

CALIFORNIA COASTAL COMMISSION

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W 18b

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49th Day: May 2, 2007
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Staff: Fernie Sy-LB
Staff Report: October 25, 2007
Hearing Date: November 14-16, 2007
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 5-06-328
APPLICANTS: Alan Schwendener
AGENT: McCabe & Company; Attn: Susan McCabe & Anne Blemker
PROJECT LOCATION: 400 Marina Drive, City of Seal Beach (County of Orange)

PROJECT DESCRIPTION: Demolition of an existing one-story, 4,640 square foot ten (10)-unit structure presently used for residential purposes, subdivision of the 13,667 square foot lot into four (4) separate parcels ranging from 2,938 to 4,855 square feet in size, and construction of four (4) new two-story, single-family residences ranging from 2,000 to 3,000 square feet with attached two (2)-car garages. Grading will consist of 200 cubic yards of cut, 400 cubic yards of fill, and 200 cubic yards of import.

SUMMARY OF STAFF RECOMMENDATION:

The subject site is located seaward of Pacific Coast Highway at 400 Marina Drive in the City of Seal Beach, Orange County. The applicant is proposing the demolition of an existing 10-unit rental structure on one (1) lot and the sub-division of the lot into four (4) lots, each with a single-family residential structure. The primary issues before the Commission are the commitment of the site, which may be suitable for a priority use, to a lower priority residential use, the loss of development density at the site and the resultant impact on public access and cumulative impacts on coastal resources, and the loss of opportunity for more affordable housing in the coastal zone. Staff recommends that the Commission **DENY** the proposed project.

As submitted, the proposed project is primarily inconsistent with Sections 30213, 30222, 30250, 30252, 30253. The proposed project intends to commit a site that may be appropriate for visitor-serving commercial use to a private residential use. Private residential use is identified in the Coastal Act as a lower priority use in the coastal zone. Visitor-serving commercial uses provide greater public benefit than private residential uses because a larger segment of the population is able to take advantage of and enjoy the use of the property and such uses support visitors to the coast. The proposed project would eliminate ten (10) rental units on-site and replace them with four (4) for-sale single-family residences, each on its own lot, resulting in a decrease in concentration of development and therefore more expensive housing and attendant impacts upon coastal resources, including public access.

Furthermore, alternatives to the proposed project exist. For example, the existing structure could be renovated or replaced to serve as a visitor-serving commercial use resulting in a higher priority use which would provide greater public benefit. If, upon further study, the site is found to be

unsuitable for a higher priority commercial use through, among other means, an exhaustive but unsuccessful active effort to market the site for a commercial use, the Commission could consider a renovation of the existing 10-unit structure to physically improve the site, while continuing to serve as a multi-family residential use. Another option is to replace the existing structures with new higher density residential development (as opposed to lower-density single-family homes) or a mixed use residential/commercial project. These options would provide housing that is more affordable than single family residences. Also, the proposed decrease in intensity of use would be avoided or reduced, resulting in lesser impacts upon coastal resources. There are, perhaps, other alternatives as well. Therefore, staff recommends that the proposed project be **DENIED**.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Seal Beach does not have a certified Local Coastal Program. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act.

STAFF NOTE:

The proposed project was originally scheduled for the August 2007 Commission hearing. However, the applicant requested a postponement in order to further analyze the staff report and prepare for the subsequent hearing. The project was then rescheduled for the September 2007 Commission hearing instead. Prior to the hearing, Commission staff received letters from the City of Seal Beach opposing staff's recommendation for the proposed project (Exhibits #11-12). The applicant again requested that the project be postponed and did so by requesting the project's postponement at the September 2007 hearing. Besides requesting postponement of the project, the applicant signed a 90-day waiver for the project to extend the time within which the project must be heard by the Commission. A letter from the City of Seal Beach's City Attorney was also submitted that again discusses the City's opposition to the staff recommendation (Exhibits #13). The issues that are found in these letters from the City of Seal Beach are addressed in the staff report. The project is now scheduled for the November 2007 Commission hearing.

LOCAL APPROVALS RECEIVED: Approval-In-Concept dated April 24, 2006 from the City of Seal Beach Planning Department; Initial Study/Mitigated Negative Declaration 06-1; General Plan Amendment 06-1; Zone Change 06-1; Tentative Parcel Map 2005-257; Resolution No. 5457 approving Tentative Parcel Map No. 2005-257;-Resolution No. 5456 approving General Plan Amendment 06-1, amending the Land Use and Housing Elements;-Resolution No. 5455 adopting the Negative Declaration 06-1; Ordinance No. 1546 adopting Zone Change 06-1, changing the Zoning Designation from General Commercial (C-2) to Residential High density (RHD), District 1.

SUBSTANTIVE FILE DOCUMENTS: Letter from Commission staff to Jill Christofferson dated September 14, 2006; Information to Commission staff from Jill Christofferson received October 3, 2006; Letter from Commission staff to Jill Christofferson dated November 2, 2006; Letter from City of the City Seal Beach to Commission staff dated December 11, 2006; Information to Commission staff from Jill Christofferson received January 9, 2007; *Visitor Serving Commercial Market Conditions* Report by Economics Research Group dated February 28, 2007; Letter from the City of Seal Beach to Commission staff dated April 26, 2007; Letter from the City of Seal Beach dated August 28, 2007; Letter from the City of Seal Beach received August 24, 2007; Letter from Richards/Watson/Gershon to Commission staff dated September 25, 2007; *Assessment of 400*

Marina Drive Site for Hotel Development by Economics Research Group dated September 30, 2007; Letter from John Pelochino dated October 1, 2007; and Letter from Ernst & Haas Management Co. dated October 5, 2007.

LIST OF EXHIBITS

1. Location Map
 2. APN/Surrounding Uses Map
 3. Zoning Maps
 4. Site/Floor/Elevation Plans for three (3) units on 25' x 118 lots
 5. Site/Floor/Elevation Plans for the fourth unit on a irregular shaped lot
 6. Tentative Parcel Map
 7. *Visitor Serving Commercial Market Conditions* Report by Economics Research Group dated February 28, 2007 (same as one received by the City dated March 5, 2007)
 8. *Assessment of 400 Marina Drive Site for Hotel Development* by Economics Research Group dated September 30, 2007; Letter from John Pelochino dated October 1, 2007
 9. Letter from John Pelochino dated October 1, 2007
 10. Letter from Ernst & Haas Management Co. dated October 5, 2007
 11. Letter from the City of Seal Beach received August 24, 2007
 12. Letter from the City of Seal Beach dated August 28, 2007
 13. Letter from Richards/Watson/Gershon (City of Seal Beach's City Attorney) to Commission staff dated September 25, 2007
 14. Ex-Parte communications
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STAFF RECOMMENDATION:

I. STAFF RECOMMENDATION OF DENIAL

Staff recommends that the Commission **DENY** the coastal development permit application by voting **NO** on the following motion and adopting the following resolution.

A. MOTION

I move that the Commission approve Coastal Development Permit No. 5-06-328 for the development proposed by the applicant.

B. STAFF RECOMMENDATION OF DENIAL

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

C. RESOLUTION TO DENY THE PERMIT

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

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The subject site is located seaward of Pacific Coast Highway at 400 Marina Drive in the City of Seal Beach, Orange County (Exhibits #1-2). The applicant is proposing the demolition of an existing one-story, 4,640 square foot ten (10)-unit apartment structure and construction of four (4) new two-story, single-family residences ranging from 2,000 to 3,000 square feet with attached two (2)-car garages (Exhibits #4-5). All of the proposed residences are approximately 23' to 24'-6" in height (25' is allowed) and comply with all setback and lot coverage requirements of the City. Grading will consist of 200 cubic yards of cut, 400 cubic yards of fill, and 200 cubic yards of import.

The applicant is also proposing a Tentative Parcel Map to subdivide the existing 13,667 square foot property into four (4) lots (Exhibit #6). Three of the lots would be 25' x 118 in size, comprising 2,938 square feet and fronting onto Fourth Street. The fourth lot, adjacent to Marina Drive is irregular in shape, has 6-feet of frontage on Fourth Street, 137-feet of frontage on Marina Drive, and has 77-feet of frontage on the alley, and comprises 4,855 square feet.

In order to allow the construction of single-family residences, the Seal Beach City Council approved amending the Land Use and Housing Elements of the General Plan to designate the 13,677 square foot property from Commercial General to Residential High Density. In addition, the City Council approved changing the Zoning Designation on this parcel from General Commercial (G-2) to Residential High Density (RHD), District 1 to be consistent with the General Plan (Exhibit #3). These land use and zoning changes have not been reviewed by the Commission because the City does not have a certified LCP.

The area consists of a mixture of commercial uses and single- and multi-family residential structures. To the north of the project site is Marina Drive and residential low density development. To the east of the project site across an alley is a General Commercial zoned area that has a small commercial development consisting of a convenience store, a pizza restaurant, a beauty salon, and a custom cabinetry shop. To the west and south are multi-story multi-family residential structures (Exhibit #2). The site is approximately three (3) blocks from the public beach.

The proposed lots are in conformance with the minimum lot size standards of the proposed Residential High Density (RHD) Zone District 1, which are a minimum lot size of 2,500 square feet and minimum lot dimensions of 25' x 100'. The maximum lot area per dwelling unit on-site is 1 per 2,178 square feet. Thus, the maximum density on-site without the land division is $13,667/2,178 = 6$ units. With the land division, the maximum density is reduced to 4 units (1 per lot).

B. VISITOR-SERVING COMMERCIAL USE

Section 30213 of the Coastal Act states, in relevant part:

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

Section 30222 of the Coastal Act states

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

Section 30213 of the Coastal Act states that lower cost visitor recreational facilities shall be protected, encouraged, and where feasible, provided. Section 30222 of the Coastal Act states that the use of private lands for visitor serving uses takes priority over private residential. The Coastal Act places a higher priority on visitor-serving commercial uses than on private residential uses. Visitor-serving commercial uses provide greater public benefit than private residential uses because a larger segment of the population is able to take advantage of and enjoy the use. In addition, visitor-serving commercial areas provide services to the visiting beach user, including providing places to stay overnight, dine and shop.

The location of the proposed project is seaward of Pacific Coast Highway, three (3) blocks north of the public beach. The site is located five (5) blocks west of Main Street, the primary visitor-serving commercial area of Seal Beach. While Main Street provides many visitor-serving commercial uses such as t-shirt shops and walk up restaurants, no overnight accommodations are located on Main Street and also there are no undeveloped lots of sufficient size available for overnight accommodations on Main Street. Access to coastal recreational facilities is enhanced when there are overnight accommodations for the public.

While the project site is currently used for 10-unit apartment rentals, the project site is well suited for visitor-serving commercial use because of the following: 1) the lot size of 13,667 is larger than most in the area and would be an appropriate size to accommodate visitor-serving commercial uses such as a hotel, motel or bed and breakfast (to be discussed later); 2) the project site is only three (3) blocks north of the public beach and five (5) blocks west of Main Street (the primary visitor-serving commercial area of Seal Beach) so it is in a prime location to serve visitors to these areas. There is a lack of overnight accommodations near these two areas and there are no overnight accommodations along Main Street nor are there lots available for such future overnight accommodations along Main Street; 3) the project site is located along Marina Drive, which is a thoroughfare through the City which is more appropriate than more isolated locations within neighborhoods; 4) there are other existing commercial uses along Marina Drive, so, a commercial use of the subject site would be compatible; and 5) as indicated in the Mitigated Negative Declaration; the site was previously used as a motel. In addition, the tentative parcel map also indicated that the existing building is a motel.

The applicant states that a commercial use such as t-shirt shops, or walk up restaurants that are reliant upon pedestrian and vehicle traffic to sustain it would not be feasible, thus he is proposing private residential use. In order to support this conclusion, the applicant has submitted the

following report: *Visitor Serving Commercial Market Conditions* Report by Economics Research Group dated February 28, 2007 (Exhibit #7). The report concludes the following: *"Considering the aforementioned factors and specifically noting that the site does not satisfy basic retail site selection criteria, is removed from the major concentration of visitor-oriented businesses which are in close proximity to the beach, and that there are properties better suited for future development with visitor-serving uses, we conclude that the use change from General Commercial to Residential High Density will not negatively impact coastal district's ability to provide for its visitors."* The applicant also states that an overnight visitor accommodation use such as a hotel or motel, or bed and breakfast would not be feasible on-site and has submitted the following report to support this claim: *Assessment of 400 Marina Drive Site for Hotel Development* by Economics Research Group dated September 30, 2007 (Exhibit #8). The report concludes the following: *"We believe that the site's location, small lot size and density limitations precludes it from being a desirable location for either a new or renovated hotel/motel property, as well as a hybrid use such as a condo-hotel. Additionally, it is very unlikely that a hotel developer could be found who would be interested in this property if he/she had to pay current commercial land market rates for the property unless additional density could be accommodated on the site."*

The applicant has stated and has provided reports that contend that visitor-serving commercial uses such as t-shirt shops, or walk up restaurants that are reliant upon pedestrian and vehicle traffic to sustain it and also other visitor-serving commercial uses not reliant upon drop-in commercial uses such as a bed and breakfast or a hotel or motel cannot be supported at the project site. In addition, the City has stated that they have not been contacted about using the project site for a commercial use and that the site has been used as a residential apartment building since 1979. Thus, the City believes that the lack of interest for commercial use on-site and its use since at least 1979 for residential use shows the inability of the site to support commercial uses. Also, the applicant has submitted a letter from the previous owner where he states that when he entertained the idea of actually selling the property in 2004; he received 12 inquiries from interested buyers and that these individuals only intended to seek approval for residential use (Exhibit #9). No evidence has been made available to the Commission that shows whether the applicant, or prior landowner(s), actively marketed the site for commercial use especially since it was being used as a 10-unit residential apartment building. It is also unknown when the use of the existing building changed from a motel use to a residential use and what effect this may have had on the inquiries.

In addition, while the reports submitted by the applicant largely support his argument that visitor-serving commercial uses reliant upon pedestrian and vehicle traffic to sustain it and also certain other visitor-serving commercial uses not reliant upon drop-in commercial cannot be supported at the project site, the Economic Research Group Report dated September 30, 2007 and a letter from Ernst & Haas Management Co. dated October 5, 2007 (Exhibit #10) also that the site could acknowledge possibly be renovated to accommodate overnight visitor housing. The Ernst & Haas Management Group Co. letter states that the renovation costs would be between \$480,000 to \$535,000 and may result in the loss of 1-unit to create an office/lobby area. The Economic Research Group Report states that the renovation costs will be 30% of the cost to build new for a total of \$460,000. However, this report also states that this a conservative figure. Therefore, if renovated and actively marketed, it appears that a visitor-serving commercial use is possible on-site.

The applicant also states that a Bed and Breakfast use is not allowed unless the existing residential structure was built prior to 1925. Perhaps this requirement exists in residentially zoned properties. The project site was previously zoned commercial and was only changed to residential

to accommodate this applicant's proposed project; the existing structure was originally built as a hotel. The applicant can apply to re-establish commercial on the site. No such prohibitions on Bed and Breakfast use exist in the commercial zone.

Previously, the Commission approved Coastal Development Permit application # 5-05-385 for a similar type of development near the project site at 202-212 5th Street. The project consisted of the demolition of an existing 23-room hotel (Seal Beach Inn) and construction of six (6) single-family residences. There was no subdivision involved as the hotel building spanned six (6) existing lots. Historically, the Inn had been an "apartment motel" structure that was renovated into a bed and breakfast. The applicant was able to demonstrate that the existing structure was in a state of such severe disrepair that it could not be addressed without substantial investment and re-construction of the building. However, reconstruction was not a feasible alternative at that site because the City indicated it would not approve another commercial use at the site due to the land use/zoning inconsistency (the site was designated for Residential High Density-RHD, and had been for decades prior, which does not allow for new commercial development; and the Inn had been a legal, non-conforming use). The applicant was also able to provide records that showed her exhaustive, unsuccessful attempts for years to try and sell that property to another hotel or bed and breakfast operator for continued use as a bed and breakfast. Lack of interest was related to the poor condition of the structure and the unlikely feasibility of being able to sufficiently renovate the building within City constraints that apply to non-conforming uses. Convinced there were no other options, the Commission allowed the structure to be demolished, provided the applicant mitigated the loss of the existing visitor-serving use of the site. Toward that end, the applicant was required to pay an in-lieu fee for each of the six single-family residences to be constructed. In the case of the present application (5-06-328), the applicant has not demonstrated that conditions at the subject site are unsuitable for a priority use. In fact, as noted above, the site appears favorable and suitable for such use.

In regards to the proposed project, if the applicant were able to demonstrate that the site is unsuitable for a priority use, through, among other means, an exhaustive but unsuccessful active effort to market the site for a commercial use, the Commission could consider other options. Meanwhile, the site must be reserved for a higher priority use. The applicant has not demonstrated an effort to actually market the site for commercial use. An additional use of the site for the applicant to consider is to offer it to developers who are in need of sites to mitigate the loss of lower cost overnight accommodations in the Coastal Zone, as the applicant has demonstrated above that the existing structure can be renovated and used as a 10-unit motel.

CONCLUSION

The Coastal Act places a higher priority on visitor-serving commercial uses than on private residential uses. However, the project proposes private residential uses over a visitor-serving commercial use in a prime area for such development. Therefore, the Commission finds that the proposed project is inconsistent with Sections 30213 and 30222 of the Coastal Act and it must be denied.

C. DENSITY

Section 30250 of the Coastal Act states, in part:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30252 of the Coastal Act states:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Section 30253 of the Coastal Act states, in part:

New development shall:

(4) Minimize energy consumption and vehicle miles traveled.

As previously discussed, if the applicant were able to demonstrate that the site is unsuitable for a priority use such as a hotel, motel or bed and breakfast, the Commission could consider other options. One of these options is a lower priority residential use. If residential use were to be allowed, higher density residential use than that proposed by the applicant should be provided at the site to assure conformity with Coastal Act Sections 30250, 30252 and 30253. By providing higher density housing, this would result in more affordable housing, which would also further the goals of Section 30604 of the Coastal Act.

Section 30250 of the Coastal Act requires that new development be concentrated in existing developed areas where it can be accommodated without adverse effects on coastal resources. Section 30252 of the Coastal Act states that the location and concentration of development should maintain and enhance public access to the coast by facilitating the extension of transit service and minimizing the use of coastal access roads. Section 30253 indicates new development shall minimize energy consumption and vehicle miles traveled. Concentrating development in existing developed areas provides more opportunities for people to live near places they work and recreate, such as the beach, and, thereby, reduces impacts to coastal resources. Impacts to roads and vehicle miles traveled would be reduced by having a more intense stock of housing located closer to employment and recreational opportunities within the coastal zone. Also, by having a higher density in an existing developed area, it places more people in a single location so that public

transit service is facilitated, which then again aids in reducing the number of cars on streets and thus reduces impacts to coastal resources and public access.

Concentrating development in developed areas also has other cumulative benefits. It would lead to less pressure to extend new development into undeveloped areas, which would prevent sprawl, preserve open space and prevent adverse impacts to sensitive habitats. By concentrating development in developed areas where it can be accommodated, sensitive coastal resources would be protected and preserved. Additionally, the location and concentration of development would maintain and enhance public access to the coast.

The applicant is proposing that the single lot be subdivided into four (4) lots and that one (1) single-family residence be constructed on each new lot. As discussed, this would provide less density than what is currently on-site (10-units). The maximum density for this Residential High Density (RHD) District 1 Zone is 1 unit per 2,178 square feet. By not subdividing the single lot and constructing the maximum number of dwelling units, it would result in a total of six (6) units on-site, two (2) more than proposed. This would result in a higher density than what is being proposed. However, even by avoiding a subdivision, the maximum number of units (6) on-site would still not equal the existing number of units (10). So, in terms of density, preservation of the existing development may be superior to redevelopment of the property.

As noted above, uses along Marina Drive are a mix of commercial and residential. It is notable, however, that those properties which immediately abut Marina Drive, like the subject site, that are developed with residential uses, are all higher density, multi-family structures, as opposed to single-family residences. To the west and south of the project site are multi-story multi-family residential structures. By not subdividing the single lot and constructing the maximum number of dwelling units, the project site would be compatible with the existing character. Therefore, the character would be maintained and a higher density of concentration would be provided.

Also, in order to increase the density on site, one option would be for the City to allow a higher density on-site. The City has stated that there are other areas within the City that have allowances for density that is higher than the density recently approved for the site. The current designation allows 20 units per acre, or, one unit for every 2178 square feet. There is a higher density designation that allows 33 units per acre, or one unit for every 1,320 square feet of lot area. This would allow 10 units ($13667/1320 = 10.4$) to be built on the site, equivalent to what exists now.

Higher density residential development would result in a concentration of development that is more affordable compared to single-family home development as proposed. It would also limit impacts to coastal resources and further the goals of Section 30604(f) and (g) of the Coastal Act. Section 30604(f) and (g) encourage housing opportunities for persons of low and moderate income as well as the protection and provision of affordable housing opportunities for persons of low and moderate income in the Coastal Zone. The existing rental units would be changed to for-sale units and the supply of more affordable units would be reduced in favor of for-sale units. Typically, multi-family rental units are less costly and more affordable than single-family residential units. For example, the current units in the multi-family structure rent for approximately \$800 a month. This is substantially lower than what one would have to pay for a single-family residence. Thus, the proposed project is decreasing the pool of rentable residential structures in favor of single-family residences that typically cost much more and are not considered lower cost, more affordable housing. Higher density, multi-family units tend to be more affordable and result in lesser impacts to coastal resources. Therefore, if the Commission were to approve residential development on

this site, it would likely condition approval in such a way as to encourage the protection of affordable housing, consistent with Section 30604.

CONCLUSION

As proposed, the project does not concentrate development in an area where it can be accommodated. Actually, the density of development would be reduced under this proposal. In addition, the number of units the applicant is proposing is not even the maximum amount of units the applicant can provide on-site under the proposed zoning. Additionally, the lack of concentration of development does not maintain or enhance access to the coast. Therefore, the Commission finds that the proposed project is inconsistent with Sections 30250, 30252 and 30253 of the Coastal Act and must be denied.

E. ALTERNATIVES

Denial of the proposed project will neither eliminate all economically beneficial or productive use of the applicant's property, nor unreasonably limit the owner's reasonable investment-backed expectations of the subject property. The applicant already possesses a substantial residential development of significant economic value on the property. In addition, several alternatives to the proposed development exist. Among those possible alternative developments are the following (though this list is not intended to be, nor is it, comprehensive of all possible alternatives):

1. No Project

No changes to the existing site conditions would result from the "no project" alternative. As such, lower cost more affordable housing would continue to be provided on-site. Also, concentration of development would not be reduced and thus no adverse impacts to coastal resources would result.

2. Updating and Improving the Site to Serve as a Visitor-Serving Commercial Use

By updating and improving the project site or redeveloping the site to serve as a visitor-serving commercial use, a higher priority use would be located on-site. Providing such a use would provide greater public benefit than private residential uses because a larger segment of the population is able to take advantage of and enjoy the use. As discussed previously, the applicant has submitted information that supports this alternative (Economic Research Group Report dated September 30, 2007 and a letter from Ernst & Haas Management Co. dated October 5, 2007). As discussed previously, the site could be sold to developer(s) who must mitigate the loss of affordable overnight accommodations.

3. Updating and Improving the Site to Continue to Serve as a Multi-Family Residential Use or Mixed Use Development

If the site is found to be unsuitable for a higher priority use and a lower priority use is considered, then renovating the existing building would continue to provide higher density lower cost housing opportunities. Also, redeveloping the site with a high density multi-family use, or a mixed-use development with high-density residential and small commercial component could also be considered.

F. LOCAL COASTAL PROGRAM

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program, which conforms with Section 30604 of the Coastal Act.

On July 28, 1983, the Commission denied the City of Seal Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications. The City did not act on the suggested modifications within six months from the date of Commission action. Therefore, pursuant to Section 13537(b) of the California Code of Regulations, the Commission's certification of the land use plan with suggested modifications expired. The LUP has not been resubmitted for certification since that time.

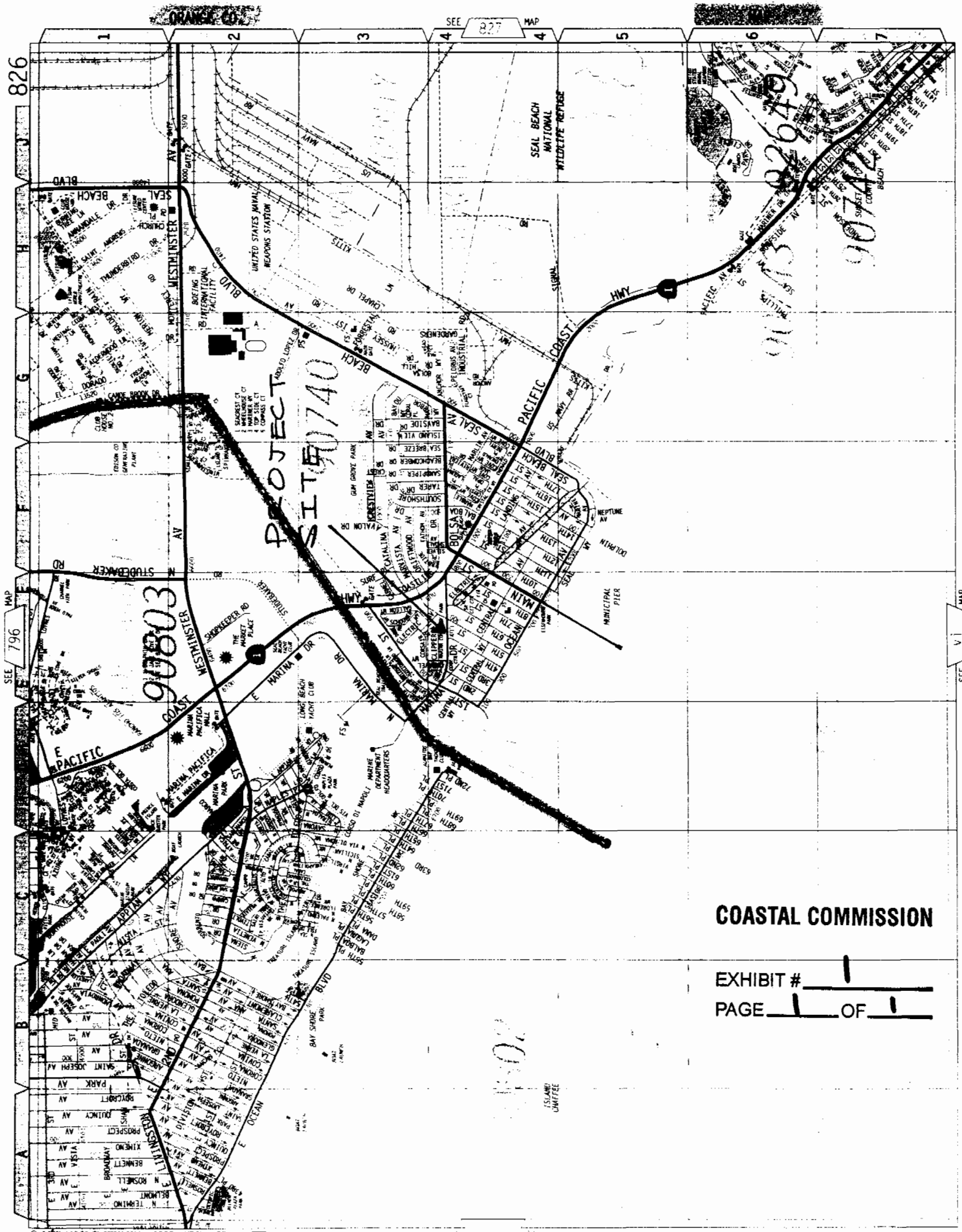
The proposed development is inconsistent with the Chapter 3 policies of the Coastal Act and would prejudice the City's ability to prepare a Local Coastal Program for Seal Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a). The density issue associated with the proposed project is a larger planning issue that should be addressed by the City. Approving projects that reduce the density of an area or allow development of lower priority uses could prejudice the City's ability to prepare a LCP that is consistent with the Coastal Act.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

The City of Seal Beach is the lead agency for California Environmental Quality Act (CEQA) purposes. The project was determined by the City to require a Mitigated Negative Declaration 06-1. Some of the Mitigation Measures required are: 1) an archeologist and Native American monitor appointed by the City of Seal Beach shall be present during earth removal or disturbance activities related to rough grading and other excavations for foundations and utilities [no archeological or paleontological resources or human remains are known to exist on site]; 2) the potential damaging effects of regional earthquake activity shall be considered in the design of the structure; and 3) prior to the issuance of the first grading or building permit, a comprehensive Water Quality Management Plan (WQMP) shall be prepared by a registered civil engineer or a registered professional hydrologist to protect water resources from impacts due to urban contaminants in surface water runoff.

As described above, the proposed project would have adverse environmental impacts. There are feasible alternatives or mitigation measures available, such as updating and improving the site to continue to serve as a multi-family residential structure and also updating and improving the site to serve as a visitor-serving commercial use. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there are feasible alternatives, which would lessen significant adverse impacts, which the activity would have on the environment. Therefore, the project must be denied.



SEE 796 MAP

826

SEE 827 MAP

SEE V1 MAP

COASTAL COMMISSION
EXHIBIT # 1
PAGE 1 OF 1

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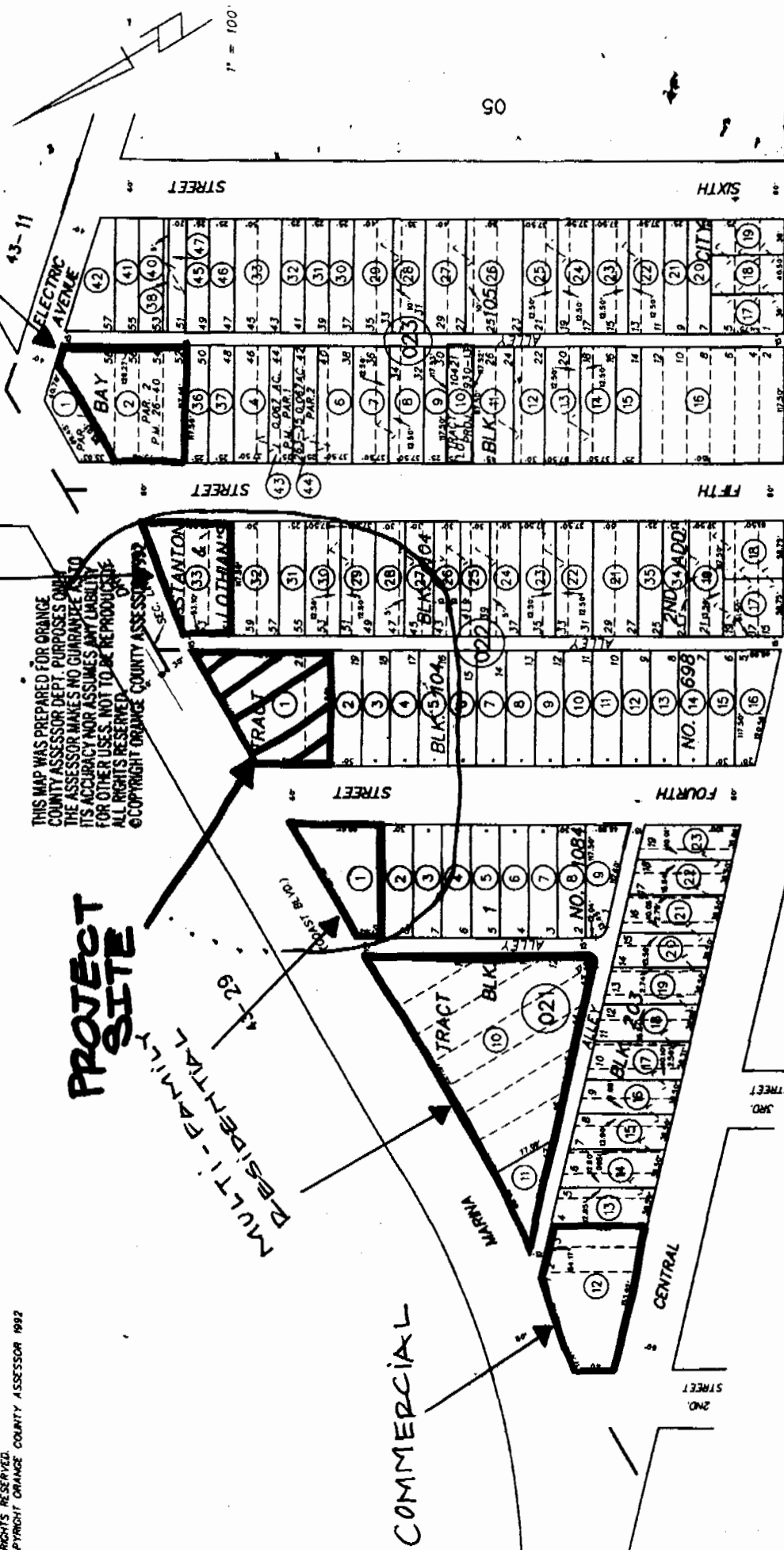
COMMERCIAL

PROJECT SITE

MULTI-FAMILY RESIDENTIAL

COMMERCIAL

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NOTE - ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES

M.M. 3-19 14
M.M. 4-19
M.M. 31-27
M.M. 35-11
M.M. 457-29,30
P.M. 28-40 261-14

BAY CITY
STANTON & LOTHIAN'S
2ND. ADD.
TRACT NO. 698
TRACT NO. 1084
TRACT NO. 10421
PARCEL MAP

MARCH 1980

COASTAL COMMISSION TRACT NO. 10421 PARCEL MAP

2

EXHIBIT #

PAGE 1 OF 1

ASSESSOR'S MAP BOOK 199 PAGE 02 COUNTY OF ORANGE

92



Exhibit 3-4 (Zoning Designations)

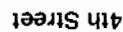


EXHIBIT # 3
PAGE 1 OF 2

EXHIBIT # 3
PAGE 2 OF 22

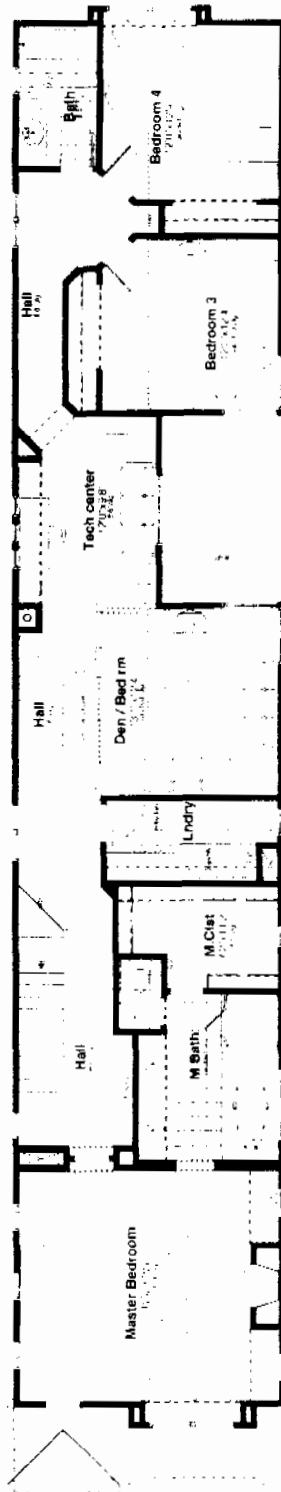
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RMD	<input type="checkbox"/>

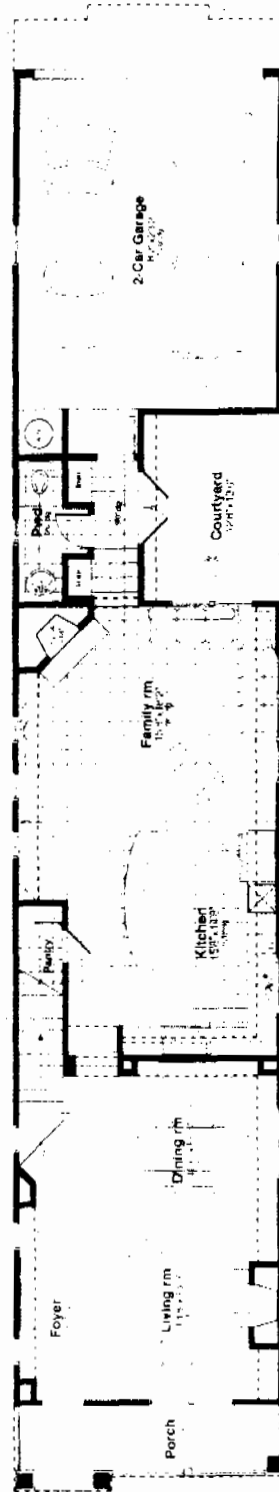


SITE PLAN: Plan 1A

By: -----
EFFECTIVE

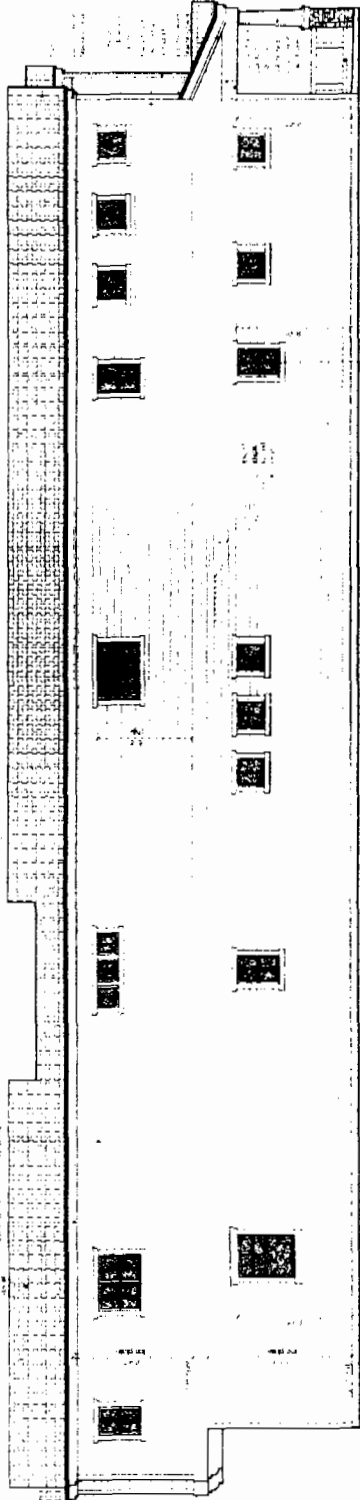


SECOND FLOOR PLAN: 1,715 sq. ft.

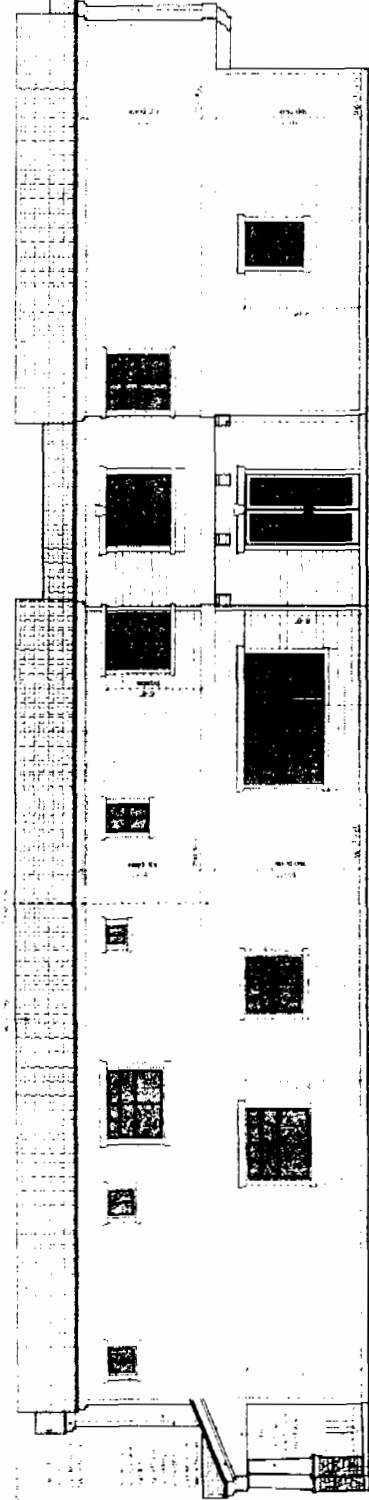


FIRST FLOOR PLAN: 1,148 sq. ft.
PLAN 1A: 2,863 sq. ft.

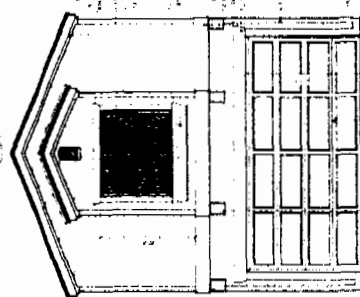
COASTAL COMMISSION



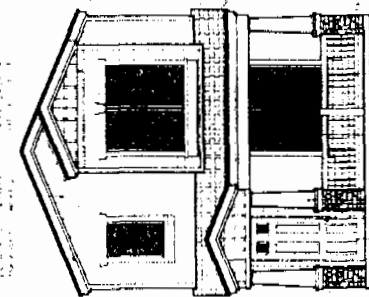
SIDEYARD ELEVATION



COURTYARD ELEVATION



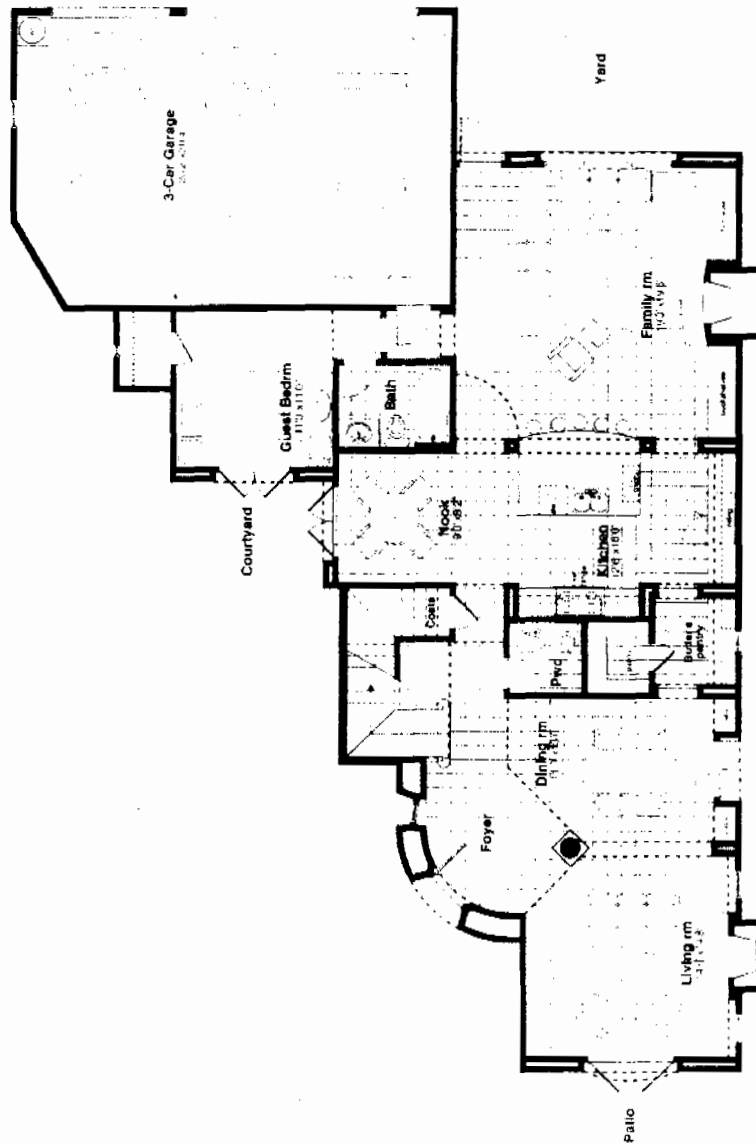
ALLEY ELEVATION



STREET ELEVATION
PLAN 1A
 EXHIBIT COULD BE DETERMINED

COASTAL COMMISSION

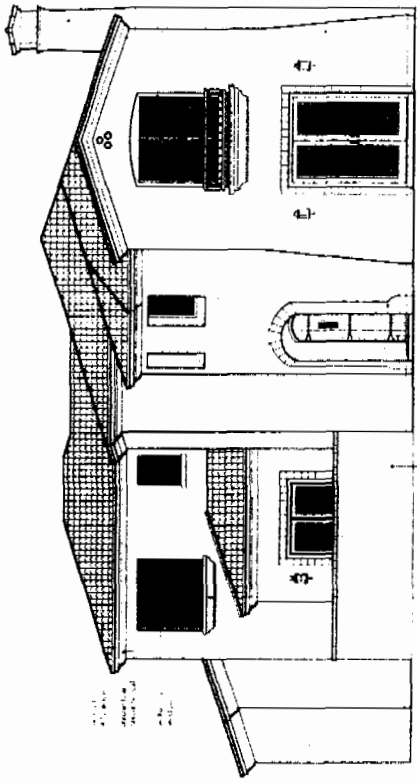
EXHIBIT # 4
 PAGE 3 OF 3



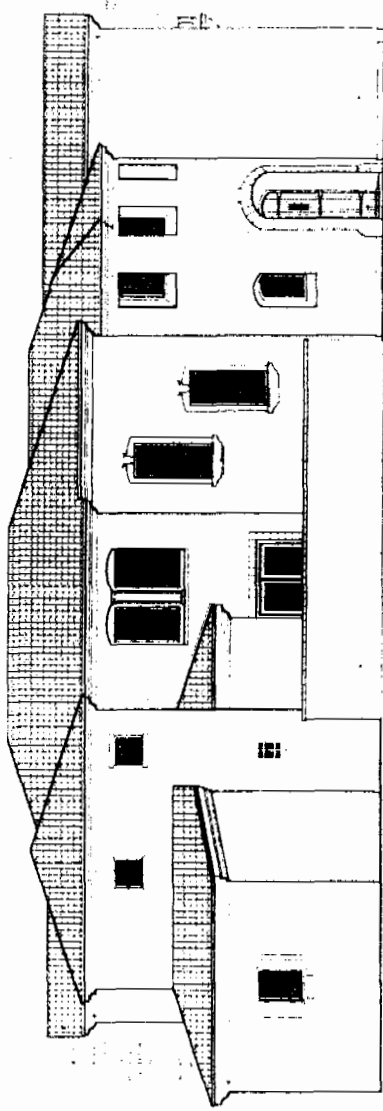
SCALE 1/4" = 1'-0"
 FIRST FLOOR PLAN: 1,660 sq. ft.
 PLAN 2: 3,142 sq. ft.

COASTAL COMMISSION

EXHIBIT # 5
 PAGE 2 OF 4



4th STREET ELEVATION



SCALE 1/4" = 1'-0"
MARINA DRIVE ELEVATION
PLAN 2
Exterior Colors to be determined

COASTAL COMMISSION

EXHIBIT # 5
PAGE 4 OF 4

SCALE: 1" = 20'

EXISTING No. OF LOTS: 2
PROPOSED No. OF LOTS: 4
NET ACRES: 0.10

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South Coast Region

AUG 16 2006

CALIFORNIA
COASTAL COMMISSION

LEGAL DESCRIPTION

LOTS 20 & 21 TRACT 1 NO. 690
MM 31 - 21
APN: 094-022-01

PROPERTY USAGE

EXISTING: MOTEL
PROPOSED: SINGLE FAMILY RESIDENTIAL

DATE OF PREPARATION

SEPTEMBER, 2005

BENCHMARK

1-280-R15
FD 3" NATIONAL GEODETIC SURVEY BRASS DISK
STAMPED "T 280 RESET 1975", SET IN THE SOUTHWESTERLY
CORNER OF A 4 FT. BY 4 FT. CONCRETE BASIN. MONUMENT
IS LOCATED IN THE SOUTHWESTERLY CORNER OF THE
INTERSECTION OF MARINA DRIVE AND FIRST STREET, 21
FT. WESTERLY OF THE CENTERLINE OF FIRST STREET AND
46 FT. SOUTHERLY OF THE CENTERLINE OF MARINA DRIVE.
MONUMENT IS SET LEVEL WITH THE SIDEWALK.
ELEV. = 4.931 (NAVD83) 1995 ADJ

OWNER / DEVELOPER

SCHWENDENER CORP.
11401 E. CARSON ST.
LAKEWOOD, CA. 90715
(562) 884-1753

ENGINEER

GILBERT ENGINEERING
4552 LINCOLN AVENUE
SUITE NO. 200
CYPRUS, CALIFORNIA 90630
(714) 945-7144
(562) 402-0196

TENTATIVE

PARCEL MAP No.2005-257

IN THE CITY OF SEAL BEACH
COUNTY OF ORANGE
STATE OF CALIFORNIA

SHEET 1 OF 1 SHEETS

SITE ADDRESS

400 MARINA DR.

ZONING

EXISTING - C-1
PROPOSED - RHD

GENERAL PLAN DESIGNATION

EXISTING COMMERCIAL
PROPOSED DENSITY RESIDENTIAL HIGH

BASIS OF BEARING

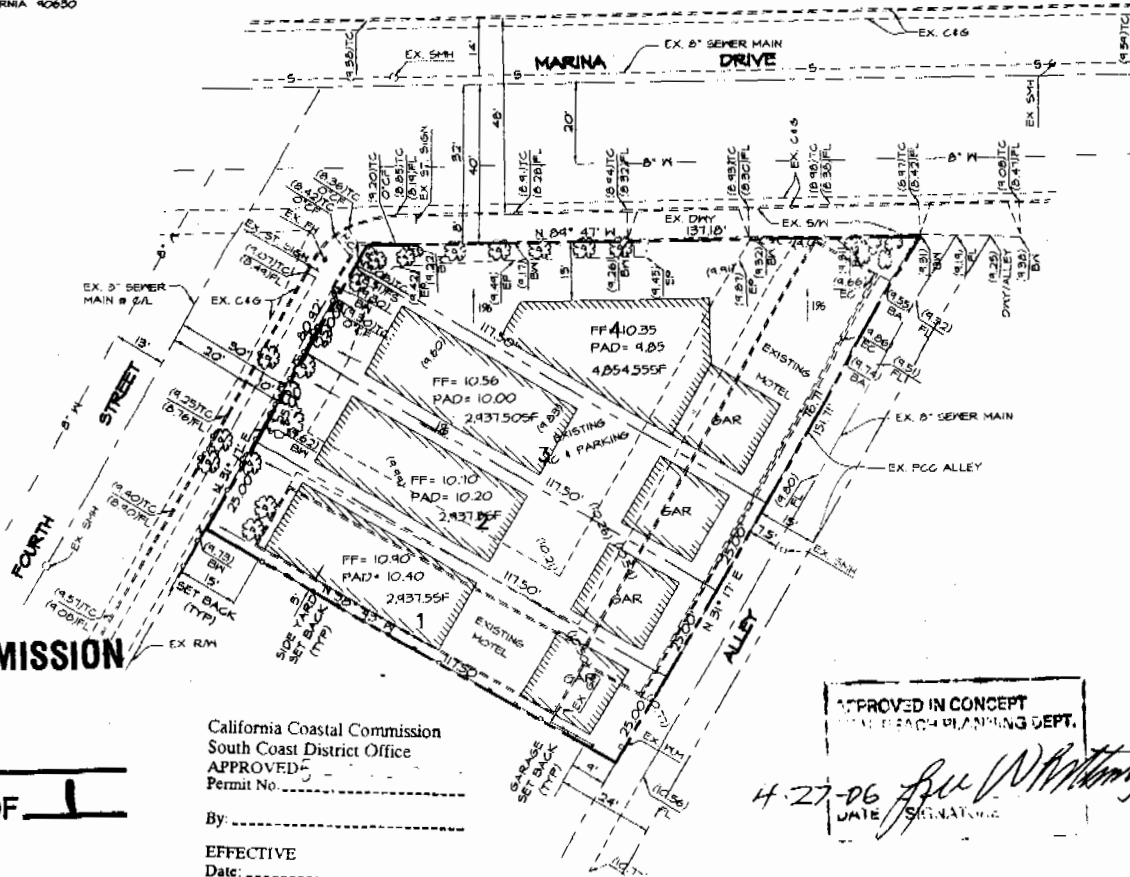
BEARINGS ON THIS TENTATIVE PARCEL MAP ARE
BASED ON A BEARING OF N31°17'E FOR THE
CENTERLINE OF 4TH ST, AS PER PARCEL MAP 1698
RECORDED IN BK 31, PG 21 OF P.M. IN THE OFFICE OF
THE COUNTY RECORDER OF ORANGE COUNTY.

UTILITY NOTES

GAS - SOUTHERN CALIFORNIA GAS COMPANY
SEWER - CITY OF SEAL BEACH
WATER - CITY OF SEAL BEACH
ELECTRICITY - SOUTHERN CALIFORNIA EDISON COMPANY
TELEPHONE - SBC GLOBAL

LEGEND

EXISTING STRUCTURE TO BE REMOVED
EXISTING LOT
PROPOSED BUILDING PAD
EX. SEWER MANHOLE
TC
FL
(XXXX)
FF
PAD
TOP OF CURB
FLOW LINE
EX. ELEVATION
FINISH FLOOR GRADE
PROPOSED HOUSE PAD



COASTAL COMMISSION

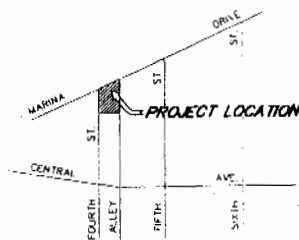
EXHIBIT # 6
PAGE 1 OF 1

California Coastal Commission
South Coast District Office
APPROVED
Permit No. _____

By: _____
EFFECTIVE
Date: _____

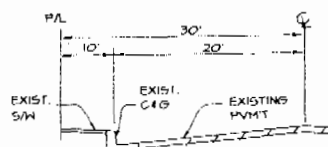
APPROVED IN CONCEPT
SEAL BEACH PLANNING DEPT.

4-27-06 *[Signature]*
DATE SIGNATURE

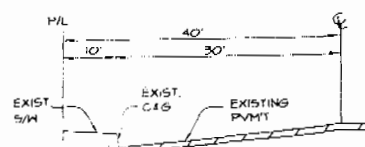


VICINITY MAP

NOT TO SCALE



**TYPICAL SECTION
4th STREET**



**TYPICAL SECTION
MARINA DRIVE**



Economics Research Associates

RECEIVED
South Coast Region

MAR 14 2007

MEMORANDUM

**CALIFORNIA
COASTAL COMMISSION**

TO: Mr. Alan Schwendener
The Schwendener Company

FROM: Christine Safriet, Associate
Michael Wright, Principal
Economics Research Associates

DATE: February 28, 2007

RE: Visitor Serving Commercial Market Conditions
Seal Beach Coastal District
ERA Project No. 17041

INTRODUCTION

The Schwendener Company retained Economics Research Associates (ERA) to examine certain issues pertaining to the proposed redevelopment of an attached multi-family residential project located at 400 Marina Drive in the city of Seal Beach. The 13,621 square foot property is located in the Coastal District as designated by the State of California in the California Coastal Act of 1976.

The property owner has requested a rezoning of the site from C-2, General Commercial, to RHD, Residential High Density. ERA has evaluated the potential effects on the area's ability to serve the commercial facility needs of its visitors and residents that would result from the proposed zoning change. The following memorandum report summarizes the findings of this analysis. During the course of this study, the following tasks were performed:

COASTAL COMMISSION

EXHIBIT # 7
PAGE 1 OF 17

- Physical inspection of subject property and adjacent areas.
- Review of the historical operation of the property, including any attempts at commercial uses.
- Analysis of retail sales patterns of the market area.
- Survey of existing visitor-serving commercial areas in the coastal district of Seal Beach



- Analysis of commercial and retail demand and projection of future commercial requirements.

A summary of ERA's findings is presented below, followed by a discussion of the supporting data and analysis.

SUMMARY OF FINDINGS

Our principal findings, based on assessment of the subject site and an analysis of the retail and commercial supply and demand conditions in the City of Seal Beach, are as follows:

- ***Poor Commercial Location.*** From a market perspective, the subject site is poor as a commercial location. Marina Drive, west of the Pacific Coast Highway, functions as a residential collector street rather than a commercial corridor. The site has extremely low traffic counts that are decreasing over time, and is several blocks outside and removed from the established visitor-serving and resident-serving commercial areas in the City. Visibility of the site is satisfactory from Marina Drive but completely obstructed from the PCH.
- ***Poorly Suited to Commercial Use.*** The subject site is poorly suited for visitor-serving commercial uses. The site is too small to attract an anchor tenant, and there are no nearby previously existing anchor tenants. There is minimal pedestrian and vehicle traffic in front of the site. A neighboring retail site is already serving existing demand for neighborhood and convenience-related commercial uses.
- ***Use Consistent with Residential.*** Development of the site with residential uses is consistent with the adjoining area which consists of mostly residential uses.
- ***Outside Commercial Concentrations.*** There are two major concentrations of commercial businesses in the focus area of this report: 1) the Main Street corridor; and 2) the PCH corridor. The Main Street corridor primarily serves the visitor market with visitor-serving uses located on the first three blocks beginning at Ocean Avenue. The business establishments become increasingly resident-serving the farther they are located from Ocean Avenue and the beach. PCH is the main arterial through the coastal district. The PCH commercial corridor serves both visitors and residents, but the retail activity is concentrated around Main Street.

COASTAL COMMISSION

EXHIBIT # 7
PAGE 2 OF 17



Economics Research Associates, Inc.

- *Adequate Existing Commercial Stock.* Seal Beach and the Coastal Area are not presently underserved with respect to visitor-related facilities. Existing visitor-serving retail establishments in the City perform significantly better than the Orange County average in terms of sales per outlet (excluding farm-related equipment). This indicates that the existing commercial stock is more than adequate to satisfy the area's present and near-term commercial needs.
- *Adequate Expansion and New Development.* Numerous existing and vacant properties have been designated for expansion or new development for future hotel, restaurant, retail, commercial, and related visitor-serving uses. These properties are better suited for visitor-serving uses than the subject property in terms of their locational attributes.

Considering the aforementioned factors and specifically noting that the site does not satisfy basic retail site selection criteria, is removed from the major concentration of visitor-oriented businesses which are in close proximity to the beach, and that there are properties better suited for future development with visitor-serving uses, we conclude that the use change from General Commercial to Residential High Density will not negatively impact the coastal District's ability to provide for its visitors.

COASTAL COMMISSION

EXHIBIT # 7
PAGE 3 OF 17

OVERVIEW OF SEAL BEACH

The City of Seal Beach is a small coastal community of approximately 12 square miles located in the northwest corner of Orange County. It is bordered by the City of Long Beach to the north and the City of Huntington Beach to the south. The US Naval Weapons Station occupies approximately 8 square miles of the city. The City includes 1.5 linear miles of beach frontage, and approximately half of the municipality is located within the Coastal Zone.

Population

The 2006 population of Seal Beach is approximately 25,300 as indicated in Figure 1. The City has not experienced significant growth since 1990, with average year over year growth ranging between -1 and 1 percent, as indicated in Figure 2. In contrast, both Orange County and the State of California have experienced net positive population gains over the same time period, with growth averaging approximately 1.5 percent per year.

Figure 1

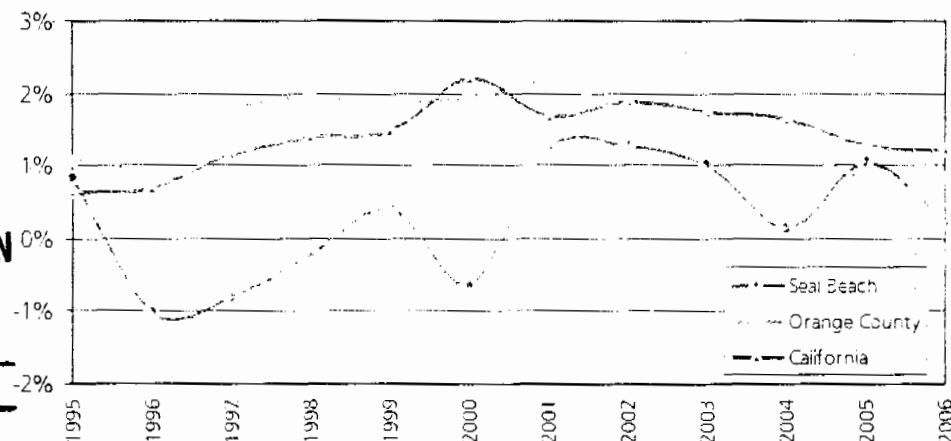
POPULATION GROWTH

Population	Seal Beach	Orange County	California
1990	25,098	2,410,668	29,588,381
1995	24,650	2,590,100	31,617,000
2000	24,100	2,829,800	33,871,648
2005	25,244	3,047,054	36,728,196
2006	25,298	3,072,336	37,172,015
CAGR	0.05%	1.53%	1.44%

Source: California Department of Finance, Economics Research Associates

Figure 2

POPULATION - YEAR OVER YEAR PERCENTAGE CHANGE



Source: California Department of Finance, Economics Research Associates

COASTAL COMMISSION

EXHIBIT # 7
PAGE 4 OF 17



Economics Research Associates

Local Coastal Program

The California Coastal Act requires all cities and counties located along the coast of the Pacific Ocean to prepare a Local Coastal Program (LCP). The LCP typically consists of two elements – a coastal land use plan and an implementation plan (e.g. zoning ordinances or maps) that have been developed by a municipality and certified by the local Coastal Commission. Once an LCP has been certified, land use and development permitting authority within the coastal zone are turned over to the city or county that submitted the plan. In 1983, Seal Beach drafted a coastal land use plan and submitted it to the Coastal Commission for review. The Commission returned the plan to the City with a number of comments. The plan was never certified. At present, the City of Seal Beach does not have a certified Local Coastal Program, so the Coastal Commission maintains authority over development and permitting decisions within the City's coastal zone.

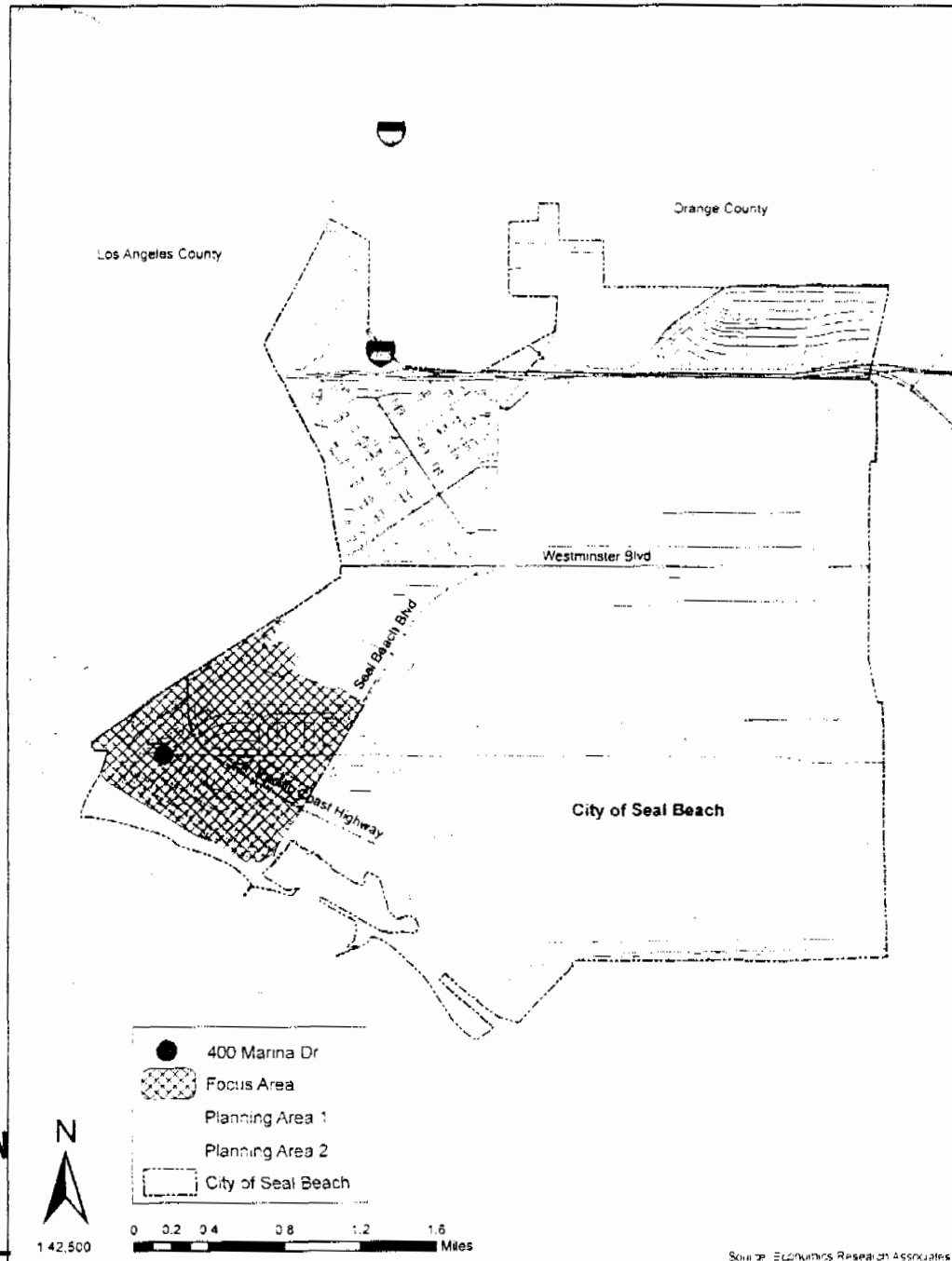
Focus Area

For the purposes of this analysis, we are concentrating on commercial, retail, and residential activity located between the coastline and Crestview Avenue, and the San Gabriel River and Kittes Highway. This area corresponds to the entirety of Planning Area 1 and a small portion of Planning Area 2 of the City's 2003 General Plan. Due to data aggregation techniques, data in the report includes information collected for the entirety of the municipal boundaries of the City of Seal Beach, as indicated in Figure 3 below.

COASTAL COMMISSION

EXHIBIT # 7
PAGE 5 OF 17

Figure 3
CITY OF SEAL BEACH, CALIFORNIA



COASTAL COMMISSION

EXHIBIT # 7
PAGE 6 OF 17

Source: Economics Research Associates and City of Seal Beach General Plan



Economics Research Associates, Inc.

PHYSICAL INSPECTION AND SITE REVIEW

Site Description

ERA inspected the subject property at 400 Marina Drive on January 23, 2007. Figure 4 provides an aerial view of the subject property, outlined in red. The site is located on the southeastern corner of 4th Street and Marina Drive. 4th Street is a residential street of well-kept single and multifamily homes. Marina Drive is a mixed residential and commercial boulevard connecting a network of residential streets to the Pacific Coast Highway.

The 13,621 square foot site is roughly diamond-shaped and consists of an existing L-shaped one story wooden frame building fronted by a 10-stall asphalt parking lot in fair condition. Currently, the building houses 10 studio apartments. The parking lot is shielded from Marina Drive and 4th Street by a row of short, bushy trees approximately 20 feet tall. A narrow space separates the western rear side of the building from neighboring lots. The eastern side of the property faces an alley. On the western corner of 4th Street and Marina Drive is a multi-story multifamily residential structure. Across the street to the north of the subject property is a paved bicycle/walking path and then a large concrete block wall that defines the southern boundary of a relatively new single family residential planned development. A mini-mall containing a convenient store, a pizza restaurant, a beauty salon, and a custom cabinetry shop is located directly to the east of the subject property on Marina Drive at 5th Street, just past the alley.

Figure 4
AERIAL VIEW OF SUBJECT PROPERTY



Source: Windows Local Live

COASTAL COMMISSION

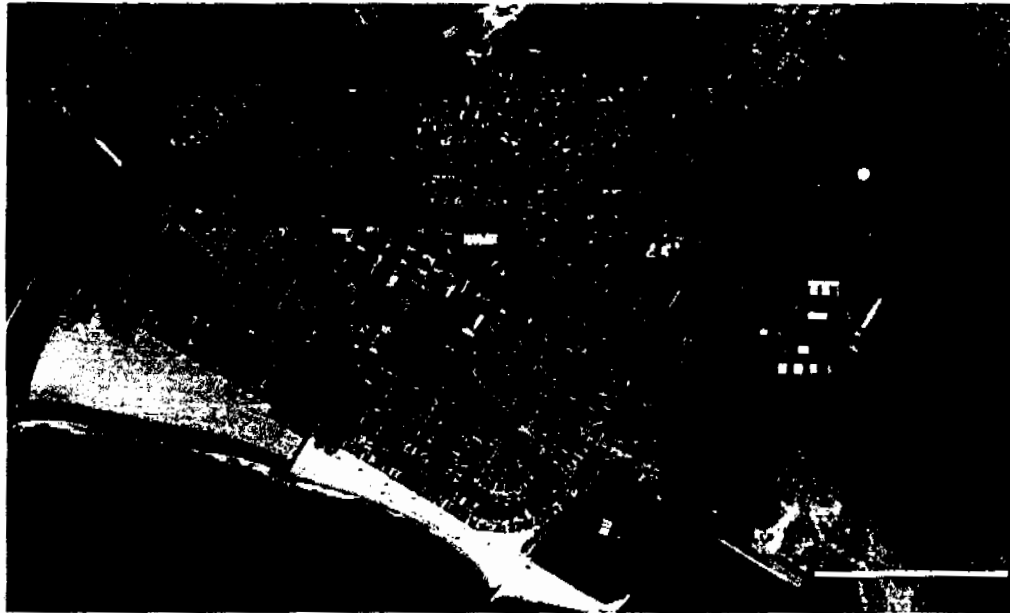
EXHIBIT # 7
PAGE 7 OF 17

Site Access

Figure 5 shows the location of the site in relationship to the surrounding areas. Vehicular and pedestrian access to the site is good. Marina Drive connects to the Pacific Coast Highway, the primary transportation corridor for the area, approximately a quarter-mile to the east of the subject property. Marina Drive connects into the City of Long Beach to the west, and can also be used to travel to the northern edge of Seal Beach Park, which includes parking facilities. Pedestrian and bicycle access to the property is available via well-maintained sidewalks in all directions, a bicycle lane on Marina Drive, and a bicycle/walking path in the linear park on the north side of Marina Drive. The site is approximately four blocks from the beach.

Figure 5

AERIAL VIEW OF SUBJECT PROPERTY IN FOCUS AREA



Source: Windows Live Local

Traffic Counts

Marina Drive at 4th Street is predominantly a residential serving connector street. Traffic counts on Marina Drive were undertaken by the City in 1999 and 2006 and are shown in Figure 6 below. Vehicular traffic along Marina Dr. has decreased substantially over the past seven years, by approximately 25 percent.

COASTAL COMMISSION

EXHIBIT # 7
PAGE 8 OF 17

Figure 6
AVERAGE DAILY VEHICLE COUNT ON MARINA DRIVE

	1999	2006	Change
Marina @ 1st St.	7,694	5,809	-24%
Marina @ 6th St.	5,004	3,713	-26%

Source: City of Seal Beach Engineering Department

Visibility

Visibility of the site is good from Marina Drive in either direction. There are no major natural impediments (trees, hills, etc.) that block visibility, and surrounding building heights are generally limited to two stories. There is no visibility of the site from the Pacific Coast Highway or 5th Street. Given the limited traffic counts on Marina Dr. (Figure 6) and the lack of visibility from the PCH, the number of drive-by customers that on-site commercial activity could hope to capture is very low.

Adjoining Land Uses

Marina Drive to the east of the property up to the PCH is used exclusively for commercial and residential accessory purposes, including a mini-mall, a church and wedding chapel, a hotel, and a 2-story retail/commercial center containing more than forty retail and office establishments with numerous vacancies. Marina Drive to the west of the subject property is predominantly residential, and contains a few interspersed commercial and residential accessory services. As can be seen in Figure 7 below, land uses to the immediately north and south of the property are exclusively residential for several blocks.

Figure 7
EXISTING LAND USES NEAR SUBJECT PROPERTY



Source: Windows Live Local and Economics Research Associates

COASTAL COMMISSION

EXHIBIT # 7
PAGE 9 OF 17

COMMERCIAL SUPPLY

Efforts to Use Site for Commercial Purposes

The subject property was purchased by The Schwendener Company approximately 13 months ago, on November 18, 2005. According to the Alan Schwendener Company, the company contacted the City of Seal Beach to inquire about the feasibility of rezoning and subdividing the property for residential ownership. After these conversations, the company acquired the property in order to execute the rezoning and subdivision. The Schwendener Company has made no efforts to investigate alternative commercial uses of the property. According to Lee Whittenberg, Director of Development Services for the City, the property has been used as a residential apartment building since 1979 (See Appendix A).

Existing and Planned Commercial Development within Focus Area

Main Street is the primary commercial area serving the retail and restaurant needs of Seal Beach visitors. The three blocks of Main Street, from Ocean Avenue to the Pacific Coast Highway, offer a wide variety of establishments serving visitors and residents. These shops primarily target beach visitors and also cater to the needs of local residents. In addition to the retail development along Main Street, retail shopping centers have been developed in the Seal Beach Coastal Area on both northern and southern sides of the Pacific Coast Highway along its entire traverse through the City of Seal Beach, excluding the US Naval Station property. These facilities primarily target automobile traffic along the PCH, but also include some local-serving uses including grocery stores and pharmacies. Samples of these retail centers are highlighted below.

Bay City Center. Less than two blocks from the subject property, Bay City Center contains 51,200 square feet of gross leasable area in several two-story buildings. The center is located on the south side of the Pacific Coast Highway between 5th Street and Marina Avenue, with entrances on all three streets. Five full-service restaurants are located within the center as well as three other food outlets. Other tenants include various retail and service outlets. The center is not fully occupied.

Seal Beach Shopping Center. This 82,000-square-foot center located at the northeast corner of Main Street and the PCH is anchored by a 48,000-square-foot Pavilions Supermarket and a Sav-On Drugstore. The site is currently under construction as the entire facility is being renovated and expanded. An additional 2,700 square feet of retail space will be added at the southern end of the property. Prior to construction, the center was approximately 90 percent leased. Current plans call for a six-month closure of the Pavilions to accommodate new construction.

COASTAL COMMISSION

EXHIBIT # 7
PAGE 10 OF 17



Economics Research Associates

Zoeter Place. Located at 12th Street and the PCH, the 22,800-square-foot Zoeter Place opened in 1990. Tenants include a restaurant and various service and retail establishments.

Old Ranch Town Center. This 25-acre, 287,000-square-foot shopping center opened in 2001, and is located on Seal Beach Boulevard to the north of Interstate 405. The center is anchored by Target, Ralph's Supermarket, Bed, Bath & Beyond, and Sav-On. Fully leased, the center's other tenants include various restaurants, retail, and service establishments.

The Shops at Rossmore. The aging strip mall, Rossmore Center, is being upgraded to "The Shops at Rossmore," a new retail lifestyle center expected to house approximately 20 businesses. Construction began in November 2006 and the development is expected to open in stages beginning in April 2007. Gross leasable area for the site is being increased from 376,000 square feet to 462,866 square feet. Anchor tenants include Kohl's Department Store and Mel's Diner.

Pacific Gateway Business Center. Pacific Gateway Business Center, a 50.3-acre site adjacent to the Boeing Seal Beach location near the intersection of Westminster Avenue and Seal Beach Boulevard, is currently under development by Overton Moore Properties. The development plan calls for 826,280 square feet of new commercial and industrial space on land formerly owned by Boeing. Phase I of the project opened in 2006, and Phase II is expected to be completed by late spring or early summer of 2007.

DWP Site. A large tract of vacant land lies immediately to the west of the San Gabriel River, bordered by Marina Drive on the north, 1st Street on the west, and the beach on the south. Approximately 9 acres is owned by the Department of Water and Power, with the remainder owned by unrelated private parties. In the late 1990s, a specific plan was developed for the DWP-owned property, permitting hotel and hotel-accessory service uses. The site remains undeveloped. Representatives of the City have suggested that, despite significant interest in the site for both hotel and residential uses, the property remains undeveloped due to large greenbelt requirements in the specific plan, which limit the amount of developable space.

COASTAL COMMISSION

EXHIBIT # 7
PAGE 11 OF 17



COMMERCIAL DEMAND

Analysis of Retail Sales

ERA examined data from the California State Board of Equalization on taxable retail sales in order to evaluate the sales performance of Seal Beach establishments. Figure 8 shows sales and business permit data for the City of Seal Beach and the entirety of Orange County. While the number of retail permits in Seal Beach is generally between 45 and 55 percent of total permits, retail sales account for a substantially higher proportion of total sales, ranging between 75 and 85 percent of taxable commercial sales. This indicates that the majority of sales in the city are going to retail establishments. Stated another way, retail establishments capture a significant majority of dollars spent in the city.

Figure 8
TAXABLE SALES

Year	Seal Beach				Orange County			
	Retail Outlets		Total All Outlets		Retail Outlets		Total All Outlets	
	Permits	Sales	Permits	Sales	Permits	Sales	Permits	Sales
2000	251	\$ 126,447	573	\$ 170,523	33,665	\$ 27,484,989	92,716	\$ 44,462,460
2001	248	159,139	573	198,966	36,305	28,518,701	94,079	44,595,314
2002	271	182,492	596	217,319	38,209	29,646,818	96,183	44,869,156
2003	297	217,860	606	266,912	40,852	32,287,697	100,039	47,517,066
2004	317	233,129	603	306,259	43,310	35,441,953	101,508	51,682,059
2005	330	243,983	591	305,700	45,402	37,672,834	102,858	55,063,246

Note: Sales are in nominal dollars.

Source: California Department of Finance, Economic Sciences Corporation, and Economics Research Associates

Figure 9 provides a graphical snapshot of the retail data for the City of Seal Beach. As can be seen in the graph, growth in both retail permits and retail sales has been steady for the period 2000 to 2005. The slight flattening in the retail permits growth in the year 2001 may be attributable to the economic shock caused by the events of September 11, 2001. Retail sales totals did not seem to be particularly affected by this event.

Figure 10 provides a comparison of retail sales per type of outlet for Seal Beach versus Orange County for the year 2005, which represents the most current data available. Due to reporting concerns regarding confidentiality, it is not possible to obtain a more detailed breakdown of sales for the City of Seal Beach (e.g., Women's Apparel, Men's apparel, etc.). The "Other Retail Stores" category includes specialty stores, which is one of the major visitor-serving categories. Specialty stores include vendors of gifts, arts and novelties; sporting goods; florists; photographic equipment and supplies; musical instruments; stationary and books; office, store, and school supplies; and other specialty items.

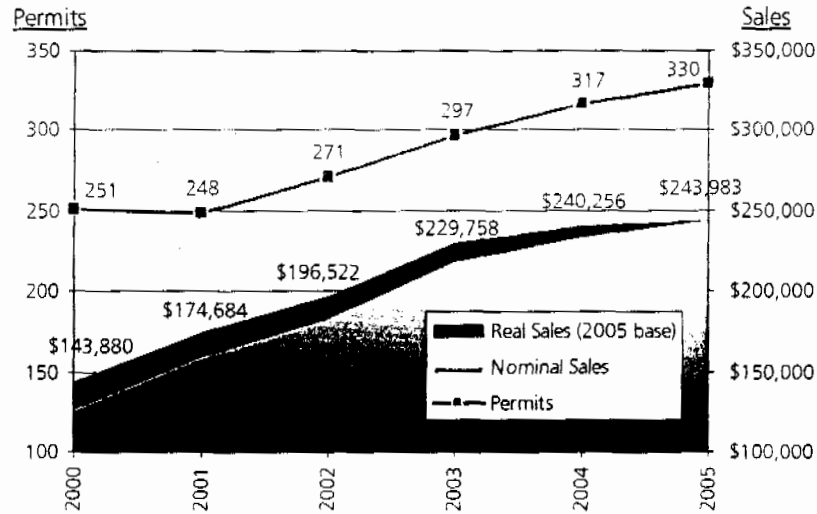
In the retail categories for which data is available, Seal Beach regularly outperforms Orange County in terms of sales per outlet in the visitor serving

COASTAL COMMISSION

EXHIBIT # 7
PAGE 12 OF 17

categories of food, eating and drinking places, home furnishings and appliances, and other retail stores.

Figure 9
SEAL BEACH RETAIL GROWTH: PERMITS, REAL AND NOMINAL SALES



Source: California Department of Finance, US Bureau of Labor Statistics (CPI-U Western Region All Items), Economic Sciences Corporation, and Economic Research Associates

COASTAL COMMISSION

EXHIBIT # 7
PAGE 13 OF 17



VISITATION

The City of Seal Beach contains 1.5 linear miles of beach frontage extending eastward from the San Gabriel River to Seal Beach Boulevard, interrupted by the entrance to Anaheim Bay, and continuing on to the western boundary of Anderson Street. On the northwest, the San Gabriel River serves as the geographic boundary that separates the cities of Seal Beach and Long Beach, and the counties of Orange and Los Angeles. On the Southeast, Anderson Street separates Surfside Colony, a private gated community in Seal Beach, from Sunset Beach in the City of Huntington Beach.

Beach Facilities

Seal Beach is the primary visitor attraction in the area. Seal Beach Municipal Pier is a city-maintained facility located at the base of the Main Street shopping area. It currently offers sport- and pier- fishing facilities and a restaurant located at the end of the pier, over the water. Adjacent to the pier is the 1.4-acre Eisenhower Park and a major retail destination, the Main Street shopping district. Public parking facilities are located at First Street, Eighth Street and Tenth Street.

Figure 10
RETAIL SALES BY TYPE OF BUSINESS – 2005

Type of Business	Seal Beach		Orange County		Sales /Outlet		Index SB/OC
	Permits	Total Sales	Permits	Total Sales	Seal Beach	Orange County	
Retail Stores							
Apparel stores	30	#	4,083	2,062,892	-	505.24	-
General merchandise stores	24	#	1,794	5,467,357	-	3,047.58	-
Food stores	12	15,180	1,599	1,716,228	1,265.00	1,073.31	118%
Eating & drinking places	84	63,033	7,716	4,798,676	750.39	621.91	121%
Home furnishings and appliances	13	17,501	3,356	2,269,650	972.28	588.60	165%
Building Mtrls. & Farm Impl.	5	3,528	1,203	3,165,171	665.60	3,155.70	21%
Auto dealers and auto supplies	1	#	2,414	7,728,809	-	3,201.66	-
Service Stations	13	44,582	662	3,554,347	3,429.38	5,369.10	64%
Other Retail Stores	143	100,359	22,275	6,909,704	701.81	310.20	226%
Retail Stores Totals	330	\$ 243,983	45,402	\$ 37,672,834	\$ 739.34	\$ 829.76	89%
All Other Outlets	261	61,717	37,456	17,390,412	236.46	302.67	78%
Total All Outlets	591	\$ 305,700	102,858	\$ 55,063,246	\$ 517.26	\$ 535.33	97%

Notes:

Total Sales are in \$000s

- Sales omitted because their publication would result in the disclosure of confidential information.
Values are included in Other Retail Stores category when possible

Source: California Department of Finance and Economics Research Associates

COASTAL COMMISSION

EXHIBIT # 7
PAGE 14 OF 17



Beach Traffic

Visitor traffic to the pier and beaches in Seal Beach varies based on several conditions, primarily season, weather and the economy. Although precise attendance figures are not yet available for 2006, the Seal Beach Lifeguard Department estimates that pier and beach attendance exceeded two million visitors. More specific annual attendance figures for the prior five year period are provided in Figure 11.

Figure 11

ANNUAL BEACH ATTENDANCE – CITY OF SEAL BEACH

Year	Attendance
2001	2,136,830
2002	1,996,042
2003	1,899,333
2004	1,973,600
2005	2,157,643

Source: United States Lifesaving Association

The Lifeguard Department estimates that the majority of beach visits occur during the summer, from mid-June through mid-September. Visitation slows down from October to February, and then from March builds gradually to the summer peak.

Beach users include both local and out-of-town visitors. Types of use include surfing, body boarding, windsurfing, kite surfing, swimming, beach combing, and general beach going. Seal Beach residents typically use the beach to the south of the pier. Local teens tend to congregate to the immediate south of the pier, with local families locating further south. Non-local visitors tend to congregate near the public parking facilities. During the summer months, surfers are restricted to the northern end of the beach, between the San Gabriel River and Fourth Street, from 10:00 a.m. to 6:00 p.m.

Visitor Accommodations

There is one lodging facility located within the boundaries of the City of Seal Beach: the 70-room Pacific Inn, located at the corner of Marina Drive and the Pacific Coast Highway, two blocks from the subject property. Within a 1- to 3-mile radius, there are four additional hotel/motel facilities:

- Seaport Marina Hotel, Long Beach
- Best Western Golden Sails, Long Beach
- SRS Hotels, Long Beach
- Ocean View Motel, Huntington Beach
- Pacific View Inn and Suites, Huntington Beach

In terms of the larger coastal supply of lodging facilities in Seal Beach, Long Beach, Sunset Beach, and Huntington Beach, a recent study by PKF Consulting indicates an inventory of 7,100 rooms available in 78 facilities. Of these facilities, 13 are considered waterfront or ocean-proximate, and provide 1,791 rooms. Market occupancy for this subset of facilities has ranged from 60-70 percent between 2000 and 2005. In 2005, the aggregate occupancy rate was 69.7 percent, a 3.7 percent increase from 2004. Compared to other coastal areas, such as Santa Monica and San Diego, which generally have occupancy rates in the mid-70s to low-80s, the market in and around Seal Beach is weak and has room to accommodate significant growth.

Indicative of this trend, the Seal Beach Inn and Gardens, a 23-room facility that was located in Seal Beach, closed in the summer of 2006.

There are, however, a number of hotel rooms in the pipelines. The City of Seal Beach has proposed at 110-room Hampton Inn hotel on a site formerly owned by Boeing. Construction is slated to begin in March 2007. A ten-room bed and breakfast facility has also been approved at 308 7th Street in Seal Beach, and is projected to open in late 2008. Furthermore, there are a number of other large hotel facilities projected to open in the next five years, totaling 670 additional rooms, including the Seal Beach properties enumerated above.

COASTAL COMMISSION

EXHIBIT # 7
PAGE 16 OF 17

APPENDIX A HISTORICAL USE OF SUBJECT PROPERTY

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PAGE 02/02

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PAGE 02/02



City of Seal Beach

BY FACSIMILE (562) 590-5084
AND FIRST CLASS MAIL

FILE COPY

December 11, 2006

Mr. Ferno Sy
California Coastal Commission
200 Oceanview, Suite 1000
Long Beach, CA 90802-4502

Dear Mr. Sy:

SUBJECT: CDP APPLICATION NO. S-06-328
400 MARINA DRIVE - SEAL BEACH
CLARIFICATION ON CURRENT USE OF PROPERTY

Based on a review of a property survey conducted by the Planning Department of the City of Seal Beach in April, 1979, the above referenced property was being utilized as a 10-unit apartment building at that time, and has been so utilized to the current time. The City has not been able to confirm what the use of the structure was prior to that date.

If you have any questions regarding this matter, please contact my office at your earliest convenience. I can be reached at (562) 431-2527, ext. 313 or by e-mail at lwhitmanberg@cityofsealbeach.ca.us.

Sincerely,



Lea Whitmanberg
Director of Development Services

CC: Alan Schwendener FAX: (562) 856-3255

COASTAL COMMISSION

Copy Document Coastal Commission 400 Marina Drive Property Use Case No. S-06-328-1-05

EXHIBIT # 7

PAGE 17 OF 17 The Schwendener Company



Economics Research Associates

RECEIVED
South Coast Region

OCT 5 2007

Memorandum

CALIFORNIA
COASTAL COMMISSION

Date: September 30, 2007
To: Alan Schwendener, The Schwendener Company
From: Michael A. Wright
RE: Assessment of 400 Marina Drive Site for Hotel Development
ERA No. 17488

On February 28, 2007, Economics Research Associates (ERA) submitted a memorandum outlining our opinion of the market viability for commercial development on the 400 Marina Drive site in the City of Seal Beach. Our analysis of the site focused primarily on its suitability as a location for visitor-serving retail and commercial service uses.

Our assessment concluded that the property was generally a poor location for non-residential commercial development in general due to the following reasons:

- Low drive-by and pedestrian traffic hampers the site for retail business viability.
- The parcel size (13,667 square feet) is physically constrained for contemporary retail facility development standards.
- The site is isolated from the primary commercial areas already established in Seal Beach. It is roughly one-third mile from the visitor-serving commercial areas along Main Street and Pacific Coast Highway.
- After analyzing recent Seal Beach retail store sales statistics provided by the State of California, we concluded that the City of Seal Beach is presently well served by its existing commercial and retail base and there are no obvious areas of unmet retail demand.
- We believe that it would be difficult to attract a speculative retail developer to purchase the site as well as retailers who would choose this location.

The August 16, 2007 Staff Report to the California Coastal Commission that reviewed the proposed Schwendener residential project does not contest ERA's opinion that the site lacks sufficient retail location criteria necessary for a successful visitor-serving retail business operation. However, the staff report implies that the 400 Marina site would be appropriate for overnight visitor accommodations such as a hotel, motel or a bed and breakfast (B&B) facility.

Specifically, the staff report states (paraphrased):

While Main Street provides many visitor-serving commercial uses such as t-shirt shops and walk up restaurants, no overnight accommodations are located on Main Street and also there are no undeveloped lots of sufficient size available for overnight accommodations on Main Street. While the project site is currently used for 10-unit apartment rentals, the project site is well suited for visitor-serving commercial use ... and would be an appropriate

COASTAL COMMISSION

EXHIBIT #

8

PAGE 1 OF 7

10990 Wilshire Boulevard Suite 1500 Los Angeles, CA 90024

310.477.9585 FAX 310.478.1950 www.econres.com

Los Angeles San Francisco San Diego Chicago Washington DC New York London

size to accommodate visitor-serving commercial uses such as a hotel, motel or bed and breakfast.

ERA has been asked by the Applicant, Alan Schwendener, to evaluate the 400 Marina site for its commercial viability as a hotel, motel or B&B property.

Assessment of Site Development Opportunities for New Construction

Discussions with the City's Planning Department staff have indicated that Seal Beach's zoning code does not allow for the construction of new structures designated for use as a Bed and Breakfast (B&B) Inn. According to City building codes, a B&B must be a renovation of a pre-1925 residential structure, effectively eliminating this option for development at the 400 Marina Drive site.

In theory, a hotel or motel operator could demolish the existing structure and build a new facility on the site. Current city parking standards indicate that there must be one parking space provided for each hotel room developed. At 13,667 square feet, the site is a tight fit for a hotel structure and incorporated parking.

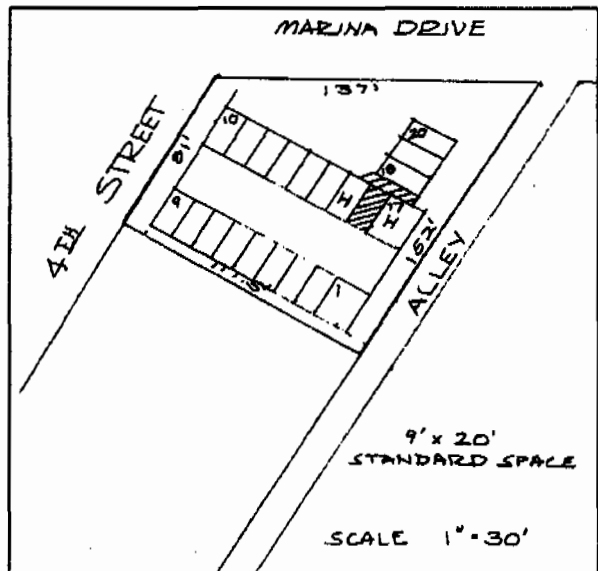
Given the city's parking requirements, the most likely development for a new hotel or motel structure would be to develop a two-story podium over surface parking. Assuming an average floor height of 12 feet, such a structure would be in keeping with the City's height limits for new development in this area.

The City's Planning Department staff provided a rough parking layout for the 400 Marina Drive site based on its use as a hotel. The layout complies with all City standards for space size, internal circulation and access from the alley. It assumes a small space on the ground floor of the structure for registration and an elevator to access all guest rooms located on second and third floor levels.

A maximum of 20 surface parking spaces can be accommodated on this site. At the one-to-one requirement of rooms to parking spaces, this implies a maximum of no more than 20 hotel rooms possible under the City's building and zoning codes.

ERA is not aware of any hotel operators that would build such a small facility for a new hotel. A very small facility for a chain hotel operator would be 40-to-45 rooms. A

typical development scenario for a small hotel would be a 45 room, two-story structure on a site of roughly one-half to three-quarters of an acre in size. At a maximum potential of no more than 20 rooms, it is highly unlikely that a hotel operator will be interested in developing a new hotel on this site as the revenue potential from the hotel would not sufficiently off-set the costs associated with development and land acquisition.



The illustrative proforma shown on Exhibit 1 shows why this would be the case.

COASTAL COMMISSION

EXHIBIT # 8
PAGE 2 OF 7

Impact of Hotel Development and Operating Economics on Land Value

We have assumed a 20-room hotel property with a small amount of space for a registration area, common hallways and an elevator. This comes to a structure of approximately 8,050 square feet. Construction costs have been estimated using construction industry cost guides adjusted for building size and regional location. Total estimated construction costs are \$1.8 million or \$92,400 per room.

We have assumed that the hotel would operate at an average 70 percent occupancy rate in congruence with other Seal Beach hotel properties and would be able to command an average daily rate (ADR) of \$120 per room. The \$120 ADR is comparable with the rates charged by the Pacific Inn in Seal Beach and may actually be on the high side due to the lack of guest amenities that the small hotel would have compared to the local competition. Annual operating costs for a typical small hotel (e.g. one that lacks restaurant and meeting room space) are also shown in the pro forma.

From this information, we are able to estimate what the underlying site would be worth to a prospective hotel developer looking to acquire the property. First, we estimate what the market value of the hotel would be after it is built and operational. Projected net operating income is divided by a market capitalization (cap) rate. The cap rate is a current market standard rate used by investors to value hotel properties. We estimate that the 20-room hotel property as outlined above would be worth \$2.5 million in current year dollars.

In order to estimate the underlying or residual land value, all costs of development (including developer profit but not including land acquisition costs) are subtracted from the capitalized value. The resulting value is the maximum price that a hotel developer would be willing to pay for the land. In this case, it is \$440,000 or \$32 per square foot.

What is commercial land worth? Due to the built up nature of Seal Beach and the adjacent coastal communities, there are very few recent examples of land sales for commercially-zoned land. Most recent activity has been for residential land or industrially-zoned land located nearby in Long Beach; or finally, for larger lots (an acre or more) which have been cleared and put on the market. There have been no recent commercial land sales for sites less than an acre in Seal Beach, nor are we aware of any currently on the market. Therefore, we have looked at commercial land for sale in adjacent coastal communities for our comparables.

Exhibit 2 presents a sample of current asking prices for small parcels (under an acre) that are zoned for commercial development. These prices vary widely depending on city and location and range from a low of \$63 per-square-foot in San Pedro to a high of \$413 per square foot for a small lot on 2nd Street in the Belmont Shore area of Long Beach.

Our illustrative pro forma indicates that for the 400 Marina site, given its density restrictions, a hotel developer could pay no more than \$32 per-square-foot for the land in order to make a market rate of return on his/her investment. The \$32 PSF ceiling is considerably lower than current market value of the site as a commercial property. The economics of hotel development and current ADR's in the local market do not support hotel development on such a small scale.

Allowable density on the subject site drives (or restricts) land value. The pro forma shown in the second column illustrates this. We have assumed that the City's height and density limits for the 400 Marina site are relaxed so that a 40-unit project is possible. The extra density allows for greater income generation and thus, greater investment value. This results in a residual land value of \$72 per-square-foot.

COASTAL COMMISSION

EXHIBIT # 8
PAGE 3 OF 7

This value is still likely to be on the low end of commercial land values for the site; however, it shows that in order for a new hotel property to justify construction, the builder can only afford to pay a certain amount of money for land and the currently allowable density for this site precludes paying market value for the land. A successful development requires a use which can justify higher returns within the density envelopment prescribed by the City.

Assessment of Site Development Opportunities for Renovation of the Existing Structure

The August staff report implies that the existing apartment structure could be renovated and operated as a small motel property. The final pro forma column shows the economics of this proposal and its impact on land value.

We have assumed that a renovated motel would result in 10 rooms plus associated parking and a small registration area. The structure would be a single-story building with surface parking. The existing building is in poor condition and is in need of significant renovation and upgrading in order to achieve modern lodging standards. We are not aware of an actual renovation cost estimate for the property, but have assumed a very conservative estimate for the pro forma illustration. We have assumed that renovation costs will be 30 percent of the cost to build new for a total of just over \$460,000. In order to appropriately renovate the property, it is likely that the costs would be much higher. ADR is estimated at \$95 based on similar rates for other coastal motel properties such as the Ocean View Motel on PCH in Huntington Beach.

The resulting pro forma indicates that at best, a motel developer would pay no more than \$30 per-square-foot for the site. If the costs to renovate the property were greater than \$460,000, the resulting residual land value would be smaller.

Condo-Hotel Development Option

A condo-hotel facility is an additional form of visitor accommodation which could be considered for the site. The term 'condo-hotel' refers to a block of condominium suites which are furnished to a hotel standard, operated by a hotel management company and sold to individual buyers who then have the option of placing their unit in the hotel inventory when they are not using it. This serves to generate annual income to offset the costs of ownership.

The attraction of the condo-hotel product model to developers is a function of its capacity to create hotel inventory at a lower risk and drive an instant return on an investment that might otherwise demand an 8 to 12-year payback period. For major international operators who have generally advocated an 'asset-light' strategy in recent years, it provides an opportunity to grow their portfolios into new destinations without the need for equity investment. Essentially the operators are adapting to trends in developer strategies and are attracted by the prospect of upfront sales commission payments for the use of their brand.

In certain US destinations, condominiums have been an enduring and popular form of second-home ownership and condo-hotels are simply an extension of this concept, as units are sold within or adjacent to a hotel operation and benefit from the range of on-site services. The second-home aspect is further reinforced by local restrictions that many cities place on owners of the condo units. Owners typically can use their rooms for a maximum of 90 days each year and are expected to rent them out the rest of the time.

COASTAL COMMISSION

EXHIBIT # 8
PAGE 4 OF 7

Strongest demand, and consequently developer activity, in North America has been in resort environments with attractive year-round climates, or four-season appeal (in the case of ski resorts). This makes Florida, Las Vegas, Arizona and the upscale ski-resorts like Aspen, Vail and Whistler the current hotspots for the concept. Additional locations where this has worked have been cosmopolitan urban areas such as Manhattan or San Francisco. In Southern California, projects have been approved for ocean-adjacent locations in Hermosa Beach, Rancho Palos Verdes and Encinitas.

A condo-hotel project depends on its association with a strong and attractive hotel brand. A condominium-hotel property must work as a hotel if it has any chance of working as a condominium hotel. It needs the same strengths: good location and brand, strong management and staff, essential services, attractive amenities.

As was the case with a more traditional hotel development, the 400 Marina site is simply too small for any condo-hotel developer to consider. The 20-unit scenario discussed earlier assumed very small rooms of 350 square feet. In order to be attractive to buyers, the units would need to be 550 to 650 square feet at a minimum in order to accommodate families. Increasing the unit size would limit the number of units in the overall building structure due to the City's height limitations on new development so that the overall unit count would likely lowered to 10 or 12 units total.

CONCLUSIONS

We believe that the site's location, small lot size and density limitations precludes it from being a desirable location for either a new or renovated hotel/motel property, as well as a hybrid use such as a condo-hotel. Additionally, it is very unlikely that a hotel developer could be found who would be interested in this property if he/she had to pay current commercial land market rates for the property unless additional density could be accommodated on the site.

COASTAL COMMISSION

EXHIBIT # 8
PAGE 5 OF 7

Exhibit 1
SMALL HOTEL DEVELOPMENT PROFORMAS

	BUILD NEW HOTEL PROPERTY			Renovate Existing Property for Motel
	Maximum # of Rooms Allowed by City Zoning	Development Density Not Capped by Code		
HOTEL PROGRAM				
Site Area	13,667 SF	13,667 SF		13,667 SF
Total Number of Rooms	20	40		10
Average Room SF	350 SF	350 SF		464 SF
Total Room SF	7,000 SF	14,000 SF		4,640 SF
Non-Room SF	15% of total	15% of total		10% of total
Total Common Area	1,050	2,100		464
Total SF	8,050	16,100		5,104
Parking Spaces Req'd	20	40		10
Type of Parking	Surface Under Podium	2-Level Podium		Surface Lot
# of Floors Above Ground Floor	2 Floors Above Grd Floor	4 Floors Above Grd Floor		Single level at Ground
Approx Bldg Height Assuming Avg Story Height of 12 feet	36 feet	60 feet		12 feet
DEVELOPMENT COSTS				
Build New - Hard Costs	\$ 150 PSF	\$ 147 PSF	\$ 152 PSF	
Rennoation Costs - % of Build New			30%	
Hard Cost Estimate Used	\$ 150 PSF	\$ 147 PSF	\$ 45 PSF	
FF&E	\$ 18,000 per room	\$ 18,000 per room	\$ 15,000 per room	
Elevator (1)	\$ 53,000	\$ 53,000	\$ -	
Lights, Security, Communications	\$ 25,000	\$ 25,000	\$ 25,000	
Parking Costs Per Space	\$ 1,700	\$ 3,000	\$ 1,500	
TOTALS				
Construction / Renovation	\$ 1,207,500	\$ 2,366,700	\$ 231,977	
FF&E	\$ 360,000	\$ 720,000	\$ 150,000	
Parking	\$ 34,000	\$ 120,000	\$ 15,000	
Equipment	\$ 78,000	\$ 78,000	\$ 25,000	
Total	\$ 1,679,500	\$ 3,284,700	\$ 421,977	
Soft Costs as % of Hard	10%	10%	10%	
Soft Cost Total	\$ 167,950	\$ 328,470	\$ 42,198	
Total Development Cost	\$ 1,847,450	\$ 3,613,170	\$ 464,174	
Per Room	\$ 92,373	\$ 90,329	\$ 46,417	
OPERATING				
Occupancy	70%	70%	70%	
Average Daily Room Rate	\$ 120	\$ 120	\$ 95	
Annual Room Revenues	\$ 613,200	\$ 1,226,400	\$ 242,725	
Other Revenues @ 8% of Room Revenues	\$ 49,056	\$ 98,112	\$ 19,418	
Total Revenues	\$ 662,256	\$ 1,324,512	\$ 262,143	
Distributed Expenses @ 25% of Gross Sales	\$ (165,564)	\$ (331,128)	\$ (65,536)	
Undistributed Expenses @ 27% of Gross Sales	\$ (178,809)	\$ (357,618)	\$ (70,779)	
Management Fee @ 3% of Gross Sales	\$ (19,868)	\$ (39,735)	\$ (7,864)	
Fixed Expenses				
Property Taxes @ 1.1% of Mkt Value	\$ (27,382)	\$ (54,845)	\$ (10,103)	
Insurance @ 1.0% of Development Costs	\$ (16,795)	\$ (32,847)	\$ (4,220)	
Reserves @ 4.5% of Gross Sales	\$ (29,802)	\$ (59,603)	\$ (11,796)	
Total Expenses	\$ (438,220)	\$ (875,777)	\$ (170,298)	
VALUATION				
Net Operating Income	\$ 224,036	\$ 448,735	\$ 91,845	
Market Cap Rate	9.0%	9.0%	10.0%	
Capitalized Value	\$ 2,489,294	\$ 4,985,944	\$ 918,452	
Less Return on Cost @ 12%	\$ (201,540)	\$ (394,164)	\$ (50,637)	
Less Development Costs	\$ (1,847,450)	\$ (3,613,170)	\$ (464,174)	
Residual Land Value	\$ 440,304	\$ 978,610	\$ 403,640	
\$PSF (rounded)	\$ 32 PSF	\$ 72 PSF	\$ 30 PSF	

COASTAL COMMISSION

Source for Construction Costs: RSMeans Square Foot Cost Guide, 2006

EXHIBIT # 8
PAGE 6 OF 7

Exhibit 2
Current Asking Price for Small Lot Commercial Land in Adjacent Coastal Areas

Site Location	City	Asking Price	Site Area (sf)	\$PSF
406 N. Gaffey St	San Pedro	\$ 950,000	14,941	\$ 63.58
1730 Long Beach Blvd	Long Beach	\$ 895,000	13,020	\$ 68.74
3527 E. PCH	Signal Hill	\$ 2,770,000	39,567	\$ 70.01
311 N. Gaffey St	San Pedro	\$ 1,199,000	15,682	\$ 76.46
318 3rd St	Huntington Beach	\$ 1,400,000	5,875	\$ 238.30
2nd Street - Belmont Shores	Long Beach	\$ 900,000	2,178	\$ 413.22

Source: LoopNet.com

COASTAL COMMISSION

EXHIBIT # 9
 PAGE 7 OF 7

RECEIVED
South Coast Region

OCT 10 2007

CALIFORNIA
COASTAL COMMISSION

October 1, 2007

Re: 400 Marina Dr., Seal Beach

To whom it may concern,

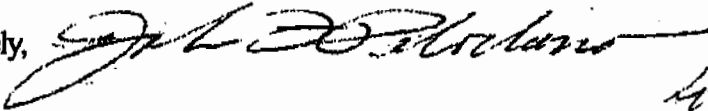
Until selling the property to Mr. Schwendener in November of 2005, our family owned 400 Marina since 1971. When our family purchased the property it was being used a residential apartment building, we continued to use it as such throughout the time we owned it. In the years we owned the property we received many solicitations to sell.

In 2004 we became serious about selling the property. Over the course of the year, prior to selling to Mr. Schwendener, we had many inquiries and received offers from 12 very interested buyers.

All the interested parties knew that the property was zoned commercial, but intended to seek an approval to subdivide for the purpose of building residential housing.

In all the years we owned the property, we never had a potential buyer interested in purchasing the property for commercial or motel use.

Sincerely,



John Pelochino

The sale of 400 Marina Dr. sold by the Pelochino Family on November 18, 2005

COASTAL COMMISSION

EXHIBIT #

9

PAGE

1

OF

1

Ernst & Haas
MANAGEMENT CO.
Residential & Commercial Real Estate

RECEIVED
South Coast Region

OCT 5 2007

CALIFORNIA
COASTAL COMMISSION

October 5, 2007

Re: 400 Marina, Seal Beach, Ca.

To Whom It May Concern:

We currently manage the Marina property and have been doing so since Mr. Schwendener took ownership in November of 2005.

Mr. Schwendener has requested an estimate for construction costs to bring the current 10 unit building up to a condition necessary to accommodate overnight visitor housing.

The structure appears to be a 1940's era construction that has had little or no upgrades. In order to make the property suitable for motel type use a complete remodel is needed. Including:

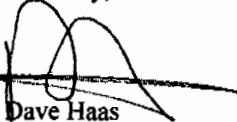
- Plumbing
- Heating
- Electrical
- Roof
- Windows
- Siding
- Walks
- Driveway
- Parking area
- Landscaping
- Structural
- Mold/asbestos abatement
- Sewer system
- Signage
- Create office/lobby area

The creation of an office/lobby area would likely result in loss of one of the existing units.

It is our estimate that the cost of this complete remodel would be about \$120-135 per square foot. Additionally, this would reduce the number of marketable units from 10 to 9. The total cost for remodeling the existing 4,000 square foot structure would be between \$480,000 to \$535,000.

If you have any questions or need further clarification, please do not hesitate to contact me.

Sincerely,



Dave Haas

COASTAL COMMISSION

EXHIBIT # 10
PAGE 1 OF 1

AUG 24 2007

SUMMARY OF CITY POSITION

COASTAL COMMISSION

CALIFORNIA
COASTAL COMMISSION

Application No. 5-06-328
400 Marina Drive Seal Beach

EXHIBIT # 11
PAGE 1 OF 2

AFFORDABLE HOUSING CONCERNS:

The sections of the Staff Report cited, Sections 30604(f) and (g) of the Coastal Act (Pub. Res. Code § 30000 et seq.) do not provide any basis for denial of the application by the Coastal Commission for the following reasons:

- The Coastal Commission lost permit jurisdiction over affordable housing in 1981.
- Sections 30604(f) and 30604(g) of the Coastal Act do not provide regulatory authority for the Commission to re-regulate affordable housing in the Coastal Zone.
- Sections 30604(f) and 30604(g) are not "*Coastal Policies*", and therefore cannot be the basis for denial of a permit.
- The Commission cannot deny or condition the CDP under Section 30607 of the Coastal Act with respect to Sections 30604(f) and 30604(g).

CHAPTER 3 POLICIES COMPLIANCE CONCERNS:

This project is consistent with the Chapter 3 policies of the Coastal Act because it is "*not feasible*" to provide visitor-serving commercial uses, and in particular overnight accommodations, on the subject property for the following reasons:

- This site cannot support viable commercial uses, as indicated in the "*Visitor Serving Commercial Market Conditions – Seal Beach Coastal District*" Study prepared by Economics Research Associates, dated March 5, 2007;
- The Site and proposed development are compatible and consistent with adjoining residential uses, as also indicated in the "*Visitor Serving Commercial Market Conditions – Seal Beach Coastal District*" Study prepared by Economics Research Associates, dated March 5, 2007;
- The natural forces of a free market economy have determined for approximately 30 years that it is not feasible to operate a visitor-serving or overnight accommodation use on the site, which has been zoned for such a use since at least 1963;
- At the same time the natural forces of a free market economy have determined that it is feasible to expand overnight accommodations at an appropriate and feasible location within the Coastal Zone within the last 2 years by 93%;
- The location not located on an appropriate street to accommodate "*visitor-serving*" uses;
- The location experiences very low traffic volumes, not sufficient for viable visitor-serving commercial, including overnight accommodation uses;
- Site constraints including irregular shape, 15-foot alley width separation from existing residential uses, parking and site visibility;
- Retail marketing performance standards do not exist;
- The project fits with the desires of the community; and

- Existing underperformance of overnight accommodation occupancy rates acts as a de-facto vacancy rate; resulting in no demand by the private sector for new overnight accommodation uses in this area of the Coastal Zone for at least the past 28 years.

This project is consistent with Coastal Act Sections 30250, 30252 and 30253 as the project:

- Is located contiguous to existing residential development on 4 sides (Section 30250);
- Can easily accommodate the proposed uses in conformance with all current development standards of the City (Section 30250);
- Eliminates a non-conforming and under-utilized property (Section 30250);
- Will not have any impact on coastal resources (Section 30250);
- Provides adequate parking (Section 30252);
- Will have no detrimental effect on nearby coastal recreational areas (Section 30252); and

COASTAL COMMISSION

EXHIBIT # 11
PAGE 2 OF 2

City of Seal Beach



CITY HALL 211 EIGHTH STREET
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BY OVERNIGHT MAIL AND FACSIMILE

COPY TO PETER M. DOUGLAS, SHERILYN SARB,
AND THERESA HENRY IN COMPLIANCE WITH EX
PARTE COMMUNICATION REQUIREMENTS

August 28, 2007

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South Coast Region

SEP 27 2007

W15c

Patrick Kruer, Chairperson
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco CA 94105-2219

CALIFORNIA
COASTAL COMMISSION

Dear Chairperson Kruer and Commissioners:

SUBJECT: **Application No. 5-06-328**
400 Marina Drive Seal Beach

The City of Seal Beach requests the Commission approve this application in conformance with the Chapter 3 policies of the Coastal Act. In reviewing the Commission Staff Report, the City believes the analysis and conclusions of staff are incomplete and not in accordance with the provisions of Chapter 3.

The City asserts the **Inability of the Coastal Commission to Regulate "Affordable Housing" in the Coastal Zone pursuant to Public Resources Code Sections 30604(f), 30604(g) and 30607.** The City of Seal Beach is extremely concerned regarding the position of Commission staff regarding this issue as set forth on pages 8 and 9 of the Staff Report. We have asked our City Attorney to review and provide comments on this issue and that letter is provided for the record also. We will summarize the position of the City Attorney briefly below but request that the Commission carefully review the detailed position of our City Attorney.

COASTAL COMMISSION

EXHIBIT # 12
PAGE 1 OF 15

**City Summary of Inability of Coastal Commission to Regulate
"Affordable Housing" in the Coastal Zone – Public Resources Code
Sections 30604(f), 30604(g) and 30607:**

The sections of the Staff Report cited, Sections 30604(f) and (g) of the Coastal Act (Pub. Res. Code § 30000 *et seq.*) do not provide any basis for denial of the application by the Coastal Commission for the following reasons:

- The Coastal Commission lost permit jurisdiction over affordable housing in 1981.
- Sections 30604(f) and 30604(g) of the Coastal Act do not provide regulatory authority for the Commission to re-regulate affordable housing in the Coastal Zone.
- Sections 30604(f) and 30604(g) are not "*Coastal Policies*", and therefore cannot be the basis for denial of a permit.
- The Commission cannot deny or condition the CDP under Section 30607 of the Coastal Act with respect to Sections 30604(f) and 30604(g).

The City is also of the opinion that the analysis set forth in Section B, "*Visitor-Serving Commercial Use*", and Section C, "*Density*" cannot be utilized as a basis for denial of this application. Our reasons are set forth below in a summary and are discussed in greater detail in the body of this letter.

**City Summary of Project Consistency with Chapter 3 Standards
relating to "Visitor-Serving Commercial Use – Public Resources Code
Sections 30213 and 30222:**

This project is consistent with the Chapter 3 policies of the Coastal Act because it is "*not feasible*" to provide visitor-serving commercial uses, and in particular overnight accommodations, on the subject property for the following reasons:

- This site cannot support viable commercial uses, as indicated in the "*Visitor Serving Commercial Market Conditions – Seal Beach Coastal District*" Study prepared by Economics Research Associates, dated March 5, 2007;
- The Site and proposed development are compatible and consistent with adjoining residential uses, as also indicated in the "*Visitor Serving Commercial Market Conditions – Seal Beach Coastal District*" Study prepared by Economics Research Associates, dated March 5, 2007;
- The natural forces of a free market economy have determined for approximately 30 years that it is not feasible to operate a visitor-serving or overnight accommodation use on the site, which has been zoned for such a use since at least 1963;
- At the same time the natural forces of a free market economy have determined that it is feasible to expand overnight accommodations at an appropriate and feasible location within the Coastal Zone within the last 2 years by 93%;

COASTAL COMMISSION

EXHIBIT # 12
PAGE 2 OF 15

- The location not located on an appropriate street to accommodate “visitor-serving” uses;
- The location experiences very low traffic volumes, not sufficient for viable visitor-serving commercial, including overnight accommodation uses;
- Site constraints including irregular shape, 15-foot alley width separation from existing residential uses, parking and site visibility;
- Retail marketing performance standards do not exist;
- The project fits with the desires of the community; and
- Existing underperformance of overnight accommodation occupancy rates acts as a de-facto vacancy rate; resulting in no demand by the private sector for new overnight accommodation uses in this area of the Coastal Zone for at least the past 28 years.

City Summary of Project Consistency with Chapter 3 Standards relating to “Density” – Public Resources Code Sections 30250, 30252, and 30253:

This project is consistent with Coastal Act Sections 30250, 30252 and 30253 as the project:

- Is located contiguous to existing residential development on 4 sides (Section 30250);
- Can easily accommodate the proposed uses in conformance with all current development standards of the City (Section 30250);
- Eliminates a non-conforming and under-utilized property (Section 30250);
- Will not have any impact on coastal resources (Section 30250);
- Provides adequate parking (Section 30252);
- Will have no detrimental effect on nearby coastal recreational areas (Section 30252); and
- Minimizes energy consumption (Section 30253).

Detailed Discussion of Issues Raised in Commission Staff Report:

Below is a more detailed discussion of the issues raised by the Commission Staff Report and the comments and concerns of the City of Seal Beach regarding those matters.

Section B – “Visitor-Serving Commercial Use”:

Commission staff takes the position that:

“ . . . the project site is well suited for visitor-serving commercial use because of the following:

- 1) the lot size of 13,667 is larger than most in the area and would be an appropriate size to accommodate visitor-serving

COASTAL COMMISSION

EXHIBIT # 12
PAGE 3 OF 15

- commercial uses such as a hotel, motel or bed and breakfast (to be discussed later);
- 2) the project site is only three (3) blocks north of the public beach and five (5) blocks west of Main Street (the primary visitor-serving commercial area of Seal Beach) so it is in a prime location to serve visitors to these areas. There is a lack of overnight accommodations near these two areas and there are no overnight accommodations along Main Street nor are there lots available for such future overnight accommodations along Main Street;
 - 3) the project site is located along Marina Drive, which is a thoroughfare through the City which is more appropriate than more isolated locations within neighborhoods;
 - 4) there are other existing commercial uses along Marina Drive, so, a commercial use of the subject site would be compatible; and
 - 5) as indicated in the Mitigated Negative Declaration; the site was previously used as a motel. In addition, the tentative parcel map also indicated that the existing building is a motel." (Page 5 of 40)

Commission staff then proceeds to assert:

"In regards to the proposed project, if the applicant were able to demonstrate that the site is unsuitable for a priority use, through, among other means, an exhaustive but unsuccessful effort to market the site for a commercial use not reliant upon drop-in business, such as a hotel, motel or bed and breakfast, the Commission could consider other options. Meanwhile, the site must be reserved for a higher priority use." (Page 6 of 40)

Commission staff then concludes that:

"The Coastal Act places a higher priority on visitor-serving commercial uses than on private residential uses. However, the project proposes private residential uses over a visitor-serving commercial use in a **prime area for such development**. Therefore, the Commission finds that the proposed project is inconsistent with Sections 30213 and 30222 of the Coastal Act and it must be denied." (Page 6 of 40, emphasis added)

COASTAL COMMISSION

EXHIBIT # 12
PAGE 4 OF 15

Position of City of Seal Beach re: Section B Staff Conclusion:

The above assumptions and assertions are unfounded in fact and therefore result in an incorrect conclusion. The City's position is based on the following facts and conclusions:

1. **Lot Size and Shape is not Conducive to Allow for an Economically Viable Use of the Site as a Hotel, Motel, or Bed and Breakfast Facility.**

The site is irregular in shape and size to accommodate an economically viable hotel, motel or bed and breakfast facility. The current structure is a single-story building constructed in the early 1950's "... that lacks distinction and is not an outstanding example of its style or design."¹



Subject Property – 400 Marina Drive
(Note: Two-story buildings behind are not part of the project site)

The site is larger than typical residential lots in the adjacent area, which generally vary between 2,937 square feet (25' x 117.5') and 4,406 square feet (37.5' x 117.5'). The site is slightly larger than the two nearby commercial/religious developments but is substantially smaller than nearby commercial retail and lodging locations, which range in size as follows:

¹ Page 7, "Historic Property Survey Report, Marina Drive Bike Trail Project, City of Seal Beach"
EDAW, January 2003.

COASTAL COMMISSION

EXHIBIT # 12
PAGE 5 OF 15

Summary of Nearby Visitor-Serving Commercial Projects

Development Name	Size in Square Feet	Size in Acres
Liquor Store/Etc.	8,889	.20
Church	12,029	.29
Subject Property	13,667	.31
<i>Pacific Inn (70 rooms)</i>	<i>36,150</i>	<i>.83</i>
PCH Plaza	61,500	1.41
<i>Hampton Inn & Suites (110 rooms)</i>	<i>98,881</i>	<i>2.27</i>
Bay City Center	155,000	3.56
Seal Beach Center	346,750	7.96

The existing structure is particularly not conducive for conversion to a hotel, motel or bed and breakfast facility, as the City has never been contacted about such a use of the property between August 1989 and the present.² Likewise, the City has never been contacted between August 1989 and the present regarding a potential lodging development on the site, even though the property zoning allowed for such a use during that entire time period.³

The existing Pacific Inn, a 70-room facility is located approximately 200 feet from the subject site and is located on approximately 36,150 square feet, and is directly visible from Pacific Coast Highway due to the 3-story development not being blocked by intervening structures. The subject site is approximately 37% of the size of this existing facility and is totally blocked from view from Pacific Coast Highway due to screening effects of adjacent residential uses to the north of the subject site. Please refer to Attachment 1 to view a photograph of the Pacific Inn facility.

The currently under construction Hampton Inn & Suites is also located within the Coastal Zone and was permitted pursuant to Coastal Development Permit 5-05-355-A1. With the completion of the Hampton Inn & Suites project there will be a 93% increase in lodging rooms over the number that existed prior to the demolition of the Seal Beach Inn and Gardens property pursuant to Coastal Development Permit 5-05-285. Please refer to Attachment 2 to view a photograph of the Hampton Inn & Suites facility.

City Conclusion: The site is not economically viable for a hotel, a motel, or a bed and breakfast facility due to lot size and configuration constraints, inappropriate location, and lack of any identified interest by the lodging industry for such a use on this site for at least an 18-year time frame. In addition there will

COASTAL COMMISSION

² Personal Statement of Lee Whittenberg, Director of Development Services, July 31, 2007.

³ Ibid.

EXHIBIT # 12
PAGE 6 OF 15

soon be 180 lodging rooms available within the Coastal Zone which is a 93% increase in lodging rooms over the number that existed prior to the demolition of the Seal Beach Inn and Gardens property pursuant to Coastal Development Permit 5-05-285.

2. **The Coastal Area does not Lack an Appropriate Level of Overnight Accommodations:**

As indicated above, the Pacific Inn, a 70-room motel is located within 200 feet of the site and within 200 feet of Main Street. As also indicated above, the completion of the Hampton Inn & Suites project will result in a 93% increase in lodging rooms (93 previous and 180 soon) over the number that existed prior to the demolition of the Seal Beach Inn and Gardens property pursuant to Coastal Development Permit 5-05-285. Commission staff presents no empirical evidence that *"There is a lack of overnight accommodations."*

City Conclusion: There will be 180 overnight accommodation rooms within the Coastal Zone upon completion of the Hampton Inn & Suites in early 2008, a 93% increase over the number of overnight accommodations that existed in the Coastal Zone in 2005.

3. **The Subject Location on Marina Drive is not an Appropriate Location for an Overnight Accommodation Use.**

The *"Summary of Findings"* in the Economics Research Associates Report titled *"Visitor Serving Commercial Market Conditions – Seal Beach Coastal District"*, which is provided as Exhibit 7 of the Commission Staff Report states on page 2:

- “• **Poor Commercial Location.** From a market perspective, the subject site is poor as a commercial location. Marina Drive, west of Pacific Coast Highway, functions as a residential collector street rather than a commercial corridor. The site has extremely low traffic counts that are decreasing over time, and is several blocks outside and removed from the established visitor-serving and resident-serving commercial areas in the City. Visibility of the site is satisfactory from Marina Drive but completely obstructed from the PCH.
- **Poorly Suited to Commercial Use.** The subject site is poorly suited for visitor-serving commercial uses. The site is too small to attract an anchor tenant, and there are no nearby previously existing anchor tenants. There is minimal pedestrian and vehicle traffic in front of the site. A neighboring retail site is already serving existing demand for neighborhood and convenience-related commercial uses.

COASTAL COMMISSION

EXHIBIT # 12
PAGE 7 OF 15

- **Use Consistent with Residential.** Development of the site with residential uses is consistent with the adjoining area which consists of mostly residential uses."

City Conclusion: The City of Seal Beach strongly concurs with the above "Summary of Findings" points by an eminently respected economic consulting firm and disagrees with the Commission staff unsubstantiated conclusions regarding this particular site being an "appropriate location" for an overnight accommodation use.

4. **Site is Not Comparable to Other Commercial Sites along Marina Drive.**

Marina Drive adjacent to the subject site has been reduced to 2 travel lanes, while east of Fifth Street Marina Drive has 4 travel lanes. Traffic volumes on Marina Drive have decreased by 24.5% between 1999 and 2006 as indicated below along the subject portion of Marina Drive.

Roadway Segment	1999 Traffic Volume	2006 Traffic Volume	Decrease in Daily Traffic Volume	% Decrease in Daily Traffic Volume
Marina Drive between First and Fifth Street	7,694	5,809	1,885	24.5%

Further, the other commercially zoned sites which have been discussed above have all been utilized for commercial or religious purposes in excess of 30 years. The economic conditions for the past 18 years have not resulted in any contemplated use of the subject property for a visitor serving commercial or overnight accommodation use.

Provided below is a summary overview of the existing commercial and visitor-serving areas within a 0.5 mile radius of the subject location:

- **Main Street:** Located approximately 4 blocks from the subject property. The historic downtown area of Seal Beach since the early 1900's. Main Street serves as the primary visitor serving and resident serving area within the Coastal Zone between the Pacific Ocean and Pacific Coast Highway. Extends three blocks in length and encompasses approximately 80,000 square feet of visitor and resident serving commercial uses and service uses. Area includes approximately 125 businesses, 16 restaurants, 2 bars, and 9 other food outlets.
- **Bay City Center:** Located less than 2 blocks from the subject property. This center contains approximately 51,200 square feet of commercial retail,

COASTAL COMMISSION

EXHIBIT # 12
PAGE 8 OF 15

restaurant and office uses. The center includes 5 restaurants and 3 other food outlets. This center is not fully occupied.

- **Seal Beach Center:** Located at the northeast corner of Main Street and Pacific Coast Highway, approximately 5 blocks from the subject property. This center contains approximately 82,000 square feet of retail and service uses. There are currently 2 restaurants and 3 other food outlets located in the center. The center is currently undergoing a major renovation pursuant to CDP 5-06-010, which includes an additional 2,700 square feet of new retail space. The major tenant, Pavilions Market, has just been demolished and is to be reconstructed at an enlarged size of 48,000 square feet.
- **Zoeter Place:** Located 8 blocks away at the southwest corner of Pacific Coast Highway and Twelfth Street, this center provides approximately 22,800 square feet of retail and service uses. One restaurant is located within this center.

The subject property is 13,667 square feet in size. The nearby competing visitor and resident serving commercial areas range from 8,889 square feet to 12,029 square feet for adjacent commercially zoned properties along Marina Drive to between 36,150 and 346,700 square feet for the main visitor serving commercial areas within the Coastal Zone that are oriented to either Main Street or Pacific Coast Highway.

City Conclusion: The subject site is a minimum of 37% smaller than other competing visitor-serving commercial areas within the immediate proximity within the Coastal Zone, has not been utilized as a commercial retail or visitor-serving commercial use for at least 28 years, is small and irregular in shape, and is not comparable to the other commercial retail or visitor-serving commercial areas discussed above.

5. **Site was Utilized as a Motel in the Past.**

Commission staff correctly point out that the site was previously utilized as a motel. However, *that use ceased*, as confirmed by a review of City records in 1979, and probably sometime before that – *a minimum of 28 years ago!*

During the intervening minimum of 28 years the City has no record of a request to revert the property back to an overnight accommodation use. The past history of the site, especially since 1979, the conclusions of the Economics Research Associates study, and the considerations of the elected City Council all support the rational conclusion that an overnight accommodation use of the subject property is not economically feasible.

COASTAL COMMISSION

EXHIBIT # 12
PAGE 9 OF 15

- Existing underperformance of overnight accommodation occupancy rates acts as a de-facto vacancy rate; resulting in no demand by the private sector for new overnight accommodation uses in this area of the Coastal Zone for at least the past 28 years

Section C – “Density”:

The City of Seal Beach disagrees with the Commission staff “*Conclusion*” in this section. Commission staff concludes that:

“As proposed, the project does not concentrate development in an area where it can be accommodated. Actually, the density of development would be reduced under this proposal. In addition, the number of units the applicant is proposing is not even the maximum amount of units the applicant can provide on-site under the proposed zoning. Additionally, the lack of concentration of development does not maintain or enhance access to the coast.”
(Page 8 of 40)

Position of City of Seal Beach re: Section C Staff Conclusion:

It is the opinion of the elected City Council that the proposed project is appropriate for the coastal area of Seal Beach. The project replaces a non-conforming, outdated use of property, with a residential use that is compatible with existing residential zoning and land use development patterns on all four sides of the subject property. The project provides new housing at a density of 12.7 units per acre.

Commission staff is now also suggesting how the zoning of properties within the City should be determined. This is not a function of the Coastal Commission, and certainly not a function of Commission staff. In accordance with the Constitution of the State of California and the provisions of the California Government Code the elected legislative body of the City of Seal Beach, the City Council, still retains unto itself zoning authority. It is totally inappropriate for the Coastal Commission to entertain and/or encourage its staff to attempt to insert itself into one of the basic powers of local governmental agencies in California.

City Summary of Project Consistency with Chapter 3 Standards relating to “Density” – Sections 30250, 30252, and 30253:

The project is consistent with Coastal Act Sections 30250, 30252 and 30253 in that the project:

- Is located contiguous to existing residential development on 4 sides (Section 30250);

COASTAL COMMISSION

EXHIBIT # 12
PAGE 10 OF 15

City Conclusion: The use of the subject property for the approved residential use is the most appropriate use and does not hinder the provision of an adequate supply of visitor-serving uses, including overnight accommodations, within the Coastal Zone. The natural forces of a free market economy have determined for approximately 30 years that it is not feasible to operate a visitor-serving or overnight accommodation use on the site, which has been zoned for such a use since at least 1963. At the same time the natural forces of a free market economy have determined that it is feasible to expand overnight accommodations at an appropriate and feasible location within the Coastal Zone within the last 2 years by 93%.

City Summary of Project Consistency with Chapter 3 Standards relating to "Visitor-Serving Commercial Use – Sections 30213 and 30222:

To again summarize, the analysis by your staff is incomplete and ignores the previous determinations by the Commission regarding Huntington Beach LCP Amendment No. 98-3 and CDP 5-99-026. It is our opinion that this project is consistent with the Section 3 policies of the Coastal Act in that it is "*not feasible*" to provide visitor-serving commercial uses, and in particular overnight accommodations, on the subject property for the following reasons:

- Location cannot support viable commercial uses, as indicated in the "*Visitor Serving Commercial Market Conditions – Seal Beach Coastal District*" Study prepared by Economics Research Associates;
- Site and proposed development is compatible and consistent with adjoining residential uses, as also indicated in the "*Visitor Serving Commercial Market Conditions – Seal Beach Coastal District*" Study prepared by Economics Research Associates;
- The natural forces of a free market economy have determined for approximately 30 years that it is not feasible to operate a visitor-serving or overnight accommodation use on the site, which has been zoned for such a use since at least 1963;
- At the same time the natural forces of a free market economy have determined that it is feasible to expand overnight accommodations at an appropriate and feasible location within the Coastal Zone within the last 2 years by 93%;
- Location not located on an appropriate street to accommodate "visitor-serving" uses;
- Location experiences very low traffic volumes, not sufficient for viable visitor-serving commercial, including overnight accommodation uses;
- Site constraints including irregular shape, 15-foot alley width separation from existing residential uses, parking and site visibility;
- Retail marketing performance standards do not exist;
- Fits with the desires of the community; and

COASTAL COMMISSION

EXHIBIT # 12
PAGE 11 OF 15

- Can easily accommodate the proposed uses in conformance with all current development standards of the City (Section 30250);
- Eliminates a non-conforming and under-utilized property (Section 30250);
- Will not have any impact on coastal resources (Section 30250);
- Provides adequate parking (Section 30252);
- Will have no detrimental effect on nearby coastal recreational areas (Section 30252); and
- Minimizes energy consumption (Section 30253).

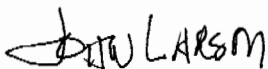
Formal City Council Review and Approval of Comment Letter:

The City Council as a body considered this letter on August 13 and authorized the mayor to execute the letter as representing the unanimous and formal position of the City Council of the City of Seal Beach.

If you have any questions regarding this letter and the information provided, Mr. Lee Whittenberg, Director of Development Services, will be most willing to provide additional information or respond to questions from the Commission or Commission staff. He can be reached at (562) 431-2527, extension 313 or at lwhittenberg@ci.seal-beach.ca.us. Mr. Whittenberg can also arrange for direct discussions with representatives of the City Attorney's office if requested by Commissioners or Commission staff.

Both Mr. Kaufman and Mr. Whittenberg will also be attending the Commission Meeting to directly address all issues raised by Commission staff and respond to questions of the Commission.

Sincerely,



John Larson, Mayor
City of Seal Beach

Attachments: (2)

Attachment 1: Photograph of Pacific Inn

Attachment 2: Photograph of Hampton Inn & Suites

Distribution:

Commissioner Khatchik Achadjian
Commissioner William A. Burke
Commissioner Ben Hueso

Commissioner Steve Blarney
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Commissioner Steven Kram

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EXHIBIT # 12
PAGE 12 OF 15

*City of Seal Beach Comment Letter re:
Coastal Permit Application 5-06-328
400 Marina Drive
August 28, 2007*

Commissioner Bonnie Neely
Commissioner Mike Reilly
Commissioner Sara Wan

Commissioner Dave Potter
Commissioner Mary K. Shallenberger

Executive Director Peter M. Douglas
South Coast Region, Senior Deputy Director Sherilyn Sarb
South Coast Region, District Manager Teresa Henry

Alan Schwendener, Applicant

Seal Beach City Council
Seal Beach Planning Commission

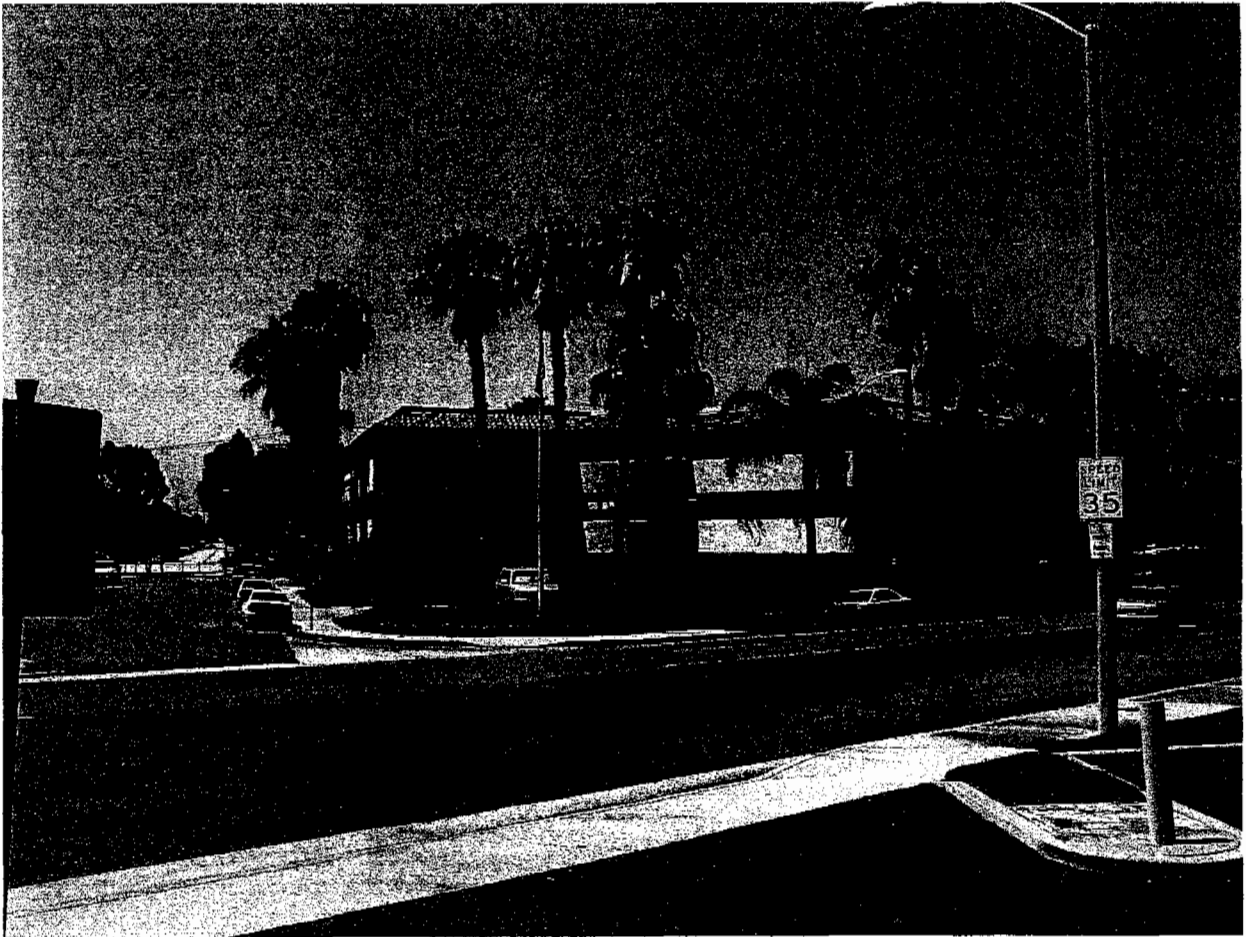
Quinn Barrow, Seal Beach City Attorney
Steve Kaufman, Seal Beach City Attorney
Lee Whittenberg, Director of Development Services

COASTAL COMMISSION

EXHIBIT # 12
PAGE 13 OF 15

ATTACHMENT 1

PHOTOGRAPH OF PACIFIC INN

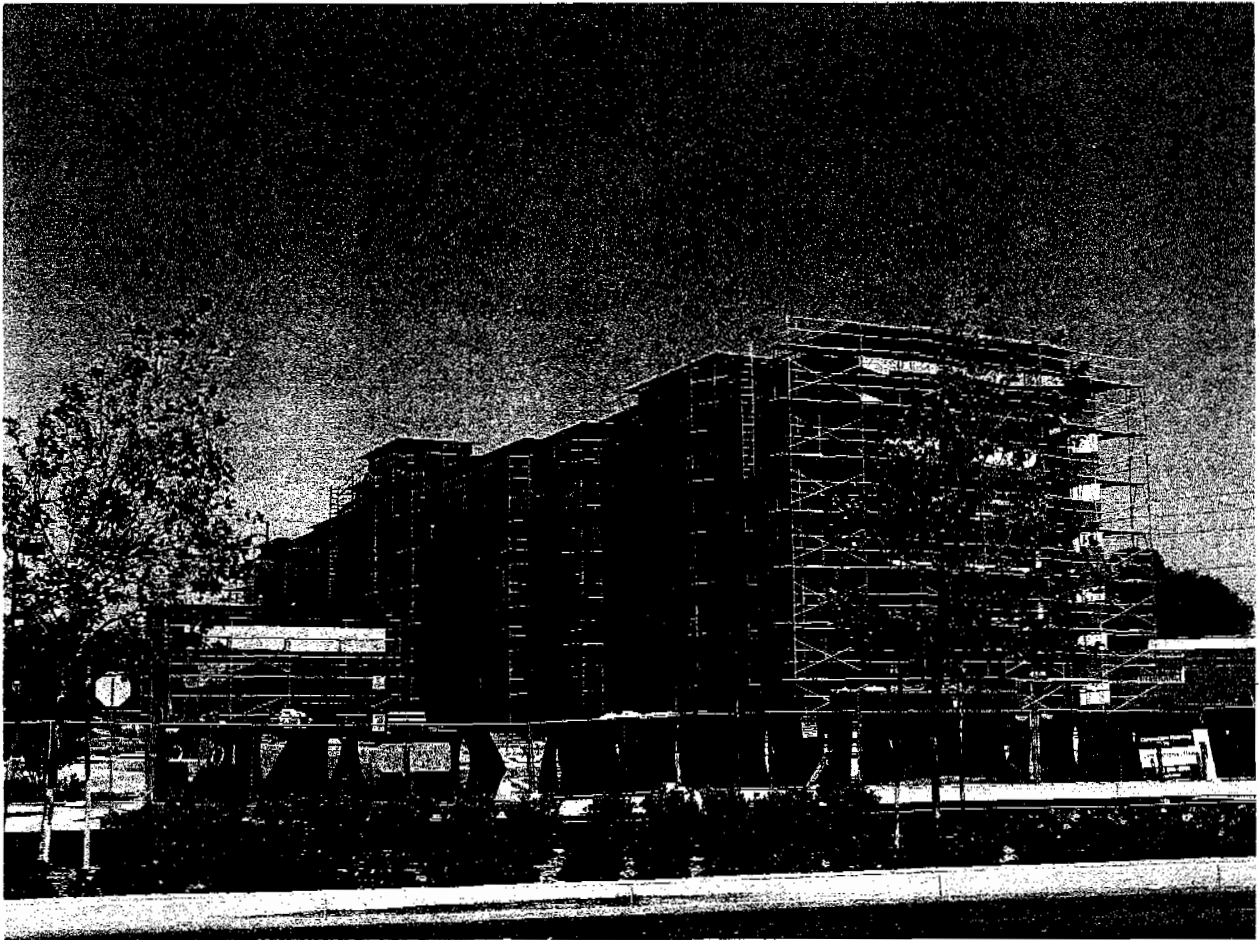


COASTAL COMMISSION

EXHIBIT # 12
PAGE 14 OF 15

ATTACHMENT 2

PHOTOGRAPH OF HAMPTON INN & SUITES



COASTAL COMMISSION

EXHIBIT # 12
PAGE 15 OF 15



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September 25, 2007

Patrick Kruer, Chair
Coastal Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

**Re: Application No. 5-06-328 (Schwendener)
400 Marina Drive, Seal Beach**

Dear Chairman Kruer and Commissioners:

This office serves as the City Attorney to the City of Seal Beach. The City has sent a letter requesting that the Commission approve the above application. At the request of the Mayor and City Council, we have prepared this separate letter to address that the portion of the staff recommendation that recommends denial of the Schwendener application on the basis that "the proposed project does not encourage the protection of provision of lower cost more affordable housing."

As explained further below, the City respectfully submits that the sections of the Staff Report cited, Sections 30604(f) and (g) of the Coastal Act (Pub. Res. Code § 30000 et seq.), do not provide any basis for denial of the application by the Commission.

1. The Commission Lost Permit Jurisdiction Over Affordable Housing in 1981.

Prior to 1981, Section 30213 of the Coastal Act included an affordable housing policy: "Housing opportunities for persons and families of low and moderate income, as defined in Section 50093 of the Health and Safety Code, shall be protected, encouraged, and, where, feasible, provided."

In 1981, because of controversy over the Commission's application of this policy, the Legislature repealed that policy, enacted provisions in the Coastal Act removing the Commission's authority over affordable housing, and transferred the authority to regulate affordable housing in the coastal zone to local governments under Government Code section 65590. (Stats. 1981, c. 1007, p. 3900.)

COASTAL COMMISSION

EXHIBIT # 13
PAGE 1 OF 7

Chair Kruer and Commissioners
September 25, 2007
Page 2

Thus, to address LCPs, the Legislature provided in Section 30500.1 of the Coastal Act that “[n]o local coastal program shall be required to include housing policies and programs.”

In addition, to address the Commission’s jurisdiction over Coastal Development Permits, the Legislature further provided in Section 30607.2(c) that no new coastal development permit “shall be denied, restricted, or conditioned by the commission in order to implement housing policies or programs.” (Emphasis added.)

Those provisions, including the prohibition on denial of an application to implement housing policies or programs, remain in effect and are applicable today.

Since 1981 (over 25 years), the Commission has not had jurisdiction to regulate affordable housing in the coastal zone. That has been and remains a local government function in the coastal zone under the detailed requirements of Government Code section 65590. Indeed, there are numerous other complex statutory provisions dealing with the intricacies of affordable housing, applicable only to local government and which are beyond the expertise of Coastal Commission staff. (See e.g., Health & Saf. Code § 50093 [low income], § 50462 [affordable housing]; Govt. Code §§ 65008(c) [middle income] and (e) [preferential treatment], § 65580-65590 [housing element], § 65913.1-2 [zoning to meet housing needs] § 65913.3 [consolidated permit processing], § 65913.4 [regulatory concessions and incentives]; § 65915-18 [density bonuses and other incentives].)

In short, the Commission lacks the authority to deny or condition the project on affordable housing grounds.

2. Sections 30604(f) and (g) of the Coastal Act do not Provide Regulatory Authority for the Commission to Re-Regulate Affordable Housing in the Coastal Zone.

The Staff Report purports to reassert Commission jurisdiction over affordable housing by relying on language in two provisions added to the Coastal Act in 2003, Sections 30604(f) and (g). While these sections have been in effect now for four years, the Commission, to our knowledge, has never applied them in the manner recommended by staff. In any case, there are multiple reasons why these provisions do not provide any basis for the Commission to deny the instant application.

COASTAL COMMISSION

EXHIBIT # 13
PAGE 2 OF 7

Chair Krueer and Commissioners
September 25, 2007
Page 3

The Staff Report cites only a portion of the two sections. Both sections, in their entirety, read as follows:

“(f) The commission shall encourage housing opportunities for persons of low and moderate income. In reviewing residential development applications for low- and moderate-income housing, as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code, the issuing agency or the commission, on appeal, may not require measures that reduce residential density or range of density established by local zoning plus the addition additional density permitted under Section 65915 of the Government Code, unless the issuing agency or the commission on appeal makes a finding, based on substantial evidence in the record, that the density sought by the applicant cannot feasibly be accommodated on the site in a manner that is in conformity with Chapter 3 (commencing with Section 30200) or the certified local coastal program.”

“(g) The Legislature finds and declares that it is important for the commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.” **(The underscored portion was omitted from the Staff Report.)**

Nothing in these two provisions changed the basic regulatory authority of local governments over affordable housing or, significantly, the provisions of the Coastal Act divesting the Commission of direct authority to regulate affordable housing. Government Code section 65590 was not changed. More to the point, the prohibition on the Commission from requiring housing policies/programs in LCPs or denying, restricting, or conditioning CDPs was not changed.

What was changed, however, was the following. In Section 30604(f), the Legislature required the Commission “encourage” affordable housing, citing one instance: The issuing agency of the Commission on appeal may not reduce a project’s residential density which includes a density bonus, unless it “makes a finding, based on substantial evidence in the record, that the density sought by the applicant cannot feasibly be accommodated on the site in a manner that is in conformity with Chapter 3 (commencing with Section 30200) or the certified local coastal program.” Thus, Section 30604(f) requires the Commission to encourage affordable housing in the coastal zone by permitting the Commission to reduce a

COASTAL COMMISSION

Chair Kruer and Commissioners
September 25, 2007
Page 4

project's density, including a density bonus, to ensure conformity with the coastal resource policies in Chapter 3 of the Coastal Act only as a last resort – i.e., if substantial evidence demonstrates there is no other feasible way to avoid impacting coastal resources.

Second, both provisions state that it is important for the Commission to “encourage” affordable housing in the coastal zone. However, they stop well short of the original language in Section 30213 of the Act, which additionally required that affordable housing opportunities be “protected” and “where feasible, provided.” In fact, “encourage” is a word capable of precise definition. It means “to inspire with courage, spirit, or hope” (hearten), “to spur on” (stimulate), and “to give help or patronage to” (foster). (Merriam-Webster’s Collegiate Dictionary (10th Ed.).) The Commission “encourages” affordable housing when, for example, it determines how to approve a higher density project that may otherwise conflict with other coastal resource policies. But, “encourage” is not synonymous with “protect” or “where feasible, provide,” and it does not mean the power to deny or condition a permit to address affordable housing. It cannot have that meaning because Section 30607.2(c) – as implemented now by the Commission since 1981 – provides that no new CDP “shall be denied, restricted, or conditioned by the commission in order to implement housing policies or programs.”

Further, the legislative history of SB 619 (Ducheny), which gave rise to Sections 30604(f) and (g), the Staff’s own analysis of that bill, and its letter to the Bill’s author, confirm that the Legislative never intended these two provisions to confer renewed authority on the Commission to regulate affordable housing, as it had prior to 1981. As introduced, SB 619 would have eliminated local public hearings for affordable housing projects up to 150 units and prevented the Commission from reducing densities of proposed affordable housing projects in the coastal zone. The bill was then amended to permit the Commission to reduce the density of an affordable housing project upon a specific finding, essentially in the language of current Section 30604(f). Staff then produced a bill analysis, but without noting the amendment. The bill analysis recommended that the Commission take an “oppose” position, and suggested:

“... that a more effective approach would be to restore the Commission’s ability to require affordable housing as a component of large development projects. Amending the Coastal Act to allow the Commission to encourage affordable housing through regulatory and local coastal program planning

COASTAL COMMISSION

Chair Kruer and Commissioners
September 25, 2007
Page 5

actions consistent with coastal resource protection policies should be considered as a substitute to the proposed approach set forth in the bill."

Thereafter, the Executive Director wrote to the Bill's author, expressing the Commission's opposition to the Bill, but only requesting that Legislature restore the provision of public hearings for large, multi-family housing projects in the coastal zone. The next version of the Bill in fact deleted the provision eliminating local public hearings. Significantly, however, no language was added to the Bill (or deleted from the existing Coastal Act) to permit the Commission to encourage affordable housing through permit and LCP planning actions.

Finally, on September 5, 2007, the Bill's author, State Senator Denise Ducheny, wrote the Commission to make clear the Legislature's intent in adding Sections 30604(f) and (g) to the Coastal Act. She explained:

"In authoring SB 619, my broad intent was to streamline processes for permitting housing, especially affordable housing. I wished to encourage state agencies, including the Coastal Commission, to facilitate affordable housing statewide, including in the coastal zone where the development was consistent with local coastal plans, by streamlining the land use approval process to permit higher density."

"To harmonize affordable housing development with coastal resource protection, Sections 30604(f) and (g) were added to the Coastal Act to require that the Commission or local governments, *before* reducing the density of a project below that allowed by local zoning and the state density bonus law, make a finding supported by substantial evidence that the density cannot be accommodated on the site without negatively affecting coastal resources."

Significantly, State Senator Ducheny explained that SB 619 was not intended to affect any existing jurisdiction that the Commission may or may not have: "SB 619 was intended to encourage the approval of developments with affordable housing units but was not intended to affect any authority the Commission may or may not have to require affordable housing in all developments." (Ducheny letter attached; emphasis added.) As noted above, the Bill did not modify or change the provisions of the Coastal Act that prohibit the Commission from requiring housing policies/programs in LCPs or denying, restricting, or conditioning CDPs. Nor was it intended to do so, as explained by the Bill's author.

COASTAL COMMISSION

EXHIBIT # 13
PAGE 6 OF 7

Chair Kruer and Commissioners
September 25, 2007
Page 6

3. **Sections 30604(f) and (g) are not Coastal Policies, and Therefore Cannot be the Basis for Denial of a Permit.**

It is also worth noting that the Staff Report further treats Sections 30604(f) and (g) as though they are policies set forth in Chapter 3 of the Coastal Act (commencing with Section 30200 *et seq.*). Significantly, however, they are not coastal resource policies, but rather are included instead in Chapter 7 of the Act.

Section 30604(a) of the Coastal Act provides the basic findings requirement for approval of a coastal development permit where, as here, there is no certified LCP. It states, in relevant part:

“Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is conformity with Chapter 3 (commencing with Section 30200) and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program in conformity with Chapter 3 (commencing with Section 30200).”
(Emphasis added.)

Thus, the Commission reviews an application for CDP for its conformity with the coastal resource policies in Chapter 3 of the Coastal Act (Sections 30200-30265.5). If the project conforms with the policies in Chapter 3, a CDP “shall be issued.” Accordingly, the Act not only provides that the Commission has no permit jurisdiction or LCP jurisdiction over affordable housing, but the provisions cited by staff are not coastal resource considerations here because they are not set forth in Chapter 3 of the Act. While the Legislature could certainly have included Sections 30604(f) and (g) in Chapter 3 – and indeed could have explicitly resurrected Commission jurisdiction over affordable housing in the coastal zone, it did not.

4. **The Commission Cannot Deny or Condition the CDP under Section 30607 of the Coastal Act With Respect to Sections 30604(f) and (g).**

The Staff Report further cites as support for the denial recommendation Section 30607 of the Coastal Act, which provides that “any permit that is issued . . . pursuant to this chapter, shall be subject to reasonable terms and conditions in order to ensure that such development . . . will be in accordance with the provisions of [the Coastal Act].”

COASTAL COMMISSION

EXHIBIT # 13
PAGE 6 OF 7

Chair Krueer and Commissioners

September 25, 2007

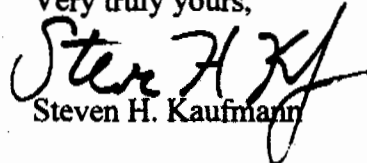
Page 7

Section 30607 is inapplicable to the staff recommendation for several reasons. First and foremost, by its terms, it applies only where a permit "is issued," not here where the recommendation is for denial of the permit. Second, it authorizes the Commission to impose "reasonable" terms and conditions to ensure consistency "with the provisions of" of the Act. This makes sense only when the Commission determines whether a project is in conformity with the provisions in Chapter 3 of the Coastal Act since, if there is conformity, Section 30604(a) requires that the permit "shall be issued." As noted, Sections 30604(f) and (g) are not contained in Chapter 3 of the Act. Third, as explained above, the other provisions of the Act added by the Legislature in 1981 make clear that the Commission has no LCP jurisdiction over affordable housing and no new CDP "shall be denied, restricted, or conditioned by the commission in order to implement housing policies or programs." (Pub. Res. Code, §§ 30500.1, 30607.2(c).)

Conclusion

Thus, the City of Seal Beach respectfully submits that Sections 30604(f) and (g) of the Coastal Act do not provide a basis for denial of the instant application.

Very truly yours,


Steven H. Kaufmann

ccs: Peter M. Douglas, Executive Director
Hope Schmeltzer, Chief Counsel
Sherilyn Sarb, Senior Deputy Director, South Coast Region
Teresa Henry, District Manager, South Coast Region
Fernie Sy, Coastal Program Analyst, South Coast Region
Alan Schwendener, Applicant
Mayor John Larson and Members of the City Council, City of Seal Beach
David Carmany, City Manager, City of Seal Beach
Lee Whittenberg, Director of Development Services, City of Seal Beach
Quinn M. Barrow, City Attorney, City of Seal Beach

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COASTAL COMMISSION

EXHIBIT # 13
PAGE 7 OF 7

COASTAL COMMISSIONEXHIBIT # 14
PAGE 1 OF 2**FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATION**5-06-328
RECEIVED
AUG 28 2007
CALIFORNIA
COASTAL COMMISSION

Date and time of communication:
(For messages sent to a Commissioner
by mail or facsimile or received as a
telephone or other message, date
time of receipt should be indicated.)

8/27/2007 - 3:30 p.m.

Location of communication:
(For communications sent by mail or
facsimile, or received as a telephone
or other message, indicate the means
of transmission.)

Eureka, CA - Conference Call

Person(s) initiating communication:

Susan McCabe

Person(s) receiving communication:

Bonnie Neely

Name or description of project:

Seal Beach - Schwendener

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete text of the written
material.)

Discussion: Was just hired by applicants. Will be requesting a postponement so substantial
issues can be addressed.

08/27/07

Date


Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the
communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that
was the subject of the communication, complete this form and transmit it to the Executive Director within
seven days of the communication. If it is reasonable to believe that the completed form will not arrive by
U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of
delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to
the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information
orally on the record of the proceedings and provide the Executive Director with a copy of any written
material that was part of the communication.

COASTAL COMMISSION

EXHIBIT # 14
PAGE 2 OF 2

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

RECEIVED
AUG 28 2007
CALIFORNIA
COASTAL COMMISSION

Date and time of communication: 7/28/07

Location of communication: La Jolla
(If communication was sent by
mail or facsimile, indicate the
means of transmission.)

Identity of person(s) initiating communication: Susan McCabe

Identity of person(s) receiving communication: Patrick Kruer

Name or description of project: W15C Schwendener

Description of content of communication: Seal Beach

(If communication included written material, attach
a copy of the complete text of the written material.)

Owens a 10 unit apt. (zoned for Commercial) Danish
units change zoning to residential. Staff
recommends denial on 3 reasons 1) Applicant has
not demonstrated that commercial use is not viable 2) Staff
is saying that CCC has authority over affordable housing
3) Applicant he builds an affordable project - it should be
higher density than proposed project

Date

7/28/07

Signature of Commissioner

Patrick Kruer

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

Applicant is asking for a continuance to address
these issues of state wide significance

APPENDIX