

CALIFORNIA COASTAL COMMISSION

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



Th 19e

Addendum

April 8, 2008

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item 19e**, Coastal Commission Permit Application
#A-6-IMB-07-131 (Pacifica Co.), for the Commission Meeting of April
10, 2008.

1. Starting on the top of page 7, Special Condition #3. Condominium Hotel Operations, Subsections k, n, and r shall be corrected as follows:

k. Each individually owned hotel unit shall be used by its owner(s) (no matter how many owners there are) for ~~not more than 90 days per calendar year with a maximum 25 days use during any immediately preceding 50 day period~~ a maximum of ninety (90) days in any calendar year, with no stay exceeding twenty-five (25) consecutive days and which stay must be immediately preceded by a fifty (50) day period during which the guest room/unit interest is not reserved or used by an Owner-Investor.

[...]

n. The applicant shall execute and record a deed restriction(s), subject to the review and approval of the Executive Director, which prohibits the conversion of those traditional hotel units/rooms to any other type of ownership (e.g. limited use overnight visitor accommodations) without an approved Coastal Development Permit or amendment. The deed restriction shall run with the land, shall be executed and consented to by the existing landowner(s) ~~lessee(s)~~ of the affected property(ies) and shall be binding on the landowner(s) and lessee(s), and on all successors and assigns of the landowner(s) and lessee(s), including without limitation any future lien holders. This deed restriction(s) shall not be removed or changed without approval of an amendment to the underlying coastal development permit and approval of an amendment to the permit by the Coastal Commission, unless it is determined by the Executive Director that such an amendment is not legally required.

[...]

r. All documents related to the marketing and sale of the condominium interests, including marketing materials, sales contracts, deeds, CC&Rs and similar documents, shall notify buyers of the following:

1. Each owner of any individual hotel unit is jointly and severally liable with the hotel owner-operator for any violations of the terms and conditions of the coastal development permit with respect to the use of that owner's unit; and
2. ~~The occupancy of the units by owner(s) is restricted to 90 days per calendar year with a maximum of 25 consecutive days of use during any 50 day period, and when not in use by the owner, the unit shall be made available for rental by the hotel operator to the general public pursuant to the terms of the coastal development permit and that the coastal development permit contains additional restrictions on use and occupancy.~~

Each guest room/unit interest shall be restricted so as to limit its reservation, use, or occupancy by an Owner-Investor to a maximum of ninety (90) days in any calendar year, with no stay exceeding twenty-five (25) consecutive days and which stay must be immediately preceded by a fifty (50) day period during which the guest room/unit interest is not reserved or used by an Owner-Investor.

2. Other references in the staff report to length of stay by owners shall be corrected to state that each guest room/unit interest shall be restricted so as to limit its reservation, use, or occupancy by an owner to a maximum of 90 days in any calendar year, with no stay exceeding 25 consecutive days and which stay must be immediately preceded by a fifty 50 day period during which the guest room/unit interest is not reserved or used by an Owner-Investor.

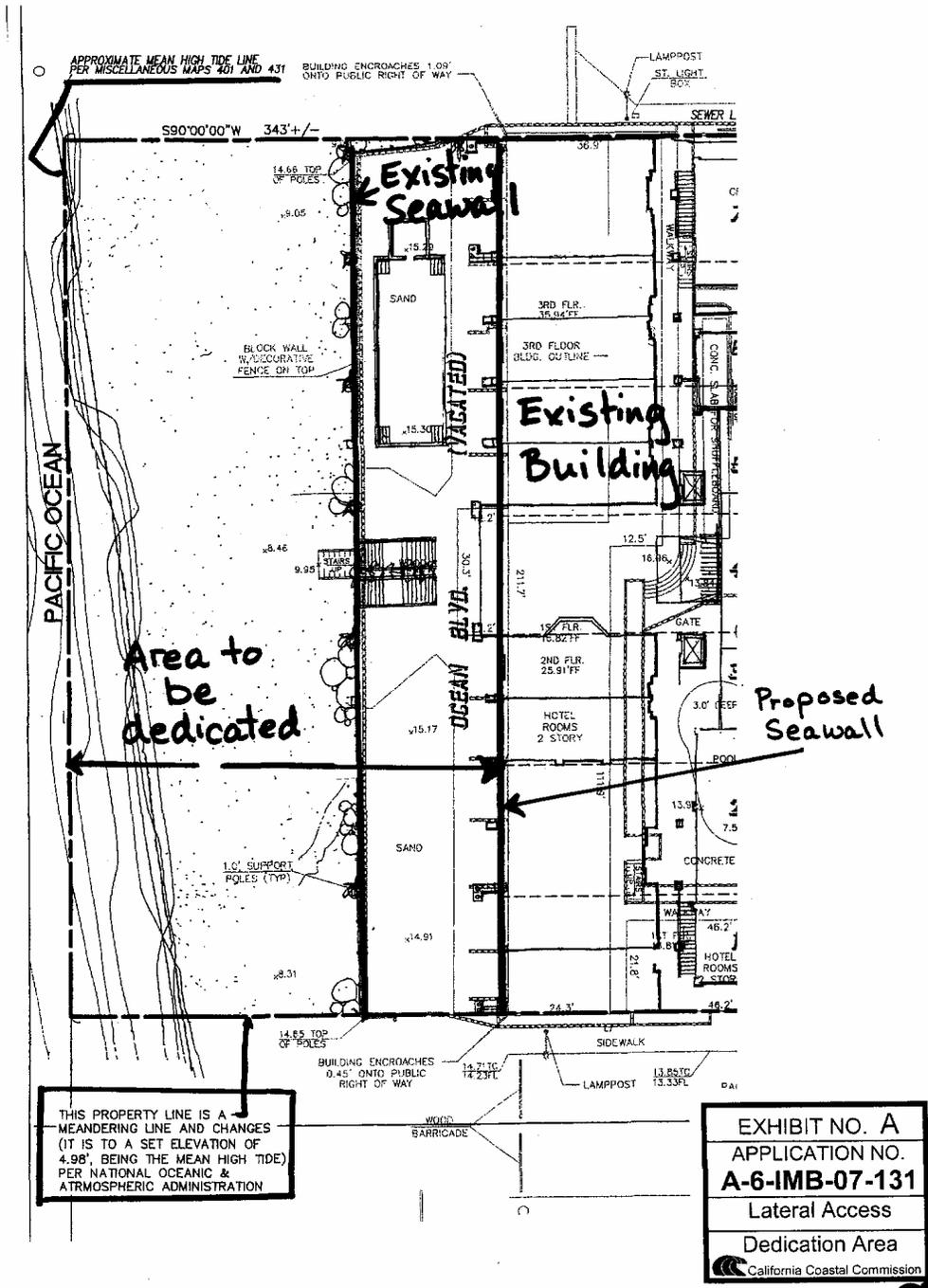
3. On page 8, Special Condition #5b shall be corrected as follows:

b. The planting plan shall be implemented within 60 days of completion of ~~residential~~ construction.

4. On page 9, Special Condition #6 shall be revised as follows:

6. Other Special Conditions from City of Imperial Beach. Except as provided by this coastal development permit, this permit has no effect on conditions imposed by the City of Imperial Beach pursuant to an authority other than the Coastal Act. The development agreement between the applicant and the City continues to be under the authority of the City of Imperial Beach.

5. The attached Exhibit A showing the correct extent of beach area proposed to be dedicated to the City shall be substituted for the original Exhibit A.



21

Th 19e

EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc.: **Th 19e Pacifica Co.**

Date and time of receipt of communication: **April 3, 2008 @ 4:00-4:30 p.m.**

Location and type of communication: **phone**

Person(s) initiating communication: **Greg Wade (Community Development Director), Gary Brown (City Manager), Mayor Jim Janney, Mayor Pro Tem Patricia McCoy**

Detailed substantive description of content of communication:

- The city summarized the main features of the proposed project: a run-down 38-room hotel will be replaced with a 78-room "green" hotel catering to eco-tourists.
 - The Project has City, community, business, and environmental group support. The project has been envisioned for 10 years.
 - City needs the TOT, property tax and sales tax from this project to provide for public safety and ensure public access to the coast. (Imperial Beach is uniquely impoverished when compared to any other coastal city in San Diego County and probably throughout California.)
 - The project will increase the supply of visitor serving room nights available to the general public by a minimum of 55%.
 - There are no negative public access implications:
 - Supply exceeds the demand for short-term vacation accommodations in the City of I.B.
 - 306 low cost visitor-serving rooms in the City of San Diego within 3.1 miles of I. Beach.
 - 420 RV Park and trailer park accommodations in the area.
 - The hotel has been restricted through the Development Agreement language so that it operates as a traditional hotel and will remain as a hotel forever.
 - The project opens up view corridors and puts parking underground.
 - The project provides I.B. with its first full-service hotel with conference facilities and a public restaurant open to the public.
 - The room rates are anticipated to be an average of \$138/night.
 - The project will provide one of the most affordable lodgings directly on a California beach.
 - The owner/developer has a considerable amount of "skin in the game" because construction and development costs exceed the revenues generated by condo sales by millions of dollars.
 - The owner/ developer will retain ownership in common areas and manage the hotel as a full service hotel facility.
- The city asked me to:
 - Oppose the staff recommended fee of \$240,000 because the applicant is deeding 7000 sf of beach to the public.
 - Oppose the staff limitation of 25% condo-hotel financing because the project needs the participation of investors to pencil out.
 - Support the restriction on operations with a few minor clarifications.

Signature on File

4/5/2008
Date

Signature of Commissioner

29

Ex Parte Communications



SAN YSIDRO
CHAMBER OF COMMERCE
ESTABLISHED 1923

*Our Mission is
development, c*

Th19e

ic

2008 Board of Directors

President
Thomas Currie
Thomas Currie & Associates

Vice President
Israel Adato
Expre\$\$ Financial Services

Secretary
Johnny Muñoz
Nike Factory Stores

Treasurer
Jose de la Garza
Financial Consultant

John Castillo
Anheuser-Busch

Juan Ceseña
Construction Testing &
Engineering

Kenn Duvall
Lucky, a Super Value Store

Grace Kojima
Educational Consultant

Alejandro Macedo
Hermanos Lopez

Ed Martinez
San Ysidro Health Center

Mireya Martinez
Wells Fargo Bank

Manuel Paul
San Ysidro School District

Fernando Puga
MexiCoach

Keno Revilla
Achiote by Espadaña

Yvonne Silva
San Diego Union-Tribune

Ahmad Solomon
Sempra Energy

Alice de la Torre
Executive Director
Jason M-B Wells

Border-Crossing Partner



Entertainment Partner



March 19, 2008

Diana Lilly, Coastal Planner
California Coastal Commission
San Diego Coast District
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108

Re: New Seacoast Inn in Imperial Beach

Dear Ms. Lilly:

The San Ysidro Chamber of Commerce wished to express its full support of Seacoast Inn project in Imperial Beach, as it has been presented – a 100% condo-financed facility.

The uniquely low socio-economic status of Imperial Beach and the higher risks taken by a developer in the Imperial Beach market is problematic at best. Therefore, 100% condo financing is needed.

The San Ysidro Chamber of Commerce, representing commerce neighboring Imperial Beach's immediate South and East, fully understands and completely supports the following:

1. The hotel wishes to use 100% condo financing.
2. The 78 room hotel will provide more rooms to the public than the current hotel even if the condo investors use their rooms for the maximum of 90 days per year.
3. The hotel has many energy and resource saving features that should please the Commission.
4. The hotel will deed a significant stretch of the beach to the public.
5. The hotel will have a restaurant and conference facilities available to the public.
6. The room rates to be charged by the new hotel will be very reasonable and one of the best, most affordable, rates on the California coast.
7. The current hotel is barely fit for human habitation, and therefore the loss of today's units is not a loss.

Please feel free to contact our office should you have any further questions or concerns regarding our support in this matter

Sincerely,

Signature on File

Jason M-B Wells
Executive Director

CC: Greg Wade, Community Development Director

663 E. San Ysidro Blvd., San Ysidro, CA 92177
www.sanysidrochamber.org – email

RECEIVED

MAR 27 2008

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Letters of Support

31



MAR 27 2008

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

March 24, 2008

Diana Lilly
Coastal Planner
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108

Dear Ms. Lilly:

We are aware that the Coastal Commission has heard an appeal on the construction of a new Seacoast Inn, and we wish to add our voice in support of this project.

We strongly support the proposed hotel with condo financing. The increase of available rooms to the public from 38 to 78, while providing the most affordable rates along the California coast, is a great improvement over the present run down hotel. A new hotel on the present site would not only stimulate tourism (especially ecotourism), but would also provide an attractive meeting place for our business guests - a much needed resource in this community.

We understand the proposed curvilinear design will allow beach to be deeded to the general public, while enhancing visual access from the east and beach access from Date Avenue. This will serve to increase coastal recreation access for visitors to the Imperial Beach. These visitors need continued, good basic services which the City could provide through the enhanced TOT and sales taxes provided from the hotel. This boost in revenue would also assist the City in becoming more self-sufficient as Port assistance will probably diminish.

In summary, we believe the proposed Seacoast Inn with its "green" design, improved coastal access, and enhanced beach area, meets the ideals, goals and mission of the Coastal Commission. The hotel has tremendous local support, including the proposed condo financing, and we urge you to allow it to happen as approved by the City Council.

Sincerely,

 Signature on File 

B. Kent Turner
President

B. Kent Turner, President
California American Water
303 H Street, Suite 250
Chula Vista, CA 91910
www.calamwater.com





Christine Moore
Director
External Affairs

AT&T California
101 W. Broadway
Suite 1440
San Diego, CA 92101-8215

T: 619.237.3340
F: 619.231-0758
www.att.com

RECEIVED

APR 07 2008

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Th 19e

March 22, 2008

Diana Lilly
Coastal Planner
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108

Dear Ms. Lilly:

We are aware that the Coastal Commission has heard an appeal on the construction of a new Seacoast Inn, and we wish to add our voice in support of this project.

We strongly support the proposed hotel with condo financing. The increase of available rooms to the public from 38 to 78, while providing the most affordable rates along the California coast, is a great improvement over the present run-down hotel. A new hotel on the present site would not only stimulate tourism, especially ecotourism, but would also provide an attractive meeting place for our business guests—a much needed resource in this community.

We also understand the proposed design will allow the beach to be deeded to the general public, while enhancing both visual and beach access. This will certainly serve to increase coastal recreation access for visitors to Imperial Beach.

As a community partner with the City of Imperial Beach, we encourage any effort on behalf of the city to promote economic independence. This project will make a significant positive contribution to the City's economic health through the enhanced TOT and sales taxes provided from the hotel while reducing its dependence on other entities for financial stability. Furthermore, it is our belief that the hotel will spur additional ancillary projects that will launch a new era in Imperial Beach's history—one of ecotourism and as a destination resort.

In summary we believe the proposed Seacoast Inn with its "green" design, improved coastal access, and enhanced beach area, meets the ideals, goals and mission of the Coastal Commission. This project, including the proposed condo financing, will have a tremendous positive impact. We urge you to allow it to proceed as approved by the City Council and overwhelmingly supported by the community.

Sincerely,

 Signature on File

Cc: Gary Brown, City Manager of Imperial Beach

CALIFORNIA COASTAL COMMISSION

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



Staff: D. Lilly-SD
Staff Report: March 27, 2008
Hearing Date: April 9-11, 2008

Th 19e

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Imperial Beach

DECISION: Approval with Conditions

APPEAL NO.: A-6-IMB-07-131

APPLICANT: Pacifica Companies

PROJECT DESCRIPTION: Demolition of an existing 38-unit hotel and construction of a new 4-story, 40 ft.-high, 129,845 sq.ft., 78-unit condominium-ownership hotel, including a restaurant, pool, conference facilities, and a 111 space underground parking garage, on a 1.39 acre beachfront lot, removal of an existing perched beach on the seaward side of the hotel, relocation and construction of a vertical seawall 35 ft. inland of its existing location, and street improvements on Date Avenue.

PROJECT LOCATION: 800 Seacoast Drive, Imperial Beach (San Diego County)
APN 625-262-01

APPELLANTS: Coastal Commissioners Sara Wan and Mary Shallenberger

STAFF NOTES:

At its February 7, 2008 hearing, the Commission found Substantial Issue exists with respect to the grounds on which the appeal was filed. This report represents the de novo staff recommendation.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends the Commission approve the de novo permit with several special conditions. The primary issues raised by the subject development relate to the LCP and Coastal Act requirements for public access and lower cost visitor-serving facilities. As proposed, the project would demolish 38 existing, more affordable traditional hotel units, and replace them with 78 condo-hotel units--units that will be less available to the general public than traditional hotel units because each unit will be privately owned and subject to owner occupancy. Ideally, development on prime visitor-serving oceanfront lots would be high-priority visitor-serving uses, such as traditional hotel rooms, restaurants,

or public recreational facilities, rather than low-priority condo-hotels. But the 78 condo-hotel rooms, as conditioned herein, will provide some additional overnight accommodations for the public--just not as many as if the site were developed with a traditional hotel with the same number of hotel units. Therefore, staff is recommending that the condo-hotel financing portion of the project be limited to 25% of the proposed units (i.e., 20 out of the 78 units).

In addition, while the applicant has indicated that the room rates at the new condo-hotel are expected to be moderately priced (\$135-\$140), similar to the rates at the existing hotel, the Coastal Act and the certified LCP promote the development of lower-cost visitor and recreational facilities. New overnight accommodations in prime visitor-serving locations should serve people with a range of incomes, either directly on site or indirectly through contribution of a fee towards the construction of lower cost overnight accommodations. In a past action in the City of Oceanside LCPA #1-07, the Commission has required payment of a fee of \$30,000 for 50% of the number of new high-cost units being developed when the proposal also involves the loss of existing hotel/motel units. This provision would mitigate the loss of oceanfront land that could otherwise have been available to develop with lower-cost facilities, and was intended to encourage rehabilitation of existing hotel/motel inventory.

Since that action, staff has continued to work on both a methodology to define “lower-cost” and to refine the policy questions raised by such proposals. Because the proposed project is not proposing to provide any on-site affordable priced units, but is providing moderately priced units, in this case, staff is recommending a fee of \$30,000 be applied to 10% of the proposed units, in this case, 8 units, for a total fee of \$240,000, to be used for the construction of lower cost visitor serving facilities in the area.

In addition, the permit is conditioned to include operational limitations on the condo-hotel portion of the project, documentation of the lateral access grant, a waiver of liability for work performed on the shoreline, and submission of final landscaping plans that use only non-invasive species.

Standard of Review: Certified Imperial Beach LCP and the public access and recreation polices of the Coastal Act.

SUBSTANTIVE FILE DOCUMENTS: Appeal Applications by Commissioners Wan and Shallenberger dated 12/28/07; Imperial Beach Resolution #2007-6559; Imperial Beach City Council Ordinances No. 2007-1061 with Development Agreement; Seacoast Inn Specific Plan; Seacoast Inn EIR; Certified City of Imperial Beach Local Coastal Program (LCP).

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. A-6-IMB-07-131 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified LCP and the public access policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following special conditions:

1. Condominium Hotel Limitations. Up to 25% of the total 78 rooms (i.e., 20 rooms) in the approved project may be financed/operate as condo-hotel units.

2. Lower Cost Overnight Accommodations Mitigation Fee. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall provide evidence, in a form and content acceptable to the Executive Director, that a fee of \$30,000 per room for 10% (8 units) of the total number of overnight visitor accommodations (78 units) in the approved project has been paid in lieu of providing lower cost accommodations on-site.

The required in-lieu fee of \$240,000 shall be deposited into an interest-bearing account, to be established and managed by one of the following entities approved by the Executive Director of the Coastal Commission: City of Imperial Beach, Hostelling International, California Coastal Conservancy, California Department of Parks and Recreation or a

similar entity. The purpose of the account shall be to establish lower cost overnight visitor accommodations, such as new hostel beds, tent campsites, cabins or campground units, at appropriate locations within the coastal area of South San Diego County. The entire fee and accrued interest shall be used for the above-stated purpose, in consultation with the Executive Director, within ten years of the fee being deposited into the account. All development funded by this account will require review and approval by the Executive Director of the Coastal Commission and a coastal development permit if in the coastal zone. Any portion of the fee that remains after ten years shall be donated to one or more of the State Park units or non-profit entities providing lower cost visitor amenities in a Southern California coastal zone jurisdiction or other organization acceptable to the Executive Director. Alternative mitigation may include completion of a specific project that is roughly equivalent in cost to the amount of the in-lieu fee and makes a substantial contribution to the availability of lower cost overnight visitor accommodations in Imperial Beach and/or the South San Diego County coastal area, subject to the review and written approval of the Executive Director.

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

3. Condominium Hotel Operations. The approved development is subject to the following conditions/restrictions:

- a. A maximum of 25% of the total number of guestrooms/units in the total project as a whole may be subdivided into condominiums and sold for individual ownership.
- b. The hotel owner/operator shall retain control through ownership, lease or easements of all structures, recreational amenities, meeting space, restaurants, “back of house” and other non-guest unit facilities.
- c. The Condominium-Hotel facility shall have an on-site hotel operator to manage rental/booking of all guestrooms/units. Whenever any individually owned hotel unit is not occupied by its owner(s), that unit shall be available for hotel rental by the general public on the same basis as a traditional hotel room.

- d. The hotel operator shall market and advertise all rooms to the general public. Unit owners may also independently market and advertise their units but all booking of reservations shall be made by and through the hotel operator.
- e. The hotel operator shall manage all guestrooms/units as part of the hotel inventory, which management will include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing units for use by guests/owners, a service for which the hotel operator may charge the unit owner a reasonable fee.
- f. If the hotel operator is not serving as the rental agent for an individually owned unit, then the hotel operator shall nevertheless have the right, working through the individually owned units' owners or their designated agents, to book any unoccupied room to fulfill demand, at a rate similar to comparable accommodations in the hotel. The owner or an owner's rental agent may not withhold units from use. In all circumstances, the hotel operator shall have full access to the condominiums' reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder.
- g. All guestrooms/unit keys shall be electronic and created by the hotel operator upon each new occupancy to control the use of the individually owned units.
- h. Unit owners shall not discourage rental of their unit or create disincentives meant to discourage rental of their unit.
- i. All individually owned hotel units shall be rented at a rate similar to that charged by the hotel operator for the traditional hotel rooms of a similar class or amenity level.
- j. The hotel operator shall maintain records of usage by owners and renters and rates charged for all units, and shall be responsible for reporting Transient Occupancy Taxes based on records of use for all units, a service for which the hotel operator may charge the unit owner a reasonable fee.
- k. Each individually owned hotel unit shall be used by its owner(s) (no matter how many owners there are) for not more than 90 days per calendar year with a maximum 25 days use during any immediately preceding 50 day period.
- l. The use period limitations identified in (k) above, shall be unaffected by multiple owners or the sale of a unit to a new owner during the calendar year, meaning that all such owners of any given unit shall be collectively subject to the use restriction as if they were a single, continuous owner.
- m. No portion of the Condominium-Hotel may be converted to full-time occupancy condominium or any other type of Limited Use Overnight Visitor Accommodations or other project that differs from the approved Condominium-Hotel

n. The applicant shall execute and record a deed restriction(s), subject to the review and approval of the Executive Director, which prohibits the conversion of those traditional hotel units/rooms to any other type of ownership (e.g. limited use overnight visitor accommodations) without an approved Coastal Development Permit or amendment. The deed restriction shall run with the land, shall be executed and consented to by the existing lessee(s) of the affected property(ies) and shall be binding on the landowner(s) and lessee(s), and on all successors and assigns of the landowner(s) and lessee(s), including without limitation any future lien holders. This deed restriction(s) shall not be removed or changed without approval of an amendment to the underlying coastal development permit and approval of an amendment to the permit by the Coastal Commission, unless it is determined by the Executive Director that such an amendment is not legally required.

o. The hotel owner/operator shall be required to submit, **PRIOR TO ISSUANCE OF A COASTAL DEVELOPMENT PERMIT**, for the review and approval of the Executive Director, a Declaration of Restrictions or CC & R's (Covenants, Conditions & Restrictions) which shall include:

1. All the specific restrictions listed in a through m above;
2. A statement that provisions of the CC & R's/Declaration of Restrictions that reflect the requirements of a through m above cannot be changed without approval of a coastal development permit amendment, unless it is determined by the Executive Director that an amendment is not legally required. If there is a section of the CC & R's/Declaration of Restrictions related to amendments, and the statement provided pursuant to this paragraph is not in that section, then the section on amendments shall cross-reference this statement and clearly indicate that it controls over any contradictory statements in the section of the Declaration/CC & R's on amendments.

p. The CC & R's or Declaration of Restrictions described above shall be recorded against all individual property titles simultaneously with the recordation of the condominium airspace map.

q. The hotel owner/operator or any successor-in-interest shall maintain the legal ability to ensure compliance with the terms and conditions stated above at all times in perpetuity and shall be responsible in all respects for ensuring that all parties subject to these restrictions comply with the restrictions. Each owner of an individual guest room/condominium unit is jointly and severally liable with the hotel owner-operator for any and all violations of the terms and conditions imposed by the special conditions of the coastal development permit with respect to the use of that owner's unit. Violations of the coastal development permit can result in penalties pursuant to Public Resources Code Section 30820.

r. All documents related to the marketing and sale of the condominium interests, including marketing materials, sales contracts, deeds, CC&Rs and similar documents, shall notify buyers of the following:

1. Each owner of any individual hotel unit is jointly and severally liable with the hotel owner-operator for any violations of the terms and conditions of the coastal development permit with respect to the use of that owner's unit; and
2. The occupancy of the units by owner(s) is restricted to 90 days per calendar year with a maximum of 25 consecutive days of use during any 50 day period, and when not in use by the owner, the unit shall be made available for rental by the hotel operator to the general public pursuant to the terms of the coastal development permit and that the coastal development permit contains additional restrictions on use and occupancy.

s. The hotel owner/operator and any successor-in-interest hotel owner and operator, and each future individual unit owner shall obtain, prior to sale of individual units, a written acknowledgement from the buyer that occupancy by the owner is limited to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, that the unit must be available for rental by the hotel operator to the general public when not occupied by the owner, and that there are further restrictions on use and occupancy in the coastal development permit and the CC & R's or Declaration of Restrictions.

t. The hotel owner/operator and any successor-in-interest hotel owner and operator shall monitor and record hotel occupancy and use by the general public and the owners of individual hotel units throughout each year. The monitoring and record keeping shall include specific accounting of owner usage for each individual guestroom/unit. The records shall be sufficient to demonstrate compliance with the restrictions set forth in a through m above. The hotel owner-operator shall also maintain documentation of rates paid for hotel occupancy and of advertising and marketing efforts. All such records shall be maintained for ten years and shall be made available to the City and the Executive Director of the Coastal Commission upon request and to the auditor required by section v below. Within 30 days of commencing hotel operations, the hotel owner-operator shall submit notice to the Executive Director of commencement of hotel operations.

u. Within 90 days of the end of the first calendar year of hotel operations, and within 90 days of the end of each succeeding calendar year, the hotel owner-operator shall retain an independent auditing company, approved by the Executive Director, to perform an audit to evaluate compliance with special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of the Condominium-Hotel. The audit shall evaluate compliance by the hotel owner/operator and owners of individual hotel units during the prior one-year period. The hotel owner/operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the

Executive Director upon request, within six months after the conclusion of each one year period of hotel operations. After the initial five calendar years, the one-year audit period may be extended to two years upon written approval of the Executive Director. The Executive Director may grant such approval if each of the previous audits revealed compliance with all restrictions imposed above.

v. If the hotel owner and the hotel operator at any point become separate entities, the hotel owner and the hotel operator shall be jointly and severally responsible for ensuring compliance with the requirements identified above. If the hotel owner and hotel operator become separate entities, they shall be jointly and severally liable for violations of the terms and conditions (restrictions) identified above.

4. Lateral Access. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, and in order to implement the applicant's proposal, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, dedicating in fee a lateral public accessway to the City of Imperial Beach. Such accessway shall be located from the approved seawall to the Mean High Tide Line as generally depicted in Exhibit A attached to this report. The dedication shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect said interest. The recorded document shall include a graphic depiction and legal description of both the applicant's entire property and the area being dedicated to the City. The recorded document shall also reflect that development in the area dedicated to the City is restricted as set forth in the Project Description proposed by the applicant for public beach use.

5. Landscape Plans: By acceptance of this permit, the applicant agrees to the following:

a. Landscaping on the site shall emphasize the use of drought-tolerant native species. Use of drought-tolerant, non-invasive ornamental species and lawn area is allowed as a small component. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized.

b. The planting plan shall be implemented within 60 days of completion of residential construction.

c. All required plantings shall be maintained in good growing condition, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape screening requirements.

d. Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.

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

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

7. Waiver of Liability. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, overtopping and flooding; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

8. Timing of Construction. No construction shall take place on sandy beach area between Memorial Day weekend and Labor Day of any year. Access corridors and staging areas shall be located in a manner that have the least impact on public access via the maintenance of existing public parking areas and traffic flow on coastal access routes (no street closures or use of public parking as staging areas).

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

V. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description/History. The proposed project would demolish an existing 38-unit hotel and construct a new 4-story, 40-foot high, 129,845 sq.ft., 78-unit condominium-ownership hotel, including a restaurant, pool, conference facilities, and 111 space underground parking garage, on a 1.39 acre beachfront lot on the west side of Seacoast Drive in the City of Imperial Beach. All units would include kitchens.

All 78 units would be condo-hotel units; that is, each room would be owned by individual investors. Owners' stays would be limited to 90 days per calendar year with a maximum of 25 days of use during any immediately preceding 50 day time period. The facility would operate on the surface as a hotel, including maid service, room service, centralized room reservations with all rooms rented out in a "mandatory pool," and marketed by Pacifica Host Hotels and their in-house reservation center. The owner-operator of the project would maintain the legal ability and responsibility to ensure compliance with all of the conditions of the City's permit regarding construction and operation of the development.

The project also includes removal of an existing seawall and perched beach currently located on sandy beach. These encroachments extend onto the beach considerably further than development on either side of the Inn, into the paper street "Ocean Lane" (Boulevard). The City has indicated that their best efforts at researching the history of the seawall and perched beach have determined that the improvements are on privately owned land. However, the EIR for the project describes the area as a former public street easement, once owned by the City and intended for the location of Ocean Boulevard but now vacated, which the Seacoast Inn development has encroached into over the years for the recreational use of hotel guests. In any case, it is believed that the encroachments predate the Coastal Act. As proposed, the seawall would be reconstructed 35 feet inland of the existing seawall, consistent with the stringline of shoreline protection to the north of the site. The beach area seaward of the new wall would be dedicated to the City for public beach access. Sand taken from the perched beach and excavated from the subject site will be tested for suitability for beach replenishment and deposited on the beach if compatible.

Other aspects of the project include street end improvements at the western terminus of Date Avenue, adjacent to the south side of the subject site, consisting of enhanced paving, landscaping, and parking.

Overall, the physical design of the project is consistent with the Coastal Act and will have a positive impact on public views, shoreline sand supply, parking, and biological productivity. Thus, this staff report focuses on the issues where the project is not in compliance with the Coastal Act--public access and recreation related to condo-hotels and affordable overnight accommodations.

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

2. Permitted Use. The City's zoning code defines "hotel" as follows:

19.04.410. Hotel.

"Hotel" means any establishment offering commercial transient lodging accommodation on a less than monthly basis **to the general public** [emphasis added], including any incidental services such as eating, drinking, meeting, banquet, entertainment, or recreational services intended primarily for the convenience of guests. Hotels shall consist of various types which are further defined as follows:

H-1: A site area of a minimum square footage of thirty-five thousand square feet, at least thirty guest rooms, facilities for conference, meeting or public use and a full service restaurant on site.

H-2: A "Motel" which is an establishment providing guest rooms on a less than monthly basis, with most rooms gaining access from an exterior walkway.

H-3: A lot, parcel or segment of real property dedicated to "timeshare units" as defined in Section 19.04.756 of this Code.

H-4: A "bed and breakfast" lodging place containing no more than six guest rooms and one kitchen.

Chapter 19.27. C-2 SEACOAST COMMERCIAL ZONE

19.27.010. Purpose of zone.

The purpose of the C-2 zone is to provide land to meet the demand for goods and services required primarily by the tourist population, as well as local residents who use the beach area. It is intended that the dominant type of commercial activity in the C-2 zone will be visitor-serving retail such as specialty stores, surf shops, restaurant, hotels and motels. The development standards of the C-2 zone encourage pedestrian activity through the design and location of building frontages and parking provisions.

19.27.020. Permitted uses.

A. The following commercial uses shall be permitted subject to subsections B, C, and D of this section as appropriate:

1. Beach equipment rental;
2. Bed and breakfast;
3. Bookstores;
4. Boutiques;
5. Financial institutions:
 - a. On first floor, subject to subsection B of this section,
 - b. All floors when located on Palm Avenue, Silver Strand Boulevard and/or Third Street.
6. Fishing supply;

7. Hotels and motels;
 8. Personal services;
 9. Professional offices:
 - a. On first floor, subject to subsection B of this section,
 - b. All floors when located on a Palm Avenue, Silver Strand Boulevard and/or Third Street.
 10. Public parks;
 11. Resident inns;
 12. Real estate offices;
 13. Private postal services;
 14. Restaurants;
 15. Retail shops;
 16. Specialty shops;
 17. Surf shops;
 18. Any other retail business or service establishment which the City Council finds to be consistent with the purposes of this chapter and which will not impair the present or potential use of adjacent properties, excluding those listed under subsection B of this section;
 19. Residential dwelling units may be permitted above the first floor at a maximum density of one unit per every one thousand five hundred square feet of lot area, subject to approval of a CUP and subject to subsections B and C of this section as appropriate;
 20. Kiosks (not to exceed twenty square feet in area each). The kiosks shall be located on public plazas or private leaseholds and shall not exceed ten locations in the Seacoast commercial zone;
 21. Short-term rentals.
- B. The uses listed below are permitted subject to the approval of a conditional use permit. Conditional use permits for financial institutions and professional offices shall be considered, provided these uses do not exceed thirty percent of the existing commercial square footage on Seacoast Drive and intersecting residential streets. Upper floor professional offices and financial institutions are not subject to this section.
1. Arcades and centers;
 2. Athletic and health clubs (second floor only);
 3. Bars and cocktail lounges;
 4. Liquor stores;
 5. Churches, clubs, fraternal organization (e.g., Masons, Moose, Elks and Eagles), service organizations (e.g., Rotary, Kiwanis, Lions Club and Jaycees), and veterans organizations (e.g., American Legion, VFW, FRA and Disabled American Veterans) subject to subsections E, F, G, and H of this section as appropriate;
 6. Commercial recreation facilities not otherwise listed;
 7. Educational institutions;
 8. Timeshares; shall be prohibited on the first floor unless twenty-five percent of the units are restricted to overnight accommodation;

9. Residential dwelling units above the first floor at a maximum density of one unit per every one thousand five hundred square feet of lot area, subject to subsections C and D of this section as appropriate;

10. Financial institutions: On first floor, subject to a conditional use permit per this subsection B;

11. Professional offices: On first floor, subject to a conditional use permit per this subsection B;

12. Theaters and assemblies;

13. Public parking lots;

14. Wireless communications facilities.

C. Site plan review by the City Council will be required if any of the following applies for proposed uses located in the C-2 zone:

1. All proposed commercial developments involving new construction;

2. Any addition, construction, remodeling or alteration of existing buildings resulting in an increase of ten percent or greater of the gross floor area of a commercial structure or in an individual commercial space within the structure or within a commercial shopping center;

3. Any proposed commercial use, residential use or structure requiring the approval of a conditional use permit;

4. Any development including residential dwelling units above the first floor.

[...]

19.27.150. Specific Plan.

A. The City Council may approve a specific plan for a hotel use that allows deviations from the following regulations in the C-2 zone:

1. Building heights specified in section 19.27.070, provided that a height deviation may not exceed four stories or forty feet, whichever is less;

2. Building setbacks specified in section 19.27.040. The specific plan shall establish setbacks to create public view corridors to and along the beach and to avoid impacts to existing public ocean views. The specific plan shall set back private development from public use areas to maximize public access, create open space buffers and avoid conflicts between public and private uses;

3. Parking requirements specified in section 19.48.040 may be reduced to 1 parking space per unit if a site-specific parking study, taking into account the demand for parking associated with ancillary uses such as conference areas and restaurants, establishes that parking demand will not exceed 1 parking space per unit;

B. The intent of this section is to accommodate, to the greatest extent possible, an equitable balance of project design, project amenities, public

improvements, and community and City benefits. The purpose of the specific plan is to provide flexibility in the application of development regulations for hotel projects where strict application of those regulations would restrict design options and result in a less desirable project.

C. The City Council may approve a specific plan for a proposed hotel project that occupies property within both the Seacoast Commercial (C-2) and Seacoast Mixed-Use Overlay (MU-2) Zones that allows deviations from the C-2 zoning regulations that are authorized by subsection A and deviations from the following regulations in the MU-2 Zone:

1. Conditional Use Permit requirement specified in Section 19.27.140(B)(1);
2. Building setbacks specified in section 19.27.040. The specific plan shall establish setbacks to create public view corridors to and along the beach and to avoid impacts to existing public ocean views. The specific plan shall set back private development from public use areas to maximize public access, create open space buffers and avoid conflicts between public and private uses;
3. Building heights specified in section 19.27.140(C)(2)(c), provided that a height deviation may not exceed four stories or forty feet, whichever is less;
4. Parking requirements specified in section 19.48.040 may be reduced to 1 parking space per unit if a site-specific parking study, taking into account the demand for parking associated with ancillary uses such as conference areas and restaurants, establishes that parking demand will not exceed 1 parking space per unit.

D. All of the following findings must be made before a Specific Plan may be approved under this section:

1. The proposed project will not adversely affect the General Plan or the local coastal program;
2. The proposed project will not be detrimental to the public health, safety or welfare;
3. The proposed project, when considered as a whole, will be beneficial to the community and the City; and
4. The proposed deviations are appropriate for the location and will result in a more desirable project than would be achieved if designed in strict conformance with zoning regulations in the C-2 zone.

E. A Specific Plan approved under this section must state the ways in which the project benefits the community and the City and the ways in which the resulting project is preferable to what the existing regulations would have allowed.

Land Use Plan

Table L-2, **LAND USE DESIGNATIONS AND SPECIFICATIONS** states in part:

C-2 Seacoast Commercial (3 stories, except for hotels where 4 stories is may be permitted by specific plan)

The Seacoast Commercial land use designation provides for land to meet the demand for goods and services required primarily by the tourist population, as well as local residents who use the beach area. It is intended that the dominant type of commercial activity in this designation will be visitor-serving retail such as specialty stores, surf shops, restaurants, hotels and motels, etc. In order to promote a more pedestrian-oriented community character, as well as to reduce the high volume of vehicle trips attracted by drive-thru establishments, drive-thru services for restaurants, banks, dry cleaners, and other similar auto related business establishments shall be prohibited in this zone. Residential uses may (included below) be permitted above the first floor at a maximum density of one unit per every 1,500 square feet of land. Discretionary permit review by the City shall be required for such residential use.

The **L-4 Commercial Uses and Areas** contains specific policies for commercial uses and areas, and states:

e. Seacoast Commercial (C-2 & MU-2)

The Seacoast commercial area shall serve as a visitor serving, pedestrian-oriented commercial area. Existing residential uses shall be slowly transitioned to new visitor serving commercial uses. As part of the design review, 2nd or 3rd stories may be required to be set-back from Seacoast Drive.

Timeshares shall be prohibited on the first floor unless 25% are reserved for overnight accommodation.

The subject site is zoned and designated for visitor-serving uses. As described above, the Seacoast Commercial District is somewhat unusual for a visitor-serving commercial zone, in that it allows a mix of general commercial, retail commercial, and residential uses, in addition to strictly visitor-serving uses such as overnight accommodations. For example, above the first floor, professional offices, residential dwelling units, financial institutions, athletic and health clubs may be permitted. Timeshares are allowed on upper stories, but are prohibited on the first floor unless twenty-five percent of the units are restricted to overnight accommodation. Financial institutions and professional offices may even be permitted on the first floor, provided these uses do not exceed thirty percent of the existing commercial square footage of the street frontages of the district.

However, condo-hotels are not listed as a permitted use in the C-2 Seacoast Commercial Zone. The LCP defines “hotel” as “any establishment offering commercial transient lodging accommodation on a less than monthly basis to the general public...” A condo-hotel is not a hotel as traditionally defined, nor does it meet the strict definition in the code as available “to the general public” because a portion of the time the units could be occupied by the owners and not the general public. Nor is the project a strictly residential or timeshare project, both permitted uses in the zone under certain circumstances.

However, the history of the Seacoast District area demonstrates that while visitor-serving uses have always been the priority uses in the district, a wide range of uses have been allowed along the shoreline in Imperial Beach.

The Seacoast District Specific Plan was first incorporated into the LCP in 1985. The District at that time encompassed an area of approximately 33 acres encompassing several blocks on both sides of Seacoast Drive between Palm Avenue and Imperial Beach Boulevard. The 1984 Plan divided the Seacoast District into six land use districts: the Beachfront Hotel District, the South Seacoast Park District, the Pier Plaza District, the Dune Park District, the Seacoast Mixed Use District, and the Civic Plaza District. The Seacoast Inn was located in the Dunes Park District. The principal permitted uses in the Dunes Park District were publicly owned recreational facilities and public or private parking areas or structures. Other allowed uses were mixed use residential and commercial, and tourist-commercial uses. The Beachfront Hotel District, located on the southern portion of the City from Imperial Beach Boulevard to approximately Elder Street, was the area specifically set aside for future development of a beachfront resort.

In May 1990, the Commission approved Imperial Beach LCPA #1-90, which established a new Seacoast District Specific Plan, superseding the previous one. This Specific Plan divided the Seacoast District into only four subareas, three on the seaward side of Seacoast Drive, one on the inland side. The Northwest Mixed Use Sub-area A on the northern portion of the District permitted open space and recreational facilities, hotels and motels, visitor-serving commercial uses, and residential uses with commercial uses on the ground floor fronting Seacoast Drive and Palm Avenue.

The Pier Plaza Sub-Area B, in the middle of the City between Daisy Avenue and Elder Avenue, included the Municipal Pier and the subject Seacoast Inn site. This sub-area was designated for various visitor-serving commercial retail uses, parking, plaza, and other public spaces.

The Beach Front Hotel Sub-Area C, between Elder Avenue and Imperial Beach Boulevard in the southern portion of the City’s shorefront permitted visitor-serving uses including hotel and motels, parking, public open spaces, and single ownership or multiple ownership resort condominiums or time shares, provided the total number of those units do not exceed one third of the total units in the hotel complex.

The Mixed Use Sub-Area D, located on the inland side of Seacoast Drive, permitted a variety of residential, commercial, and visitor-serving uses. In all cases, continuous visitor-serving development was required in developments fronting on or adjacent to Seacoast Drive.

However, little development occurred in the Seacoast District, and hoping to spur more growth, the City created the C-2 Seacoast Commercial zone, which the Commission approved on October 12, 1994 (LCPA #2-94), which superseded the Seacoast District Specific Plan. The various districts in the Seacoast Specific Plan were replaced by the C-2 (Seacoast Commercial) zone; previously the entire Seacoast area had been zoned SP-1 (Specific Plan). The Seacoast Commercial zone adopted at the time is essentially the same as it is today. Then, as now, the purpose of the C-2 zone was to serve the tourist population, with the main uses being visitor-serving retail, hotels, and motels. At that time, it was established that residential, financial institutions, and professional office uses are permitted above the first floor, and timeshares are prohibited on the first floor unless 25% of the units are restricted to overnight accommodations. The Beach Front Hotel Sub-Area was abandoned, and much of the land area immediately adjacent to the shoreline is now designated for high-density residential, in recognition of the existing pattern of development and lack of redevelopment funds to convert the area to commercial recreation or public recreational uses.

Since that time, several changes have been made to the C-2 zone allowing additional uses in the zone, some visitor-serving, such as public parks and public parking lots, others not visitor-serving, such as churches and a limited amount of professional office and financial institutions on the first floor (see LCPAs #1-97C and #1-01).

Other recent LCP amendments in Imperial Beach include #1-03, that designated short-term rentals as an allowable use in the Seacoast Commercial and General Commercial zones, while phasing out short-term rentals in residential zones.

The Commission is concerned that over the last 18 years, the City is gradually deprioritizing visitor-serving uses by eliminating the large Beach Front Hotel District, expanding the types of non-visitor-serving uses allowed in the Seacoast District, limiting short-term vacation rentals, and now, permitting condo-hotels in the Seacoast District. As discussed in detail below, condo-hotels are a low priority use compared to traditional hotels, and should not usurp existing hotels on prime visitor-serving land. Nevertheless, the Commission approved these prior LCP amendments, recognizing the difficulty Imperial Beach has had in attracting traditional visitor-serving development. Historically, residential uses and fractional hotels, such as timeshares, have been permitted under limited circumstances in the C-2 zone as long as existing visitor-serving uses are protected and prioritized.

The Commission respectfully disagrees with the City's position that a condo-hotel is a permitted use in the C-2 district as a hotel. It is not a traditional hotel, and is instead a mix of hotel and residential uses. Nor does the Commission believe that because timeshares are a permitted use (under certain circumstances), that condo-hotels should be

considered a permitted use. But, the C-2 zone does allow for some residential uses, as long as they are limited to the upper floors of a development. The provisions allowing timeshares also allow timeshares to be located on the first floor of development, as long as the number of timeshare units in a project are limited to 25% of the total units.

Therefore, the proposed mix of traditional hotel and residential uses, can be found consistent with the allowable uses in the C-2 zone, as long as the use remains primarily visitor-serving. As discussed in detail below, Special Conditions on the project limit the percentage of condo-hotels to 25% of the total number of units. Given the long history of varied visitor and non-visitor-serving uses permitted in the Seacoast District, the Commissions finds that in this particular case, if limited to 25% condo-hotel units, the proposed project can be found a permitted use in the Seacoast District. Allowing a limited number of lower-priority uses, with a preponderance of visitor-serving uses, is consistent with the goals and past practices of the Commission regarding the Seacoast area. Only as conditioned can the project be found consistent with the permitted use sections of the certified Land Use Plan.

3. Public Access/Visitor-Serving Commercial/Lower-Cost Facilities. In addition to the above-cited policies describing the visitor-serving priorities of the Seacoast District, relevant policies of the City of Imperial Beach certified LCP pertaining to protection of visitor-serving facilities and public access and recreation include the following:

LUP Policy L-6 and L-9 state:

L-6 Tourist Commercial Uses

Imperial Beach should provide, enhance and expand tourist commercial uses to the extent that they can be compatible with the small beach oriented town character of the City.

L-9 Lower Cost Visitor and Recreational Facilities

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

LUP Policies P-1, P-2 and P-7 state:

P-1 Opportunities For All Ages, Incomes, and Life Styles

To fully utilize the natural advantages of Imperial Beach's location and climate, a variety of park and recreational opportunities for residents and visitors shall be provided for all ages, incomes and life styles.

This means that:

- a. The beach shall be free to the public.

- b. Recreational needs of children, teens, adults, persons with disabilities, elderly, visitors and others shall be accommodated to the extent resources and feasibility permit.

[...]

P-2 Ocean and Beach Are The Principal Resources

The ocean, beach and their environment are, and should continue to be, the principal recreation and visitor-serving feature in Imperial Beach. Oceanfront land shall be used for recreational and recreation-related uses whenever feasible.

P-7 Increase Tourist Related Commercial Land Uses

The City and its business community should take direct action to increase the amount of tourist-oriented businesses both along the beachfront, South San Diego Bayfront and inland areas.

Coastal Act public access policies include the following:

Section 30210

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

Section 30211

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

Section 30213

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

Section 30221

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or

commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222

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

Condo-Hotel

The Seacoast Inn is the only beachfront hotel in the City and one of only three hotels in the entire City. The City's LUP states that Imperial Beach should provide, enhance and expand tourist commercial uses, and encourages the protection of new lower-cost visitor and recreational accommodations. However, the proposed condo-ownership of the hotel units may result in a use on the site that functions, at least to some extent, as a residential use and thus could lessen the overall visitor-serving use of the existing hotel, inconsistent with the certified LCP and the public access policies of the Coastal Act.

According to the applicant, purchasing a condo-hotel unit at the subject site would cost approximately \$350,000, well out of range for most people. Condo-hotels are often presented to potential buyers as more of a second home type of purchase than, for example, timeshares, because of the higher purchase price, and because timeshare owners can typically only use their homes for 1-2 weeks a year. With the proposed project, condominium hotel owners could use their units as vacation homes for up to 90 days per year. As proposed, up to ¼ of the hotel units could be unavailable over a 1-year time period. Thus, the units may function as a quasi-residential use.

In the case of the proposed project, the Commission acknowledges that because the proposed project would increase the number of units on the subject site from 38 to 78, the project would increase the overall number of rental units available to the public. For a condo-unit available to the general public for 275 days a year (assuming 90 days occupied by the owner), 78 condo units would have 21,450 days available to the public for overnight accommodations in one year. Thirty-eight traditional hotel units would have 13,870 days available to the public. Thus, the proposed project would result in an additional 7,580 days of units available to the public each year, a 55% increase in rooms.

In comparison, a traditional 78-unit hotel would have 28,470 days available to rent each year. While in concept any addition to the hotel stock is supported by the recreational policies of the Coastal Act, the Commission is concerned that cumulatively, the conversion of existing hotels to condo-hotels and the construction of new condo-hotels will eliminate opportunities for traditional hotels to locate and expand in prime visitor-serving locations.

In addition, although each owner would be limited to no more than 25 days within any preceding 50 day time period, there remains the potential for owners to use their unit during the time of year when hotel rooms for the general public are in highest demand. The time restrictions would allow a scenario where owners occupy every holiday period year round. For example, an owner could occupy a unit from Memorial Day weekend (May 24, 2008) to June 6 (14 days) then over Independence Day from July 3 to July 13 (11 days), over Labor Day weekend from August 15 through September 1 (16 days), 2 weeks over Thanksgiving, 2 weeks over Christmas, 1 week in early Spring, and 2 weeks over Easter.

The applicants have suggested that most owners would likely make their units available for rental during the summer, because owners receive a percentage of the room rental fees, and rates (thus, their income) are higher during the summer. Owners would then use their rooms during the off-season, when hotel occupancy is typically low.

However, it is unknown if this scenario is correct. The applicants have not provided any information on time of year stays for condo-hotel owners; such data may not exist for seaside condo-hotel resorts such as the proposed development. Thus, at this time, there is no reason to assume that condo-hotel owners would not have the same preferences and time constraints that make summer and holiday periods the most desirable vacation times for most people.

In addition, it is not certain that even when the units are not owner-occupied, that the rooms will be available for general transient use. There are membership organizations being formed to facilitate the peer-to-peer swapping of condo-hotel vacation units among owners (ref. National Association of Condo Hotel Owners at www.nacho.us). Thus, it appears possible that the condominium units would be disproportionately used by people who own similar units elsewhere, and not available to the general public.

In addition to immediately reducing the number of hotel units potentially available for transient use, the Commission is concerned about the long-term feasibility of the condo-hotel units. Like a traditional condominium, the proposed condominium units would have a condo association, property taxes and monthly condominium fees. Revenue from the rental of the units would be split between the hotel operator and the owners. Even when occupancy rates are low, owners would be expected to continue to pay fees to maintain the units, common areas, and amenities such as accessways, pools, and landscaping, as well as their mortgages.

Since owners are ultimately responsible for these costs, it is possible that they will want a say in how the property is managed and run. The Commission is concerned that during inevitable downtimes in the hotel industry, there will be considerable pressure from the condominium owners to be allowed to stay longer in their units. While the operator of the Seacoast Inn is responsible for maintenance of the common areas, condominium owners may also be disinclined to continue to pay for the maintenance or continued operation of the publicly-accessible areas without the revenue from non-owner occupants. Thus, there is the potential that the property will become less attractive and

available to the general public and that existing publicly-accessible areas will not be maintained and potentially closed to the public due to lack of maintenance.

Furthermore, as time goes by, if owners are not satisfied with the financial return on the properties, the Commission is concerned that there will be pressure to convert the property to purely residential use and eliminate the public recreational components of the project altogether. Traditional hotels have to cope with fluctuations in revenue, of course. But traditional hotels do not depend on numerous individual owners with a variety of financial capabilities and motivations for upkeep.

Further, the conversion to condominium ownership raises concerns regarding who will ultimately be responsible for enforcement of the restrictions and monitoring of the hotel operation. With 78 owners plus the hotel operator, enforcement of these conditions may prove difficult and impractical. Once the Commission authorizes the conversion to condominium form of ownership and the 78 units sold, it will be extraordinarily difficult, if not impossible, for the Commission to require the hotel to convert back to a conventional hotel ownership if the special conditions were to be ineffective or difficult to enforce. Such difficulty in enforcement can ultimately lead to, among other things, the provision of visitor-serving amenities being compromised. Because condo-hotels are a relatively new venture, there is little track record so far on exactly what and how many problems might occur with this type of financing mechanism

In order to address these concerns, the City of Imperial Beach incorporated into the requirements of the Specific Plan for the project, a series of special conditions such as were imposed in the permit for A-6-COR-06-46/Hotel del Coronado. These conditions place restrictions on the use, rental and marketing of the units, and prohibit conversion to timeshare or residential use.

These restrictions have been codified by Special Condition #3. Special Condition #3 specifically prohibits the conversion of any part of the project to full-time occupancy condominium.

While most of the marketing and advertising of the condo-hotel rooms will likely be performed by the hotel operator, each individual condominium owner would retain the right to market or advertise their unit on their own. All landscaping, swimming pools, spas, sidewalks, and related structures around the condominium units would be maintained by the Seacoast Inn, but the condominium owners would pay a fee for their maintenance. The CC&Rs will provide the City a direct right of enforcement against both the individual owners of the parcels and the Seacoast Inn, should any of the regulations be violated. Special Condition #3 details the requirements that must be included in the CC&R's, to ensure that potential and current owners are aware of the restrictions on use of the units.

The Commission has concerns that even with these special conditions imposed by the City, the condo-hotel still may not protect access by the general public. It has therefore added special conditions to ensure that the condo-hotel units are just as accessible to the

general public as any other unit in the hotel, except when the units are owner-occupied. While owners will have a right to market their own units, reservations must be made by and through the hotel operation, the hotel operator will still market and advertise all 78 condo hotel units to the general public.

Special Condition #3c requires that whenever any individually owned hotel unit is not occupied by its owner(s), that unit shall be available for hotel rental by the general public on the same basis as a traditional hotel room. Special Condition #3f also states that if the hotel operator is not the owner's rental agent, then the operator shall have the right, working through the owner or its designated rental agent, to book any unoccupied room to fulfill demand, at a rate similar to comparable accommodations in the hotel. Thus, regardless of whether the hotel operator is the primary rental agent, if there is a demand on the part of the general public for one of the condo-hotel units, the hotel will be able to book that room.

The Specific Plan requires that if an owner violates the conditions and regulations of the CC&R's, the owner can be subject to legal action. Special Condition #3q requires that the applicant or any successor-in-interest as hotel owner-operator maintain the legal ability to ensure compliance with the terms and conditions of the permit at all times in perpetuity and be responsible in all respects for ensuring that all parties subject to this permit comply with the terms and conditions of this permit. Each owner of an individual condominium unit is jointly and severally liable with the hotel owner-operator for violations of the terms and conditions of this permit, and this condition will be recorded on each individual deed, so that every owner is aware of the responsibility and liability associated with ownership of these units.

Special Condition #3t contains detailed provisions for the monitoring and recording of hotel occupancy and use by the general public and the owners of individual hotel units throughout each year, to ensure that the restrictions set forth in the special conditions are being complied with.

Because a portion of the development involves construction on the beach, to minimize impacts to on public access, Special Condition #8 prohibits work from occurring on sandy beach between Memorial Day weekend and Labor Day of any year.

The Commission acknowledges that to the extent the proposed condo-hotel units operate as transient accommodations, they will provide some public access and recreational opportunities. The special conditions on the permit have been designed to ensure the units do in fact operate as close to a traditional hotel as possible. But the ability for non-owners to stay at one of the units will be limited by the occupancy of the owner. The opportunities for public access and recreation at these condo hotels will be less than with a traditional hotel property, and certainly less than what is ideal for one of only three hotels in the entire City. Enforcement of the conditions may be difficult. These problems can be mitigated by the conditions in the Specific Plan, but they cannot be eliminated entirely.

In addition, it is important to emphasize that land developed with lower-priority uses such as condo-hotels, is land that is no longer available for high-priority uses like traditional hotels. The City of Imperial Beach and the applicant maintain that the economics of development in Imperial Beach are such that only a hotel using condo-hotel financing can be constructed in the City. The applicant has submitted information supporting their position that 100% condo hotel financing is required in order for the proposed development to be feasible (see Exhibit #9). It is clear that the City of Imperial Beach's plans over the last two decades for the redevelopment of the shoreline into a major tourist-recreational area have not been as successful as desired. It may be that some amount or kind of non-traditional financing is required to attract development of overnight accommodations to Imperial Beach at this time. However, Imperial Beach's situation is atypical compared to the majority of the California and even San Diego County's coastline, where the overwhelming majority of new shoreline accommodations are of luxury accommodations. The Commission is sympathetic to the City of Imperial Beach's desire to attract upscale development, but from a statewide perspective, it is not entirely negative that there are still oceanfront lots where the best economic use may be lower-cost facilities such as hostels, campgrounds, motels, or public recreational facilities available to a broad expanse of the public.

For all of these reasons, the Commission continues to prefer prime visitor-serving beachfront locations such as the subject site be developed with high-priority visitor-serving uses such as traditional hotels, particularly in communities such as Imperial Beach that have a lack of traditional overnight accommodations. The proposed project is particularly problematic, as it will not only construct lower-priority condo-hotels in a prime oceanfront location, it will reduce the supply of existing high-priority traditional hotel units by eliminating the 38 existing traditional hotel units on the site.

Thus, in past approvals, the Commission has limited fractional ownership of hotels to only a percentage of the rooms. For example, in Encinitas, the Commission approved a hotel with 77% condo-ownership. At the Hotel del Coronado, approximately 5% of the rooms are condo-hotels. In December 2007, the Commission approved an LCP amendment for the City of Oceanside that limits fractional ownership or condo-hotel units to no more than 25% of the total rooms in a hotel development. The City of Imperial Beach's LCP only allows timeshares on the first floor of any development if 25% of the units are restricted to traditional overnight accommodations.

Therefore, based on the above discussion, Special Condition #1 requires that only 25%, or 20 units, of the proposed 78 units operate as condo-hotel units. The other 58 units must operate as traditional hotel units. In this manner, the Commission can be assured that the proposed project will have a minimal impact on the supply of existing high-priority traditional hotel rooms in Imperial Beach.

In conclusion, given the current popularity of condo-hotel developments, the Commission must assure that this lower-priority use does not become the dominant or the only form of overnight accommodations in the City. The subject site is a prime location adjacent to the beach, with a variety of public amenities. Allowing a quasi-residential

use to take over 100% of the rooms on this site at the expense of the existing hotel rooms would not enhance and expand tourist commercial uses, and could set an adverse precedent regarding the preservation of visitor-serving accommodations in the Coastal Zone, inconsistent with the certified LCP and the public access policies of the Coastal Act. Therefore, the Commission finds the proposed condominium hotel ownership project can only be found consistent with the Coastal Act if conditioned to ensure the maximum public access to the condo-hotel rooms, and to require that 58 of the 78 units operate as traditional hotel rooms.

Lower-Cost Visitor-Serving Facilities

Pursuant to the public access policies of the Coastal Act, and particularly section 30213, the relevant portions of which are included in the Imperial Beach LUP, the Commission has the responsibility to both protect existing lower-cost facilities, and to ensure that a range of affordable facilities be provided in new development along the coastline of the state. In light of current trends in the market place and along the coast, the Commission is increasingly concerned with the challenge of providing lower-cost overnight accommodations consistent with the Coastal Act. Recent research in support of a Commission workshop concerning hotel-condominiums showed that only 7.9% of the overnight accommodations in nine popular coastal counties were considered lower-cost. Although statewide demand for lower-cost accommodations in the coastal zone is difficult to quantify, there is no question that camping and hostel opportunities are in high demand, and that there is an on-going need to provide more lower-cost opportunities along California's coast. For example, the Santa Monica hostel occupancy rate was 96% in 2005, with the hostel being full more than half of the year. State Parks estimates that demand for camping has increased 13% between 2000 and 2005. Nine of the ten most popular campgrounds are along the coast.

The existing Seacoast Inn has an average room rate of approximately \$135 per night. The applicant has submitted a study demonstrating that the new hotel will likely be able to support a room rate of approximately \$135-140 per night. In a constantly changing market, it can be difficult to define what price point constitutes "lower-cost," "moderate," and "higher-cost" accommodations for a given area. To address this, the Commission has created a formula to define lower-cost, moderate, and high-cost hotels.

The proposed formula is based on hotel accommodations (single room, up to double occupancy) in California. At this time, it does not incorporate hostels, RV parks, campgrounds or other alternative accommodations, as these facilities do not provide the same level of accommodation as hotels and motels. (However, these facilities are inherently lower cost, and are the type of facilities that a mitigation fee could go towards providing).

This method compares the average daily rate of lower cost hotels in the San Diego coastal zone with the average daily rate of all types of hotels across the state. Under this formula, lower-cost is defined as **the average room rate of all hotels that have a room rate less than the statewide average daily room rate.**

To determine this number, Commission staff surveyed average daily room rates for all hotels in California. Statewide average daily room rates are collected monthly by Smith Travel Research, and are available on the California Travel and Tourism Commission's website: <http://www.visitcalifornia.com/page.php?id=526>, under the heading "California Lodging Reports." Smith Travel Research data is widely used by public and private organizations.

Table 1 shows statewide average daily rates for 2003 through 2007, projected through 2008.

Table 1. Statewide Average Room Rates for 2003 to 2007 projected through 2008

	2003	2004	2005	2006	2007	Projected 2008
January	\$95.39	\$92.07	\$96.64	\$104.32	\$112.12	\$114.22
February	\$95.16	\$97.35	\$100.62	\$108.30	\$118.07	\$121.72
March	\$93.70	\$96.42	\$100.33	\$109.68	\$116.64	\$122.10
April	\$93.18	\$95.03	\$102.25	\$110.49	\$117.31	\$124.04
May	\$93.88	\$96.65	\$102.39	\$112.08	\$119.02	\$125.82
June	\$92.46	\$95.86	\$102.82	\$111.96	\$119.01	\$126.73
July	\$95.09	\$98.70	\$106.31	\$116.39	\$124.45	\$132.92
August	\$96.28	\$100.18	\$107.37	\$116.81	\$124.82	\$132.88
September	\$92.56	\$95.48	\$105.66	\$112.45	\$119.84	\$128.41
October	\$94.65	\$98.32	\$104.60	\$115.48	\$123.43	\$131.40
November	\$91.10	\$93.86	\$101.67	\$110.55	\$118.38	\$126.12
December	\$86.19	\$90.51	\$96.12	\$103.92	\$110.06	\$117.05
ANNUAL AVERAGE	\$93.30	\$95.87	\$102.23	\$111.04	\$118.60	\$125.28

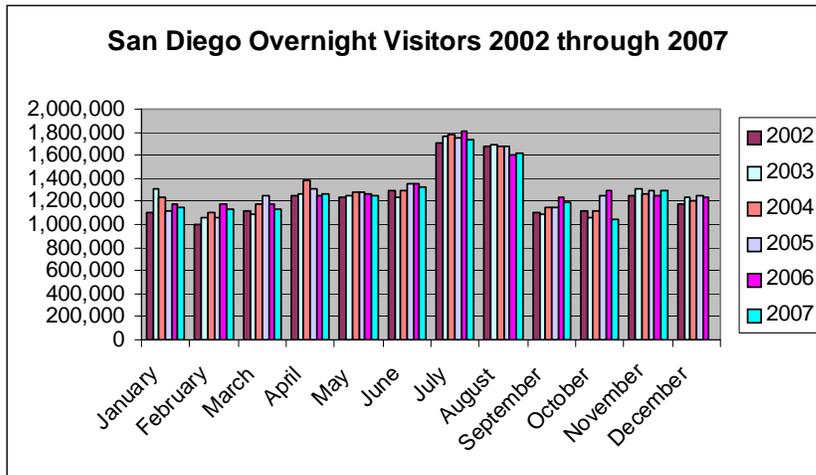
Source: Smith Travel Research, *California Tourism, June 2003 through June 2007*.

<http://www.visitcalifornia.com/page.php?id=526> [14 January 2008].

*2008 value projected using exponential regression based on 2003 through 2007 values.

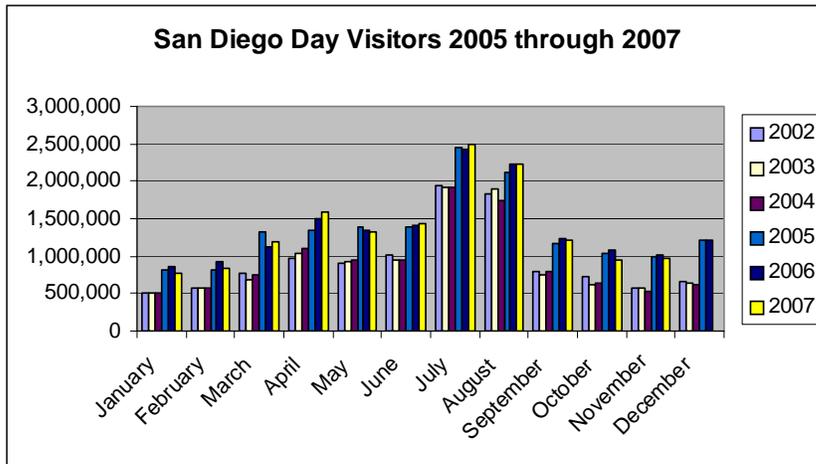
To be most meaningful peak season room rates are used. To determine the peak months in San Diego, the number of visitors to San Diego County from 2002 through 2007 were reviewed. This data is shown on Charts 1 and 2, below. The peak visitor months in San Diego for both day and overnight visitors are July and August.

Chart 1. San Diego Overnight Visitors



Source: San Diego Convention & Visitors Bureau, *San Diego County Visitor Industry Summary*.
<<http://www.sandiego.org/nav/Travel/ResearchAndReports>> [5 March 2008].

Chart 2. San Diego Day Visitors



Source: San Diego Convention & Visitors Bureau, *San Diego County Visitor Industry Summary*.
<<http://www.sandiego.org/nav/Travel/ResearchAndReports>> [5 March 2008].

To ensure that the lower cost hotels and motels surveyed meet an acceptable level of quality, including safety and cleanliness, only AAA rated properties were surveyed. According to their website, “to apply for [AAA] evaluation, [hotel] properties must first meet 27 essential requirements based on member expectations — cleanliness, comfort, security, and safety.” AAA assigns hotels ratings of one through five diamonds. The standards are described in Table 2.

Table 2. AAA Diamond Ratings

<i>One Diamond</i>
These establishments typically appeal to the budget-minded traveler. They provide essential, no-frills accommodations. They meet the basic requirements pertaining to comfort, cleanliness, and hospitality.
<i>Two Diamond</i>
These establishments appeal to the traveler seeking more than the basic accommodations. There are modest enhancements to the overall physical attributes, design elements, and amenities of the facility typically at a moderate price.
<i>Three Diamond</i>
These establishments appeal to the traveler with comprehensive needs. Properties are multifaceted with a distinguished style, including marked upgrades in the quality of physical attributes, amenities, and level of comfort provided.
<i>Four Diamond</i>
These establishments are upscale in all areas. Accommodations are progressively more refined and stylish. The physical attributes reflect an obvious enhanced level of quality throughout. The fundamental hallmarks at this level include an extensive array of amenities combined with a high degree of hospitality, service, and attention to detail.
<i>Five Diamond</i>
These establishments reflect the characteristics of the ultimate in luxury and sophistication. Accommodations are first class. The physical attributes are extraordinary in every manner. The fundamental hallmarks at this level are to meticulously serve and exceed all guest expectations while maintaining an impeccable standard of excellence. Many personalized services and amenities enhance an unmatched level of comfort.

Source: AAA, *What the Hotel Ratings Mean*

<<http://ww2.aaa.com/scripts/WebObjects.dll/AAAOnline?association=AAA&club=005&page=HotelCriteria&zip=>> [6 March 2008].

To develop the sample to represent lower cost hotels in San Diego, the AAA online database for AAA rated hotels within 5 miles of the cities and towns along the San Diego coast was searched. These cities and towns include: San Onofre, Las Flores, Oceanside, Carlsbad, Leucadia, Encinitas, Solana Beach, Del Mar, La Jolla, Pacific Beach, Ocean Beach, San Diego, National City, Chula Vista, Coronado, and Imperial Beach.

One way to identify lower cost hotels would have been to survey only one diamond hotels. However, of all the San Diego hotels identified in the AAA database search, only three one diamond hotels were found. Therefore the criterion was expanded to include one and two diamond hotels.

A total of 55 AAA-rated 1 or 2 diamonds room rates were compiled; of these, 25 were within the Coastal Zone. Table 3 shows these 25 hotels.

1	Ocean Palms Beach Resort	2950 Ocean St	Carlsbad
2	Ramada Inn & Suites	751 MacAdamia Drive	Carlsbad
3	Crown City Inn	520 Orange Ave	Coronado
4	La Avenida Inn	1315 Orange Ave	Coronado
5	Villa Capri By the Sea	1417 Orange Ave	Coronado
6	Ocean Inn	1444 N Coast Highway 101	Encinitas
7	Portofino Beach Inn	186 N Coast Highway 101	Encinitas
8	Days Inn Encinitas/Moonlight Beach	133 Encinitas Blvd	Encinitas
9	Howard Johnson	607 Leucadia Blvd.	Encinitas
10	Southbay Travelodge	1722 Palm Ave	Imperial Beach
11	La Jolla Cove Suites	1155 Coast Blvd	La Jolla
12	Scripps Inn	555 Coast Blvd S	La Jolla
13	Pacific Shores Inn	4802 Mission Blvd	La Jolla
14	La Jolla Beach Travelodge	6750 La Jolla Blvd.	La Jolla
15	Motel 6	909 N Coast Hwy	Oceanside
16	Days Inn at the Coast	1501 Carmelo Dr	Oceanside
17	La Quinta Inn	937 N Coast Hwy	Oceanside
18	Days Inn Mission Bay/Sea World	4540 Mission Bay Drive	San Diego
19	Beach Haven Inn	4740 Mission Blvd	San Diego
20	Diamond Head Inn	605 Diamond St	San Diego
21	America's Best Value Inn - Mission Bay/Sea World	4545 Mission Bay Dr	San Diego
22	Ramada Limited Sea World	3747 Midway Drive	San Diego
23	Vagabond Inn Point Loma	1325 Scott St	San Diego
24	Best Western Posada at the Yacht Harbor	5005 N Harbor Dr	San Diego
25	Ocean Villa Inn	5142 W Point Loma Blvd	San Diego

The survey did not capture every hotel that might be considered “lower-cost;” not every hotel is listed with AAA, and it is possible that the AAA list could be incomplete. However, the survey did capture hotels from all along the coastline, and it is expected that these 25 one- and two-diamond hotels provide a good representation of hotels and allow for a sufficient hotel sample size of non-luxury hotels in San Diego’s coastal zone. Next, the average monthly rates for these 25 hotels were determined. In most cases, rate information was obtained from the hotel website. If the hotel did not have a website, or their website was unable to give reservation information, a phone survey was performed. The rates do not reflect discounts for multiple night stays; each rate obtained was for one night only. The rates do not reflect discounts for exclusive groups, such as AAA members or AARP members.

Again looking at peak season room rates, the statewide average daily room rate in California in 2008 for the months of July and August is projected to be \$132.90. Of the above 25 hotels in San Diego County, 8 charged less than the \$132.90 statewide average (see Table 4).

Table 4						
1 and 2 Diamond Hotels in the Coastal Zone with Room Rates Less than State Peak Average						
	Hotel Name	AAA Rating	Address	City	July Average	August Average
1	Ocean Inn	2 Diamonds	1444 N Coast Highway 101	Encinitas	\$109.65	\$108.68
2	Portofino Beach Inn	2 Diamonds	186 N Coast Highway 101	Encinitas	\$114.99	\$114.99
3	Days Inn Encinitas/Moonlight Beach	2 Diamonds	133 Encinitas Blvd	Encinitas	\$131.58	\$132.23
4	Southbay Travelodge	2 Diamonds	1722 Palm Ave	Imperial Beach	\$106.58	\$97.23
5	Motel 6	2 Diamonds	909 N Coast Hwy	Oceanside	\$83.89	\$84.54
6	Days Inn at the Coast	2 Diamonds	1501 Carmelo Dr	Oceanside	\$93.91	\$93.50
7	Days Inn Harbor View	2 Diamonds	1919 Pacific Highway	San Diego	\$126.84	\$107.39
8	Days Inn Mission Bay/Sea World	2 Diamonds	4540 Mission Bay Drive	San Diego	\$119.52	\$108.00
AVERAGE FOR JULY AND AUGUST					\$108.35	

The average room rate of these 8 hotels was \$108.35. Thus, based on the above formula, for San Diego County in 2008, lower-cost accommodations can be defined as those charging less than \$108.35 per night, or 18% below the 2008 statewide average daily room rate of \$132.90.

At some point, a survey of hotels charging more than the statewide average could be undertaken. But for now, an estimate of “higher-cost” can be defined as those hotels with daily room rates 20% (rounding up to be conservative) higher than the statewide average of \$132.90, or \$159.48. Rates between \$108.35 and \$159.48 would be considered moderately priced.

The result is a formula defining lower cost as a percentage of the most recent statewide average room rates available. One advantage of using this formula is that it adjusts over time without having to undertake new surveys of local hotel room rates. In 2008, any hotel charging less than \$108.35 per night would be considered lower-cost. In future years in San Diego, taking 82% of statewide average daily room rate for that year will yield the room rate for a lower-cost hotel, higher cost as 120% of the peak statewide average, and so on.

The applicant submitted a survey of overnight accommodations in the Imperial Beach region. Based on this survey, there are only three hotels and motels within the City, including the Seacoast Inn. An additional hotel closed in winter 2007. The City also permits short-term vacation rentals in the Seacoast Commercial District, and there is one RV park in the City, although it specializes in long-term, not transient stays. According to the applicant, prices for the three hotel facilities are very similar, ranging in cost from \$131 to \$135 a night. Costs for short-term rentals are considerably higher--

approximately \$259 a night. Camping at the RV park, if available for overnight stays, would be \$52 per night.

Thus, based on the above definition, there are no lower-cost overnight hotels or motels in Imperial Beach. The existing room rate of \$135 and the proposed room rate of \$140 would be considered moderately priced based on the above-described formula.

The Commission feels strongly that the loss of existing, lower cost hotel units should, under most circumstances, be mitigated at a 1:1 ratio of units lost to new units provided. However, even when there has been no loss of existing, lower cost units, if no lower cost units are proposed, the Commission has typically required mitigation to ensure a range of accommodation rates are made available to visitors. When high end or even moderately priced visitor accommodations are located on the shoreline, they occupy area that would otherwise be available for lower cost visitor and recreational facilities. Thus, the expectation of the Commission, based upon several precedents, is that developers of sites suitable for overnight accommodations will provide facilities which serve people with a range of incomes. If development cannot provide for a range of affordability on-site, the Commission requires off-site mitigation.

In order to be consistent with the LUP policy requiring that lower cost visitor facilities be protected, encouraged, and, where feasible, provided, a mechanism by which to promote the future development of lower cost accommodation is necessary. Therefore, Special Condition #2 requires the applicant to provide funding for construction of such units, in lieu of providing them onsite. Although the Commission prefers the actual provision of lower-cost accommodations in conjunction with projects, where necessary, the Commission has used in-lieu fees to provide lower-cost opportunities. For example, the Commission has required an in-lieu fee in permits to convert the Highlands Inn in Monterey County and the San Clemente Inn to timeshares. In addition, the Commission required a similar in-lieu fee for the conversion of a 130-unit hotel (not yet constructed) located on the bluffs in Encinitas to a 100-unit condo-hotel, with 30 units required to remain as traditional hotel units (6-92-203-A4/KSL), for the Surfer's Point Resort development in Encinitas (#A-6-ENC-07-51), and for Oceanside LCPA #1-07 (Downtown District), the Commission approved a requirement that a \$30,000 fee be paid for 50% of the number of new high-cost units being developed, when existing units are demolished, in order to mitigate the loss of oceanfront land that could otherwise have been available to develop with lower-cost facilities

The \$30,000 fee amount was established based on figures provided to the Commission by Hostelling International (HI) in a letter dated October 26, 2007. The figures provided by HI are based on two models for a 100-bed, 15,000 sq. ft. hostel facility in the Coastal Zone. The figures are based on experience with the existing 153-bed, HI-San Diego Downtown Hostel. Both models include construction costs for rehabilitation of an existing structure. The difference in the two models is that one includes the costs of purchase of the land and the other is based on operating a leased facility. Both models include "Hard" and "Soft Costs" and start up costs, but not operating costs. "Hard" costs include, among other things, the costs of purchasing the building and land and

construction costs (including a construction cost contingency and performance bond for the contractor). “Soft” costs include, among other things, closing costs, architectural and engineering costs, construction management, permit fees, legal fees, furniture and equipment costs and marketing costs. Based on these figures, the total cost per bed for the two models ranges from \$18,300.00 for the leased facility to \$44,989.00 for the facility constructed on purchased land.

In looking at the information provided HI, it should be noted that while two models are provided, the model utilizing a leased building is not sustainable over time and thus, would likely not be implemented by HI. In addition, the purchase building/land model includes \$2,500,000.00 for the purchase price. Again, this is not based on an actual project, but on experience from the downtown San Diego hostel. The actual cost of the land/building could vary significantly and as such, it makes sense that the total cost per bed price for this model could be too high. In order to take this into account, the Commission finds that a cost per bed generally midrange between the two figures provided by HI is most supportable and likely conservative. Therefore, the in lieu fee assessed in this particular case, is \$30,000.00 per bed.

The portion of units to be assessed the \$30,000 fee should vary based on the projected rate of the proposed units. Specifically, 10% of new, moderate cost units should be mitigated, and 25% of new, higher cost units should be mitigated. Higher cost developments should be required to mitigate a larger number of units because as room rates rise, fewer and fewer visitors can afford to stay in the units. Those visitors who cannot afford higher cost room rates will increase demand for lower cost accommodations.

Accordingly, in order to mitigate for the absence of low-cost visitor accommodations in the proposed project and bring the project into conformance with the certified LCP and Coastal Act Section 30213, Special Condition #2 requires a fee of \$30,000 be applied to 10% of the proposed units, in this case, 8 units, for a total fee of \$240,000. The fee is to be used for the specific purpose of constructing lower-cost overnight accommodations (such as a hostel, tent campsites, etc.) in the coastal zone of South San Diego County. This figure is in line with the Commission’s past practice with regard to calculation of in-lieu fees as mitigation for the lack or loss of lower cost visitor accommodations in the Coastal Zone. These in-lieu fees have included \$87,810 in Seal Beach (ref. CDP #5-05-385), \$5,000,000 in Newport Beach (ref. CDP #5-07-85), and \$210,000 in Encinitas (ref. A-6-ENC-07-51). To put this figure further in perspective, the applicant has indicated that the cost of purchasing one of the proposed condo-hotel units is expected to be approximately \$350,000, so the required in-lieu fee is significantly lower than the cost of even one condo-hotel unit.

Summary

In summary, the applicant is proposing to construct a moderately priced condo-hotel on land designated primarily for tourist-serving commercial. The subject site is a prime location adjacent to the beach and supports a variety of public amenities. Allowing a

quasi-residential use to take over 100% of the rooms on this site at the expense of the existing hotel rooms would not enhance and expand tourist commercial uses, and could set an adverse precedent regarding the preservation of visitor-serving accommodations in the Coastal Zone, inconsistent with the certified LCP and the public access policies of the Coastal Act. New overnight accommodations should serve people with a range of incomes, either directly on site or indirectly through contribution of a fee towards the construction of lower cost overnight accommodations. Therefore, the project has been conditioned to limit the number of condo-hotel units on the site to 25% (20) of the proposed 78 units, and to require the submission of an in-lieu fee of \$240,000 for the construction of lower cost visitor-serving facilities in the area. Only as conditioned can the project be found consistent with the lower cost visitor serving policies of the Coastal Act and LCP.

4. Shoreline Processes and Public Access and Recreation. The following policies of the certified City of Imperial Beach apply to the proposed project:

CO-1 The Beach

Imperial Beach has few industries and must, therefore, rely on the attraction of tourists for economic development. The beach area is most critical and the City should:

1. Designate the beach as open space.
2. Retain public ownership of the beaches.
3. Insure continued public access to beaches and, where possible, provide additional access, as well as increased public parking opportunities in the beach area (see Parks, Recreation and Access Element).
4. Require landscaping of properties near the beach area to attain a pleasant visual image.
5. Assure continued replenishment of sand.

P-1 Opportunities For All Ages, Incomes, and Life Styles

To fully utilize the natural advantages of Imperial Beach's location and climate, a variety of park and recreational opportunities for residents and visitors shall be provided for all ages, incomes and life styles.

This means that:

- c. The beach shall be free to the public.

- d. Recreational needs of children, teens, adults, persons with disabilities, elderly, visitors and others shall be accommodated to the extent resources and feasibility permit.
- e. City residents need mini-parks, neighborhood parks, community parks, activity centers, special use and all-purpose parks.
- f. The City should pursue increased recreational opportunities for the general public in the Tijuana Estuary, Borderfield State Park, the beach and the South San Diego Bayfront.

P-2 Ocean and Beach Are The Principal Resources

The ocean, beach and their environment are, and should continue to be, the principal recreation and visitor-serving feature in Imperial Beach. Oceanfront land shall be used for recreational and recreation-related uses whenever feasible.

GOAL 14 SHORELINE ACCESS

To provide physical and visual access in the City's five coastal resource areas for all segments of the population without creating a public safety concern, overburdening the City's public improvements, or causing substantial adverse impacts to adjacent private property owners.

GOAL 16 SHORELINE PROTECTION

To manage the City's shoreline in a way which enhances the shoreline environment while also providing recreational opportunities and property protection.

S-10 Regulate Shoreline Land Use and Development

The City should regulate shoreline land use and development by:

- a) Minimizing construction on beaches and in front of seacliffs.
- b) Require setbacks from beaches and low-lying coastal areas.
- c) Regulate sand mining if some were to occur.

S-11 Storm Waves, Flooding and Seacliff Erosion

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, shoreline protection devices and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Prior to completion of a comprehensive shoreline protection plan designed for the area, interim protection devices may be allowed provided such devices do not encroach seaward of a string line of similar devices. [...]

In addition, the Coastal Act policies 30210, 30211, Section 30213 and Section 30220 cited above are applicable to the subject proposal.

The site is currently protected by a seawall constructed in the 1970's. The system consists of a perched beach held in place by a timber seawall capped by a low masonry wall. The perched beach provides an area for overtopping waters to dissipate and percolate back through the wall and to the ocean.

A geotechnical report submitted for the proposed project determined that the existing seawall is in good condition. However, the project proposes to remove the wall and construct a new vertical seawall 35 feet inland of the existing wall. The seawall will extend across the end of Date Street, and an improved pedestrian accessway to the beach will be constructed at Date Street. In addition, the applicant has proposed with the project to dedicate any beach area seaward of the new seawall that is owned by the applicant to the City for public lateral access. Special Condition #4 reflects this proposal.

Additionally, although the applicants assert that the proposed development can be constructed safely despite the proposed seawall, the shoreline area is known to be hazardous and unpredictable. Given that the applicants have chosen to construct the proposed hotel in this location despite these risks, the applicants must assume the risks. Accordingly, Special Condition #7 requires the applicants to acknowledge the risks and indemnify the Commission against claims for damages that may occur as a result of its approval of this permit.

The Commission has long recognized that shoreline protection is necessary along Imperial Beach's shoreline, and the City's certified LCP permits the construction of shoreline protection when it does not encroach seaward of a string line of similar devices. In the case of the proposed project, the proposed new location of the seawall 35 feet further inland than the existing wall will be entirely on private property, and will align with the existing shoreline protection to the north. The new wall will still be further seaward than the existing line of protection on the south; however, given that the new alignment will result in a substantial improvement in public access, recreational opportunities, and shoreline sand supply compared the current situation, the proposed seawall location can be found reasonable and consistent with the relevant policies of the LCP and Coastal Act.

5. Biological Resources. Goal 2 of the LUP Conservation & Open Space section states:

GOAL 2 NATURAL RESOURCES – KEY FOUNDATION OF THE CITY

The ocean, beach, bay, estuary, weather and related ecosystems set much of the image of Imperial Beach. Conservation and protection of these resources shall be a key focus of the General Plan. The unique physiographic characteristics of Imperial Beach are recognized as the foundation for all other aspects of the

community. These characteristics enhance the quality of life of residents and visitors and shall not be wasted, destroyed, or neglected. They are generally nonrenewable and provide many of the scenic, historic, economic, recreation, open space and ecological values for the community.

The Commission's water quality staff have reviewed the Water Quality Technical Report prepared for the project and determined that it contains adequate provisions for the protection of water quality.

As proposed, all windows, glass features, and the pool screen will be designed to minimize the potential for bird strikes. All decorative glass will have a texture and the Plexiglas surrounding the pool will have an adhesive film applied, as necessary, to reduce reflectivity. The design and placement of windows will incorporate design elements that break up continuous glass surfaces that are known to be problematic for birds. Outdoor lighting will be minimized to reduce the likelihood of disturbances to sensitive species. The proposed landscape plan emphasizes native plants, drought-tolerant plant species. However, because the landscape plan does not specifically prohibit the use of invasive species, Special Condition #5 requires submittal of a landscape plan with this prohibition.

Special Condition #9 requires the applicant to record a deed restriction imposing the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. This restriction will serve to notify future owners of the terms and conditions of the permit such as the landscaping requirements.

The project includes placement of excavated sand on the beach, should it be found suitable material. The project includes detailed criteria for determining suitable replenishment material, including absence of hazardous material, trash and debris, color matching, and grain size within 10% of the receiver beach. Restrictions on the timing of work to avoid impacts to invertebrates and California grunion have been incorporated into the project consistent with past beach nourishment projects approved by the Commission. A pre- and post-construction monitoring program is included as part of the proposed project to monitor a wide variety of factors, including beach profiles, surf conditions, sensitive species and resources, sedimentation, and turbidity.

The proposed development will not have an adverse impact on any sensitive habitat, and, as conditioned, will not result in erosion or adverse impacts to water quality. Thus, the project is consistent with the resource protection policies of Chapter 3 of the Coastal Act.

6. Community Character /Visual Quality. The LUP states:

GOAL 4 VISUAL QUALITY IS IMPORTANT

The visual quality of the City's environment shall be preserved and enhanced for the aesthetic enjoyment of both residents and visitors and the economic well-being of the community. Development of neighborhoods, streets and individual properties should be pleasing to the eye, rich in variety, and harmonious with existing development. The feeling of being near the ocean and bay should be emphasized

even when the water is not visible. Designs reflective of a traditional California seaside community should be encouraged.

D-7 Signs

The City should regulate signs in a manner which will emphasize safety, help improve and protect the appearance of buildings and the City as a whole, foster legible graphics and promote the public's awareness of the business community while respecting the City's suburban character.

1. Signs should be restrained in character and no larger than necessary for adequate identification.
2. Information bits should be limited and design and colors chosen to ensure legibility to passing traffic.
3. A sign should relate in message, location and character to the business conducted or product offered at that site.
4. Signs should relate in character, material, size, shape, height, placement and color to the sites and buildings of which they are a part.
5. Pole signs and roof signs shall be prohibited.
6. Monument signs shall not exceed 8 ft. in height.

D-8 Project Design

- a. The design of development projects should respect, work with and enhance the natural features of the land.
 - Natural scenic amenities such as mature trees; watercourses and views should be integrated into the project design
 - Structures should be oriented and constructed so they may take advantage of the beneficial features of the climate and be protected from the negative ones in order to reduce energy consumption and increase the enjoyment of the residents.
- b. Projects should be designed so there is a harmonious relationship with adjoining uses.
 - The pattern of existing neighborhoods should be respected. A development should be integrated with the adjacent neighborhood if the project size or natural boundaries dictate, or the design should create one or more separate and strong neighborhood identities.

- Structures should relate to neighborhood structures both within and adjacent to the development and not create a harsh contrast of scale, style or color.
- Areas of noisy activity and areas of quieter use should be separated by space or buffers, both within and between projects.
- Lighting and signs should be designed, located and directed so as not to disturb adjacent uses.

The proposed project will increase public views across the site from Dunes Park to north (see Exhibit #4). Because the project is greater than 3-stories in height, the LCP requires preparation of a specific plan, which was prepared for the proposed project. The project is consistent with the 40-foot height limit. The proposed project provides an improved pedestrian-scale streetscape along Seacoast Drive. No roof or pole signs are proposed. No monument signs greater than 8 feet in height are proposed.

The development is located within an existing developed area and will be compatible with the character and scale of the surrounding area. Therefore, the Commission finds that the development conforms to the certified LCP policies governing visual quality.

7. Parking. LUP Policy C-22 states:

Parking

Parking for both residents and visitors shall be provided as part of new development. Implementation actions shall include:

a. Seacoast Drive

The use of in lieu parking fees, off-site parking facilities and shared parking shall be encouraged for properties located west of Seacoast Drive and on Seacoast Drive. The intent of this policy is to encourage a more pedestrian atmosphere near the beach and develop properties near the ocean with commercial and recreational uses rather than parking lots.

Section 19.27.150 allows that with a Specific Plan, existing hotel parking requirements may be reduced to one parking space per unit with a site-specific parking study, taking into account the demand for parking associated with ancillary uses such as conference area and restaurants.

The City of Imperial Beach typically requires hotels to provide 1 parking space per room or 1.5 spaces per room with kitchens. However, as noted, a no less than 1 space per unit ratio is permitted with a site-specific parking study, which was performed for the proposed project. The proposed development will provide 111 parking spaces for the 78 hotel units (all of which have kitchens), restaurant and conference space, which is an approximately 1.4 space per room ratio. The site-specific parking study performed for the project notes that the restaurant and meeting rooms are expected to have different peak hours, and should be able to share parking spaces. A 1.4 space per room ratio is

well within the typical amount of parking provided for a full service hotel. The amount of parking provided is consistent with the requirements of the LCP, and no adverse impacts to public access are anticipated.

Currently, there is on-street parking in front of the hotel and on Date Street, some of which will be eliminated by the proposed redesign. Overall, 19 existing on-street public parking spaces would be eliminated. However, in addition to the 111 underground parking spaces, the project includes construction of 14 new on-street parking spaces on Date Avenue. Five on-street parking spaces would be provided on the Seacoast Drive frontage. Therefore, there would not be any loss of public parking. A traffic study performed for the project determined that the project would not have any significant impacts.

In summary, the proposed development will not have an adverse impact on public access to the coast or to nearby recreational facilities as adequate on-site parking is provided and the development will not result in the loss of any of public street parking spaces. As conditioned, the proposed development conforms to the previously cited Sections 30210 through 30214, Sections 30220 through 30224, and Section 30604(c) of the Coastal Act, and the parking and access policies of the certified LCP.

8. Local Coastal Planning. As described above, the proposed project has been conditioned to avoid impacts on visitor-serving accommodations and public access, and will be consistent with the certified LCP as it relates to the Seacoast Commercial Zone. Therefore, the Commission finds that approval of the conversion of the hotel to a condominium hotel, as conditioned, will not prejudice the ability of the City of Imperial Beach to continue to implement its certified LCP.

9. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit or amendment to be supported by a finding showing the permit or permit amendment, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

As described above, the proposed project has been conditioned to avoid adverse environmental impacts. Mitigation measures including a mitigation fee, ensuring the condo-hotel units will operate like a traditional hotel, and requiring monitoring and reporting of usage patterns, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

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

(G:\San Diego\Reports\Appeals\2007\A-6-IMB-07-131 Seacoast Inn de novo stfrpt.doc)

[Click here to go to part one of the exhibits.](#)

[Click here to go to part two of the exhibits.](#)