

CALIFORNIA COASTAL COMMISSION

SAN DIEGO DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
VOICE (619) 767-2370
FAX (619) 767-2384



F10a

A-6-NOC-22-0008 (Oliver)

April 8, 2022

CORRESPONDENCE



ATTORNEYS AT LAW

777 South Figueroa Street
34th Floor
Los Angeles, CA 90017
T 213.612.7800
F 213.612.7801

Steven H. Kaufmann
D 213.612.7875
Mobile 310.344.7888
skaufmann@nossaman.com

VIA ELECTRONIC MAIL

April 1, 2022

Donne Brownsey, Chair
Honorable Coastal Commissioners
California Coastal Commission
455 Market Street
San Francisco, CA 94105

F10a

Re: A-6-NOC-22-0008 (Carmel Valley Centre Drive, LLC/Hunter Oliver)
Agenda item F10a – Friday, April 8, 2022

**APPLICANT’S REQUEST: FIND THE COMMISSION LACKS APPEAL
JURISDICTION**

Dear Chair Brownsey and Commissioners:

This firm represents the Applicant, Carmel Valley Centre Drive, LLC, in connection with the two Commissioner appeals filed concerning the City of San Diego’s approval of the Costa Azul Mixed Use project. The project involves a hotel, restaurant, office building, and pedestrian/bike public access path at the end of Valley Centre Drive, inland of the I-5 Freeway, 2.5 miles from the coast. It was approved on a 10-0 vote by the Carmel Valley Community Planning Board, a 7-0 vote by the City Planning Commission, and an 8-0 vote by the San Diego City Council.

Summary

For multiple reasons discussed below, we underscore that the Commission lacks appeal jurisdiction, as a matter of law, over the project:

- Despite certification of the City’s LCP 34 years ago, the Commission has never adopted Post-LCP Certification Permit and Appeal Maps for the City of San Diego. The City has its own appeal maps, which Staff previously has explained in other permit matters and concedes again here, are “drafts” and contain errors, which is true of the City map which initially gave rise to the appeals here. The project site indisputably lacks any of the grounds under Coastal Act section 30603 that would qualify for appeal.

A copy of this letter has been provided to Staff in the San Diego Coast District Of
60410844.v1

EXHIBIT NO. 7
APPLICATION NO.
A-6-NOC-22-0008
Applicant’s Response
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California Coastal Commission

- In response to the Applicant's question why this project is appealable, Staff initially and erroneously responded that appeal jurisdiction was based on proximity to Los Penasquitos Lagoon and Creek. Those features are 2200-2500 feet from the property and separated from the project site by the 10-lane I-5 Freeway, multi-lane roads, and existing development.
- The project site also is not within 100 feet of a wetland, estuary, or stream. The unstated feature that Staff now appears to rely on is a man-made retention basin located off-site at the bottom of a slope over which a fully paved road, El Camino Real, previously existed. The retention basin is approximately 218 feet from the closest building approved by the City. Moreover, in 1985, the Commission itself approved and required that retention basin in approving a similarly situated development in the same subdivision, with conditions mandating that the basin be cleared and repaired annually, as necessary to retain its original design and function. The same Commission decision also explained that there are no naturally occurring streams on site. And, finally, the City's Land Development Code and Biology Guidelines provide that wetlands artificially created in historically non-wetland areas, including retention basins, do not constitute wetlands. Two expert biological reports provided as exhibits confirm this to be the case here.

While the absence of appeal jurisdiction ends consideration of the appeals filed, we also demonstrate below that, in any event, the appeal grounds stated have no merit and do not raise a substantial issue. Simply put:

- An office use is a permitted use under the City's applicable land use plans, the Carmel Valley Community Plan and the Employment Center Precise Plan, which specifically permits an office use, such as the two existing office buildings in the same subdivision in this location.
- The City has no affordable overnight accommodations policy, but, regardless, the hotel is a select-service, budget-friendly in-suite hotel projected at an ADR of \$160/night but with larger rooms designed to accommodate families with up to 6 persons, kitchens to reduce the cost of a stay, free breakfast and beer/wine/appetizers, and no resort fee or internet connection fee – as a result, a low-cost hotel.

I. The Costa Azul Mixed Use Project

The project site is located 2.5 miles from the coast, east (inland) of the I-5 Freeway and north (upcoast) of State Route 56, on fully graded flat pads above Carmel Valley Road. The property is designated by the Carmel Valley (North City West) Community Plan and the North City West Employment Center Precise Plan for motel/hotel, restaurant, office uses, and related services to the adjacent industrial/office park in the Carmel Valley Employment Center.

The City approved the resubdivision of 9.89 acres into two parcels – a 3.2 acre parcel (Parcel 1), authorizing construction of a 128-room hotel, office building, and restaurant and a separate 6.7 acre parcel (Parcel 2) already developed with two existing office buildings, hotel, and parking structure. The approved Parcel 1 development includes an 8-foot wide pedestrian/bike trail which provides public access and access for the mutual benefit of the several surrounding hotels to Carmel Valley Road and seaward to Los Penasquitos Lagoon and Torrey Pines State Beach and Torrey Pines State Reserve. No new development is proposed on Parcel 2.

The immediate surrounding area includes 3 hotels (the Hampton Inn, Residence Inn, and Marriott), two office buildings, including a large office building (Foley), and a large parking structure. A former restaurant and parking lot adjacent to the project site was approved in 2018 for a Hyatt Hotel, which has not yet been built. (*See Staff Report, Exhibit 2.*)

II. The Commission Lacks Appeal Jurisdiction

Coastal Act section 30603 defines the Commission’s appeal jurisdiction. The hotel, office, and restaurant approved on Parcel 1 are not located anywhere near the physical features or locations which would confer lawful appeal jurisdiction. As discussed below, it is clear that no thought was given to why this particular project might be appealable.

A. The City’s “Draft” Appeal Maps Do Not Establish Appeal Jurisdiction

The Commission explained as recently as last year: “Post-certification maps are an essential component of LCPs.” (Exh. 1, CCC, Year in Review 2021, p. 29.) The maps are mandated by the Commission’s regulations. (Cal. Code Regs., tit. 14, § 13576.) Yet, while the Commission certified the City of San Diego’s LCP 34 years ago, it never certified “Post-Certification Permit and Appeal Maps” to guide appealability. Indeed, in prior permit decisions which have raised this issue, Staff has long-explained:

“There are no post-certification maps that have been approved by the Coastal Commission for the City of San Diego LCP.” (6-11-67-EDD, *Protea Flower Hill Promenade*, LLC, p. 9.)

Instead, the City produced its own appeal jurisdiction maps, and the City and Commission have consistently relied upon those maps. But, Staff has repeatedly emphasized that the City maps are just “drafts” and, as it further explained in the *Protea Flower Hill Promenade* matter: “These maps contain errors, acknowledged both by City and Commission staff, and the maps themselves have never been the sole determination of permit jurisdiction within the City’s certified LCP.”

Nothing has changed in the intervening years. However, it is apparent that both the City and Staff, at least initially in formulating the two Commissioner appeals, simply relied on the City's map as if it was accurate, which it clearly is not. As the Staff Report in this matter was being prepared, the Appellant struggled to understand the basis for appeal jurisdiction and raised that question with Staff. Staff responded, conceding that the City's map is just a "draft." (Exh. 2; 3/9/22 E-mail from Staff Ross to Hunter Oliver ["Because the map is [a] draft it isn't available to the public as it hasn't been approved by the Commission."]) Not only is the map here a draft, but it is indeed a map that contains a significant error as it relates to this project. It shows an appealable area running right through the property and the hotel and office, an area which indisputably lacks any of the grounds that would qualify for appeal jurisdiction. (Exh. 3.) The area, which is elevated, previously graded, and flat, is marked by ornamental vegetation, dirt and pavement, and is not remotely near a wetland, estuary, stream, or other physical feature that would confer appeal jurisdiction. (Exh. 4, p. 2 and Fig. 2.)

B. Proximity to Los Penasquitos Lagoon and Los Penasquitos Creek Does Not Establish Appeal Jurisdiction

Not only did Staff confirm that the City's maps are just "drafts," but Staff also explained that "The project is appealable given the proximity to Los Penasquitos Creek/Lagoon." (Exh. 2 [3/9/22 e-mail from Staff to Hunter Oliver].)

Staff, however, was wrong. Los Penasquitos Creek and Lagoon are approximately 2200 to 2500 feet away from the project site on the other side of the I-5 Freeway. Specifically, they are separated from the project site by El Camino Real road, a developed parcel with a gas station, the 10-lane freeway, freeway on-ramps and off-ramps, a side road next to the freeway, a residential subdivision, and Carmel Valley Road. Even if any portion of the Lagoon or Creek crossed under the I-5 Freeway inland, it would be separated from this property, which is substantially elevated in any event, by a paved Caltrans laydown yard and the 6-lane Carmel Valley Road.

C. The Project Site is Not Within 100' of a Wetland, Estuary, or Stream.

Apparently recognizing that Los Penasquitos Lagoon/Creek could not possibly confer appeal jurisdiction, Staff pivoted again in the Staff Report, stating, without explanation, that the Commission has appeal jurisdiction "because it is located within 100 feet of the stream banks or upland wetland limits." (Staff Report, p. 6.) This, too, is incorrect.

The project site is flat and elevated high above the El Camino Real cul-de-sac and a Commission-approved retention basin below. The hotel, office, and restaurant buildings all are located well beyond 100 feet from the retention basin below. The closest building is 218 feet away; a flat patio is 104 feet away. (Exh. 5.)

The retention basin does contain a wetland vegetation community, cattails (*typha sp.*). However, the Staff Report omits that the retention basin sits in the footprint of the former extension of El Camino Real, a paved road that long provided the road access now provided by the I-5 Freeway. Historic aerials (1963, 1974, 1980) show this road, which in the mid-1980s was relocated inland to the next intersection inland as a major 8-lane arterial road, El Camino Real. (Exh. 4, Attach. A, pp. 1-3.)

Not only was the area of the retention basin paved with a road, but in 1985, the Commission addressed it in a prior Commission permit decision, 6-84-684 (Pardee Construction Co.), which approved a subdivision and a hotel, substantial parking structure, and the current retention basin. (See Staff Report, Exh. 2.) This permit and retention basin required roughly coincided in time with the elimination of the paved extension of El Camino Real road and relocation to its present location. And, in approving that permit, the Commission imposed Special Condition #5 (“Maintenance of the Detention Basin”), which required a maintenance program, and at a minimum “that the [retention] basin shall be annually cleared and repaired, as necessary to its original design and function, prior to October 1 of each year” on an “ongoing basis.” (Exh. 4, Attach. B, p. 4)

Staff obviously did not consider either the prior extension of El Camino Real or the Commission’s prior permit decision because it states that appeal jurisdiction here is, in part, on the basis that the project is within 100 feet of “stream banks.” But, there is no stream bank here, and the Commission’s 1985 permit decision quite clearly states: “[T]here are no naturally occurring streams on-site.” (*Id.*, Attach. B, p. 10.)

The project that the Commission approved by its 1985 permit decision is not the only project that has previously been approved in this precise location. In 2018, the City approved a future Hyatt Hotel project to replace an existing restaurant, Tio Leo’s, adjacent to the Applicant’s property but closer to the slope which descends to the retention basin below than the Applicant’s property. And, for context, the future Hyatt Hotel is next to the large parking structure that the Commission approved by 6-84-684, which also descends to the Commission-approved retention basin below. (See Staff Report, Exh. 2.) In October 2016, Helix Environmental Planning prepared a report in connection with the Hyatt Hotel project, focusing on the retention basin, “a man-made storm water retention facility that is maintained and lacks naturally-occurring wetlands.” (Exh. 6 {Helix Environmental Planning to Neil Patel, Excel Hotel Group, 10/13/16, p. 1}.) The report explained:

“After review of information collected in the field and from historical imagery and other data, it is evident that there would not be naturally-occurring wetlands at the location of the present-day storm water facility had it not been for the creation of the retention basin feature and impoundment and manipulation of the watershed from surrounding developments. The basin does not support naturally-occurring wetlands and was

artificially created in historically non-wetland areas for the sole purpose of collecting, retaining, and treating storm water runoff from adjacent developments. Therefore, the basin should not constitute wetlands and no avoidance or setbacks should be required for this project.” (*Id.*, pp. 5-6.)

A similar report has been prepared for this project by Dudek, which also has analyzed the history and character of the retention basin. Like Helix, Dudek determined that the City’s LCP distinguishes between wetlands that naturally occur and those created by human actions in historically not-wetland areas, including, as here, a retention (or detention) basin. (Exh. 4, pp. 3-4; Exh. 6, pp. 5-6.)

Section 113.0103 of the City’s Land Development Code defines “wetlands.” However, it also explains:

“It is intended for this definition to differentiate for the purposes of delineating wetlands, between natural occurring wetlands and wetlands intentionally created by human actions, from areas with wetlands characteristics unintentionally resulting from human activities in historically non-wetland areas. With the exception of wetlands created for the purpose of providing wetland habitat or resulting from human actions to create open waters or from the alteration of natural stream courses, areas demonstrating wetland characteristics, which are artificially created are not considered wetlands by this definition.” (Exh. 7, p. 2)

The City’s Land Development Code Biology Guidelines (2018), which are referenced in the City’s LCP, likewise state:

“Wetlands support many of the species included in the MSCP (i.e. Covered Species). The definition of wetlands in ESL is intended to differentiate uplands (terrestrial areas) from wetlands, and furthermore to differentiate naturally occurring wetland areas from those created by human activities. Except for areas created for the purposes of wetland habitat or resulting from human actions to create open waters or from the alteration of natural stream courses, it is not the intent of the City to regulate artificially created wetlands in historically non-wetland areas unless they have been delineated as wetlands by the Army Corps of Engineers, and/or the California Department of Fish and Game.” (Exh. 8, p. 6; emphasis added.)

Still further, the City’s Land Development Code Biology Guidelines reiterate the distinction drawn in the wetland definition as it relates to areas, as here, modified by past human activities:

“Areas that contain wetland vegetation, soils or hydrology created by human activities in historically non-wetland areas do not qualify as wetlands under this definition unless they have been delineated as wetlands by the Army Corps of Engineers, and/or the California

Department of Fish and Game. Artificially created wetlands consist of the following: wetland vegetation growing in brow ditches and similar drainage structures outside of natural drainage courses, wastewater treatment ponds, stock watering, desiltation and retention basins, water ponding on landfill surfaces, road ruts created by vehicles and artificially irrigated areas which would revert to uplands if the irrigation ceased. Areas of historic wetlands can be assessed using historic aerial photographs, existing environmental reports (EIRs, biology surveys, etc.), and other collateral material such as soil surveys”. (*Id.*; p. 7; emphasis added.)

Thus, like Helix, Dudek concluded:

“[T]he man-made retention basin was artificially constructed in a historically non-wetland (upland) location and therefore would not be consider a City or CCC wetland in accordance with the Land Development Code and City’s Biology Guidelines wetland definition (City of San Diego 2018).” (Exh. 4, p. 4.)

D. Conclusion: The Commission Lacks Appeal Jurisdiction

Therefore, the simple and dispositive conclusion is that the Commission lacks appeal jurisdiction to hear the two appeals. That should be the beginning and end of the two appeals filed. We respectfully submit the Commission should make that finding.

III. The Appeals Also Do Not Raise a Substantial Issue

It also serves to underscore that the stated grounds for the appeals filed are incorrect. The City properly approved this project, and thus there would be no substantial issue in any event.

A. The City-Approved Office Use is Authorized by the Applicable Land Use Plans.

The primary contention in the appeals is that the office building approved is not an authorized use in this location. (Staff Report, pp. 8-9.) However, the appeals (and now the Staff Report) provide the Commission with just “half a loaf,” omitting the half that demonstrates that the City properly approved an office use as part of this mixed use project.

The Staff Report correctly states that the North City West (Carmel Valley) Community Plan designates the site for Visitor Commercial uses, and the Implementation Plan designates the site as Commercial Visitor Zone (CV-1-1). Viewed on its own, the Commercial Visitor Zone does not expressly state that Office is an allowed use. The Community Plan states:

“Commercial Element – Visitor-commercial development on a 15-acre site is proposed at the juncture of State Route 56 and Interstate 5 at the El Camino off ramp. The basic proposals for this area are motel, restaurant, and relates services to provide for both the adjacent industrial-office park in North City West and industrial complex in Sorrento Valley. In addition, the site [that is, the 15-acre site, which at the time was largely undeveloped] is located in favorable proximity to Carmel Valley which is proposed for open space use. The recreational potential of open space can be a very desirable factor in enhancing the development of the visitor commercial site.” (Staff Report, p. 8.)

The Staff Report stops there. But, the applicable land use plans for this area and the project site include the City’s General Plan, the North City West (Carmel Valley) Community Plan, and the Carmel Valley Employment Center Precise Plan. The flaw in the appeals is that they missed the Employment Center Precise Plan, which permits office use on this site.

In 1983, the San Diego City Council amended the Employment Center Precise Plan to include Lots 1-5 of Unit No. 2 and designated them for employment center uses, in addition to uses included in the visitor commercial zone. The Costa Azul project encompasses Lots 3 and 4. Office uses are permitted within the employment center of the Carmel Valley Planned District, and office uses also are consistent with the City’s Planned Commercial Development (PCD) regulations. (Exhs. 9-11.) Indeed, the use of the PCD regulations is encouraged by the North City West (Carmel Valley) Community Plan. Still further, Section 103.0601 of the City’s Land Development Code, which states the Purpose and Intent of the Carmel Valley Planned District, requires that, as here, “all development plans and subdivisions shall conform to the adopted precise plan,” which in this case is the Employment Center Precise Plan. (Exhs. 12.)

The appeals note that the City approved the office use through the issuance of a Planned Development Permit (PDP). The appeals correctly state that the provisions for PDPs allow development to occur with uses that are not permitted in the underlying base zone, “if the development complies with the applicable land use plan.” (Exh. 13; Land Dev. Code, § 126.0602(a)(2); the underscoring appears in the staff report.) The City got it right: the office component of this Project is permitted by the applicable land use plans, which, as explained above, are the North City West (Carmel Valley) Community Plan and the Employment Center Precise Plan. The appeals, however, got it wrong.

The Staff Report also makes reference to a 2001 amendment to the City’s LCP that approved an office development on a site designated for visitor-serving uses on the other side of Carmel Valley Road in Carmel Valley-Neighborhood #6. However, that provides no parallel here. That area of Carmel Valley - Neighborhood 6 is not within the Employment Center Precise Plan (Exh. 9; see the map on the last page of the Plan), and this Project site is located in Carmel Valley - Neighborhood #2 and is specifically included in the Precise Plan.

Finally, the Staff Report suggests that the project site should be reserved exclusively for visitor-serving uses, but without any apparent understanding or explanation regarding its physical setting. The property lies at the end of Valley Centre Drive. It is surrounded by three existing hotels, a future hotel, and a large parking structure. It is disconnected from and substantially elevated above Carmel Valley Road and the remnant of El Camino Real road and across from the I-5 Freeway. As approved by the City, the project features substantial visitor-serving uses, a hotel and a restaurant. In addition, it features a bike and pedestrian trail, which serves as a collector path and promenade for all five hotels, by providing public access through a landscaped parkway, down the slope to El Camino Real, on to Carmel Valley Road, and then seaward to Los Penasquitos Lagoon and beyond to Torrey Pines State Beach and Torrey Pines State Reserve. The office use in this part of the Employment Center Precise Plan anchors the site, much like the larger office building (“Foley”) behind the Marriott Hotel and parking structure, and does not impact the supply of visitor-serving land.

The City-approved office use is authorized by the applicable land use plans, and it does not raise a substantial issue.

B. The Hotel Will Effectively Be Low-Cost, But The City’s LCP Has No Policy Regarding Lower-Cost Overnight Accommodations

The appeals and Staff Report also contend that the City’s approval is also inconsistent with the requirements of the LCP because the approval did not address affordability of the proposed hotel development. (Staff Report, pp. 9-11.) However, unlike the Coastal Act and other LCPs, the City’s LCP does not contain any policy whatsoever regarding the provision of lower-cost overnight accommodations. For example, although the Coastal Act is not the standard of review here, Section 30213 provides, in relevant part, that “Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided,” and it makes specific reference to hotels and motels. There is no such policy in the San Diego LCP. The best that the appeals and Staff Report offer is a quote from a general “Objective” in “Goals and Planning Concepts of Community Plan,” which states:

“In order to promote self containment and community identity, the community must be designed as a total physical-social-economic unit.” (Underscoring in the Staff Report.)

This vague language does not remotely address or provide a policy regarding low-cost overnight accommodations. Indeed, if this language – “total physical-social-economic unit” – sufficed, you would not need LCP policies at all. On this basis alone, the appeals do not raise a substantial issue.

In any event, given the location of this and the other surrounding hotels, far from the coast and inland of and next to the freeway, the ADR of the Costa Azul hotel is anticipated to be approximately \$160. This is comparable to the pre-Covid 2019 ADRs of the two other select-service hotels off Valley Centre Drive (Hampton Inn – \$141 and Residence Inn – \$169). (Compare ADR of the full-service Marriott – \$186). This hotel has a franchise agreement with Springhill Suites. As such, it also proposes a select-service, budget-friendly in-suite hotel, and consequently the cost of an overnight stay will be greatly reduced and well below the statewide ADR of \$130 per night because:

- The 128 rooms are larger and accommodate large families (up to six persons, pull-out couches that provide additional beds);
- Each hotel room includes a kitchen;
- Free breakfast is provided in the morning and free beer/wine and appetizers in the evening; and
- There is no resort fee or internet connection fee.

The approved hotel, therefore, compares even more favorably than the hotel the Commission approved in 5-18-0642 (Leonard Julian Sunset Beach, LLC) in Sunset Beach, Huntington Beach, with no additional low-cost mitigation. That hotel proposed large multi-bedroom suites capable of accommodating up to 6 persons each. The rooms each included a kitchen, which the Commission emphasized “could especially create cost savings by allowing guests to avoid eating out for every meal as is typically necessary with traditional motel/hotel stays.” (Page 15.) The projected nightly room rate for the Sunset Beach hotel was \$433.33 for peak season and \$233.33 for off peak season, yielding an ADR of \$283.33. Depending on how many guests stay in each room, the Commission explained that “the price per person could be as low as \$62.50 in peak summer season.” (*Id.*, p. 14.) Here, with a projected ADR of \$160 for peak season, depending how many guests stay in each room, the price per person could be as low as \$27.

In approving the Sunset Beach hotel project, the Commission found that “the imposition of on-site mitigation or a mitigation fee is not warranted to ensure consistency with Section 30213 of the Coastal Act based on the scope and impact of the proposed development.” (Page 16.) The same result would apply here with even greater force because the cost of an overnight stay in the Costa Azul hotel will be decidedly as low cost.

Accordingly, the City’s approval of the Costa Azul hotel is not inconsistent with the LCP, which presently has no low-cost requirement, and in any event this hotel, given its location and select-service, in-suite operation, will indeed provide lower-cost overnight accommodations. For both reasons, the appeals, again, raise no substantial issue, and the Commission should so find.

Donne Brownsey, Chair
Honorable Coastal Commissioners
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Page 11

IV. **Conclusion**

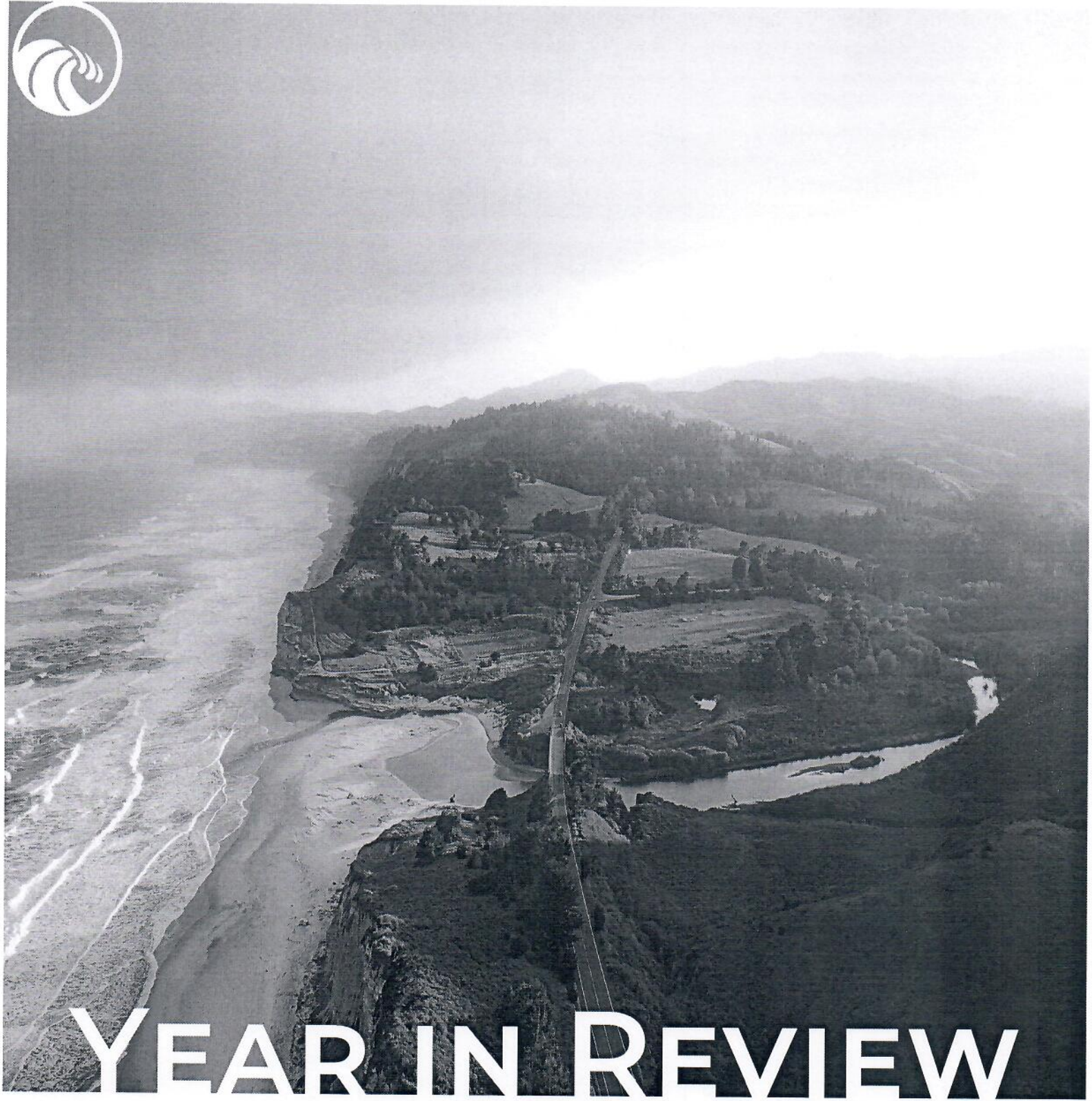
Because of the nature of the issues, the Applicant respectfully requests a hearing with respect to the Commissioner appeals filed. For the foregoing reasons, in this particular case, the Commission lacks appeal jurisdiction. Beyond that, the appeals also do not raise a substantial issue in any event. Thank you.

Very truly yours,


Steven H. Kaufmann
For Nossaman LLP

cc: Jack Ainsworth, Executive Director
Toni Ross, Coastal Program Analyst
Hunter Oliver, Carmel Valley Centre Drive, LLC

EXHIBIT “1”

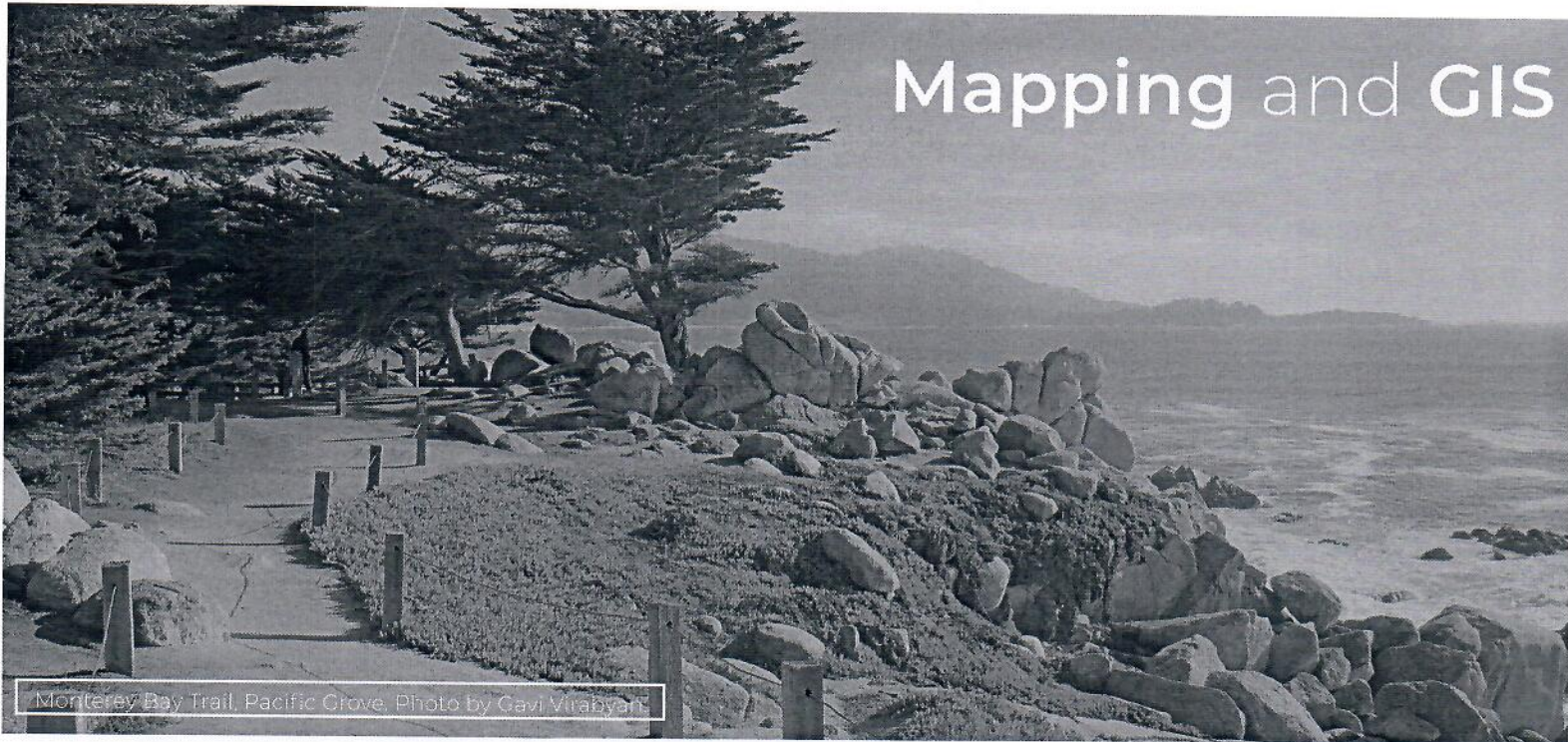


YEAR IN REVIEW

2021

California Coastal Commission

Mapping and GIS



The Commission's Mapping/GIS Unit continues its efforts to implement ArcGIS Online, a web-based mapping and analysis platform that provides access to creative online tools, maps, data, and other online content to create and share custom web maps and applications. Enhanced data sharing has increased collaboration across the agency as well as with our partners. One popular feature is the Story Map, which communicates complex information to the public in a visually creative format. The Public Education department uses Story Maps to create the [California King Tides Project Story Map](#) which presents a geographic view of citizen science data of extreme high tides in an interactive and engaging way. In 2021, the California King Tides Project mapped dozens of events and received over 4000 photo submissions from the public showcasing extreme high tides in their communities. The Mapping Unit was also instrumental in developing the [Critical Coastal Areas Map Viewer](#), the Environmental Justice Mapping tool, set to debut in early 2022, and the [California Coastal Trail Map](#).

The Mapping Unit is dedicated to utilizing latest developments in GIS technology to best support agency staff, our federal, state, and local partners, and the public.

Post-certification maps are an essential component of LCPs, and the Mapping Unit works closely with local governments to ensure that these maps are accurate, current, and publicly accessible. In February, the Commission certified the County of San Diego [Permit and Appeal Jurisdiction Map](#), depicting the areas within the County of San Diego that are subject to the Commission's permit and appeal jurisdiction following the recent certification of the County's LCP.

The Mapping Unit assisted with the significant task of upgrading and migrating the Commission's Coastal Data Management System (CDMS) to a hosted cloud environment. The new CDMS is more user-friendly and works with any modern browser with improved GIS and mapping capabilities. Staff can now access permit histories via parcel and address location information through an improved mapping interface in a more efficient way.

EXHIBIT “2”

Kaufmann, Steven H.

Subject: FW: [External] Fwd: Costa Azul Meeting Coastal Commission San Diego Coast Office

From: "Ross, Toni@Coastal" <Toni.Ross@coastal.ca.gov>

Date: March 9, 2022 at 4:30:12 PM PST

To: Hunter Oliver <hunter@oliverholdings.com>

Subject: RE: Costa Azul Meeting Coastal Commission San Diego Coast Office

Mr. Oliver,

The project is appealable given the proximity to Los Penasquitos Creek/Lagoon. Because the map is draft it isn't available to the public as it hasn't been approved by the Commission. If you would like more time to go over the contentions of the appeal, any responses or clarifications you have, etc., I strongly recommend that you sign a 49-day waiver. This will allow additional conversations between you, Coastal and City staff (as warranted), before the appeal is heard by the Commission. Please let me know if you would like me to send the waiver. In the interim, I can request our Mapping Division provide a formal boundary determination if you are interested, I believe a formal Boundary Determination incurs approximately \$300 fee. Please let me know how you'd like to move forward.

Thank you,
Toni

From: Hunter Oliver <hunter@oliverholdings.com>

Sent: Tuesday, March 8, 2022 4:55 PM

To: Ross, Toni@Coastal <Toni.Ross@coastal.ca.gov>

Subject: Re: Costa Azul Meeting Coastal Commission San Diego Coast Office

Ms. Ross,

I appreciate your e-mail. I am honestly just trying to wrap my brain around this appeal, as you can imagine. Can you tell me what makes this appealable? I've been told there's a post-certification appeal map but it may just be a draft. Can you point me to it?

Thanks so much.

Hunter

On Tue, Mar 8, 2022 at 3:53 PM Ross, Toni@Coastal <Toni.Ross@coastal.ca.gov> wrote:

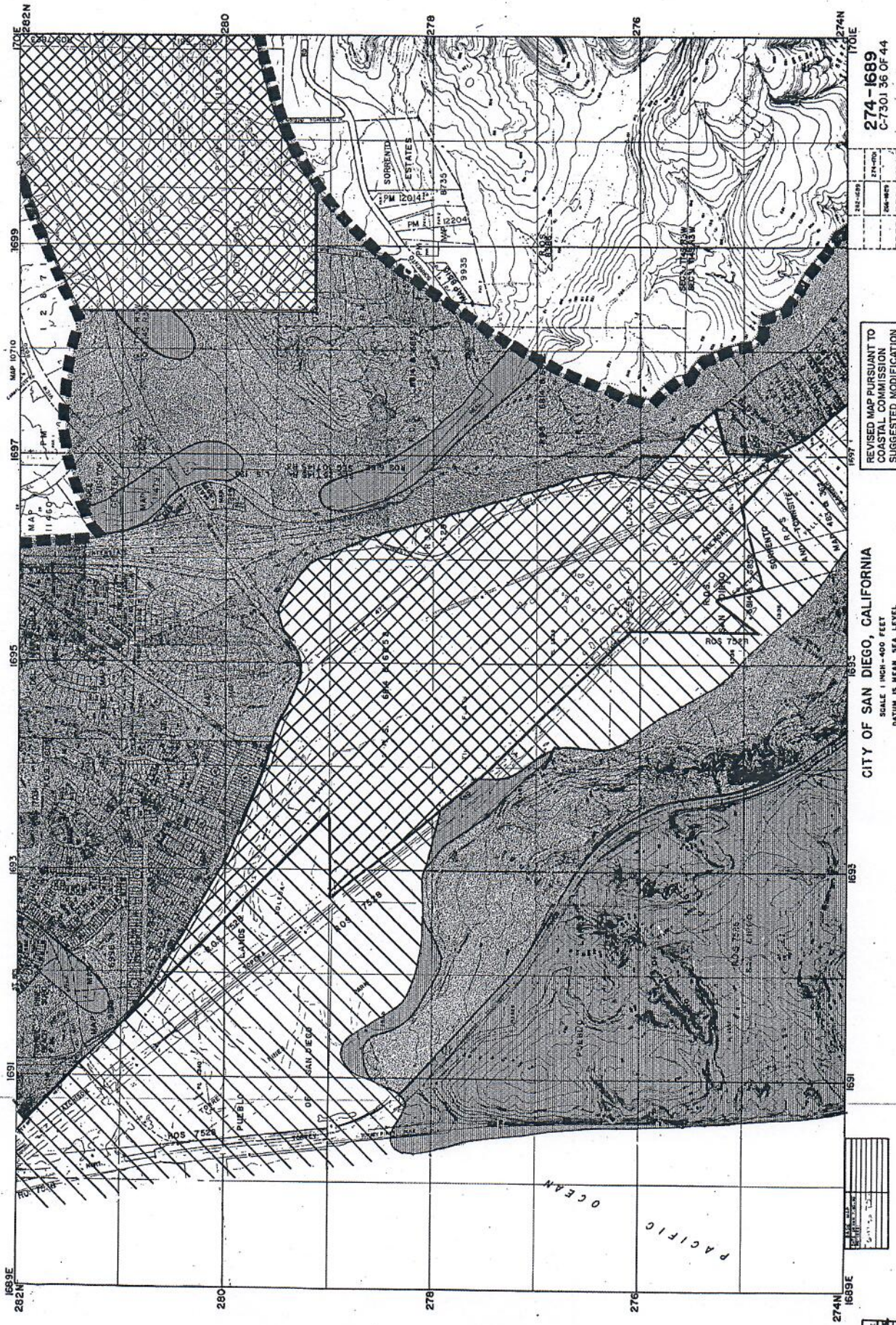
Mr. Oliver,

Will you be provided a response letter to the Commission's appeal? The draft report will be finalized this week and I'd like to have any of your concerns addressed in the report.

Thank you,

Toni

EXHIBIT “3”



REVISOR MAP PURSUANT TO
COASTAL COMMISSION
SUGGESTED MODIFICATION

CITY OF SAN DIEGO, CALIFORNIA
SCALE 1 INCH=400 FEET
DATUM IS MEAN SEA LEVEL

274-1689
C-7301 36 OF 44

EXHIBIT “4”

MEMORANDUM

To: Hunter Oliver, Carmel Valley Centre Drive, LLC
From: Scott Gressard, Senior Environmental Specialist/Biologist, Dudek
Subject: Biological Resources Memorandum for the Coastal Azul Mixed-Use Project
Date: March 30, 2022
cc: Jennifer Sucha, Dudek
Attachments: Figures 1 and 2
A – Historic Aerials
B – 1985 CCC Staff Report for Existing Subdivision

This memorandum serves to provide an assessment of existing conditions, including informal jurisdictional delineation of potential aquatic resources present, and rationale for permit approach for the Coastal Azul Mixed-Use Project (project).

1 Project Location

The project is located east of Interstate 5 (I-5) and north of State Route 56, on graded pads above Carmel Valley Road in the City of San Diego (Figure 1). The project site is within Carmel Valley Planned District and within the Coastal Overlay Zone, but is not located within the City's Multi-Habitat Planning Area.

2 Project Description

The Costa Azul mixed-use project will consolidate and subdivide a 9.89-acre property into 2 (two) Parcels, Parcel One will be 3.2-acres and Parcel Two, 6.7-acres. The Coastal Azul mixed-use project, on Parcel One, will include three commercial condominiums, a hotel, office building, restaurant, and subterranean parking. Parcel Two is currently developed with an office building and parking structure, there is no proposed construction on this site. Parcel One includes a pedestrian and bicycle trail along the western property line that connects the development to Old El Camino Real and provides access to Carmel Valley Road, Los Peñasquitos Lagoon, and the ocean.

3 Biological Reconnaissance Survey

Methods

A reconnaissance-level field survey was conducted on March 21, 2022, by Dudek biologist Scott Gressard (see Table 1) in accordance with the City's Guidelines for Conducting Biological Surveys, which is Appendix II of the City's Land Development Code – Biology Guidelines (Biology Guidelines) (City of San Diego 2018) and included the mapping of vegetation communities and land covers present in the project impact footprint and a surrounding 300-foot buffer (study area).

Table 1. Survey Conditions

Date	Time	Personnel	Survey Conditions
3/21/2022	1000–1130	Scott Gressard	Mostly sunny; 1–2 mph winds; 69 ° F

The study area and vicinity were surveyed on foot, and potential constraints, such as suitable habitat for sensitive species and potential aquatic resources, were noted. The study area was evaluated for general vegetation communities, potential aquatic resources, and the potential to support special-status wildlife and plant species. Vegetation community classifications follow the City of San Diego Multiple Species Conservation Program Subarea Plan (City of San Diego 1997) and the City’s Biology Guidelines (City of San Diego 2018), which are derived primarily from Holland (1986). In some cases, Oberbauer et al. (2008) was also used as a reference, especially with regard to land cover types. Areas supporting less than 20% native plant species cover were mapped as disturbed land.

Results and Impact Description

The proposed project has potential to impact one vegetation community and one land cover: ornamental plantings and disturbed land (Table 2; Figure 2).

Ornamental Plantings

Ornamental plantings refer to areas where non-native ornamental species and landscaping schemes have been installed and maintained, usually as part of commercial or residential property. This habitat type supports many different ornamental species, including but not limited to: hottentot fig (*Carpobrotus edulis*), Peruvian pepper tree (*Schinus molle*), Brazilian pepper tree (*Schinus terebinthifolius*), and red apple iceplant (*Aptenia cordifolia*) (Holland 1986). This vegetation community occurs within the southern end of the proposed project impact footprint. This vegetation community is ranked as Tier IV and is not considered sensitive under the City’s Biology Guidelines (City of San Diego 2018).

Disturbed Land

Disturbed land, also described as disturbed habitat (Oberbauer et al. 2008), is a land cover type characterized by a predominance of non-native species, often introduced and established through human action. Oberbauer et al. (2008) describes disturbed land as areas that have been physically disturbed (by previous legal human activity) and are no longer recognizable as a native or naturalized vegetation association but continues to retain a soil substrate. Typically, vegetation, if present, is nearly exclusively composed of non-native plant species, such as ornamentals or ruderal exotic species (i.e., weeds). Disturbed land is the predominant land cover within the project impact footprint and is composed of various ruderal species within the vacant lot that has a history of use as a staging area and has been graded and vegetation maintained in the past. Disturbed land is considered a Tier IV sensitive vegetation community according to the City’s Biology Guidelines (City of San Diego 2018).

4 City of San Diego and California Coastal Commission Biological Resource Analysis

All impacts would be limited to upland, non-wetland land covers and vegetation communities outside the limits of potential aquatic resources that would be considered Environmentally Sensitive Habitat Areas (ESHA), Environmentally Sensitive Lands (ESL), and/or wetlands by the City and the California Coastal Commission, as further detailed in the project's Report to Planning Commission (City of San Diego 2020). The Report to Planning Commission specifically states:

"The site does not contain or support Environmentally Sensitive Lands as defined by the Biology Guidelines of the City's Land Development Manual. The site does not contain native or sensitive plant species, wildlife species, or vegetation communities; wetlands that would be expected to support special status species; or lands classified as Tier I, Tier II, Tier IIIA, or Tier IIIB Habitats."

As described above, the results of biological reconnaissance surveys of the site conducted by Dudek in 2022 confirmed this assessment of the existing conditions on the site (Figure 2).

One wetland vegetation community dominated by cattail (*Typha latifolia*) was identified off-site to the west. This vegetation community is entirely limited to the existing, man-made, retention basin, which was approved and permitted in 1985 as part of the original Coastal Development Permit (No. 6-84-648) for the subdivision and construction of a hotel and multi-level parking structure. (Attachment C - 1985 CCC Decision for subdivision, hotel and parking structure development).

Section 113.0103 of the City's Land Development Code provides the following guidance on delineating and defining wetlands:

"It is intended for this definition to differentiate for the purposes of delineating *wetlands*, between natural occurring *wetlands* and *wetlands* intentionally created by human actions, from areas with *wetlands* characteristics unintentionally resulting from human activities in historically non-wetland areas. With the exception of *wetlands* created for the purpose of providing *wetland* habitat or resulting from human actions to create open waters or from the alteration of natural stream courses, areas demonstrating *wetland* characteristics, which are artificially created are not considered *wetlands* by this definition."

The City's Biology Guidelines, which are referenced in the City's Local Coastal Plan (LCP) and assumed to be utilized by CCC when delineating "wetlands" within the boundaries of the LCP, also state the following:

"Wetlands support many of the species included in the MSCP (i.e. Covered Species). The definition of wetlands in ESL is intended to differentiate uplands (terrestrial areas) from wetlands, and furthermore to differentiate naturally occurring wetland areas from those created by human activities. Except for areas created for the purposes of wetland habitat or resulting from human actions to create open waters or from the alteration of natural stream courses, it is not the intent of the City to regulate artificially created wetlands in historically non-wetland areas unless they have been delineated as wetlands by the Army Corps of Engineers, and/or the California Department of Fish and Game."

Further, the City's Biology Guidelines reiterate the distinction of the wetland definition as it relates to areas modified by past human activities in the following statement:

"Areas that contain wetland vegetation, soils or hydrology created by human activities in historically non-wetland areas do not qualify as wetlands under this definition unless they have been delineated as wetlands by the Army Corps of Engineers, and/or the California Department of Fish and Game. Artificially created wetlands consist of the following: wetland vegetation growing in brow ditches and similar drainage structures outside of natural drainage courses, wastewater treatment ponds, stock watering, desiltation and retention basins, water ponding on landfill surfaces, road ruts created by vehicles and artificially irrigated areas which would revert to uplands if the irrigation ceased. Areas of historic wetlands can be assessed using historic aerial photographs, existing environmental reports (EIRs, biology surveys, etc.), and other collateral material such as soil surveys".

The U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory (NWI) identifies Freshwater Emergent Wetlands (Code PEMCh) over a portion of the approximate man-made, retention basin's existing footprint. However, the U.S. Geological Survey (USGS) National Hydrography Dataset (NHD) does not identify any aquatic resource feature at this location (i.e., within the limits of existing, man-made retention basin). These publicly available federal databases are useful tools for preliminary site investigation and planning, but are intended to be used for high-level, informational purposes only and must be combined with site-specific reconnaissance analysis and/or jurisdictional delineation as well as with any available past permit documentation for the project in order to make accurate jurisdictional delineation recommendations. For this site, as described above, the reconnaissance survey did identify one wetland vegetation community dominated by cattail (*Typha latifolia*) within the previously constructed retention basin, however, further investigation indicated that the basin was likely constructed in a historically non-wetland, upland location and is in excess of 100 feet from the hotel, office, and restaurant uses approved by the City. The retention basin approved overlaps with the alignment of the former extension of Old El Camino Real, which was constructed to be a developed, upland land cover. It should also be noted that a condition of the Coastal Development Permit required that the retention basin be cleared annually and repaired, as necessary to its original design and function. Publicly available historic imagery does show evidence of a non-wetland waters aquatic resource (likely unvegetated, earthen streambed) offsite and adjacent to the current retention basin location. Historic imagery further confirms that the pre-existing alignment of Old El Camino Real overlapped with the current retention basin location (Attachment A). Due to the lack of accuracy of historic imagery at this scale, the 1985 CCC Decision for the existing subdivision, hotel, office, and parking structure project (Attachment B) was also utilized in order to determine specific existing conditions and resources impacted at the time of construction within the retention basin footprint. Page 10 of this Report states,

"Although there are no naturally occurring streams on-site, runoff from Interstate 5 and Del Mar Heights is directed through the Employment Center to the north and across the project site. The combination of increased runoff from I-5 and the past disturbances in and around the property which have modified the ground cover and drainage patterns has resulted in the erosion of gullies up to 25 feet in depth and 30 feet in width in some portions of the adjacent areas to the north."

Based upon the historic aerial imagery and this 1985 CCC Decision description, it is concluded that the man-made retention basin was artificially constructed in a historically non-wetland (upland) location and therefore would not be considered a City or CCC wetland in accordance with the Land Development Code and City's Biology Guidelines wetland definition (City of San Diego 2018).

6 Literature Cited

City of San Diego. 1997. *City of San Diego Final MSCP Subarea Plan*. Prepared by the City of San Diego Community and Economic Development Department. March 1997. <https://www.sandiego.gov/sites/default/files/legacy//planning/programs/mscp/pdf/subareafullversion.pdf>.

City of San Diego. 2018. *Land Development Manual – Biology Guidelines*. Adopted January 22, 2018, and amended February 1, 2018, by City Council Resolution R-311507. <https://www.sandiego.gov/planning/programs/landdevcode/landdevmanual>.

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Holland, R.F. 1986. *Preliminary Descriptions of the Terrestrial Natural Communities of California*. Nongame-Heritage Program, California Department of Fish and Game. October 1986.

Oberbauer, T., M. Kelly, and J. Buegge. 2008. *Draft Vegetation Communities of San Diego County*. March 2008. <http://www.sdcanyonlands.org/canyon-groups/canyon-group-resources/canyon-enhancement-guide/189-canyon-enhancement-planning-guide-materials>.

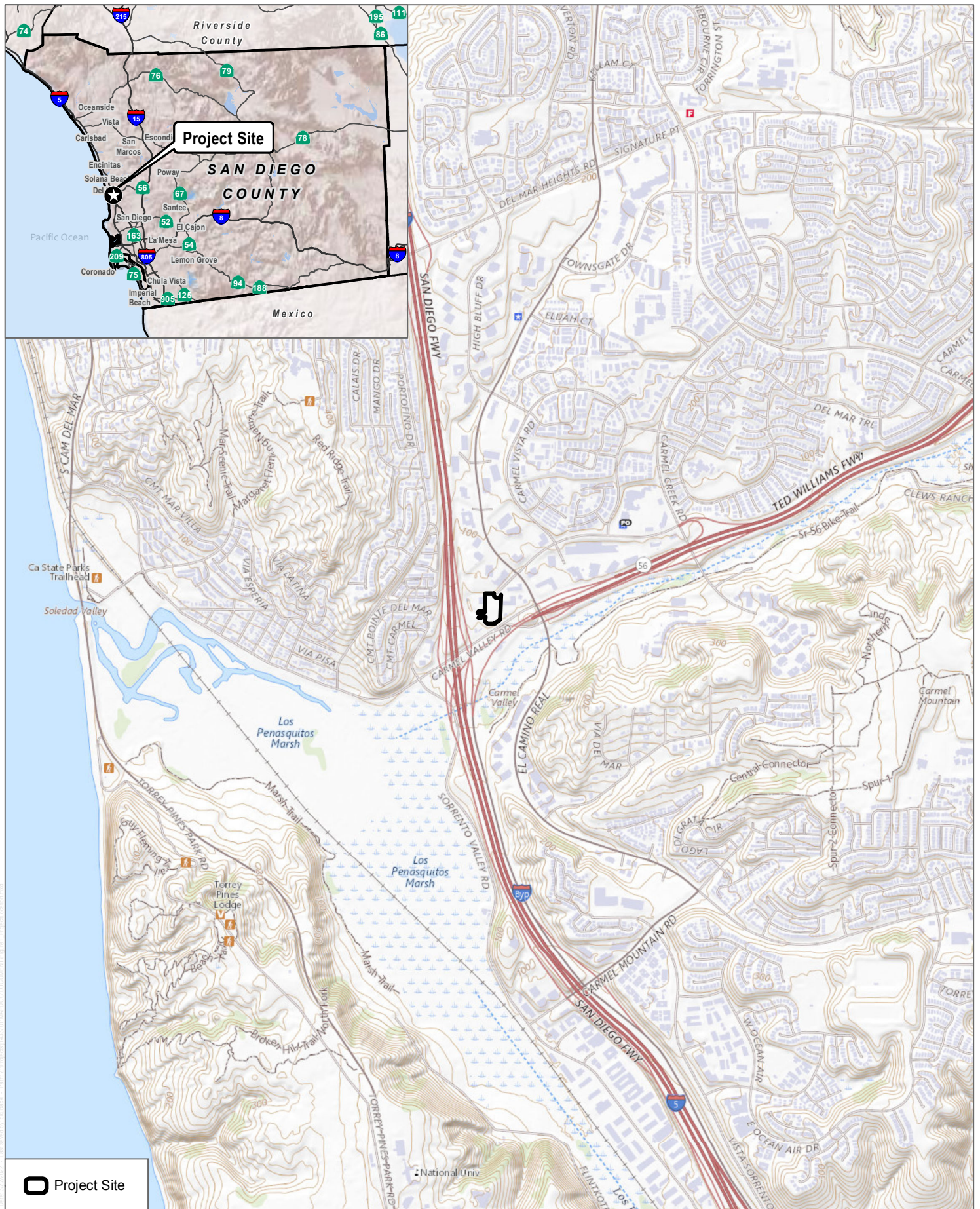
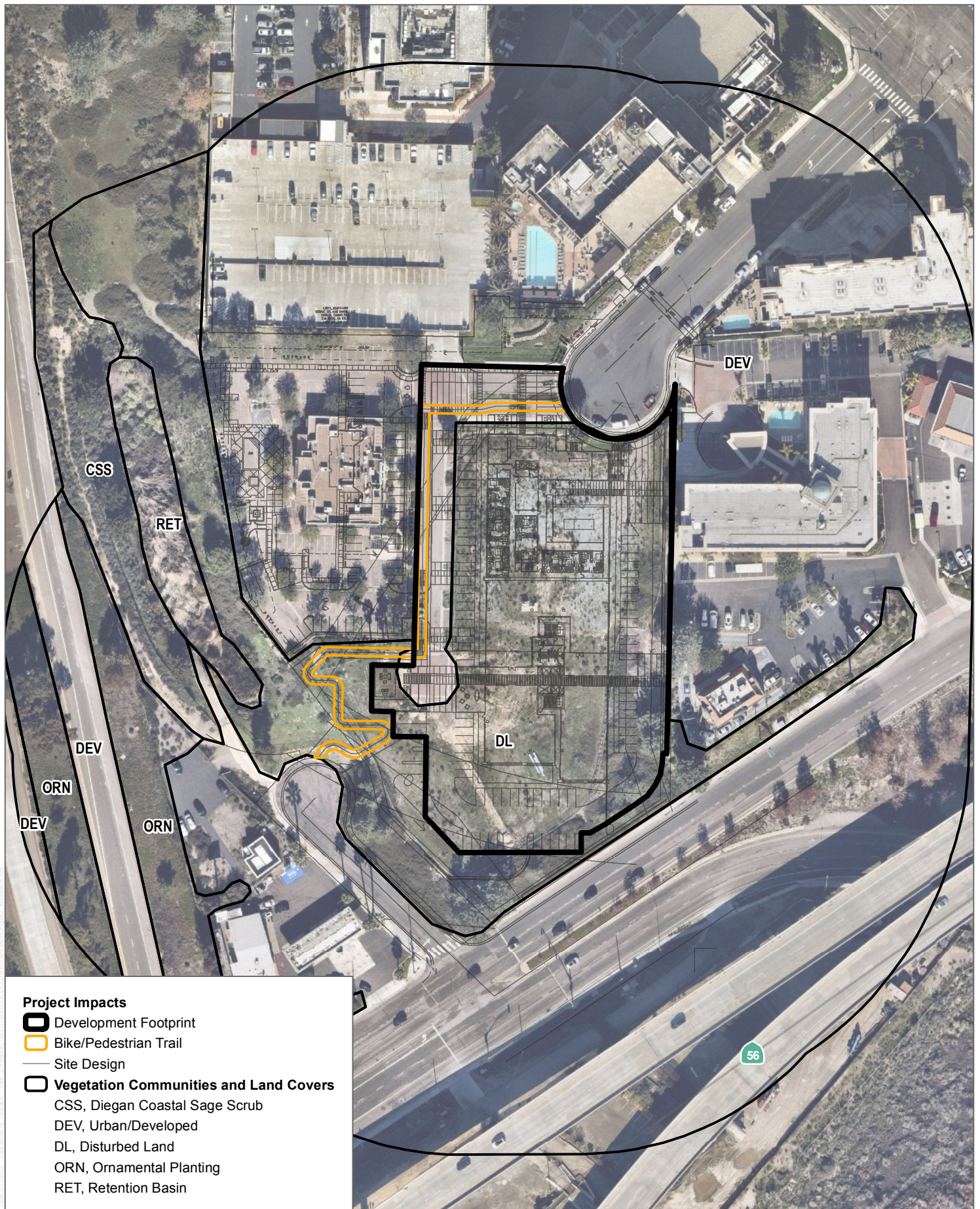


FIGURE 1

Project Location

Excel Hotel Carmel Valley Road Project



SOURCE: SanGIS 2019

FIGURE 2

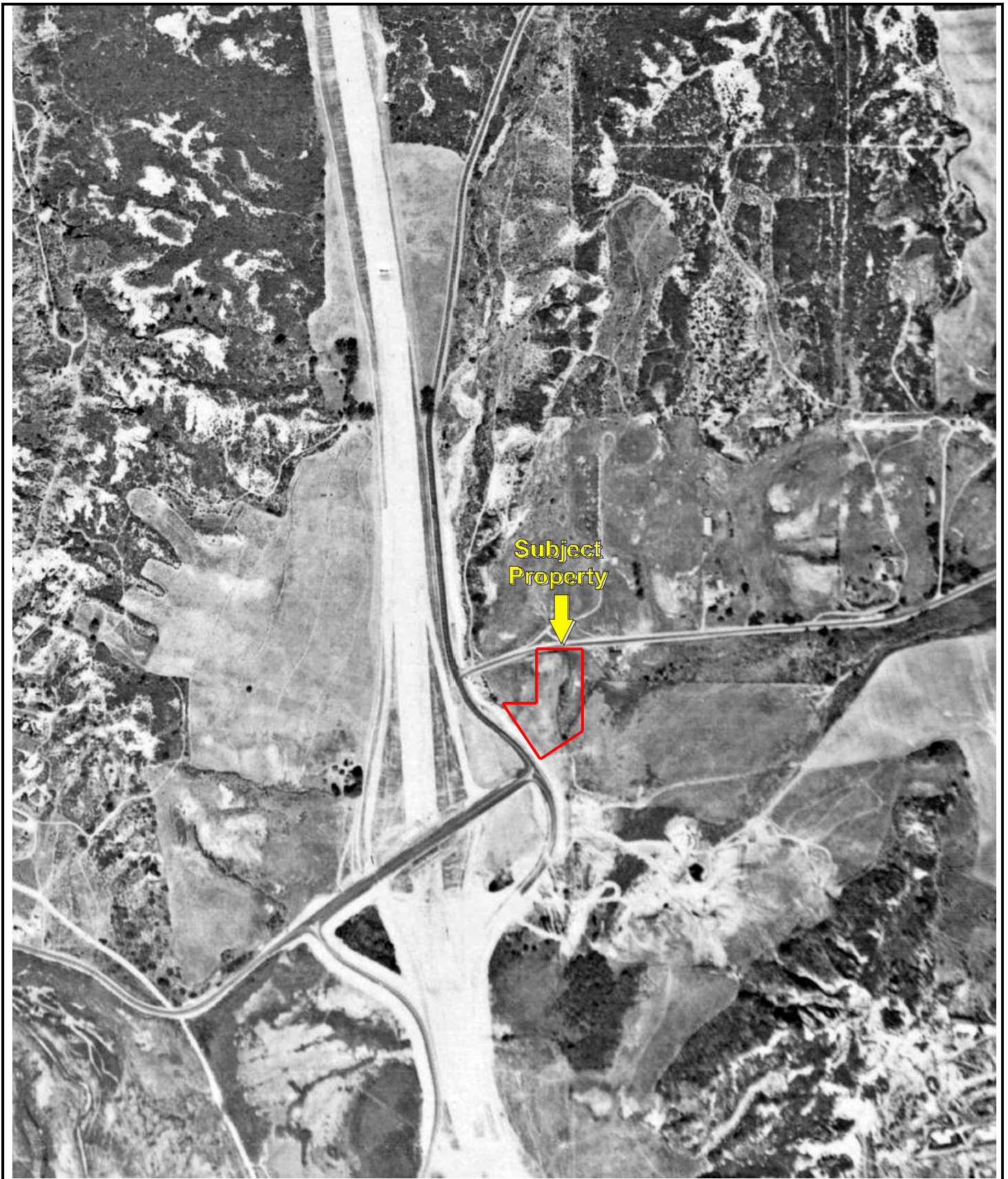
Biological Impacts

Excel Hotel Carmel Valley Road Project



Attachment A

Historic Aerials



Date of Photograph: 1963



Date of Photograph: 1974



Date of Photograph: 1980



Attachment B

1985 CCC Staff Report for Existing Subdivision

State of California, County of San Diego
California Coastal Commission
SAN DIEGO COAST DISTRICT
6154 Mission Gorge Road, Suite 220
San Diego, CA 92120
(619) 280-6992

49th DAY: Waived
180th DAY: July 2, 1985 1200
STAFF: DNL:lmb
STAFF REPORT: April 1, 1985
HEARING DATE: April 9-12, 1985

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

RECEIVED

Application No: 6-84-648

Applicant: Pardee Construction Co.

APR 10 1985

Agents: Rick Engineering Co. and
Phillip M. Schott

PARDEE CENTER

Description: Subdivision and construction of a 12-story, 500 room hotel; multi-level parking structure, three restaurants and an auto center. The project includes grading, off-site improvements and installation of a detention basin.

Lot area	614,196 square feet
Building coverage	147,560 square feet (24%)
Pavement coverage	319,375 square feet (52%)
Landscape coverage	147,261 square feet (24%)
Parking spaces	1,310
Zoning	VC
Plan designation	Visitor Commercial
Project density	N/A
Ht abv fin grade	Hotel - 160 feet (max.) Parking structure/restaurants - 40 feet (max.) Auto Center - 30 feet (max.)

Site: Northeast corner of present El Camino Real alignment and Carmel Valley Road, North City, San Diego, San Diego County.
APN(s) 307-020-57; 307-110-04; 307-120-01; 307-110-07

Substantive File Documents: North City Land Use Plan(LUP)/Commission Findings (dated May 21, 1984)
NCW Community Plan 1975, 1982 Revision
EIR Addendum - Visitor Center Development Plan (EQD # 84-0213)
EIR's - NCW Community Plan (EQD #76-05-25P/#76-05-25P-S1)
EIR - NCW Employment Center (EQD #80-Q5-35)
EIR - NCW Neighborhoods 4, 5 and 6 (EQD #81-1212)
Interstate 15 Corridor Travel Forecast (December, 1982)
Urban Systems Associates, Inc. letter to Walt Huffman, City of San Diego (dated June 22, 1983)
EIR Addendum - NCW Employment Center (EQD #83-0191)
CCC #6-84-487/Carlsberg Construction Co.

RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDING

EXHIBIT "C"

State of California, Governor's Office
California Coastal Commission
SAN DIEGO COAST DISTRICT
6154 Mission Gorge Road, Suite 220
San Diego, CA 92120
(619) 280-6992

49th DAY: Waive
180th DAY: July 2, 1985 1201
STAFF: DNL:lmb
STAFF REPORT: April 1, 1985
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STAFF REPORT AND PRELIMINARY RECOMMENDATION

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EXHIBIT "C"

RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

STAFF NOTES:Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the visitor center with extensive conditions related to protecting Los Penasquitos Lagoon and the Carmel Valley floodplain from adverse impacts including revised plans, grading restrictions, runoff control plans, restoration monies and specifications for any off-site improvements. These conditions would primarily regulate the timing, manner and mitigation for any permitted development or grading activity which could potentially cause downstream sedimentation in the short or long term. Additional conditions are recommended to enhance and preserve visual buffers and open space areas; these include submittal of a detailed landscape plan, recordation of an open space deed restriction and submittal of a signage program.

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that, as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Final Plans. Prior to transmittal of the subject permit, the permittee shall submit final site and floor plans with elevations of the hotel, three restaurants and auto center which reflect the redesigned parking structure and revised buildings' configuration (pursuant to draft revisions dated December 17, 1984) required to preserve steep slope areas along the western ridgeline. Said plans shall be first approved by the City of San Diego and conform to the adopted Urban Design Guidelines for the Visitor Center Development Plan. The plans shall be submitted to, reviewed and approved in writing by the Executive Director.

Any proposal to independently develop any of the restaurants or auto center shall require an assignment of the subject permit, in part. The assigned projects must remain in substantial conformance with the final approved plans, provide the minimum required off-street parking (one-space per 200 sq. for restaurants or one space per 400 sq. for the auto center) or the assignees shall apply for an amendment or separate coastal development permit.

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2. Final Grading Plans. Prior to transmittal of the subject permit, the permittee shall submit final City-approved grading plans which reflect the revised site plan and redesigned parking structure (pursuant to draft revisions dated December 17, 1984) to the Executive Director for review and approval in writing. The final grading plans shall incorporate a detailed work schedule which demonstrates adequate preparation, phasing and stabilization periods to conform with the adopted restrictions enumerated in Special Condition #3.

3. Grading Restrictions. All herein permitted grading shall conform to the following:

A. All permanent erosion control devices shall be developed and installed prior to or concurrent with any on-site grading activities.

B. All grading activities for the proposed buildings, access road, detention basin, utilities and installation of erosion and sedimentation devices shall be prohibited within the period from November 15 to March 31st of each year.

C. All areas disturbed by grading, shall be planted prior to November 15 with temporary or permanent (in the case of finished slopes) erosion control methods. Said planting shall be accomplished under the supervision of a licensed landscape architect and shall consist of seeding, mulching, fertilization and irrigation adequate to provide 90% coverage within 90 days. Planting shall be repeated if the required level of coverage is not established. This requirement shall apply to all disturbed soils including stockpiles.

4. Runoff Control Plans/Detention Basin Design. Prior to transmittal of the coastal development permit, the permittee shall submit a runoff control plan (including final detailed plans for the storm water retention basin) designed by a licensed engineer qualified in hydrology and hydraulics, which would assure no increase in peak runoff rate from the fully developed site over runoff that would occur from the existing undeveloped site as a result of the greatest intensity of rainfall expected during a six-hour period once every 10 years (10 year, six-hour rainstorm). The runoff control plan including supporting calculations shall be submitted to and determined adequate in writing by the Executive Director.

RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECOMMENDED

5. Maintenance of Detention Basin. Prior to transmittal of the subject permit, the permittee shall submit a maintenance program for review and approval in writing by the Executive Director. The program shall document and provide for effective and permanent maintenance of the detention basin. It shall specify, at a minimum, that the basin shall be annually cleared and repaired, as necessary to its original design and functioning, prior to October 1 of each year. The program shall provide for site inspections and remedial work on the basin after each storm. The program shall also identify the entity responsible for the on-going maintenance of the detention basin, demonstrating the ability to meet these performance standards and provide necessary funding sources for permanent maintenance.

6. Lagoon Enhancement Fund

(A) Prior to transmittal of the permit, the permittee shall enter into an agreement, suitable in form and content to the Executive Director, binding the applicant and all successors in interest to participate in a lagoon enhancement fund to aid in the restoration of Los Penasquitos Lagoon. Said agreement shall consist of an irrevocable letter of credit, an escrow account or similar account in an amount equal to one-half cent per square foot for surface area graded and three cents per square foot of ultimate impervious surfacing (buildings and paving) for the herein permitted hotel, three restaurants and the auto center.

Any funds shall be executed in favor of the People of California in a manner that allows use of the funds by the Coastal Conservancy, the Wildlife Conservation Board, the Department of Fish and Game or the City of San Diego. No such use of funds shall occur unless and until the Executive Director certifies that the funds are proposed for a bona fide Los Penasquitos Lagoon enhancement activity. Examples of "bona fide enhancement" activities shall include, but not be limited to, the development of a lagoon restoration plan, the preparation of background technical studies for development of the plan, the implementation of the plan and stewardship and management following implementation of the plan.

[and]

(B) Prior to transmittal of the subject permit, the permittee shall submit evidence in writing for the review and approval of the Executive Director, in consultation with the California Coastal Conservancy, indicating finalization of the "Lagoon Enhancement Agreement and Covenant between the Pardee Construction Company and California Coastal Conservancy" or some other instrument for the restoration of the Los Penasquitos Lagoon. The fund shall be established for all residential units constructed within the North City West Community Plan area by the Pardee Construction Company. The fee shall be equal to \$50.00 per residential unit, adjusted annually to the Consumer Price Index (CPI).

7. Off-Site Improvements. Prior to transmittal of the subject permit, the permittee shall submit a specific listing and final City-approved plans for all required off-site improvements, including, but not limited to, all off-site street, storm drain, sewer line or utility line extensions, replacements or developments. The plans shall be submitted to, reviewed and accepted in writing by the Executive Director. Said plans shall indicate that any improvements or work will not encroach within the 100-year floodplain of Carmel Valley; within any wetlands or environmentally sensitive areas identified by the Dept. of Fish and Game, at the time of plan acceptance; will prohibit any grading activity between November 15th and March 31st of any year and will provide for site restoration and revegetation to pre-development conditions.

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Any off-site improvements which are not specifically permitted herein shall require an amendment or a separate coastal development permit. This condition would also include any revisions to project requirements pursuant to the City's findings for the Final Map Approval.

8. Landscape Plan. Prior to the transmittal of a coastal development permit for the subject project, a detailed landscape plan indicating the type, size, extent and location of plant materials, the proposed irrigation system, and other landscape features shall be submitted to, reviewed, and determined adequate in writing by the Executive Director. Drought tolerant plant materials shall be utilized to the maximum extent feasible. An emphasis shall be made on creating an intensive landscape buffer along the western and southwestern boundaries by revegetating the existing slopes and proposed detention basin perimeter. The landscape plans shall include numerous trees of substantial size and shape at the initial planting to provide immediate buffering and to provide the necessary height for effective screening of the structures at maturity. The landscape plans shall also be developed consistent with the adopted Urban Design Guidelines for the Visitor Center Development Plan and provide landscape treatments for the screening of the parking structure's facade, rooftop levels and mass pavement areas.

9. Open Space Deed Restriction. Prior to transmittal of the subject permit, the permittee shall record a restriction against the subject property, free of prior liens and encumbrances, except for tax liens, and binding on the permittee's successors in interest and any subsequent purchasers of any portion of the real property. The restriction shall prohibit any alteration of landforms, removal of existing vegetation or the erection of structures of any type, except for such landscaping improvements or the detention basin herein permitted on the final approved plans or unless approved by the California Coastal Commission or its successors in interest in the future, on that area shown on Exhibit # 4 attached to this permit. The open space area incorporates the western property/slopes below the re-sited parking structure, the detention basin and the bisected lot located south of Carmel Valley Road. The recording document shall include legal descriptions of both the applicant's entire parcel and the open space areas to protect the steep slopes, landscape buffers, drainage basin and floodplain fringe.

10. Signing Program. Prior to the erection of any signs for the herein permitted uses, the permittee shall submit a comprehensive sign program for review and approval in writing by the Executive Director. All signing shall conform to the City of San Diego's draft On-Premises Signs Ordinance (dated July 1983) - Coastal Zone Regulations. The signage plans may be approved as an amendment to this permit or require a separate coastal development permit.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. The project under consideration consists of a subdivision and development plan for a 14.1 acre visitor center in the North City West (NCW) community. The subdivision (TM 83-0191) creates six lots continuing southward from the existing Employment Center. The land division would result in the following: Lot 41 - 8.7 acres; Lot 42 - 1.5 acres; Lot 43 - 1.1 acres; Lot 44 - 1.9 acres; Lot 45 - 0.9 acres and Lot A - 0.1 acres.

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The proposed Lot 41, situated in the northern-most portion of the site, would be developed as a 12-story, 500 room hotel with a multi-level parking structure. The hotel would include 355,000 square feet of gross floor area, containing an approximate 26,000 square foot conference center. Within the proposed hotel, there would also be a main restaurant, two coffee shops, a health spa and other recreational amenities. The 12-story hotel is designed running east to west, with the eastern portion being only seven stories in a series of horizontal stepped floors. The full twelve stories, reaching a maximum height of 160 ft. above finished grade, would occur along the western portion of the structure, incorporating a cellular design.

Lots 42, 43 and 44 would each be developed with one-story restaurants, ranging from 9,000 - 11,500 square feet of gross floor area. The three proposed restaurants, reaching a maximum height of 40 feet above finished grade, would be connected with the hotel, both visually and functionally, by a central esplanade. The submitted proposal includes only preliminary plans for these restaurants and there is a possibility that these structures could be independently developed. Therefore, a special condition has been attached to require the provision of adequate offstreet parking for such a permit assignment or the receipt of a separate coastal development permit.

- The final proposed lot, Lot 45, would be developed as a one-story, 2,400 square foot auto center. The center would include a gas station and an automobile service center. The single-level structure would reach a maximum height of 30 feet above finished grade. The auto center will be sited along the realigned El Camino Real at the entrance to the visitor center. The visitor center will receive access only from a cul-de-sac street off of the realigned El Camino Real; no access point will be permitted along Carmel Valley Road.

The proposed site plan retains approximately 25 percent in landscaping or open space, including a detention basin along the western property boundary. Adequate parking will be provided for the various uses in 1,310 offstreet spaces. One thousand spaces will be provided in the multi-level parking structure for the hotel, reflecting a two space/room ratio. Three-hundred five surface spaces will be provided for the three restaurants, representing a ratio of one space/100 square feet gross floor area. Five spaces would be provided for the auto center at a ratio of one space/480 square feet gross floor area. Although these ratios are not entirely consistent with previous Commission action, the resultant parking is consistent with past permit precedents (including Mission Bay Ramada/#6-82-3) and the proposed CV zone for visitor commercial sites in the City's draft implementing ordinances. The proposed development will include several off-site improvements, including the abandonment of the existing El Camino Real along the undeveloped Employment Center/Visitor Center site and its realignment, the undergrounding of an existing 69 KV power line, the widening of ramps at the Interstate 5/Carmel Valley interchange and completion of certain improvements along Carmel Valley Road. Because of the lack of specificity in the number and details of these off-site improvements and the sensitivity of adjacent coastal resources, a special condition has been attached to require Executive Director review and acceptance of final improvement plans to safeguard against off-site impacts.

2. Site Location/Environmental Setting. The project site is a \pm 14 acre, irregularly shaped parcel. It is primarily situated on the northeast section of Carmel Valley Road and Interstate 5; however, a small (approx. 5,000 sf.) flag lot, created by the realignment of Carmel Valley Road, is bisected from the main property and lies south of the road. The area north of the subject site is presently undergoing development with employment center uses by Pardee, although no development has actually occurred directly north of the visitor center site. Neighborhood 6 (Baldwin) of the North City West community is located to the east where multi-family residential development is currently underway. Interstate 5, a major coastal route carrying over 100,000 ADT runs north-south along the western perimeter of the parcel. The land south of the project site,

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across Carmel Valley Road, is undeveloped and includes the Carmel Creek floodplain and a natural sedimentation basin for the Los Penasquitos Lagoon watershed. Carmel Creek, which lies south of and parallel to Carmel Valley Road, discharges into the lagoon located about 1600 feet to the southwest. Further west, residential development within Del Mar Heights is located beyond Interstate 5.

Presently, the site is undeveloped and largely remains natural. However, the existing El Camino Real alignment parallels the freeway along the western part of the site. Along the existing roadway, there has been some unauthorized dumping. The project site is also bisected by a remnant piece of the old Carmel Valley Road; a small construction staging area and a temporary sales office were previously sited on the property. There has been extensive research into the archaeological resources of the subject site and surrounding Precise Plan units. The discovered archaeological sites appear to represent satellite campsite and resource areas, rather than vestiges of large villages. One of the researched archaeological sites (SDM - W-19) is located in the extreme southwest corner of the property. An excavation program was undertaken at the site and investigation results found the site to be nonunique.

3. Planning Background. The planning history of North City West (NCW) begins even before enactment of the Coastal Act of 1976. The City of San Diego adopted a community plan for North City West on February 27, 1975. The Planning Director of the City then convinced the Commission staff that the NCW plan should form the basis of land use planning assumptions since it preserved the most sensitive areas in open space and the NCW plan contained highly protective land use designations and policies. The next stage in Coastal Planning was adoption of an Issue Identification statement to guide LCP preparation. At that stage, the City identified as issues:

- The access capacity of the Route 56 Freeway and of Del Mar Heights Road.
- The impact of Carmel Valley area urbanization on the water quality of Penasquitos Lagoon...

To this identification, the Commission added:

...the protection of the existing floodplains within Carmel Valley and the associated natural drainages, and the controls of erosion and sedimentation into Los Penasquitos Lagoon...and the impact of proposed transportation facilities such as Route 56 Freeway through Carmel Valley on the resources of Los Penasquitos Lagoon... (January 25, 1979)

The City was subsequently funded to prepare a Land Use Plan for North City; however the issues of development within floodplains and Route 56 still remain unresolved. The LUP submitted by the City had a number of other policies that indicated the City's intention to preserve by regulation the sensitive areas of the Valley. To begin with, the entire valley floor and the steep, highly erodible slopes surrounding the valley were contained within the LUP's open space element. The plan provided further guidance on the issue of Route 56/Carmel Valley Road:

- Carmel Valley Road east of I-5 should be specially designed as a four-lane primary arterial with turn pockets at crossing areas in order to properly maintain its scale with the natural landscaped framework.
- As an initial step, Del Mar Heights Road should be considered as the major regional east-west multi-purpose link, in order to de-emphasize automobile traffic on Carmel Valley Road, and thereby minimize any environmental impacts associated with widening Carmel Valley Road. (emphasis added)

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Further, the plan called for:

- It is proposed that Carmel and Shaw Valleys be designated as a major open space system. The valleys provide for a major break in urbanization and also structure the major parts of the North City community. The study conducted by the Environmental Development Agency of San Diego County and City staff justifies the designation of these lands for open space purposes because they are also subject to inundation and contain steep slopes.

Finally, the LUP provided protection for the sediment storage areas mapped in the Sea Grant study:

- Pursue the preservation of major areas of sediment storage. These areas function to store sediment so that it is not carried downstream into stream and lagoon channels...these areas should be preserved in their natural state....

The Commission has consistently advised the City of San Diego that it is not unequivocally opposed to some encroachment onto steep slopes or fill in the floodplain fringe, as long as there are specific parameters to such alteration and an overall Commission-approved specific plan that resolves sedimentation impacts. The Commission has suggested the City adopt a requirement for the preparation of detailed grading and runoff control plans which disallow grading during the rainy season. A last major concern endorsed by the Commission was the need to implement a funding program for restoration of Los Penasquitos Lagoon. These provisions were adopted by the Commission in May, 1984 at its hearing on the North City LUP.

The City has not accepted those suggested modifications, and is preparing another resubmittal. Another planning option and additional legislative direction limiting the scope of review within Carmel Valley and its watershed was given by AB 2216 which added Section 30170(h) to the Act:

...the Carmel Valley area...shall be excluded from the Coastal zone after the City of San Diego submits, and the Commission certifies, a drainage plan and a transportation plan for the area...The drainage plan and any amendments thereto shall be prepared after consultation with the Department of Fish and Game and shall ensure that problems resulting from water runoff, sedimentation, and siltation are adequately identified and resolved.

Although the City has never pursued the option allowed under this Section, it does establish a fairly clear legislative direction that protection of the lagoon from direct impacts and siltation impacts should be the direction of the Commission's regulatory efforts.

4. Wetland Protection.

A. Los Penasquitos Lagoon/Impacts of Watershed Development. As previously mentioned, the project site lies northeast of Los Penasquitos Lagoon, prominently located near Carmel Creek and its discharge into the lagoon environs. Los Penasquitos Lagoon, a valuable wildlife habitat and preserve, has been affected by the increased deposition of sediment which has occurred since the lagoon watershed has undergone agricultural and suburban development and the development of the coast highway and railroad causeway. Primary effects have included the infilling of the lagoon and reduction of its total volume and the introduction of various pollutants

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and nutrients which contribute to periodic algal blooms. The impact of increased sedimentation and pollution has been intensified by the existence of a sandbar which is deposited by ocean currents in the mouth of the lagoon. This blockage prevents tidal flushing of the lagoon which would otherwise help to reduce sediment deposition and dilute or remove pollutants.

Specifically, sediment can interfere with the functioning of a lagoon by smothering lagoon life and by clogging lagoon channels, decreasing the rate of tidal exchange and thereby decreasing the natural flushing processes, with an overall effect of dramatically increasing the rate of eutrophication of the lagoon. Sediment can also interfere with riparian areas, again smothering vegetation and creating deposits in channels which can interfere with movement of flood flows and increase flooding. It is the rate of sedimentation, or more exactly the rate at which sediment reaches the lagoon and riparian channel, which is critical to the continued, healthy functioning of the lagoon. Therefore, the protection of the lagoon and its watershed from sedimentation, exacerbated or precipitated by improperly staged or sited development, is critical.

B. Coastal Act Policies. Protection of the wetlands of Los Peñasquitos Lagoon requires more than maintenance and preservation of the actual wetlands of the lagoon, which include some riparian and freshwater marsh resources extending upstream into Carmel Valley. Since the surrounding slopes and streambeds near the lagoon are highly erodible, the impacts of development must also be carefully controlled or sedimentation will severely damage the wetlands. In recognition of the sensitivity of these unique coastal resources to direct and indirect impacts, the Coastal Act of 1976 mandates the following provisions against which all new developments must be weighed:

Section 30231.

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, ... maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Section 30250.

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

Section 30251.

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed...to minimize the alteration of natural land forms...

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Section 30253.

New development shall:

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area....

C. Existing Drainage Pattern/Proposed Grading. The project area lies within the Soledad Hydrologic Subunit of the Penasquitos Hydrologic Unit. This subunit incorporates a watershed of approximately 55 square miles, extending from Interstate 15 to the Pacific Ocean. Although there are no naturally occurring streams on-site, runoff from Interstate 5 and Del Mar Heights is directed through the Employment Center to the north and across the project site. The combination of increased runoff from I-5 and the past disturbances in and around the property which have modified the ground cover and drainage patterns has resulted in the erosion of gullies up to 25 feet in depth and 30 feet in width in some portions of the adjacent areas to the north.

A ridge extends through the north-central portion of the Employment Center site, and drainage from this area is generally to the southeast and southwest. This ridge-line extends down into the project site, terminating and bisected by the old Carmel Valley Road alignment.

The geology of the visitor center site is similar to that of the rest of the Employment Center Precise Plan area directly north. The geologic formations underlying the project site include Del Mar Formation, Torrey Sandstone, and Bay Point Formation. Soils in this watershed are highly erodible, increasing the need for the control of sediment. No faults or landslides have been identified within the visitor center site and no significant, unmitigable geologic impacts were identified in its environmental review.

The preliminary grading plans indicate 202,500 cubic yards cut will be required to complete the project with limited fill areas amounting to 50,000 cubic yards material. The excess material would be exported out of the coastal zone and deposited in Unit 2C of the Employment Center to the north. The maximum height of any cut or fill slope would be 40 feet. The grading plan largely involves excavating the northern portions of the site and then creating terraced pads extending southward.

D. Erosion/Runoff Control. In addressing the mandates of the applicable Coastal Act policies and recognizing the potentially significant adverse impacts of downstream sedimentation on unique coastal resources, several mechanisms and policies have been developed to mitigate such off-site impacts. One mechanism is to regulate and reduce the amount of sediment generated by exposed soils during and after construction, until the site is restabilized. In order to mitigate any adverse potential for localized erosion or downstream sedimentation, Special Conditions #3 and #7, in part, limit grading for all permitted work to the non-rainy season, specifies timing for the installation of erosion control devices and requires the immediate revegetation and stabilization of all exposed surface areas.

Since the runoff rate of storm waters leaving the site will usually increase after the development is completed due to its impervious surfacing, another erosion control mechanism is the provision of a detailed runoff control plan. As a means to control off-site erosion from concentrated runoff, a runoff control plan must be designed which retains the peak runoff rate from the developed site below the expected peak discharge rate of a specified rainstorm over the natural site. In February, 1980, Leeds, Hill and Jewett, Inc. (Leeds-Hill) completed the North City West Drainage Plan.

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The Leeds-Hill drainage plan (1980) describes methods by which storm-water runoff would be controlled both under ultimate development of the North City West community and with the development of individual precise plan units. Generally, the drainage plan provides a detention basin in each precise plan development unit to allow independent development of each unit. The detention basins and outlets are sized to meet the Commission's requirement to reduce the rate of storm-water runoff having a 10-year, six hour, frequency under ultimate development conditions to the rate of runoff that exists under present conditions with the same storm events.

The proposed detention basin included within the visitor center was identified in the NCW Drainage Plan. Preliminary plans and supporting hydrological calculations have been submitted which illustrate a detention basin having a capacity of approximately four acre-feet and an outlet size of 42 inches. In addition to the project site's runoff, this basin will accommodate runoff from lots within the Employment Center. Runoff will flow out of the detention basin into an existing triple box culvert under Carmel Valley Road, which empties into a lined trapezoidal channel that outlets into Carmel Creek. Carmel Creek passes under I-5 through a triple 10- by 12-foot box culvert which empties into Los Penasquitos Lagoon west of I-5.

As stated previously, however, the plans for the herein described detention basin are preliminary and subject to change, due to necessary site plan revisions to limit steep slope encroachment. Therefore, Special Condition #4 has been attached to require an updated submittal for the runoff control plan and final detention basin drawings reflecting those changes. Additionally, Special Condition #5 requires the execution of a detailed maintenance program for the accepted detention basin to assure its effective, on-going functionality. All of these provisions serve to minimize and mitigate the sediment generation of the site or downstream erosion and sediment yields, consistent with Coastal Act Sections 30231, 30240(b), 30250(a) and 30253(2).

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E. Landform Alteration. Given that steep slope areas are subject to greater erosion potential, if altered, the North City LUP policies establish restrictive limitations on slopes steeper than 25 percent gradient. Because the steep hillsides abutting the valley floor also support unique biological resources or vegetative cover and are generally underlain by highly erodible soils, the likelihood of erosion resulting from their disruption is exacerbated. These concerns can be satisfied by eliminating or significantly reducing grading on steeper slopes. In this subject case, the preliminary site plan has been redesigned to minimize landform alteration. After early discussions on the original site plan, the applicant has agreed to reconfigure the proposed buildings and parking structure to preserve greater portions of the ridgeline. Unfortunately, the mass of the ridgeline is situated outside the coastal zone to the north; the acreage will be developed in a series of stepped-down, commercial lots within the Employment Center. Although the preservation of steep hillsides certainly provides a visual resource and the aesthetics of open space areas, their retention also serves to minimize erosion potential. Pursuant to Special Conditions #1 and 2, the applicant shall submit the final revised plans for Executive Director review and approval to document these site plan changes. Special Condition #9 has also been attached to permanently retain the undeveloped western face of the ridgeline and the detention basin/lowlands in open space. These conditions, founded in Sections 30231 and 30251, are necessary to minimize steep slope encroachment, resultant erosion potential and preserve natural buffers areas upstream from sensitive coastal resources.

F. Lagoon Restoration. Even with the special conditions and circumstances identified above, development will have some degree of adverse long-term effects on Los Penasquitos Lagoon. As noted in other permits (e.g., 6-B2-100, Genstar; 6-B2-106-A, Fieldstone; 6-B3-13, Baldwin; and A-69-81, Village Properties) and in the findings of the predecessor Regional Commission to deny the North City Land Use Plan, development will increase the amount and rate of runoff; and it will increase the amount of urban pollutants in such runoff. In addition, even with controls over the rate of runoff, a greater net volume of runoff will result because less water will percolate into the ground due to increased impervious surfacing. The combined result will establish the potential for a substantial increase in sedimentation of and adverse impacts to the lagoon ecosystem.

In order to mitigate the effects of runoff, the Commission has undertaken or funded numerous planning studies. In the Commission-sponsored study of Los Penasquitos Lagoon entitled "Stream and Lagoon Channels of the Los Penasquitos Watershed, California, with an Evaluation of Possible Effects of Proposed Urbanization" by Karen Prestegard, a recommendation was made to increase the tidal prism of the lagoon by restoring channels cut off by construction of the railroad across the lagoon. It was recommended that this would enhance the capability of the lagoon to maintain an open mouth. It was also reasoned that a lagoon that was open more of the year would be better flushed and more capable of absorbing the increased load of pollutants. Commission staff worked with North City West developers to analyze the costs of a minimal improvement project along the lines recommended in the Prestegard study. The expected cost of \$400,000 to \$600,000 was then allocated to the overall expected buildout in North City West to establish a proportionate share of about \$50/residential unit. The Commission has used that cost in the Genstar and Fieldstone permit conditional approvals.

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Key developers that worked in the formulation of this lagoon restoration fee were the Baldwin Company and the current applicant, Pardee, Baldwin, in developing its Neighborhoods 4, 5 and 6 to the east, has already committed an initial deposit for its total residential development. Similarly, in this initial permit application by Pardee in the North City West community, Pardee will be asked to fulfill its prior commitment for its residential in-lieu fees to promote lagoon restoration efforts. Based on this long-standing agreement, Special Condition #6B has been attached requiring execution of an agreement between the applicant and the Coastal Conservancy to formalize this commitment.

However, the Commission must also recognize the contribution of commercial construction activities within the lagoon watershed. Because the initial solution was a minimal one, the Commission also acknowledges that additional funding will allow a more comprehensive and effective solution. Some degree of the major causative factor in increased runoff and pollutants is the establishment of impervious surfaces. Such areas cause runoff to enter streams more rapidly, and the runoff contains increased pollutant loads particularly from such areas as parking lots. If we generalize residential development such as that occurring in North City West to equate a net density of about 5 units per acre and a coverage with impervious surfaces of about 60 percent (midrange figures, residential development actually varies around these numbers depending on density and amenities), the existing fees represent a cost of about 1¢ per square foot of impervious surface. However, impacts are caused by initial grading as well as the ultimate impervious surfaces. Even with the maximum possible controls on sedimentation, sedimentation increases downstream from graded areas until landscaping achieves effective coverage. Both the areal extent of graded areas and the areas of impervious surfaces to create large building pads and parking lots are often more extensive and necessary in commercial developments. Therefore, it is clear that commercial projects, perhaps even more than residential construction and especially when located within the direct watershed, must be assessed to provide monies for overall lagoon management and restoration.

Due to these direct and indirect off-site impacts of degradation and sedimentation resulting from commercial construction, the Commission believes it is appropriate to assess a fee, pursuant to Special Condition #6A, to mitigate both the short- and long-term effects of grading and impervious surfacing within the watershed. The fee would be based upon one-half cent per square foot of site surface area disturbed by grading and three cents per square foot of ultimate impervious surface area. The smaller fee (grading) is for the short-term impacts before the site is revegetated, stabilized or built upon; and, the larger fee (impervious surfaces) is for the long-term impacts of increased runoff loads and rates resulting from annual rainfalls on permanently hardened surfaces. The Commission finds that the fee is a reasonable condition that mitigates the actual effects of grading, creating disturbed and exposed surfaces and altering the natural hydrology of the watershed. The Commission thus finds the project consistent with other precedential permits and applicable Coastal Act policies.

5. Biological Resources. As previously cited, several Chapter 3 policies address the need to preserve natural buffer areas and sensitive habitat values from degradation. Biological information for the proposed visitor center site was presented and reviewed in the Neighborhoods 4, 5 and 6 and Employment Center environmental documents. These documents identified significant, nonmitigable impacts to biological resources resulting from the loss of coastal mixed chaparral habitat. However, the extent of this habitat on the visitor center property itself

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is more limited. The proposed development would result in the loss of about two acres of coastal mixed chaparral, four acres of coastal sage scrub and one acre of riparian scrub. The riparian feature has sparsely developed along the drainage which traverses the ridgeline, dropping down and depositing along the present El Camino Real alignment. It is characterized by scattered stands of willow, reed grass and other plants which inhabit washes. This vegetation does not possess sufficient arboreal development to be classified "riparian woodland". The riparian course, albeit degraded, should largely be retained in the lowlands area around the future detention basin. As provided for in Special Condition #8, revegetation and enhancement of this buffer area could restore some of the site's biological values.

No species listed as rare, threatened, or endangered, by state or federal agencies were found or considered likely to occur on the property. No significant populations of other sensitive species would be affected by the impacts to this area. Because of the small area involved in the visitor center site and the disturbed nature of much of the site, the impact of the loss of biological resources would not be significant relative to losses from adjacent activities and those developments situated outside the coastal zone. However, Special Condition #7, in part, was developed to assure that any proposed off-site improvements would not encroach within any environmentally sensitive areas or wetlands and it would require site restoration after development. As proposed and conditioned to regulate necessary off-site improvements, project approval should not result in any significant or adverse biological impacts.

6. Floodplain Development. Section 30253(1) of the Act specifies "new development shall minimize risks to life and property in areas of high geologic, flood and fire hazard." According to floodplain mapping provided by the Federal Emergency Management Agency, the water surface elevation of Carmel Creek during a 100-year flood is 26 feet. The realignment of Carmel Valley Road south of the visitor center site (as an off-site improvement for Neighborhood 6) is being constructed at an elevation of 34 to 38 feet to mitigate potential flooding impacts to this portion of the roadway which is within the 100-year floodplain. Since the lowest pad elevation within the Visitor Center Development is 50 feet, the main project center would not be subject to potential flooding impacts. However, the proposed development also includes a land division which creates a small flag lot south of Carmel Valley Road. Given its location and based on the City's tentative map conditions requiring flowage easements over the bisected lot, it is reasonable to conclude it may be subject to flooding and lie within the Carmel Creek floodplain fringe. Due to the potential risk of flooding hazard and the stream channelization created by floodplain fill, the Commission has generally only permitted uses within the floodplain that are consistent with periodic flooding, compatible with coastal resources and which do not propose fill to promote development. Therefore, Special Conditions #7 and 9 have been attached to retain the flag lot in permanent open space and preclude the siting of any off-site improvements within the 100-year floodplain fringe. With these conditions, the Commission may find project approval consistent with Section 30253(1), the North City LUP and past permit precedents.

7. Intensity of Use. The Coastal Act requires an overall intensity of use that is compatible with continued protection of resources. Specific policies are contained in Sections 30250, 30254, and 30240(b), which provide, in relevant part:

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30250(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have a significant adverse effect, either individually or cumulatively, on coastal resources. (emphasis added)

30254 New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division (emphasis added)

30240(b) Development in areas adjacent to environmentally sensitive habitat areas... shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Local governments are given direction to coordinate their activities adjacent to the coastal zone to assure protection of coastal resources in Section 30200(a):

All public agencies carrying out or supporting activities outside the coastal zone that could have a direct impact on resources within the coastal zone shall consider the effect of such actions on coastal zone resources in order to assure that these policies are achieved.

These policies establish a pattern of legislative concern over cumulative impacts, and direct that the overall intensity of development be carefully regulated so that coastal resources are protected.

The single issue that the Commission gave greatest emphasis in the issue identification stage for North City was accommodating development without intruding into the wetlands of Los Penasquitos Lagoon. Staff recommended the level of development proposed in the North City LUP segments previously reviewed because available traffic information indicated that the traffic generated could be accommodated on a 4 or 6 lane alignment of Carmel Valley Road. Recently, the City has approved a number of new community plans immediately adjacent to the coastal zone that generate very large traffic volumes. Further, the City and Caltrans have begun actively planning for construction of Route 56 to freeway standards through the valley.

The cumulative impact of concern to the Commission is the effect of development on Los Penasquitos Lagoon. There are two specific concerns, both relating to the construction of Route 56. First, the construction of Route 56 and its interchange with I-5 might directly fill wetland and sediment deposition areas, with serious adverse effects on the lagoon. Second, the construction of Route 56 through the Valley may so alter the hydraulics of the Valley that the existing stream system is permanently altered and downstream movement of sediment is increased. The Commission is concerned that the overall level of development being established must be consistent with protection of the stream and lagoon habitat, as required in Sections 30250 and 30240(b).

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Caltrans has just announced preparation of an EIR for substantial highway improvements, which Caltrans states is necessary to accommodate proposed development in the area and east-west traffic. Such improvements include construction of an entirely new interchange at I-5 and Carmel Valley Road including an unspecified amount of wetland fill and the possible elimination of areas where the stream now deposits sediment. Staff believes that the issue of traffic generations must be addressed so that the Commission is not involved in approving piecemeal a number of density increases that cumulatively commit the Commission to a major new freeway system that seriously damages Los Peñasquitos Lagoon. Caltrans' staff has indicated that it is possible to construct the interchange without fill, although at higher cost. Prejudice to the LCP effort can be avoided if all development that provides for a higher intensity than previously approved contributes, if necessary, to the higher cost of avoiding wetland fill. Only in this way does the staff believe that the increased intensity of use envisioned in some areas would not prejudice preparation of a certifiable LCP.

The intensity of use question is more acutely raised in the proposed Carlsberg Construction development (#6-84-487) which the Commission is currently reviewing and the City's planning actions on several adjacent areas. The intensity of use findings for the Carlsberg proposal (#6-84-487) are incorporated herein for reference. In that proposal, the applicant seeks to develop within the floodplain and areas previously reserved for open space. Unlike the Carlsberg project, the subject site has always been designated for visitor commercial use in the adopted NCW Community Plan and there is no significant increase in the visitor center's intensity of use presented here. However, because of the potentially significant and cumulative impacts resulting from increased development intensities, the Commission must be able to adequately document and differentiate this proposal from others in the area.

As previously stated, the subject site has always been designated for visitor commercial uses but there has been a continuing lack of specificity in the details and scale of the proposed development. It is now fairly certain that there will be proposals for three major hotels within all the visitor commercial designated areas. Pardee's 500 room hotel is designed to serve both the adjacent community and the office/industrial developments of the Golden Triangle, Sorrento Valley and western Mira Mesa areas, as well as the traveling public along Interstate-5. In its environmental review, it was determined that Pardee's project could be accommodated by the circulation system being developed within the NCW community. Further, the proponents declare that the project is dependent on Carmel Valley Road at a capacity and scale consistent with the Commission's action on the NCW Community Plan and North City LUP.

Although the proposed development plan for the visitor center site would not result in any new significant impacts on traffic circulation, its EIR Addendum states, "it would contribute to a previously identified, cumulatively significant and unmitigated impact on the regional transportation system." While the City made this finding, the Commission must determine whether or this specific proposal represents an increased intensity of use over that previously endorsed by the Commission and thus contributes to the City's and Caltrans' arguments for circulation improvements which may or not be consistent with coastal resource protection. To make this assessment, the Commission must review the history of the visitor center site.

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In 1975, the NCW Community Plan was adopted; it referenced a visitor commercial designation on 15 acres at the project site. However, no specific assignment for trip generation was made at that time. In 1982, the first assignment for a trip generation rate was made for the tourist commercial area in the I-15 Corridor Study. It designated a factor of 200 ADT per acre for the visitor center. Also in that year, the NCW Community Plan was revised to include a visitor commercial area (approximately 8 acres) on Baldwin's property holdings to the east. The same trip generation (200 ADT/AC) was assigned to the Baldwin site. In 1983, anticipating some proposed revisions in the Employment Center created by the realignments of El Camino Real and Carmel Valley Road, a consultant (Urban Systems Associates, Inc.), completed some traffic analysis and forwarded it to the City's Engineering & Development Department. The consultant's analysis cites only 18 acres of visitor commercial area and assigned a trip generation rate of 500 ADT per acre. The Employment Center-EIR Addendum was circulated that year and adopted the revisions and analysis presented by the applicant and consultant firm.

Recently, the Environmental Quality Division of the City transmitted a memo indicating that the traffic generation for the Pardee visitor center could equal 10,670 ADT as opposed to the former 9,000 ADT predicted by the consultant's analysis. This assumption was based on specific trip assignments being made for proposed uses rather than the gross acreage factors. Similarly, it could be argued that the trip generation assignment accepted in the revisions for the Employment Center in 1983 (increasing from 200 ADT to 500 ADT per acre) represented a change in intensity of use or scale for the visitor center. However, these arguments are not well-documented because the details in specific proposals for the visitor commercial sites is absent. Rather, the changes in assigned trip generation rates appear to be more related to updated traffic analysis or revised planning assumptions than an absolute change in scale of the proposed visitor center uses. Additionally, two other independent sources on trip generation rates (1979 San Diego Traffic Generation and 1984 Traffic Generation Rates for the San Diego Region/SANDAG) indicate hotel trip generation rates ranging from 100-300 ADT per acre, depending on size, resort facilities, the inclusion of convention facilities or associated commercial development. Therefore, although there may be some question of its scale, the subject site has always been designated for visitor commercial use and; as such, it represents a priority use under the Coastal Act. Further, it does not present the direct resource conflicts and impacts posed in other projects. Based on the project's history and the planning background for the NCW community, there is no clear argument or documentation that the herein proposed visitor center proposal represents a significant change in intensity of use over its prior endorsement. The Commission may therefore accept the proposed development and find it consistent with applicable Chapter 3 policies and other precedential permit decisions.

8. Visual Impacts. Section 30251 of the Act requires new development to enhance and protect the scenic amenities of coastal areas, to minimize landform alteration, to be visually compatible with the character of surrounding developments and to be subordinate to the natural setting and topography. The project site is situated in a visually prominent location, at the northeast corner of I-5 and Carmel Valley Road. The proposed visitor center development would be visible to regional traffic on I-5, to people entering the North City West community via Carmel Valley Road, and to residents within North City West and Del Mar Heights.

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The major issue associated with the Visitor Center Development Plan project is the visual effect of the proposed hotel. The visual prominence of the proposed 12-story hotel will be reduced to some extent by the topography of the project site in relationship to the surrounding area. The subject property is located just north of Carmel Valley, which is topographically the lowest point in the southern portion of the North City West Community Plan. The proposed 12-story hotel, when viewed from northbound traffic on I-5, will be backdropped by the contour-terraced development within the Employment Center to the North. When viewed from southbound traffic on I-5, the hotel will be backdropped by the bluffs located south of Carmel Valley Road. The backdropping effect provided by the surrounding topography and proposed development will serve to reduce the visual prominence of the hotel, since the hotel will not protrude into the skyline when viewed from vehicles traveling on I-5.

In an early staff recommendation for the North City LUP, it was suggested a 30-ft. height limit be established for new development west of Interstate-5 in Carmel Valley. However, given that the legislative direction for the Carmel Valley area focused on drainage and transportation issues, albeit the City has not completed such a comprehensive review, staff deleted the proposal to limit heights for new developments there. The question of scale could however be legitimately raised in relationship to any proposed landform alteration which could contribute to downstream sedimentation of sensitive coastal resources or any increased intensity of use which could conflict with coastal resource protection. These issues have been resolved for this proposal as cited in the findings above.

Given the Commission must still review the proposed visitor center and find it consistent with applicable Chapter 3 policies, it is important to note here that the City's preliminary approval did include specific urban design guidelines for the project. These guidelines regulate the massing, height, architectural style, colors, landscaping, signage and lighting of the visitor center (see attachment). In particular, the guidelines delineate specific landscape treatments including perimeter planter boxes around the multi-level parking structure, landscape islands and boxes on its top level and screening of rooftop equipment/utilities. As previously mentioned, the applicant has already agreed to redesign the proposed site plan to preserve more slope areas and buffers; this revision has been formalized in Special Conditions #1 and 3. Additionally, to formalize and assure that the proposed landscape buffers and overall landscaping are suitably enhanced to integrate and screen the proposed development, Special Condition #8 has been attached to submit a detailed landscape plan. Further, Special Condition #9 has been proposed to retain these buffer areas (the western slopes/detention basin) in permanent open space. Lastly, a condition has been attached to require Executive Director review and acceptance of any sign program for the visitor center. With these conditions, the Commission finds the proposed visitor center consistent with Section 30251 of the Act.

9. Local Coastal Planning. Section 30604(a) of the Act provides that a coastal development permit shall be issued only if the permitted development will not prejudice the ability of the appropriate local government to prepare a certifiable Local Coastal Program (LCP). In this particular case, such a finding can be made. The subject site is zoned VC and designated for visitor commercial development in the NCM segment of the Commission-approved North City Land Use Plan, as certified with suggested modifications. As cited above, the proposed facility is consistent with these land use regulations and precedential permit actions. With the attached conditions, the proposed development will maintain

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and preserve the sensitive resources of the adjacent Los Penasquitos Lagoon and its watershed.

In its environmental review, opponents expressed concerns about the visitor center's consistency with projected impacts on nearby beaches and coastal recreational opportunities. However, in the context of the planned NCW community and its proposed 40,000 populace, the visitor center's contribution would be marginal. Further, it again represents a priority use, visitor-serving by nature which is complementary and supportive rather than private residential development. Therefore, since the project is consistent with the applicable Chapter 3 policies, zoning, and the Commission's action on North City Land Use Plan, the Commission finds approval, as conditioned, will not prejudice the ability of the City of San Diego to develop implementing ordinances and a certifiable LCP.

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STANDARD CONDITIONS:

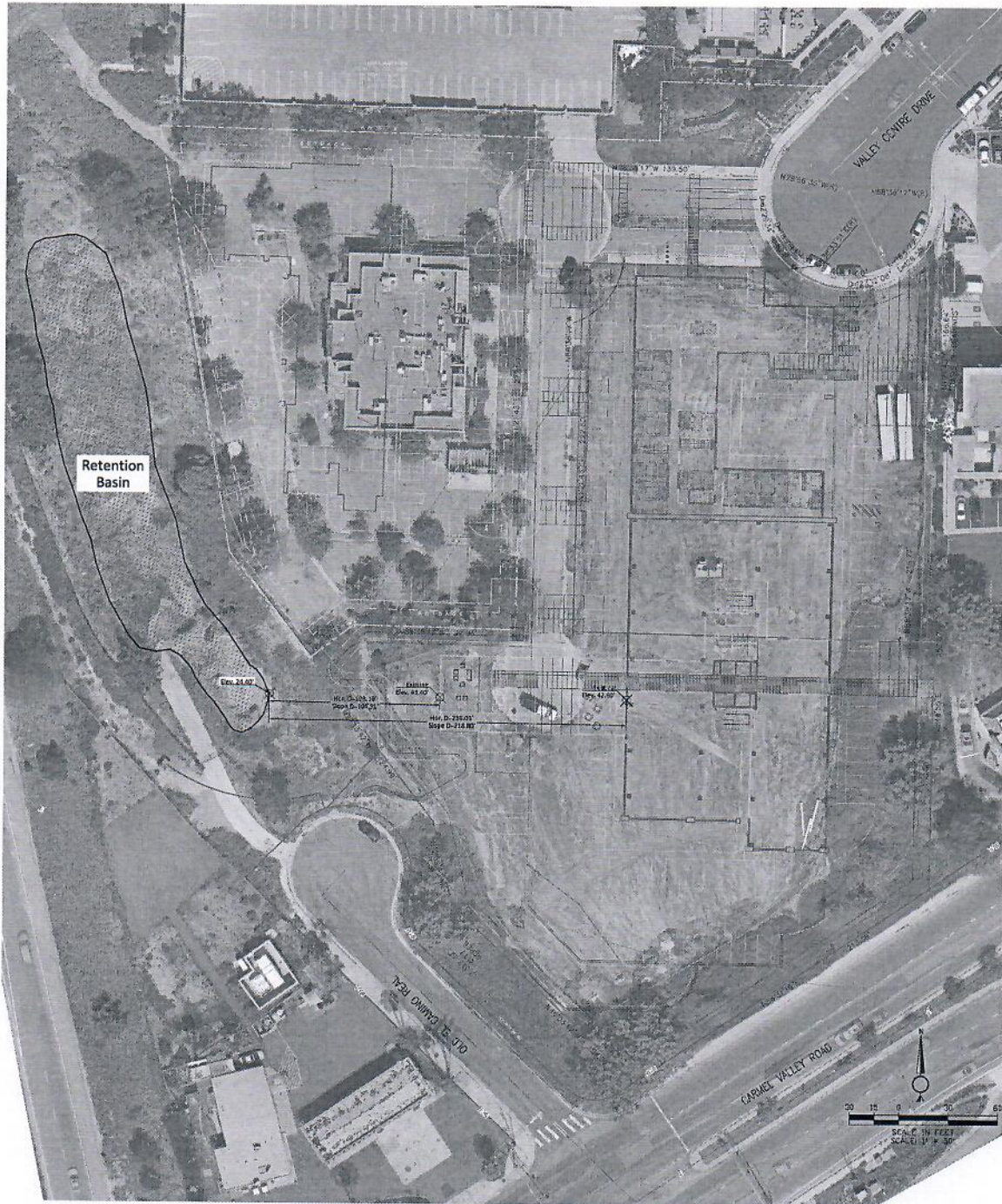
1220

1. Notice of Receipt and Acknowledgment. The permit is not valid and construction shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission Office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Construction 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. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission and affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, MRS.

EXHIBIT “5”

Distances for Approved Structures from Retention Basin



	Horizontal Distance (In Feet)	Slope Distance (In Feet)
Retention Basin to Nearest Point of Flat Patio	103.18	104.91
Retention Basin to Nearest Point of Parking Structure	216.03	218.80

Engineer: Alex Martin, PE
 Firm: APM Engineering, Inc.
 Address: P.O. Box 1874, Alpine, CA 91903
 Phone: (619) 362-0251

EXHIBIT “6”

HELIX Environmental Planning, Inc.
7578 El Cajon Boulevard
Suite 200
La Mesa, CA 91942
619.462.1515 tel
619.462.0552 fax
www.helixepi.com



October 13, 2016

Mr. Neil Patel
Vice President Acquisition & Development
Excel Hotel Group
10660 Scripps Ranch Boulevard, Suite 100
San Diego, CA 92131

Subject: Biological Resources Technical Memorandum for the Carmel Valley Hotel Project

Dear Mr. Patel:

This biological resources technical memorandum documents the results of a jurisdictional assessment conducted by HELIX Environmental Planning, Inc. (HELIX) for the Carmel Valley Hotel Project (project) located at the address of 3510 Valley Centre Drive in the Carmel Valley neighborhood in the City of San Diego, California. The assessment focuses on an off-site area located to the west of the project site demonstrated herein to be a man-made storm water retention facility that is maintained and lacks naturally-occurring wetlands. The assessment is based on project information provided to HELIX, review of readily available database information, and a site visit performed by HELIX on October 4, 2016.

PROJECT LOCATION AND BREIF DESCRIPTION

The project site is located at 3510 Valley Centre Drive in the Carmel Valley neighborhood of the City of San Diego in western San Diego County. The site consists of one 1.46-acre parcel and is assigned assessor parcel number (APN) 307-240-02-00. The site is developed with a one-story, approximately 8,669-square-foot restaurant that is surrounded by paved parking areas and associated driveways, sidewalks, and landscaping. The surrounding area is developed primarily with a mix of commercial and office uses, hotels, and open space. The site is located immediately south of a Marriott hotel and parking structure; north of Carmel Valley Road, Ted Williams Parkway, and an existing gas station; east of Interstate 5 (I-5); and west of a vacant site proposed for mixed-use development.

The project proposes a Site Development Permit (SDP) and Coastal Development Permit (CDP) to construct a five-story, 127-guestroom hotel with a pool and spa, meeting space, outdoor amenity area, surface parking, and one level of subterranean parking. Public utilities, including sewer, water, and fire mains, would connect with existing lines within Valley Centre Drive to serve the proposed project. To prepare the site for construction, the project would demolish the

8,669-SF restaurant building, parking lot, curbs, and sidewalks; remove existing vegetation; and conduct site grading.

METHODS

HELIX reviewed current and historical aerial imagery (Google Earth 2016; NETROnline 2016), topographic mapping provided by U.S. Geological Survey (USGS) and others, U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory (USFWS 2016b); U.S. Department of Agriculture (USDA) soils data (USDA 2016), and as-built drawings of existing developments and facilities. Other resources reviewed for this study included the City's Environmentally Sensitive Lands regulations (City of San Diego 2012), sensitive species (USFWS 2016a, County of San Diego 2016), City Multiple Species Conservation Program (MSCP) information (City of San Diego 1997), and maintenance records for the existing man-made storm water retention facility.

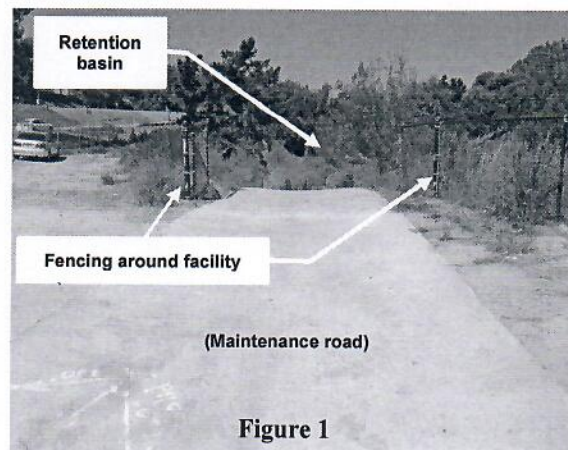
HELIX Principal Biologist, Karl Osmundson, performed a general biological survey and jurisdictional assessment of the project site and immediate vicinity on October 4, 2016. The survey focused on assessment of existing natural and man-made waterways and wetlands. General existing conditions information was obtained with an emphasis on vegetation, soils, hydrology, disturbance, and land uses.

RESULTS

General Conditions

Database information, maintenance records, and conditions observed during the 2016 survey confirmed the presence of an off-site, man-made storm water retention facility located approximately 50 feet west of the site. The facility includes a man-made retention basin, stand pipe in the center of the basin, storm drain outfalls at the perimeter of the basin, black perimeter fencing, and concrete maintenance road.

Figure 1 to the right depicts the general location of the retention basin, perimeter fencing, and existing maintenance road leading down to the retention basin. The primary function of the facility is to receive, retain, and treat storm water running off the surrounding developments.



Given the general vegetation, soils, and hydrology conditions observed, the retention basin likely supports wetland conditions, which is not uncommon to man-made storm water facilities in the region; however, it is evident that any wetland conditions present are not natural and only sustained within the basin because of man-made activities, as explained further below.

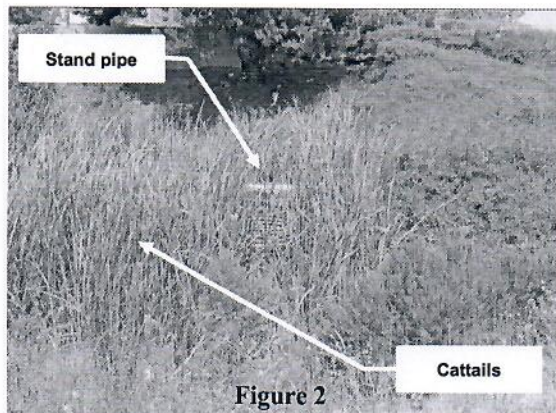


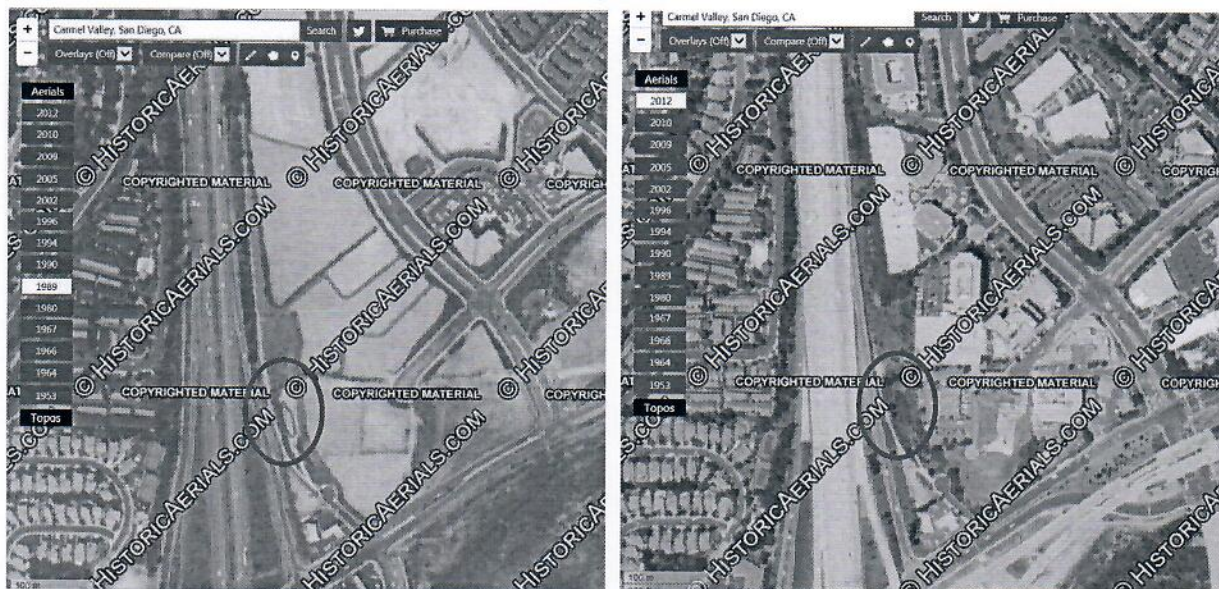
Figure 2 to the left depicts the retention basin, including the stand pipe (overflow drain pipe) and representative vegetation. Vegetation in the basin is strongly dominated by cattail (*Typha* sp.), which is commonly found in storm water facilities throughout the City, including those that support wetland conditions. Although no soil samples were taken, the soils in the lowest portions of the basin were dark, saturated, and likely hydric due to regular, artificial hydrology inputs collecting and settling at the bottom of the basin. No standing water was observed, although soils were

saturated and other indications of the presence of water or hydrology sign were observed.

Historical Imagery and Origin

Review of historical imagery (NETROnline 2016) dating back to 1953 confirms that the storm water facility was constructed sometime between 1980 and 1989. Figure 3 below provides side-by-side images from 1989 and 2012, with the generally location of the basin for the facility shown as a green polygon within the red circle.

Figure 3



From the imagery, it is apparent that the facility was constructed when previous mass grading activities occurred for the existing commercial, medical office, transportation, and other developments in the general area. The large bare earth areas in the image on the left from 1989 show the presence of graded pads and the graded storm water facility, including basin and maintenance road. There was apparently a historic drainage that trended north-south in the general location of the present-day facility; however, that drainage and its watershed upstream

had been filled and substantially modified prior to 1964 and before the storm water facility was constructed.

Evidence of Maintenance and Other Man-Made Activities

The storm water facility was originally constructed with the intent to be maintained and, based on records provided by the owner, has been maintained as recent as 2016. Evidence of facility maintenance further reinforces that the area is subject to man-made activities and conditions are controlled to promote the primary function and service of the facility, which is to provide retention and treatment of artificial runoff and storm water from the surrounding developed lands.

Specific man-made activities noted to be associated with the facility and surrounding areas include, but are not limited to: development and manipulation of the natural watershed and surrounding land; creation of the basin itself; creation of storm drains outfalling into the basin; artificial hydrology inputs from urban runoff, such as landscape irrigation; intent to maintain the facility since its origin, as evidenced by facility fencing and maintenance road for access; and regular maintenance activities, as evidenced by maintenance records held by the owner.

National Wetlands Inventory Data

Data from the U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory (NWI) identify Freshwater Emergent Wetland (Code PEMCh) over the approximate location of the basin within the storm water facility. It is not uncommon for USFWS NWI data to include man-made features such as storm water basins, artificially-created ponds, and others. Although the USFWS NWI data can be a useful tool in identifying features that may support wetland conditions, drainage courses, riparian habitat and/or other attributes, the data does not and is not meant to identify regulated waters and wetlands.

General Requirements for Regulated Waters and Wetlands

In the context of this assessment and for which the USFWS NWI data does not represent, regulated waters and wetlands include wetland and non-wetland waters of the U.S. subject to the regulatory jurisdiction of the U.S. Army Corps of Engineers (USACE) pursuant to Section 404 of the federal Clean Water Act (CWA); wetland and non-wetland waters of the State subject to the regulatory jurisdiction of the State Water Resources Control Board and Regional Water Quality Control Board pursuant to CWA Section 401 and State Porter-Cologne Water Quality Control Act; streambed and riparian habitat subject to the regulatory jurisdiction of the California Department of Fish and Wildlife (CDFW) pursuant to Sections 1600 *et seq.* of the California Fish and Game Code (CFG Code); Environmentally Sensitive Lands (ESL) wetlands, including wetlands within the coastal overlay zone, subject to the regulatory jurisdiction of the City pursuant to their Land Development Code (LDC) Biology Guidelines and ESL Regulations, and Local Coastal Program (LCP); and coastal wetlands subject to the regulatory jurisdiction of the California Coastal Commission pursuant to the California Coastal Act.

Activities resulting in impacts (e.g., fill, dredge, discharge) on regulated waters and wetlands require notification and permitting with the agencies referenced above. Avoidance, minimization, compensatory mitigation, and development setbacks are often requirements of agency permits and approvals associated with regulated waters and wetlands. Of particular note, developments in the City require avoidance and setbacks from regulated waters and wetlands that meet the definition for ESL wetlands. These setbacks typically start at 50 feet from the regulated water and/or wetland boundary, but can go to 200 feet or more for highly sensitive resources, such as vernal pools. Similarly, developments in the coastal zone require avoidance and setbacks from regulated waters and wetlands that meet the definition for coastal wetlands. These setbacks typically start at 50 feet from riparian habitat and 100 feet from wetlands associated with regulated waters and wetlands.

CONCLUSION

Despite the USFWS NWI overlay, the off-site storm water facility is a maintained facility and any wetland conditions that are present are artificially created and should not constitute regulated waters and wetlands, including wetlands defined by the City that typically require avoidance and setbacks.

The City's Biology Guidelines and ESL state the following on pages 5 and 6 about wetlands:

*Wetlands support many of the species included in the MSCP (i.e. Covered Species). The definition of wetlands in ESL is intended to differentiate uplands (terrestrial areas) from wetlands, and furthermore to differentiate naturally occurring wetland areas from those created by human activities. Except for areas created for the purposes of wetland habitat or resulting from human actions to create open waters or from the alteration of natural stream courses, **it is not the intent of the City to regulate artificially created wetlands in historically non-wetland areas** unless they have been delineated as wetlands by the Army Corps of Engineers, and/or the California Department of Fish and Game.*

The City's Biology Guidelines and ESL also state the following about wetlands on page 7:

*Areas that contain wetland vegetation, soils or hydrology created by human activities in historically non-wetland areas do not qualify as wetlands under this definition unless they have been delineated as wetlands by the Army Corps of Engineers, and/or the California Department of Fish and Game. **Artificially created wetlands consist of the following:** wetland vegetation growing in brow ditches and similar drainage structures outside of natural drainage courses, wastewater treatment ponds, stock watering, **desiltation and retention basins**, water ponding on landfill surfaces, road ruts created by vehicles and artificially irrigated areas which would revert to uplands if the irrigation ceased. Areas of historic wetlands can be assessed using historic aerial photographs, existing environmental reports (EIRs, biology surveys, etc.), and other collateral material such as soil surveys.*

After review of information collected in the field and from historical imagery and other data, it is evident that there would not be naturally-occurring wetlands at the location of the present-day

Letter to Mr. Neil Patel
October 13, 2016

Page 6 of 7

storm water facility had it not been for the creation of the retention basin feature and impoundment and manipulation of the watershed from surrounding developments. The basin does not support naturally-occurring wetlands and was artificially created in historically non-wetland areas for the sole purpose of collecting, retaining, and treating storm water runoff from the adjacent developments. Therefore, the basin should not constitute wetlands and no avoidance or setbacks should be required for the project.

Please do not hesitate to contact me or Joanne Dramko at (619) 462-1515 if you have any questions or concerns regarding this letter.

Sincerely,



Karl Osmundson
Principal Biologist / Biology Group Manager
HELIX Environmental Planning, Inc.

REFERENCES

- City of San Diego (City). 2012. San Diego Municipal Code, Land Development Code, Biology Guidelines. Planning Department, San Diego, California. Available for download at: <http://www.sandiego.gov/planning/programs/mscp/pdf/ldmbio.pdf>
1997. City of San Diego Multiple Species Conservation Program Subarea Plan.
- County of San Diego. 2016. SanBIOS Database Records.
- Google Earth. 2016. Google Earth 5.0. Available for download online at: <http://earth.google.com/>
- NETROnline. 2016. Historic Aerials by NETROnline. Available online at: <http://www.historicaerials.com/>
- U.S Department of Agriculture (USDA). 2016. National Resource Conservation Service Web Soil Survey. <http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>
- U.S. Fish and Wildlife Service (USFWS). 2016a. Occurrence Information for Multiple Species within Jurisdiction of the Carlsbad Fish and Wildlife Office (CFWO). Available at: <http://www.fws.gov/carlsbad/gis/cfwogis.html>
- U.S. Fish and Wildlife Service (USFWS). 2016b. National Wetlands Inventory. Available at: <http://www.fws.gov/wetlands/Wetlands-Data.kml>
- U.S. Fish and Wildlife Service (USFWS). 2016c. Critical Habitat Portal. Available at: <http://ecos.fws.gov/crithab>

EXHIBIT “7”

Article 3: Land Development Terms

(Added 12-9-1997 by O-18451 N.S.)

Division 1: Definitions

(“Definitions” added 12-9-1997 by O-18451 N.S.)

§113.0101 Purpose of Definitions

The purpose of this division is to provide clear and concise definitions of words and phrases that have meanings specifically related to the Land Development Code and to apply these terms in a consistent way throughout the Land Development Code.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§113.0102 Identification of Definitions

Each word or phrase that is defined in this division appears in the text of the Land Development Code in italicized letters.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§113.0103 Definitions

Abutting property means a *lot* or parcel of land that shares all or part of a common *lot* line with another *lot* or parcel of land.

Accessory building means an *accessory structure* which is also a “building” as defined in the California Building Code.

Accessory Dwelling Unit (ADU) means an attached or detached residential *dwelling unit* that is 1,200 square feet in size or less, provides complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation, and is located on a *lot* with a proposed or existing *single dwelling unit* or *multiple dwelling unit*.

Accessory structure means a *structure* attached to or detached from a primary *structure* located on the same *premises* that is customarily incidental and subordinate to the primary *structure* or use. The term *accessory structure* includes accessory buildings.

Accessory use means a use of land or building, or portion thereof, that is customarily incidental to, related to, and clearly subordinate to a *primary use* of the land or building located on the same *premises*.

Wall sign means a *sign* attached to, or a *sign copy area* on, a *structure* or adjunct of a *structure*, including an equipment *screen* or *dormer* that completely *screens* the mechanical equipment of the *structure*, and has its exposed *sign face* parallel or approximately parallel to the plane of the *structure* to which the *sign* is attached.

Wetland buffer means an area or feature(s) that protects the functions and values of the adjacent *wetland*.

Wetlands are defined as areas which are characterized by any of the following conditions:

1. All areas persistently or periodically containing naturally occurring *wetland* vegetation communities characteristically dominated by hydrophytic vegetation, including but not limited to salt marsh, brackish marsh, freshwater marsh, riparian forest, oak riparian forest, riparian woodlands, riparian scrub, and vernal pools;
2. Areas that have hydric soils or *wetland* hydrology and lack naturally occurring *wetland* vegetation communities because human activities have removed the historic *wetland* vegetation or catastrophic or recurring natural events or processes have acted to preclude the establishment of *wetland* vegetation as in the case of salt pannes and mudflats;
3. Areas lacking *wetland* vegetation communities, hydric soils and *wetland* hydrology due to non-permitted filling of previously existing *wetlands*;
4. Areas mapped as *wetlands* on Map No. C-713 as shown in Chapter 13, Article 2, Division 6 (Sensitive Coastal Overlay Zone).

It is intended for this definition to differentiate for the purposes of delineating *wetlands*, between naturally occurring *wetlands* and *wetlands* intentionally created by human actions, from areas with *wetlands* characteristics unintentionally resulting from human activities in historically non-wetland areas. With the exception of *wetlands* created for the purpose of providing *wetland* habitat or resulting from human actions to create open waters or from the alteration of natural stream courses, areas demonstrating *wetland* characteristics, which are artificially created are not considered *wetlands* by this definition. Taking into account regional precipitation cycles, all adopted scientific, regulator, and technological information available from the State and Federal resource agencies shall be used for guidance on the identification of hydrophytic vegetation, hydric soils and *wetland* hydrology.

EXHIBIT “8”



San Diego Municipal Code Land Development Code

Biology Guidelines

Adopted September 28, 1999

Amended June 6, 2000 by Resolution No. R-293254-1

Amended May 19, 2001 by Resolution No. R-294943

Amended April 23, 2012 by Resolution No. R-307376

Amended February 1, 2018 by Resolution No. [R-311507]

This information, document, or portions thereof, will be made available in alternative formats upon request.

For projects located within Montgomery-Gibbs Executive Field and Brown Field that are not processed through the Minor Amendment process, the project(s) would not be afforded the benefits of the streamlined environmental and permit process under VPHCP. Projects would be processed consistent with existing City, State, and Federal regulations for wetlands not covered by the VPHCP.

2. Wetlands support many of the species included in the MSCP and the VPHCP (i.e. Covered Species). The definition of wetlands in ESL is intended to differentiate uplands (terrestrial areas) from wetlands, and furthermore to differentiate naturally occurring wetland areas from those created by human activities. Except for areas created for the purposes of wetland habitat or resulting from human actions to create open waters or from the alteration of natural stream courses, it is not the intent of the City to regulate artificially created wetlands in historically non-wetland areas unless they have been delineated as wetlands by the Army Corps of Engineers, and/or the California Department of Fish and Wildlife. For the purposes of the ESL, artificially created lakes such as Lake Hodges, artificially channeled floodways such as the Carmel Valley Restoration and Enhancement Project (CVREP) and previously dredged tidal areas such as Mission Bay should be considered wetlands under ESL. The following provides guidance for defining wetlands regulated by the City of San Diego under the Land Development Code.

Naturally occurring wetland vegetation communities are typically characteristic of wetland areas. Examples of wetland vegetation communities include saltmarsh, brackish marsh, freshwater marsh, riparian forest, oak riparian forest, riparian woodland, riparian scrub and vernal pools. Common to all wetland vegetation communities is the predominance of hydrophytic plant species (plants adapted for life in anaerobic soils). Many references are available to help identify and classify wetland vegetation communities; Holland (1986), revised Holland (Oberbauer 2005 and 2008), Cowardin et al. (1979), Sawyer and Keeler-Wolf (1996), and Zedler (1987). The U.S. Army Corps of Engineers Wetland Delineation Manual (1987) provides technical information on hydrophytic species.

Problem areas can occur when delineating wetlands due to previous human activities or naturally occurring events. Areas lacking naturally occurring wetland vegetation communities are still considered wetlands if hydric soil or wetland hydrology is present and past human activities have occurred to remove the historic vegetation (e.g., agricultural grading in floodways, dirt roads bisecting vernal pools, channelized streambeds), or catastrophic or recurring natural events preclude the establishment of wetland vegetation (e.g., areas of scour within streambeds, coastal mudflats and salt pannes that are unvegetated due to tidal duration). The U.S. Army Corps of Engineers Wetland Delineation Manual (1987) provides technical information on hydric soils and wetland hydrology.

Seasonal drainage patterns that are sufficient enough to etch the landscape (i.e. ephemeral/intermittent drainages) may not be sufficient enough to support

wetland dependent vegetation. These types of drainages would not satisfy the City's wetland definition unless wetland dependent vegetation is either present in the drainage or lacking due to past human activities. Seasonal drainage patterns may constitute "waters of the United States" which are regulated by the Army Corps of Engineers and/or the California Department of Fish and Wildlife.

Areas lacking wetland vegetation communities, hydric soils and wetland hydrology due to non-permitted filling of previously existing wetlands will be considered a wetland under the ESL and regulated accordingly. The removal of the fill and restoration of the wetland may be required as a condition of project approval.

Areas that contain wetland vegetation, soils or hydrology created by human activities in historically non-wetland areas do not qualify as wetlands under this definition unless they have been delineated as wetlands by the Army Corps of Engineers, and/or the California Department of Fish and Wildlife. Artificially created wetlands consist of the following: wetland vegetation growing in brow ditches and similar drainage structures outside of natural drainage courses, wastewater treatment ponds, stock watering, desiltation and retention basins, water ponding on landfill surfaces, road ruts created by vehicles and artificially irrigated areas which would revert to uplands if the irrigation ceased. Areas of historic wetlands can be assessed using historic aerial photographs, existing environmental reports (EIRs, biology surveys, etc.), and other collateral material such as soil surveys.

Some coastal wetlands, vernal pools and riparian areas have been previously mapped. The maps, labeled C-713 and C-740 are available to aid in the identification of wetlands. Additionally, the 1":2000' scale MSCP vegetation maps may also be used as a general reference, as well as the U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory maps. These maps, available for viewing at the Development Services Department, should not replace site-specific field mapping.

3. Vegetation Communities within the MSCP study area have been divided into four tiers of sensitivity (the first includes the most sensitive, the fourth the least) based on rarity and ecological importance.

Tier I habitats include lands classified as southern foredunes, Torrey pines forest, coastal bluff scrub, maritime succulent scrub, maritime chaparral, native grasslands, and oak woodlands. Tier II includes lands classified as coastal sage scrub and coastal sage scrub/chaparral. Tier IIIA includes lands classified as mixed chaparral and chamise chaparral. Tier IIIB includes lands classified as non-native grassland. Tier IV includes lands classified as disturbed, agriculture, and eucalyptus.

EXHIBIT “9”

Precise Plan



North City West Employment Center
Development Unit Number Two

AMENDMENTS TO THE PLAN

1. By resolution of the Planning Commission October 1, 1981, the Precise Plan of The Employment Center Development Unit No. 2 was adopted. The final plan adopted differs from the illustrative plan diagrams only in the following ways:

a. The alignment of El Camino Real Road was moved easterly both at the north and south of the Employment Center to facilitate proper intersections at Del Mar Heights Road and El Camino Real Road.

b. The land lying between the original alignment of El Camino Real and the new alignment will be included in the Employment Center and be subject to all conditions of the Employment Center.

2. By resolution of the Planning Commission an amendment to the Precise Plan of the Employment Center was adopted. The amendment includes the following changes to the Precise Plan:

a. All land between the original alignment of El Camino Real and the new alignment both north and south is included in the Employment Center.

b. Lot 41 is further designated for Visitor Center use as described by the Community Plan.

c. Paragraph 3, Column 2 and Column 3 of Page 42 of the text are deleted and all reference to development regulations regarding height and area are included in the Planned District Ordinance.

The "Industrial-Office Park Precise Plan Criteria" set forth on page 135 of the North City West Community Plan states that the plan must "be in general conformance with the North City West Community Plan objectives and proposals in terms of overall concept...". The following outlines the **conformance** of this plan with the five objectives stated on page 88 of the Community Plan.

1. "In order to promote North City West as a balanced community, diverse job opportunities must be **achieved** within the industrial-office park."

The North City West Employment Center is envisioned to be the employment base for the housing to be developed in other areas of North City West. The Employment Center will also strengthen and advance the **overall** economic development plan of the City of San Diego.

It is hoped that a substantial portion of the property can be built prior to residential development or at least concurrently therewith so that it will create jobs at an early stage for the residents of the community. This will allow persons moving into North City West to have employment **possibilities** in close proximity to their home.

2. "In order to promote **self-containment** and **community** identity, development of an industrial-office park which emphasizes the area as a unique and permanent feature of North City West is desirable."

The goal of this plan is to create an outstanding example of **industrial-office** park design through unique and highly controlled planning. A close examination of the properties, their grading and the urban design infrastructure will reveal a carefully conceived plan that is unique to San Diego. The relationship to the town center is inherent in this park's location but will be reinforced by pedestrian access described later in this **document**.

3. "In order to promote preservation of a natural **environment**, industrial sites must be developed as part of a planned industrial park with strict development **controls**."

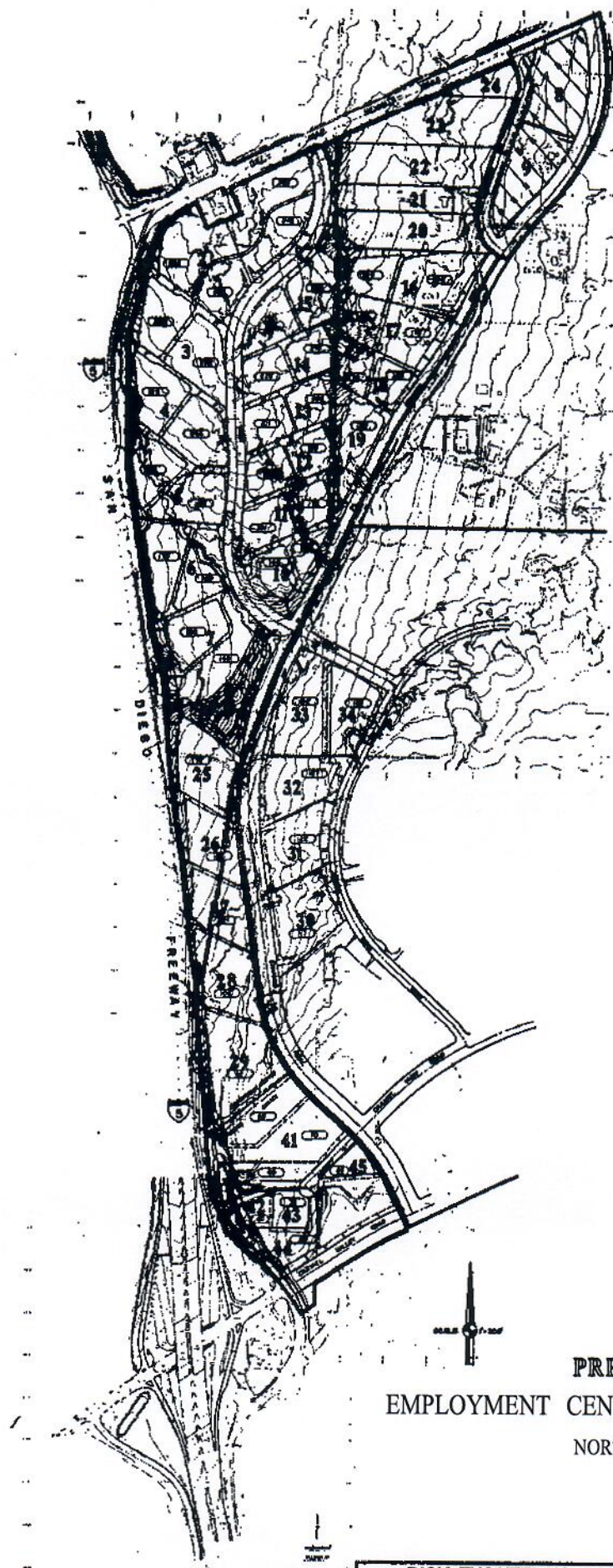
The urban design **infra-structure** will control all common landscaping, streetscape, property entrances and public facilities. The controls inherent in the design element of this plan will ensure natural grading and landscaping. This plan is unique in that each property will be graded with multiple pads instead of singular flat pads. The existing high and low points of the site will remain, the balance will echo that which now exists. This will ensure a rolling, low scale and natural result. The controls on development will reinforce these concepts and guide the building design and site **development**.

2. In order to promote self-containment and community identity, development of an industrial-office park which emphasizes the area as a unique and permanent feature of North City West is desirable. The Industrial-Office Park must be designed so as to relate to the community and the adjacent town center rather than as a separate industrial development which does not complement the area. Due to the high visibility of the industrial office area from Interstate 5 and because of its location at the major entrance to the North City West community, it is extremely important that an outstanding example of an **industrial-office** park design is developed.

3. In order to promote preservation of a natural environment, industrial sites must be developed as a part of a planned industrial park with strict development controls. Through this action the relationship of structures, driveways, parking areas, grading and landscaping can be coordinated and natural site features that exist can be capitalized upon.

4. In order to promote a balanced transportation network, development of a transportation system linking to the community is necessary. A convenient system of public transportation serving the Industrial-Office Park is necessary if the goal of a balanced transportation network and therefore reduced automotive traffic is to be achieved. Essentially, travel to the Industrial-Office Park will be at peak travel times, therefore, a system of public transportation could greatly relieve traffic congestion in the community.

5. In order to promote realistic phasing of **development**, Planning Commission approval of a precise plan for the Industrial-Office Park before proceeding with subdivision maps, zone changes or grading will be necessary. The precise plan, as described in the Precise Development Plans section on page 132 of this report, should be in basic conformance with the North City West Community Plan. Provision for installation of all necessary public facilities must be satisfied through the assessment district procedure or other property owner financed methods prior to land use development.



LEGEND

28	INDICATES LOT NUMBER
100	INDICATES PAD ELEVATION
XXXX	UNDISTURBED GROUND
XXXXXX	ORIGINAL PROPOSED PLAN AREA
XXXXXX	AMENDMENT TO PROPOSED PLAN, SEPT. 1982
XXXXXX	OPEN SPACE ELEMENT
XXXXXX	RECONSTRUCTION & PROPOSED PLAN ELEMENT



PRECISE PLAN
EMPLOYMENT CENTER & VISITOR CENTER
NORTH CITY WEST

RICK ENGINEERING COMPANY

EXHIBIT “10”



THE CITY OF SAN DIEGO

April 12, 1999

Mark Burns

Waterford Development Co. LLC

1921 Palomar Oaks Way, Suite 308
Carlsbad, CA 92008-6523

Louay Alsadek

Prentiss Properties

5050 Avenida Encinas, Suite 350
Carlsbad, CA 92008

Subject: Carmel Valley Gateway Substantial Conformance Review
N.W. Corner of Valley Centre Drive & El Camino Real

Dear Messrs. Burns and Alsadek

The City of San Diego has completed the review of your proposed modifications to the project at the above address. Subject to the requirements outlined below, the changes proposed are in substantial conformance to North City West Planned District Development Plan Permit Nos. 83-0191 and 83-0191.1.

The original project, approved by City Council on September 18, 1984 included a development on lots 1-5 in Unit No. 2 of North City West Employment Center. This included a 500 Unit Hotel, 3 Restaurants, and Auto Service Station.

Your request was for a determination of whether a 270 room hotel, 170,000 square foot office building and associated site modifications substantially conforms to this original approval in accordance with Municipal Code Section 101.067 and conditions of the original permit. While the proposed office use was not included in the uses originally approved with the development, the use is consistent with the goals and policies of the North City West Community Plan and the North City West Employment Center Precise Plan. In addition, as part of Amendments made to the Employment Center Precise Plan in 1983 by City Council, lots 1-5 of Unit No. 2 were included into the precise plan and designated for employment center uses, in addition to uses in the visitor commercial zone. Office uses are permitted within the employment center of the Carmel Valley Planned District. Office uses are also consistent with the Planned Commercial Development regulations that are made applicable to land within the Carmel Valley Planned District by Municipal Code Section 103.0603. Use of the Planned Commercial Development regulations is encouraged by the North City West Community Plan. The office use is, therefore, consistent with these code provisions.



Planning and Development Review

1222 First Avenue, MS 302 • San Diego, CA 92101-4153

Tel (619) 533-5931 Fax (619) 533-5924

The physical modifications to the development include the provision of 3 structures of: 4 stories (parking), 8 stories (office) over parking, and 12 stories (hotel) over parking where one large structure of 7 and 12 stories over parking was originally proposed. This type of modification was anticipated as part of the original approval and was acknowledged in staff reports at that time. Guidelines along with the plans adopted with the original approval were to be used by staff during the substantial conformance review of detailed drawings. The overall height of the proposed structures are less than those of the one structure shown on the original exhibits. Three structures provide for large scale articulation and a subdivision of the forms into smaller elements consistent with the Council approved guidelines. While the overall floor area has increased, the project reduces lot coverage and increases the amount of useable open space dedicated to planting and pedestrian areas. Despite the lack of identified view corridors in either the community plan or precise plan, these proposed changes to the building configuration have also made the structure more responsive to community concerns dealing with off-site views to the nearby bluffs and the state park.

The proposed change of use also reduces the number of required parking spaces and average daily traffic trip generation from the development. While under the current code, 786 spaces would be required for the proposed hotel and office uses, 900 would be provided in the modified project. This change offers surplus spaces (114) while still reducing the amount of on-site parking by 100 spaces over the originally approved 1,000 spaces. The proposed project, using the City of San Diego's Trip Generation Rate Summary (1998), would also result in 48 fewer daily trips than the original project.

This substantial conformance review does not include a review against all applicable regulations. The project submitted for final building, grading, public improvement and associated permits are subject to the conditions of the original North City West Planned District Development Permits, applicable regulations of the Municipal Code, and with the documents and requirements of this substantial conformance review noted below.

Substantial Conformance Review Documents Approved 4/12/99:

<u>Sheet No.</u>	<u>Title</u>	<u>Date</u>
Sheet 1 of 12	Site Plan	1/29/99
Sheet 2 of 12	Landscape Concept Plan	1/29/99
Sheet 3 of 12	No Document (Numbering Error)	
Sheet 4 of 12	Conceptual Grading Plan	2/8/99
Sheet 5 of 12	No Document (Numbering Error)	
Sheet 6 of 12	Office Building Floor Plans/Roof Plan	10/12/98
Sheet 7 of 12	" " " " " "	1/29/99

Sheet 8 of 12	" " " " " "	1/29/99
Sheet 9 of 12	Project Elevations	1/26/99
Sheet 10 of 12	Project Elevations	1/26/99
Sheet 11 of 12	Project Cross Sections	1/26/99
Sheet 12 of 12	Project Cross Sections	1/26/99

Del Mar Gateway Traffic Generation and Parking Calculations Letter dated 4/5/99 by
Kimley Horn and Associates, Inc.

Substantial Conformance Requirements:

Landscape Requirements

1. Your project must comply with the City-Wide Landscape Regulations and Landscape Technical Manual.
2. All slopes 6:1 and in excess of five feet in vertical height shall be planted with herbaceous or prostrate shrubby groundcover. A minimum of 50% of the total slope area shall be planted with deep rooting groundcover. Seeded plantings at least 50% of the seed shall be deep rooting. All slopes greater than 15' in vertical height shall be planted with a combination of trees and shrubs, minimum one gallon at an average rate of 1 per 100 square feet of slope area.
3. The openings for trees planted in paved areas shall be a minimum 40 square feet in area and water permeable. Unconsolidated mulch materials must be covered by tree grates or unattached pavers.
4. The project must accommodate street trees. The right-of-way on El Camino Real is adequate in size and the area is outside of the SDG&E easement as shown. The Valley Centre Drive right-of-way scales at 5' and would not be able to accommodate street trees and the trees must be shown on private property. Show the location of the actual underground service and provide the street trees within the SDG&E easement 5' away from the actual line on plans submitted for building permits. The underground line must be shown. Final landscape plans must be drawn at a larger scale in order to provide all pertinent dimensions. A copy or map showing the recorded easement (language and diagram) must be submitted with the application for building permits.
5. Show all retaining walls on the final landscape plans. Describe the wall material and provide landscape planting of the walls. If the walls are battered, show an accurate dimension in plan of the wall on the grading plan and the landscape plan.

6. Every parking space must be within 30' of the base of a tree.
7. Please correct the area and point requirements chart to match the plan when submitting for building permits.

Engineering Requirements

8. Prior to the issuance of any building permits, the applicant shall obtain a grading permit from the City Engineer (referred to as an "engineering permit") for the grading proposed for this project. All grading shall conform to requirements in accordance with Sections 62.0401 - 62.0423 of the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.
9. The drainage system proposed for this project, as shown on the site plan, is subject to approval by the City Engineer.
10. Development of this project shall comply with all requirements of State Water Resources Control Board (SWRCB) Order No. 92-08-DWQ (NPDES General Permit No. CAS000002), Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity. In accordance with said permit, a Storm Water Pollution Prevention Plan (SWPPP) and a Monitoring Program Plan shall be developed and implemented concurrently with the commencement of grading activities, and a complete and accurate Notice of Intent (NOI) shall be filed with the SWRCB. A copy of the acknowledgment from the SWRCB that an NOI has been received for this project shall be filed with the City of San Diego when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with the City of San Diego when received.
11. In addition, the owner(s) and subsequent owner(s) of any portion of the property covered by this grading permit and by SWRCB Order No. 92-08-DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in Section C.7 of SWRCB Order No. 92-08-DWQ.
12. Prior to the issuance of any building permits, the applicant shall assure, by permit and bond, the installation of all driveways in accordance with San Diego Regional Standard Drawing's G-16 & SDG-114 satisfactory to the City Engineer.

Fire Requirements

13. Provide building address numbers, visible and legible from the street or road fronting the property. (UFC 901.4.4)
14. Show location of all existing hydrants, within 600', on site plan. (UFC903.2)
15. Provide fire access roadway signs or red curbs in accordance with BFLS Policy A-96-1
16. Building is required to be sprinklered for the following reason: R1 occupancy > 3 stories and B occupancy is a high rise building.
17. Post indicator valves, fire department connections, and alarm bell are to be located on the address/access side of the structure. UFC 1001.4
18. On-site fire hydrant layout required.
19. Provide the following note on the site plan: "all removable bollards shall comply with Standard Drawing M16, City of San Diego Standard Drawings and shall not weigh more than 20 pounds per bollard."

Transportation Engineering Requirements

20. The applicant shall provide parking free of charge to employees and visitors.
21. Provide a wider driveway cut for the proposed access from/to the parking structure to Valley Center Drive.

Water and Sewer Requirements

22. Approval of this SCR does not imply approval of proposed water and sewer connections. Any proposed connections must conform to the established standards in accordance with the latest edition of the "City of San Diego Water & Sewer Design Guide."

Facilities Financing Requirements

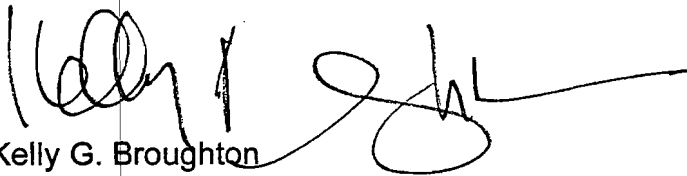
23. Project is subject to payment of Facilities Benefit Assessments of \$451,235.90 at the time of building permit issuance. Housing Impact Fees will also be due on the hotel in the amount of \$130,560 and on the office building in the amount of

\$180,200. There is no longer any limitation on building permit issuance per the Carmel Valley Transportation Phasing Plan.

Please contact me when submitting for final building, grading, or other permits in accordance with this substantial conformance review. In addition, if subsequent discretionary approvals (i.e. Tentative Map, etc.) are requested for this project, a City issued coastal development permit will be required because this area is now within the City's coastal permitting authority. We also would recommend that an amendment to the North City West Planned District Development Plan Permits be submitted along with these approvals to reflect the revised project. This will ease future project review, should additional changes be desired by the property owners after project construction.

Please call me if you have any questions at (619) 236-5932.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kelly G. Broughton', with a long horizontal flourish extending to the right.

Kelly G. Broughton
Deputy Director

NORTH CITY WEST DEVELOPMENT PLAN - EMPLOYMENT CENTER

SUPPLEMENTAL APPLICATION

SUMMARY OF REQUEST (List Type of Uses) Hotel, restaurants and auto-center as per P.O.D.

REQUIRED INFORMATION

Total Site Area Ac. 15.25 Sq. Ft. _____
 Net Site Area (Excluding Public Streets and Required Dedications) Ac. 14.5 Sq. Ft. 631,620

Total Floor Area of Project per Building

1.	Hotel	Sq. Ft.	<u>355,000</u>
2.	Restaurant	Sq. Ft.	<u>10,000</u>
3.	Restaurant	Sq. Ft.	<u>12,000</u>
4.	Restaurant	Sq. Ft.	<u>10,800</u>
5.	Auto-Center	Sq. Ft.	<u>2,400</u>
6.		Sq. Ft.	_____
7.		Sq. Ft.	_____
8.		Sq. Ft.	_____

Gross Floor Area 390,200
 Floor Area Ratio Proposed (Gross Floor Area ÷ Net Site Area) ... 0.62
 Floor Area Ratio Permitted by M-IP Zone 1
 Difference Proposed and Permitted Gross Floor Area: 0.38
 Deficient
 Excess Deviation Requested

Project Coverage Data for the Net Site Area

Building Ground Floor Area	Ac. <u>2.6</u>	Sq. Ft. <u>113,966</u>	<u>18</u> %
Landscaping Minimum 25% (Excluding Area within Parking Areas) and Natural Open Areas ..	Ac. <u>5.7</u>	Sq. Ft. <u>247,158</u>	<u>39</u> %
Open Parking Lots and Areas	Ac. <u>6.2</u>	Sq. Ft. <u>270,496</u>	<u>43</u> %
Total Ground Level Use Net Areas	Ac. <u>14.5</u>	Sq. Ft. <u>631,620</u>	<u>100</u> %

Deviations Requested from Coverage Standards Ac. _____ Sq. Ft. N/A _____ %
 Two/bed for Hotel and 1/200 SF for restaurants
 Parking Proposed (~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~) = 1160 Spaces

Parking Required

Number of Employees per Shift	Largest Shift	<u>N/A</u>	Spaces
Number of Vehicles Used in Business	Largest Shift	<u>N/A</u>	Spaces
		<u>N/A</u>	Total

EXHIBIT “11”

CARMEL VALLEY
GATEWAY

April 5, 1999

Mr. Kelly Broughton
Deputy Director
Project Management –
Planning and Development Review
The City of San Diego
1222 First Avenue, MS 302
San Diego, CA 92101-4153

Re: Carmel Valley Gateway SCR
N.W. Corner of Valley Centre Drive & El Camino Real

Dear Kelly:

We have made an application for a Substantial Conformance determination relating to the project referenced above and approved under NCWPDD Permit No. 83-10191 referenced above.

Outlined below are the factors that are the basis for determination that the proposed modifications are in substantial conformity of the approved project.

1. The North City West Employment Center, Development Unit No. 2 Precise Plan was adopted in 1981. The precise plan indicates that the Employment Center "is a homogenous area containing very similar uses and the whole area will be zoned M-IP as specified in the Community Plan." Both the precise plan and North City West community plans' goals for this area were for a high quality industrial-office park with limited commercial uses. The planned district also originally allowed uses consistent with both the Planned District Employment Center designation and with the citywide Commercial Office (CO) zone on several lots in the precise plan to permit limited commercial uses. This establishes that the Employment Center Precise Plan had intended the area designated as Employment Center to have office uses and further, some limited commercial uses.
2. Amendment to the Employment Center was approved by Council on 11/30/83 to realign El Camino Real, include all land between the original alignment and new alignment both north and south in the precise plan, to change the area between the two alignments "to Employment Center uses" (staff report No. 83-394) and revised the plan so that "lot 41 is further designated for Visitor Center use as described by the Community Plan" (language from the amendment to the precise plan). Under this provision, uses in either the EC or VC designations of the Planned District Ordinance should be allowed on the subject property since the precise plan revision designated the subject lot as employment center. Language in both the community plan and precise plan support the



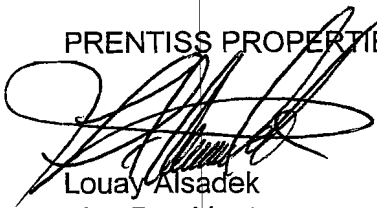
desire for industrial-office park and limited commercial within the employment center precise plan boundaries.

3. The North City West community plan recommends that the regulations of the Planned Commercial Developments ordinance "be utilized to process integrated development of the...visitor commercial area." In addition the Carmel Valley Planned District ordinance states that the provisions of "Chapter X, Article 1, Division 9 (Planned Developments)" shall apply to development in the planned district.
4. The original project, NCWPDDP Permit No. 83-0191, was approved on 9/18/84 by City Council on Appeal of the Planning Commission decision to approve.
5. NCWPDDP Permit No. 83-0191 approved a 500 unit hotel and restaurants as well as an auto service station that is not a permitted use in the VC Zone or the EC zone. This establishes that uses, not permitted by the VC zone or even the EC zone were envisioned with a NCWPDDP permit process. This is consistent with the planned commercial development regulations.
6. Final maps, rough and finish grading, construction of the service station and public improvements associated with this permit have been completed and therefore vested the approval.
7. In accordance with M.C. Section 101.0607 and Permit Conditions of the permit, the applicant submitted a request for a substantial conformity determination on 10/8/98 for revisions made to the hotel approved under this permit. This entailed modifications to the site plans including but not limited to reduction in the number of hotel rooms from 500 to 270; the addition of a 170,000 s.f. office structure; proposing three structures of 3, 8, and 11 stories instead of one structure that was primarily 7 stories with a tower of 12 stories; modifications to site circulation; reduction in building coverage; and reduction in 100 parking spaces. These changes improve traffic circulation in the area, break the originally approved structure down into smaller pieces consistent with the design guidelines, propose higher quality building materials, enhance the landscape and usable open space, and preserve important community view corridors to the sandstone bluffs to the south and the torrey pines to the west. In addition, the project is located directly adjacent to the new State Route 56 and I-5 ramps which dominate the views and visual quality of the area.
8. Condition No. 7 of the General Conditions for North City West Development Plan Permits included with Permit No. 83-0191 allows use of the property for other future purposes if "the proposed use meets every requirement of the zone existing for the subject property." Again, because the property was designated for Employment Center uses, the EC provisions of the Planned District allow office uses. In addition, since the regulations of the planned commercial development regulations apply, the proposed office use is also consistent.

9. As part of the original approval of the project, City staff recognized that the approved plans were not sufficiently detailed to deal with the design issues associated with this project at this important location. They further indicated that "guidelines, together with the conceptual building elevations and future review of detailed building plans by the planning director will adequately control the visual appearance of the project" (staff report No. 84-473). This recognized the need for broad design discretion on the part of the planning director in making the substantial conformity determination for this site. The project complies with these design guidelines and with the intent of the substantial conformity process.
10. The application review process for the SCR has included a total of 14 public meetings, 4 of which were publicly noticed to inform the public and adjacent property owners of these proposed changes and to accept suggested modifications. The proposed changes have been unanimously supported by the recognized planning group for the area after substantial comment and revision to comply with the precise plan, community plan, planned district ordinance, and other citywide regulations.
11. Letters of support from the Carmel Valley Planning Board are attached.

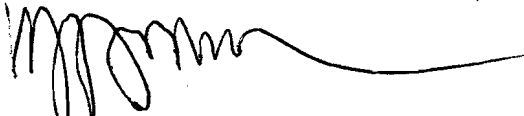
Sincerely,

PRENTISS PROPERTIES



Louay Alsadek
Vice President

WATERFORD DEVELOPMENT CO., LLC



Mark Burns
Managing Director



EXHIBIT “12”

Article 3: Planned Districts

Division 6: Carmel Valley Planned District (*"Carmel Valley Planned District"* *added 11-5-1979 by O-15070 N.S.*)

§103.0601 Purpose and Intent

The public health, safety, and welfare necessitate distinctive development controls and requirements for capital improvements and public facilities in order to systematically implement the phased growth of Carmel Valley. The regulations contained herein are in keeping with the objectives and proposals of the Progress Guide and General Plan for The City of San Diego, of the Carmel Valley Planned District, and of precise plans adopted in accordance with the community plan. All development plans and subdivisions shall conform to the adopted precise plan. The regulations contained herein shall apply to any development, building or construction; but shall not apply to subdivision or parcel maps which provide solely for financing and, in themselves, authorize no development, construction or building. (*Amended 10-3-1994 by O-18102 N.S.*)

§103.0602 Area of Applicability

The regulations contained herein shall apply in the Carmel Valley Planned District which is within the Carmel Valley area in The City of San Diego. The area to which the provisions of this Division are applicable is shown on those certain Map Drawing Nos. C-670.5, C-671.2, C-676.5, C-679.3, C-683.2, C-694, C-698.3, B-4028, B-4060, B-4074, B-4062, B-4083, B-4102, B-4106, B-4105, B-4089, and B-4180, and described in the appended boundary description filed in the office of the City Clerk. (*Amended 4-29-2002 by O-19050 N.S.*)

§103.0603 Applicable Regulations

Where not otherwise specified or inconsistent with this Division, the following provisions of the Land Development Code apply:

Chapter 11 (Land Development Procedures);
Chapter 12 (Land Development Reviews);
Chapter 13, Article 2 (Overlay Zone);
Chapter 14, Article 1 (Separately Regulated Use Regulations);
Chapter 14, Article 2, Division 1 (Grading Regulations);
Chapter 14, Article 2, Division 2 (Drainage Regulations);

EXHIBIT “13”

Article 6: Development Permits

Division 6: Planned Development Permit Procedures

(Added 12-9-1997 by O-18451 N.S.)

§126.0601 Purpose of the Planned Development Permit Procedures

The purpose of these procedures is to establish a review process for *development* that allows an *applicant* to request greater flexibility from the strict application of the regulations than would be allowed through a deviation process. The intent is to encourage imaginative and innovative planning and to assure that the *development* achieves the purpose and intent of the applicable *land use plan* and that it would be preferable to what would be achieved by strict conformance with the regulations.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§126.0602 When a Planned Development Permit May Be Requested

- (a) The following types of *development* may be requested with a Planned Development Permit decided in accordance with Process Three.
 - (1) *Development* in accordance with Section 143.0465 where the applicable *land use plan* recommends a Planned Development Permit be processed if another discretionary action is also requested; or
 - (2) *Development* in accordance with Section 143.0403(a) that complies with the applicable *land use plan*, but contains uses that are not permitted in the underlying base zone.
- (b) The following types of *development* may be requested with a Planned Development Permit decided in accordance with Process Four.
 - (1) *Development* that does not comply with all base zone regulations or all development regulations (except as permitted in accordance with Section 126.0602(a)(2)), or that proposes to exceed limited deviations allowed by the regulations in Chapter 14, as described in Section 143.0410, except that if the *development* is affordable housing, an in-fill project, and/or a sustainable building as described in Section 143.0915, it may be permitted with Neighborhood Development Permit decided in accordance with Section 126.0603.



T 510.836.4200
F 510.836.4205

1939 Harrison Street, Ste. 150
Oakland, CA 94612

www.lozeaudrury.com
brian@lozeaudrury.com

AGENDA ITEM F10a
Appeal No. A-6-NOC-22-0008
Supporters Alliance for Environmental Responsibility
In SUPPORT of Substantial Issue Determination

VIA EMAIL

April 1, 2022

California Coastal Commission
455 Market Street,
Suite 300
San Francisco, CA 94105

Toni Ross, Coastal Program Analyst
California Coastal Commission
7575 Metropolitan Dr.
Suite 103
San Diego, CA 92108
Toni.Ross@coastal.ca.gov

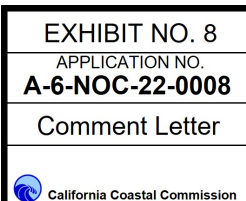
Re: Comment in Support of Substantial Issue Determination;
Appeal Number: A-6-NOC-22-0008
COASTAL COMMISSION AGENDA ITEM F10a (Fri., April 8, 2022)

Dear Honorable California Coastal Commissioners and Ms. Ross:

I am writing on behalf of Supporters Alliance for Environmental Responsibility (“SAFER”) and its members living or working in and around the City of San Diego in support of Staff’s recommendation regarding the substantial issue determination for the Costa Azul Mixed-Use Project located at 3501 Valley Centre Drive, San Diego, CA (APN 307-240-04) (“Project”) to be heard as Agenda Item F10a at the Coastal Commission’s April 8, 2022 meeting (Appeal No. A-6-NOC-22-0008). SAFER is a California nonprofit public benefit corporation whose purposes include contributing to the preservation and enhancement of the environment and advocating for programs, policies, and development projects that promote not only good jobs but also a healthy natural environment and working environment.

The Project proposes the development of a 77,652-square-foot, 7-story hotel and 96,040-square-foot, 5-story office building with restaurant on an undeveloped 3.306-acre site located at 3501 Valley Centre Drive in San Diego. The Project site is subject to the 2008 Citywide General Plan, the 1975 Carmel Valley (North City West) Community Plan (“1975 Community Plan”), and the 1981 North City West Employment Center Precise Plan (“1981 Precise Plan”), which are the adopted land use plans for the site. The subject site is conceptually identified as Visitor Commercial by the 1975 Community Plan and the 1981 Precise Plan (as amended in 1983).

The 1975 Community Plan, which serves as the certified land use plan (“LUP”) for the



Project site, provides a general framework for future planning and development of the commercial visitor area. It states the need for the visitor commercial uses to serve the office and industrial development in Carmel Valley as well as to the south of the community. In 1983, the San Diego City Council approved and adopted an amendment to the 1981 Precise Plan (“1983 Precise Plan Amendment”). The 1983 Precise Plan Amendment added 47.9 acres, including the Project site, into the Precise Plan for Neighborhood 2. At that time, the project site was rezoned from A-1 -1 to VC (Visitor Commercial) through a Planned District Ordinance amendment and designated for Visitor Commercial, consistent with the Community Plan.

As explained in the Staff Report, the Project’s proposed office uses are not compatible with the site’s Visitor Commercial designation. (Staff Report, p. 8.) According to the 1975 Community Plan, “The basic proposals for this [visitor commercial] area are motel, restaurant, and related services to provide for both the adjacent industrial-office park in North City West and industrial complex in Sorrento Valley. (1975 Community Plan, p. 86.) Similarly, the San Diego Municipal Code defines the Visitor Commercial zone as “areas for ***establishments catering to the lodging, dining, and recreational needs*** of both tourists and the local population.” (SDMC Ch. 13, Art. 1, Div. 5, § 131.0505(a) [emphasis added].) Although Visitor Commercial uses zones are intended to be “***near*** employment centers,” there is no indication that the Municipal Code allows for employment centers (e.g. office uses) *within* the zone. (*Id.*) Rather, the zoning only allows for “a mix of large-scale, visitor serving uses and residential uses”—not office uses. (*Id.* at § 131.0505(b).)

The incompatibility of the Project’s proposed office uses with the Visitor Commercial designation raises a substantial issue that the Commission should subject to full de novo review. As explained in the Staff Report, the City approved the Project’s office uses through a Planned Development Permit (“PDP”). However, the City’s PDP regulations only allow uses that are permitted in the base zone or the applicable land use plan, unless there is a concurrent application for a Neighborhood Use Permit or Conditional Use Permit, neither of which applies here. (SDMC §143.0403(a)(1).) As explained above, office uses are not permitted in a Visitor Commercial area under both the 1975 Community Plan and the City’s zoning. Therefore, the Project’s Planned Development Permit cannot be used to allow a use that is not allowed by the land use designation or the base zone.

Due to the incompatibility of the Project’s proposed office uses with the site’s land use designation and zoning, SAFER respectfully requests that the Commission find that Appeal No. A-6-NOC-22-0008 presents a substantial issue and proceed with de novo review of the City’s issuance of the Project’s Coastal Development Permit.

Sincerely,



Brian B. Flynn
Lozeau Drury LLP



ATTORNEYS AT LAW

777 South Figueroa Street
34th Floor
Los Angeles, CA 90017
T 213.612.7800
F 213.612.7801

Steven H. Kaufmann
D 213.612.7875
skaufmann@nossaman.com

VIA ELECTRONIC MAIL

April 7, 2022

Donne Brownsey, Chair
Honorable Coastal Commissioners
California Coastal Commission
455 Market Street
San Francisco, CA 94105

F10a

Re: A-6-NOC-22-0008 (Carmel Valley Centre Drive, LLC/Hunter Oliver)
Agenda item F10a – Friday, April 8, 2022

APPLICANT’S REQUEST: FIND THE COMMISSION LACKS APPEAL JURISDICTION

Dear Chair Brownsey and Commissioners:

This letter will supplement our April 1, 2022 letter to you regarding the above Agenda Item, and responds specifically to Staff’s Addendum, dated April 6, 2022.

The Commission Lacks Appeal Jurisdiction

The threshold issue on every appeal is whether the Commission has appeal jurisdiction. Ordinarily there is no issue. In this case, however, the Commission plainly lacks appeal jurisdiction, and it should so find.

The primary response from Staff is that there is wetland vegetation in the off-site man-made retention basin, and it is located within 100 feet of the boundary of the property. There is no dispute that there is wetland vegetation in the retention basin – cattails. But that is not the issue.

Staff notes that Coastal Act section 30603 confers appeal jurisdiction over development approved by local government “within 100 feet of any wetland” In this case, however, the Commission certified the City’s LCP Land Development Code explaining what constitutes a “wetland” and what does not. Instead of applying that definition in the LCP, Staff’s argument would rewrite the Commission’s own certified language and nullify it out of existence, and that it may not do.

A copy of this letter has been provided to Staff in the San Diego Coast District Office.
60413075.v1

EXHIBIT NO. 9
APPLICATION NO.
A-6-NOC-22-0008
Applicant's 2 nd
Comment letter
California Coastal Commission

Section 113.0103 of the City's certified Land Development Code defines "wetlands." However, it also explains:

"It is intended for this definition to differentiate for the purposes of delineating wetlands, between natural occurring wetlands and wetlands intentionally created by human actions, from areas with wetlands characteristics unintentionally resulting from human activities in historically non-wetland areas. With the exception of wetlands created for the purpose of providing wetland habitat or resulting from human actions to create open waters or from the alteration of natural stream courses, **areas demonstrating wetland characteristics, which are artificially created are not considered wetlands by this definition.**" (Kaufmann to CCC Letter, 4/1/22, Exh. 7, p. 2)

The City's certified Land Development Code Biology Guidelines (2018) likewise state:

"Wetlands support many of the species included in the MSCP (i.e. Covered Species). The definition of wetlands in ESL is intended to differentiate uplands (terrestrial areas) from wetlands, and furthermore to differentiate naturally occurring wetland areas from those created by human activities. Except for areas created for the purposes of wetland habitat or resulting from human actions to create open waters or from the alteration of natural stream courses, it is not the intent of the City to regulate artificially created wetlands in historically non-wetland areas unless they have been delineated as wetlands by the Army Corps of Engineers, and/or the California Department of Fish and Game." (*Id.*; Exh. 8, p. 6.)

Still further, the City's certified Land Development Code Biology Guidelines reiterate the distinction drawn in the wetland definition as it relates to areas, as here, modified by past human activities:

"Areas that contain wetland vegetation, soils or hydrology created by human activities in historically non-wetland areas do not qualify as wetlands under this definition unless they have been delineated as wetlands by the Army Corps of Engineers, and/or the California Department of Fish and Game. Artificially created wetlands consist of the following: wetland vegetation growing in brow ditches and similar drainage structures outside of natural drainage courses, wastewater treatment ponds, stock watering, desiltation and **retention** basins, water ponding on landfill surfaces, road ruts created by vehicles and artificially irrigated areas which would revert to uplands if the irrigation ceased. Areas of historic wetlands can be assessed using historic aerial photographs, existing environmental reports (EIRs, biology surveys, etc.), and other collateral material such as soil surveys". (*Id.*; p. 7; emphasis added.)

Adhering to the Commission-certified LCP, two different biologists concluded that, as defined, the retention basin does not include wetlands.

Helix Environmental reviewed the retention basin in connection with the Hyatt Hotel project approved on the adjacent property but not appealed and closer to the retention basin. Applying the LCP, Helix concluded:

“After review of information collected in the field and from historical imagery and other data, it is evident that there would not be naturally-occurring wetlands at the location of the present-day storm water facility had it not been for the creation of the retention basin feature and impoundment and manipulation of the watershed from surrounding developments. The basin does not support naturally-occurring wetlands and was artificially created in historically non-wetland areas for the sole purpose of collecting, retaining, and treating storm water runoff from adjacent developments. Therefore, the basin should not constitute wetlands and no avoidance or setbacks should be required for this project.” (*Id.*, Exh. 6, pp. 5-6.)

Dudek similarly concluded:

“[T]he man-made retention basin was artificially constructed in a historically non-wetland (upland) location and therefore would not be consider a City or CCC wetland in accordance with the Land Development Code and City’s Biology Guidelines wetland definition (City of San Diego 2018).” (*Id.*; Exh. 4, p. 4.)

In essence, Staff’s argument would rewrite the LCP and contradict and eliminate the distinction that the Commission agreed to in certifying the City’s LCP as to what constitutes wetlands in the first instance. This the Commission cannot do, as a matter of law. (*Security National Guaranty v. California Coastal Com.* (2008) 159 Cal.App.4th 402, 421-423 [Commission cannot amend the LCP in the context of an appeal; the LCP can only be amended by an amendment to the LCP]; *Citizens for South Bay Coastal Access v. City of San Diego* (2020) 45 Cal.App.5th 295, 311-312 [City’s certified LCP governs over conflicting Commission exemption regulation].) This is fundamental, but disregarded by the Staff response in the Addendum.

Staff argues that the Army Corps of Engineers does not distinguish between natural wetland and artificial wetlands, and it points to two prior Commission decision it states also drew no such distinction. The flaw in that argument is that the Commission does not ever apply the Corps wetland definition and the two Commission decisions cited did not involve the City of San Diego or, most importantly, an LCP, as quoted repeatedly above, which clearly draws that distinction.

Coastal Act 30603 does refer to wetlands, but the certified LCP defines what constitutes wetlands and states that wetlands “**which are artificially created are not considered wetlands by this definition.**” and that includes “retention basins.” (Kaufmann to CCC Letter, 4/1/22, Exh. 7, p. 2)

Staff seeks to create doubt as to whether the wetlands area is wholly man-made. (Addendum, p. 3.) That suggestion, with all due respect, is ridiculous and not supported by any evidence or the record. Staff asks the Commission to ignore that the retention lies directly over the location of the former extension of the paved El Camino Real road, before it was realigned and relocated in the early-mid 1980s. Staff further asks the Commission to ignore the Commission’s own 1985 decision, approving a massive parking lot near the edge of the slope and mandating the retention basin. Indeed, Staff ignores that this Commission’s 1985 decision imposed Special Condition #4 (“Maintenance of the Detention Basin”), which required an annual maintenance program, and at a minimum “that the [retention] basin shall be annually cleared and repaired, as necessary to its original design and function, prior to October 1 of each year” on an “ongoing basis.” (*Id.*, Exh. 4, Attach. B, p. 4; emphasis added.) In other words, this Commission made sure, by condition, that the retention basin would function properly and that before October 1 of each year, it would have to be cleared to maintain its original and function. Finally, not once in its 1985 decision did this Commission use the word “wetland.” Nor is there any reason why it would have done so. The location of the retention basin had long been a paved well-used road.

Staff notes that our April 1, 2022 letter includes a surveyed graphic that demonstrates that the closest building is 218 feet from the retention basin and a flat patio is 103 feet from the retention basin. Staff suggests that there ought to be a wetland delineation to definitely establish the location of the wetland vegetation in the depression/retention basin. This misdirection has no merit. As discussed, the wetland vegetation in the retention basin does not qualify as wetlands in the first instance. The precise location of the wetland vegetation in the depression is irrelevant.

Finally, Staff incorrectly states that the project “includes subdivision of a lot containing wetlands.” (Addendum, p. 2.) Neither the lot nor the subdivision contains wetlands or wetland vegetation. That is factually wrong. Staff’s further suggestion that, somehow, the Applicant failed to exhaust this issue at the City level is also wrong. The retention basin is off-site, removed from the property and site of the approved buildings. No issue was raised at the City as to the retention basin or wetlands, and, therefore, there would have been no reason for the Applicant to address it.¹

¹ It also is worth noting that Staff premises its argument regarding appeal jurisdiction on the basis that there is wetland vegetation within 100 feet of the property boundary. This project, however, does not alter the property boundary, and the subdivision and lot line adjustment approved merely merge two parcels. The other developments approved – the hotel, office, and restaurant – are far removed from the retention basin do not raise any coastal resource impacts on

In short, for the reasons set forth in our April 1, 2022, and now in response to the Addendum, the Commission has failed to establish appeal jurisdiction. And, when it comes to the threshold issue of jurisdiction, that is the beginning and end of the issue.

There Also Is No Substantial Issue

A. The City Properly Approved the Office Use in Conformity With the LCP.

With respect to office use, the Addendum skirts the issue and ignores the applicable land use plan and certified Land Development Code provisions. In 1983, the City amended the Employment Center Precise Plan to include 5 parcels, and designated them for employment center uses, in addition to the uses included in the visitor commercial zone. Office uses are permitted in the employment center of the Carmel Valley Planned District, and just within this subdivision there are not only hotels but two existing office buildings. The Employment Center Precise Plan permits office use on this site.

The use of the City's Planned Commercial Development (PCD) regulations is encouraged by the Carmel Valley Community Plan. Section 103.0601 of the City's certified Land Development Code, which states the purpose and intent of the Carmel Valley District, requires that, as here, "all development plans and subdivisions ***shall conform to the adopted precise plan***" – here, the Employment Center Precise Plan. (Emphasis added.) The Addendum ignores this.

Moreover, the appeals filed note that the City approved the office use through the issuance of a Planned Development Permit (PDP). The Addendum state that the underlying land use and zoning designation is visitor commercial. But, the Addendum ignores that the provisions for PDPs, and specifically Section 126.0602(a)(2) of the certified Land Development Code, allow development to occur with uses that are not permitted in the underlying base zone, "***if the development complies with the applicable land use***." (Kaufmann letter to CCC, 4/1/22, Exh. 13.) Here, the office component of this Project is permitted by the applicable land use plans, which is not only the Carmel Valley Community Plan, but the Employment Center precise plan.

As the City explained over 20 years ago as to another hotel/office project in this very subdivision:

"While the proposed office use was not included in the uses originally approved with the development, the use is consistent with the goals and policies of the North City West [now Carmel Valley] Community Plan and the North City West Employment Center Precise Plan. In addition, as part of Amendments made to the Employment Center Precise Plan in

the previously graded property and for that additional reason appeal jurisdiction is lacking and, in any event, the appeals do not raise a substantial issue.

1983 by City Council, lots 1-5 of Unit No. 2, including this property (lots 3 and 4), were included into the precise plan and designated for employment center uses, in addition to uses in the visitor commercial zone. ***Office uses are permitted within the employment center of the Carmel Valley Planned District. Office uses are also consistent with the Planned Commercial Development regulations that are made applicable to land within the Carmel Valley Planned District by Municipal Code Section 103.0603.*** Use of the Planned Commercial Development regulations is encouraged by the North City West Community Plan. ***The office use is, therefore, consistent with these code provisions.*** (*Id.*, Exhs. 9-10; emphasis added.)

In short, the Addendum does not tell the whole story. The City properly approved the office use.

B. The City Properly Approved the Hotel, Consistent with the LCP, and the Hotel Will in any Case Provide Low-Cost Overnight Accommodations

With respect to low-cost overnight accommodations, there is, first, no City LCP policy regarding low-cost overnight accommodations. We can compare that to the Coastal Act, which has a specific policy in Section 30213 that the Commission has relied on to require hotel development to provide affordable overnight accommodations. There is no such policy in the LCP. Staff's response is "Pages 8-9 of the staff report list a number of policies within the LUP that require the Carmel Valley West Community Plan area be developed as a "single socio-economic unit." (Addendum, p. 4.) What does that mean? That vague generality does not provide any policy regarding low-cost overnight accommodations. Because there is no "low cost" policy, the Project cannot be inconsistent with the certified LCP.

However, equally important, Staff tries mightily to dismiss what should be obvious – this will be a low-cost hotel, exactly like this Commission has sought to accomplish with other hotel projects. The hotel is far from the coast, but along the freeway. This subdivision has other hotels with ADRs between \$141 (Hampton Inn) and \$169 (Residence Inn). This one is projected at an ADR of \$160, but, as discussed in our April 1, 2022 letter, the end result of the product proposed will be an effective ADR well below the statewide average of \$130/night. The rooms will be larger because the franchise agreement with Springhill Suites requires an in-suite product. It will accommodate larger families, up to 6 persons. Each suite will have a kitchen. Imagine the cost savings just having a kitchen provides to a family of 2, 4, or 6, who do not have to eat out every meal. As the Commission put it in 5-18-0642 (Leonard Julian Sunset Beach, LLC): The availability of a kitchen "could especially create cost savings by allowing guests to avoid eating out for every meal as is typically necessary with traditional motel/hotel stays." (Page 15.) This product also features free breakfast on top of providing a kitchen, as well as beer, wine, and appetizers in the evening. And, there is no resort or internet connection fee.

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The Addendum states this hotel is somewhat different because the Sunset Beach project had separate bedrooms and in-unit laundry facilities. The distinction is irrelevant here. What is important is not the number of bedrooms but how many people the suite may accommodate – 6, and this hotel also offers on-site laundry. This hotel is the essence of low cost in the location at issue.

Conclusion

For the foregoing reasons and those in our April 1, 2022 letter, we again respectfully submit that, in this particular case, the Commission lacks appeal jurisdiction. Beyond that, the appeals also do not raise a substantial issue. Thank you.

Very truly yours,


Steven H. Kaufmann
For Nossaman LLP

cc: Jack Ainsworth, Executive Director
Toni Ross, Coastal Program Analyst
Hunter Oliver, Carmel Valley Centre Drive, LLC