

CALIFORNIA COASTAL COMMISSION

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Staff: Toni Ross-SD
Staff Report: September 26, 2007
Hearing Date: October 10-12, 2007

STAFF REPORT AND RECOMMENDATION ON APPEAL

Application No.: A-6-OCN-07-31

Applicant: Oceanside III

Description: The construction of an 82-room hotel (70 units to be condo-hotel units), 4,180 sq. ft. full service restaurant and four residential condominium units on a lagoon-fronting 3.8 acre undeveloped site.

Site: West side of South Coast Highway, between Eaton Street and Buena Vista Lagoon, Oceanside, San Diego County.

STAFF NOTES:

At its May 11, 2007 hearing, the Commission found Substantial Issue exists with respect to the grounds on which the appeal was filed. This report represents the de novo staff recommendation.

Summary of Staff's Recommendation:

Staff recommends that the Commission deny the proposed development as it is inconsistent with numerous provisions of the City of Oceanside's certified LCP, such as those related to protection of wetlands, public access and recreation and low cost visitor serving facilities. The most significant issue raised by the proposed development is its inconsistency with the LCP provisions related to wetland boundaries and associated buffers. The proposed project includes development in areas the Commission has determined are wetlands. The project would result in further impacts given that wetlands exist within the currently proposed 100' buffer, resulting in the elimination of the buffer in sections and the reduction of the wetland buffer in other sections. The Department of Fish and Game, as well as the policies of the City's LCP, require that the location of development incorporate a minimum 100' buffer from wetlands. These wetland impacts alone make this project inconsistent with the certified LCP, and it therefore cannot be approved by the Commission.

Further impacts from the proposed project are caused by the size and location of the development. The proposed project would result in impacts to public views both from the terminus of Broadway and when traveling south on Pacific Coast Highway. The size of the proposed hotel building would also stand significantly taller than the surrounding

community; the scale of the project would thus be inconsistent with the LCP given its close proximity to an ecological reserve. The project fails to promote either recreational facilities or protect low-cost visitor serving uses by taking a vacant lot, currently used by the public for multiple purposes, and making it an exclusive semi-residential and residential community. Other impacts resulting from the proposed project include limiting use of the proposed public access trail, and eliminating access to a fishing spot at the edge of the lagoon frequented by the public. The Commission finds that the project, as proposed, attempts to maximize development on a sensitive site where only a project with minimal impacts could be found consistent with the certified LCP.

Potential alternatives to the proposed project include, but are not limited to: (1) a scaled-down development with smaller hotel and smaller condos and/or fewer units; (2) the removal of the hotel with the remainder of the development to be constructed; (3) the applicant could provide further low cost visitor serving facilities coordinating with the Buena Vista Nature Center located adjacent to the site; or (4) the site could be used as a potential mitigation site. Given the breadth of the above discussed impacts, the project is inconsistent with many policies of the City's LCP and the Coastal Act and the Commission must therefore deny the project as submitted.

Substantive File Documents: City of Oceanside certified Local Coastal Plan; City Staff Report and Resolution for CDP RC-8-02 dated February 14, 2007 approved by City Counsel; Appeal forms; City of Oceanside Resolution #2006-P56; the Planning Commission Denial for project; Final EIR dated August 18, 2007; draft EIR appendices dated June 9, 2005; Traffic Study conducted by Darnell and Associates dated August 16, 2006; the FEMA FIRM map number 06073C0761; Submitted letter and documentation from Cynthia Eldred dated May 3, 2007; wetland delineation prepared by Affinis dated April 11, 2007; Directed Jurisdictional Wetland Delineation Report prepared by Vincent Scheidt dated September 2007; Analysis of Market Demand prepared by PFK Consulting dated March 2007; letter from the project engineer dated September 10, 2007; Staff Report and Recommendation on Appeal – Substantial Issue, dated 4/19/07.

I. PRELIMINARY STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. A-6-OCN-07-31 for the development proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

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 a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of the certified LCP and the public access policies of Chapter 3 of the Coastal Act. 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 finds and declares as follows:

1. Detailed Project Description/History. The proposed project includes the construction of a 3-story, 82 room hotel, 4,180 sq. ft. restaurant and four 2-story, 3,475 sq. ft. detached residential condominiums on an undeveloped lot. As proposed, 70 of the hotel units will be developed as condo-hotels units, with length-of-time use restrictions. The 12 remaining hotel units will be exclusively for transient overnight use. The project site is a 3.8 acre vacant lot located adjacent to and directly north of the Buena Vista Lagoon and directly west of South Coast Highway in the City of Oceanside. The North County Transit District right-of-way and main north/south railroad tracks are located directly to the west of the site.

The property includes three legal parcels and has two General Plan and Zoning designations. The eastern lots located along South Coast Highway, where the hotel and restaurant are located, are zoned Visitor Commercial (CV) and designated Special Commercial (SC) and the western portion of the lot, where the condominiums are located, is zoned Residential Tourist (RT) and designated Urban High Density (UHD). A 100' biological buffer is proposed and will be revegetated with native plants, and an improved public access easement will be located between the lagoon and the proposed development and outside the proposed 100' buffer. A total of 139 parking spaces will be provided for the combined hotel and restaurant uses. Each of the condo units has a three-car garage and there are two visitor parking spaces for a total of 14 spaces, which satisfies the City of Oceanside's parking code. A pool and deck will be provided for hotel guest use.

The standard of review for this project is the City of Oceanside's Local Coastal Program (LCP), which is comprised of its Land Use Plan (LUP) and associated Implementation Plan (Zoning Ordinances). The standard of review also includes the Chapter 3 public access and recreational policies of the Coastal Act.

2. Wetlands and Buffers. The proposed project is located on a 3.8-acre site directly adjacent to Buena Vista Lagoon, an ecological reserve. The Buena Vista Lagoon lies within the cities of Carlsbad and Oceanside. The 223-acre lagoon and wetland habitat is fed by 19 square miles of watershed. The lagoon is California's first Ecological Reserve and is owned by the California Department of Fish and Game. The lagoon edges are

dominated by narrow and broad-leaf cattails, spiny rush and bulrush. The upland community surrounding the lagoon contains mainly introduced species such as eucalyptus, giant reed, and ice plant. At least 103 bird species, 18 mammals, and 14 amphibians and reptiles have made the lagoon their home. The City of Oceanside's LCP includes numerous findings, goals, and provisions to protect these sensitive resources.

The City's LUP addresses this development site within its findings for Environmentally Sensitive Habitat Areas and states:

New development is possible on a flat 3.1 acre parcel adjoining the lagoon on the west side of Hill Street [subject site]. Several buffering and habitat protection measures are suggested for this site.

The City's LCP also includes specific provisions for protection of Buena Vista Lagoon, which state, in part:

Objective: It is the goal of the City to work with other local, state, and federal agencies to protect the sensitive biological habitats and water quality of Buena Vista Lagoon.

General Policies:

1. It is the express policy of the City to prohibit any diking, dredging or filling of Buena Vista Lagoon and its surrounding wetlands, except for habitat restoration measures which have been specifically approved by the State Department of Fish and Game.

[...]

The City's LUP has a provision for establishing adequate buffers to protect areas surrounding sensitive habitat and states:

A buffer zone shall be established around all sensitive habitats. The buffer zone shall be generally 100' for small projects on existing lots. If the project requires substantial improvements or increased human impacts, a much wider buffer area shall be required. Likewise, a reduced buffer area will be considered if, in consultation with the State Department of Fish and Game it can be demonstrated that 100' is unnecessary to protect the resources of the habitat areas.

The City also has provisions relating to the diking, dredging or filling of coastal waters:

The diking, dredging or filling of Oceanside's coastal waters shall be permitted where there are no less environmentally damaging alternatives and where feasible mitigation measure have been provided to minimize adverse environmental impacts, and shall be limited to the following:

- a. New or expanded port, energy, and coastal dependent facilities
- b. Maintaining existing or restoring previously dredged depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
- c. In open coastal waters, other than wetlands, new or expanded boating facilities.
- d. Incidental public services.
- e. Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- f. Restoration purposes.
- g. Nature study, aquaculture, or similar resource-dependent activities.

The project as proposed includes a 100' buffer from Buena Vista Lagoon. However, based on review of the project by the Commission's staff ecologist, the applicant has failed to properly delineate the wetlands located on this site. These inadequacies could have significant impacts to native wetland vegetation, and to Buena Vista Lagoon. To date, a total of three wetland examinations have been conducted on the site of the proposed development. Both the City's LCP and the Coastal Act define a wetland as follows:

[L]ands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

Both the Coastal Commission and the federal government provide further specificity in their wetlands definitions to guide the process of wetlands delineation. The Coastal Commission's regulations (California Code of Regulations Title 14 (14 CCR)) establish a "one parameter definition" that only requires evidence of a single parameter to establish wetland conditions:

Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. (14 CCR Section 13577).

The first wetland boundary determination was a component of the "Biological Resources Report and Jurisdictional Waters Delineation" and was completed in May of 2001 in association with the environmental review process (EIR) for this project. The fact that this report was almost six years old was identified as one of the primary concerns associated with the development by the appellants in the appeal of this project. After the appeal was filed, the Commission's staff ecologist further reviewed the wetland

delineation and found additional concerns with the methodology. The delineation did not use the Commission's one-parameter definition for wetlands. This report used the federal (3-parameter) methodology to stake out the line of wetlands. Further, no data on how the delineation was completed was included in this report, and the soil testing was described as "inconclusive". Thus, the usual data used by the biologist to determine the wetland boundary were not available. As such, on March 28, 2007, in a meeting with the applicant, staff requested updated wetlands delineation.

On April 13, 2007, the Commission received the second wetland delineation report for this project. This delineation again concluded that the wetlands boundary was at the edge of Buena Vista Lagoon. The report states, in part:

The landward side of the lagoon bordering the property was walked and stakes were placed at regular intervals to mark the edge of the wetland...

..the limits of the 100-foot wide buffer have not changed significantly since 2001.

However, included in this report were three areas of concern. These areas were identified as Areas A, B, and C respectively. The biological report determined that these areas did have some indicators of wetlands. The biological report for these areas of concern states, in part:

Area A

Just off the property is one small area, approximately 15 feet by 20 feet, dominated by iceplant, with six individuals of spike rush (*juncos acutus*) growing through the iceplant mat. Spike rush is classified as a facultative wetland plant. Facultative wetland plant species **usually occur in wetlands** [emphasis added], with an estimated probability 67-99%, but occasionally occur in non-wetlands, with an estimated probability of 1-33%

Area B

Area B is an artificial area; it appears to have been scooped out at some time in the past....so that the area may hold some water during rainy periods...approximately 20% of the vegetation consisted of salt grass (a facultative wetland species) and brass buttons (wetland indicator species)...

Area C

Area C is also possibly a disturbed area; it is largely devoid of vegetation and may be an area of soils compressed by past vehicular traffic. In any event, it is one of the lowest points on the property and thus appears to retain water during rainy periods. While vegetation cover was sparse in the area, the most prevalent species was brass buttons (wetland indicator species). Soil samples dug in this area in 2001 did not show hydric soils; **a sample was not taken during the 2007 fieldwork** [emphasis

added]. Based on the prevalence of brass buttons, it is probable that this area would meet the CCC criteria as a wetland, but it is well within the buffer area....

The Commission's staff ecologist reviewed this report and agreed that all three of these areas were areas of concern. Areas A, B, and C were located upland of the wetland boundary determined by both the first and second wetland delineation. On June 8, 2007 Commission staff again met with the applicant to discuss staff's remaining concerns for the project. The wetland delineation was again mentioned as an area of prime concern, given that it appeared as though Areas A, B, and C may in fact contain wetlands. It was concluded that a site visit with both Commission's ecologist and project staff would be necessary to determine the extent of these concerns.

On August 6, 2007 Commission staff, including the Commission's staff ecologist Jonna Engel, Roxayne Spruance, the project consultant, and Marcia Gross, the project biologist, met onsite. Staff participated in surveying the vegetation as well as digging soil pits. Staff ecologist Jonna Engel concluded from this site visit:

During the site visit we walked the Affinis' staked wetland boundary and carefully examined Areas A, B and C....The portion of Area A sampled by Ms. Gross was an area south-west of the property line dominated by ice plant but also supporting six individuals of spike rush, *Juncus acutus*, a FACW species. The two wetland samples taken by Ms. Gross in this area were both positive for hydrophytic vegetation and sample 3 also was positive for wetland hydrology. However, Ms. Gross suggested in her Letter Report that Area A is not "likely a functioning wetland" because it is too small and is isolated from the lagoon habitat. The presence of positive wetland samples indicate wetland characteristics and, therefore, warranted more detailed sampling of this area....

Area B is a disturbed area where past activities appear to include stockpiling of spoil materials and fill, construction material dumping, and compression of soils. In her Letter Report, Ms. Gross discusses the presence of non-native, non-wetland indicator grasses, as well as two wetland indicator species, salt grass, *Distichlis spicata* (FACW) and brass buttons, *Cotula coronopifolia* (FACW+), which she estimated comprise 20% of the vegetation. She concluded that Area B is not a wetland based on lack of wetland hydrology, soils, or prevalence of hydrophytes. However, only one wetland sample was taken in Area B. While Area B is certainly a disturbed zone, I observed several additional wetland indicator species including alkali heath, *Frankenia salina* (FACW+) and seaside heliotrope, *Heliotropium curassavicum* (OBL) which indicated to me that further sampling was warranted....

Finally, I have several concerns regarding Area C. In her Letter Report, Ms. Gross described Area C as "one of the lowest points on the property and thus appears to retain water during rainy periods." Neither the 2004 Biological Resources Report nor Ms. Gross' March 28, 2007 survey has historical hydrology data from which to evaluate days of inundation or saturation. It is possible such data would indicate that the low area and other sections of Area C would meet the hydrology criteria for

wetlands. Ms. Gross also wrote that “[W]hile vegetative cover was sparse in this area, the most prevalent species was brass buttons.” Brass buttons, *Cotula coronopifolia*, is a FACW+ species; that is, a wetland indicator species. During the August 6 site visit, the brass buttons had died back but salt grass, *Distichlis spicata* (FACW) was the dominant plant throughout Area C and I also observed alkali heath, *Frankenia salina* (FACW) and seaside heliotrope, *Heliotropium curassavicum* (OBL). Ms. Gross reported that soil samples dug in Area C in 2001 did not show hydric soils and she did not collect wetland samples in this area in 2007. Only one wetland sample was taken in Area C in 2007 and that sample appears to have been collected from the top of an artificially raised area or berm referred to by Ms. Gross as the “top of bank” that parallels the whole lagoon edge (in some areas in good shape, in other areas in bad shape) along the proposed hotel property....The 2004 Biological Resources Report did not include wetland sample data sheets and Ms. Gross wrote that the 2001 soil samples were inconclusive. As stated above, it is not clear what constitutes an inconclusive soil sample. I dug two soil pits in Area C on August 6 and both samples were positive for wetland soils. Ms. Gross concludes her remarks about Area C with this statement: “Based on the prevalence of the brass buttons, it is probable that this area would meet the CCC criteria as a wetland, but it is well within the proposed buffer area (approximately 75-85 feet from the edge of the development foot print), within the portion of Parcel 2 under CCC jurisdiction, and thus would not be impacted by the project.”

To address that statement, the purpose of a buffer is to protect sensitive habitat. Buffers are not part of that habitat; rather they begin at the boundary of sensitive habitat....

Based on Ms. Gross’ April 11, 2007 Letter Report, my observations and soil pit results, I instructed Ms. Spruance that additional wetland samples would also be required to adequately delineate Area C. I followed my site visit with an email on August 8, 2007, to Ms. Spruance, confirming that further wetland sampling was imperative and that a formal wetland delineation conducted by a certified wetland biologist must take place. I provided guidance regarding the number and placement of samples that would be necessary to properly delineate a wetland boundary [ref. Exhibit #5 – attached].

On August 24 and August 31, a third wetland study was conducted on the site of the proposed Buena Vista Lagoon hotel. In this delineation, three transects were taken in a north-south direction on the site, and intersected with the three “Areas of Concern”. A total of 14 samples were taken in various places along these transects. Two samples were taken from area “A”, five samples were taken from area “B”, and seven samples were taken from area “C”. This wetland delineation report made the following conclusions:

Buena Vista Lagoon clearly qualifies as CCC wetlands in so far as it meets one or more (in this case all three) of the three requisite conditions that define a CCC wetland. The halophyte-dominated area also meets the CCC definition of a wetland....

However, the report in its conclusions stated that this “halophytic” area is not biologically important wetlands in this case because Buena Vista Lagoon is a freshwater lagoon and the alkali (halophytic) vegetation on site is associated with salt marsh and therefore these habitat types are not associated with one another. The report further states that the presence of an 18” berm located at the lagoon edge provides further separation between these two habitats.

The Commission’s staff ecologist again had concerns with this third wetland delineation as follows:

On Aug 24 and Aug 31, Vincent N. Scheidt, Certified Biological Consultant, and an assistant, conducted the third wetland study on the proposed Boardwalk Hotel site. Mr. Scheidt was hired by the property owner to perform a formal CCC one-parameter wetland delineation. I provided Ms. Spruance and Mr. Scheidt with documents that detail CCC standard wetland delineation protocols and guidelines for preparing a wetland delineation report (“California Coastal Commission, November 16, 2006 Workshop, Definition and Delineation of Wetlands in the Coastal Zone” and “Suggestions for Preparing a Wetland Delineation Report for the California Coastal Commission”). In addition, as I stated above, I provided guidance regarding the number and placement of samples that would be necessary to properly delineate a wetland boundary. Unfortunately Mr. Scheidt did not adhere to the wetland delineation guidelines provided nor did he follow the sampling scheme that I recommended (I suggested that adequate sampling would require a minimum of six to 12 wetland samples strategically spaced in each of Area’s A, B, and C to be able to establish an upland/wetland boundary). Instead, Mr. Scheidt collected fewer samples along three transects laid out more or less perpendicular to Buena Vista Lagoon. Mr. Scheidt collected two samples from Area A, five from Area B, and seven from Area C. He reported his results in “Directed Jurisdictional Wetland Delineation Report for the Boardwalk Development Project, City of Oceanside, California.” In Area A one of Mr. Scheidt’s samples was positive for a CCC wetland (13) and one was negative (14). In Area B, samples 8 and 10 were positive for a CCC wetland and samples 9,11, and 12 were negative. In Area C samples 1, 3, 4, 5 and 6 were positive for a CCC wetland and 2 and 7 were negative...

As noted above, the applicant was given specific direction to sample soil pits throughout the site. It is unclear what the true delineation for this site is without this information. Of the 14 pits dug, 9 were found to have soils associated with wetlands, including one soil pit dug at a site well beyond the buffer and into the proposed development site (ref. Exhibit #5, site #6). As such, the Commission’s staff ecologist concludes:

Unfortunately, despite the fact that three separate wetland studies have been conducted on the proposed site of the Boardwalk Hotel, the absence of a complete wetland delineation report restricts our ability to independently define the wetlands boundary.

At this time, no information has been submitted addressing the historical hydrology of the site. Of the three reports, Mr. Scheidt's "Directed Jurisdictional Wetland Delineation Report for the Boardwalk Development Project, City of Oceanside, California" provides the most complete set of wetland sample data. Neither the 2004 Biological Resources Report nor Ms. Gross' April 11, 2007 Letter Report provide the data necessary to make a wetland boundary determination and therefore the wetland boundary proposed by Affinis is not accurate. Mr. Scheidt acknowledges in his report that much of the site previously identified as buffer and development area, meets the CCC wetland criteria standard. However, Mr. Scheidt does not provide a wetland boundary determination as part of his report findings.

Combining Figure 2 and Figure 3 of Mr. Scheidt's report, I present an estimated CCC criteria wetland boundary based on my site visit observations, the information presented in all three biological reports, and the results of Ms. Gross' set of four and Mr. Scheidt's set of 14 wetland samples (see Exhibit B, attached). This estimated wetland boundary is problematic and incomplete in all of the areas identified because a lack of samples make detection of the upland/wetland boundary questionable. More specifically, the wetland boundary determination is problematic in area A because no wetland samples were collected within the subject property; problematic in area B because a number of samples were collected on top of fill mounds; problematic in Area C because the sampling design leaves a large gap of information between samples 5 and 6. This gap includes a significant elevation change and samples spanning that change are desirable. **The boundary I recommend here is my best approximation given the available information, but a more accurate boundary determination would be possible if additional samples and study were conducted.**

A further concern raised by the Commission's staff ecologist is the timing of the wetland delineation. The third wetland delineation was taken in the middle of summer during a drought period. It is unclear what the conditions would be if sampled during the rainy season, or not during a time of drought. The fact that wetland species still are found on this site, given these constraints, adds further evidence that these areas of concern, and perhaps other areas onsite, are, in fact, functioning wetlands.

The areas identified in the third wetland delineation as areas of "halophytic vegetation" are considered wetlands by the LCP and Commission's definition of such. Thus, based on the limited information and incomplete wetlands studies provided by the applicant's consultants, the proposed project includes development not only within the wetlands buffer, but also in wetlands. As cited above, the Commission's staff ecologist, Dr. Jonna Engel, has concluded that there is still insufficient evidence to fully delineate the wetlands on the site. She has, however, created an exhibit that at least delineates the wetlands that can be identified based on the prior wetland delineations. Given Dr. Engel's determination of where known wetlands exist, the project, as proposed, will occur both within wetlands and the wetlands buffer.

As cited above, the LCP, similar to the Coastal Act, limits the fill of wetlands to certain specified uses. The proposed hotel and residential development is not one of the identified permitted uses. In addition, as also cited above, the LCP requires that a wetlands buffer be provided upland of wetlands. In this particular case, the Department of Fish and Game determined that a 100 ft. wetlands buffer is appropriate. However, as discussed above, based on the Commission's staff ecologist's review of the three wetland delineations, portions of the proposed project will occur within wetlands and the 100 ft. buffer. As the development will result in the fill of wetlands and is not one of the identified permitted uses in wetlands and because an adequate wetlands buffer is not provided, the Commission must deny the project as proposed.

The information available to the Commission shows that the wetlands and their buffer encroach much farther into the project site than the applicant's proposal suggests. Therefore, wetlands currently exist where development has been proposed. As the EPA website states, wetlands serve a very important role in the maintenance of marine resources. There is more life in a one acre of a healthy wetland than there is in one acre of almost any other kind of habitat. Wetlands are virtual havens for the endangered species of the United States; about 35% of all plants and animals listed as threatened or endangered in the United States either live in wetlands or depend on them in some way. The Commission has historically taken a very conservative role on what is allowed to impact a wetland, and private development is not one of the permissible uses. Because the project would directly impact wetlands associated with Buena Vista Lagoon, the project cannot be found consistent with the applicable policies of Oceanside's certified LCP.

Should the applicant choose to redesign the project, a thorough review of the vegetation on site should be conducted with the approval of the Commission's staff ecologist. Possible alternatives could include a scaled down project, with perhaps the restaurant and the condominiums remaining and fewer units. The applicant could also work with the Buena Vista Lagoon Nature Center to provide further lower-cost facilities to those who already utilize this site for bird watching, hiking, etc. A further alternative could be to make the site available as a mitigation site. Staff ecologist, Dr. Jonna Engel, has determined that this site has great restoration potential.

In conclusion, the applicant has provided three separate wetland delineations, all of which are incomplete and raise further concerns for the Commission. The most recent of these wetland boundary reports provided the most information, and indicates that wetlands exist on site far further inland than previously documented. However, the Commission's staff ecologist has determined that this study is also inadequate in providing a detailed and thorough delineation of the wetland boundary on this site. Any future development would require additional sampling to indicate a true boundary by which to determine the boundaries of wetlands on and adjacent to the site. The wetland boundary would then need to be buffered by 100' as stated in the City of Oceanside's LCP. Because at the present time the Commission is unable to adequately determine this wetland boundary, not only can the project as proposed not be approved, but the developable envelope for

this site cannot be determined. Given these variables, the Commission must deny the project as proposed.

3. Scale of Development and Public Views. The proposed project includes the construction of a three story hotel with a maximum height of 46', four two-story condominium units and a public restaurant on a 3.8 acre site. The project is located directly adjacent to a residential community and Buena Vista Lagoon. Buena Vista Lagoon is an ecological reserve and as such there are limited uses permitted. The surrounding community includes a mix of both commercial and residential.

The proposed development raises concerns regarding the scale of development, given its close proximity to an ecological reserve and a small-scale residential neighborhood. The City of Oceanside's LCP has Land Use Plan (LUP) provisions that address the appropriate scale of development. These provisions state, in part:

The City shall ensure that all new development is compatible in height, scale, color and form with the surrounding neighborhood.

Building forms can be designed to respect and improve the integrity of open space and other public spaces adjacent to open space

In areas of significant natural aesthetic value, new development shall be subordinate to the natural environment

While the proposed project meets all zoning ordinance provisions and no variances were requested or approved, the height of the hotel will be substantially higher than other structures in the surrounding community. The development is located within an area of primarily one-story residences to the west and north, and two-story residential and commercial buildings to the east. The height of the hotel as proposed is 3-stories and 36' high, with an observation tower that extends up to 46' high. The City, in its review, acknowledged that the hotel will be higher than the residences and other surrounding structures, but it found this difference to be insignificant. Aside from the observation deck, the hotel will be 10-15' higher than the other structures in the immediately surrounding community. Given the low scale of surrounding development, a height difference of 10-15' could be considered to be incompatible with the surrounding community and therefore inconsistent with the City's certified LCP policies pertaining to scale of development.

The proposed development includes a three-story hotel, a large restaurant and four two-story condominiums on a site directly adjacent to the lagoon and open space, where no other such large structures exist. When comparing the project to surrounding development immediately adjacent to Buena Vista Lagoon, it would be much larger in size and scale than other developments. Development immediately adjacent to the lagoon and the Pacific Ocean includes a single family residence on a multi-acre site to the south, and Saint Malo, a gated residential development constructed prior to the initiation of the Coastal Act. Saint Malo includes numerous single family residences, none of

which would be comparable to the size of the hotel. As such, it appears the development as proposed would significantly “stand-out”, as compared to nearby development and is not subordinate to the surrounding natural environment, as required by the LCP. The development, as proposed, would set a new precedent for scale of development for future sites surrounding Buena Vista Lagoon.

The Commission recognizes that the site is constrained by its proximity to Buena Vista Lagoon. However, the site can still be developed in a manner that attains the project’s goals while consisting of similar scale to the surrounding residential community. For example, one possible alternative to the proposed project could be a two story hotel, with associated restaurant, and 4 single story condominiums. The Commission therefore finds the project as proposed cannot be found consistent the policies of Oceanside’s Certified LCP.

It important to note that given the Commission’s interpretation of the wetland boundary on the site, a project redesign would be necessary for approval. The updated wetland boundary and buffer would reduce the developable area on this site. Because the project could already be considered out of scale with the surrounding community, it would be vital for the applicant to consider the scale of the surrounding community if a redesigned project is desired, regardless of the constraints on the site.

The project also adversely impacts public views. It includes the development of a three-story hotel, restaurant, and pool within the eastern portion of the site and four two-story condominiums within the western portion of the site. The project is located immediately west of Pacific Coastal Highway (PCH), and immediately east of the terminus of Broadway. The site is currently undeveloped and as such allows for public view opportunities of Buena Vista Lagoon from PCH and the end of Broadway. As proposed, the development would significantly impact these existing views. The City has LUP provisions for protection of public views that state:

The City shall maintain existing view corridors through public rights-of-way.

The city’s grid system pattern allows public views of these water bodies from several vantage points. Most east-west streets in the coastal zone offer views of the ocean. In addition, Buena Vista Lagoon, the San Luis Rey River and the ocean are visible from portions of Interstate-5.

There are no developed vista points in Oceanside, although several locations seem to meet this purpose. These include the fishing area at Buena Vista Lagoon, the frontage road adjacent to the inner lagoon, and the Oceanside Pier.

The city shall encourage development of viewing areas at the Pacific Street Linear Park, the Buena Vista Lagoon fishing area (provided by Eaton Hill Developers)...

All new development shall be designed in a manner which minimizes disruption of natural land forms and significant vegetation

Both the EIR and City staff report indicate substantial public view impacts associated with the project. The development, as proposed, will completely obstruct lagoon views from Pacific Coast Highway while driving south toward the lagoon. Further, one of the proposed condominiums is proposed to be sited directly in between the terminus of Broadway and Buena Vista Lagoon, thereby eliminating the public views from this location as well. It is important to note that the site is currently undeveloped, and any development will cause some view impacts. However, the project, as proposed, does not adequately address the associated public view impacts.

Pacific Coast Highway (PCH) is a heavily traveled coastal road, and a main artery of Oceanside's roadways. The views while traveling southbound on PCH of the lagoon (both open water and associated vegetation) are currently expansive. The subject site is currently undeveloped and therefore, currently allows uninterrupted views across the vacant site and towards the lagoon. The development, as proposed, will potentially significantly obstruct or completely obstruct these public views. Not until the traveler has passed the development and is directly over the lagoon will these views be regained. A view analysis with a mock-up of the building as viewed from PCH was completed; however, the vantage point was traveling northbound where impacts would not be as great.

Public view impacts were briefly addressed within the project's EIR. Findings were made that the project, as proposed, would cause impacts to public views of Buena Vista Lagoon. The EIR's mitigation section findings state:

The project would not be consistent with Coastal Act and Local Coastal Plan requirements to protect and enhance public views to Buena Vista Lagoon. The project hotel blocks western-facing views to the lagoon.

The mitigation section requirements state:

No mitigation shall be implemented. Excluding the hotel from the project would make the project infeasible.

These findings indicate that the hotel as proposed would be inconsistent with both the Coastal Act and the City of Oceanside's Certified LCP. The reasoning for lack of mitigation was simply that the project would not be possible in the absence of the hotel. The EIR provided no discussion on how the hotel could be designed to lessen these public view impacts. As stated above, because the site is currently vacant, any development would result in some public view impacts. The project includes the construction of a three-story hotel. Decreasing the height or stepping back the hotel from Pacific Coast Highway could potentially decrease impacts to public views, without the removal of the hotel completely. The project as proposed does not correctly address the impacts to public views of Buena Vista Lagoon, and therefore is not consistent with the applicable policies of Oceanside's certified LCP.

In 1981, the City vacated the southern end of the Broadway right-of-way to the applicant. However, City staff were unable to locate the file or provide any permits approving this public right-of-way vacation and therefore the findings for approval were not available and cannot be discussed. Further, it is unclear if the Commission was made aware of the proposed vacation prior to, or immediately following, City approval. As such, it is not clear if a coastal development permit has ever been obtained for this street vacation. Broadway, while not an east-west facing street, (identified as protected in the LCP), at its terminus abuts Buena Vista Lagoon and currently allows for uninterrupted views of the lagoon looking south and east. Broadway is a public road and local residents and those who work in Oceanside park their vehicles at the end of Broadway to utilize these public views. The project, as proposed, includes the construction of four condominium units, one of which is sited directly between the end of Broadway and the Buena Vista Lagoon, resulting in significant impacts to public views from Broadway. Given the extent of public use and the uniqueness of the type of public view (Buena Vista is the only lagoon in Oceanside), the existing view corridor at the terminus of Broadway needs to be protected. Therefore, the project as proposed cannot be found consistent with the policies of Oceanside's certified LCP, given the public view impacts associated with Broadway.

In conclusion, given the low scale of surrounding development and the habitat located in the adjacent lagoon, the site can and should be developed in such a manner to both attain the goals of the project and to be compatible with the scale to the surrounding residential community and development surrounding Buena Vista Lagoon. The project, as proposed, is not similar to the scale of development in the surrounding community nor the development adjacent to Buena Vista Lagoon, and thus is inconsistent with the applicable policies of the certified LCP. In addition, the project, as proposed, will result in significant and unmitigated impacts to public views at both Pacific Coast Highway and the Broadway street end. The impacts to public views could be reduced by relocating Condo "A" out of the view corridor. Public view impacts associated with the hotel could be addressed by reducing the scale or size of the hotel. Any future redesign of the project to avoid wetlands impacts may also result in reduction in view impacts. Given the public view impacts, the Commission finds that the proposed project must be denied.

4. Flooding. The project, as proposed, includes a substantial development immediately adjacent to Buena Vista Lagoon. Given the location of the project, an area known for potentially liquefiable soils and historic flooding, further protection measures should have been addressed to better assess any possible geological or flooding hazards. The City has two objectives pertaining to the regulation of geological stability and flood control in their LUP and these state, in part:

The city shall seek to minimize risks to life and property in areas of high geologic and flood hazards

Protect the slopes and flood prone areas on the north shore of the middle section of Buena Vista Lagoon from development

The City did address the issue of geologic stability. A geotechnical report was completed for the project that included recommendations to address issues related to the existing alluvial soils on the site. Specifically, the geotechnical report includes a number of design parameters for development of the project and requires that the surface soils be removed and recompacted and that the restaurant and portion of the hotel incorporate a caisson foundation. With these measures, which were approved by the City, geologic safety will be assured, consistent with the above-cited LCP provisions.

The project site is directly adjacent to Buena Vista Lagoon and in fact, a portion of the site is located in the identified 100-year floodplain. However, all buildings are located upland of the identified 100-year floodplain.

An undersized culvert is located just south of the project site and is necessary for PCH to cross Buena Vista Lagoon's middle and eastern basins. This culvert was built in 1914, is approximately 16-20' wide and 9' deep, and does not meet current design standards. Thus, during significant rain events, the undersized culvert does not allow stormwater to move through the culvert and results in waters overtopping the culvert and flooding the surrounding areas. There are no official records of overtopping at this Culvert. However the City of Carlsbad's Road Director and City Engineer have recalled the overtopping of this culvert 5-6 times in the last 30 years. The proposed development is directly adjacent to and west of PCH in a low lying area. If stormwater is forced to overtop PCH, these waters could also flood the project site. Given the lack of documentation, and the uncertainty in how flooding may impact the project site, the potential impacts to the proposed development are unclear. It is important to note that Buena Vista Lagoon is currently controlled by a weir and often a sandy berm develops on top of this weir. Should a flooding event such as this occur, the City of Oceanside would be responsible for opening both the berm and the weir and allowing the stormwater to exit to the ocean. Many of the buildings in the surrounding community are sited closer to the lagoon edge than the proposed project; therefore, it is unlikely that the flooding levels would reach the proposed development. However, as stated above, the restoration of Buena Vista Lagoon is currently in its CEQA phase. The restoration of Buena Vista Lagoon could include the removal of the weir. By removing the weir, control of flooding waters or high wave storm events may no longer be feasible.

Other than assuring the proposed buildings were located outside of the 100-year floodplain, the EIR did not address flooding and it imposed no mitigation measures to address flooding. Based on the above, the applicant has properly addressed the issue of flooding to the best of its ability, and therefore, the project can be found consistent with the portions of Oceanside's certified LCP related to flooding hazards.

5. Marine Resources. The proposed project is located directly adjacent to Buena Vista Lagoon, an ecological reserve. This reserve is home to numerous native plants and animals including the Belding's savannah sparrow, California least tern, and the California Clapper Rail. The proposed project is a substantial development consisting of a three story hotel, a restaurant and 4 condominium units on a currently vacant lot. Both the construction of these buildings and the increased intensity of use of this property

could lead to impacts to the surrounding sensitive resources. The City's LCP Land Use Plan (LUP) has policies for the protection of marine resources that state in part:

Prior to approving any developments on dry lands adjacent to Buena Vista Lagoon, the City shall consult the State Department of Fish and Game to ensure that adequate measures are provided to protect and enhance the lagoon's sensitive resources. Such measures shall include, where appropriate

- a. Provision for adequate buffers between development and the lagoon
- b. Erection of barriers – such as fences – to prohibit access to sensitive portions of the lagoon
- c. Incorporation of native riparian plant species into project design to enhance habitat value
- d. Construction of informational signs/kiosks educating the public on the value of the lagoon, and listing the regulations for public use.

The city shall continue to cooperate with other agencies including the State Department of Fish and Game, the Cities of Carlsbad and Vista through the Joint Powers Committee, US Fish and Wildlife Service, San Diego Association of Governments, and the Regional Water Quality Control Board in seeking ways to lessen the current impacts on the lagoon. Siltation and water pollution are two such impacts which are particularly critical.

The certified LCP includes findings within their Land Use Plan for the sensitivity of Buena Vista Lagoon and state that the "Buena Vista Lagoon is the only freshwater lagoon in San Diego County, and therefore offers a unique habitat." These findings further state that the "lagoon supports two endangered bird species, (Belding's savannah sparrow, California least tern). The California clapper rail is believed to live and breed in the lagoon environs, but no sightings have been confirmed." A recent study has been issued by the Fish and Wildlife Service (FWS) indicating that eight pairs of Clapper rails also inhabit Buena Vista Lagoon. Further, the EIR for the project indicates that a pair of clapper rails has been previously observed nesting underneath the railroad bridge. The project site is directly north and east of the above stated railroad bridge. Mitigation for the presence of a federally- and state-listed endangered species was limited to "[i]f possible, project construction should avoid the avian breeding season. If feasible, measures should be taken to avoid disturbing avian breeding season from indirect effects." Given the sensitivity of the surrounding area, further precautions should have been adopted by the City to protect the lagoon's wildlife. As noted in a previous section of this report, the applicant has not provided an adequate wetlands delineation such that the full and true extent of wetlands on the site, along with the appropriate buffer, can be determined. However, based on the information that is available, it is clear that the project as proposed not only would impact wetlands, but would not provide adequate wetland buffers and as such, is inconsistent with the resource protection policies of the

LCP. If the applicant should choose to redesign the project with an appropriate wetland boundary these impacts would be lessened.

In conclusion, if the development were approved as proposed there would be significant impacts to marine resources by both the indirect impacts to nesting birds and the direct impacts to the wetlands vegetation. Alternative designs could decrease these impacts. As such the project is inconsistent with the policies of the Oceanside's LCP and therefore, the Commission must deny the project.

6. Public Access. The project, as proposed, includes development on a currently vacant lot. As stated above, the City of Oceanside has recognized that prescriptive rights may exist on this site. To address this, the applicant has included an 8' wide public access path to be included in the proposed project. This trail as approved by the City may be allowed to be gated off and occasionally locked, resulting in possible impacts to public access. Further, currently the Commission and applicant disagree on the location of the wetland boundary. The project, as proposed, would site the public access path just beyond the wetland buffer. However, if the project design were to incorporate a new wetland boundary, based on a more complete and scientifically rigorous wetland delineation, the public access trail may no longer be feasible at its current location, thus resulting in potential impacts to public access. Both the City of Oceanside and the Coastal Act have applicable policies pertaining to public access that state:

Coastal Act Policies:

30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) Adequate access exists nearby, or, (3) Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to

public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

City Certified LUP Policies:

Adequate access to and along the coast shall be provided and maintained

Existing and new public accessways shall not be closed or converted to other uses without approval from the California Coastal Commission

There is a 3.1 acre privately owned vacant lot [subject site] just west of Hill Street on the north shore of the lagoon. The lot is flat and is vegetated with grass and weed species. The lagoon frontage has been extensively used by the public in this location, indicating possible prescriptive rights.....

Currently on the existing vacant lot, there is evidence of public use in that a well worn trail exists. The trail begins at the end of Broadway and passes through the subject lot out to Pacific Coast Highway. The project, as approved by the City, includes an 8' public access easement. However, the City failed to address the timing for improvement of the access or to include provisions for maintenance. Further, the plans for the public accessway include a gate at the entrance from Broadway. While a time-operated gate could be consistent with the public access policies of both the City of Oceanside and the Coastal Act, the details of how this gate would operate, such as its hours of operation, have not been included within the resolution and conditions approved by the City. In the absence of regulations related to the operation of the gate within the public accessway, the schedule for improvement and opening of the access, and a plan for maintenance, the development is not consistent with the public access policies stated above.

The applicant has in discussion with Commission staff agreed to remove the gating component to the access trail. However, given the project as proposed is not approvable, the Commission cannot incorporate conditions for the project to address the above stated issues or ensure the removal of the time-operated gate. As such the project is inconsistent with the policies for public access in Oceanside's certified LCP and the Coastal Act and cannot be approved.

Another issue relates to protection of an identified fishing area on the project site. As stated previously, an area designated as the "fishing area" within the preliminary Buena Vista Lagoon Management Plan (a component of the certified LCP), is located on the project site within the applicant's proposed buffer. The development as approved includes construction of a wall separating the development from the approved buffer such that the buffer area is not accessible to the public. As such, access to the fishing area would be eliminated.

In conclusion, the project would result in potential impacts relating to the public access path along the site, and public access at the edge of the site to the lagoon waters. The lack of controls for development and maintenance of the public access trail could result

in a trail that was gated off during daylight hours, or overgrown by vegetation and thus unusable. The project would also result in the loss of public access to a historically and currently used fishing spot. The project, as proposed, is thereby inconsistent with the policies of Oceanside's LCP and the Coastal Act; therefore the Commission must deny the proposed project.

7. Protection of Low Cost Visitor Serving Uses/Condo Hotel. The project includes 75% (70 units) of the 82 hotel units as condominium hotel units. The Commission does not consider condo-hotels a low-cost visitor serving use. The development would therefore have impacts on the protection of low cost visitor serving uses. Both the City of Oceanside and the Coastal Act have identical provisions protecting low-cost visitor facilities that state:

30213/ LCP Policy

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

As cited above, the Coastal Act and the Oceanside LCP give greater priority to visitor serving uses, which include hotels and other uses that provide overnight accommodations and give particular preference to lower cost visitor-serving accommodations. Because condo-hotel units are individually owned and subject to either no or varying length of stay restrictions, they can be considered a quasi-residential land use that only functions part time as an overnight visitor accommodation. As a quasi-residential land use, condo hotels raise concerns relative to the extent they actually constitute a visitor-serving land use. In addition, condo-hotels generally do not offer accommodations that can be considered "lower-cost," raising questions about the adequacy of supply of lower-cost visitor-serving accommodations in the coastal zone. Further, the price point analysis conducted for this development projected the average hotel price per room at \$200 per night. Therefore, none of the hotel rooms, either traditionally operating or the condo-hotel component would be providing lower cost visitor serving uses.

As a component of the City's permitting process, a preliminary study of low cost facilities was completed. The findings of this survey indicated that the City has ample low cost visitor serving facilities. This study, however, does not exempt the City from encouraging additional low-cost facilities or maintaining current uses, especially in areas zoned specifically for visitor serving uses. The City did include a number of provisions to address this concern and to better assure the condo-hotel units will function, to the extent feasible, as traditional hotel units.

The Commission acknowledges that to the extent the proposed condo-hotel units operate as transient accommodations, they would provide some public access and recreational opportunities. But the ability to buy one of the units would be well out of range for most people, and the ability for non-owners to stay at one of the units would be limited by the

occupancy of the owner. Thus, the opportunities for public access and recreation at these condo hotel units would be far less than with a traditional hotel property.

In conclusion, two of the parcels at the project site are zoned Visitor Commercial. These sorts of zoning designations could provide several different low cost visitor serving developments. The project, as proposed, includes an 82 unit hotel project, 70 of which would function as condo-hotel units. The quasi-residential nature of these types of developments do not facilitate the protection of low cost visitor serving uses and the project is therefore inconsistent with the above cited LCP policies. Consequently, the Commission must deny the proposed project.

8. Recreational Uses. The development, as approved, would include substantial development on a currently vacant lot abutting Buena Vista Lagoon. Development of this nature would inhibit current and future recreational uses. The development of this project will inhibit bird watching, fishing and biking and public education walks; all of which are current low cost visitor serving uses on or adjacent to the site. Specifically, construction of a wall separating the development from the buffer, and the innate exclusivity of condominium hotels will result in decreased recreational capacity at this location. Both the City of Oceanside and the Coastal Act have provisions protecting recreational uses in the coastal zone and state:

City Policies:

In granting proposals for new development within the coastal zone, the City shall give priority to visitor serving commercial recreational facilities over private residential, general industrial or general commercial uses.

The City shall protect, enhance, and maximize public enjoyment of Coastal Zone public resources.

There is a 3.1 acre privately owned vacant lot [subject site] just west of Hill Street on the north shore of the lagoon. The lot is flat and is vegetated with grass and weed species. The lagoon frontage has been extensively used by the public in this location, indicating possible prescriptive rights.....

Coastal Act Policies:

30220

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

30221

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.

30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

The development is proposed on a large lagoon-fronting vacant lot. This lot has numerous recreational uses currently utilized by local residents and guests to the Buena Vista Nature Center. Oceanside's certified LCP includes a preliminary management plan for Buena Vista Lagoon. This plan contains goals to protect public access, recreational use and educational use. The area of proposed development has historically been used for fishing, bird watching, bicycling and hiking, all of which are considered low-cost. This development will inhibit access to the site, thereby limiting or eliminating the public's ability to use the site for these historical recreational purposes. Further, given that the development includes private residential, as well as quasi-residential development, the project is not giving priority to recreational facilities and thus is not consistent with above-cited LCP and Coastal Act Policies.

The Buena Vista Audubon Society Nature Center is located directly across Pacific Coast Highway from the project site. Thousands of visitors and school children visit the Nature Center annually, many coming from other states to enjoy the bird watching amenities of this location or from local schools to learn a valuable lesson on the importance of wetlands. A development of this scale, including walling off the development from the buffer, which will prohibit access to the shoreline, will adversely impact both of these uses.

In conclusion, the combination of the wall separating the development from the buffer and various bird watching/fishing sites, the exclusivity of condo-hotels and the scale of development would lead to impacts to recreational uses, thus not giving priority to these uses. As a result, the proposed project is inconsistent with the applicable policies of Oceanside's certified LCP and the Coastal Act. The Commission must therefore deny the project.

9. California Environment Quality Act (CEQA). Section 13096 of the California Code of Regulations requires Commission approval of a coastal development permit to be supported by a finding showing the permit 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 which would substantially lessen any significant adverse effect which the activity may have on the environment.

As stated previously, and incorporated herein by reference, the development as proposed is inconsistent with the Certified LCP policies pertaining to biological resources and adequate buffering, public access, scale and public views impacts, public recreational facilities and the protection of lower cost visitor serving development. The project as proposed includes a development envelope that is too large for the surrounding community and given its close proximity to Buena Vista Lagoon. The condo-hotel component makes 75% of the hotel units exclusive and semi-residential. The project as proposed will result in fill of wetlands and the provision of an inadequate wetland buffer. In addition, numerous alternative project designs are feasible on the site that will result in fewer biological and recreational impacts.

Some of these alternatives include a smaller sized hotel structure to reduce effects of view impacts and bring the development into scale with the surrounding community. The major benefit to a redesigned project would be the appropriate determination of the wetland boundary. If the project were removed from areas currently containing wetland vegetation and were it to provide adequate buffers, the most significant biological impacts would be removed.

A further alternative would be to construct one single-family residence within the residential zoning area, and perhaps retain the restaurant in the visitor-commercially designated area. This would result in fewer impacts to marine resources onsite and still allow the applicant to develop on the site.

A final alternative would be to make the site available for coastal mitigation. Oceanside currently asserts that there are very limited, if any, mitigation sites available in the coastal zone within their city limits. This site could provide some lands for mitigation for various other projects within the city. Further, given the previous disturbance on site, and the prevalence of disturbed native vegetation, this site would be perfect for restoration. As stated above, the Buena Vista Lagoon is currently undergoing the permitting process for restoration. The project site would be of further value when considering the potential restoration of the entire lagoon. Thus, there are feasible alternatives or mitigation measures available which would substantially decrease the significant adverse effects that the project, as proposed, would have on the environment. The proposed project therefore is not consistent with the requirements of the California Environmental Quality Act (CEQA)

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