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February 7, 2008
49th Day: March 17, 2008
Staff: Jim Baskin
Staff Report: February 22, 2008
Hearing Date: March 7, 2008
Commission Action:

STAFF REPORT: APPEAL**SUBSTANTIAL ISSUE**

APPEAL NO.: **A-1-CRC-08-004**

APPLICANT: **Randy Baugh DBA: Development Consultants, Inc.**

LOCAL GOVERNMENT: City of Crescent City

DECISION: Approval with Conditions

PROJECT LOCATION: 200 "A" Street, Crescent City, Del Norte County;
APN 108-020-34.

PROJECT DESCRIPTION: *Coasta Norte* Mixed-Use Development - 98,755-sq.ft., three-story, 44-unit condominium/time-share/vacation rental residential development with medical/sales professional offices.

APPELLANTS:

- 1. Kirk Roberts and Natalie Fahning; and**
- 2. Commissioners Wan and Reilly**

SUBSTANTIVE FILE:
DOCUMENTS

- 1) City of Crescent City Coastal Development and Conditional Use Permits, and Design Review Approval Nos. CDP-07-06, UP 07-08, & AR 07-11; and
- 2) City of Crescent City Local Coastal Program.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after conducting a public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed, and that the Commission open and continue the *de novo* portion of the appeal hearing, because the appellants have raised a substantial issue with the local government's action and its consistency with the certified LCP.

On December 13, 2007, the City of Crescent City Planning Commission approved with conditions a coastal development use permit for the *Coasta Norte* mixed-use residential-professional office development project, comprising 44 dwellings in an undisclosed mix of condominium and timeshare or vacation rental units, a ± 1500 -square-foot medical/professional office, a ± 700 -square-foot sales office, and off-street parking configured as 11- and 4-space exterior lots and a 62-space interior parking facility to be developed below-grade beneath the building. The structure housing these uses would encompass a 24,575-square-foot building envelope containing 98,755 square-feet of floor area extending to a three-story height of approximately 35 feet. On January 22, 2008, the City Council of Crescent City denied a local appeal of the Planning Commission's approval. On January 24, 2008, the *Notice of Final Local Action* was received from the City initiating a ten-working day appeal period running from January 25 through February 7, 2008.

On January 28, 2008, an appeal was filed with the Commission's North Coast District office by Kirk Roberts and Natalie Fahning. Subsequently, on February 7, 2008, a second appeal was filed by Commissioners Wan and Reilly.

The first appeal was based on contentions that the project as approved and conditioned by the City: (1) was inconsistent with case law regarding the deferral of the identification of mitigation measures regarding geologic stability and hazard exposure, and the protection of coastal water quality; (2) failed to investigate and address possible effects on marine organisms in shoreline areas adjacent to the project site; (3) was inconsistent with the policies and standards of City's certified land use plan and zoning relating to permissible uses of the property, as detailed in previous Commission correspondence; (4) would result in the loss of historical access by emergency vehicles to the adjoining beach; (5) did not address the degree to which the development would minimize landform alteration; (6) failed to identify actual visual resource impacts of the project in terms of view blockage and surrounding area compatibility; and (7) did not address how the development would affect public access and recreational uses of the area, including whether additional access facilities and/or support parking would be provided.

The second appeal asserted that the conditionally approved project is inconsistent with the provisions of the City's LCP and/or Coastal Act access and recreational policies pertaining to: (1) protection and provision of public access; (2) permissible land uses; (3) residential density and lot area standards; (4) minimization of geologic risks; (5)

protection of environmentally sensitive habitat areas; (6) assured maintenance of coastal water quality; and (7) visual resources protection.

Commission staff recommends that the Commission find that the development, as approved by the City, raises a substantial issue with regard to several of the contentions raised in the appeals. First, staff recommends that the Commission find that the approved development raised a substantial issue as to whether the development of the proposed residential complex without public access facilities would be consistent with the policies of the Coastal Act and the certified LCP regarding coastal access. A principal consequence of the approved project is that the facility will introduce new residential occupants who will utilize nearby coastal access and recreational areas. Without access facilities to offset this increased demand, overuse of nearby access and recreational facilities may result. In addition, although the approved site plans depict a linkage to existing vertical and lateral public access trails, including an apparent walkway leading to the beach labeled as “beach access” in the approximate location of an existing trail to the shoreline, it is not clear from the exhibit whether the walkway would be available for public use and under what limitations. In addition, no public access was formally required to be provided by the project as approved.

Staff recommends that the Commission find that a substantial issue is raised with respect to the approved development’s conformance with the LCP policies and standards for the “Medical Related” (MR) land use designation and the implementing “Coastal Zone Residential-Professional” (CZ-RP) zoning district. Upon its certification in 1983, the City’s LCP established policies and standards for approvable development within the areas designated MR on the maps of the Land Use Plan (LUP). The LUP description for the Medical Related land use designation is, “Encourages the development of (*sic*) concentration of medically related services adjacent to the hospital.” Accordingly, as no other category of land use other than medical-related services is enumerated, a substantial issue is raised with respect to consistency with the LUP identified land uses policies the approval of the residential and sale office components.

Staff further notes that, notwithstanding the issue regarding categorical permissibility, the project was approved at a residential concentration in excess of the LCP’s density standards as extrapolated from the site’s Coastal Zone Residential Professional (CZ-RP) zoning district regulations. The approved project entails the development of an unspecified mixture of 44 condominium, time-share, or vacation rental units on a 1.24-acre parcel, which results in a residential density of 35.48 dwelling-units-per-acre (d.u./ac.). In addition to the fact that no residential density standard is provided for the Medical Related land use designation — as residential development is not identified as a permissible use — this development density would also be in excess of the 29.04 d.u./ac. density maximum derived from the CZ-RP zoning district’s lot area per dwelling development standard. Consequently a substantial issue is raised with respect to consistency with the residential density standards of the certified LCP.

Staff also recommends that the Commission find that a substantial issue is raised with related LCP regulations regarding the approved development’s consistency with

minimum lot area standards. In addition to the questions raised with respect to the permissibility and density of the approved mixed-use development, the project was authorized with an attached condition that the applicant either amend the project or secure a variance to the CZ-RP zoning district standards regarding minimum lot area per residential unit. Based on the approved site plans, the project as approved took the form of 44 residential units on an undivided 1.24-acre parcel. A reduction in the number of residential units to 36 would arguably bring the project into conformance with this zoning standard. However, the project description references an undisclosed number of the residential units being parcelized into condominium units and time-shares or vacation rentals. Accordingly, by deferring determinations on consistency with the lot-area-per-residential-unit standard to a later, staff level, ministerial approval that might not include a full review of the implications of the modified project on coastal resources, and providing for such a wide variety of possible project modifications to bring the development into conformance with the standard, a substantial issue is raised as to the consistency of the project, as might eventually be administratively approved by the City, with an assortment of LCP policies and standards, including protecting and providing for coastal access and recreational opportunities, safeguarding environmentally sensitive areas, and protecting visual resources.

Commission staff also recommends that the Commission find that the project as approved raises a substantial issue of conformance with the policies of the certified LCP regarding requirements for avoidance and minimizing exposure of persons and property to geologic and flooding hazards. The project site is located on an oceanfront parcel where coastal retreat risks to future development have been previously identified within the LCP. In addition, the site is at an elevation and situated in the vicinity of where past tsunami inundation has occurred.

Although the City required the applicant, as condition of permit issuance, to prepare a geo-technical analysis for the project site addressing a variety of specified risks and hazards, no such studies were required or received prior to approval of the mixed use development to demonstrate that the project as approved is safe from geologic and flood hazards. Therefore, the project as approved by the City raises a substantial issue of conformance with the LCP provisions requiring that development be sited and designed to minimize geologic and flood hazards exposure.

Staff also recommend that the Commission find that a substantial issue is raised with respect to the protection of environmentally sensitive habitat areas. Although the project site is situated along the open ocean shoreline, the analysis of the development's effects on nearby intertidal wetland areas was limited to noting their presence and dismissing their wetland status, with no evaluation conducted as to whether the mandatory 50-foot-wide buffer between such areas and the project improvements would be provided.

Staff also recommend that the Commission find that a substantial issue is raised regarding the protection of coastal water quality. No preliminary drainage plan or stormwater management plan was reviewed as part of the City's review of the development. Although a condition of approval attached to the project's approval

requires that water quality best management practices be utilized, including either volumetric or discharge treatment to the 85th percentile storm events, the feasibility of achieving the stated treatment goals is doubtful given the extensive structural coverage of the project site, and the approved development of a sub-surface parking structure near sea level, where the installation of such treatment facilities might necessitate expensive on-going pumping of runoff to an undisclosed location at a higher elevation and treatment and discharge.

Staff also recommends that the Commission find that the appeal raises a substantial issue with regard to the approved development's consistency with the LCP's visual resource policies and standards. The land use plan directs that design review conducted regarding the siting of new development such that the structural obtrusiveness and landform alteration are minimized, and that the development is compatible with the character of its surroundings. Although the City's hearing on the project included an architectural review, the public record for the project's approval does not directly explain how the approved development conforms with the criteria, especially with regard to a comprehensive evaluation of view blockage from public street and recreational area vantage points. Instead, the findings only compare the approved project's height with that of existing residential development on relatively more elevated lots in the project vicinity, analyze view corridor impacts only from certain limited to certain street intersections near the project site with conceding statements that the project would likely completely block street end vistas, and opine that no discernable architectural style existed in the area for which the project design need to conform.

Other contentions of the appeal are based on invalid grounds in that they do not raise allegations that the development does not conform to the policies and standards of the certified LCP and the public access policies of the Coastal Act. Staff recommends that the Commission find that the contentions that the project was approved and findings adopted without: (1) proper environmental review pursuant to the California Environmental Quality Act (CEQA) having been conducted; and (2) addressing the loss of emergency vehicle access to the adjoining beach are not founded on the basis that the approved development is inconsistent with the policies and standards of the City's LCP.

Staff further recommends that the Commission continue the *de novo* portion of the appeal hearing to a subsequent meeting because the Commission does not have sufficient information from the applicant to determine if the current project can be found consistent with various coastal resource protection policies of the certified LCP.

The Motion to adopt the Staff Recommendation of Substantial Issue is found on Page 7.

STAFF NOTES:

1. Appeal Process.

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea or within one hundred feet of a wetland or stream or three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or those located in a sensitive coastal resource area.

Furthermore, developments constituting major public works or major energy facilities may be appealed whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if development is located between the first public road and the sea¹, the public access and public recreation policies set forth in the Coastal Act.

The subject development is appealable to the Commission pursuant to both Section 30603(a)(1) and (2) of the Coastal Act because it is: (a) situated on a site that lies between the first public road and the sea or within 300 feet of the inland extent of any beach; and (b) located within 100 feet of any wetland.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that the appeal raises no substantial issue of conformity of the approved project with the certified LCP. Since the staff is recommending substantial issue, unless three Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to its *de novo* review.

¹ Per Section 13011 of the California Code of Regulations, the “first public road paralleling the sea” means that road nearest to the sea, as defined in Section 30115 of the Public Resources Code, which: (a) Is lawfully open to uninterrupted public use and is suitable for such use; (b) Is publicly maintained; (c) Is an improved, all-weather road open to motor vehicle traffic in at least one direction; (d) Is not subject to any restrictions on use by the public except when closed due to an emergency or when closed temporarily for military purposes; and (e) Does in fact connect with other public roads providing a continuous access system, and generally parallels and follows the shoreline of the sea so as to include all portions of the sea where the physical features such as bays, lagoons, estuaries, and wetlands cause the waters of the sea to extend landward of the generally continuous coastline.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised.

The only persons qualified to testify before the Commission on the substantial issue question are the applicants, the appellants and persons who made their views known to the local government (or their representatives). Testimony from other persons regarding substantial issue must be submitted in writing.

Unless it is determined that there is no substantial issue, the Commission will proceed to the *de novo* portion of the appeal hearing and review the merits of the proposed project. This *de novo* review may occur at the same or subsequent meeting. If the Commission were to conduct a *de novo* hearing on the appeal, because the proposed development is located between the first public road and the sea, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

2. Filing of Appeals.

The first appeal was filed by Kirk Roberts and Natalie Fahning; a subsequent appeal was filed by Commissioners Wan and Reilly (see Exhibit No. 6). The appeals to the Commission were filed in a timely manner on January 28, 2008 and February 7, 2008, respectively, within 10 working days of receipt by the Commission on January 24, 2008 of the City's *Notice of Final Local Action*.²

I. MOTION, STAFF RECOMMENDATION, AND RESOLUTION ON SUBSTANTIAL ISSUE:

Pursuant to Section 30603(b) of the Coastal Act and as discussed below, the staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

MOTION:

I move that the Commission determine that Appeal No. A-1-CRC-08-004 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

² Pursuant to 14 CCR §13110, the appeal period commenced on January 25, 2008, the next working day following the receipt of the City's *Notice of Final Local Action*, and ran for the 10-working day period (excluding weekends) through close-of-business on February 7, 2008.

STAFF RECOMMENDATION:

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

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-1-CRC-08-004 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS

The Commission received two appeals of the City of Crescent City's decision to conditionally approve the subject coastal development project from: (1) Kirk Roberts and Natalie Fahning; and (2) Commissioners Sara Wan and Mike Reilly. The City of Crescent City approved Coastal Development Permit (CDP) No. 07-06 for development of a 98,755-square-foot, three-story, 44-unit condominium/time-share/vacation rental residential development with medical/sales professional offices. The approved development is located at 200 "A Street in Crescent City, on the shoreline lot formerly housing the Del Norte Healthcare District's community clinic.

The appeals raise nine main contentions alleging inconsistency of the approved project with the City's certified LCP. The appellants' contentions are summarized below; the full text of the two appeals are included in Exhibit Nos. 6 and 7.

1. Coastal Access.

Both sets of appellants contend that the development as approved by the City is inconsistent with LCP and Coastal Act policies regarding the protection and provision of coastal access. This contention is presented in two sub-points:

- Other than observing the presence of nearby access facilities and concluding them to be adequate such that no further access need be required from the new development, no factual analysis was provided as to the effects 44 new residential

units in the area might have on these facilities, including associated support vehicular parking, either directly or cumulatively; and

- The approval by the City of the mixed-use development did not specifically declare whether the access facility leading to the adjoining as appears on the approved site plans would be available to the public and under what limitations, nor specifically require the accessway to be formally dedicated; and

The appellants assert that, given: (a) no factual evaluation was conducted with regard to potential facilities adverse over-crowding impacts; and (b) no continued availability of existing or provision of new access facilities was disclosed, the development as approved by the City is inconsistent with the policies and standards of the certified LCP and the Coastal Act regarding the protection of and provision of public access in the approval of new development.

2. Conformance with Permissible Use Limitations.

The appellants also contend that the mixed-use project as approved by the City, particularly its primary residential component, does not conform to the Land Use Plan in that no such use type is enumerated for the Medical Related land use designation. The appellants note that “medical related services” is the sole land use identified for the project site. The appellants assert that the City’s declaration in the findings that the certified Medical Related land use degradation has been nullified by the relocation of the county hospital from the adjacent parcel to another location does not actually change the certified land use designation and therefore the development as approved by the City is inconsistent with the identified permissible land uses of the City’s LUP.

3. Residential Density and Minimum Lot Area.

The appellants also contend that, notwithstanding the development being for a use type not specifically identified for the project site, the project would exceed established residential densities as set forth in the LCP and would not conform to prescriptive lot area per dwelling standards of the zoning district in which the site is located. In the face of no residential density standard being set for the Medical Related land use designation, the City extrapolated a density standard from the Coastal Zone Residential-Professional zoning standards. Even taking this approach, the development as proposed would exceed the derived density for the site. In response, the City applied a condition requiring the applicant to either increase the lot area per dwelling by reducing the number of dwelling units to achieve with a corresponding reduction in residential density, or obtain a variance from the Planning Commission. The appellants note that a reduction in the number of residential units from 44 to 32 units might arguably bring the project into density conformance (notwithstanding the issue regarding categorical permissibility). However, it is not clear such a reduction in units is feasible or that a variance would be granted. Therefore, the development as conditionally approved by the City is inconsistent with the policies and standards of the LCP, including its residential density and minimum lot area regulations.

4. Minimizing Geologic Hazards.

The appellants also observe that the development as approved by the City included no review for siting and designing the project so that geologic risks would be minimized and ensuring that the project would neither cause or significantly contribute to erosion, instability or the destruction of the site or surrounding areas. Instead, a condition was attached to the project approval requiring preparation of a geo-technical study prior to permit issuance. In deferring consideration of the potential effects the project may have on area stability and the reciprocal exposure of persons and property to geologic hazards through merely requiring administrative approval of future geo-technical studies, the permit approval provides no guarantee that an adequate inquiry into these environmental effects would be performed. Accordingly, the appellants contend that the project as approved is inconsistent with LCP provisions requiring that geologic risks be minimized.

5. Protection of Environmentally Sensitive Habitat Areas.

The appellants also raise an issue of the approved development's consistency with the LCP policies regarding the protection of environmentally sensitive habitat areas from two perspectives. Appellants Roberts and Fahning note that consideration of the project's potential direct and/or cumulative adverse effects on marine organisms on the adjacent shoreline was largely ignored. Secondly, Appellant-Commissioners Wan and Reilly note that the City specifically dismissed the applicability of the LUP's 50-foot-wide minimum wetland buffer requirement to the intertidal wetland areas along the adjoining shoreline, undertaking no analysis to ascertain how close the development would be situated to these environmentally sensitive area. Accordingly, the appellants contend that the approved project is inconsistent with the LUP policies regarding the protection of ESHA and/or the biological productivity of coastal waters and the marine resources residing therein.

6. Protection of Coastal Water Quality.

The appellants also assert that the protection of water quality as required by the LUP was not assured in the approved project. Both sets of appellants referenced the deferral to a condition of permit issuance of the preparation of a mitigation and monitoring plan for implementing specified water quality best management practices in developing the project. Of particular note was the imposition of a requirement that the project be designed to treat, infiltrate, or filter stormwater from each storm event up to and including either the 85th percentile 24-hour storm event, if volume-based treatment is to be used, or the 85th percentile one-hour precipitation events, with an appropriate safety factor applied, for flow-based treatment measures. Both sets of appellants questioned whether the standard could be feasibly met given the amount of impervious cover authorized for the site and the intended development of a subsurface, near sea-level elevation parking structure where such treatment facilities might typically be installed.

7. Impacts to Visual Resources.

The appellants also contend that the approved project would cumulatively impact the visual resources of the area, especially as viewed from public vantage points along the public streets and parklands in the vicinity of the development, and from beach areas. The appellants assert that considerations for designing and locating new development to minimize its visual obtrusiveness were not duly examined, nor was the project design's compatibility with character of the surrounding area adequately considered.

8. Environmental Review.

Appellants Roberts and Fahning also assert that the development as approved by the City is inconsistent with the requirements of the California Environmental Quality Act (CEQA) with regard to the deferral of the identification of mitigation measures. The appellants note that both requisite measures for the protection of coastal water quality and minimizing risks of geological instability were relegated to post-authorization administrative approval of geo-technical analyses and water quality control plans with no assurance that such protections would feasibly afford such protections and/or adequately minimize such hazards contrary to the directives of relevant environmental review case law.

9. Loss of Emergency Vehicle Access.

Appellants Roberts and Fahning also assert that by authorizing the development to extend into the Second Street right-of-way, a historically available emergency vehicle accessway to the adjoining beach would be lost. This could adversely affect public safety arrival time to the beach, for example, in response to injuries or driftwood fires.

B. LOCAL GOVERNMENT ACTION

In June 2007, the City of Crescent City accepted for filing Coastal Development Permit, Conditional Use Permit, and Variance Application Nos. CDP 07-06, UP-07-02, and V-07-08 from Randy Baugh DBA: Development Consultants, Inc., to demolish the existing Del Norte Community Health Center complex located at 200 A Street, between Second and Third Streets (APN 118-020-34) and construct a 51-unit condominium and time-share residential project together with sales/professional office space. The project would encompass 104,320 square feet of structural improvements and extend to three stories. Other proposed improvements include underground parking areas, exercise and gazebo common open space areas, public access trail facilities, landscaping, walkways, signage and exterior lighting.

Following the receipt of agency and public comments on the project, on June 14, 2007 the City Planning Commission held an informational presentation and public input meeting on the project and took no action with respect to the requested permit authorizations.

In September 2007, the City received an amended coastal development and use permit application for a revised mixed-use project (see Exhibit No. 4). Included among the modifications made to the project in response to the comments received at the June meeting were: (1) a reduction number of residential units from 51 to 44 dwellings; (2) reducing overall floor area by 5,560 square-feet; (3) increasing on-site parking by 19 percent; (4) adding a 2,172 square-foot medical office component; (5) situating the building further from Third and A Street; and (6) making a number of architectural changes to the building. As a result of these project changes, a variance was no longer required and, instead, a concurrent architectural review (AR-07-11) was included for the project.

Following completion of the planning staff's review of the project, the preparation of a staff report, and requisite circulation of a public hearing notice, City staff set the coastal development and use permits for a hearing before the Planning Commission for December 13, 2007. The Planning Commission subsequently approved with conditions the subject development (see Exhibit No. 6). The Council attached ten special conditions requiring that: (1) the approval be limited to the demolition and mixed use project described in the revised development application; (2) the applicant file a *Notice of Determination* regarding the adoption of the environmental review document with the City Clerk within five days of project approval; (3) either the building height be modified so as to not exceed thirty-five feet (35') or the applicant obtain a variance approval from the Planning Commission for the excess height prior to permit issuance; (4) either increase the proposed lot area per dwelling be increased to a minimum of 1,500 square feet or the applicant obtain a variance from the Planning Commission for the smaller lot areas prior to permit issuance; (5) provide landscaping and irrigation plans be provided prior to permit issuance; (6) obtain a geo-technical report from a licensed geologist or civil engineer, subject to the approval of the City Engineer, that determines various aspects of geologic risk and stability on the site, including, but not limited to, the potential risks for inundation of the parking level and first occupied floor from storm surge or tsunamis, the potential for groundwater infiltration into the structure, and the establishment of the appropriate setback for the proposed structure on the ocean side prior to permit issuance; (7) future shoreline protective structures to protect the development from bluff erosion or seawater incursion be prohibited and a deed restriction, acceptable to the Planning Director, be recorded memorializing the prohibition prior to permit issuance; (8) best management practices (BMPs) for controlling storm water runoff and maintaining water quality be incorporated into development design and operation and that all post-construction structural BMPs (or suites of BMPs) for the project be designed to treat, infiltrate or filter stormwater runoff from each storm event, up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor, for flow-based BMPs; (9), the applicant submit and obtain approval from the City Engineer of a mitigation and monitoring program that will identify, implement and track the performance of the BMPs prior to issuance of the building permit; and (10) no soil, materials or debris of any kind be disposed of onto the adjoining open space (beach) area.

On December 28, 2007, the City received written correspondence from Glen Tiffany of his intent to appeal the Planning Commission decision on CDP-07-06, UP 07-08, and AR 07-11 to the City Council.

On January 22, 2008, the City Council denied Mr. Tiffany's local appeal, reinstating the coastal development permit approved by its Planning Commission on December 13, 2007 and adding an eleventh project condition requiring the applicant, prior to permit issuance, to submit proof that his title to the property is not clouded by the City's 1961 abandonment of the West Second Street right-of-way.

The decision of the City Council regarding the conditional approval of the permits for the telecommunication facility improvements was final. The City then issued a *Notice of Final Local Action* on January 23, 2008 that was received by Commission staff on January 24, 2008. The appellants filed their appeals to the Commission in a timely manner on January 28, 2008 and February 7, 2008, within 10 working days after receipt by the Commission of the *Notice of Final Local Action* (see Exhibit No. 6).

C. PROJECT AND SITE DESCRIPTION

The approved project consists of the mixed-use residential and professional complex comprised of 44 dwellings in an undisclosed mix of condominium and timeshare or vacation rental units, a \pm 1500-square-foot medical/professional office, a \pm 700-square-foot sales office, and off-street parking configured as 15-space exterior lot and a 62-space interior parking facility to be developed below-grade beneath the building. The structure housing these uses would encompass a 24,575-square-foot building envelope containing 98,755 square-feet of floor area extending to a three-story height of approximately 35 feet. Once constructed, the main structure would cover approximately 45 percent of the 1.24-acre site and span approximately 272 feet across the 300-foot width of the property. Other approved improvements include a covered entry, walkways, signage, exterior lighting, and paved parking areas for 153 vehicles (see Exhibit No. 3). Other approved improvements include exercise and gazebo common open space areas, landscaping, walkways, signage and exterior lighting.

The subject site is located along the ocean shoreline within the incorporated limits of the City of Crescent City, at 200 "A" Street between Second and Third Streets, approximately 1,000 feet northeast of the Battery Point Lighthouse. The subject property encompasses approximately 1.24-acre and extends across the width of one city block between Second and Third Streets, westerly of "A" Street, at the former site of the Del Norte Community Health Clinic (see Exhibit Nos. 1-3). Following relocation of the clinic to a location in the vicinity of the Sutter Coast Hospital on Washington Boulevard in northern Crescent City, use of the project site for medical facilities was discontinued. The site was subsequently sold to the applicant in 2007.

The project site's primary frontage is along "A" Street, which functions as a sub-collector route, conveying vehicular and other modes of traffic from the residential areas to the north to and from the open space and public facility areas adjacent to the Crescent City

Harbor to the southeast. Land uses in the immediate vicinity of the property to the north are primarily single-family residential in character, with a hotel and future phased restaurant development located directly to the south of the project site between Second and Front Streets, at the former site of the Seaside Hospital, razed in 1994.

The subject property has two land use designations: “Residential” (R) on the northeasterly 7,200 square-foot portion of the site at Third and “A” Streets and Medical Related (MR) on the remaining 1.07-acre portion extending along “A” Street to the Hampton Ins and Suites site. The Residential land use designation provides for up to six units per acre of single-family and duplex apartment residential development and is described as a transition to high density zoning. The purpose of the Medical Related land use designations is stated as intended for encouraging “the development of concentration of medically related services adjacent to the hospital.” In addition, a text policy within the Public Works Chapter of the LUP states that: “...the specific area between Battery Street on the south to Second Street on the north to ‘C’ Street on the east to the Pacific Ocean on the west” shall be reserved for “the expansion of Seaside Hospital.” (Note: Although this use limitation may be seen as antiquated insofar as it was primarily intended to guide project area development when a medical facility existed on the adjacent site, it still appears as a current policy within the certified LCP.) Similar to that for all land use categories other than “Residential” and “Multi Family” designations, no residential density standard is stated for the Medical Related designation.

The property is zoned Coastal Zone Two-Family Residential (CZ-R2) and Coastal Zone – Residential Professional (CZ-RP) corresponding to the areas designated with “Residential” and “Medical Related land use designations. Adjoining residentially developed properties are zoned CZ-RP and Coastal Zone – Single-Family District (CZ-R1), with the adjoining hotel and restaurant complex having “Coastal Zone Commercial Waterfront” (CZ-CW) zoning. The project’s building improvements would be located within the CZ-RP-zoned portions of the site while an eleven space parking facility would be located within the CZ-R2-zoned northeasterly portion of the site.

The subject property is currently developed with a one-story, approximately 10,000-square-foot, one-story former medical clinic building and an additional approximately 25,000 square-feet of paved exterior off-street parking areas. The easterly $\frac{2}{3}$ of the site is generally flat with the rear $\frac{1}{3}$ of the lot sloping slightly downward toward the adjoining beach. The parcel is not located within a formally designated highly scenic area, as the City’s LCP does not make that distinction for any specific sites, but focuses instead on the “scenic highway corridor” visible from Highway 101 at the City’s southern entrance. Nevertheless, views from the project site are spectacular, consisting of nearby headlands, the Battery Point Lighthouse, and numerous offshore sea stacks. Due to the terrain of the property and the presence of adjoining residential-profession development, views to and along the coast from immediately in front of the project site from public streets and other vista points are somewhat constrained.

The project site is located immediately landward of an open sandy beach and rocky intertidal area. However, no sensitive habitat is present on the property.

D. SUBSTANTIAL ISSUE ANALYSIS

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

1. Appellants' Contentions That are Valid Grounds for Appeal.

Seven of the nine sets of contentions raised in the appeals present potentially valid grounds for appeal in that they allege the approved project's inconsistency with policies of the certified LCP. These contentions allege that the approval of the project by the City is inconsistent with LCP provisions regarding: (1) provision and protection of public access; (2) permissible development within areas designated with a Medical Related land use designation; (3) residential density limitations and minimum lot area per dwelling standards; (4) minimizing geologic hazards; (5) protecting environmentally sensitive habitat areas; (6) ensuring coastal water quality; and (7) impacts to visual resources.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Title 14, Section 13115(b), California Code of Regulations.) In previous decisions on appeals, the Commission has been guided by the following factors:

- The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
- The extent and scope of the development as approved or denied by the local government;
- The significance of the coastal resources affected by the decision;

- The precedential value of the local government's decision for future interpretations of its LCP; and
- Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure Section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the allegations concerning the consistency of the project as approved with the provisions of the LCP regarding: (1) provision and protection of public access; (2) permissible development within areas designated with a Medical Related land use designation; (3) residential density limitations and minimum lot area per dwelling standards; (4) minimizing geologic hazards; (5) protecting environmentally sensitive habitat areas; (6) ensuring coastal water quality; and (7) impacts to visual resources, the appeal raises a substantial issue with regard to the approved project's conformance with the certified City of Crescent City LCP. In addition, the Commission finds the appeal raises a substantial issue with regard to the approved project's conformance with the public access and recreation policies of the Coastal Act.

a. Allegations Raising Substantial Issue

1. Coastal Access and Recreation.

Appellants' Contentions:

The appellants state the following with respect to the allegation that the development as approved by the City is inconsistent with the policies of the LCP and the Coastal Act relating to public access and recreation:

Roberts/Fahning: Failure to address conformity with the public access and public recreation policies of Chapter 3 (P.R.C. Section 30604(c)). Although access next to the Hampton Inn is possible, parking is not available for the general public. The *Coasta Norte* project does not address access or parking accessibility for the general public.

Wan/Reilly: In reviewing the project the City justified its lack of requiring provisions for public access in new development by observing the proximity of nearby accessways. Neither in the consideration of the coastal development and use permits or the environmental document did the City consider substantive information regarding the potential effects of overuse on nearby coastal natural resource areas from a 44-unit residential complex. Analysis was limited to a conclusory statement based on the observation that, "Because adequate access exists both on the parcel and

nearby, additional public access is not required for this project.” However, no conditions were attached to the permit approval requiring that the referenced onsite accessway be formally dedicated, improved, maintained, or otherwise made available for the public’s use.

Therefore, the Planning Commission’s approval of the coastal development permit is inconsistent with Coastal Act Sections 30210 and 30212, and LUP Recreation and Visitor-Serving Facilities Policy No. 1, as no public access was required and the City did not factually consider the potential for overuse of nearby coastal natural resource due to increased coastal access demand associated with the project (i.e., beach crowding) or potential impacts from the development to Open Space public trust amenities (e.g., access to state waters, opportunities for nature study involving beach vistas, intertidal areas, or geological features). Neither did the City review the adequacy of existing public accessways to meet recreational needs as directed by Coastal Act Section 30210 and 30212(a)(1) and (2), and LUP Public Access Policy No. 1.

Applicable LCP Policies and Standards:

Section 30210 of the Coastal Act states:

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.
[Emphasis added.]

Coastal Act Section 30211 directs:

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. [Emphasis added.]

Coastal Act Section 30212(a) states:

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) *It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*
- (2) *Adequate access exists nearby, or,*
- (3) Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use

until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.
[Emphases added.]

LUP Public Access Policy No. 1 states in applicable part:

The City recognizes the importance of access to and along (the) shoreline... If in the future, the City finds that existing public accessways are inadequate to meet recreational needs, it shall encourage the development of additional accessways consistent with the City's ability to pay maintenance costs and obtain funding to develop said areas.
[Emphases added.]

LUP Public Access Policy No. 3 states, in applicable part, "*The City shall assure that the public can easily locate existing access points...*" [Emphasis added.]

Discussion:

The approved project consists of new development between the sea and the first public road. The coastal development permit granted by the City does not require the creation of any public access facilities. It should be noted that the City Council did consider the effects the vacation of West Second Street in 1961 and further conditioned the permit approval to demonstrate that no residual access rights exist to use that former "paper street" area. In addition, although the City stated that "access exists both on the parcel and nearby," the location of the referenced onsite access was not specifically identified, including any limitations on its use, nor was it required to be formally dedicated and maintained as part of the coastal development permit approval.

In acting on this appeal, the Commission is reviewing whether there is a substantial issue on conformance of the coastal development permit as approved with respect to conformance with Coastal Act and LCP public access policies. There are no findings as part of the project record that would indicate that, even with the purported onsite accessway being made available for continued public use, impacts of the project on public access would be adequately offset. The appellants contend that as the project would increase the demand for public access by bringing many new residents and visitors to the site, the project could have significant adverse impacts on public access that may indicate that new access facilities are needed to offset the intensified use levels.

In its approval of the proposed project, the City noted the presence of onsite and nearby access facilities and apparently concluded that these facilities had sufficient capacity to accommodate the increased use. Although the City stated in the project environmental document that the increased demand for access and recreational facilities was considered, no factual analysis of existing access use patterns, the capacity of the nearby support facilities, the projected increase in access demand due to the presence of the new residential units, or the adequacy of the onsite and nearby accessways to offset increased demand was conducted. Accordingly, the City did not assess potential overuse of natural

resources areas or the adequacy of existing accessways as directed within the Coastal Act and LCP Public Access Policy Recommendation No. 1, cited above.

Taking into account the guiding factors cited previously for determining whether an issue that has been raised on appeal is substantial, the Commission finds that a substantial issue exists with regard to the project's conformance with the public access and recreation policies of the Coastal Act and the LCP for the following reasons:

- The degree of factual and legal support for the local government's decision that the development is consistent with the public access and recreational policies of the certified LCP and the Coastal Act is minimal and conclusory. No substantive study of the effects of the increased demand associated with the proposed development on nearby access facilities, coastal recreational facilities, or natural resource areas, was conducted. In addition, the need for additional accessways and the appropriateness of accepting an offer of dedication for public access specific to the project site, as directed in the LCP, were not reviewed;
- The extent and scope of the development approved by the local government is significant to the site and the community in terms of the physical size of the proposed improvements and the intensity of resulting land use; and
- The shoreline amenities in proximity to the project site, including the adjacent beachfront, Battery Point Lighthouse, Beachfront Park, Harbor-City Bicycle Path, and Third Street and Hampton Inn accessways are significant local and regional coastal access and recreational resources that could be adversely affected by the City's decision.

Therefore, the Commission finds that the project as approved by the City raises a substantial issue with respect to conformance of the approved project with the LCP and Coastal Act policies regarding coastal access.

2. Permissibility of Residential Development within Medical Related Land Use Designations.

Appellants' Contentions:

The appellants also contend that the mixed-use project as approved by the City, particularly its primary residential component, does not conform to the Land Use Plan in that no such use type is enumerated for the Medical Related land use designation. The appellants note that "medical related services" is the sole land use identified for the project site. The appellants assert that the City's declaration in the findings that the certified Medical Related land use degradation has been nullified by the relocation of the county hospital from the adjacent parcel to another location does not actually change the certified land use designation and therefore the development as approved by the City is inconsistent with the identified permissible land uses of the City's LUP.

Applicable LCP Policies and Standards:

The LUP's Coastal Land Use Plan Map Designations read, in applicable part:

The Land Use Map for the Coastal Zone of the City of Crescent City contains seven land use designations for the City's coastal zone. The following is a summary of the designations:

Residential: Up to six units per acre, would include the present R-1, R-1B zones and would allow R-2 zoning as a transition to high density zoning.

Multiple Family: Over six units per acre, would allow R-2 zoning as a transition to residential areas...

Medical Related: Encourages the development of concentration of medically related services adjacent to the hospital... [Emphases added.]

Coastal Zone Zoning Regulations (CZZR) Section 17.60.010 provides, in applicable part, the following directive as to the form and content of the coastal zone regulations:

The coastal zone zoning regulations shall consist of a zoning map designating certain districts, an appeal map describing appeal districts, and a set of regulations controlling the uses of land, and density of population, the uses and location of structures, the height and bulk of structures, the open spaces and yards about structures, the appearance of certain uses and structures, the areas and dimensions of sites, locations, size, illumination, and requirements for the provision of off-street parking and off-street loading facilities. [Emphases added.]

CZZR Section 17.60.050 continues on to address the intended scope of the coastal zoning regulations,

These regulations shall apply to all property whether owned by private persons, firms, corporations, by the state or any of its agencies or political subdivisions, by any county or city including the city, or any of its agencies or by any authority of the district organized under the state. [Emphasis added.]

CZZR Section 17.63.080 sets specific restriction of permissible development, in applicable part, as follows:

A. *A building shall only be erected, converted, reconstructed, or structurally altered, and any building or land shall only be used for any purpose as permitted in the district in which such building or land is located.*

B. A building shall only be erected, reconstructed, or structurally altered which complies with the height or bulk limits established in these regulations for the district in which such building is located.

C. The lot area shall be so preserved that the yards or other open spaces shall be as prescribed in these regulations... [Emphases added.]

Discussion:

The appellants contend that the development as approved by the City is inconsistent with LCP policies regulating development within the Medical Related (MR) land use designated areas in the City. This contention is presented in several sub-points as follows:

- Notwithstanding the demolition of the Seaside Hospital and subsequent development of a visitor-serving hotel use on the adjoining parcel, the relocation of the former hospital and community health clinic uses of the project area, and the sale of the project site to a private development firm, the Land Use Plan as currently certified directs that the project site be reserved for development and concentration of medical services related and appurtenant to former hospital use;
- Although the implementing zoning district standards for the project site identify a number of additional principal and conditionally permissible uses to professional offices that could provide the medical services uses as directed by the land use designation, the Coastal Act and the City's coastal development regulations require that authorized development be consistent with the whole of the LCP, including both its LUP and zoning district standards; and
- Notwithstanding the arguable qualifications of the project as a permissible use within the locally-adopted (2001) and subsequently locally-amended (2006) Visitor and Local Commercial (VLC) land use designation, the change in the site from MR to VLC has not been certified by the Commission; and
- Similar to that done for the preceding adjacent hotel development, prior to authorizing a permit of the subject appealed development, the City should first seek certification from the Commission of an amendment to their local coastal program to reclassify the land use designation of the project site to VLC or another designation that might facilitate the subject mixed-use development. As this was not done, the requisite findings for issuing coastal development and conditional use permits were not made with respect to the approved development's consistency with the policies and programs of the land plan and applicable provisions of the zoning ordinance in force at the time of the permit action.

The appellants assert that, given: (a) the strict limitation on the types and intensities of development to be authorized on the project site as directed in the Land Use Plan; (b) the directive of Coastal Act Section 30600.5(c) that a coastal development permit be issued

by the respective local government only if the proposed development is in conformity with the certified land use plan; and (c) the new residential / sales office uses do not qualify as the one type of permissible development within the MR designation, the development as approved by the City is inconsistent with the policies and standards of the certified LCP governing development within MR land use designated areas.

In its findings for project approval, the City: (a) acknowledge that the approved development would not fully comport with the LUP directive for reserving the project site for medical services uses; (b) noted the changes that had occurred in the project vicinity, including the relocation of the hospital and clinic uses to other portions of the City; and (c) concluded the use limitation of the Medical Related land use designation to be solely advisory (i.e., merely “encourages” medical services) or null and void given the change in conditions in the project area. Yet, as is often the case, a given zoning district providing for a variety of principal and conditional uses, may be established for a site to implement a land use designation having only very limited recognized uses. Indeed, this is case in Crescent City, where the compatibility chart within the LUP identified the CZ-RP zoning district as a compatible with “Residential,” “Multiple Family,” and “Commercial” land use designations in addition to the Medical Related category. This practice is further underscored by the fact that there is no parallel “Medical Services” zoning district to implement the highly-restricted Medical Related land use designation. Therefore, although the zoning district standards may identify a diversity of development types and uses for a given designated area, authorization of any of those enumerated uses must nonetheless be found consistent with the land use plan, including a site’s overarching land use designation.

Moreover, the development was approved in the absence the City first amending the problematic land use plan provision to one which would better suit contemporary conditions, contrary to established Coastal Act procedures and past City practices. Therefore, there is not a high degree of factual and legal support for the local government’s decision that the development is consistent with the certified LCP. In addition, the local government's decision would establish a precedent with problematic implications for future interpretations of the LCP regarding proposals involving development not specified in a given land use or zoning designation. Therefore, the Commission finds that the project as approved by the City raises a substantial issue with respect to the conformance of the approved project with the land use plan designation for the site.

3. Conformance with Residential Density and Lot Area Regulations

Appellants’ Contentions:

The appellants also contend that, notwithstanding the development being for a use type not specifically identified for the project site, the project would exceed established residential densities as set forth in the LCP and would not conform to prescriptive lot area per dwelling standards of the zoning district in which the site is located. In the face of no residential density standard being set for the Medical Related land use designation, the

City extrapolated a density standard from the Coastal Zone Residential-Professional zoning standards. Even taking this approach, the development as proposed would exceed the derived density for the site. In response, the City applied a condition requiring the applicant to either increase the lot area per dwelling by reducing the number of dwelling units to achieve with a corresponding reduction in residential density, or obtain a variance from the Planning Commission. The appellants note that a reduction in the number of residential units from 44 to 32 units might arguably bring the project into density conformance (notwithstanding the issue regarding categorical permissibility). However, it is not clear such a reduction in units is feasible or that a variance would be granted. Therefore, the development as conditionally approved by the City is inconsistent with the policies and standards of the LCP, including its residential density and minimum lot area regulations.

Applicable LCP Policies and Standards:

The LUP's Coastal Land Use Plan Map Designations read, in applicable part:

The Land Use Map for the Coastal Zone of the City of Crescent City contains seven land use designations for the City's coastal zone. The following is a summary of the designations:

Residential: Up to six units per acre, would include the present R-1, R-1B zones and would allow R-2 zoning as a transition to high density zoning.

Multiple Family: *Over six units per acre, would allow R-2 zoning as a transition to residential areas...*

Medical Related: *Encourages* the development of concentration of medically related services adjacent to the hospital... [Emphases added.]

CZZR Section 17.67.030 establishes prescriptive standards for development occurring within CZ-RP zoning districts as follows:

- A. *Height. Maximum building height shall be thirty-five feet.*
- B. *Yards and Areas.*
 - 1. *Front Yards. Twenty feet for residential uses, ten feet for nonresidential uses;*
 - 2. *Side Yards. Minimum five feet for interior and corner lots. Reverse corner lots³ shall have a side yard equal to one-half the required front yard of the lots abutting the rear of such reversed corner lots;*

³ CZZR Section 17.61.135 defines "reverse corner lot as "a corner lot which rears upon the side of another lot, whether or not across an alley." Regardless of whether "A" Street or Third Street is designated as the front lot line of the subject property, the project parcel meets the definition of a "reverse corner lot." According, a minimum 10-foot-wide side yard area requirement is indicated for the development site.

3. Rear Yards. Ten feet;
4. Lot Area. Minimum six thousand square feet for residential uses. No minimum for non-residential uses;
5. Lot Area Per Dwelling Unit. A minimum of fifteen hundred square feet per dwelling unit, except that single-family uses shall conform to the CZ-R1 requirements and duplexes shall conform to the CZ-R2 requirements;
6. Lot Coverages. For nonresidential uses, no requirements. For residential uses, coverage shall be the same as required in the most restrictive zone in which they are first permitted. [Emphases added.]

CZZR Section 17.78.070 sets specific requirements with respect to the presence of structural development within minimum yard areas:

Every part of a required yard shall be open from its lowest point to the sky unobstructed except for the ordinary projections of sills, belt courses, cornices, buttresses, ornamental features and eaves; provided, however, that none of the above projections shall project into a minimum side yard more than twenty-four inches nor into a minimum front or rear yard more than forty-eight inches. Notwithstanding any of the above, development may only occur fifty feet beyond the landward edge of a wetland. [Emphases added.]

CZZR Section 17.78.080 through 17.78.100 provide for a variety of exceptions to front, rear, and side yard area setbacks, stating in applicable part:

Eaves, cornices and marquees on buildings for which no front yard or street side yard is required may project over the street property line providing that no such eaves, cornices or marquees shall project over the street line more than two feet...

Open fire escapes, open porches, outside stairways and balconies may project into the minimum front and rear yards by less than four feet...

Chimneys, flues and water softener tanks and air conditioners may project into a minimum side yard; provided that such structures or equipment shall not extend or project nearer than three feet to the side property line. [Emphases added.]

Discussion:

The appellants contend that the project as approved by the City, notwithstanding its apparent lack of status as a permissible type of development within Medical Related land use designated areas, does not conform to the residential limitations and lot-area-per dwelling standard of the Coastal Zone Residential-Professional (CZ-RP) zoning district.

The appellants assert that the City's rationale for approving the project's residential componentry and site configuration was based largely on findings that the project's density was consistent with the Visitor and Local Commercial land use designations local-adopted 6 to 60 dwelling units per acre standard. Accordingly, as an amendment to the City's LCP to apply the VLC designation on the project site has not been certified by the Commission, the appellants conclude that the development as approved by the City is inconsistent with the density limitations of the City's currently certified MR land use designation (no residential use or density stated) and/or the CZ-RP zoning regulations (29 dwellings per acre as derived from the 1,500-sq.ft. per dwelling minimum lot area standard).

In reviewing the local record for the project, the Commission finds that a substantial issue is raised concerning the City analysis as to the permissibility of the approved development's density from two perspectives. First, with respect to the applicability of the Visitor and Local Commercial land use designation's 6 to 60 dwelling units per acre limitation, the City states:

Because the City Council adopted the updated general plan in 2001, staff recommends that any proposed land use should also be consistent with the VLC designation. This is because in order to approve any entitlement, the Planning Commission and/or the City Council must find consistency with the general plan.

This interpretation does not take into account the fact that, despite its local adoption, an LCP amendment to apply the VLC designation to the project site has not been certified by the Commission. Accordingly, the "general plan" density standard for which the project must be found consistent is that set forth within the currently certified LCP. Therefore, the City's discussion regarding possible project compliance with local-adopted, superseding density provisions within the yet-to-be Commission certified VLC land use designation is not based upon the approved development's conformance with the policies and standards of the certified LCP.

Secondly, with regard to its analysis of the development's consistency with the CZ-RP's 1,500-sq.ft. lot area per dwelling unit standard, the City states:

Although the description of the Medical Related designation does not provide a residential density range or limit, the implementing and consistent zoning district, CZ-RP (Coastal Zone Residential-Professional), allows multiple-family uses and does provide an indication of the density standard that probably should have been noted in the description of the Medical Related designation. The CZ-RP development standards require a "minimum of fifteen hundred square feet per dwelling unit," which implements 29 dwelling units per acre. [Emphases added.]

With regard to this analysis, the Commission finds, and appellants Wan and Reilly note, the description of the City's coastal zoning regulations at Section 17.60.010 do imply that, in addition to a variety of other prescriptive standards, density standards are included within the contents:

The coastal zone zoning regulations shall consist of a zoning map designating certain districts, an appeal map describing appeal districts, and a set of regulations controlling the uses of land, and density of population, the uses and location of structures, the height and bulk of structures, the open spaces and yards about structures, the appearance of certain uses and structures, the areas and dimensions of sites, locations, size, illumination, and requirements for the provision of off-street parking and off-street loading facilities. [Emphases added.]

Accordingly, while the approach taken by the City to derive a density standard from the zoning district *pro rata* lot area standard might arguably have some merit. However, such an approach tacitly ignores that no specific density standard or provision for residential development is expressly stated in the LUP's description of the Medical Related land use designation. Moreover, the Commission finds the City's suggestion that the CZ-RP zone's inclusion of single- double- and multi-family residential dwellings among the classes of permissible development indicates that the Medical Related land use designation similarly provides for residential development is a highly presumptuous interpretation of the designation's intended scope, and is not supported by any language in the LUP's description of the Medical Related land use designation.

Finally, with regard to the resolving the project's inconsistency with the CZ-RP zones lot area per dwelling standard, the City states:

The project proposes 1,227 square feet of lot area per dwelling unit. This aspect is not consistent with the minimum fifteen hundred square feet of lot area per dwelling unit contained in 517.67.030.B.5; therefore, staff has added a condition of approval requiring that the applicant either increase the proposed lot area per dwelling unit or obtain variance approval from the Planning Commission. [Emphasis added.]

The Commission finds the permit condition to be problematic in two ways; First, increasing the lot area per dwelling unit would require the applicant to find approximately 12,000 square-feet of additional lot area at a minimum, to add to the project site. Other than possibly purchasing the vacant lot adjoining the project site across "A" Street to the east and incorporating the parcel into the project site plan, there appears to be no feasible way to satisfy the lot area standard.

Secondly, securing a variance would likely be similarly difficult as among the findings that must be made to approval the deviation for lot area conformance as set forth in CZZR Section 17.85.010.A through G is that, "*there are exceptional and extraordinary circumstances applicable to the property involved,*" it is "*limited to that*

necessary to correct the discrimination or undue hardship,” and “the variance is necessary for the preservation and enjoyment of the substantial property right possessed by other property in the same vicinity and zone and denied to the property in question.” Based upon the information in the public record for the project, the Commission does not find where such adverse circumstances, hardships, and discriminations are indicated for the project and/or its site. Accordingly, such a variance would likely constitute the granting of “a special privilege not shared by any other property in the same vicinity and zoning classification,” an action prohibited both by the City’s ordinance and the enabling state land use law.⁴

Finally, the delegation of the determination of conditional compliance to a staff level, effectively ministerial determination, may also result in heretofore undisclosed impacts on coastal resources. As stated in the project description, the development entails 44 residential units “in an undisclosed mix of condominium and timeshare or vacation rental units.” However, the applicant has not explained how and when such parcelization might occur and the City took no action with respect to subdivision of the site, either in concept or in formal approval of a tentative tract map and/or condominium plan. Thus, if the project were to be revised to include revisions to provide the requisite minimum lot area per dwelling by parcelization and/or reconfiguration of the building or site plan in a way as to still be overall compliance with the height and size authorizations set forth in Condition of Approval No. 1, effects on a variety of coastal resources, including public access, adjacent environmentally sensitive areas, water quality, and visual resources could result which had not been addressed in the review of the original permit application.

Given the relatively low degree of factual and legal support for the local government's decision, and the precedential implications on future interpretation of the LCP for proposals not meeting prescribed development standards, the Commission finds that a substantial issue is raised as to the approved development’s consistency with the certified LCP with respect to the density limitations and lot area standards for residential development in CZ-RP zoning districts.

4. Minimization of Geologic Risks.

Appellants’ Contentions:

The appellants state the following with regard to the contention that the project as approved is not consistent with the LCP policies directing that geologic risks should be minimized:

Roberts/Fahning: Conditions for approval of CDP07-06... re: condition # 6... which rely on future studies.

⁴

See California Government Code Section 65906.

Wan/Reilly: The project site is located immediately adjacent to the open ocean shoreline along the west side of Crescent City north of the harbor area. The property is situated on an uplifted portion of the marine terrace which, unlike other areas to the north and south, rises gradually up from the beach to an elevation of 15 to 20 feet above mean sea level. An approximately 30-ft.-wide vegetated slope runs along the western margin of the property separating the building site from the open beach face. The beach face has a narrow sandy area grading into a rocky intertidal zone bounded with numerous offshore stacks.

In addition to being exposed to the coastal erosive forces of wind and storm surge, and shaking and possible subsidence associated with both near- and distant-source seismic events, the site is also in the immediate vicinity of the portions of Crescent City inundated by the tsunami waters propagated from the Great Alaska Earthquake of March 27, 1964.

The project entails the construction of 44 permanent residences and includes a sub-surface interior parking facility that would be developed at a sea level elevation. Despite the significant exposure of property and persons to these geologic and flooding hazards, no geo-technical analysis has been conducted for the project with respect to the site's shoreline retreat rate or site stability for the anticipated economic life of the proposed mixed-use structure. Accordingly, the City's approval of the project is inconsistent with LUP Diking, Dredging, Filling and Shoreline Structures Policy No. 3 regarding siting and design to minimize geologic and flood hazards exposure.

Applicable LCP Policies and Standards:

LUP Dredging, Diking, Filling, and Shoreline Structures Policy No. 3 states:

The City shall require that new development minimize risks to life and property in areas of high geologic hazard, 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. [Emphasis added.]

Discussion:

No factual information was considered in the City's review of the development application relative to the project's siting and design for minimizing risks of geologic hazards. Instead, the City deferred such a determination to post-approval consideration of a geo-technical report through the imposition of Condition of Approval No. 6, which reads as follows:

Prior to issuance of the coastal development permit, the applicant shall obtain a geotechnical report from a licensed geologist or civil engineer, subject to the approval of the City Engineer, that determines various aspects of geologic risk and stability on the site, including, but not limited to, the potential risks for inundation of the parking level and first occupied floor from storm surge or tsunamis, the potential for groundwater infiltration into the structure, and the establishment of the appropriate setback for the proposed structure on the ocean side.

The Commission notes that the condition does not specify that any recommendations to minimize any determined exposure to geologic and flooding hazards that might be included in the report are required to be incorporated into the project. Given the relatively low degree of factual and legal support for the local government's decision, the scope of development approved by the local government, and the precedential implications on future interpretation of the LCP for proposals located in similar areas with high geologic hazards, the Commission finds that a substantial issue is raised as to the approved development's consistency with the certified LCP with respect to demonstrated minimization of geologic hazards.

5. Protection of Environmentally Sensitive Habitat Areas.

Appellants' Contentions:

The appellants state the following with regard to the contention that the approved development is not consistent with LCP policies requiring the protection of environmentally sensitive habitat areas:

Roberts/Fahning: Failure to research the possible effects on marine organisms of the adjacent shoreline from building another high density/high traffic development. Ever since another high density/high traffic development was constructed, the Hampton Inn, there has been a noticeable decrease of marine organisms on the shoreline between Battery Point Lighthouse and 5th Street, possibly due to increased visitor traffic or run-off. This decrease in marine organisms has been noticed by local residents.

Wan/Reilly: LUP Environmentally Sensitive Habitat Areas / Water Resources Policy No. 2 requires that a buffer of 50 feet be maintained around all identified wetlands. The project site is located adjacent to the ocean shoreline and open beach areas along the City's west side, in proximity to "Marine Intertidal Unconsolidated Bottom" (M2US2N) and "Marine Unconsolidated Rocky Shore (M2RS2N) wetlands as depicted on the U.S. Fish and Wildlife's National Wetland Inventory - Sister Rocks Quadrangle. Despite this fact, in approving the project, the City categorically dismissed the presence of wetlands in the vicinity of the

project and conducted no evaluation as to the location of the development relative to the “extreme higher high water” line, the upland extent of these wetlands⁵, and whether the requisite 50-foot-wide buffer width required by LUP Environmentally Sensitive Habitat Areas / Water Resources Policy No. 4 would be provided, or, if all aspects of the development in locales adjacent to these environmentally sensitive areas would be compatible with the resource areas as required by LUP Environmentally Sensitive Habitat Areas / Water Resources Policy No. 2. Therefore, the approved development is inconsistent with the policies of the LUP regarding the protection of environmentally sensitive habitat areas and water resources.

Applicable LCP Policies and Standards:

LUP Environmentally Sensitive Habitat Areas / Water Resources Policy No. 2 read as follows:

The City shall protect those areas that are designated as environmentally sensitive so that these habitats and their resources are maintained and any development shall be consistent with adjacent areas and with Section 30240 et seq. of the California Coastal Act as described herein on Page 24. [Emphasis added.]

LUP Environmentally Sensitive Habitat Areas / Water Resources Policy No. 4 continues on to prescribe specific buffer requires and use restrictions therein for the protection of wetlands ESHAs:

The City shall maintain a buffer zone of 50 feet around all identified wetlands. The only allowable uses within this buffer zone shall be those uses as provided for in Section 30240 et seq. of the California Coastal Act of 1976 as described on page 24. Criteria for the establishment of the buffer zones for wetlands should be measured land ward from the edge of the wetlands.

Discussion:

No factual information was considered in the City’s review of the development application relative to the project’s siting relative to environmentally sensitive habitat areas, including wetlands. Instead, the City effectively dismissed the issue stating:

The Local Coastal Plan/Land Use (1980) component contains most of the pertinent policies in the Coastal Visual Resources and Special

⁵ Refer to U.S. Fish and Wildlife Service - Office of Biological Services’ Publication No. FWS/OBS-79/31 “Classification of Wetlands and Deepwater Habitats of the United States” (Lewis M. Cowardin, et al, USGPO December 1979) for a further discussion of the definition of and extent of wetland habitats.

Communities section and the Environmentally Sensitive Habitat Areas/Water and Marine Resources section, which lists all of the intertidal areas between Preston Island and the Breakwater as Environmentally Sensitive Habitat Areas (ESHAs). ESHAs are not synonymous with "wetlands," which means, 'land within the coastal zone which may be covered periodically or permanently with shallow water marshes, open or closed brackish water marshes, swamps, mudflats, and fens.' Therefore, the project site is adjacent to an ESHA but not to a coastal wetland, and is not subject to the 100' setback from coastal wetlands (CCGP Section 6, Policy 6.A.3.). The proposed setback is 35 feet from the property line, at a point synonymous with the extension of the Wendell Street ROW line, and a distance consistent with the 35-foot setback from the bluff imposed on the adjacent Hampton Inn development.

As noted by appellants Wan and Reilly, wetlands do, in fact, lie within the immediate proximity of the project site, namely the intertidal areas along the adjoining open ocean shoreline. In addition, the offshore rocks and rocky intertidal reach contain a variety of encrusting marine organisms, including starfish, limpets, barnacles, bivalves, and benthic algae, provides habitat to numerous resident and migratory waterfowl, and is utilized on occasion as a haul-out area by marine mammals, such as Steller sea lions (*Eumetopias jubatus*) and harbor seals (*Phoca vitulina*). Unless the project is appropriately designed and sited, including provisions for intercepted, and treated, stormwater runoff, and/or avoiding other impacts from beach users, such as trampling of fragile tidepool areas or disturbing nesting sites, the development could have significant adverse impacts, either directly or cumulatively to these adjacent environmentally sensitive areas.

Given the relatively low degree of factual and legal support for the local government's decision, the scope of development approved by the local government, and the significance of the coastal resources affected by the decision, the Commission finds that a substantial issue is raised as to the approved development's consistency with the certified LCP with respect to protection of adjacent environmentally sensitive habitat areas.

6. Coastal Water Quality.

Appellants' Contentions:

The appellants state the following with regard to the contention that the development as approved by the City is not consistent with the LCP policies that coastal water quality be protected:

Roberts/Fahning: Conditions for approval of CDP07-06... re: condition # 8... which rely on future studies.

Wan/Reilly: In conditionally approving the project, the City applied Condition of Approval No. 8, which reads:

‘Best management practices (BMPs) for controlling storm water runoff and maintaining water quality shall be incorporated into development design and operation. All post-construction structural BMPs (or suites of BMPs) for the project shall be designed to treat, infiltrate or filter stormwater runoff from each storm event, up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor, for flow-based BMPs.’

However, in rotely applying the condition, the City cited no specific preliminary information and provided no analysis addressing whether accommodating such treatment goal volumes could be feasibly attained given: (1) the approved development’s extensive impervious surface coverage; (2) the site’s relatively low elevation; and (3) the fact that the majority of its off-street parking would be constructed at a sub-grade location where ground infiltration or outfall discharges of treated water would likely be impractical. Therefore, the approved project is inconsistent with LUP Public Works Policy No. 2.

Applicable LCP Policies and Standards:

LUP Public Works Policy No. 2 states:

The City shall require that best management practices (BMPs) for controlling stormwater runoff and maintaining water quality be incorporated into development design and operation. All post-construction structural BMPs (or suites of BMPs) for new development, including but not limited to, recreational or visitor-serving commercial development within Coastal Zone - Commercial Waterfront zoning districts, shall be designed to treat, infiltrate or filter stormwater runoff from each storm event, up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor, for flow-based BMPs. [Emphases added.]

Discussion:

As observed by both sets of appellants, no preliminary review was undertaken with regard to the repercussions on coastal water quality that might result from the project. Instead, similar to the approach taken for reviewing exposure or instigation of geologic instability, a special condition was added to the project approval, restating LUP Public Works Policy No. 2. To ensure compliance with the condition, the City attached Condition of Approval No. 9, which directs that:

Prior to issuance of the building permit, the applicant shall submit and obtain approval from the City Engineer of a mitigation and monitoring

program that will identify, implement and track the performance of the BMPs discussed under Condition of Approval No. 8 above.

As discussed elsewhere in the City's analysis of the project, the development would entail coverage of 24,575 square-feet or 45% of the site by the main building and an additional approximately 10,000 square-feet of impervious surfacing in the form of exterior parking lots, driveways, walkways, decking, and patio improvements. In addition, the project entails sub-surface development of a parking structure in a very near sea-level location. In the absence of any hydrologic data, it can only be assumed that additional groundwater infiltration into the building would require sump pumping and treatment to remove fuel, lubricants petroleum hydrocarbons and related pollutants entrained from the vehicles parking therein. Furthermore, very little remaining area exists on the property to receive and arguably treat the stormwater runoff from these surfaces.

In applying the condition without an initial assessment of stormwater generation volumes and treatment designs, no regard was given to whether the 85th percentile treatment standard could be feasibly attained at the site. Such treatment facilities can be quite extensive in size. For example, to treat the stormwater on the adjacent Hampton Inn project site, a project with similar building coverages and impervious surface areas, two treatment vaults of 30' x 30' and 45' x 45' area were needed to meet the 85th percentile standard. No feasible location for the treatment facilities has been identified. In addition, the costs for providing for on-going expenses for sump pumping during the life of the project have not been taken into account.

Given the relatively low degree of factual and legal support for the local government's decision, the scope of development approved by the local government, and the significance of the coastal resources affected by the decision, the Commission finds that a substantial issue is raised as to the approved development's consistency with the certified LCP with respect to maintenance of coastal water quality.

7. Impacts to Visual Resources

Appellants' Contentions:

The appellants state the following with regard to their contention that the approved project lacks consistency with LUP policies regarding the protection of visual resources:

Roberts/Fahning: Failure to address development's site and design to minimize landform alteration. - Coastal Act Section 30251, as incorporated in Policy 3 of LUP Chapter 3 - *Coastal Visual Resources and Special Communities...*

Failure to identify actual visual and mass impact of the development on public vantage points to the north, east, and south. Project, which is in a transitional area, is not compatible with the surrounding area of single-

family residential homes and a commercial visitor-serving development to the south. - Coastal Act Section 3025 1, as incorporated in Policy 3 of LUP Chapter 3 – *Coastal Visual Resources and Special Communities...*

Failure to address the effects of the project's height and bulk on the view corridors and ways to minimize them including proposed minimal corridor from 2nd Street. - Coastal Act Section 30251, as incorporated in Policy 3 of LUP Chapter 3 – *Coastal Visual Resources and Special Communities*

Wan/Reilly: The approved project involves the ultimate development of 98,755-sq.ft. of structural and other site improvements spanning nearly a full one-block width of an oceanfront parcel and extending to an approximate 35-ft. height. Specific analysis as to the effects on coastal views was limited to that provided by the project proponent, which focused on the relative decrease in building façade length as compared with the existing one-story clinic building, the comparative differences between the height of the proposed project and its at-grade elevation as contrasted with other existing buildings or development entitlements on adjoining properties, and selective evaluation of the degree of blockage of views toward the ocean from certain public vantage points. No comprehensive analysis was performed with respect to the comparative scale and bulk of the development with other structures in the surrounding area. Moreover, in the project staff report, the City concluded that, ‘The project as proposed will almost completely block the ocean views from the Second and A Street ROWS, which may affect the intent and the use of the twenty-foot-wide coastal access easement required for the Hampton Inn on its north side.’ [Emphasis added.]

The degree to which the approved development would be compatible with the character of the surrounding area and views would be obstructed from myriad vantages along “A” Street, Front Street, or other surrounding public roads due to the presence of the mixed residential/office structure was not addressed. In addition, no assessment of effects to visual resources from other public areas (i.e., Oceanfront Park) was conducted. Consequently, the project as approved is inconsistent with the requirements of LUP Coastal Visual Resources and Special Communities Policy No. 4 that scenic resources are considered and protected through appropriate siting and design of new development that protects views to and along the ocean and scenic coastal areas and assures that the development will be visually compatible with the character of the surrounding area.

Applicable LCP Policies and Standards:

LUP Coastal Visual Resources and Special Communities Policy No. 4 reads, in applicable part:

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 the 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 designated highly scenic areas shall be subordinate to the character of its setting... [Emphasis added.]

Discussion:

The appellants contend that the approved project would cumulatively impact the visual resources of the area, especially as viewed from public vantage points along the public streets and co-terminus Harbor-City Bicycle Path, and from beach and harbor parkland areas. The appellants assert that considerations for designing and locating new development to minimize its visual obtrusiveness, to minimize landform alteration, and to be compatible with the character of surround areas were not duly examined.

In its actions before the Planning Commission regarding the approved development's consistency with the policies and standards of the LCP regarding visual resource protection, the City stated:

Because the scenic and viewshed considerations are of primary importance to the community, staff recommends addressing this policy and applying any appropriate conditions at the public hearing. The project as proposed will almost completely block the ocean views from the Second and A Street ROWS, which may affect the intent and the use of the twenty-foot-wide coastal access easement required for the Hampton Inn on its north side...

The more subjective areas concerned with compatibility, harmony, aesthetics, and impact on adjacent properties will be the subject and function of the Commission discussion and public comment portions of the public hearing. In light of the complexity of this project, e.g., the status of the applicable general plan, local coastal plan, and zoning; the questionable locations of zoning and land use designation boundaries; the disparity of public opinion; and the preliminary issues posed by the California Coastal Commission, staff anticipates preparing additional conditions of approval for consideration at the public hearing.

During the City Council hearing on the locally filed appeal, the City added additional discussion into the project findings, address the erroneous observation that the project exceeded the CZ-RP zone 35-foot maximum height standard, and responding to

comments regarding the relative height of the structure compared to that of existing single-family residences on apparently more elevated lots within the vicinity and the height limitations applied to commercially zoned areas immediately to the east of the site outside of the Coastal Zone.

However, in reviewing the public record for the new development, the Commission finds that, despite several parties having submitted comments or given testimony as to the potential visual resource impacts the project might have, none of the conditions of approval as imposed by either the Planning Commission or the City Council specifically address or serve to modify the project in any manner with respect to its effects on coastal views, landform alteration, or height, bulk, or physical exterior appearance with respect to surrounding area compatibility. Moreover, with the exception of a presentation by the applicant presenting various visual representations and computer-generated renditions of what the project's appearance once constructed, no additional or supplementary independent evaluation was prepared or considered by the City regarding the project's ramifications on area visual resources.

Thus, in the absence of full consideration of the potential ways the approved development might further be rendered less visually obtrusive, questions arise as to the development's conformance with the City's provisions for protecting visual resources. Therefore, based upon the degree of factual and legal support for the local government's decision, the significance of the coastal resources affected by the decision, the Commission finds that a substantial issue is raised with respect to the approved development's consistency with the policies and standards of the LCP with respect to community design and view preservation.

2. Appellants' Contentions That Are Not Valid Grounds for Appeal

Appellants Roberts and Fahning raise two contentions that are not valid grounds for appeal. As discussed below, the two contentions raised regarding the adequacy of the environmental review and the loss of historical emergency vehicular access to the adjoining beach do not present potentially valid grounds for appeal in that they do not allege that the approved project is inconsistent with the LCP or the public access policies of the Coastal Act.

a. CEQA Process

As discussed below, the appellants' allegations regarding environmental review pursuant to the California Environmental Quality Act (CEQA) is invalid insofar as it is not based on a provision of the City's certified LCP or the access provisions of the Coastal Act.

Appellants' Contentions:

[T]he Negative Declaration are inconsistent with procedures required by Case Law, " Sundstrom vs. County of Mendocino (1988) 202 Cal App.

3d 296" Inappropriate delegation of CEQA duties, re: condition # 6 and condition # 9 which rely on future studies.

Discussion:

As set forth in the Coastal Act provisions cited above, after certification of its local coastal program, an appeal of a local government-issued coastal development permit is limited to allegations made on the grounds that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act.

The above appeal allegation is not based on grounds of an alleged inconsistency of the project as approved by the City with a standard of the LCP or the access policies of the Coastal Act. The City of Crescent City's certified land use plan and coastal zoning ordinance contain no provisions specifically requiring compliance with the California Environmental Quality Act (CEQA) for any development subject to its permitting jurisdiction. Rather, the only applicable mention of CEQA regards the requisite avoidance or reduction of environmental impacts through, among other means, inclusion of mitigation measures, and demonstration that no feasible less environmental damaging alternative exists to a given approved conditional use. Given the lack of such LCP policies and standards, the Commission finds that the contention point enumerated above is not a valid ground for an appeal.

b. Loss of Emergency Beach Access

Appellants' Contentions:

A second contention made by the appellants is similarly not based on valid grounds for appeal. Appellants Roberts and Fahning cite, "Access related issues on the "2nd Street corridor" for all emergency services to reach beach as has been historically done."

Discussion:

As set forth in the Coastal Act provisions cited above, after certification of its local coastal program, an appeal of a local government-issued coastal development permit is limited to allegations made on the grounds that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act.

The above appeal allegation is not based on grounds of an alleged inconsistency of the project as approved by the City with a standard of the LCP or the access policies of the Coastal Act. The City of Crescent City's certified land use plan and coastal zoning ordinance contain no provisions requiring the Second Street right-of-way to remain open and clear of development. Nor does the LCP set forth any policies or standards specifically addressing emergency access to the western shoreline beaches. Given the

lack of such LCP policies and standards, the Commission finds that the contention point enumerated above is not a valid ground for an appeal.

3. Conclusion.

All of the various foregoing contentions have been evaluated against the claim that they raise a substantial issue of conformance of the local approval with the certified LCP. The Commission finds that, as discussed above, the appeal raises a substantial issue with respect to the conformance of the approved project with the policies of the LCP regarding: (1) interference with, lack of protection of and provision for coastal access associated with the approval of new development; (2) permissible development within the Medical Related land use designated areas; (3) limitations on residential development density and lot and yard area standards; (4) minimization of geologic hazards; (5) protection of environmentally sensitive habitat areas; (6) ensuring coastal water quality; and (7) impacts to visual resources.

E. INFORMATION/ACTION NEEDED FOR DE NOVO REVIEW OF APPLICATION

As stated above, Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed. Section 30621 of the Coastal Act instructs the Commission to provide for a *de novo* hearing on all appeals where it has determined that a substantial issue exists with respect to the grounds on which an appeal has been filed. If the Commission finds substantial issue as recommended above, staff also recommends that the Commission continue the *de novo* portion of the appeal hearing to a subsequent date. The *de novo* portion of the appeal hearing must be continued because the Commission does not have sufficient information to determine how development can be approved consistent with the certified LCP.

Given that the project the Commission will be considering *de novo* has come to the Commission after an appeal of a local government action, the Commission has not previously been in the position to request information from the applicant needed to determine if the project can be found to be consistent with the certified LCP. Following is a discussion of the information needed to evaluate the development.

1. Public Access Analysis

For reviewing the project's consistency with Coastal Act and LCP public access provisions, clarification is needed regarding what, if any, access facilities would be provided by the development and how the development would interface with nearby facilities. This information should address how pedestrian circulation at the site would integrate with adjoining formally dedicated Hampton Inn and Third Street accessways and the existing informal beach trail on the project site. The description of any proposed new access facilities should include site map depiction of their location and improvement

standards, identify any limitations on their use, and detail how the facilities would be formally dedicated and whom would assume title, and detail management responsibilities for the facilities' upkeep and maintenance. The analysis should also ascertain whether the existing access in the project vicinity, and any new access facilities provided by the development, would meet the access needs of the area and be sufficient to accommodate all of the new residents of the project.

2. Geotechnical Analysis

For determining conformance with LUP Dredging, Diking, Filling, and Shoreline Structures Policy No. 3, a geo-technical analysis is needed for the proposed development. In addition to site stability and structure integrity analysis in terms of seismic, liquefaction, subsidence, and coastal erosion, and evaluation of potential tsunami, floodwater, or storm surge inundation or groundwater infiltration, the report should also identify mitigation measures to prevent geologic instability related impacts, including construction phase and long-term erosional runoff and siltation best management practices.

3. Preliminary Drainage and Water Pollution Control Plan

For determining conformance with LUP Public Works Policy No. 2, preliminary hydrologic information is needed addressing management of stormwater and groundwater drainage at the project site. The evaluation should quantify the volumes of precipitation and surface flow runoff and groundwater seepage inputs to the project site and identify water quality best management practices (BMPs) necessary to treat, infiltrate or filter stormwater runoff from each storm event, up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor, for flow-based BMPs. The analysis should also identify erosion control and stormwater management measures to be employed during the construction phase and permanent installed to prevent impacts to receiving coastal waters.

4. Biological Assessment

To assure the development's consistency with LCP provision regarding the protection of the biological resources including intertidal wetlands and tidepool areas, a biological assessment of the flora and fauna of the area surrounding the project site is needed. The assessment should delineate the surveyed location of the "extreme higher high water" line, the upland extent of the marine intertidal wetlands adjoining the project site. The assessment should also identify any rare, threatened, endangered, or special status plant and animal species that are found in or utilize as habitat the area within a 250 radius of the project site. The report should also identify mitigation measures to avoid or lessen any concluded significant adverse impacts on these species and/or environmentally sensitive areas.

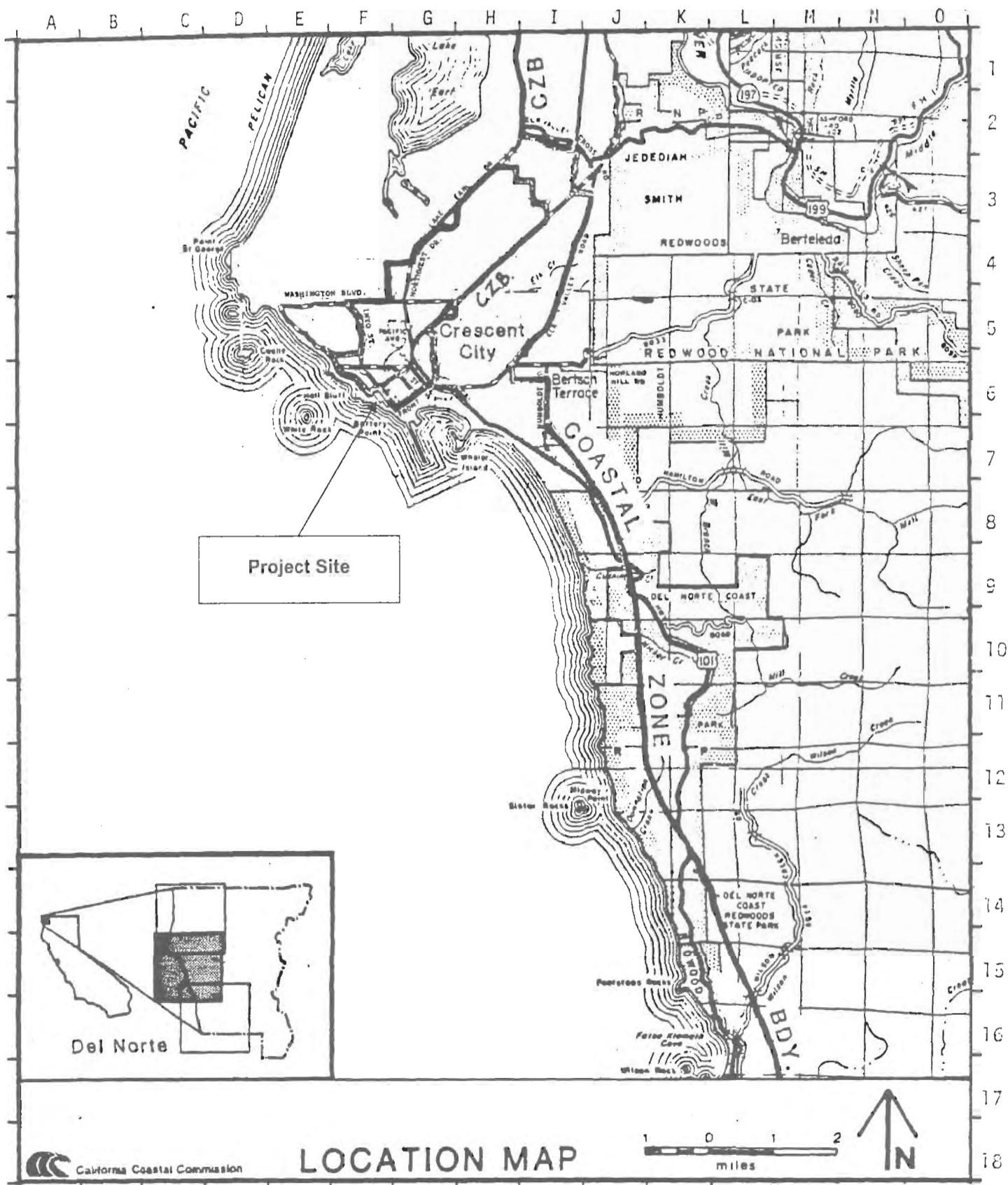
5. Comprehensive Visual Resources Impacts Analysis

To review consistency with LUP Coastal Visual Resources and Special Communities Policy No. 4, a comprehensive visual resources impact analysis is needed. The analysis should evaluate the effects the project would have on views to and along the ocean and scenic areas from the principal public vantage points in the project vicinity, including the project site's full Third and "A" Streets frontages, from Beach Front Park and Battery Point parklands and scenic areas, and lateral coastline and landward views from the adjoining beach and Hampton Inn and Third Street coastal access facilities. In addition, comparative building size, height, coverage, and architectural style should be provided for the area west of "A" Street from Front Street to Third Street, and west of Wendell Street between Third and Fifth Streets.

Without the above information, the Commission cannot reach a final determination concerning the project's consistency with the policies of the certified LCP. Therefore, before the Commission can act on the proposed project *de novo*, the applicant must submit all of the above identified information.

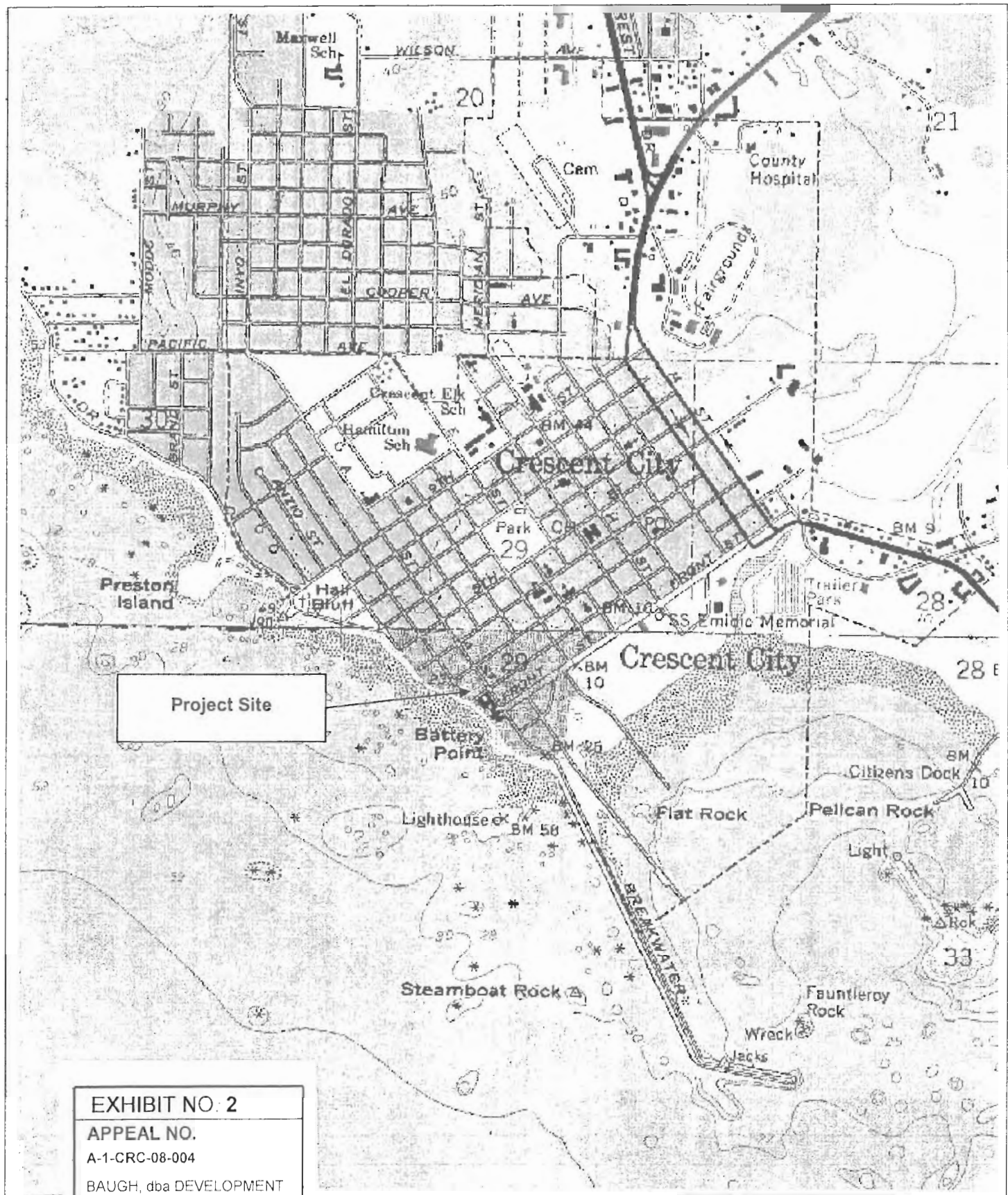
III. EXHIBITS:

1. Regional Location Map
2. Vicinity Map
3. Oblique Aerial, Project Site Vicinity
4. Approved Site Plan and Elevation Views
5. *Notice of Final Local Action* for CDP No. 07-06
6. Appeal, filed January 28, 2008 (Kirk Roberts and Natalie Fahning)
7. Appeal, filed February 7, 2008 (Commissioners Wan and Reilly)
8. Applicant's Correspondence
9. General Correspondence



County of Del Norte

EXHIBIT NO. 1
 APPLICATION NO.
 A-1-CRC-08-004
 BAUGH, dba DEVELOPMENT
 CONSULTANTS, INC.
 REGIONAL LOCATION MAP



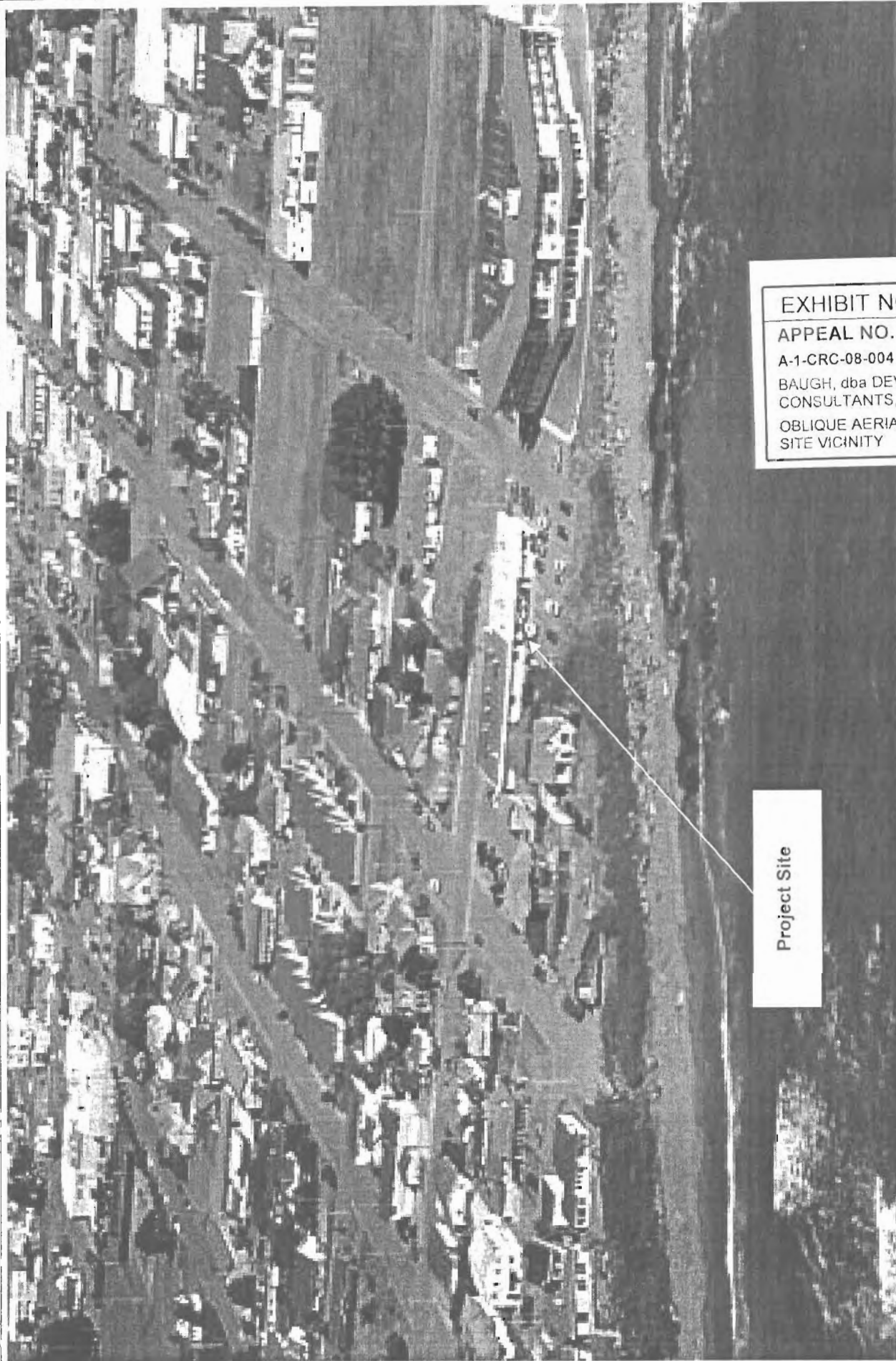


EXHIBIT NO. 3

APPEAL NO.

A-1-CRC-08-004

BAUGH, dba DEVELOPMENT
CONSULTANTS, INC

OBLIQUE AERIAL, PROJECT
SITE VICINITY

Project Site

"Coasta Norte" Crescent City, CA

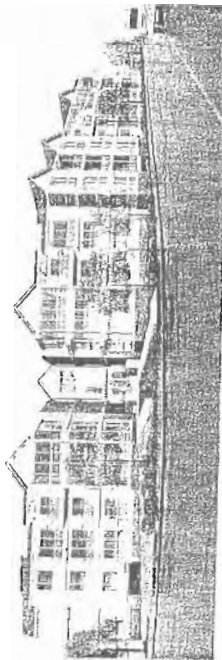


EXHIBIT NO. 4

APPEAL NO.

A-1-CRC-08-004

BAUGH, dba DEVELOPMENT
CONSULTANTS, INC.

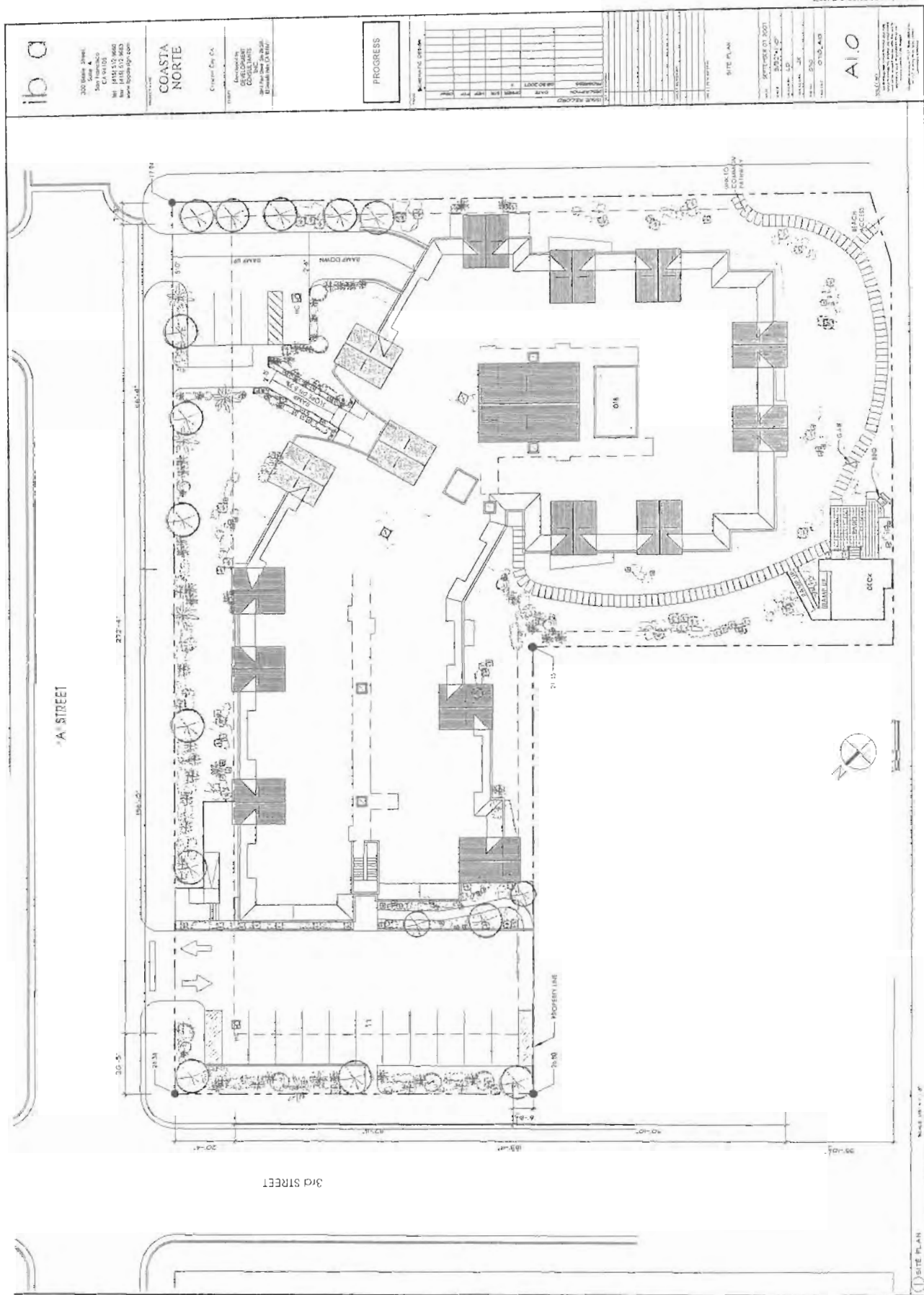
APPROVED SITE PLAN AND
ELEVATION VIEWS (1 of 11)



FOR PLANNING 09-07-07

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[illegible]



ib a

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San Francisco, CA 94103
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www.iba.com

COASTA NORTE

Project No. 04-01

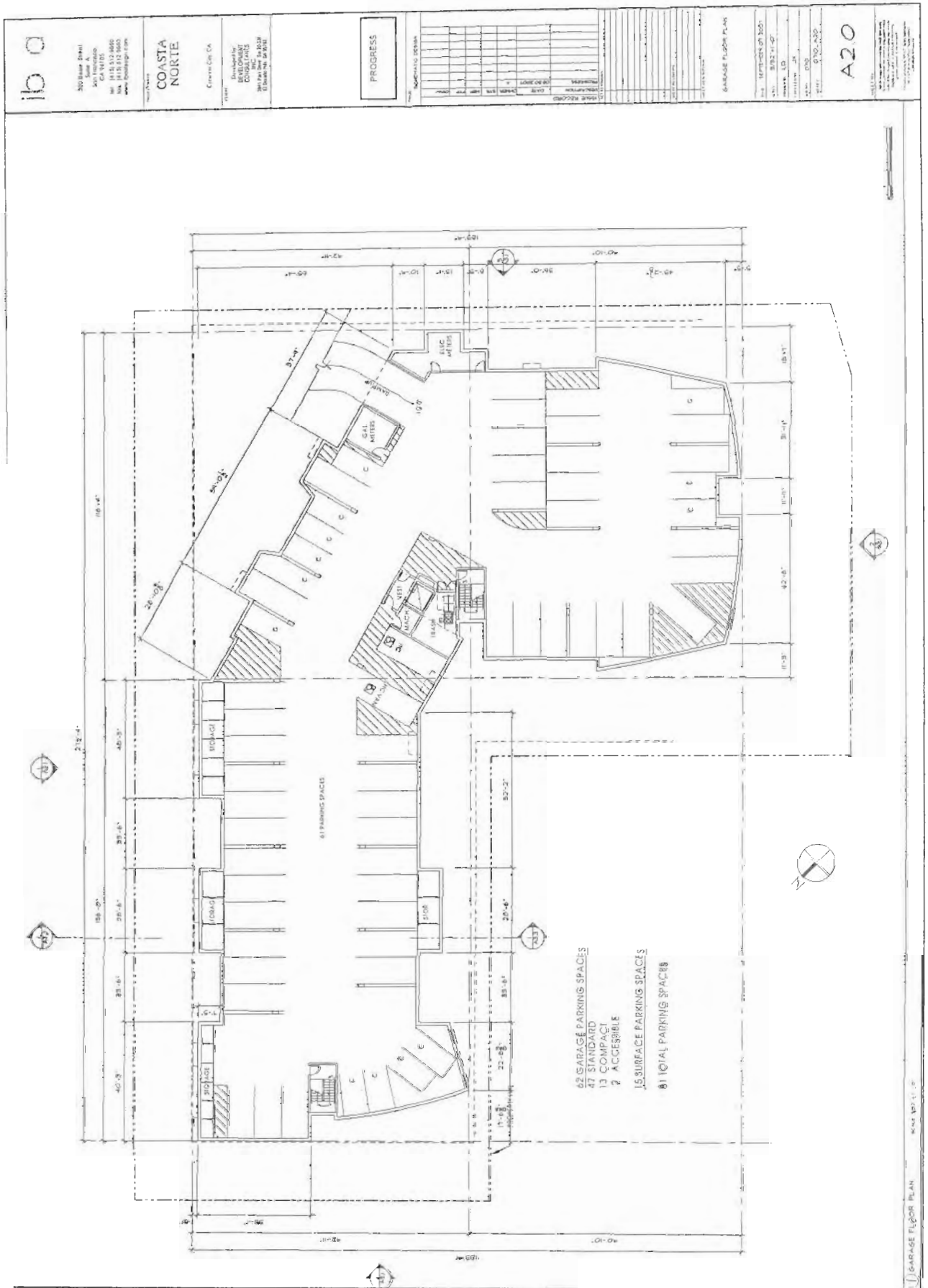
Architect: COASTA NORTE
Consultant: COASTA NORTE
Site Plan: COASTA NORTE
Scale: 1/8" = 1'-0"

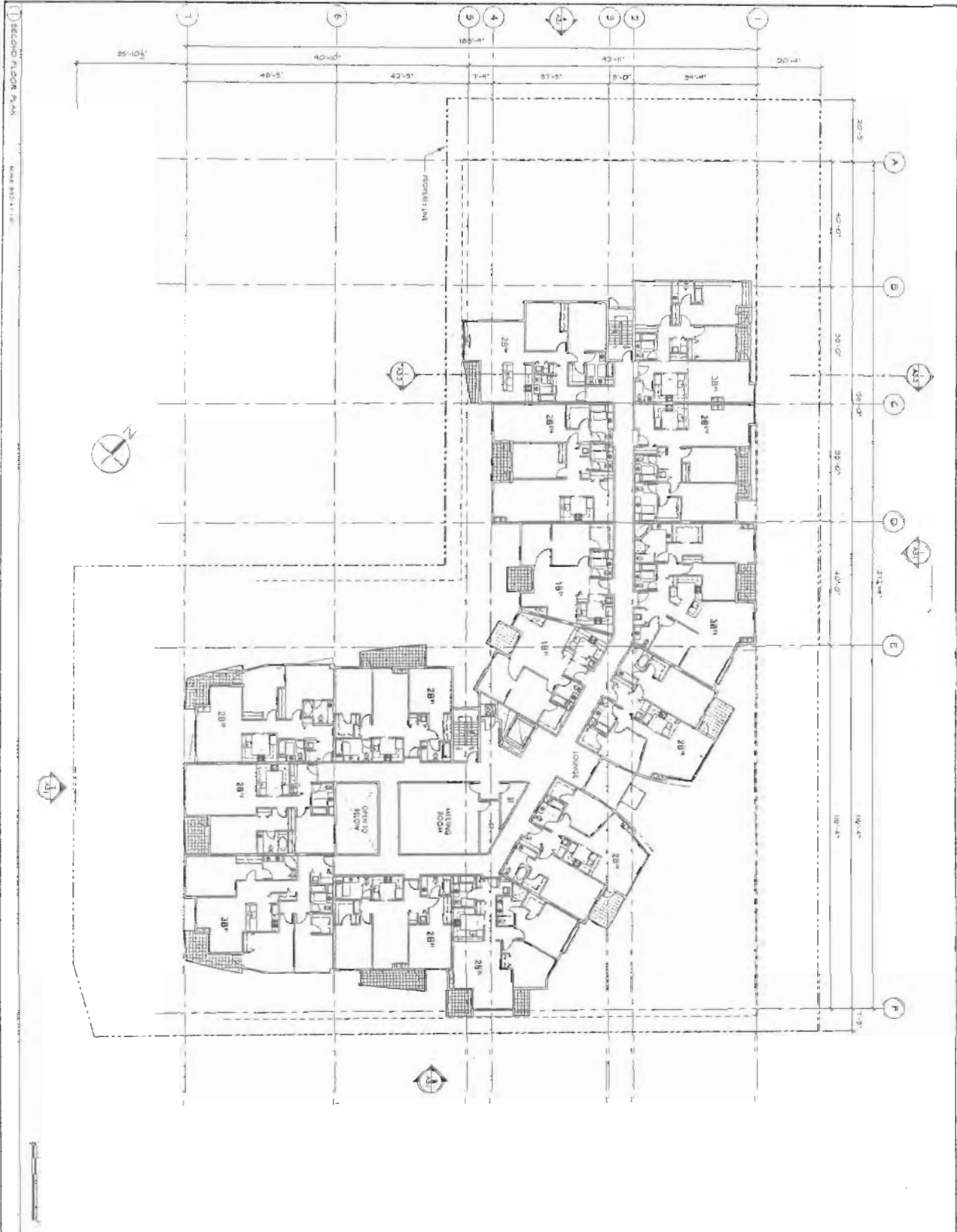
PROGRESS

NO.	DATE	DESCRIPTION
1	10/10/01	PRELIMINARY
2	11/15/01	REVISED
3	12/15/01	REVISED
4	01/15/02	REVISED
5	02/15/02	REVISED
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7	04/15/02	REVISED
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75	12/15/07	REVISED
76	01/15/08	REVISED
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100	01/15/10	REVISED

AI.O

APPROVED BY: [Signature]
DATE: 10/10/01





PROGRESS

NO.	DESCRIPTION	DATE	BY	CHKD.
1	PREPARED	10/10/2011

COASTA NORTE

3000 Santa Monica Blvd.
Santa Monica, CA 90405
Tel: 310.312.8800
Fax: 310.312.8800
www.coastanorte.com

Coastal City, CA

Architect:
Coastal City
3000 Santa Monica Blvd.
Santa Monica, CA 90405
Tel: 310.312.8800
Fax: 310.312.8800
www.coastanorte.com



COASTA
NORTE

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San Francisco, CA 94103
tel: (415) 412 9666
fax: (415) 512 5633
www.bodergo.com

Putnam Co., Va.

DEVELOPMENT
CONSULTANTS
INC.
2701 N. 1st Street, Suite 200
Chicago, IL 60640

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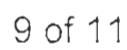
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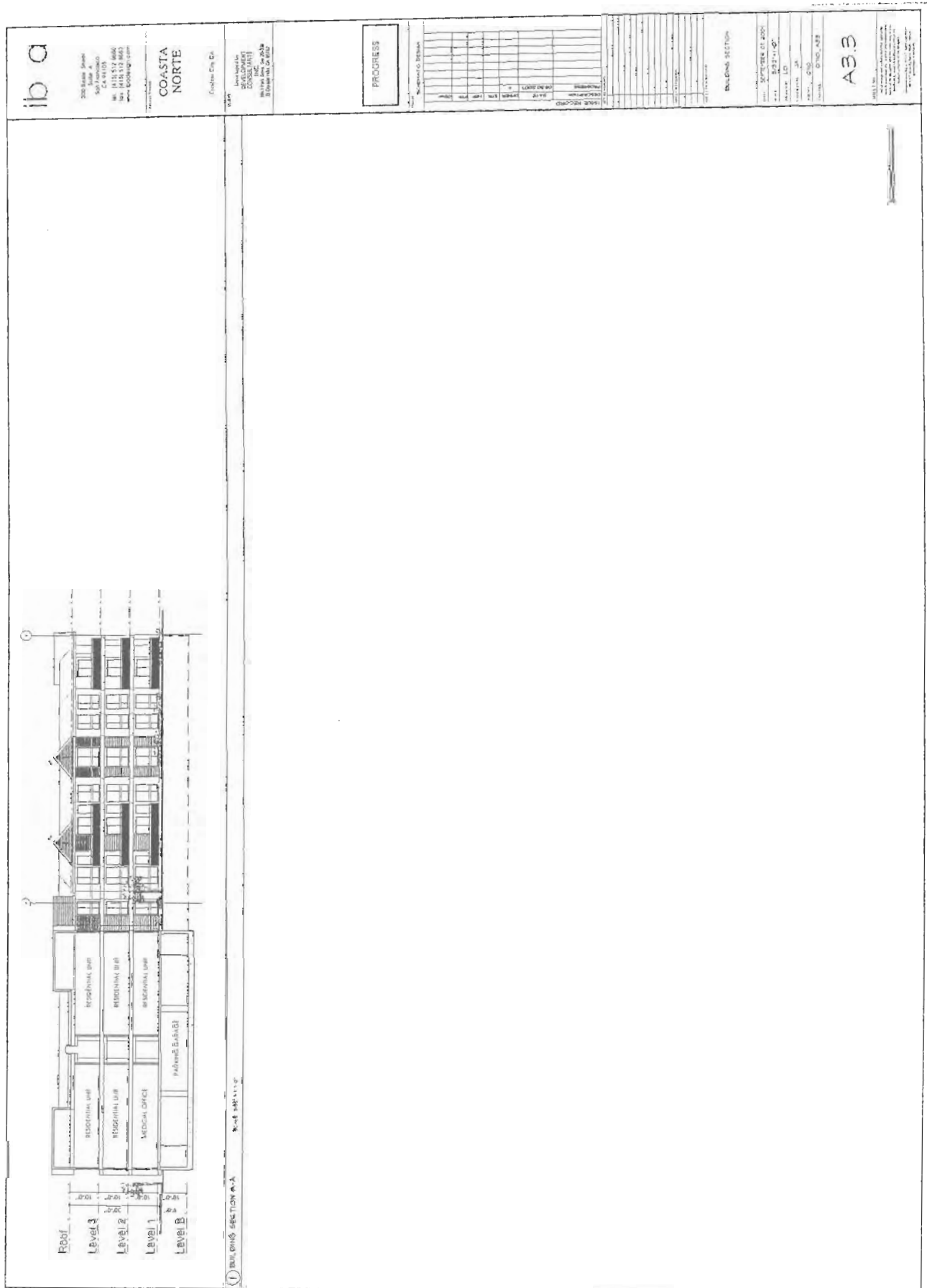
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CITY OF CRESCENT CITY
NOTICE OF FINAL ACTION
COASTAL DEVELOPMENT PERMIT

Date: January 23, 2008

The City Council of the City of Crescent City has acted upon an appeal of a Planning Commission approval of the following project located within the Crescent City Coastal Zone:

Applicant: Randy Baugh/Development Consultants, Inc.
Address: 3941 Park Drive, Ste 20338, El Dorado Hills, CA 95762
Application File No.: Appeal of CDP07-06, UP07-08, AR07-11
Filing Date of Appeal: December 21, 2007

Project Location: 200 A Street, Crescent City, CA 95531

Project Description: The applicant requested approval for a mixed-use development, comprised of a three-story building with one additional floor of underground parking, for a gross floor area of 98,755 square feet, consisting of forty-four (44) residential units (unspecified mixture of condominiums and timeshares or vacation rentals), a \pm 1500-sq. ft. medical/professional office and a \pm 700-sq. ft. sales office.

APN: APN 118-020-34

Action Date: January 22, 2008

Action By: Crescent City City Council

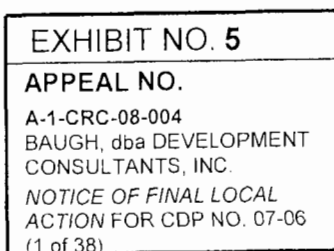
Action on Appeal: Approved X Denied Approved With Conditions

The City Council denied the appeal, upholding the Planning Commission approval of the project. The City Council added one additional Condition of Approval: Prior to issuance of the coastal development permit, the applicant shall provide proof that title to the property is unclouded by the city's 1961 abandonment of the Second Street right-of-way.

Findings:

1. That the decision of the Planning Commission approving the project on December 13, 2007 was consistent with the certified Coastal Element of the Crescent City General Plan and with the Local Coastal Program component of the Crescent City Municipal Code.
2. That the decision of the Planning Commission was in conformity with the public access and public recreation policies of Chapter Three of the Coastal Act.
3. That there is no substantial evidence that the project will have a significant effect on the environment and that the Negative Declaration reflects the Planning Commission's independent judgment and analysis.
4. That the action of the Planning Commission shall become effective at the close of the appeal hearing.
5. That the request for a waiver of the appeal fee shall be denied.

This action is appealable to the California Coastal Commission.



By:
City of Crescent City
Planning Department
377 "J" Street
Crescent City, CA 95531
(707) 464-9506

CITY OF CRESCENT CITY
CITY COUNCIL

STAFF REPORT
January 22, 2008

TO: City Council

FROM: Will Caplinger, City Planner/Economic Development Specialist

SUBJECT: Appeal of a Planning Commission decision approving the Coasta Norte project

Background

On December 13, 2007 the Planning Commission conditionally approved the Coasta Norte mixed-use project, an action that encompassed a coastal development permit, use permit and architectural review (CDP07-06, UP07-08 & AR07-11). The full record of the applications, including the environmental document pursuant to CEQA, the public hearing notices, the staff report packet, and the minutes from the December 13th meeting are attached as Exhibit A.

On December 21, 2007, the Planning Commission's decision was appealed to the City Council by Glen Tiffany, the owner of a parcel across A Street, to the east of the subject parcel. Mr. Tiffany's letter requesting the appeal is attached as Exhibit B. According to the appeal letter, the basis for the appeal is limited to the following:

1. "None" of the issues Mr. Tiffany raised in a letter to the Planning Commission dated December 13, 2007. This earlier letter is attached as Exhibit C.
2. The project's height and design are not compatible with nearby residential developments.
3. "No environmental impact study was presented to address the projects [*sic*] impact to this sensitive environment as well as neighboring uses."

Mr. Tiffany has also requested a waiver of the \$175.00 appeal fee based on his assertion that "...adequate supportive environmental impact documentation was not presented at the hearing."

Staff Analysis

Crescent City Municipal Code (CCMC) section 17.84.040 governs the appeal process for projects within the Coastal Zone. Subsection 17.84.040.B merely states that, "Action, or appellate determinations of the planning commission, may be appealed to the city council." Appeals to the Council do not require specific grounds; therefore, the appeal must be judged on the merits of the assertions contained in the appeal letter. Since the appeal letter references an earlier letter from the appellant to the Planning Director, the analysis below includes the points raised in Mr. Tiffany's letter of December 13, 2007.

Assertions of the Appeal:

1. That none of the issues raised in the letter of December 13, 2007 were addressed.

Response: The December 13th letter detailed four areas of concern, listed below, including staff's responses:

- 1) The property is located in a split zone "...and it would appear the planning departments [*sic*] recommendation is based on the intent of a proposed rezone which is yet to be approved by the Coastal Commission...the Coastal Commission first needs to ratify an acceptable zoning ordinance before such a significant development is approved."

Response: Mr. Tiffany is apparently referring to the Local Coastal Program amendment that the city submitted to the Coastal Commission in 2003. This amendment proposes rezoning the subject property to CZ-CW (Coastal Zone-Waterfront Commercial). However, until this amendment is approved, the city must consider development proposals based on the current zoning, which on the parcel is split between CZ-RP (Coastal Zone-Residential/Professional) and CZ-R2 (Coastal Zone-Two Family Residential). It is important to note that Coastal Commission staff recently advised the city that they will be undertaking the final review of the city's pending LCP amendment in 2008 (the Planning Department anticipates that this final step in the process, which will certainly involve additional modifications to the amendment, could take an additional year or more to complete).

The project only proposes uses that are consistent with the current zoning. The structure, housing the residential and professional uses, occupies only the portion of the property zoned CZ-RP, which allows, as principally-permitted uses, multiple-family dwellings (CCMC §17.67.020.D) and business & professional offices (CCMC §17.67.020.A). The portion of the property zoned CZ-R2 is proposed to be developed with only a surface parking lot. In the CZ-R2 District, parking lots are allowed by use permit (CCMC §17.66.020.F.5). The use permit application for this use was approved by the Planning Commission as part of its action on December 13th.

- 2) "The proposed height of the development (38 feet) exceeds allowable zoning requirements."

Response: This is a misconception based on the finished elevations of the project, which indicate a height of approximately 38 feet above finished grade. The CCMC defines "Building height" in the Coastal Zone as, "the vertical distance from the *average* ground level of the site to the highest point of the structure" (*emphasis added*). Since the site contains relatively more vertical relief (elevation change) than neighboring properties, the structure will not exceed 35 feet above the average ground level.

- 3) "No environmental impact statements have been presented in the submission packet."

Response: For clarification, an Environmental Impact Statement (EIS) is the federal equivalent of an Environmental Impact Report (EIR), and is required only for projects that involve federal funding or federal agency permitting. An EIR is required by the California Environmental Quality Act (CEQA) only when a project is determined to cause adverse environmental effects that cannot be mitigated to a less-than-significant level. Staff prepared an Initial Study pursuant to CEQA Guidelines, which resulted in the proposed Negative Declaration. The city submitted the Initial Study and Negative Declaration to the State Clearinghouse and adhered to all requirements for environmental review and publication of legal notices. The complete environmental documents were made available for public review and comment for at least thirty days prior to the Planning Commission's action, and were available at the public hearing.

- 4) "...the proposed development will provide very little additional employment...exceptions to zoning criteria should only be provided to projects that add significantly to the local employment base."

Response: The Planning Commission's decision of December 13th did not include granting any exceptions to zoning criteria. In fact, the staff report discusses zoning consistency in great detail. The Conditions of Approval included:

COA #3: Prior to issuance of the coastal development permit, the applicant shall either modify the proposed height to not exceed thirty-five feet (35') or obtain variance approval from the Planning Commission. (Although the project is not anticipated to exceed thirty-five feet above average site elevation, this measure is included as a safeguard.)

COA #4: Prior to issuance of the coastal development permit, the applicant shall either increase the proposed lot area per dwelling to a minimum of 1,500 square feet or obtain variance approval from the Planning Commission. (This is the only departure from zoning criteria, and is conditioned to require project modification or subsequent variance approval.)

2. The project's height and design are not compatible with nearby residential developments.

Response: Nearby residential developments in most cases meet or exceed the project's proposed height, since the residential properties are almost all at higher elevations than the subject property. Moreover, most, if not all, of the nearby residences retain the right to build to either 35 feet (CZ-R1, CZ-R2, CZ-RP, R-1 & R-2 Districts to the north and west) or 70 feet (CW District to the east). Ultimately, the proposed development has the potential to be the lowest structure in the neighborhood.

It is staff's opinion that the project cannot be judged solely according to the design of nearby residences, for the following reasons:

- a. There is little continuity or consistency of design of the residences that can be used to determine what is compatible or incompatible. Such determinations are made within the Architectural Review portion of the entitlements, and the Planning Commission/Architectural Review Committee determined that the project's design is in harmony with the neighborhood.
- b. The "neighborhood" also includes the Hampton Inn immediately to the south, and the undeveloped or underdeveloped commercially-zoned properties across A Street, where the zoning is CW (Waterfront Commercial). This zoning is intended for high-rise commercial, mixed-use or multi-family development, and has allowed building heights to 70 feet, by right, since 2003.

3. "No environmental impact study was presented to address the projects [sic] impact to this sensitive environment as well as neighboring uses."

Response: The Initial Study and Negative Declaration were prepared, circulated and adopted pursuant to CEQA Guidelines. The conditions of approval adopted for the project ensure that it will not have any significant environmental impacts.

Request for Fee Waiver

CCMC section 17.84.040.D.3 states merely that, "Appeals shall be accompanied by a filing fee or a request to waive such fee." The ordinance does not include any criteria by which to grant or deny the fee waiver request; hence, Mr. Tiffany's assertion that the waiver should be granted based on his perception that "...adequate supportive environmental impact documentation was not presented at the hearing" does not have merit, as discussed above under Assertion #3. Since the purpose of the fee is to offset the considerable cost for staff to respond to the appeal, a recommendation is included to deny the waiver request.

Staff Recommendation

Staff recommends that the City Council deny the appeal and make the Recommended Findings to Deny the Appeal below, based on the discussions in the Planning Commission staff report of December 13, 2007, the full record of the Planning Commission action, and the assertions and responses contained above. Staff has prepared alternate findings below, respectively to either deny or grant the appeal.

Recommended Findings to Deny the Appeal

The City Council finds the following:

1. That the decision of the Planning Commission approving the project on December 13, 2007 was consistent with the certified Coastal Element of the Crescent City General Plan and with the Local Coastal Program component of the Crescent City Municipal Code.
2. That the decision of the Planning Commission was in conformity with the public access and public recreation policies of Chapter Three of the Coastal Act.
3. That there is no substantial evidence that the project will have a significant effect on the environment and that the Negative Declaration reflects the Planning Commission's independent judgment and analysis.

4. That the action of the Planning Commission shall become effective at the close of the appeal hearing.
5. That the request for a waiver of the appeal fee shall be denied.

-OR-

Recommended Findings to Grant the Appeal

The City Council finds the following:

1. That the decision of the Planning Commission approving the project on December 13, 2007 was inconsistent with the certified Coastal Element of the Crescent City General Plan and with the Local Coastal Program component of the Crescent City Municipal Code.
2. That the decision of the Planning Commission was not in conformity with the public access and public recreation policies of Chapter Three of the Coastal Act.
3. That there is substantial evidence that the project will have a significant effect on the environment and that the Negative Declaration does not reflect the Planning Commission's independent judgment and analysis.
4. That the action of the Planning Commission shall be reversed effective at the close of the appeal hearing.
5. That the request for a waiver of the appeal fee shall be denied.

Recommended Actions

Staff recommends that the Council take the following actions:

1. Conduct the public hearing.
2. Adopt, via a motion, one specific set of findings, either to deny or to grant the appeal.

Exhibits: A. Record of the Planning Commission's review and actions
 B. Glenn Tiffany's letter dated December 20, 2007 requesting the appeal
 C. Glenn tiffany's December 13, 2007 letter to the Planning Director

12/20/07

RECEIVED
DEC 21 2007
CITY OF CRESCENT CITY

Ms. Dianne Nickerson
City of Crescent City
377 J Street
Crescent City, California

RE: application # CDP07-06, UP07-02, AR07-11 (APN 118-020-34).

Ms. Nickerson:

I would like to appeal Planning Commissions December 13, 2007 decision to conditionally approve the above referenced development. None of the issues that I raised in December 13, 2007 letter to the Planning Commission were addressed (see attached letter). My primary concerns still remain the compatibility of the project's proposed height and design of the development with nearby residential developments as well as the fact that no environmental impact study was presented to address the projects impact to this sensitive environment as well as neighboring uses.

Additionally I am requesting that the \$175.00 appeal fee be waived since adequate supportive environmental impact documentation was not presented at the hearing.

Sincerely,

SIGNATURE ON FILE

Glenn A. Tiffany

B.

Mr. William Caplinger
Planning Director
City of Crescent City
377 J Street
Crescent City, California

RE: application # CDP07-06, UP07-02, AR07-11 (APN 118-020-34).

Mr. Caplinger:

Unfortunately I will not be able to attend tonight's planning commission hearing due to prior commitments. However, I would still like to raise concerns regarding DCI's proposed development located at 200 A Street. In general I have no problem with the intent of a high density residential development at this location, still there are certain aspects of this development "as proposed" which raise concerns and establish undesirable precedents for future ocean front property development. The following is a list of my general concerns:

- 1) This property is reportedly located in a split zone and it would appear the planning department's recommendation is based on the intent of a proposed rezone which is yet to be approved by the Coastal Commission. This is somewhat the cart before the horse process; I would recommend that the Coastal Commission first needs to ratify an acceptable zoning ordinance before such a significant development is approved. This would most likely reduce the potential for disputes...
- 2) The proposed height of the development (38 feet) exceeds allowable zoning requirements. I would recommend lowering the building height to no higher than 28 feet. This would reduce the project to a two-story development, however, reduced set-back requirements should be permitted to increase the development density most likely resulting in a development only slightly smaller than the proposed development. This would create a development more consistent with the neighboring residential uses to the north and east.
- 3) No environmental impact statements have been presented in the submission packet. I recommend that these issues be considered before even conditional approval.
- 4) Unlike the Hampton Inn, the proposed development will provide very little additional employment for the local community. In my opinion exceptions to zoning criteria should only be provided to projects that add significantly to the local employment base.

Sincerely,

SIGNATURE ON FILE

8 of 38

Glenn A. Tiffany

CITY OF CRESCENT CITY
NOTICE OF FINAL ACTION
COASTAL DEVELOPMENT PERMIT

Date: December 28, 2007

The Crescent City Planning Commission has acted upon the following project located within the Crescent City Coastal Zone:

Applicant: Development Consultants, Inc./Randy Baugh
Address: 3941 Park Drive, Ste. 20-338, El Dorado Hills, CA 95762
Application File No.: CDP07-06, UP07-08, AR07-11 **Filing Date:** June 14, 2007

Project Location: 200 A Street

Project Description: The applicant requested approval for a mixed-use development, comprised of a three-story building with one additional floor of underground parking, for a gross floor area of 98,755 square feet, consisting of forty-four (44) residential units (unspecified mixture of condominiums and timeshares or vacation rentals), a ±1500-sq. ft. medical/professional office and a ±700-sq. ft. sales office.

APN: APN 118-020-34

Action Date: December 13, 2007

Action By: Crescent City Planning Commission

Action on CDP 05-06: Approved Denied X Approved With Conditions

Conditions: the Planning Commission approved the proposed project under the following conditions:

1. The approval is for the demolition of an existing vacant clinic building, and the development of a 98,755 square-foot three-story mixed-use project in the CZ-RP and CZ-R2 Districts.
2. Prior to issuance of the coastal development permit, the applicant shall either modify the proposed height to not exceed thirty-five feet (35') or obtain variance approval from the Planning Commission.
3. Prior to issuance of the coastal development permit, the applicant shall either increase the proposed lot area per dwelling to a minimum of 1,500 square feet or obtain variance approval from the Planning Commission.
4. Prior to issuance of the coastal development permit, the applicant shall provide landscaping and irrigation plans pursuant to CCMC Chapter 17.43.
5. Prior to issuance of the coastal development permit, the applicant shall obtain a geo-technical report from a licensed geologist or civil engineer, subject to the approval of the City Engineer, that determines various aspects of geologic risk and stability on the site, including, but not limited to, the potential risks for inundation of the parking level and first occupied floor from storm surge or tsunamis, the potential for groundwater infiltration into the structure, and the establishment of the appropriate setback for the proposed structure on the ocean side.
6. No shoreline protective structures shall be allowed in the future to protect the development from bluff erosion or seawater incursion. Prior to issuance of the coastal development permit, the applicant shall record a deed restriction, acceptable to the Planning Director, that memorializes the prohibition on future shoreline protective structures.
7. Best management practices (BMPs) for controlling storm water runoff and

maintaining water quality shall be incorporated into development design and operation. All post-construction structural BMPs (or suites of BMPs) for the project shall be designed to treat, infiltrate or filter stormwater runoff from each storm event, up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor, for flow-based BMPs.

8. Prior to issuance of the building permit, the applicant shall submit and obtain approval from the City Engineer of a mitigation and monitoring program that will identify, implement and track the performance of the BMPs discussed under Condition of Approval No. 8 above.
9. No soil, materials or debris of any kind shall be disposed of onto the open space (beach) area.

Findings:

- A. That this project is consistent with the General Plan and the Local Coastal Program.
- B. That this project is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act, commencing with Section 30200 of the Public Resources Code.
- C. That there is no substantial evidence that the project will have a significant effect on the environment and that the Negative Declaration reflects the Planning Commission's independent judgment and analysis.

This action is appealable to the California Coastal Commission.

By:
City of Crescent City
Planning Department
377 "J" Street
Crescent City, CA 95531
(707)464-9506

CITY OF CRESCENT CITY PLANNING COMMISSION

Commission Members: Kathryn Murray, Chairperson • Sylvia Bos, Vice-Chairperson
Sandy Blakely • Kirk Roberts • Marjorie Shearer

Incorporated April 15, 1954

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Regular Meeting
Thursday, December 13, 2007 at 5:30 p.m.
Cultural Center, 1001 Front Street, Crescent City, California

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DEC 12 2007

AGENDA

CALIFORNIA
COASTAL COMMISSION

I. CALL TO ORDER/ROLL CALL.

- II. PUBLIC COMMENT:** The public may address the Planning Commission on any item of interest that is within the Commission's subject matter jurisdiction. Speakers, please limit your comments to three (3) minutes. No action or discussion shall be taken on any item not appearing on the posted agenda, except that members of the legislative body may briefly respond to the statements made or questions posed. In addition, on their own initiative, or in response to questions posed by the public, members of the legislative body may ask a question for clarification, provide a reference to staff or other resources for factual information, or request staff to report back to the body at a subsequent meeting concerning any matter. Furthermore, a member of a legislative body, or the body itself, may take action to direct staff to place matter of business on a future agenda (Gov. Code Section 54954.2).

III. APPROVAL OF MINUTES: Approval of the minutes of the November 8, 2007 regular meeting.

- IV. CONSENT CALENDAR:** These items are routine in nature, are consistent with the Crescent City General Plan, Municipal Code, and State Government Code, are exempt from the California Environmental Quality Act, and are recommended for approval. Action on all items in the Consent Calendar will be taken without discussion by a single motion, unless a Commissioner, staff or member of the public requests that an item be removed from the Consent Calendar for discussion.

A. Project #: UP07-11. Use permit for the addition of on-site silk screening (screen printing) and mechanical engraving, and associated product sales in the CW (Waterfront Commercial) District.

Applicant: Community Assistance Network **Location:** 783 Third Street **APN:** 118-060-10

V. PUBLIC HEARINGS:

A. Project #UP-07-09, AR07-23 (continued from the meeting of November 8, 2007). Use permit and architectural review for a 63-unit affordable apartment complex in the C-2 (General Commercial) District.

Applicant: Global Premier Development, Inc. **Location:** NE corner of Hoover Avenue and Oregon Street
APNs: 118-401-01 through -06

B. Project #: CDP07-06, UP07-02, AR07-11. Coastal development permit, use permit and architectural review for a 98,755 square-foot mixed-use development, consisting of 44 residential units and a 2,172 square foot professional office in the CZ-RP (Coastal Zone-Residential Professional) and CZ-R2 (Coastal Zone Two-Family Residential) Districts.

Applicant: Development Consultants, Inc./Randy Baugh **Location:** 200 A Street **APN:** 118-020-34

VII. REGULAR ITEMS:

- A.** Election of new chairperson and vice-chairperson for calendar year 2008.
B. Discussion of 2008 Planning Commission meeting schedule

VIII. PLANNING DIRECTOR'S REPORT:

This item is reserved for the Planning Director to make comments or report on items not on the agenda. No action will be taken.

IX. ADJOURNMENT: Adjourn to the regular meeting on January 10, 2008.

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NOTICE REGARDING APPEALS

Pursuant to §115-31 of the Zoning Code, appeals of a final action by the Planning Commission must be filed with the City Clerk no later than ten (10) calendar days after the day on which the final action was taken, along with the appropriate fee.

NOTICE REGARDING CHALLENGES TO DECISIONS

Pursuant to all applicable laws and regulations, including without limitations, California Government Code Section 65009 and/or California Public Resources Code Section 21177, if you wish to challenge in court any of the above decisions (regarding planning, zoning and/or environmental decisions), you may be limited to raising only those issues you or someone else raised at the public hearing(s) described in this notice/agenda, or in written correspondence delivered to the city at, or prior to, this public hearing.

ADA COMPLIANCE STATEMENT

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact Planning Commission Secretary Linda Jangala at (707) 464-9506.

Notification 48 hours prior to the meeting will enable the city to make reasonable arrangements to ensure accessibility to this meeting.

**Crescent City Planning Commission
December 13, 2007
Staff Report**

Agenda Item# V.B.

Application #: CDP07-06, UP07-08, AR07-11

Project: Coastal development permit, use permit and architectural review for a mixed-use development, 'Coasta Norte'
Applicant: Development Consultants, Inc./Randy Baugh
Site Address: 200 A Street **APN:** 118-020-34
Lot Size: ±1.24 acres **Project Size:** 98,755 sq. ft.
General Plan Land Use: Current: Medical Related, Residential; Pending: Visitor & Local Commercial
Zoning: CZ-RP (Coastal Zone-Residential Professional) and CZ-R2 (Coastal Zone-Two Family) Districts
Surrounding Zoning/Uses: North: CZ-R1/residential; East: CZ-R1/residential; South: CZ-R1/residential; West: CZ-O/Coastal Zone-Open Space/open space (beach).

Background & Project Description:

In June 2007 the applicant proposed demolishing the existing vacant clinic building and constructing a three-story building with an additional level of underground parking, and consisting of fifty-one residential units and a 650-sq. ft. sales/professional office. The applicant pulled the item from the agenda of the June 14th meeting in order to allow time for certain revisions based on the initial architectural review and on comments received from others.

The revised project again proposes a three-story building with one additional floor of underground parking, for a gross floor area of 98,755 square feet, consisting of forty-four (44) residential units (unspecified mixture of condominiums and timeshares or vacation rentals), a ±1500-sq. ft. medical/professional office and a ±700-sq. ft. sales office. Further site development details are discussed under the following analyses of the project's consistency with the Crescent City General Plan, Local Coastal Program, and Zoning Code, which includes the Architectural Review. The use permit is to obtain approval to develop a parking lot on the portion of the property that is within the CZ-R2 District.

Staff Analysis:

General Plan Consistency

[The State considers that, "an action, program or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment" (Governor's Office of Planning and Research, General Plan Guidelines, 2003, p.164).]

The Crescent City General Plan land use designation adopted by the City Council in 2001 is Visitor & Local Commercial (VLC). However, this designation has yet to be approved by the California Coastal Commission under a Local Coastal Plan Amendment, the final draft of which was submitted to the Coastal Commission in 2004. Therefore, the applicable land use designation

is determined by the Crescent City section of the c. 1977 Del Norte County General Plan. The City section is brief, consisting of only seven pages. The following provisions directly apply to the subject parcel and/or project:

A) "Economic Environment" policies

- Policy P-11, "High density residential development near the Central Business district and the shopping center should be encouraged to provide a further source of support for commercial activity and to reduce local dependency upon the automobile."
- Policy P-14, "The City should encourage the concentration of medical services adjacent to Seaside Hospital and urge the construction of a medical clinic in that vicinity."

B) "Plan Map Designations"

- "Residential—Up to six units per acre, would include the present R-1, R-1B zones and would allow R-2 zoning as a transition to high density housing."
- "Medical Related—Encourages the development of [a] concentration of medically related services adjacent to the hospital."

C) "Table 1 – Zones that are compatible with Land Use Designations"

- Compatible with Residential: R-1, R-2
- Compatible with Medical Related: RP, C-1

(Note: there is no text accompanying the table, hence no explanation why the C-1 zone is also listed as compatible with the Medical Related designation.)

General Plan Applicable Policies or Standards

A) **Traffic Study.** Criteria for traffic studies are not contained in the earlier Del Norte County General Plan, including the Crescent City section, but the 2001 Crescent City General Plan Policy 3.A.16 states that,

The City shall require new land development projects to contribute their fare share of transportation improvement costs, based on trip generation. Any project that is expected to generate more than 50 trips per day shall be required to submit a traffic analysis as part of the permit application and will be required to mitigate traffic impacts identified. Regardless of the number of trips generated by a given project, a traffic study may be required if traffic safety issues warrant such a study.

Because of the apparent intent of this policy to mitigate new traffic impacts, staff believes that the traffic volume of the erstwhile medical clinic use should be factored into the anticipated traffic volume generated by the Coasta Norte project, so that a net impact will result. According to the *Trip Generation Manual* (Institute of Traffic Engineers. 2003.), a medical clinic/office use can be expected to generate a range of 292-570 daily trips, based on a weekdays-only operation and assuming little or no public transit. The lower number (292) is based on the square footage of the project, and the higher number (570) is based on the number of employees.

By contrast, the Coasta Norte project can be expected to generate as many as 328 trips per day, based on seven days per week, and further based on both the number of residential units and the

square footage of the office spaces. Using the low end of the clinic/medical office range (292 trips), Coasta Norte's anticipated 328 trips would result in a net increase of only 36 trips per day, not sufficient to trigger the requirement for a traffic study. Moreover, staff believes it is more appropriate to look at the median of the clinic range, which would be 394 trips. With this approach, the Coasta Norte project would result in a net decrease of 66 trips per day.

B) Floor Area Ratio. It is also important to note that neither land use designation states a standard for Floor Area Ratio (FAR), which the 2001 general plan defines as,

The gross floor area permitted on a site divided by the total net area of the site, expressed in decimals to two places. For example, on a site with 10,000 net sq. ft. of land area, a Floor Area Ratio of 1.00 will allow a maximum of 10,000 gross sq. ft. of building floor area to be built.

By extension of the lot coverage standard from the implementing RP zoning (50% maximum), the FAR for the Medical Related designation could feasibly be 0.50, which would ensure that no more than half the lot area would be covered. Per the adopted and amended VLC, the calculation of the FAR for this project does not include residential uses above the ground floor. Also, since FAR standards for any land use designation take in account the off-street parking needs, and because the underground parking does not significantly contribute to the bulk of the building, staff believes it is appropriate to exclude the underground parking garage from the FAR calculation. Therefore the FAR for this project is calculated by dividing the first floor area by the total lot area, i.e., 24,575/54,000. The resulting FAR is 0.45. Even though there is not an expressed FAR standard, the proposed FAR appears to be consistent with the purpose of the development standards in the CZ-RP District.

C) Density. Although the description of the Medical Related designation does not provide a residential density range or limit, the implementing and consistent zoning district, CZ-RP (Coastal Zone Residential-Professional), allows multiple-family uses and does provide an indication of the density standard that probably should have been noted in the description of the Medical Related designation. The CZ-RP development standards require a "minimum of fifteen hundred square feet per dwelling unit," which implements 29 dwelling units per acre. The proposed density, calculated for only the CZ-RP portion of the property, is 41 units per acre. If the CZ-R2 portion is included, its overlying Residential land use designation had a maximum density of six units per acre. With only 7200 sq. ft. of area, however, this portion would only allow one residential unit and result in an overall density of 40 units per acre. This density does comply, however, with the only clearly stated density standard for this parcel, in the pending general plan designation (see discussion under Visitor and Local Commercial in the following section).

D) Habitat Buffer. The Local Coastal Plan/Land Use (1980) component contains most of the pertinent policies in the Coastal Visual Resources and Special Communities section and the Environmentally Sensitive Habitat Areas/Water and Marine Resources section, which lists all of the inter-tidal areas between Preston Island and the Breakwater as Environmentally Sensitive Habitat Areas (ESHAs). ESHAs are not synonymous with "wetlands," which means, "land

within the coastal zone which may be covered periodically or permanently with shallow water marshes, open or closed brackish water marshes, swamps, mudflats, and fens.” Therefore, the project site is adjacent to an ESHA but not to a coastal wetland, and is not subject to the 100’ setback from coastal wetlands (CCGP Section 6, Policy 6.A.3.). The proposed setback is 35 feet from the property line, at a point synonymous with the extension of the Wendell Street ROW line, and a distance consistent with the 35-foot setback from the bluff imposed on the adjacent Hampton Inn development.

Local Coastal Plan Consistency

Medical Related & Residential Designations: In the maps accompanying the c. 1983 Local Coastal Plan, the parcel appears to have two land use designations of the following extent: a Medical Related designation over approximately .90 acre on the southerly portion, and a Residential designation over the northernmost 14,400 (120’ x 120’ square at the intersection of A and third Streets). The Land Use Map indicates that the Medical Related designation extends north along A Street to the mid-block point between Second and Third Streets (see Attachment C).

The location of the land-use designation boundary at the midpoint of the block appears to be a mapping error, however, primarily because the boundary in this location would have passed through the existing medical office building, leaving an occupied structure under two general plan designations. Aerial photographs or a site inspection will reveal that the clinic building is built well over the midblock line (see Attachment D) City files contain other mapping references that indicate that the location of the dividing line between the two land use designations was probably intended not to be at midblock, but to be at $\frac{3}{4}$ of the distance from Second to Third Streets; i.e., the land-use boundary line separating Medical Related and Residential designations should be 60 feet south of the Second Street ROW instead of 120 feet. The 1981 *Record of Survey for Del Norte County Local Hospital District* indicates that the hospital lands extended northerly to 60’ from the Third Street ROW line, or $\frac{3}{4}$ of the distance from Second to Third Streets (see Attachment E).

Although land use designation and zoning district boundaries typically follow parcel lines, parcels with split designations occur. Staff has not encountered any instance, however, where a structure was split by a land use designation. It is therefore staff’s interpretation that the Medical Related designation was intended to cover the entire medical office building as well as the entire hospital lands, including approximately 1.07 acres ($\pm 46,000$ sq. ft.) of the subject parcel. Accordingly, because the separate 60’ x 120’ parcel between the hospital lands and Third Street was vacant and adjacent to residential uses, the interpretation follows that the Residential designation was intended to cover only the northernmost 7,200 square feet of the 1.24-acre subject parcel (see Attachment F).

Visitor & Local Commercial Designation: Because the City Council adopted the updated general plan in 2001, staff recommends that any proposed land use should also be consistent with the VLC designation. This is because in order to approve any entitlement, the Planning Commission and/or the City Council must find consistency with the general plan.

In July 2006, the City Council adopted General Plan Amendment #GPA06-01, which affected the VLC in the following ways that relate to the proposed project:

1. Added the stipulation that the maximum Floor Area Ratio (FAR) of 0.50 does not include residential uses above the ground floor in a mixed-use development.
2. Increased the density range from 6-to-15 units per acre to 6-to-60 units per acre.
3. Added residential-only uses by use permit.

The first two ways directly affect this project, in that the intent of the general plan amendment (GPA) was to facilitate higher-density development, increase the downtown residential population, foster mixed-use development and add to the housing stock. The third way indirectly affects this project: allowing residential-only uses by use permit does not apply to a mixed-use development, but is mentioned here only to further illustrate that the VLC designation is intended to accommodate and provide higher-density residential development than has been common in Crescent City. The full description of the VLC, as amended, reads:

This designation provides for a combination of commercial uses including visitor-serving commercial uses, local-serving commercial uses, and regional-serving commercial uses. Within the coastal zone, however, visitor-serving uses will have priority over all other allowable uses. The focus of this designation is on concentrating uses oriented toward tourism and drawing trade from the entire Del Norte County area. The maximum FAR for buildings in this designation is 0.50, but the FAR does not include residential uses above the ground floor in a mixed-use development. The principal permitted uses under the VLC designation include, but are not limited to, commercial activities such as regional shopping and service centers including wholesale "club" stores and factory outlets; a full range of retail uses including apparel stores, specialty shops, durable goods, and home furnishings; travel services such as motels/hotels; restaurants; entertainment centers; banks; savings and loans, and recreation facilities. Multiple-unit residential uses as a secondary/mixed use at a density of 6 to 60 units per acre may be considered with a conditional use permit. Other uses requiring a conditional use permit include, but are not limited to, residential-only developments, new timeshare resort hotels, recreational vehicle parks, mini-storage, medical offices, public facilities, and transportation services such as gas stations and light-commercial automobile service uses. All heavy commercial uses shall be prohibited in the Visitor and Local Commercial designation.

Land Use Plan/Local Coastal Program Policies: Several LUP and LCP Policies apply to the proposed project, and pose the following requirements:

- LUP Chapter 5 Policy No. 7 states, "The City shall include a condition in the approval of all new development on ocean fronting parcels that no shoreline protective structure shall be allowed in the future to protect the development from bluff erosion. Prior to the issuance of a coastal development permit for the development, a deed restriction acceptable to the Planning Director shall be recorded memorializing the prohibition on future shoreline protective structures." A condition of approval has been added to this effect.
- LCP Chapter 7, Policy No. 2 states, "The City shall require that best management practices

(BMPs) for controlling storm water runoff and maintaining water quality be incorporated into development design and operation. All post-construction structural BMPs (or suites of BMPs) for new development, including but not limited to, recreational or visitor-serving commercial development within the Coastal Zone - Commercial Waterfront zoning districts, shall be designed to treat, infiltrate or filter stormwater runoff from each storm event, up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor, for flow-based BMPs” A condition of approval has been added to this effect.

- LUP Chapter 3, Policy No. 3 states, “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 landforms, to be compatible with surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas...” Because the scenic and viewshed considerations are of primary importance to the community, staff recommends addressing this policy and applying any appropriate conditions at the public hearing. The project as proposed will almost completely block the ocean views from the Second and A Street ROWs, which may affect the intent and the use of the twenty-foot-wide coastal access easement required for the Hampton Inn on its north side.
- Chapter Three of the California Coastal Act states that,
Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway (Public Resources Code §30212(a).

Because adequate access exists both on the parcel and nearby, additional public access is not required for this project. Therefore, the project is in compliance with the coastal access and recreation policies contained in Chapter Three of the California Coastal Act. A finding has been added to the Recommended Findings to this effect.

Zoning Code Consistency

Please refer to the discussion above under Medical Related and Residential Designations. The areal extent of the implementing zoning districts is also affected by the mapping error, i.e., the boundary between the CZ-RP and the CZ-R2 zones was applied at the midblock point, over the existing medical office building (see Attachment G). In terms of uses and development standards, the project is variously consistent and inconsistent with the Crescent City Zoning Code (Coastal Zone Zoning Regulations, or CZZR):

A) Uses: The project proposes a mixed-use, primarily multi-family residential, with a minor commercial component.

- The CZ-RP District portion of the site allows:
 - Business and professional offices such as doctors, dentists, lawyers, accountants and other professional offices as a principally permitted use (§17.67.020.A).

- Multiple Family dwellings as a principally permitted use (§17.67.020.D).

This aspect is consistent with the Zoning Code in that the CZ-RP District is the adopted and implementing zoning district for the Medical Related land use designation.

- The CZ-R2 District portion of the site will only be developed as a parking lot to serve the development. The CZ-R2 District allows, by use permit:
- Parking lots (§17.66.020.5)

B) Building height: The project proposes a building height of approximately 38 feet. The CZ-RP restricts building heights to a maximum of thirty-five feet (§17.67.030.A). This aspect is not consistent with the Zoning Code; therefore staff has added a condition of approval requiring that the applicant either modify the proposed height or obtain variance approval from the Planning Commission.

C) Setbacks: The project proposes the following setbacks:

- Front yard: twenty feet (20') on A Street
- Side yards: five feet (5') on the south side; thirty feet (30') from APNs 118-020-24 & -25 on the north side interior lot line; fifty-eight feet (58') on the street side yard on Third Street
- Rear yard: thirty-five feet (35')

These aspects are consistent with the Zoning Code, sections 17.67.030.B.1-3.

D) Lot area per dwelling unit: The project proposes 1,227 square feet of lot area per dwelling unit. This aspect is not consistent with the minimum fifteen hundred square feet of lot area per dwelling unit contained in §17.67.030.B.5; therefore, staff has added a condition of approval requiring that the applicant either increase the proposed lot area per dwelling unit or obtain variance approval from the Planning Commission.

E) Lot coverage: The project proposes lot coverage of 45%. Section 17.67.030.B.6 states that, "For residential uses, coverage shall be the same as required in the most restrictive zone in which they are first permitted;" therefore, the standard would be the same as that for the CZ-R1 zone, which sets a maximum lot coverage of 50%. This aspect is consistent with the Zoning Code.

F) Parking: The project proposes 77 parking spaces, including 4 ADA-accessible spaces. Section 17.76.040.B requires 1.5 spaces (covered or uncovered) per dwelling for multiple family dwellings. Section 17.76.060.C.4 requires one space per two hundred square feet of floor area for medical offices. Hence, the parking requirement is 66 spaces for the residential use and 11 spaces for the office use, totaling 77 spaces. This aspect is consistent with the Zoning Code.

G) Landscaping: The applicant has not submitted landscaping and irrigation plans that comply with the requirements of the city's landscaping ordinance (CCMC Chapter 17.43); however, the ordinance requires that the plans be submitted either with the development permit or the building permit applications. Staff has added a condition of approval requiring submittal of the plans prior to issuance of the coastal development permit.

H) Architectural Review: The purposes of architectural review in the Coastal Zone are "...to

permit the city to evaluate site plans and design of structures to assure compatibility, harmony in appearance in neighborhoods, reduce negative impacts on adjacent properties, reduce the unnecessary destruction of the environment and ground cover to avoid the creation of hazardous conditions and drainage problems, to avoid monotonous and otherwise nonaesthetic development injurious to the overall community, to provide a vehicle to encourage full development of streets servicing the properties and to assure full installation of all public utilities necessary to serve such properties.”

Hence, architectural review is primarily accomplished by ensuring compliance with adopted policies and development standards, which are discussed in various sections above. The more subjective areas concerned with compatibility, harmony, aesthetics, and impact on adjacent properties will be the subject and function of the Commission discussion and public comment portions of the public hearing. In light of the complexity of this project, e.g., the status of the applicable general plan, local coastal plan, and zoning; the questionable locations of zoning and land use designation boundaries; the disparity of public opinion; and the preliminary issues posed by the California Coastal Commission, staff anticipates preparing additional conditions of approval for consideration at the public hearing.

Environmental Determination:

A Negative Declaration was prepared (State Clearinghouse No. 2007112076), pursuant to the provisions of the California Environmental Quality Act (CEQA Guidelines §15070 et seq.). The Notice of Intent to Adopt a Negative Declaration, published on November 13, 2007, established a 30-day comment period extending from November 14, 2007 through the close of the public hearing at tonight’s meeting.

Recommended Findings:

Staff recommends that the Planning Commission make the following findings:

- A. That the project is consistent with the certified Coastal Element of the Crescent City General Plan and with the Local Coastal Program Component of the Crescent City Municipal Code.
- B. That the project is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.
- C. That there is no substantial evidence that the project will have a significant effect on the environment and that the Negative Declaration reflects the Planning Commission’s independent judgment and analysis.

Recommended Actions:

Staff recommends that the Planning Commission take the following actions:

- A. Conduct the public hearing to receive comments on this application.
- B. Adopt the Recommended Findings A-C.
- C. Adopt the Negative Declaration.

D. Approve application CDP07-06, UP07-02 and AR07-11, subject to the attached conditions of approval and any additional conditions adopted by the Planning Commission at the public hearing:

- Attachments:
- A) Conditions of Approval
 - B) Coasta Norte plan set (11 pp.)
 - C) Excerpt from c. 1983 Land Use Map
 - D) Aerial photo showing relation of medical office/clinic building to midblock point
 - E) 1981 *Record of Survey for Del Norte County Local Hospital District*
 - F) Excerpt from Land use Inventory Map, c. 1998, indicating internal parcels
 - G) Excerpt from the c. 1983 Coastal Zone Zoning Map

**Coastal Development Permit #CDP07-06,
Use Permit #UP07-02, & Architectural Review #AR07-11**

200 A Street, APN 118-020-34

Conditions of Approval

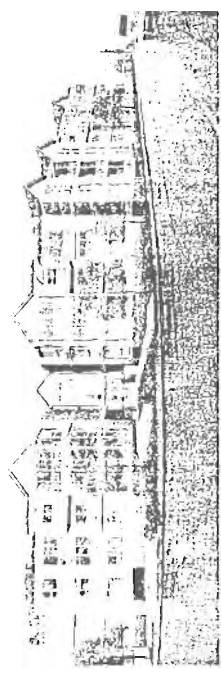
On December 13, 2007, the Planning Commission approved the above application, subject to the following conditions:

1. The approval is for the demolition of an existing vacant clinic building, and the development of a 98,755 square-foot three-story mixed-use project in the CZ-RP and CZ-R2 Districts.
2. Within five (5) days following project approval, the applicant shall file a CEQA Notice of Determination with the County Clerk.
3. Prior to issuance of the coastal development permit, the applicant shall either modify the proposed height to not exceed thirty-five feet (35') or obtain variance approval from the Planning Commission.
4. Prior to issuance of the coastal development permit, the applicant shall either increase the proposed lot area per dwelling to a minimum of 1,500 square feet or obtain variance approval from the Planning Commission.
5. Prior to issuance of the coastal development permit, the applicant shall provide landscaping and irrigation plans pursuant to CCMC Chapter 17.43.
6. Prior to issuance of the coastal development permit, the applicant shall obtain a geo-technical report from a licensed geologist or civil engineer, subject to the approval of the City Engineer, that determines various aspects of geologic risk and stability on the site, including, but not limited to, the potential risks for inundation of the parking level and first occupied floor from storm surge or tsunamis, the potential for groundwater infiltration into the structure, and the establishment of the appropriate setback for the proposed structure on the ocean side.
7. No shoreline protective structures shall be allowed in the future to protect the development from bluff erosion or seawater incursion. Prior to issuance of the coastal development permit, the applicant shall record a deed restriction, acceptable to the Planning Director, that memorializes the prohibition on future shoreline protective structures.
8. Best management practices (BMPs) for controlling storm water runoff and maintaining water quality shall be incorporated into development design and operation. All post-construction structural BMPs (or suites of BMPs) for the project shall be designed to treat, infiltrate or filter stormwater runoff from each storm event, up to and including the 85th

percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor, for flow-based BMPs.

9. Prior to issuance of the building permit, the applicant shall submit and obtain approval from the City Engineer of a mitigation and monitoring program that will identify, implement and track the performance of the BMPs discussed under Condition of Approval No. 8 above.
10. No soil, materials or debris of any kind shall be disposed of onto the open space (beach) area.

"Coasta Norte" Crescent City, CA



DEVELOPMENT CONSULTANTS INC. 10000 Wilshire Blvd. Suite 1000 Los Angeles, CA 90024 Tel: (310) 271-1111	ARCHITECT KAT BIRCHALL ASSOCIATES 10000 Wilshire Blvd. Suite 1000 Los Angeles, CA 90024 Tel: (310) 271-1111
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ABBREVIATIONS

10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100									
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DRAWING SYMBOLS

PROJECT DATA

PROJECT NAME		PROJECT NO.		PROJECT DATE	
PROJECT LOCATION		PROJECT OWNER		PROJECT ENGINEER	
PROJECT DESCRIPTION		PROJECT STATUS		PROJECT BUDGET	
PROJECT TEAM		PROJECT CONTACT		PROJECT PHONE	
PROJECT FAX		PROJECT EMAIL		PROJECT WEBSITE	

GENERAL NOTES

1. All work shall be in accordance with the latest edition of the American Institute of Steel Construction, Inc. (AISC) Specification for Structural Steel Buildings.
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CODE COMPLIANCE SUMMARY

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PROJECT TEAM

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VICINITY MAP

SITE

PROGRESS

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COASTA NORTE

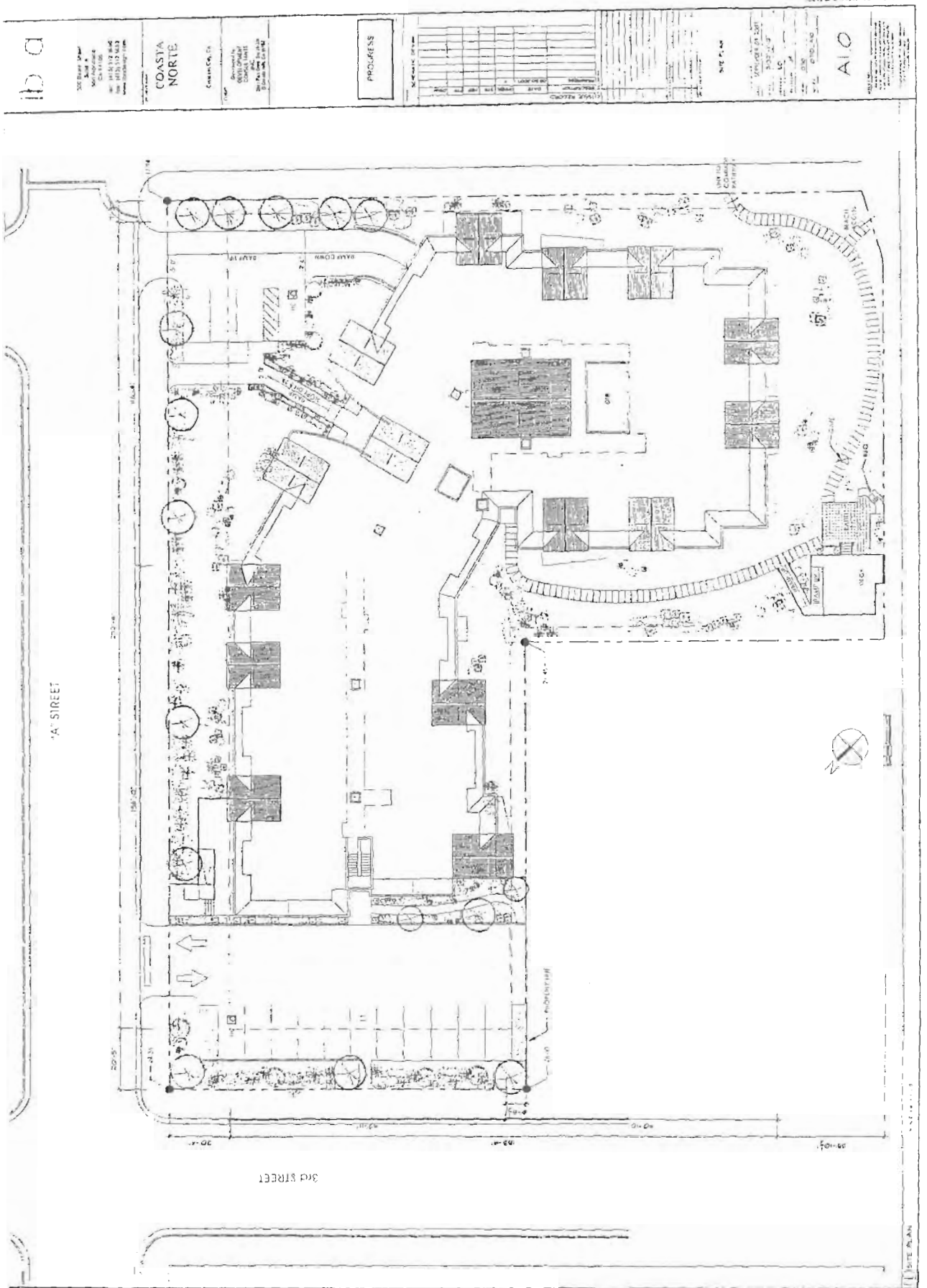
Coastal North

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COASTA
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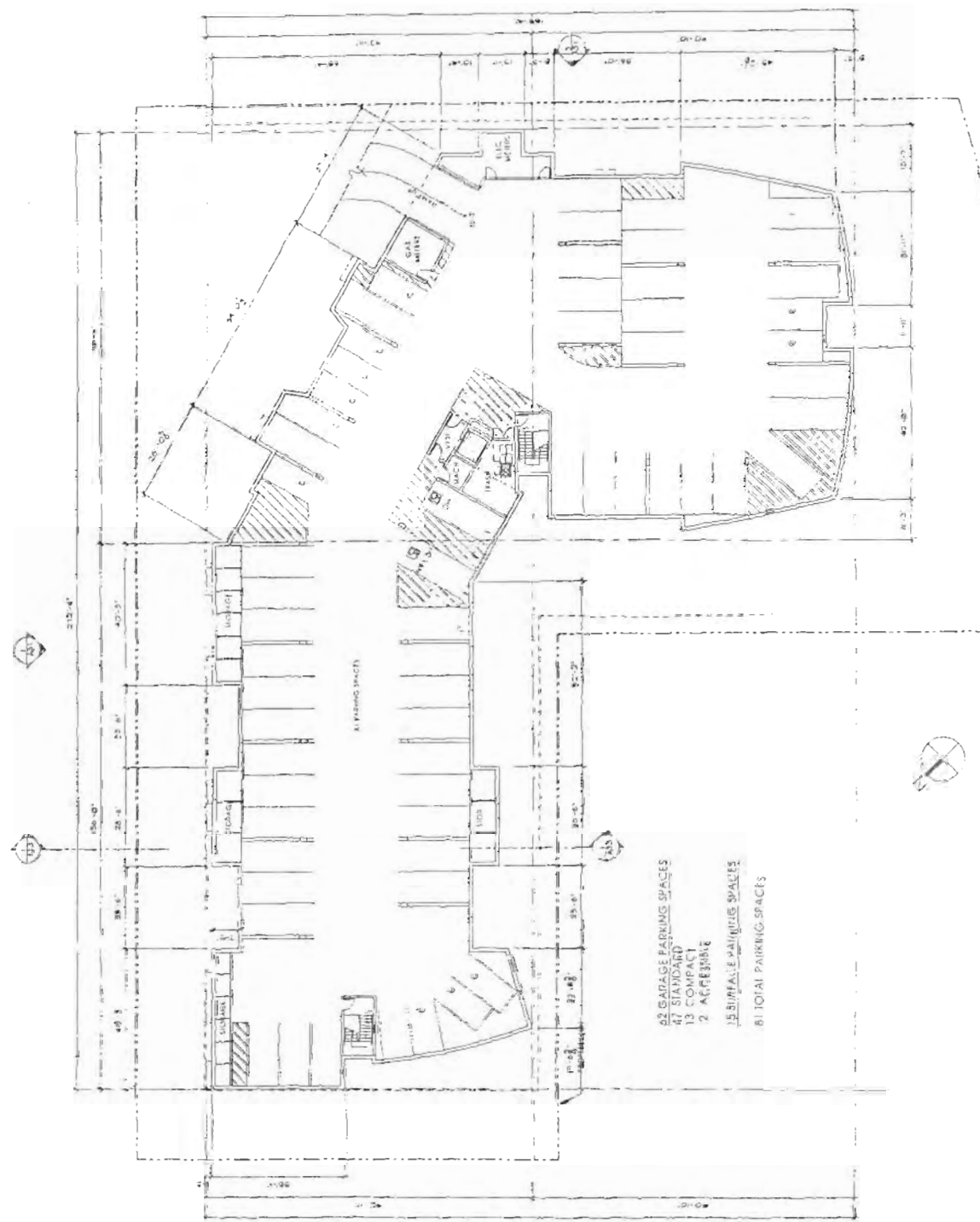
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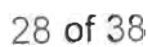
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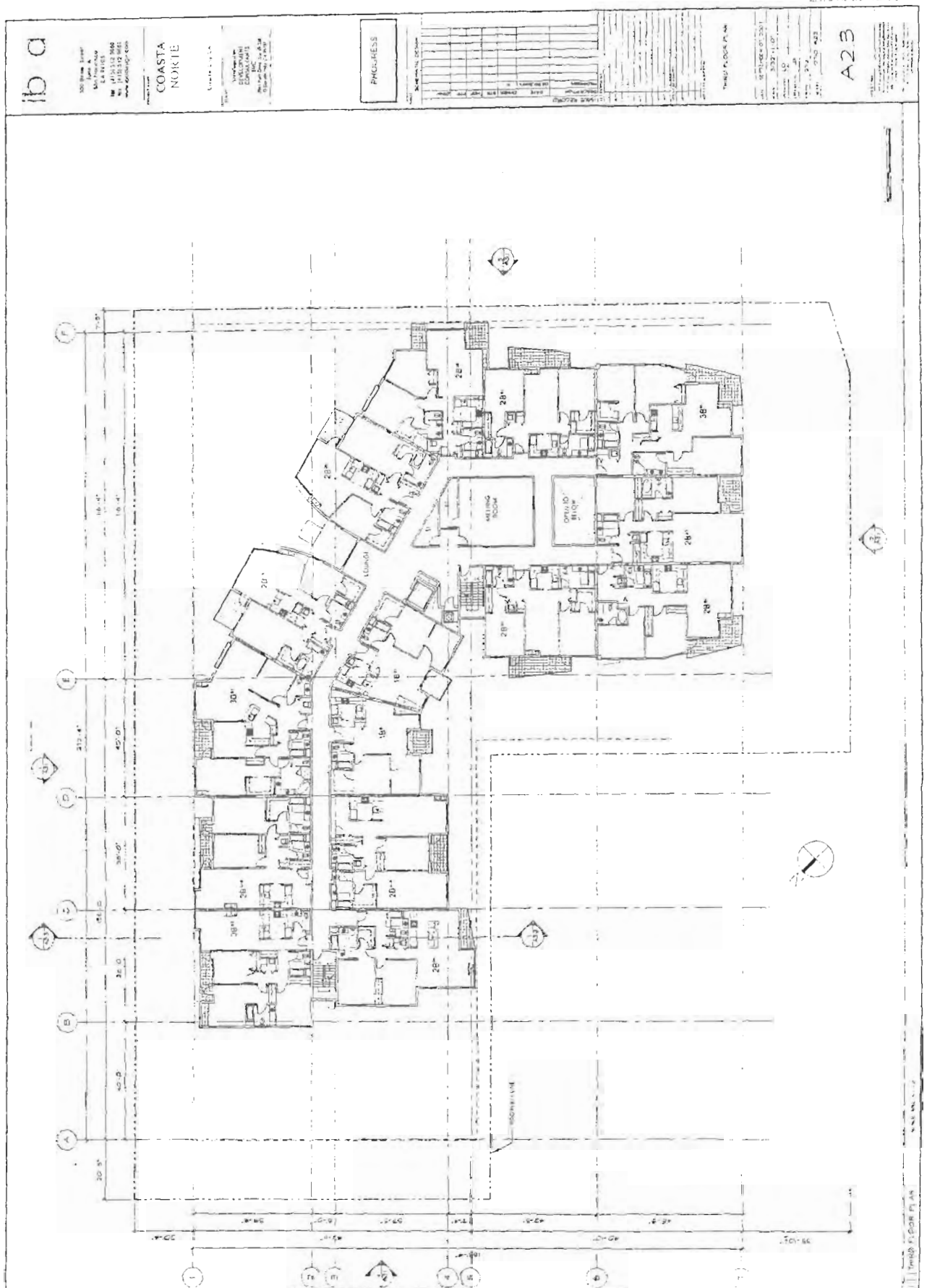
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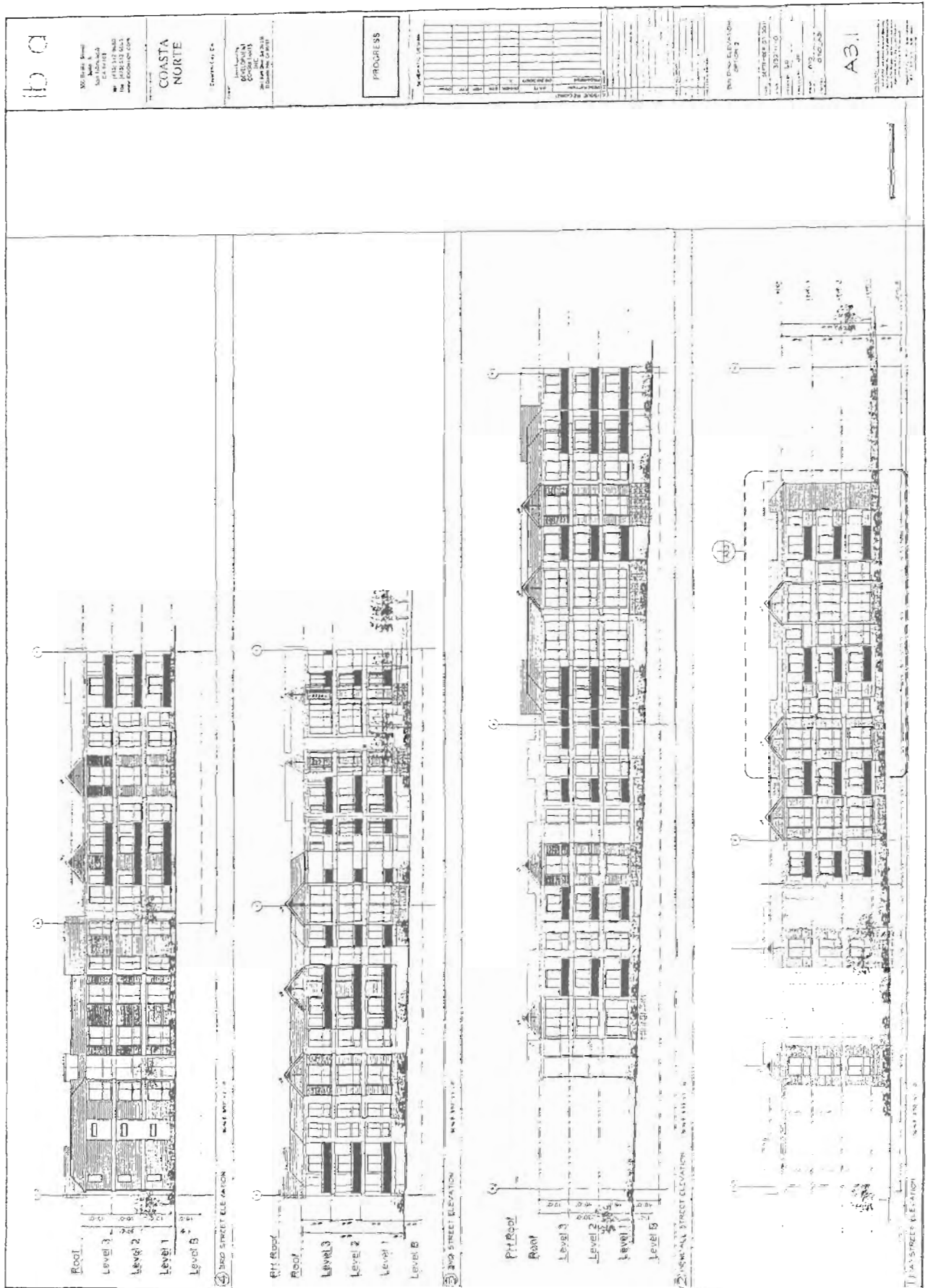
RESEARCH FUNDING

A20









ib a

300 Main Street
 Suite 100
 San Francisco, CA 94102
 Tel: 415.398.1234
 Fax: 415.398.1235
 www.kochgroup.com

COASTA
 NORTE

Copyright © 2001

Architect:
 BOLLIGER
 CONSULTANTS
 300 Main Street
 Suite 100
 San Francisco, CA 94102
 Tel: 415.398.1234
 Fax: 415.398.1235
 www.kochgroup.com

PROGRESS

NO.	DATE	DESCRIPTION	BY	CHKD
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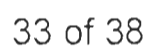
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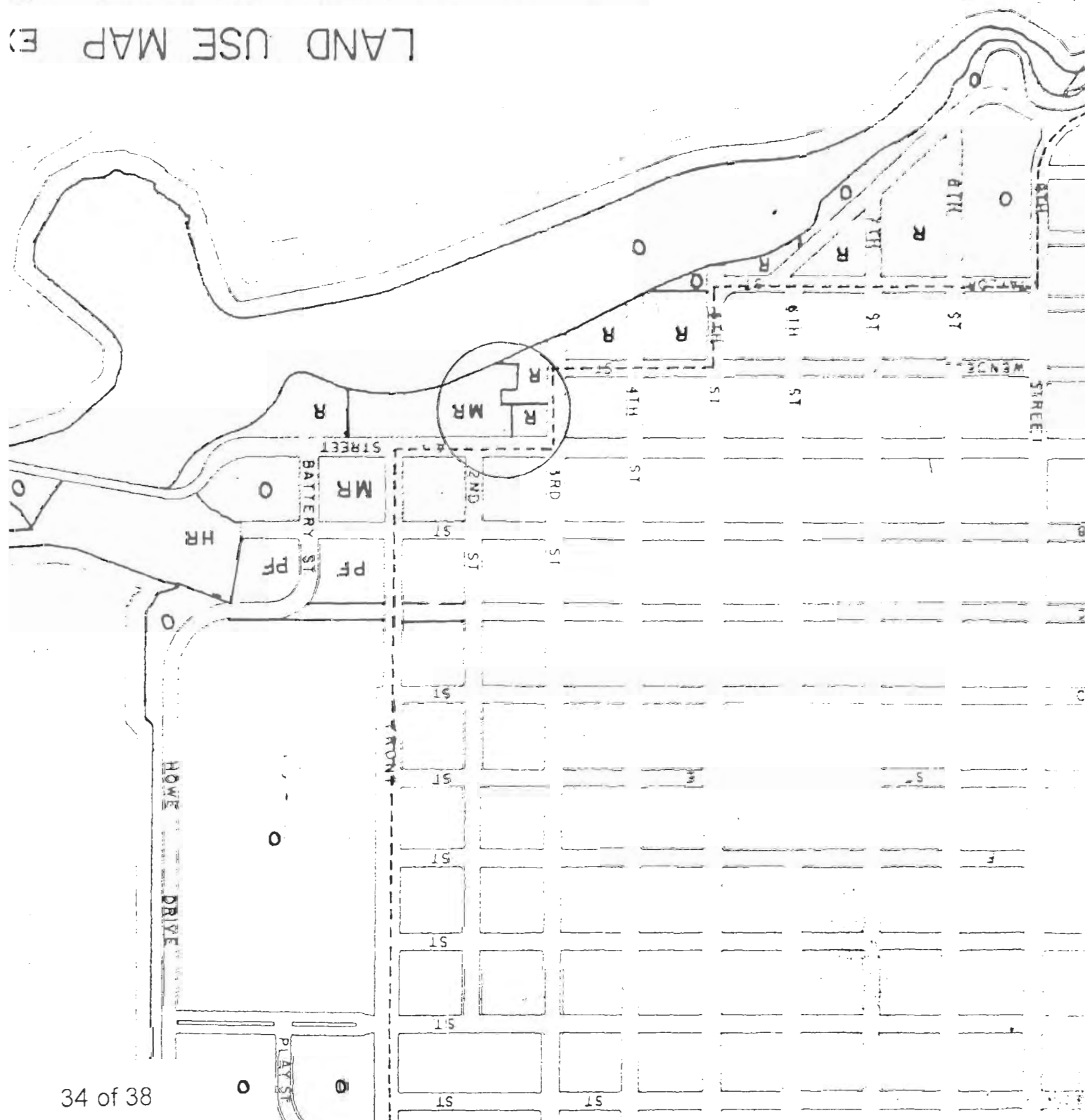
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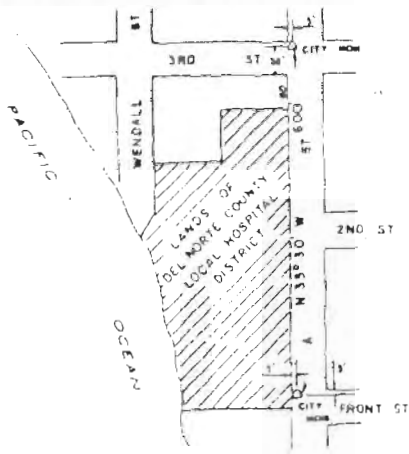
300 Main Street
 Suite 100
 San Francisco, CA 94102
 Tel: 415.398.1234
 Fax: 415.398.1235
 www.kochgroup.com



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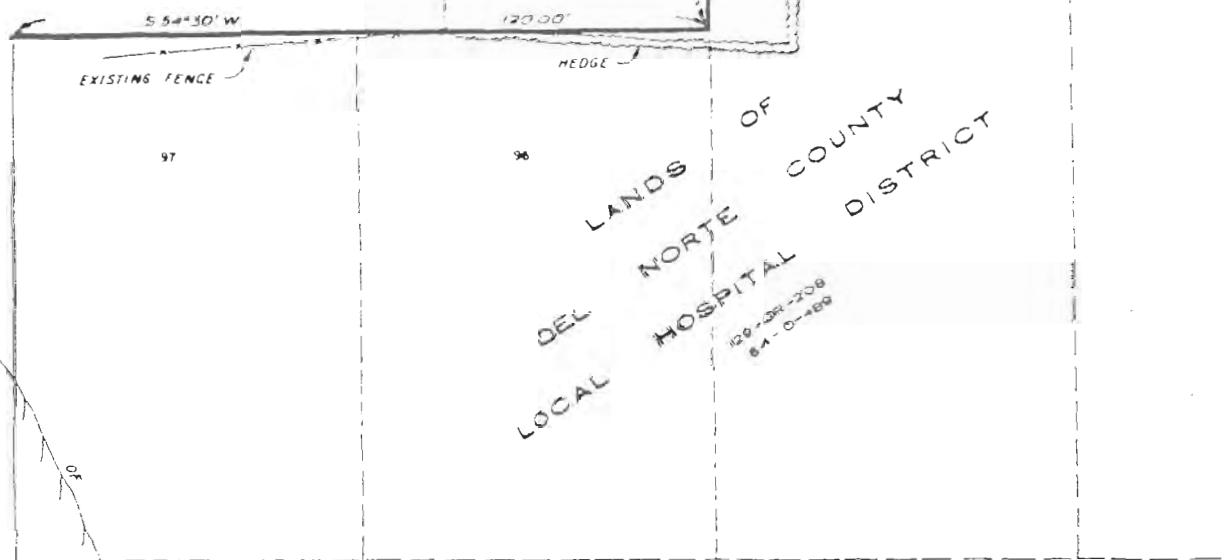
- VICINITY MAP -
SCALE 1" = 200'

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SCOTT, T L
236-OR-690

91850N, M.C.
70-GR-360

THIS IS
MONITOR
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NOTE: THIS EXTENSION OF 2ND STREET HAS BEEN VACATED & ABANDONED BY RESOLUTION # 723 OF THE CITY COUNCIL OF THE CITY OF CRESCENT CITY PER 77-OR-29.

COUNTY RECORDER'S CERTIFICATE

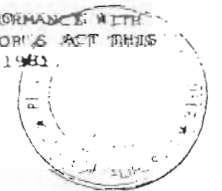
FILED THIS 18th DAY OF July, 1981, AT 4:19 P.M. IN BOOK 9 OF MAPS, AT PAGE 64, 61 3061
AT THE REQUEST OF Richard B. Davis

John D. Alarcon BY: Quia Mena
COUNTY RECORDER (DEPUTY RECORDER)

COUNTY SURVEYOR'S CERTIFICATE

THIS MAP HAS BEEN EXAMINED FOR CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT THIS 27th DAY OF July, 1981.

Scott
COUNTY SURVEYOR



City of Crescent City

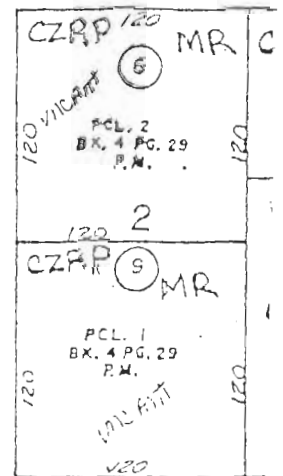
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the couple is
operating a 1 room
bed + breakfast

118-020-28
General Plan
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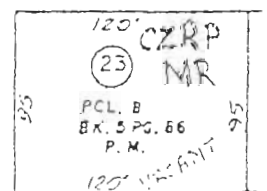
Zoned: CZ-RP
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Residential -
Professional

BATTLE
LOTS

FRONT



BATTERY





COASTAL ZONE

CRESCENT CITY

CITY OF

Ocean

G

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET, SUITE 200

EUREKA, CA 95501

VOICE (707) 445-7833 FAX (707) 445-7877



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: KIRK ROBERTS

Mailing Address: 323 WENDELL ST.

City: CRESCENT CITY

Zip Code: 95531

Phone: 707-464-1506

NATALIE FAHNING 707-464-5042
304 WENDELL ST.
CRESCENT CITY, 95531SECTION II. Decision Being Appealed

1. Name of local/port government:
CITY OF CRESCENT CITY
2. Brief description of development being appealed:
COASTA NORTE - 44 UNIT CONDO/TIMESHARE, MEDICAL OFFICE, +
SALES OFFICE WITH SUB-SURFACE PARKING
1.25 ACRE - SPLIT PARCEL
3. Development's location (street address, assessor's parcel no., cross street, etc.):
200 A STREET
CRESCENT CITY, 95531
APN 118-020-34
4. Description of decision being appealed (check one.):
☐ Approval; no special conditions
☒ Approval with special conditions:
☐ Denial

RECEIVED

JAN 28 2008

CALIFORNIA
COASTAL COMMISSION

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-1-CRC-08-004

DATE FILED:

1/28/08

DISTRICT:

North Coast

EXHIBIT NO. 6

APPEAL NO.

A-1-CRC-08-004
BAUGH, dba DEVELOPMENT
CONSULTANTS, INC.APPEAL, FILED 1/28/08 (KIRK
ROBERTS & NATALIE
FAHNING) (1 of 27)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

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

- ☐ Planning Director/Zoning Administrator
☐ City Council/Board of Supervisors
☒ Planning Commission
☐ Other

6. Date of local government's decision:

12/13/07

7. Local government's file number (if any):

CDP07-06, UP07-02, AR07-11, AND
NEGATIVE DECLARATION

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

RANDY BAUGH
DEVELOPMENT CONSULTANTS INC.
3941 PARK DRIVE SUITE 20-338
EL DORADO HILLS, CA 95762

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

(1) KIRK ROBERTS
SUSAN ROBERTS
323 WENDELL ST.
CRESCENT CITY, CA 95531

THEODORE SCOTT
148 3RD ST.
CRESCENT CITY, CA 95531

(2) WILLIAM LONSDALE
1315 PEBBLE BEACH DRIVE
CRESCENT CITY, CA 95531

JUDY STILWELL
178 WEST 5TH ST.
CRESCENT CITY, CA 95531

(3) SARA KRUSE
1315 PEBBLE BEACH DRIVE
CRESCENT CITY, CA 95531

WILLIAM + HOPE GOSS
338 WENDELL ST.
CRESCENT CITY, CA 95531

(4) CAROL HENSEL
156 3RD ST.
CRESCENT CITY, CA 95531

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

This appeal is submitted directly to the California Coastal Commission under exception D in that the local government charges a fee (\$175.) for the filing of processing appeals.

- 1) Conditions for approval of CDP07-06 (attached) and therefore the Negative Declaration are inconsistent with procedures required by Case Law, " Sundstrom vs. County of Mendocino (1988) 202 Cal App. 3d296" Inappropriate delegation of CEQA duties, re: condition # 6 and condition # 9 which rely on future studies.
- 2) Failure to research the possible effects on marine organisms of the adjacent shoreline from building another high density/high traffic development. Ever since another high density/high traffic development was constructed, the Hampton Inn, there has been a noticeable decrease of marine organisms on the shoreline between Battery Point Lighthouse and 5th Street, possibly due to increased visitor traffic or run-off. This decrease in marine organisms has been noticed by local residents.
 - Coastal Act Section 30230 and 30231
- 3) Zoning related issues as addressed in Coastal Commission letter dated 12/06/07 and staff report dated 12/13/07.
- 4) Access related issues on the "2nd Street corridor" for all emergency services to reach beach as has been historically done.
- 5) Failure to address development's site and design to minimize landform alteration.
 - Coastal Act Section 30251, as incorporated in Policy 3 of LUP Chapter 3 – *Coastal Visual Resources and Special Communities*

6) Failure to identify actual visual and mass impact of the development on public vantage points to the north, east, and south. Project, which is in a transitional area, is not compatible with the surrounding area of single-family residential homes and a commercial visitor-serving development to the south.

- Coastal Act Section 30251, as incorporated in Policy 3 of LUP Chapter 3 – *Coastal Visual Resources and Special Communities*

7) Failure to address the effects of the project's height and bulk on the view corridors and ways to minimize them including proposed minimal corridor from 2nd Street.

- Coastal Act Section 30251, as incorporated in Policy 3 of LUP Chapter 3 – *Coastal Visual Resources and Special Communities*

8) Failure to address conformity with the public access and public recreation policies of Chapter 3 (P.R.C. Section 30604(c)). Although access next to the Hampton Inn is possible, parking is not available for the general public. The Coasta Norte project does not address access or parking accessibility for the general public.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

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

Will K Robert

Natalie Fanning

Signature of Appellant(s) or Authorized Agent

Date:

1/25/08

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize

NATALIE FANNING

to act as my/our representative and to bind me/us in all matters concerning this appeal.

Will K Robert

Signature of Appellant(s)

Date:

1/25/08

Mr. William Caplinger
Planning Director
City of Crescent City
377 J Street
Crescent City, California

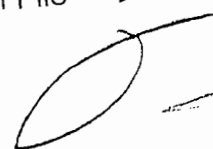
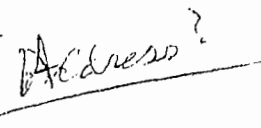
RE: application # CDP07-06, UP07-02, AR07-11 (APN 118-020-34).

Mr. Caplinger:

Unfortunately I will not be able to attend tonight's planning commission hearing due to prior commitments. However, I would still like to raise concerns regarding DCI's proposed development located at 200 A Street. In general I have no problem with the intent of a high density residential development at this location, still there are certain aspects of this development "as proposed" which raise concerns and establish undesirable precedents for future ocean front property development. The following is a list of my general concerns:

- 1) This property is reportedly located in a split zone and it would appear the planning department's recommendation is based on the intent of a proposed rezone which is yet to be approved by the Coastal Commission. This is somewhat the cart before the horse process; I would recommend that the Coastal Commission first needs to ratify an acceptable zoning ordinance before such a significant development is approved. This would most likely reduce the potential for disputes...
- 2) The proposed height of the development (38 feet) exceeds allowable zoning requirements. I would recommend lowering the building height to no higher than 28 feet. This would reduce the project to a two-story development, however, reduced set-back requirements should be permitted to increase the development density most likely resulting in a development only slightly smaller than the proposed development. This would create a development more consistent with the neighboring residential uses to the north and east.
- 3) No environmental impact statements have been presented in the submission packet. I recommend that these issues be considered before even conditional approval.
- 4) Unlike the Hampton Inn, the proposed development will provide very little additional employment for the local community. In my opinion exceptions to zoning criteria should only be provided to projects that add significantly to the local employment base.

Sincerely,

   
Signature on File Address?

Joseph P. Wardlaw Jr.
APN 11804020
108 Aero Camino
Goleta, CA 93117

December 6, 2007

City of Crescent City
Planning Commission
377 J Street
Crescent City, CA 95531

RE: CDP07-06, UP07-02, AR07-11

Regarding the Negative Declaration prepared by City Staff, I recommend it not be approved and an EIR be required.

Among environmental concerns that should be taken into consideration is the health of sea life along the Battery Point Lighthouse Beach, which Sunset Magazine ranked as the Number One Lighthouse Beach on the West Coast. Just since the Hampton facility was built, there is a noticeable decline in the native crabs, starfish, urchin and other life that inhabited the area. This observation is based upon personal observation of this beach since 1976. This should be considered before additional units are to be built at this high density in that immediate area.

Other concerns involve the considerable on-street parking problems that could be created by RVs, trailers and boats that are often brought to the area by those who come to Crescent City for such purposes. They cannot park these oversize vehicles (or perhaps a second car) in a below ground structure. This condition could be further exacerbated if any owners elect to make units available for rent to vacationers.

Due to the water table, construction of any below ground parking also needs to be further evaluated.

Sincerely,

(Signature on File ~

Joseph P. Wardlaw, Jr.

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OCT 26 2007

CITY OF CRESCENT CITY

CITY OF CRESCENT CITY
PLANNING COMMISSION
NOTICE OF PUBLIC HEARING

NOTICE is hereby given that the Crescent City Planning Commission will hold a public hearing on December 13, 2007 at 5:30 p.m. at the Cultural Center, 1001 Front Street, Crescent City, California to consider the following projects:

Application #: CDP07-06, UP07-02, AR07-11

Project: Coastal development permit, use permit and architectural review for a 98,755 square-foot mixed-use development, consisting of 44 residential units and a 2,172 square foot professional office in the CZ-RP (Coastal Zone-Residential Professional) and CZ-R2 (Coastal Zone Two-Family Residential) Districts

Applicant: Development Consultants, Inc./Randy Baugh

Location: 200 A Street, APN 118-020-34

The project listed above is within the Coastal Zone and the permitting jurisdiction of the City of Crescent City, and is appealable to the California Coastal Commission. The Planning Commission's decision may be appealed to the City Council, which requires a fee of \$175. Any appeals to the City Council must be filed with the Planning Department within ten (10) calendar days after a decision by the Planning Commission. Appellants must exhaust all local appeals before appealing the project to the Coastal Commission. Staff has prepared a Negative Declaration (State Clearinghouse No. 2007112076) pursuant to the California Environmental Quality Act (CEQA Guidelines §15070 et seq). The 30-day public comment period on the proposed Negative Declaration began on November 14, 2007, and will end at the conclusion of the public hearing on December 13, 2007. The proposed Negative Declaration and associated project documents are available for review at City Hall at the address below.

Application #: UP07-11

Project: Use permit to allow the addition of on-site silk screening and mechanical engraving, and associated product sales in the CW (Waterfront Commercial) District.

Applicant: Community Assistance Network/CAN Deal

Location: 783 Third Street, APN 118-060-10

The project listed above is not within the Coastal Zone and is exempt from the California Environmental Quality Act (CEQA) under Class 1, Existing Facilities (CEQA Guidelines §15301[a]). The Planning Commission's decision on this project may be appealed to the City Council. Any appeals to the City Council must be filed with the Crescent City Planning Department within ten (10) calendar days after a decision by the Planning Commission, and require a fee of \$175 per appeal.

Interested persons are invited to appear at the hearing and inform the City, orally or in writing, of any concerns they have regarding these projects. Please direct any questions regarding these projects to Will Caplinger, City Planner, at the Crescent City Planning Department, City Hall, 377 J Street, 464-9506.

Date: November 29, 2007

Publish: December 4, 2007

Residence at 156 3rd St. 4/7/19
To City Planning Commission:
We strongly oppose this development. The area is too small to accommodate this large a project - crowding all adjacent home streets.
8 of 27

December 10, 2007

City of Crescent City
Planning Commission
377 J Street
Crescent City, CA 95531

RE: CDP07-06, UP07-02, AR07-11

I recommend the above applications which are a Negative Declaration, Use Permit, and Architectural Review for Coasta Norte Mixed Use Development, not be approved and an Environmental Impact Report (EIR) be required.

I have been exploring the tide pools between the Battery Point Lighthouse and 5th Street for the last 17 years. Since the Hampton Inn was built, I have notice a dramatic decrease in marine organisms in these tide pools. These coastal waters use to be abundant with life just as the ones off Enderts Beach are now, full of urchins, starfish, bivalves, anemones, sea grasses, crabs, etc. It is now difficult to view any of these species as they are mostly gone. Whether this loss is caused from construction of the Hampton Inn with polluted run-off from the automobiles/parking lot or the building materials used or something else, before another development is built, we **must** research the reasons for this decline of marine life so not to further destroy this environment. The cumulative effects from another high density project could further destroy if not totally deplete these populations which in turn will harm the valuable recreational, scientific, and educational resources we receive from the tide pools. Again, I request an EIR be conducted.

The architectural design of Coasta Norte is not one that respects the "Coastal/Nautical history" of Crescent City. Fine print on the plans show the design for the condos was originally for Turlock, CA, a town located in the Central Valley. By looking on the internet, one can see that Central Valley's architecture is dramatically different than the North Coast. The neighborhood that Mr. Baugh wishes to put this large, unattractive box is filled with 2 story or less residences, comprised of old Victorian homes, farm and beach houses. The large, unattractive box will block ocean and mountain views from residential homes which have been there for decades. It does not create a harmonious transition to the coastline and residences. Mr. Baugh may try and decorate the condo with "slate stone elements" but the reality is that a Central Valley design does not fit on the North Coast. The design lacks distinctive character. We need to require that any new developments must represent the character of our coastal town for business, community, and tourist attraction. Perhaps Mr. Baugh should look within our community for an architect who gets what Crescent City needs to enhance our community not just enhance his pockets. Charles Slert, a local architect, states it simply "An economics only driven project lacking architectural imagination, correctness, clarity, character and dignity is another missed opportunity for Crescent City. Developing good designs can actually improve business, community self esteem, tourist appeal, as well as user efficiency."

use of the above concerns, the applications for Coasta Norte should not be approved.
The decrease in marine life should, by itself, be a red flag calling for a complete and
thorough Environment Impact Report.

Sincerely,

Signature on File

Natalie Fahning
304 Wendell Street
Crescent City, CA 95531

December 12, 2007

From: William and Hope Goss
Homeowners at 338 Wendell Street
Crescent City, CA 95531

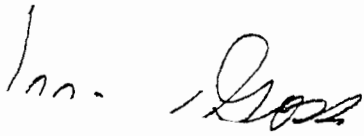
Re: Project Located at 200 A St. APN 118-020-34

We have reviewed the revised plans for the project as proposed by Development Consultants, Inc., and we respectively request that the Crescent City Planning Commission take under consideration some of our concerns about the advisability of this project as follows:

1. We feel it is irresponsible to allow a negative declaration to pre-empt a full review of the California Environmental Quality Report (E.I.R.).
2. The density of 44 residential units plus attendant parking requirements of this lot will create congestion within the project and upon the immediate neighborhood to the detriment of all adjacent properties.
3. The below grade parking level would create flooding problems that the future apartments owners and city would have to deal with since at some point in time the developer walks away from his responsibility for the project.

This project has merit of which the business community would approve. The only problem is that it is proposed for the wrong location.

Respectively Submitted


Signature on File

Bill Lonsdale
1315 Pebble Beach Drive
Crescent City, CA 95531
707-465-5964

12 December 2007

Subject: Comments for Public Hearing on Costa Norte Condo Project
[Application #: CDP07-06; UP07-08; AR07-11]

Chair & Members of the Planning Commission
City of Crescent City
City Hall
377 J Street
Crescent City, CA 95531

Purpose.

This is to request that, at the 13 December meeting, the Planning Commission either (a) take no action on the proposed Negative Declaration for this project or (b) decide not to adopt it.

Discussion.

There are several features of the "revised" Costa Norte submission that trouble me, and should serve as cautionary notes for the Planning Commission.

Alternatives Are Not Ready For Decision. The Staff Report correctly points out that the current application falls between two often conflicting City and Coastal Commission "visions" of what should be permitted on the project site. Given that fact, this matter is not "ripe for decision" until the complexities can be ironed out and both the Commission and the Public given an opportunity to review an actual, practical path forward.

Additionally, little has been done by the Applicant or the City process to build Community [and especially neighborhood] consensus about the project. A number of suggestions on how that might be done were voiced at the 14 June Commission hearing, and none have been pursued.

Complex Issues Require Additional Time For the Public To Respond. Citing the complexity of issues surrounding the Project, the Staff report for this Hearing was not issued until mid-day on 11 December. If those issues were so complex that the Staff required extra time – beyond its self-imposed "deadline" of late afternoon on 10 December, how can the Public be expected to absorb and respond effectively to the Staff report in less than 72 hours?

"Project Revisions" Are Cosmetic At Best. Applicant has made only minor revisions to the design of the building, and has failed to act on many of the questions raised during the previous Commission hearing.

The so-called medical suite and sales office are transparent "fig leaf" attempts to capture the process advantages of "commercial," "mixed use," and "continued medical/professional use." Comprising a fraction of the total project volume, and likely unrealistic in light of the fact that the medical care "center of gravity" has shifted dramatically away from the project neighborhood, this tactic would be laughable if it were not for the fact that it is being taken seriously by some.

The fact remains that the mass and visual impact of the proposed building are as controversial now as they were back in June.

The Commission should reject such tactics out of hand.

The Updated Application Materials Are Misleading. In the submission made available to the Public at the Planning Department, Applicant, or his architect, "neglected" to provide accurate representation of the actual height of the "penthouse" level - thereby obscuring the overall height of the structure.

In many jurisdictions, such an omission could have resulted in rejection of the application as "incomplete." When questioned about the omission, Staff indicated that the additional height could be "inferred" by comparing the penthouse level with measurements provided for the other levels. Staff further indicated that, using this technique, the overall height of the building could be calculated at "between 38 and 40 feet." While Staff may be able to infer information left out of the application, it is difficult for laymen to do so, thereby inhibiting the Public's ability to discern what the Applicant intended to have approved. It is hard to believe that this was unintentional.

The timing of this re-hearing of the application raises some suspicion. It falls during the Thanksgiving - Christmas holiday season, when public attention is focused elsewhere. For example, even our local newspaper, which provided considerable advance news about the Project back in June, has been focusing elsewhere - with the effect that the Community at large will have (a) little notice that the Project is back for consideration, nor (b) the nature of changes [if any] in it.

Following so closely on what some in the Community feel was a "slick deal" on the sewer plant expansion, the Commission's hearing and potential adoption of a Negative Declaration at this time is likely to meet with considerable skepticism.

The CEQA Process Should Be Followed. I continue to believe that the surest way to ensure that the concerned sector of the public is "on board" would be to follow the CEQA process. That way, all factors - pro and con - will be weighed in a systematic manner, and the City can make a more informed decision.

At minimum, it still seems prudent for the Planning Commission to require the applicant to put up "story poles" outlining the size and visual impacts of the project before hearing any Negative Declaration recommendation. This step was among those suggested at the last hearing, and nothing has been done - either by the City or by the Applicant - to take it.

Don't Leave It Up To The Council Or The Coastal Commission. I'm a little worried about one attitude that I've encountered. That is, "let bodies other than the Planning Commission handle it." The argument is being made that, because (a) adoption of a Negative Declaration is appealable to the City Council and (b) that Coastal Commission planners already have registered objections to the revised proposal and are "sure to oppose it" within their system, there is no harm in the Planning Commission's adoption of a Negative Declaration.

It is important that your Commission not abrogate its own responsibility to manage its particular responsibilities. Otherwise, why have a Planning Commission at all?

If there are sufficient uncertainties or irregularities in the process through which Project-related issues have been framed for the Commission, then the Commission should table the application until those uncertainties have been resolved.

If there is insufficient information about the actual visual and neighborhood impact for the Commission to feel justified in adopting a Negative Declaration, then the Commission should continue its review process until the consensus-building measures suggested at the June Hearing are carried out.

Finally, the your Commission and the City should settle matters like this within its own jurisdiction. Simply shifting the responsibility to other bodies in order to "kick the ball down the road" does not produce good public policy.

Recommendations.

That the Planning Commission:

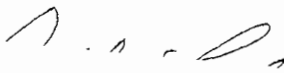
- Permit additional time for appropriate Public Comment on the Planning Department Staff report [which was not made available until mid-day on 11 December].
- Require the Applicant to erect "story poles" at the Project site, so that Commissioners and concerned citizens can assess the visual impact and mass of the proposed structure.
- Table further action on the Negative Declaration until the steps above have been taken.

Conclusion.

Staff has done a creditable job in wrestling with the complexities of this Project. It is unfortunate that their results could not have been made available to the Commission and the Public sooner.

I appreciate the opportunity to provide your Commission with these comments.

Respectfully,



Signature on File

December 11, 2007

Subject: Coastal Development Permit and Use Permit For "Costa Norte" Condo Project [CDP07-06,UP07-08, AR07-11]



Chair and Members of the Crescent City Planning Commission
City Hall
377 J Street
Crescent City, CA 95531

In June of this year, I provided comments on the proposed condo development at 200 A Street. No action was taken, since the developer withdrew his application at the time of the June 14th Planning Commission Public Hearing.

Now, the application has resurfaced, with little significant change, and with none of the steps advanced at the Public Hearing to build community consensus having been taken.

As a result, I am re-submitting my prior comments (attached) in the hope that the consensus-building measures that were proposed back in June will be implemented by the Commission prior to taking any action to adopt a "negative declaration" and precluding conduct of the CEQA process for this controversial project.

Sincerely Yours,

 Signature on File 

Sara Kruse
1315 Pebble Beach Drive
Crescent City, CA 95531

Attachment: June 12, 2007 Letter to the Planning Commission

Subject: Application for Coastal Development Permit and Use Permit For "Costa Norte" Condo Project
[CDP-07-UP-07-02]

Chair and Members of the Crescent City Planning Commission
City Hall
377 J Street
Crescent City, CA 95531

Purpose.

This is to request that the Planning Commission undertake a detailed review of the proposed project – based on California Environmental Quality Act (CEQA) factors and guidelines – despite the fact that Project Sponsors are seeking an exemption based on "infill" criteria.

It further requests that the Planning Commission defer decision on the *Costa Norte* application until additional information can be developed through a CEQA review (a) to allow the Commission itself to make a more informed judgment on this seminal project, and (b) to assure both neighbors of the proposed project and citizens concerned about this project's implications for future, similar development along the waterfront that the City has coherent plans and processes in place to handle developments of this nature.

Discussion.

1. *This is a precedent-setting project.* City leaders have indicated a desire to promote upscale mid-rise residential development along the Front Street Corridor, and have taken initial implementation steps by (a) adjusting density standards to permit higher density development there, (b) raising the height limits along the Corridor to 75 feet, and (c) raising the height limit to 70 feet at the old fish plant on US Hwy 101 near the Harbor. This project is the first upscale condo development in that Corridor to be brought before the City. Therefore, its handling likely will set a precedent for additional residential development overlooking the water.
2. *Neighbor and Citizen "buy-in" is important.* If the City wishes to avoid a battle each time a waterfront development project is brought forward, Public confidence that the "process" is working for both the developers and City residents will play an important part. Right now, we are presented with the Project Sponsor's "vision" of what he would like to place at the A Street Clinic location. However, neighbors and other Citizens need to have a voice in how well the resulting building fits in to the neighborhood, and into the City as a whole. The need goes beyond a simple three-minute Public Hearing comment on the project "as proposed."
3. *The CEQA process facilitates Neighbor and Citizen "buy-in."* Commission use of the CEQA process would engage neighbors in structured resolution of a number of issues about which they have expressed concern. These include impact of structural mass, traffic, parking, privacy, light, noise, drainage, retention of "view corridors," and compatibility with the neighborhood. Existing perceived problems in each of these areas are discussed below:
 - Structural mass of the proposed project was a consistent issue raised at both the Project Sponsor's meeting and a subsequent neighborhood gathering. It was seen as dwarfing its neighbors, and out of character with the residential neighborhood in which it was [at least in part] located.

The Project Sponsor assured those at his presentation that the absolute maximum height of his structure – including rooftop installations such as stairwell and elevator soffits, antennas, etc. would be 35 feet. This "maximum" should be made a hard and fast condition of any permit considered by the Commission

Right now, neither the Public nor the Commission itself has a clear idea of how the structure, as proposed, would fit into the site selected for it. Architect's renderings, although informative, do not permit assessment *in situ*. The Project Sponsor was asked at his meeting whether he would be willing to set up "poles and netting" to outline the actual height, length and depth of the structure for visual inspection by the Commission and the Public. He stated that he was unwilling to do that unless required.

The Commission should require that he do so. This is a common practice in areas where the visual impact of a project is an important consideration. Additionally, it permits more concrete identification of which portions [if any] of the structure need to be modified in order to gain approval.

- Traffic flow considerations were not discussed fully in the Project Sponsor's presentation. Simple "level of service" calculations do not trump "experience on the ground." For example, whereas the A Street Clinic uses two parking lots with two exits onto A Street, the proposed project appears to be using only one "gated exit," at the junction of A and 2nd Streets.

Those who use the route, A Street to 2nd Street, as a means of getting to the waterfront or downtown know that the main feature that prevents accidents at the three-way junction where the project's sole entrance and exit is proposed to be is the existence of a three-way stop. At minimum, the project should be required to have an exit stop sign, enforceable under City Traffic laws, to replace the one currently in use at the A Street clinic.

Additionally, if the project's parking access is to be "gated," then the gates need to be placed far enough inside the property to prevent vehicles backing up into the intersection while waiting to negotiate the gate.

The Planning Commission should take these needs into account in developing conditions for any Permit that it eventually plans to grant to the project.

- Parking considerations were not discussed to the satisfaction of several people at the Project Sponsor's presentation. The formulaic answer that "providing 1.5 parking spaces per unit" – for a total of 81 spaces – does not take into account the high likelihood that residents who can afford to buy units ranging from \$350,000 to \$850,000 are going to have more than one vehicle.

Moreover, that "formula" fails to take into account that time-share users may have multiple vehicles. Additionally, there is the high probability that "upscale" residents may do more entertaining than the average. So, where does the visitor and overflow parking go?

Surprisingly, the Project Sponsor admitted that he had not done any geotechnical studies to determine if the water table at that site would allow the underground parking proposed for the project without extensive [potentially noise-producing] pumping of ground water.

Finally, at an overall height of no more than 35 feet for a proposed three-story structure, it is almost a given that the overhead clearance of the proposed underground garage will be as low as the law permits. That raises the question of what will be done with vehicles [including recreational vehicles and possibly some larger SUV's] that cannot negotiate the garage's overhead clearance limitation.

There is almost a predictable tendency for residents to want to park their excess vehicles on A Street or around the corner on 3rd Street. This would not be a happy prospect – either for the neighborhood or for those who use the A Street/2nd Street route.

The Planning Commission needs to consider these potential parking impacts carefully, and to condition any potential permit approval appropriately – "up front." It may require calling for restrictive elements in the condo CC&R's or establishment of "temporary parking only" along A Street adjacent to the project.

- Privacy concerns – for both the residential neighbors and the adjacent Hotel were not resolved at project-related meetings. The height of the structure is feared to permit residents of the upper floors to look directly into neighboring back yards and – in several cases – windows.

Additionally, any balconies on the south side of the project structure will look directly into units at the adjacent Hotel, with a consequent loss of privacy for occupants of those rooms.

Neither of these concerns can be resolved through the normal residential neighborhood solutions of higher hedges or fences. Without change to the current structure, neighbors and the Hotel will be faced with a long-term, unsolvable, privacy problem that will affect not only their daily lives, but also the potential value of their property.

Apparently, these concerns were not addressed in the City's design review, as the architect's renderings still show clearly the inclusion of project structure balconies that threaten the privacy of neighbors and Hotel guests.

The Planning Commission should consider returning the proposed project to the design review process for resolution of the privacy problems posed by the current design.

- Light impacts – both blocking of the sun during parts of the day and exterior lighting at night – do not appear to have been given due consideration in preparation of this project submission for consideration by the Planning Commission.

Without the Project Sponsor having been called upon to set up the "poles and netting" visual demonstration described above, neither neighbors nor the Commissioners have a factual basis for evaluating the degree to which the proposed structure will block the sunlight of its neighbors. It may be that the effects will not be as drastic as many fear, or that a modification of the structure will resolve the main problems. Waiting until the structure is built is not the way to address the issue.

Additionally, although the Project Sponsor indicated in his presentation that he intends to use subdued exterior lighting so as not to affect his neighbors or the Hotel, there is no specific information on what, if anything, the City is requiring of him to make certain that such light will not be a nuisance to the project's neighbors.

Prior to granting any permit to the proposed project, the Planning Commission should, require installation of a "pole and netting" outline of the structure to facilitate on-site evaluation of its sun-blocking effects of on neighboring properties.

Additionally, the Commission should, at minimum, set conditions to any future permit that require the Project Sponsor to work with neighbors and City Staff to ensure that exterior lighting will not have an adverse impact on neighbors.

- Drainage and runoff concerns were expressed by some of those attending project-related meetings. Primarily concerns were based on observations of the site over time, where frequent flooding resulting from Crescent City's famous rainstorms was noted. The Project Sponsor indicated in his presentation a plan for collection and "filtering" of any floodwaters from the underground garage prior to discharging it into the storm drain system. However, there were few specifics.

The Planning Commission should assure itself that proper planning for the treatment of storm water runoff is in place, and mandated as part of any future permit granted to the project.

- View Corridor consideration was a "hot topic" at the project-related meetings. The Project Sponsor had anticipated that, and had prepared some photographs showing views along existing streets. Absent, however, was a clear presentation of the actual impact of the proposed structure on existing views from (a) the neighbors' properties, (b) the Hotel, and (c) the Community at large.

As in the case of the structural impact and light impact discussions above, requiring the Project Sponsor to erect a "pole and netting" outline of the actual structure would enable the Commissioners, neighbors, and Community to (a) assess for themselves the view corridor impact of the project and (b) to identify or suggest modifications to the structure that might reduce any adverse impact on view corridors.

- Compatibility of the project design with the neighborhood character was discussed at some length. It was evident that the "design review" process did not take neighborhood sensitivities sufficiently into account.

As part of its more detailed consideration of the proposed project, the Planning Commission should refer the project back to the design reviewers and encourage them to engage affected or interested neighbors in an effort to ensure that greater compatibility with the neighborhood character is achieved .

4. *Current process should result in re-examination of design standards.* Arising from "neighborhood compatibility" discussions was the perception that there is no overall Crescent City "theme" guiding design reviews. As a trail-blazing project, and a harbinger of what may come along the Front Street Corridor, this proposed project reminded us that both the City and the Community need to consider carefully just what it is that we want our future waterfront to look like.

"Under-planning" can be just as detrimental to quality development as can "over-planning. While most would oppose the notion of "cookie cutter" development in our future high-density, upscale residential development, some degree of coherence and consistency likely is needed. A developer-driven architectural "hodge-podge" would be unfortunate.

The Planning Commission may wish to find, as part of its ultimate decision on the *Costa Norte* project, that there is a need for an additional element to the General Plan – to establish architectural considerations or guidelines for future mid-rise condo development along the Front Street Corridor, or elsewhere in Crescent City.

Recommendation.

The Planning Commission should consider the points raised above, undertake a detailed CEQA-structured process to resolve the many issues identified and defer decision on the project until appropriate additional information has been developed.

Sincerely Yours,

Sara Kruse
1315 Pebble Beach Drive
Crescent City, CA 95531

To the Planning Commission
City of Crescent City
December 11, 2007

Re A Street Clinic agenda items

I request that the Planning Commission deny the adoption of the Tentative Negative Declaration for Coastal Development Permit #CDP07-06 et al for property located at 200 A Street, Crescent City, formerly the A Street Clinic and now known as "Coasta Norte".

I further request that an Environmental Impact Report (EIR) be prepared at the appropriate time pursuant to the California Environmental Quality Act (CEQA).

The tentative Negative Declaration should be rejected as being incomplete and inaccurate due to:

1. Information received from the California Coastal Decision in a letter dated 12/6/07.
2. Failure to adequately address significant issue which I enumerate for the record:
 - a. Subterranean water flow in the area of the project/High water table as referred to in the recent Rumiano project.
 - b. Underground/subterranean parking ventilation
 - c. Underground/subterranean water runoff/pollution
 - d. Effect on air quality from 44 new fireplaces
 - e. Lack of emergency services access on all sides
 - f. View blockage on all sides
 - g. Reduction of 2nd St view corridor from 60 feet to 5 feet
 - h. construction/demolition specifics/storage of materials
 - i. Demolition issues; I believe there may be "friable" asbestos in the flooring, ceiling tiles or roofing since it had not been totally banned at the time of construction.

I would request the Planning Director who is also the Environmental Control Officer to take such steps as is necessary to limit the renovation or removal of any suspect materials until an asbestos remediation and remission report can be done by a licensed asbestos investigator.

At the appropriate time, the EIR should be required to consider the following significant environmental effects:

1. All items contained in the Coastal Commission letter of 12/6/07.
2. Adverse effects on scenic vistas in the neighborhood.
3. Placing housing within a 100 year flood hazard area whether designated currently or not.
4. Potential of inundation by tsunami.
5. Inadequate emergency access as exists now to beach area and to building.
6. Assimilation into existing single/two family neighborhood.

In addition, the Commission should table the Architectural Review until such time as the previous issues are resolved. I would note that the both plans refer mysteriously to the City of Turlock Bureau of Engineering Standards under General Notes #25 Page A0.1 In addition, there appears to be a stairwell to nowhere on Page A2.0 which if put in its proper place would be in the middle of the underground parking traffic lane. If left in its present location, it would remove one parking place from the surface parking area.

I would further suggest that the Use Permit be tabled for the above reasons.

Planning Commission Page 2
December 11, 2007

In summary, reject the tentative Negative Declaration, table consideration of the Use Permit and Architectural Review, resolve the Zoning and General Plan/Land Use issues. Most importantly, recognize the need for an EIR as called for by CEQA.

Crescent City and our neighborhood deserve a better and more thorough review and project. Plopping a big and ugly box is not good planning or good growth policy. Putting lipstick on a pig doesn't change the fact that it is a pig.

Thank you for your consideration.

Kirk Roberts
323 Wendell St
464-1506

Sundstrom v. County of Mendocino: Court Establishes Rules for Initial Studies and Negative Declarations

In *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, court interpretation of Negative Declarations came to a head. An individual citizen challenged the Mendocino County Board of Supervisors' decision to approve construction of a sewage treatment plant to serve an existing development consisting of a small motel, restaurant, and filling station, to which a larger motel, a restaurant, and apartments would be added.

The county had prepared an Initial Study supporting a Negative Declaration for the proposed project. The Initial Study/Negative Declaration conditioned certain mitigation measures to be developed and implemented at a later date. One of the reasons the Initial Study/Negative Declaration concluded there would be no potential for significant effects was because it required the applicant to prepare a future hydrologic study to evaluate the project's potential environmental effects on soil stability, erosion, sediment transport, and flooding of downslope properties. This future study was required to recommend appropriate mitigation measures for the significant impacts reported.

The Court of Appeal held that the Initial Study/Negative Declaration violated CEQA. The court stated that, before approving the project, the county must first resolve the uncertainties regarding the project's potential significant environmental effects. The court concluded that the success of the mitigation determined by a later study was uncertain; therefore, the county could not have reasonably concluded that the project would not have the potential to have significant environmental effects. Also, the court found that the county's deferral of the analysis of significant effects to a study the applicant was preparing in the future was an inappropriate delegation of its CEQA duties. Although the county had included a permit condition requiring subsequent county approval of a sludge disposal plan, the court found it inadequate because there was evidence that an environmentally sound disposal plan might not be achievable. The court also noted that both the county public works department and the Coastal Commission had recommended project denial until the potential problems could be solved.

The court held that the Initial Study/Negative Declaration was ultimately invalid because of a lack of substantial evidence supporting the county's finding of no potential for significant impact. The court stated that the county had "evaded its responsibility to engage in comprehensive environmental review." This fact pattern and associated court ruling have been used as a reference guide for assessing the adequacy of mitigation included in Initial Study/Negative Declarations. An Initial Study/Negative Declaration that relies on a future study to determine if there are potentially significant effects is considered a failure to comply with CEQA.

If the recreational boating marine takes place, the placement of sand for a jetty shall be the least amount needed to provide for a single-wide roadway on top of the jetty.

The LUP amendment as submitted is inconsistent with the geologic hazard and shoreline protection policies of the Coastal Act and must be denied. As modified, the proposed LUP Amendment is consistent with Sections 30253 and 30235 as the language of those sections has been accurately incorporated into the proposed LUP Amendment.

6. Protection of Marine Resources and Water Quality.

Coastal Act Section 30230 states:

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.[emphasis added]

Coastal Act Section 30231 states that:

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 wastewater discharge 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. [emphasis added]

The proposed amendment is intended to accommodate development of the former site of the Seaside Hospital with a hotel and restaurant development. Such a development would include large amounts of impervious surfaces that would prevent infiltration of stormwater into the ground and result in greater amounts of sediment and other pollutants running off the site and entering coastal waters. In addition, any such commercial development would likely include large parking lots where oil and grease deposits from vehicles would further degrade the water quality of stormwater runoff from the site.

The currently certified Crescent City LUP contains very little policy language specifically addressing the protection of water quality. With the exception of quoting Coastal Act Section 30231 within the preface of the Environmentally Sensitive Habitat Areas / Water and Marine

Coastal Act Section 30251, as incorporated in Policy 3 of LUP Chapter 3 – *Coastal Visual Resources and Special Communities*, requires that:

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 landforms, to be compatible with surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas...

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2210
VOICE AND TDD (415) 804-5200
FAX (415) 804-5400



**APPEAL INFORMATION SHEET
LOCAL COASTAL PROGRAM DEVELOPMENT PERMITS**

Please read these instructions before completing the appeal application - Appeal from Coastal Permit Decision of Local Government.

Appeals to the Coastal Commission from local government decisions on coastal permit applications are limited to certain types of decisions. The information below outlines the limitations and also describes the requirements for filing appeals.

Time Frame for Filing an Appeal. An appeal must be filed by 5:00 P.M. of the 10th working day after a sufficient local government notice of final action on the permit application was received by the Commission. 14 Cal. Admin Code Section 13110. (The local government is required to send a notice of final local action to the Commission within 7 calendar days of a final local action.) The appeal must be filed in the Commission district office having jurisdiction over the affected local government. The final date for filing appeal is available from the local permit decision notices posted in the Commission's offices and may also be obtained by calling the local Commission district office.

Persons Eligible to Appeal. The applicant, any aggrieved person or any two members of the Commission may appeal. P.R.C. Section 30625. An "aggrieved person", is any person who, in person or through a representative, appeared at a public hearing of the local government in connection with the decision being appealed, or who, by other appropriate means prior to a hearing, informed the local government of the nature of his/her concerns or who for good cause was unable to do either. "Aggrieved person" includes the applicant for a permit. P.R.C. Section 30801.

Decisions Which May Be Appealed. (P.R.C. Section 30603)

- A. Within the appeals area, as shown on the Commission-adopted Post-LCP Certification Permit and Appeal Jurisdiction Map, any approval decision is appealable.
- B. In coastal counties only, an approval decision on a development that is not designated as the principal permitted use under the certified zoning ordinance, or zoning district map, is appealable.
- C. Any decision on a major works project or major energy facility is appealable.

Proper Grounds for an Appeal. (P.R.C Section 30603 AS AMENDED 1/1/92)

- A. The grounds for an appeal...[of an approval project] shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth...[in the Coastal Act].
- B. The grounds for an appeal of a denial of a permit...[for development which constitutes a major public works or a major energy facility] shall be limited to an allegation that the development conforms to the standards set forth in the certified local coastal program and the public access policies...[of the Coastal Act].

Exhaustion of Local Appeals. Pursuant to 14 Cal. Admin Code Section 13111 and 13573, the process of appealing a local decision to the Commission cannot begin until all possible appeals to local appellate bodies first have been made and have been exhausted; except that exhaustion of local appeals is not required if any of the following occur:

- A. The local government requires an appellant to appeal to more local appellate bodies than have been certified in the implementation section of the local coastal program, or designated in the LUP implementing procedures, as appellate bodies for permits in the coastal zone.
- B. An appellant was denied the right of initial local appeal by a local ordinance which restricts the class of persons who may appeal a local decision.
- C. An appellant was denied the right of local appeal because local notice and hearing procedures for the development did not comply with the provisions of Article 17 (LCP Implementation Regulations) of the California Administrative Code.
- D. The local government charges a fee for the filing of processing of appeals.

Appellant Notification of Appeals. Section III of the appeal application form is for the identification of persons interested in the project being appealed. An additional important step is that the appellant notify these persons **and** the local government of the appeal filing, within one week of the filing. Notification must be by mailing or delivering a copy of the completed appeal application form, including any attachments, to all interested parties, at the addresses provided to the local government. Failure to provide the required notification may be grounds for Commission dismissal of the appeal. 14 Cal. Admin. Code Section 13111(c).

Commission Review of an Appeal. If the Commission hears a coastal development permit on appeal, the Commission shall approve the permit if it finds that the proposed development is in conformity with the certified local coastal program (P.R.C. Section 30604(b)). Furthermore, every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that such development is in conformity with the public access and public recreation policies of Chapter 3 (P.R.C. Section 30604(c)). In determining whether a proposed development is in conformity with the certified LCP, the Commission may consider aspects of the project other than those identified by the appellant in the appeal itself, and may ultimately change conditions of approval or deny a permit altogether.

**CITY OF CRESCENT CITY
PLANNING COMMISSION
NOTICE OF PUBLIC HEARING**

NOTICE is hereby given that the Crescent City Planning Commission will hold a public hearing on December 13, 2007 at 5:30 p.m. at the Cultural Center, 1001 Front Street, Crescent City, California to consider the following projects:

Application #: CDP07-06, UP07-02, AR07-11

Project: Coastal development permit, use permit and architectural review for a 98,755 square-foot mixed-use development, consisting of 44 residential units and a 2,172 square foot professional office in the CZ-RP (Coastal Zone-Residential Professional) and CZ-R2 (Coastal Zone Two-Family Residential) Districts

Applicant: Development Consultants, Inc./Randy Baugh

Location: 200 A Street, APN 118-020-34

72- The project listed above is within the Coastal Zone and the permitting jurisdiction of the City of Crescent City, and is appealable to the California Coastal Commission. The Planning Commission's decision may be appealed to the City Council, which requires a fee of \$175. Any appeals to the City Council must be filed with the Planning Department within ten (10) calendar days after a decision by the Planning Commission. Appellants must exhaust all local appeals before appealing the project to the Coastal Commission. Staff has prepared a Negative Declaration (State Clearinghouse No. 2007112076) pursuant to the California Environmental Quality Act (CEQA Guidelines §15070 et seq). The 30-day public comment period on the proposed Negative Declaration began on November 14, 2007, and will end at the conclusion of the public hearing on December 13, 2007. The proposed Negative Declaration and associated project documents are available for review at City Hall at the address below.

Application #: UP07-11

Project: Use permit to allow the addition of on-site silk screening and mechanical engraving, and associated product sales in the CW (Waterfront Commercial) District.

Applicant: Community Assistance Network/CAN Deal

Location: 783 Third Street, APN 118-060-10

The project listed above is not within the Coastal Zone and is exempt from the California Environmental Quality Act (CEQA) under Class 1, Existing Facilities (CEQA Guidelines §15301[a]). The Planning Commission's decision on this project may be appealed to the City Council. Any appeals to the City Council must be filed with the Crescent City Planning Department within ten (10) calendar days after a decision by the Planning Commission, and require a fee of \$175 per appeal.

Interested persons are invited to appear at the hearing and inform the City, orally or in writing, of any concerns they have regarding these projects. Please direct any questions regarding these projects to Will Caplinger, City Planner, at the Crescent City Planning Department, City Hall, 377 J Street, 464-9506.

Date: November 29, 2007

Publish: December 4, 2007

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET, SUITE 200

EUREKA, CA 95501

VOICE (707) 445-7833 FAX (707) 445-7877

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT****Please Review Attached Appeal Information Sheet Prior To Completing This Form.****SECTION I. Appellant(s)**

Name: Commissioner Sara Wan c/o | Commissioner Mike Reilly c/o

Mailing Address: 45 Fremont Street, Suite 2000 | 575 Admin. Dr. Rm 100, Santa Rosa, CA 95403

City: San Francisco, CA Zip Code: 94105 Phone: (415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Crescent City

2. Brief description of development being appealed:

Coasta Norte Mixed-Use Development - 98,755-sq.ft., three-story, 44-unit condominium/time-share/vacataion rental residential development with medical/sales professional offices

EXHIBIT NO. 7**APPEAL NO.**A-1-CRC-08-004
BAUGH, dba DEVELOPMENT
CONSULTANTS, INC.
APPEAL, FILED 2/7/08
(COMMISSIONERS WAN &
REILLY) (1 of 16)

3. Development's location (street address, assessor's parcel no., cross street, etc.):

200 "A" Street, Crescent City, CA 95531; APN 118-020-34

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions
- ☒ Approval with special conditions:
- ☐ Denial

RECEIVED

FEB 07 2008

CALIFORNIA
COASTAL COMMISSION

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-1-CRC-08-004

DATE FILED: February 7, 2008

DISTRICT: North Coast

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

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

- ☐ Planning Director/Zoning Administrator
- ☒ City Council/Board of Supervisors
- ☒ Planning Commission
- ☐ Other

6. Date of local government's decision: PC: 12/13/07; CC: 1/22/08

7. Local government's file number (if any): CDP07-06, UP07-08; AR07-11

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Randy Baugh / Development Consultants, Inc.
3941 Park Drive, Suite 20338
El Dorado Hills, CA 95762

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

(1) Natalie Fauning
304 Wendell Street
Crescent City, CA 95531

(2) Kirk Roberts
323 Wendell Street
Crescent City, CA 95531

(3) Glen Tiffany
1229 North Main Street
Ashland, OR 97520-9619

(4) Jenny Petri
543 Wendell Street
Crescent City, CA 95531

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

See Attachment No. 1.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

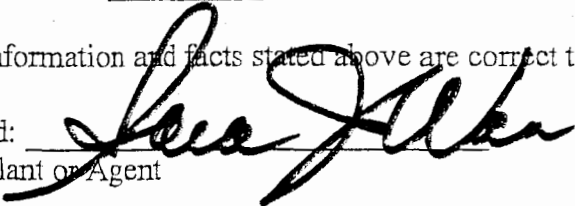
Page 4

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SECTION V. Certification

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

Signed: 
Appellant or Agent

Date: 2/7/08

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

Signed: _____

Date: _____

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

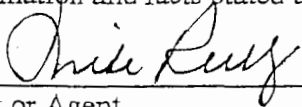
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Signed: _____

Date: _____

**ATTACHMENT NO. 1:
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The development project as conditionally approved by City of Crescent City is inconsistent with the coastal access policies of Chapter 3, Article 2 of the Coastal Act and the policies and standards of the certified Crescent City Local Coastal Program (LCP) including but not limited to: (1) permissible land uses; (2) residential density; (3) prescriptive development regulations of the applicable zoning districts; (4) geologic and flooding hazards avoidance and exposure minimization; (4) assured maintenance of coastal water quality; (5) protection of environmentally sensitive habitat areas; and (6) visual resources protection. Relevant provisions of the Coastal Act and the Crescent City LCP include, Public Resources Code Sections 30210 through 30212, Crescent City Land Use Plan (LUP) Public Access Policy Nos. 1 and 3, Coastal Land Use Plan Map Designations, Recreation and Visitor-Serving Facilities Policy No. 1, Diking, Dredging, Filling and Shoreline Structures Policy No. 3, Public Works Policy No. 2, Environmentally Sensitive Habitat Areas / Water Resources Policy Nos. 2 and 4, Coastal Visual Resources and Special Communities Policy No. 4, and Chapters 17.60, 17.63, 17.67 and 17.78, of the Coastal Zone Zoning Regulations (CZZR).

Policy Citations

Section 30210 of the Coastal Act states:

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. [Emphasis added.]

Coastal Act Section 30211 directs:

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. [Emphasis added.]

Coastal Act Section 30212(a) states:

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*
- (2) Adequate access exists nearby, or,*
- (3) Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.* [Emphases added.]

LUP Public Access Policy No. 1 states in applicable part:

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The City recognizes the importance of access to and along (the) shoreline... If in the future, the City finds that existing public accessways are inadequate to meet recreational needs, it shall encourage the development of additional accessways consistent with the City's ability to pay maintenance costs and obtain funding to develop said areas. [Emphases added.]

LUP Public Access Policy No. 3 states, in applicable part, "*The City shall assure that the public can easily locate existing access points...*" [Emphasis added.]

The LUP's Coastal Land Use Plan Map Designations read, in applicable part:

The Land Use Map for the Coastal Zone of the City of Crescent City contains seven land use designations for the City's coastal zone. The following is a summary of the designations:

Residential: Up to six units per acre, would include the present R-1, R-1B zones and would allow R-2 zoning as a transition to high density zoning.

Multiple Family: Over six units per acre, would allow R-2 zoning as a transition to residential areas...

Medical Related: Encourages the development of concentration of medically related services adjacent to the hospital... [Emphases added.]

LCP Recreation and Visitor-Serving Facilities Policy No. 1 states:

The City shall assure the preservation of areas which are zoned Open Space in a manner consistent with the uses allowed in Open Space areas.

LUP Dredging, Diking, Filling, and Shoreline Structures Policy No. 3 states:

The City shall require that new development minimize risks to life and property in areas of high geologic hazard, 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. [Emphasis added.]

LUP Public Works Policy No. 2 states:

The City shall require that best management practices (BMPs) for controlling stormwater runoff and maintaining water quality be incorporated into development design and operation. All post-construction structural BMPs (or suites of BMPs) for new development, including but not limited to, recreational or visitor-serving commercial development within Coastal Zone - Commercial Waterfront zoning districts, shall be designed to treat, infiltrate or filter

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stormwater runoff from each storm event, up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor, for flow-based BMPs. [Emphases added.]

LUP Environmentally Sensitive Habitat Areas / Water Resources Policy No. 2 read as follows:

The City shall protect those areas that are designated as environmentally sensitive so that these habitats and their resources are maintained and any development shall be consistent with adjacent areas and with Section 30240 et seq. of the California Coastal Act as described herein on Page 24. [Emphasis added.]

LUP Environmentally Sensitive Habitat Areas / Water Resources Policy No. 4 continues on to prescribe specific buffer requires and use restrictions therein for the protection of wetlands ESHAs:

The City shall maintain a buffer zone of 50 feet around all identified wetlands. The only allowable uses within this buffer zone shall be those uses as provided for in Section 30240 et seq. of the California Coastal Act of 1976 as described on page 24. Criteria for the establishment of the buffer zones for wetlands should be measured land ward from the edge of the wetlands.

LUP Coastal Visual Resources and Special Communities Policy No. 4 reads, in applicable part:

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 the 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 designated highly scenic areas shall be subordinate to the character of its setting... [Emphasis added.]

Coastal Zone Zoning Regulations (CZZR) Section 17.60.010 provides, in applicable part, the following directive as to the form and content of the coastal zone regulations:

The coastal zone zoning regulations shall consist of a zoning map designating certain districts, an appeal map describing appeal districts, and a set of regulations controlling the uses of land, and density of population, the uses and location of structures, the height and bulk of structures, the open spaces and yards about structures, the appearance of certain uses and structures, the areas and dimensions of sites, locations, size, illumination, and requirements for the provision of off-street parking and off-street loading facilities. [Emphases added.]

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CZZR Section 17.60.050 continues on to address the intended scope of the coastal zoning regulations,

These regulations shall apply to all property whether owned by private persons, firms, corporations, by the state or any of its agencies or political subdivisions, by any county or city including the city, or any of its agencies or by any authority of the district organized under the state. [Emphasis added.]

CZZR Section 17.63.080, sets specific restriction of permissible development, in applicable part, as follows:

- A. A building shall only be erected, converted, reconstructed, or structurally altered, and any building or land shall only be used for any purpose as permitted in the district in which such building or land is located.*
- B. A building shall only be erected, reconstructed, or structurally altered which complies with the height or bulk limits established in these regulations for the district in which such building is located.*
- C. The lot area shall be so preserved that the yards or other open spaces shall be as prescribed in these regulations... [Emphases added.]*

CZZR Section 17.67.030 establishes prescriptive standards for development occurring within CZ-RP zoning districts as follows:

- A. Height. Maximum building height shall be thirty-five feet.*
- B. Yards and Areas.*
 - 1. Front Yards. Twenty feet for residential uses, ten feet for nonresidential uses;*
 - 2. Side Yards. Minimum five feet for interior and corner lots. Reverse corner lots¹ shall have a side yard equal to one-half the required front yard of the lots abutting the rear of such reversed corner lots;*
 - 3. Rear Yards. Ten feet;*
 - 4. Lot Area. Minimum six thousand square feet for residential uses. No minimum for non-residential uses;*
 - 5. Lot Area Per Dwelling Unit. A minimum of fifteen hundred square feet per dwelling unit, except that single-family uses shall conform to the CZ-R1 requirements and duplexes shall conform to the CZ-R2 requirements;*
 - 6. Lot Coverages. For nonresidential uses, no requirements. For residential uses, coverage shall be the same as required in the most restrictive zone in which they are first permitted. [Emphases added.]*

¹ CZZR Section 17.61.135 defines "reverse corner lot as "a corner lot which rears upon the side of another lot, whether or not across an alley." Regardless of whether "A" Street or Third Street is designated as the front lot line of the subject property, the project parcel meets the definition of a "reverse corner lot." According, a minimum 10-foot-wide side yard area requirement is indicated for the development site.

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CZZR Section 17.78.070 sets specific requirements with respect to the presence of structural development within minimum yard areas:

Every part of a required yard shall be open from its lowest point to the sky unobstructed except for the ordinary projections of sills, belt courses, cornices, buttresses, ornamental features and eaves; provided, however, that none of the above projections shall project into a minimum side yard more than twenty-four inches nor into a minimum front or rear yard more than forty-eight inches. Notwithstanding any of the above, development may only occur fifty feet beyond the landward edge of a wetland. [Emphases added.]

CZZR Section 17.78.080 through 17.78.100 provide for a variety of exceptions to front, rear, and side yard area setbacks, stating in applicable part:

Eaves, cornices and marquees on buildings for which no front yard or street side yard is required may project over the street property line providing that no such eaves, cornices or marquees shall project over the street line more than two feet...

Open fire escapes, open porches, outside stairways and balconies may project into the minimum front and rear yards by less than four feet...

Chimneys, flues and water softener tanks and air conditioners may project into a minimum side yard; provided, that such structures or equipment shall not extend or project nearer than three feet to the side property line. [Emphases added.]

Conformance Analysis

Coastal Access and Recreation: The parcel involved in the proposed mixed-use residential/professional office development project is located between the first public road and the sea in a highly scenic area along the west side of the City of Crescent City in a developing area characterized by a mixture of visitor-serving facilities, single-family residences, and large open grassy vacant parcels atop a low uplifted marine terrace. The project site is designated in the certified Land Use Plan (LUP) as being intended for a combination of Medical Related and single- and two family (duplex) residential development, implemented through Coastal Zone Residential-Professional (CZ-RP) and Coastal Zone Two-Family Residential (CZ-R2) zoning designations. The beach adjacent to the project site is planned and zoned Coastal Zone Open Space (CZ-O). The project site is located between two established coastal access points, the Hampton Inn coastal vista point and beach accessway and the Third Street beach trailhead. In addition, there is an existing informal trail on the project site leading to the beach. Although site plans depict a linkage to existing vertical and lateral public access trails, including an apparent walkway leading to the beach encaptioned as "beach access" in the approximate location of an existing trail to the shoreline, it is not clear from the exhibit whether the walkway would be available to for public use and under what limitations. In addition, no public access has formally been formally required to be provided by the project as approved.

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In reviewing the project the City justified its lack of requiring provisions for public access in new development by observing the proximity of nearby accessways. Neither in the consideration of the coastal development and use permits or the environmental document did the City consider substantive information regarding the potential effects of overuse on nearby coastal natural resource areas from a 44-unit residential complex. Analysis was limited to a conclusory statement based on the observation that, "Because adequate access exists both on the parcel and nearby, additional public access is not required for this project." However, no conditions were attached to the permit approval requiring that the referenced onsite accessway be formally dedicated, improved, maintained, or otherwise made available for the public's use.

Therefore, the Planning Commission's approval of the coastal development permit is inconsistent with Coastal Act Sections 30210 and 30212, and LUP Recreation and Visitor-Serving Facilities Policy No. 1, as no public access was required and the City did not factually consider the potential for overuse of nearby coastal natural resource due to increased coastal access demand associated with the project (i.e., beach crowding) or potential impacts from the development to Open Space public trust amenities (e.g., access to state waters, opportunities for nature study involving beach vistas, intertidal areas, or geological features). Neither did the City review the adequacy of existing public accessways to meet recreational needs as directed by Coastal Act Section 30210 and 30212(a)(1) and (2), and LUP Public Access Policy No. 1.

Permissible Land Uses: The project as approved is described as, "a mixed-use development, comprised of a three-story building with one additional floor of underground parking, for a gross floor area of 98,755 square feet, consisting of forty-four (44) residential units (unspecified mixture of condominiums and timeshares or vacation rentals), a ±1500-sq. ft. medical/professional office and a +700-sq. ft. sales office." With the exception of the exterior 11-space off-street parking lot, all portions of the project improvements would be situated within the southeasterly $\frac{3}{4}$ of the project site designated on the LCP's land use and zoning maps as "Medical Related" (MR) and "Coastal Zone Residential-Professional" (CZ-RP) areas, respectively.

Currently, the project property is the only locale within the City that has been assigned a Medical Related land use designation. The LUP description of the MR land use designation states the intended purpose of the category as, "*Encourages the development of (sic) concentration of medically related services adjacent to the hospital.*" The LUP's Local Coastal Element Land Use Designations table identifies the CZ-RP zoning district as the sole compatible zoning designation for implementing the very limited — both in terms of geographic location and identified land uses — MR land use category. The rationale for this exclusive assignment may be deducted from the purpose statement and enumerated permissible uses of the CZ-RP district which state, in applicable part that, "*The CZ-RP district is intended to provide opportunities for the location of professional and commercial offices in close relationship to one another outside of commercial districts, and to protect such uses from the noise, disturbances, traffic hazards and other objectionable influences which would adversely affect professional and business practices being carried on,*" and identify "*Business and professional offices such as doctors, dentists, lawyers, accountants and other professional offices*" [Emphases added.]

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Before 2001 when amended to a “Commercial” designation, the MR designation extended southeasterly for another 1½ blocks to encompass the site of the former Seaside Hospital (see LCP Amendment No. CRC-MAJ-1-00). Prior to the change in the land use designation for that site, a coastal development permit to construct a visitor-serving hotel and restaurant facility at the former hospital site was appealed to the Commission (see Coastal Development Permit Appeal No. A-1-CRC-00-033, Del Norte Healthcare District, Applicant). The appeal of the approved hotel development was based upon many of the same concerns being raised for the *Coasta Norte* project, regarding consistency with public access, geologic stability, water quality, and visual resources issues. However, unlike the current project, prior to the hearing *de novo* on the hotel-restaurant development, both the City and the applicant acknowledged that the MR land use designation on the property was antiquated and needed to be amended to another use category that would allow for other than medical office-related development types. The designation for the hotel site was subsequently amended to “Commercial” and certified by the Commission, with a hearing *de novo* subsequently held resulting in the authorization of the adjoining Hampton Inn and Suites development project. Given the then existing clinic use at the *Coasta Norte* site in 2001, the MR designation was not similar changed for the subject appeal site.

Unlike its past practice on the Hampton Inns and Suites project, the City has chosen to take a different tact in its action on the *Coasta Norte* project: Instead of similarly acknowledging the outdated nature of the MR land use designation (now that the clinic use has been relocated and the property sold to a private entity) and amending the land use designation to one that could conceptually facilitate the subject mixed-use residential / professional office project, in its findings for conditional approval of the *Coasta Norte* project, the City has declared the MR land use designation as having no regulatory bearing on the property and have reviewed the permissibility of the project’s uses solely against the enumerated uses set forth in the CZ-RP zoning district standards, which in addition to the professional and commercial offices use types cited above, include other development types such as “multi-family dwellings,” “townhouses,” and “vacation homes.”

This approach to reviewing a given development’s permissibility solely on categorical conformance with zoning provisions is not consistent with the Coastal Act. With respect to the approval of coastal development permits by local governments with the whole of its certified coastal programs, Coastal Act 30600.5(c) directs:

Notwithstanding any other provision of this division, after delegation of authority to issue coastal development permits pursuant to subdivision (b), a coastal development permit shall be issued by the respective local government or the commission on appeal, if that local government or the commission on appeal finds that the proposed development is in conformity with the certified land use plan. [Emphases added.]

Moreover, in setting the grounds by which a local government issued coastal development permit may be appealed to the Commission, Coastal Act Section 30603(b)(1) limits such appeals to those based upon, “*allegation that the development does not conform to the standards set forth in*

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the certified local coastal program or the public access policies set forth in (the Coastal Act)." [Emphasis added.]

As the land use plan and its details with respect to the kinds, location, and intensity of land uses, are an indivisible component of the City's LCP², and proposed residential use is not an allowable use under the Medical Related land use designation, the approved development is inconsistent with the standards and policies regarding permissible uses as set forth in the certified LUP.

Residential Density and Lot Area per Dwelling Standards: Notwithstanding the categorical impermissibility of the approved development's residential component under the MR land use designation, the approved number of residential units per area exceeds the density standards of the LCP. As discussed above, in approving the project, the City chose to ignore that residential development was not a specifically enumerated use for lands designated as Medical Related on the Land Use Plan Map. As an alternate approach, the City chose to view residential density as permissible at the site based on the property's zoning designation, which allows for a variety of residential use types. Similarly, the City chose to derive the applicable residential density for the project from the CZ-RP zoning standard of 1,500-square-feet per dwelling unit, typically applied in the review of multi-family apartment developments, to establish a maximum 29 dwelling per acre criterion ($43,560 \text{ sq.ft./ac.} \div 1,500 \text{ sq.ft./dwelling unit} = 29.04 \text{ dwelling units/ac.}$) Even using this approach, the City concedes that the development would exceed both the implied density standard and the per-unit open space requirement of CZZR Section 17.67.030.B.5:

Although the description of the Medical Related designation does not provide a residential density range or limit, the implementing and consistent zoning district, CZ-RP (Coastal Zone Residential-Professional), allows multiple-family uses and does provide an indication of the density standard that probably should have been noted in the description of the Medical Related designation. The CZ-RP development standards require a "minimum of fifteen hundred square feet per dwelling unit," which implements 29 dwelling units per acre. The proposed density, calculated for only the CZ-RP portion of the property, is 41 units per acre. If the CZ-R2 portion is included, its overlying Residential land use designation had a maximum density of six units per acre. With only 7200 sq. ft. of area, however, this portion would only allow one residential unit and result in an overall density of 40 units per acre. This density does comply, however, with the only clearly stated density standard for this parcel, in the pending general plan designation (see discussion under Visitor and Local Commercial in the following section). [Emphasis added.]

Thus in approving the project, the City did not demonstrate how the approved project is consistent with the currently certified LCP and chose instead to examine the question of density conformance against a locally-adopted general plan standard that has not been certified by the

² See *de Bottari v. City of Norco* ((1985) 171 CA3d 1204, 217 CR 790) for a further discussion of the unseverable linkage between general plan / land use plan provisions and other regulatory controls, such as zoning and/or subdivision regulations, in the consideration of a development project's approvability.

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Commission. With regard to the lot area per dwelling standard, the City attached Condition of Approval No. 4, which reads:

Prior to issuance of the coastal development permit, the applicant shall either increase the proposed lot area per dwelling to a minimum of 1,500 square feet or obtain variance approval from the Planning Commission.

However, in applying this condition, it is unclear what such a conditionally-approved project would entail. Would the project be a common-wall apartment block with consolidated or partitioned open spaces, or, as vaguely stated in the project description and scope of approval condition, a parcelized condominium complex with each unit having a pro-rated interest share of an owners' association-held common area? Thus, in the absence of these crucial project details (i.e., revised site plan and/or approved tentative subdivision map or condominium plan), the development as approved by the City is inconsistent with the policies and standards of the LCP provisions from a variety of perspectives, including permissible uses, prescriptive yard area and open space development standards, ramifications on coastal access and recreational opportunities, potential impacts to environmentally sensitive areas, and visual resource implications.

Environmentally Sensitive Habitat Areas / Water Resources: LUP Environmentally Sensitive Habitat Areas / Water Resources Policy No. 2 requires that a buffer of 50 feet be maintained around all identified wetlands. The project site is located adjacent to the ocean shoreline and open beach areas along the City's west side, in proximity to "Marine Intertidal Unconsolidated Bottom" (M2US2N) and "Marine Unconsolidated Rocky Shore (M2RS2N) wetlands as depicted on the U.S. Fish and Wildlife's National Wetland Inventory - Sister Rocks Quadrangle. Despite this fact, in approving the project, the City categorically dismissed the presence of wetlands in the vicinity of the project and conducted no evaluation as to the location of the development relative to the "extreme higher high water" line, the upland extent of these wetlands³, and whether the requisite 50-foot-wide buffer width required by LUP Environmentally Sensitive Habitat Areas / Water Resources Policy No. 4 would be provided, or, if all aspects of the development in locales adjacent to these environmentally sensitive areas would be compatible with the resource areas as required by LUP Environmentally Sensitive Habitat Areas / Water Resources Policy No. 2. Therefore, the approved development is inconsistent with the policies of the LUP regarding the protection of environmentally sensitive habitat areas and water resources.

Water Quality: In conditionally approving the project, the City applied Condition of Approval No. 8, which reads:

Best management practices (BMPs) for controlling storm water runoff and maintaining water quality shall be incorporated into development design and

³ Refer to U.S. Fish and Wildlife Service - Office of Biological Services' Publication No. FWS/OBS-79/31 "Classification of Wetlands and Deepwater Habitats of the United States" (Lewis M. Cowardin, et al, USGPO December 1979) for a further discussion of the definition of and extent of wetland habitats.

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operation. All post-construction structural BMPs (or suites of BMPs) for the project shall be designed to treat, infiltrate or filter stormwater runoff from each storm event, up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor, for flow-based BMPs.

However, in rotely applying the condition, the City cited no specific preliminary information and provided no analysis addressing whether accommodating such treatment goal volumes could be feasibly attained given: (1) the approved development's extensive impervious surface coverage; (2) the site's relatively low elevation; and (3) the fact that the majority of its off-street parking would be constructed at a sub-grade location where ground infiltration or outfall discharges of treated water would likely be impractical. Therefore, the approved project is inconsistent with LUP Public Works Policy No. 2.

Geologic Hazards: The project site is located immediately adjacent to the open ocean shoreline along the west side of Crescent City north of the harbor area. The property is situated on a uplifted portion of the marine terrace which, unlike other areas to the north and south, rises gradually up from the beach to an elevation of 15 to 20 feet above mean sea level. An approximately 30-ft.-wide vegetated slope runs along the western margin of the property separating the building site from the open beach face. The beach face has a narrow sandy area grading into a rocky intertidal zone bounded with numerous offshore stacks.

In addition to being exposed to the coastal erosive forces of wind and storm surge, and shaking and possible subsidence associated with both near- and distant-source seismic events, the site is also in the immediate vicinity of the portions of Crescent City inundated by the tsunami waters propagated from the Great Alaska Earthquake of March 27, 1964.

The project entails the construction of 44 permanent residences and includes a sub-surface interior parking facility that would be developed at a sea level elevation. Despite the significant exposure of property and persons to these geologic and flooding hazards, no geo-technical analysis has been conducted for the project with respect to the site's shoreline retreat rate or site stability for the anticipated economic life of the proposed mixed-use structure. Accordingly, the City's approval of the project ins inconsistent with LUP Diking, Dredging, Filling and Shoreline Structures Policy No. 3 regarding siting and design to minimize geologic and flood hazards exposure.

Visual Resources: The approved project involves the ultimate development of 98,755-sq.ft. of structural and other site improvements spanning nearly a full one-block width of an oceanfront parcel and extending to an approximate 35-ft. height. Specific analysis as to the effects on coastal views was limited to that provided by the project proponent, which focused on the relative decrease in building façade length as compared with the existing one-story clinic building, the comparative differences between the height of the proposed project and its at-grade elevation as contrasted with other existing buildings or development entitlements on adjoining properties, and selective evaluation of the degree of blockage of views toward the ocean from certain public vantage points. No comprehensive analysis was performed with respect to the

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comparative scale and bulk of the development with other structures in the surrounding area. Moreover, in the project staff report, the City concluded that, “The project as proposed will almost completely block the ocean views from the Second and A Street ROWS, which may affect the intent and the use of the twenty-foot-wide coastal access easement required for the Hampton Inn on its north side.” [Emphasis added.]

The degree to which the approved development would be compatible with the character of the surrounding area and views would be obstructed from myriad vantages along “A” Street, Front Street, or other surrounding public roads due to the presence of the mixed residential/office structure was not addressed. In addition, no assessment of effects to visual resources from other public areas (i.e., Oceanfront Park) was conducted. Consequently, the project as approved is inconsistent with the requirements of LUP Coastal Visual Resources and Special Communities Policy No. 4 that scenic resources are considered and protected through appropriate siting and design of new development that protects views to and along the ocean and scenic coastal areas and assures that the development will be visually compatible with the character of the surrounding area.