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Th24b

Addendum

August 11, 2015

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item Th24b**, Coastal Commission Permit Application No. **6-15-0003 (Integral Communities)**, for the Commission Meeting of Thursday, August 13, 2015.

Staff recommends the following changes be made to the above-referenced staff report. Deletions shall be marked by a ~~strikethrough~~ and additions shall be underlined.

1. On Page 1 of the staff report, the "Applicant" listing shall be corrected as follow:

   Applicant: ~~**Integral Communities**~~ **Bernardo Shores Project Owner, LLC**

2. On page 2 of the staff report, the following paragraph shall be added after the first paragraph of the "Summary of Staff Recommendation" section:

   Since early 2012, Commission staff has been working with the City of Imperial Beach and the project applicant in order to address the relevant Coastal Act policies governing residential development on the project site. Staff reviewed several different conceptual plans and provided direction at both in-person meetings and through formal comment letters in July 2013 and August 2014. After the application was formally submitted, staff requested that the applicant develop a variety of possible alternatives to the proposed project to address issues relating to sensitive habitat impacts, public access, view blockages, and water quality, among others. The applicant has been consistently cooperative and furnished multiple documents and exhibits aiding Commission staff in its analysis of the proposed project; however, no modifications to the originally proposed plan were acceptable to the applicant.

3. On page 3 of the staff report, add a new paragraph prior to the final paragraph, and modify the final paragraph follows:

   After the staff report was written, the applicant's representative indicated that the applicant is willing to modify the proposed project to remove the western entrance

gates on Highway 75, delete a 6-unit structure at the northwest corner of the project site to provide at least 10 on-site public parking spaces and lessen view blockage, relocate the proposed BMPs outside of the 100-foot wetland buffer, treat runoff entering the site from Highway 75, and set residences 25 feet back from the public pedestrian/bike path except for the two northeastern-most residences. However, the majority of the project would remain as originally proposed, meaning fill and new structures would be located in an area subject to risk from sea level rise, the vast majority of the existing public view from Highway 75 over the project site would be blocked, no public parking or bike traffic would be accommodated in or through the internal streets of the new development adjacent to the bayshore, and wetlands would still be lost to accommodate a public pedestrian/bike path. Thus, the issues regarding public access, sensitive habitat, sea level rise, and visual resources remain unresolved. Because the project modifications were made just prior to the Commission hearing, the majority of the discussion in the staff report refers to the project as originally proposed. As noted, the coastal resource impacts from the revised project remain essentially unchanged.

Therefore, staff is recommending special conditions that identify a development envelope within the project site that removes development out the existing view corridor and the area at risk for sea level rise, and provides a twenty-five foot setback from the proposed public pedestrian/bike path for all residential development to ensure the path is clearly accessible to the public. **Special Condition No. 1** would require revised final project plans that modify the development to incorporate a 100-foot setback from the year 2100 mid-level ~~highest~~ projected sea level rise, relocate all BMPs out of the wetland buffer, set residential structures back 25 feet from the public pedestrian/ bike path, prevent development taller than 10 feet within the public view corridor, widen the main internal road to provide public parking and a demarcated bike path, provide a 10-space public parking lot, not construct any development in the panhandle east of Pond 10A, direct all lighting away from sensitive habitat, and install anti-reflective measures on all windows. **Special Condition No. 2** establishes a Long-Term Sea Level Rise Risk Zone. The Long-Term Sea Level Rise Risk Zone is the portion of the project site located between the 100-foot setback line from the year 2100 mid-level projected sea level rise and the 100-foot setback line from the year 2100 highest projected sea level rise. Within the Long-Term Sea Level Rise Risk Zone, residential development could occur; however, all structures within that zone – residential or otherwise – would be required to be designed so as to incorporate adaptive measures regarding flooding risk, such as being able to withstand periodic flooding or being ephemeral enough so as to be feasibly relocated inland. **Special Condition No. 3** requires that the development be phased so that the approved public pedestrian/bike path shall be completed prior to occupancy of the residences. **Special Condition No. 4** requires a final landscape plan that utilizes native, drought-tolerant plants, water-saving irrigation, no landscaping taller than 10 feet in the public view corridor, and maintenance and pest control programs that emphasized non-chemical measures. **Special Condition No. 5** requires a post-development runoff plan that directs runoff into pervious areas and BMPs outside

of the wetland buffer, as well as designs treatment facilities to adequately treat runoff currently entering the project site from Highway 75. **Special Condition No. 6** requires a final grading plan that allowed at most balanced grading within the projected footprint of the highest level of sea level rise on the subject property. **Special Condition No. 7** requires a signage plan that places adequate signage around and within the development informing the public of the public access opportunities and amenities available within the development. **Special Condition No. 8** would require a final color board for the development that is compatible with the surrounding character and scenic resources and eschews usage of bright colors and accents. **Special Condition No. 9** would require a construction staging and storage plan that prohibits such activity within public spaces or parking areas. **Special Condition No. 10** would require a final storm water pollution prevention plan that incorporates measures to protect coastal water quality from potential impacts arising from construction activity on the project site. **Special Condition No. 11** would require that all exported material be disposed of in a legal site outside of the Coastal Zone. **Special Condition No. 12** would require that the applicant and successors in interest to accept the risk of wave action and sea level rise on the project site. **Special Condition No. 13** would require a waiver of all future shoreline protection for the subject site so as to not alter the natural landforms of this portion of San Diego Bay. **Special Condition No. 14** would require an open space restriction be placed on the proposed wetland buffer and the panhandle along the east side of Pond 10A so as to keep them free of development and preserve their habitat value. **Special Condition No. 15** would require a sensitive species monitoring program to ensure that noise and similar impacts on wildlife in the adjacent Pond 10A are avoided to the greatest extent feasible during nesting season. Finally, **Special Condition No. 16** would require a general deed restriction to ensure that those protections required above run with the land and are implemented by the applicant and their successors in interest.

4. On page 8 of the staff report, Special Condition No. 1 shall be modified as follows:

   1. **Revised Final Plans.** PRIOR TO ISSUANCE OF THIS 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 Imperial Beach. Said Plans shall be in substantial conformance with the site plans submitted on January 2, 2015, but shall be revised to include the following:

      i. In addition to any public parking located along internal streets, the project shall include a public parking lot of no less than 10 parking spaces in proximity to the western entrance for use by non-guest members of the public. <u>Signage shall indicate: “Public parking. No resident or guest parking allowed.”</u>

5. On page 11 of the staff report, Special Condition No. 7 shall be modified as follows:

   7. **Final Signage Plan.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for

review and written approval, a signage plan indicating the type, size, extent, and location of all informational signs around and within the development. Such a plan shall include, at a minimum:

b. A sign at the public parking lot required in **Special Condition No. 1** identifying that the parking is for the general public, and prohibiting guests of residents of the residential development from parking therein. The signage shall indicate: "Public parking. No resident or guest parking allowed."

6. On page 14 of the staff report, Special Condition No. 12 shall be corrected as follows:

a. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves and flooding; (ii) to assume the risks to the applicant, the landowner, 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.

7. On page 15 of the staff report, Special Condition No. 13 shall be modified as follows:

a. By acceptance of the permit, the applicant agrees, on behalf of themselves and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to coastal development permit No. 6-15-0003 including, but not limited to, the residences, and any future improvements, in the event the development is threatened with damage or destruction from sea level rise, flooding, erosion, storm conditions, or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of the applicant, the landowner, ~~themselves~~ and all successors and assigns, any rights to construct such devices that may exist under Public Resource Code Section 30235.

8. On page 15 of the staff report, Special Condition No. 14 shall be modified as follows:

a. Public pedestrian/bike path, signage, and fencing within the landward 50 feet of the 100-foot buffer between the proposed development and Pond 10A. Signage shall conform to the Final Signage Plan required by Special Condition No. 7. Fencing shall not block views and shall conform to the design requirements of Special Conditions No. 1 and 8.

9. On page 16 of the staff report, Special Condition No. 16 shall be corrected as follows:

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

10. On Page 17 of the staff report, the first paragraph shall be modified as follows:

The applicant proposes a development in two phases. Phase I would be to demolish the existing 50-year old, 124-unit Bernardo Shores recreational vehicle (RV) park and construct a private gated community with 190 40-foot tall, 1,200 – 2,000 sq. ft. attached condominium townhomes and 3 detached, 26-foot tall, 2,250 sq. ft. single family residences, with an 8-foot wide public pedestrian/bike path running east from Highway 75 along the north of the residential development. Roadways proposed within the community would be private and set up in a grid pattern, ranging from 24-26.5 feet wide. The development would have a western entrance on Highway 75 and an eastern entrance on 7th Street, but the eastern entrance would only be for emergency use. This proposal equates to 21 dwelling units per acre. The Mitigated Negative Declaration prepared for the project indicates the City's existing water infrastructure has sufficient potable water capacity to supply the development. Phase II would a 1,300 foot long, 8-foot wide public pedestrian/bike path along the east side of Pond 10A, connecting the proposed Phase I bike path with the existing Bayshore Bikeway to the north.

11. On page 19 of the staff report, the citation to Section 30252 of the Coastal Act shall be modified as follows:

Section 30252 of the Coastal Act states in part:

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 for public transit for high intensity uses

such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

12. On page 20 of the staff report, the following citations to the Imperial Beach certified LCP shall be added:

GOAL 11 SMALL BEACH ORIENTED TOWN

The overriding goal for Imperial Beach shall be the retention of the quality of life and atmosphere of a small beach-oriented town.

• A town that is not overcrowded or exclusive like many California beach communities.

• A town with a human scale and a relaxed pace of life.

*Street, parking and property access standards that emphasize a friendly, pedestrian scaled, small town circulation system.

*A realistic bikeway plan that can be implemented.

* A proposed Class I Bikeway parallel to Highway 75 north of Rainbow Drive

L-3 Residential Uses and Neighborhoods

Specific policies for residential uses are:

a. Pedestrian Orientation

All housing and neighborhoods shall be designed with a pedestrian orientation.

13. On page 21 of the staff report, the second paragraph shall be modified as follows:

The RV park is open to members of the public who rent spaces both long and short-term. ~~No access is currently provided through the site, although visitors can and do rent RV spaces at the site.~~ As previously described, the existing development is proposed to be entirely demolished and replaced with a gated residential development with 193 dwelling units, a private internal roadway system, and a public pedestrian/bike path on the north side of the site connecting to the Bayshore Bikeway. All forms of public access (vehicular, bicycle, and pedestrian) through the community would be prohibited. The general public would not be allowed to enter the residential community or park on its streets.

14. On page 21 of the staff report, the third paragraph shall be modified as follows:

The provision of public access in new development proposals is one of the main tenets of the Coastal Act, especially in conjunction with new development located between the sea and the first public road, such as the proposed project. Gated developments that preclude the possibility of public access to the coast conflict with Coastal Act Sections 30210 and 30212 and are therefore usually prohibited. Not only do private gated communities limit public access locally, but the cumulative effect of these private gated communities along the coast impacts public access, public parking, traffic circulation, and both auto and non-auto circulation options. When there are numerous gated communities along the coast, traffic circulation is limited solely to major arterial arterials, parking is unevenly distributed in the few public areas near existing vertical accessways, and pedestrians and cyclists are forced to travel on major arterials when seeking coastal access. Because gated communities result in substantially fewer public streets and sidewalks, they adversely impact the pedestrian nature of coastal areas, depressing the opportunities for the public to engage in walking and biking.

15. On page 21 of the staff report, the fourth paragraph shall be modified as follows:

As proposed the development would only have one entryway, on Highway 75. The second gate at the 7th Street side would be for emergency vehicles only. The applicant has indicated that the purpose of the gates is to prohibit vehicles from driving into the development seeking access between Highway 75 and 7th Street and then being forced to turn around at the emergency vehicle entrance. However, there is no evidence that adverse impacts to the proposed community would result if the entry gates were removed from the proposed project and entry opened to the public. ~~this could easily be addressed by adding signage to the Highway 75 entrance indicating no access to 7th Street is available.~~ 7th Street is one of the many public grid streets that provide access to low-density residential units east of the proposed development and it is thus unlikely that large numbers of residents or visitors would use the site to access 7th Street if both entryways were open. Removing the gates would allow public parking on the internal streets, and link up with the adjacent grid street system allowing pedestrian and bicycle circulation system without the impacts to wetlands resulting from the proposed bike path connector (discussed in greater detail in the findings addressing Sensitive Habitats). It should also be noted that the issue of vehicular passage does not address why there are pedestrian gates proposed along the perimeter of the project site.

16. On page 21 of the staff report, the final paragraph shall be modified as follows:

The Commission has historically prohibited the installation of entry gates, be they vehicular or pedestrian, in coastal development located between the sea and the first public road (ref. CDP Nos. 6-99-043, A-6-OCN-02-121-A1/6-03-23-A1, 5-06-145). Due to its location and high commercial value, coastal property between the first public road and the sea throughout much of Southern California is developed. Without provision of public access through these coastal developments, public access would be severely restricted due to a walling off of the coast from

the public (such as in Broad Beach, Carbon Beach, and elsewhere). Throughout California, roads, especially the first public road paralleling the ocean and internal roads within developments located seaward, serve as vital reservoirs for the public to park, walk, and bike so as to be able to enjoy coastal resources, be they parks, beaches, or promenades. Should public parking end up being provided within the proposed development, it is important that the public is readily able to access it so a pattern of usage emerges, which entails the removal of *both* entry gates. The more difficult parking is for the public to locate due to limited supply, or the farther such parking is located from coastal resources, the less likely it is that the public will utilize the coastal resources. Besides being a detriment on public utilization of coastal resources, the lessened use could in turn serve as rationale for subsequent developments to omit providing their own public access amenities.

17. On page 22 of the staff report, the first full paragraph shall be modified as follows:

While the existing RV park does not provide non-customer public parking, the RV park is nonetheless open to members of the public who can rent spaces on a short-term basis. The ~~the~~ RV park is a development that was constructed prior to the Coastal Act's mandate to maximize public access; however, by its nature, the RV park served the general public more than the proposed gated residential community. In any event, redevelopment of the project site is an appropriate opportunity to rectify the omission of public access through the site and bring the property into conformance with ~~the~~ Coastal Act requirements to maximize access, as the property is a sizeable bayfront property adjacent to a major coastal access corridor (Highway 75) and major coastal access resource (Bayshore Bikeway).

18. On page 23 of the staff report, the first full paragraph shall be modified as follows:

Internal Streets/Parking

Separate from the effects that the proposed entry gates would have on public access, the internal road system serving the residential development will not be publicly owned or maintained, but rather part of the single-parcel condominium ownership of the residential development. Thus, the proposed private streets are only 24-26.5 feet wide. This is narrower than standard public streets, and limits the ability to provide street parking. Furthermore, even if the residential development was opened to the public, the proposed townhomes are designed with narrow street frontages, with first-floor two-car garages taking up the majority of that frontage. The townhomes themselves are then aligned in long rows of six to seven units. Such is the density of the proposed development that the sides of the internal roads are effectively long curb cuts providing access to the townhomes' garages. Thus, simply removing the entry gates will not provide much public parking. Compounding this deficit is the fact that the applicant's proposal for a 10-acre residential development with 193 dwelling units is providing only 24 parking spaces for guests. That equates to just one guest parking space for every eight dwelling units, which range from two to five bedrooms each. The applicant has indicated that four of the parking spaces will be located outside of the western

gates, adjacent to Highway 75. However, given that no public parking signage restricts use of these spaces, and the limited amount of non-resident parking in the proposed project, it is likely that the four spaces will be occupied by guests of the 193 residential units, especially because the spaces are located adjacent to the recreational pool complex serving the residential development. ~~Thus, it~~ It is also possible that the applicant's proposal will cause guest parking to spill over onto public parking on 7th Street, which is used to access the Bayshore Bikeway (there will be private pedestrian access from 7th Street). When approving large development that has the potential to adversely impact the ability of the public to park near coastal resources or public access points, the Commission has required the development to furnish a portion of the on-site parking for exclusive use by the general public (ref. CDP Nos. 6-05-041, A-6-PSD-13-005, 6-13-0407) To help lessen the appearance of exclusivity and fulfill Goal 11 of the LCP, encourage the use of the connection between Highway 75, and increase the internal supply of public parking, **Special Condition No. 1** requires the main internal east-west road connecting Highway 75 and 7th Street be widened so as to permit public parking along one side and a demarcated bike path on the other, in addition to any lanes of vehicular travel. To ensure maximum access to the public pedestrian/bike path, the condition also requires all streets, roads and public parking areas shall be open for use by the general public 24 hours per day, with the exception of standard limited parking restrictions for street sweeping/maintenance purposes. Long term or permanent physical obstruction of streets, roads and public parking areas shall be prohibited, and restrictions on use by the general public (e.g. preferential parking districts, resident-only parking periods/permits, etc.) associated with any streets or parking areas shall be prohibited. Access between the street ends and the public pedestrian/bike path shall be provided.

19. On page 26 of the staff report, the first full paragraph shall be modified as follows:

The project as conditioned in this report would introduce modifications to bring the project into conformance with the Coastal Act's public access policies. **Special Condition No. 1** would require the final project to, among other measures, remove any and all entrance gates from final plans, so as to ensure the public has access through this development between the first public road and the sea and maximize access to the bicycle and pedestrian system linking the area to the Bayshore Bikeway and the bay. The removal of entrance gates would also grant public access between Highway 75, the main entry point for northern Imperial Beach, and 7th Street, a public access point to the Bayshore Bikeway. **Special Condition No. 1** would also require the widening of the main internal east-west road in the development connecting Highway 75 and 7th Street to public standards so as to provide for public parking on one side and a demarcated bike lane on the other. This widening is recommended because even in the absence of entrance gates, the internal roads of the proposed development will not be to public standards, and thus create their own effect of exclusivity, while also removing the space to provide public parking. Because not all of the internal streets within the residential development will be required to be widened, constraining the supply of public parking, **Special Condition No. 1** also requires the provision of a public, non-

guest parking lot in addition to street parking gained from the aforementioned internal road widening so as to ensure that a public parking reservoir in close proximity to Highway 75 and the proposed public pedestrian/bike path is easily reached by the public. Because encroachment by the residential development could preclude use of the public bike path by blocking it from view or making it seem exclusive, **Special Condition No. 1** also requires that all residential development be set back a minimum of twenty-five feet from the public bike path. **Special Condition No. 3** would require the approved development to be phased such that the approved public pedestrian/bike path is completed prior to occupancy of the residences. **Special Condition No. 7** requires a final signage plan be approved and implemented so that proper signage is installed in and around the development informing the public of the public amenities being provided, such as the public bike path, public parking, and public access between Highway 75 and 7th Street. **Special Condition No. 9** requires a final construction staging and storage plan to ensure that construction activity does not occupy public spaces or parking that could be utilized by the public visiting the coast. **Special Condition No. 16** requires the recordation of a general deed restriction so that current and future property owners will be aware of this permits conditions running with the land, including the conditions ensuring proper provision of public access.

20. On page 31 of the staff report, the first full paragraph shall be corrected as follows:

The proposed Phase II portion of the proposed public pedestrian/bike path would directly impact a total of 0.14 ~~0.24~~ acre of sensitive vegetation communities, including 0.01-acre of southern coastal salt marsh, 0.08-acre of saline meadow, 0.06-acre mudflat, ~~and 0.09-acre of non-native grassland~~. The applicant is proposing to mitigate for the wetland impacts at a 4:1 ratio, totaling 0.56-acre ~~0.6-acre~~, in the buffer area adjacent to Pond 10A north of the residential development, comprised of 0.14-acre ~~0.24-~~acre of on-site wetland creation and 0.42-acre ~~0.36 acre~~ of on-site restoration and enhancement. Phase II would also impact 0.37 acre of upland habitats/land cover types, comprised of 0.09 acre of non-native grassland, 0.11 acre of non-native vegetation, 0.02 acre of developed, and 0.01 acre of disturbed habitat. However, the applicant recently modified their proposal to include widening the proposed public pedestrian/bike path from 8 feet to 10 feet. This means that the Phase II portion of the path will impact a greater amount of wetlands. Construction of the proposed Phase II bike path, while a positive recreational amenity, is clearly not one of the uses identified by Section 30233 for which fill of a wetland is allowed.

21. On page 32 of the staff report, the second full paragraph shall be modified as follows:

Further distinguishing the current proposal from CDP No. 6-02-038 is the fact that redevelopment of the Bernardo Shores RV park property was not part of that earlier public project. Thus, the alternative of having bicyclists continue east along the Bayshore Bikeway, proceed down 7th Street, and then pass through the project site to reconnect with Highway 75 was not a possibility back in 2002, unlike the situation today. A feasible, cheaper, and less-environmentally damaging alternative

to the applicant's proposal is to have bicyclists on the Bayshore Bikeway wishing to reach Highway 75 travel down 7th Street and then turn west once they reach the eastern entrance of the project site, traveling through the development to Highway 75. Though this alternate route would not include the view of the wetlands provided by the Phase II portion of the proposed public pedestrian/bike path, it would still retain the wetland views from the Bayshore Bikeway and the Phase I segment along the north of the residential development. While distance might be a reason why 7th Street was not analyzed back in 2002, it should be noted the northern entrance to the applicant's proposed public bike path is essentially just as far to the east. Indeed, only 170 feet – the span of a single residential lot – separates the majority of the applicant's proposed public bike path from 7th Street. Furthermore, because the proposed public bike path parallels 7th Street for over half of the public bike path's distance, the difference in distance traveled by bicyclists on the proposed public bike path (approximately 2,100 feet) and the 7th Street/development-shortcut alternative (approximately 2,700 feet) is just 600 feet. Thus, the applicant is attempting to justify permanent impacts from paving over coastal wetlands with the fact that the proposed bike path is 600 feet shorter. The Bayshore Bikeway is a 26-mile bicycle system connecting cyclists around San Diego Bay through the cities of San Diego, National City, Chula Vista, Imperial Beach, and Coronado. Even for cyclists traveling as little a few miles of this system, an extra 600 feet of travel is insignificant.

22. On page 38 of the staff report, the final paragraph shall be modified as follows:

Section 30253 of the Coastal Act requires new development to minimize risks to life and property in areas of high geologic and flood hazard without the use of shoreline protection devices that substantially alter natural landforms. The installation of shoreline protective devices along the project site would be inconsistent with Coastal Act policies protecting public access, sensitive habitat, and visual resources, because protective devices would form a backstop along this portion of San Diego Bay and prevent the migration of wetlands and public access paths as they adapt to sea level rise while marring the scenic quality of this portion of the National Wildlife Refuge. The best way to minimize risks to development and coastal resources is to avoid siting new development within areas vulnerable to flooding, inundation, and erosion, thus ensuring stable site conditions without the need for protective devices. Thus, to comply with Coastal Act Section 30253, projects will need to be planned, located, designed, and engineered for the changing water levels and associated impacts that might occur over the life of the development. In addition, project planning should anticipate the migration and natural adaptation of coastal resources (beaches, access, wetlands, etc.) due to future sea level rise conditions in order to avoid future impacts to those resources from the new development. For some cases, the site constraints may require revisions to the size and scale of the proposed development to fit with the available buildable area without the use of protective structures.

23. On page 40 of the staff report, the final paragraph shall be modified, and a two new paragraph shall be inserted as follows:

Because the proposed residential development is expected to have a life span of at least 75 years, the projected data for the year 2100 was used to determine the impact sea level rise will have on the proposed project. Overlaid on a map of the project site, the sea level rise study shows that by the year 2100, coastal waters could reach approximately 150 feet inland from the project site's northern boundary under the highest sea level projection or approximately 110 feet inland under the mid-level projection. ~~This~~ The highest sea level projection would not only inundate the proposed 100-foot wetland buffer and public pedestrian/bike path, but also eleven of the proposed townhomes, with the water reaching up to several additional adjoining residence sites [Exhibit No 9]. . Because this projection is just the edge of coastal water level, the water would further encroach inland during any significant tidal variations including king tides, storm events, and normal periodic oscillations.

The applicant maintains that the site would *not* be subject to inundation from sea level rise because once the site is developed as proposed, the entire residential portion of the development will be at an elevation above the highest projected sea level rise. The applicant has also stated that the 13,500 cubic yards of fill proposed for the site is not intended to raise the elevation of the site to a safe elevation, but is only proposed to create a level site and aid in the installation of drainage. However, as noted, Exhibit Nos. 7-10 show the projected sea level rise under current site conditions, demonstrating that the proposed development would be significantly affected. In comparison, an exhibit submitted by the applicant (labeled "Exhibit 1" within Exhibit No. 26 to this staff report) shows how sea level rise would occur with the development constructed as proposed, including the proposed 13,500 cubic yards of fill. Under these conditions, both the highest (red) and mid (light blue) sea level projection for the year 2100 would be 65 feet inland from the northern property line and uniformly paralleling the proposed public pedestrian/bike path, seaward of the proposed residential units. This is a decrease of 45-85 feet from projected sea levels that would occur on the project site under currently existing conditions. Thus, the proposed redevelopment of the project site would clearly result in an increase in site elevation that substantially alters the inland extent of sea level rise.

It should be noted that the page labeled as applicant's "Exhibit 2" within Exhibit No. 26 of this staff report erroneously interprets the impacts the special conditions of this permit will have on the development envelope of the project site. The applicant's "Exhibit 2" within Exhibit no. 26 purports to show that no residential development could occur in the area seaward of the 100-foot setback line for the highest projected sea level for year 2100, substantially impacting the development potential. However, **Special Condition No. 1** states that it is only seaward of the 100-foot setback line for the *mid-level* projected sea level where residential development is prohibited [Exhibit 7]. **Special Condition No. 2** goes on to identify the area located between the 100-foot setback line for the mid-level projected sea level and the 100-foot setback line for the highest projected sea level as the Long-Term Sea Level Rise Risk Zone [Exhibit No. 23], which does allow residential

development but requires that such development incorporate adaptability measures with regards to sea level rise, subject to the other conditions of this permit. Thus, in addition, proper project design could allow for the recapture of any dwelling units displaced by the mid-level sea level setback area.

24. On page 42 of the staff report, the following shall be added to the first complete paragraph:

The applicant has stated that the requirements for setting development back from sea level rise, in conjunction with other special conditions, will result in the loss of up to 68 dwelling units from the applicant's proposal. However, the subject project would demolish all of the existing uses on the 10-acre project site for redevelopment. Given the size of the project site and development envelope identified on the project site by the relevant Coastal Act and LCP policies, proper project design could accommodate a substantial number of dwelling units. Ultimately, the number of units constructed on the site will depend on a variety of factors, including the size and height of the residences, the infrastructure, amenities, and other project components determined by the applicant. The purpose of the special conditions, whether addressing sea level rise, biological resources, or visual quality, is to define a development area in which a variety of development options could be accommodated, while ensuring that coastal resources are protected and enhanced.

25. On page 43 of the staff report, the following shall be added after the first paragraph:

Salt Evaporation Ponds and South San Diego Bay
The salt evaporative ponds act as the gateway to Imperial Beach as one enters into the City along State Highway 75 from either the Silver Strand area or from Interstate 5. Unlike the Pacific Ocean, these ponds are small enough to be easily understood visually. They serve as important gateways to the City. There are excellent nighttime views of the Coronado Bridge and Downtown San Diego.

c. Developments should be designed to respect and enhance the view and safety of the passerby.
   - Structures and open space areas should be arranged so that open space qualities of a development are apparent from outside the development.

   - Public rights of way should be designated not only for the safety and enjoyment of the motorist, but also for the pedestrian, jogger and bicyclist.

26. On page 44 of the staff report, the first full paragraph shall be modified as follows and a new paragraph shall be added after it:

Staff, in consultation with the applicant, established the boundaries of the existing public view corridor across the site. The view corridor exists where it does because

Highway 75 increases in elevation as it proceeds north from its intersection with Palm Avenue toward the Silver Strand. When Highway 75 reaches the western boundary of the project site, it has increased to such an elevation relative to the project site that the public is able to look out over the existing RV park and see Pond 10A and San Diego Bay. As proposed, approximately forty-five 40-foot tall townhomes would be located within this view corridor, all the way up to the project site's boundary along Highway 75. Even with the aforementioned height difference between the project site and Highway 75, the townhomes will be substantially taller than Highway 75 and completely block the existing public views of Pond 10A and San Diego Bay. The view blockage will be further exacerbated because the project includes importing 15,000 cubic yards of fill to raise the grade of the project area, particularly in the aforementioned western third within the view corridor, prior to constructing the 40-foot tall townhomes. Furthermore, because the townhomes would be arranged in connected rows of approximately seven units each, the proposed development will not even have side yard setbacks between the homes, and thus will completely wall off the existing public view (Exhibits 13 & 16).

The applicant has commented that the aforementioned view corridor is not explicitly identified in the City's LCP. While the long-existing public view over the project site is not called out in the LCP, this does not change the public nature of the view or its scenic quality. In providing exhibits identifying particular public views, LCPs cannot provide an exhaustive list of every opportunity for the public to be able to view coastal resources. Indeed, the City's LCP highlights the fact that Imperial Beach is unique in that it is bordered on the north, west, and south by scenic coastal resources: San Diego Bay, the Pacific Ocean, and the Tijuana River Estuary, respectively. The Design Element of the City's LCP recognizes that "from an environmental standpoint, Imperial Beach has a number of unique qualities. These include a large number and variety of vistas and natural settings (i.e., from nearly all sections of the community there are panoramic views)…" Identifying every single public vantage point on a single exhibit is not necessary, as the visual protection policies are designed to apply whenever a public view is identified in the course of processing a proposed project. Using the LCP as guidance and the Chapter 3 policies of the Coastal Act as the standard of review, the Commission finds that the existing public view across the subject site is a unique panoramic that must be considered and protected, and the subject development must be sited and designed to protect it.

27. On page 46 of the staff report, the final paragraph shall be modified as follows:

In addition, the project site currently channels all runoff flowing east from the adjacent segment of Highway 75 into a storm drain located in the northwest corner of the property and discharges from the property into Pond 10A, which is part of the National Wildlife Refuge. The proposed project design would divert the road drainage that currently enters the site 160 feet further along the highway where it would enter, untreated, a Caltrans storm drain that also discharges to the National Wildlife Refuge. Because runoff from road surfaces commonly carry pollutants

such as metals, petroleum products, sediment and trash, the drainage directly and adversely impacts the water quality of the National Wildlife Refuge. Thus, the Commission's water quality staff determined that because runoff from Highway 75 has been and will continue to pass through the project site untreated, for the protection and restoration of coastal water quality, it would be optimal to accommodate the highway runoff that currently passes untreated through the project site using the project's water quality BMPs. The applicant has responded that the requirement to treat runoff entering the site from Highway 75 prior to it entering Pond 10A is not required by Regional Water Quality Control Board. However, given that the proposed project represents a significant intensification of use on the site directly adjacent to the highly sensitive National Wildlife Refuge, it is important that all drainage both from and through the project site be treated in a manner that will protect these resources.

28. On page 48 of the staff report, the penultimate full paragraph shall be modified as follows:

    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. A "Final Environmental Study and Mitigated Negative Declaration for Bernardo Shores" dated November 2014 was prepared and adopted for the proposed project.

29. Replace all references to 15,000 cubic yards of fill with 13,050 cubic yards of fill.

30. Replace Exhibit Nos. 7, 8, 9, 10, and 22 with attached updated Exhibits.

31. Add Exhibit No. 23 - Proposed Plan Long-Term SLR Risk Zone

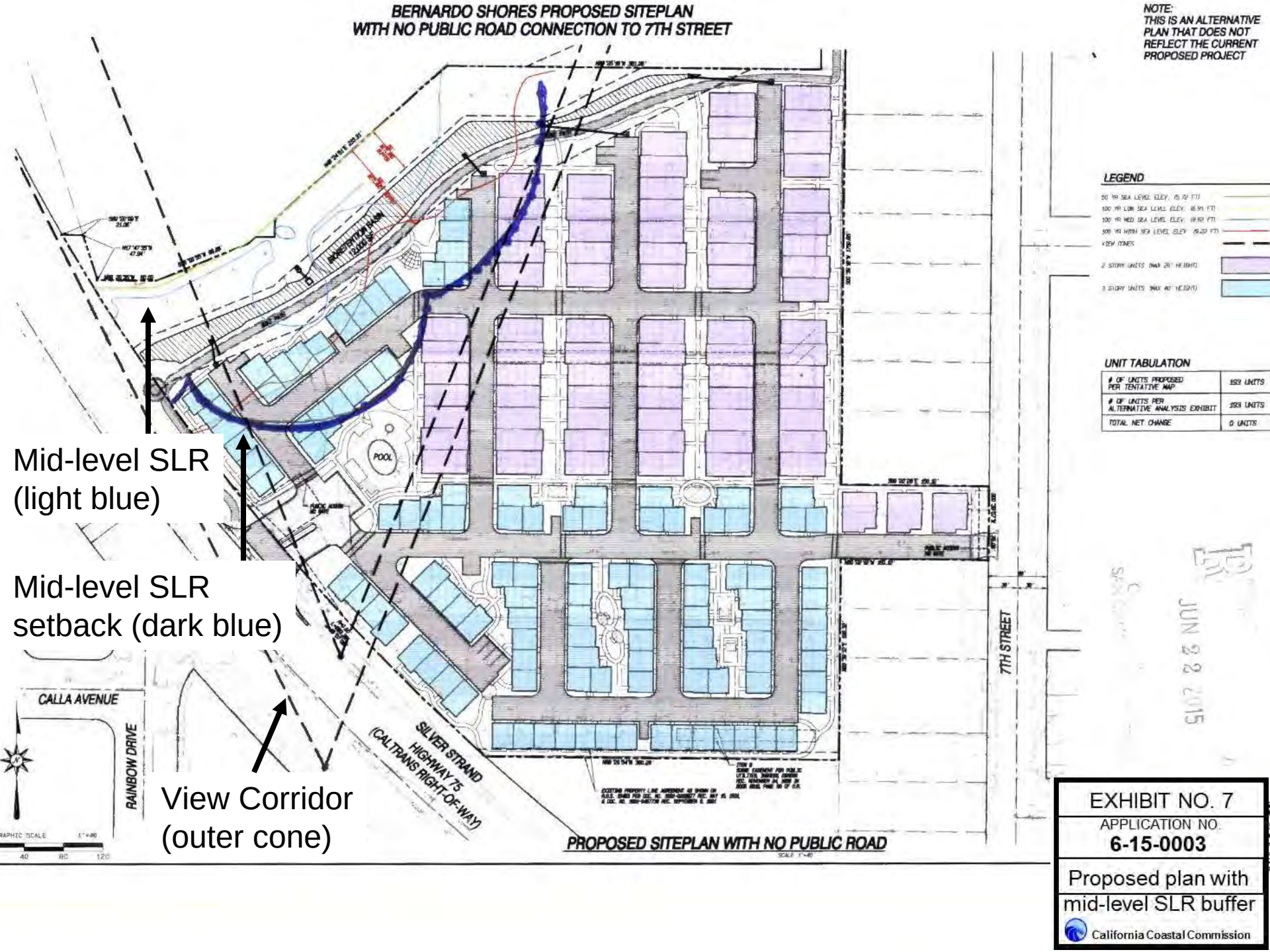
32. Add Exhibit No. 24 – Potential alt. plan Long-Term SLR Risk Zone

33. Add Exhibit No. 25 – Applicant's Briefing Booklet

34. Add Exhibit No. 26 – Applicant's Response

35. Add Exhibit No. 27 – City of Imperial Beach Letter

36. Add Exhibit No. 28 – Ex-Parte Notices


BERNARDO SHORES PROPOSED SITEPLAN
WITH NO PUBLIC ROAD CONNECTION TO 7TH STREET
NOTE:
THIS IS AN ALTERNATIVE PLAN THAT DOES NOT REFLECT THE CURRENT PROPOSED PROJECT
LEGEND
UNIT TABULATION
OF UNITS PROPOSED PER TENTATIVE MAP
1929 UNITS
OF UNITS PER ALTERNATIVE ANALYSIS EXHIBIT
1929 UNITS
TOTAL NET CHANGE
0 UNITS
POOL
7TH STREET
CALLA AVENUE
RAINBOW DRIVE
SILVER STRAND HIGHWAY 75 (CALTRANS RIGHT-OF-WAY)
PROPOSED SITEPLAN WITH NO PUBLIC ROAD
Mid-level SLR (light blue)
Mid-level SLR setback (dark blue)
View Corridor (outer cone)
JUN 22 2015
EXHIBIT NO. 7
APPLICATION NO.
6-15-0003
Proposed plan with mid-level SLR buffer
California Coastal Commission

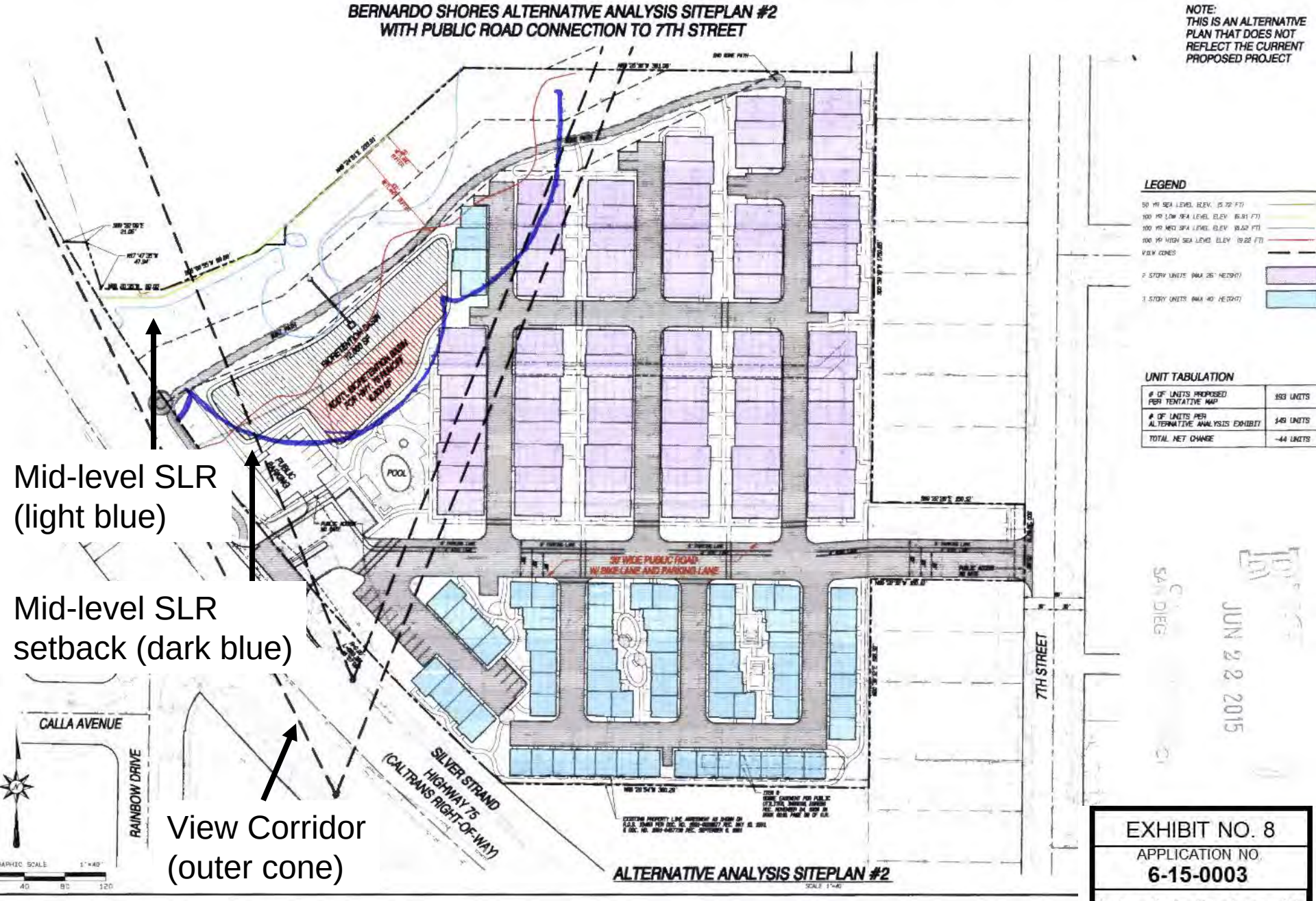


EXHIBIT NO. 8

APPLICATION NO.
6-15-0003

Potential alt. plan with mid-level SLR buffer

California Coastal Commission

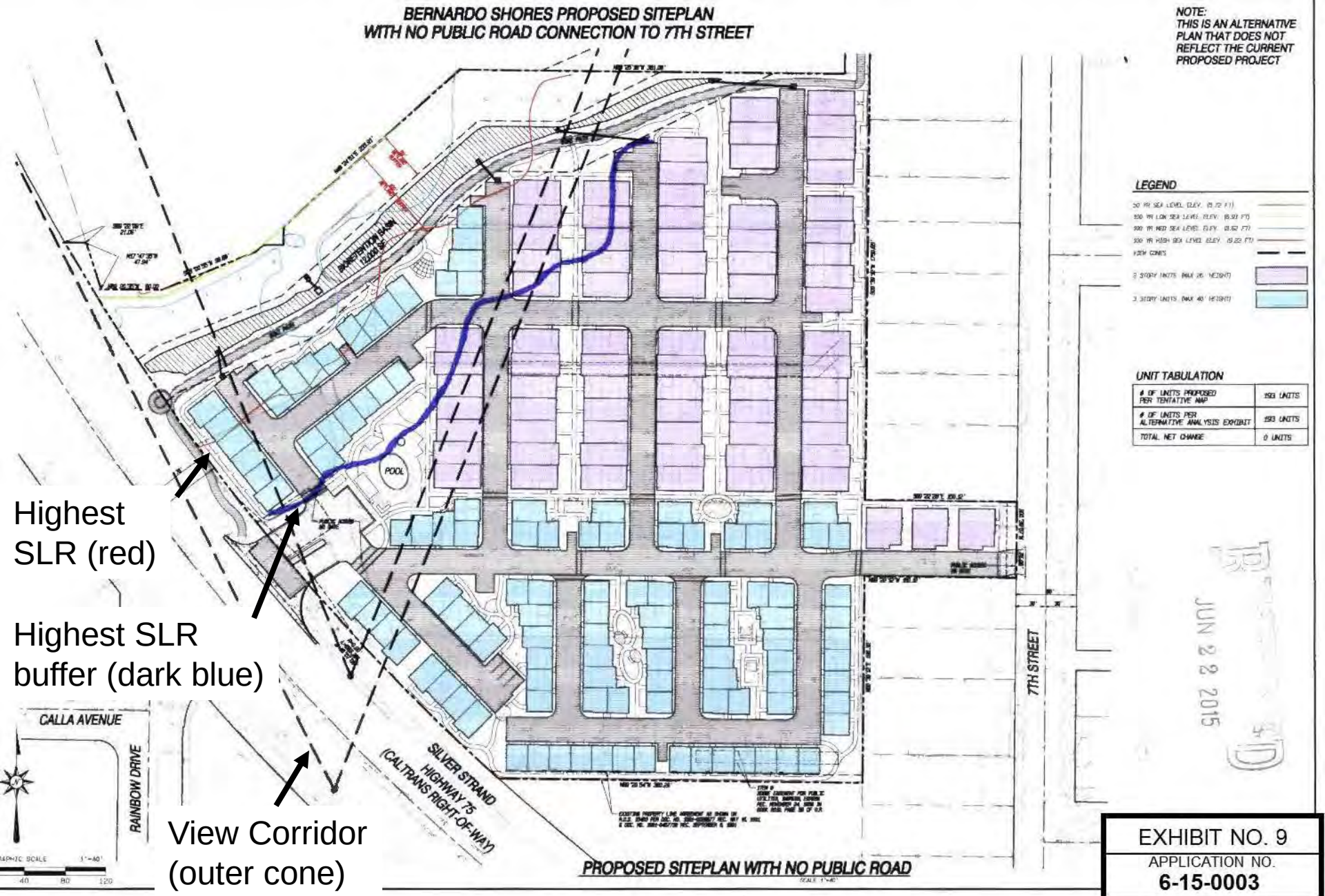
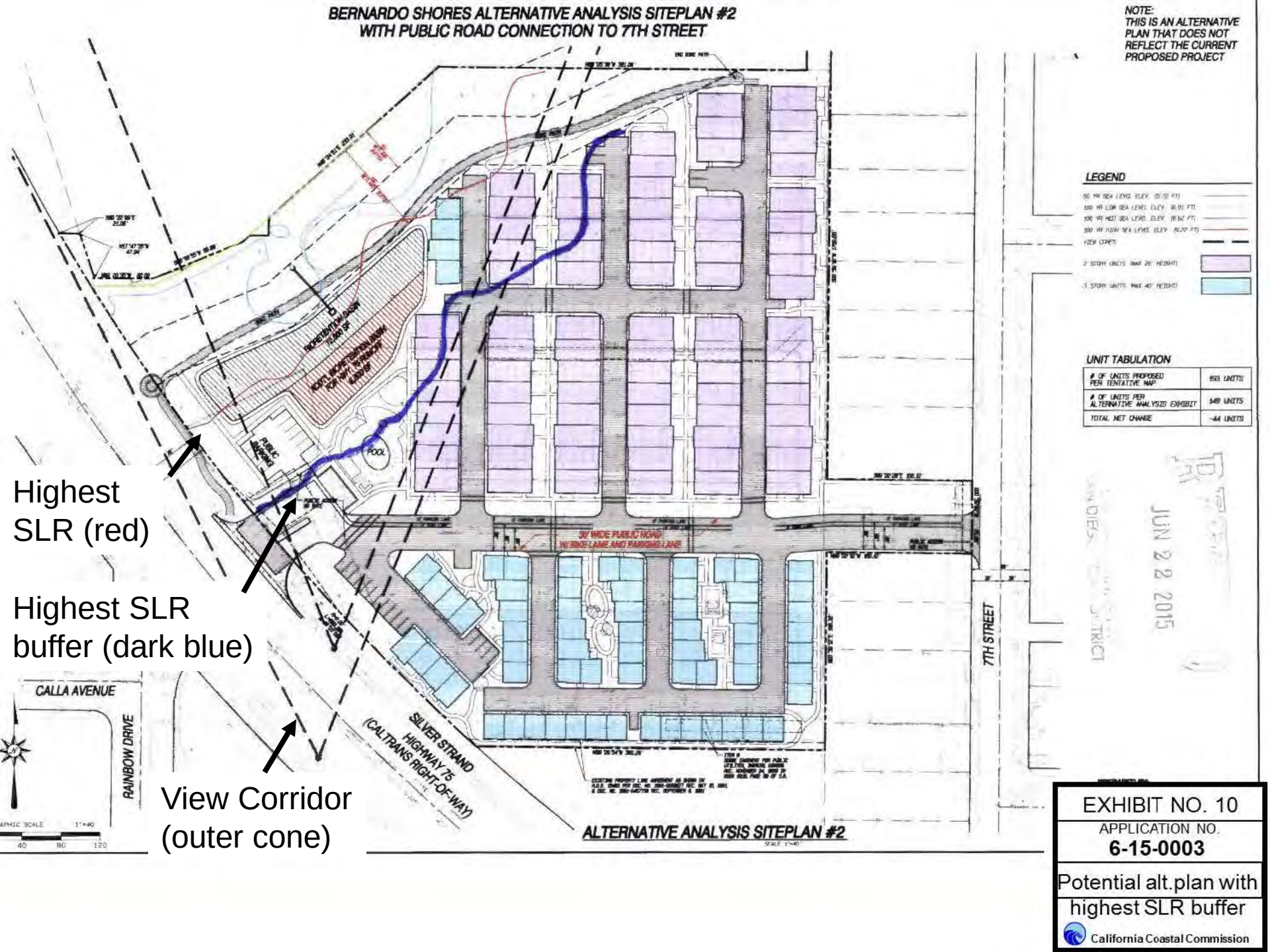


EXHIBIT NO. 9

APPLICATION NO.
6-15-0003

Proposed plan with highest SLR buffer

California Coastal Commission


BERNARDO SHORES ALTERNATIVE ANALYSIS SITEPLAN #2
WITH PUBLIC ROAD CONNECTION TO 7TH STREET
NOTE:
THIS IS AN ALTERNATIVE PLAN THAT DOES NOT REFLECT THE CURRENT PROPOSED PROJECT
LEGEND
UNIT TABULATION
OF UNITS PROPOSED PER TENTATIVE MAP
193 UNITS
OF UNITS PER ALTERNATIVE ANALYSIS EXHIBIT
149 UNITS
TOTAL NET CHANGE
-44 UNITS
POOL
PUBLIC PARKING
50' WIDE PUBLIC ROAD
7TH STREET
SILVER STRAND HIGHWAY 75 (CALTRANS RIGHT-OF-WAY)
CALLA AVENUE
RAINBOW DRIVE
ALTERNATIVE ANALYSIS SITEPLAN #2
Highest SLR (red)
Highest SLR buffer (dark blue)
View Corridor (outer cone)
JUN 22 2015
EXHIBIT NO. 10
APPLICATION NO.
6-15-0003
Potential alt.plan with highest SLR buffer
California Coastal Commission

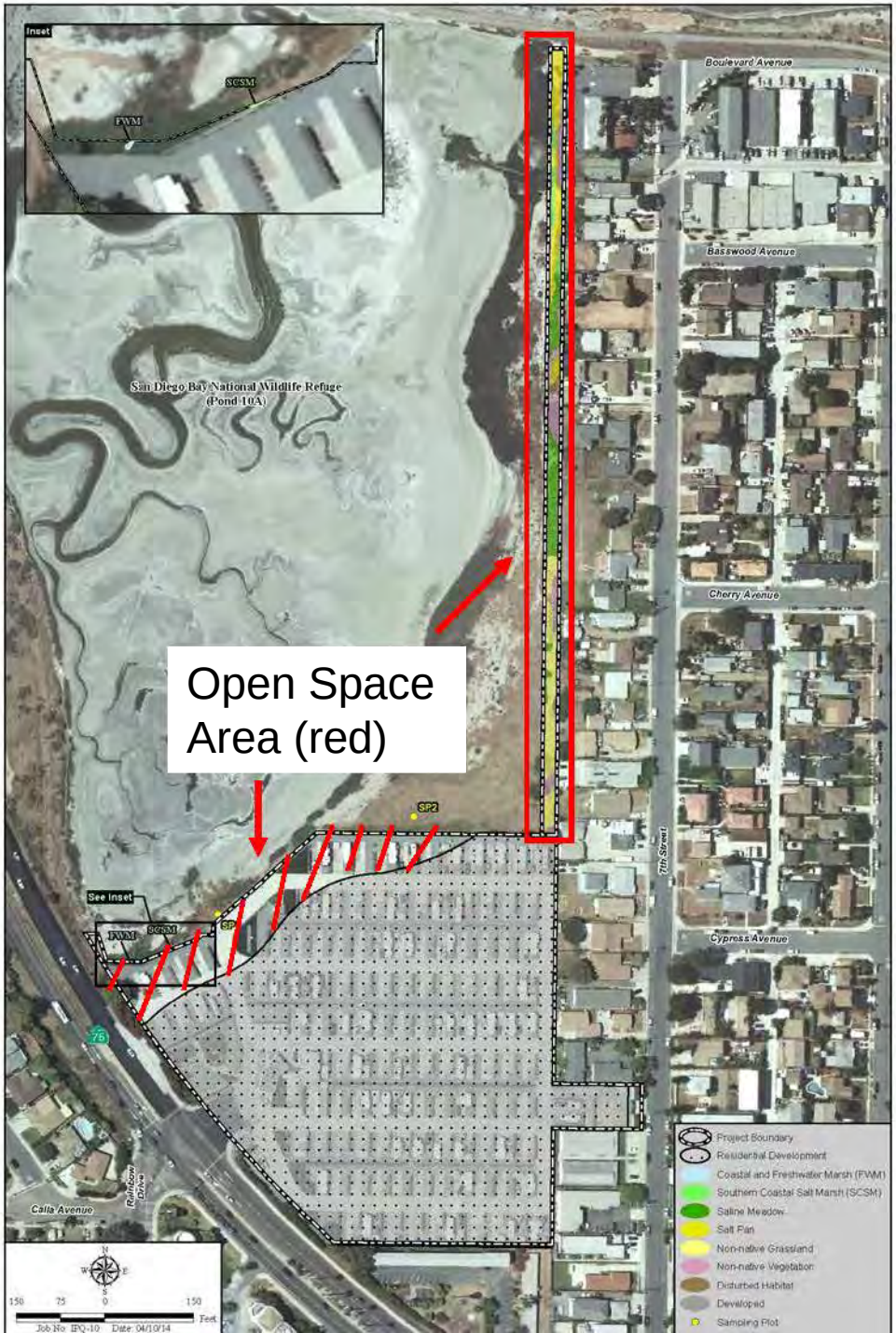


EXHIBIT NO. 22

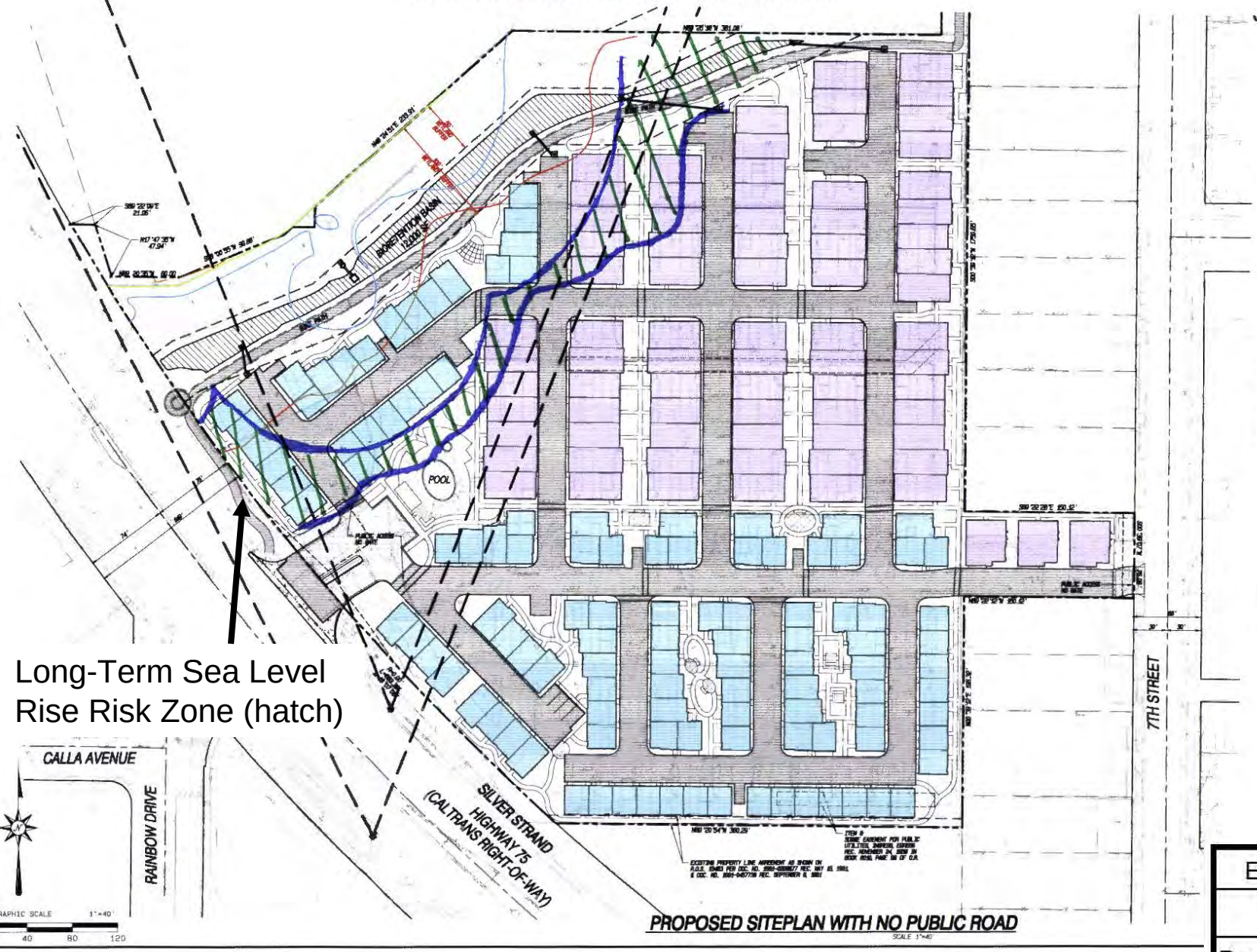
APPLICATION NO.
6-15-0003

Open Space Area

California Coastal Commission

BERNARDO SHORES PROPOSED SITEPLAN WITH NO PUBLIC ROAD CONNECTION TO 7TH STREET

NOTE:
THIS IS AN ALTERNATIVE PLAN THAT DOES NOT REFLECT THE CURRENT PROPOSED PROJECT



LEGEND

- 50 YR SEA LEVEL ELEV. (5.72 FT)
- 100 YR LOW SEA LEVEL ELEV. (6.91 FT)
- 100 YR MED SEA LEVEL ELEV. (8.62 FT)
- 100 YR HIGH SEA LEVEL ELEV. (9.22 FT)
- VIEW CONES
- 2 STORY UNITS (MAX 26' HEIGHT)
- 3 STORY UNITS (MAX 40' HEIGHT)

UNIT TABULATION

# OF UNITS PROPOSED PER TENTATIVE MAP	193 UNITS
# OF UNITS PER ALTERNATIVE ANALYSIS EXHIBIT	193 UNITS
TOTAL NET CHANGE	0 UNITS

JUN 22 2015

EXHIBIT NO. 23

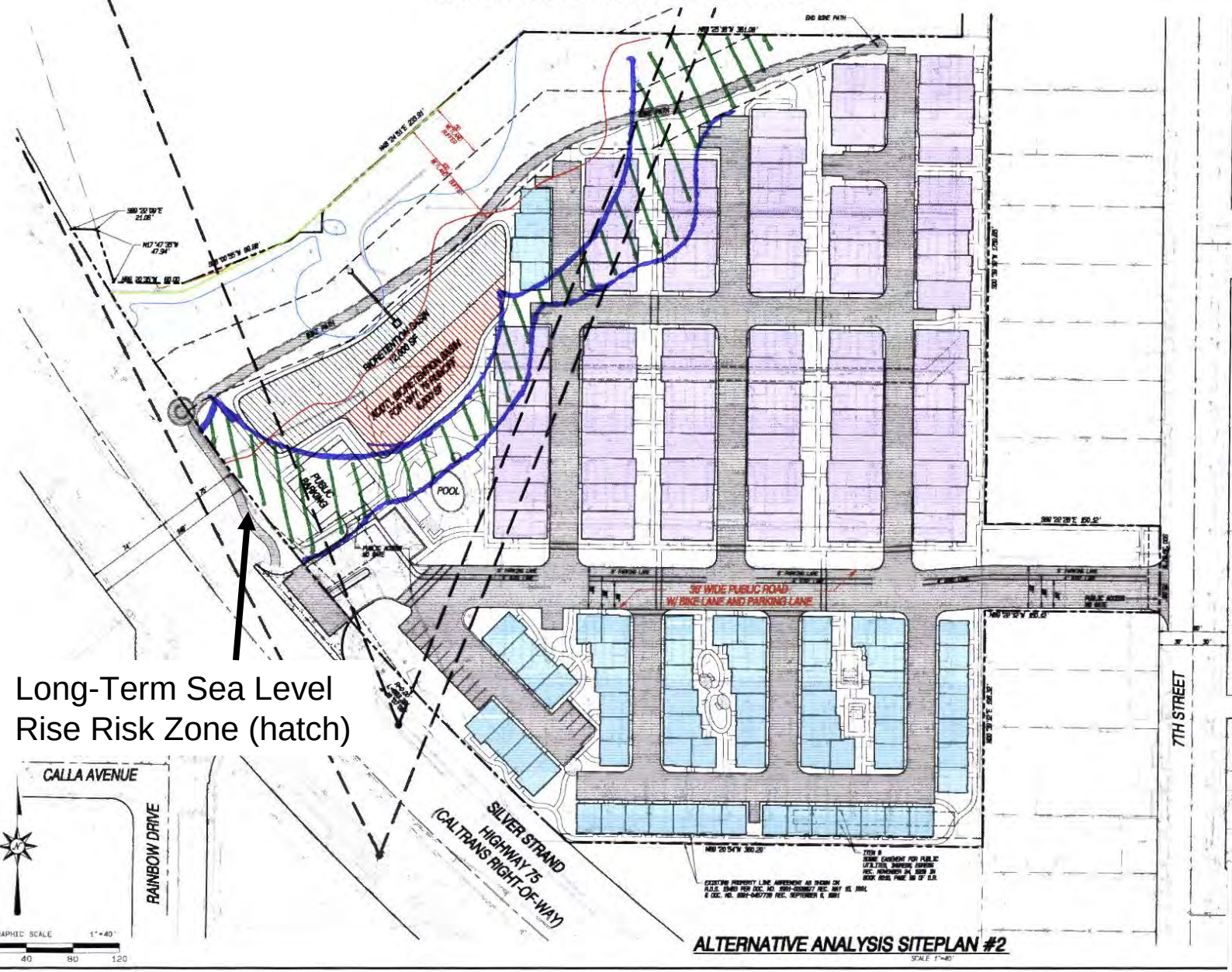
APPLICATION NO.
6-15-0003

Proposed plan Long-Term SLR Risk Zone

California Coastal Commission

BERNARDO SHORES ALTERNATIVE ANALYSIS SITEPLAN #2
WITH PUBLIC ROAD CONNECTION TO 7TH STREET

NOTE:
THIS IS AN ALTERNATIVE PLAN THAT DOES NOT REFLECT THE CURRENT PROPOSED PROJECT



ALTERNATIVE ANALYSIS SITEPLAN #2

SCALE 1"=40'

LEGEND

- 50 YR SEA LEVEL ELEV. (5.72 FT)
- 100 YR LOW SEA LEVEL ELEV. (6.91 FT)
- 100 YR MED SEA LEVEL ELEV. (8.62 FT)
- 100 YR HIGH SEA LEVEL ELEV. (9.22 FT)
- VIEW CONES
- 2 STORY UNITS (MAX 26' HEIGHT)
- 3 STORY UNITS (MAX 40' HEIGHT)

UNIT TABULATION

# OF UNITS PROPOSED PER TENTATIVE MAP	193 UNITS
# OF UNITS PER ALTERNATIVE ANALYSIS EXHIBIT	149 UNITS
TOTAL NET CHANGE	-44 UNITS

RECEIVED JUN 22 2015 CITY OF SAN DIEGO

EXHIBIT NO. 24

APPLICATION NO.
6-15-0003

Potential alt. plan
Long-Term SLR Risk Zone

California Coastal Commission

CDP Application No. 6-15-0003

Integral Communities
500 California Hwy 75, City of Imperial Beach

CCC Hearing
Item Th24b
August 13, 2015

A copy of these briefing materials has been provided to CCC Staff.

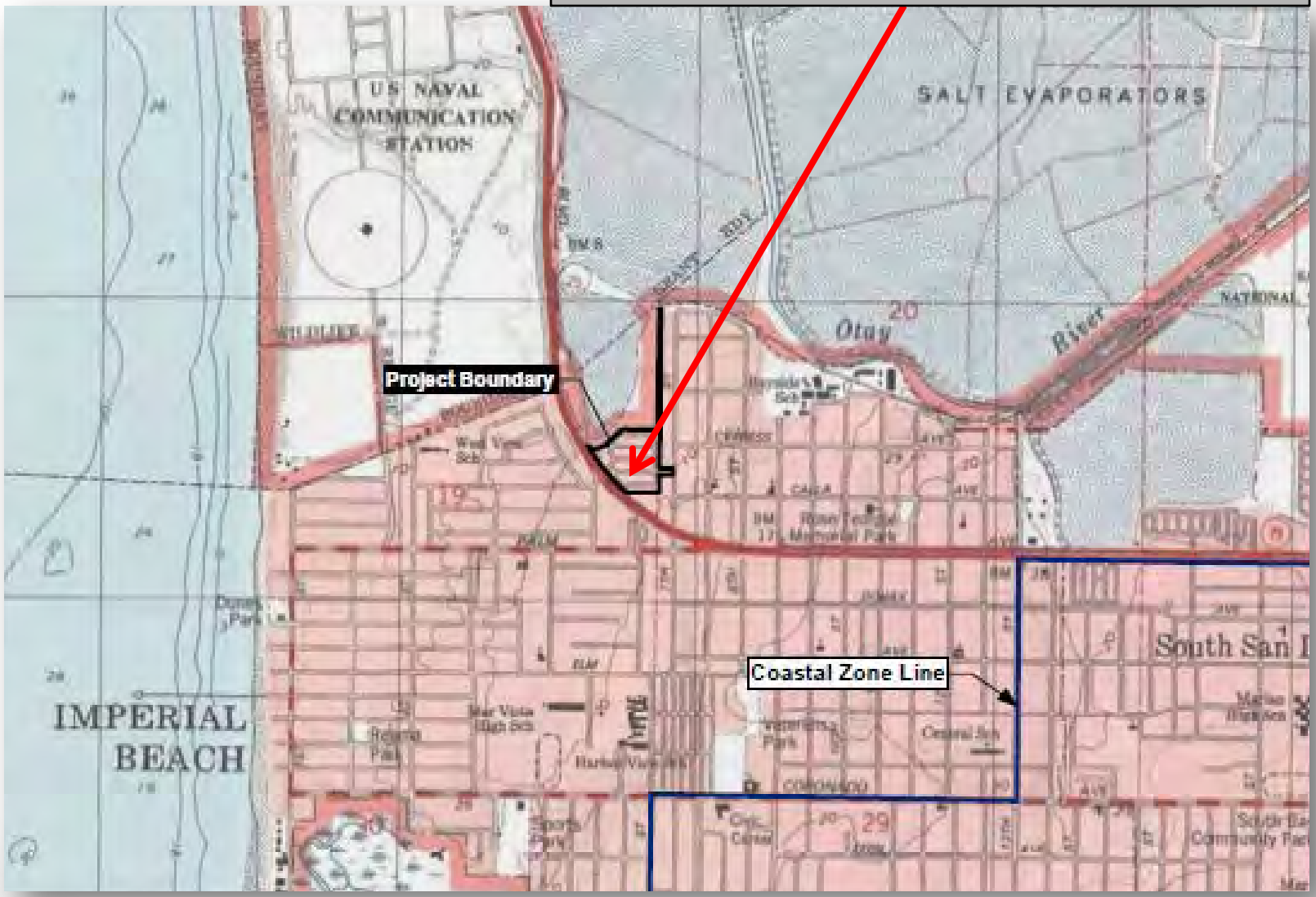
EXHIBIT NO. 25
APPLICATION NO.
6-15-0003
Applicant's Briefing Booklet
California Coastal Commission

Vicinity

Downtown
San Diego
Coronado
Coronado
Cays
Chula Vista
Bayfront
Silver
Strand
Bike
Trail
Site

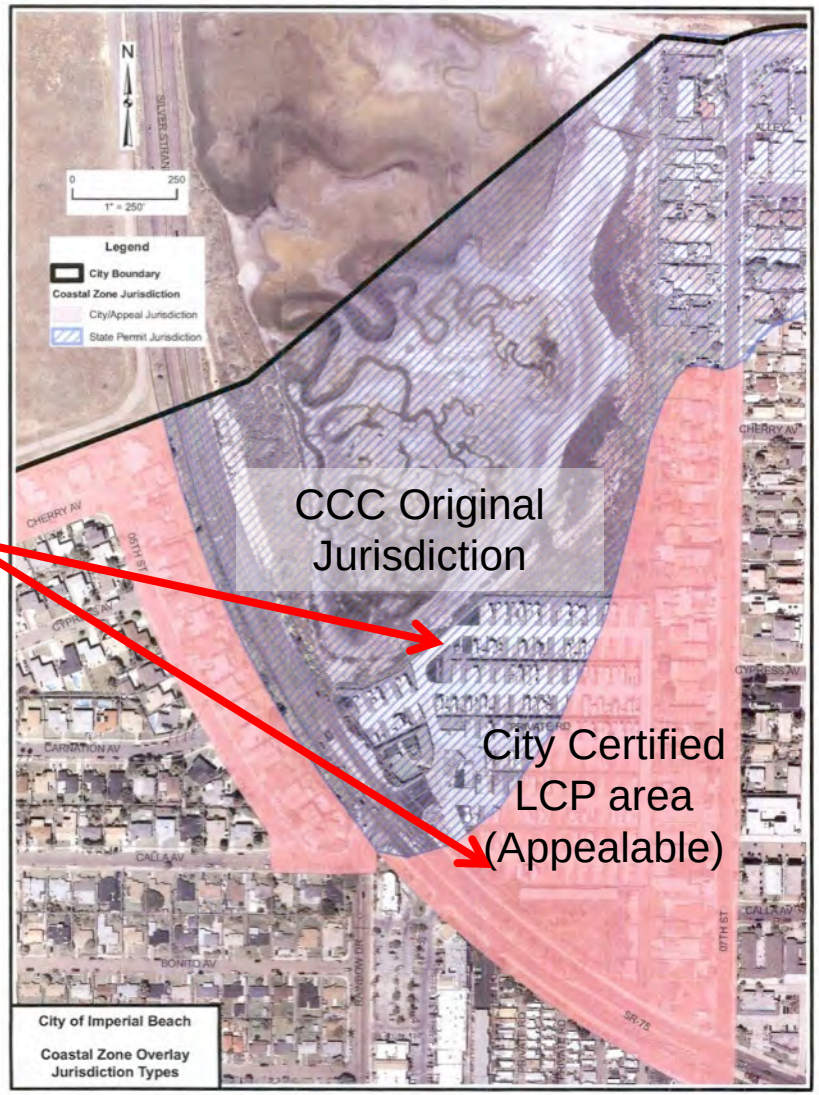
Project Site

500 California Hwy 75, City of Imperial Beach



CCC/City Jurisdiction

- Project site located within CCC original jurisdiction and area covered by City of Imperial Beach Certified LCP
- Project being processed as "consolidated permit" pursuant to Section 30601.3



Existing Conditions

Existing Conditions/Standards

- Subject site currently developed with private 124-space adult RV park
- Existing development currently extends into 100 foot wetland buffer area with concrete roads and RV hookups
- LCPA approved in 2013 allows development of multi-family residential at subject site and establishes development standards as follows:

ALLOWED	PROPOSED
4 stories/40’ height limit	2-3 stories
43 DU/acre	21 DU/acre
Total units: 400	193

Proposed Project

- Demolition of existing RV park, including removal of all concrete currently located adjacent to sensitive biological resource area
- Construction of 190 multi-family townhomes, 3 single family homes and recreational amenities (inc. pool, spa, tot lot, and “share-bike” facilities)
- Construction of approximately ½ mile section of public bike path to connect Imperial Beach with existing 24-mile Bayshore Bikeway
- Creation of over 1.4 acres of wetlands and bayfront habitat area

Proposed Site Plan

Visual Simulations

Looking north from highway at Rainbow Drive - BEFORE

Visual Simulations

Looking north from highway at Rainbow Drive – AFTER

Visual Simulations

Looking south from Bayshore Bikeway towards project site - BEFORE

Visual Simulations

Looking south from Bayshore Bikeway towards project site - AFTER

Timeline

- **Aug. 2012:** City Council adopted LCP amendment allowing multi-family residential development at subject site
- **Sept. 2012:** City submitted LCPA to CCC
- **Oct. 2013:** CCC approved LCPA
- **Dec. 2013:** Revised Findings adopted by CCC
- **Nov. 2014:** Final Mitigated Negative Declaration for project approved by City (no CCC comments)
- **Jan. 2015:** Consolidated CDP application submitted to CCC
- **Jan. - Present:** On-going coordination with CCC staff, including:
    - Preparation of multiple alternatives analyses
    - Provision of staff required revised site plans
    - Provision of additional public view analyses required by staff
- **Aug. 2015:** CCC Hearing

Staff Recommendation

Staff recommends ***approval*** with sixteen (16) special conditions related to public access, public views, biological resources, and avoidance of hazards associated with sea level rise.

Recommendation would require substantial revisions to the project design and would result in removal of:

- **At least 63 residential units**
- **Connection to Bayshore Bikeway**

Staff Conditions & Responses

Staff Conditions	Applicant Responses
• Place bike path through project site and on 7th Street instead of adjacent to wetland buffer	• Eliminates opportunity for expanded direct public wetland views; creates potential safety conflict between bikes & vehicles
• Create new view corridor; significantly restrict development footprint	• While site not in protected view corridor, project creates new view corridor and expands views for pedestrians and bicyclists
• Relocate detention basin outside of 100 foot wetland buffer	• Replaces existing concrete in 100 foot wetland buffer with wetland plant materials

Staff Conditions & Responses

Staff Conditions	Applicant Responses
• Provide public parking reservoir and on-street parking	• Four (4) public parking spaces added at project entrance; serves new bikeway
• Treat run-off from Hwy 75 not connected to or generated by project	• Inconsistent w/ San Diego Regional Water Quality Board regulations, treatment will be provided by City's Hwy 75 Improvement Project
• Setback all development 100 feet from highest inundation level (i.e., maximum extent of Sea Level Rise)	• Based on Sea Level Rise Study, proposed project is sufficiently setback and above highest projected levels in year 2100

Bikeway Connectivity

Bikeway Connectivity

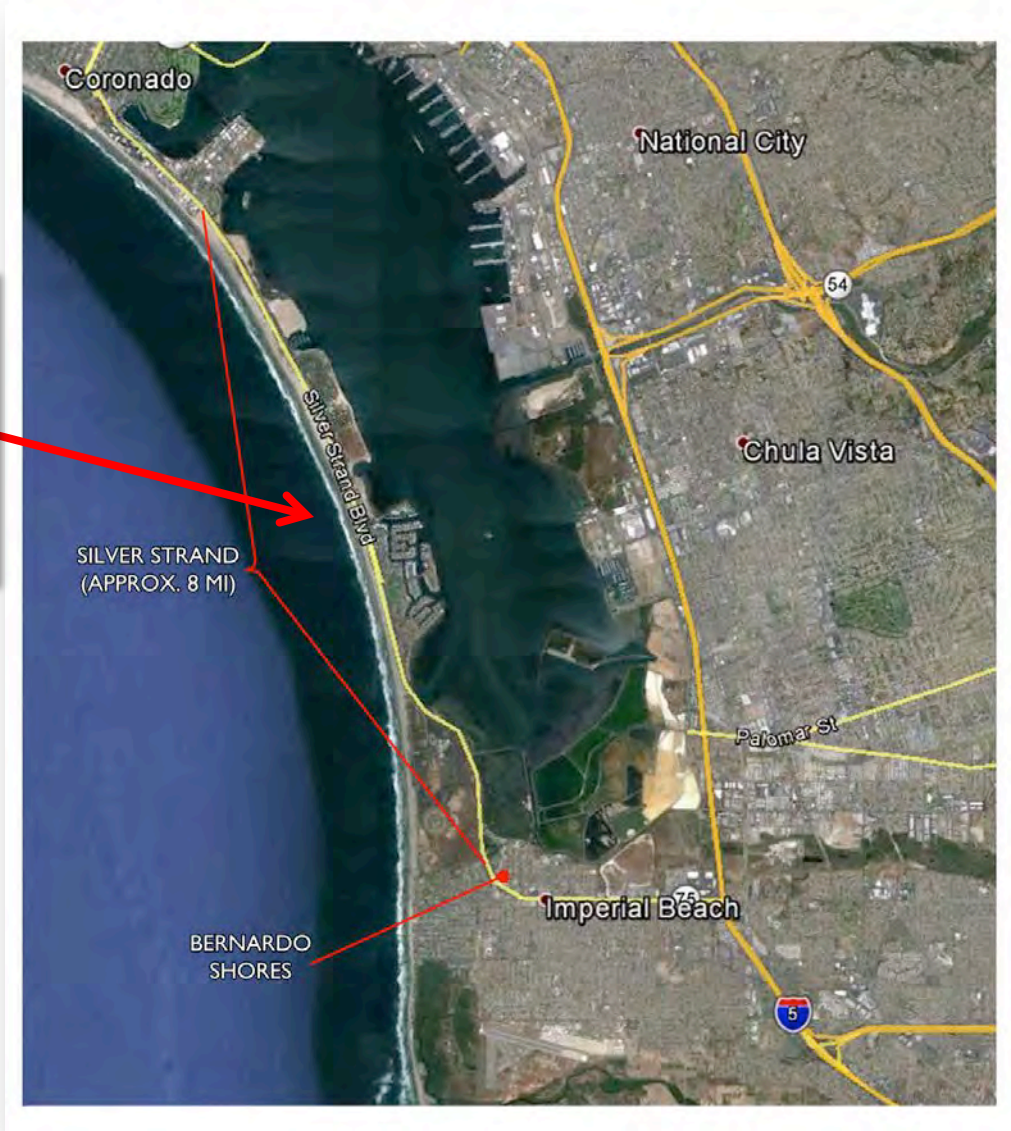
- Approximately ½ mile extension of bikeway will be located along wetland buffer bordering project site and will connect with existing 24-mile San Diego Bayshore Bikeway to the north
- Project provides new Class I connection between City of Imperial Beach and Bayshore Bikeway
- Located adjacent to San Diego Bay, overlooking wildlife refuge, within walking/biking distance of beach, and near the amenities of the Seacoast District and City of Coronado
- 2002: Prior Commission approval (CDP 06-02-038) allowed for wetland impacts of bike path for incidental public service/access purposes

Views from Proposed Bikeway

Approximate location of new Class 1 bikeway

Public Views from Silver Strand

Expansive ocean and bay views available from Silver Strand bikeway



Biological Buffer Zone

- Approximately 1.4 acre wetland buffer/setback area being provided between Pond 10A and proposed development
- Minor wetland impacts resulting from creation of new Class 1 bikeway (0.14 acre)
- Impacts mitigated on site at 4:1 ratio
- Creation component of 1:1
- Total mitigation requirement of .56 acre, including 0.14 acre of wetland creation - all on site
- No net loss of wetlands

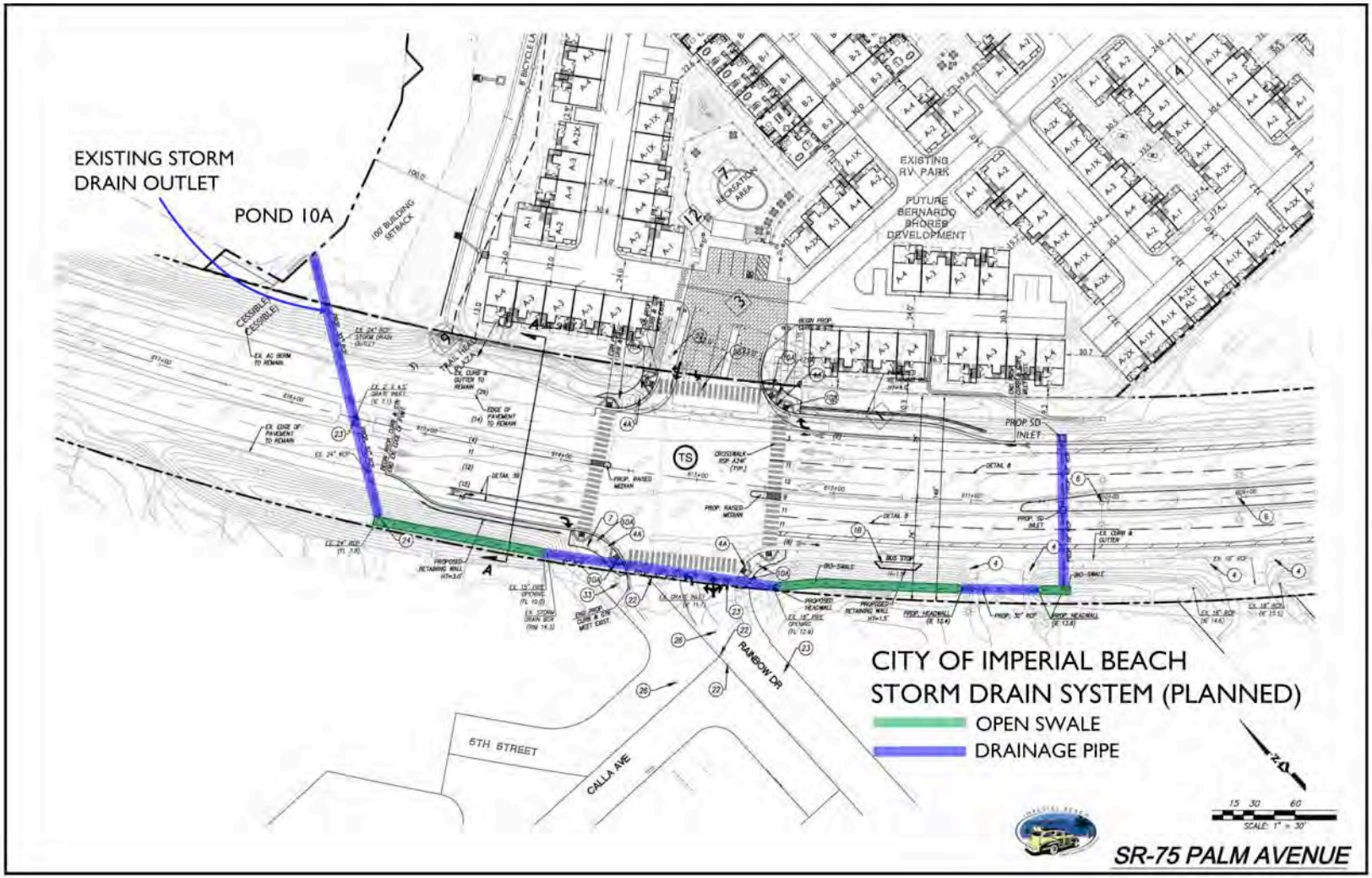
Biological Buffer Zone

Separation from Buffer Area

Sea Level Rise

- Study concluded site is above highest projected sea level rise levels in year 2100
- Fill not being added to remove site from inundation zone
- Development does not rely on structural protective devices
- Imported material necessary for drainage purposes only
- Applicant willing to accept “no future sea wall” condition
- No discernable displacement of water draining from site to adjacent properties

City Storm Drain System Plan



Project Benefits

- Provides new recreational access/connectivity to Bayshore Bikeway and public parking
- Creates new public scenic view area from bike/pedestrian pathway and from Highway 75
- Improves biological resources by removing existing concrete to add over 1.4 acres to the bayfront
- Protects and preserves water quality
- Provides “share-bikes” for community
- Lowest priced new homes in coastal zone in all of California
- CCR’s will allow all 193 units to be used for short term vacation rentals

Supporters

- Mayor Serge Dedina, City of Imperial Beach
- Former Mayor Jim Janney, City of Imperial Beach
- San Diego MOVE Alliance
- San Diego Bike Coalition

Conclusion

Applicant respectfully requests **approval** of the project as described in the letter to be sent to the Commission prior to hearing.

Proposed Project:

- Provides public access benefit in form of new approximately ½ mile Class 1 bikeway connection from Imperial Beach to 24-mile long Bayshore Bikeway
- Adds over 1.4 acres to the bayfront including over ½ acre of wetlands
- Provides the lowest priced new homes in the coastal zone in all of California
- Provides up to 193 new vacation rentals

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MITCHELL E. ABBOTT
GREGORY W. STEPANICICH
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B. TILDEN KIM
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August 7, 2015

Th 24b

Steve Kinsey, Chair
and Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 91405

Re: Application 6-15-0003 (Integral Communities, Imperial Beach)
Bernardo Shores Project

Agenda Item: August 13, 2015, #24.b

Dear Chair Kinsey and Commissioners:

This firm, along with McCabe and Company, represents the Applicant, Integral Communities, which proposes the Bernardo Shores Project – a request to demolish an existing 124-unit RV park, to create a 100' wetland buffer (which currently is concrete) and ½ mile Class I bikeway connection from Imperial Beach to the Bayshore Bikeway, and to construct 193 residential units on a 10-acre site which fronts Pond 10A at the southern end of San Diego Bay, in the City of Imperial Beach. Notably, the 193 residential units proposed will provide the lowest priced newly constructed homes in the coastal zone in all of California.

Unfortunately, the Staff Recommendation would slash the Project by 1/3 (63 units) with proposals (in Special Conditions #s 1 and 6) that are not required by the City's certified LCP, the amendment to the LCP that the Commission approved in 2013, or the Chapter 3 policies of the Coastal Act.

Over the past several months, the Applicant has sought to work with Staff to achieve a viable project that makes sense in terms of maximizing protection and enhancement of coastal resources. With changes to the Project the Applicant agrees to make, all issues raised by Staff have been addressed, except for two issues – the Applicant's proposal to extend the public bike/pedestrian connection to the Bayshore Bikeway and the fact that the Project would be above the highest projected sea level rise in the year 2100.

EXHIBIT NO. 26
APPLICATION NO.
6-10-64
Applicant's Response
California Coastal Commission

A key element of this Project is the creation of a ½ mile long Class I public bikeway/pedestrian path connection from Imperial Beach to the Bayshore Bikeway. The Project proposes to extend the bike/pedestrian path well past the arbitrary termination point at the end of the development recommended by Staff so that the public bike/pedestrian path will provide a meaningful and direct connection to the 26-mile Bayshore Bikeway, which sits atop the levee on the north side of the property. The Applicant also will construct a post and cable barrier fence to protect the existing wetland and 100' wetland buffer and will post educational signage along the path. This public bikeway/pedestrian path will provide a safe and 100% close-up public view of the wetlands for an enhanced public educational experience, along with views of San Diego Bay in the distance.

Prior to receipt of the Staff Report, the Applicant had agreed to the following Project revisions: 1) relocate the bike path further from the wetlands; 2) create ½ acre of new wetlands in the 100' wetland buffer for impact to 0.14 acre of wetlands from the bike/pedestrian path; 3) reduce building height from 3-stories to 2-stories along the most of the edge facing Pond 10A; 4) provide on-site public parking; and 5) eliminate the entry gate off Highway 75 to allow access to the public parking and bike/pedestrian path.

As discussed below, following receipt of the Staff Report, the Applicant proposes the following additional Project changes:

- Increase the width of the public bike/pedestrian path from 8' to 10' to facilitate joint use of the path.
- Relocate the biofiltration basin out of the 100' wetland buffer and treat all project stormwater within the development area.
- Restore the entire 100' wetland buffer area, which is currently covered with concrete driveways and RV vehicle spaces.
- Treat off-site Highway 75 "run-on" not associated with the Project.
- Delete one 3-story building in the northwest corner along Highway 75 to provide a minimum of 10 public parking spaces.
- Create a view corridor of the wetland area which expands to full views of the pond and wetlands for motorists as they pass the curve at the intersection of Highway 75 and Rainbow Drive, and then full views of the Ocean and San Diego Bay for the next 8 miles. (See Exhibit 1 – "Bernardo Shores Proposed Changes.")

The Staff Recommendation nonetheless goes beyond what is required by the LCP or Coastal Act and would abruptly terminate the bike/pedestrian path so that it is, strangely, a "bike path to nowhere"; would limit meaningful public and up-close views of the wetland and buffer area and San Diego Bay; and would arbitrarily and drastically truncate one of the last truly reasonably priced coastal residential developments, something the Commission rarely, if ever, sees along the California coast. (See Exhibit 2 – "Bernardo Shores with Staff's Conditions".)

The Property and Bernardo Shores Project

The Bernardo Shores Project does not front on the Ocean or the open waters of San Diego Bay. It is uniquely behind a levee (on top of which is the Bayshore Bikeway) that until recently was closed off to tidal influence and historically was a salt pond (Pond 10A), as well as two other former, levied salt ponds (Ponds 10 and 11), and then San Diego Bay. In 2011, the South San Diego Bay Coastal Wetlands Restoration and Enhancement Project (in particular, the Western Salt Pond Restoration Project), opened up Pond 10A to tidal flow. Today, Pond 10A is approximately 32 acres and consists of open water, tidal and high, medium, and low marsh habitats. Tidal exchange is restricted by five 3.5-foot diameter culverts that pass under the Bikeway.

The Project is currently developed with the 50-year old, 124-unit Bernardo Shores adult recreational RV park which the Commission, in certifying the City's LCP amendment in 2013, recognized specializes in long-term non-transient stays. The area that would lie within the 100-foot setback from the wetlands in Pond 10A is covered with concrete driveways and parking pads for RVs. There is currently no public access, no public parking, and no public bike/pedestrian path on the property.

The property consists of two parcels – a 9.31-acre developed area containing the existing RV park and a .76-acre thin, 25'-foot wide, undeveloped "panhandle" lot along the east side of the pond which is bounded on the east by the rear yards of existing residences on 7th Street.

The Project proposes development in two phases. Phase I would demolish the RV park and construct the residences. The recently certified amendment to the City's LCP permits a density of 43 dwelling units per acre, or a maximum of 400 units. The Project, however, proposes only 193 units – 190 1,100 – 1,900 sq. ft. attached

condominium townhomes and 3 detached 2,250 sq. ft. single-family residences. The condominium units will be marketed in the mid-$300,000 to mid-$400,000 range.

The Project proposes an 8' wide public pedestrian/bike path running east from Highway 75 and along the north side of the development with post and cable fencing to protect the sensitive habitat area. The Staff Recommendation would terminate this pedestrian/bike path at the northeast end of the development – a dead-end with no connection. By contrast, Phase II of the Project would provide an additional 1,400-foot long, public bike/pedestrian path (8' wide as proposed, but now 10' wide, as noted below) extending from the northeast corner of the development along the east side of Pond 10A to the existing Bayshore Bikeway to the north.

As the Staff Report notes, the Bayshore Bikeway "provides a 26-mile bicycle facility connecting cyclists around San Diego Bay through the cities of San Diego, National City, Chula Vista, Imperial Beach [with the Applicant's additional segment], and Coronado." (Staff Report, p. 20.) It is obviously a very important coastal recreational and ecological educational resource along those portions of San Diego Bay.

The Proposed Bayshore Bikeway Connection and Public Pedestrian Access

As noted, a significant feature of this Project is the inclusion of a publicly accessible ½ mile long public bike/pedestrian path that runs along Highway 75, continues east between the Project and the 100-foot wetland until the northeast corner of the development, and then proceeds north along the narrow panhandle parcel. (See Exhibit 3.)

The result is that for the first time, the public – bicyclists and pedestrians – will have a path with a 100% panorama view of the wetlands, the restored buffer area, and San Diego Bay to the north, and a continuous, direct connection to the 26-mile Bayshore Bikeway from the City of Imperial Beach. (See Exhibit 4.)

Special Condition 1.b requires the bike/pedestrian path to be 10' in width instead of the 8' initially proposed. The Applicant agrees to provide the wider 10' path which will allow for more comfortable joint use by both pedestrians and bicyclists.

The Staff Recommendation also includes conditions which, inexplicably, would abruptly terminate the bike/pedestrian path at the northeast corner of the development, eliminate the direct connection to the Bayshore Bikeway, and eliminate the direct public views of the wetland and restored buffer area. Instead, Staff's conditions would re-route the bikeway in an unsafe, circuitous path that would require bicyclists to compete with vehicular street traffic within the Project and on 7th Street to the east in order to reach the Bayshore Bikeway. This requirement makes no sense.

The Applicant requests that the Commission delete the following condition language (noted by strikeout):

> Special Condition #1.b: "~~This path shall terminate at the northeast corner of the residential development and provide access at that point into the development.~~"
>
> Special Condition #1.h: "~~The main internal east-west road connecting the project site's western entrance on Highway 75 and the eastern entrance on 7th Street shall be built to public standards and sufficiently widened to permit public parking on one side and a demarcated bike lane on the other, in addition to any lanes of vehicular traffic.~~"
>
> Special Condition #1.j: "~~The Phase II bikeway extension along the panhandle east of Pond 10A shall be deleted~~."

The Staff Report makes the compelling point that this bike path "provides education and recreational opportunities to the public by allowing travel in close proximity to Pond 10A, observing the wetland and wildlife located therein, as well as view of San Diego Bay beyond." (Staff Report, p. 24.) Nevertheless, it recommends truncating that valuable public access, recreation, and educational opportunity by terminating it at the northeast corner of the development, thus leaving the bike/pedestrian path as a "path to nowhere." By seeking to re-route the path away from the resource, through the development and over public streets, the Special Conditions above would eliminate any pedestrian access, viewing, and educational opportunity beyond the development. And, bicyclists would be presented with the less safe and circuitous option of traversing streets and competing with vehicular traffic within the development and then on the public street on 7th Street.

Staff's rationale for terminating the public bike/pedestrian path connection is that in one area midway between the northeast corner of the development and the Bayshore Bikeway, the path would cross a minute portion of wetland – 0.14-acre of wetland vegetation.[1] Staff argues that while the Phase II bike path is a "positive" recreational amenity, it "clearly" is not one of the uses identified by Coastal Act Section 30233 for which fill of a wetland is allowed. Staff's argument is plainly wrong and, moreover, it is directly contrary to the Commission's decision in a nearly identical situation which approved construction of a bike path "spur" affecting an even larger wetland area immediately upcoast of the Bernardo Shores property on the east side of SR-75 and west side of Pond 10A. Same pond, same wetlands. This is reflected on the graphic in Exhibit 5, which is taken from that prior Commission decision, with the Bernardo Shores property added.

In approving the bike path "spur," the Commission noted that there is a striped and separated Class I bikeway extending south from Coronado to the northern edge of the salt ponds, but "[t]here is no bike path for the remaining half-mile of SR 75 heading south into Imperial Beach," that "a significant number of bicyclists (both recreational and commuters) continue along this road instead of veering east where the Class I bikeway turns," and "[a] separated bikeway along this stretch would enhance the safety of bicyclists." (CDP No. 6-02-038, p. 8.) The Commission concluded that "the bike path is an allowed use in wetlands as an incidental public service," which is one of the eight permissible uses in a wetland. (Id.) As stated by the Commission:

> "The proposed [bikeway] spur will not only enhance public access, but significantly increase safety for bikers along this roadway." (Id., p. 9.)

And, the Commission required 4:1 mitigation for the wetland impacts (which the Applicant also proposes here).

The Applicant respectfully submits that there should be no compromising here on public safety. As the Commission previously concluded, the public bike/pedestrian path is an "incidental public service" which is a permissible use in wetlands under Section 30233 of the Coastal Act. The path not only provides the full viewing and educational opportunity of the coastal resource that Staff acknowledges

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[1] The Staff Report inaccurately states that the wetland impact is 0.24-acre.

in its Staff Report, but it is the appropriate and direct route to the Bayshore Bikeway and the feasible least environmentally damaging alternative, in contrast with the circuitous route that Staff recommends, which would require bicyclists to compete with motorists using the main street within the Project and 7th Street to the east. Moreover, the 4:1 mitigation ratio is satisfied here on-site in a more appropriate and desirable area within the 100' wetland buffer than where the impact occurs. It bears emphasis that the location where Staff has proposed deletion of the bike path is currently degraded and used as a substandard, unmaintained, and unsafe walking path.

The Entry Gate

Special Condition #1.a would prohibit any pedestrian or vehicular gates at any entrance to the proposed development. The Applicant has no problem with this requirement at the entry to Bernardo Shores from Highway 75. The entry will be open to the public and to the 10 public parking spaces provided and the pedestrian/bike trail.

The Applicant cannot, however, agree to eliminate the gate at the rear of the Project in order to provide an east-west road connection between Highway 75 and 7th Street. The sole purpose for widening this road and removing the gate is the Staff recommendation for re-routing the bike path away from the direct connection to the Bayshore Bikeway and over the streets. As approved by the City, the rear gate to the property would be limited to emergency access. There would be no through-traffic, vehicular or bicycle (whether by residents or otherwise), from or to 7th Street, nor is there any traffic circulation need at all for such a connection. Motorists on 7th Street have a direct and short route to a signalized intersection at 7th Street and Highway 75. There is no traffic necessity for 7th Street residents to drive circuitously through the Project, nor any reason for Bernardo Shores residents to drive on 7th Street.

For these reasons, the Applicant requests that the Commission modify the following condition language:

> Special Condition 1.a: No pedestrian or vehicular gates are permitted at ~~any~~ the entrance to the proposed development at Highway 75. All publicly and privately maintained streets, roads and public parking areas identified on revised plans shall be for public street purposes including, but not limited to,

pedestrian, bicycle and vehicular access. All streets, roads, and public parking areas shall be open for use by the general public 24 hours a day, with the exception of standard limited parking restrictions for street sweeping/maintenance purposes. Long term or permanent physical obstruction of streets, roads and public parking areas shall be prohibited. ~~All public entry controls (e.g. gates, gate/guard houses, guards, signage, etc.) and restrictions on use by the general public (e.g., preferential parking districts, resident-only parking periods/permits, etc.) associated with any streets or parking areas shall be prohibited.~~ Access between the street ends and the public pedestrian bike path shall be provided."

Special Condition #1.h (also noted above): "~~The main internal east-west road connecting the project site's western entrance on Highway 75 and the eastern entrance on 7th Street shall be built to public standards and sufficiently widened to permit public parking on one side and a demarcated bike lane on the other, in addition to any lanes of vehicular traffic.~~"

<u>The Applicant's Proposed Deletion of 3-Story Building on West Side of Entry Along Highway 75 and Provision of Public Parking</u>

In response to the Staff Report, the Applicant is also prepared to delete the 3-story (6 unit) residential building on the northwest side of the Project entry along Highway 75. As discussed further below, the elimination of this building will provide a public parking area for pedestrian/bike trail users and an additional view corridor of the wetlands for motorists traveling upcoast. Currently, no view exists in this area due to landscaping and extensive vegetation. The Applicant's revised proposal would significantly improve the current conditions relating to the view of the wetlands.

A. <u>Public Parking</u>

Special Condition #1.i requires: "In addition to any public parking located along internal streets, the project shall including a public parking lot of no less than 10 parking spaces in proximity to the western entrance for use by non-guest members of the public." The Applicant agrees to satisfy this requirement. By eliminating the building along Highway 75, at least 10 public parking spaces can be provided.

B. View Corridor

As to the development area, the Staff Report inaccurately states that "there are expansive views of Pond 10 and the bay across the site from northbound SR 75." (Staff Report, p. 3.) Those views exist only once a motorist traveling north at 50-55 mph passes the existing RV park. Currently, the majority of views of the wetland are blocked by the extensive vegetation which exists on the western boundary of the property and the RVs which extend significantly closer to the wetlands on the concrete driveways and pads within the proposed 100-foot wetland buffer. A number of Staff's Special Conditions (the wetland setback, the residential setback, and the sea level rise setback) appear intended to eliminate a significant portion of the Project (1/3 of the units) simply to provide additional views of the wetlands in Pond 10A. It is important to note that nothing in the LCP or the Commission's recently approved amendment to the LCP designates this site as a protected view corridor. However, a true, designated "Scenic Corridor" begins at the northwest corner of the project site after the end of the Project's proposed buildings and, as noted, continues largely unobstructed for 8 miles to the north along the Bay and Ocean.

In any event, there are three significant public views of the wetlands that this Project will provide. First, by eliminating the cement driveways and RVs and creating a 100' wetland buffer, the Project will open up views of the wetland from Highway 75.

Second, while the Staff Report acknowledges the value of the public view of the wetlands from the bike/pedestrian path around the development itself, it ignores the continuation of the bike connection to the Bayshore Bikeway on the north levee. This feature of the Project – the totality of the new bike/pedestrian path – will provide a 100% public, panoramic view of the wetlands and restored 100' wetland buffer, as well as portions of views of San Diego Bay north of the levee. This is reflected in the photos included as Exhibit 4.

Third, in addition to the other viewing opportunities, the Applicant will provide a further view corridor for motorists traveling north on Highway 75, a view that does not exist today because it is obstructed by extensive vegetation. As noted, the Applicant is additionally prepared to modify the Project by also removing the three story building proposed to the north of the entry along Highway 75 and to observe restrictions in the conditions on the height of structures and landscaping in

that area. At this location, a motorist will cross a busy intersection at Highway 75 and Rainbow Drive along a curved portion of the Highway. Thus, a motorist traveling at 50-55 mph north will have a view corridor to observe the wetland area with eyes focused forward, which will expand in an instant to a full view of Pond 10A past the development.[2] (See Exhibit 1, view cones, and Exhibit 6, before and after visuals.) Moreover, and importantly, the recommendation in the Staff Report to require an additional 150 feet of view here ignores that beyond the Project site, the motorist traveling north will have 8 miles (12 minutes of driving time) of almost unobstructed views of the Ocean on one side and the Bay on the other along the Silver Strand.

For these reasons, the Applicant requests that the Commission modify the condition language as follows:

> Special Condition 1.g: The residential building proposed west of the entry to the project site and along Highway 75 shall be deleted. A view corridor from Highway 75 shall be established over the site as shown on ~~Exhibit Nos. 7-10~~ Applicant's "Bernardo Shores Proposed Changes" exhibit, received in the San Diego Coast Office on August 7, 2015. No structures taller than 10 feet in height as measured from existing or finished grade – whichever is lower – shall be erected within the view corridor. No landscaping taller than 10 feet, including raised planters, or with a growth potential of more than 10 feet, may be utilized in this view corridor.

Project Site Runoff and Water Quality Protection

The Project currently proposes a bioretention basin in the 100' wetland buffer. This water quality feature essentially would place a wetland (which, in essence, is what it is) within the 100' wetland buffer, and thus would be a perfectly permissible use in the buffer area. Special Condition 1.c., however, would require: "Water quality BMPs, including, but not limited to, bioretention basins, shall be located outside the 100-foot wetland buffer." At the Applicant's request, the City has recently agreed to elimination of the bioretention basin so that all runoff related to the

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[2] It should be noted, however, that the angle and direction of Highway 75 at this point would require the motorist to turn all the way to the right to capture the view while driving which would not make the viewing experience safe or meaningful.

Project can and will be treated within the development portion of the site by use of modular wetlands filtration systems in accordance with Regional Water Quality Control Board regulations.

The Staff Recommendation would also require the Applicant to treat road runoff (essentially "run-on" because it runs across the entry to the Property) from Highway 75. Because this runoff is not associated with the Property or generated by the Project, this Staff requirement is of questionable validity. Nonetheless, the Applicant agrees to add additional modular wetland filtrations systems on-site to accommodate the off-site runoff from Highway 75.

To accommodate this change, the Applicant requests the following minor change to Special Condition #5 (see underscoring):

> Special Condition #5: PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a Post-Development Runoff Plan (PDRP) approved by the City of Imperial Beach. The PDRP shall document that the runoff from the roofs, driveways, streets, and other impervious surfaces of the existing and proposed development will be collected and directed into pervious areas and infiltrated or treated in BMPs prior to being discharged to Pond 10A in a non-erosive manner. The PDRP shall prioritize Low Impact Development Best Management Practices (BMPs) that use small-scale, distributed BMPs to replicate the site's natural hydrologic balance through infiltration, evapotranspiration, harvesting, detention, or retention of stormwater close to its source. The PDRP shall address runoff from both the project site and runoff that currently passes through the project site from Highway 75 into Pond 10A. Water quality treatment BMPs shall be sized, designed, and managed to infiltrate, retain, or treat the amount of runoff produced by, at minimum, all storms up to and including the 85th percentile 24-hour storm event for volume-based BMPs, or the 85th percentile 1-hour storm event (with an appropriate safety factor of 2 or greater) for flow-based BMPs, using <u>modular wetland filtration systems that comply with Regional Water Quality Control Board requirements.</u> All PDRP water quality treatment BMPs shall be located outside of the buffer area between the residential development and Pond 10A.

Residential Setbacks

With the changes the Applicant has agreed to make, the proposed residential development would be outside of the 100' wetland buffer, landward of the pedestrian/bike path, and outside the projected low, mid and high sea levels. In an effort to create a larger view corridor, the Staff Recommendation has added two additional substantial setbacks, neither of which is required nor justified for this development, but which together would result in eliminating 1/3, or 63, of the residences proposed.

A. Setback from the Pedestrian/Bike Path

Special Condition 1.d. would require all residential structures to be set back a minimum of 25 feet inland from the public path. There is no LCP standard that requires this. Special Condition 1.b permits the pedestrian/bike path to be in the upper (inland) 50 feet of the 100' wetland buffer. By adjusting the public bike/pedestrian path, the residences will be at least 25' from the path in all but two buildings on the northeast end of the development. For this development, that is the proper balance – maximizing the wetland setback in a development that opens to the bike path on one side and is wide-open to the wetland and buffer on the opposite side. With the change proposed, a specific 25-foot setback requirement is not necessary.

The Applicant therefore requests that the Commission delete Special Condition 1.d:

> Special Condition 1: ~~d. All residential structures shall be set back a minimum of 25 feet inland from the public path.~~

B. Sea Level Rise

Bernardo Shores is a very unique development as it is neither exposed to the Ocean or yp the open waters San Diego Bay. Pond 10A is separated from the rest of San Diego Bay by an ample and stable levee (again, upon which is the regional Bayshore Bikeway) and two other former salt ponds (Ponds 10 and 11). The Staff Report speculates that "the levee system will likely experience damage and overtopping from an increase in water levels, extreme wave conditions, or a loss of

wetlands, which buffer impacts from high water." (Staff Report, p. 38.) No evidence supports this speculation.

At Staff's request, Coastal Environments, Inc., prepared a "Sea Level and Extreme Water Level Analysis" (April 2013, revised March 2015) to analyze the Project site for risk from sea level rise. The Study's findings incorporated the most recent sea level studies used in the Commission's Draft Sea Level Rise Guidance.

The Sea Level Rise Study evaluated two different time horizons, 2050 and 2100, and determined a "low," "medium," and "high" estimated projection of sea level rise for each of the two dates. **The Study concluded that the development as proposed is above the highest projected sea rise levels in the year 2100.** (See Exhibit 1.) Thus, there is no sea level rise issue with this development or justification for the substantial "setback on a setback" requirement recommended in the Staff Report.

Staff's approach would disregard the presence of the existing levee (and the need to protect the Bayshore Bikeway on top of it) and culverts. Further, Staff assumes no fill for the development and that the site would be lower, and thus subject to "high" estimated sea level rise projection in 2100. However, neither scenario, viewed separately or together, is realistic. It is founded on the fiction that the site is not protected by a substantial and existing levee (one whose sustainability is essential for the regional bikeway) and that site should require no balanced fill to be developed.

The Staff Report also assumes incorrectly that the fill is being added to remove the site from the inundation zone. The approximately 13,050 cy of fill[3] required for this Project is for drainage purposes only. Specifically, 7,250 cy of the fill imported is necessary due to the soil "shrinkage" that will occur when the site is graded and the loose native soil is compacted – meaning, the elevation of the overall site will not materially change by virtue of importing this "shrinkage" material. The fill will allow for grading of the site to construct and install the on-site drainage system. It will also provide the elevation necessary to permit the on-site stormwater drainage to be treated in the development area on-site (as required by Staff and agreed to by the Applicant) to meet the BMPs required to protect water quality.

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[3] The Staff Report inaccurately states that the amount of fill is approximately 15,000 cy.

The Staff Report also posits that owing to the proposed fill, "coastal waters that would otherwise expand over the projected sea level rise envelope would instead be forced elsewhere, potentially flooding nearby habitat, public access points, or residences at a lower elevation than the proposed development." There is no factual support for this asserted scenario. The amount of fill, 13,500 cy, amounts to an average of approximately 3.5 inches over the 10-acre development area, and given the location of the development, the amount of "displacement" relative to San Diego Bay would be literally imperceptible, something on the order of 0.0000005 feet.

Finally, the Applicant certainly appreciates the need to ensure that the development approved is set back far enough that it will not be endangered in the future by sea level rise. To that end, the site-specific analysis prepared for the proposed development and its location inland of the existing levee demonstrates that the Bernardo Shores Project is safely above the location of high projected sea level rise by 2100. Moreover, there is nothing inherently wrong in balancing fill for proper drainage and site preparation. Here, no pilings are proposed or might be exposed, nor is a seawall, revetment, or other shoreline protective device proposed, and the Applicant agrees to the "Waiver of Future Shoreline Protection" set forth in Special Condition #13. There is nothing in the Commission's Sea Level Rise Guidance that suggests that an additional 100-foot setback, or, in effect, a "setback on a setback," or conditions here arbitrarily identifying a "long-term sea-level rise risk zone" should be imposed. Indeed, to impose such a standard would mean that little could ever be developed anywhere on the California Coast, especially in the different bays along the coast, including San Diego Bay. In this case, it would unnecessarily gut 1/3 of the Project, or 63 units.

For these reasons, the Applicant requests that the Commission delete the following several conditions that create unnecessary requirements relating to sea level rise:

> ~~Special Condition #1.e: A 100-foot setback shall be demarcated from the mid-level and highest projected sea level rise for the year 2100, disregarding levees and culverts, as calculated in the Sea Level and Extreme Water Level Analysis revised March 6, 2015 and shown in Exhibit Nos. 7-10. Only those at-grade and accessory improvements not expressly prohibited by this condition may be located seaward of the setback line for the mid-level sea level rise project.~~

~~Special Condition #1.f: The area of the project site located between the 100-foot setback of the mid-level projected sea level rise and the highest projected sea level rise for the year 2100 shall be identified as the "Long-Term Sea Level Rise Risk Zone," and structures located in this area shall be developed in accordance with the Design and Management of Structures in the Long-Term Sea-Level Rise Risk zone approved by the Executive Director in accordance with Special Condition 2.~~

~~Special Condition #2: **Design and Management of Structures in the Long-Term Sea-Level Risk Zone.** Structures located on the project site in the area between the 100-foot buffer line from the mid-level projected sea level rise to the 100-foot buffer line from the highest project sea level rise for the year 2100 are at risk for long-term sea-level rise. As such, only structures capable of withstanding periodic flooding or which can feasibly be removed should they become threatened by flooding or sea-level rise shall be permitted. Only minimal, balanced cut and fill grading is permit in this location."~~

Special Condition #6: **Final Grading Plans.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final grading plans for the approved development. ~~The plans shall clearly indicate and state with written plan notes that only minimal, balanced grading is permitted within the area seaward of the 100-foot setback line from the highest projected sea level rise for the year 2100, referenced in Special Condition 1 and as seen in Exhibit Nos. 9 & 10.~~ The applicant shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this Coastal Development Permit, unless the Executive Director determines that no amendment is legally required.

Conclusion

With the additional changes proposed by the Applicant, the Project is fully consistent with the City's certified LCP and the Chapter 3 policies of the Coastal Act. The Project will provide a key, new public access and recreation benefit – a safe and scenic 1/2 mile Class I bikeway/pedestrian connection from Imperial Beach to the 26-

mile long Bayshore Bikeway. The Project will provide public parking to support that use, and a view corridor to enable motorists traveling northbound to view Pond 10A. The Project will add 1.4 acres to the bayfront, including over ½ acre of new wetlands, and in addition to treating the Project's on-site stormwater runoff, it will treat offsite "run-on" from Highway 75 pending completion of the City's project to treat that runoff. The 0.76-acre panhandle parcel will be added to the 1.4-acre wetland setback area, thus totaling over 20% of the site as being used to increase the area of the Bay by over two acres. And, the Project will provide the lowest priced new homes in the coastal zone of all of California.

Accordingly, for all the foregoing reasons, the Applicant requests your approval with the changes to the Special Conditions noted above. We will provide a handout that includes the condition changes at the hearing.

Very truly yours,

Steven H. Kaufmann

cc (w/attachments):

Dr. Charles Lester, Executive Director
Sherilyn Sarb, San Diego Coast District Deputy Director
Alexander Llerandi, Coastal Program Analyst
Lance Waite, Integral Communities
Marc Perlman, Integral Communities
Serge Dedina, Mayor, City of Imperial Beach
Steven Dush, Community Development Director, City of Imperial Beach
Susan McCabe, McCabe and Company

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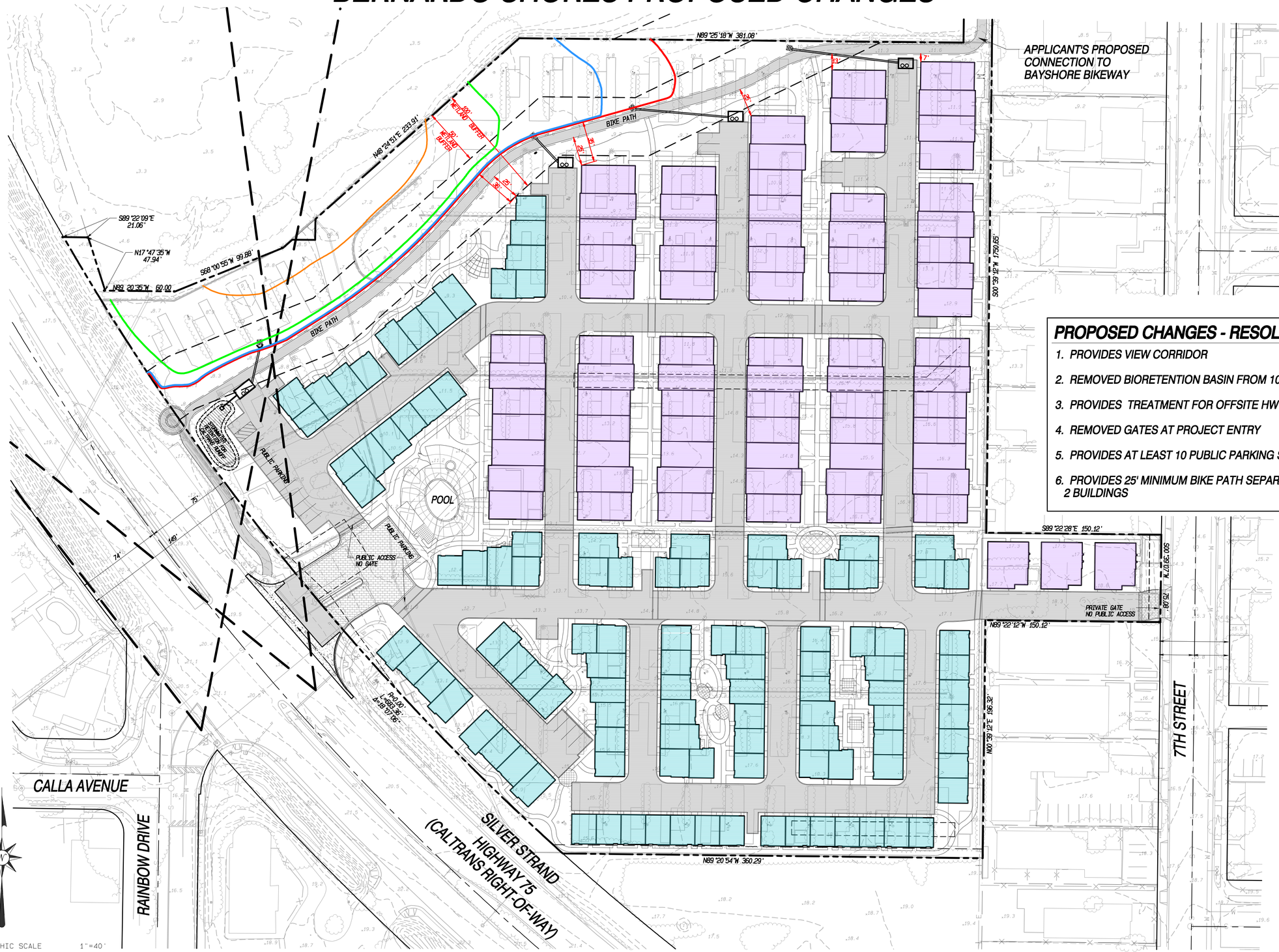
EXHIBIT 1

BERNARDO SHORES PROPOSED CHANGES



LEGEND

- 50 YR SEA LEVEL ELEV. (5.72 FT)
- 100 YR LOW SEA LEVEL ELEV. (6.91 FT)
- 100 YR MED SEA LEVEL ELEV. (8.62 FT)
- 100 YR HIGH SEA LEVEL ELEV. (9.22 FT)
- VIEW CONES
- 2 STORY UNITS (MAX 26' HEIGHT)
- 3 STORY UNITS (MAX 40' HEIGHT)

UNIT TABULATION

# OF UNITS PROPOSED PER TENTATIVE MAP	193 UNITS
# OF UNITS PER PROPOSED CHANGES	187 UNITS
TOTAL NET CHANGE	-6 UNITS

PROPOSED CHANGES - RESOLVED ISSUES

1. PROVIDES VIEW CORRIDOR
2. REMOVED BIORETENTION BASIN FROM 100' WETLAND SETBACK
3. PROVIDES TREATMENT FOR OFFSITE HWY. 75 STORMWATER RUNOFF
4. REMOVED GATES AT PROJECT ENTRY
5. PROVIDES AT LEAST 10 PUBLIC PARKING SPACES
6. PROVIDES 25' MINIMUM BIKE PATH SEPARATION ON ALL BUT 2 BUILDINGS

PREPARED BY:

PASCO LARET SUITER & ASSOCIATES
CIVIL ENGINEERING + LAND PLANNING + LAND SURVEYING
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ph 858.259.8212 | fx 858.259.4812 | plsaengineering.com

DATE PREPARED: 8/7/2015

PLSA 2045

BERNARDO SHORES
WITH STAFF'S CONDITIONS

EXHIBIT 2

LEGEND

- 50 YR SEA LEVEL ELEV. (5.72 FT)
- 100 YR LOW SEA LEVEL ELEV. (6.91 FT)
- 100 YR MED SEA LEVEL ELEV. (8.62 FT)
- 100 YR HIGH SEA LEVEL ELEV. (9.22 FT)
- VIEW CONES
- 2 STORY UNITS (MAX 26' HEIGHT)
- 3 STORY UNITS (MAX 40' HEIGHT)

UNIT TABULATION

# OF UNITS PROPOSED PER TENTATIVE MAP	193 UNITS
# OF UNITS PER STAFF'S CONDITIONS	130 UNITS
TOTAL NET CHANGE	-63 UNITS

PREPARED BY:

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DATE PREPARED: 8/7/2015

PLSA 2045

Bikeway Connectivity

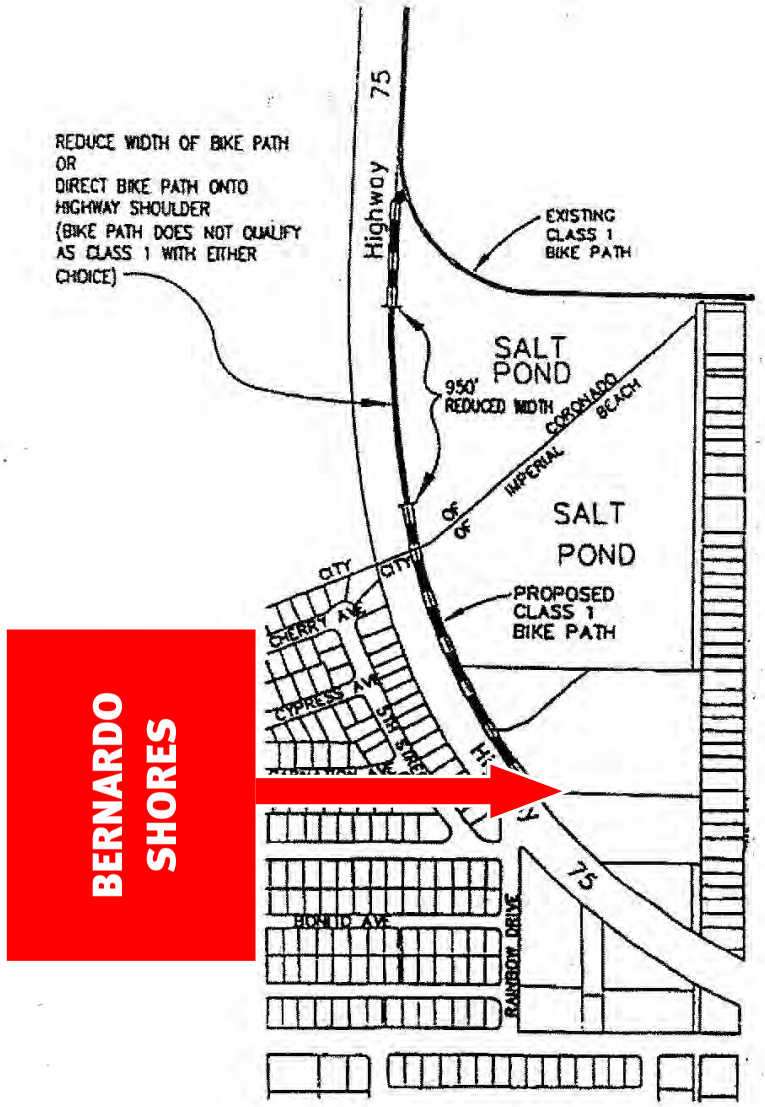
EXHIBIT 3

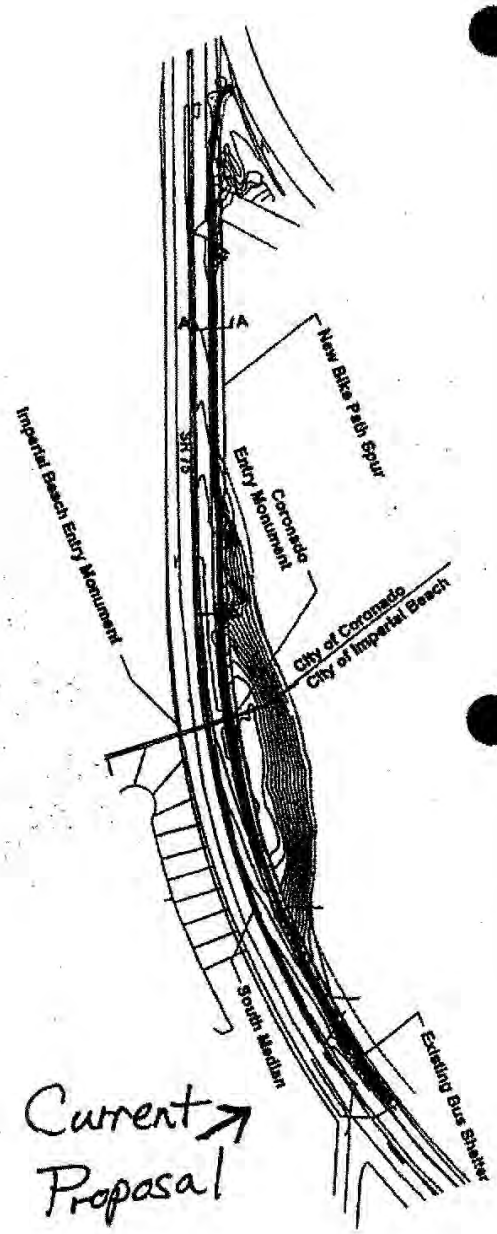
Views from Proposed Bikeway

Approximate location of new Class 1 bikeway

EXHIBIT 4

6-02-038





Current Proposal

Potential Redesign
to narrower path

EXHIBIT NO. 4
APPLICATION NO.
6-02-038 RF
Bike Path Spur
California Coastal Commission

EXHIBIT 5

Existing Conditions

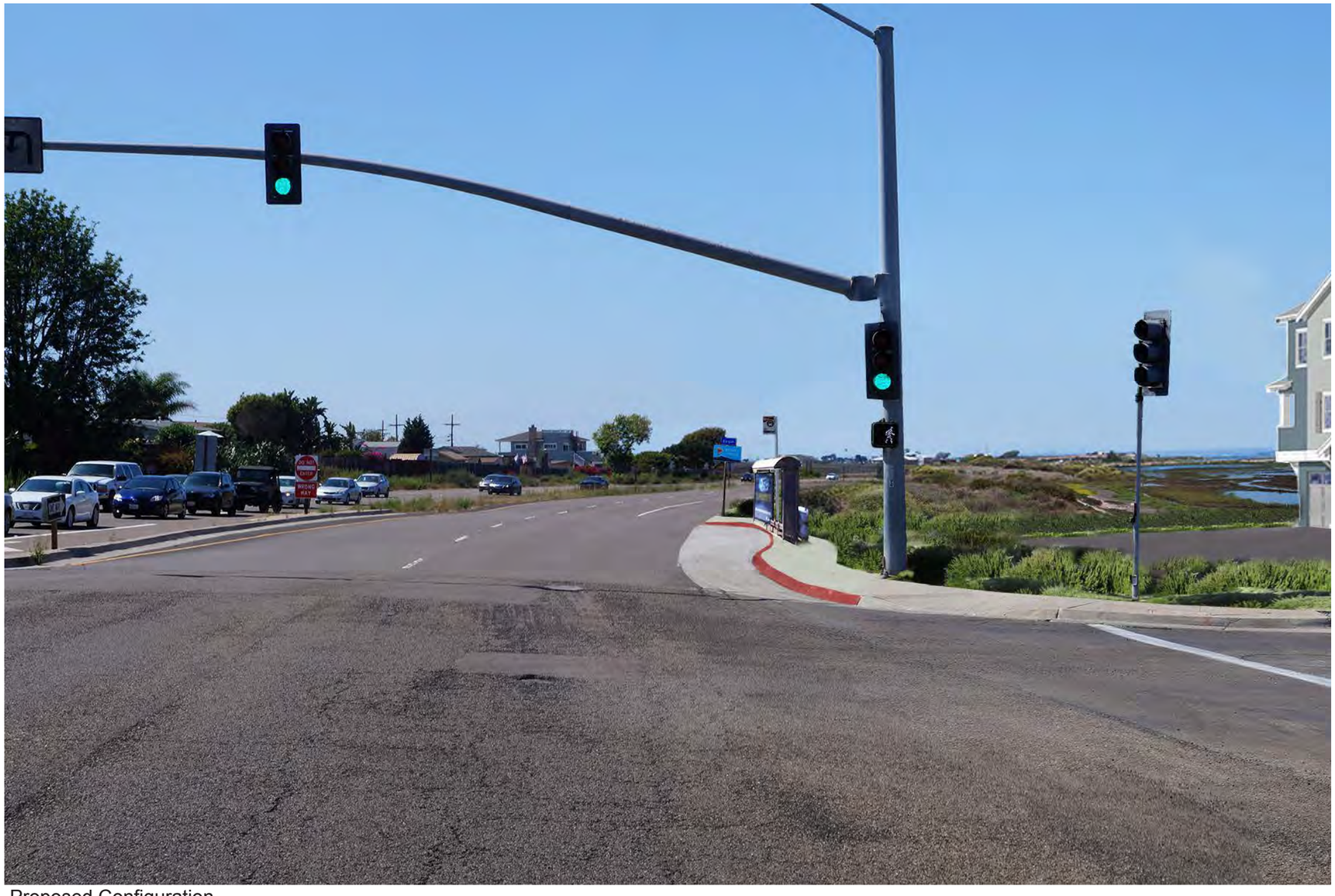
K:\- PROJECTS\IUPQ-13 Bernardo Shores\Simulations\Layout\PQ-13 Sim_2015_additional_080315.indd

Key View/Existing Conditions 4 - Looking north from highway at project site

BERNARDO SHORES

HELIX Environmental Planning

EXHIBIT 6



Proposed Configuration

K:- PROJECTS\IUPQ-13 Bernardo Shores\Simulations\Layout\PQ-13 Sim_2015_additional_080315.indd

Key View/Photosimulation 4 - Looking north from highway at project site

BERNARDO SHORES

PROPOSED PROJECT

HELIX Environmental Planning

Existing Conditions

K:\- PROJECTS\HPQ-13 Bernardo Shores\Simulations\Layout\HPQ-13 Sim_2015_additional_090315.indd

Key View/Existing Conditions 5 - Looking north from highway at Rainbow Drive

BERNARDO SHORES

HELIX Environmental Planning

Proposed Configuration

K:\- PROJECTS\UPQ-13 Bernardo Shores\Simulations\Layout\UPQ-13 Sim_2015_additional_080315.indd

Key View/Photosimulation 5 - Looking north from highway at Rainbow Drive

BERNARDO SHORES

HELIX Environmental Planning

City of Imperial Beach, California

OFFICE OF THE MAYOR

825 Imperial Beach Blvd., Imperial Beach, CA 91932 Tel: (619) 423-8303 Fax: (619) 628-1395

Honorable Members of the Coastal Commission:

The City of Imperial Beach would like to thank the staff of the Coastal Commission for providing the City with the various documents associated with the application for approval of a Coastal Development Permit for the Bernardo Shores project by the California Coastal Commission that will be considered by the Commission on August 13, 2015. Upon review of the staff report, the City of Imperial Beach would like to provide a response to some of the items identified in the report.

- Bicycle Facility - The City of Imperial Beach strongly supports the inclusion of the bicycle path as proposed by the applicant. The proposed location of the facility will not only provide a necessary alternative mode of transportation and a much desired recreational amenity, it will also mitigate several issues raised by the City of Imperial Beach, including:
  - As proposed, the linkage from SR 75 (Palm Avenue) to the Bayshore Bikeway represents the safest route with minimal vehicular conflict. The staff proposal to link the facility with 7th Street introduces several additional points of vehicular conflict including backing vehicles.
  - As proposed, the location of the bicycle facility provides, by far, the most visually pleasing experience for the users of the facility while ensuring non-motorist public views to the South Bay.
  - As proposed, the new facility will replace an existing path that is not properly constructed, results in significant erosion, and is fails to provide adequate delineation and protection of the wetlands. The new facility would reduce erosion and the use of post and cable fencing would clearly identify wetland areas.
  - The City of Imperial Beach has discussed the location of the bicycle path with representatives from the adjacent National Wildlife Refuge who indicated the facility, as proposed, is acceptable.

- Removal of Vehicular Gates – The City of Imperial Beach is very concerned about the Coastal Staff recommendation to remove the eastern vehicular gate and provide a public street connection onto 7th Street. This circulation pattern was not contemplated in the traffic analysis and the introduction of additional traffic into an existing residential neighborhood is not supported by the City. It is highly likely that if the alternative traffic pattern would have been presented to the residents during the public outreach effort, there would have been significant opposition to the additional traffic.

- The City of Imperial Beach is supportive of the Coastal Commission Staff's suggestion to identify additional public parking spaces.

The City of Imperial Beach is supportive of the Bernardo Shores project and appreciates the collaborative approach employed by the applicant. The City is hopeful that the Coastal Commission will agree that this project is consistent with the development goals of Imperial Beach and the Coastal Act, and represents a responsible and measured development proposal.

Very Respectfully,

Serge Dedina,
Mayor, City of Imperial Beach

EXHIBIT NO. 27
APPLICATION NO.
6-15-0003
City of IB Letter
California Coastal Commission

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Greg Cox

1) Name or description of project:

Redevelopment of the Bernardo Shores property in Imperial Beach into residential units.

2) Date and time of receipt of communication: June 8, 2015 at 3:00PM
3) Location of communication: San Diego
(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
4) Identity of person(s) initiating communication:
Jim Bartel
5) Identity of person(s) on whose behalf communication was made:
Integral Communities
6) Identity of persons(s) receiving communication:
Greg Cox, and Greg Murphy
7) Identity of all person(s) present during the communication:
Greg Cox, Greg Murphy, Jim Bartel, Lance Waite, Marc Perlman, Steve Neudecker

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

The representatives of the developer wishing to redevelop Bernardo Shores into residential units described 7 coastal issues that remain between them and the Coastal staff. 1) The bike path connection to the Bayshore Bikeway: provides public access but impacts a small portion of wetlands, which they are willing to mitigate. 2) Developer wants to include the bio-retention basin in the 100' wetland buffer, which staff worries might be precendent-setting. 3) Treatment of approx.. 3 acres of stormwater runoff from off-site section of Hwy 75. 4) View corridor, which developer contends only lasts for a couple seconds from the highway, but would take out about 28 units. 5) Providing public streets and public parking on site. 6) Sea level rise, and 7) the use of gates at the front entrance to the community.

6/12/15
Date

Greg Cox
Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

RECEIVED
JUN 12 2015
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

EXHIBIT NO. 28
APPLICATION NO.
6-15-0003
Ex-Parte Notices
California Coastal Commission

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: GREG COX

1) Name or description of project: APPLICATION 6-15-0003 BERNARDO SHORES
2) Date and time of receipt of communication: JULY 24, 2015 AT 9:30AM
3) Location of communication: SAN DIEGO
4) Identity of person(s) initiating communication: JIM BARTELL
5) Identity of person(s) on whose behalf communication was made: INTEGRAL COMMUNITIES
6) Identity of persons(s) receiving communication: GREG MURPHY for GREG COX
7) Identity of all person(s) present during the communication: GREG MURPHY, LANCE WAITE, MARC PEARLMAN and ADRIAN KWIATKOWSKI

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

Integral Communities representatives explained that this item is an application to demolish the existing RV park and construct 190 two and three story townhomes and 3 single-family homes in a gated development; construct public bike path between Hwy 75 and Bayshore Bikeway, on 10-acre bayfront site, at 500 Highway 75 in Imperial Beach, San Diego County. The representatives also explained their differences of opinion with coastal commission staff on issues related to: the view corridor, bike path termination, proposed east-west city street through the project and the location of the detention basin.

7/30/15

Date

Greg Cox

Signature of Commissioner

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: GREG COX

1) Name or description of project: APPLICATION 6-15-0003 BERNARDO SHORES
2) Date and time of receipt of communication: August 6, 2015 at 8:15AM
3) Location of communication: SAN DIEGO
4) Identity of person(s) initiating communication: Mayor Serge Dedina
5) Identity of person(s) on whose behalf communication was made: City of Imperial Beach
6) Identity of persons(s) receiving communication: Greg Cox, and Greg Murphy
7) Identity of all person(s) present during the communication: Mayor Serge Dedina, Andy Hall, Steven Dush, Tyler Foltz, Greg Cox and Greg Murphy

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

The City of Imperial Beach is supportive of the project presented by the developer of Bernardo Shores. Mayor Serge Dedina said that the City of Imperial Beach has already set aside 400 acres for restoration, and he says this project represents a win for social equity and that the applicant's proposal addresses wetland mitigation. He also said there is no real view corridor from the Rainbow Street intersection. He supports the applicants proposed trail connection to the Bayshore Bikeway because it promotes public recreation and addresses the fact there is already an informal trail along the proposed route that attracts negative attention. The city urges the Commission's approval of the project as proposed by the applicant.

8/6/15
Date

Greg Cox
Signature of Commissioner

RECEIVED
AUG 1 1 2015
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Item Th24b

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Carole Groom

1) Name or description of project: Application 6-15-0003 (Integral Communities, Imperial Beach)
2) Date and time of receipt of communication: August 3, 2015 at 2:15 PM
3) Location of communication: Telephone
(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
4) Identity of person(s) initiating communication:
Anne Blemker
5) Identity of person(s) on whose behalf communication was made:
Marc Perlman, Integral Communities
6) Identity of persons(s) receiving communication:
Carole Groom
7) Identity of all person(s) present during the communication:
Carole Groom, Susan McCabe, Steve Kaufmann, and Richard Alexander Bac

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

I received a briefing regarding the application of Integral Communities to demolish an RV park in Imperial Beach and build 190 two and three story townhouses and 3 single-family homes in gated development as well as construct a public bike path. The representatives went through a briefing booklet that was previously provided to staff (titled "Integral Communities" and dated August 13, 2015). The representatives stated that the proposed development would be among the lowest priced residential units in the CA Coastal Zone. The project would include a bayshore bikeway. Because the project is located within CCC original jurisdiction and covered by the Certified LCP, it goes straight to the CCC. The LCP allows certain conditions, according to the representatives. They stated that the staff proposes truncating the bikeway and the creation of 1.4 acres of wetlands and bayfront habitat. This would route the bikeway through the project (which the representatives oppose) and connect through 7th Street. In addition, the staff recommendation wants to cut the project by approximately one-third, eliminating 63 residential units, which representatives contend leads to the disconnection of the public bikeway. The representatives said they have agreed to remove 6 units to the left of the entrance. The representatives indicated that the units will be for sale at the lower-end of market rate housing (~$300,000-$400,000). The representatives also stated that the project only compromises 0.14 acres of wetlands and that it is within the 8 permissible uses in wetland areas. The representatives of the applicant propose that a public parking lot would be located where the 6 units are to be removed by the entrance to the development. The representatives also mentioned increasing bio-filtration on site. Lastly, the representatives mentioned the 100 foot setback from the highest inundation level for potential sea level rise. The representatives stated that the applicant is willing to agree with the "no future seawall" condition. However, they oppose the 100 foot "setback on a setback." They stated that the amount of fill is negligible, that it is for drainage purposes, and that the displacement of water is imperceptible. They also indicated that the 193 units would be visitor-serving as they would be allowed as short-term vacation rentals.

Aug 7 2015
Date

carole Groom
Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Steve Kinsey

1) Name or description of project: 6-10-0003 (Integral Communities)
2) Date and time of receipt of communication: Aug. 10, 2015 at 1:30pm
3) Location of communication: Telephone
   (If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
4) Identity of person(s) initiating communication:
   Anne Blemker
5) Identity of person(s) on whose behalf communication was made:
   Marc Perlman, Integral
6) Identity of persons(s) receiving communication:
   Steve Kinsey
7) Identity of all person(s) present during the communication:
   Marc Perlman, Lance Waite, Steve Kaufmann, Susan McCabe, Anne Blemker

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

I received a briefing from the applicant's representatives in which we went through a briefing booklet that was previously provided to staff. They described the proposed replacement of a long-term stay "adult" RV park with a new multi-family residential development and public bikeway adjacent to the Pond 10A wetland area. According to the applicant's representatives, the proposed project would remove all existing encroachments into the wetland buffer, set new development back 100 feet, and create a new connection to the Bayshore Bikeway. At the time of our call, the applicant was working to redesign the project to respond to concerns raised in the staff report, including those related to public views, detention basin siting and public parking. The representatives referred to a letter and full description of project revisions provided to staff and Commissioners by Steve Kaufmann on Friday, August 7th. The applicant requests that the Commission approve the plan as described in that letter.

8/10/15
Date

S H Kinsey
Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

CALIFORNIA COASTAL COMMISSION
7575 METROPOLITATION DRIVE, SUITE 103
SAN DIEGO, CA 92119-4402
VOICE (415) 904-5200
FAX (619) 767-2370

Th24b

Filed:	6/04/15
180th Day:	12/1/15
Staff:	A. Llerandi-SD
Staff Report:	7/31/15
Hearing Date:	8/13/15

STAFF REPORT: REGULAR CALENDAR

Application No.:	**6-15-0003**
Applicant:	**Integral Communities**
Agent:	Marc Perlman
Location:	500 Highway 75, Imperial Beach, San Diego County (APN: 625-140-20-00; 626-010-18-00)
Project Description:	Demolish existing 124-unit RV park and construct 190 two- and three-story townhomes and 3 single family residences in a gated condominium subdivision; construct a public pedestrian/bike path between Highway 75 and Bayshore Bikeway, on a 10-acre site adjacent to Pond 10A in South San Diego Bay.
Staff Recommendation:	Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending approval of the proposed residential subdivision, with substantial revisions to the project and the allowable development envelope to protect and enhance public access, public views, biological resources, and to avoid hazards associated with sea level rise.

The applicant proposes a development in two phases. Phase I would be to demolish the existing 65-year old, 124-unit Bernardo Shores recreational vehicle (RV) park and construct a private gated community with 190 40-foot tall, attached townhomes and 3 detached, 26-foot tall single family residences, with an 8-foot wide public bicycle/pedestrian path running east from Highway 75 along the north of the residential development and temporarily terminating at the northeast corner of the development. Phase II would extend the public bicycle/pedestrian path north 1,300 feet along the east side of Pond 10A, connecting with the existing Bayshore Bikeway to the north. The 10.1-acre bayfront project site is located within the City of Imperial Beach in San Diego County immediately south of a former salt pond (Pond 10A) which is part of the South San Diego Bay National Wildlife Refuge. The subject site is partially within the Commission's original permit jurisdiction and partially within the City's jurisdiction, appealable to the Commission. At the request of the City and the applicant, this proposed project is being processed as a consolidated permit, with Chapter 3 of the Coastal Act as the standard of review and the City's LCP being used as guidance.

The project site is a bayfront lot adjacent to Highway 75, a popular coastal access corridor and the main northern gateway to Imperial Beach. However, the proposed project would erect a gated community on the 10-acre site with no public access or parking despite being located between the first public road and the sea, in close proximity to the Bayshore Bikeway and the aforementioned National Wildlife Refuge. Construction of a gated community adjacent to the bay is contrary to the public access policies of the Coastal Act. Furthermore, the proposed project would only provide minimal guest parking, potentially leading to spillover onto public street parking used by the public to access the aforementioned coastal resources. Staff is recommending that all gates be removed, all internal streets be open to the public, that the main east/west street through the development be widened to allow creation of a bike lane and public parking on one side of the street, and that 10 public parking spaces be created for public access to the shoreline.

The second phase of the project would extend the new public bicycle/pedestrian path north to connect with the Bayshore Bikeway. The path would not be a part of the Bayshore Bikeway itself, but would create an additional connect between it and Highway 75. While the proposed extension would have public access benefits, the segment of the bike path along the panhandle east of Pond 10A would permanently impact approximately 0.24-acre of wetland vegetation adjacent to the National Wildlife Refuge. Construction of a path is not a permitted use under Section 30233 of the Coastal Act. There is already a connection to the Bayshore Bikeway from 7th Street, which is only 170 feet east of the proposed bike path. If the development were not proposed to be gated, the proposed street system would connect to 7th Street and create a link to Highway 75 without impacting wetlands.

Furthermore, the proposed mitigation for the impacts to wetlands would be located within the proposed 100-foot buffer area between the residential development and Pont 10A. This would be inappropriate because buffers are ecologically distinct from wetlands, and provide a number of habitat, protective, and aesthetic roles that are vital in conjunction with the wetlands themselves. The creation of wetlands within buffers would not only lead to a need for further buffers, but also interfere with the buffer's aforementioned roles.. Staff is recommending that the Phase II portion of the project be deleted.

The proposed residential development would also result in several significant impacts to coastal resources compared with the existing RV Park. Currently, there are expansive views of Pond 10 and the bay across the site from northbound Highway 75. The proposed project would completely block the approximately 500-foot wide existing view corridor with rows of 40-foot tall townhomes. The proposed 193-unit residential development will also be of a height and density substantially higher than the surrounding community character, which would adversely impact the scenic quality of Pond 10A as seen from the Bayshore Bikeway and elsewhere.

In addition, a Sea Level and Extreme Water Level Analysis of the project site determined that the site is at risk from sea level rise by the year 2100. The existing RV park is the type of use that is very adaptable to sea level rise, as it involves only minor permanent structures and easily relocatable RV units. In contrast, the proposed development consists of large, high-value, permanent structures built on fill. To address the sea level rise, the proposed project would import approximately 15,000 cubic yards of fill to raise the surface grade of the project site, mostly in the footprint of the projected sea level rise. However, this would effectively channelize this portion of the San Diego Bay coast, preventing the migration of wetlands, eliminating the wetland buffer, and forcing coastal waters into other areas of the bay, potentially increasing the sea level and flooding in those locations.

Finally, the proposed project would place a bioretention basin into which runoff from all 193 residential units would be directed into the proposed wetland buffer. For the reasons stated earlier, wetland buffers serve vital protective and habitat roles in conjunction with their adjacent wetlands, and occupation of any of a buffer area, especially half of it, would degrade the ability of the buffer to fulfill these roles.

Therefore, staff is recommending special conditions that identify adevelopment envelope within the project site that removes development out the existing view corridor and the area at risk for sea level rise, and provides a twenty-five foot setback from the proposed public pedestrian/bike path for all residential development to ensure the path is clearly accessible to the public. **Special Condition No. 1** would require revised final project plans that modify the development to incorporate a 100-foot setback from the highest projected sea level rise, relocate all BMPs out of the wetland buffer, set residential structures back from the public pedestrian/ bike path, prevent development taller than 10 feet within the public view corridor, widen the main internal road to provide public parking and a demarcated bike path, provide a 10-space public parking lot, not construct any development in the panhandle east of Pond 10A, direct all lighting away from sensitive habitat, and install anti-reflective measures on all windows. **Special Condition No. 4** requires a final landscape plan that utilizes native, drought-tolerant plants, water-saving irrigation, no landscaping taller than 10 feet in the public view corridor, and maintenance and pest control programs that emphasized non-chemical measures. **Special Condition No. 5** requires a post-development runoff plan that directs runoff into pervious areas and BMPs outside of the wetland buffer, as well as designs treatment facilities to adequately treat runoff currently entering the project site from Highway 75. **Special Condition No. 6** requires a final grading plan that allowed at most balanced grading within the projected footprint of the highest level of sea level rise on the subject property. **Special Condition No. 7** requires a signage plan that places adequate signage around and within the development informing the public of the public access

opportunities and amenities available within the development. **Special Condition No. 8** would require a final color board for the development that is compatible with the surrounding character and scenic resources and eschews usage of bright colors and accents. **Special Condition No. 9** would require a construction staging and storage plan that prohibits such activity within public spaces or parking areas. **Special Condition No. 10** would require a final stormwater pollution prevention plan that incorporates measures to protect coastal water quality from potential impacts arising from construction activity on the project site. **Special Condition No. 11** would require that all exported material be disposed of in a legal site outside of the Coastal Zone. **Special Condition No. 12** would require that the applicant and successors in interest to accept the risk of wave action and sea level rise on the project site. **Special Condition No. 13** would require a waiver of all future shoreline protection for the subject site so as to not alter the natural landforms of this portion of San Diego Bay.. **Special Condition No. 14** would require an open space restriction be placed on the proposed wetland buffer and the panhandle along the east side of Pond 10A so as to keep them free of development and preserve their habitat value. **Special Condition No. 15** would require a sensitive species monitoring program to ensure that noise and similar impacts on wildlife in the adjacent Pond 10A are avoided to the greatest extent feasible during nesting season. Finally, **Special Condition No. 16** would require a general deed restriction to ensure that that protections required above run with the land and are implemented by the applicant and their successors in interest.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Vicinity Map
Exhibit 2 – Aerial Map
Exhibit 3 – National Wildlife Refuge Map
Exhibit 4 – Pond 10A Culvert Connection
Exhibit 5 – Current Topographic Map
Exhibit 6 – Bio-map of Project Site
Exhibit 7 – Applicant's Proposed Site Plan & Mid-Level Sea Level Rise Setback
Exhibit 8 – Potential Alternative Site Plan & Mid-Level Sea Level Rise Setback
Exhibit 9 – Applicant's Proposed Site Plan & Highest Sea Level Rise Setback
Exhibit 10 – Potential Alternative Site Plan & Highest Sea Level Rise Setback
Exhibit 11 – View Survey Key
Exhibit 12 – Existing Public View No. 1
Exhibit 13 – Existing Public View No. 1 with proposed project
Exhibit 14 – Existing Public View No. 1 with potential alternative
Exhibit 15 – Existing Public View No. 2
Exhibit 16 – Existing Public View No. 2 with proposed project
Exhibit 17 – Existing Public View No. 2 with potential alternative
Exhibit 18 – Existing Public View No. 3
Exhibit 19 – Existing Public View No. 3 with proposed project
Exhibit 20 – Existing Public View No. 3 with potential alternative
Exhibit 21 – Letters in Support of Applicant's Proposed Bike Path
Exhibit 22 – Open Space Easement

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit 6-15-0003 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 6-15-0003 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 and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. 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 THIS 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 Imperial Beach. Said plans shall be in substantial conformance with the site plans submitted on January 2, 2015, but shall be revised to include the following:

    a. No pedestrian or vehicular gates are permitted at any entrance to the proposed development. All publicly and privately maintained streets, roads and public parking areas identified on revised plans shall be for public street purposes including, but not limited to, pedestrian, bicycle and vehicular access. All streets, roads and public parking areas shall be open for use by the general public 24 hours per day, with the exception of standard limited parking restrictions for street sweeping/maintenance purposes. Long term or permanent physical obstruction of streets, roads and public parking areas shall be prohibited. All public entry controls (e.g. gates, gate/guard houses, guards, signage, etc.) and restrictions on use by the general public (e.g. preferential parking districts, resident-only parking periods/permits, etc.) associated with any streets or parking areas shall be prohibited. Access between the street ends and the public pedestrian/bike path shall be provided.

    b. A 100-foot buffer from the delineated wetlands on the northern property of the project site line shall be established. Within this buffer, no development shall be permitted, except for in the upper (inland) 50 feet of the buffer, a public pedestrian /bike path a minimum of 10-feet in width, a post and rail fence on the bayward side of the path and public access signage shall be constructed. This path shall terminate at the northeast corner of the residential development and provide access at that point into the development.

    c. Water quality BMPs, including, but not limited to, bioretention basins, shall be located outside the 100-foot wetland buffer.

    d. All residential structures shall be set back a minimum of 25 feet inland from the public path.

    e. A 100-foot setback shall be demarcated from the mid-level and highest projected sea level rise for the year 2100, disregarding levees and culverts, as calculated in the Sea Level and Extreme Water Level Analysis revised March 6, 2015 and shown in Exhibit Nos. 7-10. Only those at-grade and accessory

improvements not expressly prohibited by this condition may be located seaward of the setback line for the mid-level sea level rise projection.

f. The area of the project site located between the 100-foot setback of the mid-level projected sea level rise and the highest projected sea level rise for the year 2100 shall be identified as the "Long-Term Sea Level Rise Risk Zone," and structures located in this area shall be developed in accordance with the Design and Management of Structures in the Long-Term Sea-Level Rise Risk Zone approved by the Executive Director in accordance with Special Condition No 2.

g. A view corridor from Highway 75 shall be established over the site as shown on Exhibit Nos. 7-10. No structures taller than 10 feet in height as measured from existing or finished grade – whichever is lower – shall be erected within the view corridor. No landscaping taller than 10 feet, including raised planters, or with a growth potential of more than 10 feet, may be utilized in this view corridor.

h. The main internal east-west road connecting the project site's western entrance on Highway 75 and the eastern entrance on 7th Street shall be built to public standards and sufficiently widened to permit public parking on one side and a demarcated bike lane on the other, in addition to any lanes of vehicular traffic.

i. In addition to any public parking located along internal streets, the project shall include a public parking lot of no less than 10 parking spaces in proximity to the western entrance for use by non-guest members of the public.

j. The Phase II bikeway extension along the panhandle east of Pond 10A shall be deleted.

k. All lighting shall be designed to be directed downward onto the developed residential area, be the lowest intensity while still providing for human safety, and be shielded to minimize spillover into the adjacent wetland areas. No lighting may be directed northward from the residential development towards Pond 10A.

l. All glass and other proposed reflective surfaces in the residential development will be made of non-reflective glass or coated with a material to minimize reflections.

m. No chain link fencing shall be used along the perimeter of the project site.

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

2. **Design and Management of Structures in the Long-Term Sea-Level Rise Risk Zone**. Structures located on the project site in the area between the 100-foot buffer line from the mid-level projected sea level rise to the 100-foot buffer line from highest projected sea level rise for the year 2100 are at risk for long-term sea-level rise. As such, only structures capable of withstanding periodic flooding or which can feasibly be removed should they become threatened by flooding or sea-level rise shall be permitted. Only minimal, balanced cut and fill grading is permitted in this location.

3. **Construction Phasing**. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a final development phasing plan for review and approval of the Executive Director which indicates that construction of development shall be phased so that the approved public pedestrian/bike path shall be completed prior to occupancy of the first residence

4. **Final Landscape Plans.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a detailed landscape plan, approved by the City of Imperial Beach, indicating the type, size, extent, and location of all plant materials, any proposed irrigation systems, and other landscape features.

   a. All landscaping shall be drought tolerant and native or non-invasive plan species. No plant species listed as invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or 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. No landscaping taller than 10 feet, including raised planters, or with a growth potential of more than 10 feet, may be utilized within the view corridor as identified in Exhibit Nos. 7-10.

   c. Any irrigation that utilizes potable water shall incorporate drip irrigation or microspray systems.

   d. Landscape management practices shall utilize environmental methods to minimize fertilizer use and water use to the maximum extent feasible, to avoid impacts to adjacent native upland habitat, wetlands, riparian habitat, and water quality of Pond 10A and San Diego Bay.

   e. Precedence shall be given to non-chemical strategies over chemical strategies for managing onsite pests. Chemical strategies shall only be employed after all other non-chemical strategies have been used and proven ineffective. Rodenticides may be used only after all non-chemical strategies have been exhausted. Written notice of the non-chemical strategies that were used and the reasons they were found ineffective shall be provided to the Executive Director, and any chemical strategies that are being considered must be approved in advance by the Executive Director.

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

5. **Post-Development Runoff Plan.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a Post-Development Runoff Plan (PDRP) approved by the City of Imperial Beach. The PDRP shall document that the runoff from the roofs, driveways, streets, and other impervious surfaces of the existing and proposed development will be collected and directed into pervious areas and infiltrated or treated in BMPs prior to being discharged to Pond 10A in a non-erosive manner. The PDRP shall prioritize Low Impact Development Best Management Practices (BMPs) that use small-scale, distributed BMPs to replicate the site's natural hydrologic balance through infiltration, evapotranspiration, harvesting, detention, or retention of stormwater close to its source. The PDRP shall address runoff from both the project site and runoff that currently passes through the project site from Highway 75 into Pond 10A. Water quality treatment BMPs shall be sized, designed, and managed to infiltrate, retain, or treat the amount of runoff produced by, at minimum, all storms up to and including the 85th percentile 24-hour storm event for volume-based BMPs, or the 85th percentile 1-hour storm event (with an appropriate safety factor of 2 or greater) for flow-based BMPs. All PDRP water quality treatment BMPs shall be located outside of the buffer area between the residential development and Pond 10A.

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

6. **Final Grading Plans.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final grading plans for the approved development. The plans shall clearly indicate and state with written plan notes that only minimal, balanced grading is permitted within the area seaward of the 100-foot setback line from the highest projected sea level rise for the year 2100, referenced in **Special Condition No. 1** and as seen in Exhibit Nos. 9 & 10.

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

7. **Final Signage Plan.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a signage plan indicating the type, size, extent, and location of all informational signs around and within the development. Such a plan shall include, at a minimum:

a. A sign at the eastern and western entrances to the development informing the public that public parking is available.

b. A sign at the public parking lot required in **Special Condition No. 1** identifying that the parking is for the general public, and prohibiting guests of residents of the residential development from parking therein.

c. A sign at the western entrance to the public pedestrian/bike path informing the public that the path is open for public use.

d. Signs and displays not explicitly permitted in this document shall require an amendment to this permit unless the Executive Director determines that no amendment is legally required.

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

8. **Final Color Board.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a color board or other indication of the exterior materials and color scheme to be utilized in the construction of the proposed residential development. The color of the structured permitted herein shall be restricted to earth tones including shades of green, brown, and gray, with no white or light shades and no bright tones.

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

9. **Construction Staging and Storage Plans.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a Construction Staging and Storage Plan that shall include the following:

a. No construction staging or storage shall be permitted in public areas, within public parking spaces, or in any other location that would otherwise restrict public access to the coast at any time.

b. No public parking spaces shall be used for employee parking.

The applicant shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No change to the plans shall occur without a Commission-approved amendment to the

permit unless the Executive Director determines that no such amendment is legally required.

10. **Final Construction Stormwater Pollution Prevention Plan (SWPPP).** AT A MINIMUM OF 30 DAYS PRIOR TO CONSTRUCTION, the permittee shall submit for the review and approval of the Executive Director, a Final SWPPP prepared and signed by a licensed engineer. At a minimum, the SWPPP shall demonstrate that the development complies with the following requirements:

    a. During construction, development shall minimize site runoff and erosion through the use of temporary BMPs, and shall minimize the discharge of sediment and other potential pollutants resulting from construction activities (e.g., chemicals, vehicle fluids, petroleum products, cement, debris, and trash).

    b. Development shall minimize land disturbance during construction (e.g., clearing, grading, and cut-and-fill) and shall phase grading activities, to avoid increased erosion and sedimentation. Development shall minimize soil compaction due to construction activities, to retain the natural stormwater infiltration capacity of the soil.

    c. Development shall minimize the damage or removal of non-invasive vegetation (including trees, native vegetation, and root structures) during construction, to achieve water quality benefits such as transpiration, vegetative interception, pollutant uptake, shading of waterways, and erosion control.

    d. Development shall implement soil stabilization BMPs (such as mulching, soil binders, erosion control blankets, or temporary re-seeding) on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters.

    e. During construction, development shall avoid the use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and silt fences) that incorporate plastic netting (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers), in order to minimize wildlife entanglement and plastic debris pollution.

    f. Development shall implement additional BMPs for construction taking place over, in, or adjacent to coastal waters, if there is a potential for construction chemicals or materials to enter coastal waters. BMPs shall include, where applicable:

        1. Tarps to capture debris and spills. Use tarps or other devices to capture debris, dust, oil, grease, rust, dirt, fine particles, and spills to protect the quality of coastal waters.

        2. BMPs for preservative-treated wood. If preservative-treated wood is used, implement appropriate BMPs that meet standards

for treatment, storage, and construction practices for preservative-treated wood; at a minimum, those standards identified by the American Wood Protection Association.

3. Conduct fueling and maintenance of construction equipment and vehicles off site if feasible. Any fueling and maintenance of mobile equipment conducted on site shall take place at a designated area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets, if feasible (unless these inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.

g. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction; debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a Coastal Development Permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.

h. The Construction Pollution Prevention Plan shall include a construction site map and a narrative description addressing, at a minimum, the following required components:

1. A map delineating the construction site, construction phasing boundaries, and the location of all temporary construction-phase BMPs (such as silt fences, inlet protection, and sediment basins).

2. BMPs that will be implemented to minimize land disturbance activities, the project footprint, soil compaction, and damage or removal of non-invasive vegetation.

3. BMPs that will be implemented to minimize erosion and sedimentation during construction activities, including:

   a. BMPs that will be implemented to stabilize soil during construction.

   b. BMPs that will be implemented to control erosion and sedimentation during construction.

   c. A schedule for installation and removal of temporary erosion and sedimentation control BMPs, and identification

of temporary BMPs that will be converted to permanent post-development BMPs.

d. BMPs that will be implemented to minimize polluted runoff from stockpiling soil and other excavated materials.

e. A construction phasing schedule, if applicable to the project, with a description and timeline of significant land disturbance activities.

4. BMPs that will be implemented to minimize the discharge of other pollutants resulting from construction activities (such as paints, solvents, vehicle fluids, asphalt and cement compounds, trash, and debris) into runoff or coastal waters, including:

   a. BMPs that will be implemented to minimize polluted runoff from staging, storage, and disposal of construction chemicals and materials.

   b. Site management "good housekeeping" BMPs that will be implemented during construction, such as maintaining an inventory of products and chemicals used on site, and having a written plan for the clean-up of spills and leaks.

5. BMPs that will be implemented, if needed, to either infiltrate runoff or treat it prior to conveyance off-site during construction.

6. A schedule for the inspection and maintenance of construction-phase BMPs, including temporary erosion and sedimentation control BMPs, as needed to ensure that the Coastal Development Permit's water quality requirements are met.

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

11. **Disposal of Graded Material.** All excess spoils exported from the project site must be disposed of at a legal site outside of the coastal zone. Disposal of graded materials within the coastal zone will require a new Coastal Development Permit or an amendment to this permit.

12. **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 waves 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.

13. **Waiver of Future Shoreline Protection.**

a. By acceptance of the permit, the applicant agrees, on behalf of themselves and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to coastal development permit No. 6-15-0003 including, but not limited to, the residences, and any future improvements, in the event the development is threatened with damage or destruction from sea level rise, flooding, erosion, storm conditions, or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resource Code Section 30235.

b. By acceptance of this permit, the applicant further agrees, on behalf of themselves and all successors and assigns, that the landowners shall remove the development authorized by this permit if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the wetland before they are removed, the landowners shall remove all recoverable debris associated with the development from the wetland and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

14. **Open Space Restriction.**

A. No development, as defined in Section 30106 of the Coastal Act, shall occur without the review and written approval of the Executive Director in the area generally described as the 100-foot buffer area between the proposed development and Pond 10A, as well as within the panhandle east of Pond 10A, as generally depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for:

a. Public pedestrian/bike path, signage, and fencing.

PRIOR TO THE ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a legal description of the existing subject property affected by this development, a metes and bounds legal description and corresponding graphic depiction drawn to scale and prepared

by a licensed surveyor of the open space restriction area affected by this condition, as generally described and shown on Exhibit No. 22 attached to this staff report.

15. **Sensitive Species Monitoring.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, a qualified biologist shall conduct a site survey for evidence of active clapper rail, Belding's savannah sparrow, and California gnatcatcher nests in all adjacent or on-site vegetation. PRIOR TO ANY CONSTRUCTION ACTIVITIES during clapper rail, Belding's savannah sparrow, and California gnatcatchers breeding/nesting season (February 15th through August 15th), a qualified biologist shall conduct a site survey for active nests no more than 72 hours prior to any development. If an active nest is located, then a qualified biologist shall monitor the nest daily until project activities are no longer occurring within 300 feet of the nest or within 500 feet of active gnatcatchers, or until the young have fledged and are independent of the adults or the nest is otherwise abandoned. The monitoring biologist shall halt construction activities if he or she determines that the construction activities may be disturbing or disrupting the nesting activities. The monitoring biologist shall make practicable recommendations to reduce the noise or disturbance in the vicinity of the active nests or birds. This may include recommendations such as (1) turning off vehicle engines and other equipment whenever possible to reduce noise, and (2) working in other areas until the young have fledged. The monitoring biologist shall review and verify compliance with these avoidance boundaries and shall verify that the nesting effort has finished in a written report. Unrestricted construction activities may resume when no other active nests are found. The results of the site survey and any follow-up construction avoidance measures shall be documented by the monitoring biologist and submitted to the San Diego office of the California Coastal Commission.

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

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

The applicant proposes a development in two phases. Phase I would be to demolish the existing 50-year old, 124-unit Bernardo Shores recreational vehicle (RV) park and construct a private gated community with 190 40-foot tall, 1,200 – 2,000 sq.ft. attached condominium townhomes and 3 detached, 26-foot tall, 2,250 sq. ft. single family residences, with an 8-foot wide public pedestrian/bike path running east from Highway 75 along the north of the residential development. Roadways proposed within the community would be private and set up in a grid pattern, ranging from 24-26.5 feet wide. The development would have a western entrance on Highway 75 and an eastern entrance on 7th Street, but the eastern entrance would only be for emergency use. This proposal equates to 21 dwelling units per acre. Phase II would a 1,300 foot long, 8-foot wide public pedestrian/bike path along the east side of Pond 10A, connecting the proposed Phase I bike path with the existing Bayshore Bikeway to the north.

The 10.1-acre bayfront project site is located within the City of Imperial Beach in San Diego County. The site is bordered by State Route 75 on the west, Pond 10A of the South San Diego Bay Unit of the San Diego Bay National Wildlife Refuge on the north, a vacant commercial lot to the south, and single family residences to the east. A six-foot high block wall is located along the southern and eastern borders of the parcel and a chain link fence is located on the northern border. The thin panhandle parcel that extends north from the main, developed portion of the project site to the Bayshore Bikeway along the eastern edge of Pond 10A is undeveloped, though some of the neighboring residences to the east have encroached into it with landscaping and benches.

The subject site currently contains the 124-unit Bernardo Shores RV Park, which has existed for approximately 50 years, with full hook ups for electrical, water, sewer, and telephone, as well as a small office building, laundry facility, and putting green. The main, developed portion of the project site containing the RV park is 9.31 acres and the thin, undeveloped panhandle lot along the east side of Pond 10A is 0.76 acres. The main project site is relatively flat, sloping south to north with a high elevation of approximately 19 feet above mean sea level in the southeast corner to approximately 7 feet above mean sea level along the northern border adjacent to Pond 10A.

The subject site is partially within the Commission's original permit jurisdiction and partially within the City of Imperial Beach's jurisdiction, appealable to the Commission. At the request of the City and the applicant, the proposed project is being processed as a consolidated permit, with Chapter 3 of the Coastal Act as the standard of review and the City's LCP used as guidance.

B. PROJECT HISTORY

Historical sources such as topographical maps, aerial photographs, and city directory listings indicate that the project site was vacant and undeveloped from at least 1904 until 1964. Since 1964, the project site has been developed with the existing RV park.

At the Commission hearing of October 10, 2013, the Commission approved the City of Imperial Beach Local Coastal Program Amendment No. IMB-MAJ-2-12, making a variety of changes to the permitted uses and development standards to the C-1 General Commercial District, the C-2 Seacoast Commercial District, and the C-3 Neighborhood Commercial District. In each district, the amendment allowed areas currently designated for commercial uses to be developed with residential uses, and significantly reduce the amount of parking required for mixed use projects.

One potential concern at the time was the impact the amendment would have on the City's existing RV park, Bernardo Shores, located on the current project site. The property was designated at that time as C-1; and the amendment redesignated the site to C/MU-1 (the easternmost portion adjacent to 7th Street and proposed for the three detached single family residences is designated R-3000-D), which allows it be developed with multi-family residential uses.

The project site has historically provided some amount of lower cost visitor-serving accommodations. However, the City, based on information provided by the operator, indicated that the RV park is typically used for long-term stays, not single-night overnight accommodations, and there are no facilities, such as showers or restrooms, provided on-site. All recreational vehicles have to be self-contained vehicles, with the RV park providing full hook ups for electrical, water, sewer, and telephone, as well as a small office building, laundry facility, and putting green. Thus, in approving IMB-MAJ-2-12, the Commission found that the RV park does not constitute a lower cost overnight visitor and recreation facility within the meaning of Section 30213, and did not require that the RV park be replaced with a similar low-cost facility upon its removal or require any mitigation payment for future replacement of the use.

C. PUBLIC ACCESS

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 30211 of the Coastal Act states:

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

Section 30212(a) of the Coastal Act states:

> *(a) Public access from the nearest public roadway to the shoreline and long 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 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 30212.5 of the Coastal Act states:

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

Section 30252 of the Coastal Act states in part:

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…

Section 30253(d) of the Coastal Act states:

New development shall do all of the following: […]
(d) Minimize energy consumption and vehicle miles traveled.

Relevant policies from the City of Imperial Beach's certified LCP used for guidance include the following:

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

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

This means that:

a. The beach shall be fee to the public.

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

c. City residents need mini-parks, neighborhood parks, community parks, activity centers, special use, and all-purpose parks.

d. The City should pursue increased recreational opportunities for the general public in the Tijuana Estuary, Borderfiled State Park, the beach, and the South San Diego Bayfront.

GOAL 14 SHORELINE ACCESS

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

LUP Policy C-22 states:

(a) Parking
Parking for both residents and visitors shall be provided as part of new development.

The project site currently hosts a 124-space RV park located on Highway 75 where it meets Palm Avenue, a major coastal access route and the northern gateway to the City of Imperial Beach from the Silver Strand and the City of Coronado. The site is an ideal location for the existing visitor-serving use: adjacent to San Diego Bay, overlooking the wildlife refuge, within walking/biking distance of the beach, and near the amenities of the Seacoast District and the City of Coronado.

The project site has a western entrance on Highway 75 and an eastern entrance on 7th Street. For the existing use and as proposed, the 7th Street entrance is kept closed, and thus the main, and only, entrance into the project site is the western one. Currently, the RV park serves customers from the general public, but does not offer amenities such as public parking for non-customers. A bus stop is located on the eastern side of Highway 75 immediately north of the western entrance to the RV park. Public sidewalks run north along Highway 75 from its intersection with Palm Avenue and terminate just north of the bus stop. There is an informal trail that runs east from Highway 75 near the end of the sidewalk at the northwest corner of the project site and continues between the RV park and Pond 10A, gradually turning north and following the rear property lines of the residences east of Pond 10A until it reaches the Bayshore Bikeway approximately 1,300 feet north of the RV park.

The Bayshore Bikeway located to the north of Pond 10A provides a 26-mile bicycle facility connecting cyclists around San Diego Bay through the cities of San Diego, National City, Chula Vista, Imperial Beach, and Coronado. Currently, approximately 13 miles of bicycle paths are in use on the Bayshore Bikeway. The rest of the facility consists of on-street sections designated as either bicycle lanes or bicycle routes. The 0.81-mile portion of the bikeway within the City of Imperial Beach runs along the City's northern boundary, between the City and San Diego Bay. This Class I bike path is the only bike path within the City. Class I bicycle lanes are hard surfaced routes within exclusive right-of-way physically separated from vehicular roadways and intended specifically for non-motorized use, with center striping and a minimum width of eight feet.

The 193-unit residential gated residential development that the applicant is proposing raises significant issues regarding conformance with the public access policies of Chapter 3 of the Coastal Act and the City's certified LCP.

Gates

No access is currently provided through the site, although visitors can and do rent RV spaces at the site. As previously described, the existing development is proposed to be entirely demolished and replaced with a gated residential development with 193 dwelling units, a private internal roadway system, and a public pedestrian/bike path on the north side of the site connecting to the Bayshore Bikeway. All forms of public access (vehicular, bicycle, and pedestrian) through the community would be prohibited. The general public would not be allowed to enter the residential community or park on its streets.

The provision of public access in new development proposals is one of the main tenets of the Coastal Act, especially in conjunction with new development located between the sea and the first public road, such as the proposed project. Gated developments that preclude the possibility of public access to the coast conflict with Coastal Act Sections 30210 and 30212 and are therefore usually prohibited. Not only do private gated communities limit public access locally, but the cumulative effect of these private gated communities along the coast impacts public access, public parking, traffic circulation, and both auto and non-auto circulation options. When there are numerous gated communities along the coast, traffic circulation is limited solely to major arterial arterials, parking is unevenly distributed in the few public areas near existing vertical accessways, and pedestrians and cyclists are forced to travel on major arterials when seeking coastal access.

As proposed the development would only have one entryway, on Highway 75. The second gate at the 7th Street side would be for emergency vehicles only. The applicant has indicated that the purpose of the gates is to prohibit vehicles from driving into the development seeking access between Highway 75 and 7th Street and then being forced to turn around at the emergency vehicle entrance. However, this could easily be addressed by adding signage to the Highway 75 entrance indicating no access to 7th Street is available. 7th Street is one of the many public grid streets that provide access to low-density residential units east of the proposed development and it is thus unlikely that large numbers of residents or visitors would use the site to access 7th Street if both entryways were open. Removing the gates would allow public parking on the internal streets, and link up with the adjacent grid street system allowing pedestrian and bicycle circulation system without the impacts to wetlands resulting from the proposed bike path connector (discussed in greater detail in the findings addressing Sensitive Habitats).

The Commission has historically prohibited the installation of entry gates, be they vehicular or pedestrian, in coastal development located between the sea and the first public road. Due to its location and high commercial value, coastal property between the first public road and the sea throughout much of Southern California is developed. Without provision of public access through these coastal developments, public access would be severely restricted due to a walling

off of the coast from the public (such as in Broad Beach, Carbon Beach, and elsewhere). Throughout California, roads, especially the first public road paralleling the ocean and internal roads within developments located seaward, serve as vital reservoirs for the public to park, walk, and bike so as to be able to enjoy coastal resources, be they parks, beaches, or promenades. The more difficult parking is for the public to locate due to limited supply, or the farther such parking is located from coastal resources, the less likely it is that the public will utilize the coastal resources. Besides being a detriment on public utilization of coastal resources, the lessened use could in turn serve as rationale for subsequent developments to omit providing their own public access amenities.

While the existing RV park does not provide non-customer public parking, the RV park is a development that was constructed prior to the Coastal Act's mandate to maximize public access; however, by its nature, the RV park served the general public more than the proposed gated residential community. In any event, redevelopment of the project site is an appropriate opportunity to rectify the omission of public access through the site and bring the property into conformance with the Coastal Act.

The vehicular and pedestrian gates proposed at the entrances to the proposed residential development would create a significant impediment to public use. Not only would the gates themselves physically obstruct public access, but even in instances where public access is actually permitted through gates, their mere presence creates the appearance that the accessways are private and not available for general public use. The gates would create an impression of exclusivity and would serve as a deterrent to public access not just in the development itself but to the nearby coastal area. The proposed residential development would include a five-foot high tubular steel fence along the northwestern side of the proposed gated residential development, between the proposed residences and the proposed buffer area. In addition, the southwestern side of the project site next to Highway 75 will be fenced with a combination three-foot high masonry wall with two-foot tall tubular steel fence. The existing masonry wall would remain between the proposed residences and the abutting existing residences to the east. All of this walling, in conjunction with the proposed gates, would further exacerbate the appearance of exclusivity to the Bayfront development and surrounding coastal area.

Furthermore, because each proposed dwelling unit will have an attached two-car garage, private parking will total 368 spaces, with an additional 24 parking spaces dispersed throughout the development serving guests of the gated community, for a total of 410 parking spaces. However, as proposed, because of the proposed entry gates, this bayfront property in close proximity to many coastal resources such as the Bayshore Bikeway and National Wildlife Refuge would provide no public parking. Allowing public parking within the subject site would provide an additional means for people to view the shoreline and walk the path on the north side of the site, and add capacity for people accessing the Bayshore Bikeway on 7th Street or Highway 75.

Furthermore, Section 30212.5 of the Coastal Act specifically refers to the need distribute facilities such as parking areas throughout coastal areas so as to mitigate against impacts, social or otherwise, or overcrowding or overuse by the public of a single area.

Thus, public access would not be maximized if the project site were allowed to be a private gated community with private streets. In an area where parking availability for access to the bayshore is already limited, the proposed project would exacerbate that problem by not allowing the public to park in the community. Therefore, **Special Condition No. 1** requires that the project be revised so that the residential development is not a gated community.

Internal Streets/Parking

Separate from the effects that the proposed entry gates would have on public access, the internal road system serving the residential development will not be publicly owned or maintained, but rather part of the single-parcel condominium ownership of the residential development. Thus, the proposed private streets are only 24-26.5 feet wide. This is narrower than standard public streets, and limits the ability to provide street parking. Furthermore, even if the residential development was opened to the public, the proposed townhomes are designed with narrow street frontages, with first-floor two-car garages taking up the majority of that frontage. The townhomes themselves are then aligned in long rows of six to seven units. Such is the density of the proposed development that the sides of the internal roads are effectively long curb cuts providing access to the townhomes' garages. Thus, simply removing the entry gates will not provide much public parking. Compounding this deficit is the fact that the applicant's proposal for a 10-acre residential development with 193 dwelling units is providing only 24 parking spaces for guests. That equates to just one guest parking space for every eight dwelling units, which range from two to five bedrooms each. Thus, it is possible that the applicant's proposal will cause guest parking to spill over onto public parking on 7th Street, which is used to access the Bayshore Bikeway (there will be private pedestrian access from 7th Street). To help lessen the appearance of exclusivity, encourage the use of the connection between Highway 75, and increase the internal supply of public parking, **Special Condition No. 1** requires the main internal east-west road connecting Highway 75 and 7th Street be widened so as to permit public parking along one side and a demarcated bike path on the other, in addition to any lanes of vehicular travel. To ensure maximum access to the public pedestrian/bike path, the condition also requires all streets, roads and public parking areas shall be open for use by the general public 24 hours per day, with the exception of standard limited parking restrictions for street sweeping/maintenance purposes. Long term or permanent physical obstruction of streets, roads and public parking areas shall be prohibited, and restrictions on use by the general public (e.g. preferential parking districts, resident-only parking periods/permits, etc.) associated with any streets or parking areas shall be prohibited. Access between the street ends and the public pedestrian/bike path shall be provided.

Public Bike Path

The applicant is also proposing an approximately 2,100 foot long, 8-foot wide public pedestrian/bike path that would connect Highway 75 with the Bayshore Bikeway. Phase 1 of the proposed development would construct the first approximately 800 feet of the public pedestrian/bike path in conjunction with the gated residential development. Phase II would consist of the remaining approximately 1,300 foot long, 8-foot wide public pedestrian/bike path that would connect the Bayshore Bikeway to the north of the project site to the 8-foot wide public pedestrian/bike path built in Phase I. The public pedestrian/bike path would be paved with asphalt concrete pavement and would be approximately five feet from the rear property lines of

the single family residences to the east of Phase II. Post and rail fencing would be constructed between the proposed public pedestrian/bike path and Pond 10A and would be approximately 3.5 feet in height.

For reasons detailed in the findings regarding Sensitive Habitat impacts, the Phase II public bike path does not conform to Chapter 3 of the Coastal Act, and this permit is conditioned to delete that segment from the final development. However, the approximately 800-foot long segment in Phase I that will be located in the proposed buffer area between the residential development and Pond 10A would improve public access opportunities and can be found in conformance. As mentioned earlier in the report, there is currently an informal path that traverses the southern shore of Pond 10A between the pond and the RV park. This path provides education and recreational opportunities to the public by allowing travel in close proximity to Pond 10A, observing the wetland and wildlife located therein, as well as views of San Diego Bay beyond. However, this path does cross through portions of wetlands. Construction of the proposed paved Phase I segment of the public bike path in a more southerly, upland alignment from the existing informal public path will formalize access to this coastal area, making it easier for the public to recognize the existence of the public access and avoid any wetlands. The post-and-rail fence along the public bike path will prevent further intrusions into the wetland areas around Pond 10A. Additionally, the paved, realigned design of the Phase I public bike path will make the access more usable during king tide and storm events, and provide area for the path to migrate inland when this area is subject to sea level rise. To discourage people from jumping the post-and-rail fence and continuing north along the east side of Pond 10A and through the wetlands therein, this permit is conditioned to provide a public access point through the residential development, and 7th Street beyond, so as to be able to still proceed to the Bayshore Bikeway on 7th Street. Ensuring a connection with this bike path is another reason why it is important that no gates block access through the proposed development. However, while aligning the public bike path farther south from Pond 10A will minimize impacts to the nearby wetlands, locating public access amenities in close proximity to development, such as the proposed residential development, increases the risk that the public may not utilize the public access either because the development will block it from view or cause it to appear as a private amenity serving only the residential development. Thus, **Special Condition No. 1** requires that all residential development be set back a minimum of twenty-five feet from the public pedestrian trail/bike path to increase its visibility and public character. To ensure the public improvements are constructed in a timely manner, **Special Condition No. 3** requires the approved public pedestrian/bike path be completed prior to occupancy of the first residence

Regarding the impacts to public access, recreation, and educational opportunities from the deletion of the Phase II segment, the deletion east of Pond 10A will not have an adverse effect on the recreational and educational opportunities afforded to the public. The first 800-foot segment will still provide the public a close-up view of Pond 10A and the surrounding wetlands and wildlife therein. The Bayshore Bikeway on the opposite side of Pond 10A already provides close up views of Pond 10A, as well as views of the remainder of the National Wildlife Refuge, that will complement the new southern public pedestrian trail and bike path. Furthermore, because the proposed project is being conditioned to remove all entry gates, cyclists and pedestrians wishing to continue on to the Bayshore Bikeway will be able to travel through the residential development to 7th Street and travel north to the existing access point there.

Vacation Rentals

The applicant's proposal also indicates that vacation rentals would be allowed in the gated residential development. However, while vacation rentals can provide a valuable source of overnight accommodations, particularly in cities such as Imperial Beach where traditional overnight facilities are limited, the availability of vacation rentals is totally dependent on the interest of individual homeowners, and short-term rentals are also often controversial and are frequently restricted by community interest groups. Thus, while the Commission typically encourages vacation rentals in existing residential zones, they have never been seen as equal to facilities that consistently offer short-term lower cost overnight accommodations, such as motels and RV parks. Residential vacation rentals also do not provide the types of visitor-serving uses such as retail stores and restaurants that are often associated with commercially-zoned properties.

Imperial Beach does not currently have an abundance of existing lower cost overnight accommodations within close proximity to the coast; in fact, the City currently only has a handful of hotels, including the Seacoast Inn, which has recently been remodeled and expanded into a high-end hotel. The potential that some of the residents of the proposed gated community may decide to periodically advertise their residence as a vacation rental is a positive benefit to the community, but cannot offset the impacts resulting from prohibiting access to the site through the proposed gates.

Traffic

According to the San Diego Association of Government's (SANDAG's) 2013 population and housing estimates, the average household size in Imperial Beach is 2.82 people, and applying that rate to the proposed 193 dwelling units produces a population increase of 545 people.

A Traffic Impact Analysis dated September 8, 2014, was prepared by Linscott, Law & Greenspan. The analysis found that the levels of service of surrounding roadway segments under all analyzed "With Project" scenarios (Existing Plus Project, Near-term With Project, and Year 2040 With Project) would be at a Level of Service (LOS) D or better, with the exception of Highway 75 between 9th Street and Florida Street, and Palm Avenue between Rainbow Drive and Highway 75 under Year 2040 conditions (both with and without the proposed project). Because the changes in volume-to-capacity ratio would be under the significance threshold of 0.02, the Traffic Impact Analysis determined the impacts to those two roadway segments would be less than significant.

Regarding surrounding intersections, the Traffic Impact Analysis found that the levels of service under "With Project" scenarios would be LOS D or better, with the exception of the Highway 75/Rainbow Drive/Project Entrance, which would operate a LOS F and E in the AM and PM peak hours, respectively, under Year 2040 conditions (both with and without the project). The AM peak hour impact was considered significant, and the Traffic Impact Analysis recommends that the project restripe the northbound approach at the intersection of Highway 75/Rainbow Road/Project Entrance to provide one left-turn lane and one shared left-turn/through/right-turn

lane, along with extending the existing turn pocket to the intersection with Bonito Avenue to the south to increase the capacity and queue area. The proposed project will also extend the southbound left-turn pocket from Highway 75 into the project site's driveway to meet the standards of the California Department of Transportation. Commission staff has reviewed the Traffic Impact Analysis and accepted its findings that traffic resulting from the project will not adversely impact public access.

Conclusion

The project as conditioned in this report would introduce modifications to bring the project into conformance with the Coastal Act's public access policies. **Special Condition No. 1** would require the final project to, among other measures, remove any and all entrance gates from final plans, so as to ensure the public has access through this development between the first public road and the sea and maximize access to the bicyle and pedestrian system linking the area to the Bayshore Bikeway and the bay. The removal of entrance gates would also grant public access between Highway 75, the main entry point for northern Imperial Beach, and 7th Street, a public access point to the Bayshore Bikeway. **Special Condition No. 1** would also require the widening of the main internal east-west road in the development connecting Highway 75 and 7th Street to public standards so as to provide for public parking on one side and a demarcated bike lane on the other. This widening is recommended because even in the absence of entrance gates, the internal roads of the proposed development will not be to public standards, and thus create their own effect of exclusivity, while also removing the space to provide public parking. **Special Condition No. 1** also requires the provision of a public, non-guest parking lot in addition to street parking gained from the aforementioned internal road widening so as to ensure that a public parking reservoir in close proximity to Highway 75 and the proposed public pedestrian/bike path is easily reached by the public. Because encroachment by the residential development could preclude use of the public bike path by blocking it from view or making it seem exclusive, **Special Condition No. 1** also requires that all residential development be set back a minimum of twenty-five feet from the public bike path. **Special Condition No. 3** would require the approved development to be phased such that the approved public pedestrian/bike path is completed prior to occupancy of the residences. **Special Condition No. 7** requires a final signage plan be approved and implemented so that proper signage is installed in and around the development informing the public of the public amenities being provided, such as the public bike path, public parking, and public access between Highway 75 and 7th Street. **Special Condition No. 9** requires a final construction staging and storage plan to ensure that construction activity does not occupy public spaces or parking that could be utilized by the public visiting the coast. **Special Condition No. 16** requires the recordation of a general deed restriction so that current and future property owners will be aware of this permits conditions running with the land, including the conditions ensuring proper provision of public access.

Thus, in conclusion, the project as proposed by the applicant does not conform to the public access policies of Chapter 3 of the Coastal Act because it fails to maximize access due to the presence of entry gates and omission of public parking and public access between Highway 75 and 7th Street. However, the project as conditioned, with requirements to remove the gates, provide public parking and access between Highway 75 and 7th Street, and widen the main

internal east-west road connecting the two thoroughfares will bring the project into conformance with Chapter 3, and can thus be approved by the Commission.

D. HABITAT RESOURCES

Section 30230 of the Coastal Act states:

> *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the maritime environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy population of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

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.*

Section 30233 of the Coastal Act states:

> *(a) the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize environmental effects, and shall be limited to the following:*
>
> > *(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
> >
> > *(2) Maintaining existing, or restoring previously dredged, depths in existing navigation channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
> >
> > *(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*

(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(6) Restoration purposes.

(7) Nature study, aquaculture, or similar resource dependent activities.

[…]

(c) In addition to the other provision of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary.

Section 30236 of the Coastal Act states:

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

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.

A relevant section of the City of Imperial Beach's certified LCP states:

GOAL 2 NATURAL RESOURCES – KEY FOUNDATION OF THE CITY

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

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

Prior to the 1900's, San Diego Bay was a fertile, shallow flat-bottomed bay surrounded by extensive mudflats and salt marshes. In the southern end of the bay, much of the original salt marsh and intertidal habitat was diked to create solar evaporation ponds for the purpose of producing salt. On July 13, 2004, the South San Diego Bay Unit was combined with the Sweetwater Marsh Unit and became the San Diego Bay National Wildlife Refuge. The National Wildlife Refuge protects a rich diversity of endangered, threatened, migratory, and native species and their habitats in the midst of a highly urbanized coastal environment. Nesting, foraging, and resting sites are managed for a diverse assembly of birds. Waterfowl and shorebirds provide new, high quality habitat for fishes, birds, and coastal salt marsh plants. Quiet nesting areas, buffered from adjacent urbanization, ensure the reproductive success of the federally listed as threatened western snowy plover, federally and state listed endangered California least tern, and an array of ground nesting seabirds and shorebirds. The National Wildlife Refuge further provides a variety of habitats that support tens of thousands of migratory birds that annually travel along the Pacific Flyway. Some birds, such as red-necked phalarope, stop over to forage and rest within salt ponds while migrating along the Pacific Flyway. Other species, such as black brant and eared grebes are winter visitors. During the summer months, the area supports a variety of seabirds. South San Diego Bay also supports a number of year-round residents.

Pond 10A, located in the southwestern corner of San Diego Bay and immediately adjacent to the north of the project site, became a part of the 3,940-acre San Diego Bay National Wildlife Refuge when the South San Diego Bay Unit was established on June 16, 1999; prior to that it was owned by the Western Salt Company and used as a solar salt evaporation pond for commercial salt extraction. Pond 10A is one of the three western salt ponds (10, 10A, and 11) that include approximately 223 acres of open water and 7 acres of associated levees. A new tide gate has been constructed on the west side of Pond 12, to the east of the Otay River Channel, and sediment is being redistributed within the ponds to achieve elevations suitable for supporting the desired native coastal wetlands. That project is restoring approximately 36.5 acres within Pond 10A, comprised of shallow subtidal habitat, intertidal mudflats, low salt marsh habitat (cordgrass salt marsh), mid salt marsh habitat, and high salt marsh habitat.

Pond 10A provides foraging and roosting habitat for a variety of shorebirds and other water birds, particularly when water levels are low. Four federally listed as endangered species, including California least tern, light-footed clapper rail, California brown pelican, and the endangered plant salt marsh bird's-beak occur within the National Wildlife Refuge. Two federally listed threatened species, including western snowy plover and eastern pacific green turtle, are also present in the National Wildlife Refuge. The California least tern, light-footed clapper rail, and California brown pelican are also listed as endangered by the state of California. The Belding's savannah sparrow, state listed as endangered, also occurs in the National Wildlife Refuge. The applicant's biological consultants observed three Belding's savannah sparrows in the National Wildlife Refuge along the eastern edge of Pond 10A during a March 14, 2013, site

visit with the US Fish & Wildlife Service and the National Wildlife Refuge staff. However, no sensitive or listed animal species were observed on the developed project site itself.

Currently, the project site is developed with a flat concrete pad all the way up to the northern property boundary adjacent to Pond 10A, with hook-ups for the 124 RV spaces, landscaping, a small office building, and a putting green. The proposed project will demolish the existing RV park and pull back the northern boundary of development to create a new 100-foot wetland buffer between Pond 10A and the residential development. However, the proposed project presents a substantial intensification of use of the project site, with 193 dwelling units, 410 parking spaces, an anticipated increase in population of 545 people, pets, and human activity. Thus, it is important to provide a buffer as part of the redevelopment of the site. In addition, the proposed project itself will directly impact existing wetlands due to the proposed Phase II bike path.

A Biological Technical Report surveying the project site and adjacent area and dated June 25, 2014, was prepared by Helix Environmental Planning. The report determined that the southern boundary of the wetlands surrounding Pond 10A north of the project site stops at the northern boundary of the paved pad of the RV park, with the undeveloped panhandle east of Pond 10A, between the RV park and the Bayshore Bikeway, containing more wetlands. Thus, redevelopment of the RV park portion of the project site will not have any direct impacts on wetlands or sensitive species.

The proposed Phase I of development would demolish the RV park and install a buffer area, comprised of a 100-foot buffer setback from Pond 10A, northwest of the proposed 193 residences, with the buffer area getting narrower as it moves northeast, away from the wetlands. The northwestern-most fifty feet of the buffer area nearest the wetlands would be restricted from human intrusion. The landward most fifty feet of the buffer area is proposed to contain a large bioretention basin handling all runoff from the residential development, as well as the proposed 8-foot wide public bicycle path. The proposed Phase II of development would construct a 1,300-foot long public pedestrian/bike path east of Pond 10A between the residential development and the Bayshore Bikeway, paving over wetlands.

Under the Coastal Act, disturbance or fill of wetlands is severely constrained. Coastal Act Section 30233(a) sets forth a three-part test for all projects involving the fill of coastal waters and wetlands. The test criteria are: (1) that the project is limited to one of the eight stated allowable uses, (2) that the project has no feasible less environmentally damaging alternative, and (3) that adequate mitigation measures have been provided to minimize adverse environmental impacts.

<u>Allowable Use Test</u>

Section 30233 of the Coastal Act allows the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes for (1) new, expanded port, energy, and coastal-dependent industrial facilities; (2) maintaining existing, or restoring previously dredged, depths in existing navigation channels, turning basins, vessel berthing and mooring areas, and boat launching ramps; (3) open coastal waters, other than wetlands, including streams, estuaries, and lakes, new

or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities; (4) incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines; (5)mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas; (6) restoration purposes; and (7) nature study, aquaculture, or similar resource dependent activities.

The proposed Phase II portion of the proposed public pedestrian/bike path would directly impact a total of 0.24 acre of sensitive vegetation communities, including 0.01-acre of southern coastal salt marsh, 0.08-acre of saline meadow, 0.06-acre mudflat, and 0.09-acre of non-native grassland. The applicant is proposing to mitigate for the wetland impacts at a 4:1 ratio, totaling 0.6-acre, in the buffer area adjacent to Pond 10A north of the residential development, comprised of 0.24-acre of on-site wetland creation and 0.36 acre of on-site restoration and enhancement. Phase II would also impact 0.37 acre of upland habitats/land cover types, comprised of 0.09 acre of non-native grassland, 0.11 acre of non-native vegetation, 0.02 acre of developed, and 0.01 acre of disturbed habitat. Construction of the proposed Phase II bike path, while a positive recreational amenity, is clearly not one of the uses identified by Section 30233 for which fill of a wetland is allowed.

The only potential category within which the Phase II public bike path might fit is in "incidental public use," because the applicant claims that it will enhance public access. The applicant has noted that in July 2002, the Commission approved a permit for the cities of Coronado and Imperial Beach to install various public access, parking, and habitat restoration along Highway 75 as it crossed the Silver Strand (CDP No. 6-02-038). Among the improvements approved in the CDP was an approximately 2,500-foot long Class I bike path "spur" that turned off the Bayshore Bikeway as it turns east just north of the existing culvert connecting Pond 10A to San Diego Bay. The approved spur would then continue south down the east side of Highway 75 until the entrance to the project site. Although that project involved some impacts to wetlands, the Commission allowed it as an "incidental public service" due to the fact that there was no bike path at that time for the southernmost half-mile of Highway 75 – adjacent to Pond 10 and the project site – connecting the Bayshore Bikeway and nearby surface streets in Imperial Beach, and that when the Bayshore Bikeway would start turning east north of the culvert connecting Pond 10A with the San Diego Bay, many bicyclists would instead cross the dirt area between the Bayshore Bikeway and Highway 75 and continue south along the shoulder of the highway, against traffic. Thus, the Commission concluded, allowing the construction of a Class I bike path immediately along the east side of Highway 75 would enhance bicyclist's safety. To date, the bike path spur approved by the Commission in 2002 has not been built, and there is still no bike path along the southernmost half mile of Highway 75.

The applicant's proposed bike path is distinguishable from the bike path approved in CDP No. 6-02-038. The Commission's approval 2002 of the bike spur's wetland impacts was explicitly based on the unique funding situation of that public – not private – project. The findings state:

> "Because of the dangerous situation [narrowing the bike path] would create, funding sources would be difficult, if not impossible, to find, and the entire project would be jeopardized. The overall project includes significant resource, access, and educational benefits, which the

> Commission supports. Thus, due primarily to the identified public safety concern, but also to maintain funding sources, the Commission finds that this alternative [to narrow the bike path and avoid wetland impacts] is not feasible, and finds that proposed bike path alignment the least environmentally damaging feasible alternative."

Thus, in the 2002 CDP, there was a unique combination of resource, access, education, and public safety benefits along the length of Highway 75 associated with the project that qualified the project as an incidental public service use. In contrast, the proposed bike path would serve only as a minor connector to the existing Bayshore Bikeway. The Bayshore Bikeway is a 26-mile bicycle system connecting cyclists around San Diego Bay through the cities of San Diego, National City, Chula Vista, Imperial Beach, and Coronado. The Bayshore Bikeway can currently be accessed immediately east of the subject site from 7th Street. Thus, the proposed bike path is not necessary to complete a continuous alignment, nor would it create a significant new transportation or public access connection above what is currently available. Because of the availability of other access connections (and the omission of public parking from the proposed project), it is likely that the main users of the particular bike path will be the residents of the proposed development.

Further distinguishing the current proposal from CDP No. 6-02-038 is the fact that redevelopment of the Bernardo Shores RV park property was not part of that earlier public project. Thus, the alternative of having bicyclists continue east along the Bayshore Bikeway, proceed down 7th Street, and then pass through the project site to reconnect with Highway 75 was not a possibility back in 2002, unlike the situation today. A feasible, cheaper, and less-environmentally damaging alternative to the applicant's proposal is to have bicyclists on the Bayshore Bikeway wishing to reach Highway 75 travel down 7th Street and then turn west once they reach the eastern entrance of the project site, traveling through the development to Highway 75. While distance might be a reason why 7th Street was not analyzed back in 2002, it should be noted the northern entrance to the applicant's proposed public bike path is essentially just as far to the east. Indeed, only 170 feet – the span of a single residential lot – separates the majority of the applicant's proposed public bike path from 7th Street. Furthermore, because the proposed public bike path parallels 7th Street for over half of the public bike path's distance, the difference in distance traveled by bicyclists on the proposed public bike path (approximately 2,100 feet) and the 7th Street/development-shortcut alternative (approximately 2,700 feet) is just 600 feet. Thus, the applicant is attempting to justify permanent impacts from paving over coastal wetlands with the fact that the proposed bike path is 600 feet shorter. The Bayshore Bikeway is a 26-mile bicycle system connecting cyclists around San Diego Bay through the cities of San Diego, National City, Chula Vista, Imperial Beach, and Coronado. Even for cyclists traveling as little a few miles of this system, an extra 600 feet of travel is insignificant.

Alternative Analysis Test

Furthermore, the project is not the least environmentally damaging feasible alternative. The Phase I portion of the proposed public bike path running along the north of the residential development will not impact any wetlands. This portion could terminate at the northeast corner of the residential development, then provide access to the residential development to the south, exiting onto 7th Street. As noted before, 7th Street is in close proximity and alignment to the

proposed Phase II bike path that would directly impact wetlands, and it already has an access point onto the Bayshore Bikeway. While a shared bike path on a surface street is not as appealing to cyclists as a separate bike path, this alternative would provide substantially similar connection to the Bayshore Bikeway while avoiding all impacts to wetlands.

Mitigation Test

A project that involves fill of wetlands must be an allowable use under Section 30233 of the Coastal Act. It must also be the least environmentally damaging feasible alternative and it must incorporate all feasible mitigation measures. In this case, the proposed project has not qualified as an allowable use under the Coastal Act or avoided impacts to sensitive habitat. Nevertheless, even if the proposed project did meet those first two "tests," the project does not identify adequate mitigation to offset wetland impacts resulting from the development.

The mitigation is proposed to be located in the newly created 100-foot setback from the wetlands adjacent to the site. The Commission has typically found that development that does not provide at least a 100-foot buffer from wetlands (freshwater or saltmarsh) and 50-foot buffer from riparian vegetation areas can adversely impact the wetland, interfering with the maintenance of functionality required by Section 30233(c). The purposes of establishing a buffer area between wetlands and development include reducing the amount of human and domestic animal intrusion into sensitive vegetation, reducing the impact of human activity on native wildlife, providing an area of land which can filter drainage and runoff from developed areas before it impacts the wetlands, and providing an upland resting area for some wetland species. Buffers further provide areas for those same sensitive species to hide from predators or escape king tides. Buffer areas also grant space for wetlands to migrate due to sea level rise of other fluctuations in the water level. The buffer space and the plants therein can act as a catchment for refuse, man-made or otherwise, before the refuse has an opportunity to enter the wetland. Thus, it is not appropriate to create wetlands in a buffer area, at the very least without the provision of additional buffer areas around the created wetlands.

In summary, the Phase II portion of the proposed bike path east of Pond 10A that will permanently impact wetlands is not an allowable use within those wetlands, is not the least environmentally damaging feasible alternative, and the project does not provide adequate mitigation to offset the wetland impacts. Thus, it is inconsistent with Section 30233 of the Coastal Act. Therefore, **Special Condition No. 1** requires final project plans that delete the Phase II portion of the bike path from the project.

With regards to the aforementioned 100-foot buffer area that the applicant is proposing to install between Pond 10A and the residential development, the applicant is also proposing to install a 12,000 sq. ft. bioretention basin that will consume the entire landward most half of the buffer area. The applicant's proposal would then direct all runoff from the entire development into the buffer area basin. As noted, wetland buffers are vital areas that serve a number of habitat functions.

While it is true that another function of wetland buffer areas is to filter runoff by providing space for water to infiltrate before it enters the wetlands, the function of the applicant's proposed bioretention basin make it inappropriate for placement in the wetland buffer. Both the Commission's staff ecologist and water quality specialists reviewed the applicant's proposal, and both concluded that a bioretention basin is inappropriate in the buffer because it will adversely impact many of the above-mentioned benefits that wetland buffers are to provide. Furthermore, because the proposed bioretention basin is a BMP, that means it will have to periodically have to be maintained by maintenance staff to ensure proper performance. This period human intrusion into the buffer area and related clearing actions will further negate many of the protective benefits that wetland buffers provide. Thus, to avoid these impacts and ensure the greatest chance of success for the buffer and the wetlands beyond, **Special Conditions Nos. 1 & 5** require the bioretention basin and similar BMPs be located outside of the wetland buffer area.

Sensitive Species

Breeding birds such as the Belding's savannah sparrow may temporarily or permanently leave their territories to avoid disturbances from construction activities, which could lead to reduced reproductive success and increased mortality. To protect sensitive bird species from noise impacts during construction, **Special Condition No. 15** requires the subject site be surveyed for evidence of active clapper rail, Belding's savannah sparrow, and California gnatcatcher nests in all on-site vegetation, and construction activities be halted if a biologist determines that the construction activities may be disturbing or disrupting the nesting activities.

Another potential habitat impact from proposed residential development is lighting. Night lighting that extends from a developed area onto adjacent wildlife habitat can discourage nocturnal wildlife in habitat and can provide nocturnal predators with an unnatural advantage over their prey. Outdoor lighting should be of the lowest illumination allowed for human safety, selectively placed, shielded, and directed away from habitat. The applicant proposes lighting for the project entry, building exteriors, and along walkways within the gated residential development. **Special Condition No. 1** requires final project plans that utilize the dimmest lighting while still providing for human safety and that all lighting be shielded and directed away from the adjacent habitat areas. With such measures are implemented, then significant adverse impacts from lighting should be avoided.

Window strike by birds occurs when they mistake reflective surfaces for open space, killing millions of birds annually. Because the proposed project will introduce thousands of windows and similarly reflective surfaces up to a height of forty feet on a property immediately adjacent to the National Wildlife Refuge, threats such as collisions with man-made structures will increase substantially over present levels. Birds are known to collide with buildings that they do not see because of reflective surfaces. To reduce the potential of bird strikes, **Special Condition No. 1** requires that all glass or reflective surfaces within the residential development use non-reflective glass and/or coatings to minimize reflectivity.

Because the project site is adjacent to Pond 10A and runoff could enter the pond or pest control measures could impact the wildlife therein, **Special Condition No. 4** requires that any landscape management plan minimize fertilizer and chemical pest control use so as to avoid impacting the

habitat area. **Special Condition No. 9** requires a construction staging and storage plan that clearly shows that no construction activity will be taking place outside of the property boundaries and in the wetlands or public spaces. **Special Condition No. 10** requires a final stormwater pollution prevention plan to ensure that measures preventing debris or similar material from entering habitat areas are put in place, as well as proper cleanup procedures in the event of that occurrence. **Special Condition No. 11** requires that any graded material exported from the site must be disposed of legally outside of the Coastal Zone. To ensure that the wetland buffer area is maintained into the future as an open space habitat area, as well as ensuring that the panhandle east of Pond 10A stays free of development, **Special Condition No. 14** requires the recordation of an open space easement over both areas.

In summary, the project as proposed by the applicant does not conform to the habitat protection policies of Chapter 3 of the Coastal Act. Only as conditioned to avoid direct and indirect impacts to wetlands and sensitive species by deleting the Phase II portion of the proposed bike path and maintaining a viable wetland buffer between the proposed project and upland development, can the project be found in conformance with Chapter 3 of the Coastal Act.

E. SEA LEVEL RISE RISK AND ADAPTATION

Section 30231 of the Coastal Act requires protection and maintenance of the biological productivity of coastal waters and 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 entrapment, 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.*

Section 30236 of the Coastal Act states:

> *Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.*

Section 30253 of the Coastal Act states in relevant part:

> *New development shall <u>all of the following:</u>*
>
> *(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.

Relevant Sections of the City of Imperial Beach's certified LCP state:

GOAL 16 SHORELINE PROTECTION

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

S-10 Regulate Shoreline Land Use and Development
The City should regulate shoreline land use and development by:

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

Section 19.25.060, Development Regulations and Design Standards

G. Climate Change/Sustainability Provision:

2. Adaptation Measures:

b. Sea Level Rise (SLR). Buildings may have a useful life of 50 to 100 years or more. Global warming scenarios project an increase in sea level rise due to the effects of greenhouse gases. The State of California projects a rise of 10 to 17 inches by the year 2050 and a rise of 31 to 69 inches by the year 2100 (State of California, Sea Level Rise Task Force of the Coastal and Ocean Working Group of the California Climate Action Team (CO-CAT), Sea Level Rise Interim Guidance Document, October 2010). Project proponents shall, using best available science, assess their projects for its vulnerability to impacts from sea level rise and, if vulnerable, propose a reasonable adaptation strategy that may take the form of hard structures (such as seawalls, levees, bulkheads, or rip-rap), soft structures (such as wetland restoration, low impact development (LID), detention basins, bioinfiltration, or bioswales), accommodation (such as elevated grades, elevated structures, floodable development, or floating structures), or withdrawal (such as buffers, rolling easements, disassembly design, or managed retreat). However, revetments and other shoreline protection devices that alter natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing principal structures, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. New development shall be sited and designed to account for sea level rise such that the need for hard protective structures is avoided.

Sea Level Rise Impacts and Adaptation Strategies

Over the coming decades, global climate change will have increasingly significant impacts on California and its coastal environments and communities. Climate change is affecting almost every facet of California's natural and built environment. The Coastal Act mandates the California Coastal Commission to "protect, conserve, restore, and enhance" the state's coastal resources. As a result, the Commission must consider climate change, including potential sea level rise, in its review of new development in the coastal zone.

The sea level is rising in most places around the world, with an average global sea level rise for the 20th century ranging from 0.18 to 0.31 centimeters a year. Projections of global mean sea level indicate that it has risen by 0.19 meters from 1901-2010, with an average rate of 1.7 millimeters per year. However, between 1993 and 2010, the rate substantially increased to 3.2 millimeters per year. The State of California supported the preparation of the 2012 National Research Council's (NRC) Report, *Sea-Level Rise for the Coasts of California, Oregon and Washington: Past Present and Future*, as stated in the 2014 *Safeguarding California* document and the Ocean Protection Council's 2013 State of California Sea-level Rise Guidance Document. Increasing global temperatures are causing significant effects at global, regional, and local scales. The NRC projects that by year 2100, sea level in California may rise by 17 to 66 in (42 to 167 cm) for areas south of Cape Mendocino. While the California coast regularly experiences erosion, flooding, and significant storm events, sea level rise will exacerbate these natural forces, leading to significant social, environmental, and economic impacts. In San Diego Bay, the mean sea level has gradually increased at a rate of approximately 0.67 feet per century (20 centimeters per century). In recognition of this, the Coastal Commission is finalizing the "Sea Level Rise Policy Guidance" with recommendations for how to implement applicable Coastal Act and LCP policies that address the risks posed by sea level rise.

There are several situations where sea level rise should be considered in the siting and designing of a project, including, but not limited to, currently in or adjacent to the flood plain, currently or has been exposed to flooding or erosion from waves or tides, currently in a location protected by the constructed dikes, levees, or other flood-control or protective structures; on or close to a beach, estuary, lagoon, or wetland; on a coastal bluff with historic evidence of erosion; or reliant upon shallow wells for water supply. Due to the proximity to tidally influenced wetlands, the need to preserve upland area to allow the wetlands to migrate inland is also a priority. Sea level rise will lead to wetland habitat conversion and loss as the intertidal zone shifts inland. Of particular concern is the loss of saltwater marshes from sea level rise, which have already decreased by about 90% from their historical levels in California. California's 550 square miles (885 km) of critical coastal wetland habitat would be be converted to open water by 4.6 ft. (1.4 m) rise of sea level if they are not able accrete upward or to migrate inland due to natural or anthropogenic barriers. Although barriers are plentiful, inland migration of these wetlands is possible for over 50% of the potentially inundated wetland area based on land use compatibility alone. Consideration of adequate sediment supply and additional barriers to inland migration would further constrain wetland migration potential. A 4.6 ft (1.4 m) increase in sea level would flood 150 square miles (241 km) of land immediately adjacent to wetlands, which could become future wetlands if that land remains undeveloped. Loss or reduction of wetland habitat would impact many plant and animal species, including migratory birds that depend on these habitats as part of the Pacific Flyway. Species that are salt-tolerant may have an advantage as sea level rise

occurs and exposes new areas to salt water, while species that have narrow salinity and temperature tolerances may have difficulty adapting to changing conditions. Furthermore, as wetlands migrate inland, the closer they get to development, and the greater the disturbance from noise and light, degrading the habitat value of wetlands.

Because sea level rise will increase the likelihood of property damage from flooding, inundation, or extreme waves, it will increase the number of people living in areas exposed to significant flooding. Increased erosion and loss or movement of beach sand will lead to an increase in the spatial extent of eroding bluffs and shorelines, and could increase instability of coastal structures and recreation areas. While Pond 10A is separated from the rest of San Diego Bay by a levee (upon which is the Bayshore Bikeway), levee systems will likely experience damage and overtopping from an increase in water levels, extreme wave conditions, or a loss of wetlands, which buffer impacts from high water. The replacement value of property at risk from sea level rise for the California coast is approximately $36.5 billion[1], not including San Francisco Bay. The construction of new residences in the projected envelope of sea level rise, along with the adverse impacts arising from such placement, will only add to this cost.

Thus, when development is permitted within an area subject to sea level rise, it increases the likelihood that shoreline protection will be sought. As noted, beaches, wetlands, and other habitat backed by fixed or permanent development will not be able to migrate inland as sea level rises, and will become permanently inundated over time, which in turn presents serious concerns for future public access and habitat protection.

The Coastal Commission utilizes the best available science (currently the 2012 NRC report) to identify a range of sea level rise scenarios including the high projection, low projection, and one or more intermediate projections. An even higher value than the NRC range might also be considered if there is the potential for severe impacts to coastal resources and human health and safety from sea level rise impacts. It is important to identify the amounts of sea level rise that could result in effects to a particular site as well as the time periods over which those effects could occur so that the proposed development can be safely sited and designed to avoid resource and development impacts. In addition, given the uncertainty in the magnitude and timing of future sea level rise, particularly over longer time periods, it is important to examine a range of possible shoreline changes and sea level rise risks to identify potential local impacts from sea level rise, incorporating storms, extreme water levels, and shoreline change, when determining the appropriate development envelope for a site.

Section 30253 of the Coastal Act requires new development to minimize risks to life and property in areas of high geologic and flood hazard without the use of shoreline protection devices that substantially alter natural landforms. The best way to minimize risks to development and coastal resources is to avoid siting new development within areas vulnerable to flooding, inundation, and erosion, thus ensuring stable site conditions without the need for protective devices. Thus, to comply with Coastal Act Section 30253, projects will need to be planned,

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[1] Heberger M, H Cooley, P Herrera, PH Gleick, E Moore. 2009. *The Impacts of Sea-Level Rise on the California Coast*. Prepared by the Pacific Institute for the California Climate Change Center.

located, designed, and engineered for the changing water levels and associated impacts that might occur over the life of the development. In addition, project planning should anticipate the migration and natural adaptation of coastal resources (beaches, access, wetlands, etc.) due to future sea level rise conditions in order to avoid future impacts to those resources from the new development. For some cases, the site constraints may require revisions to the size and scale of the proposed development to fit with the available buildable area without the use of protective structures.

Analysis

The shoreline of the project site is located on a portion of south San Diego Bay that had previously been utilized as salt ponds (Ponds 10A, 10, and 11) for over 50 years. These salt ponds were shut off from tidal flows by a series of levees, and water flow was controlled via channels and gates. In 2011, the South San Diego Bay Coastal Wetlands Restoration and Enhancement Project, in particular, the Western Salt Pond Restoration Project, opened up 223 acres, including the pond adjacent to the property (Pond 10A), to tidal flow. Pond 10A is approximately 32 acres and consists of open water, tidal and high, medium and low marsh habitats. This Pond is bounded to the north by Bayshore Bikeway (which was constructed on top of the historic levee that separated Pond 10A from Pond 10). Tidal exchange is restricted to five 3.5-foot-diameter culverts that pass through the bikeway in a single location at the pond's northwest corner. The water level measurements also show tidal muting from the open bay to Pond 10A during both high and low tides

The diurnal tide range (the difference between the mean higher high water (MHHW) and the mean lower low water) in San Diego Bay is 5.6 feet, in Imperial Beach it is 5.4 feet, and the maximum tide range for the region is approximately 10 feet. The highest tides, (known as king or spring) tides, occur in January and June. Water levels in San Diego Bay are also affected by storm surge, El Nino Southern Oscillation Events, and long term eustatic (i.e., global sea level) changes. The highest observed water level for the region is 5.23 feet MSL.

Most of the project site's current topography is above 10 feet National Geodetic Vertical Datum (NGVD) (9.5 feet MSL), except for the northwestern portion of the site, where the site is as low as approximately 7 feet NGVD (6.5 feet MSL). The northern boundary of the paved pad serving the existing RV park is separated from Pond 10A by a wall that varies in height, but at the highest point is about 2 feet tall above ground level. The wall is made of cement for the most part; however, the western portion was constructed of railroad ties. On top of the wall is a chain-link fence with either railroad ties or metal posts as vertical supports.

Because of the proposed project's proximity to the tidally influenced salt ponds, the applicant provided an analysis of flooding and inundation hazards and how the hazards would change with sea level rise. A Sea Level and Extreme Water Level Analysis was prepared by Coastal Environments, Inc., to analyze the project site for risk from sea level rise. The study's findings incorporate the most recent sea level rise studies used in the Commission's Draft Sea Level Rise Guidance.

The existing paved RV park is currently developed up the northern property line, only approximately 60 feet from the waters of Pond 10A. The proposed development would be setback a minimum of 100 feet from the northern property line. In addition, the proposed project includes substantial grading and importation of approximately 15,000 cubic yards of fill so as to raise the surface elevation of the project site by several feet, especially in the northwest portion of the project site. This fill placement would raise the proposed residences above the highest projected year 2100 sea level discussed below. Thus, as proposed, the development proposed on the site would be less vulnerable to sea level rise than the existing use. However, the existing RV park is the type of use that is very adaptable to sea level rise, as it involves only minor permanent structures and easily relocatable RV units. In contrast, the proposed development consists of large, high-value, permanent structures built on fill. When reviewing adaptation strategies for new development, the Commission first looks at ways in which the development can avoid risk, rather than create new hard structures, which includes creating a new permanent development pad that prevents the inland migration of bay waters, the surrounding wetlands, and the proposed public path. Essentially, the proposed fill would have the effect of channelizing this portion of San Diego Bay, as the coastal waters that would otherwise expand over the projected sea level rise envelope would instead be forced elsewhere, potentially flooding nearby habitat, public access points, or residences at a lower elevation than the proposed development. Therefore, in order to assess the risk at the site, staff requested that the sea level rise analysis determine where expected sea level rise would occur on the site using the existing site topography, not considering the proposed fill.

The study looked at two different time horizons, 2050 and 2100, and determined a “low,” “medium,” and “high” estimated projection of sea level rise for each of these two dates. Utilizing the current topography of the project site, the sea level rise report’s findings show that the projected sea level rise for the year 2050 would approach, but only minimally encroach into, the northern property boundary of the project site. However, the sea level rise study determined that projected sea level rise for year 2100 would likely substantially enter the project site. The total water level analysis started with the highest observed water level of 5.23 feet and reduced this by 67% to account for the tidal muting within Pond 10A. Varying amounts of sea level rise were then added to this observed water level to estimate future expected water levels at the project site for 2050 and 2100. The high projection for total water levels is approximately 9.22 feet MSL; the median projection is 8.62 feet, and the low projection is 6.91 feet. It should be pointed out that there are other events than those considered in the study that may raise the water level higher than the values estimated in this study for a short time period. The Commission’s engineer has reviewed the study, and agrees that sea level rise calcuations were performed correctly.

Because the proposed residential development is expected to have a life span of at least 75 years, the projected data for the year 2100 was used to determine the impact sea level rise will have on the proposed project. Overlaid on a map of the project site, the sea level rise study shows that by the year 2100, coastal waters could reach approximately 150 feet inland from the project site’s northern boundary. This would not only inundate the proposed 100-foot wetland buffer and public pedestrian/bike path, but also eleven of the proposed townhomes, with the water reaching up to several additional adjoining residence sites. Because this projection is just the edge of coastal water level, the water would further encroach inland during any significant tidal variations including king tides, storm events, and normal periodic oscillations.

Furthermore, because such encroachment by coastal waters would result in the natural landward migration of wetlands and animal habitat, when sea level rise occurs, the required 100-foot wetland buffer must also be accommodated to ensure the integrity of the sensitive habitat, as well as ensuring that the residential development is properly protected from flooding and wave action in the future. Exhibit Nos. 7-10 shows the location of the low, mid, and high projected sea level rise by the year 2100, and a buffer drawn 100 feet inland of the mid and high projections. Because of the high degree of variability in year 2100 projections, rather than simply use the high-range estimate to establish a safe line of development, a two-tiered approach was determined to be the most reasonable approach to creating a development envelope on the subject site. Because the area seaward of the mid-level projection is likely to be inundated by sea level rise, and require the existing habitat to migrate landward, **Special Condition No. 1** would only allow at-grade or accessory development to be constructed seaward of a buffer located 100 feet inland of the mid-range projected sea level rise (see Exhibit Nos. 7 & 8).

It is possible that sea levels will rise beyond the mid-level projection and encroach the full 150 feet into the project site. Thus, **Special Condition No. 2** creates a second restricted area designated as the Long Term Sea Level Rise Risk Zone. This area is defined as the the area between the 100-foot buffer line from the mid-level projected sea level rise, to the 100-foot buffer from the highest projected sea level rise for the year 2100 (see Exhibit Nos. 9 & 10). As conditioned, any development located in this area would be required to incorporate adaptive design features to be able to handle flood risk, such as incorporating ground floors that can withstand flooding, or being designed to be readily dismantled or relocated landward. These two sea level rise setbacks will minimize the risk of hazard from inundation and the need to construct shoreline protective devices, and well as allowing for the landward migration of the wetlands currently within Pond 10A and the proposed public pedestrian/bike path.

Because all land seaward of the 100-foot setback for the high-level projection is at significant or potential risk from sea level rise, **Special Condition No. 6** only allows balance grading in that portion of the project site. **Special Condition No. 1** requires a final plan that establishes a 100-foot setback from the highest projected year 2100 setback line so as to provide ample space to avoid flooding risk and permit habitat migration, while still allowing at-grade and accessory development in the area. **Special Condition No. 1** further requires identification of the area at risk as the "Long-Term SLR Risk" zone in order that structures there are developed with the guidance. **Special Condition No. 2** limits development in the risk zone to structures that are capable of withstanding the flooding or that can be moved, with grading minimized to further prevent risk. Because the project site is a bayfront property that will experience inundation from sea level rise, **Special Condition No. 12** requires an acceptance on the part of the applicant and his successors in interest of the wave and flooding risks inherent in such a development, while **Special Condition No. 13** requires a waiver of future shoreline protection to avoid shoreline armoring altering the natural shoreline and backstopping the migration of sensitive habitat in the National Wildlife Refuge. Finally, **Special Condition No. 16** requires the recordation of a deed restriction to ensure the aforementioned coastal protection measures and other requirements of this permit are properly implemented into the future.

The proposed sea level rise setbacks would affect the design of applicant's proposed project. As shown on Exhibit Nos. 7-10, when both the mid and high projections are overlain on the proposed site plan, approximately thirty-nine townhomes would have be removed or relocated,

somewhat fewer if they could be adapted to periodic flooding. As proposed, all of the structures have been designed with first floor garages, which could possibly be allowed in the Long Term Sea Level Rise Risk Zone. In addition, as conditioned, the project must provide a minimum of 10 public access parking spaces, and relocate the required water treatment retention basin outside of the wetland buffer. Parking spaces and water treatment BMPs are uses compatible with periodic flooding and would be appropriate in the Long Term Sea Level Rise Risk Zone. In addition, as described in detail in the findings addressing visual resources, the portion of the project site at risk from sea level rise risk is substantially within the existing public view corridor that, as conditioned, would be placed over the project site, and restrict any development higher than 10 feet in height. Thus, development in this portion of the project site will already be restricted to protect public views, and the restrictions arising from sea level rise risk would not substantially alter allowable development in this location.

Ultimately, the number of units constructed on the site will depend on a variety of factors, including the size and height of the residences, the infrastructure, amenities, and other project components determined by the applicant. The purpose of the special conditions, whether addressing sea level rise, biological resources, or visual quality, is to define a development area in which a variety of development options could be accommodated, while ensuring that coastal resources are protected and enhanced.

In summary, the project site is at risk from flooding associated with sea level rise. Unlike the existing RV Park, which is a use that can easily adapt to rising sea level, the proposed project would consist of be a permanent, high-value structures. As proposed, the project would address the risk of sea level rise by importing material and raising the elevation of the site. However, this would prevent the wetlands, other habitat, and the proposed public accessway from migrating inland as sea level rises. The importation of fill also impacts on adjacent coastal resources by redirecting flood waters onto habitat areas or adjacent properties. Thus, as conditioned, the project must be revised to accommodate a setback line where only at-grade, accessory improvements are allowed, and a setback line where only improvements that are removable or capable of withstanding periodic flooding are acceptable. Only as conditioned can the project can be found by the Commission to be in conformance with Chapter 3 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 landforms, 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.*

The City of Imperial Beach's certified LCP states:

GOAL 4 VISUAL QUALITY IS IMPORTANT
The visual quality of the City's environment shall be preserved and enhanced for the aesthetic enjoyment of both residents and visitors and the economic well-being of the community. Development of neighborhoods, streets and individual properties should be pleasing to the eye, rich in variety, and harmonious with existing development. The feeling of being near the ocean and bay should be emphasized even when the water is not visible. Designs reflective of a traditional California seaside community should be encouraged.

D-8 Project Design

a. The design of development projects should respect, work with and enhance the natural features of the land.

- Natural scenic amenities such as mature trees; watercourses and views should be integrated into the project design

Highway 75 is a popular coastal thoroughfare along the Silver Strand between the coastal communities of Imperial Beach and Coronado utilized by commuters, recreational users, and cyclists. The project site is immediately adjacent to the east side of Highway 75 and the south side of Pond 10A. The existing RV park consists of trailers and a small one-story office building. The project site sits at a lower elevation than Highway 75, with the site sloping seaward from a high of 19 feet above sea level in its southeast corner to a low of 7 feet above sea level at its northwest boundary next to Pond 10A. Highway 75 is approximately twenty feet above sea level along the segment adjacent to the project site. The surrounding area is characterized by protected open space ponds and San Diego Bay to the north, one and two-story detached residences to the east, and Highway 75 and a mix of residential and commercial uses to the west and south.

As stated earlier in this report, prior to 1964, the project site was undeveloped, and has been developed since that time with the existing RV park, which does not have development taller than the one-story RV's themselves. Thus, for most, if not all, of the project site's history, the public – pedestrians, cyclists, and drivers – have enjoyed coastal views of Pond 10A, the BayShore Bikeway, and San Diego Bay over the western third of the 10-acre project site from northbound Highway 75 (Exhibits 12 & 15).

Of the 190 attached townhomes proposed by the applicant, a total of 115 townhomes would be three stories in height, ranging from 1,145 sq. ft. to 1,640 sq. ft. with attached two-car garages. The remaining 75 attached townhomes would be two stories in height, ranging between 1,600 and 1,990 sq. ft. with attached two-car garages. All of the proposed townhomes would a maximum of 40 feet in height. All of the townhomes would be grouped together in a row home configuration averaging seven units in length, with some rows forming internal courtyards. The three proposed detached single family residences would be located on the easternmost portion of the project site next to the 7th Street entrance and would be two stories, approximately 2,250 sq. ft. with attached two-car garages and 26 feet tall. The proposed project would also include a recreational area with pool facilities near the main western entrance off Highway 75.

Staff, in consultation with the applicant, established the boundaries of the existing public view corridor across the site. As proposed, approximately forty-five 40-foot tall townhomes would be located within this view corridor, all the way up to the project site's boundary along Highway 75. Even with the aforementioned height difference between the project site and Highway 75, the townhomes will be substantially taller than Highway 75 and completely block the existing public views of Pond 10A and San Diego Bay. The view blockage will be further exacerbated because the project includes importing 15,000 cubic yards of fill to raise the grade of the project area, particularly in the aforementioned western third within the view corridor, prior to constructing the 40-foot tall townhomes. Furthermore, because the townhomes would be arranged in connected rows of approximately seven units each, the proposed development will not even have side yard setbacks between the homes, and thus will completely wall off the existing public view (Exhibits 13 & 16).

In addition to the direct view blockages resulting from the project, the proposed 193-dwelling unit residential development would have a density of 21-dwelling units per acre which, coupled with the 40-foot height, would be substantially denser and taller than the surrounding community character. The development will be visible from a variety of public vantage points including Highway 75, surrounding streets, and the Bayshore Bikeway, and would substantially alter the community character of this corner of San Diego Bay (Exhibit 19). Currently, members of the public looking south from the Bayshore Bikeway at Pond 10A see a wetland vista backstopped by unobtrusive singe-story single family residences on the east and a low-lying RV park on the south. Because usage of the RV park is seasonal, it is substantially vacant for much of the year, which further lessens the visual impact it has on the adjacent viewshed.

Any increase in the intensity of use at the project site is likely to change the community character of this shoreline site. However, although some intensification of development may be acceptable, new development along the coast should not substantially reduce or block existing public views of the shoreline. Regardless of maximum height and density requirements, the Commission typically requires new development to define existing view corridors that protect and preserve public views, and design the project within those parameters. (ref. CDP No. A-6-LJS-13-0256).

Therefore, to bring the proposed project into conformance with the visual resource protection policies of Chapter 3 of the Coastal Act, several special conditions have been attached that require the development to preserve the existing view corridor on the site. **Special Condition No. 1** requires the final approved plans to include no structures higher than 10 feet from existing or finished grade – whichever is lower – within the identified view corridor. **Special Condition No. 4** requires that no landscaping within the view corridor be taller than 10 feet nor have a growth potential of more than 10 feet. Because the development is adjacent to Pond 10A and in close proximity to the Bayshore Bikeway, which provides scenic vistas of the coastal area, **Special Condition No. 8** requires the applicant to submit a final color board for the proposed development that avoids bright, obtrusive colors and emphasizes earth-tone colors. To ensure that the visual protection measures carry forward into the future with subsequent property owners, **Special Condition No. 16** requires the recordation of a general deed restriction against the property to inform the public and potential buyers of the permit and its conditions.

In summary, the proposed residences would not only block public views from highway, but create an unusually large and massive development directly adjacent to and looming over the open expanse

of the wildlife refuge, inconsistent with the visual protection policies of Chapter 3 of the Coastal Act. Only as conditioned to protect the existing view corridor from obstruction and ensure the final development is less intrusive into the scenic quality of the area, can the project be found by the Coastal Commission to be in conformance with Chapter 3 of the Coastal Act.

G. WATER QUALITY

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.*

Relevant Sections of the City of Imperial Beach's certified LCP state:

Section 19.25.060, Development Regulations and Design Standards

G. Climate Change/Sustainability Provisions:

1. Mitigation Measures

> *a. **Storm Water**. Storm Water runoff shall be minimized (in addition to satisfying the storm water requirements of IBMC Chapter 8.30, 8.31, and 8.32) by infiltrating runoff on-site provided that geotechnical studies support infiltration/percolation capabilities.*

The applicant's proposed development includes the demolition and grading of almost the entire 10-acre project site, as well as possible measures such as removing and compacting topsoil to prepare the site for development. The proposed residential development would utilize landscaping consisting of trees, shrubs, vines, accent plants, groundcover, and turf. A 100-foot wide buffer from the wetlands on the northern border of the project site would be created, which, as proposed, would include approximately 0.6-acre of wetland restoration consisting of native coastal salt marsh plants, and a 12,000 sq. ft. bioretention area that will consist of groundcover vegetation and would occupy approximately half of the wetland buffer area. The project site is not currently located within a 100-year flood hazard area as mapped by the Federal Emergency Management Agency (FEMA). However, because the project site is adjacent to San Diego Bay, the hazard zone is predicted to progressively encroach toward the site as sea levels continue to rise.

A Preliminary Hydrology & Hydraulic Report and a Preliminary Stormwater Management Plan and a draft Stormwater Pollution Prevention Plan have been prepared by Pasco Laret & Associates. According to the report, potential water quality impacts associated with the proposed

project include construction-related erosion and sedimentation (soil stockpiles and trenches excavated during construction could pose erosion risks), hazardous material discharge, and potential groundwater discharge.

According to the environmental studies submitted by the applicant, under existing conditions the properties located adjacent to Pond 10A, as well as existing storm drains in the area, can experience tidal inundation during very high tides. As a result, the National Wildlife Refuge performed hydraulic modeling to determine if the new hydraulic connections within the salt ponds installed as part of restoration would exacerbate the potential for tidal flooding in the vicinity of the ponds. That analysis determined that there was no difference in water levels in the western ponds under existing conditions and those following the restoration project. Therefore, the National Wildlife Refuge concluded that the restoration projects would have no effect on the level or rate of tidal flooding within the adjacent neighborhood. Nevertheless, flooding is a potential risk for areas in close proximity to the ponds, and thus even if materials are properly secured, coastal waters could encroach into the area and impact water quality.

The City of Imperial Beach maintains two outlets that affect the water within Pond 10A, including a 24-inch reinforced concrete pipe that empties into Pond 10A just outside the northwestern corner of the project site, after crossing under Highway 75 from 5th Street. There is also a small storm drain outlet that empties into Pond 10A from 7th Street between Boulevard Avenue and Basswood Avenue, near the northeast corner of the pond. Finally, there is a storm drain under the northwest corner of the project site that captures runoff from Highway 75 itself and channels it through the project site directly into Pond 10A.

The proposed project, by removing the existing use as a trailer park, would result in a net reduction of approximately one-acre of impervious surfaces from current levels, largely by providing the wetland buffer, and the small landscaped areas within the development.

As proposed, a 12,000 sq. ft. bioretention basin proposed to be located within the buffer area. The proposed new residential development must capture and treat polluted stormwater runoff before it exits the project site. As stated in the findings regarding impacts to sensitive habitat, both the Commission's ecologist and water quality staff have determined that the placement of the bioretention basin within the proposed wetland buffer area would adversely impact the biological role that wetland buffers are meant to provide. For example, required trash abatement as part of BMP upkeep would not necessarily be compatible with upland wildlife resting and refuge. It should be noted that compared to the existing use, the high density of the proposed development is expected to potentially generate moderate amounts of polluted runoff, requiring robust water quality measures. However, the 10-acre project site has ample space to dedicate an area for water quality BMPs outside of the wetland buffer.

In addition, the project site currently channels all runoff flowing east from the adjacent segment of Highway 75 into a storm drain located in the northwest corner of the property and discharges from the property into Pond 10A, which is part of the National Wildlife Refuge. The proposed project design would divert the road drainage that current enters the site 160 feet further along the highway where it would enter, untreated, a Caltrans storm drain that also discharge to the National Wildlife Refuge. Because runoff from road surfaces commonly carry pollutants such as metals, petroleum products, sediment and trash, the drainage directly and adversely impacts the

water quality of the National Wildlife Refuge. Thus, the Commission's water quality staff determined that, for the protection and restoration of coastal water quality, it would be optimal to accommodate the highway runoff that currently passes untreated through the project site using the project's water quality BMPs.

The applicant responded to Commission staff that treating the additional runoff would require increasing the size of the proposed bioretention basin by 40-50% - approximately 4,800 – 6,000 additional square feet. However, the entire existing trailer park will be removed prior to development, and the 10-acre site can and should be designed to provide for resizing and appropriately relocating the proposed bioretention basin outside of the wetland buffer. The applicant also responded that the City of Imperial Beach is working on a plan to eventually improve this portion of Highway 75, and that since such improvements will likely include treatment of the road runoff, it is unnecessary for the subject project to incorporate treatment of this runoff. The materials the applicant submitted to staff regarding the proposed project, such as the traffic impact analysis, make several references to potential improvements to road segments around the project site. However, those same materials identify that the improvement plans are either conceptual or still working their way through local government; with timelines, costs, and funding still unsecured. Thus, it is unknown when, if ever, the City of Imperial Beach will actually implement any improvements to the segment of Highway 75 adjacent to the project site. It is important that redevelopment of this site treat all runoff that is currently discharged from the site into the National Wildlife Refuge.

Another potential source of impacts to coastal water quality comes from the landscaping of the proposed 193 residences and the common spaces that will serve them. Landscaping requires periodic maintenance, and such measures, such as fertilizer use and rodent control, can impact water quality when high levels of nitrates, pesticides, and rodenticides enter coastal waters. While the proposed project includes the use of bioretention basins that would treat polluted runoff, additional measures that keep potential pollutants separate from runoff could be even more effective. Through the prudent, efficient use of no-fertilizer or environmentally-friendly fertilizer measures, the likelihood of such chemicals entering coastal waters is significantly reduced. The same logic applies to pest control. Popular pest control measures, such as widespread application of poisonous chemicals, can degrade coastal waters and impact non-targeted wildlife. Thus, any new development should include measures that favor non-chemical pest control measures.

As proposed, the project contains features that do not conform to the water quality protection policies of Chapter 3 of the Coastal Act. In order to bring the proposed project into conformance with the Coastal Act, several special conditions are requires. **Special Condition No. 1** requires final plans that relocate all water quality treatment BMP outside of the proposed wetland buffer. **Special Condition No. 4** requires a final landscape plan that will emphasize the use of alternatives to chemical treatments and the minimization of chemical treatments for maintenance and pest control. **Special Condition No. 5** requires a final drainage plan which requires that Low Impact Development BMPs be prioritized, and requires the water quality treatment BMPs be designed to also treat the drainage received from Highway 75. **Special Condition No. 10** requires a final Stormwater Pollution Prevention Plan that ensures construction activity will not impact coastal waters and contains all measures needed to prevent construction activity from spillover into coastal waters. **Special Condition No. 11** requires the applicant to dispose of all

exported material in a legal site outside of the coastal zone. Thus, as conditioned in this permit, the Coastal Commission may find that the proposed project conforms to the water quality protection policies of the Coastal Act.

H. LOCAL COASTAL PLANNING

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, only as conditioned, such a finding can be made.

The project site is zoned C/MU-1 (General Commercial & Mixed Use), which permits attached multi-family residential units at a maximum density of one dwelling unit per 1,000 square feet (or 43.5 dwelling units per acre). The project proposes a residential density of 21 dwelling units per acre, consistent with this requirement. However, the proposed project presents conflicts with the certified LCP's policies addressing public access and recreation, shoreline protection, public parking, natural resources, visual quality, and sea level rise. As conditioned, the amended project should not prejudice the ability of the City of Imperial Beach to continue to implement its Local Coastal Program.

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 establishing an appropriate development area including wetland buffers, runoff treatment, public access and signage, community character, visual resource protection, and sea level rise 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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.

(G:\San Diego\Reports\2015\6-15-0003 Integral Communities stf rpt draft.docx)

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Final Environmental Initial Study and Mitigated Negative Declaration for Bernardo Shores, dated November 2014 by Helix Environmental Planning.
- Preliminary Geotechnical Investigation, Bernardo Shores Residential Development, City of Imperial Beach, CA, dated February 11, 2014 by Advanced Geotechnical Solutions, Inc.
- Biological Technical Report, dated June 25, 2014 by Helix Environmental Planning
- Air Quality and Greenhouse Gas Technical Report, dated September 15, 2014 by Helix Environmental Planning
- Jurisdictional Delineation Report, dated September 26, 2012 by Helix Environmental Planning
- Acoustical Technical Report, dated September 16, 2014 by Helix Environmental Planning
- Traffic Impact Analysis, Bernardo Shores, dated September 8, 2014 by Linscott, Law & Greenspan
- Sea Level and Extreme Water Level Analysis, Bernardo Shores, dated March 6, 2015 by Coastal Environments, Inc.
- Certified Local Coastal Program for the City of Imperial Beach

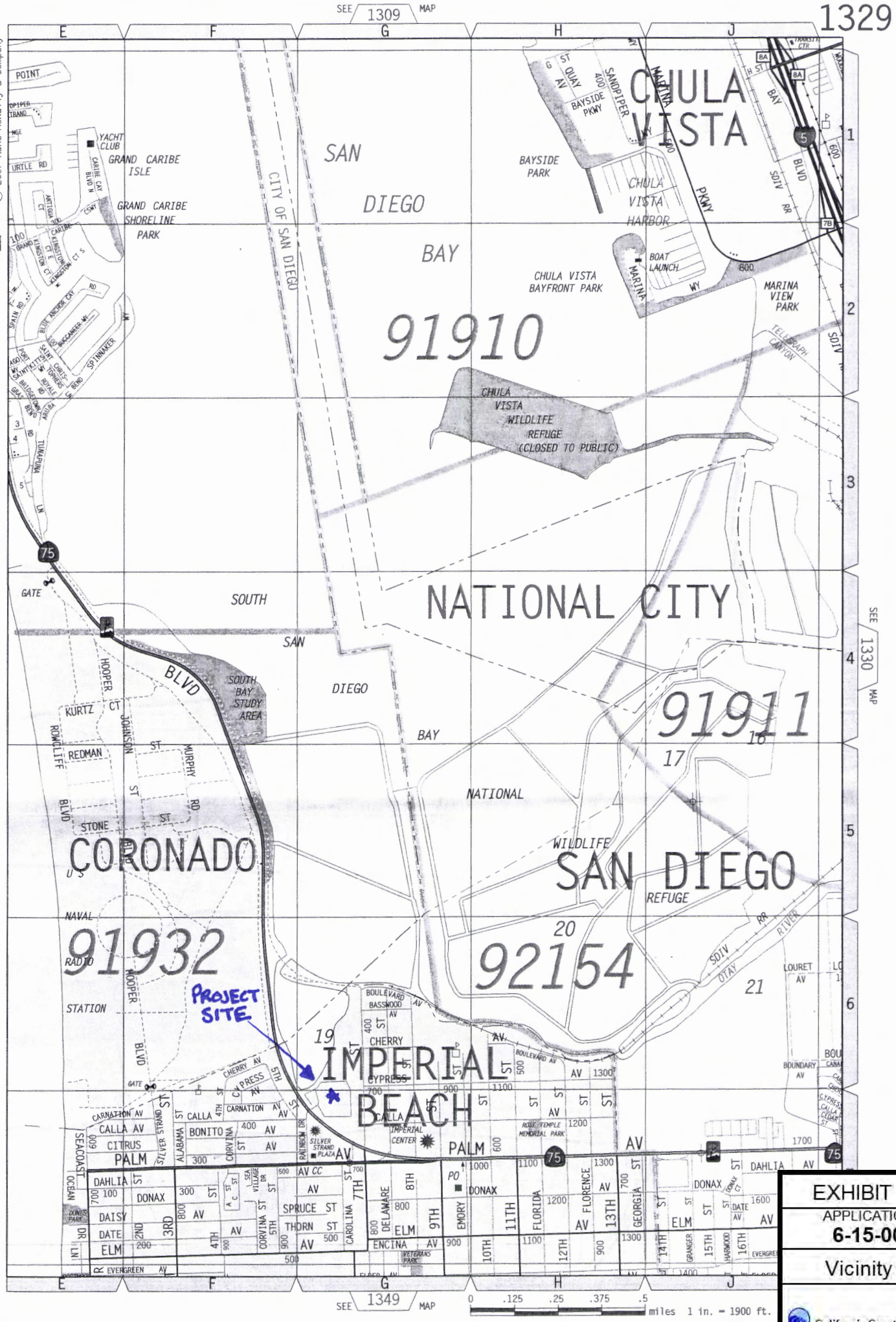


EXHIBIT NO. 1

APPLICATION NO.
6-15-0003

Vicinity Map

California Coastal Commission

EXHIBIT NO. 2

APPLICATION NO.
6-15-0003

Aerial Map

California Coastal Commission

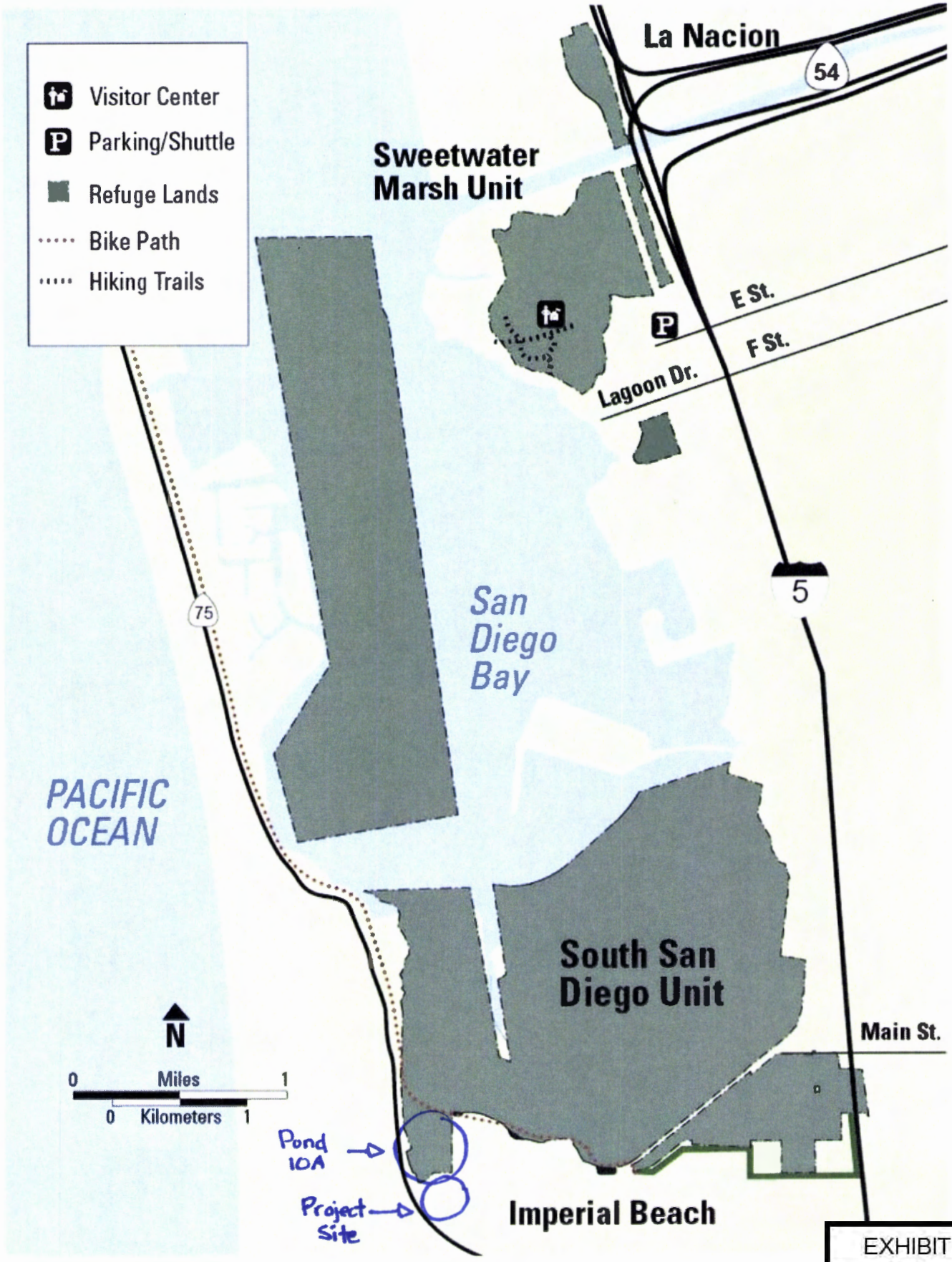


EXHIBIT NO. 3
APPLICATION NO.
6-15-0003
NWR Map

http://www.mobilemaplets.com/thumbnails/9834_thumbnail-1024.jpg

California Coastal Commission

EXHIBIT NO. 4

APPLICATION NO.
6-15-0003

Pond 10A Culvert

California Coastal Commission

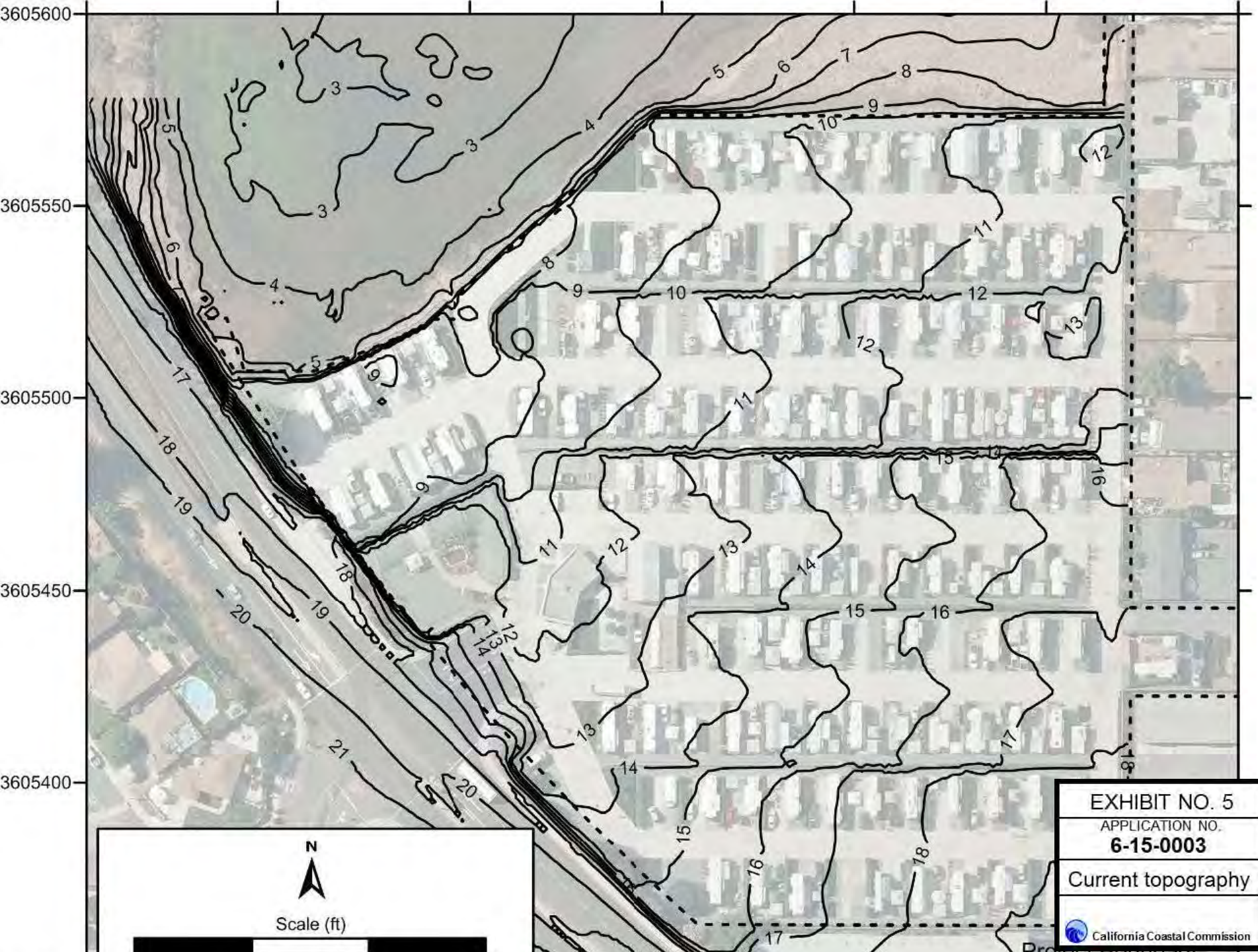


EXHIBIT NO. 5

APPLICATION NO.
6-15-0003

Current topography

California Coastal Commission

I:\PROJECTS\I\IPQ\IPQ-10_BernardoShores\Map\BIO\BTR\Fig5_Vegetation.mxd - DR

Vegetation and Sensitive Resources

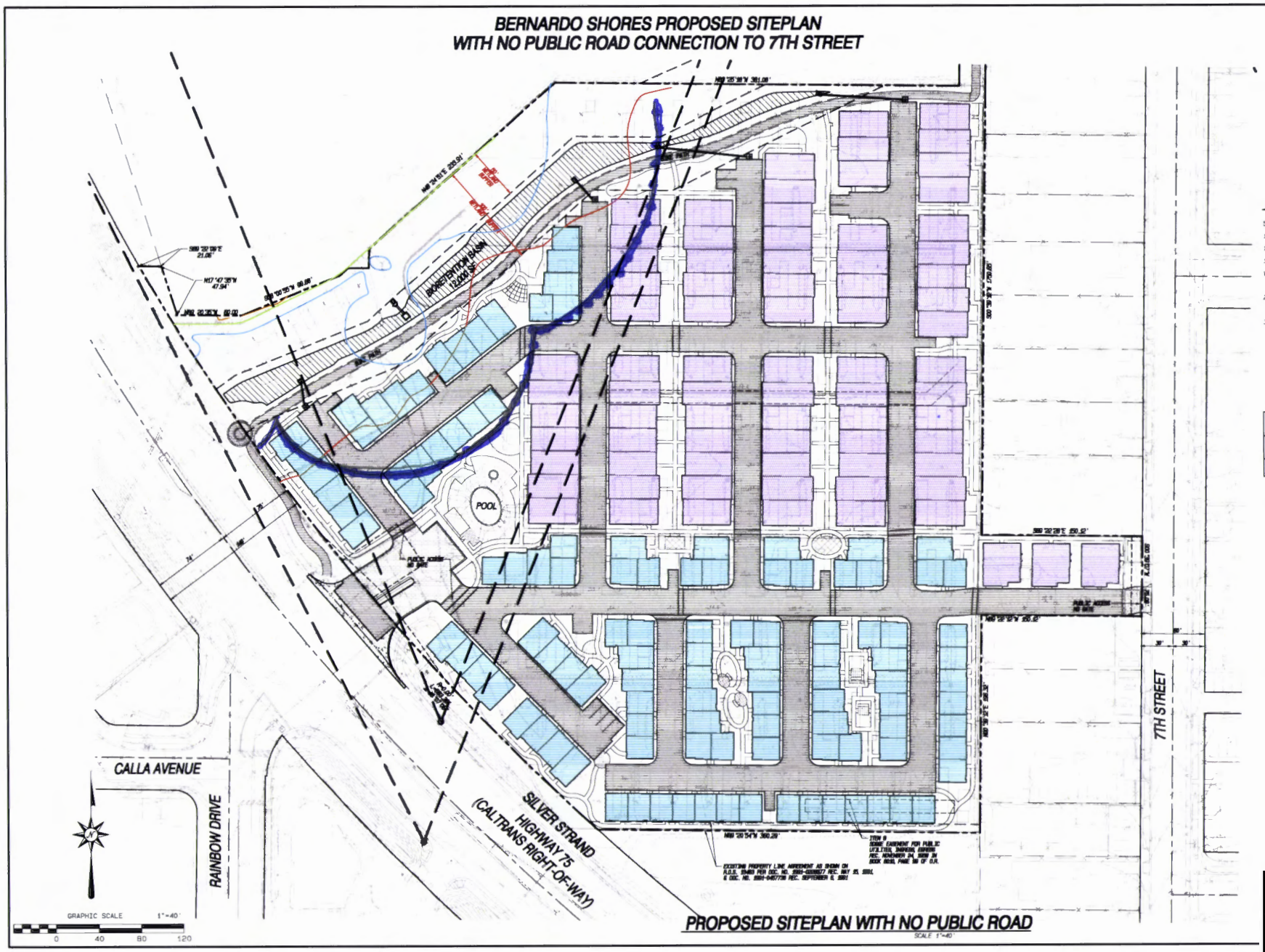
BERNARDO SHORES

HELIX Environmental Planning

Figure 5

BERNARDO SHORES PROPOSED SITEPLAN WITH NO PUBLIC ROAD CONNECTION TO 7TH STREET

NOTE:
THIS IS AN ALTERNATIVE PLAN THAT DOES NOT REFLECT THE CURRENT PROPOSED PROJECT



PROPOSED SITEPLAN WITH NO PUBLIC ROAD

SCALE 1"=40'

LEGEND

- 50 YR SEA LEVEL ELEV. (5.72 FT)
- 100 YR LOW SEA LEVEL ELEV. (6.91 FT)
- 100 YR MED SEA LEVEL ELEV. (8.62 FT)
- 100 YR HIGH SEA LEVEL ELEV. (9.22 FT)
- VIEW CONES
- 2 STORY UNITS (MAX 26' HEIGHT)
- 3 STORY UNITS (MAX 40' HEIGHT)

UNIT TABULATION

# OF UNITS PROPOSED PER TENTATIVE MAP	193 UNITS
# OF UNITS PER ALTERNATIVE ANALYSIS EXHIBIT	193 UNITS
TOTAL NET CHANGE	0 UNITS

RECEIVED
JUN 22 2015
CALIFORNIA COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

PREPARED BY:

EXHIBIT NO. 7

APPLICATION NO.
6-15-0003

Proposed plan with mid-level SLR buffer

California Coastal Commission

BERNARDO SHORES ALTERNATIVE ANALYSIS SITEPLAN #2
WITH PUBLIC ROAD CONNECTION TO 7TH STREET

NOTE:
THIS IS AN ALTERNATIVE PLAN THAT DOES NOT REFLECT THE CURRENT PROPOSED PROJECT

ALTERNATIVE ANALYSIS SITEPLAN #2

JUN 22 2015
SAN DIEGO

EXHIBIT NO. 8

APPLICATION NO.
6-15-0003

Potential alt.plan with mid-level SLR buffer

California Coastal Commission

BERNARDO SHORES PROPOSED SITEPLAN WITH NO PUBLIC ROAD CONNECTION TO 7TH STREET

NOTE:
THIS IS AN ALTERNATIVE PLAN THAT DOES NOT REFLECT THE CURRENT PROPOSED PROJECT

PROPOSED SITEPLAN WITH NO PUBLIC ROAD

JUN 22 2015

EXHIBIT NO. 9

APPLICATION NO.
6-15-0003

Proposed plan with highest SLR buffer

California Coastal Commission

BERNARDO SHORES ALTERNATIVE ANALYSIS SITEPLAN #2
WITH PUBLIC ROAD CONNECTION TO 7TH STREET

NOTE:
THIS IS AN ALTERNATIVE PLAN THAT DOES NOT REFLECT THE CURRENT PROPOSED PROJECT

ALTERNATIVE ANALYSIS SITEPLAN #2

JUN 22 2015

EXHIBIT NO. 10
APPLICATION NO.
6-15-0003
Potential alt.plan with highest SLR buffer
California Coastal Commission

Key Observation Points

EXHIBIT NO. 11
APPLICATION NO. **6-15-0003**
Public View Survey Key
California Coastal Commission

Existing Conditions

Key View/Existing Conditions 1 - Looking north from west side of HWY-75 to

EXHIBIT NO. 12

APPLICATION NO.
6-15-0003

Existing public view
No. 1

California Coastal Commission

Proposed Configuration

Key View/Photosimulation 1 - Looking north from west side of HWY-75 tow

EXHIBIT NO. 13

APPLICATION NO.
6-15-0003

Existing public view with proposal

California Coastal Commission

Alternative Configuration

Key View/Photosimulation 1 - Looking north from west side of HWY-75 to

EXHIBIT NO. 14

APPLICATION NO.
6-15-0003

Existing public view with potential alt.

California Coastal Commission

Existing Conditions

Key View/Existing Conditions 2 - Looking north from on-site east side of HWY-75 sidewalk tov

EXHIBIT NO. 15
APPLICATION NO. **6-15-0003**
Existing public view No. 2
California Coastal Commission

Proposed Configuration

Key View/Photosimulation 2 - Looking north from on-site east side of HWY-75 sidewalk tow

EXHIBIT NO. 16

APPLICATION NO.
6-15-0003

Existing public view with proposal

California Coastal Commission

Alternative Configuration

Key View/Photosimulation 2 - Looking north from on-site east side of HWY-75 si

HELIX Environmental Planning

A

EXHIBIT NO. 17

APPLICATION NO.
6-15-0003

Existing public view with potential alt.

California Coastal Commission

Existing Conditions

Key View/Existing Conditions 3 - Looking south from Ba

EXHIBIT NO. 18

APPLICATION NO.
6-15-0003

Existing public view
No. 3

California Coastal Commission

Proposed Configuration

Key View/Photosimulation 3 - Looking south from Bays

EXHIBIT NO. 19

APPLICATION NO.
6-15-0003

Existing public view with proposal

California Coastal Commission

Alternative Configuration

Key View/Photosimulation 3 - Looking south from Ba

EXHIBIT NO. 20

APPLICATION NO.
6-15-0003

Existing public view with potential alt.

California Coastal Commission

December 1, 2014

Melissa Krause
Integral Communities
2235 Encinitas Boulevard, Suite 216
Encinitas, CA 92024
mkrause@integralcommunities.com

Re: **MOVE ALLIANCE ENDORSMENT**

Dear Ms. Krause,

The MOVE Alliance is pleased to offer our endorsement of the proposed Integral Communities Bernardo Shores development. The development proposes a new residential community in Imperial Beach that facilitates the use of sustainable modes of transportation. The site is located directly on an existing high-use transit route (901 bus) with two other bus routes servicing the IB trolley station in close proximity, all with 15 minute headways during peak weekday hours. Additionally, the site is adjacent to the Bayshore Bikeway, a 26-mile bike facility connecting San Diego, National City, Chula Vista, Imperial Beach and Coronado.

This new development of approximately 200 homes brings much needed neighborhood investment to Imperial Beach, and provides the rooftops to support community businesses, restaurants and shops. Bernardo Shores will create a new housing choice, and entry-level housing opportunity, along the California coast. Residents will enjoy proximity to natural resources including the Pacific Ocean, the San Diego Bay, the Otay River, and the San Diego Natural Wildlife Refuge. Many of these neighborhood services and amenities will be easily accessible by bike via the Bayshore Bikeway.

Bernardo Shores has earned the endorsement of the MOVE Alliance based upon the following commitments:

- Construction of a covered seating area in close proximity to the 901 bus stop
- Establishment of well lit bicycle parking in close proximity to the 901 bus stop
- Pre- wiring the garage units for charging of electric vehicles
- Sustainable building practices such as diverting construction waste from landfills, crushing and reusing on-site concrete, and high-efficiency tankless water heaters
- Transportation Demand Management measures which may include a bike sharing program and/or subsidized transit passes

EXHIBIT NO. 21
APPLICATION NO.
6-15-0003
Letters of Support
California Coastal Commission

Our endorsement is based on the current vision for the project as presented to the MOVE Alliance. We understand that changes are to be expected throughout the entitlement process; however if there are significant modifications to the project which reduce its commitment to sustainable modes of transportation, we reserve the right to re-evaluate significant changes to the project to maintain our endorsement.

Congratulations on earning the MOVE Alliance endorsement for Bernardo Shores, a new residential community which fosters sustainable modes of transportation and helps to create Mobility Options Viable for Everyone.

Sincerely,

Jim Stone
Executive Director, Circulate San Diego
For the MOVE Alliance

MOVE Alliance members

Jim Stone, Circulate San Diego
Diego Velaso, MW Steele Group
Lisa Leweck, Kettler Leweck Engineering
Sherm Harmer, Urban Housing Partners
Kevin Wood, San Diego County Bicycle Coalition
Erik Ruehr, VRPA Technologies

BIKE COALITION
SAN DIEGO COUNTY

December 3, 2014

City of Imperial Beach
Attn: Greg Wade

Dear Mr. Wade:

On behalf of the San Diego County Bicycle Coalition, I am writing in support of Integral Communities Bernardo Shores Development. The development proposes a new residential community in Imperial Beach that facilitates the use of sustainable modes of transportation. The San Diego County Bicycle Coalition strongly supports any community-based project that encourages bicycling and improves the safety of people who ride bicycles for recreation and transportation.

Additionally, the project also proposes to build an important connection to the Bayshore Bikeway, a 26-mile bike regional bicycling and walking path that surrounds the San Diego Bay and connects the cities of San Diego, National City, Chula Vista, Imperial Beach and Coronado. This connection will also provide a safe, scenic bikeway for resident to get to beach area.

We recognize that on a daily basis thousands of San Diegans use their cars to drive distances as short as two miles from their homes. The Bernardo Shores Development will not only build the Bayshore Bikeway connection but the project will also include a community-wide bike sharing system that will encourage their residents to take advantage of this accessible, safe, and sustainable transportation option.

If you would like any additional information, please do not hesitate to contact me at (858) 487-6063 or via e-mail at andy@sdbikecoalition.org. Thank you.

Sincerely,

Andy Hanshaw
Executive Director

EXHIBIT NO. 22

APPLICATION NO.
6-15-0003

Open Space Easement

California Coastal Commission