul W. Moncrief  
Anthony W.E. Cresap  
Bradley W. Sullivan  
Edward G. Bernstein  
*Of Counsel*

Lombardo  
& Gilles  
A LIMITED LIABILITY LAW CORPORATION  
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318 Cayuga St.  
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Salinas, CA 93902-2119  
(SALINAS) 831-754-2444  
(MONTEREY) 888-757-2444  
(FAX) 831-754-2011  
(EMAIL) lomgil.com

December 17, 2003

File No. 01145.000.A

Via Courier

**RECEIVED**

DEC 17 2003

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Ms. Susan Craig  
California Coastal Commission  
725 Front St, Ste 300  
Santa Cruz CA 95060-4537

Re: Ocean View Plaza Coastal Development Permit 3-03-010

Dear Susan

In response to your December 2, 2003, letter, I understand that Diane Landry has provided a two-month extension for submission of the information requested by your July 24, 2003, correspondence on this matter. Specifically, the construction plans for the desal plant, discretionary permits from the Monterey County Health Department and a NPDES permit from the State Water Quality Control Board may be submitted to your office on or before February 16, 2004.

In response to the remaining items, we have enclosed the following: (1) an email from the State Lands Commission confirming that the City owns the tidelands where the source water intake and brine discharge pipes will be constructed; (2) the public access plan clearly showing all unrestricted (i.e., not private or dependent upon being a customer or patron) public access improvements; and (3) geotechnical Investigation Report, wave run-up study and our current Construction Storm Water Pollution prevention Plan prepared by Mactec Engineering and Consulting, Inc., for the Ocean View Plaza project

We appreciate your patience and cooperation on this application and look forward to moving forward with the project.

Sincerely,

LOMBARDO & GILLES, PLC

  
Todd D. Bessire

TDB/lc  
Enclosures

cc: Dan Summers  
Chris Treble  
Phil Taylor  
Diane Landry /

CCC Exhibit 14  
(page 7 of 8 pages)

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863



Sent Via Regular & Certified Mail (7000 1670 0007 7215 6867)

March 3, 2004

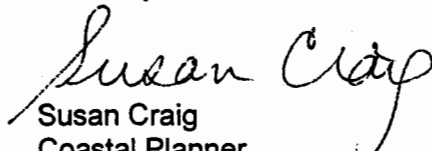
Todd Bessire  
c/o Lombardo & Gilles  
P. O. Box 2119  
Salinas, CA 93901-2119

Subject: *Oceanview Plaza*

Dear Todd,

This letter is to inform you that we are returning the Oceanview Plaza application to your office. (The application materials will arrive separately via UPS.) It has recently come to our attention that on September 23, 2003 a judge ruled that the EIR for the proposed Oceanview Plaza project does not meet State standards because it failed to analyze reasonable alternatives to the proposed project. The City did not appeal this ruling and has been developing a supplemental EIR. Therefore, in addition to other deficiencies noted in previous status letters, the submitted application does not have local approval. Thus, the application is not fileable. You have known of this information regarding the need for a supplemental EIR since late September 2003. We would have appreciated being informed of this fact at that time.

Sincerely,

  
Susan Craig  
Coastal Planner  
Central Coast District Office

Enclosures: Previous status letters

CCC Exhibit 14  
(page 8 of 8 pages)