

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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W12a

Staff: M. Ahrens-SD
Staff Report: 4/19/12
Hearing Date: 5/9-11/12

REVISED FINDINGS

LOCAL GOVERNMENT: City of San Diego

DECISION: Approved with Conditions

APPEAL NO.: A-6-PEN-11-077

APPLICANT: Axiom Shelter Island, LLC/ Rand Wassem, Prism Investments

PROJECT DESCRIPTION: Demolition of two existing, two story, commercial structures and construction of three, two story buildings and one, three story building consisting of a total of 36 residential townhomes, ten commercial condominium units, and a one level parking garage with 132 partially below grade spaces on a 1.65 acre site.

PROJECT LOCATION: 1275 Scott St., Peninsula, San Diego, San Diego County.

APPELLANTS: Ian Trowbridge, Commissioner Mark Stone, Commissioner Esther Sanchez

STAFF NOTES:

Staff recommends the Commission adopt the following revised findings in support of the Commission's action on March 7, 2012. In its action, the Commission approved the permit with modification to Special Condition #2, Marine related commercial/industrial and visitor commercial uses. Specifically, the Commission required that the live/work commercial leaseholds should be included in the total count of proposed commercial square footage on the subject site, 50% of which will be required to be occupied exclusively by marine related retail or services supporting the commercial fishing and recreational boating industries. The amended motion begins on Page 9. Modifications to Special Conditions begin on Page 10. Findings to support these modifications can be found starting on Page 18.

Date of Commission Action: March 7, 2012,

Commissioners on Prevailing Side: Sanchez, O'Connor, Bochco, Burke, Caldwell, Zimmer & Stone

SUMMARY OF STAFF RECOMMENDATION:

~~The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed.~~

Staff also recommends that the Commission **APPROVE** the de novo permit with special conditions. ~~The primary issues raised by the subject development are the project's inconsistency with the requirement of the certified Peninsula Community LUP that requires marine related community commercial and visitor serving uses be protected and encouraged on the subject 1.65 acre site. The Peninsula Community LUP includes provisions that require new development on the subject site to include marine related community commercial and visitor serving uses on the ground floor, with residential uses specifically restricted to the upper floors of a structure. As such, staff is recommending Special Conditions 1, 2, 3 and 4, which require that residential uses on the subject site are restricted to the upper floor of the proposed development, that commercial uses that occupy the ground floor units encourage and emphasize marine related community commercial and visitor serving priority uses, and that both of these restrictions are implemented through a deed restriction recorded against the property and through the CC&Rs for the development, which will provide notification and ensure that these restrictions apply to all future owners and lessees of the proposed commercial units. Staff is also recommending other conditions regarding final plans, landscaping, water quality, and signs. Therefore, as conditioned, the project can be found consistent with the applicable Peninsula Community LUP, the City of San Diego LCP and the Chapter 3 public access policies of the Coastal Act.~~

SUBSTANTIVE FILE DOCUMENTS: Appeal by Commissioners Sanchez and Stone filed 10/21/11; Appeal by Ian Trowbridge filed 10/19/11; City of San Diego Coastal Development Permit No. 221431; Certified San Diego Local Coastal Plan, Peninsula Community Plan.

I. Appellants Contend That: The City's approval of the proposed development is inconsistent with the policies of the certified LCP relating to protecting visitor and marine related businesses in this zone as well as prohibiting residential uses from occupying the ground floor of a structure in the 'Roseville' area of the Peninsula Community.

The Commercial Plan Element of the Peninsula Community Plan requires that marine related community commercial uses be encouraged and emphasized in development projects on properties adjacent to the tidelands, such as the subject site. However, the City did not condition this project to ensure that the available commercial space would be occupied by any businesses or commercial enterprises associated with waterfront activities. The City's CDP for the proposed development contains no condition that would assure the continued presence of any visitor or marine related businesses on the subject site. The absence of any binding condition in the City's CDP relating to the

perpetuation of marine and waterfront related business activity in the proposed development's available commercial space deviates from the intent of the Peninsula Community Plan and all applicable provisions therein that aim to preserve and maintain the community character and historic marine related uses in this zone.

Additionally, the City of San Diego's CC-4-2 zoning for the subject site and the Peninsula Community plan state that within the Coastal Overlay Zone in this region of San Diego, residential uses are not permitted on the ground floor. While the project subject to this permit does include only commercial and live/work uses on the ground floor of the structure, the project has not been conditioned by the City to require that the proposed ground floor commercial square footage will remain such in perpetuity and not be converted to residential living space once portions of the structure become leased or sold. As such, the appellants contend that the lack of any condition in the City's approval of the project that would require residential uses to be restricted to the upper floors in the proposed development is inconsistent with the Peninsula Community plan and the overlying CC-4-2 zoning in the City's LCP.

II. Local Government Action. The coastal development permit was approved by the City Council on October 7, 2008, at which point the applicant proceeded to apply for an LCP amendment (LCPA 2-10) through the Commission. Subsequent to Commission approval of the LCPA, the Planning Commission reviewed the project through the substantial conformance review process and approved the project on September 29, 2011. The permit contains special conditions addressing development of the subject site including affordable housing requirements, landscaping, planning/design, wastewater, water requirements, transportation requirements and historical resources.

III. Appeal Procedures.

After certification of a municipality's Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permit applications. One example is that the approval of projects within cities and counties may be appealed if the projects are located within mapped appealable areas. The grounds for such an appeal are limited to the assertion that "development does not conform to the standards set forth in the certified local coastal program or the [Coastal Act] public access policies." Cal. Pub. Res. Code § 30603(b)(1).

After the local government has taken final action on an appealable project, it must send a notice of that final action (NOFA) to the Commission. Cal. Pub. Res. Code § 30603(d); 14 C.C.R. § 13571. Upon proper receipt of a valid NOFA, the Commission establishes an appeal period, which runs for 10 working days. Cal. Pub. Res. Code § 30603(c); 14 C.C.R. § 13110 and 13111(b). If an appeal is filed during the appeal period, the Commission must "notify the local government and the applicant that the effective date of the local government action has been suspended," 14 C.C.R. § 13572, and it must set

the appeal for a hearing no later than 49 days after the date on which the appeal was filed, unless the applicant waives this deadline. Cal. Pub. Res. Code § 30621(a).

Section 30625(b)(2) of the Coastal Act requires the Commission to hear an appeal of the sort involved here unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends “substantial issue” and no Commissioner objects, the Commission will proceed directly to the de novo portion of the hearing on the merits of the project then, or at a later date.

If the staff recommends “no substantial issue” or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If a substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project either immediately or at a subsequent meeting. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Coastal Act requires that, for a permit to be granted, a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

The only persons qualified to testify before the Commission at the “substantial issue” stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo hearing, any person may testify.

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: ~~*I move that the Commission determine that Appeal No. A-6-PEN-11-077 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*~~

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become

~~final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.~~

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

~~The Commission hereby finds that Appeal No. *A-6-PEN-11-077* presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.~~

V. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description. The project as approved and conditioned by the City, would allow for demolition of two existing on-site structures, currently used by marine related businesses, and redevelopment of the subject site with three, two story buildings and one, three story building with a maximum height of 30 ft. The total square footages of the proposed mixed-use structures would be 13,068 sq. ft. of commercial and live/work unit space on the ground floor and 64,588 sq. ft. of upper floor residential square footage. The proposed project involves the construction of 36 residential/town home units on the upper floors of the mixed-use structure as well as four (4) new integrated live/work commercial spaces (“live/work quarters”) to be located along the ground level on the bayside/tidelands frontage of the development and six commercial condominium units (totaling approx. 7,100 sf.) to be situated all along the Scott Street frontage and one separate commercial leasehold at the northeast corner of the site along Dickens/adjacent tidelands. The proposed development would also provide 132 parking spaces in a partially subterranean parking garage.

The Peninsula Community Plan identifies this area as a “transitional area”, where gradual Commercial development and redevelopment is currently underway. Further, one of the objectives of the Plan is to “maintain and encourage continued development of the commercial fishing and marine related commercial land uses within Peninsula.” The Peninsula Community LUP designates the site as Community/Commercial, with the City’s overlying zoning for the site being CC-4-2, or Community Commercial. The CC-4-2 zoning allows for multi-residential units but not on the ground floor; all retail sales uses; all commercial services; visitor accommodations; bed & breakfast establishments; parking facilities; vehicle sales & services; warehouses; and research/development uses. Additionally, under the C-4-2 zoning industrial land use classification, “marine-related uses within the coastal zone” are clearly allowed under the zoning code with a conditional use permit as are numerous other uses allowed through either conditional use or neighborhood use permits. As such, the subject mixed use development, as proposed and conditioned, would include uses allowable under the LUP and LCP zoning.

The subject site is located one parcel from the San Diego Bay (America's Cup Harbor) and is located in an area commonly referred to as the Roseville District of the Peninsula Community Plan area. The Roseville District supports a mix of single family residential, multi family residential, commercial, industrial, and visitor serving uses. There are existing commercial developments fronting Scott St. near the subject site, as well as industrial marine related uses to the southeast and northeast. Port tidelands are located immediately southeast of the site which are currently undergoing redevelopment as the "Kettenburg Landing" which includes, in part, construction of a walk-up food plaza and a public access walkway. While the subject site does not have direct waterfront access it still supports a variety of marine related business on site and is adjacent to other surrounding marine related industries.

The standard of review is the certified City of San Diego LCP as well as the public access policies of the Coastal Act.

2. Planning History. The Peninsula Community Plan/Land Use Plan, which is applicable to the subject site, is part of the City of San Diego's certified LCP, which contains 12 segments. The Commission approved, with suggested modifications, the Peninsula Community segment of the City of San Diego's Local Coastal Program on May 22, 1981 focusing on the protection of the Famosa Slough. On August 21, 1981, and again on May 23, 1984, the Commission certified this segment with suggested modifications. A second resubmitted LUP was certified by the Commission on August 27, 1985, and addressed the adequacy of parking requirements in the nearshore areas. A third resubmittal was certified as submitted on July 13, 1988.

There have only been three LCP amendments to the Peninsula Land Use Plan. The first (No. 2-98B) was for the North Bay Redevelopment Plan, which encompassed several City of San Diego planning communities and included a small portion of the Peninsula Community Plan area. The second amendment (No. 1-04A) was to redesignate a .39-acre property from Marine Related Industrial to Medium Density Multi-Family Residential and rezone the site from CO-1-2 to RM-2-5 to accommodate a proposed seven-unit condominium project. The LCPA was approved, as submitted, by the Commission on November 17, 2004 and became effective that same date. The third LCP amendment was a project driven amendment involving a land use change for the 1.65 acre Scott Street property where the subject mixed use development is proposed for construction.

At the February 2011 hearing, the Commission approved, with suggested modifications, LCP Amendment No. 2-10, the third amendment to the Peninsula Community Land Use Plan. The LCP amendment redesignated the subject 1.65 acre property from Industrial (Commercial Fishing/Marine Related) to Commercial/Recreational with the addition of policy language in two community plan provisions to accommodate the subject mixed use project. As the subject LCP amendment raised concerns regarding the protection of marine-related land uses, which is a priority use under the Coastal Act, the additional policy guidance clarified and expanded the list of marine-related priority uses for the Roseville subarea, which applies to the subject property, and reinforced the development standards that de-emphasize the residential component for this mixed use community.

The specific modifications approved by the Commission included language that requires marine related community commercial uses be provided in the Roseville commercial district as well as for properties adjacent to tidelands, and also restricts residential uses to the upper floors in that specific subarea.

3. Inconsistency with the Certified LCP.

A. Marine Related Commercial/Industrial and Visitor Commercial Uses. The language in the Recommendations for Specific Commercial Area Element of the Peninsula Community Plan (LUP), which applies to this specific property, specifically states that permitted commercial uses in this area should emphasize visitor and marine related industries or businesses. Specifically, it states, in part:

For properties adjacent to the tidelands, permitted uses shall include, but not be limited to, marine sales and services supporting the commercial fishing and recreational boating industries, hotels, restaurants, marine navigation and fish finding equipment, yacht brokers, diving schools, sail makers, marine salvage operations, specialty/handcraft shops, beachwear, books, chart/map sales and other similar activities that support uses on the waterfront. [...]

Also, the first objective in the Commercial Plan Element of the Peninsula Community Plan states:

Encourage continued development and sensitive redevelopment of a wide variety of community, visitor and marine related community commercial uses in the Roseville commercial district, including, but not limited to, marine sales and services supporting the commercial fishing and recreational boating industries, hotels, restaurants, marine navigation and fish finding equipment, yacht brokers, specialty/handcraft shops, beachwear, chart/map sales and other similar activities that support uses on the waterfront. [...]

The above cited provisions require such uses be included on the subject site. However, the City did not condition this project to ensure that the available commercial space would be occupied by any businesses or commercial enterprises associated with waterfront activities. The City's CDP permit for the proposed development contains no condition that would assure the continued presence of any visitor or marine related businesses on the subject site.

The absence of any binding condition in the City's CDP relating to the perpetuation of marine and waterfront related business activity in the proposed development's available commercial space deviates from the intent of the Peninsula Community Plan and all applicable provisions therein that aim to preserve and maintain the community character and historic marine related uses in this zone. Therefore, the City's approval is inconsistent with the above cited LCP provisions and the appellants have raised a substantial issue.

B. Residential Uses. Additionally, while the project applicant is proposing to have only commercial and live/work uses occupy the ground floor units of the structure, the project has not been conditioned by the City to require that the proposed ground floor commercial square footage remain such in perpetuity and not be converted to residential living space once portions of the structure become leased or sold. The lack of any condition in the City's approval of the project that would require residential uses to be restricted to the upper floors in the proposed development is inconsistent with the following section of the Peninsula Community plan (Recommendations for Specific Commercial Areas, Roseville Pg. 36) and in the first objective in the Commercial Plan Element of the Peninsula Community Plan, which state in part:

*[...] Residential uses may be permitted but for properties situated along or southeast of Rosecrans St. and extending to the tidelands between Hugo St. and Byron/Shelter Island Drive, **residential uses should be restricted to the upper floors**; only commercial units that provide integrated live/work space (i.e. live/work quarters) and required off-street parking may be located on the ground/street level. (Emphasis Added).*

The subject site is located within the area described in the above referenced LCP provision, and, as such, to ensure consistency with the LDC the proposed development should not allow any residential uses to occupy the ground floor units of the town home development. The project, as currently proposed, dictates that residential use will only occur on the upper floors, with commercial/live work units to occur exclusively on the ground floor. However, there are no conditions attached to the permit approved by the City that would ensure this element of the proposed project becomes a binding restriction guaranteeing no residential uses become established in the ground floor units of the proposed development following construction or through any redevelopment or future modifications to the proposed development. Therefore, the City's approval is inconsistent with the above cited LCP provisions and the appellants have raised a substantial issue.

4. Conclusion. In summary, the City's approval of the proposed development is inconsistent with the policies of the certified LCP relating to protecting visitor and marine related businesses in this zone as well as prohibiting residential uses from occupying the ground floor of a structure in the 'Roseville' area of the Peninsula Community. Therefore, the project raises a substantial issue regarding consistency with the Peninsula Land Use Plan.

5. Substantial Issue Factors. As discussed above, there is inadequate factual and legal support for the City of San Diego's determination that the proposed development is consistent with the certified LCP. The other factors that the Commission normally considers when evaluating whether a local government's action raises a substantial issue also support a finding of substantial issue. The objections to the project suggested by the appellants raise substantial issues of regional or statewide significance and the decision creates a poor precedent with respect to the proper interpretation of the Peninsula Community LUP, as the City's determination does not assure that marine-related visitor serving/commercial uses will be encouraged and incorporated into the subject mixed use

development, nor does it condition the project to restrict residential uses to the upper floors of the subject structure as required by the applicable provisions of the certified LCP.

VI. STAFF RECOMMENDATION ON THE COASTAL PERMIT

The staff recommends the Commission adopt the following resolution:

~~———— **MOTION:** *I move that the Commission approve Coastal Development Permit No. A-6-PEN-11-077 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 certified LCP and the public access policies 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.~~

~~**I. MOTION:** *I move that the Commission adopt the revised findings in support of the Commission's action on March 7, 2012 concerning approval of Coastal Development Permit No. A-6-PEN-11-077*~~

STAFF RECOMMENDATION OF APPROVAL:

~~Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the revised findings hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings. The Commissioners eligible to vote are:~~

~~Commissioners Sanchez, O'Connor, Bochco, Burke, Caldwell, Zimmer, and Stone~~

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for *Coastal Development Permit No. A-6-PEN-11-077* on the ground that the findings support the Commission's decision made on March 7, 2012 and accurately reflect the reasons for it.

VII. Standard Conditions.

See attached page.

VIII. Special Conditions.

The permit is subject to the following special conditions:

1. Residential Uses. Residential uses shall be restricted to the upper floors of the proposed condominium complex development and only commercial units, commercial units that provide integrated live/work space (i.e. live/work quarters) and required offstreet parking may be located on the ground/street level of the subject property.

2. Marine related commercial/industrial and visitor commercial uses. Permitted commercial uses on the subject site must include and emphasize marine sales and services supporting the commercial fishing and recreational boating industries, hotels, restaurants, marine navigation and fish finding equipment, yacht brokers, diving schools, sail makers, marine salvage operations, specialty/handcraft shops, beachwear, books, chart/map sales or other similar activities that support uses on the waterfront. A minimum of 50% of the commercial units proposed as part of the subject structure, ~~excluding the live/work commercial leaseholds,~~ shall be occupied exclusively by marine related retail or services supporting the commercial fishing and recreational boating industries.

3. Deed Restriction. **PRIOR TO THE 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 (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all the Standard and 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 that 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.

4. CC&R's. **PRIOR TO OCCUPANCY OF THE CONDOMINIUM UNITS**, the applicant shall submit, for the review and written approval of the Executive Director of the Coastal Commission ("Executive Director"), a Declaration of Restrictions or Covenants, Conditions & Restrictions (CC&Rs) approved by the City of San Diego, which shall include:

- a. All the specific restrictions listed in Special Condition Nos. 1 & 2 above;
- b. A requirement that any lease(s) for commercial square footage within the proposed structures shall include the specific restrictions listed in Special Condition Nos. 1 & 2.
- c. Acknowledgement that these same restrictions are independently imposed as condition requirements of the coastal development permit;
- d. A statement that provisions of the CC&Rs that reflect the requirements of Special Conditions Nos. 1 & 2 above, cannot be changed without a coastal development permit amendment. If there is a section of the CC&Rs 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 CC&Rs (Declaration of Restrictions) on amendments;
- e. The CC&Rs described above shall be recorded against all individual property titles prior to the close of the first escrow for the condominium units.

5. Final Plans. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and written approval, final site, floor, and elevation plans for the proposed development that have been stamped approved by the City of San Diego. Said plans shall be in substantial conformance with the concept plans for Pt. Loma Townhomes by Project Design Consultants dated 9/30/11 submitted with the coastal development permit application.

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

6. Final Revised Landscape Plans: **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and written approval final landscaping plans for the proposed development. Said plans shall be in substantial conformance with the landscape development plan for Pt. Loma Townhomes by GMP Landscape Architects dated 3/23/11, but shall be revised to remove the proposed 24 Mexican Fan Palms and include the following:

- a. The type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features on the site shall be provided. All landscaping shall be drought-tolerant, native or non-invasive plant species. All landscape materials within the identified view corridors shall be species with a growth potential not expected to exceed three feet at maturity, except for authorized trees. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest 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. The use of Mexican Fan Palms is prohibited.
- b. A planting schedule that indicates the planting plan will be implemented within 60 days of completion of construction
- c. A written commitment by the applicant that all required plantings will be maintained in good growing condition, and whenever necessary, will be replaced with new plant materials to ensure continued compliance.
- d. Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
- e. Five years from the date of issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicants, or successors in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

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

7. Water Quality. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT** the applicant shall submit a final Water Quality Technical Report (WQTR), prepared by a licensed water quality professional, for review and approval of the Executive Director. The WQTR shall incorporate structural and nonstructural Best Management Practices (BMPs) (site design, source control and treatment control) designed and implemented to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather flows leaving the developed site and to minimize water quality impacts to surrounding coastal waters. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- a. Impervious surfaces, especially directly connected impervious areas, shall be minimized, and alternative types of pervious pavement shall be used where feasible.
- b. Irrigation and the use of fertilizers and other landscaping chemicals shall be minimized.
- c. Efficient Irrigation Measures including water saving irrigation heads and nozzles, flow sensors, automatic rain sensors and multiple programming capabilities shall be used.
- d. Trash, recycling and other waste containers, as necessary, shall be provided. All waste containers anywhere within the development shall be covered, watertight, and designed to resist scavenging animals.
- e. All dry weather runoff (non-stormwater flows) shall be retained onsite and not discharged to the bay.
- f. A BMP treatment train shall be designed and implemented to collect and treat runoff and remove pollutants of concern (including heavy metals, oil and grease, hydrocarbons, trash and debris, sediment, nutrients and pesticides) through infiltration, filtration and/or biological uptake. The drainage system shall also be designed to convey and discharge runoff from the developed site in a non-erosive manner.
- g. Post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- h. All BMPs shall be operated, monitored, and maintained for the life of the project and at a minimum, all structural BMPs shall be inspected, cleaned-out, and where necessary, repaired at the following minimum frequencies: (1) prior to October 15th each year; (2) during each month between October 15th and April 15th of each year and, (3) at least twice during the dry season.

i.. Debris and other water pollutants removed from structural BMP(s) during cleanout shall be contained and disposed of in a proper manner.

j. It is the permittee's responsibility to maintain the drainage system and the associated structures and BMPs according to manufacturer's specifications. The permittees shall undertake development in accordance with the approved program. Any proposed changes to the approved program shall be reported to the Executive Director. No changes to the approved program shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. Sign Program. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and written approval a sign program documenting that only monument signs, not to exceed eight (8) feet in height, or facade signs are proposed. No tall or free-standing pole or roof signs shall be allowed.

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

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

IX. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description. The proposed project involves the demolition of two existing on-site structures, currently used by marine related businesses, and redevelopment of the subject site with three, two story buildings and one, three story building, with a maximum height of 30 ft. The total square footages of the proposed mixed-use structures would be 13,068 sq. ft. of commercial and live/work unit space on the ground floor and 64,588 sq. ft. of upper floor residential square footage. The proposed project involves the construction of 36 residential/town home units on the upper floors of the mixed-use structures as well as four (4) new integrated live/work commercial spaces ("live/work quarters") to be located along the ground level on the bayside/tidelands frontage of the development and six commercial condominium units (totaling approx. 7,100 sf.) to be situated all along the Scott Street frontage and one separate commercial leasehold at the northeast corner of the site along Dickens/adjacent tidelands. The proposed development would also provide 132 parking spaces in a partially subterranean parking garage.

The Peninsula Community Plan identifies this area as a “transitional area”, where gradual Commercial development and redevelopment is currently underway. Further, one of the objectives of the Plan is to “maintain and encourage continued development of the commercial fishing and marine related commercial land uses within Peninsula.” The Peninsula Community LUP designates the site as Community/Commercial, with the City’s overlying zoning for the site being CC-4-2, or Community Commercial. The CC-4-2 zoning allows for multi-residential units but not on the ground floor; all retail sales uses; all commercial services; visitor accommodations; bed & breakfast establishments; parking facilities; vehicle sales & services; warehouses; and research/development uses. Additionally, under the C-4-2 zoning industrial land use classification, “marine-related uses within the coastal zone” are clearly allowed under the zoning code with a conditional use permit as are numerous other uses allowed through either conditional use or neighborhood use permits. As such, the subject mixed use development, as proposed and conditioned, would include uses allowable under the LUP and LCP zoning.

The subject site is located one parcel from the San Diego Bay (America’s Cup Harbor) and is located in an area commonly referred to as the Roseville District of the Peninsula Community Plan area. The Roseville District supports a mix of single family residential, multi family residential, commercial, industrial, and visitor serving uses. There are existing commercial developments fronting Scott Street near the subject site, as well as industrial marine related uses to the southeast and northeast. Port tidelands are located immediately southeast of the site which are currently undergoing redevelopment as the “Kettenburg Landing” which includes, in part, construction of a walk-up food plaza and a public access walkway. While the subject site does not have direct waterfront access it still supports a variety of marine related businesses on site and is adjacent to other surrounding marine related industries.

The standard of review is the certified LCP as well as the public access policies of the Coastal Act.

2. Marine-Related Uses. The subject site has historically supported marine dependent commercial recreational and industrial uses such as boatyards and boat repair services and is currently occupied by seven different marine related businesses on site. At one point in time, prior to a lot line adjustment, the subject site was connected with the tidelands parcel to the east, though, currently the subject site has no direct water access. The proposed project would displace the current marine-related businesses on site, however, the proposed project, as conditioned, would require that marine related community commercial and visitor serving uses are preserved in the new mixed use development proposed on the subject site.

The following provisions from the Peninsula Community LUP apply to the subject site and state in part:

- Encourage continued development and sensitive redevelopment of a wide variety of community-, visitor- and marine-related community commercial uses in the Roseville commercial district.
- The Roseville commercial district should remain as the primary commercial focus within Peninsula. A majority of the area should be designated for a mix of residential, community commercial, commercial recreation and marine-related commercial and industrial uses. A portion of this area should be rezoned to residential which would permit this mix of uses with strengthened parking and landscape requirements. Residential development should be allowed at densities not exceeding 29 du/acre on upper floors of the commercial development, or with densities up to 43 du/acre permitted only in conjunction with low- and moderate-income housing.
- Maintain and encourage continued development of the commercial fishing and marine related commercial land within Peninsula.
- The area generally located along the north and west sides of Canon Street, east of Scott, and the area generally between Carlton and Dickens, also east of Scott, should be designated for marine-related commercial/industrial uses. In cases where discretionary review is applicable, development controls addressing building design, landscaping, view preservation, parking requirements and performance criteria should be applied to all new development in this area.

Additionally, the following City of San Diego Land Development provisions are applicable to the subject site and state:

131.0507 Purpose of the CC (Commercial--Community) Zones

(a) The purpose of the CC zones is to accommodate community-serving commercial services, retail uses, and limited industrial uses of moderate intensity and small to medium scale. The CC zones are intended to provide for a range of *development* patterns from pedestrian-friendly commercial *streets* to shopping centers and auto-oriented strip commercial *streets*. Some of the CC zones may include residential *development*. Property within the CC zones will be primarily located along collector *streets*, major *streets*, and public transportation lines.

[...]

(4) The following zones allow heavy commercial uses and residential uses: CC-4-2 is intended to accommodate *development* with high intensity, strip commercial characteristics

[...]

Ground *Floor* Restriction. Residential use and residential parking are prohibited on the ground *floor* in the front half of the *lot*, except in the CC-3-4, CC-3-5, CC-

4-4, CC-4-5, CC-5-4, CC-5-5, and CV-1-2 zones, where these uses are prohibited on the ground *floor* in the front 30 feet of the *lot* as shown in Diagram 131-05A. Within the Coastal Overlay Zone, required parking cannot occupy more than 50 percent of the ground floor in the CV-1-1 or CV-1-2 zones.

[...]

(f) Within the Coastal Overlay Zone, residential uses are not permitted on the ground floor.

Prior to Commission approval of LCP Amendment 2-10 in February 2011, the subject site had an Industrial land use designation indentified in the Peninsula Community Plan. Through the project driven LCP Amendment 2-10, the land use designation for the subject site was changed to Community/Recreational, with the intent that marine related commercial and visitor serving uses would be included and emphasized in the commercial component of the proposed mixed use development on the subject site. As part of the LCP Amendment approval, the Commission included policy language modifications in the Peninsula Community Plan that clarified the requirement for encouraging marine related community commercial and visitor serving uses in the Roseville subarea. The new policies included in the Peninsula Community Plan state:

On Page 34 of the Community Plan, under the Commercial Plan Element, the first Objective reads:

Encourage continued development and sensitive redevelopment of a wide variety of community, visitor and marine related community commercial uses in the Roseville commercial district, including, but not limited to, marine sales and services supporting the commercial fishing and recreational boating industries, hotels, restaurants, marine navigation and fish finding equipment, yacht brokers, specialty/handcraft shops, beachwear, chart/map sales and other similar activities that support uses on the waterfront. Residential uses may be permitted but for properties situated along or southeast of Rosecrans Street and extending to the tidelands between Hugo Street and Byron/Shelter Island Drive, residential uses should be restricted to the upper floors; only commercial units, commercial units that provide integrated live/work space (i.e. live/work quarters) and required off-street parking may be located on the ground/street-level.

On Page 36, under Recommendations for Specific Commercial Areas, Roseville,:

For properties adjacent to the tidelands, permitted uses shall include, but not be limited to, marine sales and services supporting the commercial fishing and recreational boating industries, hotels, restaurants, marine navigation and fish finding equipment, yacht brokers, diving schools, sail makers, marine salvage operations, specialty/handcraft shops, beachwear, books, chart/map sales and other similar activities that support uses on the waterfront. Residential uses may be permitted but for properties situated along or southeast of Rosecrans Street and extending to the

tidelands between Hugo Street and Byron/Shelter Island Drive, residential uses should be restricted to the upper floors; only commercial units, commercial units that provide integrated live/work space (i.e. live/work quarters) and required off-street parking may be located on the ground/street-level.

Although the subject site does not have direct water access it remains critical that the proposed project encourage and includes marine related community commercial uses, consistent with the policies of the Peninsula Land Use Plan, which identifies marine related businesses as priority uses. While the standard of review is the City LCP/ Peninsula Community Plan, both the City's LCP and Peninsula LUP were derived from Chapter 3 policies of the Coastal Act and, as such, incorporate measures for protecting and preserving marine related uses in areas near the shoreline. The permitted uses allowed in the Community/recreational land use designation for the subject site allow for a broad range of retail, commercial, and visitor serving services as well as light industrial uses such as dry boat storage or marine services. Marine related priority uses are required to be encouraged in the commercial units along the street and tidelands frontages, but non-priority uses, such as the residential component of the proposed development, must be located above the street level, as specifically stipulated in the Peninsula LUP.

The applicant is proposing to construct a mixed use development with ten ground floor commercially designated units, where four of those will be live/work units, with the remaining 36 townhome units located in the upper floors of the 30 ft. high structure. Marine-related/industrial uses are a priority use for this area as identified by Chapter 3 policies of the Coastal Act as well as the Peninsula Community Plan, and as such, the proposed project is conditioned so that such uses are required and incorporated into the commercial component of the proposed mixed use structures. Specifically, Special Condition Nos. 1, 2, 3, and 4 pertain to protection of marine related priority uses on the subject site. Special Condition #1 restricts residential development to the upper floors of the proposed structure, while Special Condition #2 requires that marine related uses be included in the commercial component of the proposed structure.

Specifically, Special Condition #2 requires that 100% of the commercial use on the subject site must include and emphasize marine sales and services supporting the commercial fishing and recreational boating industries, hotels, restaurants, marine navigation and fish finding equipment, yacht brokers, diving schools, sail makers, marine salvage operations, specialty/handcraft shops, beachwear, books, chart/map sales or other similar activities that support uses on the waterfront, as stipulated in the Peninsula Community Plan. Additionally, the condition requires that 50% of the commercial uses in the proposed development, ~~excluding the live/work commercial leaseholds,~~ must be occupied by marine related retail or services that support the marine community. Specifically, Special Condition #2 would apply to all of the proposed commercial units including the seven general commercial condominium units and the four live/work units, which total 13,068 sq. ft. of commercial space. As such, 50% of the total 13,068 sq. ft. of commercial square footage would be required to be occupied exclusively by marine related retail or services supporting the commercial fishing and recreational boating industries. The inclusion of the live/work units into the 50% requirement of Special

Condition #2 is consistent with the applicable Peninsula Community Plan, which requires all commercial development on the subject site to include and encourage marine related community commercial uses. This restriction still allows for a broad array of commercial/retail uses in the commercial and live/work commercial units, however, it would restrict uses such as hotels or offices, unrelated to the marine community sales or services, from occupying over 50% of the total commercial square footage of the subject development.

The intent of this condition is to allow for a variety of potential commercial/recreational and visitor serving uses on the subject site, while still encouraging and emphasizing marine related priority uses, consistent with the requirements of the Peninsula LUP, Commercial Plan Element.

Special Condition #3 requires that the applicants record a deed restriction prior to permit issuance that incorporates all of the permit's Standard and Special Conditions and will ensure that all of the Standard and Special Conditions attached to this permit appear on the title report for the property. To further ensure that these marine related priority uses are protected and encouraged on the subject site in perpetuity, Special Condition #4 requires that CC&Rs be prepared and submitted to the Commission prior to occupancy of any of the units. Through the CC&Rs, all future owners and lessees of commercial units in the subject structure will be notified of and required to abide by the restrictions on the property implemented through the Special Conditions number 1 and 2 of this permit.

In summary, the proposed special conditions will protect and encourage marine related priority uses on the subject site and restrict residential units to the upper floors of the ground structure, consistent with the requirements of the Peninsula Community Plan LUP and the City's LCP. As such, the proposed project, as conditioned, is consistent with the above cited provisions of the certified LCP.

3. Public Access/Parking. A number of policies in the Coastal Act address the protection and improvement of public access and recreation opportunities within the coastal zone, including:

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 30212(a)

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

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby, or, [...]

The Peninsula Community Plan Transportation and Shoreline Access component includes the following objectives:

- Residential development should provide 1.3 parking spaces per one bedroom or studio unit and 1.6 parking spaces per two or more bedroom units.
- All parking facilities should be designed so that they are compatible with pedestrian circulation and should be screened, to the extent feasible, from public view.
- Complete the system of public sidewalks, paths and stairways to provide safe and efficient pedestrian access to the residential, commercial and recreational areas of the Peninsula community.
- The commercial, residential and industrial areas should encourage pedestrian orientation and strive to include pedestrian and bicycle pathways and other facilities in their design in order to enhance the aesthetic and recreational qualities of this area.
- Scott Street, between North Harbor Drive and Talbot should be designed to incorporate a priority for pedestrian crossings east-west for better safety, maintain traffic flow and improve overall aesthetic design. The design should be integrated into the overall redevelopment of the Roseville area. In addition, Talbot between Rosecrans and Scott should also be improved as a four-lane major street. Peak hour parking restrictions and formation of an assessment district should also be reviewed for their effectiveness in alleviating traffic congestion.
- The following parking requirements should apply within the coastal zone:
 - New commercial/office development should provide at least one parking space for every 400 square feet of gross floor area on-site or one space per 500 square feet of gross floor area in a common parking facility.
 - Additions or modifications to existing commercial/office development should provide a minimum of twice the number of parking spaces as would be necessitated by the magnitude of said enlargement; provided, however, that the number of spaces required by this paragraph need not exceed the total number of parking spaces required for the enlarged development.
 - Residential development should provide 1.3 parking spaces per one bedroom or studio unit and 1.6 parking spaces per two or more bedroom units.
 - Parking for commercial establishments in the Voltaire and Rosecrans commercial districts should be located in rear alleys wherever this is practical.

In addition, the following provisions of the certified LCP are applicable and state, in part:

Article 2, General Development Regulations- Division 5, Parking Regulations the following policies apply to the subject site:

§142.0525 Multiple Dwelling Unit Residential Uses — Required Parking Ratios

(a) Minimum Required Parking Spaces. The required automobile parking spaces, motorcycle parking spaces, and bicycle parking spaces for *development of multiple dwelling units*, whether attached or detached, and related an *accessory uses* are shown in Table 142-05C. Other allowances and requirements, including the requirement for additional common area parking for some projects, are provided in Section 142.0525(b) through (d).

§142.0530 Nonresidential Uses — Parking Ratios

(a) Retail Sales, Commercial Services, and Mixed-Use Development. Table 142-05D establishes the ratio of required parking spaces to building *floor* area in the commercial zones, industrial zones, and planned districts shown, for retail sales uses and for those commercial service uses that are not covered by Table 142-05E or 142-05F. Table 142-05D also establishes the required parking ratios for mixed-use developments in a single *structure* that include an allowed use from at least two of the following use categories: (1) retail sales, (2) commercial services, and (3) offices.

-All parking facilities should be designed so that they are compatible with pedestrian circulation and should be screened, to the extent feasible, from public view.

The subject site is situated between the first public road and the sea in an area of the Peninsula Community designated as Roseville. The proposed mixed use development includes a 36 unit townhome project, four live/work commercial units with six commercial leaseholds and 132 off-street garage parking spaces with four ADA accessible spaces, 6 motorcycle spaces and 23 bicycle spaces, on a 1.65 acre parcel. The subject site is located one parcel from the San Diego Bay (America's Cup Harbor) and is located in an area commonly referred to as the Roseville District of the Peninsula Community Plan area. Port tidelands are located immediately southeast of the site which are currently undergoing redevelopment as the "Kettenburg Landing" which includes, in part, a reconfigured and smaller boatyard located closer to Shelter Island Drive; two commercial/retail buildings with two parking lots, the construction of a walk-up food plaza and the establishment of a public access promenade connecting public accessways from beyond Point Loma Seafoods and the sportfishing operations along America's Cup Harbor north of the site through the tidelands parcel and connecting to Shelter Island Drive south of the site. The Peninsula LUP states: "A public walkway follows the perimeter of the commercial fishing basin between Dickens Street and North Harbor

Drive. Although there is no direct access to the water, the walkway does provide public enjoyment of the fishing facilities. A public parking lot, comfort station and picnic area serves this area which is under the control of the Port District".

The policies of the Peninsula LUP and the City's LCP require that for every 400 sq. ft. of commercial space, one parking spot is required to be provided on site. The residential parking requirements for the coastal zone in the LUP are less restrictive than the LDC policies and are not as applicable to the proposed type of mixed use development, as such, the LDC parking policies of Table 142-05C and D are applied as they refer to multiple dwelling residential and non residential-mixed use development. There are 36 townhome units with a mix of one, two and three bedrooms, and 13,068 sq. ft. of ground floor commercial and commercial live/work space. The policies of the LDC per SDMC table 142-05C, require that 1 parking space be provided for every 400 sq. ft. of commercial space, 1.75 parking spaces be provided for the 2 one bedroom units proposed, 2.25 parking spaces be provided for the 5 two bedroom units, and 2.5 parking spaces be provided for the 29 three bedroom units proposed. Based on these requirements, the proposed project would need to provide 33 spaces for the commercial component (13,068 sq. ft. divided by 400) and 88 spaces for the residential component (29 3-bedroom units x 2.5; 5 2-bedroom units x 2.25; and 2 1-bedroom units x 1.75) with 11 additional spaces provided in excess of the requirements of the City LCP. The parking spaces would be located in a partially subterranean garage. As such, the proposed project provides adequate on site parking and will not have adverse impacts on the traffic circulation in the area or result in adverse impacts to public access to the shoreline in this area.

There is no public access to the bay currently provided on the subject site. Access to the bay will be provided in the future through an adjacent promenade/pedestrian path along the waterfront which is proposed by the Port District on the adjacent parcel of bayfront land between the subject site and bay (Port Master Plan Amendment #33/America's Cup Harbor). The proposed project will not result in adverse impacts to direct waterfront access, as adequate parking is provided on site at parking ratios consistent with the City's LDC. Additionally, the proposed project will enhance pedestrian amenities in the right of way along Carleton and Dickens Streets with improved sidewalks leading towards the Kettenburg landing site. As such, the proposed project is consistent with the public access policies of Chapter 3 of the Coastal Act and the certified LCP.

4. Visual Resources. The Peninsula Community Plan includes the following objectives:

Urban Design Section Objectives

- Maintain and complement the existing scale and character of the residential areas of Peninsula.
- Upgrade the physical appearance of the commercial area in Peninsula.

- Protect and enhance those natural and man-made features of the Peninsula community which make this area unique to the San Diego region.
- Enhance the community's image through special treatment of the major entry points into the community.
- Preserve and enhance significant views of the bay and ocean.

Commercial Component

In addition to physical access to the ocean and bay environments, visual access is an important consideration in terms of maximizing enjoyment of the Peninsula's unique resources. A number of view corridors exist throughout the Peninsula planning area, providing views of the bay, ocean, downtown, Coronado, Mission Bay and Pacific Beach. [...]

Local Coastal Program Section

L. VISUAL RESOURCES AND SPECIAL COMMUNITIES

1. Issue: Future development in the area should not detract from the special characteristics of the community. Residential development should be compatible with existing housing styles and price ranges.

Recommendation: The Plan's community character component discusses the factors which make the Peninsula community unique to the San Diego region. The Plan proposes guidelines for new development which are designed to protect significant natural and man-made (heritage) resources of the community. Also stressed is the need to ensure that new development is consistent with regard to overall design to adjacent properties.

2. Issue: The Peninsula plan proposes the removal of overhead power lines, billboards, and other visual clutter. Planting of vegetation and landscaping along streets lacking these amenities is also recommended. The Land Use Plan should propose zoning changes and an effective abatement program. Effective measures (including controls on building and vegetation) must be taken to ensure the preservation of lines of sight to the bay and ocean.

Recommendation: The Plan contains a visual resources component which addresses, in detail, proposals to enhance aesthetics of the community.

Specifically, sign standards are recommended for all of the commercial areas in order to reduce the visual clutter present in these locations. The Plan recommends that billboards be eliminated and utilities, wherever feasible, be undergrounded. In conjunction with the public access component, the visual resources component also identifies significant vistas throughout the community and encourages their preservation.

In addition, Section 132.0403 of the City’s certified Land Development Code also contains the following requirements:

[...]

(c) If there is an existing or potential public view between the ocean and the first public roadway, but the site is not designated in a *land use plan* as a view to be protected, it is intended that views to the ocean shall be preserved, enhanced or restored by deed restricting required side *yard setback* areas to cumulatively form functional view corridors and preventing a walled effect from authorized development.

[...]

(e) Open fencing and landscaping may be permitted within the view corridors and visual accessways, provided such improvements do not significantly obstruct public views of the ocean. Landscaping shall be planted and maintained to preserve public views.

Public views to the bay are visible from the eastern side of the project site and also along the two frontages (Dickens and Carleton Streets), although views across the site itself from Scott Street (west side of site) are not available due to the presence of existing buildings on the property. There are no LUP designated public view corridors along any portion of the site or its surrounding street frontage to the bay. However, the LUP does state that, “[i]n addition to physical access to the ocean and bay environments, visual access is an important consideration in terms of maximizing enjoyment of the Peninsula’s unique resources. A number of view corridors exist throughout the Peninsula planning area, providing views of the Bay, ocean, Downtown, Coronado, Mission Bay and Pacific Beach....” The Commission typically reviews projects to assure that any new proposed development does not encroach into the yard setback areas which could impede public views toward the ocean or bay. In this particular case, the proposed development will observe all required setbacks and public views to the bay will not be impacted as a result of the proposed structure.

Furthermore, the proposed development will not exceed the 30 ft. height limit for this area pursuant to the certified LCP and is consistent in size and scale with the surrounding area. In addition, because tall free standing signs or pole signs can result in visual impacts, Special Condition #8 is proposed and requires the applicants to submit a sign program, prior to issuance of the permit, documenting that only monument signs, not to exceed eight (8) feet in height, or facade signs are proposed, consistent with the recommendation of the Peninsula LUP Visual Resources and Special Communities section. Also, Special Condition # 8 stipulates that no tall or free-standing pole or roof signs shall be allowed.

In addition, the Port action on the “Kettenburg Landing” project formalized and preserves the public view corridors extending down the Carleton and Dickens Street ends through

the tidelands parcel to the bay. The subsequent redevelopment of the subject upland site would not result in any adverse impacts on any designated public view corridors or physical accessways in the area and the Commission finds the proposed mixed use development, as conditioned, consistent with the certified LCP.

5. Water Quality/Sensitive Biological Resources. The Peninsula Community Plan includes the following objectives:

Conservation and Environmental Quality Objectives

- Identify existing and desired resources which contribute to the quality of the community environment, and develop guidelines for the conservation and enhancement of these resources.
- Balance new development with resource conservation, with consideration given to the protection of life and property from geologic hazards and environmental impacts.

Additionally, the following LDC policies addressing water quality and sensitive species and which are most applicable to the subject proposal, state, in part

Purpose of Environmentally Sensitive Lands Regulations

The purpose of these regulations is to protect, preserve and, where damaged restore, the *environmentally sensitive lands* of San Diego and the viability of the species supported by those lands. These regulations are intended to assure that *development*, including, but not limited to *coastal development* in the Coastal Overlay Zone, occurs in a manner that protects the overall quality of the resources and the natural and topographic character of the area, encourages a sensitive form of *development*, retains biodiversity and interconnected habitats, maximizes physical and visual public access to and along the shoreline, and reduces hazards due to *flooding* in specific areas while minimizing the need for construction of *flood* control facilities. These regulations are intended to protect the public health, safety, and welfare while employing regulations that are consistent with sound resource conservation principles and the rights of private property owners.

The subject site does not lie directly adjacent to the waters of the San Diego Bay, however, it is in close proximity to it and impacts to water quality as a result of the proposed project are a potential concern. The subject site is an existing commercial/industrial property that has been previously disturbed and consists mostly of impervious surfaces and dirt areas. The proposed project will be required to incorporate water quality BMPs, including the use of pervious surfaces and landscaped areas, to assure that the project does not result in significant water quality impacts. Specifically, Special Condition #7 is proposed. This condition requires the applicant to implement a number of pre- and post-construction water quality protection BMPs and construction practices including efficient irrigation with soil water sensors, programmable irrigation timers, automatic shut-off valves, and the incorporation of pervious pavement. This would benefit coastal waters and marine organisms by minimizing any increases in total volume and peak runoff rate of stormwater and water pollutants to the marine waters.

Therefore, as proposed and conditioned the project can be found consistent with the policies of the LUP and LDC regarding protection of environmental resources.

In regards to the proposed landscaping plan, 24 Mexican Fan Palms were identified on the submitted plan around the perimeter and interior of the proposed development. In addition to being an invasive species, these palms have the potential to increase visual obstruction of available coastal views in the surrounding area and also act as predator perches for raptors preying on sensitive species of harbor and shorebirds, protected under the Migratory Bird Treaty Act. As such, Special Condition #6 requires that the applicant submit a revised landscaping plan omitting any Mexican Fan Palms prior to issuance of the permit. The subject site consists of previously disturbed commercial/industrial land with no environmentally sensitive lands located on site. Therefore, as conditioned, the proposed project will not result in any impacts to sensitive biological resources and can be found consistent with the policies of the LUP and LCP regarding protection of sensitive environmental resources.

6. Local Coastal Planning. The City of San Diego has a certified LCP for the Peninsula area. As discussed above, the project is consistent with the Commercial/Recreational land use designations in the Peninsula LUP and the CC-4-2 zoning in the City's LCP. As conditioned, the development is consistent with all applicable provisions of the certified LCP as well as with the public access policies of Chapter 3 of the Coastal Act. The Commission, therefore, finds that approval of the proposed development, as conditioned, will not prejudice the ability of the City of San Diego to continue to implement its certified Local Coastal Program for the Peninsula Community.

7. Consistency with the California Environmental Quality Act (CEQA). The City of San Diego is the lead agency for CEQA purposes and the Commission is a responsible agency. The City of San Diego approved a supplemental EIR for the proposed project. 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.

The proposed project has been conditioned to be found consistent with the Marine-Related uses, public access, and visual protection, policies of the Peninsula community LUP, City of San Diego LCP and the public access policies of the Coastal Act. Mitigation measures 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, as conditioned

to mitigate the identified impacts, is the least environmentally damaging feasible alternative and is consistent with the requirements of 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.

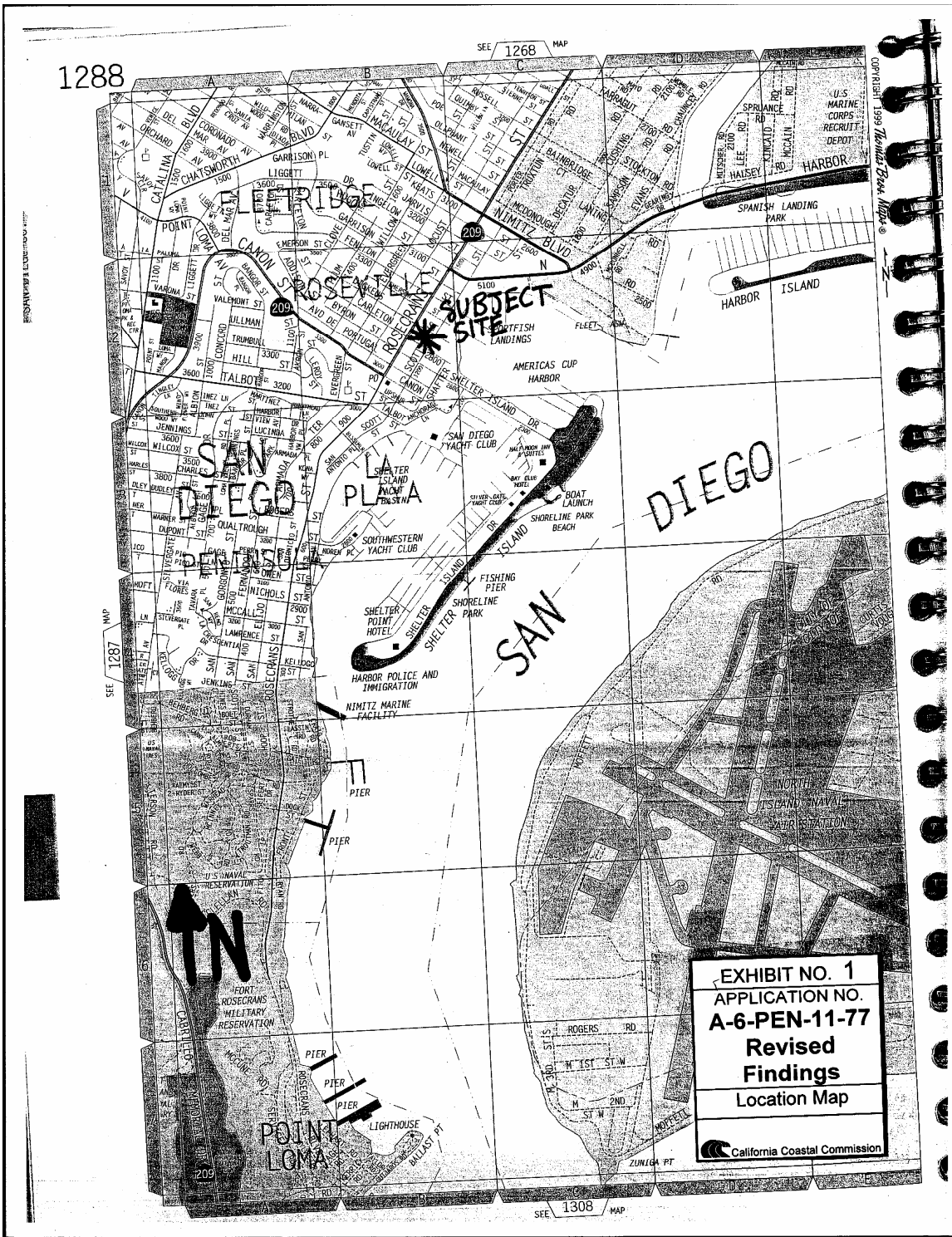


EXHIBIT NO. 1
APPLICATION NO.
A-6-PEN-11-77
Revised
Findings
Location Map
California Coastal Commission

Site Plan

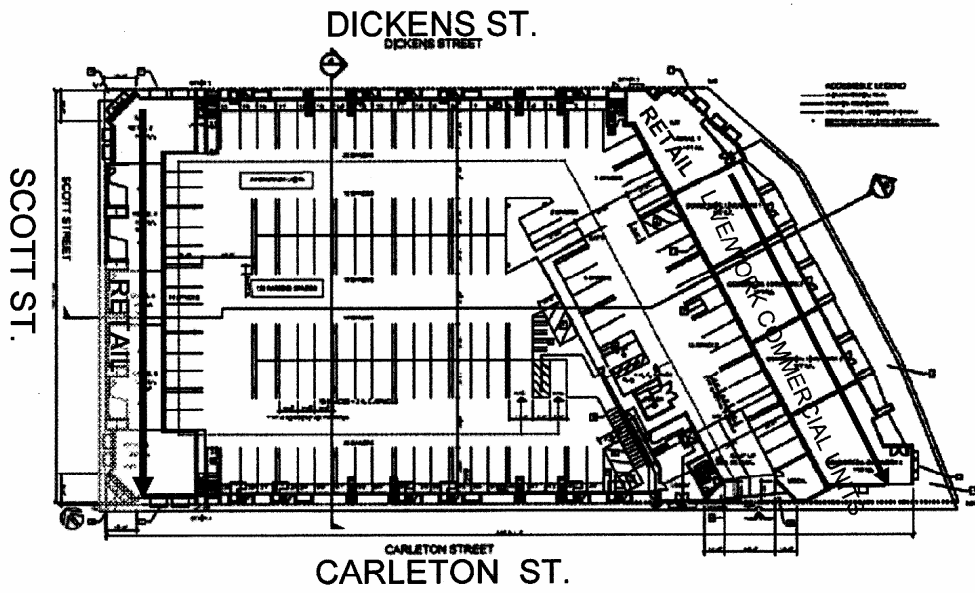


EXHIBIT NO. 2
APPLICATION NO.
A-6-PEN-11-77
Revised Findings
Site Plan
California Coastal Commission

