

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



F 20b

Addendum

November 9, 2007

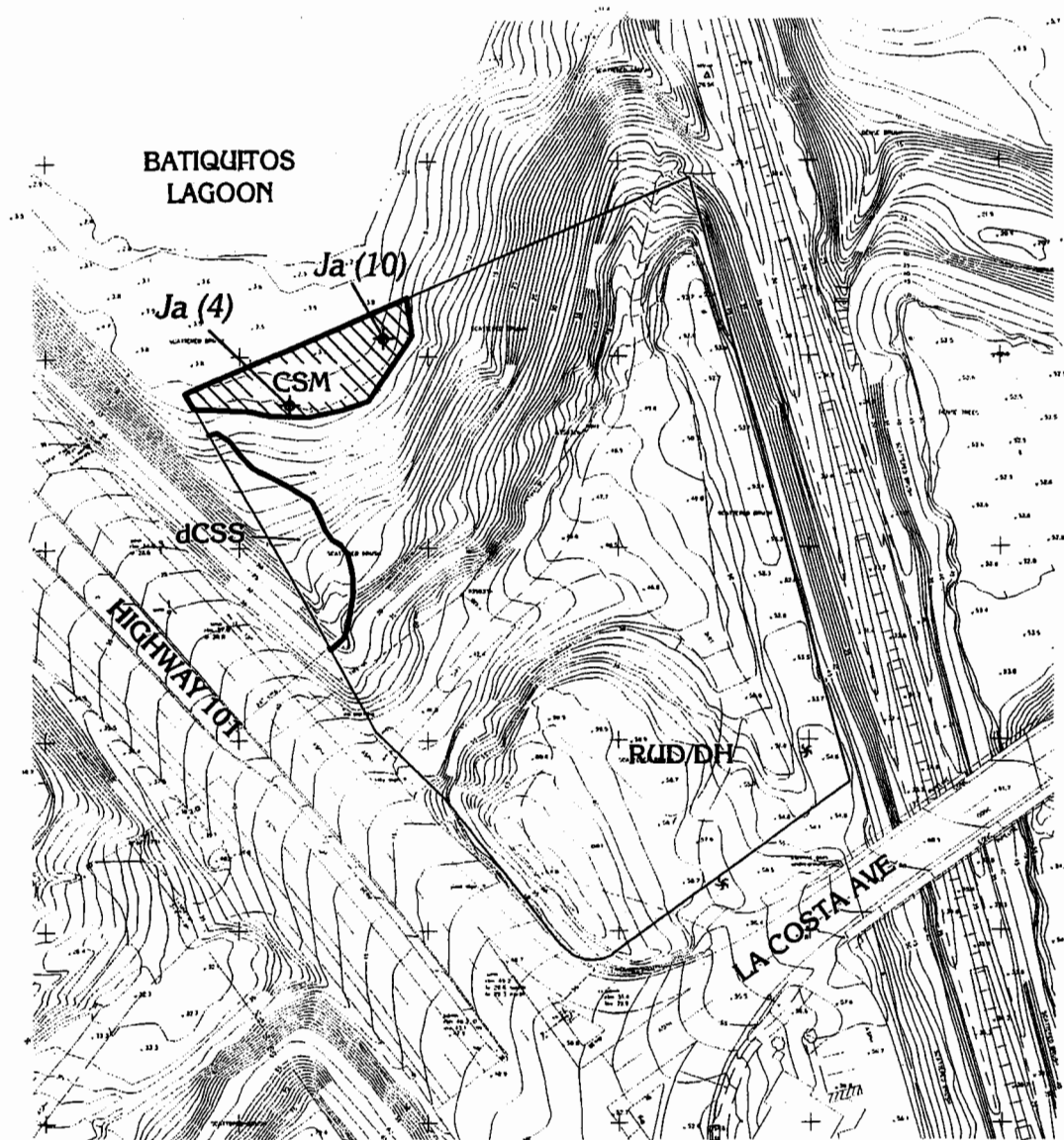
To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item 20b**, Coastal Commission Permit Application
#A-6-ENC-07-51 (Surfer's Point), for the Commission Meeting of
November 16, 2007

Staff recommends the following changes be made to the above-referenced staff report:

The attached exhibit shall be added as Exhibit #9 to the staff report representing the biological resources existing on the project site.



Jurisdictional Wetlands:

 ACOE/CDFG Wetlands

Habitat Types:

CSM - Coastal Salt Marsh

dCSS - disturbed Coastal Sage Scrub

RUD/DH - Ruderal/Disturbed Habitat

Sensitive Species:

Ja - *Juncus acutus*
spp. *leopoldii*

(# indicates presence of species
at that location)

 Property Line



Surfer's Point - Biological Resources Report & Impact

Biological Resource

EXHIBIT NO. 9

APPLICATION NO.

A-6-ENC-07-51

Biological Resources



City of
Encinitas

RECEIVED

OCT 25 2007

F 20b

October 25, 2007

California Coastal Commission
San Diego District Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421
Attn.: Gary Cannon, Coastal Program Analyst
gcannon@coastal.ca.gov

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

VIA FAX AND US MAIL

RE: Surfer's Point Timeshare and Hotel Project (Coastal Commission Appeal File No. A-6-ENC-07-51)

Dear Mr. Cannon:

During our teleconference on September 20, 2007 the Coastal Commission staff ("Coastal staff") advised the City staff ("staff") of certain issues that are, in part, the subject of the Coastal staff's appeal of the above referenced appeal case and which pertains to the City's local action in the issuance of a Coastal Development Permit for the associated development project (Case No. 00-201 MUP/DR/CDP/EIA). Staff has completed a review of the Coastal staff's expressed issues and concerns and submits the following responses:

Project Condition for Storm Drain Improvement

Pursuant to Condition SCF of the City's adopted resolution of approval (No. PC 2005-33) for the project, the project is required to construct a storm drain facility to replace the existing storm drain facility that discharges over a portion of the northwesterly on-site slope area fronting the Batiquitos Lagoon. The existing facility discharges storm waters that flow over NCH 101. During significant storm water events, properties within the greater coastal area of the northern portion of the Leucadia community contribute significantly to the storm water flows within NCH 101 and which are ultimately discharged through the subject storm water outlet. The approved project's future contribution of discharged and treated storm water to the facility is insignificant relative to the community-wide storm water volumes that flow through the outlet. In fact, with the incorporation of standard "priority project" measures for the detention of storm water flows, the project's post-construction peak volume storm water discharge will not exceed the volume that currently flows off the site in its existing condition. Accordingly, replacement of the facility was not necessary in order to handle the storm water flows from the project. However, the City found sufficient nexus to condition the project for the construction of a replacement storm water facility due to the location of the existing outlet on the project site and due to a recognized need to improve the condition of the existing facility with an energy dissipater to stem further erosion of the slope bank from non-dissipated discharge as is the current situation.

Impacts to Coastal Sage Scrub Vegetation

The biological resources assessment and impact analysis prepared for the project quantified a loss of 174 square feet of disturbed coastal sage scrub (CSS) with the project's construction of the replacement storm drain facility and improvement with a rip-rap rock dissipater to stem

Surfer's Point Timeshare and Hotel Project
Tel 760/633-2600 FAX 760/633-2627, 505 South Vulcan Avenue, Encinitas, CA 92024 TDD 760/633-2700

page 1 of 2

Letters from City

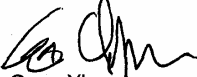
1

further erosion of the slope bank which is part of an upland slope area fronting the Batiquitos Lagoon. The location of the storm drain facility is also located within a 100-foot buffer zone of wetland vegetation adjacent to the Lagoon. However, the mitigation measures of the adopted Final Environmental Impact Report require that the loss of 174 s.f. of CSS be compensated by a re-vegetation of 0.7 acres of ruderal/disturbed habitat area on the project site with new replacement CSS vegetation. Accordingly, there would actually be a net gain of CSS on the project within the same vegetation community buffer zone. The net gain is approximately 0.66 acres of CSS and would off-set the loss of 174 s.f. (0.004 acres) of CSS once the re-vegetation requirement is completed in conjunction with the development of the project.

Policy 10.1 of the Resource Management Element of the City's General Plan and certified Local Coastal Program states the following: *"The City will minimize development impacts on coastal mixed chaparral and coastal sage scrub environmentally sensitive habitats by preserving within the inland bluff and hillside systems, all native vegetation on natural slopes of 25% grade and over other than manufactured slopes. A deviation from this policy may be permitted only upon a finding that strict application thereof would preclude any reasonable use of the property (one dwelling unit per lot). This policy shall not apply to construction of roads of the City's circulation element, except to the extent that adverse impacts on habitat should be minimized to the degree feasible. Encroachments for any purpose, including fire break brush clearance around structures, shall be limited as specified in Public Safety Policy 1.2. Brush clearance, when allowed in an area of sensitive habitat or vegetation, shall be conducted by selective hand clearance (Coastal Act/30240/30250/30251/30253)".* In the context of the project's construction of a replacement storm water facility and the associated loss of CSS, staff contends that in this case development impacts to CSS have been minimized by virtue of the fact that the loss of 0.004 acres of CSS would actually be compensated with the creation of 0.7 of new CSS on the project site. The replacement ratio is equivalent to 175 to 1 and represents a significant net gain in sensitive plant species habitat.

Please contact me with any questions regarding these concerns, thank you.

Sincerely,



Gene Ybarra
Senior Planner
City of Encinitas Planning Division
(760) 633-2698
gybarra@ci.encinitas.ca.us

GY/gy

Cc: Dan Reedy, Surfer's Point, LLC



City of Encinitas
Planning and Building Department
Current Planning Division
505 S. Vulcan Avenue, Encinitas, California 92024-3633

RECEIVED

NOV 07 2007

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

November 6, 2007

VIA FAX AND ELECTRONIC MAIL

California Coastal Commission
San Diego District Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421
Attn.: Gary Cannon, Coastal Program Analyst
gcannon@coastal.ca.gov

RE: Surfer's Point Timeshare and Hotel Project (Coastal Commission Appeal File No. A-6-ENC-07-51)

Dear Mr. Cannon:

At the request of the project applicant, staff submits the following additional information as a supplement to our last letter to you dated October 25, 2007 and specifically addressing the locally approved project's requirement for the improvement of an existing storm drain discharge facility located upon the project site and within an area of disturbed coastal sage scrub (DCSS) vegetation and to which the Coastal Commission staff ("Coastal staff") contends is an environmentally sensitive habitat area (ESHA). Given the Coastal staff's contention that the required improvement constitutes an inconsistency with the City's Local Coastal Program due to the loss of 174 square feet of DCSS, despite the fact that the City's adopted mitigation measures of the project Environmental Impact Report require a compensation for the loss with a re-vegetation of 0.7 acres of ruderal/disturbed vegetation existing on the project site with new replacement CSS vegetation, and despite the fact that the required re-vegetation program would result in a multiple times greater area of non-disturbed CSS vegetation supporting ESHA than currently exists on the site; the applicant has requested that staff comment upon the feasibility for the project's fulfillment of the storm water improvement with no impacts to ESHA. Staff submits there are both technical prohibitions and statutory limitations for any relocation of the existing storm water facility such that there are no impacts to the ESHA on the project site.

Relocation of the storm water outlet from its existing location within the on-site DCSS to some other proximate location is technically limited and technically inefficient. The only proximate location would be off-site and adjacent to the NCH 101 roadway. However, this location would move the outlet to a higher elevation and would exponentially increase the velocity of discharge. As a result, a larger overall facility including a channel would have to be constructed to handle the increased velocity and contain the discharge to roughly the same location as the existing outlet.

With regard to statutory prohibitions to require a location of the storm water facility to some other non-proximate location for the avoidance of impacts to ESHA, as stated in our last letter the City found sufficient nexus to condition the project for the construction of a replacement storm water facility due to its existing location on the project site and due to a recognized need

Surfer's Point Timeshare and Hotel Project
(A-6-ENC-07-51)

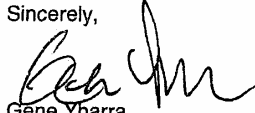
page 1 of 2

3

to improve the condition of the existing facility with an energy dissipater to stem further erosion of the slope bank from non-dissipated discharge as is the current situation. However as was also explained, the project development in and of itself would have only a marginal contribution of storm water to the facility and the project's contribution would not have any significant effects to the performance of the existing facility. Accordingly, any applied exaction by the City to cause the project to relocate the storm water facility to some other non-proximate off-site location for the avoidance of ESHA would have failed a statutory test of rough proportionality to the project's impact.

Please contact me with any questions, thank you.

Sincerely,



Gene Ybarra
Senior Planner
City of Encinitas Planning Division
(760) 633-2698
gybarra@ci.encinitas.ca.us

GY/gy

Cc: Edward C. Dygert, Esq.
Dan Reedy, Surfer's Point, LLC

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



Fri 20b

Filed: 4/23/07
49th Day: Waived
Staff: G. Cannon-SD
Staff Report: 10/31/07
Hearing Date: 11/14-16/07

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved with Conditions

APPEAL NO.: A-6-ENC-07-51

APPLICANT: Surfer's Point, LLC AGENT: Dan Reedy

PROJECT DESCRIPTION: Construction of a 29,975 sq. ft. two-story, 30 ft. high, 26-unit timeshare/hotel resort with an approximately 23,500 sq. ft. subterranean garage on a 1.81 acre site.

PROJECT LOCATION: Northeast corner of North Coast Highway 101 and La Costa Avenue, Leucadia, Encinitas, San Diego County.

APPELLANTS: Coastal Commissioners Sara Wan & Mary Shallenberger

STANDARD OF REVIEW: Certified City of Encinitas LCP and public access and recreation policies of the Coastal Act.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed.

Staff also recommends that the Commission approve the de novo permit application with several special conditions. The primary issues raised by the subject development relate to the Coastal Act and LCP requirements for lower cost visitor serving facilities, views of the coastline and lagoon, public access, and protection of environmentally sensitive habitat areas (ESHA) within the adjacent Batiquitos Lagoon. To mitigate the impacts to these coastal resources, the development has been conditioned to require the payment of an in lieu fee of \$210,000.00 to be used for the construction of lower cost visitor serving facilities in the area, the dedication of a public access path to assure continued public views of the lagoon and ocean and, an open space deed restriction over all portions of the property seaward of the inland bluff to protect the adjacent ESHA. In addition, the

permit is conditioned to include submission of final plans, landscaping plans that use only native, non-invasive species, BMPs to address water quality and exterior color and landscaping to minimize the appearance of the structures.

SUBSTANTIVE FILE DOCUMENTS: Certified City of Encinitas Local Coastal Program, City of Encinitas Staff Report and Resolution dated September 1, 2005, Final EIR dated October 1, 2004 by Curtis Scott Englehorn and Associates; Appeal applications from Commissioners Wan and Shallenberger dated April 23, 2007.

I. Appellants Contend That: The development, as approved by the City, is inconsistent with the certified LCP with respect to protection of environmentally sensitive habitat areas and visual resources. First, the proposed development relies on the use of a parcel owned by the North County Transit District (NCTD) to site a portion of the timeshare units and the public access path/overlook included on the eastern edge of the project site. At the time of City approval, the applicant had not secured the use of the railroad property; thus, calling into question the implementation of these features. In addition, potential use of the NCTD parcel may undermine efforts for future double-tracking and/or use of this transit corridor to offset and complement anticipated Interstate 5 corridor proposals that could significantly impact coastal resources. Second, the proposed landscaping plan, contrary to direction from the California Department of Fish & Game (DFG) and Commission staff, includes non-native and invasive plant species, that could adversely affect the adjacent lagoon habitat and trees that could serve as predator perches for raptors. In addition, the City failed to adequately assess and protect historic use by the public of the subject site. Commission staff had recommended a continuous public access loop along the lagoon hillside be provided connecting La Costa Avenue to North Coast Highway 101. Thus, the appellants also claim that the project, as approved by the City, is inconsistent with the public access policies of Chapter 3 of the Coastal Act.

II. Local Government Action: The project was approved, with conditions, by the City of Encinitas Planning Commission on September 1, 2005. However, the Notice of Final Action which opens the 10-day appeal period to the Coastal Commission was not received by the Commission until April 9, 2007. Specific conditions were attached which, among other things, require implementation of BMPs and other measures to control erosion and treat runoff from the site, recordation of a deed restriction over steep slopes on the site, a requirement that a minimum of 7 of the 26-units be reserved for exclusive use as traditional hotel units available at all times as transient overnight accommodations and submittal of CC&Rs and a management plan to assure the overnight units are reserved for such and to assure compliance with other length of stay limitations.

III. Appeal Procedures: After certification of a municipality's Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permit applications, as laid out in the Coastal Act, Section 30603. The grounds for such an appeal are limited to the assertion that "development does not conform to the standards set forth in the certified local coastal program or the [Coastal Act] public access policies." Cal. Pub. Res. Code § 30603(b)(1).

After the local government has taken final action on an appealable project, it must send a notice of that final action (NOFA) to the Commission. Cal. Pub. Res. Code § 30603(d); 14 C.C.R. § 13571. Upon proper receipt of a valid NOFA, the Commission establishes an appeal period, which runs for 10 working days. Cal. Pub. Res. Code § 30603(c); 14 C.C.R. § 13110 and 13111(b). If an appeal is filed during the appeal period, the Commission must "notify the local government and the applicant that the effective date of the local government action has been suspended," 14 C.C.R. § 13572, and it must set the appeal for a hearing no later than 49 days after the date on which the appeal was filed, unless the time limit is waived by the applicant. Cal. Pub. Res. Code § 30621(a), 30625(a).

Section 30625(b)(2) of the Coastal Act requires the Commission to hear an appeal of the sort involved here unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the Commission may proceed directly to the de novo portion of the hearing on the merits of the project then, or at a later date.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to the de novo portion of the hearing either immediately or at a subsequent meeting. If the Commission conducts a de novo review of the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Coastal Act requires that, for a permit to be granted, a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo portion of the hearing, any person may testify.

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-ENC-07-51 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. **A-6-ENC-07-51** presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Findings and Declarations.

1. Project Description. The project, as approved by the City, includes the construction of a 29,975 sq. ft., two-story, 30-ft. high, 26-unit timeshare/hotel resort with underground parking for 43 parking spaces. The 1.81 acre vacant site, consisting of 3 parcels, is located at the northeast corner of North Coast Highway 101 and La Costa Avenue in the Leucadia community of the City of Encinitas. One of the parcels is owned by the North County Transit District (NCTD), and includes the existing NCTD rail line that is used both for passenger rail and freight. A portion of the development is proposed to be constructed on the NCTD property, including a proposed access path that leads from La Costa Avenue, north along the railroad tracks to a viewing platform overlooking Batiquitos Lagoon.

The subject site is an inland hillside site overlooking Batiquitos Lagoon. The site extends down a steep north facing slope and includes a small portion of Batiquitos Lagoon. The upper portion of the site has been previously graded, is relatively flat and is devoid of native vegetation. The north facing slope contains a mixture of non-native habitat, interspersed with disturbed upland native habitat and patches of coastal sage scrub vegetation. The lower northwest portion of the site contains a small area of lagoon coastal salt marsh. Surrounding uses includes Batiquitos Lagoon to the north, North Coast Highway 101 and the Ponto State Beach parking lot to the west, the NCTD railroad

tracks and a single-family home to the east, and La Costa Avenue and two small office buildings to the south.

The subject review is an appeal of a City approved coastal development permit. As such, the standard of review is the certified City of Encinitas Local Coastal Program. Because the subject site is located between the first public road and the sea, the standard of review also includes the public access and recreation policies of the Coastal Act.

2. Environmentally Sensitive Habitat Areas. The appellants contend that the development, as approved by the City, fails to adequately protect adjacent environmentally sensitive habitat areas (ESHA). The City's LCP contains a number of provisions that require protection of wetlands and other environmentally sensitive resources. Specially, the LCP provisions applicable to the subject development include:

Section 30.34.040 (B) (3) (c) of the certified Implementation Plan states:

All buildings or other improvements proposed to be placed or erected, and all grading activities proposed to be undertaken adjacent to a wetland shall be located so as not to contribute to increased sediment loading of the wetland, cause disturbance to its habitat values, or otherwise impair the functional capacity of the wetland. (emphasis added)

In addition, the Resource Management Element of the Land Use Plan contains the following:

GOAL 10: The City will preserve the integrity, function, productivity, and long term viability of environmentally sensitive habitats throughout the City, including kelp-beds, ocean recreational areas, coastal water, beaches, lagoons and their up-lands, riparian areas, coastal strand areas, coastal sage scrub and coastal mixed chaparral habitats. (Coastal Act/30230/30231/30240)

POLICY 10.9: The City will encourage the preservation and the function of San Elijo Lagoon and Batiquitos Lagoon and their adjacent uplands as viable wetlands, ecosystems and habitat for resident and migratory wildlife, by prohibiting actions (subject to the detailed provisions of RM policy 10.6) which:

[. . .]

- adversely affect existing wildlife habitats.

As noted above, the subject site is located adjacent to Batiquitos Lagoon and in fact, includes a small portion of the lagoon and its associated salt marsh habitat. Batiquitos Lagoon was approved for enhancement through dredging by the Commission in the early 1990s. As a result of that enhancement, the lagoon mouth remains open year round, providing continuous tidal flushing. Aside from the sensitive native plant communities that occupy the lagoon and its environs, a number of sensitive bird species visit and nest at this lagoon. According to the EIR for the project, both California least terns and

western snowy plovers nest within 750 ft. of the project site. Given the sensitive nature of the surrounding area, care must be taken to assure development does not directly or indirectly impact these areas or their occupants.

One issue raised by the appellants relates to the applicant's lease of NCTD property to accommodate the development. As noted above, a single line of railroad tracks exists along the eastern boundary of the property and a portion of the subject site is owned by NCTD and will be leased by the applicant. The applicant is proposing to construct several of the proposed units and the public path on the property leased from NCTD. The appellants assert that by allowing development to occur on NCTD property, there is a concern that the development may affect the ability of NCTD to construct double-rail tracks at this location in the future. Currently, the NCTD right-of-way at this location is 200 feet in width. With the addition of the timeshare development within the NCTD right-of-way, the concern is raised that there will not be adequate room on the remaining 100 feet of right-of-way accommodate a double track and thus NCTD may be precluded from providing double-tracking at this location. This raises a public access and resource concern because if this development impedes future double-tracking at this location, it may preclude the opportunity to increase passenger rail service as an alternative form of transportation, resulting in greater demands to widen, among others, Interstate 5 at San Elijo Lagoon, which could have significant adverse impacts on environmentally-sensitive habitat areas. However, subsequent to the City's approval, the applicant has signed a 55-year lease with NCTD and NCTD has submitted schematic drawings for double tracking which document that 100 feet of right-of-way is sufficient to accommodate an additional railway track. NCTD has also identified the right-of-way immediately south of the subject site is only 100 feet in width as are many of its right-of-ways throughout the County. Therefore, it appears that the use of NCTD property for the proposed development will not inhibit future double-tracking at the site which could have had adverse impacts to ESHA along Interstate 5. Therefore, the use of the NCTD property does not raise a substantial issue.

However, the landscape plan approved by the City for the subject development includes extensive use of invasive plant species (*Myoporum Laetum*) throughout the site and specifically along the top of the slope overlooking Batiquitos Lagoon. In addition, the landscape plan approved by the City includes the use of King Palms in the areas adjacent to the top of slope. These trees have been identified by the California Department of Fish and Game as a concern because they can serve as a predator perch for raptors that prey on the terns and plovers that nest in the lagoon below. Approval of the development utilizing invasive plant species and trees that serve as predator perches could adversely impact the adjacent lagoon and its identified sensitive biological resources, inconsistent with the above-cited LCP provisions. Therefore, the development raises a substantial issue with regard to protection of ESHA.

3. Protection of Public Access & Visual Resources. The appellants assert that the development, as approved by the City, fails to adequately address the protection of public access or views. The City's LCP contains several provisions that address protection of

scenic visual resources. Specifically, the Resource Management Element of the LUP includes:

GOAL 4: The City, with the assistance of the State, Federal and Regional Agencies, shall provide the maximum visual access to coastal and inland views through the acquisition and development of a system of coastal and inland vista points. (Coastal Act/30251)

POLICY 4.1: The following Vista Points and others will be acquired and developed, as feasible:

[. . .]

- Highway 101, north of La Costa Avenue

[. . .]

POLICY 4.4: The system of Vista Points will provide for the differing needs of automobile, bicycle, and pedestrian users, and will recognize as a recreational resource, the function of Vista Points as facilities for the passive, and occasionally remote enjoyment of the coastal and inland view. (Coastal Act/30251/30212.5/30210)

POLICY 4.7: The City will designate the following view corridors as scenic highway/visual corridor viewsheds:

[. . .]

- Highway 101, La Costa Ave. to South Carlsbad Beach

[. . .]

In addition, because the project site is located between the sea and the first coastal roadway, the development must also be consistent with the public access and recreation policies of the Coastal Act. Applicable Coastal Act provisions are as follows:

Section 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.

Section 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.

Section 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.

As noted previously, the subject site is located adjacent to Batiquitos Lagoon. The subject site is currently vacant and provides expansive views of Batiquitos Lagoon, Ponto State Beach and the Pacific Ocean by individuals who access the site on existing trails. For motorists there are currently public views of the ocean available across a portion of the subject site as they travel westbound on La Costa Avenue. With approval of the subject development, the wide expansive views currently available for those who traverse the site and the limited views by motorists will be lost. In addition, the subject development will be visible from offsite locations including the beach, the public trail that runs along the north side of Batiquitos Lagoon, Interstate 5 and North Coast Highway 101. As approved by the City, though, the project does include a design that breaks the development into several buildings to help reduce the appearance and mass of the development and the buildings are setback at least 25 ft. from the top of the slope and include landscaping to help screen and reduce the visibility of the structures as seen from these offsite locations.

More significant, however, is that the City failed to adequately address protection of public access across the site and public views from the site itself. While the development does include an improved public trail that runs along the eastern edge of the development next to the NCTD railroad tracks, terminating at a public overlook at the top edge of the slope, the City failed to address what appears to be evidence of historic public use of the site. In looking at aerial photographs of the site, there is clear evidence of a well worn trail that runs not only along the railroad tracks where the proposed trail is located, but also from North Coast Highway 101 across the site along the top of the slope. The City's action did not require the public trail to be provided along the top of the bluff. Instead, the City approved the trail next to the railroad tracks on NCTD property and required that if the applicant's lease with NCTD is ever terminated, then access equal or better to the

approved access shall be provided. Given the significant impacts on public views of the lagoon and ocean that will result from construction of the 26-unit resort, what appears to be evidence of historical public use of the site and the significant views provided from this location, the City should have required adequate mitigation in the form of a continuous public access trail/linkage along the top of the slope as well as the trail that parallels the railroad tracks. In not requiring this mitigation, the City's approval is not consistent with the above cited LCP provisions to provide "...maximum visual access to coastal and inland views." In addition, by failing to address historic public use of the site along the top of slope, the City failed to assure adequate protection of public access.

In summary, the development approved by the City is inconsistent with several provisions of the certified LCP as well as the public access and recreation policies of the Coastal Act in that ESHA may be impacted, historic use of the site by the public for access and viewing has not been adequately addressed and public views have not be protected. Therefore, the City's action raises a substantial issue regarding consistency with the requirements of the LCP and the public access and recreation policies of the Coastal Act as asserted by the appellants.

I. STAFF RECOMMENDATION ON THE COASTAL PERMIT

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. A-6-ENC-07-051 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified LCP and the public access policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following special conditions:

1. Final Plans. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and written approval, final site, floor, and elevation plans for the permitted development that have been stamped approved by the City of Encinitas. Said plans shall be in substantial conformance with the concept plans for KITAbayashi Design Studio dated approved by the City of Encinitas on 9/1/05, and shall include the following:

- a. Construction lighting and post-construction project lighting fixtures shall be shaded and oriented so that direct light or indirect glow will not increase the light levels in the lagoon or within the 100 ft. wetlands buffer provided on the project site.

No portion of the proposed buildings shall extend any closer than 25 ft. from the top edge of the inland hillside. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Revised Final Landscaping Plan. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and written approval of the Executive Director, a revised final landscaping plan (including for the 100 ft. wetlands buffer) developed in consultation with the California Department of Fish and Game and approved by the City of Encinitas and Encinitas Fire Department (for identification of fire-resistant plant species that comply with brush management requirements). Said plan shall be in substantial conformance with the plans submitted with this application by Topia Landscape Architecture – Planning dated revised 3/23/07, but shall be revised to include the following:

- a. The plan shall show the type, size and location of all landscape species to be retained, removed and planted on site and shall include, at a minimum, 1 tree (minimum 24-inch box or 5-foot trunk height minimum) or 1 similarly sized non-invasive plant species to be located every 10 feet adjacent to the western and northern side of the proposed timeshare/hotel facility in a manner that will maximize screening of the structures and/or upon maturity will exceed the roofline of the structures so as to substantially screen the structures from views from Coast Highway 101, La Costa Avenue or any other off-site public areas.
- b. All landscaping shall consist of drought-tolerant native, non-invasive plant species that is obtained from local stock, if available. No plant species listed as

problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized.

- c. A planting schedule that indicates that the planting plan shall be implemented within 60 days of completion of the timeshare/hotel construction and prior to occupancy of any of the timeshare/hotel units.
- d. A written commitment by the applicant that all required plantings shall be maintained in good growing condition, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape screening requirements.
- e. Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
- f. Five years from the date of issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Open Space Restriction. No development, as defined in section 30106 of the Coastal Act shall occur in the area generally described as the portion of the property below the inland bluff edge as depicted on the proposed grading plan by William A. Steen and Associates and approved by the City of Encinitas on 9/1/05, and as depicted in an exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for:

a. Approved drainage improvements, removal of exotic plants and installation/long-term maintenance of native species proposed as part of the approved landscape plan for the development.

b. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit #7 attached to the October 25, 2007 staff report.

4. Public Access Program. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval of the Executive Director, detailed plans which shall incorporate the following:

- a. Public Viewing Area. A scenic viewing area for hotel guests and the public shall be provided at the north eastern portion of the site within the 25 ft. inland hillside setback, but not closer than 5 ft. from the slope. The viewing area shall include, at a minimum: benches, an animal waste bag dispenser and a covered trash enclosure. Interpretative signage concerning the lagoon and its resources is also encouraged.
- b. Public Access Path. A paved pedestrian path for public use, at least 5 ft. in width, shall be provided that extends from La Costa Avenue, north along the eastern portion of the development site to the public viewing area and then from the public viewing area west to North Coast Highway 101 along the inland hillside, but no closer than 5 ft. from the slope.
- c. Hours of Availability. The public access path and public viewing area shall be available for public use 24 hours a day, 7 days a week.
- d. Signage. Access routes and the public viewing area shall be clearly marked for public use with a minimum of one sign located along La Costa Avenue at the entrance to the public access path; one sign located along North Coast Highway 101 at the entrance to the public access path; and, at the public viewing area. Said signage shall indicate the provision of public access along the provided path and the location of the public viewing area. The signs shall also indicate the availability of the path and viewing area 24 hours a day, 7 days a week.
- e. Continual Access. No structures of any type, including gates or fences shall be placed that would impede use of the access path and viewing area by the general public.
- f. Animal waste bag dispensers. Animal waste bag dispensers accompanied by signage which encourages park users to dispose of animal waste in proper

receptacles shall be provided and regularly stocked. Covered trash receptacles shall be included and emptied weekly.

The permittee shall undertake the development in accordance with the approved access program. Any proposed changes to the approved access program shall be reported to the Executive Director. No changes to the access program shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit #2 attached to the October 25, 2007 staff report.

5. Public Access Management Plan. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and written approval by the Executive Director, a public access management plan for the construction and perpetual maintenance of the public access improvements required and approved pursuant to Special Condition #4 of this permit. The public access management plan shall include a written agreement that includes the following:

- a. The applicant agrees to construct the access features prior to or concurrent with the resort/hotel construction, and the access improvements shall be completed prior to occupancy of the resort/hotel.
- b. The applicant agrees to maintain said access improvements in perpetuity.

The permittee shall undertake the development in accordance with the approved access management plan. Any proposed changes to the approved access management plan shall be reported to the Executive Director. No changes to the access management plan shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. Exterior Treatment. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and written approval of the Executive Director, a color board or other indication of the exterior materials and color scheme to be utilized in the construction of the proposed timeshare/hotel. This document shall comply with the following requirements:

- a. The color of the proposed structures and roof permitted herein shall be restricted to colors compatible with the surrounding environment (earth tones) including shades of green, brown, and gray, with no white or light shades and no bright tones except as minor accents.

- b. All proposed external windows on the west, east and south sides of the structures visible from Coast Highway 101 or La Costa Avenue shall be comprised of non-glare glass.

The permittee shall undertake the development in accordance with the approved color board. Any proposed changes to the approved color board shall be reported to the Executive Director. No changes to the color board shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

7. Revised Drainage and Polluted Runoff Control Plan. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director, revised final drainage and runoff control plans approved by the City of Encinitas, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. The design criteria for BMPs shall be based on the recommendations in the latest edition of the California Association of Stormwater Quality Agencies (CASQA) Stormwater Best Management Practices Handbooks. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- a. Selected BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter stormwater from each runoff event, up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor, for flow-based BMPs.
- b. Runoff shall be conveyed off site in a non-erosive manner. Energy dissipating measures shall be installed at the terminus of all outflow drains.
- c. Drainage from all roofs, parking areas, driveway area, and other impervious surfaces on the building pad shall be directed through vegetative or other media filter devices effective at removing and/or mitigating contaminants such as petroleum hydrocarbons, heavy metals, and other particulates.
- d. Opportunities for directing runoff into pervious areas on-site for infiltration and/or percolation of rainfall through grassy swales or vegetative filter strips, shall be maximized where geotechnical concerns would not otherwise prohibit such use.
- e. The combination bioswale and detention basins proposed along the 25 ft. inland bluff setback area must be designed not only to treat all runoff through the BMP from the 85th percentile storm event (0.6 inch storm), but must be designed and built so that it will not fail under runoff conditions during the 100 year storm event. The bioswale shall be designed to incorporate the use of an impervious clay layer in order to prevent infiltration of runoff or

irrigation water into the bluff. The impervious clay layer shall be a minimum of twelve inches thick and shall have a maximum hydraulic conductivity of 1×10^{-6} cm/sec.

- f. No drainage improvements shall be located within Environmentally Sensitive Habitat Areas (ESHA). The drainage plans shall be revised to document that all drainage improvements including pipes or dissipater devices will neither directly nor indirectly impact ESHA.
- g. The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. The plan shall include an identification of the party or entity(ies) responsible for maintaining the various drainage systems over its lifetime and shall include written acceptance by the responsible entity(ies). Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to and during each rainy season, including conducting an annual inspection no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

The permittee shall undertake development in accordance with the approved drainage and runoff control plans. Any proposed changes to the approved drainage and runoff control plans shall be reported to the Executive Director. No changes to the approved plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. Lower Cost Overnight Accommodations Mitigation Fee. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the Permittee shall submit to the Executive Director for review and written approval, a plan to establish a Lower Cost Overnight Accommodations Fund. Subsequent to Executive Director approval of the plan, a sum of \$210,000.00 shall be deposited into an interest bearing account, to be established and managed by one of the following entities as approved by the Executive Director: the Permittee, the City of Encinitas, the California Department of Parks and Recreation, Hostelling International, or similar entity. The purpose of the account shall be to establish new lower cost overnight visitor serving accommodations, such as new hostel or tent campground units, at appropriate locations within the coastal zone of northern San Diego County. The entire fee and any accrued interest shall be used for the above-stated purpose, in consultation with the Executive Director, within ten years of the fee being deposited into the account. Any portion of the fee that remains after ten years

shall be donated to one or more of the State Park units located along the northern San Diego County shoreline (e.g., Carlsbad or San Elijo State Parks), or other organization acceptable to the Executive Director, for the purpose of providing lower cost public access and recreation improvements to and along the shoreline, including improvements to the California Coastal Trail.

PRIOR TO EXPENDITURE OF ANY FUNDS CONTAINED IN THIS

ACCOUNT, the Executive Director shall review and approve, in writing, the proposed use of the funds as being consistent with the intent and purpose of this condition. In addition, the entity accepting the in-lieu fee funds required by this condition shall enter into a memorandum of understanding (MOU) with the Commission, which shall include, but not be limited to, the following: (1) a description of how the funds will be used to create or enhance lower cost accommodations in the Coastal Zone; (2) a requirement that the entity accepting the funds must preserve these newly created lower cost accommodations in perpetuity; and (3) an agreement that the entity accepting the funds will obtain all necessary regulatory permits and approvals, including but not limited to, a coastal development permit for development of the lower cost accommodations required by this condition.

9. Sign Program. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a comprehensive sign program, documenting that only monument signs, not to exceed eight (8) feet in height, or facade signs are proposed. No tall, freestanding pole or roof signs shall be allowed. Said plans shall be subject to the review and written approval of the Executive Director and shall include the following:

The permittee shall undertake development in accordance with the approved sign plans. Any proposed changes to the approved sign plans shall be reported to the Executive Director. No changes to the approved plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

10. Timing of Construction. No construction or grading activities shall occur during the California gnatcatcher or Snowy Plover breeding season from April 1 to September 15 of any year unless authorization is first received in writing from either the California Department of Fish and Game or U. S. Fish and Wildlife Service.

The permittee shall undertake development in accordance with the approved timing restrictions. Any proposed changes to the timing restrictions shall be reported to the Executive Director. No changes to the timing restrictions shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

11. Disposal of Graded Spoils. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall identify the location for the disposal of graded spoils. If the site is located within the coastal zone, a separate coastal

development permit or permit amendment shall first be obtained from the California Coastal Commission or its successors in interest. In addition, any material found suitable for beach use by the State Department of Parks and Recreation shall be reserved for placement on the beach. Applicable permits/review/approval from the Army Corps of Engineers and/or California Department of Parks and Recreation or other public agency shall be obtained prior to placement on the beach.

12. Deed Restriction. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

13. Other Special Conditions from City of the Encinitas. Except as provided by this coastal development permit, this permit has no effect on conditions imposed by the City of Encinitas pursuant to an authority other than the Coastal Act.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. **Project Description.** The proposed project involves the construction of a 29,975 sq. ft., two-story, 30-ft. high, 26-unit timeshare/hotel resort with underground parking for 43 parking spaces. Seven of the 26 units will remain as traditional hotel rooms and will not be sold as timeshares. The 1.81 acre vacant site, consisting of 3 parcels, is located at the northeast corner of North Coast Highway 101 and La Costa Avenue in the Leucadia community of the City of Encinitas. One of the parcels is owned by the North County Transit District (NCTD), and includes the existing NCTD rail line that is used both for passenger rail and freight. A portion of the development is proposed to be constructed on the NCTD property, including a proposed access path that leads from La Costa Avenue, north along the railroad tracks to a viewing platform overlooking Batiquitos Lagoon. The applicant has revised the project for purposes of the Commission's de novo review to include an extension of the public access path from the Batiquitos Lagoon overlook along the northern side of the development site ending at Highway 101.

The subject site is an inland hillside site overlooking Batiquitos Lagoon. The site extends down a steep north facing slope and includes a small portion of Batiquitos Lagoon. The upper portion of the site has been previously graded, is relatively flat and is devoid of native vegetation. The north facing slope contains a mixture of non-native habitat, interspersed with disturbed upland native habitat and patches of coastal sage scrub vegetation. The lower northwest portion of the site contains a small area of lagoon coastal salt marsh. Surrounding uses includes Batiquitos Lagoon to the north, North Coast Highway 101 and the Ponto State Beach parking lot to the west, the NCTD railroad tracks and a single-family home to the east, and La Costa Avenue and two small office buildings to the south.

The standard of review is the certified City of Encinitas Local Coastal Program and the public access and recreation policies of the Coastal Act.

2. Environmentally Sensitive Habitat Areas. The City's LCP contains a number of provisions that require protection of wetlands and other environmentally sensitive resources. Specifically, the LCP provisions applicable to the subject development include:

Section 30.34.040 (B) (3) (c) of the certified Implementation Plan states:

All buildings or other improvements proposed to be placed or erected, and all grading activities proposed to be undertaken adjacent to a wetland shall be located so as not to contribute to increased sediment loading of the wetland, cause disturbance to its habitat values, or otherwise impair the functional capacity of the wetland.

In addition, the Resource Management (RM) Element of the Land Use Plan contains the following:

RM GOAL 10: The City will preserve the integrity, function, productivity, and long term viability of environmentally sensitive habitats throughout the City, including kelp-beds, ocean recreational areas, coastal water, beaches, lagoons and their up-lands, riparian areas, coastal strand areas, coastal sage scrub and coastal mixed chaparral habitats.

RM POLICY 10.1: The City will minimize development impacts on coastal mixed chaparral and coastal sage scrub environmentally sensitive habitats by preserving within the inland bluff and hillside systems, all native vegetation on natural slopes of 25% grade and over other than manufactured slopes. A deviation from this policy may be permitted only upon a finding that strict application thereof would preclude any reasonable use of the property (one dwelling unit per lot). . .

POLICY 10.3: The City shall explore the prevention of beach sand erosion. Beaches shall be artificially nourished with excavated sand whenever suitable material becomes available through excavation or dredging, in conjunction with the development of a consistent and approved project. The City shall obtain necessary permits to be able to

utilize available beach replenishment sands (as necessary, permits from the Army Corps of Engineers, California Coastal Commission, Department of Fish and Game, EPA, etc.).

POLICY 10.5: The City will control development design on Coastal Mixed Chaparral and Coastal Sage Scrub environmentally sensitive habitats by including all parcels containing concentrations of these habitats within the Special Study Overlay designation. The following guidelines will be used to evaluate projects for approval.

- conservation of as much existing contiguous area of Coastal Mixed Chaparral or Coastal Sage Scrub as feasible while protecting the remaining areas from highly impacting uses;
- minimize fragmentation or separation of existing contiguous natural areas;
- connection of existing natural areas with each other or other open space areas adjacent to maintain local wildlife movement corridors;
- maintenance of the broadest possible configuration of natural habitat area to aid dispersal of organisms within the habitat;
- where appropriate, based on community character and design, clustering of residential or other uses near the edges of the natural areas rather than dispersing such uses within the natural areas;
- where significant, yet isolated habitat areas exist, development shall be designed to preserve and protect them;
- conservation of the widest variety of physical and vegetational conditions on site to maintain the highest habitat diversity;
- design of development, with adjacent uses given consideration, to maximize conformance to these guidelines; and
- reservation of rare and endangered species on site rather than by transplantation off site.

In addition, all new development shall be designed to be consistent with multi-species and multi-habitat preservation goals and requirements as established in the statewide Natural Communities Conservation Planning (NCCP) Act. Compliance with these goals and requirements shall be implemented in consultation with the United States Fish and Wildlife Service and California Department of Fish and Game.

POLICY 10.9: The City will encourage the preservation and the function of San Elijo Lagoon and Batiquitos Lagoon and their adjacent uplands as viable wetlands,

ecosystems and habitat for resident and migratory wildlife, by prohibiting actions (subject to the detailed provisions of RM policy 10.6) which:

- adversely affect existing wildlife habitats.

As noted above, the subject site is located adjacent to Batiquitos Lagoon and, in fact, includes a small portion of the lagoon and its associated salt marsh habitat within the property boundaries. Batiquitos Lagoon is an environmentally sensitive habitat area that is managed by the California Department of Fish and Game and is one of the 19 priority wetlands listed by the State Department of Fish and Game for acquisition. Batiquitos Lagoon was fully tidal until the 1881 construction of the railway line and the construction of Pacific Coast Highway (Coast Highway 101) in 1912. In March of 1990, the Commission approved the restoration of Batiquitos Lagoon including the permanent opening of lagoon mouth (Ref. CDP 6-90-219/City of Carlsbad). The creation of the open mouth restored continuous tidal action and the former marine ecosystem, without significant adverse impacts to established habitat values within the project limits. The lagoon provides habitat for at least four State or Federal-listed threatened or endangered birds that include the California least tern, the light-footed clapper rail, Belding's savannah sparrow, and the western snowy plover. As such, the potential adverse impacts on sensitive resources as a result of activity in or adjacent to the lagoon could be significant.

Protection of ESHA/Sensitive Bird Species

The proposed timeshare/hotel will be sited atop a disturbed inland hillside and, with the exception of drainage improvements, no portion of the timeshare/hotel facility is proposed on natural steep slopes or will result in direct impacts to environmentally sensitive habitat areas (ESHA). The timeshare/hotel facility, including the proposed subterranean parking garage and access path improvements will all be located on what today consists of upper and lower-terraced pads landward of the inland hillside edge. According to the project EIR, these terraced pads consist of man-made fills and cut slopes that occurred with depositions associated with the construction of North Coast Highway 101. Although the timeshare/hotel facilities generally will not directly impact steep slopes or ESHA, the one exception involves a proposed storm drain and riprap dissipater. In approving the project, the City required the developer to construct an approximately 40 ft.-long storm drain pipe and an approximately 150 sq. ft. energy dissipater device to resolve an erosion problem caused by a public storm drain that outlets near the subject lot east of North Coast Highway 101. However, installation of the proposed devices will result in the loss of approximately 174 sq. ft. of coastal sage scrub located on the slope north of the development. The Commission's staff ecologist, Dr. Jonna Engel, has reviewed the applicant's drainage plan and biological report and has concluded that because of its close proximity to Batiquitos Lagoon, California gnatcatcher habitat and California least tern nesting areas, the coastal sage scrub proposed for impact is considered an Environmentally Sensitive Habitat Area (ESHA).

As cited above, Resource Management (RM) Policies 5, 9 10, and 10.1 each require the protection of coastal sage scrub habitat particularly on steep slopes around Batiquitos Lagoon which is where the drainage improvements are proposed. Based on a review of the applicant's biology report, most of the steep slope areas below the subject site do not contain coastal sage scrub or other environmentally sensitive habitat which suggests the drainage improvements could be sited elsewhere on the property so as to not impact ESHA. Therefore, Special Condition #6f has been attached which requires the applicant to relocate any needed storm drain or energy dissipater facility so as to not impact ESHA. As a result of this condition, none of the proposed development will directly impact ESHA consistent with RM Policies 5, 9, 10 and 10.1 of the LCP.

In addition, the EIR for the subject site identifies that construction activity during the breeding and nesting season of several endangered birds. According to the EIR, "[o]f particular concern is noise from construction activity which could be disruptive to breeding and nesting Belding's savannah sparrows, California least tern and western snowy plovers in nearby wetland locations, and possibly California gnatcatchers in disturbed coastal sage scrub." To avoid any potential adverse impacts to these endangered species, Special Condition #10 has been attached to prohibit construction or grading activities from occurring during the breeding/nesting season of April 1 to September 15th of any year unless authorized by either the U.S. Fish and Wildlife Service (USFWS) or State Department of Fish and Game (DFG).

Wetlands Buffer Requirements

Although, as conditioned, none of the proposed development will be located within ESHA, the development will be located adjacent to wetlands. The LCP also requires that a protective buffer be established between new development and wetlands. The following policies are applicable:

RM Policy 10.6: The City shall preserve and protect wetlands within the City's planning area. "Wetlands" shall be defined and delineated consistent with the definitions of the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, the Coastal Act and the Coastal Commission Regulations, as applicable, and shall include, but not be limited to, all lands which are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water.

There shall be no net loss of wetland acreage or resource value as a result of land use or development, and the City's goal is to realize a net gain in acreage and value whenever possible. . .

The City shall also control use and development in surrounding areas of influence to wetlands with the application of buffer zones. At a minimum, 100-foot wide buffers shall be provided upland of salt water wetlands, and 50-foot wide buffers shall be provided upland of riparian wetlands. Unless otherwise specified in this plan, use and development within buffer areas shall be limited to minor passive recreational

uses with fencing, desiltation or erosion control facilities, or other improvements deemed necessary to protect the habitat, to be located in the upper (upland) half of the buffer area when feasible.

All wetlands and buffers identified and resulting from development and use approval shall be permanently conserved or protected through the application of an open space easement or other suitable device.

As previously described the proposed development will be sited on an inland hillside overlooking Batiquitos Lagoon. With the exception of drainage improvements, no structures or grading will occur lagoonward of the inland hillside edge. The applicant's biology report has identified the subject site as being located adjacent to the wetlands of Batiquitos Lagoon and that some portion of the subject property on its most northern point adjacent to the lagoon contains saltmarsh wetlands. As required by the LCP, the applicant is proposing a 100 ft.-wide wetlands buffer between the development located on the top of the inland hillside and the wetlands below. In addition, because of the steep slopes that surround the north and east sides of the site, the City's MUP required that all steep slopes be placed into an open space easement that prohibits future development. Therefore, in this case, the effective wetlands buffer consists not only of the required 100 ft. from wetlands but the additional area of steep slopes upland of the 100 foot landward extension of the wetlands buffer. If this additional upland slope area is added to the proposed 100 ft. wetlands buffer, the effective wetlands buffer will range from about 100 ft. to 145 ft. in width.

However, it should be noted that the Commission's ecologist, Dr. Jonna Engel has identified some concern with the adequacy of the applicant's wetlands delineation. The applicant's biology report identifies the location of wetlands as being located somewhere near the toe of the inland hillside between elevation contours 5 and 6 ft. According to Dr. Engel, the applicant's wetlands delineation is insufficient to determine the upland extent of the wetlands as it consists of only one sample location. However, after reviewing the applicant's biology report and visiting the site, Dr. Engel has determined that, in this particular case, because of the steepness of the slope adjacent to the lagoon, that any updated wetlands delineation would also likely conclude the inland extent of wetlands would generally follow the toe of the slope. The Commission's geologist, Dr. Mark Johnsson, has reviewed the applicant's topography contours shown on the concept grading plan and generally interprets the map to show the toe of the slope to be somewhere at contour elevation 5 ft. In addition, given that the effective wetlands buffer will be 100 ft. or greater from the toe of the slope and given the significant elevational difference of approximately 45 ft. from the toe of the slope to the development pad, Dr. Engel has determined, in this particular case, that a further wetland delineation is not necessary as the proposed buffer is more than adequate to afford protection to the adjacent wetlands of Batiquitos Lagoon.

In addition, the City MUP requires that all exotic vegetation located seaward of the inland hillside edge including within the wetlands buffer be removed and that native coastal sage scrub species be re-planted throughout the open space area. To assure that

all landscaping throughout the development site (including the wetlands buffer) is protective of the adjacent ESHA resources, Special Condition #2 requires that the final landscaping plan for the development be developed in consultation with the Department of Fish and Game and also approved by the City of Encinitas. Special Condition #2 also requires the use of only drought-tolerant native, non-invasive plants from local stock and prohibits the use of rodenticides. In addition, Special Condition #3 has been attached to require that all portions of the subject lot seaward of the inland hillside slope edge to be placed in open space so as to prohibit all future development of the steep slope, wetlands buffer or wetlands located on the site with the exception of landscaping and the construction of erosion control improvements allowed for by RM Policy 10.6 of the LCP. Finally, Special Condition #1a has been attached to require all lighting from the development be shaded and oriented so that direct light or indirect glow will not increase the light levels within the lagoon or the 100 ft. wide buffer.

RM Policy 10.3 requires that the City make use of excavated sand from approved developments for beach nourishment. The applicant's civil engineer has identified that the proposed development will result in export of spoils following grading operations that includes excavation for an approximately 23,500 sq. ft. subterranean garage. To assure that any beach quality sand recovered from the site is available for beach nourishment, Special Condition #10 has been attached which requires the applicant to identify the location of any exported grading spoils and reserve any beach quality sand excavated for beach nourishment. This condition is identical to the condition required by the Commission in its approval of the 130 unit hotel to be located immediately west of the subject (Ref. 6-92-203/Encinitas Resort).

In summary, as conditioned, the proposed development will not adversely affect ESHA and a greater than 100 ft. wide protective vegetated buffer will be installed between the proposed development and the adjacent wetlands of Batiquitos Lagoon. As conditioned, the proposed development is consistent with the ESHA protection policies certified LCP.

3. Protection of Visual Resources and Public Access. The City's LCP contains several provisions that address protection of scenic visual resources and public access.

Visual Resources

Resource Management Element of the LUP includes:

GOAL 4: The City, with the assistance of the State, Federal and Regional Agencies, shall provide the maximum visual access to coastal and inland views through the acquisition and development of a system of coastal and inland vista points. (Coastal Act/30251)

POLICY 4.1: The following Vista Points and others will be acquired and developed, as feasible:

[. . .]

- Highway 101, north of La Costa Avenue

[. . .]

POLICY 4.4: The system of Vista Points will provide for the differing needs of automobile, bicycle, and pedestrian users, and will recognize as a recreational resource, the function of Vista Points as facilities for the passive, and occasionally remote enjoyment of the coastal and inland view. (Coastal Act/30251/30212.5/30210)

POLICY 4.7: The City will designate the following view corridors as scenic highway/visual corridor viewsheds:

[. . .]

- Highway 101, La Costa Ave. to South Carlsbad Beach

[. . .]

Goal 8: The City will undertake programs to ensure that the Coastal Areas are maintained and remain safe and scenic for both residents and wildlife.

The following certified Implementation Plan (IP) section is also applicable:

Section 30.34.030B(5): No principal structure or improvement or portion thereof shall be placed or erected, and no grading shall be undertaken, within twenty-five (25) feet of any point along an inland bluff edge. Minor accessory structures and improvements located at grade, including landscaping, shall be allowed to within 5 feet of the top edge of any hillside/inland bluff subject to these regulations. . . .

Recreation/Public Access

Policy 1.4: Establish a balance of natural open space and “improved” recreational open space and implement measures to preserve, and maintain the natural environment.

Policy 2.3: Encourage the preservation and protection of areas for the recreational activities characteristic of Encinitas such as horseback riding, surfing, skindiving, bicycling, walking and jogging.

Policy 2.6: Encourage the provision of a full range of recreational facilities distributed throughout the area.

Goal 3: The Coastal Areas will continue to play a dominant role in providing residents with open spaces for recreation.

In addition, because the project site is located between the sea and the first coastal roadway, the development must also be consistent with the public access and recreation policies of the Coastal Act. Applicable Coastal Act provisions are as follows:

Section 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.

Section 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.

Section 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.

As noted previously, the subject site is located at the northeast corner of Coast Highway 101 and La Costa Avenue in Encinitas overlooking Batiquitos Lagoon. The project site is vacant and provides expansive views of Batiquitos Lagoon, Ponto State Beach and the Pacific Ocean for individuals walking along dirt trails that exist across the site. In addition, there are sporadic public views of the ocean available to motorists across portions of the subject site as they travel westbound on La Costa Avenue. With approval of the subject development, all existing public views across the site to the ocean will be eliminated. Based on aerial photos depicting worn trails across the site, the north and east sides of the property have historically been accessed by the public for viewing of the ocean and lagoon. Because of the steep slopes and train tracks adjacent to the site, trails from the site into the lagoon do not exist. The applicant is proposing to protect these historic access paths on the top of the hillside with the installation of a formal public access path that will extend from La Costa Avenue on the southeast corner of the site to

an overlook at the northeast corner of the property. The path will then extend westward along the inland hillside of the property to North Coast Highway 101. Pedestrians will thereby be able to walk to the traffic light at La Costa and Highway 101 to access the walkways to the beach that lie west of Highway 101. Therefore, while sporadic views of the ocean will be lost for motorists along La Costa Avenue, the proposed development will result in formal access across the site to Highway 101 which will afford expansive public views of the lagoon, ocean and shoreline and will accommodate pedestrians seeking to walk to the beach.

In addition, the proposed development will be highly visible from the beach, by southbound motorists along North Coast Highway 101, the public trail that runs along the north side of Batiquitos Lagoon and Interstate 5 to the east. Currently southbound motorists or bicyclists entering into the City of Encinitas uphill via North Coast Highway 101 at Ponto State Beach encounter vacant hillsides at both the subject site on the east and on the west side. However, these hillside areas have been previously graded and filled over time such that they are not in a natural undisturbed state. In addition, although the vacant parcel to the west of the subject site, across North Coast Highway 101 is currently vacant, a two-story, 130 unit condo-hotel has been approved for construction on this site and will likely be constructed during the same general timeframe as the subject timeshare/hotel development (Ref. 6-92-203-A4/KSL). Therefore, upon completion of these two developments, the visual character of these properties will be substantially transformed. However, in each case, the City's LCP has designated these two sites for Visitor Serving Commercial such that the LCP contemplated the construction of visitor serving uses such as the proposed timeshare/hotel facility as long as design measures were incorporated to mitigate their visual impacts.

In this case, the project has been designed so as to break the development into several buildings which helps reduce the appearance and mass of the development. In addition, the buildings will be setback at least 25 ft. from the top of the inland hillside and will be required to include adequate landscaping to help screen and reduce the visibility of the structures as seen from the various offsite locations. Significant street setbacks along North Highway 101 have also been provided to assure views of the ocean from the intersection of La Costa Avenue and North Coast Highway 101. To assure that the visual impact of the structures are reduced to the maximum extent possible, Special Condition #2 has been attached. Special Condition #2 requires the use of sufficient landscaping (trees or large shrubs every 10 ft.) which upon maturity will help to break up the façade of the structures. In addition, Special Condition #6 requires that only earthtone colors are used throughout the development and that non-glare glass be utilized in the windows that face sunlight. Finally, to assure that any signage proposed for the development is minimized so as to not be obtrusive, Special Condition #9 requires the submission of a sign program which, among other things, prohibits the construction of tall, freestanding pole signs or roof signs

Because the project site lies between the sea (Batiquitos Lagoon) and the first coastal roadway (La Costa Avenue) a specific finding relating to public access is required. In this case the project site itself does not currently contain direct public access to the beach

or lagoon and the applicant is not proposing public parking spaces. Because of the steep slopes that exist on the site, the public access that exists across the site is for viewing purposes alone. Public beach parking is available across from the subject site, west of North Coast Highway 101, at the Ponto State Beach parking lot. In addition, 100 public parking spaces will be provided in the future at the Encinitas Resort Hotel which is proposed for construction across from the subject site west of North Coast Highway 101 (Ref. CDP# 6-92-203-A4/KSL). The Encinitas Resort Hotel has already constructed a public access stairway that leads to the beach. Therefore, public parking is currently available and, after construction of the Encinitas Resort Hotel, additional parking will be available for visitors wishing to access the subject site for viewing of the lagoon.

Access into the adjacent lagoon would not be appropriate because of the steep slopes but also because of the adverse ESHA impacts that would occur as a result of public use of the lagoon. No public trail system currently exists within this corner of the lagoon. Therefore, in this case, the applicant's proposal to provide complete public access along the east and north sides of the development for viewing of the lagoon and ocean will not only allow for continued use of the site for public views but will also enhance those opportunities by making the paths safe and inviting. To assure that the proposed public access path is made available to the public, Special Condition #4 has been attached. Special Condition #4 requires that the applicant submit a public access program which identifies the location and availability of the proposed access path and specifies components to be used such as benches, animal waste bag dispensers and adequate public access signage. In addition, Special Condition #5 has been attached which requires the applicant to submit a public access management plan which will assure the construction and maintenance of the facility in perpetuity. With these conditions the Commission can be assured that the public will continue to access the site for public views of the lagoon and ocean shoreline.

In summary, while the proposed development will eliminate some views of the ocean that currently exist, the proposal includes a public access path which will be located along the east and north sides of the subject site affording the public full views of the ocean, shoreline and Batiquitos Lagoon. In this case, any development on the site would impact public views, but with the required design measures such as coloring and landscaping those impacts will be significantly reduced. In addition, the public access path will connect to Coast Highway 101 which will accommodate pedestrian access to the beach via a crosswalk at La Costa/Coast Highway 101. As proposed and conditioned to include measures to mitigate the visual impact of the proposed development and make the public access path available in perpetuity, the project is consistent with the requirements of the LCP relative to protection of visual resources and the public access and recreation policies of the Coastal Act.

4. Lower Cost Visitor Serving and Recreational Facilities. The following Coastal Act and LCP policy identifies the need to protect lower cost visitor serving and recreational facilities:

Coastal Act/Public Access Policy

Section 30213

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

In addition, the following LCP policies identify the need to protect visitor serving uses in general:

Land Use Plan Policies of the Certified LCP:

POLICY 1.13: The visitor-serving commercial land use shall be located where it will not intrude into existing residential communities. This category applies in order to reserve sufficient land in appropriate locations expressly for commercial recreation and visitor-serving uses such as:

- tourist lodging, including campgrounds (bed and breakfast facilities may be compatible in residential areas)
- eating and drinking establishments
- specialty shops and personal services
- food and beverage retail sales (convenience)
- participant sports and recreation
- entertainment

[. . .]

POLICY 1.14: The City will maintain and enhance the Hwy 101 commercial corridor by providing appropriate community-serving tourist-related and pedestrian-oriented uses.

Visitor-Serving Commercial

The Visitor-Serving Commercial designation specifically applies to those commercial activities that serve persons visiting the City. Land uses within this category are an important source of sales tax revenue for the City. This designation is also important in implementing Coastal Act policies that call for the identification of hotels, resorts, and other establishments that serve visitors utilizing the City's coastal amenities. The maximum permitted floor area ratio for uses in this category is up to 1.0.

North Highway 101 Specific Plan:

Section 3.0F Visitor-Serving Commercial (N-L-VSC)

This zone is intended to provide for commercial activities that serve the needs of persons visiting the city for recreation and business.

The following requirements of the certified IP relate exclusively to timeshare projects such as is proposed:

Section 30.020.20B

TIME-SHARE PROJECTS. Time-share projects as defined in Section 30.04 of this Code shall be subject to the following regulations in addition to the development standards and design criteria of the Commercial Zone as established by this chapter: (Ord. 98-11).

1. All time-share projects shall require a Major Use Permit. In addition to the mandatory findings required for the issuance of a Conditional Use Permit under Chapter 30.74 (Use Permits), the authorized agency shall also find:

a. That the time-share project is located in reasonable proximity to an existing resort or public recreation area, and therefore can financially and geographically function as a successful time-share project, and the project will thus not be disruptive to existing or future uses in the surrounding neighborhood.

b. All proposals for time-share projects shall be accompanied by a detailed description of the methods to be employed to guarantee the adequacy, stability and continuity of a satisfactory level of management and maintenance. A Management and Maintenance Plan shall be approved as, and made a part of, the permit for the project and shall be recorded in the County Recorder's Office referenced to the subject property to ensure to successors in interest.

c. For proposals in the Coastal Zone, the Management and Maintenance Plan shall also demonstrate how a reasonable number of units within the timeshare resort project will be made available to the general public for reasonably priced transient overnight accommodations during the course of each calendar year. The Plan shall include an aggressive marketing program to maximize exposure of rental possibilities to a broad spectrum of the public. For properties located in all visitor serving commercial zones within the coastal zone, the specific criteria for the aggressive marketing program would be related to the specific project and would be reviewed and conditioned as part of the Coastal Development Permit application to ensure 25% of the units are made available for the general public at all times. The marketing strategy would include a specific program to make sure that all vacant units are made available to the general public. (emphasis added)

d. A sales plan shall address the time, location and methods that will be used to sell the time-share resort estates or uses. Factors to be defined in the plan shall include, but are not limited to: the location, length, and marketing

methods that will be used. The sales plan shall include such information as the Director requests for the purpose of determining that the sales effort of the project will not create a traffic or safety problem and will not otherwise be a nuisance to the neighborhood.

2. The maximum time increment for recurrent exclusive use of occupancy of a time-share unit shall be no more than thirty (30) consecutive days nor more than a total of sixty (60) days in any twelve (12) month period. However, a time-share project may include a permanent on-site management residence.

3. Approval of a time-share project shall include approval to operate a hotel in the event that the project cannot be successfully marketed as a time-share project

Section 30213 of the Coastal Act, as cited above, requires that lower cost visitor and recreational facilities shall be “protected, encouraged, and, where feasible, provided.” In addition, Section 30.20.20B of the IP requires that a reasonable number of timeshare units be made available to the general public for “reasonably priced transient overnight accommodations” during the course of each year. In light of current trends in the market place and along the coast, the Commission is increasingly concerned with the challenge of providing lower-cost overnight accommodations consistent with the Coastal Act. Recent research in support of a Commission workshop concerning hotel-condominiums showed that only 7.9% of the overnight accommodations in nine popular coastal counties were considered lower-cost. Although statewide demand for lower-cost accommodations in the coastal zone is difficult to quantify, there is no question that camping and hostel opportunities are in high demand, and that there is on-going need to provide more lower-cost opportunities along California’s coast. For example, the Santa Monica hostel occupancy rate was 96% in 2005, with the hostel being full more than half of the year. State Parks estimates that demand for camping has increased 13% between 2000 and 2005. Nine of the ten most popular campgrounds are along the coast.

The proposed development involves the construction of 26 units, 19 of which will be sold as timeshares and 7 which will be reserved as traditional hotel rooms. The project site is zoned Visitor Serving Commercial (VSC) and timeshares are a permitted use in the VSC Zone with an approved MUP that assures the development conforms to the timeshare regulations of Section 30.20.20B of the City’s certified IP. Consistent with the requirements of Section 30.20.20B, the applicant proposes to restrict use of the timeshares to 30 days at a time per owner and no more than 60 days per owner per year. In addition, as required by the LCP, the applicant proposes an aggressive marketing campaign to identify the units are available as regular hotel rooms when not used by timeshare owners and has set aside 25% of the 26 units to be used exclusively as hotel rooms at all times (7 units). However, according to the applicant’s representative, whether the rooms are sold as timeshare or rented as a traditional hotel room, the proposed timeshare/hotel resort will not be designed for lower cost visitor use. The applicant indicates that the cost of renting any of the available hotel rooms is estimated to have a seasonal range of \$250 to \$500 per night. Therefore, not only will the timeshare/hotel not be lower cost, but the proposed cost appears to be inconsistent with

the LCP requirement that some of the units be made available as “reasonably priced transient overnight accommodations”.

In comparison, there are many hotel/motels in the Encinitas area that offer rooms at more affordable rates, including rooms at the Best Western (\$100 - 150 per night), Comfort Inn (\$90-100 per night), Econo Lodge (\$65 per night), and Days Inn (\$70 - 129 per night). In terms of camping and hostel options, average cost data indicates perhaps a better range for what might be considered “lower cost” accommodations. For example, at the two closest Hostel Internationals in downtown San Diego, the cost of a dorm bed is currently \$19 per night with private rooms ranging from \$42 - 65 per night. Camping at San Elijo State Park in Encinitas and Carlsbad State Park in Carlsbad ranges from \$20 - 44 a night. Accordingly, the proposed timeshare/hotel development will not provide lower cost visitor serving accommodations and will not even provide some as “reasonably priced transient overnight accommodations”. Therefore, as proposed, the project cannot be found consistent with Section 30213 which requires lower cost visitor facilities be protected and provided, or with Section 30.20.20B of the certified IP.

Although as indicated above and on the attached survey of hotel rooms that was provided to the Commission by the City of Encinitas in 2005, there are numerous hotels in the City of Encinitas that offer lower priced rooms than that proposed by the subject development (Ref. Exhibit #4); however, very few of them are located in Visitor Serving Commercial zones. Most of the hotels listed on attached Exhibit #4 lie on commercially zoned properties. Therefore, most of the City’s lower cost hotels are not protected in that, in the future, the existing hotel use could be converted to more profitable and potentially non-visitor serving uses. Therefore, it is critical that existing and proposed hotels located on the limited number of VSC designated sites in Encinitas be protected from adversely impacting the availability of low cost visitor- serving accommodations.

Therefore, in order for the proposed development to be found consistent with the Coastal Act policy requiring protection and enhancement of lower cost visitor facilities and the LCP requirement that timeshares make a reasonable number of units available at a reasonable transient overnight rate, Special Condition #8 requires the applicant to provide funding for construction of such units, in lieu of providing them onsite. In lieu of providing low-cost accommodations on-site, the requirements of Coastal Act Section 30213 can be met by providing an in-lieu fee for the purpose of funding lower-cost accommodations at an off-site coastal location in the same geographic region. Although the Commission prefers the actual provision of lower-cost accommodations in conjunction with projects, where necessary, the Commission has used in-lieu fees to provide lower-cost opportunities. For example, the Commission has required an in-lieu fee in permits to convert the Highlands Inn in Monterey County and the San Clemente Inn to timeshares. In addition, the Commission required a similar in-lieu fee for the construction of a 130 unit condo-hotel facility located immediately west of the subject site on the bluffs in Encinitas (6-92-203-A4/KSL).

Accordingly, in order to mitigate for the absence of low-cost visitor accommodations in the proposed Surfer’s Point Resort development and bring the project into conformance

with Coastal Act Section 30213 and IP Policy 30.020.20B, which requires 25% of units be priced at a reasonable transient overnight rate, attached Special Condition #8 requires the applicant to provide an in-lieu fee of \$210,000.00, an amount of money equivalent to the cost of constructing at least 7 low-cost units, in an interest bearing account, for the specific purpose of constructing lower-cost overnight accommodations (such as a hostel, tent campsites, etc.) in the coastal zone of San Diego County.

The fee amount was established based on figures provided to the Commission by Hostelling International (HI) in a letter dated October 26, 2007 (ref. Exhibit #8 attached). The figures provided by HI are based on two models for a 100-bed, 15,000 sq. ft. hostel facility in the Coastal Zone. The figures are based on experience with the existing 153-bed, HI-San Diego Downtown Hostel. Both models include construction costs for rehabilitation of an existing structure. The difference in the two models is that one includes the costs of purchase of the land and the other is based on operating a leased facility. Both models include "Hard" and "Soft Costs" and start up costs, but not operating costs. "Hard" costs include, among other things, the costs of purchasing the building and land and construction costs (including a construction cost contingency and performance bond for the contractor). "Soft" costs include, among other things, closing costs, architectural and engineering costs, construction management, permit fees, legal fees, furniture and equipment costs and marketing costs. Based on these figures, the total cost per bed for the two models ranges from \$18,300.00 for the leased facility to \$44,989.00 for the facility constructed on purchased land.

In looking at the information provided HI, it should be noted that while two models are provided, the model utilizing a leased building is not sustainable over time and thus, would likely not be implemented by HI. In addition, the purchase building/land model includes \$2,500,000.00 for the purchase price. Again, this is not based on an actual project, but on experience from the downtown San Diego hostel. The actual cost of the land/building could vary significantly and as such, it makes sense that the total cost per bed price for this model could be too high. In order to take this into account, the Commission finds that a cost per bed generally midrange between the two figures provided by HI is most supportable and likely conservative. Therefore, the in lieu fee in this particular case, is \$30,000.00 per bed. That, multiplied by 25% of the units (7) results in an in lieu fee total of \$210,000.00. This figure is in line with the Commission's past practice with regard to calculation of in-lieu fees as mitigation for the lack or loss of lower cost visitor accommodations in the Coastal Zone. These in-lieu fees have ranged from a total of \$87,810.00 in Seal Beach (ref. CDP #5-05-385) to \$5,000,000.00 in Newport Beach (ref. CDP #5-07-85).

In summary, the applicant is proposing to construct a high-end timeshare/hotel on land designated Visitor Serving Commercial. Coastal Act Policy 30213 requires that lower cost visitor and recreational facilities shall be protected and, where feasible, provided. IP Policy 30.020.20B requires that timeshare developments make available a minimum of 25% of the units as reasonably priced so as to accommodate transient overnight visitors. In this case, the proposed development is not consistent with the requirements of either of these policies. Therefore in order to be consistent, the project has been conditioned to

require the submission of an in-lieu fee of \$210,000.00 for the construction of lower cost visitor serving facilities in the area. As conditioned, the project is consistent with the lower visitor serving policies of the Coastal Act and LCP.

5. Water Quality. Recognizing the value of protecting the water quality of oceans and waterways for residents and visitors alike, the City's LCP requires that preventive measures be taken to protect coastal waters from pollution. The following policies are applicable:

RM Policy 2.1: In that the ocean water quality conditions are of utmost importance, the City shall aggressively pursue the elimination of all forms of potential unacceptable pollution that threatens marine and human health.

RM Policy 2.3: To minimize harmful pollutants from entering the ocean environment from lagoons, streams, storm drains and other waterways containing potential contaminants, the City shall mandate the reduction or the elimination of contaminants entering all such waterways . . .

RM GOAL 14: The City shall stringently control erosion and sedimentation from land use and development to avoid environmental degradation of lagoons and other sensitive biological habitat, preserve public resources and avoid the costs of dealing with repair and sedimentation removal.

RM POLICY 14.3: The City will reduce the rate of sedimentation of the lagoons by requiring procedures for controlling runoff and erosion associated with upland grading and development based on a minimum 10-year, six-hour storm event. The City shall provide regulations for the use of sedimentation basins and the potential transfer of sediment as beach replenishment (if of an acceptable material).

The proposed development will be sited on an approximately 1.8 acre disturbed vacant site with limited vegetation. Following construction of the proposed 29,975 sq. ft. two-story, 30 ft. high, 26-unit timeshare/hotel resort and its associated improvements (such as the walkways, driveways and 23,500 sq. ft. subterranean garage) substantial amounts of impervious surfaces will be created throughout the site. Due to the proximity of the proposed development to the environmentally sensitive resources and waters of Batiquitos Lagoon and the nearby Pacific Ocean, the LCP requires that all runoff be effectively reduced or eliminated. As such in approving the Major Use Permit (MUP), the City has required extensive Best Management Practices (BMP) and a Storm Water Pollution Prevention Plan (SWPPP) for approval by the Regional Water Quality Control Board (RWQCB). The Commission's water quality and geology staff have reviewed the water quality protection measures imposed by the City's MUP and generally concur with the City's requirements.

However, Commission staff has identified a concern with the design of a bioswale and detention basin that is proposed along the north side of the development site. The MUP approved by the City requires that a "drainage ditch" (or bioswale) be constructed along

the north and east sides of the inland hillside development site to control and filter post-construction runoff. Because the bioswale will be located along the top of inland hillside, the Commission's water quality and geology staff have identified that unless constructed correctly, the system could fail, resulting in erosion and sloughage of the hillside. The Commission therefore requires that the proposed bioswale and detention basin be designed to handle storm flows from a 100 year flood and that they be lined with clay to prevent saturation of the inland hillside that could lead to a slope failure. Special Condition #7 has been attached which assure the installation of construction and post-construction BMPs that will effectively eliminate or reduce polluted runoff from entering into the lagoon or ocean waters consistent with the requirements of the LCP. These requirements are generally consistent with the requirements imposed by the City's MUP, but their attachment to the subject coastal permit will assure if changes to MUP occur in the future the Commission's BMP requirements will still apply. Special Condition #7e has been added to assure the proposed bioswale along the northern inland hillside edge will be designed in a way that will not threaten the stability of the slope. In addition, as identified previously, Special Condition #7f has been attached to require the relocation of the proposed storm and energy dissipater to an area on the property that will not impact ESHA. Therefore, as conditioned, the proposed development will be designed to reduce or eliminate polluted runoff from entering into coastal waters and ESHA consistent with the requirements of RM Policy 2.1 and 2.3 of the LCP.

6. Local Coastal Planning. In November of 1994, the Commission approved, with suggested modifications, the City of Encinitas Local Coastal Program (LCP). Subsequently, on May 15, 1995, coastal development permit authority was transferred to the City. The project site is located within the City's permit jurisdiction and, therefore, the standard of review is the City's LCP.

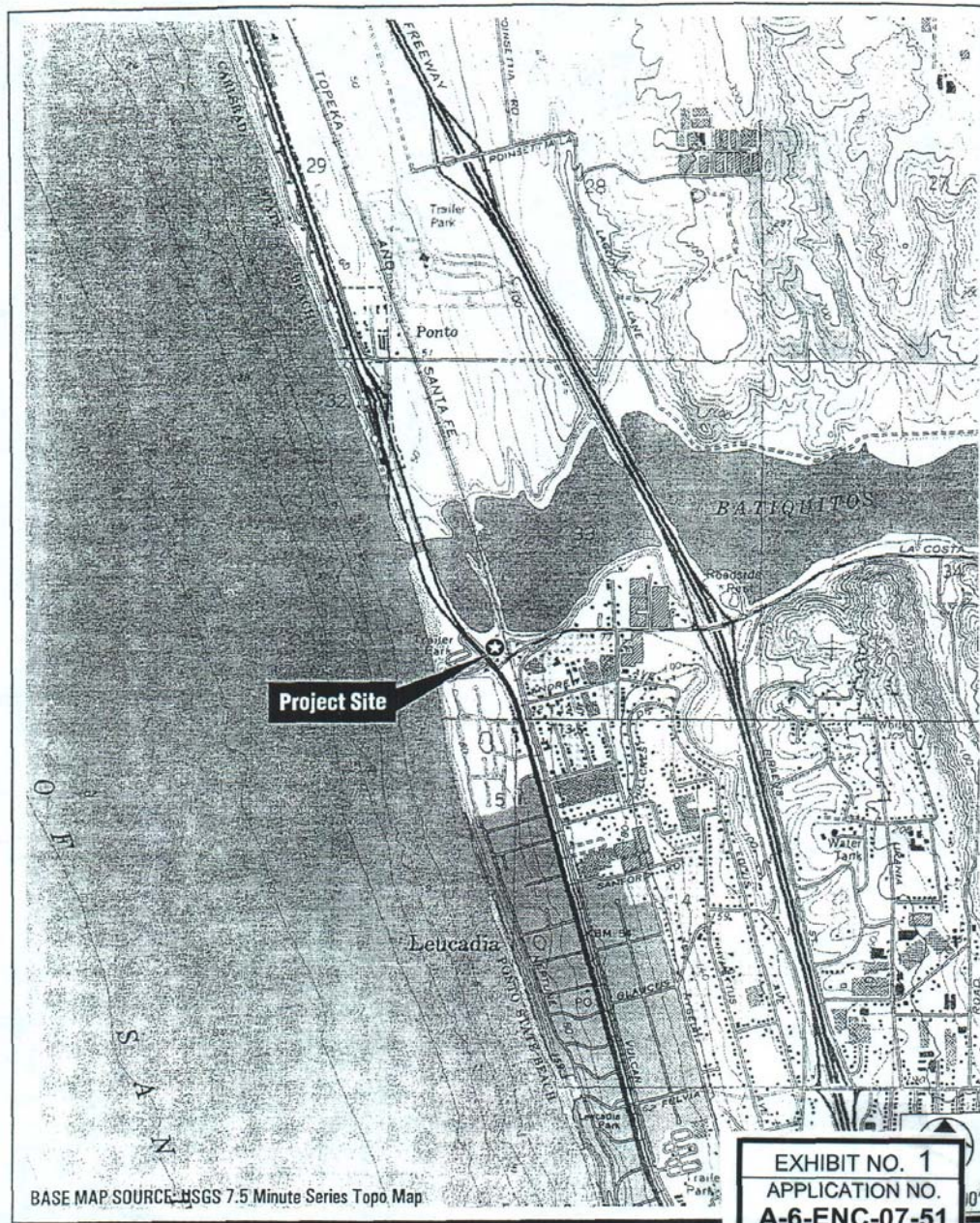
The subject site is zoned and planned Visitor Serving Commercial (VSC) within the North Coast Highway 101 Corridor Specific Plan of the City's certified LCP and the proposed development is consistent with the VSC zone and plan designation. The proposed timeshare/hotel project is a permitted use within the VSC zone with the approval of a Major Use Permit (MUP) conditioned on specific operational requirements for the timeshares as delineated in Section 30.20.020B of the certified Implementation Plan. As conditioned, all potential adverse impacts to nearby ESHA will be mitigated consistent with the requirements of the LCP. Therefore, the Commission finds the approval of the proposed development, as conditioned, will not prejudice the ability of the City of Encinitas to continue to implement its certified LCP.

7. California Environmental Quality Act (CEQA) Consistency. Section 13096 of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit to be supported by a finding showing the permit is 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.

The proposed project, as conditioned, is consistent with the policies of the City's LCP relating to protection of ESHA, water quality, public access and visual resources. In addition, as conditioned to require mitigation to address lower cost visitor serving facilities, the project is consistent with the public access and recreation policies of the Coastal Act. Mitigation measures including enhancement of the wetlands buffer and the conservation of the buffer within an open space easement, construction and post-construction BMP's, landscaping requirements, exterior color restrictions will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is the least environmentally-damaging feasible alternative and is consistent with the requirements of the City's LCP and the public access and recreation policies of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

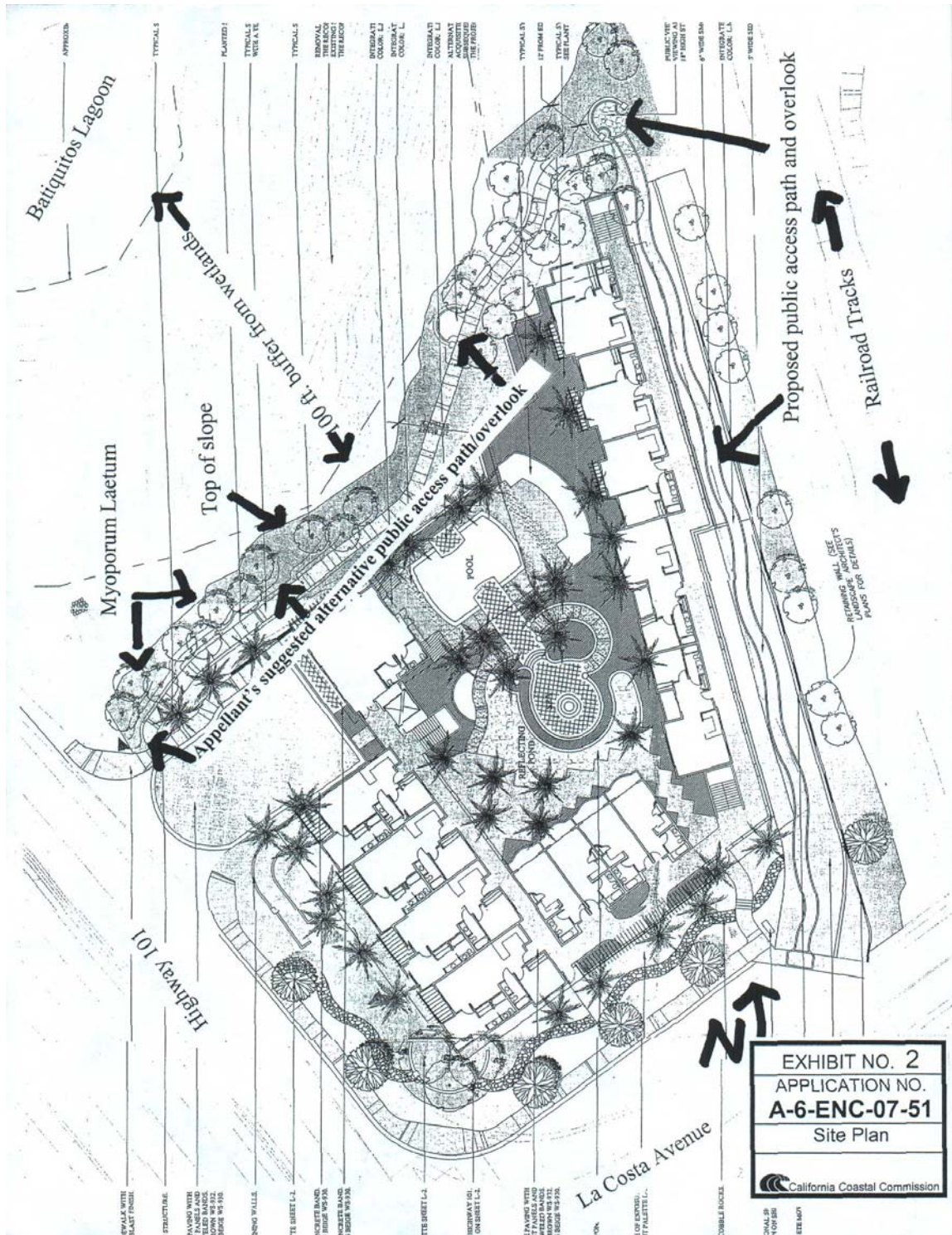
1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration.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

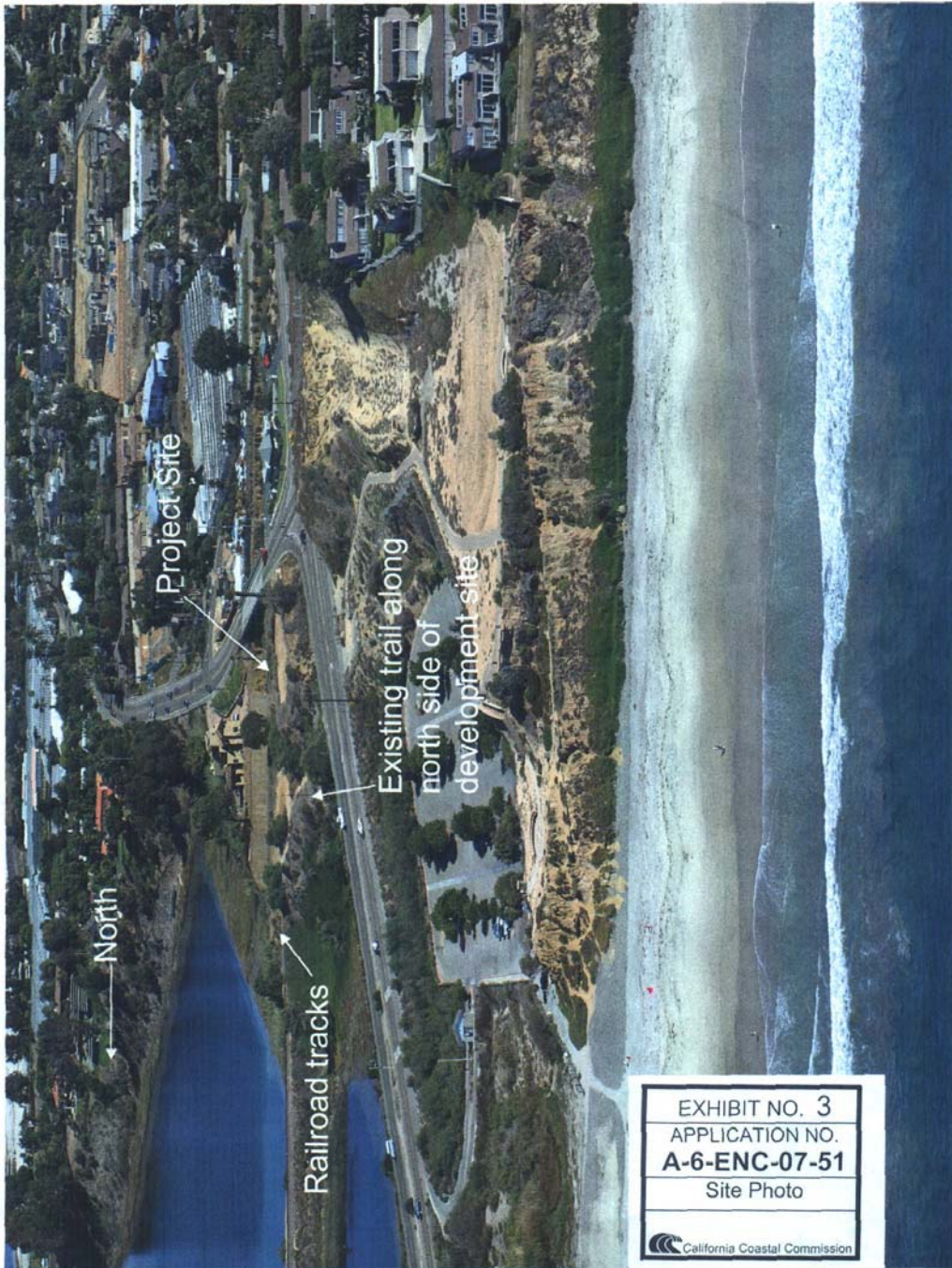


Encinitas Timeshare Hotel - Wetland D

EXHIBIT NO. 1
APPLICATION NO.
A-6-ENC-07-51
Location Map

California Coastal Commission





Hotel / Motel Room Rates City of Encinitas 2005 Survey					
Lodging		# of Rooms	# of Rooms Wt of Hwy 101 or w/in 5 min. walk to beach	Low	High
1.	Best Western**	94	94	\$100	\$150
2.	Cardiff by the Sea**	17	17	\$140	\$285
3.	Comfort Inn	101	0	\$90	\$100
4.	Days Inn**	124	124	\$70	\$129
5.	Econo Lodge*	30	30	\$65	\$65
6.	Holiday Inn	101	0	\$89	\$149
7.	Leucadia Beach*	20	20	\$70	\$89
8.	Leucadia Inn*	7	7	\$99	\$149
9.	Moonlight Beach*	24	24	\$75	\$89
10.	Motel Villa Mar*	15	15	\$60	\$60
11.	Ocean Inn*	51	51	\$59	\$152
12.	Portofino Beach*	45	45	\$69	\$159
13.	Pacific Surf*	27	27	\$55	\$65
14.	Royal Motor Inn*	9	9	0	0
15.	Seabreeze B&B**	5	5	\$80	\$175
16.	San Elijo Campground*	171	171		
17.	Short-term Rentals*	150	135***		
Total Rooms		991	774		
Average Room Rate				\$80	\$130
Future Lodging					
19	Potential Short-Term Rentals in Com. Zones*	332	299***		
20	La Costa Resort*	131	131		
21	Time share**	7	7		
Total all Rooms		1461	1211		

* Hotels / Motels west of Highway 101. (Short-term vacation rentals estimate is based on a survey of the Web sites, most of which were located west of Hwy 101.)

** Within 5 minute walk to beach.

*** Estimate 90% of total dwellings ("potential short-term rentals") to be west of Hwy 101.

Vacancy Rate 04/05 Fiscal Year					
	1 st Qtr Jul-Sept 2004	2 nd Qtr Oct-Dec 2004	3 rd Qtr Jan-Mar 2005	4 th Qtr Apr-June 2005	Year Average
All Hotel / Motels	35.1%	52.1%	52.9%	38.2%	44.6%
Hotels wt of 101 (& w/in 5 min. walk to beach)	34.1%	52.4%	53.0%	43.2%	45.7%

EXHIBIT NO. 4
APPLICATION NO.
A-6-ENC-07-51
Survey of Encinitas
Hotel Rates

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Commissioner Sara Wan
Mailing Address: 45 Fremont Street
San Francisco, CA 94105

Phone Number: 415-904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Encinitas
2. Brief description of development being appealed: Construction of a 29,975 sq. ft. two-story, 30 ft. high, 26-unit timeshare resort with an approximately 23,500 sq. ft. subterranean parking garage on a 1.81 acre site.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
Northeast Corner of North Coast Highway 101 and La Costa Avenue, Encinitas (APN 216-042-01, 05 & 011).
4. Description of decision being appealed:
a. Approval; no special conditions: ☐ b. Approval with special conditions: ☒
c. Denial: ☐

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-ENC-07-51

DATE FILED: 4/23/07

DISTRICT: San Diego

Received

APR 23 2007

California Coastal Commission
San Diego Coast District

EXHIBIT NO. 5
APPLICATION NO.
A-6-ENC-07-51
Appeal by
Commissioner Wan
Page 1 of 7
California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 2

5. Decision being appealed was made by (check one):

- a. ☐ Planning Director/Zoning Administrator c. ☒ Planning Commission
b. ☐ City Council/Board of Supervisors d. ☐ Other

Date of local government's decision: 9/1/05

Local government's file number (if any): 00-201 CDP/MUP/DR/EIA

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

Name and mailing address of permit applicant:

Surfer's Point, LLC
Attn: Dan Reedy
1765 Garnet Avenue, #3
San Diego, CA 92019

Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

SEE Attachment "A"

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: 
Appellant or Agent

Date: 4/23/07

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

Surfer's Point Timeshare Appeal
Attachment A
April 23, 2007

The coastal development permit approved by the City of Encinitas involves the construction of an approximately 29,975 sq. ft., two-story, 30-ft high, 26-unit timeshare resort with an approximately 23,500 sq. ft of subterranean parking garage (43 spaces). The project will be located at the northeast intersection of Highway 101 and La Costa Avenue in Encinitas overlooking Batiquitos lagoon and will be located on an approximately 1.81 acre site consisting of 3 parcels. One of the parcels is owned by the North County Transit District (NCTD) and contains a 100 ft. right-of-way to the west of the railroad tracks that are used for both passenger and freight trains. The project includes an approximately 5 ft.-wide public walkway that leads from La Costa Avenue north across the North County Transit District property to a viewing platform overlooking Batiquitos Lagoon and the Pacific Ocean. The project as approved by the City raises significant concerns relating to the consistency of the project with the Certified LCP and the public access and recreation policies of the Coastal Act.

Impacts to Environmentally Sensitive Habitat:

The proposed development is on an inland hillside adjacent to Batiquitos Lagoon. While no wetlands are identified on the subject site, the application indicates that the proposed development will be approximately 125 ft. from southern edge of the lagoon, which contains a number of identified wetland resources and endangered species. The City's LCP contains several provisions addressing the protection of wetlands. Most applicable to the proposed development are:

Section 30.34.040(B)(3)(b) of the certified Implementation Plan which states:

- b. All buildings or other improvements proposed to be placed or erected, and all grading activities proposed to be undertaken adjacent to a wetland shall be located so as not to contribute to increased sediment loading of the wetland, cause disturbance to its habitat values, or otherwise impair the functional capacity of the wetland. (emphasis added)

In addition, the Resource Management Element of the Land Use Plan contains the following:

GOAL 10: The City will preserve the integrity, function, productivity, and long term viability of environmentally sensitive habitats throughout the City, including kelp-beds, ocean recreational areas, coastal water, beaches, lagoons and their up-lands, riparian areas, coastal strand areas, coastal sage scrub and coastal mixed chaparral habitats. (Coastal Act/30230/30231/30240)

POLICY 10.9: The City will encourage the preservation and the function of San Elijo Lagoon and Batiquitos Lagoon and their adjacent uplands as viable wetlands, ecosystems and habitat for resident and migratory wildlife, by prohibiting actions (subject to the detailed provisions of RM policy 10.6) which:

[...]

- adversely affect existing wildlife habitats.

The landscape plan approved by the City for the subject development includes extensive use of an invasive species (*Myoporum Laetum*) that are proposed to be planted along the north side of the development site overlooking Batiquitos Lagoon and the use King Palm trees that can serve as raptor perches. According the Final EIR prepared for the subject development, Batiquitos Lagoon contains endangered species that include the California least tern and western snowy plover that could be adversely impacted by these two plants. Approval of the development with the use of invasive plants species and trees that could serve as predator perches could adversely impact the adjacent lagoon and its sensitive biological resources.

Impacts to Public Access and Visual Resources:

The proposed development site is located at the northeast corner of Highway 101 and La Costa Avenue. Highway 101 is a designated scenic corridor in the LCP at this location and the public is afforded extensive views from the site of the ocean and Batiquitos Lagoon.

Resource Management Element of the LUP has the following applicable conditions:

GOAL 4: The City, with the assistance of the State, Federal and Regional Agencies, shall provide the maximum visual access to coastal and inland views through the acquisition and development of a system of coastal and inland vista points. (Coastal Act/30251)

POLICY 4.1: The following Vista Points and others will be acquired and developed, as feasible:

[...]

- Highway 101, north of La Costa Avenue

[...]

POLICY 4.4: The system of Vista Points will provide for the differing needs of automobile, bicycle, and pedestrian users, and will recognize as a recreational resource, the function of Vista Points as facilities for the passive, and occasionally remote enjoyment of the coastal and inland view. (Coastal Act/30251/30212.5/30210)

POLICY 4.7: The City will designate the following view corridors as scenic highway/visual corridor viewsheds:

[...]

- Highway 101, La Costa Ave. to South Carlsbad Beach

[...]

In addition, because the project site is located between the sea and the first coastal roadway, the City approval is required to be consistent with the public access and recreation policies of the Coastal Act as well as with the LCP. The applicable public access policies from the Coastal Act are:

Section 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.

The development as approved by the City raises concerns relative to the provision of public access. Based on the expansive views provided on the property and the various dirt trails that run along the top of slope, it appears the property has been accessed historically by the public for viewing of the coast. As a result of the construction of the approximately 29,975 sq. ft., two-story, 30-ft high, 26-unit timeshare resort existing public views of the coast will be lost. The City failed to adequately address protection of public views for the development. Specifically, while there are some public views across the site afforded by motorists traveling on the adjacent public roads, the most significant views are from the top of the slope as evidenced by the well worn trail on the site that follows the top of slope. While the City in its review did require a public access trail, the trail approved by the City does not follow the top of the slope, but follows along the railroad tracks from La Costa Avenue, terminating at the top of slope. Because of the significant impacts on public views of the ocean and lagoon that will result from the construction of this 26-unit timeshare and the evidence of historic public use, the City should have required adequate mitigation in the form of a public access trail along the northern top of slope. Instead the City only required a single promontory overlook to be constructed and maintained by the applicant along at the northeast corner of the

development site with access from La Costa Avenue perpendicular to the railroad tracks. This approved public path is located within the NCTD right-of-way which is proposed to be leased to the applicant. If this right-of-way lease is not approved, the applicant has identified that an alternative would be to construct a public access path from Highway 101 across the northern side of the subject lot such that the public will have complete access across the site, similar to what occurs today. Therefore, to assure public access was adequately protected, the City could have required full public access for viewing purposes along the north side of the property, between the proposed structures and the ocean and lagoon. By not requiring this alternative, the City's failed in its stated LUP goal to provide "maximum visual access to coastal and inland views".

A second public access concern raised by the subject development relates to the lease of the NCTD property to construct timeshare buildings and other elements of this project and how this may adversely affect the ability of NCTD to construct double-rail tracks at the subject location in the future. The current space between the proposed development and a residential development to the east is already very limited. With the addition of a timeshare within the NCTD right-of-way, the proposed development raises a concern that NCTD will be precluded from providing a double-track at this location. The primary concern is that if this development impedes the development of future double-tracking at this location, it may preclude the opportunity to utilize passenger rail as an alternative form of transportation to automobiles, resulting in a greater demands to widen Interstate 5 which would have adverse impacts to not only public access but also to environmentally sensitive habitat resulting from the expansion of Interstate 5.

For these reasons, the City's approval of the subject development is inconsistent with the City's LCP and the public access policies of the Coastal Act.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Commissioner Mary Shallenberger
Mailing Address: 45 Fremont Street
San Francisco, CA 94105

Phone Number: 415-904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Encinitas
2. Brief description of development being appealed: Construction of a 29,975 sq. ft. two-story, 30 ft. high, 26-unit timeshare resort with an approximately 23,500 sq. ft. subterranean parking garage on a 1.81 acre site.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
Northeast Corner of North Coast Highway 101 and La Costa Avenue, Encinitas (APN 216-042-01, 05 & 011).
4. Description of decision being appealed:
a. Approval; no special conditions: ☐ b. Approval with special conditions: ☒
c. Denial: ☐

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-ENC-07-51

DATE FILED: 4/23/07

DISTRICT: San Diego

Received

APR 23 2007

California Coastal Commission
San Diego Co

EXHIBIT NO. 6
APPLICATION NO. A-6-ENC-07-51
Appeal by Commissioner Shallenberger
Page 1 of 7
California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 2

5. Decision being appealed was made by (check one):

- a. ☐ Planning Director/Zoning Administrator c. ☒ Planning Commission
b. ☐ City Council/Board of Supervisors d. ☐ Other

Date of local government's decision: 9/1/05

Local government's file number (if any): 00-201 CDP/MUP/DR/EIA

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

Name and mailing address of permit applicant:

Surfer's Point, LLC
Attn: Dan Reedy
1765 Garnet Avenue, #3
San Diego, CA 92019

Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

SEE Attachment A

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: Mary K. Challinberger
Appellant or Agent

Date: April 23, 2007

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

Surfer's Point Timeshare Appeal
Attachment A
April 23, 2007

The coastal development permit approved by the City of Encinitas involves the construction of an approximately 29,975 sq. ft., two-story, 30-ft high, 26-unit timeshare resort with an approximately 23,500 sq. ft of subterranean parking garage (43 spaces). The project will be located at the northeast intersection of Highway 101 and La Costa Avenue in Encinitas overlooking Batiquitos lagoon and will be located on an approximately 1.81 acre site consisting of 3 parcels. One of the parcels is owned by the North County Transit District (NCTD) and contains a 100 ft. right-of-way to the west of the railroad tracks that are used for both passenger and freight trains. The project includes an approximately 5 ft.-wide public walkway that leads from La Costa Avenue north across the North County Transit District property to a viewing platform overlooking Batiquitos Lagoon and the Pacific Ocean. The project as approved by the City raises significant concerns relating to the consistency of the project with the Certified LCP and the public access and recreation policies of the Coastal Act.

Impacts to Environmentally Sensitive Habitat:

The proposed development is on an inland hillside adjacent to Batiquitos Lagoon. While no wetlands are identified on the subject site, the application indicates that the proposed development will be approximately 125 ft. from southern edge of the lagoon, which contains a number of identified wetland resources and endangered species. The City's LCP contains several provisions addressing the protection of wetlands. Most applicable to the proposed development are:

Section 30.34.040(B)(3)(b) of the certified Implementation Plan which states:

- b. All buildings or other improvements proposed to be placed or erected, and all grading activities proposed to be undertaken adjacent to a wetland shall be located so as not to contribute to increased sediment loading of the wetland, cause disturbance to its habitat values, or otherwise impair the functional capacity of the wetland. (emphasis added)

In addition, the Resource Management Element of the Land Use Plan contains the following:

GOAL 10: The City will preserve the integrity, function, productivity, and long term viability of environmentally sensitive habitats throughout the City, including kelp-beds, ocean recreational areas, coastal water, beaches, lagoons and their up-lands, riparian areas, coastal strand areas, coastal sage scrub and coastal mixed chaparral habitats. (Coastal Act/30230/30231/30240)

POLICY 10.9: The City will encourage the preservation and the function of San Elijo Lagoon and Batiquitos Lagoon and their adjacent uplands as viable wetlands, ecosystems and habitat for resident and migratory wildlife, by prohibiting actions (subject to the detailed provisions of RM policy 10.6) which:

[...]

- adversely affect existing wildlife habitats.

The landscape plan approved by the City for the subject development includes extensive use of an invasive species (*Myoporum Laetum*) that are proposed to be planted along the north side of the development site overlooking Batiquitos Lagoon and the use King Palm trees that can serve as raptor perches. According the Final EIR prepared for the subject development, Batiquitos Lagoon contains endangered species that include the California least tern and western snowy plover that could be adversely impacted by these two plants. Approval of the development with the use of invasive plants species and trees that could serve as predator perches could adversely impact the adjacent lagoon and its sensitive biological resources.

Impacts to Public Access and Visual Resources:

The proposed development site is located at the northeast corner of Highway 101 and La Costa Avenue. Highway 101 is a designated scenic corridor in the LCP at this location and the public is afforded extensive views from the site of the ocean and Batiquitos Lagoon.

Resource Management Element of the LUP has the following applicable conditions:

GOAL 4: The City, with the assistance of the State, Federal and Regional Agencies, shall provide the maximum visual access to coastal and inland views through the acquisition and development of a system of coastal and inland vista points. (Coastal Act/30251)

POLICY 4.1: The following Vista Points and others will be acquired and developed, as feasible:

[...]

- Highway 101, north of La Costa Avenue

[...]

POLICY 4.4: The system of Vista Points will provide for the differing needs of automobile, bicycle, and pedestrian users, and will recognize as a recreational resource, the function of Vista Points as facilities for the passive, and occasionally remote enjoyment of the coastal and inland view. (Coastal Act/30251/30212.5/30210)

POLICY 4.7: The City will designate the following view corridors as scenic highway/visual corridor viewsheds:

[...]

- Highway 101, La Costa Ave. to South Carlsbad Beach

[...]

In addition, because the project site is located between the sea and the first coastal roadway, the City approval is required to be consistent with the public access and recreation policies of the Coastal Act as well as with the LCP. The applicable public access policies from the Coastal Act are:

Section 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.

The development as approved by the City raises concerns relative to the provision of public access. Based on the expansive views provided on the property and the various dirt trails that run along the top of slope, it appears the property has been accessed historically by the public for viewing of the coast. As a result of the construction of the approximately 29,975 sq. ft., two-story, 30-ft high, 26-unit timeshare resort existing public views of the coast will be lost. The City failed to adequately address protection of public views for the development. Specifically, while there are some public views across the site afforded by motorists traveling on the adjacent public roads, the most significant views are from the top of the slope as evidenced by the well worn trail on the site that follows the top of slope. While the City in its review did require a public access trail, the trail approved by the City does not follow the top of the slope, but follows along the railroad tracks from La Costa Avenue, terminating at the top of slope. Because of the significant impacts on public views of the ocean and lagoon that will result from the construction of this 26-unit timeshare and the evidence of historic public use, the City should have required adequate mitigation in the form of a public access trail along the northern top of slope. Instead the City only required a single promontory overlook to be constructed and maintained by the applicant along at the northeast corner of the

development site with access from La Costa Avenue perpendicular to the railroad tracks. This approved public path is located within the NCTD right-of-way which is proposed to be leased to the applicant. If this right-of-way lease is not approved, the applicant has identified that an alternative would be to construct a public access path from Highway 101 across the northern side of the subject lot such that the public will have complete access across the site, similar to what occurs today. Therefore, to assure public access was adequately protected, the City could have required full public access for viewing purposes along the north side of the property, between the proposed structures and the ocean and lagoon. By not requiring this alternative, the City's failed in its stated LUP goal to provide "maximum visual access to coastal and inland views".

A second public access concern raised by the subject development relates to the lease of the NCTD property to construct timeshare buildings and other elements of this project and how this may adversely affect the ability of NCTD to construct double-rail tracks at the subject location in the future. The current space between the proposed development and a residential development to the east is already very limited. With the addition of a timeshare within the NCTD right-of-way, the proposed development raises a concern that NCTD will be precluded from providing a double-track at this location. The primary concern is that if this development impedes the development of future double-tracking at this location, it may preclude the opportunity to utilize passenger rail as an alternative form of transportation to automobiles, resulting in a greater demands to widen Interstate 5 which would have adverse impacts to not only public access but also to environmentally sensitive habitat resulting from the expansion of Interstate 5.

For these reasons, the City's approval of the subject development is inconsistent with the City's LCP and the public access policies of the Coastal Act.





**HOSTELLING INTERNATIONAL USA
SAN DIEGO COUNCIL**

739 Fourth Avenue Ste 203 San Diego CA 92101 T 619.338.9981 F 619.525.1533
www.sandiegohostels.org

October 26, 2007

Ms. Sherilyn Sarb
Deputy Director
California Coastal Commission
7675 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

Re: Cost Estimates for Construction of Hostels

Dear Ms. Sarb,

Thank you for giving Hostelling International USA the opportunity to present information about the construction and operations of hostels to the Coastal Commission.

Per your request, we have created two models for a 100-bed hostel, 15,000 square feet, in the coastal zone. Model 1 is a hostel using an existing structure on purchased land, and Model 2 is a hostel that is operated in a leased facility. Many of the assumptions would not change for the two models. The major difference would be the acquisition costs and associated fees, and lease expense.

To establish a per bed cost for a hostel, we used a worksheet developed by our national office. The worksheet allowed us to input our assumptions and known costs to obtain not only the per bed cost, but to also create a pro forma to determine the sustainability of the hostel.

Key indicators were:

Hard Costs – includes building/land purchase price (Model 1 only), construction costs (based on rehabilitation of an existing structure), and construction cost contingency, and performance bond for the construction company.

Soft Costs – includes acquisition and closing costs (Model 1 only), architecture, engineering, permits and fees, construction management and legal fees. Startup costs were also included such as fundraising, marketing and furniture and equipment per bed.

Sources of Cash - This includes proceeds from the sale of the San Clemente hostel and the issuance of a bond. Other potential sources of cash include, but are not limited to, our national office, individual donors and mitigation fees from the California Coastal Commission.

EXHIBIT NO. 8
APPLICATION NO.
A-6-ENC-07-51
Letter from Hostelling International
California Coastal Commission

Operational revenue and expenses are based on our experience with HI-San Diego, Downtown, a 153-bed hostel. Hostelling International issues standards for hostels based on overnights per year. A 100-bed hostel would be classified as a high volume hostel, and we have based our expenses on those requirements.

SUMMARY OF MODELS

Model 1 – 100 bed hostel - purchased land – existing structure:

Hard Cost per bed (page 7)	\$ 34,653
Total Cost per bed (does not include operational costs)	44,898

Purchase price	2,500,000
Construction @ \$55 per square foot + associated costs	965,250
Soft costs (not including startup costs)	579,072
Start up costs	445,477
Total costs (does not include operational costs)	\$4,489,799

Sustainable in Year 5

Model 2 – 100 bed hostel – leased – existing structure:

Hard Cost per bed (page 7)	\$ 9,653
Total Cost per bed (does not include operational costs)	18,300

Purchase price	N/A
Construction @ \$55 per square foot + associated costs	965,250
Soft costs (not including startup costs)	203,879
Start up costs	660,824
Total costs (does not include operational costs)	\$1,829,953

Lease amount is based on \$1.00 square foot
Sustainability does not occur.

I have attached a breakdown of the assumptions, revenue and expense, and a summary of the capital budget and pro forma for both models.

Please call me with any questions you may have about the models I have provided.

Sincerely,

Sue Schaffner
Executive Director

Attachments:

Hostelling International USA, San Diego Council - Proforma -Leased building
Hostelling International USA, San Diego Council - Proforma – Purchased building