

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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original staff report

Th16e

Addendum

February 10, 2014

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item Th16e**, Coastal Commission Permit Application
#6-13-0407 (McMillin-NTC, LLC), for the Commission Meeting of
February 13, 2014

The purpose of this addendum is to modify the staff report dated January 23, 2014 to clarify that a package of amenities shall be provided at the all-suite hotel at no cost for its patrons. ~~**Bold, double strikethrough**~~ indicates text deleted from the January 23, 2014 staff report pursuant to this addendum and **bold, double underline** indicates text added to the January 23, 2014 staff report pursuant to this addendum, as shown below:

1. On Page 2 of the staff report, the Staff Notes shall be revised as follows:

Staff recommends the Commission adopt the following revised findings in support of the Commission's action on December 12, 2013. In its action, the Commission approved the permit with a modification to Special Condition #1 requiring the final project plans be modified such that 35% of the rooms in the all-suite hotel 1 be designed and furnished to accommodate six persons at the same room rate as a standard four-person suite with double occupancy; and that Hotel 1 shall provide free internet service, breakfast, and cocktail reception for its patrons, to increase affordability of the units. Additionally, the Commission modified Special Condition #9 to remove the requirement for an "on demand" shuttle to major local attractions, such as the San Diego Zoo, Sea World, and Balboa Park, and added the requirement for the hotels to operate and maintain regular shuttle service to and from the Old Town Transit Center and Santa Fe Depot, in addition to the San Diego International Airport. The Commission also made modifications to Special Condition #13 that, 1) reduced the in-lieu fee from \$1,890,000 to \$960,000, and 2) prioritized the use of the in-lieu fee towards establishment of a local hostel. The amended motion begins on Page 6. The modifications to Special Conditions begin on Page 8. Findings to support these modifications can be found starting on Page 17.

2. On Page 8 of the staff report, Special Condition No. 1, Final Plans, shall be revised as follows:

- g. At least 35% of the rooms within Hotel 1 shall be designed and furnished to accommodate six (6) persons at the same room rate as a standard four-person suite with double occupancy; and Hotel 1 shall provide free internet service, breakfast, and cocktail reception, for its patrons.

3. On Pages 32-33 of the staff report, the second complete paragraph shall be revised as follows:

In looking at the information provided by 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 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 in this particular case, is \$30,000 per bed. ~~That, multiplied by 25% of the higher cost units results in an in lieu fee total of \$1,890,000 ((.25 x 252) x \$30,000 = \$1,890,000).~~ In the Commission's past practice, it has typically applied the in-lieu fee to 25% of the total number of rooms in the high-cost hotel to mitigate for no provision of lower cost visitor accommodations in a proposed hotel project. In this particular case, the Commission has acknowledged the increased affordability associated with the proposed all-suite hotel in combination with the applicant's commitment to design and furnish 35% of the rooms to be able to accommodate up to six persons, with free amenities (internet service, breakfast, cocktail reception), and has, therefore, reduced the percentage of rooms to which the fee applies from 25% to 12.5% of the total number of rooms provided. Thus, \$30,000 multiplied by 12.5% of the total number of units results in an in lieu fee total of \$960,000 ((.125 x 252) x \$30,000 = \$960,000).¹ **Special Condition #1** requires the applicant to submit final project plans demonstrating that 35% of the rooms within the all-suite hotel are able to accommodate six persons and are provided at the same rate as a standard four-person suite with double occupancy. ~~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 ranged from a total of \$87,810 in Seal Beach (ref. CDP #5-05-385) to \$5,000,000 in Newport Beach (ref. CDP #5-07-85).~~

¹ The mitigation fee of \$960,000 is determined by multiplying the total number of units within the higher cost hotel, or 252, by 12.5%, resulting in 31.5 units which is rounded up to 32 units and then multiplied by the cost to build a hostel unit, or \$30,000, such that the mitigation fee is \$960,000.

The applicant contends that the proposed hotels should all be considered as moderate priced hotels for two major reasons, including the provision of amenities such as free breakfast, cocktail reception, internet service and parking, and the “all-suite” design of Hotel 1. However, in staff’s research, many hotels within San Diego County at a variety of difference price points provide amenities such as free parking, breakfast, and wireless internet access as part of the daily rate. Thus, these amenities are often included with the price of the room, especially for hotels that are already low or moderate cost, and should not be solely considered in the determination of whether a hotel is low, moderate, or high cost. **In this case, however, the package of free amenities combined with the agreement to configure 35% of the suites to accommodate 6 people at the same rate as a standard suite, has increased the overall affordability.**

4. On Pages 33-34 of the staff report, the last paragraph shall be revised as follows:

In the case of the subject development, the mitigation fee is still required because there is substantial evidence that no component of the project involves lower cost accommodations despite the proposed construction of three separate hotels. ~~and t~~ However, the applicant’s offer to accept a special condition that requires ~~25%~~ 35% of the rooms in ~~one~~ the all-suite hotel to be able to accommodate six people at the same rate as a standard four-person suite with double occupancy within the same hotel **along with free amenities (internet service, breakfast, cocktail reception)** ~~will~~ would not increase the affordability of a portion of the entire suites in the hotel. As conditioned, the mitigation fee will provide funds to construct overnight visitor accommodations that will be priced at or below the lower-cost rates discussed previously to mitigate for not providing lower cost overnight visitor accommodations onsite with the subject development. ~~Further, the hotel operators have yet to be determined, so there is some uncertainty as to what the actual rates (versus projected rates) of the hotels may be. Thus, the only way to mitigate for the loss of providing lower cost accommodations is to require an in-lieu fee that provides funds to construct accommodations that will be priced at or below the lower cost rates for overnight accommodations.~~

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Th16e

Staff: K. Brown-SD
Staff Report: 1/23/14
Hearing Date: 2/13/14

REVISED CONDITIONS AND FINDINGS

Application No.: 6-13-0407

Applicant: McMillin-NTC, LLC

Agent: Kimberly Elliott

Decision: Approved with Conditions

Location: 2200 Lee Court, Peninsula, San Diego, San Diego County

Project Description: Demolition of existing off-airport parking lot and construction of a 650-room hotel complex, consisting of an 80-ft. high, 252 room, 214,940 sq. ft. hotel; 65-ft. high, 215 room, 142,550 sq. ft. hotel; 65-ft. high, 183 room, 87,420 sq. ft. hotel; 3,180 sq. ft., 1-story restaurant; 150 ft. wide public esplanade with passive/active recreation areas, pedestrian/bicycle path, and public seating; 701 parking spaces, including 15 coastal-access spaces; subdivision into five lots; vacation of portion of Halsey Road; maintenance of existing pump station; removal or undergrounding of existing steam lines; traffic improvements to Kincaid Road; connection to Spanish Landing and Liberty Station; landscaping; and 22,000 cu. yds. of balanced grading.

Commissioners on
Prevailing Side: Brennan, Cox, Groom, McClure, Mitchell, Shallenberger, Vargas, Zimmer and Chair Kinsey.

STAFF NOTES

Staff recommends the Commission adopt the following revised findings in support of the Commission's action on December 12, 2013. In its action, the Commission approved the permit with a modification to Special Condition #1 requiring the final project plans be modified such that 35% of the rooms in the all-suite hotel 1 be designed and furnished to accommodate six persons at the same room rate as a standard four-person suite with double occupancy. Additionally, the Commission modified Special Condition #9 to remove the requirement for an "on demand" shuttle to major local attractions, such as the San Diego Zoo, Sea World, and Balboa Park, and added the requirement for the hotels to operate and maintain regular shuttle service to and from the Old Town Transit Center and Santa Fe Depot, in addition to the San Diego International Airport. The Commission also made modifications to Special Condition #13 that, 1) reduced the in-lieu fee from \$1,890,000 to \$960,000, and 2) prioritized the use of the in-lieu fee towards establishment of a local hostel. The amended motion begins on Page 6. The modifications to Special Conditions begin on Page 8. Findings to support these modifications can be found starting on Page 17.

Date of Commission Action: December 12, 2013

	<u>SUMMARY OF COMMISSION</u>	
<u>ACTION</u>		<u>SUMMARY OF STAFF</u>
	<u>RECOMMENDATION</u>	

The ~~proposed~~ project consists of the demolition of an existing commercial parking lot that serves San Diego International Airport and the construction of three hotels totaling 650 rooms and a separate 3,180 sq. ft. restaurant building. The first hotel is a 252-room "all-suite" hotel that has been designed to accommodate hotel operators such as Embassy Suites and Springhill Suites and is projected to cost \$155-\$190 per night. The second hotel includes 215 rooms with in-room kitchenettes that has been designed to accommodate hotel operators such as Residence Inn, Hyatt House, Marriott Town Place, and Home 2, and is projected to cost \$145-\$160 per night. The third hotel has 183 rooms and includes standard rooms and suites, designed to accommodate hotel operators such as Hampton Inn & Suites and Fairfield Inn & Suites, and is projected to cost \$115-\$145 per night.

The ~~proposed~~ project is located on a site that was previously a U.S. Naval Training Center under the jurisdiction of the federal government. The site has been transferred to the City of San Diego; however, it remains within the Commission's original coastal permit jurisdiction as public trust lands. Because the subject site is public trust lands, it is particularly important that development on the site promote public access and recreation.

While the project includes high-priority uses such as overnight visitor-serving accommodations, a public esplanade, and a restaurant, the major Coastal Act issue associated with this project is the lack of lower cost overnight visitor accommodations. Since the proposed project does not include lower cost accommodations onsite and the applicant has demonstrated that such facilities

are not feasible to provide with this project, **Special Condition #13** requires an in-lieu mitigation fee to protect and provide current and future lower cost overnight accommodations within the City's coastal zone.

Although the applicant has proposed a number of public access and recreation amenities as part of the project, **Special Condition #7** requires a formal Public Access Program be developed and implemented to further activate uses within the proposed public esplanade and maximize public use of the space. **Special Condition #6** requires submittal of a detailed and comprehensive sign program to ensure that the public is aware of the many public access and recreational opportunities provided. Additionally, since the proposed public esplanade is proposed to be managed by the future hotel operators through a shared-cost arrangement, the Commission is requiring **Special Condition #8**, the provision of a Public Access Management Plan, to identify who is responsible for management and maintenance of the esplanade and associated access improvements, as well as an agreement to maintain the esplanade in perpetuity, including the relocation of the esplanade if it is threatened by flooding or sea-level rise in the future.

To minimize the potential for traffic congestion over the long-term, ~~the Commission staff is also recommending requiring~~ **Special Condition #9** to ensure that shuttle service is provided for hotel patrons and that the applicant commits to working with MTS to increase bus service along North Harbor Drive, as well as with the Port of San Diego and other stakeholders to extend shuttle programs like the Big Bay shuttle to the subject site. **Special Condition #10** requires the development and implementation of a Transportation Demand Management (TDM) Program to further reduce vehicle miles traveled along North Harbor Drive, a major coastal accessway fronting the San Diego Bay.

Due to the project site's proximity to coastal waters, including the San Diego Bay and boat channel, ~~the Commission staff is recommending requiring~~ **Special Condition #1, #2, #3, and #5** that require the submission, review, and approval of final plans, including revised final plans, final landscaping plans, final water quality technical report, and final storage/staging areas, in order to minimize any potential adverse impacts to water quality within the adjacent bay. There is also a potential risk of liquefaction due to the site's proximity to coastal waters. As such, ~~the Commission staff is recommending requiring~~ **Special Condition #4** ~~for submittal of requiring~~ a final geotechnical report and **Special Condition #14** requiring an assumption of risk, waiver of liability, and indemnity agreement. Finally, to protect sensitive bird species that use the adjacent coastal waters, **Special Condition #15** requires final plans that are in compliance with bird-safe building standards.

Because the applicant is not the property owner, but a lessee, it is important the Commission be assured that future lessees and sub-lessees are aware of and agree to comply with the special conditions of this permit. Thus, **Special Condition #11** requires the applicant to obtain a written agreement from the City, as lessor, that upon termination of the applicant's lease, the City will include a provision in all future leases that the new lessee agree in writing to all of the terms of the permit. In addition, **Special Condition #12** requires the terms of the permit to be recorded as a deed restriction against the property if it transfers from City ownership.

6-13-0407 Revised Findings (McMillin-NTC, LLC)

~~Commission staff recommends **approval** of coastal development permit application 6-13-0407, as conditioned.~~

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APPENDICES

[Appendix A – Substantive File Documents](#)

EXHIBITS

Exhibit 1 – Location Map
Exhibit 2 – NTC Land Use Plan
Exhibit 3 – NTC Tidelands Trust Area
Exhibit 4 – Site Plan

I. MOTION AND RESOLUTION

Motion:

I move that the Commission adopt the revised findings in support of the Commission's action on December 12, 2013 concerning approval of Coastal Development Permit No. 6-13-0407

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 Brennan, Cox, Groom, McClure, Mitchell, Shallenberger, Vargas, Zimmer and Chair Kinsey.

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for Coastal Development Permit No. 6-13-0407 on the grounds that the findings support the Commission's decision made on December 12, 2013 and accurately reflect the reasons for it.

Motion:

*~~I move that the Commission **approve** Coastal Development Permit 6-13-0407 subject to the conditions set forth in the staff recommendation.~~*

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

Resolution:

~~The Commission hereby approves Coastal Development Permit 6-13-0407 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the 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

This permit is granted subject to the following 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 of 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.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Revised Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final project 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 preliminary plans submitted with this application on June 13, 2013, but shall be revised to include the following:
 - a. The hotel proposed adjacent to the boat channel shall be designed such that the side which faces the boat channel and the esplanade is, or appears to be, the front of the hotel.
 - b. A minimum of two corridors and entryways from the hotel adjacent to the esplanade to the public esplanade shall be provided and made available to the public.
 - c. A corridor and entryway from the restaurant to the public esplanade shall be provided and made available to the public.

- d. The public amenities plan required by Special Condition #7 shall be incorporated into and made a part of said final project plans.
- e. Construction of the public esplanade shall be completed prior to occupancy of the first hotel.
- f. The number of rooms in each hotel may vary as long as the total does not exceed 650 rooms.
- g. At least 35% of the rooms within Hotel 1 shall be designed and furnished to accommodate six (6) persons at the same room rate as a standard four-person suite with double occupancy.

The permittee shall undertake the 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.

2. **Final Landscaping Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final landscaping 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 preliminary plans submitted with this application on June 13, 2013 by the applicant and shall 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. Any proposed landscaping shall be drought-tolerant and native or non-invasive plant species. 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 within the property.
- b. A planting schedule that indicates the planting plan will be implemented within 60 days of completion of construction.
- c. To avoid an increased threat of raptor predation on shorebirds and water birds, new tree plantings shall be located at least 30 feet from the boat channel.
- d. Construction lighting and post-construction project lighting fixtures shall be shaded and oriented so that direct light or indirect glow will not increase the light levels in the boat channel adjacent to the project site.
- e. 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.

The permittee shall undertake the 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.

3. **Final Water Quality Technical Report.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a Final Water Quality Technical Report for review and written approval of the Executive Director, that is in substantial conformance with the Preliminary Technical Report for Liberty Station East Hotel Site dated December 12, 2012, and with the modifications submitted by the applicant's representative, Robert R. Gehrke, on October 15, 2013.
 - a. In addition, the Final Water Quality Technical Report (WQTR) shall document how the elements of the water quality treatment system will meet the following conditions:
 - i. The project water quality treatment system will eliminate dry weather runoff to the Navy Channel;
 - ii. The project water quality treatment system will treat storm runoff from storms smaller than or equal to the 85th percentile design storm (0.6 in./24 hours for volume-based Best Management Practices (BMPs) and 0.2 in./hr. for flow-based BMPs), including that amount of storm runoff from larger storms, with a suite of BMPs that meet the design criteria below; and
 - iii. The design criteria for BMPs shall be based on the recommendations in the latest edition of the California Association of Stormwater Quality Agencies (CASQA) BMP Handbook.
 - b. The WQTR shall include at least the following components:
 - i. A Landscape Management Program that includes a regular sweeping program of impervious surfaces, litter pick-up, and proper equipment maintenance;
 - ii. Efficient irrigation using flow sensors, automatic rain sensors and water saving irrigation heads and nozzles;
 - iii. The use of a drought tolerant planting palette; and
 - iv. A Fertilizer and Pest Management Program that minimizes the use of chemical fertilizers and pesticides.

The permittee 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.

4. **Final Geotechnical Report.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a final geotechnical report for the proposed development that has been prepared by a certified engineering geologist in accordance with the Guidelines for Engineering Geologic Reports, prepared by the State Board of Registration for Geologists & Geophysicists. Said report shall be in substantial conformance with the preliminary report submitted with this application on June 13, 2013 by the applicant and shall include, at a minimum, the following components:
 - a. Review of the regional and site geology, and land-use history, based primarily on existing maps and technical literature;
 - b. Interpretation of aerial photos and other remotely sensed images relative to topography, vegetation, or any other features related to geologic hazards and past site use;
 - c. Surface investigation;
 - d. Subsurface investigation; and
 - e. Special methods (used when special conditions permit or critical structures demand a more intensive investigation).

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

5. **Storage and Staging Areas/Access Corridors.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and written approval of the Executive Director, final plans indicating the location of access corridors to the construction site and staging and storage areas. The final plans shall indicate that:
 - a. No overnight storage of equipment or materials shall occur on sandy beach or public parking spaces. During the construction stage of the project, the permittee shall not store any construction materials or waste where it will be or could potentially be subject to tidal erosion and/or dispersion. In addition, no machinery shall be placed, stored or otherwise located within 15 feet of the boat channel at any time. Construction equipment shall not be washed adjacent to the boat channel.
 - b. Access corridors shall be located in a manner that has the least impact on public access to and along the shoreline.

- c. During construction of the hotel, the existing esplanade along the boat channel shall remain open and available for public use; however, public access may be restricted during construction of the esplanade improvements.
- d. The applicant shall submit evidence that the approved plans/notes have been incorporated into construction bid documents.
- e. The staging site shall be removed and/or restored immediately following completion of the development.

The permittee shall undertake the 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. **Public Access Sign Program.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, a final comprehensive sign program and plan for the permitted development that has been stamped approved by the City of San Diego and includes the following:

- a. The signage program shall identify the size, location, font size and text of all signage. The text, design, font size and location of such signs shall be clearly visible to pedestrians and maintained in good legible condition, and not obscured by landscaping or any other obstructions.
- b. Signage shall recognize the contribution of the City, lessee, and the California Coastal Commission in the establishment of the public esplanade.
- c. Public access signage shall be distributed throughout the site, but generally concentrated alongside the public esplanade, at each and every public corridor and/or accessway identified on the approved plans, and at and around focal points. Particular attention shall be given to various pedestrian transition points, such as the transition from the esplanade to the pedestrian bridge, the transition from the esplanade to the Spanish Landing pedestrian/bicycle path located underneath Harbor Drive bridge, the corridors linking the esplanade paths to the upland hotel and restaurant, and from the parking lot to the public access corridors through the hotel. Signs along the esplanade shall be placed at conspicuous locations and reasonable intervals along the esplanade identifying the esplanade as public.
- d. Signage shall be placed in the parking lot identifying the 15 dedicated coastal access parking spaces as available to the public.
- e. Signage on the hotel leasehold shall identify the access corridors and plazas as public. If hours of use are enforced, the hours shall be included on the signs. Such hours shall be consistent with or no more restrictive than the hours listed in Special Condition #7d.

- f. Signage shall be in place prior to occupancy of the first hotel.

The permittee 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.

- 7. **Public Access Program.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a public access program. Said program shall contain a detailed list of and a plan showing the type, location, and amount of public amenities and access offered on the subject site and shall incorporate the following:

- a. Public Esplanade. The proposed 150-ft. wide multi-use public esplanade shall include active and passive recreation areas, pedestrian walking path, bicycle path, public viewing area overlooking boat channel, publicly available multi-purpose sand court area (for activities such as sand volleyball), drinking fountains, benches, picnic areas with picnic tables, covered trash enclosures, animal waste bag dispensers, bicycle racks, and interpretative and/or educational signage.
- b. Public Restrooms. Restroom facilities within or adjacent to the hotel and/or restaurant shall be made available to the public.
- c. Public Parking. A total of 15 parking spaces shall be dedicated for coastal access.
- d. Hours of Availability. No restrictions on access to the public esplanade shall be imposed between sunrise and midnight. Public seating and gathering areas, plazas, corridors, and other outdoor passageways on the hotel leasehold shall remain open and available to the public year-round, and hours of operation shall be no more restrictive than 7 AM to 10 PM.
- e. Signage. Access routes and public amenities shall be clearly marked for public use. Signage shall indicate the provision of public access to and along the public esplanade, the multi-purpose sand court, and public viewing area.
- f. Continual Access. No structures of any type, including gates or fences shall be constructed or placed that would impede use of the public esplanade and other amenities described above by the general public.
- g. Implementation. The public amenities and access in the approved program shall be in place prior to occupancy of the first hotel.

The permittee shall undertake development in accordance with the approved final program. Any proposed changes to the approved final program 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.

8. **Public Access Management Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and written approval by the Executive Director, a public access management plan for the construction and perpetual maintenance of the public access improvements required and approved pursuant to Special Condition #7 of this permit. The public access management plan shall include a written agreement that includes the following:
- a. The applicant agrees to construct the access features prior to or concurrent with the hotel complex construction, and the access improvements shall be completed prior to occupancy of the first hotel.
 - b. The applicant agrees to maintain said access improvements in perpetuity.
 - c. The applicant agrees to relocate the public esplanade further upland (adjacent to the hotel and restaurant), should it be threatened by sea-level rise or periodic flooding.
 - d. The applicant agrees that the common areas of the hotel(s), including lobby restrooms, restaurants, and commercial lease areas, shall be open and available to the general public.
 - e. The applicant agrees to support the construction of a public recreational dock, in the future, if feasible, when the boat channel is transferred from the Navy to the City of San Diego.

The permittee shall undertake the development in accordance with the approved access management plan. Any proposed changes to the approved access management plan shall be reported to the Executive Director. No changes to the access management plan 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. **Public Transit.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, the following items:
- a. An agreement to work with MTS to encourage increased bus service along North Harbor Drive to better serve visitors, residents, and employees with more frequent access to beaches, the airport, and downtown.
 - b. An agreement to coordinate with the Port of San Diego and other stakeholders to extend shuttle service, such as the Big Bay Shuttle, to the subject site and other Liberty Station developments.
 - c. A commitment that the hotel(s) shall operate and maintain regular shuttle service to and from the San Diego International Airport, Old Town Transit Center and Santa Fe Depot ~~and major local attractions, such as the San Diego Zoo and Balboa Park~~, for its patrons.

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

10. **Transportation Demand Management Program.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and written approval of the Executive Director, a Transportation Demand Management (TDM) Program. Said program shall include, but not be limited to, the following:
- a. Participation in shuttle systems to the San Diego International Airport, Old Town Transit Center, and Santa Fe Depot;
 - b. Transit incentives for employees to promote the use of public transportation, including fare/monthly pass subsidies;
 - c. Bicycle storage;
 - d. On-site shower facilities and lockers available to all employees;
 - e. Creation and implementation of a carpool plan for employees with notices of the carpool program posted in employee work areas; and
 - f. Information regarding the aforementioned components of the Transportation Demand Management Program shall be provided to all employees and included in any employment paperwork for new employees.

The permittee shall undertake the 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 a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

11. **Notification of Future Lessees.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a written agreement by the City-lessor, in a form and content acceptable to the Executive Director, providing that upon termination of the applicant's lease of the property that is the subject of this coastal development permit, the City-lessor agrees (1) to be bound to terms of this permit if it becomes the owner of the possessory interest in such property, and (2) to include provisions in any subsequent lease of such property requiring the lessee to submit a written agreement to the Commission, for the review and approval of the Executive Director, incorporating all of the terms of this permit.

12. **Transferees' Acknowledgment.**

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant (current and prospective future lessees of the property that is the subject of

this permit) shall agree in writing that before execution of any agreement to assign the lease or any portion thereof or to sub-lease the property or any portion of that property or any interest in that property, the lessee-transferor shall secure a letter from the prospective (sub-) lessee-transferee (1) acknowledging (a) that the conditions imposed by this permit run with the land, (b) that the use and/or development of the land may therefore be restricted by special conditions of the permit and (c) that pursuant to those special conditions, the owner of any possessory interest in the property has certain obligations and the public has certain rights with respect to future use of the property; and (2) agreeing that, prior to any further transfer of any interest in the property that occurs in the future, that the agreeing (sub-)lessee (i.e., transferee-turned-transferor) shall secure from the new (sub-)lessee (or transferee) a letter to the same effect.

B. Subsequent to the issuance of this coastal development permit, and prior to execution of any agreement to assign the lease or any portion thereof or to sub-lease the property or any portion of the property or any interest in the property that is the subject of this permit, the lessee-transferor shall secure a letter from the prospective (sub-) lessee-transferee (1) acknowledging (a) that the conditions imposed by this permit run with the land, (b) that the use and/or development of the land may therefore be restricted by the special conditions of the permit and (c) that pursuant to those special conditions, the owner of any possessory interest in the property has certain obligations and the public has certain rights with respect to future use of the property; and (2) agreeing that, prior to any further transfer of any interest in the property, that the transferee-turned-transferor shall secure from its transferee a letter to the same effect.

C. A copy of such letter(s) shall be provided to the Executive Director and the City of San Diego prior to the transfer of any property interest, as described above.

13. **Lower Cost Overnight Accommodations Mitigation Fee.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide evidence, in a form and content acceptable to the Executive Director, that a fee of \$30,000 per unit for 12.5% ~~25%~~ (32 ~~63~~-units) of the total number of high cost overnight visitor accommodations (252 high cost units) in the approved project has been paid in lieu of providing lower cost accommodations on site.

A. The required in lieu fee of \$960,000 ~~\$1,890,000~~ 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 San Diego, 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 hostel beds, tent campsites, cabins or campground units, at appropriate locations within the coastal area of San Diego County with priority given to a local hostel. 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. If any portion of the fee remains ten years after it is deposited, it 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 comparable 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 San Diego and/or the coastal area of San Diego County, subject to the review and written approval of the Executive Director.

B. 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; (3) the terms provided in subsection (a) of this condition; and (4) 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.

14. Assumption of Risk, Waiver of Liability, and Indemnity Agreement.

- a. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from liquefaction 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.
- b. PRIOR TO ANY CONVEYANCE OF THE PROPERTY THAT IS THE SUBJECT OF THIS COASTAL DEVELOPMENT PERMIT, the landowner shall execute and record 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 Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The restriction shall include a legal description of the landowner's entire parcel or parcels. It shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the Standard and Special 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.

- c. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

15. **Bird-Safe Building Standards.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final project plans for the proposed development that are in compliance with bird-safe building standards for façade treatments, landscaping, lighting, and building interiors, as follows:

- a. Untreated glass or glazing shall not compromise more than 35% of a building façade.
- b. Acceptable glazing treatments include: fritting, netting, permanent stencils, frosted, non-reflective or angled glass, exterior screens, decorative latticework or grills, physical grids placed on the exterior of glazing, ultraviolet patterns visible to birds or similar treatments, as approved by the Executive Director.
 - i. Where applicable, vertical elements within the treatment pattern should be at least 1/4” wide, at a maximum spacing of 4”;
 - ii. Where applicable, horizontal elements within the treatment pattern should be at least 1/8” wide, at a maximum spacing of two inches 2”; and
 - iii. No glazing shall have a “Reflectivity Out” coefficient exceeding thirty percent 30%. That is, the fraction of radiant energy that is reflected from glass or glazed surfaces shall not exceed 30%.
- c. Building edges of exterior courtyards and recessed areas shall be clearly defined, using opaque materials and non-reflective glass.
- d. Trees and other vegetation shall be sited so as to avoid or obscure reflection on building facades.
- e. Buildings shall be designed to minimize light spillage and maximize light shielding to the maximum feasible extent per the following standards:
 - i. Nighttime lighting shall be minimized to levels necessary to provide pedestrian security.
 - ii. Building lighting shall be shielded and directed downward.
 - iii. Up-lighting and use of event “searchlights” or spotlights is prohibited.

- iv. Landscape lighting shall be limited to low-intensity and low-wattage lights.
- v. Red lights shall be limited to only that necessary for security and safety warning purposes.
- f. Artificial night light from interior lighting shall be minimized through the utilization of automated on/off systems and motion detectors.
- g. Avoid the use of “bird traps” such as glass courtyards, interior atriums, windows installed opposite each other, clear glass walls, skywalks, and transparent building corners.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION & HISTORY

The proposed project consists of the demolition of an existing commercial parking lot that serves airport users and the development of three hotels and a separate 3,180 sq. ft. restaurant building. The first hotel is a 252-room, 214,940 sq. ft., 80-ft. high “all-suite” hotel that has been designed to accommodate hotel operators such as Embassy Suites and Springhill Suites and is projected to cost \$155-\$190 per night. The second hotel is a 215-room, 142,550 sq. ft., 65-ft. high hotel with in-room kitchenettes that has been designed to accommodate hotel operators such as Residence Inn, Hyatt House, Marriott Town Place, and Home 2, and is projected to cost \$145-\$160 per night. The third hotel is a 183-room, 87,420 sq. ft., 65-ft. high hotel with standard rooms and suites, designed to accommodate hotel operators such as Hampton Inn & Suites and Fairfield Inn & Suites, and is projected to cost \$115-\$145 per night.

The project also includes subdivision of the property into five lots; vacation of a portion of the Halsey Road public right-of-way; maintenance of existing 490 sq. ft. pump station; removal or undergrounding of existing steam lines; traffic improvements to Kincaid Road, including connection to Harbor Drive; water, sewer, and drain and storm drain improvements; provision of 701 surface parking spaces, including 15 dedicated coastal access spaces; a 150-ft. public esplanade with passive/active recreation areas, pedestrian/bicycle path, and public seating; connection to Spanish Landing via the North Harbor Drive underpass; connection to existing pedestrian bridge to the rest of Liberty Station; landscaping; and 22,000 cu. yds. of balanced grading.

The 15.85-acre project site is located within the Naval Training Center (NTC) Precise Plan area within the Peninsula Community Plan area and is situated at the intersection of North Harbor Drive and Lee Court, with the boat channel forming the site’s western boundary, Kincaid road forming its eastern boundary, and the City of San Diego’s Metropolitan Wastewater District (MWWD) building to the north. The San Diego Fire-Rescue Department Training Facility is located east of the project site. Spanish Landing Park and San Diego Bay are located south of the project site. Currently, the site is developed as a temporary surface parking lot for San Diego

International Airport which is operated by WallyPark. While the majority of the site is relatively flat at approximately 10 feet above mean sea level, the site slopes down to sea level as it approaches the boat channel on the westernmost portion, with disturbed habitat and informal dirt trails located alongside the water's edge. An existing pump station proposed to be retained and steam lines that will be undergrounded or removed are also located on the site.

The former NTC was operated as a military facility by the federal government from 1922 to 1997. During that time, title to the land was held by the federal government pursuant to a conveyance from the City of San Diego, which had itself taken title pursuant to a grant from the State, subject to the public trust. In July 1993, the U.S. Navy declared its intention to close the base under the terms of the Base Closure and Realignment Act of 1990, and the City of San Diego began planning for the reuse of the site in 1993. The City's conveyance of the lands to the federal government in the early part of the 20th Century did not terminate the public trust, so when the federal government recently reconveyed the lands back to the City, the lands remained public trust lands.

The City of San Diego has a certified NTC Precise Plan and Local Coastal Program (LCP) covering the 361 acres of NTC that was conveyed to the City, including the subject site. The Plan designates the subject site for use as a "Business Hotel," and the site is zoned Commercial – Community (CC), which is designed for community-serving commercial services, retail uses, and limited industrial uses. However, because the subject site is located on public trust lands, it is within the Commission's original jurisdiction. Thus, Chapter 3 of the Coastal Act is the standard of review, with the certified NTC Precise Plan used as guidance.

B. PUBLIC ACCESS & RECREATION

Section 30210 of the Coastal Act states:

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

Section 30212(a) of the Coastal Act states:

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30252 of the Coastal Act states:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Section 30253 of the Coastal Act states, in relevant part:

New development shall do all of the following:

[...]

(d) Minimize energy consumption and vehicle miles traveled.

Section 30604(c) of the Coastal Act states:

Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Sections 30200).

In addition, the NTC Precise Plan includes the following policies:

The two most important edges to consider in the design of the hotel site are those that face onto the channel and Harbor Drive. The channel edge will be a public pedestrian area where the esplanade must uniformly provide a welcoming entrance that encourages hotel guests and the public to make use of this amenity. The hotel should be designed so that the side which faces the boat channel and the esplanade reads as if it were – or might be – the front of the hotel.

Amenities typically associated with a business hotel – conference facilities, restaurants, recreation facilities, visitor commercial retail establishments – are permitted within the hotel or on separate pads. The hotel may include a public recreational dock in the boat channel for small boat rentals and public access and recreational opportunities.

The hotel design will include the design of the shoreline esplanade. Primary vehicular access will be via the signalized intersection of Harbor Drive and Lee Road.

Parking may be provided on a surface lot or in a parking structure. A parking structure sited on the easternmost portion of site could act as a buffer between the hotel and the Regional Public Safety Training Institute (RPSTI). Hotel guests will be notified of hazards associated with the RPSTI by measures such as fencing, markers, flagging and access restrictions. Guest rooms should be oriented away from the RPSTI.

The hotel elevation facing the esplanade should be visually and architecturally connected to the esplanade through the use of arcades, paving, landscaping, or other materials.

On the east side of the channel, for design flexibility, the esplanade width may vary, but shall maintain at least an average minimum depth of 150' from the water's edge to the business hotel, with that dimension tapering to 50' at the very north end of the site near the RPSTI, where it is interrupted by existing buildings.

Visitor-serving commercial uses shall be sited adjacent to the boat channel.

Development shall not interfere with the public's right of access to the boat channel.

However, a transit office shall be established concurrent with occupancy of the first phase of office/R&D or mixed use development to issue bus passes and coordinate car pools for employees and residents, provide transit information to visitors, and consult on the transit needs for special events. MTDB will be encouraged to provide neighborhood circulators or shuttles to provide community-level tripmaking and feeder access to established bus routes. Hotels shall participate in shuttle systems to Lindbergh Field.

The pedestrian system should be integrated with the street system so that automobiles, pedestrians and bicycles are welcome within public rights-of-way on NTC. A pedestrian system must link buildings, plazas, courtyards and open spaces throughout the site.

Public Trust Lands

The Commission is vested with the authority to assure that it acts in a manner consistent with Section 30210 of the Coastal Act which requires the Commission to carry "out the requirement of Section 4 of Article X of the California Constitution" and provide for maximum access and recreational opportunities for all people. Section 4 of Article X of the California Constitution provides the following:

No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof. (emphasis added.)

This section merges the common law public trust doctrine with the California Constitution. (See *Personal Watercraft Coalition v. Marin County Board of Supervisors* (2002) 100 Cal.App.4th 129, 144-145.) The Legislature, in furthering the goals of Article X Section 4 of the Constitution, enacted Section 30210 of the Coastal Act to ensure the public can always attain access to navigable waters for recreational purposes. As such, through this legislative mandate,

the Commission is charged with the duty of ensuring that proposed development is consistent with Section 30210 of the Coastal Act, and by extension, the public trust doctrine. Therefore, the Commission has the authority to impose requirement to provide a public trust use as a condition of approval for a development if such development would be inconsistent with Section 30210 of the Coastal Act without the imposition of such a condition.

Under the granted lands statutes, the Legislature granted the tide and submerged lands in San Diego to the City, dictating that such lands shall be used for public trust purposes.¹ Approximately 1/3 of the former Naval Training Center (NTC) is subject to Tidelands Trust restrictions, including the subject site. State Lands Commission has found that uses of public trust lands must “accommodate, promote, foster or enhance statewide public’s need for essential commercial services or [the public’s] enjoyment of tidelands.”² Therefore, the proposed project must promote and foster the public’s enjoyment of tidelands.

The California State Lands Commission policy on the public trust doctrine requires that all uses subject to the Tidelands Trust must take into account the overarching principle of the public trust doctrine that trust lands belong to the public and are to be used to promote public rather than exclusively private purposes. Public trust uses are generally limited to water dependent or related uses, and include commerce, fisheries, navigation, ecological preservation, and recreation. Visitor-serving facilities such as restaurants, hotels, shops, and parking areas can be appropriate uses if they allow broad public access to the tidelands and therefore enhance the public’s enjoyment of these lands historically set apart for their benefit. Projects must have a connection to water-related activities that provide benefits to the public statewide. The State Lands Commission policy states “failure to achieve this goal simply to make a development financially attractive sacrifices public benefit for private or purely local advantage.”

On February 5, 2001, the State Lands Commission approved a land exchange agreement between the City of San Diego and the State of California that reconfigured some of the public trust and non-public trust lands as NTC. The final public trust configuration, which includes the subject site, allows the City to develop the land adjacent to open water for public trust uses, from potential waterfront heavy industrial use to visitor-serving areas appropriate for shoreline parks, restaurants, shops, hotels, museums, public walkways, and sites for animal and bird habitat (Exhibit #3).

Because the project site is public land, it is particularly important that development on the site respond adequately to the Chapter 3 and LCP policies regarding public access and recreation and public benefit.

Hotels & Public Esplanade

Located in the southern portion of NTC between the Navy boat channel and North Harbor Drive, the first public roadway in the area, the subject site is easily accessible and highly visible from

¹ http://www.slc.ca.gov/Granted_Lands/San_Diego.html

² http://www.slc.ca.gov/Policy_Statements/Public_Trust/Public_Trust_Doctrine.pdf

surrounding streets. It also directly across from a public park (Spanish Landing) to the south. As such, the site is a key public access and recreational linkage between the public park, the esplanade, the pedestrian bridge leading to the northwest side of the channel, which is also developed with a public esplanade, hotel development (ref. CDP 6-05-041), and public park. If the boat channel side of the subject site is not sufficiently attractive and inviting to the public, recreational use and access will terminate at the adjacent Spanish Landing park rather than continuing down North Harbor and across the pedestrian bridge to the southwest side of the boat channel and the rest of Liberty Station.

Although the subject site is within the Commission's original jurisdiction, and thus, Chapter 3 of the Coastal Act is the standard of review, at the time the NTC Precise Plan was approved, the Commission established clear policy direction on the type and design of development which could occur on the subject site to ensure consistency with the applicable Coastal Act policies. The unique mix of resources on and adjacent to the site – the boat channel, esplanade, pedestrian bridge, and adjacent public park, combined with the public trust requirement to serve statewide public purposes, led to the above-listed policies in the certified Precise Plan. Of particular relevance to the subject project are the requirements that the hotel be oriented to the boat channel and respond to its location near the public esplanade; and that the ground floor of the hotel be pedestrian-oriented, with easy access to such public uses as restaurants and any visitor commercial retail establishments. In short, the site must be developed in a manner that is oriented to public use and which allows the public to circulate through and around the site to utilize all of the elements on the site.

As described above, the project consists of three separate hotels and a restaurant, with the all-suite hotel and restaurant located adjacent to the boat channel. A 150-ft. wide public esplanade with pathways and landscaping is also proposed along the boat channel. The project has been conditioned to ensure that it is consistent with the above policies and goals. **Special Condition #1** requires the submission of revised final plans that require the hotel adjacent to the esplanade be designed such that the side which faces the boat channel and esplanade is, or appears to be, the front of the hotel and that adequate public accessways connect the esplanade with the hotel and restaurant adjacent to the esplanade so as to draw pedestrians to the public spaces.

The proposed public esplanade will provide walking and bike paths, and grassy areas for passive recreation, and represents a prime lower-cost visitor and public recreational amenity on the site. The trails on this site will line up and connect with those from Spanish Landing Park via the North Harbor Drive underpass and to the rest of Liberty Station via the pedestrian bridge over the boat channel. Because the esplanade on the subject site will be next to a private hotel development, in order for the esplanade to function as an inviting, accessible public amenity in this area, rather than just a private amenity for hotel guests, it is important the adjacent hotel development provide a variety of amenities and opportunities for the public to feel welcome on the site.

Although the applicant proposes a number of public access and recreation amenities as part of the project, **Special Condition #7** requires a formal Public Access Program be developed and implemented to further activate uses within the proposed esplanade and maximize public use of the space. Public spaces inside the hotels are few, limited to a lounge/bar, ballroom, and meeting

space within the all-suite hotel. Thus, the public amenities provided as part of the esplanade improvements and required Public Access Program will augment public access and recreational opportunities. **Special Condition #7** requires the public esplanade include the following: active and passive recreation areas, pedestrian walking path, bicycle path, public viewing area overlooking boat channel, publicly available multi-purpose sand court area (for activities such as sand volleyball), drinking fountains, benches, picnic areas with picnic tables, covered trash enclosures, animal waste bag dispensers, bicycle racks, fire pits, and interpretative and/or educational signage. These elements represent public recreational opportunities and will encourage access to and around the site. This condition explicitly requires that the public passageways and amenities are open and available to the public year-round, and if some restrictions on hours of operation are necessary, that the restricted hours be no greater than 10 PM to 7 AM. However, access the adjacent esplanade may not be restricted between sunrise and midnight.

With the proposed project site located directly adjacent to the Navy boat channel, **Special Condition #8e** requires the applicant to agree to support the construction of a public recreational dock, in the future, if feasible when the boat channel is transferred from the Navy to the City of San Diego. As stated in the NTC Precise Plan, “the hotel may include a public recreational dock in the boat channel for small boat rentals and public access and recreational opportunities.” Therefore, a public recreational dock is not required; however, it is a public access and recreational amenity that may be provided. Currently, the channel is owned by the Navy and requires environmental cleanup prior to its transfer to the City. The timeline of the channel’s cleanup and subsequent transfer to the City is uncertain; however, the subject condition requires the applicant to not oppose the installation of a public recreational dock once the channel has been remediated and transferred. At this time it is not clear which entity – the applicant or the City – would be responsible for installation of a dock. Thus, the proposed project, as conditioned, can be found consistent with the NTC Precise Plan, as well as the public trust doctrine.

To ensure that public amenities are provided in a timely manner, **Special Condition #1** requires that construction of the public esplanade be completed prior to occupancy of the first hotel. **Special Condition #6** requires submittal of a detailed and comprehensive sign program to ensure that the public is aware of the many public access and recreational opportunities provided. As conditioned, the public accessways and amenities provided on the subject site will ensure that the proposed development will protect and provide for public access to the waterfront, and a wide range of public and private, lower and higher cost recreational opportunities, consistent with the public access and recreational policies of the Coastal Act.

Traffic & Parking

A traffic study prepared by Kimley-Horn and Associates, Inc., dated August 9, 2012, evaluated existing and future (with project) traffic operations for intersections and roadway segments at or adjacent to the access to the project site. This study concluded that study intersections and roadway segments at and adjacent to the project site access are currently operating at an acceptable Level of Service (LOS) and would continue to operate at acceptable LOS. As such, no significant traffic impacts were found as a result of the proposed project. The proposed

project includes several traffic improvements, including improvements to Kincaid Road and connection of Kincaid Road to Harbor Drive to accommodate the proposed hotel complex.

However, at the time the Commission certified the NTC Precise Plan and associated LCP Amendment, it acknowledged that redevelopment of NTC would result in significant unavoidable project-specific and cumulative impacts to transportation and circulation that could not be mitigated to below a level of significance. Large scale commercial redevelopment efforts always present challenges with regard to traffic and circulation patterns. Section 30250 of the Coastal Act supports the construction of new development in existing developed areas to decrease sprawl and impacts to open space. However, many older neighborhoods, including Point Loma, were planned with street patterns and parking and traffic capacities that are inadequate for denser development. To alleviate traffic congestion over the long-term and reduce vehicle miles traveled as required under Section 30254 of the Coastal Act, public transit opportunities must be increased.

The site is currently served by Metropolitan Transportation System (MTS) Route 923 along North Harbor Drive with stops along the north and south sides of the street at the intersection of North Harbor Drive and Lee Court. The applicant proposes to maintain this bus stop and **Special Condition #9** requires the applicant to agree to work with MTS to encourage increased bus service along North Harbor Drive. Currently, regular service is only provided Monday through Saturday and although this bus route is not considered a high-performing transit option (because headways are not 15 minutes or better during peak periods), this bus route feeds directly into a high performing transit option (Bus Route 23), located less than one mile west of the project site. This condition would address the potential for traffic congestion by reducing vehicle miles traveled by both employees and visitors to the hotel development.

In an effort to further reduce traffic impacts and reduce the need for guests to rent cars during their visits and, thereby, reduce vehicle miles traveled, the applicant is committed to providing hotel shuttle service to the airport for its guests. However, **Special Condition #9** requires the applicant to ~~agree to participate in~~ operate and maintain a regular shuttle service shuttle systems to the San Diego International Airport, as well as the Old Town Transit Center and Santa Fe Depot in downtown San Diego. The Old Town Transit Center and Santa Fe Depot are transit hubs that provide direct linkages to major local attractions such as SeaWorld, the San Diego Zoo, Balboa Park and other destinations, both local and regional. Both transit centers offer visitors a variety of travel modes (bus, trolley, train) to access other coastal communities and the greater San Diego area without the need to rent a car. an “on-demand” shuttle to major local attractions such as SeaWorld, the San Diego Zoo and Balboa Park. Unlike a regularly scheduled shuttle service, an “on-demand” shuttle may consist of a shuttle, van, or car service to the major local attractions that is available at the request of hotel patrons. All of these major local attractions are in the nearby vicinity, located 5½ miles or less from the subject site. Additionally, the Commission has approved hotel projects with similar shuttle services, including construction of a 44 room hotel in Pacific Beach (A-6-PCB-03-61) and the Lane Field Project in downtown San Diego (A-6-PSD-08-04-A1). This condition also requires agreement of the applicant to coordinate with the Port of San Diego and other major stakeholders to extend shuttle service, such as the Big Bay Shuttle that serves the bay front, to the subject site and other Liberty Station developments.

To further minimize vehicle miles traveled and traffic congestion, **Special Condition #10** requires the preparation and implementation of a Transportation Demand Management (TDM) Program. The program would be composed of the following components: participation in shuttle systems to the San Diego International Airport, Old Town Transit Center, and Santa Fe Depot; transit incentives for employees to promote the use of public transportation, including fare/monthly pass subsidies; bicycle storage; on-site shower facilities available to all employees; carpool plan with notices of the program posted in employee work areas; and provision of TDM Program information to all employees and included in any employment paperwork for new employees.

The applicant is proposing to provide 701 parking spaces with 686 parking spaces for the three hotels and ancillary restaurant and 15 dedicated public coastal access parking spaces. The 15 coastal access spaces are in addition to the parking requirements for the hotels and restaurant. These public spaces will be signed and striped to indicate they are for “Public Coastal Access Parking Only.” Similar spaces located adjacent to the esplanade on the west side of the boat channel are highly used by visitors who want to enjoy the public park and esplanade. Thus, adequate parking to serve the proposed use will be provided, as we as parking to serve visitors who just want to come down and enjoy the area.

As conditioned, the proposed project is consistent with the Coastal Act requirements to maintain and enhance public access to the coast and provide adequate parking facilities, and with the transit and parking requirements of the certified LCP.

Conclusion

Maximizing public access to waterfront land, as required by the Coastal Act, requires more than the provision of a walkway along the shoreline. Hotels and restaurants are considered to be appropriate public trust uses, even though they may be privately owned and operated, because they draw large numbers of people to the shoreline and provide facilities for them to enjoy the shoreline once they are there. A well-designed waterfront development opens up access to the water for a wide range of individuals, not just paying hotel guests and restaurant patrons. It provides inviting spaces where people can eat, shop, people watch, play games, exercise, or bring a picnic to enjoy during the weekends.

The propose project consists of visitor-serving overnight accommodations and restaurant uses, which are high-priority uses under the Coastal Act. The subject development has incorporated publicly-oriented design features and amenities into the project to promote public access and recreational opportunities, mainly the improvements to the 150-ft. wide public esplanade adjacent to the boat channel. Adequate parking to serve the proposed use will be provided, with 15 parking spaces dedicated solely for public coastal access.

Because the applicant is not the property owner, but a lessee, it is important the Commission be assured that future lessees and sub-lessees are aware of and agree to comply with the special conditions of this permit. Therefore, **Special Condition #11** requires the applicant to obtain a written agreement from the City of San Diego, as lessor, that upon termination of the applicant's

lease, the City will include a provision in all future leases that the new lessee agree in writing to all of the terms of this permit. In addition, if the property should transfer from City ownership, the terms of this permit must be recorded as a deed restriction against the property. **Special Condition #12** requires a Transferee's Acknowledgement to ensure that future assigned lessees or sub-lessees are aware and agree to comply with the permit conditions.

Additionally, since the proposed public esplanade is proposed to be managed by the future hotel operators through a shared-cost arrangement, the Commission is requiring **Special Condition #8**, the provision of a Public Access Management Plan, to identify who is responsible for management and maintenance of the esplanade and associated access improvements, as well as an agreement to maintain the esplanade in perpetuity, including the relocation of the esplanade if it is threatened by flooding or sea-level rise in the future.

In light of the fact that the subject permit contains several components that will likely be operated by separate lease holders, the Commission acknowledges that any violation of a condition that results in an enforcement action, will be enforced only against the non-compliant lessee, the master lessee, and the underlying property owner, and not against other lessees not involved in the violation.

As conditioned to ensure the design features and amenities providing public access and recreational opportunities on the site are provided, maintained, and clearly identifiable to the public, the development conforms to the public access and recreation policies of the Coastal Act.

C. LOWER COST VISITOR SERVING & RECREATIONAL FACILITIES

Section 30213 of the Coastal Act states:

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

The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

In addition, the NTC Precise Plan includes the following policies:

Lower cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided...

Pursuant to the public access policies of the Coastal Act, and particularly Section 30213, the Commission has the responsibility to ensure that lower cost visitor and recreational facilities be provided along the coastal zone of the state. 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.

Historically, the Commission has endorsed new hotel developments along the coastline. However, it has virtually all been exclusive, higher priced resort developments. In each of those actions, though, the Commission has typically secured offsetting public amenities, such as new public accessways, public parking or open space dedications, to address the Coastal Act priorities for public access and visitor support facilities.

In light of current trends in the marketplace and along the coast, the Commission is increasingly concerned with the challenge of providing lower-cost overnight accommodations consistent with the Coastal Act. Research in support of a Commission workshop held on August 9, 2006 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 ongoing 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. In addition, nine of the ten most popular campgrounds in the state are along the coast.

In general, many low to moderately priced hotel and motel accommodations tend to be older structures that are becoming less and less economically viable. As more redevelopment of hotels and motels occurs, the stock of lower cost overnight accommodations tends to be reduced, since it is not generally economically feasible to replace these structures with accommodations that will maintain the same low rates. As a result, the Commission sees far more proposals for moderate and higher cost accommodations than for low cost ones. The loss of affordable overnight accommodations within the coastal zone has become an important issue for the Commission. If this development trend continues, the stock of affordable overnight accommodations will eventually be depleted.

In an effort to stem this tide, and to protect lower cost visitor-serving facilities, the Commission has imposed in-lieu mitigation fees when development proposes higher cost accommodations. By doing so, a method is provided to assure that some degree of lower cost overnight accommodations will be protected. In past actions, because applicants did not include lower cost accommodations on site with new developments, the Commission has imposed an in-lieu mitigation fee to be used to provide new lower cost overnight visitor accommodations off site. Examples include coastal development permit application numbers 6-92-203-A4 (KSL Encinitas Resort Co.), 5-99-169 (Maguire Partners), 5-05-385 (Seal Beach Six), A-3-PSB-06-001 (Beachwalk Hotel), A-6-ENC-07-51 (Surfer's Point), and A-6-PSD-08-04-A1 (LPP, Lane Field. In-lieu fees were also adopted in the City of Huntington Beach's LCP Amendment for the Waterfront Hilton and Hyatt Regency planning sub-area and the protection of lower cost visitor accommodations was also a critical element in the Commission's action on the City of Oceanside's LCPA #2-08 for the "D" Downtown District. It is the goal of the Commission to address the cumulative impacts that new development and redevelopment have on city, county,

and statewide lower cost overnight facilities. By addressing the need for protection of lower cost overnight accommodations at the LCP level, it provides an opportunity for individual cities to be involved in how these fees will be determined, allocated, and managed; and will therefore create a program by which to manage, protect and encourage the development of lower cost overnight accommodations.

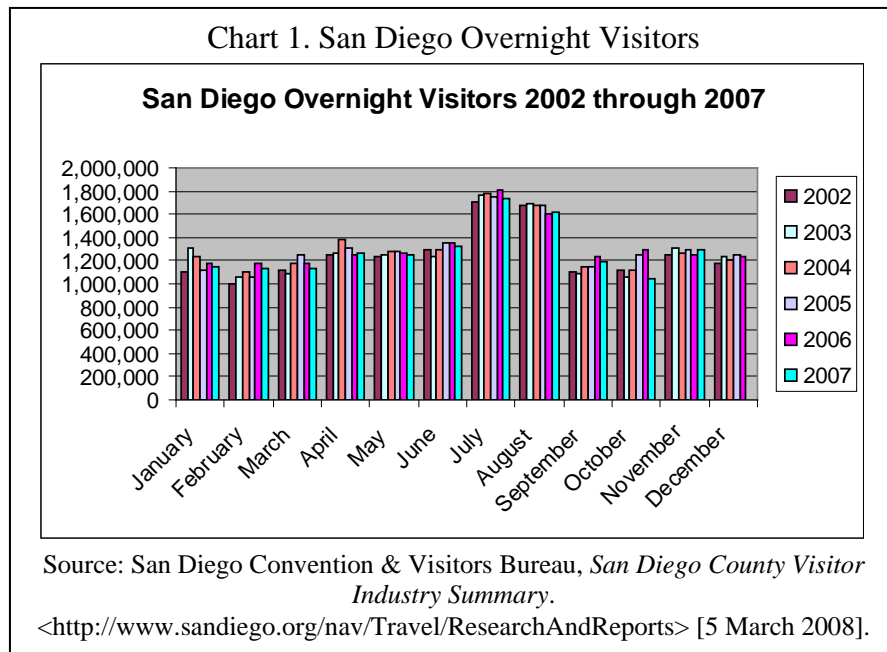
The Commission has historically found that in-lieu fees provide the funds necessary to develop and maintain visitor accommodations that are not exclusive to those who can afford to pay considerable rates to experience California's coast. Hostels, campgrounds, and cabins are just some of the developments that could furnish this goal. Given the current trend of proposed developments including high cost facilities (recreational, overnight, residential, etc.), the Commission reviews individual projects for the cumulative impacts associated with these trends and their conformity with the policies.

Although the proposed project involves the construction of three separate hotels, the applicant contends it is not economically feasible for any of the hotels onsite to be offered as lower-cost. Two of the hotels are projected to be moderately priced and the all-suite hotel located directly adjacent to the public esplanade is projected to be high cost. Additionally, traditional types of lower cost overnight visitor accommodations such as camping facilities may not be appropriate for the subject site due to the above average noise levels associated with the adjacent San Diego International Airport. Therefore, the Commission recommends **Special Condition #13** to protect and provide current and future lower cost overnight accommodations within the City's coastal zone; thereby consistent with the applicable policies of the Coastal Act.

2007 Lower Cost Overnight Accommodations Analysis

To properly determine the in-lieu mitigation fee required under Special Condition #13, the Commission must assess the number of rooms in a proposed hotel project that are deemed high cost, since the in-lieu fee is calculated by multiplying 25% of the total high cost rooms in a proposed hotel development by the cost required to construct one lower cost unit in a facility that provides overnight accommodation, like a hostel. To determine what constitutes a high-cost overnight accommodation, the Commission begins by defining what constitutes a lower cost overnight accommodation which, by extension, would assist in defining the high cost threshold. In the early 2000s, the Commission had not finalized the definition of "lower cost overnight accommodations." In early actions, lower cost was loosely considered to be less than \$100 per night. The Commission gave direction to staff to better define what accommodations can be considered lower cost. In response to this request, staff has been working on not only an appropriate definition of what price can be considered lower cost, but staff has determined a formula by which to identify what can be considered low, moderate, and high cost accommodations within a specific area, that will reflect the market, and any increase to costs, demand, etc.; thereby creating a dynamic tool for accurately determining what a feasible "lower cost overnight accommodation" is defined as.

The Commission notes that the following analysis used to derive the current formula is based upon research of hotel rates conducted in 2007; however, the conclusions are still applicable



since the state's average daily rate (ADR) for hotels has not fluctuated considerably. In fact, the ADR has since decreased from \$132.90 per night in 2007 to \$128.93 today. In order to determine what could be considered lower cost within the entire state, information was taken from the Smith Travel Research website. The research data available from this source is widely used by both public and private organizations. The research data available on this website was used to obtain the average room rate for hotel bookings made statewide. Commission staff isolated the rates of what could be considered "peak time" (July and August) so that an accurate assessment of what a member of the public would actually pay could be determined. Data was collected from 2003 to 2007. Based on these figures, an average rate for 2008 was projected. The projected price paid by visitors to hotels through California in the months of July and August for 2008 is \$132.90. This calculated number is then used as a baseline by which to compare specific coastal regions of the state. Staff researched San Diego region visitor data, and it was determined that July and August were the peak visitor months (ref. Chart #1) and as such, the hotel rates were collected from those timeframes, again to gain a more accurate assessment of what people are actually paying to visit San Diego County's coast.

Staff then used the American Automobile Association (AAA) website to research hotel and motel stock within San Diego County. All hotels surveyed were required to meet a certain level of quality, safety, and cleanliness. This was accomplished by requiring that all hotel/motel developments inventoried meet the criteria of one or two diamonds, as rated by AAA. According to the AAA website, One and Two Diamond rated facilities can be described as follows:

One Diamond – 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.

Two Diamonds – 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.

To develop a sample of lower cost hotels in the coastal zone, the AAA website was again used to obtain a stock of lower cost hotels within five miles of the coast. The sample resulted in identification of 55 One or Two Diamond hotel/motel developments within this research area. Of the 55 hotels originally surveyed, 25 were within the coastal zone and eight of these charged room rates less than the state average. The rates charged for the months of July and August of these eight developments (ref. Table #1) were then determined and averaged. The average charge for a room of One or Two Diamonds that were found within the coastal zone and were charging less than the state average was \$108.35. This number was then used to determine how San Diego County's average room rates compare to the state wide average of \$132.90. By dividing the average for San Diego (\$108.35), by the State average (\$132.90), a percentage is given that can be used in the future. This percentage represents what a reasonable difference ($108.35/132.90=.82$ or 82%) would be between the statewide nightly average rate and San Diego County's average for lower cost accommodations in the coastal zone. This formula represents a comparison between two averages that will both reflect the current market trend, so that the most appropriate definition of lower cost is utilized. Using this definition, lower cost overnight accommodations in the San Diego coastal area would be any establishment that costs less than 82% of the current peak, statewide average.

This percentage can then be taken to find what the appropriate definition of "lower cost overnight accommodation" would be in the future. Any person wanting to determine whether or not the proposed development would meet the criteria of "lower cost" would simply access the Smith Travel website, obtain the current statewide average daily rate, and multiply this number by .82. If the development's proposed daily room rate is less than the computed number (current statewide average x .82), that development can be considered "lower cost". This formula could be used for all coastal areas in the State, after an initial survey similar to the AAA survey discussed above has been completed.

Table 1.

**UNDER STATE
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					\$108.35	

When attempting to define “lower cost,” it becomes apparent that some developments are innately lower cost, and some are higher cost; however, not everything that is not lower cost automatically becomes high cost. The policies of Chapter 3 of the Coastal Act require the Commission to protect a range of affordability and; as such, a definition for what can be considered moderately priced accommodations is also necessary. The above discussed statewide average is \$132.90. Again, this number was taken during the peak season for tourism. As such, this number represents what a general populous can and would be willing to pay. The San Diego County average for lower cost accommodations is 82% of the statewide average. Moderately priced overnight accommodations should reflect the local market, and as such, can be defined by incorporating both of these averages. Because San Diego County rates are approximately 20% below that of the state, moderately priced accommodations would start at above this rate (statewide average x .82). 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 from the 18% baseline percentage to be conservative) higher than the statewide average of \$132.90, or \$159.48. Therefore, rates between \$108.35 and \$159.46 would be considered moderately priced and units in that range would not be included in the in-lieu fee calculation while those above \$159.48 would be considered high cost and be factored into the calculation.

It is important to note that staff utilized the AAA website to obtain site specific information on the hotel/motel inventory for San Diego County. Staff acknowledges that not all hotel/motel stock for the County of San Diego is represented on the AAA website; however, given that the survey included a total of 55 different establishments within the survey boundaries, it can be fairly concluded that the AAA survey is a good representation of the types of and prices for hotel/motels units countywide.

2013 Lower Cost Overnight Accommodations Analysis

For the subject permit, the formula described above was used to determine low, moderate, and high costs from the current statewide ADR of \$128.93. Using the formula, low cost is considered any rate that is below \$105.72 ($.82 \times \$128.93 = \105.72), moderate cost is any rate between \$105.72 and \$154.72, and high cost is any rate above \$154.72 ($\$128.93 + (.2 \times \$128.93) = \154.72). Thus, the proposed Hotel 1 projected to cost \$155-\$190 per night is high cost, Hotel 2 projected to cost \$145-\$160 per night is at the upper end of moderate range, and Hotel 3 projected to cost \$115-\$134 is moderate cost. According to the applicant, it is infeasible for them to offer any of the hotels as lower cost, and thus, **Special Condition #13** is required so that the in-lieu mitigation fee may result in the provision of lower cost overnight visitor

accommodations offsite – with priority given to establishment of a local hostel – potentially for the Port of San Diego’s future hostel project in the nearby vicinity.

The 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 cost of purchase of the land and the other is based on operating a leased facility. Both models include “Hard” and “Soft Costs” and startup 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 for the leased facility to \$44,989 for the facility constructed on purchased land.

In looking at the information provided by 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 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 in this particular case, is \$30,000 per bed. ~~That, multiplied by 25% of the higher cost units results in an in lieu fee total of \$1,890,000 ((.25 x 252) x \$30,000 = \$1,890,000).~~ In the Commission’s past practice, it has typically applied the in-lieu fee to 25% of the total number of rooms in the high-cost hotel to mitigate for no provision of lower cost visitor accommodations in a proposed hotel project. In this particular case, the Commission has acknowledged the increased affordability associated with the proposed all-suite hotel in combination with the applicant’s commitment to design and furnish 35% of the rooms to be able to accommodate up to six persons and has, therefore, reduced the percentage of rooms to which the fee applies from 25% to 12.5% of the total number of rooms provided. Thus, \$30,000 multiplied by 12.5% of the total number of units results in an in lieu fee total of \$960,000 ((.125 x 252) x \$30,000 = \$960,000).³ **Special Condition #1** requires the applicant to submit final project plans demonstrating that 35% of the rooms within the all-suite hotel are able to accommodate six persons and are provided at the same rate as a standard four-person suite with double occupancy. ~~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~~

³ The mitigation fee of \$960,000 is determined by multiplying the total number of units within the higher cost hotel, or 252, by 12.5%, resulting in 31.5 units which is rounded up to 32 units and then multiplied by the cost to build a hostel unit, or \$30,000, such that the mitigation fee is \$960,000.

~~Coastal Zone. These in-lieu fees have ranged from a total of \$87,810 in Seal Beach (ref. CDP #5-05-385) to \$5,000,000 in Newport Beach (ref. CDP #5-07-85).~~

The applicant contends that the proposed hotels should all be considered as moderate priced hotels for two major reasons, including the provision of amenities such as free breakfast and parking, and the “all-suite” design of Hotel 1. However, in staff’s research, many hotels within San Diego County at a variety of difference price points provide amenities such as free parking, breakfast, and wireless internet access as part of the daily rate. Thus, these amenities are often included with the price of the room, especially for hotels that are already low or moderate cost, and should not be considered in the determination of whether a hotel is low, moderate, or high cost.

In addition, the applicant maintains that the all-suite design of Hotel 1 increases affordability such that the hotel should be considered moderate cost rather than high cost, and offered to accept a special condition requiring that ~~25%~~ 35% of the rooms in Hotel 1 (~~6389~~ rooms) include room furnishings of two queen beds, a fold-out couch, and allowance of a rollaway bed so as to accommodate a minimum of 6 to 7 people. In past actions, the Commission has taken into consideration the increase in affordability of suite-style rooms that accommodate large families that would normally need to purchase two standard rooms. In the case of the Legoland Hotel (ref. to City of Carlsbad LCP 1-09B), the in-lieu mitigation fee was not applied because the applicant proposed that all 250 room types within the hotel would accommodate at least 5 people and that the suites would accommodate up to 7 people, and even though the projected rate for a room was \$220 per night, the cost of the room would be reduced to within the moderate cost range when packaged with admission to Legoland. However, research provided by the applicant illustrates the challenges associated with the Commission’s determination of when a fee is appropriate, as current rates at Legoland are very high, at \$329-\$369 for a standard room, \$405.67-\$469 for a premium room, and \$505.67-\$569 for a suite. In addition, only discounted admission tickets are offered with hotel stays. Thus, the Commission cannot rely on the projected hotel rates in the determination of its price range as there is no way to control them. Further, the hotel operators have yet to be determined, so there is some uncertainty as to what the actual rates (versus projected rates) of the hotels may be. For the DKN Hotel in Carlsbad (City of Carlsbad LCPA 1-07A) the Commission did not impose a mitigation fee for suite style hotel; however, the hotel was already within the moderate price range.

In the case of the subject development, the mitigation fee is still required because there is substantial evidence that no component of the project involves lower cost accommodations despite the proposed construction of three separate hotels. ~~and t~~ However, the applicant’s offer to accept a special condition that requires ~~25%-35%~~ of the rooms in ~~one~~ the all-suite hotel to be able to accommodate six people at the same rate as a standard four-person suite with double occupancy within the same hotel will ~~would not~~ increase the affordability of a portion of the ~~entire~~ suites in the hotel. As conditioned, the mitigation fee will provide funds to construct overnight visitor accommodations that will be priced at or below the lower-cost rates discussed previously to mitigate for not providing lower cost overnight visitor accommodations onsite with the subject development. Further, the hotel operators have yet to be determined, so there is some uncertainty as to what the actual rates (versus projected rates) of the hotels may be. Thus, the only way to mitigate for the loss of providing lower cost accommodations is to require

~~an in-lieu fee that provides funds to construct accommodations that will be priced at or below the lower cost rates for overnight accommodations.~~

As conditioned, the in-lieu fee will ensure that lower-cost overnight visitor accommodations will be provided off-site, and the development conforms with the Chapter 3 policies of the Coastal Act.

D. WATER QUALITY

Section 30230 of the Coastal Act states, in part:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters...

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

In addition, the NTC Precise Plan includes the following policies:

Water quality improvement is an important policy issue for NTC. Therefore, storm water quality management techniques must be integrated into the engineering and landscape design. A Storm Water Pollution Prevention Plan must be developed which leads to an NPDES permit. This will be among the conditions of approval on a Vesting Tentative Map. Proposals to control runoff shall be required of NTC development and include Best Management Practices for dealing with sediment, petrochemicals, and trash. The policy of the City is to ensure the future health, safety and general welfare of the citizens of the City and to improve and protect the water quality and beneficial uses of receiving waters by controlling stormwater runoff and pollution that may cause or contribute to adverse impacts on recreational access to beaches, or other coastal resources, such as sensitive habitat areas in, or associated with, coastal waters. All development, public and private, shall meet or exceed the stormwater standards of the State of California, and the most recent standards of the Regional Water Quality Control Board with regard to stormwater runoff.

All development shall be designed to minimize the creation of impervious surfaces, reduce the extent of existing unused impervious surfaces, and to reduce directly connected impervious area, to the maximum extent possible on the site.

WATER QUALITY STANDARDS: Proposals to control runoff shall be required of NTC development and include methods for dealing with sediment, petrochemicals, and trash. The policy of the City is to ensure the future health, safety and general welfare of the citizens of the City and to improve and protect the water quality and beneficial uses of receiving waters by controlling stormwater runoff and pollution that may cause or contribute to adverse impacts on recreational access to beaches, or other coastal resources, such as sensitive habitat areas in, or associated with, coastal waters. All development, public and private, shall meet or exceed the stormwater standards of the State of California, and the most recent standards of the Regional Water Quality Control Board with regard to stormwater runoff. Pursuant to this:

- 1. All development on the first row of lots adjacent to the boat channel and boat channel park shall comply with the provisions of applicable state and federal water quality standards for discharges into sensitive habitat areas.*
- 2. All development shall be designed to minimize the creation of impervious surfaces, reduce the extent of existing unused impervious surfaces, and to reduce directly connected impervious area, to the maximum extent possible on this site.*
- 3. Plans for new development and redevelopment projects, shall incorporate Best Management Practices (BMPs) and other applicable Management Measures contained in the California Nonpoint Source Pollution Control Plan, that will reduce to the maximum extent practicable the amount of pollutants that are generated and/or discharged into the City's storm drain system and surrounding coastal waters. BMPs should be selected based on efficacy at mitigating pollutants of concern associated with respective development types or uses. For design purposes, post-construction structural BMPs (or suites of BMPs) should be designed to treat, infiltrate or filter stormwater runoff from each storm, up to and including the 85th percentile, 1-hour storm event, with an appropriate safety factor, for flow-based BMPs.*
- 4. A public participation component that identifies methods to encourage public participation in managing development and minimizing urban runoff impacts to the coast shall be developed. This component should outline a public education and involvement program designed to: raise public awareness about stormwater issues and the potential impacts of water pollution; and, involve the public in the development and implementation of the City's pollution control goals.*
- 5. The City shall pursue opportunities to actively participate in watershed level planning and management efforts directed towards reducing stormwater and urban runoff impacts to water quality and related resources, including restoration efforts and regional mitigation, monitoring, and public education programs. Such efforts*

will involve coordination with other local governments, applicable resource agencies and stakeholders in the surrounding areas.

6. If a new development, substantial rehabilitation, redevelopment or related activity poses a threat to the biological productivity and the quality of coastal waters or wetlands and if compliance with all other applicable legal requirements does not alleviate that threat, the City shall require the applicant to take additional feasible actions and provide necessary mitigation to minimize the threat.

The Navy Channel bordering the project site connects directly to San Diego Bay and receives direct stormwater discharge from various facilities. The channel supports adjacent ruderal, freshwater marsh, disturbed ephemeral wetland, subtidal estuarine open water, eelgrass and rocky shoreline habitats. The Navy Channel supports foraging and roosting of the California brown pelican (federal and state endangered), and nesting and foraging of the California least tern (federal and state endangered). Sensitive bird species protected under the Migratory Bird Treaty Act may also breed, roost and forage within and adjacent to the boat channel.

The proposed project has several challenges to protect coastal water quality. The project area currently drains stormwater directly to the Navy Channel and from there to San Diego Bay through two 30 inch diameter storm drain outfalls. Due to the new construction on site, the northern 30 inch outfall will see an increase in the expected one-hundred year storm peak flow rate (Q_{100}) from 28.1 cubic feet per second (cfs) to 31.1 cfs. At the same time, the flow to the southern 30 inch outfall will decrease from 24.0 cfs to 20.8 cfs resulting in an overall decrease in runoff to the Navy Channel. This decrease in peak runoff is due to the installation of bioretention basins that compensate for the additional impervious surface area created by the project. The major pollutant classes of concern are heavy metals; oils, grease and hydrocarbons; trash; suspended sediment; and pesticides. The development proposes to decrease the impervious surfaces at the site by 0.15 acres or 1%.

According to the Preliminary Water Quality Technical Report for Liberty Station East Hotel Site dated December 12, 2012, the Source Control BMPs that will be used by the applicant include Efficient Irrigations systems to avoid overwatering and reduce dry weather runoff from irrigation. Automatic shut off valves will be used to control water loss in the event of broken sprinkler heads or lines. Impervious areas will be disconnected from storm drains by draining to landscaped areas. Pests will be controlled using integrated pest management practices including biological control, using pest-resistant plants in landscaping, using site and landscaping design to discourage pests, and only using pesticides in a manner that minimizes risks to human health and the environment if non-pesticide methods have been shown to be ineffective using on-site monitoring. Discharges from fire sprinkler systems and from air conditioning condensate will be discharged into the sanitary sewer system. The development will only use non-toxic roofing materials and will avoid use of galvanized steel or copper for roofs, gutters or downspouts.

Low Impact Development (LID) management practices to be included in the project include optimizing the site layout to minimize storm water impacts by minimizing grading, preserving significant vegetation and protecting areas where stormwater can infiltrate. In addition, the WQTR indicates that the project has increased the building densities to reduce impervious

surfaces, minimized street sidewalks and parking lot aisles, constructed walkways of pervious materials and minimized parking lot stall sizes in order to reduce runoff from the site. The project will drain rooftops and other impervious areas to adjacent landscaping areas and use depressed landscaping areas to slow runoff from the site.

Since this project is considered a Priority Project under the applicable municipal storm water permit due to its size and proposed land use, it must incorporate treatment control BMPs. In addition, the treatment control BMPs selected must have a medium to high efficiency at removing pollutants that are anticipated to be generated by the completed project. Pollutants that may be generated by the hotel, landscaping, and parking lots include sediment, nutrients, trash, metals, bacteria, oil and grease and organic chemicals, although source control BMPs should minimize the release of these pollutants. The WQTR indicates that the applicant has selected bioretention basins to capture and treat storm water runoff from the site since they have a high effectiveness for the pollutants that are anticipated. Bioretention basins treat runoff by detaining and filtering it through vegetation and soil prior to discharge to the bay.

Special Condition #4 is included to specify the minimal design criteria for the water quality treatment system that is needed to protect coastal water quality. This condition requires that the water quality treatment system needs to address the major pollutant classes of concern expected to result from the project (heavy metals; oils, grease and hydrocarbons; trash; sediment; and pesticides); that the suite of treatment control BMPs need to treat the amount of runoff from the 85th percentile storm event (0.6 in./24 hours for volume based BMPs and 0.2 in./hour for flow based BMPs); the stormwater system needs to eliminate dry weather flow to the Navy Channel and that the design criteria for the BMPs need to be based on the latest edition of the California Association of Stormwater Quality Agencies (CASQA) BMP Handbook. Implementation of the above-described condition will protect coastal water quality from increased impacts due to the proposed development. Therefore, as conditioned, the development will be consistent with the water quality policies of the Coastal Act, as well as the NTC Precise Plan.

E. SENSITIVE SPECIES PROTECTION

Section 30240 of the Coastal Act states:

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

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

The site has been previously graded and developed with a parking lot; however, the boat channel traversing the west side of the project site supports adjacent ruderal, freshwater marsh, disturbed ephemeral wetland, sub-tidal estuarine open water, and rocky shoreline habitats. In addition, eelgrass beds exist within the boat channel. The boat channel also supports foraging and

roosting of the California brown pelican (federal and state endangered), and nesting and foraging of the California least tern (federal and state endangered). Other sensitive bird species protected under the Migratory Bird Treaty Act may also breed, roost, and forage within and adjacent to the boat channel. Therefore, in order to protect sensitive bird species from development encroachment, human activity, and increased raptor predation, **Special Condition #2** requires that new tree plantings be located at least 30 feet from the boat channel (to decrease raptor perching opportunities). Only drought-tolerant and non-invasive plant species may be used within the landscaped areas.

Construction lighting and post-construction lighting fixtures must be oriented away from the boat channel, and fertilizer and pesticide use must be minimized to prevent direct avian impacts and protect water quality, as well as offshore eelgrass habitat. No invasive species are permitted in any part of the site. **Special Condition #5** requires that construction equipment be placed such that it does not impact sensitive habitat or water quality. These conditions are consistent with the requirements imposed on development of the adjacent esplanade.

While the project site is not considered an environmentally sensitive habitat area (ESHA), the site is located in close proximity to the San Diego Bay and boat channel. The proposed development (up to 80 feet in height) would be located directly adjacent to the San Diego Bay and boat channel, an area used by a variety of coastal birds (Exhibit 2). Development adjacent to coastal waters must be designed to prevent impacts which would significantly degrade the area, so it is compatible with the continuance of the habitat, as required by Section 30240 of the Coastal Act. Section 30240 of the Coastal Act applies to the proposed project because of the threat of day and night collisions with the proposed hotel complex for both migrating and non-migrating birds.

Urban sprawl and intensified urbanization have eliminated and/or degraded bird habitat around the globe; most development is concentrated along rivers, woodlands, coasts, and wetlands that birds depend on for food and shelter. Loss of habitat squeezes birds into urbanized areas where they encounter novel man-made structures. Modern urban buildings that have clear glass or reflect light during the day and are lit up at night, as well as suburban and rural buildings with windows and reflective surfaces, can present serious hazards for birds. Bird populations, which have declined from loss of habitat, are seriously threatened by the growing presence of man-made structures within their transit and migratory flight space.

Over three decades of research has documented that buildings and windows are the top killer of birds in North America^{4,5,6,7}. In the United States, an estimated 100 million to one billion birds perish each year from encounters with buildings^{8,9}. This level of bird mortality is believed to be

⁴ Banks, R. 1979. Human Related Mortality of Birds in the United States. USFWS. Special Scientific Report-Wildlife No. 215.

⁵ Ogden, L. September, 1996. Collision Course: The Hazards of Lighted Structures and Windows to Migrating Birds. A Special Report for the World Wildlife Fund, Canada and the Fatal Light Awareness Program.

⁶ Hager, S.B., H. Trudell, K.J. McKay, S.M. Crandall & L. Mayer. 2008. Bird Density and Mortality at Windows. *The Wilson Journal of Ornithology*. Vol. 120 (3): 550-564.

⁷ Gelb, Y. & N. Delacretaz. 2009. Windows and Vegetation: Primary Factors in Manhattan Bird Collisions. *Northeastern Naturalist*, Vol. 16(3): 455-470.

⁸USFWS. January 2002. Migratory Bird Mortality: Many Human-Caused Threats Afflict Our Bird Populations.

significant enough to impact the viability of bird populations, leading to local, regional, and national declines. Bird injury or death is primarily due to two factors: 1) the apparent inability of birds to detect and avoid glass and reflective surfaces, during the day or night, and 2) the potential for artificial night lighting to attract and/or entrap foraging or migrating bird species.

Collisions resulting in injury or death occur anywhere that birds and windows and reflective surfaces coexist because birds do not perceive glass as an obstacle during flight or are attracted to reflections they perceive as sky or natural habitat. Daytime building collisions occur on windows and reflective surfaces of all sizes on all building types, from single-story buildings to sky scrapers; during all seasons and weather conditions; and in every type of environment, from rural and suburban settings to dense city centers. A building's threat to birds increases substantially when its windows or glass reflects nearby trees, bushes, or other potential bird habitat. Window and reflective surfaces in buildings are indiscriminate killers of birds regardless of species, size, age, sex, or migration characteristics and patterns. The amount of windows and reflective surfaces in a building is the strongest predictor of how dangerous it is to birds and most collisions end in the death of the bird, either immediately or soon after from brain injuries or predation.

Two characteristics of reflective or glazed surfaces and glass contribute to birds' inability to see them: reflection and transparency. Reflections of the sky and vegetation look no different to a bird than the real thing and lure in birds resulting in collisions. The reflective property of a surface material is referred to as reflectivity. Reflectivity is a measurement of how reflective a material is; it is a measure of the intrinsic reflectance of the surface of a material. A material's reflectivity can be reduced several ways including application of anti-reflective (AR) coatings or permanent stencils and fritting or frosting. Transparent glass is invisible to birds which collide with the glass as they attempt to fly through it toward potential perches, prey items, and other attractions inside and beyond the glass. Transparency is exacerbated in buildings with significant amounts of clear glass that have plant decorated lobbies, interior atriums, windows installed opposite each other, glass balconies, and glass corners because birds perceive such conditions as unobstructed flyways.

A number of factors contribute to a building being a hazard for birds. The factors that should be considered when determining whether to require bird safe building practices include: 1) location of the building in relation to recognized migration corridors or flyways; 2) proximity of the building to open terrestrial and aquatic foraging areas – parks, forests, rivers, streams, wetlands and ocean; 3) proximity of the building to documented stopover or roosting locations; and 4) regions prone to haze, fog, mist, or low-lying clouds. Researchers have found that combination of building characteristics, coined, “bird-hazards,” present the greatest threat to birds. These characteristics include buildings located within or immediately adjacent to open spaces with lush landscaping and with a façade of more than thirty-five percent (35%) glazing; buildings located adjacent to or near wetlands or open water and with a façade of more than thirty-five percent (35%) glazing; and buildings with ‘bird traps’ such as glass courtyards, transparent building corners, and glass balconies.

⁹ Klem, D. February 2009. Avian Mortality at Windows: The Second Largest Human Source of Bird Mortality on Earth. Proceedings of the Fourth International Partners in Flight Conference: Tundra to Tropics. 244-251.

It is possible to design buildings so they are less hazardous to birds by implemented bird safe building practices. Several major cities including Toronto¹⁰, San Francisco¹¹, Chicago¹², and New York¹³, have developed bird safe building guidelines, and a number of buildings in these cities have employed bird safe building practices. Bird safe building practices include specific treatments and design considerations for windows and glazed surfaces, lighting, and landscaping. Employment of these practices is proving effective; for instance, Swarthmore College renovated its Unified Science Center building using glass with a ceramic frit matrix and has measured a significant reduction in bird strikes¹⁴.

The proposed project is characterized by several of the factors that contribute to buildings being collision hazards for birds. The site's proximity to the San Diego Bay and open coastal waters within the boat channel, both areas that support numerous coastal bird species, is the main factor. In addition, the area is prone to fog and mist during summers and is also located within the Pacific Flyway, a primary migratory route for birds along the western coast of the United States. In order to reduce potential for bird strikes, all new buildings, including windows and outdoor fencing, shall be required to provide bird-safe building treatments, incorporated as **Special Condition #15**. Windows shall be comprised of non-glare glass and glazing treatments shall be consistent with the standards provided for within the condition.

Implementation of the above-described conditions will protect sensitive bird species and their habitat from increased impacts due to the proposed development. Therefore, as conditioned, the development will be consistent with the sensitive species and habitat protection policies of Section 30240 of the Coastal Act.

F. VISUAL RESOURCES

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

¹⁰ City of Toronto. March 2007. Bird Friendly Development Guidelines. City of Toronto Green Development Standard (www.toronto.ca/lightsout/)

¹¹ Ibid. October 2010. City of San Francisco

¹² City of Chicago. Design Guide for Bird-Safe Buildings: New Construction and Renovation.

¹³ Brown, H., S. Caputo, E.J. McAdams, M. Fowle, G. Phillips, C. Dewitt, & Y. Gelb. May 2007. Bird Safe Building Guidelines. New York Audubon (www.nycaudubon.org).

¹⁴ Grasso-Knight. G. & M. Waddington. Spring 2000 Report on Bird Collisions with Windows at Swarthmore College.

In addition, the NTC Precise Plan includes the following requirements:

Preservation of existing views and the creation of new public view corridors is a priority.

Building heights at NTC will be regulated by zoning, although proposed building heights at NTC are expected to have limited or no effect on downtown views. (See viewshed analysis conducted from 10 key public observation points in the Point Loma area, as described within the environmental initial study prepared for this Precise Plan.) The NTC site is a transitional area between the high-rise downtown core of Centre City and the Port of San Diego lands, and the traditional business/residential neighborhood of Point Loma and the Peninsula community. Thus, building heights shall be designed to be visually compatible with the character of surrounding areas.

Views of the waterfront and skyline shall be protected by establishing public view corridors which accentuate key public rights-of-way (streets and sidewalks, both existing and proposed) with appropriate zoning, setbacks and design standards, including clustering of tall buildings, slender buildings, proper building orientation and floor area restrictions and height limits where necessary.

There are also three panoramic viewsheds over NTC, observable from publicly accessible areas west of the base as shown on Figure 4.2, View Preservation. These panoramic views are possible because the topography rises steeply west of Rosecrans. To avoid negatively affecting these panoramic views, no new on-site development at NTC shall exceed 45 feet in height within 600 feet of Rosecrans Street.

A distinctly open space and landscape orientation must be a guiding principle of NTC's design.

Enhanced orientation to the Bay.

As mentioned previously, the 15.85-acre project site is located within the NTC Precise Plan area within the Peninsula Community Plan area and is situated at the intersection of North Harbor Drive and Lee Court, with the boat channel forming the site's western boundary, Kincaid road forming its eastern boundary, and the Metropolitan Wastewater District (MWW) building to the north. The San Diego Fire-Rescue Department Training Facility is located east of the project site. Spanish Landing Park and San Diego Bay are located south of the project site. Currently, the site is developed as a temporary surface parking lot for San Diego International Airport which is operated by WallyPark. While the majority of the site is flat, the site slopes down as it approaches the boat channel on the westernmost portion and informal dirt trails are located alongside the water's edge. An existing pump station proposed to be retained and steam lines that will be undergrounded or removed are also located on the site.

The subject site is highly visible from North Harbor Drive, the first coastal roadway in the area and a major coastal access route. The LCP permits a maximum height of 80 feet on the business hotel site. Consistent with this designation, the proposed project includes construction of a six-story hotel with maximum height of 80 feet, another six-story hotel with maximum height of 67

feet, a four-story hotel with maximum height of 65 feet, and a single story restaurant. Historically, the site has not had buildings greater than 30 feet in height located on it; however, the height and type of development were anticipated and evaluated in the certified LCP as appropriate for the subject site. A visual analysis performed by KLR Planning for the project demonstrates that the proposed project will not obstruct or block public views.

The Peninsula Community Plan identifies five coastal vistas within the project area; however, four of these vistas (along Farragut Road, Womble Road, Roosevelt Road, and Dewey Road) provide east-facing views of the boat channel from Liberty Station. The project site is visible in the background of the Farragut Rd view shed; however, because the project is situated east of the boat channel, views of the water within the boat channel would not be hindered and there are no views of the San Diego Bay or the downtown skyline across the site at this elevation. In addition, the project would not be visible from Womble Road, Roosevelt Road, or Dewey Road. The fifth vista from North Harbor Drive bridge looking south into the San Diego Bay does not provide views across the site and would therefore not affect this vista.

Additionally, the NTC Precise Plan designates through view corridors (along Farragut Road, Womble Road, Roosevelt Road, and Dewey Road) and panoramic view sheds for view preservation. As with the corresponding coastal vistas of the Peninsula Community Plan, the view corridors designated in the NTC Precise Plan provide views of the boat channel that would not be obstructed by the proposed project, as it is located on the east side of the boat channel. Panoramic view sheds originating at hillside elevations higher than the project site (Evergreen Street at Whittier Street, Evergreen Street at Browning Street, and Russell Road at Locust Street) are also discussed in the NTC Precise Plan. According to the visual analysis prepared for the applicant, the proposed project would be visible from Evergreen Street at Whittier Street and Evergreen Street and Browning Street; however, due to the topographical difference between the site and these view sheds, the proposed project would add new buildings to the panoramic viewshed but would not block or hinder views of the view shed area. From Russell Road at Locust Street, the proposed project would be almost entirely masked by existing development. Thus, the panoramic view sheds would not be impacted.

While the proposed project will result in buildings that are much taller than those that previously existed on the site, the design of the project is such that the heights of the hotels step down as they approach the boat channel and North Harbor Drive. The proposed heights of the buildings also result in more space available for the provision of public access and amenities. As discussed in detail above, the project includes numerous pedestrian scale features alongside the public esplanade that will add to the visual appeal of the project. In addition, landscaping is proposed to maintain the aesthetic appeal of the hotel development. **Special Condition #2** requires that the final landscaping plans be implemented within 60 days of completion of construction, and maintained in good growing condition for the life of the project.

As conditioned, the proposed project protects the scenic quality of the area and is consistent with the policies of the certified LCP regarding the protection of views and orientation towards the boat channel and the San Diego Bay. Therefore, the Commission finds the proposed project consistent with the visual protection policies of the Coastal Act.

G. HAZARDS & GEOLOGIC STABILITY

Section 30253 of the Coastal Act states, in part:

New development shall do all of the following:

(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs...

The proposed development is located on the San Diego Bay and Navy boat channel at an elevation of about 8-10 feet above mean sea level and within geologic hazards zone 31 (as shown on the City's Seismic Safety Study Geologic Hazards Maps). Zone 31 is characterized by high potential for liquefaction, shallow groundwater, major drainages, and hydraulic fills; however, the closest active fault (defined by the State of California as showing evidence of movement in the past 11,700 years) is the Spanish Bight Fault approximately 1¼ miles to the east. The geological history of the site was examined as part of the submitted preliminary geotechnical report. According to the report, a navigational map from 1859 indicates that the San Diego River formerly drained into San Diego Bay, and the subject site appears to have been within the western edge of the river delta as the river flowed into the bay. A topographic map from 1953 depicts the mean high tide line in 1918 showing that the entire project area was inundated at high tide. An aerial photo from 1929 shows the area inundated by the San Diego Bay. The 1953 aerial photo shows the site had been reclaimed by filling and was in use by the Navy.

The geotechnical study evaluated the liquefaction risk for the project site, which was determined to be high. Liquefaction during a seismic event would produce from 2 to 4 inches of ground settlement. The preliminary study concludes that the project site is suitable for the proposed project based on the evaluation of the site's geology in relation to the proposed development, provided that mitigation for the predicted amount of liquefaction-induced settlement is provided. The Commission's staff geologist has reviewed the preliminary technical report prepared for the development and generally agrees with their analysis and conclusions. However, to ensure stability and structural integrity, he suggests that the Commission require the preparation, submission, and approval of a final geotechnical report prepared in accordance with the Guidelines for Engineering Geologic Reports. Due to the potential for liquefaction, **Special Condition #4** requires a detailed subsurface investigation of the subject site.

In addition, RBF Engineering used data from the Sea Level Rise Adaptation Strategy for San Diego Bay, dated January 2012, to consider the potential impacts of sea-level rise on the proposed development. The aforementioned document addresses sea level rise within the San Diego Bay which would affect the subject project. The project is located 150 feet from the San Diego Bay at an average elevation of 10 feet above mean sea level (MSL). According to the submitted evaluation, the project's distance from the bay and its elevation minimize the potential for impacts associated with sea-level rise. The U.S. Army Corps of Engineers 2006 Coastal

Engineering Manual (CEM) documented the highest recorded sea levels to date within the bay of approximately 5.8 feet National Geodetic Vertical Datum (NGVD). Sea level rise predictions for San Diego Bay are approximately 12 inches by 2050 and 55 inches by 2100.

The boat basin shoreline has existing elevations along the top of the boat channel at approximately 10 NGVD. Grades across the project site generally range from 8-10.5 feet NGVD. The project is not expected to experience adverse flooding in 2050; however, in 2100, there could be localized flooding associated with sea-level rise. The localized flooding would not affect any structures, as they would be above the projected flooding elevation. The hotel structures have a proposed finish floor elevation of 11.25 and 11.75 feet NGVD and restaurant has a finish floor elevation of 10.75 feet NGVD, and would not experience any flooding as a result of sea-level rise. As such, to ensure maintenance of the public esplanade in perpetuity, **Special Condition #8** requires the applicant to agree to relocate the esplanade further upland, closer to the hotel and restaurant, if it is threatened by sea-level rise and/or flooding in the future.

As mentioned above, the site is located on San Diego Bay at elevation of about 8-10 feet above mean sea level and is protected from ocean waves by Point Loma. Although it is possible that the site could be affected by waves caused by tsunamis or seiches, the height and runout length of those waves would have to be very large. Therefore, the potential of tsunamis or seiches affecting the site is considered low to insignificant. The site is above the tsunami runup zone mapped by the California Geological Survey.

Although the conditions described above render the project sufficiently stable to satisfy the requirements of Section 30253, no project is wholly without risks. Due to the fact that the proposed project is located in an area subject to a potential for damage or destruction from natural hazards, including liquefaction and flooding, those risks remain substantial here. If the applicant nevertheless chooses to proceed with the project, the Commission requires the applicant to assume the liability from these associated risks. Through the assumption of risk, **Special Condition #14**, the applicant acknowledges the nature of the hazard that exists on the site and that may affect the safety of the proposed development.

For the reasons set forth above, the Commission finds that, as conditioned, the proposed project is consistent with Section 30253 of the Coastal Act.

H. LOCAL COASTAL PLANNING

The proposed project is located on a site that was previously a U.S. Naval Training Center under the jurisdiction of the federal government. The site has been transferred to the City of San Diego; however, it remains within the Commission's original coastal permit jurisdiction as public trust lands.

Based on the above discussion, the proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. As proposed and conditioned, the development will provide adequate public access to the shoreline and sufficient public recreational amenities, as well as protecting water quality, visual quality, and habitat protection. The Commission finds that approval of the proposed project, as conditioned, will not prejudice the ability of the City of

San Diego to continue implementing its Local Coastal Program (LCP) that is in conformity with the provisions of Chapter 3 of the Coastal Act.

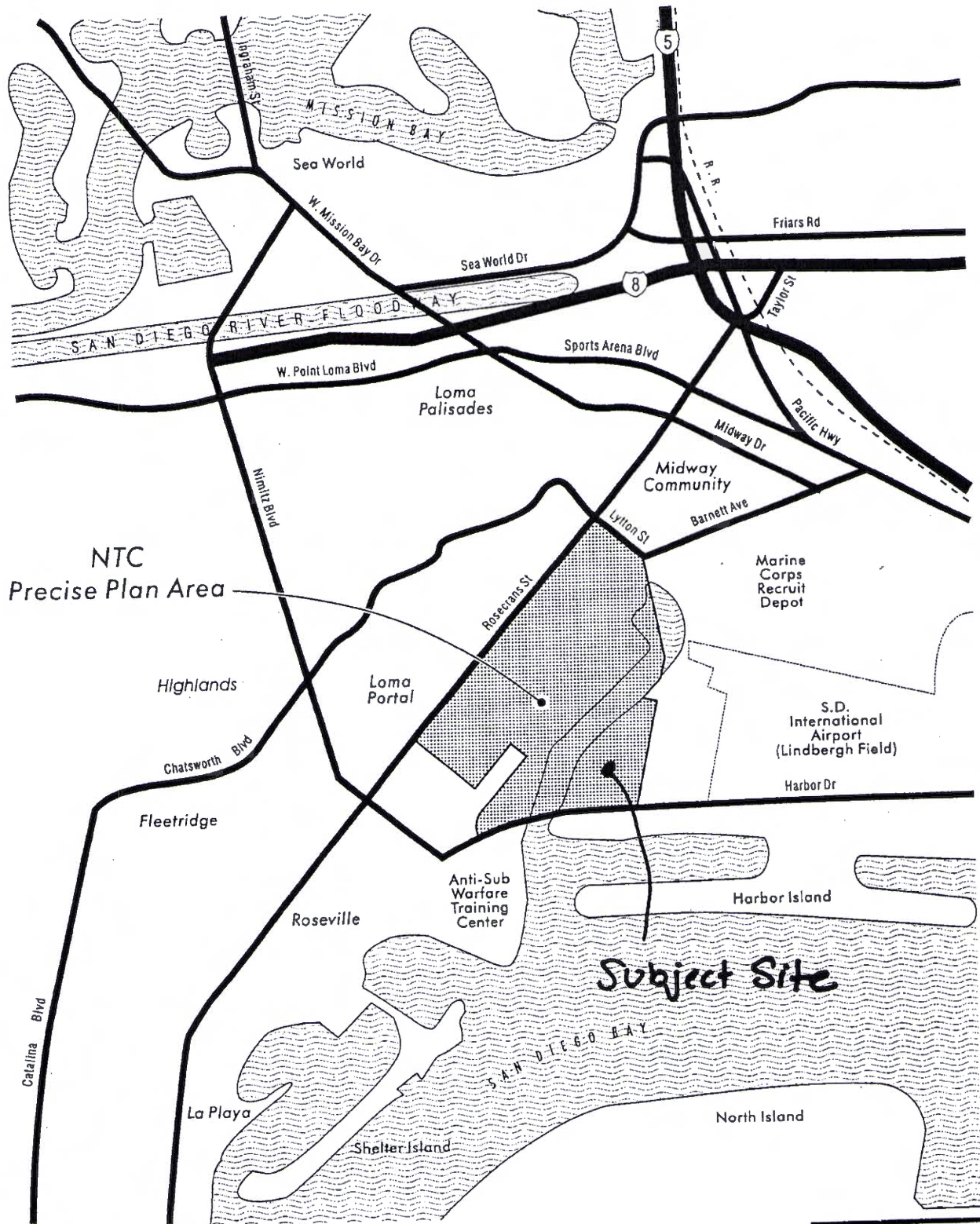
I. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, 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 in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing protection of low cost overnight visitor accommodations, water quality, sensitive habitat, and public access to and along the site, 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.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

Visual Quality and Neighborhood Character Analysis, dated November 2012, prepared by KLR Planning for Atlantis Group; NTC Precise Plan and Local Coastal Program dated September 2001; Addendum to an Environmental Impact Report and Mitigated Negative Declaration to the NTC Redevelopment EIR for the NTC Unit 8 Hotel (Project Number 285352); Coastal Development Permit #6-05-041; Preliminary Geotechnical Investigation prepared by GeoCon International, dated October 19, 2012



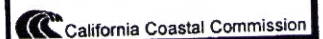
NTC
Precise Plan Area



Approximate Scale: 1"=2500'
Rick Planning Group 7-19-00

NTC

EXHIBIT NO. 1
APPLICATION NO.
6-13-0407
Location Map



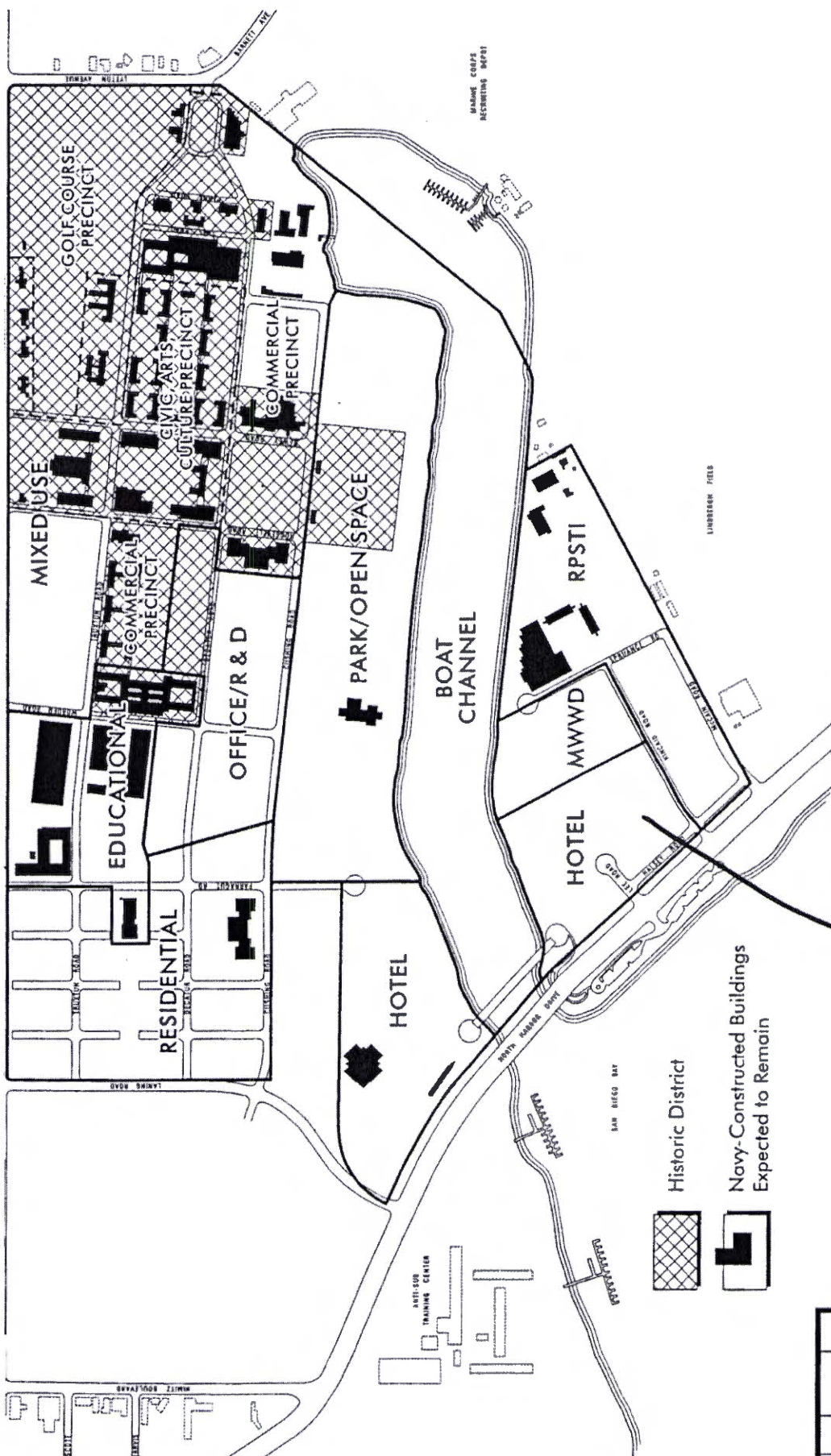


figure 2.1
Land Use Plan
NTC Precise Plan



EXHIBIT NO. 2
APPLICATION NO.
6-13-0407
NTC Land Use Plan



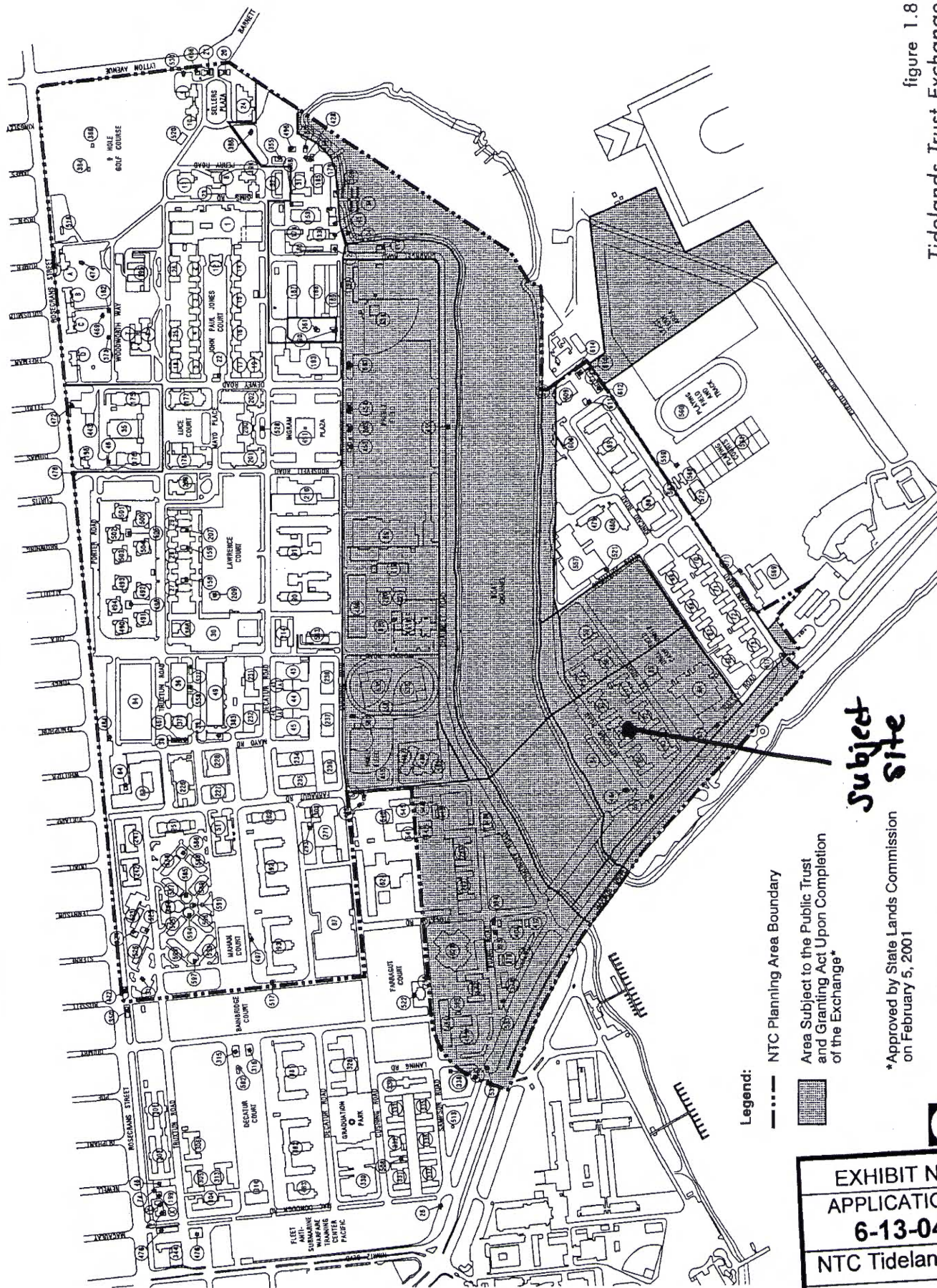
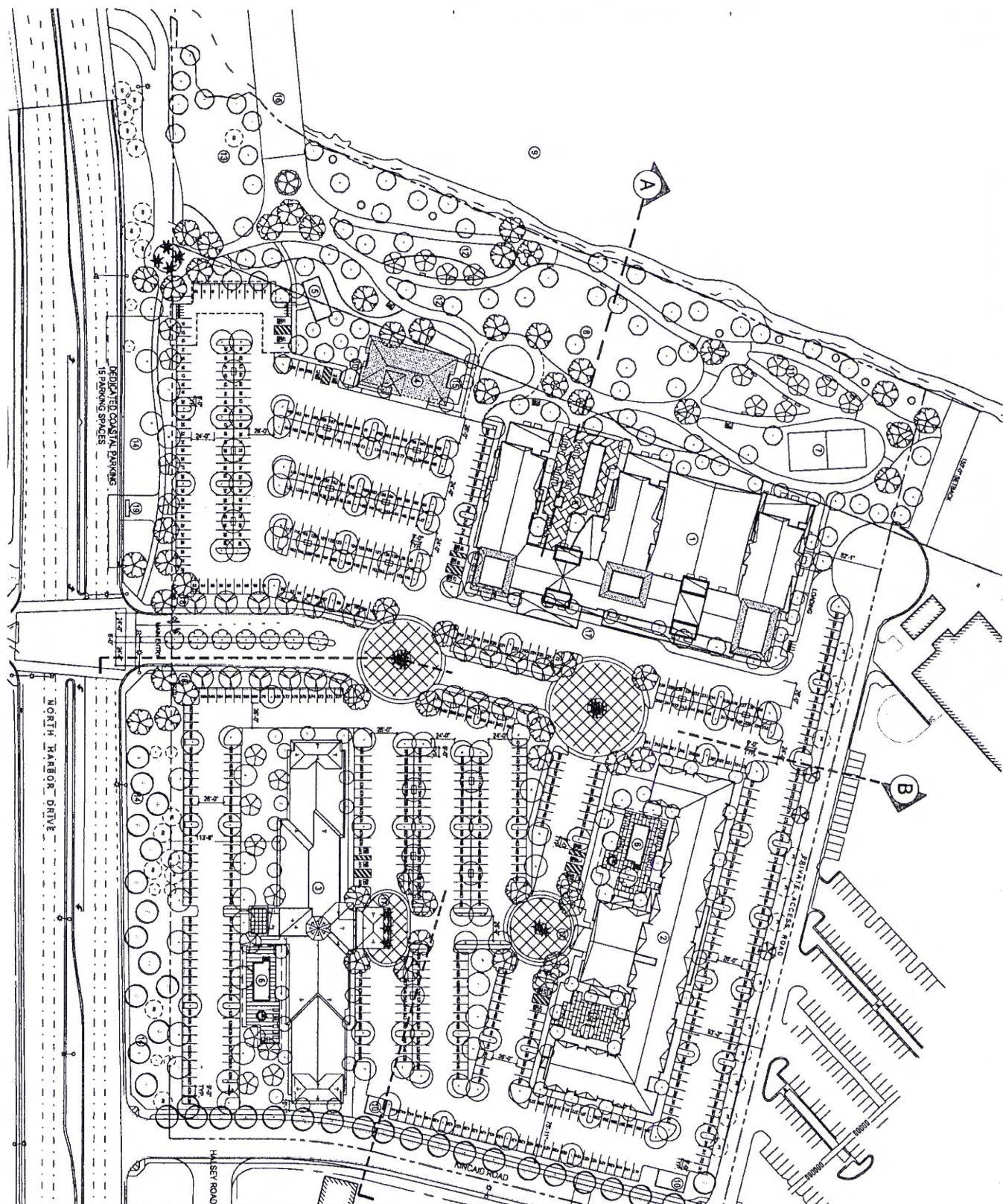


figure 1.8
Tideland Trust Exchange
NTC Precise Plan

*Approved by State Lands Commission on February 5, 2001

EXHIBIT NO. 3
APPLICATION NO.
6-13-0407
NTC Tideland Trust
California Coastal Commission



LEGEND

- 1 BUILDING 1 (HOTEL - 4 STORIES)
- 2 BUILDING 2 (HOTEL - 4 STORIES)
- 3 BUILDING 3 (HOTEL - 4 STORIES)
- 4 BUILDING 4 (RESTAURANT - 1 STORY)
- 5 EXISTING POOL HOUSE
- 6 POOL / SPA AREA
- 7 MULTIPURPOSE SAND COURT AREA
- 8 OPEN PLAZA AREA
- 9 BOLL CHAIRS
- 10 TRASH ENCLOSURE
- 11 ACTIVE ACTIVITY AREA
- 12 PASSIVE ACTIVITY AREA
- 13 PLANTING PLANT AREA
- 14 LAWN
- 15 OUTDOOR PATIO AREA
- 16 ROBERTSON BRIDGE
- 17 DRIVE-UP AREA

EXHIBIT NO. 4
APPLICATION NO.
6-13-0407
Site Plan

California Coastal Commission