CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863 FAX (831) 427-4877
www.coastal.ca.gov

W9

CENTRAL COAST DISTRICT (SANTA CRUZ) DEPUTY DIRECTOR'S REPORT

For the

November Meeting of the California Coastal Commission

MEMORANDUM Date: November 12, 2008

TO: Commissioners and Interested Parties

FROM: Charles Lester, Central Coast District Deputy Director

SUBJECT: ***Deputy Director's Report***

Following is a listing for the waivers, emergency permits, immaterial amendments and extensions issued by the Central Coast District Office for the November 12, 2008 Coastal Commission hearing. Copies of the applicable items are attached for your review. Each item includes a listing of the applicants involved, a description of the proposed development, and a project location.

Pursuant to the Commission's direction and adopted procedures, appropriate notice materials were sent to all applicants for posting at the project site. Additionally, these items have been posted at the District office and are available for public review and comment.

This report may also contain additional correspondence and/or any additional staff memorandum concerning the items to be heard on today's agenda for the Central Coast District.

IMMATERIAL AMENDMENTS

1. 3-07-031-A1 Jennifer S. Krach; Michael N. Inglis; John C. Laing (Live Oak, Santa Cruz County)
2. 3-06-024-A1 City Of Pacific Grove, Public Works Department, Attn: Celia Perez Martinez, Public Works Supervisor (Pacific Grove, Monterey County)

TOTAL OF 2 ITEMS

DETAIL OF ATTACHED MATERIALS

REPORT OF IMMATERIAL AMENDMENTS

The Executive Director has determined that there are no changes in circumstances affecting the conformity of the subject development with the California Coastal Act of 1976. No objections to this determination have been received at this office. Therefore, the Executive Director grants the requested Immaterial Amendment, subject to the same conditions, if any, approved by the Commission.

Applicant	*Project Description*	*Project Location*
3-07-031-A1 Jennifer S. Krach Michael N. Inglis John C. Laing	Modify Condition No. 2 of previously approved coastal development permit regarding drainage.	4640, 4630 & 4610 Opal Cliffs Drive, Live Oak (Santa Cruz County)
3-06-024-A1 City Of Pacific Grove, Public Works Department, Attn: Celia Perez Martinez, Public Works Supervisor	Repair damage to the pier/breakwater at Lover's Point. Project involves removing broken and/or spalled concrete, placing rebar and other reinforcing matting onto the wall, and pumping/spreading roughly 4 yards of shotcrete over the reinforced surface of the breakwater.	Ocean View Blvd. (various locations along Pacific Grove shoreline, generally seaward of Ocean View Blvd. (first public road) and the Monterey Bay coastal recreation trail between 5th St. & Beach St.), Pacific Grove (Monterey County)

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WEB: WWW.COASTAL.CA.GOV

NOTICE OF PROPOSED PERMIT AMENDMENT

Date: October 28, 2008

To: All Interested Parties

From: Dan Carl, Central Coast District Manager DCarl
Susan Craig, Coastal Planner S. Craig

Subject: **Proposed Amendment to Coastal Development Permit (CDP) 3-07-031**
Applicants: Jennifer Krach, Michael Inglis, and John Laing

Original CDP Approval

CDP 3-07-031 was approved by the Coastal Commission on May 6, 2008, and provided for the removal of riprap and the construction of a two-foot wide stem wall along the toe of an existing concrete gravity seawall fronting three residential properties; excavation of a keyway and restacking of existing riprap adjacent to the upcoast end of the existing seawall; collection of all bluff-top drainage and directing it away from the bluff-top edge; removal of all drainage pipes that extend over the bluff-top or through the bluff edge, and; future seawall/revetment repair and maintenance, all located at the toe of the bluffs at Privates Beach along Opal Cliffs in the Live Oak beach area of Santa Cruz County.

Proposed CDP Amendment

CDP 3-07-031 would be amended to change Special Condition 2 regarding drainage to allow one drain line to continue to discharge at the seawall. The Commission's reference number for this proposed amendment is 3-07-031-A1.

Executive Director's Immateriality Determination

Pursuant to Title 14, Section 13166(b) of the California Code of Regulations, the Executive Director of the California Coastal Commission has determined that the proposed CDP amendment is immaterial for the following reasons:

In moving forward with condition compliance, it became apparent that it is not technically feasible to implement all elements of the drainage plan as required by Special Condition 2. Specifically, it is not feasible to collect all bluff-top drainage and direct it away from the bluff-top edge nor is it feasible to remove all drainage pipes that extend over the bluff-top or through the bluff edge. This is due to the volumes of runoff, the grades and associated difficulty of directing the runoff uphill to the street, and the lack of public drainage infrastructure and capacity on Opal Cliff Drive. Recognizing these constraints, an alternative drainage plan has been developed to consolidate the drainage and camouflage the drainage components as much as possible. The proposed amendment will allow for the new drainage alternative to be implemented and will, over time, reduce the number of pipes extending seaward from five to one. Two of the pipes would be removed and drainage would be connected to the one remaining pipe upon redevelopment or significant reconstruction of rear yard/patio and/or overall residential development at 4640 Opal Cliff Drive. The proposed amendment includes camouflaging of drain piping through: 1) the use of earthen-tone colored plastic pipe; 2) screening the portion of pipe that extends along the terrace

deposit portion of the bluff face with appropriate drought-resistant native vegetation, and; 3) fixing the piping to the bedrock facing and covering the piping with shotcrete that is colored, textured, and sculpted to match the adjacent bedrock. These methods of camouflage will be maintained for the life of the project. The proposed drainage plan will result in visual enhancement by reducing the number of pipes that extend over the bluff-top or through the bluff edge, and by camouflaging remaining piping that extends through these areas. In sum, the proposed amendment will enhance visual resources along this portion of coastline consistent with the Commission's original coastal development permit approval, as well as consistent with the Coastal Act and the certified Santa Cruz County Local Coastal Program.

Coastal Commission Review Procedure

The CDP will be amended as proposed if no written objections are received in the Central Coast District office within ten working days of the date of this notice. If such an objection is received, the objection and the Executive Director's response to it will be reported to the Commission on Wednesday, November 12, 2008, in Long Beach. If three Commissioners object to the Executive Director's determination of immateriality at that time, then the application shall be processed as a material CDP amendment.

If you have any questions about the proposal or wish to register an objection, please contact Susan Craig in the Central Coast District office.

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

NOTICE OF PROPOSED PERMIT AMENDMENT

Date: November 10, 2008

To: All Interested Parties

From: Dan Carl, Central Coast District Manager
Mike Watson, Coastal Planner

Subject: **Proposed Amendment to Coastal Development Permit (CDP) 3-06-024**
Applicants: City of Pacific Grove; Attn: Celia Perez Martinez

Original CDP Approval

CDP 3-06-024 was approved by the Coastal Commission on January 11, 2007, and provided for repairs to the Monterey Bay Coastal Trail (aka Pacific Grove Recreation Trail) and armoring of several sections of the adjacent bluffs along the seaward side of Ocean View Boulevard in the City of Pacific Grove.

Proposed CDP Amendment

CDP 3-06-024 would be amended to add one additional repair site at the pier/breakwater at Lover's Point, where a section of spalled concrete below the public access observation platform would be repaired in-kind. The Commission's reference number for the proposed amendment is 3-06-024-A1.

Executive Director's Immateriality Determination

Pursuant to Title 14, Section 13166(b) of the California Code of Regulations, the Executive Director of the California Coastal Commission has determined that the proposed CDP amendment is immaterial for the following reasons:

The additional repair will protect existing public access, it is minor in scope, and it is appropriate to undertake it as part of the larger project that is currently ongoing. In sum, the proposed amendment will enhance public access and recreational opportunities consistent with the Commission's original coastal development permit approval, as well as consistent with the Coastal Act and the certified Pacific Grove Land Use Plan.

Coastal Commission Review Procedure

The CDP will be amended as proposed if no written objections are received in the Central Coast District office within ten working days of the date of this notice. If such an objection is received, the objection and the Executive Director's response to it will be reported to the Commission. If three Commissioners object to the Executive Director's determination of immateriality, then the application shall be processed as a material CDP amendment.

If you have any questions about the proposal or wish to register an objection, please contact Mike Watson in the Central Coast District office.

STATE OF CALIFORNIA – THE RESOURCES AGENCY

Arnold Schwarzenegger, *Governor*

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

November 10, 2008

To: Commissioners and Interested Parties

From: Charles Lester, Senior Deputy Director, Central Coast District

Re: Additional Information for Commission Meeting Wednesday, November 12, 2008

Agenda Item	Applicant	Description	Page
W11b, CML-MAJ-2-07	City of Carmel	Correspondence	1
W11d, MCO-MAJ-2-07 Pt.2	Monterey County (Doud)	Correspondence	7
W11e, SCO-MAJ-1-08 Pt.2	Santa Cruz County	Correspondence	8
W12a, A-3-SLO-07-059	San Luis Obispo County	Correspondence	9
W13a, 3-07-048	Held and Violiz	Correspondence	31
W14a, 3-08-013	Cannery Row Marketplace	Correspondence	35

W11b

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CENTRAL COAST AREA

CITY HALL
BOX CC
CARMEL-BY-THE-SEA, CALIFORNIA 93921

7 November 2008

California Coastal Commission
45 Fremont St, Ste 2000
San Francisco, CA 94105

RE: Carmel LCP Amendment 2-07

Dear Commissioners:

The City of Carmel-by-the-Sea respectfully requests that LCP Amendment 2-07 be continued until the December Coastal Commission meeting. The proposed amendment is an important part of the City's efforts to comply with Carmel's fair share of the regional housing needs, as required by the California Department of Housing and Community Development.

The City is requesting additional time to review and discuss the concerns raised by Coastal Commission staff. It is our hope that with additional time we can more accurately demonstrate to the Commission and to Coastal Commission staff the benefits of the proposed amendments, and our commitment to maintaining the City's unique character.

Sincerely,

Sean Conroy
Planning & Building Services Manager

James & Catherine Bell
P.O. Box 3757
Carmel-by-the-Sea, CA 93921
(831) 624-4234

November 8, 2008

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CALIFORNIA COASTAL COMMISSION
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

RE: W11B – for hearing November 12, 2008

Dear Commissioners:

This is a clarification of our October 31 letter. A more thorough outline of our reasoning is warranted, especially because it might inspire a creative way for the Coastal Commission to help the Carmel City Council move forward with its particular low-income senior housing project without making blanket zoning changes. We hope you will have the time to read and consider its arguments. Please do not hesitate to contact us if it might be helpful.

We continue our strong opposition the zoning changes even though we understand and personally value the proposal by the Carmel Foundation for low-income housing. This particular project is a welcome development for our senior citizens, and it makes good sense in that location. We also know that the City Council faced and still faces time and expense pressures that were(I believe) among its reasons for proposing blanket changes in the zoning for the RC and R4 districts rather than seeking approval through its variance procedures.

Having said that, we continue to strongly oppose the zoning change for the RC and R4 districts. The reasons in our letter of October 31 are articulated in more detail below.

Dense, multiunit low-income development in Carmel-by-the-Sea would not make sense economically for a developer in the present financial environment. Situations and contexts can change unpredictably in the future, however. Such projects may become economically feasible and they already are for a non-profit investor like the Carmel Foundation. Granting the rezoning in blanket fashion could make future non-desirable projects *prima facie* credible without variance procedures. More worrisome is that such could happen decades in the future, when the immediate pressures surrounding the present project could be largely forgotten or seem irrelevant. Even if some people could remember the situation, recalling the *ad hoc* rationale to question or oppose an undesirable project would likely be viewed as defensive at best. The precedent would have been set in the zoning changes and precedent always carries a great deal of weight.

Catherine and I do have a personal interest here. Single-family homes and condominiums in these zoning areas are not the rule but there are quite a few besides our own (a single-family home). We or future owners of such properties could be significantly impacted if the town makes a major zoning change for expeditious reasons, even if the particular project is highly desirable and, I believe, widely supported. The protections of variance procedures would be greatly compromised if not eliminated. That is also why the reasons given here are important for many home owners, and perhaps business owners as well, regardless of how many may be aware of the issues much less voice an opinion.

In closing, my wife and I ask the Coastal Commission to think creatively to see if it could help the Carmel City Council implement the Carmel Foundation project as a variance and hopefully without undue delay. We strongly oppose using the proposed zoning changes to accomplish that purpose, now and in the future.

Sincerely yours,

James Bell

Cc: City Council of Carmel-by-the-Sea

W11b

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James & Catherine Bell
P.O. Box 3757
Carmel-by-the-Sea, CA 93921
(831) 624-4234

October 31, 2008

CALIFORNIA COASTAL COMMISSION
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

RE: W11B – for hearing November 12, 2008

Dear Commissioners:

Our cottage that has been in our family since the 1930's is located in the Limited Commercial area (RC district) of Carmel-by-the-Sea. This is a zone that we thought was a buffer and nice transition between residential and commercial areas.

We wish that Carmel-by-the-Sea had rewritten the affordable housing rules as a variance only, as it was changed to accommodate a specific group for a specific purpose in a specific area. We feel that a blanket amendment to allow design and scale exemptions for projects involving affordable housing in RC and R4 Districts would be very negative and is far too broad. We request that you vote against this proposed amendment that could drastically and negatively change our area.

Thank you for taking our request into consideration on this important matter. Please do call if we could be of further assistance.

Sincerely,

James Bell

Catherine Bell

Cc: City Council of Carmel-by-the-Sea

W11d

MONTEREY COUNTY
RESOURCE MANAGEMENT AGENCY

PLANNING DEPARTMENT, Mike Novo, Director

168 W. Alisal St., 2nd Floor
Salinas, CA 93901

(831) 755-5025
FAX (831) 757-9516

November 7, 2008

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California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95080

Attn: Dan Carl

Subject: **Item W11d – County of Monterey LCP Amendment No. MCO-MAJ-2-07, Part 2 (Doud rezoning, Big Sur)**

Dear Commissioners:

Monterey County has requested a Local Coastal Program amendment for property in the Big Sur Coastal area. The application has been scheduled for Coastal Commission consideration on Wednesday, November 12, 2008. We respectfully request that this application be withdrawn. We will continue to work with your staff on the issues raised in their staff report related to this property.

If you have any questions, please contact me at (831) 755-5192 (or novom@co.monterey.ca.us) or Carl Holm at (831) 755-5103 (or holmcp@co.monterey.ca.us).

Sincerely,

Michael Novo, Director
Resource Management Agency – Planning Department
County of Monterey

cc: Property Owner
File PD040368
Carl Holm

W 11e

SAN LORENZO VALLEY WATER DISTRICT

13060 Highway 9 • Boulder Creek, CA 95006-9119
Office (831) 338-2153 • Fax (831) 338-7986
Website: www.slvwd.com

San Lorenzo Valley Water District
13060 Highway 9
Boulder Creek, CA 95006-9119

November 3, 2008

California Coastal Commission
Central Coast Office
725 Front St., Suite 300
Santa Cruz, CA 95060

Re: County of Santa Cruz LCP Amendment No. SCO-MAJ-1-08 Part 2 (Timber Production Minimum Parcel Size)

Dear Coastal Commissioners:

The San Lorenzo Valley Water District (District), which supplies drinking water to approximately 7,300 connections (approximately 22,000 people) in Santa Cruz County, supports the Coastal Commission Executive Director's determination that the proposed County of Santa Cruz LCP Amendment No. SCO-MAJ-1-08 Part 2 (Timber Production Minimum Parcel Size) is de minimis.

In order to qualify as de minimis, the Coastal Act requires that an amendment satisfy three criteria. The District concurs with the Executive Director's determination that this proposed amendment satisfies all three of these criteria, as follows:

1. No impact to coastal resources and consistency with Chapter 3 of the Coastal Act.
Since the effect of this amendment would be to prevent an additional 522 acres of coastal forest land from being commercially logged, the District agrees that this amendment will limit or reduce future impacts to coastal resources.

2. Provision of public notice.
The District attended the public meetings listed by the Executive Director and observed that these meetings were appropriately noticed.

3. No change in use of land or allowable use of property.
The District concurs that this amendment actually makes change in land use more difficult, as it imposes more stringent requirements for rezoning to a new use.

The District fully supported the County Board of Supervisors Resolution No. 147-2008, which changes the minimum parcel size for rezoning to TP from 5 to 40 acres, throughout the county.

Yours truly,

Betsy Herbert

Betsy Herbert, Ph.D.
Environmental analyst

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November 4, 2008
5855 San Simeon Creek Road
Cambria, CA 93428

Chairman Patrick Kruer
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: San Simeon Creek Bridge Replacement, **Appeal A-3-SLO-07-059**

Dear Chairman Patrick Kruer:

We have reviewed the report from your staff regarding the replacement of the two bridges on San Simeon Creek Road, Cambria, California.

We agree with the staff recommendation that that the Commission finds the appeal raises no substantial issue and the Commission declines to take jurisdiction over the CDP for this project.

Sincerely,

Debby Mix Tom Mix

Debby and Tom Mix

cc: James Cady via email
Shirley Bianchi via email

Item # W12A ✓
permit # A-3-SLO-07-059
support Apellants

Dear Coastal Commission,

In regard to the bridges of San Simeon Ck., I would like to inform you that the concensus of the residents served by these bridges is Not unanimous.

I live on San Simeon Ck. Rd. approx. Fourteen miles beyond the locked gate above the two bridges in question. I fully support the appellants in this matter. The damage to both flora and fauna by the construction of "Freeway style" bridges on this one lane road is unacceptable.

Please do not be stampeded into a hasty decision by a group of residents who get together frequently and stoke each others fears.

The recent replacement of the worst of the two bridges with a temporary and totaly adequate alternative shows that these bridges can and should be replaced in kind.

Sincerly,

Philip Yaple

Philip H. Yaple
Box 671 Cambria Ca.
93428

W12a

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Theresa Mendoza

The Stepladder Ranch

4460 San Simeon Creek Road

Cambria, CA 93428

November 3, 2008

Commissioner Patrick Kruer, Chairperson

California Coastal Commission

45 Fremont Street, Suite 2000

San Francisco, CA 94105

Re: November 12, 2008 Coastal Commission Meeting

Appeal No. A-3-SLO-07-059 (San Luis Obispo County Public Works Dept)

Replacement of 2 existing bridges on San Simeon Creek Road

Dear Commissioner Kruer,

I live on The Stepladder Ranch, at 4460 San Simeon Creek Road, Cambria.

I support the staff recommendation of "no substantial issues," and urge you to deny the appeal on November 12, 2008.

Very truly yours,

Theresa Mendoza

Theresa Mendoza
11-03-08

W12a

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Mario Mendoza
The Stepladder Ranch
4460 San Simeon Creek Road
Cambria, CA 93428

November 3, 2008

Commissioner Patrick Kruer, Chairperson

California Coastal Commission

45 Fremont Street, Suite 2000

San Francisco, CA 94105

Re: November 12, 2008 Coastal Commission Meeting

Appeal No. A-3-SLO-07-059 (San Luis Obispo County Public Works Dept)

Replacement of 2 existing bridges on San Simeon Creek Road

Dear Commissioner Kruer,

I am the ranch manager of The Stepladder Ranch, 4450 San Simeon Creek Road, Cambria, CA. I also live on the ranch, at 4460 San Simeon Creek Road.

I support the staff recommendation of "no substantial issues," and urge you to deny the appeal on November 12, 2008.

Very truly yours,

The Stepladder Ranch

Mario Mendoza 11/03/08
Mario Mendoza

Ranch Manager

W12a

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CENTRAL COAST AREA

Nov. 1, 2008

Chairman Patrick Kruer,

I support the staff recommendation of no substantial issues.

I am a property owner on San Simeon Creek road & keep full time residence here.

RE: appeal A-3-SLO-07-059

Thank you,

Joyce Williams

JOYCE WILLIAMS
8929 San Simeon Crek Road, Cambria, California 93428

W12a

MARILYN KINSEY
355 MIRA SOL DRIVE, SAN LUIS OBISPO, CA 93405
PHONE (805) 543-8763

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NOVEMBER 1, 2008

Chairman Patrick Kruer
California Coastal Commissioin
45 Fremont St., Suite 2000
San Francisco, CA 94105

RE: Appeal A-3-SLO-07-059
SAN SIMEON CREEK BRIDGES

Dear Chairman Kruer,

As a property owner of land above the bridges referenced above, I would like to say that I support the staff recommendation of no substantial issues.

Sincerely yours,

Marilyn Kinsey

Marilyn Kinsey

W12a

RCD
Conserving Resources
Providing Service Since 1951

Upper Salinas-Las Tablas Resource Conservation District

65 South Main Street, Suite 107, Templeton, Ca 93465 / (805) 434-0396 ext. 4 / fax 434-0284

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October 29, 2008

Commissioner Patrick Kruer, Chairman
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

RE: Appeal A-3-SLO-07-059
San Simeon Creek Bridges

Dear Chairman Kruer:

The Board of Directors of the Upper Salinas-Las Tablas Resource Conservation District has become aware that the replacement of two bridges on San Simeon Creek Road in our district has been significantly delayed by appeal actions by the Santa Lucia Chapter of the Sierra Club and supported by two members of your Board. All preliminary local review has been completed and design is ready to go out to bid. State/Federal grant funding was found. It is imperative that construction begin as soon as possible.

The primary importance of access on this road is fire response to the ridge from HY 1 and range lands that make up the watersheds draining to coastal streams from Santa Rosa Creek north. This area receives the highest rainfall in our District and also delivers a significant portion of runoff into Nacimiento Reservoir on the east side of the Santa Lucia Range, so is vital to the water resources of the central coast. The basis for the appeal before you is insignificant as compared to the drastic ecological (biological and vegetative), channel and soil erosion, water quality/quantity, and agricultural productivity responses that an uncontrolled fire would have on these watersheds. The north coast and Salinas Valley water supply also would be impacted if a fire were to go uncontrolled because fire response equipment and manpower were significantly delayed and/or impeded.

Cal Trans this month condemned the upper of the two bridges. It now has been replaced with a temporary structure, but they also set the lower bridge at a load limit not to exceed 5 tons. This prevents fire equipment traverse larger than a loaded pickup. This is unacceptable not only from the above environmental viewpoint but also public safety issues for the family residents in the area.

As you know one of the highest priorities in the coastal zone is agriculture. Support of agricultural operations, transport of crops, livestock, hay and supplies, has been disrupted. There is no justification for support of these appeals and the delay of bridge construction any further.

Chuck Pritchard

Chuck Pritchard
Board President

W12a

Susan Gloisten
4808 Foxglove Ct.
Santa Rosa, CA 95405

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

November 3, 2008

Dear Commissioner Kruer and others on the California Coastal Commission;

I have seen the report from your staff regarding the building of two important bridges on San Simeon Creek Road, near Cambria, California. I found it very thorough.

I 100% agree with its conclusion:
..the Commission finds that the appeal raises no substantial issue and declines to take jurisdiction over the CDP for this project.

Thank you,

Susan Gloisten

Susan Gloisten

W12a

Judith Grace

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

November 3, 2008

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

Dear Commissioner Kruer and others on the California Coastal Commission;

I have seen the report from your staff regarding the building of two important bridges on San Simeon Creek Road, near Cambria, California. I found it very thorough. These bridges are so vital to those of us who use that road – please do not deny us access to our homes and businesses.

I 100% agree with its conclusion:

..the Commission finds that the appeal raises no substantial issue and declines to take jurisdiction over the CDP for this project.

Thank you,

Judith Grace

Oak Mountain Ranch, San Simeon Creek Road
P.O. Box 1541, Morro Bay, California 93443
[illegible]

W12a

Nov 1, 2008

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

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Dear Calif. Coastal Commission Commisioners,

Please carefully consider the replacement of the two bridges on San Simeon Creek Road near Cambria California. I and several others live beyond those bridges and our very lives depend on their existence and safety.

When you discovered that Cal-trans – on their annual inspection – came thru an immediately tore down one of them – didn't that speak to you about the urgency of the situation?? We are so grateful to them for their quick response. However they replaced it with a temporary bridge – and that as well as the remaining wooden bridge still need permanent replacing.

As you are aware – we are held to the Federal Government requirements – in terms of the size of the bridges – since they are funding 89% of the cost – money the county does not have. All of the "environmental hoops" were passed thru while seeking that funding – nothing has changed.

For several years, San Simeon Creek has been effected beyond anything "natural" by the Cambria Community Services Districts use of water from that creek. Not much more damage could occur.

Please be opend minded in your consideration of allowing the replacement of these bridges – and please be very clear about your opposition to them if that is your decision – we cannot afford to just have you put them on the back-burner and not issue a real reason for denying them.

Thank you, very much,

Judith Grace

Judith Grace
San Simeon Creek Road resident

W12a

Olaf Egeberg

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November 3, 2008

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

Dear Commissioner Kruer and others on the California Coastal Commission;

I have seen the report from your staff regarding the building of two important bridges on San Simeon Creek Road, near Cambria, California. I found it very thorough.

I 100% agree with its conclusion:
..the Commission finds that the appeal raises no substantial issue and declines to take jurisdiction over the CDP for this project.

Thank you,

Olaf Egeberg

Oak Mountain Ranch, San Simeon Creek Road
P.O. Box 1541, Morro Bay, California 93443
(805) 934-3244 • olaf@oakmountainranch.com

W12a

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Dear Mr. Kruer,

We support the staff recommendation of no substantial issues regarding the construction of the two new bridges on San Simeon Creek Road in Cambria.

We don't want our neighbor Linda Hotchkiss to ever again have to be helped by her husband Bud across the creek to get to her chemo appointments.

Thank you for understanding the enormity of the risks our current bridges pose to the residents of San Simeon Creek Road and for helping us get our safe, new, sorely needed bridges.

Respectfully,

John and Marcia Rhoades
RE: Appeal A-3-SLO-07-059

W/d 2

Nov. 1 - 2008

Dear Chairman Kruer —

We support the staff recommendation of no substantial issues regarding appeal

A-3-SLD-07-059

☆ San Simeon Creek Bridges

Thank you

Bill & Joan Hancock

William & Joan E. Hancock
344 Tennyson Ave
Palo Alto, CA 94301

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CENTRAL COAST AREA

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COASTAL COMMISSION
CENTRAL COAST AREA

Nov. 1 '08

22

Dear Commissioner Kruer —

Help! What has happened to the Sierra Club? I was a member and proud of their intelligent efforts protecting the environment. Now it seems they've gone off track — attempting to block a bridge that would make fire protection possible for the Rocky Butte area.

These confused priorities give the Sierra Club a bad name and cause us to turn against it.

I hope you'll realize how many residences and how much commerce depend on this bridge —

Thank you,

Joan Hancock

Re: appeal A-3-SLD-07-059

W12a

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Anne Russell Rudolph
The Stepladder Ranch
68 Tuscaloosa Avenue
Atherton, CA 94027
(650) 324-3497

November 3, 2008

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

Re: November 12, 2008 Coastal Commission Meeting
Appeal No. A-3-SLO-07-059 (San Luis Obispo County Public Works Dept)
Replacement of 2 existing bridges on San Simeon Creek Road

Dear Commissioner Kruer,

I was heartened to read the Staff Report posted Friday on your web site. That report was very thorough, and thoughtfully prepared.

I support the staff recommendation of "no substantial issues," and urge you to deny the appeal on November 12, 2008.

Very truly yours,

The Stepladder Ranch

Anne Russell Rudolph

General Partner

W12a

now!
The money is available for the bridges — We all urge you to not delay!

Thank you,

Joyce Williams
Property owner and full time resident on San Simeon Creek Road

JOYCE WILLIAMS
8929 SAN SIMEON CREEK RD.
CAMBRIA, CALIF. 93428

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Oct. 30-2008

Coastal Comission,

I live on San Simeon Creek Road. My family has owned property since the 1870's and have seen many changes.

The bridges when put in were great and badly needed at that time. They have done a great job for all of us who live up here as well equipment that needs to come & go. But now they are in need of replacement.

Don't take my word for it — look at photos that are available ck. with our County crew who work on the road & bridges also ck. with Cal Trans — they all agree — We need new bridges

(over)

W12a

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NOV 0 4 2008

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

November 1, 2008
5855 San Simeon Creek Road
Cambria, CA 93428

Chairman Patrick Kruer
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: San Simeon Creek Bridge Replacement, Appeal A-3-SLO-07-059

Dear Chairman Patrick Kruer:

We are two of approximately 45 full time residents living above the bridges needing replacement on San Simeon Creek Road. In correspondence from others, you have heard our concerns about fire, medical, the state and county communications stations, livestock and produce transportation, and propane deliveries. We concur with our neighbors who have written you explaining our crisis.

Rather than going into more detail on each of these items, since that has already been done, we ask simply that you put yourselves in our predicament. If you were a resident living upstream from the two bridges, we are confident you would be in favor of their replacement as soon as possible. Please consider this and do all within your power to approve the replacement of the bridges.

Sincerely,

Debby and Tom Mix

cc: James Cady via email
Shirley Bianchi via email

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NOV 0 4 2008

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

W12a

October 29, 2008

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

Dear Commissioner Kruer and others on the California Coastal Commission;

Please move to hasten the replacement of the two bridges on San Simeon Creek Road near Cambria California. I live above the bridges and would be seriously effected if they go out in the rains this winter.

When the little bridge was taken down last month for a temporary replacement, it was easy to see by the large number of vehicles parked on both sides of the bridge how many of us were having difficulty getting to our jobs, or to our suppliers or running our business. Those who only owned one vehicle had to arrange for someone to pick them up on the other side.

For the county engineers to get as far as they did in preparing for the bridge replacement using federal funds their design had to pass several layers of environmental review. A lot of research and approval getting went into bringing the project to it's present state of readiness. The environmental impact has been carefully considered.

Please do not let the bridge replacement be delayed any longer.

Thank you very much,

Olaf Egeberg

Oak Mountain Ranch, San Simeon Creek Road
P.O. Box 1841, Morro Bay, California 93443
(805) 801-3244 • olaf@changesahead.net

W12a

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NOV 03 2008
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COASTAL COMMISSION
CENTRAL COAST AREA

MARILYN KINSEY
355 Mira Sol Drive, San Luis Obispo, CA 93405
(805) 543-8763

October 29, 2008

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

Re: San Simeon Creek Bridges, San Luis Obispo County

Dear Commissioner Kruer,

My sons and I own 62 acres above Rocky Butte, near Pine Mountain. We have to cross these rotted bridges on San Simeon Creek Road to reach our property, and we are very distressed to hear of the impediments placed by your Commission upon the replacement of these dangerous structures. Aside from the perilous crossings by our trucks and automobiles, it is unconscionable to think of what would happen if a wildfire swept through this dry and combustible area, denying access to adequate fire fighting equipment.

Please do your part to ameliorate this very dangerous and potentially life-threatening situation.

Most sincerely,

Marilyn Kinsey

Marilyn Kinsey
San Simeon Creek Road Property Owner

W12a

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CENTRAL COAST AREA

Anne Russell Rudolph
The Stepladder Ranch
68 Tuscaloosa Avenue
Atherton, CA 94027
(650) 324-3497

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Commissioner Patrick Kruer, Chairperson

California Coastal Commission

45 Fremont Street, Suite 2000

San Francisco, CA 94105

Re: November 12, 2008 Coastal Commission Meeting

Appeal No. A-3-SLO-07-059 (San Luis Obispo County Public Works Dept)

Replacement of 2 existing bridges on San Simeon Creek Road

Dear Commissioner Kruer,

My family owns The Stepladder Ranch, 4450 San Simeon Creek Road, Cambria, California. We are avocado growers and we operate a small cattle operation. I am writing to you to implore you to deny the appeal before you and to allow the construction of the bridges to go forward as originally approved. This is a matter of public safety for us, our neighbors, and the entire county. I know that you will receive other letters from neighbors and county officials which will address the safety issues and concerns (fire department access, access to the Rocky Butte radio transmission site, environmental concerns, etc.). I share all of those very serious concerns, but I also want to give you an insight into what the state of those bridges means to someone who is trying to continue the operation of a 25 year-old family business. I want to let you know what happened to us last month when the existing upper bridge was condemned and the lower bridge downgraded to a five-ton maximum capacity.

When the upper bridge on San Simeon Creek Road was abruptly closed last month, it was almost a devastating occurrence for our business. At the moment it happened, we had almost $50,000, in avocadoes picked and waiting for pick up by

Mission Produce. It was only through truly heroic efforts by our manager and employees and Mission Produce, as well as the sympathy of county workers, that the fruit ever made it to market. Our employees worked through the night and ferried the fruit down the road in small loads for pick up at 6:00am by Mission Produce before the bridge was closed for more than a week. Our fruit, worth almost $50,000, was literally dumped on the side of the road, where Mission Produce picked it up in the dark. The bridge closure happened near the end of our harvest. Had the closure occurred thirty days before, I am not sure what we would have done. It would have been catastrophic for our business. We were able to hold the remaining fruit on the trees until the bridge was reopened, but this too, was at a loss of money for us.

The fact that the remaining original bridge has a load maximum of five thousand tons does not allow us to conduct our business in any where close to a reasonable fashion. We cannot run a business that requires us to limit loads to five tons including the truck.

Avocado growers on the Central Coast have had a particularly difficult two years. 2007 was the year of the freeze, and many growers lost all of their current crop plus their 2008 crop that was already on the trees. 2008 is so far, the year of the heat wave and resulting crop burn, where growers suffered more devastating losses. Now for us at The Stepladder Ranch, we can add to that the loss of the bridges.

We are trying to keep our business going because we love what we do. We need bridges that will support realistic loads – for providing emergency services, and for moving our fruit. We need those bridges now.

Very truly yours,

The Stepladder Ranch

Anne Russell Rudolph

General Partner

W12a

RECEIVED

OCT 31 2008

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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

Dear Commissioner Kruer,

I am writing you regarding the potentially disastrous situation involving the San Simeon Creek bridges. As you know, these small bridges are being held up due to environmental impact worries. Even though the much needed replacements for these dangerously old and damaged bridges are not much larger than the current bridges.

As I am sure you know Rocky Butte is a key county, state and federal emergency radio transmission location. Due to the inability of these bridges to be replaced, we are putting the entire state in harms way. Rocky Butte is also in a high danger fire zone. If fire response or propane delivery (for the generators) is blocked at the bridges then emergency response transmissions for much of the state would go silent.

Could you imagine the statewide outrage if we do have an emergency crisis and are unable to respond due to the fact that the inexpensive, federally funded replacement of the bridges that lead to the emergency transponders were blocked by the CA Costal Commission? As someone who works in the media, I understand what a great story that would make. Talk about scapegoats handed to the media on a silver platter!

And, if the bridge replacements remain blocked, then what? The old, dangerous bridges remain in place? How is it even possible that we would consider keeping dangerous bridges in place on the only road that leads to a high risk fire zone that happens to be home to many elderly citizens? Could you imagine a fire ripping through there with citizens trapped behind a faltering bridge that the Fire Department refuses to cross? Please think about that as you sleep tonight.

Sincerely,

Robert Kinsey

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

W13a

Prepared November 10, 2008 (for November 12, 2008 hearing)

To: Commissioners and Interested Persons

From: Dan Carl, District Manager
Mike Watson, Coastal Planner

Subject: **STAFF REPORT ADDENDUM for W13a**
CDP Application Number 3-07-048 (Held Mixed Use Project)

In the time since the release of the above-referenced staff report (dated prepared October 30, 2008), staff has identified minor corrections necessary to ensure that the recommended lease and deed restriction condition (special condition 8 on staff report page 24) accurately reflects the City's property ownership and lessor role for the Morro Bay Embarcadero area. Accordingly, special condition 8 in the staff report is modified as follows (text in underlined format is text to be added, and text in ~~strike-through~~ format is text to be deleted):

8. **~~Deed and~~ Lease and Deed Restrictions.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the Permittee and City have ~~has~~ executed and recorded against the lease sites and parcel(s) governed by this permit a lease and 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 lease and deed restriction shall include ~~a~~ legal descriptions of the lease sites and ~~entire parcel or~~ parcels governed by this permit. The lease and deed restriction shall also indicate that, in the event of an extinguishment or termination of the lease and 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.

W13a

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NOV 10 2008
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

November 6, 2008

Mr. Michael Watson, Coastal Planner
California Coastal Commission
725 Front Street, #200
Santa Cruz, CA 95060

VIA FAX: 831 427-4877
VIA EMAIL: mwatson@coastal.ca.gov

Mike —
Will you please help this find its way to the commissioners' addendum packages?
Thanks

Re: **Commission Hearing Agenda Item #W13a,**
November 12, 2008 Meeting
CDP Application #3-07-048 (Smith Held, applicant)
Request to add information as Addendum

Dear Mike,

Thank you for your help getting this project and application to a place where your office can recommend approval to the Commission. I believe the project has become a better one as we worked together to ensure compliance with the Coastal Act. The Staff Report reflects the many positive changes we have made on the project. The report also contains several inconsistencies that I wish to address.

As I recall, the items below had been discussed by you and I, but I do not recall agreeing to them. I was surprised to find them incorporated as conditions of approval.

Special Condition 1.d. and 2.b. (page 18 and 19 of staff report), Floating Dock. My intent was not to provide the dock for unrestricted use by the public. I intend to rent dock space to the public for berthing of recreational boats. Allowing uncontrolled access of the public for fishing, kayaking, whatever undermines the value of the dock so far that may become an unviable part of the project. There is also the issue of ADA compliance, as well as the issues of public safety on the docks, and safety of the berthed boats with un-managed public access.

Special Condition 5.a. and 5.b (page 23), Hotel Requirements. To the best of my memory we discussed and I agreed to limiting length of stay to 30 days for hotel guests. I do not recall further limiting the length of stay to 14 days during Morro Bay's visitor-serving season.

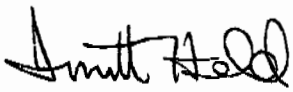
Special Condition 2.e. (page 21), Courtyard Access. You and I concurred that adding bollards to control parking, and limiting parking to hotel guests, will minimize automobile traffic in the

driveway/walkway. I did not agree to install garage doors to conceal the automobiles. Garage doors would be problematic because when they are closed, they take up valuable maneuvering room from the parking areas. Further, I believe that garage doors would detract from the open space we are providing both for lateral access and for the view corridor. Finally, I note that the neither of the two most recent permits issued on the Embarcadero in Morro Bay were required to add garage doors to their parking areas (Estero Landing and Anderson Inn).

As the staff report indicates, this project will expand visitor-serving uses in Morro Bay and stimulate the local economy. We concur with the City of Morro Bay's findings that this project is in compliance with their local coastal plan. Since my initial submittal to you in August, 2007, we have made many modifications to expand public access and benefits, and expand Coastal Act compliance.

I am looking for some consideration on these late changes. I remind you that all else you have requested, we have readily agreed to.

Thank you,



Smith Held
(805) 440-4430

Anthony L. Lombardo
Jeffery R. Gilles

Dennis C. Beougher
Patrick S.M. Casey
Sheri L. Damon
E. Soren Diaz
J. Kenneth Gorman
Koren R. McWilliams
Paul Rovella
Bradley W. Sullivan
James W. Sullivan
Kelly McCarthy Sutherland

Virginia A. Hines
Of Counsel

Amy Purchase Reid
Of Counsel

Lombardo & Gilles
LIMITED LIABILITY PARTNERSHIP

W14a

318 Cayuga Street
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831-754-2444 (SALINAS)
888-757-2444 (TOLL FREE)
831-754-2011 (FAX)
www.lomgil.com

225 Sixth Street
Hollister, CA 95023
831-630-9444

File No. 01145.000.A

September 29, 2008

A copy of this letter has been provided to each of the California Coastal Commissioners.

VIA CALIFORNIA OVERNIGHT

Mr. Peter Douglas
Executive Director, California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: **Cannery Row Marketplace LLC; Application for Coastal Development Permit CDP 3-08-013**

Dear Peter:

After approximately ten years in the approval process, our clients look forward to finally being able to begin construction on their project and transforming this blighted property into a community asset.

We have not received proposed conditions of approval and findings, nor have we been notified when you expect to present those to the Commission. Without findings and conditions, our project cannot move forward since some of the other regulatory agencies (such as the Monterey Bay Marine Sanctuary) will not take action on our application until they receive the findings and conditions from the Commission.

I am submitting with this letter revised findings and conditions based on the direction given by the Commission on August 7th combining the conditions proposed by the applicant and staff prior to the August 7th hearing as modified by the Commission. I hope this will assist your staff in completing its staff report so the adoption of the findings and conditions can be added to your October agenda.

We believe these conditions follow the direction of the Commission to incorporate "standard" Coastal Commission conditions while allowing the Executive Director to review plans to ensure consistency of the final project design with that presented to the Commission on August 7th.

We have modified the language of one of the conditions discussed on August 7th and request the deletion of a second condition in order to make the conditions consistent with the prior actions of the Commission and the certified LUP.

REVISION OF HOURS OF PUBLIC ACCESS

Staff's proposed condition requiring that the public plaza remain open until midnight is not consistent with public access hours for the rest of Cannery Row. The most recent approvals by the Commission on Cannery Row (the Intercontinental Hotel (January 2001) and Bubba Gump's Shrimp Co. deck expansion (December 2005) provided that public access would be from 8:00 a.m. to one hour after sunset. The Ocean View Plaza project is a mixed use project and my client requests that the residents and patrons of Ocean View Plaza receive the same hours of public access that the Hotel guests and restaurant patrons obtained from the Commission in its most recent actions on other Cannery Row projects.

ELIMINATION OF WALKWAY AT THE REAR OF BUILDING B

At the August 7th meeting, we presented the specific public access standards applicable to this project contained in the certified Cannery Row LUP. After the public hearing was closed, Commissioner Wan represented to the Commission that there was a specific policy which mandated that a walkway be added to the back of Building B. She stated,

> The applicant showed us the policy that said in the area that we are talking about, the rocky shoreline along Cannery Row, and specific to this, that it requires improvements to a public access easement a minimum width of 10 feet to the rocky promontory on the site of the former San Xavier Cannery, that is fine, that is done.
>
> But, he didn't read other policies in the same LUP for <u>this area</u> (emphasis added) that require that pedestrian movement parallel and adjacent to the water shall be required with unobstructed views of the water in the form of an open or enclosed walkway, a minimum of 8-feet wide across the seaward side of structures, as a condition of all new development.

Reporter's Transcript of Proceedings, August 7, 2008, Agenda Item No. 29.b. ("Reporter's Transcript of Proceedings"), p. 101:10-21.

The policy referenced by Commissioner Wan does not apply to this property. The policy Commissioner Wan read applies only to areas in the certified LUP which are mandated to provide "Backs of Structures" access. *See* Public Access Figure 4. It is only in certain areas of Cannery Row that this type of access is mandated, areas which have no other method of providing coastal access.

The Cannery Row LUP identifies four different access standards which apply to properties, depending on the location of the particular property. (Figure 4 of the Cannery Row LUP) The Ocean View Plaza site is located in the area of Cannery Row which is subject to the Rocky Shoreline and Promontories section of the Public Access portion of the LUP because it **has** a rocky shoreline.

Properties such as Cannery Row Hotel, Bubba Gump's, the Monterey Plaza Hotel and the Monterey Bay Aquarium are subject to the back of building access standard requirements (Figure 4, Public Access as attached) because there is neither rocky shoreline nor sandy beach and so the LUP has designated that these areas have "Backs of Structures" access. Further note that Figure 4 designates viewpoints for Bubba Gump's and the Cannery Row Hotel sites, but it does not designate *any* viewpoints for the Ocean View Plaza property.

This project provides unparalleled coastal access from the Rec Trail to the ocean exceeding the LUP access standards by over ten times. The Commission certified these standards as consistent with the Coastal Act in fairness to the applicant. The Commission should rely on those standards. We, therefore, respectfully request that the Commission delete the following condition:

> (a) **Building B Access Promenade.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, Permittee shall provide two sets of full-scale public access plans for Building B which show a lateral public access promenade that is a minimum of 8-feet wide shall be provided along the seaward side of Building B, and such access promenade shall extend completely seaward of the building approved by the City of Monterey on June 1, 2004, as proposed in the submitted plans without any Building B or other encumbrances (i.e., no building overhang, walls, etc.), and shall provide unimpeded access to the onsite public access areas (including the history plaza, the overlook areas, and the Building A access promenade). The upcoast end of the Building B access promenade shall include a stairway, ramp, or equivalent component designed to provide access to the 10-foot-wide public access easement area located along the shoreline so as to allow for a connection to the upcoast Chart House accessway and improvements to it.

RETENTION OF COASTAL DEPENDENT INDUSTRIAL USE FINDING

We have retained the coastal dependent industrial use finding. At the August 7th hearing, you said the Commission could not make such a finding because "if you do treat it as an industrial facility, it is not permitted under the zoning, so that really creates a fundamental legal challenge here." Reporter's Transcript of Proceedings, p. 113:2-5. Your statement was incorrect.

The City's zoning designation for this property allows major "utilities" to be built with a use permit (Monterey City Code Section 38-32 (B)). This was exactly the process used by the City to approve this desalination plant. Moreover, at the Commission's direction, the City applied to LAFCO for the formation of a Community Services District to own and operate this public utility. This "utility" under the City's Zoning Ordinance is also a coastal dependent industrial use as defined under the Coastal Act because "it is a use that must be located in or adjacent to the ocean in order to function." (Coastal Commission staff report, Poseidon desalination project, November, 2007). We respectfully request the Commission adopt a finding that this desalination plant (as you found for Poseidon and every other desalination plant which involves ocean intake and discharge) is a coastal dependent industrial use. This finding provides additional legal support for your decision to approve this project.

Hopefully the ground work we have done on the findings and conditions will allow the Commission to approve them at your October meeting.

Sincerely,

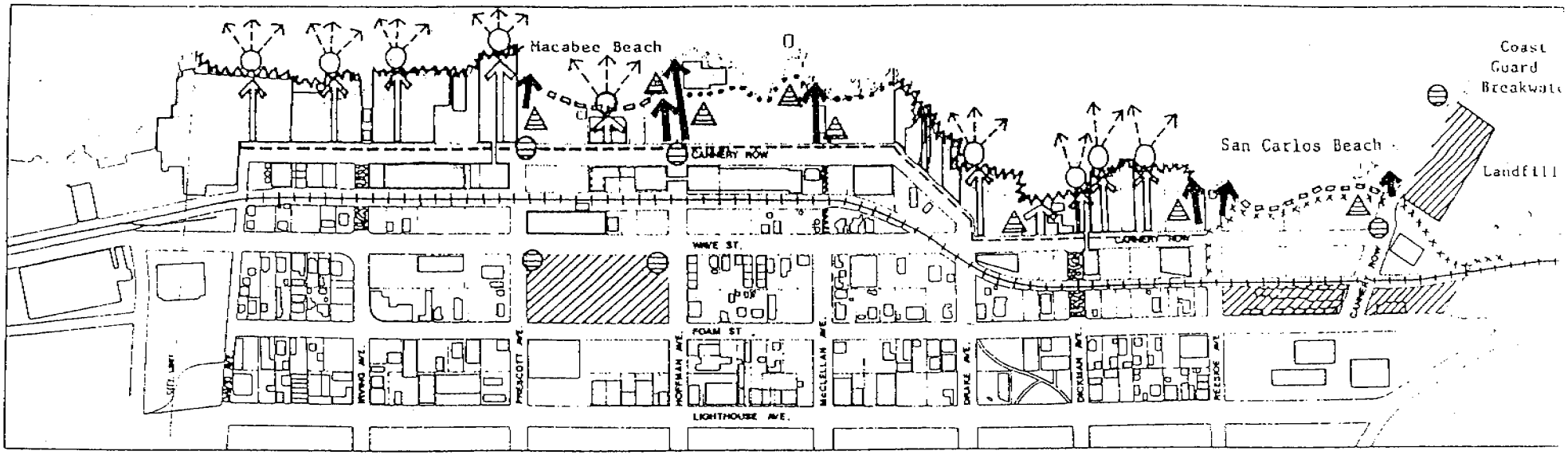
Lombardo & Gilles, LLP

Anthony L. Lombardo

ALL:ncs

Enclosures

cc: Mr. Charles Lester
Mr. Phil Taylor
Mr. Jared Ficker



VERTICAL ACCESS

ACCESS (To Backs of Structures)

LATERAL ACCESS (Sandy Beach)

LATERAL ACCESS (Rocky Shoreline)

VIEWPOINTS (Backs of Structures)

LATERAL ACCESS (Cannery Row)

LATERAL ACCESS (Backs of Structures)

LATERAL ACCESS (Recreational Trail)

LATERAL ACCESS (Recreational Trail Branch)

PEDESTRIANWAY

PEDESTRIAN PLAZA

DIRECTIONAL SIGNING

PUBLIC PARKING

CANNERY ROW
LOCAL COASTAL PROGRAM
CITY OF MONTEREY

0 100 200 300 400 500
FEET

Figure 4
PUBLIC ACCESS

Note: The locations of VERTICAL ACCESS, ACCESS (To Backs of Structures), LATERAL ACCESS, PEDESTRIANWAYS, and PEDESTRIAN PLAZAS shown above within properties should not be interpreted as precise locations. These locations are to serve as guidelines for the City's Architectural Review Committee in determing precise location and design features within each property when it reviews specific development projects.

Policy b.12 on page II-A-7 provides that a pedestrian plaza or vertical access point may be provided at Aneas Beach, but both are not required.

A. Standard Conditions

1. **Notice of Receipt and Acknowledgement.** This permit is not valid and development shall not commence until a copy of the permit is signed by the Permittee or authorized agent, acknowledging receipt of the permit and the acceptance of the terms and conditions, and 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 of the Commission (hereinafter, "Executive Director") or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided the 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. **Offshore Intake/Discharge Plans.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit for Executive Director review and approval two copies of full-scale plans specific to the offshore intake and discharge components of the approved project (Offshore Plans). The Offshore Plans shall be substantially in conformance with the offshore intake and discharge plans submitted to the Coastal Commission (as shown on pages 15-24 of Exhibit 3) except that the Offshore Plans shall provide for the following:

    a. **Maintenance.** Maintenance measures that ensure that the offshore intake and discharge components are maintained in a manner that avoids adverse impacts to the offshore environment. Such measures shall, at a minimum, include a clear schedule for inspection and all procedures to be applied for underwater work.

    b. **Mitigation.** The mitigation plan regarding the use of the emergency open ocean intake shall be as set forth in the Regional Water Quality Control Board Order Number R3-2007-0040.

2. **Water Supply Contingency Plan.** PRIOR TO OCCUPANCY, the Permittee shall submit for Executive Director review and approval two copies of a water supply contingency plan, consistent with the water supply contingency plan previously submitted by Permittee. The plan previously submitted by Permittee

provides that in the event that the desalination facility cannot provide adequate potable water for the project, conservation efforts shall be required, and potable water shall be obtained and trucked in to the project site. The source of the potable water shall not adversely impact coastal zone resources.

3. **OVCSD Ownership Required.** PRIOR TO OCCUPANCY OF ANY PORTION OF THE APPROVED PROJECT AND PRIOR TO WATER BEING PROVIDED FROM THE DESALINATION FACILITY TO SERVE TO THE APPROVED PROJECT, the Permittee shall submit for Executive Director review and approval clear written evidence that ownership of the desalination facility (both onshore and offshore components) has been transferred in full to the Ocean View Community Services District (OVCSD), and that the OVCSD agrees to be bound by the terms and conditions of this coastal development permit that pertain to the desalination facility. Such written evidence shall include a copy of the water system dedication instrument as set forth in the Indemnification Agreement between the City of Monterey and Cannery Row Marketplace LLC (i.e., Addendum C, Paragraph e - see page 20 of Exhibit 13).

4. **Municipal Water Connection.** In accordance with LAFCO Resolution No. 05-27, the project is conditioned as follows: The Community Services District shall (a) accept dedication of the desalination facility on the project site from the Permittee only pursuant to a dedication agreement that, among other things, requires the Community Services District to apply to LAFCO for dissolution of the Community Services District at such time as Cal-Am Water Co. has commenced water service for the entire Project; and (b) cause the desalination facility to be decommissioned and the on-site equipment that is part of the Project Water System to be removed by Permittee within ninety (90) days following commencement of Cal-Am Water Co. water service for the Project, unless the Community Services District, Permittee and Cal-Am Water Co. otherwise agree in writing to an alternate disposition of the desalination facility and equipment.

5. **Historic Reconstruction/Rehabilitation Plans.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit for Executive Director review two sets of full-scale plan drawings specific to the Stohan's Building, the San Xavier Warehouse, and the fish holding pens (Historic Plans) to confirm that the plans comply with the plans and conditions (7.e., 7.i., 7.p.) approved by the City of Monterey on June 1, 2004 and these conditions of approval. The Permittee shall undertake development in accordance with the approved Historic Plans.

6. **Public Access Plans.** EXCEPT AS SET FORTH BELOW, PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit for Executive Director review and approval two sets of full-scale public access plans (Access Plans) for the project. A public access management program shall also be provided which shall clearly describe the manner in which general public access associated with the approved project is to be managed and provided, with the objective of maximizing public access to certain common and other public access areas of the site as set forth on the Access Plans. The Access Plans shall be

substantially in conformance with the public access portion of the plans submitted to the Coastal Commission (including as shown on page 2 of Exhibit 3) except that the Access Plans shall provide for the following changes to the project:

(a.) **Building A Access Promenade.** The Building A access promenade shall allow for a future connection to potential future public accessways at the El Torito property as submitted in the plans.

(b.) **Retain Proposed Public Access Amenities.** The Access Plans shall retain the public access promenade along Building A, the overlook areas, the history plaza, the community park, the stairways to the rocky shoreline, and the 10-foot wide public access easement along the rocky shoreline as originally proposed and as shown on page 2 of Exhibit 3.

(c.) **Public Access Signs.** PRIOR TO OCCUPANCY, Permittee shall submit access plans that identify all signs and any other project elements that will be used to facilitate, manage, and provide public access to the approved project, including identification of all public education/interpretation features that may be provided on the site. Sign details showing the location, materials, design, and text of all public access signs shall be provided. The signs shall be designed so as to provide clear information without impacting public views and site character. At a minimum, public access directional signs shall be placed at the Cannery Row entrances to the history plaza, at either end of the access promenades located along Buildings A and B, at the top of each set of stairs that lead to the 10-foot wide easement along the rocky shoreline, and at the junctions of the community park with the recreation trail and with Cannery Row. At a minimum, public access interpretive signs shall be placed at the history plaza, the historical bayside fish holding tanks, and the bayside lateral access promenades.

(d.) **Clear Depiction of Public Access Areas and Amenities.** All public access areas and amenities, including all of the areas and amenities described above, shall be clearly identified as such on the Access Plans (including with hatching and closed polygons so that it is clear what areas are available for public access use), as they are in the Access Plans already submitted.

(e.) **No Public Access Disruption.** The Access Plans shall prohibit development and uses within the public access areas that disrupt and/or degrade public access including using furniture, planters, temporary structures or private use signs that act as barriers to public access. The public use areas shall be maintained in a manner that maximizes public use and enjoyment.

(f.) **Public Access Amenities Provided Prior to Occupancy.** All public access components of the approved project shall be constructed and ready for use consistent with the City of Monterey's approvals and prior to residential or retail/restaurant occupancy of the project.

(g.) **Public Access Use Hours.** Except for the Stohan's Building History Center, all public access areas and amenities shall be available to the general public free of charge from 8:00 a.m. until one hour after sunset or until the last close of business for the retail components of the approved project, whichever is earlier. The bayside access components may be closed during these hours if necessary for public safety due to storms or otherwise dangerous conditions, but must be reopened as soon as the dangerous conditions have passed.

(h.) **Public Access Areas and Amenities Maintained.** The public access components of the project shall be maintained in their approved state in perpetuity.

The Permittee shall undertake development in accordance with the approved Access Plans, which shall govern all general public access to the approved project pursuant to this coastal development permit.

7. **Drainage Plans.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit for Executive Director review two sets of full-scale drainage plans to confirm that the plans are consistent with the City of Monterey's requirements.

8. **Design Plans.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit for Executive Director review two sets of full-scale design plans approved by the City of Monterey's Architectural Review Committee to confirm that the plans comply with the plans approved by the City of Monterey on June 1, 2004 and these conditions of approval. These plans shall include all structures and including all other project elements within the public view (e.g., walkways, paved areas, railings, benches, tables, chairs, lighting, signs, landscaping, etc.).

9. **Wave Impacts.** Permittee shall incorporate engineering design and construction materials and methods to withstand wave impacts from a 100-year storm event; require appropriate warning signs and access restrictions during dangerous conditions; and develop an emergency response plan in the event of a tsunami, consistent with Permittee's submissions from Mactec and from Haro, Kasunich & Associates.

10. **Construction Plans.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit for Executive Director review two sets of fullscale construction plans to confirm that the plans comply with the plans approved by the City of Monterey on June 1, 2004 and these conditions of approval. To the extent the following requirements are consistent with the City of Monterey's approvals, the construction plans shall include the following:

    (a.) **Construction Areas.** The plans shall identify the specific location of all construction areas, all staging areas, all storage areas, and all construction access corridors (to the construction sites and staging areas). All such areas within which construction activities and/or staging are to take place

shall be minimized to the maximum extent feasible in order to minimize construction encroachment on intertidal areas, Cannery Row, and all public access points, and to have the least impact on public access overall.

(b.) **Construction Methods and Timing.** The plans shall specify the construction methods to be used, including all methods to be used to keep the construction areas separated from public recreational use areas and intertidal areas (including using the space available on the inland portion of the Permittee's property for staging, storage, and construction activities to the maximum extent feasible, and including using unobtrusive fencing (or equivalent measures) to delineate construction areas). All erosion control/water quality best management practices to be implemented during construction and their location shall be noted.

(c.) **Construction Requirements.** The plans shall include the following construction requirements specified by written notes on the Construction Plan. Minor adjustments to the following construction requirements may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

- All work shall take place during daylight hours and lighting of the intertidal area is prohibited.
- Construction work or equipment operations shall not be conducted below the mean high water line unless tidal waters have receded from the authorized work areas.
- All construction materials and equipment placed on the beach during daylight construction hours shall be stored beyond the reach of tidal waters. All construction materials and equipment shall be removed in their entirety from the beach area by sunset each day that work occurs.
- Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.
- Equipment washing, refueling, and/or servicing shall not take place on bayside parcel.
- The construction site shall maintain good construction site 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 intertidal area).
- All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each workday.

At a minimum, silt fences, straw wattles, and/or other equivalent apparatus, shall be installed at the perimeter of the construction site to prevent construction-related runoff and/or sediment from entering into the Pacific Ocean.

- All public access areas impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction. Any beach materials shall be filtered as necessary to remove all construction debris from the area near the Monterey Bay.
- The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least three working days in advance of commencement of construction, and immediately upon completion of construction.

All requirements of the condition above shall be enforceable components of this coastal development permit to the extent consistent with the City of Monterey's approvals. 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.

11. **Water Supply Production and Use Restrictions.** No more than 27.89 acre feet per year of potable water shall be produced by the project's desalination facility, and all such potable water produced shall only be used on-site for the approved project.

12. **Archaeology.** Should human remains or prehistoric or historic cultural features be discovered during foundation removal, demolition and soil disturbance activities as set forth in the City of Monterey's Condition of Approval 8.a., Native American consultations shall be obtained as appropriate.

13. **Marketing.** All disclosure documents required by the California Department of Real Estate shall notify buyers that: (a) the water for all components of the project (including the retail and condominium components) will be provided solely by the project's onsite desalination facility until such time as municipal water becomes available to serve the project; (b) that use of municipal water supply in the event that the desalination facility does not provide adequate potable water to serve the approved project is prohibited; (c) that in the event that the desalination facility cannot provide adequate potable water for the project, conservation efforts shall be required, and potable water shall be obtained and trucked in to the project site from a source which shall not adversely impact coastal zone resources; and (d) that the cost of the water supplied by the desalination facility may be substantially higher than the cost of water provided to surrounding properties by California-American Water Company if this representation is true at the time it would be made.

14. **Coastal Hazards Assumption of Risk, Waiver of Liability, and Indemnity Agreement.** The Permittee acknowledges and agrees: (i) that the site is subject to extreme coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunami, coastal flooding, and geologic instability; (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 Permittee.

15. **Desalination Facility Assumption of Risk, Waiver of Liability, and Indemnity Agreement.** The Permittee acknowledges and agrees: (i) that water for all components of the project (including residential and retail components) shall be provided solely by the project's onsite desalination facility until such time as municipal water becomes available and is allocated to the project; that connection to the to the municipal water distribution system in the City of Monterey is otherwise prohibited; that the desalination facility is limited to producing 27.89 acre-feet per year that can only be used to serve the approved project; and that a water supply contingency plan is in place to provide substitute potable water in the event that the desalination facility does not provide adequate potable water to serve the approved project, where such contingency plan prohibits the use of substitute water from any water supplier who obtains water from sources located within or outside the coastal zone within Monterey County where such water use would result in adverse coastal zone resource impacts; (ii) to assume the risks to the Permittee and the property that is the subject of this permit in the event that the desalination facility does not provide adequate potable water to serve the approved project and/or the approved contingency plan is implemented; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury, damage or inconvenience resulting from parts (i) and (ii) above; (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, damage, or inconvenience due to parts (i) and (ii) above; and (v) that any adverse effects to property caused by parts (i) and (ii) above shall be fully the responsibility of the Permittee.

16. **Other Agency Approvals.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit for Executive Director review and approval a copy of a valid permit, letter of permission, or evidence that no permit/permission is necessary for the project approved by this coastal

development permit from the following agencies: (a) U.S. Army Corps of Engineers; (b) Monterey Bay National Marine Sanctuary; (c) California Department of Fish and Game; (d) Monterey Peninsula Water Management District; (e) Monterey County Department of Health; (f) State Lands Commission; (g) Regional Water Quality Control Board; (h) National Marine Fisheries Service; (i) U .S. Fish and Wildlife Service; (j) California Department of Health Services; and (k) the U.S. Coast Guard. PRIOR TO OCCUPANCY, the Permittee shall submit for Executive Director review and approval a copy of a valid permit, letter of permission, or evidence that no permit/permission is necessary for the project approved by this coastal development permit from the following agencies: (a) Monterey County Department of Health; and (b) California Department of Health Services.

17. **City's Required Mitigations and Conditions.** Permittee shall provide the Executive Director with evidence of compliance with the City of Monterey's conditions of approval in City of Monterey Use Permit 00-019 and the mitigations imposed by the City of Monterey.

18. **Indemnification by Permittee/Liability for Costs and Attorneys Fees.** By acceptance of this permit, the Permittee agrees to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

19. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit for Executive Director review and approval documentation demonstrating that the Permittee has executed and recorded against the parcels 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 and site plan 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.

Filed:	03/13/2008
180th Day:	09/09/2008
Staff report prepared:	08/07/2008
Hearing date:	08/07/2008

COASTAL DEVELOPMENT PERMIT APPLICATION

Application number.....**3-08-013, Ocean View Plaza**

Applicant .....Cannery Row Marketplace, LLC

Project location .....Along the seaward and inland portions of Cannery Row between Hoffman Street to the north, Monterey Bay to the east, Drake Street to the south, and the Monterey Peninsula Recreation Trail to the west, in the City of Monterey (Monterey County).

Project description.....Mixed use commercial-retail/residential project consisting of: 87,362 sq. ft. of retail and retail support use, including 30,000 sq. ft. of restaurant use; 38 market-rate condominiums; 13 affordable housing units; 8,408 sq. ft. of coastal/community use; 377 parking spaces in garages; an onsite desalination system with seaward (roughly 1,200 feet offshore) intake/discharge components; rehabilitation of the historic Stohan's building as a history center with an adjacent history plaza; replication of an historic utility bridge over Cannery Row; and development of a community park.

File documents .....Coastal Development Permit Application File Number 3-06-065, including:

- Ocean View Plaza Environmental Impact Report (Pacific Municipal Consultants, 2001);
- Two Supplements to the Ocean View Plaza Final EIR –Traffic Analysis (December 2001) & Alternatives Analysis (March 2004);
- Ocean View Plaza – Horizontal Directional Drilling Pipeline Installations (Cherrington Corporation, May 29, 2003);
- Seawater Desalination System for Ocean View Plaza (Kennedy/Jenks Consultants, July 24, 2006);
- Geotechnical Investigation Report, Ocean View Plaza Project, Monterey, California (MACTEC Engineering and Consulting, Inc., December 16, 2003);
- Technical Memorandum Evaluation of Alternatives to an Open Ocean Intake (Parsons-Brinckerhoff, June 2007);
- Certificate of Completion for Ocean View Community Services District (Local Agency Formation Commission, December 27, 2005);

- Review of Wave Impacts on Ocean View Plaza, Monterey, California (Haro, Kasunich, and Associates, Inc., November 5, 2007);
- Memorandum from Edward B Thornton, PhD. Regarding Sea Level Rise and Beach Erosion (November 2, 2007);
- Engineering Report: Seawater Desalination Pilot Program, Marin Municipal Water District (Kennedy/Jenks Consultants, January 26, 2007);
- Extension of 180-Day Permit Streamlining Act Deadline, dated December 20, 2007;
- City of Monterey Desalination Facility Annual Operations and Maintenance Cost Evaluation (CH2M Hill, July 7, 2005);
- Economic and Planning Systems Memorandum, July 12, 2005;

Coastal Development Permit Application File Number 3-08-013, including:

- Seawater Desalination by Reverse Osmosis—Technology Proposed for the OVP Desalination Project (Val S. Frenkel, PhD, Kennedy/Jenks Consultants, April 21, 2008);
- Correspondence regarding reliability (Jeffrey Nelson, Parsons Brinckerhoff, April 21, 2008);
- Correspondence regarding sufficiency of sand cover and marine habitat (Ray de Wit, Padre and Associates, April 21, 2008);
- Correspondence regarding long term sand cover (John Kasunich, Haro, Kasunich & Associates, Inc., April 30, 2008);
- Ocean View Plaza Seawater Intakes and Discharge (Parsons Brinckerhoff, June 2008);
- Shadow Casting Simulation (Videoscapes.net, May 2008);
- Intertidal Reconnaissance Survey (Padre Associates, Inc., June 2008)

City of Monterey Cannery Row Land Use Plan

Staff recommendation: Approval

A. Staff Recommendation

1. Summary of Staff Recommendation

The Applicant proposes to construct a mixed-use commercial-retail and residential project on a combined 3.5-acre site consisting of bayside and inland parcels located on Cannery Row in the City of Monterey. The proposed project includes: four new buildings (Buildings A and B, to be located on the bayside parcel; Buildings C and E, to be located on the inland parcel); commercial retail, retail support uses, a retail plaza, and restaurant space on the first floors of Buildings A, B, and E; 38 market-rate condominium housing units on the second and third stories of Buildings A and B; 13 moderate-income inclusionary housing units on the second story of Building C; an onsite desalination facility (in Building B) and associated ocean water intake and discharge pipelines extending roughly 1,200 feet seaward of the shoreline; redevelopment of the existing Stohan's building for use as a Cannery Row history center, with an adjacent public history plaza; public viewing areas and a public access promenade located adjacent to Building A and the history plaza, leading down to a 10-foot-wide public access easement

along the rocky shoreline; a community park on the inland parcel; and a combined total of 377 garage parking spaces in enclosed garages on both the bayside and inland parcels.

The project is consistent with the Coastal Act. The project as proposed will be consistent with the policies of Coastal Act sections 30230 and 30231 meant to protect marine life and water quality. The project is consistent with the policies of Coastal Act section 30233. With the subsurface intake, only a few feet of pipe that is six inches in diameter will be above ground and could be considered "fill". It is permitted because there is no feasible less environmentally damaging alternative and feasible mitigation measures have been provided to minimize adverse environment effects and because the desalination facility is a coastal-dependent industrial facility and these pipes are for incidental public service purposes.

The project is consistent with the Coastal Act and the certified Cannery Row Land Use Plan provisions for public access. The project far exceeds the public access requirements in those documents.

As a coastal dependent industrial facility, the Commission also finds that the project, as conditioned, will conform to the Coastal Act.

2. Staff Recommendation on CDP Application

The staff recommends that the Commission, after public hearing, **approve** the CDP for the proposed development.

> **Motion**. I move that the Commission approve Coastal Development Permit Number 3-08-013 for the development as proposed by the Applicant.
>
> **Staff Recommendation of Approval**. Staff recommends a **YES** vote which will result in the approval of the coastal development permit pursuant to the conditions set forth below. Failure of this motion will result in denial of the coastal development permit. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve a Coastal Development Permit. The Commission hereby approves the coastal development permit under the conditions set forth below:

See enclosed redlined conditions.

Report Contents

B. Findings and Declarations

The Commission finds and declares as follows:

1. Proposed Development

a. Project Location

The proposed project is located along Cannery Row in the City of Monterey, between Hoffman Street to the north, Monterey Bay to the east, Drake Street to the south, and the Monterey Peninsula Recreation Trail to the west. The project site consists of two main parcels of land (each consisting of multiple lots), one located on the bayside of Cannery Row and one located on the inland side of Cannery Row. The 2.2-acre bayside parcel is sandwiched between the El Torito Restaurant (downcoast) and the Chart House Restaurant (upcoast) and was historically occupied by two canneries: the Pacific Fish Company on the northern portion of the site and the San Xavier Canning Company on the southern portion of the site. These canneries closed in the early 1960s and the project site has been essentially

vacant since that time, except for the use of the San Xavier Canning Company's Fish Reduction Plant, which was occupied by the Stohan's Gift Gallery until 1997. In addition to the vacant Stohan's building, the bayside parcel includes an abandoned storage tank and various remnants of former buildings from past development at this location. The 1.3-acre inland parcel is currently occupied by a paved parking lot, the remains of the foundation of the former San Xavier Warehouse, and other structural remnants of the Cannery Row cannery era, including a storage tank. The project site totals about 3.5 acres of land along Cannery Row. See Exhibits 1 and 2 for location maps and photographs of the site.

b. Project Description

The Applicant proposes a mixed-use commercial and residential project on the combined 3.5-acre site (bayside and inland parcels). The proposed project includes:

- Two new buildings on the bayside parcel, Buildings A and B, each consisting of three stories above ground (up to a maximum height of 44 feet) and a basement;
- Two new buildings on the inland parcel (each 35 feet in height), Building C (two stories and a basement) and Building E (three stories and a basement);
- Commercial retail, retail support uses, a retail plaza, and restaurant space on the first floors of Buildings A, B, and E;
- 38 market-rate condominiums units on the second and third stories of bayside Buildings A and B (ranging in size from 1,534 square feet to 1,934 square feet plus outdoor deck areas);
- 13 moderate-income housing units on the second story of inland Building C (ranging in size from 626 square feet to 1,302 square feet plus outdoor deck areas);
- Redevelopment/rehabilitation of the existing bayside Stohan's building for use as a Cannery Row history center, with an adjacent public history plaza;
- Public viewing areas and a public access promenade located adjacent to bayside Building A and the history plaza;
- Dedication of a 10-foot-wide public access easement along the rocky shoreline below bayside Buildings A and B (this access easement would extend to the Mean High Tide line, which is coterminous with the fee-title property line), with stairway access to the easement area provided near Building A and the proposed history center;
- An onsite desalination facility in bayside Building B and associated ocean water intake and discharge pipelines extending roughly 1,200 feet seaward of the shoreline and placed almost entirely under the ocean floor;
- A utility bridge crossing over Cannery Row (connecting bayside Building B to inland Building C), designed not for passage across the street but rather as an architectural interest feature;

- A roughly 14,000 square-foot public community park between the Monterey Peninsula Recreation Trail and Cannery Row (inland parcel); and[1]

- Parking facilities providing 377 total parking spaces that are designated for specific uses (123 for residential use, 168 for restaurant use, and 86 for retail use) and are located in multiple project areas (93 basement-level spaces on the bayside parcel (45 spaces in Building A; 48 spaces in Building B), and the remainder on the inland parcel: 132 basement-level spaces, 48 second-level spaces, 48 third-level spaces, and 56 roof-level spaces).

The table below summarizes various components of the proposed project; see Exhibit #3 for detailed project plans.

Use	Bayside parcel	Inland parcel	Total
Retail/Restaurant (sq. ft.)	55,622	31.740	87,362
Residential (sq. ft., including residential circulation and support)	87,257	15,260	102,517
Market Rate Residential Units (number)	38	0	38
Moderate-Income Residential Units (#)	0	13	13
Total Residential Units (number)	38	13	51
Desalination Facility (sq. ft.)	2,135	0	2,135
Total Area of the Above Project Components (sq. ft.)	147,264	55,799	203,063
Community Park (sq. ft.)	0	13,796	13,796
Parking Area (sq. ft.)	42,398	124,786	167,184
Covered Ramps (sq. ft.) (to access parking areas)	2,250	8,799	13,299
Parking Spaces (number)	93	259	377

c. Project Background

The proposed project represents a substantial redesign of a previous project proposed for this site in 1997. The 1997 project was known as the Cannery Row Marketplace project. The environmental impact report (EIR) on the Cannery Row Marketplace project was not certified and the project was denied by the Monterey City Council in August 1999, primarily due to concerns regarding mass and scale.

Subsequently, the project was substantially modified based upon public comment and input from the City of Monterey and the Coastal Commission. A draft EIR (DEIR) for the modified Ocean View Plaza project was prepared in 2001. In 2002, the City certified a final EIR (FEIR) and approved the Ocean View Plaza project. The City's decision was challenged, and ultimately a 2003 Monterey County Superior Court decision found that ~~the FEIR for~~although the water supply issues were adequately discussed in the Ocean View Plaza project FEIR, the FEIR lacked analysis of a sufficient range of project alternatives. Following this decision, a supplemental EIR was completed in 2004 that analyzed an expanded range of project alternatives, including a range of reduced project densities (see Exhibit 4 for a summary of these project alternatives). Ultimately, the City certified the EIR and approved Alternative 4, which was similar to the project approved by the City Council in 2002 and included

[1] Note that the park occupies the site of formerly proposed Building D; Building D is no longer a part of the proposed project.

architectural and design changes required by the City's conditions of approval in 2002; an increase in the number of housing units; and a decrease in the square footage of the retail/restaurant components of the project.[2] Alternative 4 approved by the City is the current proposed project.

The availability of a public water supply for the proposed project has been an ongoing matter of concern. Public drinking water for the project area is managed by the Monterey Peninsula Water Management District (MPWMD) and is provided by the California-American Water Company (Cal-Am), which is the retail water purveyor for the Cannery Row area. The City of Monterey, however, is currently using its full allotment of water from the MPWMD and additional domestic water from Cal-Am is not available to serve the project's water needs due to restrictions on pumping from the Carmel River and Seaside aquifer which are the sources of Cal-Am water. Therefore, an onsite desalination facility is proposed to provide water for the project.

Another ongoing issue of concern has been whether the water supply for the project would be public or private. The Monterey County Health Department requires that certain desalination plants be publicly managed and operated. The DEIR originally had stated that Cal-Am would likely operate and maintain the proposed desalination plant, but an agreement to that effect did not come to fruition. Because Coastal Act Section 30250 requires such a supply to be publicly managed, this issue has been at the fore of the coastal development permit (CDP) application process, with the Commission expressing concerns to the Applicant that the water supply for the project be publicly managed, including through a public hearing and action by the Commission regarding whether to file the CDP application for the project. In that action, wherein the Applicant was challenging the Executive Director's determination that the application could not be filed without the proper approvals for a public desalination water supply, the Commission found:

> *The City and the Applicant understand the Coastal Act requirement that the water supply for the proposed project be provided for by a public entity. Therefore, the Applicant is proposing the creation of a Community Services District, to construct, operate, and maintain the proposed desalination plant that will provide water for the Ocean View Plaza project. ...*
>
> *In this case, the application presented fails this initial [filing] test because it lacks evidence of necessary governmental approvals for the creation of a Community Services District needed to construct, operate, and maintain the proposed desalination plant that will provide the water supply that is a basic and fundamental component of the proposed project.*[3]

Subsequently, the City of Monterey requested that the Monterey County Local Agency Formation Commission (LAFCO) review the establishment of a Community Services District (CSD) for the project site only that would own, operate, and maintain the proposed desalination plant once it is constructed. In late 2005, LAFCO approved the formation of the Ocean View Community Services

[2] The City-certified EIR includes a Supplemental EIR on traffic due to traffic restrictions through the Presidio of Monterey implemented subsequent to September 11, 2001; a Supplemental EIR on Alternatives; a Findings and Mitigation Monitoring Chart; and adoption of a Statement of Overriding Considerations regarding project impacts to historic resources and traffic.

[3] California Coastal Commission, Adopted Findings, Executive Director's Determination to Reject the Submittal of a Permit Application, Ocean View Plaza, May 5, 2005, pp. 5 and 8.

District (OVCSD) and a Sphere of Influence for OVCSD (see Exhibit 7). The members of the Monterey City Council act as board members for the OVCSD. The OVCSD has met approximately 10 times since its formation. Since the desalination facility will be owned, operated and maintained by the OVCSD, once the Applicant provides the documentation outlined in Special Condition 3 above, this will no longer be an issue.

2. Standard of Review

The City of Monterey does not have a certified LCP.[4] The Cannery Row Land Use Plan (LUP) was certified in 1981, and it has been amended several times since. The Coastal Commission has reviewed each amendment, and after the Coastal Commission made a determination that each amendment was consistent with the Coastal Act requirements, the City of Monterey has thereafter adopted each amendment that the Coastal Commission determined was consistent with the Coastal Act requirements. The Cannery Row LUP has therefore been certified as being consistent with the Coastal Act. In reviewing the Cannery Row LUP, the Coastal Commission is not authorized to diminish or abridge the authority of a local government to adopt and establish, by ordinance, the precise content of its land use plan.[5]

3. Coastal Development Permit Determination

A. Water Supply

~~This finding analyzes multiple Coastal Act issues raised by the proposed water supply for the project.~~ As detailed below, the Commission finds that the project as conditioned is consistent with Coastal Act sections 30230, 30231, 30233, 30240, 30250, and 30254.

1. Applicable Policies

Public Services

The Coastal Act requires that new development be located in existing developed areas with adequate public services and where it will not have significant adverse effects on coastal resources. Coastal Act Section 30250(a) states:

> *Section 30250(a): New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources...*

[4] The Cities of Monterey, Seaside, and Pacific Grove are the only remaining jurisdictions of the 15 local governments in the Central Coast District that do not have certified LCPs. The City of Monterey still needs to submit an updated land use plan for the Laguna Grande segment (there are five LUP segments in Monterey) and the Implementation Plan for all five segments for review and approval by the Commission in order to complete the certification of its LCP.

[5] Coastal Act Section 30512.2(a); *also see Douda v. California Coastal Commission*, 159 Cal.App.4th 1181, 1198-9 (2008).

This policy is directly applicable to the proposed project because it is located in an already developed area – Cannery Row in the highly urbanized City of Monterey – that is struggling with serious limitations on adequate public water supplies.

Because the Applicant is proposing an alternative water supply outside of the current public service system for the City of Monterey, Section 30254 of the Coastal Act also is applicable. It provides for new or expanded public works facilities and states:

> *Section 30254. New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; . . . . Special districts shall not be formed or expanded except where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.*

Finally, Cannery Row LUP Water Resources Policy (a) requires that development in the City of Monterey not exceed existing water supplies allocated to the City by the Monterey Peninsula Water Management Agency. LUP Water Resources Policy (a) states:

> ***a.*** *Development in the City of Monterey is to be monitored so as to prevent said development from using any more than the share of the existing water supplies allocated to the City by the Monterey Peninsula Water Management agency. The City of Monterey agrees to abide by the allocation procedures of the Water Management Agency and to enforce said procedures in the City of Monterey.*

Additionally, Cannery Row LUP Water Resources Policies (b) through (d) require, among other things, water conservation in new development:

> ***b.*** *Promote water conservation by requiring new development to meet all the appropriate requirements of the City of Monterey's Water Conservation Ordinance.*
> ***c.*** *Promote water conservation in the Coastal Zone by requiring water-saving devices (i.e. dishwashers) in all new restaurant developments.*
> ***d.*** *Promote water conservation in the Coastal Zone by requiring landscaping in new development to be native or other plant landscaping which minimizes water use.*

Protection of Coastal Waters

As detailed below, the current public water service provider for the City of Monterey is having a direct adverse impact on the Carmel River and the Seaside groundwater basin aquifer (water is withdrawn from these resources as shown in Exhibit #8). In addition, the proposed alternative onsite desalination water supply raises potential concerns with the protection of the coastal waters and resources of the Monterey Bay. Therefore, Coastal Act Sections 30230, 30231 and 30233, which provide for the

protection of marine resources and coastal waters, including their biological productivity, are also relevant:

> *Section 30230. Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*
>
> *Section 30231. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Coastal Act Section 30233(a) provides criteria for when fill can be placed and when dredging can occur in coastal waters, limiting such activities to seven enumerated development types:

> *Section 30233(a). The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following: (~~1~~1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities. (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps. (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities. (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines. (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas. (6) Restoration purposes. (7) Nature study, aquaculture, or similar resource dependent activities.*

The Coastal Act also protects environmentally sensitive habitat areas (ESHA). Such policies are applicable in a water supply context most specifically in terms of potential impacts of water withdrawals on ESHA resources, such as the Carmel River system. Coastal Act Section 30240 states:

> *(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
>
> *(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.

Coastal Act Section 30240 also protects parks and recreation areas, such as the Edward F. Ricketts State Marine Conservation Area, which is located offshore of the project site.

2. Project Water Supply Context

a. Existing Public Water Supply for the Project Area

Public drinking water for the communities on the Monterey Peninsula, including the City of Monterey, is managed by the Monterey Peninsula Water Management District (MPWMD) and is provided by the California-American Water Company (Cal-Am). Cal-Am thus is the retail water purveyor for the City of Monterey, including the Cannery Row area, where the project would be located. Cal-Am's water is drawn from the Carmel River and the Seaside coastal groundwater basin aquifer (see Exhibit 8 showing the locations of these sources in relation to the City). The MPWMD allocates existing water supplies among various cities and the County, who in turn decide how to distribute their allocations to users within their jurisdictions. Currently, the City is using its entire water allocation from the MPWMD.

When the Cannery Row LUP was first certified in 1980, it was thought that the maximum total amount of water that could be prudently produced by Cal-Am facilities at the time was 18,000 acre-feet per year (afy); and with development of four new wells, that Cal-Am would have an assured water supply of 22,000 afy.[6] Existing demand for Cal-Am water on the Monterey Peninsula in 1980 was estimated at 16,565 afy.[7]

Carmel River Extractions

In 1995 the State Water Resource Control Board (SWRCB) issued SWRCB Order 95-10, in response to complaints alleging that Cal-Am did not have a legal right to divert water from the Carmel River and that the diversions were having an adverse affect on the public trust resources of the river. SWRCB found that Cal-Am has a legal right only to withdraw about 3,376 afy from the river, and that the Cal-Am diversions were having an adverse effect on the lower riparian corridor of the river, the wildlife that depends on this habitat, and the steelhead and other fish inhabiting the river. SWRCB thus ordered Cal-Am to extract no more than 11,285 afy from the river, to implement measures to minimize harm to public trust resources, and to reduce its withdrawals. Order 95-10 also reduces the amount of water Cal-Am could take from the Carmel River aquifer by 20 percent in the near-term and up to 75 percent in the long-term, and also requires that any new water that is developed by Cal-Am must first completely offset Cal-Am's unlawful diversions from the Carmel River before any water produced by Cal-Am can be used for new construction or expansions in use.

Unfortunately, Cal-Am has not yet met the requirements of Order 95-10, which is now 13 years old. In response, the SWRCB recently issued a draft cease and desist order that would compel Cal-Am to reduce its pumping of the Carmel River by 15% by October 2009, increasing to a 50% reduction by

[6] Cannery Row LUP, p. I-C-2; see also Monterey County Del Monte Forest LUP, p. 92.
[7] Id.

2014 (see Exhibit 9).[8] The draft order states that Cal-Am's unauthorized diversions are continuing to have adverse effects on the public trust resources of the Carmel River and should be reduced. Further, notwithstanding Order 95-10, Cal-Am water withdrawals have not been reduced beyond the initial 20% reduction in 1995, even while the Monterey peninsula urban population has increased from approximately 100,000 in 1995 to 112,000 today. Thus, the order observes:

> *Order 95-10 condition 2 intended that Cal-Am would make one-for-one reductions in the unlawful diversions from the Carmel River for water obtained from other sources, such as conservation. The current water management strategy used by Cal-Am/MPWMD, however, has not resulted in any significant reduction of unlawful diversions from the Carmel River since 1998. Instead, it appears that water savings resulting from conservation efforts have been redirected to support marginal increases in development.*[9]

The cease and desist order proceedings have not yet completed (phase II of the hearing process will take place July 23-25, 2008 at the SWRCB offices in Sacramento). Regardless of the outcome, it is clear that the public water supply currently drawn from the Carmel River is having a significant adverse impact on the coastal resources of the Carmel River system. In addition, it is clear that it will be many years before any new regional public water supply is available for new development on the Monterey Peninsula.

With other regional stakeholders, Cal-Am has been pursuing the implementation of the Coastal Water Project, which is a proposed large-scale desalination facility that would produce 10,370 afy. The California PUC is currently working on the DEIR for this project. Cal-Am has also been developing the Aquifer Storage and Recovery Project (ASR) under which excess winter flows of the Carmel River would be diverted to and injected into the Seaside groundwater basin for storage and use. In addition to Cal-Am's efforts to find new water supplies, the Pajaro Sunny Mesa Community Services District has submitted an application for a pilot desalination plant at the former National Refractories Moss Landing site in northern Monterey County, but the application is still incomplete. Also, the Water Standard Company has made several presentations to Commission staff and staff from other agencies about their proposed ship-based desalination facility; however, that company has not yet submitted an application for such a project. Most recently, the City of Monterey itself has issued a Request for Proposals to analyze hydrogeologic conditions along the shoreline of the City for the purposes of considering the feasibility of a desalination facility for the City.

Seaside Aquifer Extractions

Cal-Am water withdrawals are also adversely impacting the Seaside coastal groundwater basin aquifer. A recent technical report completed for the MPWMD shows consistently declining water levels and deficit water budgets over an 8-year period, indicating that the basin is in a state of overdraft since

[8] State of California, State Water Resources Control Board, Division of Water Rights, Draft Cease and Desist Order WR 2008-00XX-DWR (January 15, 2008); see Exhibit 9.
[9] Id; p. 5.

groundwater extractions exceed the sustainable yield.[10] Because it is being over-drafted, the basin is at risk of seawater intrusion, as well as other negative outcomes such as basin subsidence, chronically declining groundwater levels, and water quality degradation. According to the MPWMD-sponsored report, in the event of a prolonged drought, storage in the Seaside basin could not be relied upon to sustain current levels of production for very many years in row.[11]

More recently, existing and potential withdrawals from the basin have been adjudicated in Monterey County Superior Court.[12] The Court concluded that the "natural safe yield" of the Seaside basin is between 2,581 to 2,913 afy, but that total groundwater production withdrawals over the last five years ranged between approximately 5,100 and 6,100 afy, or roughly twice the safe yield of the basin. The Court concludes that while there is some uncertainty, all parties were in agreement that continued production from the basin beyond the safe yield will ultimately result in seawater intrusion and deleterious effects to the basin in the foreseeable future. The Court also appointed a special water master to implement a long-term management program to reduce production from the basin over time to the natural safe yield. Under the general schedule set out by the Court, withdrawals from the basin would have to be reduced 10% every three years after the first three years. All things being equal, at this rate of reduction, the basin would reach equilibrium in approximately 20 years.

Conclusion

There is little dispute that both of the Cal-Am water sources – the Carmel River and the Seaside coastal groundwater basin aquifer – are being adversely affected by current water withdrawals. From a coastal resource protection standpoint, both water sources are significantly over-drafted. The effects of this over-drafting include significant impacts to riparian habitat in the river, especially for the sensitive steelhead species, and potential seawater intrusion and continued degradation of the Seaside basin. Any new water withdrawals from these over-drafted sources thus will further adversely affect coastal resources. The evidence shows that not only should there not be any new withdrawals from these resources, but existing withdrawals should be significantly reduced. From a water management standpoint, there is no water currently available from the City's MPWMD allocation.

Given the state of both the Carmel River and the Seaside groundwater basin, the only water available for new development is that which may become available through the management and allocation of existing connections or some new public supply. As mentioned above, the City of Monterey is currently using its full allotment of water from the MPWMD and additional water is not available to serve the proposed project's water needs. The City of Monterey (as well as other jurisdictions within the Cal-Am service area) also maintains a waiting list for new water hookups. As of the date of this report, the Applicant's project was 21st out of 32 projects on the City's water waiting list, and a cumulative total of 37.177 acre feet of water would need to become available in the City of Monterey to serve the projects ahead of the Applicant's project on list before the Applicant would "clear" the waiting list and be eligible to receive Cal-Am water (see Exhibit 10). In the last 5 years, less than four acre feet of water has become available. Thus, based on recent experience, and barring the development of a major new

[10] Eugene Yates, Martin Feeney and Lewis Rosenberg, *Seaside Groundwater Basin: Update on Water Resources Conditions* April 2005 for MPWMD (available at http://www.mpwmd.dst.ca.us/seasidebasin/index.html). Estimated sustainable yield is about 2,880 afy while average extractions are about 5,600 afy.

[11] Id; p. 28.

[12] *California American Water v. City of Seaside*, Monterey County Superior Court Case M66343.

water source in the near future, it will likely be many years before the proposed project could clear the City's water waiting list and become eligible to receive Cal-Am water.

Because of the lack of water available from the Cal-Am system for the project, the Applicant has proposed an onsite reverse osmosis desalination facility to provide water for the proposed residential and commercial development. ~~As discussed in more detail below,~~Since the desalination facility ~~would be owned and operated by the recently formed project-specific Ocean View Community Services District (OVCSD).~~ provides a source of water other than the Cal-Am system, it eliminates the concerns expressed above regarding the project imposing any harm on the Carmel River and the Seaside groundwater basin.

b. Public Services Requirement

The Coastal Act Section 30250 requirement that new development in urban areas be served by public infrastructure has been an ongoing concern for the project. ~~This policy provides that if an urban area lacks critical infrastructure—e.g., water, sewer, or road capacity—to support further urban development, then new development must be delayed unless and until the capacity of the limited service can be increased, preferably through a comprehensive urban planning process, in order to support it. It does not mean that urban uses should proceed incrementally, using what are essentially rural-level services (e.g., private wells and septic systems). The proliferation of rural services within an urban area causes practical problems (e.g., wells run dry, lot sizes are too small to accommodate septic systems, etc.) and planning problems. In addition, these services often draw from the same source as public supplies, further exacerbating public service constraints and related problems. Ultimately, incremental development without comprehensive planning or the reliable institutional and management structure to assure its performance may lead to serious cumulative environmental resource impacts such as groundwater overdraft, polluted groundwater, degraded riparian habitat, and so on.~~

~~The Commission has recognized that the authorization of private wells or private desalination facilities within the City of Monterey, whether for potable water or supplemental non-potable water for irrigation purposes, could lead to potential cumulative impacts that could undermine Cal-Am's ability to provide adequate water supplies to existing service connections within their service area. For this reason, the Commission's 2003 approval of the Del Monte Beach LUP and Harbor LUP components of the City's LCP included policies clearly requiring that development be served by an adequate public water supply, as well as a prohibition on private water supplies to serve existing and new development within the City of Monterey. Additional policies in those LUPs allow for development of public desalination facilities, provided any adverse environmental impacts are mitigated. With respect to the project, the DEIR for the proposed project was completed in April 2001. At that time, the proposed project's expected water demand was estimated at 25.6 acre-feet of water per year. The DEIR noted that the City of Monterey was at that time using most of its full allotment of water as allocated by the MPWMD.~~ Given that there was no public water available for the project from the City's water allotment, the DEIR evaluated a number of alternative water supply sources for the project and determined that a seawater desalination plant was the only feasible alternative.[13]

[13] The other alternatives considered for providing daily water to the site included an onshore seawater well, a nearshore infiltration trench system, a fixture retrofit program, and trucking potable water to the site. Each of these alternatives was rejected for feasibility, adverse impact, or regulatory reasons.

The DEIR also noted (independent of the Coastal Act 30250 requirement) that County regulations required that any desalination facility be owned and operated by a public entity.[14] The DEIR also noted that Cal-Am had expressed a willingness to assume such responsibility. MPWMD staff, however, expressed concerns regarding the appropriateness of Cal-Am being the owner-operator of the desalination plant. The FEIR included a letter from the Applicant's representative stating that instead of Cal-Am operating and maintaining the desalination plant, that the Applicant would instead form a mutual water company to oversee these duties regarding the desalination plant.

When the City approved the project in 2002, the City noted that the Applicant proposed to form a mutual water company to construct, operate, and maintain the desalination component of the project. However, in December of 2004, after project delays related to litigation of the EIR and circulation of a supplemental project EIR, the Applicant informed Commission staff that the Applicant no longer planned to form a mutual water company to operate the desalination plant for the project. Instead, the Applicant was seeking to create, pursuant to Government Code §§ 61000 *et seq.*, a community services district (CSD) to construct, operate, and maintain the proposed desalination plant.[15]

The creation of a CSD to construct, operate, and maintain the proposed desalination plant required additional approvals from the City of Monterey, the County of Monterey, and, pursuant to Government Code section 61107, the Local Area Formation Commission (LAFCO) of Monterey County.[16]; LAFCOs were created to discourage urban sprawl and encourage the orderly formation and development of local government agencies. Specifically, LAFCO of Monterey County is responsible for coordinating logical and timely changes in local governmental boundaries, including annexations and detachments of territory, incorporations of cities, formations of special districts, and consolidations, mergers, and dissolutions of districts, as well as reviewing ways to reorganize, simplify, and streamline governmental structure.

In December 2004, Commission staff informed the Applicant's representative that staff would not accept an application submittal for the project until all local approvals had been obtained, including the specific approvals needed for the proposed CSD to provide water for the proposed project. Ultimately, this filing decision was challenged by the Applicant, and in May of 2005, the Commission upheld the Executive Director's determination that the project could not be filed absent the requisite approvals of the CSD. A primary concern of staff was that that there was no guarantee that the City, the County, and LAFCO would approve the creation of a CSD to serve not a community but a single project. Also, until a CSD was established, there was no entity to take responsibility for the future construction and operation of the facility and its discharge. Given the fundamental lack of a public entity to take responsibility for construction, operation, and maintenance of the proposed desalination facility, the Commission found that the project could not be accepted for filing. However, as detailed below, the ~~Applicant~~City of Monterey has since received LAFCO's approval and formed a CSD, the Ocean View Community Services District ("OVCSD"), for the project site to operate and maintain the proposed onsite desalination plant.

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[14] Section 10.72.030(B) of the Monterey County Code states: *Provide assurances that each facility will be owned and operated by a public entity.*

[15] The purpose of a CSD is to provide a community with various needed public services, such as an adequate water supply, trash collection and disposal, fire and police protection, etc.

[16] LAFCOs were created in each county in California by the Legislature in 1963; this initial legislation was replaced by the Cortese-Knox Local Government Reorganization Act of 1985 (Government Code §§ 56000 *et seq.*).

c. Avoiding Impacts to Marine Resources

The avoidance of marine resource impacts is a third important area of concern for the proposed desalination component of the project. Since, as noted above, the project will not be drawing any water from Cal-Am sources, the analysis here focuses on impacts from the desalination facility. The Commission is familiar with this issue, having identified and addressed significant potential resource impacts of desalination plants up and down the California coast.[17] Generally, these impacts fall into three areas of concern: impingement and entrainment of marine resources in the intake, potential adverse discharges from the outfall, and the fill of ocean waters or disruption of the marine environment from infall, outfall, and related structures. The Commission has analyzed these issues in a number of major desalination proposals in the last several years.[18]

In this project, Commission staff identified these issues during the application process and advised the Applicant that in order to avoid impacts that potentially would be inconsistent with the Coastal Act, the Applicant should evaluate the feasibility of a subsurface intake and outfall for any necessary desalination components~~, even though~~. This was not necessary because the EIR made clear that there were no significant impacts from using the open ocean intake and outfall. Moreover, as described below, the current project's use of a subsurface intake eliminates any possibility of entrainment and impingement concerns, and the Applicant demonstrated that a subsurface outfall would not be feasible at the site due to concerns regarding the need to maintain a solid foundation and to adequately diffuse the discharge without negatively impacting water quality.

3. Description of Proposed Desalination Facility

a. Design and Operation

The proposed desalination facility would be comprised of onshore pumps, desalination equipment, water storage reservoirs, and offshore seawater intake and brine disposal pipelines and structures. With the exception of the seawater intake and brine disposal elements, all other components of the project desalination facility would be located on the project site in the lower level of bayside Building B (see pages 15-24 of Exhibit #3 for desalination facility plans and description. The Monterey County Health Department, Environmental Health Division, has reviewed and approved the 75% design submittal. Prior to occupancy, the Environmental Health Division of the Monterey County Health Department will require that the desalination facility successfully operate for a period of time subject to Health Department monitoring to ensure that ~~it~~the desalination facility is providing a reliable source of potable water.

Under the LAFCO conditions of approval and an agreement between the Applicant, the City of Monterey, and Cal-Am, operation of the facility is specifically limited~~ to the period of time commencing with the Applicant's dedication of the plant to the OVCSD and~~, ending when water is made available to the project from Cal-Am, consistent with its franchise agreement for the service area

[17] See, generally, *Seawater Desalination and the California Coastal Act*, March 2004, California Coastal Commission.

[18] For example, the Commission approved a desalination plant proposed by the City of Sand City in Monterey County, in part because the potential entrainment, impingement, fill and discharge impacts associated with the intake and outfall were avoided through the use of subsurface beach wells for both intake and outfall structures. (See A-3-SNC-05-010, Adopted Findings, California Coastal Commission, May 11, 2005).

(see Exhibit #7 and Special Exhibit 4, above)~~. OVCSD would also be required to apply to LAFCO for dissolution of the CSD at that time~~.

Onshore Components

The reverse osmosis system ~~would~~will be manufactured as a complete, skid-mounted unit equipped with all necessary piping, instruments, housing, and pumps. Potable water produced by the system would be pumped into two 75,000-gallon reservoirs located onsite adjacent to the desalination system, which would be capable of storing a three-day supply at maximum daily demand of 50,000 gallons per day (gpd) (or six days at average daily demand of 25,000 gallons gpd, 12 days at the demand expected during any emergency requiring water conservation). The reservoirs would consist of rectangular poured-in-place concrete basins. From the reservoirs, water would be pumped to a 1,000-gallon hydro-pneumatic tank, located adjacent to the desalination facility, which would deliver pressurized water to the project's potable water delivery system. The proposed desalination facility would be designed to meet the average demand of 25,000 gpd, which is equivalent to a project demand of approximately 27.89 afy. The 25,000 gpd includes approximately 2,000 gpd surplus as a safety factor.

Offshore Components

As proposed in the EIR, the desalination plant would have included the exclusive use of open ocean intake and outfall lines. To provide 25,000 gpd of desalted water, the project would take in about 86,400 gallons per day of seawater (120 gallons per minute for 12 hours per day) from coastal waters and would cause entrainment due to its proposed use of an open-water intake. Commission staff expressed concern that the open ocean intake would not conform to Coastal Act provisions related to protection of marine and coastal waters, including Coastal Act Sections 30230 and 30231. Commission staff also expressed concern to the Applicant that the proposed open ocean intake and outfall lines would constitute placement of fill within the Monterey Bay and that the project's proposed intake and outfall structures did not appear to conform to the provisions of Coastal Act Section 30233(a) related to the allowable placement of fill in coastal waters.

In response to these concerns, the Applicant engaged an engineering firm to perform a feasibility study to determine if subsurface (below the ocean floor) intake and discharge structures would be a feasible alternative to the open ocean intake/discharge proposed in the EIR (the results ~~of this feasibility study~~regarding the intake structures are presented in a technical memorandum attached as pages 17-21 in Exhibit 3). The main difference between a subsurface alternative and the open ocean intake/discharge alternative is that the subsurface alternative consists of horizontally-oriented pipes with intakes placed inside well screens buried beneath the sand deposits of the ocean bottom.

The final seawater intake and discharge design ~~currently proposed would~~will include two six-inch diameter intake pipes, to which one emergency intake line ~~would~~will be connected, and one six-inch diameter discharge pipe. These pipelines ~~would~~will be installed by first directionally drilling a 20-inch bore hole from the inland side of the site to a location roughly 350 feet offshore where the bore will exit the underlying granite formation adjacent to a submarine sand channel on the ocean floor in about 25 feet of water. The one discharge pipe and the two intake pipes ~~would~~will then be bundled together and pulled into the bore hole. At the exit point of the bore, permanent collar anchors ~~would~~will be installed around the pipes and six-inch diameter pipe extensions extending further seaward ~~would~~will be attached to each of the three pipes. These pipe extensions ~~would~~will be jetted two to three feet into the

surficial sediment of the sandy bottom (by divers using air hoses) where they ~~would~~will be anchored in place using concrete weights, and they ~~would~~will be re-covered (buried) with sandy bottom sediments. The one discharge pipe ~~would~~will be extended in this manner approximately 850 additional feet to a point roughly 1,200 feet offshore in about 50 feet of water, where it ~~would~~will daylight about one to two feet above the ocean floor and into the water column. The two intake pipelines ~~would~~will also be extended in this manner approximately 450 beyond the bore exit point to a point roughly 800 feet offshore where they ~~would~~will extend into a concrete vault at a water depth of about 40 feet. The concrete vault (approximately 15 feet in length, 6 feet wide, and 6 feet high and consisting of two chambers) ~~would~~will be assembled onshore, and jetted into the seabed floor and re-covered (buried) with sandy bottom sediments in a similar manner as the pipes. The larger chamber of the vault ~~would~~will be filled with sand, and the smaller chamber ~~would~~will be open; the sand-filled chamber ~~would~~will be where seawater is pulled through the sand filter, and the smaller chamber ~~would~~will be fitted with a cover to allow for diver access to the vault and to allow for removal of pipeline inspection gauges ("pigs") sent through the intake pipes for cleaning and maintenance purposes.

The Applicant indicates that the pipes ~~would~~will be reburied under two to three feet of sediment at the bore hole exit, and up to six to seven feet where the pipes enter the vault, and that the vault itself ~~would~~will be reburied under six inches to 2 feet of sediment.[19]

A six-inch emergency intake pipe riser ~~would~~will be attached to the two intake pipes through a Y-valve near the concrete vault, and it ~~would~~will be extended so that it ~~would~~will daylight about one to two feet above the ocean floor and into the water column. This intake pipe ~~would~~will be fitted with a velocity cap to limit maximum intake to no more than 0.2 feet per second, and it ~~would~~will be perforated with 1-inch diameter, screened ports through which seawater ~~would~~will be drawn. It is not feasible to have a subsurface discharge pipe in this location because if the discharge is not diffused at a high enough velocity subsurface, it will not provide adequate diffusion to avoid negatively impacting the water in the Monterey Bay, and if the discharge is diffused at a sufficient velocity to avoid negatively impacting the water in the Monterey Bay, it will erode the sand under the discharge pipe, harming not only the discharge pipe but also the Monterey Bay ocean floor.

Operations and Maintenance

The proposed desalination facility will be operated and maintained by the Ocean View Community Services District (OVCSD),[20] under the direction of a State-certified water treatment plant operator, as required by State regulations that govern potable water supplies. The Applicant indicates that one of the six-inch intake pipes will provide sufficient seawater to serve the development, and that the second line provides complete system redundancy (e.g., in the case of maintenance for the other intake pipe).[21]

The proposed desalination facility will be operated 12 hours a day to meet the anticipated demand of the users.

The project's desalination facility is designed with numerous redundancies and back ups to provide additional reliability. Flexible pipes such as those proposed are used on water supply projects

[19] Email from Jared Ficker, Applicant's representative, to Dan Carl, Coastal Commission staff, dated June 26, 2008.
[20] See also Institutional Design findings below.
[21] Parsons Brinkerhoff, April 21, 2008 letter.

worldwide because they have proven to be durable and reliable. In addition, a significant portion of the pipeline alignment will be bored through the underlying granite formation providing protection from ground motion events. Where the alignment will be submerged in sediment, concrete collars and the concrete vault will be designed to hold the pipes in place under the most extreme conditions to ensure sufficient sediment coverage. Redundancies include the provision of two subsurface intakes (one would be redundant and available for times when the other was not working or shut down for maintenance). The project also includes an open ocean intake in case the proposed subsurface intakes fail to perform as anticipated. The project provides for storage for a 6-12 day supply of water onsite, in two tanks. The length of time for this backup supply would be dependent on the amount of conservation implemented during an emergency. Thus, during emergencies, the project contemplates mandatory conservation, imposed through the covenants and restrictions of the tenants, of up to 50% by all residential and commercial users. The reverse osmosis plant itself is designed with "100% operational redundancy" because it will only operate 12 hours a day to meet the anticipated demand of the users. Thus, in the event of a failure in operation, the plant can be operated for a longer period (once repaired) to build the onsite storage back up. Other equipment redundancies include extra seawater intake, brine, and distribution pumps, as well as an emergency power generator, other spare parts and a 30-day supply of chemicals, either onsite or stored nearby. The redundancies in the design, the use of best technology, and the world's experience with desalination indicate that the most likely length for any plant failure is approximately 8 hours, well within the onsite storage capacity proposed.

In the event that the subsurface intakes malfunction, use of the emergency open ocean intake would begin a day or two prior to depletion of the onsite stored water in order to avoid a disruption in water supply to the Ocean View Plaza residents and tenants. In case of a situation in which the emergency open ocean intake also malfunctions and the onsite stored water is depleted, potable water would be trucked in to the project~~.~~, as set forth in Special Condition 2.

Repairs in desalination facilities such as those designed to be located in Building B are straightforward and do not require long down time. For example, cleaning the membranes usually takes four to eight hours once every approximately three to six months. In order to replace the membranes, which may need to be done after three years of operation, it takes two to four hours per membrane vessel. As an additional measure of security to maintain the reliability of the water source, the system is designed to have spare components on the shelf which can then be replaced in approximately eight hours. Applicant has agreed to submit Offshore Intake/Discharge Plans providing for maintenance and mitigation as set forth above in Special Condition 1.

b. Institutional Design

Governance

LAFCO's approval of the project was conditioned to restrict the OVCSD area to the project site and to disallow expansion of the OVCSD within the Cal-Am service area for any new development or to otherwise serve an already existing Cal-Am service (see Exhibit #7 for LAFCO's conditions of approval). LAFCO's approval also limits the OVCSD's authorization and authority to provide water to the project to the period of time commencing on the date on which the Applicant has completed construction of, and dedicated to the OVCSD, the desalination facility and related water system and continuing until such time as Cal-Am is able to provide water service to the project. At that time, the desalination plant is required to be decommissioned within 90 days following commencement of Cal-

Am water service for the project, unless the OVCSD and Cal-Am otherwise agree in writing to an alternate disposition of the desalination plant and equipment.

OVCSD, governed by its board of Directors, will operate and function as an independent governmental entity pursuant to express powers and authority granted by LAFCO and statutory law. As required by the LAFCO approval, the City of Monterey Council members are serving as the OVCSD Board. Because OVCSD will have the specific power to own or operate a water system, it may contract with any person, private corporation, or public agency to purchase or acquire from, or to sell to, or jointly acquire, construct, operate, or maintain the water system or water supply to serve its inhabitants. Regarding real and personal property, OVCSD will have express statutory authority to acquire these items, whether located within or outside of its boundaries, and it may hold, use, enjoy, lease or dispose of any of its property. In addition, OVCSD will be authorized to collect rates or other charges for the services and facilities it furnishes, such as water service rates and charges. The cost of the services that OVCSD will provide include all costs associated with operation and administration of the desalination plant, the related water distribution infrastructure, and OVCSD administrative costs that are necessary for the provision of water service within the OVCSD, i.e., the project site.

With respect to financial matters, OVCSD may: 1) borrow money or incur or assume indebtedness and issue bonds; 2) levy and cause to be collected taxes for the purposes of carrying on its operations and paying its obligations; 3) impose a "special tax", and; 4) set revise, and collect rates or other charges for the services and facilities it furnishes. Any such indebtedness, bonds, taxes, and rates would only impact the residents and tenants of the Ocean View Plaza project. Liability issues are discussed separately in the findings below.

With respect to its day-to-day operations, OVCSD may employ labor and professional services, either contracted with the City for the services of City staff to perform administrative support services on behalf of OVCSD, or OVCSD may contract with outside professionals for administrative support.

Financial

The cost of constructing the desalination plant and related water distribution infrastructure will be the responsibility of the Applicant. Additionally, the cost of the initial administration of the OVCSD prior to dedication and operation of the desalination plant and related water distribution infrastructure, will also be the responsibility of the Applicant. Ultimately, the OVCSD will operate and own the desalination facility and related water distribution infrastructure, and the cost of operating the OVCSD will be born by the residents and commercial tenants of the Ocean View Plaza project.

Liability

The liability for OVCSD is addressed and minimized by state law and by an indemnification agreement between the OVCSD and the Applicant. The OVCSD can sue or be sued. Because the City Council members will serve as the OVCSD's Board of Directors, the Council members could be named as defendants in an action against the OVCSD in their capacity as the OVCSD Board of Directors. Pursuant to state law, they would be immune from individual liability for discharging their duties. City staff has obtained a comprehensive insurance program that will protect the OVCSD and its board members in the case of a lawsuit. To address liability issues related to the OVCSD formation process, the construction of the desalination plant and related water distribution infrastructure, and any costs

incurred by the City on behalf of the OVCSD related to the administration and operations of the OVCSD, City staff has negotiated an Indemnification Agreement with the Applicant (see Exhibit #13). The Indemnification Agreement does not expire until the OVCSD has owned and operated the desalination facility for ten years. The Indemnification Agreement requires the Applicant to indemnify the City against all claims that arise from:

1. The formation of the OVCSD.

2. Any liability arising in connection with the construction, testing, and operation of the desalination plant and related water distribution infrastructure by the Applicant and the Applicant's contractors, as well as any construction defect claims arising in the first 24 months following commencement of water service to the Ocean View Plaza project by OVCSD. (The indemnity by the Applicant does not extend to any liability arising from the management and operation of OVCSD following dedication, which liabilities will be addressed through the comprehensive insurance program.)

3. The indemnity provisions include an obligation of the Applicant to defend the City, at the Applicant's sole expense, from claims against which the City is indemnified with counsel acceptable to the City and with the City in control of the defense.

4. Although the Indemnification Agreement provides broad protection for the City, such protection is only as good as the ability of the City to enforce the terms of the Agreement against the Applicant. Given the limited liability nature of the entity being used by the Applicant for the project and the possibility of bankruptcy in the event that the project is unsuccessful, there is a practical risk that the City will be unable to enforce the Applicant's obligations under the Indemnification Agreement. According to the City, during the period prior to and immediately following the dedication of the desalination plant and related water distribution infrastructure, and commencement of operation by OVCSD, this risk is offset by the insurance requirement on the Applicant and its contractors, naming the City as an additional insured. Following this period, the risk will be partially offset to the extent of the insurance coverage maintained by OVCSD.

5. According to the City, it is expected that the Applicant (i.e., Cannery Row Marketplace, LLC) will dissolve once the Ocean View Plaza project is complete. Thus, the Indemnification Agreement requires the purchaser of the retail/commercial portion of the project (excluding the residential owners) to assume the Applicant's indemnity obligations for the duration of the ten-year indemnity period.

6. The construction of the desalination plant and related water distribution infrastructure by the Applicant will be further secured by an obligation that the Applicant provides a surety bond for the completion of the desalination component of the project. The City has agreed that the Applicant can satisfy this obligation with the surety bond that the Applicant intends to obtain in connection with its financing, provided that: 1) all bond proceeds must be used to complete the desalination plant and may not be diverted by the lender, and; 2) the City receives notice of all activity with respect to such a bond.

7. In addition to the indemnity obligation of the Applicant with respect to construction defects in the water system, the Applicant is required to obtain extended 24-month warranties from all providers of materials and equipment for the water system. To the extent that the Applicant cannot obtain extended 24-month warranties for the entire water system, the Applicant will be required to fund a warranty reserve equal to 20% of the replacement cost of the portions of the water system without an extended warranty (e.g., accordingly, if a warranty for a portion of the water system is for only 12 months, then the Applicant will be required to fund the warranty reserve for months 13-24). Because the extended warranties will commence with the completion of the water system, the Applicant's 24-month indemnity with respect to construction defects, which will run from the commencement of OVCSD providing water serve to the project, will cover any lag time between completion and operation.

4. Coastal Act Consistency Analysis

a. Marine Resource Impacts

Impingement and Entrainment

Coastal Act Sections 30230 and 30231 require the protection of marine resources. As discussed, Applicant has agreed to a water contingency plan (see Special Condition 2) that will not adversely impact coastal zone resources. Back-up water will not be drawn from the Carmel River and/or the Seaside Aquifer in violation of State Water Resources Control Board Order 95-10. Therefore, these these sources will not be impacted by this project.

With regard to the impacts from the construction and operation of the desalination facility, as discussed, the Applicant has redesigned the project to include ~~two~~a subsurface intake ~~lines in order to avoid~~vault which further avoids the impingement and entrainment of marine organisms. If constructed as recommended in the Parsons-Brinkerhoff Technical memorandum and as set forth in Special Condition 1 above (i.e., using a concrete vault filled with sand to contain intakes that are located solely below the seafloor), the impingement and entrainment of marine organisms ~~should~~will be even more insignificant. This is due to the natural filtering that would be provided by the surrounding sand both in and above the vault, and the low intake velocities associated with this design (less than 0.1 feet per second). Moreover, Special Condition 11 limits the water production so that this low intake velocity can be maintained.

Pursuant to an order by the Regional Water Quality Control Board, the project also includes a backup open ocean intake in the event that the subsurface intake fails. The EIR concludes that an open water intake at the contemplated scale and design will "essentially eliminate any impingement impacts to marine mammals and large fish." The EIR also concludes that the intake will result in less than significant entrainment impacts.

With regard to the open ocean intake, the EIR found as follows:

> In general, potential impingement and entrainment impacts of the project were minimized by siting the intake structure as far as possible from kelp forests and rocky habitat areas. Potential Entrainment or passage of small fish or marine organisms into the intake pipe would be further reduced by installing a steel screen with a mesh size not

> to exceed 0.125 inches. Impingement impacts would be reduced by fitting the intake pipe with a "velocity cap" which would reduce maximum intake velocity to 0.2 feet per second (fps). This flow reduction should essentially eliminate any impingement impacts to marine mammals and large fish. While entrainment impacts are expected, which would result in the mortality of any marine organisms entrained into the desalination facility, this impact is considered less than significant in the context of the entire Monterey Bay ecosystem given the relatively small amount of seawater (maximum 100,000 gallons per day) entering the intake. By contrast, Duke Energy's Moss Landing Power Plant has an intake pipe with a capacity of 890 million gallons per day, which is 8,900 times the volume of the intake proposed for the project.

EIR, p. 248.

With regard to the discharge, the EIR similarly concluded there would be no adverse impacts:

> Even under a worst-case scenario of low current velocities and high levels of temperature and salinity stratification in the water column, the study found that the effluent would be reduced to 34 ppt (2 percent above ambient salinity) within a horizontal distance of 2.4 meters of the discharge diffuser. In other words, the salinity levels in the "mixing zone" would return to within about 2 percent (0.6 ppt) of ambient seawater concentrations within a distance of about eight feet of the discharge point. Under normal conditions, and under conditions of wave mixing (which was not considered in the dilution analysis), the salinity would be further reduced. Thus any increase in salinity at the discharge point would be minor and limited in aerial extent.
>
> ....Due to the relatively low levels of both discharge volume and salinity estimated for the proposed project, as well as the increased mixing rates achieved by using a multiport diffuser and elevating the diffuser above the ocean floor, impacts to the biological resources of Monterey Bay are expected to be less than significant.

EIR, pp. 248-9.

The EIR for the project was completed by the City of Monterey in August 2001. In November 2002, the Save Our Waterfront Committee challenged the EIR in Monterey County Superior Court. The Monterey County Superior Court upheld the validity of the EIR's water supply discussion in its order dated September 18, 2003, stating as follows:

> Petitioners contend the EIR is deficient for failing to discuss growth-inducing or cumulative impacts. The thrust of the argument seems to be that approval of this system may be a precedent for future desalination projects, thereby creating more available water, which would inevitably mean more development.
>
> The Court finds this to be a tenuous argument. Any subsequent projects will be subject to environmental review. Presumably, those charged with approving those project proposals will evaluate the totality of circumstances that are then present. A logical extension of Petitioner's argument would call for a purposeful effort to keep water

availability scarce as a basis for preventing development. The Court finds that the EIR adequately discussed the water supply issue.

When the Save Our Waterfront Committee again challenged the EIR in 2004, the Monterey County Superior Court again upheld the validity of the EIR. The Coastal Commission staff acknowledges the validity of the EIR, and it has acknowledged that the EIR was final for the project and that Coastal Commission staff would *not* be performing any additional environmental review.

Coastal Commission staff previously expressed concern that the location of the outfalls and intakes are designated by the California Department of Fish and Game (CDFG) as a State Marine Conservation Area (SMCA) under the California Marine Life Protection Act (MLPA) (the Edward F. Ricketts SMCA), the primary purpose of which is to protect or conserve marine life and habitat (see Exhibit #15). According to CDFG MLPA program documents, this SMCA prohibits the take of all living marine resources except for the recreational take of fin-fish by hook and line and the harvesting of kelp under strict limitations.

The impetus for the 1999 Marine Life Protection Act (MLPA) and implementation of the Marine Protection Areas was derived from a science-based concern of the commercial and recreational take of species and damage to marine ecosystems mostly through direct fishing or bycatch. The MLPA mandated the State design and manage an improved network of marine protected areas to, among other things, protect marine life and habitats, marine ecosystems, and marine natural heritage.

The Edward F. Ricketts State MCA was established by the State Fish and Game Commission and became effective on September 21, 2007. By regulation (14 CCR § 632 (b)(36)), the Edward F. Ricketts MCA has the following restrictions of recreation and commercial take:

1. The recreational take of finfish by hook-and-line is allowed.
2. The commercial take of giant kelp (Macrocystis pyrifera) and bull kelp (Nereocystis spp.) is allowed by hand in the area defined by subsection 165(c)(4)(D) under the following conditions:
   a. A kelp harvester with a valid license issued pursuant to Section 165 may take no more than 12 tons of kelp from the portion of Administrative Kelp Bed 220 within the Edward F. Ricketts State Marine Conservation Area in any calendar month.
   b. Duplicate landing records must be kept on board the harvest vessel in accordance with the requirements of Section 165.

The operation of water intake is not a prohibited taking in the Ed Ricketts SMCA. The subsurface intake for the desalination facility has no entrainment issues, and the emergency operation of an open ocean back up intake does not create a prohibited taking. Moreover, CDFG has responded to this concern and stated that it has reviewed the project and determined that the project is allowed in the SMCA. The CDFG previously commented on the discharge for the desalination facility, and those comments were already incorporated into the design of the desalination facility.

Brine Discharge

~~The Applicant~~As noted above, the EIR concluded that the brine discharge would have less than significant impacts to the biological resources of Monterey Bay, in part due to the "increased mixing rates achieved by using a multiport diffuser and elevating the diffuser above the ocean floor". See EIR, pp. 248-9. Even though the above-surface discharge contributed to avoiding significant impacts on the

biological resources of Monterey Bay, staff requested that the Applicant consider the feasibility of a sub-surface discharge. As the Applicant explained, it proposes an above-surface outfall diffuser to discharge the brine from the desalination plant because:

> *...modeling results have indicated that near-ambient salinity conditions are achieved within a ZID [Zone of Initial Dilution] of less than 10 feet. Further, if the diffuser was buried, there is a distinct possibility that the velocity of the effluent through the diffuser ports could excavate or destabilize the surrounding sediment creating a pit that could jeopardize the integrity of the diffuser.*[22]

~~Commission staff suggested that employing appropriate discharge velocities through a subsurface multi-port diffuser would avoid potential sediment disturbances, but~~The Applicant has thus demonstrated that a subsurface diffuser is not a feasible option here because it would not provide adequate diffusing and would therefore create water quality concerns. Additionally, the Applicant has demonstrated that a subsurface diffuser in this location would erode the sand under the pipelines, thereby destabilizing the pipelines.

As demonstrated in the certified EIR and subject to compliance with Special Conditions 1 and 2, marine resources are adequately protected from impingement and entrainment.

Fill of Coastal Waters

Coastal Act section 30233 limits the dredging and fill of coastal waters to certain specified uses, such as coastal dependent industry, or maintenance of existing pipelines incidental to an existing public service. Coastal Act section 30108.2 defines fill as "earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area." The project design currently includes an emergency open water backup intake structure and an above-surface outfall that would be permanently located in the water column. These structures are likely to be no more than one to one and a half feet in height above the surface, and approximately six inches in diameter.

The specified uses allowed under Coastal Act section 30233 include the proposed project (see Coastal Act section 30233 text above).[23] The Coastal Act defines a coastal dependent use as follows: "'Coastal-dependent development or use' means **any** development or use which requires a site on, or adjacent to, the sea to be able to function at all." Coastal Act Section 30101 (emphasis added). In this case, in order to obtain water from the ocean, the desalination facility's pipelines must be in the ocean. The pipelines cannot go into any beach wells on the property because none exist on the property since it sits almost entirely on granite. The desalination facility must therefore be adjacent to the sea, and the desalination facility must be considered a "coastal-dependent development or use", so any fill or dredging for the project is allowed pursuant to Coastal Act Section 30233(a)(1).

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[22] November 16, 2007 email communication from Applicant's representative to Commission staff.

[23] The project is a coastal-dependent industrial facility. State law does not set forth any size requirement for a coastal-dependent industrial facility. In fact, state law specifically defines "coastal-dependent development or use" as "**any** development or use which requires a site on, or adjacent to, the sea to be able to function at all." Coastal Act §30101 (emphasis added). Consistent with other desalination facilities in California, this desalination facility is a coastal-dependent industrial facility.

After reviewing the City of Monterey's zoning ordinance applicable to the project site, such "coastal-dependent industrial use" is not prohibited by such ordinances. The City's zoning designation for this property allows major "utilities" to be built with a use permit (Monterey City Code Section 38-32 (B)). This was exactly the process used by the City to approve this desalination plant. Moreover, at the Commission's direction, the City applied to LAFCO for the formation of a Community Services District to own and operate this public utility, just as the Coastal Commission is requiring for all other desalination plants with ocean intakes and discharges that have also been found to be "coastal dependent industrial uses". This "utility" under the City's Zoning Ordinance is also a coastal dependent industrial use as defined under the Coastal Act because "it is a use that must be located in or adjacent to the ocean in order to function." (Coastal Commission staff report, Poseidon desalination project, November, 2007).

~~The specified uses include the proposed project (see Coastal Act section 30233 text above).~~[23] Coastal Act Section 30233(a)(4) provides that fill or dredging is allowed for "Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines." The plain language of the statute states that "burying cables and pipes" is permissible. Since the desalination facility will be a public water service provider, the plain language of Coastal Act Section 30233(a)(4) provides that it can bury/install the pipes and then it will be allowed to later maintain them. Moreover, the desalination facility is temporary since it will be operational only until the municipal water purveyor is able to provide water to the project site. Accordingly, even if the project will include fill or dredging, the project will still comply with Coastal Act Section 30233.

~~Coastal Act section 30108.2 defines fill as "earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area." The project design currently includes an emergency open-water backup intake structure and an above surface outfall that would be permanently located in the water column. These structures are likely to be no more than one to one and a half feet in height above the surface, and approximately six inches in diameter. These structures are consistent with Coastal Act section 30233.~~

~~Since~~Moreover, since the desalination facility is clearly a coastal-dependent industrial facility like the Poseidon Resources project in Carlsbad (see Coastal Commission Staff Report dated February 21, 2008, page ~~91~~91, *et seq.*), Coastal Act Section 30260 applies to it:

> Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division. However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with this section and Sections 30261 and 30262 if (1) alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible.

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[23] ~~The project is a coastal-dependent industrial facility. State law does not set forth any size requirement for a coastal-dependent industrial facility. In fact, state law specifically defines "coastal-dependent development or use" as "any development or use which requires a site on, or adjacent to, the sea to be able to function at all." Coastal Act §30101 (emphasis added). Consistent with other desalination facilities in California, this desalination facility is a coastal-dependent industrial facility.~~

There are no other locations for the desalination facility. The certified EIR which was upheld by the Court concludes that there are no significant adverse impacts resulting from the installation and operation of the desalination facility. The public will benefit tremendously by the approval of the project, and the public will be adversely affected by the continued presence of the blighted eyesore. The public will benefit from the expansive coastal access, jobs, affordable housing and traffic improvements that this project provides. The public will be rid of a blighted, urban redevelopment site subject to vandals, graffiti and debris. Accordingly, although the project complies with the Coastal Act, the Commission could approve the project even if that were not the case.

Disruption of the Seafloor and Marine Environment

As described above and in the technical memorandum submitted by the Applicant (see pages 17-21 of Exhibit 3), the project will entail the installation of pipelines, a concrete vault, and related development (e.g., collars to hold the pipelines, etc.) below the surface of the ocean floor by jetting the seabed floor to create voids into which the components would be placed and then buried with the jetted sediments. Although the technical memorandum describes the lines as being buried under 5 feet of sand, the DEIR describes the sediment depths along the pipeline route as ranging from 2 feet to over 6 feet.[24] The Applicant indicates that the pipes would be reburied under two to three feet of sediment at the bore hole exit, and up to six to seven feet where the pipes enter the vault, and that the vault itself would be reburied under six inches to 2 feet of sediment.[25] Thus, it appears that the pipes would be buried under as little as 2 feet of sandy bottom sediments in places, and the vault would be buried under as little as six inches of sediments.

Based on technical documents in record and the current project design, it appears that there will be some disruption of the seabed for the initial installation of the pipelines and the vault. This disruption is likely to last for a short period of time as the sediment will begin to settle back on the pipes almost immediately after the jetting is completed. The technical memorandum describes the sediment layer thickness at water depths between 36 and 46 feet as approximately 6-7 feet. The vault would be located at about the 40 foot water depth level. At this water depth, the wave impacts on the seabed are minimal, so it is unlikely that the sand will be washed off the vault. Additionally, the grading of the granite bedrock is such that over time, any sand on that bedrock will be washed down, toward the pipes and the vault, resulting in the sand layer over the pipelines and vault to increase. It is expected that the vault will be completely buried at installation and that it will stay buried given the minimal wave action and effect of gravity on the sand on the granite bedrock~~. Thus, it appears that neither the vault nor the three pipelines would be permanent fill of the ocean~~.

Based on diver surveys conducted in 1998, the marine habitat in the vicinity of the project's intake and outfall lines installation has been characterized in the EIR as primarily sedimentary, with only isolated low-relief outcrops. The species observed in the area included tube-building worm, anemones, and bat star. The divers observed gumboot chitons, algae, bat stars, and sand castle worms in association with hard substrate. No substantial kelp was noted in the offshore portion of the proposed pipeline corridor, although there is dense kelp bed to the north, approximately 130 feet from the proposed brine discharge point.

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[24] DEIR, pg. 228.

[25] Id; per Jared Ficker, June 26, 2008.

The EIR concludes that the pipeline installations will have a less than significant impact because the habitats and species affected are "common and widespread" in the region and in California. The lines will be directionally drilled under the seabed to a depth of -30ft to avoid nearshore and intertidal rocky habitats. The routing of the pipelines has been designed to stay as far as possible from kelp areas and avoid rocky habitat areas. As described above, the pipelines would be jetted into the sandy sea floor and covered with seabed sediments to bury them.

Still, in previous reviews of proposed offshore cables and pipelines, the Commission has generally found that the disturbances to sandy bottom habitats to be temporary and minor -- there would likely be some mortality of marine organisms, but these short-term construction-related effects on organisms living in the disrupted areas are similar to the level of disturbance they already experience due to naturally-occurring sand movement, and the disturbed areas are usually re-colonized fairly quickly after the disturbance. Therefore, the Commission finds that the proposed disruption of the marine environment caused by construction of the offshore components is consistent with Coastal Act sections 30230 and 30231.

Other Agency Review

The Commission also notes that the installation of the pipelines and the vault under the seafloor of Monterey Bay will require state approvals from the California State Lands Commission (SLC) and the California Department of Fish and Game (CDFG), and federal approvals from the Monterey Bay National Marine Sanctuary, the U.S. Army Corps of Engineers (ACOE), National Marine Fisheries Service, U.S. Fish and Wildlife Service (USFWS), and the U.S. Coast Guard. USFWS has concluded its consultation required by ACOE, indicating that the proposed development is not likely to adversely affect the federally endangered brown pelican or the federally threatened southern sea otter (pages 1-2 of Exhibit 15). NMFS has concluded its consultation required by ACOE, determining that the proposed project minimizes potential adverse effects to essential fish habitat such that the effects are temporary and minimal (pages 3-6 of Exhibit 15). CDFG has reviewed the details of the subsurface seawater intake and open ocean emergency backup intake and finds these aspects of the project consistent with the requirements of the Edward F. Ricketts State Marine Conservation Area (ERSMCA), which is located directly offshore of the land portion of the project site (pages 7-8 of Exhibit 15). CDFG also states, however, that the proposed process for installation of both the subsurface and emergency intake would require further department review prior to construction. CDFG's correspondence does not address the brine discharge outfall. The Regional Water Quality Control Board reviewed the discharge and approved it. Neither the State Lands Commission nor MBNMS have made any formal determination regarding the project at this time.

The EIR calls for buoy markers in the location of the open water intakes and discharge. According to the Applicant, the only approval needed from the Coast Guard is with regard to the lighting, design, lettering and location of the buoys. According to the Applicant, the Coast Guard has been notified of the project in connection with the permit to be issued by the ACOE, but no correspondence has been received from the Coast Guard regarding the project. Special Condition 16 addresses this by requiring other agency approvals.

Conclusion

As demonstrated above, this project as conditioned complies with the marine resources sections of the Coastal Act. Impingement and entrainment impacts are not significant. The brine discharge design avoids water quality concerns. Any fill and dredging are allowed under Coastal Act section 30233. Disruption of the seafloor and marine environment will be temporary and minor. Other agencies are required to review various parts of the project to further protect marine resources.

~~The Applicant has made efforts to reduce the marine resource impacts of the project including by burying most of the seaward components of the desalination facility under the seabed. Given that the only parts of the project that will be seaward are from the desalination facility, which is a coastal dependent industry, any fill from the project is allowed pursuant to Coastal Act Section 30233.~~

b. Water Supply Reliability, Cost, and Risks to Coastal Resources

Reliability of Supply/Contingency Planning[26]

Desalination facilities similar to the one for this project reliably provide water to millions of people around the world. Reverse Osmosis membrane technology was developed at UCLA and was first patented in 1962. In the early 1970's, desalination by Reverse Osmosis became the leading treatment process producing drinking water from salt or brackish water. Reverse Osmosis desalination became the dominant desalination technology due to the reliability and flexibility of the process, and the relative simplicity of the operation. Sea Water Reverse Osmosis ("SWRO") produces potable water in thousands of desalination facilities around the world. Locations in many countries such as Saudi Arabia, Israel, Egypt, Jordan, Spain, and Singapore have Sea Water Desalination as their sole source of potable water. These systems also supply potable water in Algeria, Antigua, Antilles, Bahamas, Barbados, Bermudas, Canada, Cayman Islands, Chile, China, Cuba, Denmark, Greece, India, Italy, Japan, Mexico, Philippines, Portugal, Taiwan, Great Britain, Venezuela and the Virgin Islands.

Many of the SWRO desalination facilities worldwide such as that designed for Ocean View Plaza have been successfully operating for many years. For example, in Israel, the desalination facility in spa City of Eilat on the Red Sea, with an initial capacity of 600,000 gallons per day, has been operating since 1979. Later in the 1990's, this plant capacity was increased up to 4,000,000 gallons per day. Also, in Egypt, a desalination facility in Sharm-El-Sheikh on Sinai (2,000,000 gallons per day) has been in operation since 1998. Subsurface water intakes are a commonly employed technology, and are used to collect and reliably supply fresh, brackish and sea water to potable water treatment plants around the world. Sub-surface intakes are either in use or planned to supply ocean water at several desalination

[26] The July 18, 2008 Coastal Commission staff report on this project recommended rejection of the project in part due to staff's assertion that the project could only be approved if the project could guarantee 100% reliability. This is not the standard applied by the Coastal Commission to any other desalination facility in California. This is not even the standard applied by the Coastal Commission to any other desalination facility within the Monterey Bay area. In late February 2008, after Cal-Am received a draft Cease and Desist from the State Water Resources Control Board, the Coastal Commission granted an extension on Sand City's permit to develop a desalination facility that will provide 300 AFY of water. The Commission revised the conditions on this permit at that time to provide that all 300 AFY will be sent to Cal-Am initially, and then as Sand City develops, it will continue to provide Cal-Am with a minimum of 94 AFY of water per year. This extension did not require any guarantee of 100% reliability, even though if Sand City's desalination facility fails, the impact to Cal-Am and to the Carmel River and Seaside Basin aquifers could be severe.

facilities along the California coast, including Municipal Water District of Orange County's Dana Point facility. Subsurface intakes are constructed and function similar to groundwater supply wells, which are used to supply potable water to millions of Californians, including residents of Monterey County.

The project's desalination facility is designed with numerous redundancies and back ups to provide additional reliability. Flexible pipes such as those proposed are used on water supply projects worldwide because they have proven to be durable and reliable. In addition, a significant portion of the pipeline alignment will be bored through the underlying granite formation providing protection from ground motion events. Where the alignment will be submerged in sediment, concrete collars and the concrete vault will be designed to hold the pipes in place under the most extreme conditions to ensure sufficient sediment coverage. Redundancies include the provision of two subsurface intakes (one would be redundant and available for times when the other was not working or shut down for maintenance). The project also includes an open ocean intake in case the proposed subsurface intakes fail to perform as anticipated. The project provides for storage for a 6-12 day supply of water onsite, in two tanks. The length of time for this backup supply would be dependent on the amount of conservation implemented during an emergency. Thus, during emergencies, the project contemplates mandatory conservation, imposed through the covenants and restrictions of the tenants, of up to 50% by all residential and commercial users. The reverse osmosis plant itself is designed with "100% operational redundancy" because it will only operate 12 hours a day to meet the anticipated demand of the users. Thus, in the event of a failure in operation, the plant can be operated for a longer period (once repaired) to build the onsite storage back up. Other equipment redundancies include extra seawater intake, brine, and distribution pumps, as well as an emergency power generator, other spare parts and a 30-day supply of chemicals, either onsite or stored nearby. The redundancies in the design, the use of best technology, and the world's experience with desalination indicate that the most likely length for any plant failure is approximately 8 hours, well within the onsite storage capacity proposed.

The facility's design is based upon a pilot plant that recently completed a successful one year run in the San Francisco Bay Area. The facility was designed with almost 20 years of knowledge from the operation of the Monterey Bay Aquarium SWRO, so the designer had the information regarding the type of water to be pulled in. Moreover, given the vastness of the Pacific Ocean and the rapid rate at which it dilutes other substances, it is very unlikely that the source water would experience any sudden changes of sufficient magnitude that they would prevent RO membranes from working, particularly the membranes that were designed into this project. The Monterey County Health Department, Environmental Health Division, has reviewed and approved the 75% design submittal. Prior to occupancy, the Environmental Health Division of the Monterey County Health Department will require that the desalination facility successfully operate for a period of time to ensure that it is providing a reliable source of potable water.

Repairs in desalination facilities such as those designed to be located in Building B are straightforward and do not require long down time. For example, cleaning the membranes usually takes four to eight hours once every approximately three to six months. In order to replace the membranes, which may need to be done after three years of operation, it takes two to four hours per membrane vessel. As an additional measure of security to maintain the reliability of the water source, the system is designed to have spare components on the shelf which can then be replaced in approximately eight hours.

If the desalination plant fails to operate for a period longer than the 6-12 day onsite supply, as an emergency response, the application has arranged for water to be trucked in for the duration of the

emergency (see Special Condition 2). Therefore, the project will not be connected to the Cal-Am system for emergency back up water, but instead has contracted for emergency potable water to be trucked in from a water provider that does not draw from the Carmel River and the Seaside groundwater basin, so the project will not harm the Carmel River and the Seaside groundwater basin.

Additionally, in accordance with state law, water for the project's interior fire suppression system (sprinklers) still would be supplied by the Cal-Am system. The MPWMD allows a special fire meter connection (plumbed to Cal-Am) directly to a project's sprinkler system. Firefighting flows would also be provided by existing hydrants (connected to Cal-Am) along Cannery Row.

Costs of Operating the CSD and Desalination Plant

The Applicant will pay for the costs associated with construction of the proposed desalination facility. The residential, retail, and restaurant tenants of the project site will pay the costs associated with operation and maintenance of the desalination facility, as well as the overhead, management, and administrative costs of the OVCSD.

The City of Monterey initiated two studies related to the costs of administering the CSD and operating and maintaining the desalination plant and related water distribution infrastructure. Prior to these studies, the Applicant's consultants prepared a "Desalination Plant Preliminary Pro-Forma," which estimated the 10-year operation and maintenance cost for the desalination plant and related water distribution infrastructure to be $6.25 per 1000 gallons of water. This estimate, however, did not include the overhead, management, and administrative costs of the CSD. A peer review of the Applicant's cost estimate was performed by CH2M Hill.[27] CH2M Hill estimates the cost of operating and maintaining the desalination plant at between $9.64 and $11.75 per 1000 gallons of water produced, or 54% to 88% more than the cost estimated by the Applicant's consultants. This cost estimate, however, also does not include the overhead, management, and administrative costs of the CSD.

A second study performed by Economic and Planning Systems[28] (EPS) sought to determine the preliminary budget for the CSD. The CSD's overhead, management, and administrative costs will add approximately 43 percent to the desalination plant's annual operating and maintenance costs. Thus, the total cost for producing 1000 gallons of water is estimated to be between $13.79 and $16.80. According to this study, the resulting water rates for the residential, retail, and restaurant tenants of the proposed project will be approximately 291% to 354% above the current rates paid by other water users (i.e. water provided by Cal-Am to City of Monterey residents) in the Monterey area. The current estimated monthly water bill for each of the proposed project's residential units is:

Unit Description	Projected Monthly Water Cost
Moderate income – 1 Bedroom, 1 Bath	$39.59 to $48.23
Moderate Income – 2 Bedroom 2 Bath	$39.59 to $48.23
Market Rate – 2 Bedroom, 2 Bath	$60.56 to $73.77

[27] As stated on its website, CH2M Hill is a "multinational firm providing engineering, construction, operations, communications, security, environmental, and related services to public and private clients in numerous industries."

[28] As stated on its website, EPS is a "land economics consulting firm experienced in the fill spectrum of services related to real estate development, market analysis, public-private partnerships, and the financing of government services and public infrastructure."

Market Rate – 3 Bedroom, 3.5 Bath	$87.91 to $107.10

As evidenced by the varying prior estimates of costs, there is some uncertainty as to the actual cost to the water provided to tenants of the project will be once the desalination plant is operational, but the range is well within that approved in other projects. As noted above, Cal-Am is experiencing difficulties in providing water at levels sufficient to satisfy its current connections. Cal-Am's current water rates have been artificially low as evidenced by Cal-Am's recent application to the California Public Utilities Commission for a significant rate increase which will be comparable to the CSD's water costs. Cal-Am seeks to increase its rates dramatically so that Cal-Am can address its infrastructure issues and provide water for its service areas. The water costs for the desalination facility customers are not excessive. Given that the market rate units are likely to have comparable prices to the residences in the Cal-Am Bishop and Hidden Hills service areas, it appears that the water costs for those customers are the appropriate comparisons. The monthly water costs for the market rate units are comparable to the monthly water costs for residents of the Cal-Am Bishop and Hidden Hills service areas without factoring in Cal-Am's requested increase. In addition, once Cal-Am's requested increase is granted, the monthly water costs for the project will actually be less than the fees paid in most of Cal-Am's service areas in Monterey County.

LAFCO Evaluated and Approved CSD Protections

As originally described in the EIR for the project, the desalination component of the project would be owned and operated by the Applicant, a private entity. As previously described, the Ocean View Community Services District (OVCSD) was formed on December 27, 2005 to own, operate, and maintain the proposed desalination plant once it is constructed, with the members of the Monterey City Council acting as board members for the OVCSD (see Exhibit 7).[29]

Commission staff wrote two letters to LAFCO staff regarding the proposed Community Services District. In these letters, Commission staff raised a number of concerns regarding the proposed formation of a project-specific Community Services District. Additionally, on December 27, 2005, the evening of the LAFCO hearing, Commission staff noted that the LAFCO staff report regarding formation of the CSD relied upon the project EIR, which did not specifically analyze the environmental impacts, such as potential cumulative growth impacts, attributable to the creation of a project-specific services district that might be emulated by other projects in the future.[30] ~~Please note, however, that~~However, Commission staff had previously provided a letter to LAFCO stating and emphasizing that the project's EIR was the only EIR for the formation of the desalination facility and no further environmental review was necessary.[31] The City of Monterey evaluated whether an additional EIR needed to be done regarding the formation of the OVCSD and made the determination that no additional EIR was necessary. LAFCO also evaluated this issue and concluded that no additional EIR

[29] LAFCO hastened its approval of the OVCSD in late 2005 to avoid approving the CSD under State Senate Bill 135 (SB 135), which became law on January 1, 2006. SB 135 substantially amended State Law regarding Community Services Districts. Formation of a CSD under the provisions of SB 135 requires a vote of the City's residents (Section 61014). Any CSD formation subject to the new law requires an election for the initial members of the CSD board (Section 61021). By approving the CSD five days prior to January 1, 2006, LAFCO avoided the need for a public vote on the CSD formation and was also able to appoint the Monterey City Council members to the OVCSD board without a public vote.

[30] See letter dated December 27, 2005.

[31] See letter dated May 9, 2005.

was necessary. The Monterey County Superior Court also considered this issue and determined that no further EIR was necessary.[32]

The cost of constructing the desalination plant and related water distribution infrastructure will be the responsibility of the applicant. Additionally, the cost of the initial administration of the CSD prior to dedication and operation of the desalination plant and related water distribution infrastructure, will also be the responsibility of the applicant. These obligations of the applicant are the subject of an Indemnification Agreement (see Exhibit #13) that has been approved by the Monterey City Council. Ultimately the CSD will operate and own the desalination plant and related water distribution infrastructure, and the cost of operating the CSD will be born by the residents and commercial tenants of the Ocean View Plaza project. In light of all of these protections, the City of Monterey and LAFCO both determined that the project was appropriate.

Conclusion

Given all of the above, the project as conditioned is consistent with the Coastal Act Section 30250(a). The project is located in a blighted, urban infill area in need of redevelopment. The project will have adequate public services and it will not have significant adverse effects, including growth-inducing effects, on coastal resources. The probability of debilitating operational or institutional failures are small, and water may be trucked in from outside Cal-Am's jurisdication to provide any water in the unlikely event of an emergency, so there will be no harmful impacts on the Carmel River and Seaside Aquifers.

c. Cumulative Impacts of Proliferation of Package Desalination Plants

Coastal Act Section 30254 requires that special districts not be formed except where provision of the service would not induce new development inconsistent with this division. Section 30250 requires that new development in urban areas not have adverse cumulative impacts on coastal resources. The project is consistent with Coastal Act sections 30250 and 30254 regarding cumulative impacts. As the Monterey County Superior Court found in its order dated September 18, 2003 when rejecting a challenge to the project's EIR:

> Petitioners contend the EIR is deficient for failing to discuss growth-inducing or cumulative impacts. The thrust of the argument seems to be that approval of this system may be a precedent for future desalination projects, thereby creating more available water, which would inevitably mean more development.
>
> The Court finds this to be a tenuous argument. Any subsequent projects will be subject to environmental review. Presumably, those charged with approving those project proposals will evaluate the totality of circumstances that then present. A logical extension of Petitioner's argument would call for a purposeful effort to keep water availability scarce as a basis for preventing development. The Court finds that the EIR adequately discussed the water supply issue.[33]

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[32] *Save Our Waterfront Committee v. City of Monterey, et al*, Monterey County Superior Court Case No. M78054.

[33] *See Responsible Monterey Planning and the Open Monterey Project, v. City of Monterey, et al. (Cannery Row Marketplace, LLC, Real Party In Interest)*, Case No. M62183, and *Save Our Waterfront Committee, Barbara Bass Evans v.*

The project is not precedent setting because of its unique circumstances: a project site that is a blighted urban infill space in need of redevelopment and that is temporarily without another water source pending completion of other larger regional desalination facilities. Any other project before the Commission must be evaluated based upon its own circumstances.

The project's desalination facility will not encourage any additional growth beyond the project in the City of Monterey because the desalination facility will only be producing enough water for the project site (see Special Condition 11), and the desalination facility will only be producing that water until such time as Cal-Am is able to provide water to the project site (see Special Condition 4). LAFCO of Monterey County is responsible for discouraging urban sprawl and encouraging the orderly formation of local government agencies. The City of Monterey applied to LAFCO of Monterey County to form a community services district to own and operate the desalination facility. LAFCO found that formation of the CSD would not impede efforts to develop regional solutions to address water shortages because the CSD would only provide water to the Ocean View Plaza, and as soon as a regional water source was available, the Ocean View Plaza would connect to that source. LAFCO rejected the Coastal Commission staff's concern that the CSD formation would be cumulatively growth inducing, finding that the CSD formation would not create a need for facilities or activities outside the scope of the Ocean View Plaza EIR.

As stated in the Resolution of the Local Agency Formation Commission of Monterey County Making Determinations and Approving the Proposed Ocean View Community Services District, Resolution No. 05-27,

> The project is essential to allowing the planning, orderly and efficient patterns of urban development, by creating an alternative water supply in light of Cal-Am's present inability to serve the area. By creating a water supplier to the area, the project allows for valuable infill development, restoring a blighted area and preventing urban sprawl, consistent with the policies and priorities set forth in Government Code section 56377.

5. Conclusion

In conclusion, the proposed project as conditioned is consistent with Coastal Act Sections 30230, 30231, 30233, 30240, 30250, and 30254.

2. Public Access and Recreation

1. Applicable Policies

Coastal Act Policies

The project is located in an extremely popular visitor destination. The bayside portion of the project is located along the immediate shoreline seaward of the first public road. The inland portion of the project site is located adjacent to the heavily used Monterey Peninsula Recreational Trail. Public access and

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City of Monterey, et al. (Cannery Row Marketplace, LLC, Real Party In Interest), Case No. M62184. These cases were consolidated and tried together.

recreational issues must be understood in this context. The following Coastal Act Sections specifically address public access and recreation:

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

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

30212 (in relevant part): (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) Adequate access exists nearby...

30213 (in relevant part): Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

30220: Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

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

30223: Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

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.

30253(5): New development shall: (5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

LUP Policies

In addition, in section 3(c) of the Public Access section of the Cannery Row LUP provides a number of public access and recreation policies that apply to the rocky shoreline along Cannery Row, including requiring lateral access along the seaward sides of buildings as a condition of new development:

3(c)(2). Require improvements to and a public access easement (a minimum width of ten feet) to the rocky promontory on the site of the former San Xavier Cannery as a condition of new development.

3(c)(3). Require improvements to and a public access easement (a minimum width of ten feet) along lands adjoining the rocky shoreline between the rocky promontory on the site of the former Carmel Canning Cannery (south of Macabee Beach) and the rocky promontory on the site of the former San Xavier Cannery as a condition of new development. On the site of the former Carmel Canning Cannery where a building presently exists along this stretch of rocky shoreline, the required improvements and access easement are to be provided on the landward side adjoining the existing buildings.

3(c)(4) Require improvements to and a public access easement for a pedestrian plaza (a minimum of 250 square feet for each 100 linear feet or portion thereof of front footage along the rocky promontory...on the former San Xavier Cannery site) as a condition of development of parcels along the rocky shoreline.

The certified Cannery Row LUP is consistent with the Coastal Act. The Coastal Commission certified the Cannery Row LUP in 1981, confirming that the plan was consistent with the Coastal Act. Prior to approving any subsequent amendments, the Coastal Commission was required by law to confirm that those amendments were consistent with the Coastal Act.

Most recently, in a December 18, 2003 staff report, Coastal Commission staff recited the history of the Cannery Row LUP and its amendments. The Coastal Commission noted that when it received the City of Monterey's 2001 proposed amendments, staff reviewed the Cannery Row LUP and the amendments and concluded that the amendments would result in the plan being internally inconsistent. The report explained that the City had made some revisions in response to the staff's requests, and that in its 2003 submittal, the City had presented amendments which were consistent with the Coastal Act. These most recent amendments included some amendments to the public access section and to Figure 4 of the public access section. Figure 4 of the public access section identifies which LUP provisions apply to which locations along Cannery Row. A note on Figure 4 explains that the exact locations of various viewpoints and access points within each property are to be determined by the City's Architectural Review Committee.

At its January 14, 2004 meeting, the Coastal Commission approved and recertified the Cannery Row LUP as consistent with the Coastal Act. The policies regarding the location of this project were recertified without being changed. The City of Monterey applied the approved and recertified Cannery Row LUP to the project when it approved the project on June 1, 2004.

The Cannery Row LUP identifies four different access standards which may apply, depending on the location of the property. Figure 4 of the Cannery Row LUP demonstrates that the property is located in the area of Cannery Row which is subject to the Rocky Shoreline and Promontories section of the Public Access portion of the LUP (as noted above).

Requirements for the new Cannery Row Hotel, Bubba Gump's, the Monterey Plaza Hotel and Macabee Beach are inapplicable to the Ocean View Plaza because they are located in different areas which are subject to different requirements. See designation and description of indicators in legend on Figure 4, Public Access in LUP. The Ocean View Plaza project is not located within an area designated as "Backs of Structures" on Figure 4; instead, as noted above, it is located in an area subject to the Rocky Shoreline and Promontories section. Further note that Figure 4 designates viewpoints for Bubba

Gump's and the Cannery Row Hotel sites, but it does not designate *any* viewpoints for the Ocean View Plaza property.

Policy Conclusion

The Coastal Act clearly requires recreational access to and along the shoreline for the project site, and this requirement is further reinforced and further developed by the certified LUP.

2. Consistency Analysis

Cannery Row is an extremely popular tourist destination located along the craggy Monterey shoreline. Cannery Row contains many shops, restaurants, several hotels, and the Monterey Bay Aquarium. The Cannery Row coastline is generally rocky but there are three accessible beaches, specifically McAbee Beach, Aneas Beach, and San Carlos Beach, which are popular with beachgoers and divers.

In addition to the immediate shoreline, a portion of the 18-mile Monterey Bay Coastal Trail (Trail), a biking and hiking path that overlays a section of the old Southern Pacific railroad grade, runs parallel to and inland from the shoreline in Cannery Row. This trail is extremely popular and a portion of it is located directly adjacent to the inland portion of the project site (see page 2 of Exhibit 2). Traveling downcoast from this section of Trail leads to the Monterey Bay Aquarium and Lover's Point in Pacific Grove; traveling upcoast from this section of trail leads to the historical Custom House Plaza, Fisherman's Wharf, Monterey Bay Park, and further out to the communities of Seaside and Sand City.

Lateral Access

As noted above, for lateral access across the shoreline, sub-section (c)(3) of the Rocky Shoreline and Promontories section states as follows:

> Require improvements to and a public access easement (a minimum width of ten feet) along lands adjoining the rocky shoreline between the rocky promontory on the site of the former Carmel Canning Cannery (south of Macabee Beach) and the rocky promontory on the site of the former San Xavier Cannery as a condition of new development. On the site of the former Carmel Canning Cannery where a building presently exists along this stretch of rocky shoreline, the required improvements and access easement are to be provided on the landward side adjoining the existing buildings.

The former Carmel Canning Company site is now the home to El Torito. In accordance with this section, the project provides a ten foot wide public access easement across the entire rocky shoreline. The project also provides two staircases to facilitate access to this easement. The shoreline lateral access connection to the access way under the Chart House will be a continuation of the existing pathway at the Charthouse. Likewise, the shoreline lateral access will be continuous to the El Torito property to the north.

Vertical Access

As noted above, for vertical access across the property toward the shore, sub-section (c)(2) of the Rocky Shoreline and Promontories section states as follows:

> Require improvements to and a public access easement (a minimum width of ten feet) to the rocky promontory on the site of the former San Xavier Cannery as a condition of new development.

The Ocean View Plaza project provides considerably more than a ten foot wide easement to the rocky promontory. The vertical access to the rocky promontory is through a public access easement over the entire Community Park on the inland parcel which connects the Recreational Trail and Cannery Row Street. The Community Park is approximately 150 feet wide (15 times the requirement). The vertical public access easement continues on the bayside parcel through the entire History Plaza. The History Plaza is 40 feet wide at the entrance from Cannery Row Street (plus another 5 feet for a handicap ramp), and it is 190 feet wide where it overlooks the rocky promontory. So the vertical access provided by the project is 4 to 19 times what the LUP requires. From the History Plaza, visitors can see the entire shoreline along the front of the property.[34]

Two stairways also provide access to the shoreline from the project. These stairways were provided in response to a request made by the Coastal Commission staff at a site visit. One stairway is located at the bayside edge of the History Plaza between the History Center and Building B. The second stairway is accessible under Building A from the bayside level promenade to the water. Pursuant to Special Condition 6, this bayside level promenade shall allow for a future connection to potential future public accessways at the El Torito property.

Wheelchair access is also provided through the Community Park as an integral access with Building E on the north side of Community Park. Wheelchair access from Cannery Row Street to the promontory is provided at the edge of the retail plaza for Building A and the History Plaza. The wheelchair access on the bayside parcel serves both the retail plaza of Building A and the History Plaza.

Pedestrian Plaza

As noted above, for a pedestrian plaza, sub-section (c)(4) of the Rocky Shoreline and Promontories section states as follows:

> Require improvements to and a public access easement for a pedestrian plaza (a minimum of 250 square feet for each 100 linear feet or portion thereof of front frontage along the rocky promontory south of Macabee Beach and the rocky promontory on the

[34] The July 18, 2008 staff report on this project erroneously applied different sections of the Cannery Row LUP. Staff indicated that there should be a walkway along the back of Building B in addition to the public easement along the shoreline that the LUP requires. Given that this section of the LUP does not apply to the project, that the entire shoreline of the property can be accessed through the two stairways, and that the History Plaza provides panoramic views of the entire shoreline of the property, no walkway along the back of Building B is required. Staff had also indicated that the Applicant should provide a walkway from Cannery Row Street to the shoreline between Building B and the Chart House. Given the size of the History Plaza, the narrow size of the Chart House, the Applicant's compliance with the LUP and the Coastal Act, and the likelihood that such a walkway is likely to be less safe than the History Plaza, no such walkway between Building B and the Chart House is required.

former San Xavier Cannery site) as a condition of development of parcels along the rocky shoreline.

For Ocean View Plaza, sub-section 4 requires a plaza of 1,375 square feet on the project site. The project exceeds that requirement by providing a plaza of 13,021 square feet, almost ten times the required amount. Then there is also the Community Park on the inland side—it is 13,796 square feet. Considering the Community Park proposed on the inland portion in conjunction with the bayside History Plaza, the total square footage designated to dedicated public access is twenty times the square footage requirement for a pedestrian plaza in the LUP.

Additionally, the plaza includes a History Center which will provide the public a place to learn about the history of Cannery Row. Moreover, all of the windows facing the bay in Building A and Building B on the street level are contemplated as restaurant use, a visitor serving activity, providing even more public access. All in all, Ocean View Plaza not only provides unheard of multiples of the required public access uses, but also creates an unprecedented Recreation Trail-to-Pacific Ocean public access and view corridor. Special Condition 6 assures that this public access shall be retained.

Offshore Access

Coastal Act Section 30240(b) requires that development in areas adjacent to parks and recreation areas prevent impacts that would degrade these areas and requires such development to be compatible with the continuance of the recreational area. As previously described, the Edward F. Ricketts State Marine Conservation Area (ERSMCA) is located directly offshore of the project site (see page 1 of Exhibit 11 for a map of this area). The ERSMCA is akin to an underwater park, and it is extremely popular for diving and associated interpretation of the Bay's natural resources. CDFG has reviewed the details of the proposed operation of the subsurface seawater intake and open ocean emergency backup intake and finds these project components consistent with the requirements of the ERSMCA (see page 7-8 of Exhibit 15). As noted above, the EIR for the project concluded that there would not be any significant harmful effects to the environment from the project. The intake and discharge pipes will be small enough and deep enough that they will not interfere with the recreational use of the ERSMCA. The buoys near the intake and discharge pipes will similarly not interfere with the recreational use of the ERSMCA.

3. Conclusion

In summary, the proposed project provides at least as much and frequently much greater access than is required by the Cannery Row LUP. Accordingly, the proposed project as conditioned is consistent with the public access requirements of the Coastal Act and the certified Cannery Row LUP public access policies and should be approved.

C. Visual Resources

1. Applicable Policies

Coastal Act

Coastal Act Section 30251 provides for the protection of scenic and visual qualities of the coast and states, in part:

> ***30251.*** *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize alteration of natural land forms, to be visually compatible with the character of surrounding areas, and where, feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated...by local government shall be subordinate to the character of its setting.*
>
> ***30253(5).*** *New development shall: (5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.*

LUP Policies

Cannery Row LUP Public Recreation Policy b provides protection to viewpoints along the rocky shoreline and states:

> ***b.*** *(1) Provide viewpoints along the rocky shoreline to enhance recreational opportunities for the casual sightseer. These viewpoints are shown in Figure 5 and discussed in the Coastal Visual Resources section. (2) Provide access to the viewpoints along the rocky shoreline as discussed in the Public Access section (See policies c.1., c.2., c.3., c.4.).*[35]

Cannery Row LUP Visual Resource Policies a-d provide for protection of public views and also require that new development respect the visual forms of the old canneries and state:

> ***a.*** *Preserve and enhance coastal overviews shown in Figure 3 by establishing a punctuated, low-rise skyline respecting the visual forms of the old canneries with roof surfaces of varying sizes, shapes, and heights broken by skylights, towers, vertical stacks, dormer vents, and other projection (punctuated low-rise skyline is defined by policies b, c, d, e, f and g in Development Section, Chapter IV [see Exhibit #14 for LUP Development Section Policies b, c, d, e, f, and g and their associated diagrams]).*
>
> ***b.*** *As part of new private development on presently vacant and private lands, provide viewpoints along the shoreline as shown in Figure 3. Improvements to and an access easement over the viewpoint are to be required as a condition of the new development. As provided for by Section 30212 of the Coastal Act, this access shall not be required to be opened to public use until a*

[35] Policies c.2., c.3., and c.4. are set forth above. Policy c.1. is irrelevant to this project because it is with regard to properties adjacent to Macabee Beach.

public agency or private association agrees to accept responsibility for maintenance and liability...

c. Preserve view corridors to the water shown in Figure 3 by establishing guidelines for the sideyard setbacks conceptually shown by the asterisks shown in Figure 3.

d. Provide new viewpoints within new or rehabilitated structures as shown in Figure 3 by conditioning these viewpoints as a requirement of new development with the possible exception of coastal dependent uses, such as aquaculture, where such viewpoints may not always be appropriate.

Policy Conclusion

The policies of the Coastal Act and the LUP protect the public and visual qualities of coastal areas and require access to viewpoints along Cannery Row's rocky shoreline. The LUP also provides that new development respect the visual forms of the old canneries through the implementation of specific development standards. Specifically, the Cannery Row LUP provides architectural review guidelines (as shown in Exhibit 14) for new development (including encouraging multiple shed and gable roof forms, rectangular multi-lighted windows, the use of windows in groups, and bridges above streets which are parallel to the ocean). Also, Cannery Row LUP Development Policy f(1)(b) (see page 6 of Exhibit 14) has a basic height limit of 35 feet as measured from Cannery Row, but allows this height to be increased to 45 feet subject to a use permit and requires findings that the additional height above 35 feet is designed so as to assure the historic character and pedestrian-oriented scale and perspective are respected. The maximum height of Building A is 44 feet; the maximum height of Building B is 43 feet. Buildings C and E on the inland parcel do not exceed 35 feet in height. The City of Monterey issued a use permit to allow such heights.

2. Consistency Analysis

a. Background

Cannery Row is a unique coastal community with cultural and historical significance. A number of factors combine to create unique visual resources in the Cannery Row area. The general location of Cannery Row on the shoreline of the Monterey Peninsula provides highly scenic views of the Monterey Bay, including the generally rocky shores of Monterey. Historically, these views were greatly blocked by canneries. Today, although the canneries are no longer functioning, development along the seaward side of Cannery Row continues to mostly impede wide-open views to the ocean from the street. In fact, other than some view corridors and the subject site, Cannery Row is generally dominated by large building forms along the seaward side of the road. These buildings in large measure define the area's visual character.

The area's visual character is also distinguished by the presence of numerous buildings that reflect the area's cannery-era industrial history and other historic periods. Many of these structures have been renovated and remodeled to accommodate present-day uses. Architectural details typical of historic-era buildings that are currently found along Cannery Row include shed and gabled roofs; varied areas of inset and offset relative to the streets and shoreline; varying roof heights (even within the same building); small, multi-paned windows often arranged in groups; textured and/or industrial surface

materials such as corrugated sheet metal, roughcast concrete, brick, and (horizontal and vertical) wood siding; and exposed exterior stairways (see Exhibit #14 for examples of these architectural details as required by the LUP for new development). Examples of local buildings that incorporate some of these design features include the Monterey Bay Aquarium, which occupies a remodeled 1914 cannery structure located at the north end of Cannery Row, and the newly completed Clement Intercontinental Hotel.

In addition to the character as one meanders along Cannery Row proper, the public accessways that run along the seaward side of some Cannery Row buildings, and/or are incorporated into the public spaces of the buildings, also provide an important vantage point for public views. Development on Cannery Row since the canneries went out of business has generally provided for public access to views of the shoreline and ocean from shoreline walkways along the edge of buildings (and sometimes under buildings). These accessways each have their own character, and the character differences help provide a richly textured visual access experience along the shoreline as well.

Thus, development scale and design, including accessway design, are critical to protecting the scenic and visual qualities of Cannery Row. Over time, the unique scale and historical character of Old Cannery Row has only been maintained by assuring that new development is of a compatible scale and character.

b. Public Views

The project's bayside parcel extends along Cannery Row and contains a number of abandoned and crumbling foundations (often covered by graffiti), the remains of concrete fish holding tanks, the historic and vacant Stohan's building, and an abandoned storage tank, all interspersed with weedy plant growth. The site is framed on both sides by existing one-to-two-story buildings that extend to the shoreline's edge: the Chart House Restaurant on the upcoast side, and El Torito Restaurant on the downcoast side. Immediately offshore of the project site are the remnants of the foundation piles of an old cannery operation from a bygone era. The project site is currently fronted by a chain-link fence and it appears abandoned, and somewhat incongruous with the rest of Cannery Row. The project's inland parcel spans the same length along Cannery Row, and is currently occupied by a paved parking lot, the foundation of the former San Xavier Warehouse, and other structural remnants of the Cannery Row era, including a storage tank. See photographs of the site in Exhibit #2.

The Monterey Peninsula Recreation Trail (Trail) is an 18-foot-wide paved path that runs for almost 15 miles along Monterey Bay. A portion of the Trail is located along the western boundary of the project's inland parcel (see page 2 of Exhibit #2). This Trail extends from Pacific Grove to Seaside and it is extremely popular and heavily used by local residents and visitors for walking, jogging, bicycling, and skating. The Trail follows an old railroad right-of-way extending right through the heart of the Cannery Row area, and it is framed in by development in most cases. As a result, in terms of views, pedestrians and others traveling along the Trail within the Cannery Row area experience a sequence of views that are intermittently enclosed, open, and partially screened depending on the location.

The project's proposed Buildings C and E will be located on the inland parcel directly adjacent to the Trail (see project plans in Exhibit #3)~~, and these buildings will block existing views toward the bay~~. The project also includes development of a public community park between Buildings C and E. This community park will not include buildings and will extend for approximately 120 feet along the Trail,

allowing through views in this corridor. Thus, public views to the bayside will be available from the portion of the Trail that borders the proposed community park, as shown on page 2 of Exhibit #3. As proposed, the project would provide public viewing areas from the bayside parcel between Building A and Building B, beyond what is prescribed by the LUP, through the retail plaza and history plaza (i.e., around the Stohan's building), as well as views from two promontories located directly adjacent to the rocky shoreline. Thus, the project as proposed would block some existing public views from both the Trail and Cannery Row, but it would also provide for some new public views from the proposed promontories. This project will also provide the most panoramic view any where along the Trail along Cannery Row.

c. Community Character

The proposed buildings range in height above Cannery Row from 35 feet (Buildings C and E on the inland parcel) to 43 and 44 feet (Buildings B and A, respectively, on the bayside parcel). (Please see pages 12-13 of Exhibit 3 for site elevations.) The rooflines of the proposed buildings vary in height and form, and include vertical and horizontal offsets, and some shed roofs. Buildings A and B (bayside parcel) have generally been designed to emulate the characteristics of historic cannery-type buildings. Specifically, Buildings A and B include shed and gabled roof elements and other archaeological details that are characteristic of cannery-type buildings. Exterior elements for Buildings A and B also include painted plaster and window elements at street level, with smaller areas of painted wood siding. Materials used on the upper stories ~~would~~will be a combination of painted plaster, wood siding, and ribbed metal siding.

Buildings C and E (inland parcel) have been designed in a simpler, warehouse-type style. Building E will replicate the San Xavier Warehouse that was previously located on this parcel during the cannery era. In these warehouse-type structures, the elevations will be subdivided by means of their fenestration. The facades of Buildings C and E ~~would~~will be a combination of corrugated metal, painted plaster, and painted wood siding. The proposed replication of a utility bridge above Cannery Row proper, which ~~would~~will connect Building B to Building C, ~~would~~will be reminiscent of an historic utility bridge at this location.[36]

The Stohan's building ~~would~~will be restored with historically accurate detailing and include preserved or relocated elements from the existing foundations. The City conditioned its approval to require Architectural Review Committee review of the design elements of the structures and other elements proposed within the view corridor, including but not limited to the walkways, paved areas, benches, lighting and landscaping (see pp 6-7 of Exhibit 5). Special Condition 8 requires the Applicant to submit plans showing all structures and project elements within the public view to the Executive Director of the Coastal Commission.

Thus, the project as proposed and conditioned includes design elements that would appear to match the historic cannery style consistent with the LUP guidance and consistent with the established character of Cannery Row.

3. Conclusion

[36] The utility bridge ~~would~~will not provide through access, but rather ~~would~~will be a decorative architectural feature only.

The view corridors substantially exceed dimensional guidelines for view sightlines in figure 18, View Sightlines for Shoreline Development. No part of above grade structures impinge on the view corridors, except for the proposed History Center which has been determined by the City of Monterey to make positive contributions to that view corridor. The views of the bay afforded by the proposed project will be the largest privately dedicated view corridor on Cannery Row. The Conditions of Approval established by the City, wherein architectural treatment and conformity to stated LUP architectural objectives are assured by strict oversight by Architectural Review Committee and the Historic Preservation Commission for the City of Monterey.

Thus, as proposed and conditioned, the project is consistent with Coastal Act Sections 30251 and 30253 protecting public views and community character.[37]

D. Natural Hazards

1. Applicable Policies

Coastal Act

Coastal Act Section 30235 addresses the use of shoreline protective devices:

> ***30235***. *Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.*

Coastal Act Section 30253 addresses the need to ensure long-term structural integrity, minimize future risk, and avoid additional, more substantial protective measures in the future. Section 30253 provides, in applicable part:

> ***30253***. *New development shall:*
>
> *(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
>
> *(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

[37] And it is also consistent with the Coastal Act's access and recreation policies for the same reasons because these policies also protect visual access; see Public Access findings.

LUP Policies

Cannery Row LUP Natural Hazards Policy b. provides criteria for the construction of seawalls to protect existing development and states:

> ***b(1)*** *Construction of seawalls to protect existing development shall be allowed only if an engineering analysis determines that such protective structures are the least environmentally damaging alternative; and* ***(2)*** *Seawalls and foundations shall be located as far landward as possible.*

Cannery Row LUP Natural Hazards Policy a. provides for protection of the public in wave run-up and tsunami areas and states:

> ***a.*** *In tsunami and storm wave run-up areas where public access is provided, install warning signs as a condition of shoreline development, both public and private.*

Cannery Row LUP Natural Hazards Policy c. provides for protection of structures in wave run-up areas and states:

> ***c.*** *Minimal structural clearance from the water and adequate unobstructed run-up areas for buildings on the bay side of Cannery Row shall be based upon an engineering analysis for each project relative to protection from waves of a 100-year storm.*

Cannery Row LUP Development Policy h. provides standards for development along the shoreline and states:

> ***h.*** *Shoreline development along Cannery Row is not to extend seaward so far as to require new seawalls or alteration of the natural shoreline with the exception of parcels where structures or slabs presently existing over the water, as shown in Figure 28. Existing structures and slabs beyond the mean high tide line are not to be extended horizontally as part of any new development and are not to encroach further on the natural shoreline beneath the structures. Under no circumstances is any existing structure or slab to be extended vertically so as to be any lower than 13 vertical feet above the mean high tide line... (The 13-foot above mean high tide line vertical height requirement is the current approximation of the area subject to flooding or damage from tsunami and storm waves and this 13-foot requirement may be modified based on new information to be developed.)*

Policy Conclusion

The Coastal Act and LUP policies regarding natural hazards limit the construction of new seawalls ~~to protect existing development~~ and require that new development minimize risks to property in hazardous area, such as the Cannery Row area, which is subject to hazards from storms, wave run-up, and tsunamis. ~~The Coastal Act also requires that development assure stability and structural integrity without armoring.~~

2. Consistency Analysis

The proposed project is located on a shoreline composed of rocky substrate upon which numerous pier pilings are visible from previously existing structures. An analysis of aerial photographs of nearby San Carlos Beach and McAbee Beach detected no change in shoreline width since 1949, suggesting that the shoreline fronting the proposed project has changed very little over time and indicating that the shoreline at this location may be in a state of quasi-equilibrium. Portions of the proposed project, however, are located in an area subject to wave run-up, especially during storms. Also, because California and the west coast of the United States are seismically active, the bayside portions of the project site ~~are~~could also be subject to flood hazard from tsunamis, which are generated by submarine earthquakes, volcanic eruptions, and landslides.

The Commission's experience in evaluating the consistency of proposed developments with Coastal Act policies regarding development in areas subject to hazards has been that development has continued to occur despite periodic episodes of heavy storm damage or other such occurrences. Development in such dynamic environments is susceptible to damage due to such long-term and episodic processes. Past occurrences statewide have resulted in public costs (through low interest loans, grants, subsidies, direct assistance, etc.) in the millions of dollars. As a means of allowing continued development in areas subject to these hazards while avoiding placing the economic burden for damages onto the people of the State of California, ~~Applicants~~applicants are regularly required to acknowledge site geological risks and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed~~.~~, see Special Condition 14.

A portion of the bayside section of the project site, from the shoreline to approximately 20 to 60 feet inland, lies within the V6 Velocity Zone on the Federal Emergency Management Agency (FEMA) Flood Map. Areas within the V6 zone are subject to 100-year coastal flooding with wave action to an elevation of 17 feet above National Geodetic Vertical Datum (NGVD). The lower level of proposed bayside Building A is 15 feet above NGVD; the lower level of proposed bayside Building B and the history plaza are 21 feet above NGVD (or 13 and 19 feet above the mean high tide level respectively). Thus, the lower level of Building A would be in an area FEMA maps as subject to coastal flooding. Cannery Row LUP Development Policy 3h prohibits the extension of existing structures or slabs lower than elevation 13 feet above the mean high tide line. The proposed project is consistent with this policy because both finished floor areas of the proposed bayside buildings would be at least at elevation 13 feet above the mean high tide level. The lower parking levels of Buildings A and B could be subject to flooding and impact damage by storm waves or a combination of storm waves and tsunami.

A separate geotechnical report (not contained in the EIR) was completed that evaluated potential impacts to the proposed project's bayside components due to wave impacts and wave run-up. This report projected a sea level rise of one foot over the next 100 years. Given that some experts are projecting a potential sea level rise of three feet over the next 100 years, Commission staff requested an analysis of the potential wave run-up impacts to the project if a three-foot rise in sea level takes place. The results of this analysis showed that a three-foot rise in sea level over the next 100 years would result in a still water level of approximately 9 feet National Geodetic Vertical Datum (NGVD; which is approximately 0.23 feet below mean sea level in the Monterey Bay area) The wave impacts of concern were for (1) wave run-up at the parts of the project where there will be sloped areas and the opportunity for waves to wash over the walkways and access areas and (2) uplift forces for the parts of the project that might have waves underneath the building area. Wave run up is the flow of water up a slope or

beach. Wave run-up is calculated as the vertical height to which the rush of water will reach and it depends upon both the incoming wave energy and the slope of the beach or structure. The calculated maximum wave run-up was approximately 29 feet NGVD with a potential rise in sea level of one foot and 31 feet NGVD with a potential rise in sea level of three feet. In the worst case scenario, wave run-up across the shoreline and up proposed Building B will reach 31 feet MSL. The proposed project includes a three-foot-wide reinforced concrete ledge or "eyebrow" along Building B at elevation 31.1 MSL, which is designed to mitigate splash-up and ensure that windows above this level are not impacted (no windows are located below this level).

Building A is designed so that waves will run under the structure and break, which will dissipate the wave energy. The main concern at Building A is that the bottom level of the building be high enough above the water level that breaking waves and return flow do not impact or push up the bottom of the building. The bottom of the first floor of Building A is at 23 feet NGVD (similar to the Cannery Row street elevation at this location). The maximum crest of the highest possible refracted wave, with a potential rise in sea level of three feet, would be less than 23 feet NGVD and thus should not cause damage to the portions of the building that are located over the water.

As discussed above, the bayside components of the proposed project are located in an area subject to hazards including flooding due to tsunamis or wave run-up during episodic heavy storms. Additionally, the proposed history plaza, located at an elevation of 15.6 feet NGVD, will get wet based on the maximum calculated run-up of approximately 31 feet. Persons using the lower level promenade in Building A, the coastal access stairs, or the rocky shoreline at the project site would also be at risk during a storm or tsunami.[38]

Given the hazardous location of the bayside portions of the project site, the City conditioned the project to incorporate engineering design and construction materials and methods to withstand wave impacts from a 100-yer storm event, to provide appropriate warning signs and access provisions along the bayside access areas, and to require that the project subscribe to a tsunami early warning system. The ~~City's approval, however, does not require the Applicant to waive any claims of liability for allowing the development to proceed.~~ Coastal Commission is similarly conditioning the project. See Special Condition 9.

3. Conclusion

The proposed project is located directly adjacent to the shoreline in a hazardous area that could be subject to wave run-up, flooding, and tsunamis. The proposed project includes a number of conditions imposed by the City that would reduce potential impacts from hazards. The proposed project, as conditioned by the City and above, is consistent with the Coastal Act.

[38] Thus, Natural Hazards LUP policy b(1), which requires that seawalls be allowed only to protect existing development; and only if an engineering analysis determines that such protective structures are the least environmentally damaging alternative; and only if located as far landward as possible, is not directly relevant. The City did contemplate alternative designs that would have pulled the buildings further back from the shoreline; however, it found that these did not meet the project objectives or were otherwise infeasible.

E. Historic Resources

1. Applicable Policies

Coastal Act Policies

Coastal Act Section 30253(5) protects special communities that are popular visitor destinations and states:

> ***30253.*** *New development shall: (5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.*

LUP Policies

Protection of the special character of Cannery Row, particularly as it relates to its historic cannery era, is a long-standing Coastal Act concern. Cannery Row LUP Development Policies o and p protect historic sites and buildings along Cannery Row and state:

> ***o.*** *Historic sites and buildings shall be designated by the City as part of the implementation phase. Identified historic sites and buildings shall be preserved at existing locations to protect and preserve community character.*
>
> ***p.*** *All new development is to meet the conditions of a historic documentation program to be developed as part of the implementation phase. More specifically, the historic documentation program will require that the history of the site be exhibited as part of any new development (i.e. plaques, pictures, artifacts, etc.).*

2. Consistency Analysis

a. Background

Historic Cannery Row was an intensely developed industrial district. At the beginning of World War I, there were only three canneries along Cannery Row. However, during the war, Monterey's fishing industry took off as canned sardines became popular as food for the troops overseas. As a result, a number of other canneries were built along what came to be known as Cannery Row. During World War II, the U.S. government again bought great quantities of canned fish. At the height of the industry's production in 1945, the canneries along Cannery Row numbered 16. After the end of the war, however, there was a reduction in demand for canned sardines. In addition, the depletion of the sardines was becoming increasingly apparent. The depletion of the sardine fishery caused the majority of canneries to close down, and by 1957 only five plants remained. The last cannery closed in 1973. Today Cannery Row is a special community and a major tourist attraction. Cannery Row retains much of its historical atmosphere while offering a variety of visitor serving commercial and recreational uses along this section of the central coast.

None of the structures on the project site have been listed in The National Register of Historic Places or The California Register of Historical Resources. Regardless of these facts, the Applicant will be

undertaking a number of measures designed to provide visitors with various ways to experience the history of Cannery Row. These measures were commended by the California State Office of Historic Preservation.

The project site was historically occupied by two canneries: the Pacific Fish Company and the San Xavier Canning Company. Both canneries were built in the typical Cannery Row configuration, with the cannery buildings on the bayside, the warehouses on the inland side, and the two connected by a second story walkway bridge over Cannery Row. Currently the bayside parcel is occupied by the Stohan's building (the former San Xavier Cannery Company's Fish Reduction Plant, which is proposed to be redeveloped as a history center and museum), a storage tank, and various structural and foundational elements of former buildings of the Cannery Row era (see Exhibit #2 for photos of the site). The inland parcel is currently occupied by a paved parking lot, the foundation of the former San Xavier Warehouse, and other structural remnants of the Cannery Row era.

b. Project Impacts to Historic Resources

As part of its approval, the City of Monterey adopted a Statement of Overriding Considerations because the cumulative historic impacts of the project cannot be fully mitigated because the mitigations set forth in the EIR did not allow full mitigation of the identified historic impacts. Specifically, the proposed removal and non-replacement of several foundations on the site, a fish-holding tank, a cylindrical steel tank, and an historic wall are significant and unavoidable impacts. The EIR determined that these impacts are mitigated to the maximum extent feasible with the project as proposed, by installing interpretive markers displaying their former use and/or by developing an exhibit in the proposed history museum that describes these historic elements of the project site.

c. Analysis and Conclusion

The project includes rehabilitation and restoration of the Stohan's building as an historic ~~museum~~center that will provide a place for the history of Cannery Row to be gathered. The City's conditions of approval require that the history center be utilized as a ~~museum.~~history center. The Commission is conditioning its approval as set forth in Special Condition 5. It is anticipated that the historic ~~museum~~center will include exhibits on Monterey's cultural history associated with the fishing and canning industry and contributions made by immigrant men and women from the early 1850s to the present; overfishing, fisheries management, and conservation practices; the impact of international events on the local immigrant community including the Chinese Exclusion Act of 1882, and World War I and World War II internment camps; national events (e.g., Great Depression) and their relationship to Cannery Row; and the real history of Cannery Row with historic photos, narratives and artifacts as juxtaposed to the Row's literary and scientific heritage. Additionally, the bayside fish holding pens ~~will be covered with a see-through covering to allow historic interpretation~~are being retained in place so the public can view them, and interpretive markers will be on the site, too, further enhancing the historic experience. Thus, ~~it appears that~~ the project as conditioned has reasonably mitigated for adverse impacts to the unique historical character of the Cannery Row community, consistent with the requirement of Coastal Act section 30253 to protect special communities that are popular with visitors, and also consistent with the Cannery Row Land Use Plan's requirements to preserve identified historic sites and buildings to protect community character.

F. Land Use/ Recreation and Visitor-Serving Uses

1. Applicable Policies

Coastal Act Policies

Coastal Act Sections 30213, 30221, and 30222 protect visitor-serving and recreational uses along the coast and state, in relevant part:

> ***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.*
>
> ***30222.*** *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

LUP Policies

Cannery Row LUP Development Policy h. states:

> ***h.*** *Development allowed beyond mean high tide: Only in existing structures and on slabs presently extending beyond the mean high tide line. On all other parcels, development is not to extend beyond the mean high tide line.*

The Cannery Row LUP's Visitor-Serving Commercial Chapter contains a number of applicable policies that specify the allowable uses on land designated as Visitor-Serving Commercial:

> ***a.*** *Principal permitted visitor-serving commercial uses are to include food service establishments, sidewalk cafes (but not including fast food restaurants and restaurants/bars with live entertainment), recreation-related commercial uses conducted within a completely enclosed building and shops of a tourist commercial nature (e.g. antique shops, art galleries, personal apparel shops, gift shops, and handicraft and work shops). The above uses are to be in proper character with and scale to the Cannery Row area.*
>
> *Fast food restaurants, restaurants and bars with live entertainment, commercial uses not conducted within a completely closed building, personal improvement uses, and walk-up service windows are allowed in the Visitor-Serving Commercial use area subject to approval of a Conditional Use Permit.*
>
> ***g.*** *Lower cost visitor facilities shall be protected, encouraged, and where feasible, provided in the City of Monterey.*

h. *Mixed use projects consisting of residential use on upper floors above visitor-serving commercial are allowed as conditional uses in the visitor-serving commercial use area at a maximum density of 30 units per acre. The maximum number of residential units associated with mixed use projects developed throughout the Cannery Row coastal zone planning area shall not exceed a total of 183 units. Conversion of existing or previously approved visitor accommodation facilities is prohibited.*

Finally, in addition to the advisory LUP policies, the City of Monterey has an uncertified ordinance (not part of the LUP or otherwise approved by the Commission) that prohibits the construction of any new hotels in the City of Monterey without a vote of the citizens of Monterey.

Policy Conclusion

The Coastal Act places a high priority on visitor-serving uses and residential uses are not a priority use for sites immediately adjacent to the ocean. Section 30221 requires that oceanfront land suitable for recreational use be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area. Section 30222 states that the use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry. Both the inland and bayside parcels of the proposed project site are designated in the certified Cannery Row LUP as Visitor-Serving Commercial.

2. Consistency Analysis

Cannery Row is a highly popular destination for visitors to California's central coast. Attractions such as the Monterey Bay Aquarium, world-known scuba diving sites, major hotels, a variety of retail shops, and the Monterey Bay Coastal Trail, as well as Cannery Row's prime location relative to the overall Monterey Peninsula and its regional attractions (e.g. nearby Pacific Grove, Del Monte Forest, etc.) draw people from near and far to experience coastal access, recreation, visitor serving, and educational opportunities. Cannery Row's proximity to the Monterey City Harbor and Custom House Plaza, as well as its history as the site of California's major sardine canneries, adds to its desirability as a recreational and historical destination.

a. Land Use/Priority Uses

The proposed project includes a mix of visitor-serving uses on the street/bay levels of the proposed buildings, and residential uses on the upper floor levels. Strictly speaking, the proposed land uses, particularly the residential units, are not consistent with Coastal Act priorities. The site is a prime oceanfront site suitable for visitor-serving development or other public recreational or commercial activity. However, Cannery Row is a special case. In ~~1997~~1997, the Commission approved an amendment to the Cannery Row Land Use Plan which specifically added mixed-use projects as an allowable conditional use within areas designated as Visitor-Serving Commercial in the LUP. Such mixed-use projects allow for the development of residential units above first floor levels only; first floor levels must remain available for Visitor-Serving Commercial land uses. According to information provided by the City at the time the amendment was approved by the Commission, the amendment was

designed to assist the City in meeting its Housing Element goals, while still maintaining a high-degree of visitor-serving qualities along Cannery Row. Another key factor associated with this amendment was that, as the result of a past citizen initiative, no new hotels on Cannery Row can be approved without a vote of the electorate.

In approving the LUP amendment, the Commission found that the LUP amendment as submitted did not contain any specific limitations on the amount of residential development that would be allowed to occur within the Cannery Row coastal planning area. Without such a limitation, the proposed amendment had the potential to displace visitor-serving uses with residential development and result in the conversion of existing or approved (but not yet constructed) overnight accommodations for visitors to residential use. To ensure that the amendment would not have an adverse impact on coastal access and visitor-serving recreational uses, the Commission modified the amendment by requiring that mixed-use projects be required to conform to a maximum 30-unit per acre standard. Additionally, to address Commission concerns, the City evaluated the amount of vacant and underdeveloped land within the Cannery Row coastal zone to reliably estimate the number of new residential units that could be accommodated at a maximum density of 30 units per acre. The City found this number to be 183 units. With these data, the Commission also modified the amendment to put a limit of 183 residential units in the Cannery Row LUP area and to disallow the conversion to residential use of existing or previously approved overnight accommodations for visitors (see Visitor Serving Commercial Uses policy h. above). With these modifications, the Commission found that the restricted extent of mixed-use development on Cannery Row will limit associated impacts on visitor-serving recreational uses to an insignificant level, and that the LUP amendment was consistent with Coastal Act Sections 30221 and 30222. The City adopted the Commission's proposed modifications.

In this case, the residential density of the proposed project (bayside and inland parcels combined) is approximately 15 units per acre.[39] The total number of approved residential units along Cannery Row (including this project) would be 56. Thus, this aspect of the proposed project ~~would be~~is consistent with the ~~advisory~~ requirements of Cannery Row LUP Visitor-Serving Commercial Policy h.

In terms of the proposed commercial uses of the property, these generally ~~would~~will be visitor-serving components of the project, including shops and restaurants located at street level~~. However, Commission staff has previously commented that the project should specify or somehow provide for visitor-serving commercial uses that are coastal related. Similarly, the LUP advises that restaurants, shops of a tourist nature, or recreation related uses are principally permitted, whereas more generic commercial uses are not~~. The project currently includes an area of coastal related retail.

b. Lower-Cost Visitor-Serving Uses

The project includes a history center/museum and history plaza on the bayside parcel, and a community park on the inland parcel. The community park will be available to the public free of charge and will include amenities such as landscaping and seating. The existing Stohan's building will be rehabilitated and reused as a history center and museum. The goals of the history center/museum would be to create a cultural and historic interpretative center for the historic Cannery Row, including (but not limited to) documenting and celebrating Monterey's cultural history associated with the fishing and canning

[39] The project site = 3.5 acres; the total number of proposed residential units = 51 units; 51 units/3.5 acres = 14.57 units/acre.

industry, and exploring the issues, controversies and impacts concerning over-fishing, fisheries management, and conservation practices. The City of Monterey may operate the history center or may find a suitable non-profit group to operate the history center. It is not certain at this time if access to the history center would be free or if a fee would be required. In any event, the history plaza adjacent to the history center and museum would be open to the general public for free and would also include interpretive historical displays. See Special Condition 6. These amenities would provide opportunities for lower-cost visitor-serving uses, as required by Coastal Act Section 30213. In addition, as discussed in the public access finding, the project includes a dedicated public area and access to the shoreline.

3. Conclusion

Although residential development is not a priority under the Coastal Act, particularly immediately adjacent to the ocean, the mix of visitor serving, public recreational access, and residential uses proposed can be found consistent with the Coastal Act. This is because the project provides for a range of visitor serving/public recreational access development that will augment and enhance such facilities and opportunities along Cannery Row. Thus, as proposed and conditioned, the project is consistent with the Coastal Act land use priority policies.

G. Water Quality

1. Applicable Policies

Coastal Act Sections 30230 and 30231 state:

> ***30230.*** *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*
>
> ***30231.*** *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

2. Consistency Analysis

The proposed project is located on the bayside and the inland side of Cannery Row, directly adjacent to the Monterey Bay National Marine Sanctuary and the Edward F. Ricketts State Marine Conservation Area. The bayside portion of the project site contains the Stohan's building and various structural remnants of former buildings of the Cannery Row era. However, much of the bayside parcel consists of grassy areas with ruderal plants (see pages 3-4 of Exhibit #2). The pervious nature of these grassy areas may limit the amount of any polluted runoff currently, although there may also be a level of

contamination of the site from prior uses. As stated above, the bayside components of the project include two new buildings that will house underground parking garages, as well as residential and commercial uses, and paved plaza areas. The inland portion of the project site is currently occupied by a paved parking lot, the foundation of the former San Xavier Warehouse, and other structural remnants of the Cannery Row era. Development of the inland portion of the project site ~~would~~will include a parking garage (with a basement component), as well as residential and commercial uses, and a community park.

a. Construction Issues

The proposed project is located directly adjacent to the sensitive bay waters of the Monterey Bay National Marine Sanctuary. Construction work that might adversely affect the habitat and organisms of the bay waters must be carried out in a manner that will eliminate the possibility of adverse effects. Potential marine impacts occurring from the development of the project site include: (1) destruction of intertidal life due to construction activities; (2) increased sedimentation and turbidity during construction; and (3) increased runoff contamination from impervious surfacing.

As part of the project description, the EIR states that the construction contractor would be required to manage storm water runoff so that there would be no direct discharge into Monterey Bay. The proposed project includes a Construction Storm Water Pollution Prevention Plan (SWPPP). This SWPPP provides the basis upon which the project-specific SWPPP ~~would~~will be prepared pending completion of construction plans for the project. This SWPPP includes a suite of best management practices (BMPs) to be used during construction activities, including sediment controls, BMPs to protect operational storm water inlets or receiving waters from contaminated discharges, waste management practices to reduce the potential for non-storm water discharges, spill prevention and control practices, and other good housekeeping practices. The proposed best management practices contained in the SWPPP ~~would~~and Special Condition 10 will be adequate to protect water quality during construction, consistent with Coastal Act Sections 30230 and 30231.

b. Post Construction Issues

Post construction, water quality can be adversely affected by increased runoff due to an increase in paved/developed surfaces and by post-construction activities and uses on the site, such as parking and restaurant use. The proposed project, as conditioned, will include post-construction BMPs to protect water quality once construction ~~would be~~is complete.

~~The City-approved project includes minimal setbacks to Cannery Row, meaning that there is minimal area to allow onsite ground infiltration of runoff. In addition, the substrate along Cannery Row is primarily granitic, which does not provide a good base for infiltration. Runoff that flows directly to the Monterey Bay could negatively impact marine, biological, and recreational resources and water quality by contributing additional urban contaminants to marine waters. Urban runoff is known to carry a wide range of pollutants including nutrients, sediments, trash and debris, heavy metals, pathogens, petroleum hydrocarbons, and synthetic organics such as pesticides. Urban runoff can also alter the physical, chemical, and biological characteristics of water bodies to the detriment of aquatic and terrestrial organisms. Such impacts would be at the expense of one of the state's and nation's great treasures, the Monterey Bay National Marine Sanctuary. Such impacts raise questions of consistency with the above-referenced Coastal Act policies that require protection of these resources. The Commission, however,~~

~~typically requires new development to maintain peak runoff flows at the same level as the undeveloped site condition, and also requires that new development reduce urban runoff and potential pollutants to the maximum extent feasible.~~ Runoff from the ~~buildings and other pervious surfaces would be directed into the existing City storm drain system. This drain system ultimately flows to the bay without significant filtering or treatment. This does not meet the objective of maintaining peak flows of runoff at the same level as the undeveloped site condition or of protection of water quality more generally, including the requirement to at the least maintain coastal water quality. In highly urbanized contexts such as the current case, it is important to consider the installation of a low impact design standard drainage system that maintains runoff onsite to the maximum extent feasible, and allows for appropriate filtering and treating of any runoff anticipated from the site if this is not otherwise available in the urban storm water management system. Examples of a low impact design include development of a rooftop garden to collect and retain rainwater onsite, or installation of cisterns to collect water that then can be reused onsite for landscaping needs, etc.~~ project will be directed into the existing City storm drain system.

3. Conclusion

The project will incorporate BMPs in order to mitigate post-construction run-off impacts, and it will be governed by the City of Monterey's requirements regarding drainage. See Special Condition 7. As proposed and conditioned, the project is consistent with the Coastal Act regarding water quality.

H. Environmentally Sensitive Habitat

1. Applicable Policies

Coastal Act Policies

Coastal Act Sections 30230 and 30231 protect marine resources and the biological productivity/quality of coastal waters and state:

> ***30230.*** *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*
>
> ***30231.*** *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

In addition, oftentimes when dealing with marine resource issues, the environmentally sensitive habitat area (ESHA) policies of the Coastal Act come into play. Specifically, these policies protect ESHAs against inappropriate development. The Coastal Act defines environmentally sensitive areas as follows:

> ***Section 30107.5.*** *"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

Almost all development within ESHAs is prohibited, and adjacent development must be sited and designed so as to maintain the productivity of such natural systems. In particular, Coastal Act Section 30240 states:

> ***30240.*** *(a). Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. (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.*

<u>LUP Policies</u>

Cannery Row LUP Marine Resources and Habitat Areas Policies a-c protect the shoreline habitats adjacent to Cannery Row and states:

> ***a.*** *Protect intertidal and tidepool habitat through signing as a condition of shoreline development, both public and private.*
>
> ***b.*** *Require sensitive shoreline restoration (debris cleanup) and maintenance (litter control) in a manner that will not impair biological productivity for the habitat and restoration needs areas shown in Figure 2 as a condition for any grading, excavation, demolition, and construction in conjunction with shoreline development.*
>
> ***c.*** *Support State Department of Fish and Game regulations controlling spear fishing and kelp harvesting.*

2. Consistency Analysis

The bayside portion of the project site contains the Stohan's building, various structural remnants of former buildings of the Cannery Row era, and undeveloped grassy areas with ruderal plants. The inland portion of the project site is currently occupied by a paved parking lot, the remnants of a warehouse foundation, and other structural remnants of the Cannery Row era. No special status plant or animal species have been identified on the project site. Thus, none of the land based portion of the project site constitutes ESHA.

Regarding the marine areas offshore of the project site, the Cannery Row LUP has found that the adjacent coastal marine environment is unique along the entire California coast in its diversity and

abundance of marine life. This area supports a broad range of intertidal and subtidal organisms, as well as marine mammals and birds. The California brown pelican (*Pelecanus occidentalis californicus*) (endangered) feeds in the bay waters offshore of the project site. The southern sea otter (*Enhydra lutris*) (threatened) uses the kelp beds off of Cannery Row. A rocky intertidal habitat is found along the project site's shoreline. California sea lions (*Zalophus californicus*) and harbor seals (*Phoca vitulina*) use the nearshore rocky areas for resting. Also, as previously described, the Monterey Bay National Marine Sanctuary and the Edward F. Ricketts State Marine Conservation Area are located directly offshore of the project site. With respect to these offshore resources, although they clearly have well-known habitat and resource values, and are protected by the Coastal Act as such through the previously-cited policies, they do not in this case constitute ESHA.

Dive surveys were conducted in 1998, in 2001, and in 2004 by the project's biologist within the prescribed proposed desalination intake/outfall corridor and subtidal areas located offshore of the project site. While kelp was observed on the rocky substrates during all the surveys, no eelgrass or surfgrass was observed (see below for a discussion of the biological importance of these marine plant species). Regarding potential impacts to kelp species due to installation of the offshore desalination pipeline, the horizontal directional drilling method of desalination pipeline installation is specifically designed to eliminate impacts to the rocky substrate and associated biota, including kelp. As mentioned above, the installation of the vault and associated intake lines will take place in sandy substrate located offshore of the rock reef habitat, at least 130 feet from kelp habitat. Thus, the proposed project will not result in direct impacts to sensitive kelp species. As a result, there would be no direct disturbance to sensitive kelp habitat or other offshore habitats that might constitute ESHA. In other words, the project does not propose development in ESHA.

In terms of potential ESHA adjacency issues, the construction of buildings as high as 44 feet along the shoreline will result in increased shading of the adjacent intertidal area and bay waters. Tidepool shading, however, is not expected to result in adverse impacts to resident invertebrates. Tidepools occur in a wide variety of geographic locations exposed to varying amounts of direct sunlight. Research has demonstrated that water temperatures, desiccation rates, and wave action all combine to create distinctive species distribution patterns among tidepool communities. Increased shading may cause a shift in the local species composition, but is not expected to decrease overall diversity or productivity.

~~Shading~~With regard to the shading of marine algae and plants~~, however, is a greater concern.~~ Eelgrass (*Zostera* spp.) and surfgrass (*Phyllospadix* sp.) are known to occur along Cannery Row. Eelgrass in particular is known to be very dependent on the amount of available light. These species of marine plants provide significant biological productivity to coastal waters as they serve as a haven for crabs and other small invertebrates and numerous species of fish, providing these creatures with habitat, nursery grounds, and food. The long blades of grass often are covered with tiny marine animals and algae. The DEIR noted that "Eelgrass stands are known to occur at the Coast Guard Breakwater, located to the southeast of the project site, and could potentially be present in the vicinity of the project."[40] More recently, a field survey of the intertidal area located offshore of the project site was conducted in June 2008.[41] Two species of surfgrass (genus *Phyllospadix*) were observed within the intertidal survey area in three different clumped locations, but no eelgrass (*Zostera* spp.) was observed. A shadow simulation study to assess the impacts of shading by the proposed project on the intertidal

[40] See page 243 of the Draft Environmental Impact Report for Ocean View Plaza, April 2001.

[41] Ocean View Plaza Intertidal Reconnaissance Survey, Monterey, California (Padre Associates, Inc., June 2008).

zone, and specifically on the sensitive surfgrass species located in the intertidal zone offshore of the project site, was also completed.[42] The results of the shadow simulation study show that the surfgrass located offshore of the project site will be shaded between 10% and 50% of the year. However, according to Senior Ecologist Dr. John Dixon, shading during the summer likely has more impacts to surfgrass species than shading during other times of the year. According to the shadow simulation study, during the summer months, the surfgrass located offshore of the project site will be shaded from less than 10% of the time to a maximum of 20% of the time. Given that many surfgrass populations occur at the base of coastal bluffs that also provide shade part of the time, Dr. Dixon has concluded that this amount of shading should not have a significant impact on the surfgrass populations located offshore of the project site.

The proposed installation of seawater and brine discharge pipelines has the potential to impact listed species, such as the federally endangered brown pelican (*Pelecanus occidentalis*) and the federally threatened southern sea otter (*Enhydra lutris nereis*). The Army Corps of Engineers (ACOE) requested concurrence from U.S. Fish and Wildlife Service (USFWS) that the project may affect, but is not likely to adversely affect, the aforementioned species. USFWS staff concurred that the proposed project is not likely to adversely affect the brown pelican or the southern sea otter (see Exhibit 15). Additionally, National Marine Fisheries Service (NMFS) has concurred with the ACOE that the project is not likely to adversely affect listed anadromous salmon species, nor did NMFS have any recommendations for changes to the proposed project that would further protect essential fish habitat (see Exhibit 15).

3. Conclusion

None of the land based portion of the project site constitutes ESHA. Additionally, the horizontal directional drilling method of desalination pipeline installation is specifically designed to eliminate impacts to the rocky substrate and associated biota, and the installation of the vault and associated intake lines will take place in sandy substrate located offshore of the rock reef habitat, away from kelp habitat. Thus, the proposed project will not result in direct impacts to sensitive kelp species or other offshore habitats that might constitute ESHA. Thus, the project is consistent with Coastal Act Section 30240 regarding protection of ESHA.

I. Parking and Traffic

1. Applicable Policies

<u>Coastal Act Policies</u>

In addition to the public access policies of the Coastal Act cited above that apply to parking and traffic (not cited here), Section 30252 of the Coastal Act states:

> ***30252****. The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing non-automobile circulation within the*

[42] Shadow Casting Simulation for the Proposed Ocean View Plaza (Videoscapes.Net, 2008).

development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Also, Section 30212.5 of the Coastal Act states:

30212.5 *Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.*

LUP Policies

Cannery Row Parking policy h. states:

h. *For mixed-use projects, which are not shown on Table 4, first floor visitor serving commercial development shall be required to provide 1 space per 400 square feet for the first 1,000 square feet of floor area and 1 space per 500 square feet for the balance. The residential component of mixed use projects located above first floor visitor serving commercial shall be required to provide a minimum of one on-site parking space for every residential unit to be developed. The City of Monterey shall require more than one on-site parking space per residential unit if necessary to maintain adequate visitor parking opportunities in the Cannery Row planning area. Additional bedrooms may require additional parking spaces as determined on a case-by-case basis.*

LUP Parking Policy f states:

f. *Within the ... parking district where on-site parking requirements are not shown to be provided, require the payment of an in lieu fee for all required spaces not provided and granted a parking adjustment.*

LUP Circulation Policy i states:

i. *Support shuttle systems and Peninsula area transit within and to the Cannery Row Coastal Zone.*

2. Consistency Analysis

a. Parking

The proposed project includes a total of 377 auto parking spaces on site: 93 spaces on the bayside portion of the site and 284 spaces on the inland portion of the site. The bayside parking will be provided in a subterranean garage. Inland parking will be provided in an underground level and three above-grade levels (including the rooftop of Building E). In addition, the project includes 43 motorcycle parking spaces dispersed throughout the parking garages, and parking for 79 bicycles (39 bicycle spaces

would be located in a secured storage area in the underground level of the inland parking garage; parking for 40 bicycles would be provided in an outdoor rack located adjacent to the Recreation Trail).

The auto parking includes 90 spaces restricted for residential use, 138 spaces restricted for use by employees and retail tenants, and 149 unrestricted spaces for the public. See page 5 of Exhibit #3 for the project's parking plan.

Based on proposed project uses (including a maximum of 700 restaurant seats), the proposed project would generate a demand for parking that exceeds the proposed onsite parking supply by 50 spaces during peak Saturday afternoons (primarily during the summer months) when public parking facilities in the area operate at practical capacity.[43] Additionally, as described in the EIR, the project will result in the loss of 71 existing parking spaces on the inland parcel. Thus, there will be a general loss of 71 existing spaces currently available to the public and thus a projected parking deficit on peak Saturday afternoons overall of 121 parking spaces.

The proposed mitigation for this peak-period parking deficit includes use of 121 existing public parking spaces located in the underused public parking garages east of the Lighthouse tunnel in Monterey (according to data submitted from the City of Monterey, these parking garages generally have this amount of availability even during peak periods). These parking garages are also the location for visitors to access the free WAVE (Waterfront Area Visitor Express) shuttle, which operates on a daily basis from the Memorial Day weekend through the Labor Day weekend. The WAVE shuttle departs for Cannery Row from the downtown parking garages every 10 to 12 minutes during the summer months. Also, the City conditioned its approval to require the Applicant to contribute on an annual basis to the funding of the WAVE shuttle for its expansion and operations, as required by Cannery Row LUP Parking Policy f. An additional condition imposed by the City includes a requirement to implement trip reduction measures identified within an Employee Transportation Management Program to be prepared by the Applicant.

Coastal Act Section 30252 requires that new development maintain and enhance public access to the coast, including through the provision of adequate parking. The proposed project, however, provides onsite parking for the residential users and employees and retail tenants but there will be an onsite parking deficit for retail customers and general public access users during peak periods. ~~As approved by~~However, as noted above, the City~~,~~ addressed this deficit ~~would be addressed by~~through other existing parking spaces currently available to the general public during peak periods. This is consistent with Coastal Act Section 30252.

b. Parking Conclusion

Coastal Act Section 30252 requires that new development maintain and enhance public access to the coast, including through the provision of adequate parking. The proposed project, between onsite parking and its contributions to the WAVE shuttle, will maintain and enhance public access to the coast. This is consistent with Coastal Act Section 30252.

c. Traffic

[43] This analysis is based on more than the minimum one space per residential unit as required by Cannery Row LUP Parking policy h., as well as that policy's parking formula for mixed-use projects.

The EIR included a traffic study that evaluated Level of Service (LOS) conditions at street and highway intersections that would potentially be impacted by the proposed project.[44] The City of Monterey has established LOS D as the minimum acceptable level of service for signalized and un-signalized intersections. The EIR identified additional standards of significance for intersections due to the proposed project as follows:

- A degradation in LOS from an acceptable level (LOS D or better) to an unacceptable level (LOS E or F); or
- The LOS is already at an unacceptable level and the addition of project trips causes an increase in delay for the intersection's critical movements; or
- The intersection volume-to-capacity ratio (v/c) is 0.95 or less and the addition of project trips causes the v/c to exceed 0.95; or
- The project would generate 50 or more peak-hour trips at an intersection that already operates at LOS D (LOS E for un-signalized intersections); or
- The project will cause or contribute to the need for a traffic signal at an un-signalized intersection.

The EIR included an analysis of existing and projected traffic conditions for 18 signalized intersections and 8 un-signalized intersections, as well as three Highway 1 segments. The EIR found that the proposed project would have a significant impact on six intersections. Additionally, the EIR found that the proposed project would cumulatively have a significant adverse impact on an additional ten intersections by the year 2020.

The City adopted a Statement of Overriding Considerations (Exhibit 6) regarding the proposed project's impacts to the Cannery Row/Prescott Avenue intersection, which would degrade during the Saturday peak hour from LOS D to LOS F due to the project. The City found that this particular intersection is especially heavy with pedestrian activity and that no mitigation was preferred, with the specific intent of gaining safety benefits from slower speeds and intersection saturation during peak periods. Regarding the proposed project's other significant impacts on street intersections, the Applicant has agreed to fund $2,000,000.00 in traffic improvements to mitigate the proposed project's impacts. These improvements include, but are not limited to, a fair-share contribution to the installation of new traffic signals, the addition of new turn lanes and through lanes, and a fair-share contribution to the WAVE shuttle. Additional mitigation includes implementation of trip reduction measures as identified within an Employee Transportation Management Program (ETMP) prepared by the Applicant.

d. Traffic Conclusion

As noted in the Statement of Overriding Considerations, Cannery Row serves significant tourist destination traffic, and therefore traffic speeds are low and few accidents are experienced. Cannery Row is not a commuter thoroughfare, but rather a street that serves a high volume of pedestrian traffic. In order to maintain the character of Cannery Row, the City intends to avoid maximizing automobile speeds. Cannery Row has stop signs so cars must wait for pedestrians, instead of street lights which

[44] LOS is a qualitative description of operating conditions ranging from LOS A (free-flowing conditions with little delay) to LOS F (jammed conditions with excessive delays). LOS D means operations with longer delays due to a combination of unfavorable progression, long cycle lengths, or high V/C [volume/capacity] ratio; many vehicles stop and individual cycle failures are noticeable.

would force the pedestrians to wait for cars. From the EIR, it appears that traffic on Cannery Row itself will not experience any critical delay as a result of this project. The mitigations proposed by the City are appropriate, and the project's traffic and parking impacts are therefore consistent with Coastal Act Section 30252's requirement to maintain and enhance public access to the coast.

J. Archaeological Resources

1. Applicable Policies

Coastal Act Section 30244 protects archaeological and paleontological resources and states:

> ***30244.*** *Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be*
> *required.*

Cannery Row LUP Development Policy k states:

> ***k.*** *Reasonable mitigations are to be required as a condition of development where it would adversely impact archaeological or paleontological resources as identified by the State Historic Resource Preservation Officer.*

2. Consistency Analysis

The City conditioned its approval (see pages 6-7 of Exhibit #5) to require that a professionally qualified archaeological monitor be present during all foundation removal, demolition, and soil disturbance activities, except for the paved parking lot on the inland parcel (the parking lot area has been excavated extensively previously and there is little possibility that significant archaeological materials remain there). If human remains or archaeological features are discovered during these activities, the City's conditions require that construction work be halted within 50 meters of the find until it can be evaluated by the project's archaeological monitor and appropriate measures can be formulated and implemented and secondary archaeological testing can be conducted. Special Condition 12 supplement's the City's condition on this. The City's approval also includes the preparation of a Preliminary Archaeological Report and Archeological Mitigation Plan, as warranted.

3. Conclusion

As proposed and conditioned by the City and by the Commission, the project is consistent with Coastal Act Section 30244.

K. Coastal Act Section 30260 Override

Although the project, as conditioned, conforms to the Coastal Act policies above, because the proposed project is a coastal-dependent industrial facility, the Commission may "override" any inconsistencies with those policies pursuant to Coastal Act Section 30260. That policy allows the Commission to approve coastal-dependent industrial facilities that are not consistent with other Coastal Act policies

contained in Chapter 3 if the proposal meets three tests. Those tests require: (1) that there be no feasible and less environmentally damaging location for the proposed project; (2) that the project's adverse environmental impacts be mitigated to the maximum extent feasible; and (3) that not permitting the proposed project would adversely affect the public welfare. Although the Commission finds consistency with all applicable Coastal Act policies, in applying these tests to the proposed project, the Commission also finds, as discussed in the findings below, the following:

- There are no feasible and less environmentally damaging alternative locations to draw in the needed seawater. The project is on granite, so there are no beach wells or any other locations to draw in the needed seawater. Moreover, the certified EIR indicates that the project will not cause any significant damage to the environment.
- The subsurface intake system will mitigate any adverse environmental impacts to the maximum extent feasible.
- Denial of the proposed project would adversely affect the public welfare for a number of reasons. As set forth in the project's EIR, the project would provide public benefits in the form of eliminating a blighted urban infill area in need of redevelopment. The project will eliminate this blight and turn it into a needed revenue base for the City. The project will provide $2 million to improve existing traffic conditions for the City of Monterey. The project provides more than 25% inclusionary housing. The project provides coastal access that does not otherwise exist. The project will also provide much needed and very important continuity of development along the Cannery Row.

The Commission therefore finds that the project, as conditioned, will conform to Coastal Act Section 30260.

C. California Environmental Quality Act (CEQA)

On June 1, 2004, the City of Monterey certified an Environmental Impact Report for the proposed project. In addition, Section 13096 (14 CCR) requires Commission approval of CDP applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of CEQA. Public Resources Code section 21080.5(d)(2)(A) prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment.

As discussed above, the proposed project is consistent with the requirements of the Coastal Act. Pursuant to these Findings and the review conducted by the City of Monterey, the project includes all available and feasible measures to avoid or minimize significant adverse environmental impacts. There are no feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse impact that the activity would have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with the requirements of CEQA.

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COASTAL COMMISSION
CENTRAL COAST AREA

CITY OF MONTEREY

November 6, 2008

VIA FAX: 831-427-4877 & USPS

California Coastal Commission
725 Front Street, Suite 300
Santa Cruz,CA 95060

RE: Ocean View Plaza - Coastal Development Permit Application 3-08-013

Dear Honorable Commissioners:

The City of Monterey supports the Coastal Commission's approval of the Ocean View Plaza project. This approval will remove a coastal eyesore and crumbling dangerous foundations with a project that provides access to the beautiful Monterey Bay National Marine Sanctuary.

The City requests; however, that Conditions #4, #5, #6, and #16 are amended. Specifically, Conditions #4, #5, and #16 enable the Executive Director to approve the final design details of the project. The Executive Director has never had this level of authority on a previous project in our community.

The City of Monterey has an extensive design and historic preservation review process. Every building element, light fixture, sign and plant will be analyzed. This is a lengthy and detailed review. The idea that these final design details would then undergo a second review by the Executive Director is inappropriate. What happens if the Executive Director disagrees with a particular bench, sign, or building treatment? We strongly feel that these design decisions can be most appropriately addressed at the local government level. Moreover, changes develop during construction as specific issues are encountered. Oftentimes, this requires an immediate onsite review. It is impossible to expect the Coastal Commission staff to have the resources to meet these deadlines and not stop construction. Lastly, Monterey has a proven track record. The Intercontinental Clement Hotel was just completed and is a testament to our community's architectural review process in the coastal zone.

In closing, the City of Monterey requests that the Coastal Commission approve the findings for Ocean View Plaza project with the exception that conditions of approval #4, #5, #6 and #16 are amended to eliminate the Executive Director's peer review of the City's final design approvals. These decisions should remain with the local government.

Sincerely,

Chuck Della Sala

Chuck Della Sala
Mayor

c: City Council
City Manager
Deputy City Manager P&PW

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Date: November 8, 2008

To: California Coastal Commission, Central Coast Office
725 Front Street, #300
Santa Cruz, Ca. 95060

From: Mrs. Joyce Raye
Harper Cyn. Rd., Salinas, Ca.
Retired teacher, testified for Monterey Marine Sanctuary at NOAAH

Re: Permit/Application #3-08-013
Cannery Row Marketplace or Ocean View Plaza, Monterey

Because of the project's location within the Monterey Bay Marine Sanctuary and within the California Coastal Act jurisdictions, we ask that you approve all the "Special Conditions" in the Staff Report for all aspects of the project, especially the construction conditions.

For thirty five years I have personally observed this site to be a breeding and nesting area for pelagic birds, the protected sea otter, and harbor seals that all give birth and raise young in this protected cove, along with a myriad of marine animals and fish. These are all protected by the Coastal Act, Sections 30230-30234. If this project is approved, the above mentioned animals will all have their habitat adversely affected by the negative effects of this project which was originally disapproved by your staff. We ask that you please fulfill your responsibilities as coastal commissioners under the Coastal Act and provide protection for this marine bird and mammal breeding area, by approving the Special Conditions recommended by staff findings to avoid destruction of this fragile marine habitat.

All of these Special Conditions are vital to protect these marine resources, especially the construction conditions. Please also include these following conditions to provide better protection of marine life: 1) no blasting of rock on site, 2) no use of pile drivers before 8:00am or after 5:00pm, 3) mitigation of noise levels, 4) no dumping of construction materials on site or in the ocean, 5) posting of signs to notify public: "Do not disturb wildlife," "This is a seabird nesting and sea otter area," "It is against the law to disturb seabirds, sea otters, or seals."

The desal plant would still involve entrapment impacts to small marine organisms, thus degrading the entire marine ecosystem in this area (see p. 79). This problem needs remediation. Diving access would have an adverse impact on this important marine area and should be prohibited.

Even with all Special Conditions required, this project will lead to a degrading of this coastal marine environment and a disruption of the nesting of pelagic birds and animals. It is for these reasons that we ask you to please require and enforce all the Special Conditions requested by staff, and the additional ones I noted above.

Thank you, Mrs. Joyce E. Raye