

CALIFORNIA COASTAL COMMISSION

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



W12b

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STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE DETERMINATION

Local Government: City of San Diego

Decision: Approved with Conditions

Appeal Number: A-6-SAN-19-0203

Applicant: City of San Diego

Location: 1788 Palm Avenue, Otay-Mesa Nestor, City of San Diego, San Diego County (APN No. 627-090-02-00)

Project Description: Rehabilitation of a 24,154 sq. ft., 2-story 61-room hotel into a 42-room (84 beds) transitional housing facility that provides substance abuse treatment and supportive services under the San Diego Misdemeanants At-Risk Track (SMART) Program. Exterior and interior improvements including new office areas, living and dining rooms, communal spaces, ADA improvements, fencing, a 916 sq. ft. addition to enclose existing exterior staircases, new hardscaping and landscaping, on an approx. 42,689 sq. ft. lot.

Appellants: Citizens for South Bay Coastal Access

Staff Recommendation: No Substantial Issue

IMPORTANT HEARING PROCEDURE 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), and the local government shall be qualified to testify. Others may submit comments in writing. 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.

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 the appeal has been filed.

The subject project consists of the rehabilitation of a 24,154 sq. ft., 2-story 61-room Super 8 hotel into a 42-room (84 beds) transitional housing facility that provides substance abuse treatment and supportive services under the San Diego Misdemeanants At-Risk Track (SMART) Program on an approx. 42,689 sq. ft. lot. A number of exterior and interior improvements are proposed, including new office areas, living and dining rooms, and communal spaces. Full service kitchens for residents and employees as well as laundry rooms and fitness rooms will be provided. Circulation improvements will increase Americans with Disability (ADA) accessibility as well as include new fencing, vehicular and pedestrian gates, and new sidewalks. New roofing and windows as well as repainting of the building will be undertaken; the pool associated with the hotel will be filled in and landscaped. A 916 sq. ft. addition will also be constructed to enclose existing exterior staircases and a new fire suppression system will be installed. Reconfiguration of the parking lot will result in a loss of parking spaces; 53 existing spaces will be redrawn to create 25 parking spaces, with the excess parking lot area redeveloped as green space.

The project site is located within the Palm Avenue West area of the Egger Highlands neighborhood of the Otay Mesa-Nestor community, which is located west of Saturn Boulevard between the salt ponds and the Tijuana River Valley and constitutes the main commercial and circulation corridor of Egger Highlands. Among the development guidelines for the Palm Avenue West area as described in Otay Mesa-Nestor Community Plan (which functions as the certified LCP for the area), intensified land use, the reduction of on-site parking and the maximization of on-street parking, creation of a pedestrian-friendly streetscape, and renovation and upgrades to buildings, sidewalks, and landscapes are identified. The vision statement for Palm Avenue West emphasizes revitalization of a commercial area that will provide a safe environment for pedestrians.

Additionally, the certified Otay Mesa-Nestor Community Plan includes specific language protecting existing hotels, recommending “retention and rehabilitation of the existing hotels, retail, and visitor-oriented commercial areas along the southern edge of the San Diego Bay in order to maintain visitor-oriented uses and public access to coastal resources.” Despite the loss of overnight accommodations in the South Bay area, the City found that the project conforms to the goals for the Palm Avenue West area as stated in the LCP and does not present a critical loss of overnight accommodations due to several other nearby visitor-serving options of similar affordability and size that were identified in a comparative analysis. The City additionally found the hotel had been underutilized in the years preceding its purchase, including being closed for renovations for approximately a year. Furthermore, a judgement issued by the Superior Court of San Diego agreed that the City’s analysis demonstrated that the hotel was underperforming and similar accommodations exist nearby, and that the conversion therefore did not present an inconsistency with the LCP. In constructing this project, the City would meet housing needs as put forth in its General Plan Housing Element, including its goal to provide sufficient housing for all income groups to accommodate San Diego’s anticipated share of regional growth over the current Housing Element Cycle (2013-2020).

The City's analysis does not appear to include all of the affordable overnight accommodations in the South Bay area, but it nevertheless presents adequate factual support that removal of the hotel would not significantly impact the supply of nearby affordable overnight accommodations. Based on the 11 lower cost hotels identified by the City, the loss of the subject hotel represents only 6.2% of available accommodations in the South Bay area. The appellant's assertion that a loss of the Super 8 hotel units constitutes a loss of 25% of affordable units in the Otay Mesa-Nestor area is based on the 3 lower cost hotels that the City identified in the immediate Otay Mesa-Nestor area. However, all of the hotels analyzed by the City are within approximately 6 miles of the subject site, and thus can reasonably be considered within the area potentially impacted by the project. In addition, Commission staff performed a cursory search of nearby overnight accommodations, with results suggesting that there may be other nearby hotels of comparable affordability in the South Bay area that were not included in the City's analysis. Based on this preliminary research, the loss of the Super 8 hotel rooms constitutes less than the 6.2% found by the City. Although the loss of overnight accommodations is always a concern, and the LCP does specifically recommend retention and rehabilitation of existing hotels in the South Bay area, the site history of the subject hotel suggests the underutilized hotel may not have been functioning as a viable visitor-serving use and an attempt to renovate the hotel resulted in a year-long closure. The City also notes that the project will provide housing opportunities to a population that typically would not otherwise be able to afford coastal housing, thereby increasing access for this population.

Section 30213 requires protection and enhancement of lower-cost visitor and recreational facilities because, as the Commission has seen in the past, there is significant market pressure to develop new higher cost accommodations that sometimes results in the replacement of existing lower or moderate cost facilities. A loss of a hotel, particularly a lower-cost one, is typically followed by redevelopment or conversion of the site into either a more expensive hotel or a type of residence, including condominiums or timeshares. In the case of the subject project, however, the conversion of the Super 8 hotel is not being driven by these suggested market demands or a desire to construct new and higher cost units. As such, the proposed development presents a rare occurrence for both the limited circumstances where transitional housing is proposed within the Coastal Zone as well as where an underutilized hotel in disrepair can be repurposed without significant loss to the larger nearby hotel stock. While cumulative impacts would undoubtedly occur if this type of conversion were to continue regularly, given this particular set of circumstances, impacts to the overall supply of affordable visitor-serving accommodations in the area are minimal.

Because there are no identified inconsistencies with the LCP and the Coastal Act, staff recommends that the Commission determine that the project raises no substantial issue regarding conformance with the certified LCP and Chapter 3 policies of the Coastal Act.

Standard of Review: Certified City of San Diego Local Coastal Program and the public access and recreation policies of Chapter 3 of the Coastal Act.

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APPENDICES

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EXHIBITS

[Exhibit 1 – Appeal by Citizens for South Bay Coastal Access](#)

[Exhibit 2 - Vicinity Map](#)

[Exhibit 3 – Site Plan](#)

[Exhibit 4 – Landscaping Plan](#)

[Exhibit 5 – Location of Surveyed Hotels](#)

[Exhibit 6 – Room Totals and Rate Ranges by Hotel](#)

[Exhibit 7 – Hotel Market Analysis \(2019 Supplemental Report\)](#)

I. APPELLANTS CONTEND

The appellant Citizens for South Bay Coastal Access contends the project as approved by the City does not conform to the City of San Diego's certified Local Coastal Program (LCP), with regard to the protection of visitor-serving overnight accommodations and public access policies ([Exhibit 1](#)). Specifically, the appellant cites comment letters from Commission staff dated June 7, 2017 and September 8, 2017, which describe the need to retain and rehabilitate existing hotels along the southern edge of the San Diego Bay in accordance with the LCP policies of the Otay-Mesa Nestor Community Plan in order to maintain visitor-serving uses and public access, and that the loss of 64 lower-cost units would be inconsistent with these coastal access policies. The applicant also contends that the Super 8 hotel represents more than 25% of the affordable accommodations in the area, and the loss of these units runs contrary to the public access goals of the LCP and the Coastal Act.

II. LOCAL GOVERNMENT ACTION

The project was approved with conditions by the City Council on October 22, 2019. Through this action, the City amended a previously issued Conditional Use Permit (CUP) for the project. Specific conditions were attached to this combined Coastal Development Permit (CDP)/CUP which, among other things, specifies planning and design requirements relating to landscaping, maximum occupancy of living units, minimum sizes of living unit spaces and accessories, facility hours and supervisory responsibilities, general rules and participation in a Neighborhood Advisory committee, and basic requirements of a Communications/Litter Plan and a Security Plan. A Notice of Final Action was received by the Coastal Commission on October 29, 2019.

III. APPEAL PROCEDURES

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits.

Section 30603(b)(1) of the Coastal Act states:

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.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to the de novo portion of the hearing on the merits of the project, then, or at a later date. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, those allowed to testify at the hearing will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project then, or at a later date, reviewing the project de novo in accordance with sections 13057-13096 of the Commission's regulations. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable standard of review for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program (LCP).

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also applicable Chapter 3 policies when reviewing a project on appeal.

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

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question as to conformity with the certified local coastal program" or, if applicable, the public access and public recreation policies of Chapter 3 of the Coastal Act (Cal. Code Regs., tit. 14 section 13115(b)). In previous decisions on appeals, the Commission has 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 certified LCP;
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 only 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 a petition for a writ of mandate pursuant to the Code of Civil Procedure, Section 1094.5.

The City of San Diego has a certified Local Coastal Program (LCP), and the subject site is located in an area where the Commission retains appeal jurisdiction because it is located between the first public road and the sea. Therefore, before the Commission considers the appeal de novo, the appeal must establish that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. In this case, for the reasons discussed further below, the Commission exercises its discretion to determine that the development approved by the City does not raise a substantial issue with regard to the appellant's contentions regarding coastal resources.

IV. SUBSTANTIAL ISSUE MOTION AND RESOLUTION

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-SAN-19-0203 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **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 by a majority of the Commissioners present.

RESOLUTION: *The Commission hereby finds that Appeal No. A-6-SAN-19-0203 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATION

The Commission finds and declares as follows:

A. PROJECT DESCRIPTION

The project site is located on the north side of Palm Avenue, in the Otay Mesa-Nestor community of the City of San Diego, and is located approximately 0.6 mile from San Diego Bay between the first public road and the sea ([Exhibit 2](#)). The project consists of the rehabilitation of a 24,154 sq. ft., 2-story 61-room Super 8 hotel into a 42-room (84 beds) transitional housing facility that provides substance abuse treatment and supportive services under the San Diego Misdemeanors At-Risk Track (SMART) Program on an approximately 42,689 sq. ft. lot ([Exhibit 3](#)). Exterior and interior improvements include new office areas, living and dining rooms, and communal spaces, full service kitchens for residents and employees, laundry rooms, and fitness rooms. Other improvements include Americans with Disabilities (ADA) accessibility, safety, and security improvements, security cameras, new fencing and vehicular and pedestrian gateways, new sidewalks and low water landscaping. New roofing and windows as well as repainting of the building will be undertaken; the pool associated with the hotel will be filled in and landscaped ([Exhibit 4](#)). A 916 sq. ft. addition will also be constructed to enclose existing exterior staircases and a new fire suppression system will be installed. Parking on-site will also be reconfigured and reduced from 53 spaces to 25 spaces, with the excess parking lot area redeveloped as passive open green space.

The project is intended to help meet housing needs put forth in the City's General Plan Housing Element, including its goal to provide sufficient housing for all income groups to accommodate San Diego's anticipated share of regional growth over the current Housing Element Cycle (2013-2020). The City's Housing Element also includes policies that call for the active provisioning of homeless services in establishing additional short-term and temporary housing as well as permanent supportive housing, of which the project would fall under.

The project site is designated for Community Commercial in the certified Otay Mesa-Nestor Community Plan/Land Use Plan and zoned Commercial-Community (CC-4-2) in the City's zoning code. The standard of review for the project is the certified LCP and the public access policies of the Coastal Act.

SMART Program Background Information

The SMART program began in 2016, and provides substance abuse treatment and supportive services to low-level misdemeanor offenders who repeatedly cycle through the criminal justice system without access to services.¹ Participants in the program are provided a Housing Navigator to ensure that they exit to permanent housing. The Housing Navigator facilitates apartment searches, rental applications, and credit checks to aid participants in obtaining housing. Through a partnership with Family Health centers,

¹ <https://www.sandiego.gov/cityattorney/divisions/criminal/smart>

SMART participants have access to Civil Legal Aid services to remove barriers to permanent housing such as unlawful detainers or child support issues.

SMART is a collaborative effort between the San Diego Attorney's Office, the Mayor's Office, the San Diego Police Department, the San Diego County Sheriff's Department, the San Diego County Office of the Public Defender, the County of San Diego Behavioral Health Services Department, Family Health Centers of San Diego, and the San Diego Second Chance Program.

Site History

The City of San Diego purchased the subject hotel in 2017. A discretionary permit application was submitted to the City's Development Services (DSD) on August 18, 2017 in order to allow for the conversion of the existing hotel into a transitional housing facility for participants in the SMART program. DSD determined that the project required a Conditional Use Permit but was exempt from the requirement to obtain a Coastal Development Permit (CDP) per the San Diego Municipal Code (SDMC). SDMC Section 126.0704(a) allows projects that propose only improvements to an existing structure to be exempt from further CDP requirements. An exception to the exemption is if the project proposes an intensification of use (SDMC Section 126.0704(a)(3)). Intensification of use in the City code is defined as a change in the use of a lot or premises which, based upon the provisions of the applicable zone, requires more off-street parking than the most recent legal use on the property. In this case, the existing parking lot would be re-configured and the total parking spaces would be reduced from 53 to 25 based on the parking standards for transitional housing use, which require at least one off-street parking space for each employee and one off-street parking space for every seven beds. Therefore, the City did not conclude it presented an intensification of use and found the project exempt. The City Council approved CUP No. 2053090 (Resolution Number R-311456) on December 11, 2017.

On December 14, 2017, Citizens for South Bay Coastal Access (the appellant) filed a petition for writ of mandate with the Superior Court of San Diego County to challenge the City's approval.² Among the claims made was that the Coastal Act preempted the City's CDP exemption provision in the LCP, which the City relied on in determining the exempt status of the project. A final ruling and judgment was issued by the Court on January 2, 2019, which stated that the project did in fact require a CDP, because the Coastal Act requires a permit for activities that include a change in the intensity of use, meaning both an increase or a decrease in the intensity of use (i.e. parking standards) requires a CDP. Furthermore, the Court held, because the Super 8 hotel was underutilized and similar hotels exist nearby, that the project was consistent with the Otay Mesa-Nestor Community Plan/Local Coastal Program. On August 2, 2018, the City obtained building permits to rehabilitate the existing hotel and the construction phase of the Project is approximately 90-95% completed.

² Case No. 37-2017-00048213-CU-TT-CTL.

B. LOWER-COST ACCOMMODATIONS

Section 30213 of the Coastal Act states:

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

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

Section 30222 of the Coastal Act states:

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

Page 121 of the Otay Mesa-Nestor Community Plan states on Visitor-Serving Services:

The Palm Avenue West Topic recommends retention and rehabilitation of the existing hotels, retail, and visitor-oriented commercial areas along the southern edge of the San Diego Bay in order to maintain visitor-oriented uses and public access to coastal resources.

Section 30213 of the Coastal Act specifically requires protection of lower cost visitor serving uses, including lower cost overnight accommodations. In addition, Coastal Act Section 30222 requires private land suitable for visitor serving uses to be prioritized for those uses, rather than for private residential or general industrial or commercial development. Visitor-serving uses such as overnight accommodations are considered high-priority uses under the Coastal Act and the conversion of a hotel, particularly a lower-cost hotel, into a residential use constitutes a transition to a lower priority use. The Coastal Commission has the responsibility to both protect existing lower-cost facilities, and to ensure that a range of affordable facilities be provided in new development along the coastline of the state. Neither the City of San Diego nor Imperial Beach currently have an abundance of existing lower-cost overnight accommodations within close access to the coast. Thus, the Commission has typically discouraged the conversion of existing lower-cost overnight accommodations into lower priority residential uses.

The supply of affordable overnight accommodations along the coast is extremely limited. In 2018, the State Coastal Conservancy released an assessment of coastal lower cost

overnight accommodations, titled ‘Explore the Coast Overnight’³ and found that occupancy rates show that there is a limited supply of overnight accommodations in coastal California. In San Diego County, the average occupancy rate for overnight accommodations was 84%. This is significantly higher than typical hotel occupancy rates, and it means that few hotel rooms are available during peak visiting times. Furthermore, as the Commission found in its 2016 public workshops on lower-cost visitor serving accommodations, the construction of timeshare and condominium units, or the conversion of hotels/motels to timeshares and condominiums, has been popular in recent years, but does not present the optimal ownership framework for increasing public access to the coast. These types of developments often more closely resemble residential uses, and can reduce opportunities for publicly available overnight accommodations, especially lower cost facilities. The Commission’s experience has confirmed the need to guard against the loss or preclusion of lower cost accommodations along the coast, and to proactively seek opportunities to ensure these development opportunities are provided whenever feasible as the state’s coastline is developed and redeveloped.

The certified Otay Mesa-Nestor Community Plan reflects a similar concern with retaining visitor-serving accommodations along the southern edge of the San Diego Bay. The specific LCP policy explicitly recommends retention and rehabilitation of existing hotels to preserve public access to the coast.

In order to protect, plan for, and provide lower cost accommodations, pursuant to Section 30213 and the certified LCP, it is necessary to understand and perhaps specifically define what “lower cost” means. In general, the concept depends on the specific context and facts in each case, including the type of facility or facilities being evaluated. For example, while campgrounds, cabins, and hostels are usually lower cost by their nature (although this too may not necessarily be the case), many hotels and motels may or may not be defined as lower cost, depending on various factors, such as room rates, types of amenities provided, and overall quality.

During its review of the project, the City conducted a competition analysis as part of its appraisal when the City was negotiating the purchase of the Super 8 hotel. The 2017 appraisal by Rasmuson Appraisal Services compared the Super 8 hotel with ten other nearby economy class hotels in the South Bay area that are in the same competitive market as the subject hotel. According to the City’s analysis, the Super 8 represents 6.2% of available accommodations in the South Bay area (the analysis indicates that only 56 rooms were available at the Super 8, which is likely an average due to the variability in the number of available rooms throughout the years) ([Exhibit 6](#)). The comparative analysis also presented the lowest quoted room rates available from the 11 selected hotels, which revealed an average rate of \$59 ([Exhibit 6](#)). The room rates ranged from \$47 to \$70 a night, with the subject hotel trending on the average with a room rate of \$54-\$59 per night. The analysis goes on to state that the demand for these units “is generated primarily from the visitor/tourist segment and from military-related visits from

³ To view the full assessment, please visit: [Explore the Coast Overnight](#).

the Navy facility in Imperial Beach and other Navy facilities in Coronado and San Diego.”

In terms of methodology and defining lower cost, the 2017 report by Rasmuson Appraisal Services compared the subject hotel to ten other nearby hotels. As indicated in the analysis, the hotels selected are “not intended to be a complete listing of all hotels in the subject’s area, but are those that are located in the South Bay area, fall in the economy/limited service hotel class and have project sizes in the range of the subject. Most have chain affiliations, similar to the subject.” The location map indicates that the eleven hotels can be found clustered in three general areas; five are located in the City of Chula Vista, three are located in the Otay Mesa-Nestor community of the City of San Diego, and 3 are located along the I-5 in the San Ysidro district of the City of San Diego ([Exhibit 5](#)). Of the eleven hotels, only three are located in the Coastal Zone, although the other nine are close to the Coastal Zone boundary. All of the hotels analyzed are within 6 miles of the subject project.

The City claims that, based on the total number of rooms among the 11 hotels analyzed in the appraisal, the Super 8 represents only 6.2% of affordable overnight accommodations in the area ([Exhibit 6](#)). While the appellant does not disagree with the City in terms of the methodology of the analysis or how it defined affordable accommodations, the appellant based its argument of a substantial loss of overnight accommodations on the 3 hotels located specifically in the Otay Mesa-Nestor community of the City of San Diego. In calculating the relative proportion of the number of rooms the Super 8 presents when focused on these 3 hotels alone, the Super 8 constitutes 27.6% of affordable accommodations in the area.

The Commission notes that the scope of the City’s comparative analysis is rather limited in that it examines only 10 hotels similar in affordability and size to the subject Super 8 hotel. The hotels appear to have been chosen for their location in the South Bay area, but further scrutiny of the report leads to the fact that: 1) not all of the hotels contained within the analysis are located in the immediate South Bay area of San Diego (such as those located in San Ysidro), and 2) other hotels in closer proximity to the subject Super 8 as well as hotels closer to the coast were also not included in the analysis (e.g. the Rambler Motel in Chula Vista and accommodations in Imperial Beach). A cursory online search of overnight accommodations reveals a number of hotels/motels in the same area as the analysis that appear to be lower-cost that were not included in the City’s analysis, potentially further supporting the City’s finding that the loss of overnight accommodations provided by the Super 8 would not significantly impact the overall supply in the area. In addition, when evaluating the impact of the loss of overnight accommodations, the Commission typically does so with information on the entire range of accommodations in an area, including both moderate and even high-end hotel stock, to gain a better understand of the supply and demand for accommodations in the region. In this case, the City only looked at a small number of lower-cost accommodations.

With regard to LCP policies for the area, the project site is designated for Community Commercial in the certified Otay Mesa-Nestor Community Plan/Land Use Plan and zoned Commercial-Community (CC-4-2) in the City’s zoning code. The LCP states that

the purpose of the Community Commercial land use and zone designations are to provide a wide range of commercial development types and facilities, and to accommodate high intensity development, including residential uses. Neighborhood and Visitor Commercial uses are also typical uses found under this land use designation. According to the City's Land Development Code, both transitional housing facilities and multiple dwelling units are permitted in the CC-4-2 zone. In the case of transitional housing for seven or more persons, a Conditional Use Permit is required in accordance with Process Five, pursuant to SDMC Section 141.0313. The project approved by the City is conditioned to comply with the requirement for transitional housing facilities set forth in SDMC Section 141.0313 and does not include any deviations from the development regulations. Thus, transitional housing is allowed under the land use designation and zoning.

The project site falls within the Egger Highlands neighborhood of the Otay Mesa-Nestor community, which is located west of Saturn Boulevard between the salt ponds and the Tijuana River Valley, and is described as "the gateway to the City and the community from Imperial Beach" in the Community Plan. The location of the project is more narrowly defined as Palm Avenue West, which the Community Plan states is the main commercial and circulation corridor of Egger Highlands. The vision statement for Palm Avenue West includes "an attractive, revitalized commercial area that emphasizes the energy, movement, and vitality of its dominant linear form while providing a safe environment for pedestrians and transit users. Commercial uses will be intensified through redevelopment, infill development and efficient land utilization." The five guidelines for the Palm Avenue West area within the Community Plan are summarized as follows: 1) providing opportunities for intensified land use by promoting building expansion and reducing on-site parking where possible; 2) maximizing on-street parking; 3) creating pedestrian-friendly streetscape; 4) establishing a sense of place along the streetscape through renovations and upgrades to buildings as needed, as well as improvements to sidewalks and landscaping; and 5) capitalizing on the location along Palm Avenue by planting a variety of palm trees.

The City cites the exterior renovations of the building, including new sidewalks, parking lot lighting, and circulation improvements as contributing to revitalization of this particular strip of Palm Avenue. While no changes would be made to the street design or public right-of-way, the City cites compliance with ADA requirements and on-site circulation improvements as consistent with the Community's Plan goal to create a safer environment for pedestrians along Palm Avenue. Exterior repairs to the building would also be consistent with the Community Plan's goal of making architectural improvements. The project would maintain the existing on-street parking along Palm Avenue and would result in reduced on-site parking/hardscaping that in turn will be landscaped, thus improving the appearance of the site and creating a more attractive streetscape along Palm Avenue. Finally, in accordance with Community Plan goals, the project would retain Mexican fan palms on site as well as require additional plantings. In terms of adherence to the guidelines noted above, the Commission appreciates that these improvements will likely contribute to pedestrian comfort, but these minor improvements are not sufficient in and of themselves to offset the impacts to public access resulting

from the loss of overnight accommodations. Thus, the Commission continues to prioritize retention and rehabilitation of existing hotels, as stated in the LCP.

Nevertheless, while the information presented in the City's analysis was somewhat lacking in detail that takes into account the full breadth of affordable options available within the South Bay area, it does present adequate factual support to its argument that removal of a long underperforming hotel would not significantly impact the supply of nearby affordable overnight accommodations. While the relevant LCP policy recommends retention and rehabilitation of existing hotels, Commission staff finds that visitor-serving accommodations to the coast will be maintained in the South Bay area despite the loss of rooms represented by this one particular motel. As discussed in detail below under subsection C, the hotel was underutilized and given the actual amount of usage, and the additional nearby affordable hotels not considered in the City's analysis, the impact would be even less than 6.2%.

Finally, as was noted in the November 2014 Commission staff report on lower-cost visitor serving accommodations, Section 30213 requires protection and enhancement of lower-cost visitor and recreational facilities because, as the Commission has seen since the beginning of its program, there is a significant pressure to develop new higher cost accommodations that sometimes results in the replacement of existing lower or moderate cost facilities.⁴ This arises because market demand tends to push prices increasingly higher in the California coastal zone, where tourism and overnight accommodations are extremely valuable commodities. A loss of a hotel, particularly a lower-cost one, is typically followed by redevelopment or conversion of the site into either a more expensive hotel or a type of residence, including condominiums or timeshares. In the case of the subject project, however, the conversion of the Super 8 hotel is not being driven by these suggested market demands or a desire to construct new and higher cost units. Transitional housing, as defined in the City's Housing Element, is a form of affordable housing. As such, the proposed development presents a rare occurrence for both the limited circumstances where transitional housing is proposed within the Coastal Zone as well as where an underutilized hotel in disrepair can be repurposed without significant loss to the larger nearby hotel stock.

As with any type of development, cumulative impacts would undoubtedly occur if this type of conversion were to continue within the South Bay area and should therefore be avoided and safeguarded against; however, given this particular set of circumstances, impacts to the overall supply of visitor-serving accommodations in the area, including affordable options, is minimal.

C. PUBLIC ACCESS

Section 30211 of the Coastal Act states:

⁴ <https://documents.coastal.ca.gov/reports/2014/12/W3-12-2014.pdf>

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

Section 30212 of the Coastal Act states, in relevant part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (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.

(b) For purposes of this section, "new development" does not include:

[...]

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

The Salt Ponds Topic of the Otay Mesa-Nestor Community Plan states:

Where appropriate, contain criteria for provisions of public access, circulation, view points and view corridors. Consider provision of these public amenities particularly along the waterfronts adjacent to the San Diego Bay, the salt ponds, the Otay River and Nestor Creek.

The proposed conversion of land designated and reserved for high priority visitor-serving accommodations to residential uses is typically considered inconsistent with the Coastal Act because it adversely impacts the City's ability to provide visitor amenities that are necessary to support public recreation. Visitor-serving commercial uses are a high priority use since they provide enhanced opportunities for a greater segment of the general public to enjoy the coast. These types of uses provide accommodations, goods, and services intended to primarily serve the needs of visitors, such as hotel/motel, bed and breakfast, hostel and other overnight accommodations; restaurants, food concessions and other eating establishments; bike and other recreational equipment rentals, and souvenir shops and other retail uses.

There is a finite amount of land available for visitor-serving uses along the coast, and land zoned for overnight accommodations is especially limited. Overnight

accommodations are a necessary part of providing public access and recreational opportunities for the many visitors that live far from the coast, including those from inland areas. In addition, for many low and moderate income visitors, lower cost overnight accommodations are essential to being able to access the California coast at all, and reducing the supply of land available for accommodations increases their overall demand and cost. When planning and development does not adequately address the need for lower cost facilities, it is inconsistent with the Coastal Act's requirement to protect, provide and maximize access for all.

In the case of the subject project, the City states that the Super 8 hotel had been under-utilized for several years prior to its purchase, and that occupancy rates for 2015 and 2016 were 28.5% and 30.6%, respectively. The City points to this (as well as a high rate of police calls to the site) as evidence that the Super 8 was not functioning as a viable visitor-oriented use. Additionally, the hotel had apparently been closed for renovations for nearly a year before the City's purchase. Supplemental information provided by the City shows that the Super 8 was underperforming when compared to other nearby accommodations, including lower-cost hotels, with roughly a negative 13 percentage difference in occupancy and negative 27% average daily rate (ADR) compared to regional hotel performance ([Exhibit 7](#)). The additional information also reveals that despite the hotel's low cost, the majority of online reviews on websites such as [HotelPlanner.com](#) and [tripadvisor.com](#) rated the hotel as "Poor" or "Terrible." The City also stated in their Notice of Final Action that nearby affordable lodging and visitor-serving accommodations, including several located just west of the project site along Palm Ave and some closer to the coast, are readily available within the community to sufficiently meet the visitor-oriented demands in the community. The average occupancy rates for these accommodations for 2014, 2015, and 2016 were 72.2%, 75.4%, and 74.5%, respectively.

The appellant, however, contends that the project violates the public access policies of the Coastal Act. They cite a letter from Commission staff to the City of San Diego from September 8, 2017 in regards to the project, which states that "[c]onversion of an existing motel to a residential use resulting [in] the loss of 64 lower-cost motel units would not be consistent with this policy [of protecting existing motels]." The appellant states that the conversion of this hotel constitutes a loss of affordable overnight accommodations in the area and therefore runs contrary to the Coastal Act and LCP policies that preserve and protect coastal access.

As discussed above, the Commission is extremely concerned about the lack of affordable accommodations along the coast, and the impact this deficiency has on public recreation and public access. However, as previously noted, this one facility does not represent a substantial portion of lower cost accommodations in the area. The project itself will not encroach upon any legally existing physical accessway or any proposed public accessway as identified in the certified Otay Mesa-Nestor Community Plan. The project will also not obstruct views of the San Diego Bay and this section of Palm Avenue is not considered a view corridor under the certified LCP.

As detailed above, while the loss of the Super 8 hotel constitutes a conversion to a lower priority use under the Coastal Act, public access to the coast will not be significantly

impacted due to a number of nearby alternative lodgings of comparable price. As the City describes, the hotel was severely underperforming, with occupancy rates of approximately 30 percent in the years preceding the City's purchase, while nearby establishments continued to have occupancy rates of approximately 75 percent. The Super 8 had also been closed for renovations for approximately a year before being purchased by the City. The LCP policy recommends retention and rehabilitation of existing hotels in the South Bay area; however, these two aspects of site history suggest that both retention of this hotel as a viable method of public access to the coast, as well as its rehabilitation, were difficult endeavors. The City's findings reveal that the site may have not been functioning as a viable visitor-serving use. It is also important to note that the project will provide housing opportunities to a population that typically would not otherwise be able to afford coastal housing, thereby increasing coastal access for this population. Thus, in this particular case, the project does not raise a substantial issue with regard to consistency with the certified LCP or public access policies of the Coastal Act.

D. SUBSTANTIAL ISSUE FACTORS

Generally speaking, the Commission considers five factors when deciding whether a project raises a "substantial issue." None of the factors support a finding of substantial issue regarding the issues raised in this appeal. As discussed above, the appellant did not demonstrate the City lacked factual support to approve the proposed development. While a loss of visitor-serving accommodations presents a loss of a priority use as mandated by the Coastal Act, the subject hotel was found to be underperforming, and adequate alternative options to maintain visitor-serving uses and provide public access to the coast were identified. A loss of a hotel, particularly a lower-cost one, is typically followed by redevelopment or conversion of the site into either a more expensive hotel or a residence, including condominiums or timeshares. In the case of the proposed project, the conversion of the Super 8 to transitional housing presents a rare occurrence for both the limited circumstances where transitional housing is proposed within the Coastal Zone as well as where an underutilized hotel in disrepair can be repurposed without significant loss to the larger nearby hotel stock.

Additionally, the extent of the project is limited, does not significantly impact coastal resources, and given its singular circumstances, should not affect future interpretations of the City's LCP in the future. Finally, the objections to the project suggested by the appellants do not raise substantial issues of regional or statewide significance. The Commission therefore finds that the City's action does not raise a substantial issue with regard to conformity with the LCP.

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS:

Appeal by Citizens for South Bay Coastal Access dated October 29, 2019
Otay Mesa-Nestor Community Plan

San Diego Co. Superior Court, Case No. 37-2017-00048213-CU-TT-CT, Judgment on
Complaint for Declaratory and Injunctive Relief and Petition for Peremptory Writ of Mandate
(January 2, 2019).