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# W15a

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## STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE & DE NOVO

**Local Government:** City of Oceanside

**Decision:** Approved with Condition

**Appeal Number:** A-6-OCN-19-0181

**Applicant:** Beach Walk, Beach City LLCs

**Location:** 831/833 South Pacific Street, Oceanside, San Diego County. (APNs 150-356-19, 150-356-09)

**Project Description:** Demolition of nine residential units on two separate lots totaling 5,780 sq. ft.; lot consolidation and construction of a four level, four-unit condominium building.

**Appellants:** Commissioners Padilla and Brownsey and Carolyn Kramer

**Staff Recommendation:** Substantial Issue and Approval with Conditions on De Novo

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### IMPORTANT HEARING PROCEDURE NOTE

The Commission will not take testimony on this “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask questions of the applicant, any aggrieved person, the Attorney General, or the Executive Director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the

Chair limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing.

If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow, unless it has been postponed, during which the Commission will take public testimony.

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## **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed.

The appellants allege that the approved condominiums raise a number of LCP consistency issues: including that; 1) the proposed development will impact housing by reducing the density of the site from 9 to 4 units, when the LCP would allow up to 6 units; 2) the scale of the development will block existing public views, and potentially be out of character with the surrounding community; 3) the existing units provide lower-cost overnight accommodations which will be lost when redeveloped with the approved 6 units with six and nine bedrooms; 4) the redevelopment of the site will result in the loss of eight on-street public beach parking spaces; and 5) the site is located on the shorefront and within the 100 year floodplain and will likely be subject to increased hazards in the near future.

Regarding the density proposed on the site, staff confirms that the number of units is less than the maximum 6 units the underlying zoning would permit. The site is located in close proximity to the Oceanside Transit Center and has a highest-density Land Use Designation (Urban High-Density) permitted in the Coastal Zone, and thus, is an appropriate location to maximize the permitted density.

The proposed development will replace the nine single-story beach bungalows with a three-level structure over a partially below-grade basement area, on an oceanfront site located directly north of the western terminus of Hayes Street. As a much larger structure, the proposed project would block existing ocean views from Hayes Street, and has the potential to impact community character. In addition, the existing bungalows are currently being used as vacation rentals, and the proposed new units will be substantially larger and likely less affordable, impacting lower cost overnight accommodations. Parking is at a premium along the shoreline, and the project would eliminate nine existing parking spaces.

The contentions raised by the appellant regarding hazards also raised a substantial issue, as that the development could be subject to flooding associated with wave overtopping and the site is dependent on an existing City revetment for protection. The project includes a retaining wall on the seaward side of the site, which could function as shoreline protection, inconsistent with the hazard policies of the LCP.

Other contentions raised by the appellants are that the development is not consistent with the City's Climate Action Plan and that the property should not be used for commercial purposes. However, regarding the City's Climate Action Plan, the Plan is not currently a part of the City's LCP and is therefore not part of the standard of review. Additionally, the development includes a number of energy-efficient measures including more efficient water and heating/cooling capabilities. Regarding the use of the lot, the certified land use and zoning designations permit the proposed condominium development, and while it is likely that the condominium will be used to provide short-term vacation rentals, the site is zoned as Residential Tourist (R-T), making vacation rentals an allowable use. Thus, these remaining contentions do not raise a substantial issue regarding conformity with the certified LCP.

Because of these potential inconsistencies with the LCP and the Coastal Act, staff recommends that the Commission determine that the project raises a substantial issue regarding conformance with the certified LCP and the Chapter 3 policies of the Coastal Act.

Commission staff further recommends **approval** of the application on de novo with the inclusion of eight special conditions.

After working with Commission staff to address the concerns raised by the appeal, the applicant has revised the project as follows:

- An additional two units have been incorporated into the development for a total of six units, which is the maximum density permitted by the zone. As revised, each unit will be between 1,830 sq. ft. and 2,117 sq. ft. with four or five bedrooms in each unit. The parking spaces have been increased from eight parking spaces to twelve parking spaces to accommodate the two additional units.
- The first level of the structure has been redesigned to serve as a parking garage, thus the entire first level is non-habitable. Additionally, the garage will use construction materials capable of withstanding occasional flooding.
- The retaining wall previously proposed on western edge of the property has been removed.
- Access to the site has been revised to eliminate a curb cut, increasing street parking.
- Portions of the south and west sides of the condominium building have been removed to protect and improve existing public ocean views.

Additionally, the applicant has submitted information that asserts the existing units are not providing low-cost visitor accommodations. Additionally, the City has submitted a survey that shows there currently 476-units within the City's Coastal Zone that meet the definition of low-cost overnight accommodation, thus addressing the concern regarding loss of low-cost visitor accommodations.

In addition to the proposed project revisions, and to address the concerns that the proposed development may be subject to flooding, the applicant has submitted a

detailed wave run-up analysis, including projections for future Sea Level Rise, that assures the safety of the development through the expected economic life of the structure. The Commission engineer agrees with this determination. Thus, as revised, the project will not result in significant impacts to public views, public access, will be safe to the expected life of the structure.

To ensure the development is undertaken as revised, Special Condition No.1 requires the applicant to submit Final Plans, approved by the City of Oceanside and submitted to the Executive Director for approval. To ensure the fencing and landscaping do not obstruct public views, Special Condition No. 2 limits the height of landscaping to no greater than three feet and the fencing to be at least 75% of its surface open to light. Special Conditions 3, 4, 5 address the hazards present on the site and require the applicant to assume the risks present, waive the right to future shoreline protection and require the recordation of a deed restriction respectively. Special Condition Nos. 6 & 7 protect water quality by requiring a detailed construction pollution prevention plan as well as a drainage plan to address appropriate filtration of stormwater. Special Condition No. 8 restricts construction storage, staging and activities on site to address any potential impacts to public access during construction. It is staff's understanding that the applicant is in agreement with all of the special conditions.

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

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- [Exhibit 5 – Location of Potential View Obstruction](#)
- [Exhibit 6- Development as Originally Proposed](#)
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- [Exhibit 8 – Rendering of Revised Project](#)
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- [Exhibit 12 – Side-yard Setback Encroachment](#)
- [Exhibit 13 – Existing Development Located Beyond Stringline](#)
- [Exhibit 14 – Hayes St. Parking and Signage](#)
- [Exhibit 15 – Appeal Forms](#)

## **I. APPELLANTS CONTEND**

The development, as approved by the City, raises several LCP consistency issues including that; 1) the proposed development will reduce the density of the site from 9 to 4 units, when; based on zoning, up to 6 units would be allowed; 2) the scale of the development will block existing public views, and potentially be out of character with the surrounding community; 3) the existing units provide affordable overnight accommodations that will be lost when redeveloped with the proposed six and nine bedroom condominiums; 4) the redevelopment of the site will include the loss of eight on-street public beach parking spaces (nine spaces existing, one will remain post-construction); 5) the site is located within the 100 year floodplain and will likely be subject to increased hazards in the near future, and 6) the development does not provide required energy efficiency standards.

## **II. LOCAL GOVERNMENT ACTION**

On July 22, 2019 the Planning Commission adopted Planning Commission Resolution No. 2019-P28 and Regular Coastal Development Permit No. RC18-00006. The Planning Commission action was not appealed to the City Council. The appellants have standing to appeal to the Coastal Commission as they participated in the local hearing. They were not required to appeal locally due to the fees charged by City appeals. (Cal Code of Regs., tit.14, § 13573(a)(4)).

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## **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 Coastal Act requires that the Commission shall hear an appeal unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603. (§ 30625(b)(2).) Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue:

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.

The Commission may, but need not, assign a particular weight to a factor. 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 Oceanside has a certified Local Coastal Program (LCP), and the subject site is located in an area where the Commission has 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 raises substantial issue with regard to the appellant's contentions regarding coastal resources.

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## IV. SUBSTANTIAL ISSUE MOTION AND RESOLUTION

### Motion:

I move that the Commission determine that Appeal No. A-6-OCN-19-0181 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by affirmative vote of a majority of Commissioners present.

### Resolution:

The Commission hereby finds that Appeal No. A-6-OCN-19-0181 presents 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.

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## V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATION

### A. Project Description and Background

The project as approved by the City includes the demolition of nine 1-story, one and two-bedroom, bungalow style residences on two adjacent lots and construction of a single three-level over a basement structure consisting of four condominium units. The new building includes an 8-space tandem parking garage and rooftop deck with glass railings. Units 1 and 2 would each be 3,701 sq. ft. and would each have 6 bedrooms and 7 bathrooms. Units 3 and 4 would each be 3,387 sq. ft. and have 9 bedrooms and 9 bathrooms. The project will also consolidate the two existing parcels into one legal 5,780 sq. ft. lot.

The project site is surrounded by Pacific Street to the east, an undeveloped City right-of-way, the beach and Pacific Ocean to the west, residential development to the north and the western terminus of Hayes Street to the south ([ref. Exhibit No. 2](#)). The right-of-way located on the west side of the site is a continuation of public road called "The Strand." Further to the north, The Strand is a paved two-lane road that is open to the public and provides access to a single row of homes along the east side of the Strand. However, this section of The Strand adjacent to the subject site is not developed, and

remains dirt. This dirt section of The Strand does not provide vehicular access but does provide public pedestrian access on the west side of the homes. There is an existing rock revetment that provides protection to the dirt right-of-way that also provides protection for the existing structures. The revetment is located on City land and is maintained by the City. No portion of the City's revetment is located on the subject site.

The subject properties are located within the Residential-Tourist (R-T) zoning designation and have an Urban High-Density land use designation (UHD-R). These designations allow single and multi-family residential structures serving both residential and visitor-serving uses. The nine units are currently used as vacation rentals. The applicant has indicated that the newly constructed condominium will also be operated as vacation rentals.

The two subject lots are of the last remaining lots on this section of Pacific Street to be redeveloped from the original homes. The Commission has reviewed the redevelopment of each of the nine sites to the north, with seven of the City's approvals being appealed (ref. 6-OCN-17-1403, 6-OCN-18-0143, A-6-OCN-14-0066, A-6-OCN-14-0065, A-6-OCN-13-017, A-6-OCN-13-018, A-6-OCN-12-054, A-6-OCN-12-055, A-6-OCN-12-056). In all cases, the redevelopment approved by the City was for large, multi-story structures similar to the proposed project, and the contentions raised in the previous appeals were largely similar to those in the subject appeal, including 1) community character; 2) views; and 3) public parking. However, of the seven appeals, the Commission found the contentions did not raise a substantial issue five times, and the City's approval was upheld. The two appeals that were found to raise a substantial issue were based upon a question of the legality of the lot, and the Commission ultimately approved the redevelopment.

## **B. Reduction in Density**

The City's LCP includes provisions that promote development when located near high levels of transportation facilities and reduction of vehicle miles traveled and include the following:

### **VII. New Development and Public Views**

#### **A. Coastal Act Policies.**

The Coastal Act requires mitigation of impacts on archaeological and paleontological resources, the location of new development in or near existing urban areas, improvement of transit and parking opportunities, and provision of on-site recreation facilities.

#### **C. Policies**

The City shall promote development of a high level of transportation facilities, public services and amenities in the Coastal Zone as a means for reducing energy consumption and vehicle miles travelled.

The proposed development would reduce density on site from 9 to 4 units. The site is zoned as Residential-Tourist (R-T) and has an Urban High-Density land use designation (UHD-R). Both the land use and the zoning on the property are the highest density designations permitted in the City's coastal zone. Based on this designation the maximum density of the site is 43 units per acre, or a total of six units. As approved by the City, the site would be developed with a total of four units, below the maximum density allowed by the LCP. The site is located less than one mile from the Oceanside Transit Center. This transit center is one of the largest in the county and connects to the Coaster, the Sprinter, the North County Transit District Breeze Buses and the Riverside Transit Area Commuter Link (ref. <https://www.metrolinktrains.com/rider-info/general-info/stations/oceanside/>). Thus, given its location and zoning, the subject site is located within an area that would be appropriate to maintain the maximum housing density allowed under City's LCP. Therefore the project raises a substantial issue on the grounds asserted.

### **C. Protection of Public Views/Community Character**

The City's LCP includes provisions that protect public views and require new development to maintain and enhance visual quality in the coastal zone and include the following:

#### VI. Visual Resources and Special Communities

##### B. Summary of Major Findings:

2. The City's grid street pattern allows public views of these water bodies from several vantage points. Most east-west streets in the Coastal Zone offer views of the ocean...

##### C. Objectives:

The City shall protect, enhance, and maximize public enjoyment of Coastal Zone public resources.

The City shall, through its land use and public works decisions, seek to protect, enhance, and restore visual quality of urban environment.

##### Policies:

1. In areas of significant natural aesthetic value, new development shall be subordinate to the natural environment.
3. All new development shall be designed in a manner which minimizes disruption of natural landforms and significant vegetation.
4. The city shall maintain existing view corridors through public rights-of-way.

9. In areas where a change to a more intensive use is proposed, adequate buffers or transition zones (such as increased setbacks, landscaping barriers, or decorative walls) shall be provided.

The City of Oceanside's LCP also contains design standards that further address the preservation and creation of views and states:

The visual orientation to the Pacific Ocean is a major identity factor for the City of Oceanside. Traditional view corridors should be preserved and reinforced in the placement of buildings and landscaping. Additionally, some views not presently recognized, deserve consideration in the design and location of further coastal improvements.

1. No fencing, signage, planting or structures should be placed in a way that will obstruct a view corridor. (Maintain existing view corridors through public rights-of-way).
2. Street rights-of-way carried through to the water and views along the waterfront provide a desirable sense of contact with the water

Unlike the other lots on this block that the Commission has reviewed on appeal, the proposed development includes the redevelopment of a site located directly north of Hayes Street, an east-west street that ends on the shorefront. East-west oriented streets are recognized by the LCP as areas that contain significant public ocean views and thus, views across the subject site are protected. The site is currently developed with nine single-level, smaller-sized, bungalow-style units. The appellants contend that the combination of the street end and the low height of the existing structures provides views to the ocean (ref. [Exhibit No. 5](#)).

The proposed developed will demolish the single-level bungalows and redevelop the site with a much larger, three-level over-basement structure including a roof top deck, which will obstruct a portion of the existing views.

Additionally, the appellants contend that the proposed project is not compatible in height, scale, color and form with the surrounding neighborhood. The appellants submitted a number of photographs from the surrounding area, noting that the majority of the homes inland of the proposed site are single-level smaller-scale homes (ref. [Exhibit No. 15](#)).

In conclusion, the proposed development will be larger and potentially out of scale with the surrounding community and will block existing public views, and therefore raises a substantial issue regarding conformity with the certified LCP.

## **D. Affordable Overnight Accommodations**

The appellants contend that approved development raises concerns regarding the protection of the existing affordable overnight accommodations. The City's LCP contains policy pertaining to public recreation and visitor serving facilities and states:

### II. Recreation and Visitor Serving Facilities Policies:

6. Lower cost visitor and recreational facilities shall be protected, encourages, and, where possible, provided.

7. In granting approvals for new development within the Coastal Zone, the City shall give priority to visitor serving commercial recreation facilities over private residential, general industrial or general commercial uses.

26. The City shall protect a minimum of 375 lower cost hotel and motel units and 220 recreational vehicle/camping sites within the coastal zone. Twenty percent of those hotel/motel units shall be maintained in shorefront locations. The City shall not allow any demolitions of affordable hotel/motel units which would allow the coastal zone inventory of such units to drop below the number required by this policy. In order to verify this policy, the City shall report the inventory of affordable hotel/motel units to the Coastal Commission on an annual basis.

The appellants contend that the proposed redevelopment of the site will result in the loss of affordable overnight accommodations, which are protected by the above stated LCP policies. In this case, the proposed development includes the demolition of nine 1- and 2- bedroom bungalow style units currently being used as vacation rentals. The appellants contend that these rental units should be considered low-cost as many of them rent for as little as \$75/night. Lower cost overnight accommodations on the shorefront are an increasingly rare commodity. As such, the existing development should be considered as high-priority, lower-cost overnight accommodations protected by the LCP.

As approved by the City, the existing units will be demolished, and the site will be developed with four condominium units each ranging from 6-9 bedrooms. While the applicant has indicated they intend to continue to use the newly constructed units as vacation rentals, it is highly unlikely the units will continue to be considered lower cost. Thea appellant's provided, as a comparison, a list of existing shorefront vacation units located in nearby portions of the City's shorefront that include a similar number of bedrooms rent for as high as \$2,926/night (ref. [Exhibit No. 15](#)).

Therefore, the development, as approved by the City, will result in the loss of eight low-cost overnight accommodations that are protected by the LCP and the contentions raised by the appellant do raise a substantial issue.

## **E. Loss of Public Parking/Public Access**

The appellants contend that the approved development raises concerns regarding the protection of the public access and specifically public beach parking. The City's LCP contains a policy pertaining to public access and beach parking and state:

### II. Recreational and Visitor Serving Facilities

#### C. Objectives and Policies

12. If existing beach parking is removed for any reason, one-to-one replacement parking shall be provided west of the railroad track.

In addition, because the site is located between the sea and the first coastal road, the public access and recreation policies of the Coastal Act apply and state in part:

#### Section 30210.

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

#### Section 30211

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

(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...

#### Section 30212.5

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

Additionally, the LCP includes the following parking requirements:

City of Oceanside Zoning Section 27 – Off-Street Parking

Use	Parking Spaces Required
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Apartments, Triplexes, and Condominiums

1 Bedroom	1 ½ spaces per unit
2 bedrooms or more	2 spaces per unit

Exceptions

(1) The above provisions for R-2, R-3, O-P, R-T, and R-C zones shall not be applicable to any lot legally subdivided prior to January 20, 1958, where the combination of such lots has a total area for each lot of 7,5000 square feet or less. Off-street parking requirements for such a lot or combination thereof shall be the same as required by Ordinance No. 69-39 and shall be as follows:

1- and 2-bedroom units	1 enclosed or covered space per family unit
3 bedrooms or more	1 ½ space for each unit, at least 1 of which is covered or enclosed.

The appellants content that the project is inconsistent with the public access requirements of the City's LCP and the Coastal Act, given that the redevelopment of a site will result in the loss of existing public parking spaces and the parking provided by the new development is insufficient.

The LCP requires two spaces per unit, which the development is providing; however, the redevelopment of the site will remove as many as eight on-street parking spaces located along the terminus of Hayes Street that may be providing public beach parking. As proposed, the City is requiring the end of Hayes Street be reconstructed to allow for turnaround of vehicles including fire trucks, and this reconfiguration will remove all but one of these existing spaces, therefore resulting in the loss of eight public parking spaces. The City's LCP requires that when any beach parking is removed west of the railroad track, those spaces must be replaced. However, the development does not provide replacement for any of the eight lost spaces. Given the proximity to the ocean, and the lack of public parking in coastal communities generally, the removal of eight public parking space will likely result in significant impacts to public access in this portion of the City's shorefront.

The appellants further contend that while the parking is consistent with the requirements of the LCP, given the number of bedrooms proposed, it is unlikely the parking provided will be adequate to accommodate all guests and their visitors. Specifically, the four units include between 6-9 bedrooms per unit and in total provide 30 rooms. The project is designed to be used as vacation rentals. Given the size and the number of rooms,

the units will likely be rented by multiple families in each unit, with each family driving their own vehicle. Thus, eight parking spaces may not be enough parking to accommodate the total number of occupants, and public parking will likely be usurped by the people renting the units, further impacting coastal access.

Finally, the appellants contend that the City's approval will further impact public access through the removal of one additional existing public parking space located on Pacific Street. This on-street parking space will be removed by a new curb-cut in order to gain vehicular access to the site, as currently there is no vehicle access to the units/site.

Therefore, the project, as approved by the City, will result in the loss of eight parking spaces on Hayes Street, one parking space on Pacific Street, and may not provide the parking necessary for the proposed development, all of which could result in impacts to public access inconsistent with the requirements of the City's LCP and substantial issue can be found.

## **F. Hazards**

The approved development raises concerns regarding geologic stability and natural hazards. The City's LCP contains a policy pertaining to these concerns and states:

### **III. Water and Marine Resources; Diking, Dredging, Filling, and Shoreline Structures; and Hazard Areas**

#### **C. Objective and Policies**

6. Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate impacts on local shoreline sand supply. Such structures shall be designed and constructed to minimize erosive impacts on adjacent unprotected property and minimize encroachment on to the beach. The structures shall not interfere with access along the beach. The property owner shall dedicate all area seaward of the shoreline structure for lateral access for the public.

The subject site is located along the shorefront and within the FEMA 100-year floodplain. The site is currently separated from the sandy beach by a 15-ft wide dirt public access path that is the City's right-of way and is the southern terminus of The Strand. The entire length of The Strand is protected by a City owned and maintained revetment, including the dirt portion located west of the subject site. Thus, while the site does not currently include its own shoreline protective device, it does gain protection from the City's rock revetment (ref. [Exhibit No. 2](#)).

The appellants contend that the proposed development may be located in an unsafe location when accounting for the rise in sea levels anticipated within the new structure's expected life. Coastal staff employed the sea level rise model developed by the U.S.

Geological Survey (U.S.G.S.) - Cosmos – which shows the site as relatively safe over the next 75 years. Additionally, a wave runup study was completed for the development, and the conclusions were that the site will be adequately protected by the offsite, City maintained rock revetment.

However, sections of The Strand north of the subject site are already subject to flooding during king tide and storm events. Therefore, the site is likely to be considered hazardous. Additionally, while the site is currently protected by the City’s revetment, new development should not rely upon existing protection and the City may desire to remove the existing revetment at some point in the future.

Additionally, the applicants contend that - and the wave runup analysis confirms– that a 36-inch high privacy wall (with footings) proposed and approved by the City will provide additional protection to the site. Given the location of the wall and the footings included, the appellants contend that the privacy wall should be considered new shoreline protection.

To conclude, the contentions raised by the appellant raise a substantial issue because the 36-inch high privacy wall could be considered shoreline protection and the development approved by the City may require additional protection in the future if the revetment located west of the site were removed or not maintained by the City. Therefore, the appeal raises a substantial issue regarding conformity with the certified LCP.

## **G. Additional Contentions**

The appellant’s contentions that raise a substantial issue have been summarized in the sections above. The entire appeal as submitted can be reviewed directly as [Exhibit No. 15](#). Included in the remaining contentions are concerns that the development is not consistent with the City’s Climate Action Plan and that the property should not be used for commercial purposes. However, regarding the City’s Climate Action Plan, the Plan is not a part of the City’s LCP and is therefore not part of the standard of review. Additionally, the project includes a number of energy efficient measures, including more efficient water, heating/cooling capabilities, and prohibits the use of high VOC (Volatile Organic Compounds) and toxic chemicals. Regarding the use of the lot, the certified land use and zoning designations permit the proposed condominium development, and while it is likely that the condominium will be used to provide short-term vacation rentals, the site is zoned as Residential Tourist (R-T), making vacation rentals an allowable use. Thus, these remaining contentions do not raise a substantial issue regarding conformity with the certified LCP.

## **H. Substantial Issue Factors**

As discussed above, there is inadequate factual and legal support for the City’s determination that the proposed development is consistent with the certified LCP. In this case, the City’s approval is inconsistent with LCP policies regarding protection of public access, public views, and fails to maximize density for a lot located adjacent to public transportation. The other factors that the Commission normally considers when

evaluating whether a local government's action raises a substantial issue also support a finding of substantial issue. The objections to the project suggested by the appellants raise substantial issues of regional or statewide significance regarding Sea Level Rise, and the local government's decision has the potential to establish adverse precedential value for future interpretations on the certified LCP regarding protection of public views and maximizing density in areas adjacent to public transportation.

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## **STAFF RECOMMENDATION ON THE COASTAL PERMIT**

### **VI. MOTION AND RESOLUTION ON DE NOVO**

#### **Motion:**

I move that the Commission approve Coastal Development Permit A-6-OCN-19-0181 subject to conditions set forth in the staff recommendation specified below.

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

#### **Resolution:**

The Commission hereby approves the Coastal Development Permit for the proposed project and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## VII. 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 applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

## VIII. SPECIAL CONDITIONS

1. **Revised Final Plans.**

**PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and written approval of the Executive Director, revised final plans approved by the City of Oceanside that are in substantial conformance with the plans prepared by Studio Four, dated 8/14/20 and as modified on 1/12/21 and include the following:

- (a) A total of six units with a minimum of 12 parking spaces shall be provided.
- (b) The first level of the structure shall be developed as a parking garage.
- (c) The garage shall use construction materials capable of withstanding occasional flooding.
- (d) The retaining wall located on western edge of the property shall be eliminated.
- (e) No curb cutting shall occur.
- (f) Portions of the proposed structure on the southern and western sides shall be redesigned to increase setbacks from Hayes Street and protect existing views from Hayes Street to the Ocean.

The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

**2. Final Landscape/Fencing Plans.**

**PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval final landscape plans. Said plans shall be in substantial conformance with the landscape plans prepared by prepared by The Lightfoot Planning Group, dated April 30, 2020 and shall include the following:

- (a) All proposed landscaping in the side and front yard areas shall be maintained at a height of three feet or lower (including raised planters) to preserve views from the street toward the ocean.
- (b) All landscaping shall be drought-tolerant native, non-invasive plant species that are obtained from local stock, if available. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.
- (c) Any fencing in the side yard setback areas shall permit public views and have at least 75 percent of its surface area open to light.
- (d) A written commitment by the applicant that five years from the date of the issuance of the coastal development permit for the residential structure, the applicant will submit, for the review and written approval of the Executive Director, a landscape monitoring report prepared by a licensed Landscape Architect or qualified Resource Specialist that certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.
- (e) If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

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

3. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding, sea level rise, erosion and wave uprush; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
  
4. **No Future Shoreline Protection**
  - (a) **By acceptance of this Permit**, the permittee agrees, on behalf of itself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-6-OCN-19-018, including in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, bluff retreat, landslides, or other coastal hazards in the future, and as may be exacerbated by sea level rise. By acceptance of this Permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under applicable law.
  
  - (b) **By acceptance of this Permit**, the permittee further agrees, on behalf of itself and all successors and assigns, that the permittee shall remove the development authorized by this Permit if the City or any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to natural hazards and that there are no measures that could make the structures suitable for use without the use of bluff protective devices. The permittee shall obtain a coastal development permit for removal of approved development unless the Executive Director provides a written determination that no coastal development permit is legally required. In the event that portions of the development fall to the public beach before they are removed, the permittee shall remove all recoverable debris associated with the development from the public beach and lawfully dispose of the material in an approved disposal site.

**5. Deed Restriction.**

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

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

**PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit for the review and approval of the Executive Director, two (2) sets of a CPPP prepared and signed by a licensed engineer that, at a minimum, includes the following:

- (a) Best Management Practices (BMPs) designed to prevent spillage and runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the on-set of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of project. Such measure shall include:
  - i. No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion;
  - ii. Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;
  - iii. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters or storm drains;
  - iv. Erosion control/sedimentation BMPs shall be used to control dust and sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and

- v. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- vi. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- vii. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a Coastal Development Permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
- viii. All construction materials stockpiled on site shall be covered and enclosed on all sides to ensure that the materials are not discharged to a storm drain inlet or receiving waters;
- ix. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. If thinners, petroleum products or solvents must be used on site, they shall be properly recycled or disposed after use and not be discharged into storm drains, sewers, receiving waters or onto the unpaved ground.
- x. The discharge of any hazardous materials into any receiving waters shall be prohibited;
- xi. Spill discharge and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction material. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The designated area shall be equipped with spill control materials and located to minimize the risk of spills reaching receiving waters, storm drains, sewers or unpaved ground;
- xii. BMPs and Good Housekeeping Practices (GHPs) designed to prevent spillage and runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
- xiii. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

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

## 7. Post Development Runoff Plan (PDRP)

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit for the review and written approval of the Executive Director a Post Development Runoff Plan (PDRP) that includes a map, drawn to scale, showing the property boundaries, building, footprint, runoff flow directions, relevant

drainage and water quality features, impervious surfaces, permeable pavements, and landscaped areas.

(a) The PDRP shall demonstrate that the project:

- i. Minimizes disturbance of coastal waters and natural drainage features; minimizes removal of native vegetation; and avoids, to the extent feasible, covering or compaction of highly permeable soils;
- ii. Preferentially uses Low Impact Development (LID) techniques to retain and disperse runoff on site;
- iii. Uses infiltration to the greatest extent feasible to retain runoff; minimize the addition of impervious surfaces; disconnect impervious surfaces from the storm drain system by interposing strategically-located pervious areas. Where infiltration is not appropriate or feasible, uses alternative BMPs to minimize changes in the runoff flow regime, such as direct roof runoff into rain barrels or cisterns for later use, evaporate roof runoff, employ a green roof, construct a rain garden, or plant trees;
- iv. Unless specifically prohibited by conditions as documented in a detailed site analysis certified by a licensed engineer, runoff from the development, up to and including the 85th percentile, 24-hour runoff event, shall be infiltrated on-site;
- v. Minimizes pollutants associated with landscaping and building materials;
- vi. Directs drainage from all parking areas and driveways, roofs, walkways, patios, and other impervious surfaces to, in order of priority, a) landscaped areas or open spaces capable of infiltration, b) earthen-based infiltration BMPs, c) flow-through bio-filtration BMPs designed to treat, at a minimum, twice the 85th percentile one-hour storm event volume, accompanied by supporting calculations, d) proprietary filtration systems designed to treat, at a minimum, twice the 85th percentile one-hour storm event volume, accompanied by supporting calculations and product documentation;
- vii. Conveys excess runoff off-site in a non-erosive manner;
- viii. Where flow-through BMPs are used, includes supporting calculations and product documentation; and
- ix. Includes all maintenance and operating procedures that will be conducted to keep the water quality provisions effective for the life of the development.

The permittee shall undertake development in conformance with the approved PDRP. No changes to the plan shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

#### **8. Construction Schedule/Staging Areas/Access Corridors.**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, detailed plans identifying the location of access corridors to the construction site and

staging areas, and a final construction schedule. Said plans shall include the following criteria specified via written notes on the plan:

- (a) Use of sandy beach and public parking areas outside the actual construction site, including on-street parking, for the interim storage of materials and equipment is prohibited;
- (b) No work shall occur on the beach during the summer peak months (start of Memorial Day weekend to Labor Day) of any year;
- (c) Equipment used on the beach shall be removed from the beach at the end of each workday; and
- (d) Access corridors shall be located in a manner that has the least impact on public access and existing public parking areas. Use of public parking areas for staging/storage areas is prohibited.

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

## **IX. FINDINGS AND DECLARATIONS**

### **A. Project Description and Background**

The detailed project description and history is described above under the substantial issue findings of this report and incorporated herein by reference.

Since the time of the appeal, and in an effort to resolve concerns regarding the reduction in density, sea level rise, the protection of existing public ocean views and public parking, the applicant has made a number of substantial revisions to the project.

To address the concerns regarding the reduction in density, the applicant has revised the project to add two additional units, for a total of six units, which is the maximum density permitted by the zone. As revised, each unit will be between 1,830 sq. ft. and 2,117 sq. ft. and include four or five bedrooms in each unit. The parking spaces have been increased from eight parking spaces to twelve parking spaces to meet the LCP requirements of two parking spaces per unit.

To address the concerns regarding sea level rise, the applicant has redesigned the project to make the first level of the structure a parking garage; thus the entire first level will be non-habitable. Additionally, the garage will use construction materials capable of withstanding occasional flooding. The applicant has also removed the retaining wall

located on western edge of the property to eliminate any structures that could be considered new shoreline protection.

To address concerns regarding public access/beach parking, the applicant has revised the project to eliminate any curb cuts, and therefore no existing on-street parking on Pacific Street will be removed.

To address the concerns regarding the project of public views, as discussed in greater detail below under section C. Protection of Public Views/Community Character, the project has been redesigned to remove portions of the proposed structure on the southern and western sides to protect and improve all existing public ocean views.

The standard of review is the certified City of Oceanside Local Coastal Program and the public access and recreation policies of Chapter 3 of the Coastal Act.

## **B. Reduction in Density**

The LCP policies pertaining to density and locating development in proximity to public transit are included above under the substantial issue findings of this report are incorporated herein by reference. In addition, the Following policy language is applicable:

### Article 3006 Accessory Dwelling Units

#### B. Where Permitted

[..]

3. Only one SDU may be created per legal lot. An ADU shall not be permitted on lots developed with duplexes or multifamily housing...

#### E. Conditions

[...]

3. Neither the ADU nor the primary dwelling unit shall be rented for less than 31 days.

The development approved by the City included the demolition of nine existing units and the subsequent construction of a four-unit condominium complex. Thus, the project would have resulted in the loss of five residential units, currently being used as vacation rentals. The City's LCP includes provisions that promote the location of new development in or near existing urban areas and improvement of transit and parking opportunities. In this case, the project site is located in close proximity to public transit and thus, is an appropriate location to maximize the permitted density on the site. To address this, the applicant has revised the project to add two more units, for a total of six units, the maximum permitted under the LCP.

Because there are currently nine units on the site, the proposed project would still result in the loss of three units, which, were the site to remain in its current state as a legal non-conforming development, could continue to serve to either to support the City's housing stock, or its supply of overnight accommodations. Although six units is the maximum allowed by the LCP, Commission staff asked the applicant to look at alternatives for redevelopment of the site that would potentially accommodate nine units. However, the site is small (approximately 6,000 sq. ft. total) and allowing the replacement of the nine existing units would be hard to accommodate given LCP setback, height, and parking requirements. In addition, the units have been designed to be used as vacation rentals. Gaining additional units through the construction of ADUs is also not possible because the City prohibits ADUs and the primary dwelling units from being rented for less than 31 days. Vacation rentals are a high-priority use as overnight accommodations. The LCP further prohibits ADUs on duplex and/or multifamily housing. Therefore, given that the development is multifamily and will be used as vacation rentals, adding units as ADUs is not feasible. Finally, the no project alternative is not feasible because the buildings were constructed in 1931 and have finished their economic life. The existing development does not have adequate parking, water quality control measures, green buildings standards or modern utilities. The project site is designated Urban High Density Residential and zoned Residential Tourist (R-T), which are the highest-density designation permitted in the Coastal Zone, thus, no additional density would be feasible through revisions to the underlying Land Use or Zoning. Therefore, the project has been revised to maximize the density permitted on the site, consistent with the LCP, and the project will not have a significant adverse impact on development patterns and density in Oceanside.

The applicant has provided updated plans showing the revisions necessary in order to provide the additional units, without increasing the size of the structure. As revised, the condominium units are smaller, and the number of bedrooms has been reduced from 6-9 to 4-5. Additionally, the onsite parking has been increased from eight spaces to twelve to accommodate the additional units. To ensure that the project is constructed as revised, Special Condition No. 1 requires the applicant submit Final Plans that include the revisions, accepted by the City of Oceanside and subject to the review and approval of the Executive Director.

To conclude, as revised by the applicant, and conditioned herein, the project can be found as consistent with all applicable policies of the City's LCP and can be approved.

### **C. Protection of Public Views/Community Character**

The LCP policies pertaining to the protection of public views are included above under the substantial issue findings of this report are incorporated herein by reference.

The proposed development will replace nine single-story beach bungalows with a three-level over partially below-grade parking area on an shorefront site located directly north of the western terminus of Hayes Street (ref. Exhibit [No. 2](#)). As a much larger structure,

the proposed project has the potential to significantly impact both existing public views of the ocean and community character.

As discussed in the SI portion of the report, there are currently views of the ocean from Hayes Street over the existing cottages on the southern portion of the site ([Exhibit No. 4](#)). The LCP identifies most east-west streets in the Coastal Zone as providing views of the ocean. Therefore, development located immediately adjacent to these view corridors must be designed to protect and enhance the existing views. As shown on Exhibit Nos. 12 & 13, the new condominium building will be located further north and east than the existing bungalows, which will actually open up new ocean views from Hayes Street (ref. [Exhibit Nos. 12, 13](#)). However, as originally proposed, a portion of the building and the west-facing balconies on the new structure would have also eliminated a portion of the existing ocean views over the bungalows (ref [Exhibit Nos. 5, 6, 7, 9](#)).

Since the time of the original appeal, the applicant has worked with Commission staff to revise the project to eliminate significant impacts to existing ocean views. On the street level the building will be stepped back an additional four feet to six feet along the south side of the proposed structure (ref. [Exhibit No. 11](#)). The first habitable floor (2<sup>nd</sup> story) has been revised to remove 44 sq. ft. of the building area and 213 sq. ft. of decking. The third level was redesigned to remove a total of 205 sq. ft. of combined deck and building area. The fourth level includes the same reductions as the third level. The reductions are located on the southern and western sides of the development, where the new building would have blocked views to the ocean that currently exist over the existing bungalows. Collectively, the design revisions result in the reduction of approximately 700 sq. ft. of deck/building area. As a result, the proposed project will result in more expansive views of the ocean from Hayes Street (ref. [Exhibit No. 9](#)).

Additionally, the siting of existing bungalows are not in conformance with LCP requirements as the seaward-most structures are located ten feet seaward of the rear-yard stringline setback. The “stringline” in this case is a line on a map generally following the line of development on the beach-fronting homes along the City’s coast. The certified “Stringline Setback Map” was developed in 1983 by overlaying an imaginary stringline on an aerial photo of the shoreline in the City of Oceanside. The stringline map was based on existing building patterns, as well as anticipated future developments and remodels/expansions. This “stringline” was certified by the Commission in 1986 as part of the City’s Local Coastal Program. These maps are kept on file in the City’s Planning Division and are used to determine the westernmost boundary for any proposed development along the shoreline. The goal of limiting new development to extend no further seaward than the stringline is to restrict encroachment onto the shoreline and preserve private and public views along the shoreline.

There is also an existing at-grade deck, over an impervious concrete patio, that extends an additional 10.5 feet beyond the bungalows. As revised, all development beyond the stringline will be removed and the new structure will be located entirely inland of the stringline. Therefore, the redevelopment of the site will bring the line of development landward for a combined 20.5 feet of deck, patio, and building structure. The increased western setback will open views obstructed by the existing development.

Additionally, the existing development is located beyond what is permitted by the LCP for side-yard setbacks. As redeveloped, the new structure will be located approximately 5-feet north of existing development, which serves to further improve views to the ocean from Hayes Street (ref. [Exhibit No. 13](#)).

Regarding the concerns raised by the scale of development, there is no question that the proposed structure, even as revised, will be much larger than the existing bungalows. However, while the shoreline of Oceanside was once dominated by smaller beach bungalow style development, redevelopment in the last few decades has changed the community character to larger, boxier style homes. Since 2012, the question of scale of development and community character has been previously reviewed by the Commission nine other times for properties located immediately north of the subject site (ref. 6-OCN-17-1403, 6-OCN-18-0143, A-6-OCN-14-0066, A-6-OCN-14-0065, A-6-OCN-13-017, A-6-OCN-13-018, A-6-OCN-12-054, A-6-OCN-12-055, A-6-OCN-12-056). Each of these locations was also re-developed with three-level structures of similar height and scale to the subject project. In those cases, the Commission found that the proposed development was not out of character with the surrounding community because while large in size, those developments represent the current trend in redevelopment of residential structures, often used as vacation rentals, located in the Residential-Tourist zone and within the coastal zone.

Commission staff has visited the subject site and the surrounding blocks on numerous occasions in order to assess the current character of the community. Both four-level, as well as 35-foot tall, structures are common in this area, including all of the nine structures located immediately north of the subject site (ref. Exhibit [No. 10](#)). South of the subject site, immediately south of Hayes Street is also constructed with a three-level over basement structure. However, this structure is approximately six-feet taller and is generally larger in scale. (ref. Exhibit [No. 10](#)). Thus, while the proposed project will be significantly larger than the existing structures, the proposed development is not out of scale or community character and can be found as consistent with the LCP as proposed.

The City's LCP also requires that in areas where a change to a more intensive use is proposed, adequate buffers or transition zones (such as increased setbacks, landscaping barriers, or decorative walls) shall be provided. In this case, the subject site, while decreasing the density, will increase the height of the site from single-story bungalows, to a four-level, box-style condominium structure. Additionally, the building will be located directly north of the western terminus of Hayes and is therefore located immediately north of undeveloped land that provides wide open views. As originally proposed, the development provided no transition areas or setbacks greater than the minimum required. However, as revised, the development will be further set back on the south side of the structure for a portion of each level, therefore increasing the setback between the subject site and the street-end and will therefore provide adequate transition between the site and the otherwise undeveloped street-end. As revised, the proposed development can be found consistent with the City's LCP.

To ensure the development is undertaken as revised by the applicant, and all existing public views protected, Special Condition No. 1 requires the applicant to submit Final Plans that have been approved by the City of Oceanside and that are subject to the review and approval of the Executive Director. Additionally, Special Condition No. 2 - Final Landscape and Fencing Plan - requires all proposed landscaping in the side and front yard areas be maintained at a height of three feet or lower (including raised planters) and that any fencing in the side yard setback areas shall have at least 75 percent of its surface area open to light for the life of the proposed development. In this way, public views from the street toward the ocean will remain open along the side yards as viewed from South Pacific and Hayes Streets. Only as revised by the applicant and conditioned herein can the project be found to appropriately protect existing public views, and therefore be consistent with the City's LCP.

#### **D. Affordable Overnight Accommodations**

The LCP policies pertaining to affordable overnight accommodations are included above under the substantial issue findings of this report are incorporated herein by reference.

The proposed development consists of the demolition of nine 1- 2-bedroom bungalows that are currently being used as vacation rentals. The proposed six new units will be substantially larger and likely less affordable. The applicant provided data regarding the pricing for the existing units. Based on the information provided by the applicant, the cost of the existing units, (including fees) ranges from \$192/night for the one-bedroom units of weeknights during the off-season to \$942/night for the larger units during peak times, with an average cost of about \$300/night.

In 2009, the Commission certified, through the approval of LCP Amendment No. 2-08/Downtown "D" District, a formula to define of low-cost accommodations in the City of Oceanside. This formula was also used in the above-described survey and determined that low-cost threshold for Oceanside is rooms with average daily rates less than \$149.33. Therefore, while in certain limited scenarios, the existing units may be considered as **moderately** priced, the existing units do not currently provide low-cost overnight accommodations.

Furthermore, the City's LCP requires the protection of no less than 375 low-cost hotel/motel units within the Coastal Zone. While the policy specifically requires protection of hotel/motel units, not vacation rentals, vacation rentals can provide an alternative form of lower-cost overnight accommodations that could help meet the goals of this policy, should affordable hotel/motel units be lost over time and not replaced. Thus, when reviewing the redevelopment of a site current providing lower-cost overnight accommodations, it is important to assess the City's other forms of lower cost accommodations. Therefore, if there are less than 375 affordable hotel/motel units, the nine vacation rentals could be providing the accommodations necessary to meet the requirements of this LCP policy.

At the time the appeal was filed, the City had not updated its inventory of hotel/motel units since 2008. However, recently, the City has provided to the Commission an updated survey of the available hotel/motel units within the City's Coastal Zone. The report, titled "Coastal/Non-Coastal Hotel-Motel Survey" and dated August 14, 2020, concluded that there are currently 476 low-cost hotel/motel units available within the City's Coastal Zone. The Commission has reviewed the survey and agrees that the City's current stock of hotel/motel units meets the requirements of the LCP, and the conversion of the vacation rentals on the site to higher-cost will not significantly impact the supply of lower-cost accommodations in the City.

Therefore, given that the existing units do not provide low-cost accommodations, and a recent survey determined that there are adequate low-cost accommodations already provided in the Coastal Zone, the proposed development can be found consistent with the requirements of the LCP.

## **E. Public Access**

The LCP and Coastal Act policies pertaining to public access are included above under the substantial issue findings of this report are incorporated herein by reference.

The project is located on a shorefront lot west of Pacific Street and north of the western terminus of Hayes Street. The lot itself is developed and there is no public access across the site. However, as previously discussed, lateral access is currently available to the public along the dirt portion of The Strand, directly west of the subject site (ref. [Exhibit No. 2](#)). Vertical access to the public beach is provided immediately south of the site at the terminus of Hayes Street. Thus, surrounding development provides adequate lateral and vertical access and no new access is necessary at this time.

However, concerns remain regarding potential impacts to public parking. These include the loss of eight parking spaces on Hayes Street, the loss of one public parking space on Pacific Street, and concerns that the parking provided by the development will not be adequate given the number of rooms proposed in each unit.

Regarding the loss of parking on Hayes Street, as approved by the City, the applicant is required to reconstruct the end of Hayes Street to include a cul-de-sac that will provide for turnaround of vehicle and adequate access for fire trucks. Currently the end of Hayes Street is a straight street-end with a vegetated median, includes no sidewalks on the north side, and is improved with nine informal parking spaces (ref. [Exhibit No. 14](#)). The reconstruction of Hayes Street will result in the removal all but one of these existing spaces, for a total loss of eight parking spaces.

The City's LCP requires that any beach parking removed west of the railroad track must be replaced. However, Commission staff consulted with the City, which confirmed that the nine existing spaces on Hayes Street are illegal spaces and are in fact located partially on the subject site and partially within the City's right-of-way. Additionally, there has long been signage on the site that indicates the parking spaces are private and all other users will be towed (ref. [Exhibit No. 14](#)). As previously discussed, the site

presently does not contain any garage or off-street parking for the guests of the nine units. Given the lack of parking and the signage present, the nine parking spaces are and historically likely have been used almost exclusively by guests of the vacation rentals. As noted, the proposed project will provide a 12-space parking garage, as required by the LCP. Therefore, the project not only will provide adequate parking, it will improve the current situation by supplanting illegal on-street parking with off-street parking.

Additionally, access will be improved by the reconstruction of the Hayes Street street-end, in that it will be reconstructed with sidewalks and one new legal parking space that will be open and available for public use.

Regarding the loss of the single public parking space on Pacific Street, as originally proposed, one on-street parking space would be lost through the construction of a new curb-cut to gain access to the site. However, as redesigned by the applicant, the access was relocated to Hayes Street and the curb-cut on Pacific Street was eliminated.

Appellants also raised concerns that the number of parking spaces required by the City (8 spaces) would not be adequate given the number of rooms included in the development (30 rooms), and as a result, the private use would displace public parking by beach visitors. This concern has been previously raised in 2014 by two other appeals for this block (ref. A-6-OCN-14-0066, A-6-OCN-14-0067). The Commission has acknowledged that the availability of public parking in this area of the City is a major concern for the Commission, as parking can be highly impacted during the peak beach periods in the summer months; in addition, vacation rentals that include a large number of bedrooms may increase demand for parking beyond that anticipated in the LCP. However, there are a variety of public parking opportunities within this portion of the City. These include a small public pay lot located approximately ½ block north of the subject site, a long narrow pay lot adjacent to the railroad tracks located approximately ½ block north of the subject site at the corner of Meyers Avenue and Wisconsin Avenue, and numerous other free and pay parking lots located between ¼ and ½ mile north of the subject site near the Oceanside Pier and the Oceanside Transit Center, reachable by transit. Thus, adequate public parking opportunities are currently being provided in the City's Coastal Zone, and the proposed project is not expected to significantly adversely impact the public's ability to reach the shoreline.

Additionally, since the time of the appeal, the applicant has revised the project to include two additional units. While increasing the density of the site, this is likely to actually slightly reduce parking demand compared to the project approved by the City, because the overall number of rooms will be reduced from 30 to 27 and the off-street parking spaces will increase from 8 to 12.

Therefore, as revised, redevelopment of the site will provide 12 new off-street spaces, will no longer eliminate the single space on Pacific Street, and will construct a new public parking space on Hayes Street. To ensure the development is undertaken as currently revised, Special Condition No. 1 requires the applicant submit final plans, approved by the City subject to review and approval by the Executive Director.

One additional concern remains, in that it is possible the construction activities associated with the proposed development, including staging, construction crew parking, hauling of materials, etc., especially during peak summer months, could result in impacts to public access. To address this concern, Special Condition No. 8 requires that construction access and staging not affect public access and prohibits construction on the sandy beach on weekends and holidays during the summer months between Memorial Day to Labor Day of any year.

Therefore, impacts to the public will be minimized to the greatest extent feasible. Thus, as conditioned, the Commission finds the project consistent with the public access and recreation policies of the Coastal Act.

## **F. Hazards**

The LCP policies pertaining to hazards are included above under the substantial issue findings of this report are incorporated herein by reference.

The project site is located on an shorefront lot, and is therefore vulnerable to erosion, flooding, wave runoff, and storm hazards. These risks are exacerbated by sea level rise that is expected to occur over the coming decades. In this geographic area, the main concerns raised by beach fronting developments are impacts to public access and recreation, and whether hazardous conditions might eventually lead to a request to build a shoreline protective device to protect the proposed development.

The LCP discourages shoreline protection devices because they cause adverse impacts to coastal resources and constrain the ability of the shoreline to respond to dynamic coastal processes. As a sandy beach erodes, the shoreline will generally migrate landward toward the structure, resulting in a reduction and/or loss of public beach area with no increase of the landward extent of the beach. Shoreline protective devices also result in a progressive loss of sand because shore material is not available to nourish the nearshore sand bar. The lack of an effective sand bar can allow such high wave energy on the shoreline that materials may be lost offshore, where it is no longer available to nourish the beach. This also affects public access through a loss of beach area.

Shoreline protection devices such as revetments, seawalls, and bulkheads cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. Such protective structures are often placed on public land rather than on the private property it is intended to protect, resulting in a physical loss of beach area formerly available to the general public. In general, shoreline protection devices are not attractive, can detract from a natural beach experience, and adversely impact public views. Shoreline protective devices, by their very nature, conflict with various LCP and Coastal Act policies because shoreline structures have these various adverse impacts on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach.

As proposed, nine single-level bungalows will be demolished and reconstructed with a four-level, 6-unit condominium complex. The first level of the structure will include a partially below-grade garage that is open and has been designed to include material capable of withstanding occasionally flooding.

Although not located on the subject property, the site is protected by an existing pre-Coastal rock revetment on City property. The revetment provides protection for a portion of The Strand, located between the subject site and the ocean, which in this location consists of a dirt path only open for public pedestrian use.

The geotechnical report completed for the project made the following conclusions:

- The existing public shore protection, and public pathway fronting the site may, in the future on occasion, may be subject to wave overtopping during extreme storms and water levels.
- During extreme wave events coinciding with an extreme high tide and future SLR, wave runup may flow across the public pathway. The water depth will be less than one foot. By the time any wave runup reaches the proposed building, the height of the water and the velocity may be reduced such that the impact will be minimal.
- The finished first floor elevation is above the FEMA 100-year still water elevation.
- Coastal hazards, which include shoreline erosion, wave and wave runup attack, and flooding, will not significantly impact this property over the life of the proposed remodel development.
- There is over a 28-foot linear distance between the revetment and the new structure. For every 25 feet that wave overtopping travels, the height of the runup bore is reduced by one foot. While unlikely to happen, by the time any wave runup reaches the building, the height of the water and the velocity will be reduced such that the impact will be minimized.
- There are no additional recommendations necessary for wave runup protection and it is likely that no additional shore protection will be needed in the future over the life of the structure.

Coastal staff employed the sea level rise model developed by the U.S. Geological Survey (U.S.G.S.) - Cosmos – which shows, including projected sea level rise, that the site will be relatively safe over the next 75 years. However, as detailed above, the wave runup study completed for the development concluded that the site will be safe only because it will be adequately protected by the offsite, City maintained rock revetment. The Commission's engineer has reviewed the material submitted by the applicant and concurs that the site will be safe due to the existing revetment.

The City's LCP contains conflicting policies regarding the construction of new development that relies on shoreline protective devices. As cited above, the City's Land Use Plan allows protection for existing development only. However, section 19.B.19 of the certified City of Oceanside Seawall Ordinance requires:

Shoreline structures as defined in Article II shall be allowed when required to serve coastal dependent uses or **to protect proposed or existing structures** in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply and other coastal resources; and where the construction is in conformance with the City's Local Coastal Plan. [emphasis added]

In the past, the Commission has approved new development in Oceanside that relied on existing shoreline protection as long as the protection adequately addressed the impacts associated with public access and recreation and was designed to eliminate or mitigate for impacts to local sand supply (ref. CDP No. A-6-OCN-06-44/Margulis, A-6-OCN-06-13/Ratkowski). With sea level rise adding to the risk to structures and public beach area, future development that relies on existing shoreline protection, or allowing new development that requires new/additional shoreline protection may not be able to be adequately mitigated and supported under the LCP. However, in the case of the subject project, the existing revetment protecting the site is on public property and is necessary to protect public property, specifically a public accessway. No work to the revetment is necessary, nor is any proposed at this time. Thus, there will be no impacts to public access, recreation or sand supply associated with the proposal. Additionally, if; in the future, maintenance work is proposed for the revetment by the City, public access and recreation impacts will be reviewed and mitigated if needed at that time.

However, while the site is currently protected by the City's revetment, sections of The Strand north of the subject site are already subject to flooding during king tide and storm events. Therefore, the site is still considered hazardous.

To address these concerns the applicant has revised the project to include only parking on the first level and the garage will be generally open and constructed with material that can be subject to occasional flooding. The applicant has removed the 36-inch tall privacy wall from the proposed development. As previously proposed, the wall was to be located on the western side of the site and would include below-grade footings. Therefore, while the wall was proposed as a "privacy" wall, given the design and location of the wall, it would have also functioned as a type of shoreline protection device.

As described above, approximately 10 feet of the existing structures and 10.5 feet of deck are located seaward of the stringline. Redevelopment of the site will result in the new structure being pulled back from the shoreline and located consistent with the stringline setback requirements. As a result, all new structures will be located a minimum of 20 feet inland of the existing development (ref. [Exhibit No. 13](#)). Thus, the relocation of the structure inland will help reduce the risk associated with future sea level rise.

While there is no indication at this time that the City will abandon the public accessway, it is possible that the City could remove the existing revetment at some point in the future. Therefore, Special Condition No. 4 requires the applicant to acknowledge that the project, as new development, is not entitled to shoreline protection and it must waive any possible right to construct a shoreline protective device for the property in the

future. Special Condition No.4 also requires relocation and/or removal of structures that may be threatened in the future.

Although protected by the City revetment, there is still a possibility of damage on the site from wave uprush, storm surge and high tides, particularly in the future as sea level continues to rise. Therefore, Special Condition No. 3 requires the applicant to acknowledge that the site is subject to hazards based on its location on the coast and that the applicant assumes the risk of developing the property. Special Condition No. 5 requires the applicants to record the permit conditions in order to cause the title to the property to reflect the obligations of the subject permit conditions. Therefore, as conditioned, the proposed project can be found consistent with the hazard policies of the LCP.

## **G. Water Quality**

The certified Oceanside LCP contains a policy that addresses water quality. City of Oceanside LUP - Water and Marine Resources; Diking, Dredging, Filling, and Shoreline Structures and Hazard Areas - Policy 2 states:

As part of its environmental review process, the City shall establish measures on a project-by-project basis to minimize the introduction of dissolved grease, oil, paints, pesticides, construction, waste, and other pollutants into the urban runoff.

The proposed project will result in an increase in impervious surfaces. Consistent with the LCP, new development must use best management practices to ensure that water quality will not be adversely affected by new development. In this case, the Commission finds that to conform to the above LUP policy, runoff leaving the site must be filtered through vegetation or another best management practice before it enters the beach portion of the site. Directing on-site runoff through landscaping for filtration is a well-established best management practice for treating runoff from small developments such as the subject project. Special Condition No. 7 requires a final drainage plan that indicates that runoff from impervious surfaces will be collected and directed towards on-site vegetation before being discharged off-site in a non-erosive manner. In addition, without the use of appropriate BMPs during the construction phase of the proposed development, there is the potential for construction debris and activities to result in short-term water quality impacts. To prevent any potential impacts to water quality during construction, Special Condition No. 6 requires the applicant to submit and implement an erosion control and construction BMPs plan. Therefore, the Commission finds that, as conditioned, the project minimizes adverse impacts to coastal resources in a manner consistent with the water quality policy of the certified LCP.

## **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 City's certified LCP contains a number of applicable land use and implementation policies, which have been discussed in this report. The project site is designated Urban High Density Residential and zoned Residential Tourist (R-T). The proposed project is consistent with these designations. Additionally, the conditions of approval placed by the City as well as those conditioned herein ensure that the development is consistent with all applicable provisions of the certified LCP as well as with the public access policies of Chapter 3 of the Coastal Act. The permittee will remain responsible for satisfying all terms and conditions of this coastal development permit in addition to any other requirements imposed by City of Oceanside permit conditions.

## **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 Oceanside found the project to be exempt as a Class 3 Categorical Exemption for "New Construction or Conversion of Small Structures." (Cal. Code of Regs., tit. 14, § 15303(b).)

The proposed project has been conditioned to be found consistent with policies of the Oceanside LCP and the public access policies of the Coastal Act. Mitigation measures will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and is consistent with the requirements of CEQA.

**APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

- Certified City of Oceanside Local Coastal Program
- Appeal Forms
- City Staff report for project dated July 22, 2019
- Notice of Final Action Nos. 6-OCN-17-1403, 6-OCN-18-0143
- Coastal Commission Appeal item Nos. A-6-OCN-12-054, A-6-OCN-12-055, A-6-OCN-13-017, A-6-OCN-13-018, A-6-OCN-14-0065, A-6-OCN-14-0066, A-6-OCN-14-0067, A-6-OCN-15-0043, A-6-OCN-15-0044, A-6-OCN-18-0002, A-6-OCN-18-0003
- Hotel/Motel survey titled, “Lower Cost/Affordable Accommodations Survey” and dated August 14, 2020
- Oceanside LCP Amendment No. 2-08/Downtown “D” District