

## CALIFORNIA COASTAL COMMISSION

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



W11a

**Prepared July 10, 2007 (for July 11, 2007 hearing)**

**To:** Coastal Commissioners and Interested Persons

**From:** Steve Monowitz, District Manager  
Mike Watson, Coastal Program Analyst

**Subject: STAFF REPORT ADDENDUM for 11a  
A-3-PSB-06-001 (Beachwalk Hotel; HMW Group, Pismo Beach)**

As described in the June 28, 2007 staff report, the Applicant proposes to demolish 13 existing small residential rental-cabins and a 7,000 square foot commercial warehouse building, and construct a 77,585 square foot, three-story, 69-room ocean front hotel with 2 conference rooms, fitness center, underground parking, and public access connections to the City's pedestrian boardwalk.

Since the staff report was completed, staff has identified the need to modify the recommended Special Conditions and findings regarding project landscaping and long term occupancy of the hotel units. Staff provides the following revisions to the staff report findings and special conditions as follows (new text shown with underlines; deletions are shown with ~~strike-throughs~~):

### 1. Landscape Plan.

Special Condition 3 of the staff report does not adequately protect against the planting and spread of non-native invasive species. Therefore, staff recommends Special Condition 3 be revised in the following manner:

3. Landscape Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit a Landscape Plan prepared by a landscape professional to the Executive Director for review and approval. The Landscape Plan shall clearly identify in site plan view the type, size, extent and location of all plant materials to be used, as well as the method and extent of irrigation that will be used to ensure planting success. The plant palette shall be comprised of native species of local stock, except within the courtyard and along Stimson Avenue, where drought resistant, non-invasive ornamentals may be allowed. All existing non-native invasive species such as ice plant shall be removed and not allowed to persist on site. ~~The planting~~ Planting of non-native invasive species, such as those listed on the California Invasive Plant Council's Inventory of Invasive Plants, is prohibited.

The Permittee shall undertake development in accordance with the approved Landscape Plan. Any proposed changes shall be reported to the Executive Director. No changes shall occur



California Coastal Commission

July 11, 2007 Meeting in San Luis Obispo

Staff: Mike Watson Approved by:

without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

## **2. Long Term Occupancy.**

In response to concerns that limiting the length of stay for any individual or family to 14 consecutive days in the summer and 29 days annually may unnecessarily restrict public use of the hotel, staff is recommending that Special Condition 6 be modified as follows:

6. Land Use Requirements. All hotel facilities shall be open to the general public. No individual ownership or long term occupancy of units shall be allowed. Rooms may not be rented to any individual, family, or group for more than 30 days per year ~~nor for more than 14 days between Memorial Day and Labor Day.~~

### **Revise 2<sup>nd</sup> Full Paragraph on Page 29 of Staff Report.**

Figure LU-2 (Exhibit 10) illustrates that the condominium hotel provision applies to several planning areas about the City, including the North Spyglass, Dinosaur Caves, Motel, and Pismo Creek planning areas, but clearly excludes the downtown planning district. The individual planning map for the downtown planning area does not contain a resort commercial land use designation and condominium hotels are not contemplated within the specific policy language of any of the downtown land use policies. Thus, condominium hotels are not currently an allowable use in the downtown planning district. To ensure that the facility remains visitor serving, permit conditions prohibit private ownership of the hotel units, and limit lengths of stay for any individual, group, or family. Specifically, Special Condition 6 requires the proposed hotel rooms must remain available for public transient use in perpetuity, and places a ~~29~~ 30 day annual limit on the length of stay (~~14 days between Memorial Day and Labor Day~~).



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**W11a**

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## APPEAL STAFF REPORT

### SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

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**Appeal number** ..... **A-3-PSB-06-001, Beachwalk Resort Hotel**

**Applicants** ..... HMW Group LTD

**Appellants** ..... Commissioners Patrick Kruer and Mike Reilly

**Local government** ..... City of Pismo Beach

**Local decision** ..... Approved with conditions by the Pismo Beach Planning Commission on October 25, 2005 (City Permit No. 02-0138).

**Project location** ..... 147 Stimson, Pismo Beach, Downtown Planning Area, San Luis Obispo County (APN: 005-152-027 and 005-152-032). See Exhibit 1.

**Project description** ..... As approved by the City of Pismo Beach, the project involves demolition of 13 small cabins and a 7,000 square foot commercial warehouse building, and the construction of a 77,585 square foot, three story, 67-room ocean front hotel with 2 conference rooms, a fitness center, underground parking, and a foundation designed to function as a seawall. The project also includes construction of an outdoor courtyard available for public use with access connections to an adjacent public pedestrian boardwalk. The project has been subsequently modified by the applicant to replace the seawall foundation with a caisson/piling foundation, increase structural setbacks from the adjacent public boardwalk, maintain a 25' height limit on beachfront parcels, and increase the number of rooms to 69.

**File documents** ..... City of Pismo Beach Local Permit File No. 02-0138, supplemental materials submitted by applicants, and City of Pismo Beach certified Local Coastal Program.

**Staff recommendation** . **Substantial Issue Exists; Approve with Conditions**

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**California Coastal Commission**  
**July 11, 2007 Meeting in San Luis Obispo**

Staff: Mike Watson Approved by:

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**Summary of staff recommendation:** On October 25, 2005, the City of Pismo Beach approved a Coastal Development Permit authorizing the demolition of 13 existing rental units and a 7,000 sq. ft. commercial building, and the construction of a 4-level, ocean front hotel with subterranean parking and related improvements. As approved by the City, the project involved a building foundation designed to function as a seawall to address hazards associated with storm wave run-up and tsunamis. The local approval was appealed by two Coastal Commissioners, due to concerns that the project did not conform to the City's shoreline hazards standards, height limits, and other LCP policies regarding protection of public views, provision of low-cost visitor-serving accommodations, and preservation of low-cost housing.

Substantial issues raised by the appeal include project inconsistencies with LCP standards that allow seawalls only when necessary to protect *existing* structures in danger of erosion, and that prohibit new development that may need a shoreline protective device within a period of 100 years. In addition, the City approval allows the hotel to be constructed to an average height of 35 feet, in conflict with the LCP's 25' special height limitation for ocean front parcels that are zoned R-4 (Hotel-Motel). Because of the structure's close proximity to a popular lateral access boardwalk, concerns regarding its impact on coastal views and recreation experiences also raise a substantial issue regarding project consistency with LCP visual resource policies.

Other substantial issues raised by the appeal relate to the lack of lower cost visitor serving accommodations, as required by Coastal Act Section 30213. Accordingly, staff recommends that the Commission find that the appeal raises a **substantial issue** regarding the locally approved project's consistency with the access and recreation policies of the Coastal Act.

The revised project and supplemental information have, to a large degree, resolved many of these issues. Project modifications that replace the previously proposed seawall foundation with deep caissons reconcile inconsistencies with LCP policies that limit the construction of shoreline protective devices. In order to address visual resource policies, setbacks from the westerly property line and pedestrian boardwalk have increased, the 1<sup>st</sup> and 2<sup>nd</sup> floors have been stepped back, and the structure limited to 25' in height on the beachfront lots. Public access from the pedestrian boardwalk to the public courtyard proposed by the development has been enhanced with the inclusion of a 3' wide ADA accessible ramp, and a second stairway has been added to allow for access to and from the sandy beach area directly seaward of the hotel.

Notwithstanding the improved design and mitigation measures, special conditions are needed to ensure that the project is carried out consistent with applicable LCP provisions, as well as Coastal Act access and recreation policies. Staff therefore recommends that the Commission **approve a permit with conditions** that:

- Refine and secure public access and recreation opportunities proposed by the project;



- Ensure that final project plans conform to the height limits and development standards of the LCP, and thereby protect coastal views and recreation opportunities along the adjacent boardwalk;
- Require the Applicants to assume the risk of developing in a hazardous location, and waive the liability for any such claims of injury or damage against the Commission;
- Require construction, drainage, landscape, and beach restoration plans to protect coastal water quality, prohibit the planting of invasive exotic vegetation, and minimize construction impacts on coastal access and recreation opportunities;
- Require payment of an in-lieu fee to provide for low-cost visitor serving accommodations; and
- Require recordation of a deed restriction that binds the Applicants and all successors to the property to the terms and conditions of this permit.

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#### Exhibits

- Exhibit 1: Project Location Map
- Exhibit 2: Photo of Project Site
- Exhibit 3: City of Pismo Beach Staff Report, Findings and Conditions
- Exhibit 4: Appeal of Commissioners Patrick Kruer and Mike Reilly
- Exhibit 5: Project Plans and Elevations (Revised June 30, 2006)
- Exhibit 6: Proposed Hotel Schematics (Revised June, 2007)
- Exhibit 7: Area for Public Access and Recreation
- Exhibit 8: Height Limitations: Ocean Front Parcels
- Exhibit 9: Correspondence

## 1. Conditions of Approval

### A. Standard Conditions

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



## B. Special Conditions

1. **Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit Final Engineered Plans to the Executive Director for review and approval. The final plans shall be in substantial conformance with the June 30, 2006 plan revisions prepared by Clark Forest Butts AIA, which shall be revised and supplemented to comply with the following requirements:

- a. **Building Height.** The maximum building height for all ocean fronting parcels, as shown on Exhibit 8, shall be 25 feet from existing natural grade. Maximum height for all other parcels shall not exceed 35 feet above existing natural grade at any point. Height limits for building appurtenances (e.g., cupolas, flag poles, elevator shafts, and tower features) may be extended by 15%.
- b. **Building Articulation.** The following minimum development setbacks from the inland extent of the public boardwalk shall be maintained: 1<sup>st</sup> floor -21 feet and 2<sup>nd</sup> floor -35 feet.
- c. **Maximum Floor Area.** The total maximum building floor area shall not exceed 43,228 square feet, excluding the subterranean parking garage.
- d. **Lot Coverage/Planting Area.** The total maximum building lot coverage shall not exceed 18,435 square feet. The minimum planting area shall be 6,900 square feet.
- e. **Hotel Foundation.** The hotel foundation shall incorporate the use of deep caisson piers and be designed to insure appropriate minimum site stability standards as required by the Uniform Building Code, for development within a FEMA Zone-A flood plain. Other design considerations for the engineered foundation shall include direct wave attack, shoreline erosion, wave scour, liquefaction, and tsunami over the life of the structure (100 years). Final plans shall be submitted with documentation from a licensed geotechnical engineer that the plans are consistent with the recommendations contained in the *Geologic/Wave Run-up Reports (Earth Systems Pacific, as revised by the Response to Coastal Commission Comments, February 6, 2007)*.
- f. **Post Construction Drainage Plan.** The drainage plan shall identify the specific type, design, and location of all drainage infrastructure and Best Management Practices (BMPs) necessary to ensure that post construction drainage from the project, including runoff from the roadway, paths, parking areas, and other impervious surfaces, does not result in erosion, sedimentation, or the degradation of coastal water quality. Such plan shall clearly identify a drainage system designed to collect, filter, and treat all runoff prior to its discharge from the site and to remove vehicular contaminants and other typical urban runoff pollutants more efficiently than standard



silt and grease traps. Such plan shall at a minimum provide for:

- (1) The drainage system shall be designed to filter and treat (i.e., a physical and/or chemical reduction of pollutants achieved through active filtration) the volume of runoff produced from each and every storm event up to and including the 85th percentile 24-hour runoff event prior to its discharge. The drainage system and its individual components (such as drop inlets and filtration mechanisms) shall be sized according to the specifications identified in the California Storm Water Best Management Practice Municipal Handbook (California Storm Water Management Task Force, March 1993);
- (2) The drainage system may include natural biologic filtration components such as vegetated filter strips and grassy swales provided that they are populated with native plant species capable of active filtration and treatment (e.g., rushes). If grades require, check-dams may be used in such biologic filters.
- (3) The drainage system shall include at least one engineered filtration unit to which all drainage shall be directed prior to any discharge from the site. The engineered filtration unit shall be designed to remove, at a minimum, vehicular contaminants, and shall be appropriately sized to handle all parking lot drainage. Such unit may include media designed to remove expected contaminants.
- (4) All vehicular traffic and parking areas shall be swept and/or vacuumed at regular intervals and at least once prior to October 15th of each year. Any oily spills shall be cleaned with appropriate absorbent materials. All debris, trash and soiled absorbent materials shall be disposed of in a proper manner. If wet cleanup of any of these areas is absolutely necessary, all debris shall first be removed by sweeping and/or vacuuming, all storm drains inlets shall be sealed, and wash water pumped to a holding tank to be disposed of properly and/or into a sanitary sewer system.

The applicant shall be responsible for implementing and maintaining drainage, erosion, and sedimentation control measures and facilities for the life of the project. This shall include performing annual inspections, and conducting all necessary clean-outs, immediately prior to the rainy season (beginning October 15), and as otherwise necessary to maintain the proper functioning of the approved system.

The Permittee shall undertake development in accordance with the approved final plans, and as otherwise described by the amended project description submitted by the HMW Group, LTD on August 17, 2007. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved Plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.





- 2. Construction Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit a Construction Plan to the Executive Director for review and approval. The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. Construction and staging zones shall be limited to the minimum area required to implement that approved project, and to minimize construction encroachment on the beach, among other ways by using blufftop areas for staging and storing construction equipment and materials.

The Construction Plan shall also identify the type and location of erosion control/water quality best management practices that will be implemented during construction to protect coastal water quality, including the following:

- (a) Silt fences, or equivalent apparatus, shall be installed at the perimeter of the construction site to prevent construction-related runoff and/or sediment from discharging onto the beach.
- (b) All construction materials and equipment shall be removed in their entirety from the beach area by sunset each day that work occurs. The only exception shall be for the temporary erosion and sediment controls required above.
- (c) Grading or alteration of beach outside of the approved construction zone is prohibited with one exception as follows: existing quarry stone in the vicinity of the Stimson street end shall be removed.
- (d) Equipment washing, refueling, and/or servicing shall not take place on the beach. All construction equipment shall be inspected and maintained at an off-site location to prevent leaks and spills of hazardous materials at the project site.
- (e) The construction site shall maintain good construction housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the beach).
- (f) All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each work day.

A copy of the approved Construction Plan shall be kept at the construction job site at all times and all persons involved with the construction shall be briefed on its content and meaning prior to commencement of construction. The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least 3 working days in advance of commencement of construction, and immediately upon completion of construction.

The Permittee shall undertake construction in accordance with the approved Construction Plan. Any proposed changes to the approved Construction Plan shall be reported to the Executive Director. No changes to the approved Construction Plan shall occur without a Commission



amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

3. **Landscape Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit a Landscape Plan prepared by a landscape professional to the Executive Director for review and approval. The Landscape Plan shall clearly identify in site plan view the type, size, extent and location of all plant materials to be used, as well as the method and extent of irrigation that will be used to ensure planting success. The planting of non-native invasive species, such as those listed on the California Invasive Plant Council's Inventory of Invasive Plants, is prohibited.

The Permittee shall undertake development in accordance with the approved Landscape Plan. Any proposed changes shall be reported to the Executive Director. No changes shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

4. **Beach Area Restoration.** WITHIN THREE (3) DAYS OF COMPLETION OF CONSTRUCTION, the Permittee shall restore all beach areas and all beach access points impacted by construction activities to their pre-construction condition. All rock and debris landward of the public pedestrian boardwalk and along the Stimson Avenue street end shall be removed from the site. Beach sands within the construction area shall be sifted as necessary to remove all construction debris.

5. **Public Access.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit an Access Management Plan to the Executive Director, for review and approval. The Plan shall specify the hours when the hotel outdoor courtyard and seating areas, sandy beach area, and all associated access connections to the pedestrian promenade, will be open and available for free public access and passive recreational use. At a minimum, public access and recreational use of the access area shall be available during daylight hours and evenings, 365 days a year, for the life of the development, except where limited private events are allowed in accordance with the approved Access Management Plan. Provisions for private events shall establish a maximum duration and number of events per year, which shall not exceed 7 private events on weekends between and including Memorial Day and Labor Day weekends, and shall ensure that at least 50% of the courtyard area remains open for free public use at all times during such events. The Plan shall also detail the type, design, and location, and content of all signs that will be installed to identify the location of public access areas and approved terms of use.

No development, as defined in Section 30106 of the Coastal Act, shall occur in the Public Access and Recreation, as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit, except for the development authorized by this permit .

PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI OF THIS PERMIT,



the applicant shall submit, for review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, which shall include all public use areas described above, as generally shown by Exhibit 7 attached to this staff report.

- 6. Land Use Requirements.** All hotel facilities shall be open to the general public. No individual ownership or long term occupancy of units shall be allowed. Rooms may not be rented to any individual, family, or group for more than 29 days per year nor for more than 14 days between Memorial Day and Labor Day.
- 7. Assumption of Risk, Waiver of Liability and Indemnity Agreement.** The Permittee acknowledges and agrees, on behalf of itself and all successors and assigns: (i) that the site is subject to hazards from episodic and long-term bluff retreat and coastal erosion, stream erosion and scour, wave and storm events, bluff and other geologic instability, and the interaction of same; (ii) to assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; and (v) that any adverse effects to property caused by the permitted project shall be fully the responsibility of the landowner.
- 8. Tsunami Preparedness Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit, for the review and approval of the Executive Director, a plan for mitigating the hazards associated with tsunamis. The plan shall demonstrate that: (a) the existence of the threat of tsunamis from both distant and local sources will be adequately communicated to all hotel and resort guests, (b) information will be made available regarding personal safety measures to be undertaken in the event of a potential tsunami event in the area, (c) efforts will be provided to assist physically less mobile guests in seeking evacuation from the site during a potential tsunami event, and (d) hotel and resort staff have been adequately trained to carry out the safety plan. The plan shall include, at a minimum, the following components:
  - Tsunami Information Component detailing the posting of placards, flyers, or other materials at conspicuous locations within the resort, each hotel room, stairwell exits and elevator lobbies on all floors, and the parking garage, provided in an appropriate variety of languages and formats (e.g., International symbols, embossed Braille, tape recordings, etc.) explaining tsunami risks, the need for evacuation if strong earthquake motion is felt or alarms are sounded, and the location of evacuation routes;



- Tsunami Evacuation Assistance Component detailing the efforts to be undertaken by hotel and resort staff to assist the evacuation of physically less mobile persons during a tsunami event; and
- Staff Training Component detailing the instruction to be provided to all hotel and resort employees to assure that the Tsunami Preparedness Plan is effectively implemented.

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

**9. Compliance with Local Conditions of Approval.** All conditions imposed by the City under legal authority other than the Coastal Act continue to apply.

**10. Lower Cost Overnight Accommodations Mitigation Fee.** PRIOR TO COMMENCEMENT OF CONSTRUCTION ACTIVITIES, the Permittee shall submit to the Executive Director for review and approval a plan to establish a Lower Cost Overnight Accommodations fund. Subsequent to Executive Director approval of the plan and prior to construction, a sum of \$97,020 shall be deposited into an interest bearing account, to be established and managed by one of the following entities as approved by the Executive Director: the Permittee, the City of Pismo Beach, the County of San Luis Obispo Parks Department, the Port San Luis Harbor District, the California Department of Parks and Recreation, Hostelling International, or similar entity. The purpose of the account shall be to establish new lower cost overnight visitor serving accommodations, such as new hostel or tent campground units, at appropriate locations within the coastal zone of San Luis Obispo County. The entire fee and any accrued interest shall be used for the above-stated purpose, in consultation with the Executive Director, within ten years of the fee being deposited into the account. PRIOR TO EXPENDITURE OF ANY FUNDS CONTAINED IN THIS ACCOUNT, the Executive Director must review and approve the proposed use of the funds as being consistent with the intent and purpose of this condition. All development funded by this account will require separate coastal development permit review and approval. Any portion of the fee that remains after ten years shall be donated to one or more of the State Parks units located along the San Luis Obispo County shoreline (e.g., Estero Bay, Morro Strand, Morro Bay, Montana de Oro, or Pismo Beach State Park), or other organization acceptable to the Executive Director, for the purpose of providing lower cost public access and recreation improvements to and along the shoreline, including improvements to the California Coastal Trail.

**11. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Applicants shall submit to the Executive Director for review and approval documentation demonstrating that the Applicants has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized



development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## 2. Local Government Action

On October 25, 2007 the City of Pismo Beach Planning Commission approved a coastal development permit for a 67 room ocean front hotel with subterranean parking and related improvements at 147 Stimson in the Downtown Core planning area of the City.

An appeal of the Planning Commission decision was filed on January 3, 2006<sup>1</sup> by Coastal Commissioner's Patrick Kruer and Mike Reilly. The appeal contends that the project does not conform to the City's certified LCP shoreline hazards standards, and other LCP policies regarding height limits, protection of public views, and preservation of low-cost visitor-serving opportunities.

## 3. Standard of Review for Appeals

Coastal Act section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because the area of development is between the sea and the first public road paralleling the sea.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission

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<sup>1</sup> Although the City approved the project on October 25, 2005, notice of this Final Local Action was not received by the Commission until December 16, 2005, which resulted in an appeal period that ran from December 19, 2005 to January 3, 2006.



conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the nearest public road and the sea and thus, this additional finding must be made in a de novo review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicants, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

#### 4. Summary of Appellant's Contentions

The appeal contends that the project approved by the City of Pismo Beach is inconsistent with the shoreline hazards, general development standards, and visual resource policies of the certified LCP, as well as the public access policies of the Coastal Act. Specifically, the appeal asserts that the City-approved project does not conform to certified Land Use Plan (LUP) Policies S-2 (New Development), S-6 (Shoreline Protective Devices), and Implementation Plan (IP) Chapter 17.078 (Hazards and Protection Overlay Zone), particularly section 17.078.060(5) (Shoreline Protection Criteria and Standards), which prohibits new development that will require shoreline protection within a period of 100 years. Contrary to these requirements, the locally approved project involves new development that includes a shoreline protection device.

Additionally, the Appeal questions the City-approved project's consistency with LCP standards that protect views to and along the shoreline and safeguard against structures with excessive mass and bulk (Section 17.102.010(9)(c)). The appeal also asserts that the project is inconsistent with the LCP's general development standards for height and coverage on ocean fronting lots (17.081.030(3), 17.102.080(3)). Lastly, the appeal contends that the project raises issues regarding consistency with Coastal Act access policy 30213, calling for the protection and provision of low-cost visitor-serving and recreation amenities. Please refer to Exhibit 3 for the full text of the appeal.

#### 5. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action.

**Motion.** I move that the Commission determine that Appeal Number A-3-PSB-06-001 raises no substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the



Coastal Act.

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

**Resolution To Find Substantial Issue.** The Commission hereby finds that Appeal Number A-3-PSB-06-001 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

## Recommended Findings and Declarations

### 6. Project Location, Description, and Background

The project approved by the City is located on ten contiguous lots totaling 34,582 square feet, one block south of Pismo Pier, at 147 Stimson Street, and directly adjacent to the beach promenade at Pismo Beach State Park. The site is improved with 13 small and aging beach cottages and a single large metal structure. The cottages are a remnant from the former Clam Digger motel and are in poor condition. They are currently used as residential rental units. The existing warehouse is used for storage and parking. The property is zoned R-4 for hotel / motel uses by the certified LCP.

Currently, the western portion of the site is comprised mainly of beach sand and ice plant, and divided from the developed portion of the site by a noticeable break in elevation that has been created by wave scour and partly covered by unpermitted rock and debris, purportedly placed after the 1982 – 83 El Nino winter. The project site and adjacent site to the north are the only two remaining ocean front development sites between Hinds and Addie Streets that have not been re-developed within the past 20 years. The six block stretch of coastline between Main Street and Addie Street, within which the project is located, is improved with hotel/motels, restaurants, beach access and parking, and a series of shoreline protection devices.

The City approved project involves the construction of a 67 room hotel with underground parking and related improvements. The hotel structure includes three above ground floors rising to an average height of 35 feet with several pergolas / towers reaching up to 42 feet in height. There is also a subterranean parking garage with capacity for the required 81 parking spaces, two meeting rooms, a fitness center, business center, and public courtyard with connections to the City's pedestrian promenade. Due to the hazards associated with storm wave runup and tsunamis, the City's approval requires that the western portion of the hotel foundation and underground parking facility be engineered to function as a shoreline protective device. In addition, the City's conditions require the applicant to provide public access to the



beach promenade, and make the new courtyard available to the public. The applicant is also required to provide streetscape improvements along Stimson Street, landscaping, bicycle parking, and temporary and permanent water quality and erosion control measures. The project has since been revised by the Applicants. The project approved by the City, however, remains the focus of the Substantial Issue analysis.

## 7. LCP Background

The City's LCP is composed of two documents, the Land Use Plan and the Zoning Ordinance. The Land Use Plan was comprehensively revised in 1992, and Coastal Commission modifications were adopted in May 1993. In 1998, the City submitted to the Commission the first comprehensive Zoning Ordinance revision since certification in 1983. The Commission and the City were unable to reach a consensus on suggested modifications and thus, the 1983 Zoning Ordinance remains as the standard of review.

## 8. Substantial Issue Findings

### 8.1 Shoreline Structures

The certified Land Use Plan Safety Element Policies S-2, S-6, and Section 17.078.050(5) of the Zoning Ordinance regulate new development and construction of shoreline protective structures, and require new development to minimize risk to life and property by avoiding development in high hazards areas. These LCP provisions only allow for shoreline protection structures when necessary to protect *existing* principal structures in danger of erosion, and allow for the approval of new development only when it can be accommodated without shoreline armoring for a period of 100 years. (Please see the De Novo findings for a citation of these policies and standards.)

In contrast to these policies, the City's approval includes new development within a high hazards area that is periodically subject to wave attack, wave run-up, and inundation by tsunamis. The locally approved project includes construction of a subterranean parking garage beneath the ocean fronting site and below the level of the beach. The wave run-up analysis prepared for the project indicates that under existing conditions, the site has a high potential for being flooded from an El Nino storm event or from a tsunami. In order to mitigate for the impacts of the potential hazards, the City's approval requires that the hotel foundation be engineered to function as a seawall. This conflicts with the LCP provisions referenced above. In addition, the wave run-up analysis that was the basis for the City's approval did not include an evaluation of the risk of flooding associated with sea level rise or long-term beach erosion, which are key factors to evaluating the project's compliance with LCP provisions regarding hazards and shoreline structures. Accordingly, the appeal raises a substantial issue.

### 8.2 Visual Resources





The project also raises questions of consistency with the certified LCP standards that protect views to and along the beach, and safeguard against excessive mass and bulk, throughout the R-4 (hotel/motel and visitor serving) zoned district. Specifically, section 17.102.010(9)(c) of the 1983 zoning ordinance establishes a 25-foot height limit for new development on ocean-fronting parcels within the R-4 zone to limit massing along the pedestrian promenade and preserve scenic views. Elsewhere in the zone district, a height limit of 35 feet is allowed. Additionally, to further address scale and bulk, Section 17.081.030(3) requires a series of graduated setbacks for each successive floor on the primary ocean fronting elevation, up to the maximum height permitted by the underlying zone. (Please see the De Novo findings of this report for a citation of these provisions.)

The City-approved project includes three above ground floors that front the beach and the southern elevation (Stimson Street), and will be constructed to a maximum height of 35 feet with a portion at the rear of the site rising to 42.5 feet. Additionally a tower feature at the beach elevation is proposed at 42 feet. The project includes modest graduated setbacks at the west (beach) elevation to break up mass and introduce building articulation. This includes a 9', 15' and 19' step back on the first, second, and third levels, respectively. The City's findings for approval indicate that with the façade setbacks, the proposed 3-story, 35 foot height structure meets the intent of the development standard. However, the applicable standards require that both the maximum height be limited to 25 feet and a series of setbacks be incorporated to preserve scenic views and safeguard against excessive bulk and scale. Although the city-approved project includes the required step-back articulation, it exceeds the ocean front height limit by 10 feet and in some cases even more. It will block public views from the Stimson cul-de-sac and create an unusually large and massive structure directly adjacent to and looming over the public beach access promenade. As a result, the appeal contentions raise a substantial issue regarding the consistency of the local approval with the height limits and visual resource protection provisions of the certified LCP

### 8.3 General Development Standards

Section 17.102.080(3) of the certified LCP establishes the maximum allowable lot coverage for all structures within the R-4 zone at 55% of the parcel size. This standard limits the overall size and density of development, and thereby helps preserve visual aesthetics. The appeal contends that the project is inconsistent with this standard because if all elements of the project are included in the calculation of site coverage (e.g., the courtyard and driveways) the total amount of site coverage equates to approximately 90% of the development site.

The LCP defines "building lot coverage" as all portions of the building, either at or above ground level including garages, carports, and cantilevered portions of the building excluding roof overhangs, eaves or similar architectural extensions. Although the LCP's definition of structure is more expansive, and includes anything that is erected, constructed, or placed onto or in the ground such as swimming pools, roads, driveways, and at-grade patios, etc., the City has consistently applied the LCP's definition of building lot coverage to the determination of allowable site coverage. Consistent with this approach, the locally approved building coverage amounts to 18,435 square feet or 53.3% of the development site. Accordingly, the appeal does not raise a substantial issue regarding project conformance with LCP



coverage limits.

#### 8.4 Access

The City approved project raises issues regarding consistency with LCP and Coastal Act access policies calling for the protection, encouragement, and where feasible, preservation of lower cost visitor and recreation facilities. The City's approval did not evaluate opportunities to provide lower cost visitor serving accommodations, or require the provision of such facilities in conjunction with the Development. As a result, the locally approved project does not adequately address the requirements of Coastal Act Section 30213, and a substantial issue is raised regarding project compliance with Coastal Act access and recreation policies.

#### 8.5 Substantial Issue Conclusion

The City's LCP requires new development to be assured of 100 years of stability without reliance on shoreline protective structures. It also directs new development to be located outside of high hazard areas and stipulates that seawalls may be permitted only to protect *existing* structures in danger from erosion. The LCP policies also establish height limits to preserve scenic views and avoid excessive mass and scale. In addition, Coastal Act access policies call for the provision of low-cost recreational facilities where feasible. The City approved project does not adequately address these requirements. **Therefore, a substantial issue is raised regarding the consistency of the City's approval with LUP Policies S-2, S-6, and Zoning Ordinance Sections 17.078.060(5), 17.081.030(3), 17.102.010(9)(c), as well as Coastal Act Section 30213.**

### 9. Staff Recommendation on De Novo Permit

The staff recommends that the Commission, after public hearing **approve** the Beachwalk Resort coastal development permit with conditions.

**MOTION:** I move that the Commission approve Coastal Development Permit No. A-3-PSB-06-001 pursuant to the staff recommendation.

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

**RESOLUTION TO APPROVE THE PERMIT:** The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified City of Pismo Beach Local Coastal Program. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or



alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## 10. De Novo Coastal Permit Findings

By finding a substantial issue in terms of the project's conformance with the certified LCP, the Commission takes jurisdiction over the CDP application for the proposed project. The standard of review for this application is the City of Pismo Beach certified LCP and the Coastal Act access and recreation policies.

### A. Hazards

#### 1.1 LCP Hazard Protection Standards

As described in the Substantial Issue findings, incorporated herein, Policies S-2, S-6, and 17.078.060(5), address the use of shoreline protective devices and the need to ensure long-term structural integrity, minimize future risk, and avoid shoreline protective features in new development.

#### S-2 New Development

*New development within the City's jurisdiction shall be designed to withstand natural and man-made hazards to acceptable levels of risk by:*

...

*d. Requiring new development to avoid portions of sites with high hazard levels.*

#### S-6 Shoreline Protective Devices

*Shoreline protective devices, such as seawalls, revetments, groins, breakwaters, and riprap shall be permitted only when necessary to protect existing principal structures, coastal dependent uses, and public beaches in danger of erosion. If no feasible alternative is available, shoreline protection structures shall be designed and constructed in conformance with Section 30235 of the Coastal Act and all other policies and standards of the City's Local Coastal Program. Devices must be designed to eliminate or mitigate adverse impacts on local shoreline sand supply, and to maintain public access to and along the shoreline. Design and construction of protection devices shall minimize alteration of natural landforms, and shall be constructed to minimize visual impacts. The City shall develop detailed standards for the construction of new and repair of existing shoreline protective structure and devices. As funding is available, the City will inventory all existing shoreline protective structures within its boundaries.*

#### 17.078.060 Shoreline Protection Criteria and Standards

*...(5) New development shall not be permitted where it is determined that shoreline protection*



*will be necessary for protection of the new structures now or in the future based on a 100 year geologic projection.*

## **1.2 Hazard Analysis**

Policy S-2 requires all new development to minimize risk by avoiding development within known high hazard areas. Policy S-6 limits the construction of shoreline protective works to those required to protect *existing* structures or public beaches in danger from erosion. Implementation Plan standard 17.078.060(5) further prohibits new development if it is determined that shoreline protection will be necessary at any time within a 100 year geologic projection. The LCP provides these limitations because shoreline structures have a variety of negative impacts on coastal resources including adverse affects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach.

Pursuant to LCP guidance, policy S-2 and zoning standard 17.078.060(5) direct new development to be designed and sited to allow the natural process of erosion to occur and be able to withstand super-charged atmospheric and oceanographic events (El Nino, tsunami, etc.) without creating a need for a shoreline protective device. At a minimum, new development should be set back far enough to protect the principal structures from erosion for the reasonable economic life of the project (a minimum of 100 years per City policy).

The project site is located on Stimson Avenue, one block south of Pismo Pier and directly adjacent to Pismo State Beach and the Pacific Ocean. The beach in this location is fairly broad, averaging several hundred feet in width during summer months when beach accretion is at its maximum. The site is separated from the beach by a 4' to 6' high rock strewn scarp. It is currently occupied by several small cottages and a warehouse building, which are planned to be demolished. Rip-rap rock and debris has been placed along the scarp and near the existing structures approximately 50 feet back from the western property line, as well as along the Stimson Avenue street end. Staff was unable to locate any coastal permits for the shoreline armoring at either location, however, the Applicant is proposing to remove the rock contained on the project site in conjunction with the proposed development.

To aid in the evaluation of potential hazards of the site, a geotechnical investigation and separate wave run-up analysis were prepared. The geotechnical investigation was prepared by GSI Soils Inc. (December 16, 2002) and makes specific recommendations on soil preparation and foundation design to address the sandy underlying soils. Also, a geologic/wave run-up analysis was prepared for the multi-level hotel and subterranean parking garage proposed for the site. The purpose was to evaluate the on-site geology and oceanographic conditions that would influence erosion of the existing beach, as well as assess wave run-up characteristics with respect to the planned development. The analysis was prepared by Earth Systems Pacific, April 18, 2005 and subsequently revised and supplemented on June 8, 2006, January 10, 2007 and February 6, 2007.

Lastly, a photogrammetric analysis was prepared by Joseph Scepan (photo image analysis expert) using a 2005 Google Earth image overlain by a 1961 coastal records photograph. Mr. Scepan's analysis indicates that the wet line has migrated slightly seaward over the past 44 years, suggesting that the



Pismo Beach shoreline configuration is stable (i.e., in equilibrium), if not experiencing a bit of beach accretion. These findings are at odds, however, with the results of the National Assessment of Shoreline Change (USGS Open File Report 2006-1219) for the long-term shoreline rate change at Pismo State Beach. The short-term shoreline rate change over the time period analyzed in the USGS report indicates an average erosion rate of 3 meters per year.

### **1.2.1 Geologic Setting / Faulting**

The near surface soils encountered on the site generally consist of alluvium and beach sand deposits originating from Pismo Creek. Beach deposits cover the entire development site and are estimated to be approximately 15' to 20' thick. Exploratory borings discovered moist and saturated soils beginning at approximately 10' below grade with free standing water at 15 – 17 feet. The very moist conditions indicate fluctuations in the groundwater table to as high as 10 feet below grade.

The site is located in a region of high seismic activity, and is expected to experience ground shaking from earthquakes on regional and/or local faults during the life of the structure. The San Andreas fault is located approximately 41 miles northeast of the site, and with additional, more localized faults such as the Hosgri and Santa Lucia Bank faults and the Wilmar and San Luis Range faults, presents significant earthquake risks. In addition, the Los Alamos-Baseline-Lions and Casmalia-Orcutt-Little Pine faults may be active or potentially active and pose a significant potential to generate earthquakes. Ground shaking is the primary risk associated with strong earthquakes; however they can also cause secondary seismic hazards such as liquefaction and tsunamis.

Soil liquefaction is the loss of soil strength during a significant seismic event and occurs primarily in saturated sands and sandy silts. As reported in the geotechnical investigation by GSI Soils Inc (December, 2002) the site has a moderate liquefaction potential at a depth of 10 to 16 feet and a moderate to high liquefaction potential below 16 feet due to the moist/saturated conditions of the soil.

Vertical ground displacement due to submarine faulting may also cause a hazardous tsunami along the San Luis Obispo County coastline. The Earth Systems Pacific report indicates that one such event occurred in the late 1920's when a temblor occurred off the coast of Point Arguello. The resultant quake produced a tsunami that reached a height of 6 feet above mean high tide in Pismo Beach and other areas of San Luis Obispo County. Another tsunami in 1960, generated by a large earthquake in Chile, resulted in reports of a 9 foot high tide at Pismo Beach. Although clearly a threat to any development along the California shoreline, these risks can be exacerbated by such factors as sea level rise and localized geography that can focus storm energy at particular stretches of coastline.

### **1.2.2 Sea Level Rise**

There is general consensus among experts that the overall global rate of sea level rise during the past 100 years is approximately 2 mm/year. However, in California, the shoreline is subject to extreme and complicated sea level variations –often related to oceanographic / meteorological conditions such as an El Nino event. El Nino occurs roughly every 7 to 10 years, causing a seiching effect or wave of warm



water to travel north from the equator, raising the water temperature along the California coast. As the seawater warms, it expands and increases the volume of the ocean, which in turn, raises the sea level. During the 1982 – 83 El Nino event, sea level along the western U.S. seaboard rose more than a foot in some locations. After the El Nino conditions subside, sea level returns to its normal elevation. Since 1950, there has been seven strong El Nino events: 1957 -58, 1965 -66, 1972 -73, 1982 -83, 1986-87, 1991 -92, and 1997 -98.

Long-term sea level rise along the California shoreline has been relatively stable for thousands of years, as the rate of tectonic uplifting along the California coast outpaced the rise in sea level. However, there is mounting evidence that global climate change and a warming of the earth's surface, could tip the delicate balance in favor of higher sea levels along the California shoreline. Presently, beach erosion and flooding due to long-term sea level rise is not as significant as the short term sea level rise caused by an El Nino event. The Earth Systems Pacific 2005 report concludes that beach erosion and flooding at the site will be episodic and irregular, and attributed to the severe storms that are frequently associated with El Nino events. El Nino conditions will enable high-energy, short-period storm waves to attack farther up the beach and closer to the site of the proposed development.

### **1.2.3 Flooding**

As taken from the Earth Systems Pacific, 2006 report, according to the FEMA Flood Insurance Rate Map (Community Panel #060309 0002-B, Revised November 5, 1997), the seaward edge of the site is located in Zone A10. This zone is defined as 100-year flood zone up to elevation 10 feet. A 100-year flood event could flood the garage floor due to its elevation of 10 feet. The remainder of the site is defined as minimal risk of flooding (Zone C). However, if scour occurs on the western part of the site, or if the area experiences greater than normal sea level rise, the eastern half of the property could be also be included within a Zone A-10 flood zone and therefore subject to 100-year flooding. The flood risk identified on the Flood Insurance Rate Maps are based on current geologic conditions and do not provide an indication of flood potential if there is accelerated erosion or a rise in sea level.

### **1.2.4 Maximum Wave Run-Up**

To assess wave run-up characteristics and estimate the maximum design elevation of wave run-up for the site, the Earth Systems Pacific 2005 report assumes the return period coincides primarily with an El Nino storm event and secondarily with tsunamis. Wave run-up is a function of beach slope and elevation, as well as off-shore slope characteristics and structure type. The beach in this area follows the typical pattern of seasonal deposition and erosion observed along many beaches of the California coast. During spring and summer months, sand is deposited on the beach making it wider and higher in elevation. As a result, the widened beach creates a waters edge that is greater in distance from the back-beach improvements. The trend reverses in the winter. Larger, more frequent waves scour and erode the beach berm, moving the sand offshore and/or into the longshore sand supply system. As this happens, the waters edge moves closer to back-beach improvements.



Another input to the wave run-up analysis is the maximum wave height. Maximum wave height is estimated by examining the height of the run-up seawater flowing over the landward beach area, and is also based on the existing beach topography, the highest tide elevation, and a tidal surge produced by a storm or tsunami. The Earth Systems 2005 Report assumed a high tide elevation of 5.5 feet with a 5-foot tidal surge to arrive at an average still water depth of 10.5 feet. A wave period of 4 seconds was used. Based on the above geologic conditions, the result of the wave run-up analysis for a sloping beach condition was estimated to be 3 feet. This height, when combined with the estimated still water elevation of 10.5 feet, totals a wave elevation of 13.5 feet on the scoured beach surface. Based on this information, the Applicant's consulting geologist concluded that the development site has a high potential of being flooded up to an elevation of 13.5 feet (western half of the project site) from an El Nino event (every 7 to 10 years) or from a tsunami (once every 30 years).

As was discussed in the substantial issue findings above, at the time of the Commission's appeal, the City-approved project included a shoreline protective device (parking garage wall) to forestall erosion and wave run-up on the western end of the development site. The results of the wave run-up analysis with the proposed parking garage wall revealed a maximum wave run-up of approximately 7 feet. This height, combined with the assumed still water elevation of 10.5 feet at the wall, totals roughly 17.5 feet to the top of the wave at the vertical wall (parking garage) structure. The Earth Systems Pacific report noted that at 16.5 feet, the current design of the parking garage wall could be overtopped; however by extending the wall by another foot to 17.5 feet, the frequency of overtopping by storm driven waves or tsunami could be reduced. The City conditioned its approval to require the seawall be extended to 17.5 feet.

In response to questions raised regarding project consistency with the certified LCP shoreline protection standards and the adequacy of the wave run-up analysis provided in the Earth Systems 2005 report, two significant building revisions were proposed that affect the extent of wave run-up on the site. The Applicant submitted a revised project that removed the proposed seawall foundation structure and replaced it with a system of deep caisson/pilings foundation, and also proposed to increase the structural setbacks of the proposed building from the southwest (beach-front) property line. The Applicant's consulting geologist followed suit with a supplemental report (Earth Systems Pacific, June 8, 2006) to address the changes in the structural design. The report estimates that replacement of the seawall with an open unconfined parking garage, 4 feet of beach scour, and an additional 4-foot structural setback would result in a calculated wave run-up height of 12 feet. Absence of scour would decrease still water depth at the building and wave height. The report concludes that the garage floor has the potential for being flooded, but qualifies that the potential is low for a 30 year period and high for a 100 year period. The last time the site area was flooded was 24 years ago during the 1982-83 El Nino storms, which are considered by many to be the 100 year event.

The Applicant's consultants (Earth Systems Pacific, January 10, 2007; revised February 6, 2007) provided yet another revision to the wave run-up analysis, which the Commission staff's engineer found generally appropriate, if conservative (i.e., they assume a "worse-case" scenario). This most recent revision evaluated site conditions under two different storm and erosion conditions –conditions typical



of the 1982-83 El Nino winter, and conditions associated with a highly eroded beach, 1-foot rise in sea level, and a winter storm that occurs coincident with a high tide.

The 1982-83 El Nino storm event is considered to be the strongest and most devastating of the 20<sup>th</sup> century. In order to accurately assess the potential hazard, the analysis provided by the Applicant's consultant assumes a worst case scenario for several parameters including: tidal elevation, stillwater elevation, breaking wave height, and beach scour depth. Data obtained from the 1982-83 El Nino storms were used to estimate such things as breaking wave height and beach scour. The results of the 1982-83 storm wave run-up analysis yields an elevation of 7.4 feet and indicates that wave run-up comes close to the historic 1982-83 storm wave run-up elevation, which almost reaches the break in slope erosion feature on the site. This is lower than the proposed garage level parking elevation of 10.75 feet and as such the main impact associated with this event would consist of wave run-up forces against the system of deep caissons/pile foundation.

At the basis of the second scenario are the short-term erosion rates articulated by the U.S. Geologic Survey (USGS Open File Report 2006-1219), which suggests that the sandy beach area along Pismo State Beach is eroding upwards of 3 meters per year. The revised Earth Systems report extrapolated this erosion rate over the required 100-year design life of the project and concluded that at the end of the design period, the shoreline would be approximately 300 meters (984 ft) landward of its present location. Thus, for purposes of the analysis, the assumption is that at the end of 100 years, the shore would be underneath and landward of the proposed hotel structure. With respect to sea level rise, the rate of sea level change was extrapolated from observations reported in a study of coastal vulnerability to sea level rise near Santa Barbara. The rate of sea level change was estimated to be approximately 3.22 mm/yr., based on 27 years of data. Using this rate over the 100 year design life of the project equates to a relative sea level change of 32 cm or about 1 foot. Given the above parameters, the results of the maximum wave run-up analysis for a 100 year eroded beach condition with sea level rise, yielded an elevation of 8.35 feet. The maximum breaking wave height was calculated to be approximately 12.2 feet. Based on the maximum wave height results, the maximum breaking wave would have the most significant impact on the proposed hotel garage floor and caisson foundation. The garage level of the proposed hotel is designed at an elevation of 10.75 feet and can be expected to be inundated or flooded during winter storm events coinciding with high tides.

This site presents some unique geologic and oceanographic conditions that complicate the degree of threat from shoreline hazards. The sandy beach materials are highly erodable, the soils beneath the surface are saturated, and there is considerable differences regarding the configuration of the shoreline (depositional vs. erosional state). However, no matter which scenario or particular set of circumstances are assumed, it is clear that the development site will be subject to wave run-up and flooding. When all the factors are considered together, and evaluated in the context of an extreme storm event, the Applicant's consulting geologist and Staff's engineer have both concluded that the garage level of the proposed hotel will have some inundation and flooding, and accordingly, will require siting and design options to ensure it can be safe from storm, erosion and flooding hazards over its expected economic life. The Applicant's consultants have analyzed several different storm and erosion conditions in order to determine the appropriate design conditions for the hotel and foundation without needing to add





shoreline protection now or in the future. Based on the results of their analyses, the foundation of the hotel will have to use deep caissons or pile supports and should be designed to withstand beach scour around their base to -8.4 feet NGVD. The design conditions should factor in wave forces against the caissons, as well as sand scour. While the garage floor could be built today at or below grade, if there is significant erosion of the beach, there may be several feet of clearance below the garage floor sometime in the future. The garage floor should therefore be designed to accommodate or be able to be modified in the future to remain stable with this clearance. Special Condition 1 requires the submittal of a foundation plan to insure appropriate minimum site stability standards as required by the Uniform Building Code for development within a flood plain. Design considerations for the engineered foundation shall include direct wave attack, shoreline erosion, wave scour, liquefaction, and tsunami over the life of the structure (100 years).

It is also essential that potential hazards from a tsunami be considered. Most tsunamis that are likely to occur at this location will be comparable to the inundation levels that can be expected from the FEMA A-zone inundation. An extreme tsunami, with far less than a 1% annual probability of occurrence, could be high enough to threaten the lobby level of the proposed hotel, and would likely coincide with a co-seismic event. Under such an occurrence, the proposed hotel structure would be threatened from both the earthquake and the subsequent tsunami. There are no probabilities associated with these extreme events. The design conditions for normal seismic loadings combined with the flood and erosion design conditions should insure that the building will remain stable during most tsunamis. The upper stories of the hotel would provide for safe vertical evacuation and protection of human life during these extreme events. Special Condition 8 requires the development of a tsunami preparedness plan to provide for safe, organized evacuation in the event of a tsunami.

Therefore, as conditioned to require a foundation plan and tsunami preparedness plan, the proposed hotel and subterranean garage will minimize shoreline hazards and risks to people and property consistent with the certified LCP.

### **1.2.5 Assumption of Risk**

The experience of the Commission in evaluating the consistency of proposed developments with LCP policies regarding development in areas subject to problems associated with geologic instability, wave and/or erosion hazard, has been that development has continued to occur despite periodic episodes of heavy storm damage, landslides, or other such occurrences. Development in such dynamic environments is susceptible to damage due to such long-term and episodic processes. As a result, permits for development in such areas are regularly conditioned in a manner that requires the permittee to acknowledge site geologic risks and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed.

Although the Commission has sought to minimize the risks associated with the development proposed in this application, the risks cannot be eliminated entirely. Given that the Applicants have chosen to pursue the development despite these risks, the Applicants must assume these risks. Accordingly, this approval is conditioned for the Applicants to assume all risks for developing at this location (see Special



Condition 7).

### 1.2.6 Hazards Conclusion

As discussed above, the project has been designed and conditioned to minimize (to the extent feasible) shoreline hazards and the risk imposed by them. Special Condition 1 requires the Applicants to submit Final Foundation Plans consistent with the design consideration identified in the revised February 6, 2007 Wave Run-up study prepared by Earth Systems Pacific. Special Condition 8 requires creation of a tsunami preparedness plan to address concerns regarding the threat of flooding and loss of human life during extreme tsunami events. Special Condition 7 requires the applicant to assume liability and risk for developing in a known shoreline hazards area. As conditioned, the proposed project can be found consistent with the City's Hazard Protection Criteria and Standards (S-2, S-6, and 17.078.060(5)).

## B. Public Access and Recreation

### 1.1 LCP and Coastal Act Policies

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3." The proposed project is located seaward of the first through public road (Cypress Street). Coastal Act Sections 30210 through 30213 and 30221 specifically protect public access and recreation. In particular:

**30210.** *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

**30211.** *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

**30213.** *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...*

**30221.** *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Coastal Act Section 30240(b) also protects parks and recreation areas, such as the adjacent beach area. Section 30240(b) states:



**30240(b).** *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

These overlapping policies clearly protect the beach (and access to and along it) and offshore waters for public access and recreation purposes, particularly free and low-cost access and recreational opportunities. In addition, the City's certified LCP requires:

**LU-K-2 Downtown Development.** *Development shall comply with the following policies:*

- a. **Oceanfront Boardwalk.** A continuous pedestrian boardwalk along the planning area ocean frontage to Pismo Creek shall be established. This boardwalk shall include pedestrian amenities such as, but not limited to seating, lighting, and landscaping. Properties adjacent to the future boardwalk location shall be required to dedicate up to 20 feet of the ocean frontage of the property for the boardwalk. Installation of the boardwalk may be required as a condition of approval of development projects. The amount of dedication shall be subject to the size of the ocean-facing parcels and the area required minimizing bluff erosion identified in geologic studies submitted with development applications. The boardwalk will connect into the Pismo Creek trail at the end of Addie Street.*

### **1.2.1 Public Access Analysis**

The proposed development site is located at 147 Stimson Avenue, approximately one block south of Pismo Pier, in the Downtown Core planning district of the City of Pismo Beach. The project site contains 150 feet of sandy beach frontage and is directly landward of the public pedestrian boardwalk. The raised wooden boardwalk is heavily used and provides an important link between the Pismo Pier promenade and the existing promenade south of Stimson Avenue with connections to Pismo Creek and beyond. The City of Pismo Beach is a very popular visitor-serving destination and attracts over 1 million visitors annually.

As approved by the City, the proposed development includes construction of a 67-room hotel with spa, meeting rooms, appurtenant facilities, and outdoor courtyard. The approved development further includes a requirement to provide access connectivity to the public pedestrian boardwalk and allow passive recreational use of the courtyard area. LCP requirements indicate that all properties adjacent to the oceanfront boardwalk must dedicate up to 20' of ocean frontage for the construction of the boardwalk. However, in this instance, the public boardwalk has already been constructed seaward of the development site. Accordingly, the City required the applicant to provide the access connection and allow public use of the courtyard.

Special conditions on the City's permit require the applicant to construct access to the pedestrian promenade but use of the courtyard appears to be more of an informal arrangement than compulsory requirement. Furthermore, the City-approved project did not address the potential impacts of the proposed three-story hotel structure on the access and recreational experience along the public



boardwalk. The above ground portion of the proposed three-story hotel structure was designed with only a 9 foot setback from the southwest property line (16' from the public pedestrian boardwalk). The structure was designed to be generally 35 feet in height, with appurtenant features that extend to roughly 40 feet above grade and the public pedestrian boardwalk. The boardwalk is located less than 7 feet from the southwest property line and thus, the second and third floor walls would be setback only 22' and 26' respectively from the public pedestrian boardwalk.

The Applicant has since submitted a revised proposal that includes an increased setback and greater articulation for the second floor, and a maximum height limit of 25 feet on the beachfront lots. Please see Exhibit 5 for site plans and elevations, and Exhibit 6 for a computer aided schematic of the proposed changes. As revised, the redesigned hotel increases the ground floor setback from the pedestrian boardwalk an additional 5' for a total of 21 feet. The second floor setback would increase from 26' to 35' from the public access boardwalk. The 25' maximum height established by the LCP limits construction to two stories on the five existing beachfront lots (Lots 34 – 38). The second floor roof will be used as an observation deck and spa area. In addition, the applicant proposes to construct access stairs from the courtyard to the pedestrian boardwalk, from the courtyard to the open space beach area seaward of the hotel, and a fully ADA accessible ramp from the courtyard to the pedestrian boardwalk.

Special Condition 5 of this permit ensures that the outdoor courtyard and seating areas, sandy beach area, and all associated access connections to the pedestrian promenade shall be open and available for free general public 365 days a year for the life of the development, with limited exceptions for private events, as detailed by an Access Management Plan to be reviewed and approved by the Executive Director. It further prohibits future development from occurring in the areas available for public access and requires the applicant to prepare a legal description and graphic depiction of the public access area affected by this condition.

### **1.2.2 Lower Cost Visitor Serving and Recreational Facilities**

Coastal Act section 30213 requires that lower cost visitor and recreational facilities be protected and where feasible, provided. In light of current trends in the market place and along the coast, the Commission is increasingly concerned with the challenge of providing lower-cost overnight accommodations consistent with the Coastal Act. Recent research in support of a Commission workshop concerning hotel-condominiums showed that only 7.9% of the overnight accommodations in nine popular coastal counties were considered lower-cost. Although statewide demand for lower-cost accommodations in the coastal zone is difficult to quantify, there is no question that camping and hostel opportunities are in high demand, and that there is on-going need to provide more lower-cost opportunities along California's coast. For example, the Santa Monica hostel occupancy rate was 96% in 2005, with the hostel being full more than half of the year. State Parks estimates that demand for camping has increased 13% between 2000 and 2005. Nine of the ten most popular campgrounds are along the coast.

The proposed hotel development project will result in the demolition of 13 small cottages that



potentially could be used for low cost visitor serving accommodations. In their place, the applicant will construct a new hotel that will provide 69 units of medium-high to higher cost. As discussed below, it cannot reasonably be said that any “lower-cost” overnight accommodations are being proposed in the project.

City analysis of the potential for visitor serving use of the cottages indicates that the “transient use” of the units had been abandoned. The cottages were originally designed for transient occupancy as part of the Wave Hotel constructed prior to 1924, and continued to provide beachfront accommodations through the 1980’s and possibly into the mid-1990’s. Residential use of the cottages is documented for the past 8 years. In response to the appeal contentions regarding this issue, the Applicant has noted that the proposed development will result in the replacement of a private residential use with a coastal priority, visitor-serving use that will also include amenities to support public access and recreation. As discussed above, the proposed hotel project is designed with a large outdoor courtyard and open space area that will be available for free public use. In addition, the proposed hotel includes construction of smaller units that, according to the applicant, will be rented at affordable rates. The applicant estimates that roughly one out of every six rooms will provide low-cost visitor serving accommodations.

The Commission acknowledges the applicant’s efforts to provide low-cost visitor-serving facilities available to the public in conjunction with the project, including dedication and use of the outdoor courtyard, and access connections from the hotel courtyard to the City’s public promenade. However, the project does not provide lower-cost overnight accommodations needed to address the requirements of Coastal Act Section 30213, as detailed below. The provision of low-cost accommodations is feasible at the project site, and therefore required by Coastal Act Section 30213. In order to effectively address this requirement, it is reasonable to expect that at least one out of every ten units should provide a lower cost opportunity. Since the project proposes 69 hotel units, at least 7 low-cost units should be provided.

The original hotel design included a variety of hotel accommodations including larger ocean front suites, more modest ocean view rooms, and smaller mountain view hotel rooms located at the rear of the structure, which due to their small size and easterly orientation, likely would be rented at lower rates. This original design included 8 mountain view rooms, each 345 square feet. Subsequent revisions to the hotel, necessary to bring it into conformance with the general development and visual standards of the certified LCP, eliminated some of the larger ocean front suites and reduced their size, and increased the number and size of the mountain view rooms. There are now 12 mountain view rooms proposed and the size of those rooms has increased approximately 20% to 410 square feet. The redesign also includes five ocean view rooms that are smaller in size than the proposed mountain view quarters, and average 360 square feet in size.

Despite the increase in the number of smaller hotel rooms, it is unlikely that the smaller rooms being proposed will provide a lower-cost option in the competitive market of overnight accommodations. Rather, the Applicant has indicated the smaller rooms will be offered at a rate of approximately \$150 per night, depending upon the season and market conditions. In comparison, there are many hotel/motels in the Pismo Beach area that offer similarly-sized rooms at more affordable rates, including rooms at the Ocean Breeze Inn (\$70 per night), Rose Garden Inn (\$75 per night), Oxford Suites (\$89 per night), Best



Western Shelter Cove Lodge (\$92 per night), and Shore Cliff Lodge (\$116 per night). According to an internet hotel room guide, a hotel room rate of \$150 per night would register a rating of four out of five stars on its affordability chart. In terms of camping and hostel options, average cost data indicates perhaps a better range for what might be considered “lower cost” accommodations. For example, the average cost of a hostel is \$14. Camping at State Parks ranges from \$9-\$25 a night. Accordingly, staff cannot concur with the applicant that low-cost visitor serving accommodations will be provided by the project. Therefore, as proposed, the project cannot be found consistent with Section 30213 of the Coastal Act.

In lieu of providing low-cost accommodations on-site, which would require a significant change in the project objectives, the requirements of Coastal Act Section 30213 can be met by providing an in-lieu fee for the purposed of funding lower-cost accommodations at an off-site coastal location in the same geographic region. Although the Commission prefers the actual provision of lower-cost accommodations in conjunction with projects, where necessary, the Commission has used in-lieu fees to provide lower-cost opportunities. For example, the Commission has required an in-lie fee in permits to convert the Highlands Inn in Monterey County and the San Clemente Inn to timeshares. In these cases, the Commission required the applicant provide funding for a hostel to offset the loss of lower-cost accommodations.

Accordingly, in order to mitigate for the absence of low-cost visitor accommodations in the Beachwalk Resort Hotel development and bring the project into conformance with Section 30213 of the Coastal Act, the terms of this permit require the applicant to place an amount of money equivalent to the cost of constructing at least seven low-cost units in an interest bearing account, for the specific purpose of establishing low-cost accommodations such as a hostel, tent campsites, or other low-cost overnight accommodations in the coastal zone of San Luis Obispo County.

The amount of this fee was derived by estimating the cost of constructing seven new campsites and associated infrastructure. Based on information provided by the Department of Parks and Recreation, the creation of additional campsites within an existing State Park unit may cost up to \$5,000 per site. The typical amenities including grading to create a level parking pad and camp area, table or bench, fire pit, cook site, landscaping, and a share of utilities such as water and restrooms. However, this does not include the cost of constructing restrooms and utilities. In its evaluation of the cost of constructing a new campground at the Harbor Terrace site in Port of San Luis, including the extension of necessary utilities and the construction of restrooms and other campground amenities, the Port estimated the cost of each new tent campsites at more than \$13,860 per site in 2002. Applying this figure to the anticipated cost of constructing at least seven new tent camping sites results in a fee of \$97,020.

Lastly, the Applicants maintain that they do not seek a condominium hotel approval, though have indicated that it may be necessary depending on the ability to secure adequate financing for the hotel development. They claim that the certified LCP permits condominium hotels and have indicated that they would like to retain that option. However, the LCP’s allowance of condominium hotels only applies to resort commercial designated properties. The subject heading for LCP policy LU-4 is Resort Commercial Land Uses; subsection (e) refers to a permissible type of land use within so designated



areas, specifically, Condominium Hotels. Policy LU-1 further establishes the applicability of land uses throughout the City and states:

*Land uses shall be regulated as shown on the Land Use Map, Figure LU-2 and the maps for the individual neighborhood planning areas. In case of conflict, the maps for the individual planning areas shall take precedence. Land use categories applicable to the Downtown area are stated in the policy section for that subarea.*

Figure LU-2 (Exhibit 10) illustrates that the condominium hotel provision applies to several planning areas about the City, including the North Spyglass, Dinosaur Caves, Motel, and Pismo Creek planning areas, but clearly excludes the downtown planning district. The individual planning map for the downtown planning area does not contain a resort commercial land use designation and condominium hotels are not contemplated within the specific policy language of any of the downtown land use policies. Thus, condominium hotels are not currently an allowable use in the downtown planning district. To ensure that the facility remains visitor serving, permit conditions prohibit private ownership of the hotel units, and limit lengths of stay for any individual, group, or family. Specifically, Special Condition 6 requires the proposed hotel rooms must remain available for public transient use in perpetuity, and places a 29 day limit on the length of stay (14 days between Memorial Day and Labor Day).

### **1.2.3 Construction Impacts**

During construction, beach access and recreation would effectively be precluded on the beach seaward of the proposed hotel, between the pedestrian boardwalk and the development site. Construction activities will also intrude and negatively impact the aesthetics, ambiance, serenity, and safety of the beach and immediate offshore recreational experience (i.e., boardwalk and beach). The public would bear the burden of the negative construction impacts over several months including the typically busy summer vacation season. Although this impact could be minimized by appropriate construction controls (such as limiting the times when work can take place, fencing the construction area, staging equipment and vehicles, storing equipment and materials on-site, and clearly delineating and avoiding to the maximum extent feasible public areas, etc., see required construction plan – Special Condition 2), it cannot be eliminated. The project construction will also negatively impact the beach recreational experience by introducing construction including large equipment, noise, etc., into what is a fairly tranquil natural area. This temporary impact will be minimized through the development and implementation of the construction plan required by the Special Conditions of this permit. In addition, the Applicants will be required to restore all beach areas including removing all rock and debris between the public pedestrian boardwalk and the development site following construction (see Special Conditions 4 and 5).

### **1.3 Public Access and Recreation Conclusion**

The proposed project will provide visitor-serving and public access and recreation facilities consistent with the public access and recreation provisions of the LCP and the Coastal Act. Permit conditions



refine and secure these public access and visitor-serving elements, provide for low-cost accommodations, and minimize construction impacts. As so conditioned, the project can be found consistent with the certified LCP and Coastal Act access and recreation policies discussed in this finding.

### C. Scenic Resources

The City's general development and special height limitation standards protect public views to and along the shoreline. More specifically, Implementation Plan Standards 17.081.030(3) and 17.102.010(9)(c) state, in relevant part:

***17.081.030 Special Height Limits –Ocean Fronting Parcels.*** *Special height limitations for ocean fronting parcels in the following planning areas shall be described below:*

*(3) Commercial Core Planning Area: Beginning at the inland extent of the public boardwalk identified in the City's Local Coastal Program, one story facades no higher than twelve (12) feet in height above site grade (including roofs) shall be permitted immediately adjacent to the boardwalk. Additionally story facades beyond the first level shall maintain the following minimum setbacks from the inland extent of the public boardwalk:*

*First level...None Required*

*Second level...7' – 10' minimum setback*

*Third level...14' – 20' minimum setback*

*Fourth level...21' – 30' minimum setback*

***17.102.010 Building Heights.*** *1. In the R-3, R-4 and R-R Zones no building or structure shall exceed thirty-five (35) feet in height above site grade...5. Exceeding Height Limits (R-4, R-R, C-1, C-2, C-M and G zones). Building Appurtenances and Architectural Extensions: Where cupolas, flag poles, elevators, and solar collectors not otherwise permitted by subsection 7 below, radio or other towers, water tanks, church steeples and similar structures and mechanical appurtenances are associated with a permitted use in a district, height limits may be exceeded by fifteen percent (15%) upon securing a conditional use permit or development permit...*

***17.102.010(9) Special Height Limitations –Ocean Fronting Parcels.*** *Special height limitations for ocean fronting parcels in the following planning areas shall be described below:*

***c. Commercial Core Planning Area:*** *all structures on ocean fronting parcels shall be limited to 25 feet in height above site grade.*

Partly because of its geographic setting between Point Buchon and the Point Sal and partly because of





its relatively unspoiled central California beach-town setting, the project area is located in a significant public viewshed. The City's certified Land Use Plan (Table PR-4) designates the Stimson Avenue street-end as a public viewpoint of importance. The cul-de-sac provides visual ocean access and a connection to the now completed beach-front pedestrian boardwalk, which runs from Pismo Creek north to the Pier promenade, with a soon-to-be-constructed extension to Main Street. The downtown area in and around Pismo Pier is a highly valued visitor-serving destination.

As originally submitted, the proposed 67-room hotel included three above ground floors on two ocean-front parcels overlooking the pedestrian boardwalk and beach. The proposed hotel is designed in the shape of the number "7" and includes an expansive open courtyard accessible from the pedestrian boardwalk. In terms of the visual aesthetic, the design and orientation of the hotel allows roughly half of the 150 foot ocean frontage to remain open, maximizing visual access into the property. The design also facilitates public pedestrian access onto the site and is much more inviting than the large, 3-story, monolithic hotel structures fronting the boardwalk to the south. Nonetheless, the proposed hotel is setback just 16 feet from the pedestrian boardwalk. This combined with designed height of 35 feet (and tower feature rising to 42 feet along the west [beach] elevation) and only modest step back articulation on the second and third floors, accentuate the scale and mass of the proposed structure and raised questions regarding consistency with the certified LCP.

The applicable LCP standards require that both the maximum height be limited to 25 feet *and* a series of step backs be incorporated to preserve scenic views and safeguard against excessive mass. The Commission appealed the project in part due to concerns raised regarding project conformance with the certified LCP standards for preserving views to and along the beach, as well as safeguarding against excessive mass and bulk throughout the R-4 zoned district.

In response to the Commission's concerns, the Applicant has proposed to re-design the project by increasing the step backs and articulation of the structure. The redesigned hotel increases the ground floor setback from the pedestrian boardwalk an additional 5' for a total of 21 feet. Additionally, the second floor setback is likewise increased to 34 feet from the pedestrian boardwalk. See Exhibit 5. The new hotel design also respects the LCP 25' maximum height limit on oceanfront parcels by incorporating a second story roof deck and eliminating the third floor suites on the oceanfront parcels. See Exhibit 6. The re-siting and re-design breaks up the mass of the hotel and reduces shadowing of the pedestrian boardwalk, and will improve views of the coast from Stimson Avenue. Special Condition 1 requires the submittal of Final Plans and elevations to ensure the proposed revisions are carried forward into the project.

As conditioned, the project is consistent with the visual resource standards (17.081.030, 17.102.010(1), and 17.102.010(9)(c)) of the City's certified LCP.



## D. Affordable Housing

Coastal Act Section 30604 states, in relevant part:

*(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 densities below the density sought by an applicant if the density sought is within the permitted density or range of density established by local zoning plus the 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 City of Pismo Beach has addressed the impacts of the project on affordable housing opportunities pursuant to the California Environmental Quality Act and the Housing Policies of the City's General Plan that are not a part of its LCP. As previously described, the project involves the demolition of thirteen small cabin units. According to the Negative Declaration certified by the City, eleven of these cabins were occupied the time the Negative Declaration was prepared, and seven of the tenants had very-low, lower, or moderate incomes, and that five of the units rented to the tenants with moderate incomes or below are rented at rates lower than the maximum considered affordable to those income groups. The Negative Declaration concludes that when the existing cabins are demolished and replaced by a hotel, "the City will have eleven fewer units affordable to very-low- to moderate-income persons, and the eight persons who occupy seven of the units now, whose income levels qualify as very-low to moderate, will be displaced." To address this impact, the Negative Declaration establishes the following mitigation measure:

*The applicant shall submit, prior to issuance of a demolition permit for the housing on the site:*

- ☐ *A plan, acceptable to the Community Development Director, providing relocation assistance to moderate-income- and below tenants. Plan shall include reasonable moving expenses and assistance in finding new homes, as described in Housing Element policy H-13.*
- ☐ *A program for providing replacement units, acceptable to the Community Development Director, if required by the Planning Commission.*



Although the Planning Commission did not require a program for providing replacement units, they did attach a condition of approval that requires the payment of all applicable fees. According to City staff, this includes the payment of In-Lieu Fees to meet the City's Inclusionary Housing Requirements in accordance with City Ordinance No. 2000-03. As noted by Special Condition 9 of this report, this and other City conditions that have been enacted under an authority other than the Coastal Act and the LCP continue to apply to the project.

#### E. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of 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 Pismo Beach conducted environmental review for the proposed project per the requirements of CEQA and issued a Negative Declaration with Mitigations.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has analyzed the environmental impacts posed by the project and identified changes to the project that are necessary to reduce such impact to an insignificant level. Project changes required by special conditions implement alternatives that lessen the project impacts on the environment and address cumulative impacts associated with beachfront development. Based on these findings, which are incorporated by reference as if set forth herein in full, the Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA.

