

CALIFORNIA COASTAL COMMISSION

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**W14e**

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Staff:	ALB/LB
Staff Report:	January 25, 2006
Hearing Date:	February 8-10, 2006

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-05-240

APPLICANTS: Alkapuri Associates, LLC

AGENT: David Swerdlin

PROJECT LOCATION: 402-404 Pasadena Court, San Clemente, Orange County

PROJECT DESCRIPTION: Construction of 18,511 square foot eight-unit condominium project consisting of seven new units in two wings (north wing: 3 units in 2 stories & south wing: 4 units in 4 stories), with 21 parking spaces in new 18-car subterranean garage and renovation of historic residence with attached 3-car garage, re-creation of historical gardens, and provision of new public ocean view area. The historic residence will be used as the eighth condominium unit. Approximately 3,620 cubic yards of grading (3,350 cy cut and 270 cy fill) is proposed for parking garage excavation and site preparation.

PROJECT SPECIFICS:

Lot Area:	17,791 sq. ft.
New Building Area:	15,548 sq. ft.
Retained Building Area:	2,963 sq. ft.
Total Building Area:	18,511 sq. ft.
Pavement Coverage:	2,382 sq. ft.
Landscape Coverage:	5,423 sq. ft.
Parking Spaces:	21 (3 retained and 18 new)
Land Use Designation:	CRC1-p-A
Avg. ht. above final grade:	38 feet 8 inches

SUMMARY OF STAFF RECOMMENDATION:

The applicants propose to construct an 8-unit condominium project on an historic property in the Pier Bowl district of the City of San Clemente. Staff recommends that the Commission **DENY** the proposed development. The major issue of this staff report is protection and encouragement of visitor-serving land uses in prime coastal tourism areas. This site is one of only two sites designated as CRC (Coastal and Recreation Services) in the certified LUP. As the City's population grows and development pressures increase, the demand for visitor-serving uses will also increase. As proposed, the project would allow the construction of a residential development on a site designated for visitor-serving use. The site is particularly desirable for visitor-serving development due to its location overlooking the Pier Bowl and ocean.

The applicants object to the staff recommendation, contending that the site has historically been a residential use and has never provided a visitor-serving use. They also cite topographic challenges, economic infeasibility and lack of demand for such a use at that location.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of San Clemente only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

LOCAL APPROVALS RECEIVED:

City of San Clemente City Council adoption of Resolution No. 05-30 certifying the Final Environmental Impact Report for the Seacliff Condominium Project and Resolution No. 05-31 approving Tentative Tract Map 16092/Conditional Use Permit 01-040/Cultural Heritage Permit 00-131 and Approval-in-Concept from the Department of Community Development received June 24, 2005.

SUBSTANTIVE FILE DOCUMENTS:

City of San Clemente Certified Land Use Plan; City of San Clemente Pier Bowl Specific Plan; Final Environmental Impact Report for Seacliff Condominiums prepared by Keeton Kreitzer Consulting dated May 3, 2005; Preliminary Geotechnical Investigation for Proposed Multi-family Residential Development, 404 Pasadena Court, Lots 60, 61 & 62, Block 1, Tract 785, San Clemente, California prepared by Peter and Associates dated January 2, 2001.

LIST OF EXHIBITS:

1. Vicinity Map
2. Assessor's Parcel Map
3. Pier Bowl Boundary Map
4. Project Plans
5. Land Use Plan Table 3-1
6. Correspondence from Opponent
7. Correspondence from Agent
8. Photo Simulations
9. Aerial Photo of Pier Bowl

I. MOTION AND RESOLUTION:

The staff recommends that the Commission make the following motion and adopt the following resolution:

Motion: *I move that the Commission approve proposed Coastal Development Permit No. 5-05-240 for the development as proposed by the applicants.*

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of majority of the Commissioners present.

Resolution to Deny Permit No. 5-05-240:

The Commission hereby denies a coastal development permit on the grounds that the development will not conform with the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Location, Description and Background

Project Location

The subject site is an historic property (known as the Robison property) located at 402-404 Pasadena Court in the Pier Bowl area of the City of San Clemente (Exhibits 1 & 2). The subject site is a 0.41-acre (17,791 square foot) sloping, irregularly shaped lot with frontage along Pasadena Court, Cazador Lane and Avenida Victoria. Surrounding uses include multi-family development to the north and southeast, single-family development to the east, and hotel development to the southwest (seaward). The site is located within the CRC-p-A land use designation (Coastal and Recreation Services with a Pedestrian overlay and an Architectural overlay). The nearest public coastal access is provided at the entrance to the San Clemente Municipal Pier, less than one-quarter mile from the site.

The Pier Bowl is a mixed-use district adjacent to the Municipal Pier, which serves as the central focal point of the City (Exhibit 3). The area includes commercial, visitor-serving and residential development. As described in the Pier Bowl Specific Plan, the topography of the subject area gently slopes seaward, forming a “*natural amphitheater to the ocean.*” The site is located along the southernmost rim of the amphitheater. An aerial view of the area is provided as Exhibit 9.

Project Description

The applicants are proposing the construction of an 18,511 square foot condominium project consisting of seven new units and renovation of an existing historic residence for use as an eighth unit (Exhibit 4). The new units will be constructed in two wings. The north wing will provide 3 units in 2 stories. The south wing will provide 4 units in 4 stories. Parking for the new units will be provided in a new 18-car subterranean garage accessed from Avenida Victoria. The historic structure will be served by an existing attached 3-car garage, which also takes access from Avenida Victoria. The project also involves re-creation of the historical gardens and provision of a new 1,387 square foot public ocean viewing area along Pasadena Court. Approximately 3,620 cubic yards of grading (3,350 cy cut and 270 cy fill) is proposed for parking garage excavation and site preparation.

Site History and Project Background

The site is developed with a four-level single-family residence known as Vista del Las Olas, which was constructed in 1927. The structure is located in the center of the site, surrounded by historic gardens. The main element of the house is a one-story portion fronting Pasadena Court. The remaining levels of the structure follow the slope of the lot down to Avenida Victoria. The structure has been converted into three apartments, with a three-car garage on the lowest level.

As explained in the EIR, the property has been included in the City of San Clemente’s Designated Historic Structures List. Because the property is included in the Designated Historic

Structures List, it is also listed in the California Register. The property, including the site features (i.e. gardens) is eligible for listing in the National Register of Historic Places for its "...contribution to the 'Spanish Village' district," and for "...its individual qualities, and its presumed association with [Virgil] Westbrook." As a condition of local approval, the applicants are required to rehabilitate the historic structure, north garden, portions of the south garden and to reconstruct portions of the south garden. Once rehabilitated, the historic property must be maintained in perpetuity in accordance with the Secretary of the Interior Standards. The Secretary of the Interior is responsible for establishing standards on the preservation of historic properties listed in or eligible for listing in the National Register of Historic Places. The Standards pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and interior of the buildings. They also encompass related landscape features and the building's site and environment, as well as attached, adjacent, or related new construction.

B. Standard of Review

The Commission certified the City of San Clemente Land Use Plan (LUP) on May 11, 1988, and approved an amendment in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan (IP) portion of the Local Coastal Program (LCP). The suggested modifications expired on October 10, 1998. Therefore, the City has no certified LCP and the Commission retains permit issuance jurisdiction.

The Chapter Three policies of the Coastal Act are applied as the standard of review. The City's certified LUP will be used as guidance in the current analysis.

The City adopted the Pier Bowl Specific Plan on October 13, 1993. The Specific Plan will be included in the City's IP submittal for Commission review. However, as the Commission has yet to certify the Specific Plan, the Plan will not be applied as guidance.

C. Coastal Access/Priority Land Uses

1. Coastal Act Policies

The Coastal Act gives priority to visitor-serving commercial uses, encourages the provision of lower cost visitor and recreational facilities, and provides that development should maintain and enhance public access to the coast.

Section 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30221 states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30252 states, in relevant part:

The location and amount of new development should maintain and enhance public access to the coast by...(2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads,...(4) providing adequate parking facilities or providing substitute means of serving the development with public transportation.

2. Land Use Plan Policies

Chapter 3 (Goals and Policies) of the City of San Clemente Certified Land Use Plan (LUP) contains policies regarding development within the Pier Bowl area.

Chapter 3, Section F of the LUP discusses special districts within San Clemente, including the Pier Bowl area. The City's LUP describes future plans for the Pier Bowl as follows:

Plan policy provides for the continuation of the Pier Bowl as a recreational activity area. Coastal recreational uses include retail, restaurant, hotel, bed and breakfast, time share, and residential are allowed. Cultural and recreational activities, including the Ocean Festival, are encouraged. Building design in the Pier Bowl is required to preserve public views, encourage pedestrian activity, to be sensitive to the Pier Bowls' topography and to be a Spanish Colonial Revival Architecture style.

Mirroring Section 30252 of the Coastal Act, Section VII(d) of the LUP states, in relevant part:

The location and amount of new development should maintain and enhance public access to the coast by...(2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads...

Mirroring Section 30222 of the Coastal Act, Section X.3 of the LUP states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Policy II.1 states, in pertinent part:

Accommodate the continuation of existing and development of a mix of new neighborhood, visitor-serving commercial centers in areas designated respectively as "NC" and "CRC" in accordance with the density and height standards stipulated in Table 3-1.

3. Visitor-Serving Commercial Development and Recreational Use

The primary issue of concern presented by this proposal is the need to reserve adequate and suitable land for high priority, visitor-serving uses. As cited previously, Section 30213 of the Coastal Act requires that lower cost visitor and recreational facilities be protected, encouraged and where feasible, provided. Section 30221 requires land suitable for recreational use to be protected for recreational use and development. Section 30222 prioritizes visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation over private residential use. The proposed project would eliminate the possibility of the subject site being developed as a visitor-serving commercial facility.

The project involves development of the Robison property into an eight-unit condominium complex. The Robison property is located immediately adjacent to the Beachcomber Motel, a landmark development located along the bluff overlooking the San Clemente Municipal Pier. The possibility of combining the Beachcomber and Robison properties has been anticipated and allowed for in the City's Planning documents. The General Plan, Coastal Element (certified Land Use Plan) and Pier Bowl Specific Plan designate the site as CRC (Coastal and Recreation Services) and contain policies to guide combined development of these two lots. The General Plan and the Pier Bowl Specific Plan also contain alternatives to CRC development at the Robison property if the site is developed separately. According to the General Plan and Specific Plan, multi-family residential use is allowable with a conditional use permit. The zoning designation for the site is R-3, multi-family residential. However, the Coastal Element/Land Use Plan does not contain the same exceptions to the CRC land use. The Land Use Plan contains references to the General Plan, but does not specifically incorporate the General Plan policies or land use designations into the Land Use Plan. The Land Use Map depicts the site as CRC and Table 3-1 lists "Typical Principal Uses" and "Maximum Density/Intensity and Height" for the CRC land use category (Exhibit 5).

In response to Commission staff inquiries, City staff offered the following explanation of the apparent land use discrepancy:

Regarding the land use on Sea Cliff project which is located on the site known as the Robison property, the LUP for the Pier Bowl specifically refers to section 1.14 of the General Plan Land Use Element which provides the details on this special district.

Policy 1.14.18 states "Allow for the option of the development of multi-family residential units on the Robison property."

Policy 1.14.20 states "Permit a maximum density of 36 units per net acre and a maximum height of 45 feet should the Robison property be developed as residential use."

Clearly this was always the intent of the LUP to allow for this project to have the option to develop as visitor serving commercial if it were to be combined with the Beachcomber property or residential if it were to be developed by itself. It is also clear that it was the intent of the LUP that it match the land uses of the City General Plan as it states "The Coastal Element utilizes the same land use designations found in the Land Use Element of the City's General Plan".

The Commission acknowledges that Section 302 of the LUP (Coastal Element) states that the Coastal Element uses the same land use designations found in the Land Use Element of the City's General Plan. Additionally, before the Pier Bowl policies on page 3-15, there is an italicized line stating "Pier Bowl (refer to Section 1.14 of the General Plan Land Use Element)". However, the land use designations and policies of the General Plan are not incorporated by

reference into the LUP. Also, the language in Section 1.14.18 of the General Plan is not a definition of a land use designation; it is a specific allowance for a specific property. Therefore, even if the LUP did incorporate the land use designations from the General Plan, it does not specifically incorporate Section 1.14.18, which allows for the option of residential development on the subject site. As such, the only land use designation that is relevant to the Commission's review for this site is the one in the certified LUP--Coastal Recreation Services (CRC).

Interestingly, the LUP amendment certified in October 1995 changed the land use designation of the subject site from H (High Density Residential) to CRC. This was done to accommodate a proposed commercial project that combined the Beachcomber and Robison properties. The project was eventually withdrawn from local consideration and was never reviewed by the Commission.

The project site is located in a prime location for visitor-serving commercial development. The Robison property sits at the upper edge of the Pier Bowl, overlooking the Pier, ocean, and core commercial development along Avenida Victoria. It also takes vehicular access from Avenida Victoria. Although the site is not directly oceanfront, it is situated only one lot from the coastal bluff and offers sweeping views of the coastline.

The proposed development will have an adverse affect on the opportunity for priority visitor-serving development. Residential development is the lowest priority use within the Coastal Zone. The site may be developed with any type of coastal-related commercial use, including those that are neighborhood serving and/or community serving. According to the uses listed in the LUP, this may include *“retail, restaurants, offices, recreation, overnight accommodations, entertainment and similar uses.”* The Commission would be interested in promoting and reserving the site for a primary visitor-serving use, such as overnight accommodations. Due to its setting, the site would be particularly conducive to a bed and breakfast. The City of San Clemente offers fewer overnight accommodation opportunities than similarly sized coastal cities in Orange County and any increase in the room supply would provide a benefit to coastal visitors. Other development options include a museum or community center. Opponents to the project argue that the site should be developed in accordance with the CRC land use designation (Exhibit 6).

According to City staff, the Pier Bowl is not being targeted for additional hotel rooms and parking and traffic concerns would be raised with any type of commercial development at the site. The agent for the applicants has asserted that the site was only intended to be a tourist-serving use if combined with the Beachcomber Motel (Exhibit 7). The agent has also stated that there is no demand for additional overnight accommodations and that such a development would not be economically viable, particularly due to the cost of restoring the historic structure. Nonetheless, economic factors change over time. In addition, the site would not be limited to a lodging use. The site is located in a highly visible, well-traveled location and could potentially support a variety of commercial development in the future. If the site were to be residentially developed now, the opportunity for future commercial use would be lost.

The agent has also noted that the size of the subject site presents difficulties for commercial development due to the required number of parking spaces. However, if 21 spaces can be provided for the proposed condominium use, then the same number could be provided for a commercial use. Consequently, there is an opportunity to provide adequate parking without allowing residential development. In addition, while the property could be developed separately, the original vision was the possible consolidation of the Robison and Beachcomber properties at this prominent setting.

Commercial development of the site could serve potential visitors to the coast. As the population of San Clemente and the surrounding area continues to grow, the demand for visitor-serving uses will also grow. The corner location is conducive to commercial development and consistent with the adjacent commercial hotel use and the nearby commercial development on Avenida Victoria. Residential development at the subject site would provide little benefit to members of the visiting public. The public viewing area would be provided at Pasadena Court, but that alone would not provide a sufficient draw to the site. Such a viewing area could also be provided in conjunction with a commercial development.

The proposed development is inconsistent with Section 30213 of the Coastal Act, which requires visitor and recreational facilities be “*protected, encouraged, and, where feasible, provided.*” The proposed project would fail to prioritize “*visitor serving commercial recreational facilities*” as required by Section 30222 of the Coastal Act. The project would also preclude the possibility of future development as a visitor-serving use, ignoring “*foreseeable future demand for public or commercial recreational activities that could be accommodated on the property*” as required by Section 30221. Lastly, the proposed project is inconsistent with Section 30252 of the Coastal Act, which requires the “*location and amount of new development should maintain and enhance public access to the coast by... (2) providing commercial facilities within or adjoining residential development.*”

Therefore, the Commission finds that the proposed development poses adverse impacts to the provision of lower cost visitor and recreational facilities and is inconsistent with Sections 30213, 30221, 30222, 30252 of the Coastal Act as well as the LUP land use designation, and the project must be denied.

D. Scenic and Visual Resources

1. Coastal Act Policy

Section 30251 of the Coastal Act states, in pertinent part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

2. City of San Clemente Land Use Plan Policies

Section 305 of the City’s certified LUP contains the following Coastal Visual and Historic Resources Goals and Policies.

Policy XII.5 states:

Preserve the aesthetic resources of the City, including coastal bluffs, visually significant ridgelines, and coastal canyons, and significant public views.

Policy XII.9 states:

Promote the preservation of significant public view corridors to the ocean.

Policy XIII.3 states:

Through the design review process, encourage that new development is compatible with adjacent existing historic structures in terms of scale, massing, building materials and general architectural treatment.

3. Analysis of Scenic and Visual Resource Issues

As proposed, the project consists of the construction of two new buildings (one four-story and one two-story) and the retention of a four-level historic structure. The proposed development will reach an average maximum height of 38' 8" above existing grade. The project is sited in an area where development is allowed to reach to a maximum average building height of 45 feet above existing grade. (Averages are used to accommodate development on sloping lots.) The project will appear two-story as viewed from Pasadena Court and Cazador Lane (inland vantage points), but will appear four stories from Avenida Victoria and the ocean.

The current project represents a scaled down version of the applicants' original proposal for the site. According the City staff report, the original request submitted to the City was for "a ten-unit condominium project that was 45 feet high, near the maximum Floor Area Ratio (FAR) limit, altered the historic building, neglected the principles of architectural guidelines and eliminated the historic south garden." In response to negative reaction from City staff and the public, the project has undergone substantial redesign that reduces the size of the buildings, lowers the height and reduces the density of the structure.

The currently proposed development will still be highly visible from public vantage points, including Avenida Victoria and the San Clemente Municipal Pier. Due to the project's location, it is necessary to evaluate how the proposed development will affect public views and conform to the character of surrounding development. Toward this end, visual simulations were prepared for the EIR (Exhibits 8a & 8b).¹

At present, the ocean is visible when traveling toward the Municipal Pier via Avenida Victoria. Avenida Victoria is a primary entrance road into the Pier Bowl. The Commission recognizes this horizon view of the ocean to be a visual resource of statewide significance. As shown in Exhibit 8a, the proposed project will maintain views of the ocean within this existing public view corridor. No significant view obstruction will occur.

Nonetheless, the project will affect views inland toward the Pier Bowl as seen from the San Clemente Pier (Exhibit 8b). The new condominium wings will be constructed on portions of the lot that are currently open landscape/hardscape areas. As described previously, the property sits atop the edge of the "bowl." Because the property is situated at a higher elevation than adjacent development, the project will create a substantial new structural element in the subject area. However, the maximum height of the proposed development will appear consistent with the heights of structures in the surrounding area. The project is considered infill development and has been designed in conformance with the Spanish Colonial Revival architectural design style. The building massing has been articulated to step back from the street and to follow the topography of the site. As such, the development will not appear out of character with adjacent structures. Additionally, the project site is distinguishable from other sites and will not be identified as precedential relative to other developments in the Pier Bowl. Each development proposal will be review on a case-by-case basis, with consideration given to the unique characteristics of each site.

¹ The photo simulations created for the EIR show the north wing as a 3-story building. The third floor was removed at the local hearing.

The proposed project conforms to the existing pattern of development and will not set a precedent for future development in the subject area. The proposed project will also preserve a public view of the coastline. Therefore, the Commission finds that the project is consistent with the visual resource protection policies of Section 30251 of the Coastal Act. Nonetheless, the project must be denied due to inconsistency with the land use requirements discussed in Section C.

E. Alternatives

Denial of the proposed project will not deny all economically beneficial or productive use of the applicants' property or unreasonably limit the owners' reasonable investment-backed expectations of the subject property. The LUP allows the site to be developed with a visitor-serving land use. A variety of uses could be accommodated on site, including, but not limited to, those identified below.

1. **Different Use of Site**

The site could be developed with a visitor serving land use, consistent with the CRC1 land use designation in the San Clemente certified LUP. The designation allows for a wide variety of uses. Options include *"coastal related retail, restaurants, offices, recreation, overnight accommodations, entertainment and similar uses."*

2. **No Project**

No changes to the existing site conditions would result from the "no project" alternative. There are three existing residential units present on the property that could continue. This alternative would not preclude future development of the site in another land use and would not have any adverse effect on the current value of the property.

F. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000.

The proposed development is inconsistent with the land use designation contained in the certified Land Use Plan. Moreover, as discussed herein, the development is inconsistent with the Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development would prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

G. Consistency with the California Environmental Quality Act (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect the activity may have on the environment.

As described above, the proposed project would have adverse environmental impacts. There are feasible alternatives or mitigation measures available, such as a visitor-serving land use alternative or the no project alternative. Therefore, the proposed project is not consistent with CEQA or the requirements of the Coastal Act and its implementing regulations to ensure that approved development is consistent with CEQA, because there are feasible alternatives that would lessen significant adverse impacts the activity would have on the environment. Therefore, the project must be denied.