

**CALIFORNIA COASTAL COMMISSION**

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 Staff: F. Sy – LB  
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**STAFF REPORT: APPEAL – NO SUBSTANTIAL ISSUE**

**Appeal Number:** A-5-DPT-17-0063

**Applicant:** Headlands Investments, LLC

**Local Government:** City of Dana Point

**Local Decision:** Approval with Conditions

**Appellant:** Surfrider Foundation

**Project Location:** 34075 Pacific Coast Highway, City of Dana Point

**Project Description:** Appeal of City of Dana Point Local Coastal Development Permit No. 17-0008 approved with conditions for the construction of a two-story, 35,000 square foot commercial development that consists of a 57-room hotel, 52-bed hostel, a 4,000 square foot restaurant, a visitor center, and a parking garage on a 1.6-acre vacant lot.

**Staff Recommendation:** No Substantial Issue

**IMPORTANT NOTE:** This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), or those who, for good cause, were unable to oppose the application before the local government, and the local government shall be qualified to testify. Others may submit comments in writing. (14 CCR § 13117.) If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony. (*Id.* § 13115.)

**SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission after public hearing, determine that **no substantial issue exists** with respect to the grounds on which appeal number A-5-DPT-17-0063 has been filed because the locally approved development can be found consistent with the City of Dana Point

certified Local Coastal Program and the public access policies of Chapter Three of the Coastal Act.

The appellant claims various inconsistencies with the certified Local Coastal Program, which for present purposes is the Headlands Development and Conservation Plan (HDCP) and the City's certified LCP where the HDCP is silent: 1) additional California Environmental Quality Act (CEQA) review is required for this project because its scope of work far exceeds that contemplated by the original Environmental Impact Report (EIR) and the HDCP; 2) the project exceeds the permitted number of hotel rooms allowed per the HDCP; 3) the first floor of the hotel includes uses that are not allowed; 4) the Visitor Information Center is not consistent with the HDCP; 5) the hostel design is inadequate; 6) the development exceeds the allowed lot coverage and Floor Area Ratio; 7) the development has more than two stories; 8) the City's survey of existing affordable overnight accommodations is flawed; 9) the traffic study is not comprehensive; 10) the proposed parking is inadequate; 11) the roof top restaurant decks are not compliant with the HDCP; and 12) the large blank walls are not compliant with the HDCP.

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### **EXHIBITS**

[Exhibit 1 – Surfrider Foundation Appeal](#)

[Exhibit 2 – Dana Point City Council adopted Resolution No. 17-10-03-03](#)

[Exhibit 3 – Project Plans](#)

[Exhibit 4 – Vicinity Map](#)

[Exhibit 5 – Letter from Surfrider Foundation dated November 28, 2017](#)

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission determine that Appeal No. A-5-DPT-17-0063 raises NO SUBSTANTIAL ISSUE with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the Commissioners present. If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting during which it will take public testimony.

### Resolution:

*The Commission hereby finds that Appeal No. A-5-DPT-17-0063 presents NO SUBSTANTIAL ISSUE with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access policies of the Coastal Act.*

## II. APPELLANT'S CONTENTIONS

On October 20, 2017, an appeal by the Surfrider Foundation was filed alleging the project's failure to comply with the Headlands Development and Conservation Plan (HDCP) which is the applicable LCP standard of review, with the City's certified LCP providing the standard of review where the HDCP is silent ([Exhibit No. 1](#)). The contentions of that appeal are summarized as follows:

1. The project will have one or more significant effects not discussed in the previous Environmental Impact Report (EIR) and Headlands Development and Conservation Plan (HDCP). Additional California Environmental Quality Act (CEQA) review is required for this project because its scope of work far exceeds that contemplated by the original EIR and the HDCP. The appellant also contends that the City's issued Master Coastal Development Permit (CDP04-23) for the HDCP expired prior to exercise, having no entitlements.
2. Only a maximum of 90 keys (rooms) are permitted in Planning Areas 4 and 9 of the HDCP. The applicant proposes 147 keys in these two planning areas. Therefore, the project exceeds the scope and allowable use of the HDCP. In addition, the appellant claims that the intent of the HDCP was for only one hotel in the Headlands development.
3. The proposed hotel includes a gym, lobby and reception area on the first floor which violates the HDCP requirement that the "*first floor will be limited to retail commercial uses including the Visitor Information Center.*"

4. The Visitor Information Center does not comply with the requirements in the HDCP.
5. The hostel design is inadequate.
6. The lot coverage and floor area ratio (FAR) appear to exceed what is allowed in the HDCP.
7. The building has more than two stories.
8. The City's survey of existing affordable overnight accommodations is flawed. Also, the proposed hotel is not a low cost overnight accommodation.
9. The traffic study is not comprehensive of all the hotel room loads proposed for Street of the Green Lantern.
10. The proposed parking supply for the development is inadequate.
11. The roof top restaurant decks are not compliant with the HDCP.
12. The large blank walls on the front of the proposed development do not comply with the Development Guidelines found in the HDCP.

### **III. LOCAL GOVERNMENT ACTION**

On July 10, 2017, the City of Dana Point Planning Commission held a duly noticed public hearing for the proposed development. At the conclusion of the public hearing, the Planning Commission approved with conditions Local Coastal Development Permit CDP 17-0008/Site Development Permit SDP 17-0013/Minor Conditions Use Permit CUP 17-0005(M) (Resolution No. 17-07-10-13).

On July 24, 2017, the Surfrider Foundation filed an appeal of the City of Dana Point Planning Commission's approval action.

On October 3, 2017, the City of Dana Point City Council held a duly noticed public hearing on the appeal of the Planning Commission's approval Local Coastal Development Permit CDP 17-0008/Site Development Permit SDP 17-0013/Minor Conditions Use Permit CUP 17-0005(M). At the conclusion of the public hearing, the City Council adopted Resolution No. 17-10-03-03 upholding the Planning Commission's approval of Local CDP 17-0008 ([Exhibit No. 2](#)).

Following the action by the City Council, a Notice of Final Action related to the City Council's action on Local CDP 17-0008, as required by both the Coastal Act and City's Local Coastal Program (LCP), was received in the Coastal Commission's South Coast Area Office in Long Beach on October 6, 2017. A Notification of Appeal Period was provided to the City by Coastal Commission staff, dated October 11, 2017, indicating an expiration of the ten (10) working day appeal period on October 20, 2017.

On October 20, 2017, the Surfrider Foundation filed the appeal of Local CDP 17-0008 in the Coastal Commission's South Coast Area Office in Long Beach.

#### **IV. APPEAL PROCEDURES**

After certification of Local Coastal Programs (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Development approved by cities or counties may be appealed if they are located within certain geographic appealable areas, such as those located between the sea and the first public road paralleling the sea, or within 100 feet of any wetland, estuary, or stream, or within 300 feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff. Furthermore, developments approved by counties may be appealed if they are not a designated "principal permitted use" under the certified LCP. Finally, any local government action on a proposed development that would constitute a major public work or a major energy facility may be appealed, whether approved or denied by the city or county. [Coastal Act § Section 30603(a)].

Section 30603 of the Coastal Act states in relevant part:

*(a) After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:*

*(1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.*

*(2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.*

Section 30603(a)(1) of the Coastal Act establishes the project site as being appealable by its location between the sea and first public road.

Section 13111(a) of Title 14 of the California Code of Regulations allows an appeal of a local government's decision on a coastal development permit application once the local appeal process has been exhausted. In accordance with Section 13573(a), an appellant shall be deemed to have exhausted local appeals once the appellant has pursued his or her appeal to the local appellate body, except that exhaustion of all local appeals shall not be required if:

*(1) The local government or jurisdiction require an appellant to appeal to more local appellate bodies than have been certified as appellate bodies for permits in the coastal zone, in the implementation section of the Local Coastal Program.*

*(2) An appellant was denied the right of the initial local appeal by a local ordinance which restricts the class of persons who may appeal a local decision.*

*(3) An appellant was denied the right of local appeal because local notice and hearing procedures for the development did not comply with the provisions of this Article.*

*(4) The local government jurisdiction charges an appeal fee for the filing or processing of appeals.*

The grounds for appeal of an approved local CDP in the appealable area are stated in section 30603(b)(1) of the Coastal Act, which states:

*(b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in [the Coastal Act].*

The grounds listed for the current appeals include various contentions that the approved development does not conform to the standards set forth in the certified LCP. Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed pursuant to Section 30603. If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the de novo public hearing on the merits of the project. If the Commission finds substantial issue, the de novo hearing will be scheduled at a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act.

The City erroneously found that the proposed development is not located between the first public road and the sea. However, that is incorrect (and it may have just been a typographical error, since the City did make findings that the development is consistent with the public access and recreation policies of the Coastal Act). The project is located between the first public road paralleling the sea (Pacific Coast Highway) and the sea and thus if a CDP is ultimately approved on *de novo* for the development, the proposed development must be reviewed for consistency with the public access and recreation policies of the Coastal Act. (Pub. Res. Code § 30604(c).) Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

### **Qualifications to Testify before the Commission**

If the Commission decides to hear arguments and vote on the substantial issue question, those who are qualified to testify at the hearing, as provided by Section 13117 of Title 14 of the California Code of Regulations, will typically have three minutes per side at the discretion of the Chair to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), or those who, for good cause, were unable to oppose the application before the local government, and the local government. Testimony from other persons must be submitted in writing. The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that the grounds for the appeal raise no substantial issue.

## **V. FINDINGS AND DECLARATIONS**

### **A. PROJECT DESCRIPTION**

The City-approved development is the construction of a two-story, 35,000 square foot visitor serving development that includes a 57-room hotel, 52-bed hostel, a 4,000 square foot restaurant, a visitor center and a parking garage ([Exhibit No. 3](#)).

The subject site is a 1.6-acre vacant lot located on the seaward side of Pacific Coast Highway in the City of Dana Point (Orange County) ([Exhibit No. 4](#)). It is zoned Visitor/Recreation Commercial (V/RC) under the Headlands Development and Conservation Plan (HDCCP), which was approved by the Coastal Commission on August 11, 2004, which became effectively certified in January 2005, as a component of the City's Local Coastal Program. The HDCCP provides the development requirements for the Headlands area, including the subject site, known as HDCCP Planning Area 4 (PA 4). The proposed project requires a Coastal Development Permit (CDP) due to its location in the Coastal Zone and requirements from the HDCCP and the City's Master CDP (CDP 04-23) previously issued for the development of the Headlands district of the City.

As described in the HDCCP, the Headlands development project consists of three major components: 1) The residential component (a maximum of 118 single-family zoned lots); 2) the development of two Visitor/Recreation Commercial uses; and 3) the establishment of approximately 70 acres of recreation/open space along with supporting visitor recreation facilities, trails and coastal access points. At the time of approval of the Master Coastal Development Permit for the Headlands project from the City of Dana Point Planning Commission on January 19, 2005, a specific condition (No. 122) was included that required approval of separate Coastal Development Permits (CDPs) for both of the Visitor/Recreation Commercial sites (Planning Area 4 (PA 4) and Planning Area 9 (PA 9)). This appeal involves the development of Planning Area 4. The City will process a separate local coastal development permit for the hotel use planned for Planning Area 9.

### **B. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS**

Section 30625(b)(2) of the Coastal Act states that the Commission shall hear an appeal of a local government action carried out pursuant to a certified LCP unless it finds that no substantial issue exists with respect to the grounds on which the appeal was filed. The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulations simply indicates that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." In previous decisions on appeals, the Commission had been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the relevant provisions of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and,



5. Whether the appeal raises local issues, or those of regional or statewide significance.

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

Staff is recommending that the Commission find that **no substantial issue exists** with respect to whether the local government action conforms to the policies of the certified LCP and the public access policies of the Coastal Act for the reasons set forth below.

**C. SUBSTANTIAL ISSUE ANALYSIS**

As stated in Section IV of this report, the local CDP may be appealed to the Commission on the grounds that the proposed development does not conform to the standards set forth in the certified Local Coastal Program (LCP) or the public access policies of the Coastal Act. Pursuant to Section 30625(b) of the Coastal Act, the Commission must assess whether the appeal raises a substantial issue with respect to the grounds upon which the appeal was filed pursuant to Section 30603 of the Coastal Act.

In making that assessment, the Commission will consider whether the appellants' contentions regarding the inconsistency of the local government action with the certified LCP or the public access policies raise significant issues in terms of the extent and scope of the approved development, the factual and legal support for the local action, the precedential nature of the local action for interpretation of the LCP, whether a significant coastal resource would be affected, and whether the appeal has statewide or regional, as opposed to local, significance.

The grounds for this appeal relate to the proposed project's alleged inconsistency with a number of policies and standards of the certified LCP for the area (the HDCP). The appellant's contentions are discussed and analyzed below.

- (1). The appellant claims that the project will have one or more significant effects not discussed in the previous Environmental Impact Report (EIR) and Headlands Development and Conservation Plan (HDCP). Furthermore, the appellant states that additional California Environmental Quality Act (CEQA) review is required for this project because its scope of work far exceeds that contemplated by the original EIR and the HDCP. The appellant also contends that the City's issued Master Coastal Development Permit (CDP04-23) for the HDCP expired prior to exercise, having no entitlements.

The Coastal Commission lacks jurisdiction to review a local government's compliance with CEQA. Section 30603(b)(1) of the Coastal Act expressly states that: "The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division." Furthermore, the HDCP/certified LCP does not contain any provisions specifying when a lead agency (here, the City) must undertake additional CEQA review for a project. The Commission instead is tasked on review of an appeal to determine conformity of the local government's action to the certified Local Coastal Program and to the public access policies of the Coastal Act.

While CEQA compliance is not reviewable on appeal, it is still worth noting the CEQA review that the City did undertake for this project. The City's Certified HDCP, EIR and EIR addendum analyzed a 35,000 square foot visitor-serving commercial development use for the project site, Planning Area 4 (PA 4). The City then analyzed the proposed project comparing it to what was reviewed in those three documents and concluded that no new or additional significant environmental effects were created as a result of the proposed project. An updated noise study and traffic study were also conducted for the proposed project. The additional noise study concluded that the project is below the threshold of significance for noise and 19 decibels below existing ambient noise on Pacific Coast Highway. The additional traffic study concluded that the potential for traffic impacts on the surrounding street system associated with the proposed project will be nominal and is forecast to operate at an acceptable Level of Service (LOS) of A or B.

The appellant also contends that the City's issued Master Coastal Development Permit (CDP 04-23) expired having no entitlements that currently exist and therefore; the project is inconsistent with the HDCP. In addition to the fact that this contention is not a valid ground for appeal of the *current* CDP at issue (*see* Coastal Act section 30603(b)(1)), this is incorrect anyway as the Master CDP was exercised and has not expired. The Master CDP (CDP 04-23) did not cover all development within the Headlands project as it included Master CDP Condition of Approval No. 122 that specifically required a separate CDP for development within PA 4 and PA 9 (Planning Area 9). The CDP being reviewed in this appeal is for development proposed in PA 4, which as stated under the Master CDP required a separate CDP application and its consistency with the HDCP was reviewed by the City and found consistent. In other words, whether the Master CDP expired or not (which it did not) is irrelevant to the current CDP on appeal because the applicant was legally required to apply for a separate CDP to pursue development for PA 4, which it did so (the current CDP on appeal).

Therefore since CEQA review is not reviewable under an appeal of a locally-issued CDP, the appellant's claim that CEQA review was insufficient does not raise a substantial issue with respect to consistency of the appealed project with the HDCP/certified LCP. Additionally, the appellant's claim that the Master CDP (CDP04-23) expired and thus is inconsistent with the HDCP is incorrect as the permit did not expire and required submittal of a separate CDP application for PA4, which the applicant did and the City reviewed for HDCP consistency and found it to be consistent.

- (2). The appellant claims that a maximum of 90 keys (rooms) are permitted in Planning Areas 4 and 9 of the HDCP. The applicant proposes 147 keys in these two planning areas. Therefore, the project exceeds the scope and allowable use of the HDCP. In addition, the appellant claims that the intent of the HDCP was for only one hotel in the Headlands development.

The issue here is whether the 90-key maximum referred to in the HDCP Tables applies to all of the Headlands developments or just PA 9 where a luxury hotel has been planned since the adoption of the plan. The City has determined that the 90-key maximum only applies to the development of PA 9, and not PA 4. The HDCP clearly allows a 65-to-90-key hotel in PA 9, along with an associated 40-bed hostel in PA 4 in order to provide lower-cost overnight accommodations in the area. The question is whether a second hotel is allowed in the Headlands development. The appellant asserts that only one hotel is allowed, but the City has determined

that there is not a one-hotel limit in the HDCP, and the 90-key limit only applies to the hotel in PA 9. The City points out that the applicable development limits for PA 4 are the 35,000 square foot limit in Table LU-6A and the Allowable Uses Table 3.4.3, and the approved project conforms to these limits.

The HDCP, which is a component of the certified LCP, sets forth the following policies for PA 4 and PA 9:

**4.3 PLANNING AREAS**

***Planning Area 4: PCH Visitor/Recreation Commercial (Visitor/Recreation Commercial)***  
*PCH and the Street of the Green Lantern border the 1.6-acre Planning Area 4. This Visitor/Recreation Commercial area complements the adjacent City Town Center, and will attract coastal visitors by providing a variety of commercial and office uses including a Visitor Information Center and can comprise one or more buildings. A maximum of 35,000 square feet will be developed, limited to two stories. The first floor will be limited to retail commercial uses including the Visitor Information Center. Additionally, the second floor can support retail commercial and professional office uses.*

***Planning Area 9: Resort Seaside Inn (Visitor/Recreation Commercial)***  
*This 2.8-acre site provides a maximum 65-90-room (keys), luxury Seaside Inn, with a public restaurant, amenities and accessory uses. The site fronts the Street of the Green Lantern and Scenic Drive, and complements existing, off-site commercial facilities, such as the Charthouse Restaurant. The site offers dramatic ocean and harbor views. The location, adjacent to the Harbor Point Park, lends itself to public and private functions, encouraging coastal access.*

The City’s points out that Land Use Plan (LUP) Table: “Table LU-6A “Maximum Land Uses Within the Headlands” which identifies the 65-90 keys requirement associated with the 110,750 maximum square foot limit, which is the 110,750 square foot limit for the PA 9 development:

**Table LU-6A  
 Maximum Land Uses Within Headlands**

LAND USES	MAXIMUM
Residential SF	125 dwelling units
Visitor/Recreation Commercial	35,000 sq. ft. 110,750 sq. ft. with 65-90 keys
Visitor Recreation Facilities	3,800 sq. ft.

IP Table: “Table 3.3.1 Land Use Statistical Summary” further identifies the 65-90 key requirement for the PA 9 development, but no limit on keys in PA 4. Again, the applicable development limit for PA 4 is the 35,000 square foot limit in Table LU-6A below:

**TABLE 3.3.1**  
**LAND USE**  
**STATISTICAL SUMMARY**

Land Use	Acres	Planning Area	Maximum
RECREATION OPEN SPACE			
(REC/OS)	9.9	1	
	5.4	3	
	15.1	5	
	4.3	8A	
SUBTOTAL REC/OS	34.7		
CONSERVATION OPEN SPACE			
(CONS/OS)	27.9	7	
	6.1	8B	
SUBTOTAL CONS/OS	34.0		
VISITOR/RECREATION COMMERCIAL			
(V/RC)	1.6	4	35,000 sq. ft.
	2.8	9	110,750 sq. ft.
	4.4		(65-90 Keys)
SUBTOTAL V/RC			145,750 sq. ft. (65-90 keys)
RESIDENTIAL			
(RES)	25.7	2	75 lots
	20.2	6	50 lots
SUBTOTAL RES	45.9		125 lots
PUBLIC R.O.W.	2.5	1, 6, 8A	
TOTAL ACREAGE	121.3		

The City-approved development in PA 4 is within the maximum 35,000 square feet allowable per Table LU-6A and IP section 4.3 Planning Areas/Planning Area 4.

The appellant also claims that the intent of the HDCP was for only one hotel in the Headlands development. The appellant contends that on page ii of the HDCP that it does not indicate the allowance of an additional hotel on PA 4 besides the allowed 65-90 key hotel to be located on PA 9: “A total of 125 residential homes, a 65-90 room (key) a seaside inn, with 4.4 acres of visitor recreation commercial uses are also provided for in the HDCP”:

**B. The 2004 Headlands Development and Conservation Plan**

The 2004 HDCP strives to balance the social, economic, and physical components of the property by establishing complementary policies that incorporate a multitude of uses and activities. The HDCP significantly reduces the amount of acreage previously designated for private development in the City General Plan and the certified Local Coastal Program. The density and intensity of development was also lowered. In turn, major portions of the 121.3 acre site will accommodate public parks, coastal trails, and open space.

The HDCP designates 68.5 acres of public parks, conservation, and open space (70.0 acres with roads) which include up to three miles of public trails and four public visitor recreation facilities. Numerous opportunities for public coastal access and public view overlooks are created. A total of 125 residential homes, a 65-90-room (key) seaside inn, with 4.4 acres of visitor recreation commercial uses are also provided for in the HDCP.

This narrative describes the 65-to-90-room Seaside Inn luxury hotel that has been planned for PA 9 all along. However, the HDCP also allows for the development of PA 4 in more general terms (LUP Table LU-6A, IP Table 3.3.1), providing that PA 4 will be developed with a visitor-serving recreation use (not exceeding 35,000 square feet). The City approved project on PA 4, which includes a hotel, is a visitor-serving recreation use, which is consistent with the HDCP/LCP. The HDCP Allowable Uses Table 3.4.3, below, clearly allows a hotel in PA 4. The table indicates “hotel” is allowed in both PA 4 and PA 9. There is no one-hotel limit set forth anywhere in the HDCP, and the 65-to-90-key limit applies only to the Seaside Inn luxury hotel, which is the pre-planned hotel for PA 9. The limit on the PA 4 development is the maximum 35,000 square foot visitor/recreation development, with no restriction on the number of “keys.”

Therefore, the City-approved 35,000 square foot development including a 57-room hotel approved under CDP 17-0008 is allowed under the HDCP and conforms with the maximum allowed square footage and is an allowed use based Table 3.4.3 “*Allowable Uses In V/RC Districts*” below:

**TABLE 3.4.3**  
**ALLOWABLE USES IN V/RC DISTRICTS**

LAND USES	Planning Area 4	Planning Area 9
Bed and Breakfast Inn	P	P
Caretaker's Residence	X	P <sup>1</sup>
Clinical Services		
• On the second floor, or above or below street level	P	P <sup>1</sup>
• Street Level	X	P <sup>1</sup>
Commercial Antennas	C*	C*
Commercial Entertainment Uses	X	C <sup>1</sup>
Commercial Recreation Uses	P	P <sup>1</sup>
Cultural Uses	P	P <sup>1</sup>
Day Care Centers	C	C <sup>1</sup>
Drinking Establishments	X	P/C*
Educational Uses	P	C <sup>1</sup>
Food Service Uses, Specialty	P	A
Fractional Ownership	P <sup>2</sup>	P <sup>2</sup>
Furniture Store	C	X
Hostel	P	X
Hotel	P	P
Live Entertainment Uses	X	C* <sup>1</sup>
Marine Uses	P	X
Massage Establishments	C*	C* <sup>1</sup>
Membership Organizations		
• On the second floor, or above or below street level	C	X
• Street Level	X	X
Open Space	P	P
Personal Service Uses	P	A
Photographic, Reproduction and Graphic Service Uses	P	X

Continued

**TABLE 3.4.3**  
**ALLOWABLE USES IN V/RC DISTRICTS**  
 (Continued)

LAND USES	Planning Area 4	Planning Area 9
Professional Office Use		
• On the second floor, or above, or below street level	P	A
• Street Level	X	A
Recreational Uses	A	A
Restaurant	P	P <sup>1</sup>
Restaurant, Take-Out	X	X
Restaurant, Walkup	X	C <sup>1</sup>
Retail Sales Uses	P	A
Temporary Uses	T*	T*
Video Arcades or Game Rooms	X	C <sup>1</sup>
Visitor Information Center	P	X

**LEGEND:**

P = Permitted Use

P\* = Permitted Use subject to special use standards (see Chapter 9.07 of the Zoning Code).

C = Conditional Use

C\* = Conditional Use subject to special use standards (see Chapter 9.07 of the Zoning Code).

T = Temporary Use

T\* = Temporary Use subject to special use standards (see Chapter 9.39 of the Zoning Code).

X = Prohibited Use

A = Accessory Use

<sup>1</sup> Allowable uses only if constructed in conjunction with the Seaside Inn

<sup>2</sup> Prior to the sale of the first Fractional Ownership interest, the property owner shall execute an agreement with the City to provide on-going compensation from the Fractional Ownership uses equivalent to the Transient Occupancy Tax effective for hotel uses. In Planning Area 4, this requirement shall only apply to Fractional Ownership uses associated with lodging.

The appellant also contends that certified LCP policies LUE Policy 5.44 and Conservation /Open Space Element (COE) Policy 3.12 of the HDCP only allow the development of one luxury overnight visitor-serving inn with the Headlands:

**LUE Policy 5.44:** *New development of a luxury overnight visitor-serving inn within the Headlands shall only be developed in conjunction with a component of lower cost overnight visitor accommodations (e.g. hostel) as either part of the project or elsewhere within a visitor recreation commercial area within the Headlands. The lower-cost overnight accommodations shall consist of no less than 40 beds and shall be available for use by the general public prior to or concurrent with the opening of the inn.*

**COE Policy 3.12:** *In the context of any specific project application that provides all of the HDCP elements and only in conjunction with a requirement that the plan can be completed as a whole, a maximum of 6.5 acres of ESHA may be displaced along the slope of the bowl to accommodate the development within the owl, and a maximum of 0.75 acres of ESHA located on the Strand bluff face at the southerly boundary of the Strand may be displaced to accommodate development within the Strand. The amount of ESHA*

*permitted to be displaced may be increased as necessary to accommodate construction of a 65-90 room inn, scaled appropriately to the property, within Planning Area 9 provided that lower-cost visitor overnight accommodations are provided consistent with Land Use Element 5.44. The maximum impacts to ESHA identified in this policy do not pertain to or limit vegetation removal necessary to construct and maintain public trails as identified on Figure COS-4.*

The above-stated LCP policies are requirements to be imposed when PA 9 is developed. These LCP policies reflect that the HDCP allows a hotel in PA 9, also specifically requires that, in conjunction with a hotel in PA 9, a lower cost overnight visitor accommodation (e.g. a 40-bed hostel) shall be provided in another HDCP planning area. The City-approved project provides the required hostel, along with additional visitor-serving uses (i.e., hotel, restaurant, visitor center, and parking). Nothing in the HDCP prohibits a second hotel in the Headlands or in PA 4 where up to 35,000 square foot of visitor-serving uses are allowed. Table 3.4.3 of the HDCP clearly allows a hotel in PA 4, as well as PA 9.

Therefore since the maximum 90-key allowance only pertains to PA 9 and there is no key allowance stated for PA 4, and there is no one-hotel limit in the LCP, the appellant's claim that project exceeds the maximum key allowance does not raise a substantial issue with respect to project consistency with the HDCP/certified LCP.

- (3). The appellant claims that the proposed hotel includes a gym, lobby and reception area on the first floor which violates the HDCP requirement that the *"first floor will be limited to retail commercial uses including the Visitor Information Center."*

IP Section: "4.3 Planning Areas/Planning Area 4: PCH Visitor/Recreation Commercial (Visitor/Recreation Commercial)" states that the first floor will be limited to retail commercial uses including the Visitor Information Center:

#### **4.3 PLANNING AREAS**

##### ***Planning Area 4: PCH Visitor/Recreation Commercial (Visitor/Recreation Commercial)***

*PCH and the Street of the Green Lantern border the 1.6-acre Planning Area 4. This Visitor/Recreation Commercial area complements the adjacent City Town Center, and will attract coastal visitors by providing a variety of commercial and office uses including a Visitor Information Center and can comprise one or more buildings. A maximum of 35,000 square feet will be developed, limited to two stories. The first floor will be limited to retail commercial uses including the Visitor Information Center. Additionally, the second floor can support retail commercial and professional office uses.*

IP Table: "Table 3.4.3 Allowable Uses In V/RC Districts" further states what uses are permissible, which includes a hotel use. Normally associated with a hotel use are a lobby and reception area and small work-out room, which will be located on the first floor. While these three uses are not specifically identified in Table 3.4.3 as allowable uses, they are uses associated with a hotel.



Although IP section 4.3 limits the first floor to “retail commercial uses,” Table 3.4.3 also allows hotels. There is some inherent tension in IP section 4.3 and Table 3.4.3 if taking a strict interpretation of “retail commercial use” to not include hotels. This would mean that any hotel use is limited to the second floor, which seems uncommon/unusual and probably not an intended consequence of IP Section 4.3. Since (1) a gym, lobby, and reception are common uses associated with a hotel; (2) hotels are an allowable use in PA 4; and (3) a gym, lobby, and reception (presumably) do not raise any coastal resource concerns significantly different than typical “retail commercial use,” the proposed hotel with first floor gym, lobby, and reception do not raise a substantial issue with respect to HDCP/LCP consistency.

- (4). The appellant claims that the Visitor Information Center does not comply with the requirements in the HDCP. The appellant further claims that as designed it cannot *"provide diversified, low cost public programs to attract visitors" nor serve as "a destination point for the public trail system."*

IP Section: “3.4 Development Regulations/B. Visitor/Recreation Commercial Zoning District/5. Development Requirements for Planning Area 4” states that the Visitor Information Center may be incorporated into the hostel, but if separate from the hostel, the Visitor Information Center shall consist of a minimum of 800 square feet:

### **3.4 DEVELOPMENT REGULATIONS**

#### **B. Visitor/Recreation Commercial Zoning District**

##### **5. Development Requirements for Planning Area 4**

*Development of Planning Area 4 shall include the following uses regardless of other development that will occur there:*

- a) *A 40-bed hostel and Visitor Information Center. The hostel will serve as a lower-cost overnight visitor accommodation and will include a Visitor Information Center that shall provide detailed maps and other information regarding trails, overlooks, open space, parks, beaches and public access thereto, public parking facilities, and other visitor serving recreational and commercial facilities present at the Headlands and in the City of Dana Point and vicinity. Other information may also be provided regarding the biological, historical and cultural aspects of the Headlands, City of Dana Point and vicinity. The hostel and Visitor Information Center shall be constructed and open to the public in accordance with the phasing requirement identified in Section 3.7.C.6. Development Phasing Plan. The Visitor Information Center may be incorporated into the hostel, provided that it is clearly available for use by the general public separate from the hostel. If separate from the hostel, the Visitor Information Center shall consist of a minimum of 800 sq. ft.*
- b) *Six (6) public parking spaces in Planning Area 4 to serve open space visitors shall be required over and above the parking required as part of the V/RC uses in Planning Area 4. The six*

*parking spaces shall serve visitors intending to utilize the public open space in the project. The parking shall be constructed in accordance with the phasing requirements identified in Section 3.7.C.6 Development Phasing Plan.*

The proposed project will include a Visitor Information Center as a functional kiosk within an 800 square foot area separate from the hostel incorporated within the larger 2,100 square foot public plaza area of the hotel on the street level fronting Pacific Coast Highway. The final design in terms of features and amenities will be determined during the construction phase and is subject to the approval of the Community Development Director, as conditioned in the City’s CDP 17-0008 (Condition of Approval No. 34). The appellant claims that the proposed Visitor Information Center will not be available for the public nor “provide diversified, low cost public programs to attract visitors” nor serve as “a destination point for the public trail system.” However, the Visitor Information Center will be designed to utilize interactive technology providing coastal, visitor-serving, educational, historical, cultural, and general event information, and will also provide seating for visitors. Access information will be made available at the Visitor Information Center and the hotel will provide direct access to the parking area, which provides the required six parking spaces for the trail system where direct access to the trailhead is located adjacent to the site on Shoreline Drive which leads to the Strand Access Point and beach, and additional access via the sidewalk on Green Lantern. The Visitor Information Center will enhance public access opportunities by providing the public a place where access information is available.

The appellant claims the HDCP IP Table 3.3.2: “Table 3.3.2 Visitor Recreational Facility Statistical Summary” requires that the Visitor Information Center provide public restroom and drinking fountains:

**TABLE 3.3.2  
 VISITOR RECREATIONAL FACILITY  
 STATISTICAL SUMMARY**

<b>Public Facility</b>	<b>Planning Area</b>	<b>Maximum</b>
Nature Interpretive Center	8A	2,000 sq. ft.
Public Restrooms/Showers <sup>1</sup>	1	2 x 500 sq. ft.
Visitor Information Center	4	800 sq. ft.

**All proposed public visitor facilities shall include public restrooms and public drinking fountains, open to the public at hours to be determined by the appropriate public agency.**

<sup>1</sup> **Public restrooms and showers shall be constructed at both the north and south ends of Planning Area 1 above Strand Beach.**

However, the Visitor Information Center will provide signage directing the public to the adjacent hotel lobby public restrooms and to drinking fountains.

Therefore since the Visitor Information Center can be found consistent with the requirements of the HDCP and provides diversified visitor information to the public, the appellant's claim that it is not consistent with the HDCP does not raise a substantial issue with respect to project consistency with the HDCP/certified LCP.

(5). The appellant claims that the hostel design is inadequate.

IP Section: "3.4 Development Regulations/B. Visitor/Recreation Commercial Zoning District/5. Development Requirements for Planning Area 4" requires that the proposed hostel provide a minimum of 40 beds, serve as a lower cost overnight visitor-accommodation, include a Visitor Information Center unless separate from the hostel, and be constructed and open to the public prior to or concurrent with the opening of a hotel on PA 9. IP Section: "3.7 Development Review Process/C. Discretionary Approvals and Permits/6. Development Phasing Plan" requires that the 40-bed hostel shall be constructed and open to the public prior to or concurrent with the opening of the luxury inn in PA 9:

### **3.7 DEVELOPMENT REVIEW PROCESS**

#### **C. Discretionary Approvals and Permits**

##### **6. Development Phasing Plan**

...

*The 40-bed hostel shall be constructed and open to the public prior to or concurrent with the opening of the luxury inn in Planning Area 9.*

...

*The Visitor Information Center in Planning Area 4 shall be constructed and open to the public concurrent with the opening of any other commercial development within Planning Area 4.*

*The six (6) public parking spaces in Planning Area 4 to serve open space visitors shall be constructed and open to the public prior to or concurrent with the opening of any other commercial development within Planning area 4.*

The appellant contends that the hostel is an afterthought to this project since the size of the hostel (4,050 square feet) is smaller than the hotel (26,950 square feet) and is not consistent with the intent of the HDCP. However, the hostel has been designed to be consistent with the policies of the HDCP as the hostel will provide low cost overnight accommodation through the provision of 52 hostel beds (more than the 40-bed minimum) to the public and be opened to the public prior to or concurrent with the opening of the hotel on PA 9 as required by the HDCP. By providing low cost affordable accommodations through this hostel use, public access opportunities are enhanced for the public to enjoy the coast.

Since the hostel provides the minimum amount of hostel beds and more, serves as a lower cost overnight visitor-accommodation, includes a Visitor Information Center and will be constructed and open for use of the public prior to or concurrent with the opening of a hotel on PA 9, the hostel meets the requirements of the HDCP, the appellant’s claim that the hostel is inadequately designed does not raise a substantial issue with respect to project consistency with the HDCP/certified LCP.

- (6). The appellant claims that the lot coverage and floor area ratio (FAR) appear to exceed what is allowed in the HDCP.

IP Table: “Table 3.4.4 Development Standards for V-RC Districts” states that for PA 4, the Maximum Lot Coverage is 60%; Maximum Height is 31-35 feet with a maximum of two stories [levels]; and that the Maximum Allowable Gross Floor Area is 35,000 square foot:

**TABLE 3.4.4**  
**DEVELOPMENT STANDARDS FOR V/RC DISTRICTS**

Land Uses	Planning Area 4	Planning Area 9
(a) Minimum Lot Size	5,000 sq. ft	15,000 sq. ft.
(b) Minimum Lot Width	60-feet	80-feet
(c) Minimum Lot Depth (measured at building set-back lines).	60 feet	80-feet
(d) Maximum Lot Coverage	60%	60%
(e) Maximum Height*	31-35-feet 2 stories	42-feet** 3 stories
(f) Maximum allowable gross floor area	35,000 sq. ft.	110,750 sq. ft.
(b) Setback From Ultimate Public Street R/W Line	10-feet	10-feet
(j) Minimum Side Yard Setback		
Interior Side	10-feet	10-feet
Street Side	10-feet	10-feet
(j) Minimum Rear Yard Setback		
Standard	10-feet	10-feet
Adjacent to Alley or Street	10-feet	10-feet
(k) Minimum Landscape Coverage	20%	20%
(l) Minimum Building Separation	10-feet	10-feet

\* This is a maximum potential structural height. This maximum shall be reduced on a case-by-case basis where necessary to assure that public views, as identified on Figure 4.5.3 (Coastal View Opportunities) in Section 4.5 of the Development Guidelines, to and along the shoreline are not significantly degraded.

\*\* The Seaside Inn development along Street of the Green Lantern/Scenic Drive (Planning Area 9) shall not exceed 42 feet above the finished building pad elevation and no finished building pad shall be higher in elevation than 220' MSL. In no case shall more than 30% of the buildable area within the 2.8 acre site exceed the height of the adjoining ridge line.

The proposed project has a lot coverage of 50.4% (32,742 square feet divided by 64,992 square feet = 50.38%) and is thus consistent with the HDCP regarding lot coverage. IP Section: “3.4 Development Regulations/B. Visitor/Recreation Commercial Zoning District/4. Maximum Intensity of Development” establishes the FAR for the visitor serving commercial in Planning Area 4 at .57 FAR:

### 3.4 DEVELOPMENT REGULATIONS

#### B. Visitor/Recreation Commercial Zoning District

##### 4. Maximum Intensity of Development

*The City General Plan and Section 9.05.210 of the City zoning code permit a maximum Floor Area Ratio (FAR) of 1.75 for commercial projects, which represents an increase above the standard FAR. Projects receive the higher level FAR by demonstrating exceptional design and quality, and by providing public amenities. The HDCP establishes the visitor serving commercial in Planning Area 4 at .57 FAR; Planning Area 9 has a .91 FAR. Both FARs are slightly above the standard levels but significantly below the 1.75 FAR maximum. Provisions contained within this Section 3.0 and Section 4.0 Development Guidelines, qualify for the increased FAR by providing project-wide design standards, architectural guidelines, numerous public recreation facilities, public art, and land use controls designed to create an exceptional project. Each V/RC Planning Area incorporates courtyards, fountains, landscaping, seating areas, public viewing areas, or other amenities that promote a pedestrian environment. The project also includes amenities such as bicycle racks or lockers that reduce dependence on the automobile and encourage alternate forms of transportation.*

The FAR for the project is 0.54 (35,000 square feet divided by 64,992 square feet), which is less than the 0.57 FAR allowed.

Therefore since the lot coverage and FAR of the development do not exceed what is allowed in the HDCP, the appellant's claim does not raise a substantial issue with respect to project consistency with the HDCP/certified LCP.

(7). The appellant claims that the building has more than two stories.

LUE Policy 5.40 of the LUP states that the development shall have a maximum height of 35 feet above finished grade:

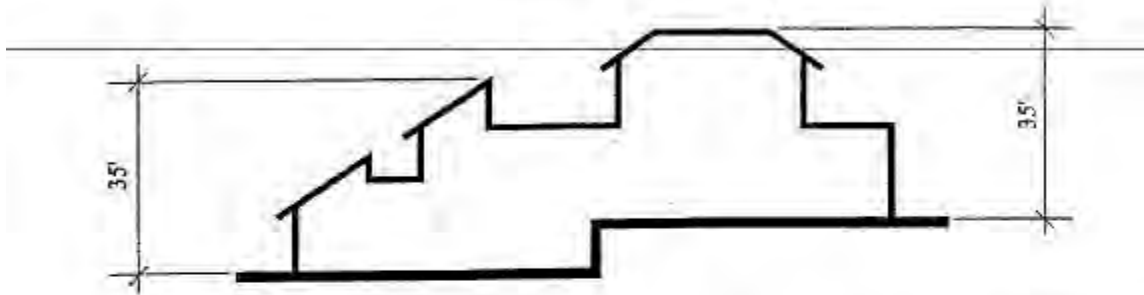
***LUE Policy 5.40:*** *The height of the structures shall be limited to minimize impacts to visual resources. The maximum allowable height for the residential development in the Strand shall be 28 feet above finished grade, and at the upper Headlands shall be 18 feet above finished grade. Chimneys and rooftop antennas may be permitted to extend above the permitted height of the structure provided they do not significantly degrade public views to and along the shoreline. Finished grades shall be set such that any structure constricted to the full height limit plus any chimneys and rooftop antennas shall not significantly degrade public views to and along the shoreline. The commercial development along Pacific Coast Highway shall have a maximum allowable height of 40 feet above existing grade, 32-35 feet above finished grade. The Seaside Inn development along Street of the Green Lantern/Scenic Drive shall not exceed 42 feet above the finished building pad elevation and no finished building shall be higher in elevation than*

*220' MSL. In no case shall more than 30% of the buildable area within the 2.8 acre site exceed the height of the adjoining ridgeline. For commercial development, minor architectural projections may exceed the height limit provided they do not significantly degrade public views to and along the shoreline.*

IP Table “*Table 3.4.4 Development Standards for V-RC Districts and IP - Figure 3.4.3 Building Height Measurement*” state that the building can have a maximum building height of 35 feet and is limited to two stories in PA 4. Additionally, IP Figure “*Figure 3.4.3 Building Height Measurement*” shows how the maximum 35-foot height limit would be measured if there were split level finished pads:

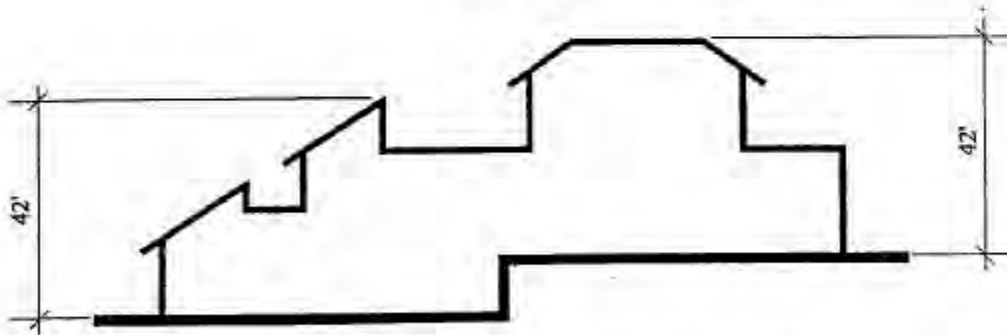
**BUILDING HEIGHT MEASUREMENT  
FIGURE 3.4.3**

**PLANNING AREA 4**



IN PLANNING AREA 4, THE MAXIMUM BUILDING HEIGHT OF THE STRUCTURE, AS MEASURED FROM THE UPPERMOST FINISHED PAD ELEVATION IMMEDIATELY ADJOINING THE STRUCTURE, TO THE UPPERMOST PORTION OF THE ROOF CANNOT EXCEED 35 FEET.

**PLANNING AREA 9**



IN PLANNING AREA 9, THE MAXIMUM BUILDING HEIGHT OF THE STRUCTURE, AS MEASURED FROM THE UPPERMOST FINISHED PAD ELEVATION IMMEDIATELY ADJOINING THE STRUCTURE, TO THE UPPERMOST PORTION OF THE ROOF CANNOT EXCEED 42 FEET. NO FINISHED BUILDING PAD SHALL BE HIGHER IN ELEVATION THAN 220' MSL. IN NO CASE SHALL MORE THAN 30% OF THE BUILDABLE AREA WITHIN THE 2.8 ACRE SITE EXCEED THE HEIGHT OF THE ADJOINING RIDGELINE.

**THE HEADLANDS  
DEVELOPMENT AND CONSERVATION PLAN**

IP Section “3.4 *Development Regulations/B. Visitor/Recreation Commercial Zoning District/3. Measurement of Building Height and Maximum Stories*” states that site on which the structure may have a single or multiple finish pad elevation:

**3.4 DEVELOPMENT REGULATIONS**

**B. Visitor/Recreation Commercial Zoning District**

3. *Measurement of Building Height and Maximum Stories*

*The measurement and height criteria for V/RC buildings shall be as provided in Chapter 9.05.110 except as follows. Building height is defined as the vertical distance, measured from the interior of the building, by which the uppermost portion of the roof extends above either of the following: (i) finished floor, (ii) the finished pad elevation immediately adjoining the structure, or (iii) the ceiling of uppermost level of the basement or subterranean parking structure, whichever is lower.*

*The site on which the structure is located may have a single or multiple finish pad elevation. Building height shall not be measured from existing grade or natural grade. Figure 3.4.3, Measurement of V/RC Building Height, depicts these measurement criteria.*

The site is not flat. There is an approximately twenty-foot grade difference between the north and south ends of the site, so there are varying finished pad elevations on the site, and two subterranean levels (not stories) for the parking garage. The City-approved development includes no more than two stories in any location, and the development does not exceed the 35-foot height limit. The appellant claims that from Street of the Green Lantern and Pacific Coast Highway it appears that there are up to four different levels, which is correct, but there are never more than two stories above any basement level. Pursuant to City's Zoning Code § 9.75.020 "B" Definitions and Illustrations and § 9.75.190 "S" Definitions and Illustrations, subterranean levels (i.e., basements) are not considered a "story."

Where it might appear to be a four-level structure (as viewed from the corner of the Street of the Green Lantern and Pacific Coast Highway), it is actually a two-story portion of the structure set behind another lower two-story portion of the structure that has a much lower grade/elevation. So while there are multiple levels in the structure, at no point are there more than two stories stacked above the basement levels (which are not stories). The building has been designed so that there are no more than two stories stacked on top of the basements, even at the entry points into the subterranean parking garage. The appellant appears to conflate the HDCP's allowance for multiple finish pad elevations/levels as separate "stories". This is not the case. Though a story may have a different finish pad elevation (thus resulting in split levels), the number of stories is two at all times. Ultimately, there is no substantial issue as the structure complies with the 35-foot height limit, does not violate the HDCP's two-story limit, and does not adversely affect any coastal resources.

Therefore, the appellant's claim that the hotel building has more than two stories does not raise a substantial issue with respect to project consistency with the HDCP/certified LCP.

- (8). The appellant claims that the City's survey of existing affordable overnight accommodations is flawed. Also, the proposed hotel is not a low cost overnight accommodation.

The City-approved 52 hostel beds will provide for low cost affordable overnight accommodations as mitigation for the hotel rooms for the luxury hotel to be located on PA 9 and for the Wave Resort, the City-approved hotel in PA 4. Using information from the two CCC



workshops led by Commission Staff in 2014 and 2016, the City used the guidance from the CCC workshops that suggests that hotel projects should provide/mitigate at a rate of 25% of the total number of guest rooms, meaning that for every 100 market rate rooms provided 25 affordable units should be provided onsite. Using the total number of hostel beds proposed as the amount of affordable units provided onsite; the hostel will be mitigating the two headland hotel projects at a rate of 35% which is above 25%. Thus, while the future Seaside Inn hotel in PA 9 and the Wave Resort Hotel in PA 4 do not provide low cost overnight accommodations in the hotels themselves, the necessary low cost accommodations will be provided by in PA 4 by the City-approved 52-bed hostel. This 52-bed hostel serves as mitigation for the two high cost hotels now planned in the Headlands development.

To show that there were also additional affordable overnight accommodations in the vicinity, the City provided an inventory of affordable overnight accommodation options in the area in their Staff Report. The proposed project with a 52-bed hostel will complement the existing inventory of affordable overnight accommodation options in the area. The appellant claims that within that inventory, the identified 28 rooms in the old Dana Point Sea Side Inn (not to be confused with the luxury “Seaside Inn” planned for HDCP PA 9) do not exist and that cottages and camp sites in noncontiguous cities (Newport Beach and San Diego) were included. The old Sea Side Inn currently is not in operation while they prepare their plans for refurbishment, but when it was in operation, it provided 28 rooms. Thus, the inclusion of the old Sea Side Inn and the sites in Newport Beach and San Diego were used to show what other options may be available in the area and not to show how the high cost PA 9 hotel (Seaside Inn) and Wave Resort to be built in PA 4 will be mitigated by these other facilities. As stated, the 52-bed hostel will be mitigating the two headland hotel projects (PA 9’s Seaside Inn and PA 4’s Wave Resort). In other words, the methodology of the City’s survey of existing overnight affordable accommodations has no bearing on this project’s consistency with the HDCP/certified LCP.

Therefore since low cost affordable accommodations will be provided through the 52-bed hostel to mitigate for the PA 9 hotel and the Wave Resort Hotel and the City’s survey identifying low cost affordable accommodations was meant to just show what other options were available in the area, the appellant’s claim that City’s survey of existing affordable overnight accommodations is flawed does not raise a substantial issue with respect to project consistency with the HDCP/certified LCP.

- (9). The appellant claims that the traffic study is not comprehensive of all the hotel room loads proposed for Street of the Green Lantern.

The City’s Certified HDCP, EIR and EIR Addendum analyzed a 35,000 square foot visitor-serving commercial development use for PA 4 and the City analyzed the current proposed project as compared to what was reviewed in the Certified EIR and Addendum. The City determined that no new or additional significant environmental effects were created as a result of the changes induced by the proposed project. An updated traffic study, which included the addition of other new hotels on Street of the Green Lantern, was also conducted and the City agreed with its determination that the project’s potential for potential traffic impacts on the surrounding street system will be nominal and are forecast to operate at an acceptable service level of LOS A or B.

The appellant claims that the development will create traffic impacts in the immediate vicinity. Doing so would result in impacts to coastal access in the area and be inconsistent with the public access policies of the Coastal Act:

Coastal Act Section 30210:

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

Coastal Act Section 30214(b):

*It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and the balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.*

However as stated, the City determined that after comparing the project to what was reviewed in the Certified EIR and Addendum and also conducting an additional traffic analysis that no new or additional significant environmental effects were created as a result of the changes induced by the proposed project and that the project's potential for potential traffic impacts on the surrounding street system will be nominal and are forecast to operate at an acceptable service level of LOS A or B.

Therefore since the City conducted a traffic study of all the hotel room loads proposed for Street of the Green Lantern and determined no new or additional significant environmental impacts will be caused as a result of the proposed project, the appellant's claim does not raise a substantial issue with respect to project consistency with the HDCP/certified LCP.

(10). The appellant claims that the proposed parking supply for the development is inadequate.

LUE Policy 5.22 of the HDCP states that off-street parking shall be provided for all new commercial development in accordance with the ordinances contained in the LCP to assure there is adequate public access to coastal resources:

***LUE Policy 5.22:** Off-street parking shall be provided for all new residential and commercial development in accordance with the ordinances contained in the LCP to assure there is adequate public access to coastal resources. A modification in the minimum quantity of parking stalls required through the variance process shall not be approved. Valet parking shall not be implemented as a means to reduce the minimum quantity of parking stalls required to serve the development. Provide on-street and off-street public parking facilities strategically distributed to maximize public use and adequately sized to meet the needs of the public for access to areas designated for public recreation and public open space uses at the Headlands, as measured by the standards set forth in the City regulations. Where existing adjacent public parking facilities are*

*presently underutilized and those facilities are also anticipated to be underutilized by projected future parking demand, use those existing adjacent public parking facilities, where feasible, to serve the needs of the public for access to areas designated for recreation and public open space uses at the Headlands. (Coastal Ace/30212.5, 30252)*

Furthermore, IP Policy: “3.5 General Development Standards All Districts/A. Access, Parking and Loading” states that all parking regulations within the HDCP shall be provided in the Chapter 9.35 of the Zoning Code:

### **3.5 GENERAL DEVELOPMENT STANDARDS ALL DISTRICTS**

#### **A. Access, Parking and Loading**

1. *Access, parking and loading regulations within this HDCP shall be provided in Chapter 9.35 of the Zoning Code except for the following:*

...

*In addition, six parking spaces in Planning Area 4, accessible from Pacific Coast Highway, shall be provided to exclusively serve open space visitors. The six parking spaces shall be in excess of those necessary to serve the V/RC uses in Planning Area 4 and shall be constructed concurrent with the development of V/RC improvements in Planning Area 4.*

Based upon the City’s Zoning Code, 129 parking spaces are required for the project (57 parking spaces for the hotel, 40 parking spaces for the restaurant, 19 parking spaces for the restaurant deck Dining, 7 parking spaces for the hostel (*see* discussion below regarding the “requirement” of 7 parking spaces for the hostel) and 6 parking spaces for Open Space Visitors). The applicant is proposing 130 standard parking spaces, so the number of standard parking spaces exceeds the amount of parking required by the LCP. The project also incorporates a total of 44 tandem parking spaces, which the applicant obtained a Minor Conditional Use Permit for from the City. The tandem parking spaces can be used by employees, hotel guests, visitors, patrons and trail visitors. Thus, a total of 174 parking spaces will be provided on site, which is 45 parking spaces over the required amount (129 parking spaces) or 35% over the required amount.

Within these 130 standard parking spaces, 7 are proposed specifically to meet the demands of the hostel use. As stated, the HDCP refers back to the City’s Zoning Ordinance for parking standards; however, there are no parking standards for a hostel. In order to determine the appropriate number of parking spaces for the hostel, the City indicated that it did three things to determine the parking necessary for the hostel: 1) the City looked at uses in the parking section of the Zoning Ordinance that are similar in function to a hostel use, like a bed and breakfast use; 2) the City looked at the previous approval of a hostel use on the site approved by the City that required 7 parking spaces (the approval was not appealed but has expired and is no longer valid); and 3) the City contacted hostels from Los Angeles to San Diego and determined that the vast majority had fewer than 7 on-site parking spaces or no parking at all. According to the surveyed hostel operators, most people do not arrive at their facilities by private vehicle, as public transportation is the more common method of travel for hostel visitors. The City also determined that the parking requirement for hostels more closely resembles the requirement for a Bed and Breakfast, which is 1 space per guest room, plus 2 additional spaces. Parking was thus

calculated on the basis of 1 space per guestroom for 5 guestrooms (at the time, the City counted five rooms in the hostel), plus 2 additional spaces, for a total of 7 parking spaces.

The City-approved project as a whole provides a total of 174 on-site parking spaces, which is 45 more spaces than required by the LCP, according to the City. A parking management plan will also be implemented in order to manage on-site parking so that the maximum number of vehicles can be accommodated in the parking garage. Therefore, the project provides more parking than required and provides an ample amount of additional parking if necessary for the hostel use, whose parking was calculated based on a similar use (Bed and Breakfast) and based on a previous hostel approval onsite and parking required for similar hostel developments in Southern California and is thus consistent with the HDCP and Zoning Ordinance. The appellant's claim that there is inadequate parking does not raise a substantial issue with respect to project consistency with the HDCP/certified LCP.

The appellant further claims that primary access to the development needs to be from Street of the Green Lantern, a secondary street. IP Policy "4.6 CIRCULATION PLAN/A. PCH/"A" Street" states that "A" Street (Shoreline Drive) will provide primary access to PA 4 and not from a secondary street (Street of the Green Lantern):

**4.6 CIRCULATION PLAN**

**A. PCH/"A" Street**

*Access to the project site from PCH will occur at "A" Street. "A" Street provides primary access to Planning Area 4, PCH V/RC, and Planning Area 6, Upper Headlands Residential. The new intersection shall be constructed by the developer prior to issuance of the first building permit for Planning Area 4 or 6. The proposed intersection will be designed such that the north-bound traffic on PCH can have a continuous green light and not be required to stop for north-bound left turns out of the project. The Developer shall improve the portions of PCH that front the project site to its ultimate design as a major arterial (100-foot ROW). CalTrans requires an encroachment permit to be approved prior to construction. The intersection is projected to meet warrants for a traffic signal.*

Thus, the appellant is incorrect in stating that primary access should be from the secondary street.

The appellant also claims that parking needs to be located in the rear as required by the HDCP. IP Policy "4.12 DESIGN GUIDELINES/E. Design of the PCH/Visitor Recreation Commercial" states that parking shall be located to the rear of the building using secondary street access:

**4.12 DESIGN GUIDELINES**

**E. Design of the PCH/Visitor Recreation Commercial**

...

- *Parking shall be located to the rear of the building using secondary street access.*

However, in this case, all parking is provided in the subterranean garage. The purpose of placing the parking in the rear of the building as embodied by IP Policy 4.12 is to keep parking out of

view from the primary street, which is PCH. Placing the parking underneath would make the parking area completely out of view and minimizing view impacts and thus can be found consistent with the purpose/objective of IP Policy 4.12, even while such a setup is not directly controlled by IP Policy 4.12.

Therefore since the proposed development provides the required and also more parking than required, the appellant's claim does not raise a substantial issue with respect to project consistency with the HDCP/certified LCP.

(11). The appellant claims that the roof top restaurant decks are not compliant with the HDCP.

There is no roof top restaurant nor are there roof top restaurant decks, as the restaurant is only located only on the second floor (but not the rooftop). Patio dining in the interior area of the development for the restaurant is provided, but again only on the second floor.

The appellant also claims that the decks, assuming they are referencing the hotel decks and hotel decks on the second floor fronting Pacific Coast Highway, are not compliant with IP Section: "4.12 Design Guidelines" requiring simple, color schemes and natural materials:

**4.12 DESIGN GUIDELINES**

***E. Design of the PCH/Visitor Recreation Commercial***

...

- *A strong relationship to the native landscape shall be portrayed through the use of material and color. Materials such as brick, stone, wood, and stucco are suitable.*
- *Simple color schemes with no more than three colors are recommended. Non-reflective surfaces shall be utilized.*

The project does comply with these guidelines as it will incorporate no more than three colors (wood color, stone veneer with the same color as the building, and glass with softer wood). In addition, the color scheme is simple and employs natural materials, primarily wood and stone.

Therefore since are no roof top decks and the hotel building design complies with the HDCP design guidelines, the appellant's claim does not raise a substantial issue with respect to project consistency with the HDCP/certified LCP.

(12). The appellant claims that the large blank walls on the front of the proposed development do not comply with the Development Guidelines found in the HDCP.

IP Section "4.12 Design Guidelines/E. Design of the PCH/Visitor Recreation Commercial" states that "blank walls" and other empty spaces shall be avoided along sidewalk frontages:

**4.12 DESIGN GUIDELINES**

***E. Design of the PCH/Visitor Recreation Commercial***

...

- *Create continuous pedestrian activity along the sidewalk edge. Avoid blank walls and other empty spaces along sidewalk frontages.*

The project's design does not include "blank walls" fronting the sidewalks as the frontage is dominated by glass and landscaping and will include future signage and/or wall art and be landscaped. CDP17-0008 Condition of Approval No. 12 provides that no signs are approved for the project and thus a separate Master Sign Program still must be developed. Also, CDP17-0008 Condition of Approval No. 101 requires that prior to Certificate of Occupancy; the applicant must follow the "*Art In Public Places*" (Program No. 9.05.240 Dana Point Zoning Code) process. Thus, there will be no "blank walls" along sidewalk frontages.

Therefore since there are no "blank walls" fronting the sidewalks associated with the development and the development can be found consistent with the Development Guidelines of the HDCP, the appellant's claim does not raise a substantial issue with respect to project consistency with the HDCP/certified LCP.

### **Significance of Issues Raised by Appeal**

Applying the five factors listed in the prior section clarifies that the appeal raises "no substantial issue."

The City's action in approving Local CDP17-0008 provides factual and legal support under both the other relevant portions of the certified LCP as discussed above. None of the appellant's appeal contentions raises a significant issue with respect to project consistency with the HDCP and LCP when considering the City's factual and legal bases for approving the project. This factor supports a finding of no substantial issue.

The extent and scope of the development is a 35,000 square foot visitor-serving development with a 57-room hotel, 4,000 square foot restaurant, hostel and parking supply, as contemplated in the HDCP. The "Master CDP" already evaluated a 35,000 square foot retail/commercial use on the 1.6-acre site, and the currently proposed project is just a specific proposal within that framework. This factor supports a finding of no substantial issue.

Public access and visual resources are the coastal resources affected by the City's action. Although these do constitute significant coastal resources, in context of the legal and factual adequacy of the City's approval (including through protection of these resources through the CDP as conditioned), these coastal resources do not raise a significant issue with respect to the grounds of the appeal. The proposed project actually *enhances* public access opportunities by providing overnight accommodations including a hostel, a low cost overnight accommodation, provides an opportunity for the public to be educated about the public access opportunities through the Visitor Information Center and minimizes visual resource impacts by adhering to the HDCP, including Design Guidelines. Through the City's approval of its Local CDP17-0008, public access and visual resources will be enhanced and protected. This factor supports a finding of no substantial issue.

The precedential value of the local government's decision for future interpretations of its LCP is low. While the City's LCP, in this case the HDCP, does not clearly specify how to handle parking requirements for hostels, the Commission has determined that the City's approach was

reasonable and thus does not raise a substantial issue with respect to precedential value of the City's interpretation of the LCP. Ultimately, in evaluating each of the appellant's appeal contentions, the Commission determined that the City reasonably interpreted the HDCP and LCP to justify its decision in approving a CDP for the proposed project and did not rely on any novel, unsubstantiated, or unreasonable interpretations of the HDCP/LCP. This factor supports a finding of no substantial issue.

Regarding whether the appeal raises issues of local, regional, or statewide significance, although public access and visual resources are *generally* coastal resources of regional and statewide concern, there is nothing about this project specifically which raises any issues other than of local significance. This factor supports a finding of no substantial issue.

Therefore, in conclusion, the Commission finds that the local government's action does not raise any substantial Local Coastal Plan or Chapter 3 public access policy issues. Therefore, no substantial issue exists with respect to the approved project's consistency with the LCP or Chapter 3 public access policies.