

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 6-19-0109

Applicant: Fenton Solana Highlands, LLC

Agent: Marisa Lundstedt

Location: 661-781 South Nardo Avenue and 821 Stevens Avenue, San Diego County (APN(s): 298-260-33, 298-281-10, 298-164-22)

Project Description: Demolition of an existing 159,015 sq. ft., 198-unit apartment complex and construction of a new 253,423 sq. ft., 260-unit apartment complex of which 32 units will be reserved as affordable senior units for a 55-year period; consolidation of three underlying lots into two lots; new landscaping and hardscape improvements.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The proposed project involves the redevelopment of an existing apartment complex sited west of the South Nardo Avenue and Stevens Avenue intersection in the City of Solana Beach. The project site is located over a ¾ mile inland from the shoreline and will provide adequate parking on-site.

Of the 260-units proposed, thirty-two will be reserved as low-income senior units. There are currently thirteen affordable units in the existing apartment complex. Seven of the tenants

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currently residing in the existing affordable units are anticipated to be eligible for relocation into the newly constructed low-income senior units. The remaining tenants residing in the existing affordable units that do not meet the requirements for relocation into the senior units will be provided relocation assistance and benefits pursuant to state law.

To lower the overall elevation/grade of the site, the applicant proposes to excavate approximately 154,000 cubic yards of fill. Preliminary boring tests of the soil suggest that a majority of the excavated material is suitable for placement on the beach through the City of Solana Beach's Sand Compatibility and Opportunistic Use Program (SCOUP). **Special Condition #3** requires the applicant to submit a Construction Pollution Prevention Plan that incorporates BMPs designed to address contaminants associated with construction activity.

No cultural resources have been identified on the project site; however, cultural resources have been previously discovered on sites within a quarter-mile of the project site. Ground disturbing activities on the project site could potentially unearth subsurface cultural deposits. In coordination efforts between the City of Solana Beach and the Viejas Band of Kumeyaay Indians tribe, the tribe stated that the project site is of significance to or has ties to the Viejas tribe and has requested to be informed of all developments for the site and that a Kumeyaay cultural monitor is present during excavation activities. The Final Environmental Impact Report (FEIR) contains cultural resource mitigation measures requiring archaeological monitoring with a Kumeyaay cultural monitor, among other requirements. **Special Condition #6** requires the applicant to comply with all recommendations and mitigation measures for cultural resources contained in the FEIR for this project. Additionally, in accordance with the Commission's Tribal Consultation Policy, Commission staff notified the Viejas Band of Kumeyaay Indians tribe of the coastal development permit application.

No sensitive habitat areas exist on or adjacent to the project site and no sensitive bird species were observed; however, several trees exist on-site including five native California Sycamores. The applicant proposes to replace the sycamores at a 1:1 ratio and all other trees at a 2:1 ratio to mitigate the impact of removing mature trees. **Special Condition #2** requires submission of a final landscape plan to ensure any trees removed during ground-moving activities are ultimately replaced. The existing trees on-site could potentially provide cover, foraging, and nesting for birds. **Special Condition #4** requires the applicant to submit a bird nesting survey prior to any development activities to ensure that nesting birds are not adversely impacted.

Commission staff recommends **approval** of coastal development permit application 6-19-0109 as conditioned.

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

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[Exhibit 3 – LUP Land Use Map](#)

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I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 6-19-0109 subject to the conditions set forth in the staff recommendation.*

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

Resolution:

The Commission hereby approves coastal development permit 6-19-0109 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Submittal of Final Plans.**
 - (a) **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and written approval of the Executive Director, final plans that are in substantial conformance with the plans prepared by Stephen Dalton Architects, revised 10/24/18.
 - (b) The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
2. **Final Landscape Plans.**
 - (a) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and written approval by the Executive Director, a full-size set of final landscaping plans prepared by a licensed landscape architect or a qualified resource specialist. A landscape architect or other qualified landscape professional shall certify in writing that the final Landscape plans are in conformance with the following requirements:
 - i. A plan showing the type, size, extent, and location of all proposed vegetation and any necessary irrigation.
 - ii. Only drought-tolerant native or non-invasive plant materials may be planted throughout the project site. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be planted.

iii. Low-flow efficient irrigation systems shall be utilized. All irrigation systems shall be designed with: drip lines, where feasible; check valves at low points to reduce excess drainage; automatic controllers; rainy weather shut off controls; and, if rotor heads are used, minimal head coverage overlap.

(b) The permittee shall undertake the development in accordance with the approved final landscape plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. **Construction Pollution Prevention Plan (CPPP).**

(a) **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and written approval of the Executive Director, a final Construction and Pollution Prevention Plan prepared and certified by a qualified licensed professional. The plan shall demonstrate that all construction, including, but not limited to, clearing, grading, staging, storage of equipment and materials, or other activities that involve ground disturbance; building, reconstructing, or demolishing a structure; and creation or replacement of impervious surfaces, complies with the following requirements:

- i. Protect Public Access. Construction shall protect and maximize public access, including by:
 - A. Construction is prohibited outside of the defined construction, staging, and storage areas.
 - B. All construction methods to be used, including all methods to keep the construction areas separated from public areas (e.g., using unobtrusive fencing or equivalent measures to delineate construction areas), shall be clearly identified on the construction site map and described in the narrative description (see subdivision vi of this Special Condition).
 - C. A rain event action plan (REAP) shall be prepared to address the demolition and construction activities for this project.
- ii. Minimize Erosion and Sediment Discharge. During construction, erosion and the discharge of sediment off-site or to coastal waters shall be minimized through the use of appropriate Best Management Practices (BMPs), including:

- A. Where feasible, sidewalks shall integrate paver-brick sections or decomposed granite strips, and curb gutters shall use permeable concrete to achieve additional runoff infiltration.
 - B. Trash screens or trash capture BMPs shall be provided on all storm drain inlets.
 - C. Land disturbance during construction (e.g., clearing, grading, and cut-and-fill) shall be minimized, and grading activities shall be phased, to avoid increased erosion and sedimentation.
 - D. Erosion control BMPs (such as mulch, soil binders, geotextile blankets or mats, or temporary seeding) shall be installed as needed to prevent soil from being transported by water or wind. Temporary BMPs shall be implemented to stabilize soil on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters.
 - E. Sediment control BMPs (such as silt fences, fiber rolls, sediment basins, inlet protection, sand bag barriers, or straw bale barriers) shall be installed as needed to trap and remove eroded sediment from runoff, to prevent sedimentation of coastal waters.
 - F. Tracking control BMPs (such as a stabilized construction entrance/exit, and street sweeping) shall be installed or implemented as needed to prevent tracking sediment off-site by vehicles leaving the construction area.
 - G. Runoff control BMPs (such as a concrete washout facility, dewatering tank, or dedicated vehicle wash area) that will be implemented during construction to retain, infiltrate, or treat stormwater and non-stormwater runoff.
- iii. Minimize Discharge of Construction Pollutants. The discharge of other pollutants resulting from construction activities (such as chemicals, paints, vehicle fluids, petroleum products, asphalt and cement compounds, debris, and trash) into runoff or coastal waters shall be minimized through the use of appropriate BMPs, including:
- A. Materials management and waste management BMPs (such as stockpile management, spill prevention, and good housekeeping practices) shall be installed or implemented as needed to minimize pollutant discharge and polluted runoff resulting from staging, storage, and disposal of construction chemicals and materials. BMPs shall include, at a minimum:

- (1) Covering stockpiled construction materials, soil, and other excavated materials to prevent contact with rain, and protecting all stockpiles from stormwater runoff using temporary perimeter barriers.
 - (2) Cleaning up all leaks, drips, and spills immediately; having a written plan for the clean-up of spills and leaks; and maintaining an inventory of products and chemicals used on-site.
 - (3) Proper disposal of all wastes; providing trash receptacles on-site; and covering open trash receptacles during wet weather.
 - (4) Prompt removal of all construction debris from the beach.
 - (5) Detaining, infiltrating, or treating runoff, if needed, prior to conveyance off-site during construction.
 - (6) All activities associated with the removal and disposal of asbestos materials shall adhere to State of California hazardous waste handling requirements, including wetting-down asbestos-containing materials prior to removal, removing asbestos-containing material in discrete units where possible, and disposal of asbestos materials at a regulated facility.
- B. Fueling and maintenance of construction equipment and vehicles shall be conducted off-site if feasible. Any fueling and maintenance of mobile equipment conducted on-site shall take place at a designated area located at least 50 feet from storm drain inlets, if feasible (unless those inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.
- iv. Minimize Other Impacts of Construction Activities. Other impacts of construction activities shall be minimized through the use of appropriate BMPs, including:
- A. The damage or removal of non-invasive vegetation (including trees, native vegetation, and root structures) during construction shall be minimized, to achieve water quality benefits such as transpiration, vegetative interception, pollutant uptake, shading of waterways, and erosion control.
 - B. Excavated project soils shall be prioritized for re-use in restoration projects to the extent feasible.

- C. The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and silt fences) that incorporate plastic netting (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers) shall be avoided, to minimize wildlife entanglement and plastic debris pollution.
- v. Manage Construction-Phase BMPs. Appropriate protocols shall be implemented to manage all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and training), to protect coastal water quality.
- vi. Construction Site Map and Narrative Description. The Construction and Pollution Prevention Plan shall include a construction site map and a narrative description addressing, at a minimum, the following required components:
 - A. A map delineating the construction site, construction phasing boundaries, and the location of all temporary construction-phase BMPs (such as silt fences, inlet protection, and sediment basins).
 - B. A description of the BMPs that will be implemented to minimize land disturbance activities, minimize the project footprint, minimize soil compaction, and minimize damage or removal of non-invasive vegetation. Include a construction phasing schedule, if applicable to the project, with a description and timeline of significant land disturbance activities.
 - C. A description of the BMPs that will be implemented to minimize erosion and sedimentation, control runoff and minimize the discharge of other pollutants resulting from construction activities. Include calculations that demonstrate proper sizing of BMPs.
 - D. A description and schedule for the management of all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and training). Identify any temporary BMPs that will be converted to permanent post-development BMPs.
- (b) The permittee shall undertake development in accordance with the approved Construction-Phase Pollution Prevention Plan, unless the Commission amends this permit or the Executive Director provides written determination that no amendment is legally required for any proposed minor deviations.

4. **Nesting Bird Survey.**

- (a) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, in a form and content acceptable to the

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Executive Director, a plan for a Breeding/Nesting Bird Survey to be conducted by a qualified biologist prior to any development activities, which shall substantially conform to the following requirements:

- i. Should vegetation or tree removal be planned to occur during the bird nesting season, February 1 to September 15, a qualified biologist with experience in conducting bird surveys shall conduct a bird survey no more than 72 hours prior to construction to detect any protected native birds in the habitat to be disturbed and any other such habitat within 300 feet of the construction area.
 - ii. If any active nests are detected, the area shall be flagged and mapped on the construction plans along with a minimum 300-foot buffer and up to a maximum of 500 feet for raptors and special status bird species, as determined by the project biologist, and shall be avoided until the nesting cycle is complete or nests abandoned. Subject to consultation with and the prior written approval of the Executive Director, the project biologist may reduce the avoidance buffer if a reduced buffer maintains protection of the nesting cycle of the avian species.
 - (b) The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
5. **SCOUP Suitability and Participation.** The applicant shall comply with and implement its proposal to test all excavated material for suitability according to the criteria of the City of Solana Beach's Sand Compatibility and Opportunistic Use Program (SCOUP) for beach quality material. If found to be consistent with SCOUP criteria, the excavated material shall be deposited on City beaches in conformance with SCOUP. If the excavated material is not consistent with SCOUP criteria, the applicant shall dispose of the excavated material at a licensed and designated disposal site located outside of the Coastal Zone.
6. **Area of Archaeological Significance.** The applicant shall comply with all recommendations and mitigation measures for cultural resources contained in the Solana Highlands Revitalization Project Final EIR (SCH #2014111028), dated October 2018.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

The proposed development is demolition of an existing 159,015 sq. ft., 198-unit apartment complex and construction of a new 253,423 sq. ft., 260-unit apartment complex including 32 affordable senior units. The subject site is located west of the intersection of South Nardo Avenue and Stevens Avenue in the City of Solana Beach, over a ¾ mile inland of the shoreline ([Exhibit #1](#)). The site is fully developed in an urban setting and is surrounded by single-family neighborhoods to the north and multi-family neighborhoods and a public park to the northeast, a mix of residential uses including another apartment complex to the east, apartment and condominium complexes to the south, and a church and school to the west.

The existing 159,015 square foot, 198-unit apartment complex, consisting of 194 apartment units in sixteen 2-story buildings on two lots, and three 1- and 2-story buildings containing four multi-family units on a separate lot, was constructed in the early 1970s. The existing complex will be demolished, and the entire site will be graded to lower the overall elevation/grade of the site. Grading activities will result in 154,000 cubic yards of fill. The City has determined that a majority of the excavated material is acceptable material for the City's Sand Compatibility Opportunistic Use Program (SCOUP), recently amended by the Commission in November 2018 (CDP #6-08-038-A2). Any material not acceptable for placement on the beach will be disposed of outside of the Coastal Zone.

The proposed 260 units and a new clubhouse/leasing office will be divided between twenty-four new buildings that will range from two to three stories ([Exhibit #2](#)). Three of the twenty-four buildings will be stepped two- and three-story buildings that match the transition of the grade. Approximately 58,543 square feet of total garage area will be divided between the ground floors of the proposed buildings with the exception of Building 25, which will house the thirty-two affordable low-income senior housing apartments. Parking for Building 25 will be provided in a new parking lot sited east of the building. Additional parking will be provided in several new parking lots sited throughout the project site.

The applicant also proposes to consolidate the three existing lots underlying the project site into two lots: an 11.6-acre lot and a 1.8-acre lot. Building 25 will be sited on the smaller lot and have a new driveway providing separate egress and ingress onto the project site from Stevens Avenue. Other hardscaping improvements include new retaining walls, fences, concrete driveway aprons for egress and ingress along South Nardo Avenue, and new walkways, drive aisles, and parking lots. New water quality improvements such as bioretention basins will be placed in key areas around the project site. New drought-tolerant landscaping is proposed, and secondary improvements along South Nardo Avenue include a speed table, street chokers, curb extensions, new crosswalks, and raised medians.

While the City of Solana Beach has a certified LUP, the City's Local Coastal Plan (LCP) is not certified because the City has not yet completed, nor has the Commission reviewed, any implementing ordinances. Thus, the standard of review for the proposed development is the Chapter 3 policies of the Coastal Act, and the certified LUP is used as non-binding guidance.

B. NEW DEVELOPMENT

Section 30250 of the Coastal Act states, in part:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30253 of the Coastal Act states, in part:

New development shall do all of the following:

(d) Minimize energy consumption and vehicle miles traveled

Section 30604 of the Coastal Act states, in part:

Coastal development permit; issuance prior to certification of the local coastal program; finding that development in conformity with public access and public recreation policies; housing opportunities for low and moderate income persons .

..

(f) The commission shall encourage housing opportunities for persons of low and moderate income. In reviewing residential development applications for low- and moderate-income housing, as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code, the issuing agency or the commission, on appeal, may not require measures that reduce residential densities below the density sought by an applicant if the density sought is within the permitted density or range of density established by local zoning plus the additional density permitted under Section 65915 of the Government Code, unless the issuing agency or the commission on appeal makes a finding, based on substantial evidence in the record, that the density sought by the applicant cannot feasibly be accommodated on the site in a manner that is in conformity with Chapter 3 (commencing with Section 30200) or the certified local coastal program.

(g) The Legislature finds and declares that it is important for the commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.

Policy 7.16 of the Solana Beach certified Land Use Plan states:

Encourage a variety of housing types throughout the City to minimize commuting needs of all socioeconomic sectors.

Coastal Act Section 30250 provides that new residential development shall be located in or in close proximity to existing developed areas that are able to accommodate it, or in other areas with adequate public services and where it will not have significant, cumulative adverse effects on coastal resources. In addition, Section 30253 requires that new development must minimize energy consumption and vehicle miles traveled. These policies together encourage “smart” growth by locating new development in appropriate areas that minimize impacts on coastal resources and discourages residential sprawl in more rural or sparsely populated areas that are not adequately developed to support new residential development and where coastal resources could be threatened.

Chapter 3 of the Coastal Act does not authorize the Commission to regulate or require affordable housing. That authority was removed from the Coastal Act by the Legislature, and a separate statute, the Mello Act (Government Code Section 65590), establishes requirements for affordable housing in the Coastal Zone that apply to local governments, not the Commission. However, while not a Chapter 3 policy, Section 30604(f) of the Coastal Act directs the Commission to encourage low and moderate income housing opportunities in the Coastal Zone. The LUP for Solana Beach also encourages a variety of housing types throughout the City to minimize commuting needs of all socioeconomic sectors.

The project site is located in an urban portion of the City of Solana Beach with predominately high density residential development. The City’s zoning map designates the entire site for High Density Residential (13-20 du/ac). However, the certified LUP designates two of the three lots for High Density Residential and the third as Medium-High Density Residential (8-12 du/ac) ([Exhibit #3](#)). Thus, under the LUP, looking at just the base density, a total maximum of 266 units would be permitted on the site.

The City of Solana Beach Municipal Code (Section 17.20.030(B)(4)) requires that for multiple dwelling unit projects located in or in proximity to sensitive lands such as steep slopes, coastal bluffs and wetlands, the density otherwise established for the site be “adjusted” downward. The site does contain slopes in excess of 25% grade, although they are manufactured (graded) slopes, not natural steep slopes. Based on a detailed formula contained in the code, which is not included in the LUP, that requires the City to lower the base density on the site taking into account areas with steep slopes, the City determined that the maximum base density permitted on the site is 207 units.

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The City's Affordable Housing Ordinance requires new rental residential projects of five or more dwelling units to either pay affordable housing impact fees or set aside 15 percent of the total units to be rented to very low or low-income households at affordable rents. The applicant opted to provide 32 low-income senior units (15.5% of 207) instead of paying the in-lieu fee. Under the City's Density Bonus Ordinance, designed to implement state density bonus law (Government Code Section 6591), any housing development of five or more units that proposes to construct 10% of the total units for lower-income households is qualified to receive a base density bonus of 20%. In addition, an additional density bonus can be added to the base density bonus if the developer constructs more than 10% of the total proposed units for low-income households. As the applicant proposes to provide 15.5% of the 207 units to low-income seniors, the density bonus formula contained in the City's municipal code allows for a density bonus of up to 57 extra units to be constructed on the site. The applicant chose to build an extra 53 units, thus, the total number of units proposed is 260, 53 low-income senior units, and 207 market rate units. Therefore, even with the density bonus, the number of units proposed on the site is consistent with the maximum density designation in the certified LUP.

With regard to the affordable housing component of the project, the existing apartment complex did not include a specific affordable housing component when the existing apartment complex was originally constructed in the early 1970s. In the mid-1990s, the existing apartment complex was refinanced by a prior property owner with Multifamily Housing Revenue Bonds issued by the Housing Authority of the County of San Diego. In conjunction with that financing, a Regulatory Agreement placed affordability restrictions on twenty percent of the existing 194 units, excluding the four multi-family units, for a 15-year period. As a result, 39 units were maintained at affordable rents for the next 15 years. The agreement expired on June 27, 2010; however, a provision in the agreement allowed qualified tenants occupying an affordable unit after the expiration of the Regulatory Agreement to continue to rent their unit at affordable rents until June 27, 2025, unless or until such a time that: (1) their income exceeds 140% of the qualifying income, (2) the household moves voluntarily or is evicted for good cause, or (3) the owner pays relocation assistance and benefits pursuant to state law.

At this time, of the original 39 units, 13 units currently remain with qualified tenants paying affordable rent under the above terms. Of the qualified tenants in the remaining 13 affordable units, 7 are anticipated to be eligible for relocation into the newly constructed low-income senior units. Any remaining qualified tenants not eligible for relocation into the senior units will be provided relocation assistance and benefits provided by the applicant and pursuant to state law, consistent with the Regulatory Agreement. The remaining 25 affordable senior units will be rented to qualifying tenants.

The City is preparing an Affordable Housing Agreement with the applicant to record an affordability restriction against the 32 low-income senior units for a period of fifty-five years. Under state density bonus law, the applicant is also entitled to waivers for development standards that would have physically precluded the construction of the proposed project. Such waivers must be nevertheless consistent with the Coastal Act and any applicable local coastal program. As discussed in greater detail below under Section

F. Visual Resources/Community Character, the City waived the height limitation on building heights, retaining walls, and fencing.

Approval of this project will increase the amount of affordable housing located in Solana Beach, encouraging low-income housing opportunities in the Coastal Zone and further minimizing the commuting needs of all socioeconomic sectors. Therefore, the project, as conditioned, is consistent with Sections 30250 and 30253 the Coastal Act and the certified LUP.

C. PUBLIC ACCESS/PARKING

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

Section 30212 of the Coastal Act states, in 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 . . .

Section 30252 of the Coastal Act states, in part:

The location and amount of new development should maintain and enhance public access to the coast by . . . (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation . . .

Section 30253 of the Coastal Act states, in part:

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

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Policy 2.24 of the Solana Beach certified Land Use Plan states:

New development shall provide off-street parking sufficient to serve the approved use in order to minimize impacts to public street parking available for coastal access and recreation.

Policy 2.67 of the Solana Beach certified Land Use Plan states, in part:

[M]aximum public access from the nearest public roadway to the shoreline and along the shoreline shall be provided in new development. . . .

Policy 6.20 of the Solana Beach certified Land Use Plan states, in part:

Any development involving more than one building or structure shall provide common access roads and pedestrian walkways. . . .

The subject site is located over $\frac{3}{4}$ miles from the shoreline, and more than $\frac{1}{2}$ mile north of the nearest coastal access road, Via de la Valle, and neither parking shortfalls or traffic associated with the proposed development are likely to have any impact on coastal access. However, the City's LUP requires adequate parking to be provided for all new development and redevelopment, to protect both beach and other recreational facilities such as parks. According to the City's certified LUP, the following parking standards are required for the proposed units:

- Residential studios: 1 space per unit
- Residential units containing one bedroom: 1.5 spaces per unit
- Residential units containing two or more bedrooms: 2 spaces per unit
- Additional guest parking: 1 space per 4 residential units

The proposed development consists of 12 studios (12 spaces), 128 1-bedroom units (192 spaces), and 120 2-bedroom units (240 spaces), for a total of 260 units. Guest parking for 260 units requires an additional 65 parking spaces. Thus, under the certified LUP, the proposed project would require a total of 509 parking spaces. The project would exceed the parking requirement by providing 539 on-site spaces divided between the proposed garage areas and new parking lots. **Special Condition #1** requires the applicant to submit final plans in substantial conformance with the preliminary plans showing a total of at least 509 parking spaces on-site. Thus, the proposed project will provide adequate on-site parking and free up adjacent street parking for the public.

The applicant also proposes to modify the existing vehicular egress/ingress and circulation on the project site. New egress/ingress points on the site will not be significantly further from the location of the existing egress/ingress. Other secondary improvements to South Nardo Avenue, such as the curb extensions, speed table, and raised median, are meant to serve as traffic calming measures to make the road safer to cross for pedestrians. Improvements such as the crosswalks and curb extensions will facilitate public access in the surrounding area. In recent Commission actions, traffic

calming measures combined with the removal of traffic lanes on major coastal access routes have been identified as potentially causing adverse impacts to both public access to the coast and the coastal route itself as a recreational amenity. However, the surrounding roadways, South Nardo Avenue and Stevens Avenue, are local access routes, and slowing speeds on these roads will not impact public access to the coast or adversely impact recreational opportunities along any major coastal access routes.

Therefore, the project is not anticipated to result in adverse impacts to public access. As conditioned, the proposed development will be consistent with the public access and recreation policies of the Coastal Act and the certified LUP.

D. WATER QUALITY

Section 30231 of the Coastal Act states in part:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, [. . .] encouraging waste water reclamation, [. . .]

Policy 3.43 of the Solana Beach certified Land Use Plan states:

Where grading is permitted during the rainy season (extending from November 1 to March 1), erosion control measures such as sediment basins, silt fencing, sandbagging, installation of geofabrics, shall be implemented prior to and concurrent with grading operations. Such measures shall be maintained through final grading and until landscaping and permanent drainage is installed.

Policy 4.70 of the Solana Beach certified Land Use Plan states:

Inform applicants, for new development in the City and in surrounding areas that do not have permitted SCOUP programs, of the City's SCOUP program and encouraged them to participate. Development on upland sites that will result in 5,000 cubic yards, or more, of export should be required to test the material for suitability for beach deposition. If suitable, the material should be placed on the beach via the SCOUP program.

To prepare the site for construction of the new complex, approximately 154,000 cubic yards of fill will be excavated. To avoid placing all the excavated material in a landfill, **Special Condition #5** requires the applicant to test the excavated material for beach quality sand. The Commission approved the City's Sand Compatibility and Opportunistic Use Program (SCOUP) in 2008 and extended it in 2013 and 2018, each for a five-year period, with specific criteria for determining beach quality material as well as restrictions on the amount and the timing of beach deposition (CDP Nos. 6-08-038/City of Solana

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Beach, 6-08-038-A1/City of Solana Beach, and 6-08-038-A2). If any material is compatible with beach quality sediment, the applicant shall incorporate it into the SCOUN for beach replenishment. Any non-beach quality material will be exported to a site outside of the Coastal Zone. **Special Condition #3.iv.B** requires the applicant to prioritize reusing excavated project soil.

Existing drainage patterns on the project allow some stormwater runoff to discharge onto the neighboring property to the south. The majority of the runoff from the project site flows east into an existing storm drain system that discharges into Stevens Creek and is ultimately conveyed to the Pacific Ocean via the San Dieguito River Lagoon. Although the project will reduce the amount of paved area, it will slightly increase the building footprint, thereby increasing the amount of impervious surface on-site. Runoff can mobilize pollutants and other debris that can accumulate on impervious surfaces, such as parking lots and buildings. Runoff from parking lots can be a major contributor of non-point source pollution in stormwater which ultimately is disposed into coastal waters. To the greatest extent feasible, runoff should be captured on-site to reduce the volume of runoff that ultimately discharges into the Pacific Ocean. The applicant proposes several biofiltration basins, sized for a 100-year storm event peak discharge, to provide for stormwater pollutant control on-site. Basins will be landscaped and contain a layer of gravel for additional detention of stormwater.

Demolition and construction activities will result in debris that could migrate into the ocean without proper BMPs. **Special Condition #3** requires the applicant to submit a Construction Pollution Prevention Plan, prepared by a licensed engineer, that incorporates BMPs designed to address contaminants associated with construction activity. Therefore, as conditioned, the project is not anticipated to result in adverse impacts to water quality and is consistent with Section 30231 of the Coastal Act and the certified LUP.

E. BIOLOGICAL RESOURCES

Section 30240 of the Coastal Act states in part:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Policy 3.32 of the Solana Beach certified Land Use Plan states:

For development in locations known, or determined by environmental review, to potentially have breeding or nesting sensitive birds species, two weeks prior to any scheduled development, a qualified biological monitor shall conduct a

preconstruction survey of the site and within 500 feet of the project site. Sensitive bird species are those species designated “threatened” or “endangered” by state or federal agencies, California Species of Special Concern, California Fully Protected Species, raptors, and large wading birds. In addition, surveys must be conducted every two weeks for sensitive nesting birds during the breeding season. If nesting sensitive birds are detected at any time during the breeding season, the California Department of Fish and Wildlife shall be notified and an appropriate disturbance set-back will be determined and imposed until the young-of-the-year are no longer reliant upon the nest. The set-back or buffer shall be no less than 100 feet.

Policy 3.51 of the Solana Beach certified Land Use Plan states:

New development shall be sited and designed to preserve oak, sycamore, alder, willow, toyon, or other native trees that are not otherwise protected as ESHA. Removal of native trees shall be prohibited except where no other feasible alternative exists. Structures, including roads or driveways, shall be sited to prevent any encroachment into the root zone and to provide an adequate buffer outside of the root zone of individual native trees in order to allow for future growth.

Policy 3.52 of the Solana Beach certified Land Use Plan states:

New development on sites containing native trees shall include a tree protection plan.

Policy 3.53 of the Solana Beach certified Land Use Plan states, in part:

Where the removal of native trees cannot be avoided through the implementation of project alternatives or where development encroachments into the protected zone of native trees result in the loss or worsened health of the trees, mitigation measures shall include, at a minimum, the planting of replacement trees on-site, if suitable area exists on the project site, at a ratio of 1:1 for every tree removed. Where onsite mitigation is not feasible, off-site mitigation shall be provided through planting replacement trees or by providing an in-lieu fee based on the type, size and age of the tree(s) removed. . . .

The project site is located west of Interstate 5 and is surrounded by urban development. No sensitive habitat areas exist on or adjacent to the project site and no sensitive bird species were observed; however, several trees exist on-site including five native California Sycamores. The applicant proposes to remove the existing sycamores to prepare the site for construction but to replace them at a 1:1 ratio. The City required the applicant to prepare a Tree Protection Plan for the replacement of the California Sycamores including a monitoring requirement for an arborist to inspect the replacement trees to ensure they are in good health and thriving. All other trees will be replaced at a 2:1 ratio to mitigate the impact of the removal of mature trees on site. Approximately 529 new trees will be planted on-site. The FEIR prepared for the project acknowledges that

the existing trees may support active nests for nesting birds species that are protected under the federal Migratory Bird Treaty Act, and removal of the trees during the breeding season could potentially result in adverse impacts to the birds.

To reduce potential impacts to nesting birds to a less than significant level, a mitigation measure was included in the FEIR requiring the applicant to conduct a nesting bird survey, no earlier than seven days prior to any grading or construction activities, if any development occurs during the nesting/breeding season of special-status birds or birds protected under the Migratory Bird Treaty Act. **Special Condition #4** requires the applicant to submit a bird nesting survey, with similar requirements as the mitigation measure identified in the EIR, to ensure that nesting birds are not adversely impacted. Therefore, as conditioned, the project is not anticipated to result in adverse impacts to any biological resources and is consistent with Section 30240 of the Coastal Act.

F. VISUAL RESOURCES/COMMUNITY CHARACTER

Section 30250 of the Coastal Act states in part:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. . . .

Section 30251 of the Coastal Act states in part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, [. . .]

Policy 6.10 of the Solana Beach certified Land Use Plan states:

New development shall be sited and designed to minimize adverse impacts on scenic resources visible from scenic roads or major public viewing areas. If there is no feasible building site location on the proposed project site where development would not be visible then the development shall be sited and designed to minimize impacts on scenic areas visible from Scenic Roads or major public viewing areas, through measures including, but not limited to, siting development in the least visible portion of the site, breaking up the mass of new structures, designing structures to blend into the natural hillside setting, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, incorporating landscape elements, and where appropriate berming.

Policy 6.20 of the Solana Beach certified Land Use Plan states:

Parking and outside storage areas shall be screened from view, to the maximum extent feasible, from either the scenic highway or the adjacent scenic, historic, or recreational resource. Acceptable screening methods shall include, but are not limited to, the use of existing topography, the strategic placement of buildings and structures, or landscaping and plantings, which harmonize with the natural landscape of the designated area.

The project site is not within the Scenic or Hillside/Coastal Bluff Overlays as depicted in the certified LUP, and neither South Nardo Avenue or Steven Avenue is identified as a scenic road. There are no views of the ocean across the project site. State density bonus law requires the City to approve a request for a waiver or modification of a development standard that would physically preclude the construction of a housing development with a density bonus, unless the request violates state or federal law, has a specific health or safety impact, or has an impact on a historic building. A development standard is a site or construction condition, such as a height limit or setback requirements or parking standards reduction. The LUP does not contain explicit height standards for structures but provides generally that the height of retaining walls, fences, and buildings must be minimized to not block views from public viewing areas.

The applicant indicated that without height waivers, the project could not be constructed as proposed. Therefore, the applicant requested and received (1) a building height limit increase up to a maximum of 47 ft. (standard 30 ft.); (2) additional exposed retaining wall height up to a maximum of 15 ft. (standard 6 ft.); and (3) wall and fence height increases including up to a maximum of 35 ft. (the wall and fence heights reflect a proposed 6-ft. high fence on top of a manufactured slope, thus under the municipal code the wall and fence are technically considered to be 35 feet high). The proposed building heights, retaining walls, and fencing will not block any public scenic views or public visual resources.

Grading the site to lower the elevation/grade has allowed the applicant to propose two and three-story buildings with rooflines that will not exceed the height of the rooflines of any of the existing street-facing buildings. The mass of the new complex will be divided between twenty-four buildings with architectural variation and landscaping and green spaces between the buildings instead of one massive structure. The twelve three-story buildings will be sited in the center and south portions of the site, closer to the condominium and apartment complexes to the south. The general design and clustering of development, along with the presence of the existing complex, and the minor expansion of the existing building footprint, make the proposed development visually compatible with the surrounding area. Therefore, the proposed development, as conditioned, is consistent with Section 30251 of the Coastal Act and the certified LUP.

G. ARCHAEOLOGICAL/CULTURAL RESOURCES

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Policy 5.51 of the Solana Beach certified Land Use Plan states:

Identify and mitigate potential impacts of development on archaeological, paleontological and historic resources.

Policy 5.52 of the Solana Beach certified Land Use Plan states:

New development shall protect and preserve archaeological, historical and paleontological resources from destruction, and shall avoid, and minimize impacts to such resources.

Policy 5.54 of the Solana Beach certified Land Use Plan states:

The City shall coordinate with appropriate agencies to identify archaeologically sensitive areas. Such information should be kept confidential to protect archaeological resources.

Policy 5.56 of the Solana Beach certified Land Use Plan states:

New development on sites identified as archaeologically sensitive shall include on-site monitoring of all grading, excavation, and site preparation that involve earth moving operations by a qualified archaeologist(s), and appropriate Native American consultant(s).

In August 2018, the Commission adopted its Tribal Consultation Policy to improve tribal consultation on projects submitted to the Commission that could adversely impact tribal cultural resources. In accordance with the policy, Commission staff provided notice to a representative of the Viejas Band of Kumeyaay Indians for early notification of the project.

During the CEQA review process with the City of Solana Beach, the applicant contacted the Native American Heritage Commission (NAHC) who performed a search of the Sacred Lands Files to see if any tribal cultural resources had been previously identified on-site. The search failed to indicate the presence of Native American traditional cultural places within the project area. The NAHC provided the applicant with a list of contacts for Native American individuals/organizations who may have knowledge of cultural resources in the project area. The applicant sent requests for comments on the project to the individuals/organizations provided by the NAHC for San Diego County and received a letter from the Viejas Band of Kumeyaay Indians (Viejas) stating that the project area

may contain sites sacred to the Kumeyaay people. The representative for Viejas requested that any sacred sites discovered be avoided with adequate buffer zones. In response to the Viejas request, cultural resource mitigation measures were included in the FEIR requiring the applicant to provide archaeological monitoring through a qualified archaeological monitor, with a Kumeyaay cultural monitor present, of any ground disturbing activities associated with the project. Preconstruction cultural resources worker sensitivity training shall be conducted by the approved monitors. The applicant must also retain a qualified paleontologist for full-time monitoring. If paleontological resources are unearthed during any ground disturbing activities, all work within fifty feet of the discovery will be temporarily halted or diverted while the discovery is examined by the appropriate monitor. In the event of accidental discovery of any human remains during construction of the proposed project, the applicant must immediately contact the County of San Diego coroner.

Although no Native American traditional cultural places were identified on the project according to the NAHC, two sites of cultural significance were uncovered as recent as 2003 within the vicinity of the project site. Both sites were discovered within a quarter-mile of the project site. The applicant has surveyed the project site for cultural resources, but, due to poor ground surface visibility during the survey, it was difficult to rule out whether any cultural resources could be located on-site or may be unearthed during the grading phase of the project. Given the poor ground surface visibility and the proximity of the known cultural sites, archaeological monitoring is necessary to mitigate any impacts to tribal cultural resources that may be unearthed during ground disturbance activities. Pursuant to mitigation measure CUL-1, monitoring will be conducted with a Kumeyaay cultural monitor present. **Special Condition #6** requires the applicant to comply with all recommendations and mitigation measures for cultural resources contained in the FEIR for this project. Therefore, as conditioned, the proposed development is consistent with Section 30244 of the Coastal Act and the certified LUP.

H. LOCAL COASTAL PLANNING

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

The Commission has certified the City's Local Coastal Program Land Use Plan, but the City has not yet completed, nor has the Commission reviewed any implementing ordinances. Thus, the City's LCP is not fully certified, and Chapter 3 of the Coastal Act is the standard of review. However, as cited above, the certified LUP contains provisions encouraging a variety of housing for all socioeconomic sectors and emphasizing protection of public access, water quality, and biological, scenic, and cultural resources.

The City of Solana Beach determined that the entire subject site was designated High Density Residential (13-20) consistent with its zoning map; however, the certified LUP designates two of the three lots for High Density Residential and the third as Medium-High Density Residential (8-12 du/ac) ([Exhibit #3](#)). The LUP would allow a maximum of

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266 units on site. The designation of the site pursuant to the zoning map would permit approximately two more units over what is permitted by the designation of the site in the LUP (268 units). Regardless of the minor discrepancy between the zoning map and the LUP, the number of units proposed in this project (260) would be consistent with the LUP. The City of Solana Beach should submit an LUP amendment to update the land uses for the project site to reconcile the differences between the zoning code and the LUP.

As conditioned, the subject development is consistent with the coastal resource protection policies of the LUP. Furthermore, the low-income senior units will contribute to the variety of housing opportunities for all socioeconomic sectors. Based on the above findings, the proposed development is consistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds the proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act, and will not prejudice the ability of the City of Solana Beach to complete a certifiable local coastal program.

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of Solana Beach adopted a FEIR in December 2018 (SCH #2014111028) for the proposed project.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions designed to avoid adverse impacts to birds when removing trees, preserve native trees, protect water quality, and protect potential tribal cultural resources, will avoid or minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- City of Solana Beach certified LUP
- Final Environmental Impact Report and Attachments (SCH #2014111028)
- Regulatory Agreement and Declaration of Restrictive Covenants (Doc #1995-0267516)
- Solana Beach City Attorney Opinion Regarding 1970 Grant of Open-Space Easement, dated 11/29/18