
CALIFORNIA COASTAL COMMISSION

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Staff: JP-SD
Staff Report: 1/25/24
Hearing Date: 2/8/24

REVISED FINDINGS

Appeal Number:	A-6-ENC-22-0049
Applicant:	Encinitas Beach Land Venture I, LLC
Location:	1900 and 1950 North Coast Highway 101, San Diego County. (APNs: 216-041-20, 216-041-21, and 216-041-06)
Project Description:	Demolition of four existing commercial structures and parking areas, and construction of a multi-family residential and mixed-use development consisting of 94 residential apartments (75 market rate and 19 low-income units) including four residential podium buildings with a two-level underground parking structure, four mixed-use commercial buildings, two commercial buildings, a 36 room hotel with 6 moderate-cost rooms and 3 lower-cost rooms, private amenity and common open space, grading, streetscape and landscaping improvements.
Appellants:	Chair Donne Brownsey; Vice Chair Caryl Hart
Staff Recommendation:	Substantial Issue and Approval with Conditions on De Novo

STAFF NOTES

Staff recommends the Commission adopt the following revised findings in support of the Commission's action on October 12, 2023. In its action, the Commission found that the project approved by the City of Encinitas raised a substantial issue and approved the revised project, with conditions, on de novo. The Commission approved the permit after

removing the special conditions requiring the provision of on-site lower-cost accommodations and modifying the special conditions to require the payment of an in-lieu mitigation fee. At the same hearing, the applicant also revised the project description for the hotel to include 32 high-cost rooms. The amended motion beings on Page 18. The modifications to the special conditions begin on Page 30. The findings supporting the modifications can be found starting on Page 40.

Commissioners on Prevailing Side: Aguirre, Bochco, Brownsey, Escalante, Harmon, Notthoff, Rice, Turnbull-Sanders, and Wilson.

IMPORTANT HEARING PROCEDURE NOTE

~~The Commission will not take testimony on this “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask questions of the applicant, any aggrieved person, the Attorney General, or the Executive Director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the Chair limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing.~~

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

SUMMARY OF STAFF RECOMMENDATION **SUMMARY OF COMMISSION ACTION**

~~Staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. On October 12, 2023, the Commission found that the project approved by the City of Encinitas raised a substantial issue and approved the revised project, with conditions, on de novo.~~

The project Approved by the City is the demolition of four existing commercial structures and parking areas, and the construction of a multi-family residential and commercial and

hotel mixed-use development at 1900 & 1950 North Coast Highway 101. The development will consist of 94 residential apartments (75 market rate and 19 low-income units), four mixed-use commercial buildings, two commercial buildings, and a 34-room hotel with eight economy/affordable rooms.

The City of Encinitas found that the project is consistent with the certified LCP and relevant Coastal Act policies. However, the development as approved by the City raises several concerns with regard to lower-cost overnight accommodations, and traffic and public access.

The site contains parcels that are zoned for Limited Visitor Serving Commercial with a Residential Overlay that allows for the development of affordable housing. At the time the Commission approved the residential overlay on this site, it was identified as a potential inconsistency with the priority use provision of the LCP and the Coastal Act. The site is designated for visitor-serving commercial uses and is intended to provide for hotel/motel uses as the primary use, with ancillary uses for residents. Therefore, the LCP includes language that specifically requires that "Future development will be mixed-use to include residential and visitor-serving commercial uses, as well as a minimum of 30 traditional overnight accommodations. The eventual proposal will address a full range of affordability for the overnight accommodations." The project approved by the City includes a new 34-room resort-style hotel that, based on the nature of the accommodations and the location, is expected to be a high-end hotel. The City's approval does not include any requirements as to the number of rooms that will be provided at lower or moderate cost. While the City's approval describes that eight of the rooms will be "affordable," there are no restrictions on the approval requiring all eight rooms be priced at or below average cost. The City has confirmed that as approved, one room could be priced at a lower level, one at average cost, and the other six at above average, or any other combination as long as a minimum of one room fits into each of the three categories. Therefore, the number of lower-cost rooms actually provided in the 34-room hotel is likely to be fewer than the 25% typically required by the Commission to meet the LCP-required "full range of affordability." Thus, this raises a substantial issue.

The project will result in an increase of 1,173 average daily trips and a change of service from LOS D to LOS E at the intersection of La Costa Avenue and Sheridan Road. Policy 1.3 of the adopted LUP Circulation Element prohibits development which results in a Level of Service E or F at any intersection unless no alternatives exist and an overriding public need can be demonstrated. The City approved a statement of overriding public need for the La Costa Avenue and Sheridan Road intersection because the project is providing public benefits through the provision of eight affordable hotel rooms. However, as described above, there is no requirement that eight rooms be affordable, and thus, there is no certain public benefit to support a statement of

overriding public need. Further, La Costa Avenue is a major east-west connector that provides access from I-5 to Coast Highway 101. The approved project may make it more difficult for the public to access the coast and may discourage public access due to longer wait times and increased traffic, and this thus raises a substantial issue.

Because of the above-described inconsistencies with the LCP and the Coastal Act, ~~staff recommends that the Commission determine~~ found that the project ~~raises~~ a **substantial issue** regarding conformance with the certified LCP and the Chapter 3 policies of the Coastal Act. ~~Commission staff further recommends approval of the application on de novo with special conditions.~~

As addressed in the appeals, the primary issues raised by this project related to the provision of lower-cost accommodations. Since the appeals were filed, Commission staff and the applicant ~~have had multiple discussions regarding the proposed hotel. After these discussions, the applicant has modified its proposal and further modified the proposal at the hearing to include a 32-room hotel with market-rate rooms.~~ The proposed new hotel will now consist of 36 rooms, six of which (approximately 17%) will be offered at a rate of no more than \$204/night, inclusive of resort fees and three of which (approximately 8%) will be offered at a rate of no more than \$153/night inclusive of resort fees. The remaining 27 rooms will be offered at market rate. Based on available data for the statewide annual average daily rate for coastal overnight accommodations, the applicants proposed rate of \$204/night for six rooms meets the Commission's criteria for moderate cost room rates and the proposed rate of \$153/night for three rooms meets the criteria for lower cost room rates. The proposed provision of ~~three lower cost and six moderate cost rooms along the coast is a significant public access amenity.~~ The City's LCP specifically requires that this site provide a "full range of affordability," ~~and the three lower cost and six moderate cost rooms will partially fulfill that requirement.~~

~~However, and,~~ in past actions, the Commission has considered a "full range of affordability" to mean that 25% of the number of new high-cost rooms must be provided at a lower cost rate. In order to meet this standard, the applicant would need to provide ~~6.758~~ lower cost rooms (~~2732~~ proposed high-cost rooms x 25% = ~~6.758~~) or will need to mitigate the absence of lower-cost rooms with an in-lieu fee. At the hearing, the applicant agreed to provide an in-lieu fee. ~~In this case, the applicant has proposed six moderate cost and three lower cost rooms. While the applicant is partially fulfilling the LCP requirement for a range of affordability with their proposal, there remains a deficit of $6.75 - 3 = 3.75$ lower cost rooms, which will need to be mitigated through an in-lieu fee.~~ Therefore, **Special Condition #86** requires the applicant to deposit an in-lieu fee of \$542,812.501,158,000 into an interest-bearing account established and managed by a public agency approved by the Executive Director of the Coastal Commission.

~~To ensure that the proposed lower cost and moderate cost rooms are provided in the number and location approved by the Commission, **Special Condition #1** requires the submittal of final development plans that identify the lower cost and moderate cost accommodations in the hotel include a 32-room hotel. **Special Condition #6** requires the applicant to implement its proposal to provide three lower cost rooms at a rate of \$153/night and six moderate cost rooms at a rate of \$204/night, inclusive of parking costs and resort fees, which may be adjusted in the future on an annual basis according to the Consumer Price Index. Additionally, **Special Condition #6** requires the applicant to submit a yearly monitoring report that provides evidence of operation of the lower and moderate cost accommodations. **Special Condition #7** requires a marketing and engagement plan that discusses how the applicant will actively promote and publicize the proposed affordable accommodations to ensure that underserved communities are made aware of the resource and utilize the lower cost and moderate cost rooms to the maximum extent feasible.~~

In addition, ~~the Commission approved the project on de novo with staff are recommending~~ a number of special conditions to address potential impacts to coastal resources as described in the report, including: **Special Condition #'s 2 and 3** require protection of water quality both during construction and operation of the project, **Special Condition #149** requires the applicant to implement their proposal to provide affordable housing, **Special Condition #1210** requires the provision of public access signage at the site directing the public to a nearby public accessway, **Special Condition #1311** requires an archaeological/cultural resources monitoring plan, and **Special Condition #1513** requires a Marine Debris Management Plan to reduce waste and single-use items.

~~The substantial issue motion and resolution can be found on Page 11 of the staff report. The de novo motion and resolution can be found on Page 19.~~

Standard of Review: The certified City of Encinitas Local Coastal Program and the public access and recreation policies of Chapter 3 of the Coastal Act.

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Site Plan](#)

[Exhibit 3 – Proposed Renderings](#)

[Exhibit 4 – Proposed Project Plans](#)

[Exhibit 5 – Resolution No. 2022-89](#)

[Exhibit 6 – Commissioner Brownsey Appeal](#)

[Exhibit 7 – Commissioner Hart Appeal](#)

[Exhibit 8 – Resolution No. PC 2022-08](#)

[Exhibit 9 – Resolution No. PC 2022-09](#)

I. APPELLANTS CONTENT

The appellants contend that the project as approved by the City does not conform to the City of Encinitas's certified Local Coastal Program (LCP) with regard to two major issues. First, the appellants contend that the approved project is inconsistent with LCP and Coastal Act policies in regard to visitor-serving lower-cost accommodations because the approved development does not provide a full range of affordable accommodations. Second, the appellants contend that the project will result in an increase of 1,173 average daily trips and a change of service from LOS D to LOS E at the intersection of La Costa Avenue and Sheridan Road without providing public benefits, such as lower-cost accommodations as is required by the LCP.

II. LOCAL GOVERNMENT ACTION

The project was approved with conditions by the Planning Commission on June 16, 2022. A local appeal was filed by Friends of Seabluffe c/o Delano & Delano on June 27, 2022. The appeal by Seabluffe c/o Delano & Delano was denied by the City Council on August 10, 2022 and on the same day, the City Council affirmed the Planning Commission's decision to approve with conditions CDP No. CDP-003788-2020. Friends of Seabluffe did not appeal that decision to the Commission.

III. APPEAL PROCEDURES

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

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

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

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

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

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

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

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

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

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;

2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

The Commission may, but need not, assign a particular weight to a factor.

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

The City of Encinitas has a certified Local Coastal Program (LCP), and the subject site is located in an area where the Commission retains appeal jurisdiction because it is located between the first public road and the sea. Therefore, before the Commission considers the appeal de novo, the appeal must establish that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. In this case, for the reasons discussed further below, the Commission exercises its discretion to determine that the development approved by the City raises substantial issue with regard to the appellant's contentions regarding coastal resources.

IV. SUBSTANTIAL ISSUE MOTION AND RESOLUTION

On October 12, 2023, the Commission found that the subject appeal No. A-6-ENC-22-0049 raised a substantial issue.

Motion:

~~I move that the Commission determine that Appeal No. A-6-ENC-22-0049 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.~~

~~Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become~~

~~final and effective. The motion passes only by affirmative vote of a majority of Commissioners present.~~

Resolution:

~~The Commission hereby finds that Appeal No. A-6-ENC-22-0049 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.~~

V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATION

A. Project Description and Background

The scope of work approved by the City includes demolition of 10,681 sq. ft. of commercial space consisting of four structures and construction of a new mixed-use development consisting of residential, commercial, and hotel uses ([Exhibit 4](#)). The new 193,720 sq. ft. mixed-use development includes eight 3-story buildings, one 2-story building, and two 1-story buildings. The development will include 18,261 sq. ft. of commercial space (retail, restaurant, office), 72,982 sq. ft. of residential space (including 94 apartments, 19 of which are affordable), 6,575 sq. ft. of private open space, and 21,344 sq. ft. of common amenity space including a walking paseo, pedestrian plaza, and an outdoor seating area. The new 3-story, approximately 24,319 sq. ft. hotel will include 36 rooms, an outdoor swimming pool and a spa. A pedestrian bridge would also be constructed at the north end of the project site to connect the proposed hotel to the adjacent Alila Marea Beach Resort and provide indirect access to South Ponto State Beach. The project will provide 211 parking spaces located in a two-level, 78,158 sq. ft. underground parking garage as well as surface parking and access to North Coast Highway via the construction of a new roundabout at North Coast Highway 101 ([Exhibit 4](#)).

The project site is located on approximately 3.8 acres at 1900 and 1950 North Coast Highway 101 in the City of Encinitas. The site is bordered by the Alila Marea Hotel to the north, North Coast Highway to the east, and multi-family housing to the west and to the south. The site is comprised of three parcels – Parcel 1 (APN 216-041-20), Parcel 2 (216-041-21), and Parcel 3 (216-041-06). Parcels 1 and 2 are zoned Limited Visitor Serving Commercial (N-L-VSC) with a Residential 30 Overlay (R-30 OL) and Parcel 3 is zoned Commercial Mixed (N-CRM-1) and has a Coastal Zone Overlay, with a maximum density of 25 dwelling units per acre. The site is also located within the City’s North 101 Corridor Specific Plan, which is part of the City’s certified LCP.

The City of Encinitas offers a density bonus for development as outlined in Section 30.016.20(C)(3) of the LCP Implementation Plan:

Applicability. A “housing development” as defined in State Density Bonus Law shall be eligible for a density bonus and other regulatory incentives that are provided by State Density Bonus Law when the applicant seeks and agrees to provide low, very-low, senior or moderate income housing units or units intended to serve transitional foster youth, disabled veterans, or homeless persons in the threshold amounts specified in State Density Bonus Law. A “housing development” includes only the residential component of a mixed use project.

The project proposes to provide 20% of the eligible 94 residential units (19 units) as “low-income” affordable residential units (affordable to households that earn no more than 80% of the area median income) and qualifies as a Density Bonus Project under SB 330. Under State Density Bonus law, the project is afforded two incentives for each lot.

The incentive requested for Parcel 2 is an increase in the height limit for two buildings to 40 ft. 6 in. The existing height limit for Parcels 1 and 2 is 35 feet for flat roof structures and 39 feet for sloped roof structures as determined by the R-30 Overlay. The increase in the height limit is necessary to accommodate commercial ceiling height. The incentive requested for Parcel 3 is an increase in the height limit to 39 ft. 6 in. for two mixed-use buildings. The existing height limit for Parcel 3 is 30 ft. regardless of roof type. The requested increase in height is necessary to accommodate commercial ceiling height, the third level of residential units, and to retain loft storage.

Housing Element Background

In June 2019 the Commission approved changes to the City’s certified LCP in connection with the City’s adoption of its 2013-2021 Housing Element Update (LCP-6-ENC-19-0014-1). While the Housing Element itself was not incorporated into the LCP (it is only part of the City’s General Plan), various changes were made to the certified LCP to implement it, including a new overlay zone (Residential 30 Overlay, or R-30 OL) that was created within the LUP for the up-zoning of a specific inventory of sites that are intended to meet the City’s housing needs.

Parcels 1 and 2 of the Marea Village development were one such site and were identified in the Housing Element Update as “Site 07: Jackal Properties.” The findings for rejection of the LUP amendment as submitted and approval with suggested modifications involved the problematic nature of applying the R-30 Overlay Zone to the subject Jackal Property site and the ramifications for overnight visitor serving accommodations. As mentioned previously, the land use designation for this site is L-

VSC and the site is therefore intended to provide for hotel/motel uses as primary use, with ancillary uses for residents and visitors. Thus, up-zoning the site to the R-30 overlay could preclude the development of overnight accommodations on a site that is located along the historic Coast Highway at the northern entrance to the City and within the North Highway 101 Corridor Specific Plan area, which had been identified as lacking critical visitor-serving accommodations. The Jackal Property is among the only areas within the North 101 Corridor Specific Plan where a hotel/motel is permitted by-right. Therefore, the LCP amendment was approved with a suggested modification to the require that future development on the re-zoned Jackal site (i.e., Parcels 1 and 2 of the Marea Village project) must be a mixed-use development that will include residential, visitor-serving commercial, and a minimum of 30 traditional overnight accommodations. Furthermore, both the residential and overnight accommodation uses are required to provide an affordable component. In this way, overnight accommodations will remain a key component of development on this site, in addition to the provision of affordable housing.

Standard of Review

The site is within the City of Encinitas's permit jurisdiction and appealable to the Coastal Commission due to the property being located between the first public road and the sea ((§ 30603(a)(1)). The standard of review is the City of Encinitas's certified LCP and the public access and recreation policies of the Coastal Act.

B. Lower-Cost Overnight Accommodations

Section 30213 of the Coastal Act states:

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

Policy 1.13 of the Land Use Element states:

The visitor-serving commercial land use shall be located where it will not intrude into existing residential communities. This category applies in order to reserve sufficient land in appropriate locations expressly for commercial recreation and visitor-serving uses such as:

- tourist lodging, including campgrounds (bed and breakfast facilities may be compatible in residential areas)
- eating and drinking establishments
- specialty shops and personal services
- food and beverage retail sales (convenience)
- participant sports and recreation
- entertainment (Coastal Act/30250)

The above listed uses and other uses specifically intended to serve the needs of visitors shall be the principal uses allowed within the visitor-serving land use designation. All other permitted or conditionally permitted uses specified in the Zoning Code for areas zoned as visitor-serving commercial, shall be considered as ancillary uses to the allowable principal uses. Ancillary or non-principal uses and required off-street parking shall not occupy or utilize more than 30% of the ground floor area. Policy 1.13 amended 5/11/95 (Reso. 95-32)

Policy 1.14 of the Land Use Element states:

The City will maintain and enhance the Hwy 101 commercial corridor by providing appropriate community-serving tourist-related and pedestrian-oriented uses. (Coastal Act/30250)

Policy 3.2 of the Recreation Element states:

The City will designate as "Visitor-Serving Commercial" use areas land in the vicinity of primary coastal access routes, particularly in proximity to higher intensity beach use areas. (Coastal Act/30221/30222/30223)

Policy 3.1.2 of the North 101 Corridor Specific Plan states:

3.0 Use and Development Regulations

3.1.2 Commercial Zones

H. Zone: Limited Visitor-Serving Commercial (N-L-VSC) (R-30 OL)

This zone is intended to provide additional residential development opportunities to comply with the City's Regional Housing Needs Assessment (RHNA) allocation for sites to accommodate lower income housing with a minimum density of 25 units per acre and a maximum of 30 units per acre. Future development will be mixed-use to include residential and visitor-serving commercial uses, as well as a minimum of 30 traditional overnight accommodations. **The eventual proposal will**

address a full range of affordability for the overnight accommodations. [Emphasis added]

The site consists of three parcels. Parcels 1 & 2 are zoned Limited Visitor-Serving Commercial with Residential 30 Overlay and Parcel 3 is Commercial Mixed. As described previously, the Residential 30 Overlay was applied to Parcels 1 & 2 pursuant to an LCP amendment approved by the Commission in 2019 (LCP-6-ENC-19-0014-1/Housing Element Update 2013-2021). At the time the Commission approved the residential overlay on this site, it was identified as a potential inconsistency with the priority use provision of the LCP and the Coastal Act. The site is designated for visitor-serving commercial uses and is intended to provide for hotel/motel uses as the primary use, with ancillary uses for residents. Further, the site is located on Coast Highway 101, a major visitor-serving commercial corridor. Therefore, in order to find the LCPA consistent with Coastal Act requirements to prioritize visitor-serving uses, the Commission approved the LCPA with a suggested modification that requires future development on this specific site to be a mixed-use development that includes residential, visitor-serving commercial, and a minimum of 30 traditional overnight accommodations. The Commission's findings of approval identified that both the residential and overnight accommodation uses would include an affordable component.

The project approved by the City includes a new 34-room resort-style hotel that, based on the nature of the accommodations and the location, is expected to be a high-end hotel. Prior to the City's action, Commission staff worked extensively with the applicant to develop a program to ensure that a minimum of 25% of the new hotel rooms (8.5 rooms) proposed would be lower-cost accommodations. The project as approved by the City identifies that eight of the proposed new rooms would provide "a range of affordability" by being priced at low, moderate, and high levels of affordability based upon a 75%, 100%, and 125% index utilizing the prior year pricing for all San Diego County hotel rooms as reported by Smith Travel Research. However, the City's approval does not include any requirements as to the number of rooms that will be provided at each of the rates. There are no restrictions on the approval requiring all eight rooms be priced at or below average cost; the City has confirmed that as approved, one room could be priced at the lower level, one at average cost, and the other six at 125% of average, or any other combination as long as a minimum of one room fits into each of the three categories. Therefore, the number of low-cost rooms actually provided in the 34-room hotel is likely to be fewer than the 25% typically required by the Commission to meet the LCP-required "full range of affordability."

Further, the applicant's proposed method for determining what constitutes "low," "medium," and "high" cost rates appears inconsistent with how the Commission typically determines them. In discussions prior to the City's action, Commission staff advised the applicant that there are two methods for calculating low, medium, and high-cost rates.

The first is to use the statewide annual or peak season average daily rate and apply 75% to it to determine the low-cost threshold and apply 125% to it to determine the high-cost threshold. The second, market area method is to purchase city or county economy rate data from Smith Travel Research. In this method, STR's economy rate hotel segment represents the low-cost rate for the market area. Instead, the project conflates how the Commission calculates low-cost rooms by applying the percentages associated with the statewide average methodology for low-cost thresholds (75%) and higher-cost thresholds (125%) to a modified market area methodology that relies on the average daily rate of *all* hotels and motels in San Diego, as opposed to just considering the economy rate segment. Because San Diego market has higher rates than the statewide average, conflating these two methodologies likely results in an inflated low-cost rate. Thus, the project does not appropriately provide for a "full range of affordability" and the methodology used does not ensure the provision of truly lower-cost rooms.

Therefore, as approved, the project raises a substantial issue with regard to consistency with Coastal Act and LCP requirements to provide lower-cost visitor accommodations on the subject site.

C. Traffic & Public Access

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

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

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept

responsibility for maintenance and liability of the accessway. [...]

Policies in the adopted LUP Circulation Element include:

Goal 6: The City will make every effort to provide public access and circulation to the shoreline, through private dedications, easements or other methods, and public transportation or other facilities.

Policy 1.3. Prohibit development which results in Level of Service E or F at any intersection unless no alternatives exist and an overriding public need can be demonstrated.

The project will result in an increase of 1,173 average daily trips and a change of service from LOS D to LOS E at the intersection of La Costa Avenue and Sheridan Road. The City approved a statement of overriding public need for the La Costa Avenue/Sheridan Road intersection because the project is providing public benefits through the provision of eight affordable hotel rooms. However, as described above, there is no requirement that eight rooms be affordable, and thus, there is no certain public benefit to support the statement of overriding public need. Further, La Costa Avenue is a major east-west connector that provides access from I-5 to Coast Highway 101. The approved project may make it more difficult for the public to access the coast and may discourage public access due to longer wait times and increased traffic inconsistent with the certified LCP and the public access policies of the Coastal Act, and thus raises a substantial issue.

D. Substantial Issue Factors

As discussed above, there is inadequate factual and legal support for the City's determination that the proposed development is consistent with the certified LCP. In this case, the City's approval is inconsistent with LCP policies regarding the provision of lower-cost accommodations and public access. The other factors that the Commission normally considers when evaluating whether a local government's action raises a substantial issue also support a finding of substantial issue. First, the objections to the project suggested by the appellants raise substantial issues of regional or statewide significance due to the frequency of development of higher-cost accommodations at the coast and the need to provide more lower-cost overnight accommodations. Second, the local decision creates a poor precedent with respect to the proper interpretation of the City's LCP, as the City's failure to require lower-cost accommodations is not only an incorrect interpretation of the LCP, but could also set an adverse precedent elsewhere along the coast. Finally, the coastal resources affected by the decision (i.e., public

access) are significant due to lack of lower-cost overnight accommodations across the state and within San Diego County.

STAFF RECOMMENDATION ON THE PROJECT

VI. MOTION AND RESOLUTION ON DE NOVO

Motion:

I move that the Commission adopt the revised findings in support of the Commission's action on October 12, 2023 approving Coastal Development Permit No. A-6-ENC-22-0049.

Staff recommends a YES vote on the foregoing motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members of the prevailing side present at the revised findings hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings. The Commissioners eligible to vote are:

Commissioners Aguirre, Bochco, Brownsey, Escalante, Harmon, Notthoff, Rice, Turnbull-Sanders, and Wilson.

~~I move that the Commission approve Coastal Development Permit A-6-ENC-22-0049 pursuant to the staff recommendation.~~

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

Resolution:

The Commission hereby adopts the findings set forth below for Coastal Development Permit No. A-6-ENC-22-0049 on the grounds that the findings support the Commission's decision made on October 12, 2023, and accurately reflects the reason for it.

~~The Commission hereby approves the Coastal Development Permit for the proposed project and adopts the findings set forth below on grounds that the~~

~~development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.~~

VII. STANDARD CONDITIONS

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

VIII. SPECIAL CONDITIONS

1. **Submittal of Final Plans PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit, for the review and written approval of the Executive Director, a full-size sets of the following final plans:
 - (a) Final construction plans that conform with the plans titled "Marea Village" from Stephen Dalton Architects, "job no. 1927," dated 6/01/2022, and modified in part through subsequent communications with the Commission, except that the hotel

~~shall include 32 rooms. The plans shall identify the construction of 6 moderate-cost accommodations (at \$204/night) and 3 lower-cost accommodations (at \$153/night) that the applicant proposes to rent to any member of the general public, inclusive of applicable resort fees. The rate may be increased annually consistent with the Consumer Price Index.~~

- (b) Final landscaping plans prepared by a licensed landscape architect or a qualified resource specialist who shall certify in writing that the final landscape plans are in conformance with the following requirements:
- i. The plans shall include a planting schedule that indicates that the planting plan shall be implemented within sixty (60) days of completion of construction. Within ninety (90) days of completion of construction, the Permittee shall submit for the review and written approval of the Executive Director a landscaping implementation report, prepared by a licensed Landscape Architect or qualified resource specialist who certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this special condition. The implementation report shall include photographic documentation of plant species and plant coverage.
 - ii. All cut and fill slopes shall be stabilized with planting at the completion of final grading. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils.
 - iii. Vegetated landscaped areas shall consist only of native plants and/or non-native drought-tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by the California Department of Water Resources (See: <http://ucanr.edu/sites/WUCOLS/files/183488.pdf>).
 - iv. All landscaped areas on the project site shall be maintained in a litter-free, weed-free, and healthy growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements. The Permittee shall submit for the review and written approval of the Executive Director two landscaping monitoring reports. The first monitoring report shall be submitted three years from the date of the issuance of the coastal development permit. The second report shall be submitted five years after permit issuance. The landscaping monitoring reports shall be prepared by a

licensed Landscape Architect or qualified resource specialist that certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring reports indicate the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the Permittee shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised or supplemental landscape plan must be prepared by a licensed Landscape Architect or qualified resource specialist and shall specify measures to remediate those portions of the approved landscaping plan that have failed or are not in conformance with the original approved plan.

- v. The use of rodenticides containing any anticoagulant compounds is prohibited.
- vi. All irrigation systems shall limit water use to the maximum extent feasible. Use of reclaimed water for irrigation is encouraged. If permanent irrigation systems using potable water are included in the landscape plan, they shall use water conserving emitters (e.g., microspray) and drip irrigation only. Use of reclaimed water ("gray water" systems) and rainwater catchment systems are encouraged. Other water conservation measures shall be considered, including use of weather-based irrigation controllers.

2. Construction Pollution Prevention Plan.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the written approval of the Executive Director, a Construction Pollution Prevention Plan that demonstrates that all construction, including, but not limited to, clearing, grading, staging, storage of equipment and materials, or other activities that involve ground disturbance; building, reconstructing, or demolishing a structure; and creation or replacement of impervious services, complies with the following requirements:

(a) General Construction-Phase Best Management Practices

- i. Best Management Practices (BMPs) designed to minimize adverse impacts resulting from construction and demolition activities shall be implemented prior to the onset of such activity, including BMPs to minimize erosion and sedimentation, minimize the discharge of pollutants and non-stormwater runoff, and minimize land disturbance and soil compaction, as applicable. The plan shall specify the description and location of all BMPs to be implemented during construction and demolition.

- ii. Appropriate protocols shall be implemented to manage all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and staff training), to protect coastal water quality.
 - iii. All BMPs shall be maintained in a functional condition throughout the duration of the construction and demolition activities and shall be promptly removed when no longer required.
 - iv. The damage or removal of non-invasive vegetation (including trees, native vegetation, and root structures) during construction shall be minimized, to achieve water quality benefits such as transpiration, interception of rainfall, pollutant uptake, shading of waterways, and erosion control.
 - v. Soil compaction due to construction activities shall be minimized, to retain the natural stormwater infiltration capacity of the soil.
- (b) **Minimize Erosion and Sediment Discharge.** During construction, erosion and the discharge of sediment off-site or to coastal waters shall be minimized through the use of appropriate Best Management Practices (BMPs), including:
- i. Land disturbance during construction (e.g., clearing, grading, and cut-and-fill) shall be minimized, and grading activities shall be phased, to avoid increased erosion and sedimentation.
 - ii. Erosion control BMPs (such as mulch, soil binders, geotextile blankets or mats, or temporary seeding) shall be installed as needed to prevent soil from being transported by water or wind. Temporary BMPs shall be implemented to stabilize soil on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters.
 - iii. Sediment control BMPs (such as silt fences, fiber rolls, sediment basins, inlet protection, sand bag barriers, or straw bale barriers) shall be installed as needed to trap and remove eroded sediment from runoff, to prevent sediment from construction-related activities from entering coastal waters or the storm drain system.
 - iv. Tracking control BMPs (such as a stabilized construction entrance/exit, or street sweeping) shall be installed or implemented as needed to prevent vehicles leaving the construction area from tracking sediment off-site.
 - v. To minimize wildlife entanglement and plastic debris pollution, the use of temporary erosion and sediment control products that contain plastic netting (such as fiber rolls, erosion control blankets, and mulch control netting) shall be prohibited. Heavy-duty silt fences reinforced by plastic or metal netting shall also be prohibited. Only products that contain natural-fiber netting, or that do not contain netting, shall be allowed.

(c) **Minimize Discharge of Construction Pollutants.** The discharge of other pollutants resulting from construction and demolition activities (such as chemicals, paints, vehicle fluids, petroleum products, asphalt and cement compounds, debris, and trash) into runoff or coastal waters shall be minimized through the use of appropriate BMPs, including:

i. **Stockpile and Debris Management**

- A. All stockpiles, demolition and construction materials, debris, and waste shall be covered during rain events, protected from stormwater runoff using temporary perimeter barriers, and located a minimum of 50 feet from coastal waters and storm drain inlets.
- B. Demolition or construction waste and debris shall be removed from work areas as soon as feasible, to prevent the accumulation of debris, sediment, and other pollutants that may potentially be discharged into coastal waters or the storm drain system. Adequate disposal facilities shall be provided for solid waste produced during demolition or construction activities.
- C. Trash receptacles shall be provided on-site and covered during rain events, and all trash shall be disposed of in the proper trash and recycling receptacles by the end of every construction day.
- D. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.

ii. **Spill Prevention and Equipment Maintenance**

- A. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of construction products or materials that may have adverse environmental impacts. The discharge of any construction products or materials into coastal waters, drainage courses, or the storm drain system shall be prohibited.
- B. Leaks or spills of fuel, oil, grease, lubricants, hydraulic fluid, chemicals, preservatives, paints, or other construction products or materials shall be immediately contained on-site and disposed of in an environmentally safe manner as soon as feasible.

- C. Construction vehicles operating at the project site shall be inspected daily to ensure there are no leaking fluids and shall be serviced immediately if a leak is found.
- D. Fueling and maintenance of construction equipment and vehicles shall be conducted off-site, if feasible. Any fueling and maintenance of mobile equipment conducted on site shall take place at a designated area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets (unless these inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other pollutants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.
- E. Equipment, machinery, and vehicles shall be washed only in designated areas specifically designed to contain runoff and prevent discharges into storm drain inlets. Thinners, oils, and solvents shall not be discharged into the sanitary sewer or storm drain systems.

iii. **Control of Non-Stormwater Runoff**

- A. Runoff control BMPs (such as a concrete washout facility or a dewatering tank) shall be installed or implemented to retain, infiltrate, or treat non-stormwater runoff resulting from demolition and construction activities.

(d) **Construction Site Map and Narrative Description.** The Construction Pollution Prevention Plan shall include a construction site map and a narrative description addressing, at a minimum, the following required components:

- i. A map delineating the construction site, construction phasing boundaries, and the location of all temporary construction-phase BMPs (such as silt fences, inlet protection, and sediment basins).
- i. A description of the BMPs that will be implemented to minimize land disturbance activities, minimize the project footprint, minimize soil compaction, and minimize damage or removal of non-invasive vegetation. Include a construction phasing schedule, if applicable to the project, with a description and timeline of significant land disturbance activities.
- ii. A description of the BMPs that will be implemented to minimize erosion and sedimentation, minimize the discharge of other pollutants resulting from construction and demolition activities, and control non-stormwater runoff. Include calculations that demonstrate proper sizing of BMPs, as applicable.

A description and schedule for the management of all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and staff training). Identify any temporary BMPs that will be converted to permanent post-development BMPs.

3. Post Development Runoff Plan.

(a) **Water Quality and Hydrology Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a Water Quality and Hydrology Plan that demonstrates that the project complies with the following requirements for post-development protection of coastal water quality:

i. **Use a Low Impact Development Approach to Stormwater Management.**

Use a Low Impact Development (LID) approach to stormwater management to replicate the site's pre-development hydrologic balance, by implementing site design strategies that reduce runoff, integrated with small-scale, distributed Best Management Practices (BMPs) to retain stormwater runoff close to the source.

The project shall comply with the following LID Site Design strategies and BMPs:

- A. Minimize disturbance of coastal waters and natural drainage features such as stream corridors, rivers, wetlands, natural drainage patterns, drainage swales, groundwater recharge areas, floodplains, and topographical depressions.
- B. Minimize removal of native vegetation, and plant additional non-invasive vegetation, particularly native plants that provide water quality benefits such as transpiration, interception of rainfall, pollutant uptake, shading of waterways to maintain water temperature, and erosion control.
- C. Maintain or enhance on-site infiltration of runoff to the greatest extent appropriate and feasible. Use strategies such as avoiding building impervious surfaces on highly permeable soils; avoiding unnecessary soil compaction; amending soil if needed to enhance infiltration; directing runoff to permeable landscaped areas; and installing an infiltration BMP (e.g., rain garden or bioretention system).
- D. Minimize the addition of impervious surfaces, and where feasible increase the area of pervious surfaces in redevelopment. Use strategies such as minimizing the footprint of buildings; minimizing the footprint of impervious

pavement; and installing a permeable pavement system where pavement is required.

- E. Disconnect impervious surface areas from the storm drain system, by interposing permeable areas between impervious surfaces and the storm drain system. Design curbs, berms, and similar structures to avoid isolation of vegetative landscaping and other permeable areas and allow runoff to flow from impervious pavement to permeable areas for infiltration. Use strategies such as directing roof-top runoff into permeable landscaped areas; directing runoff from impervious pavement into distributed permeable areas (e.g., turf, medians, or parking islands); installing a vegetated swale or filter strip to intercept runoff sheet flow from impervious pavement; and installing a rain barrel or cistern to capture and store roof-top runoff for later use in on-site irrigation or plumbing. Convey runoff from impervious surfaces into permeable areas in a non-erosive manner.
- F. Where appropriate and feasible, direct stormwater runoff from all impervious surfaces (e.g., parking areas and driveways, roofs, walkways, and patios) to, in order of priority, a) landscaped areas or open spaces capable of infiltration; b) earthen-based infiltration BMPs (such as a bioretention basin) c) manufactured infiltration BMPs (such as a permeable pavement system) or rainwater harvesting BMPs (such as a cistern); d) flow-through biofiltration BMPs (such as a vegetated swale or green roof); and if infiltration is not feasible, e) proprietary filtration systems (such as an inlet filter) or runoff flow control systems (such as a stormwater detention vault).
- G. Implement Runoff Control BMPs that are sized and designed to retain runoff on-site (by means of infiltration, evaporation, uptake by plants, or harvesting for later on-site use), to the extent appropriate and feasible. Examples include a bioretention basin, rain garden, permeable landscaped area, permeable pavement system, and cistern.
- H. If the proposed development will not retain on-site the runoff using an LID approach, an alternatives analysis shall be conducted. The alternatives analysis shall demonstrate that on-site runoff retention is maximized to the extent appropriate and feasible, and there are no appropriate and feasible alternative project designs (such as a reduction in impervious surface area) that would enable on-site retention of the design storm runoff volume.

- I. Where on-site infiltration is not appropriate or feasible, use alternative BMPs to minimize post-development changes in runoff flows. Alternative BMPs shall also be used where infiltration BMPs are not adequate to treat a specific pollutant of concern attributed to the development, or where infiltration practices would conflict with regulations protecting groundwater. Examples include an evapotranspiration BMP that does not infiltrate into the ground but uses evaporation and uptake by plants to reduce and attenuate runoff flows (e.g., a vegetated “green roof,” flow-through planter, biofiltration basin, or retention pond); a rainwater harvesting BMP to capture and store runoff for later use in landscape irrigation (e.g., a rain barrel or cistern); directing runoff to an off-site infiltration facility; or a BMP to reduce runoff flow rate (e.g., a manufactured stormwater detention vault) prior to directing runoff to the storm drain system.
- ii. **Implement Treatment Control BMPs if Necessary.** Treatment Control BMPs are structural systems designed to remove pollutants from runoff by processes such as gravity settling of particulate pollutants, filtration, biological uptake, media adsorption, or other physical, biological, or chemical process. Examples include vegetated swales, bioretention basins, and storm drain inlet filters. Runoff Control BMPs that promote infiltration or evapotranspiration may also provide Treatment Control.
 - A. Implement a Treatment Control BMP (or suite of BMPs) that is sized and designed to remove pollutants of concern from that will not be retained on-site.
 - B. Where infiltration BMPs are not adequate to remove a specific pollutant of concern attributed to the development, an effective Treatment Control BMP (or suite of BMPs) shall be required prior to infiltration of runoff, or else an alternative BMP that does not involve infiltration shall be substituted for the infiltration BMP.
- iii. **Implement Source Control BMPs.** Appropriate and feasible long-term Source Control BMPs, which may be structural features or operational practices, shall be implemented to minimize the transport of pollutants in runoff from the development by controlling pollutant sources and keeping pollutants segregated from runoff. Use strategies such as covering outdoor storage areas; using efficient irrigation; proper application and clean-up of potentially harmful chemicals and fertilizers; and proper disposal of waste. Waste disposal receptacle within the leasehold shall be of a scavenger-proof design to prevent access by animals.

- iv. **Avoid Adverse Impacts from Stormwater and Dry Weather Discharges.** The adverse impacts of discharging stormwater or dry weather runoff flows to coastal waters, intertidal areas, beaches, bluffs, or stream banks shall be avoided, to the extent feasible. The project shall comply with the following requirements:
- A. New outfalls discharging stormwater or dry weather runoff to coastal waters shall be prohibited, and runoff shall be directed inland to the storm drain system or to an existing outfall. If no storm drain system or existing outfall is present, runoff shall be directed to an existing drainage channel. Runoff shall not be allowed to sheet flow to the beach or the bay.
 - B. Runoff shall be conveyed off-site or to drainage systems in a non-erosive manner. If runoff flows to a natural stream channel or drainage course, determine whether the added volume of runoff is large enough to cause erosion.
 - C. Protective measures shall be used to prevent erosion from concentrated runoff flows at stormwater outlets (including outlets of pipes, drains, culverts, ditches, swales, or channels), if the discharge velocity will be sufficient to potentially cause erosion. The type of measures selected for outlet erosion prevention shall be prioritized in the following order, depending on the characteristics of the site and the discharge velocity: (1) vegetative bioengineered measures (such as plant wattles); (2) a hardened structure consisting of loose materials (such as a rip-rap apron or rock slope protection); or (3) a fixed energy dissipation structure (such as a concrete apron, grouted rip-rap, or baffles).
 - D. Design and manage the development to minimize discharge of dry weather runoff to coastal waters, to the maximum extent feasible. For example, use efficient landscape irrigation techniques, and design vehicle washing areas to convey wash water to vegetated areas, infiltration system, or the sanitary sewer system to minimize off-site runoff.
- v. **Manage BMPs for the Life of the Development.** Appropriate protocols shall be implemented to manage BMPs (including ongoing operation, maintenance, inspection, and staff training) to keep the water quality provisions effective for the life of the development.
- vi. **Site Plan and Narrative Description.** The Water Quality and Hydrology Plan shall include a site plan and a narrative description addressing, at a minimum, the following required components:

- A. A California-licensed professional (e.g., Registered Professional Civil Engineer, Geotechnical Engineer, Geologist, Engineering Geologist, Hydrogeologist, or Landscape Architect) qualified to complete this work shall prepare the Water Quality and Hydrology Plan.
- B. A site plan, drawn to scale, showing the property boundaries, building footprint, runoff flow directions, relevant drainage features, structural BMPs, impervious surfaces, permeable pavements, and landscaped areas.
- C. An estimate of the proposed changes in (1) impervious surface areas on the site, including pre-project and post-project impervious coverage area and the percentage of the property covered by impervious surfaces; (2) the amount of impervious areas that drain directly into the storm drain system without first flowing across permeable areas; and (3) site coverage with permeable or semi-permeable pavements.
- D. A polluted runoff and hydrologic characterization of the existing site (e.g., potential pollutants in runoff, soil properties, infiltration rate, depth to groundwater, and the location and extent of confining layers such as bedrock), as necessary to design the proposed BMPs.
- E. A description of the BMPs that will be implemented, and the Low Impact Development approach to stormwater management that will be used. Specify the number, location, size, design, and stormwater management function of all BMPs. Include a schedule for installation or implementation of all post-development BMPs.
- F. Supporting calculations demonstrating that all required Runoff Control and Treatment Control BMPs shall be sized, designed, and managed to infiltrate, retain, or treat, at a minimum, the runoff produced by the 85th percentile 24-hour storm event for volume-based BMPs, or the 85th percentile 1-hour storm event (multiplied by a safety factor of two) for flow-based BMPs, to the extent appropriate and feasible, for the portions of the project site that are determined to not already be able to infiltrate the volume produced by an 85th percentile 24-hour storm event. Indicate the values used in the calculations, and the source of data for each variable.
- G. For the portions of the project site where the 85th percentile 24-hour design storm runoff volume cannot be retained on site using an LID approach, an alternatives analysis shall demonstrate that no feasible alternative project design would substantially improve runoff retention.

- H. Runoff from all new or replaced impervious and semi-pervious surfaces shall be addressed in the plan. For sites where the area of new or replaced impervious and semi-pervious surfaces is greater than or equal to 50% of the pre-existing impervious and semi-pervious surfaces, runoff from the entire developed area, including the pre-existing surfaces, shall be addressed in the plan.
- I. A description and schedule for the ongoing management of all post-development BMPs, including operation, maintenance, inspection, and staff training, that will be performed for the life of the development, if required for the BMPs to function properly.

The permittee shall undertake development in accordance with the approved Water Quality and Hydrology Plan, unless the Commission amends this permit or the Executive Director issues a written determination that no amendment is legally required for any proposed minor deviations.

5. Disposal of Graded Spoils and Hazardous Materials.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall identify the location for the disposal of all excess graded spoils and hazardous materials. If the site is located within the coastal zone, a separate coastal development permit or permit amendment shall first be obtained from the California Coastal Commission.

6. Provision of Lower-Cost and Moderate Cost Accommodations.

~~BY ACCEPTANCE OF THIS PERMIT and as proposed by the applicant, the permittee, and any and all other successors or assigns, shall provide lower cost and moderate cost accommodations on the site of the hotel, subject to the following requirements:~~

- ~~A. The permittee shall implement its proposal to provide 6 of the 36 new rooms at a rate of \$204/night and 3 of the 36 new rooms at a rate of \$153/night, inclusive of parking costs and resort fees, which may be adjusted in the future according to the Consumer Price Index not more than once per year, with written notice to the Executive Director.~~
- ~~B. The permittee may not open the market rate rooms prior to the opening of the moderate cost and lower cost rooms.~~

- ~~C. If the permittee seeks to increase the rates or reduce the number of lower cost or moderate cost accommodations, it shall obtain an amendment to this permit that will authorize the change in conjunction with a requirement to mitigate for any increased rates (i.e., payment of additional in-lieu fees or provision of alternative lower cost or moderate cost rooms).~~
- ~~D. Guests of the lower cost and moderate cost rooms shall have free access to the same amenities the permittee provides to the guests in the market rate rooms, including amenities associated with a resort fee (Internet access, phone, pools, athletic/recreational equipment, etc.).~~
- ~~E. If the hotel operator seeks to change the designated rooms or the location of such rooms, the permittee shall notify the Executive Director, who will determine whether a permit amendment is required.~~
- ~~F. As proposed, the lower cost and moderate cost room rates shall apply every day of the year and shall not be adjusted seasonally.~~
- ~~G. Lower cost and moderate cost rooms shall be reserved through a first come, first serve reservation system on the hotel website and be easily accessible for perpetuity. Interested guests may also call the hotel to inquire about lower cost and moderate cost room availability and make a reservation if there is availability.~~
- ~~H. The permittee shall submit an annual monitoring report for review and written approval by the Executive Director that provides evidence of operation of the lower cost and moderate cost accommodations in compliance with all requirements of this permit, including sufficient detail to demonstrate the total number of rooms rented daily in the hotel, the number of lower cost and moderate cost hotel rooms rented for each night, the room rates for the lower cost and moderate cost hotel rooms, and the total cost (which shall include parking fees and resort fees) charged to guests for the reservation of these rooms.~~

~~The monitoring report shall include a description of proposed lower cost and moderate cost rates for the upcoming year (which may increase by no more than the annual Consumer Price Index for the previous calendar year), evidence of marketing of lower cost and moderate cost rooms through the hotel's website, a summary of the marketing and engagement methods implemented over the previous year pursuant to **Special Condition #7**, and an assessment of compliance with the terms and conditions of this GDP regarding the lower cost and moderate cost units. The permittee shall provide the monitoring information~~

~~required by this condition to the Executive Director annually by January 30 for the life of the development.~~

~~By the third anniversary of the approval of this CDP, and by the same date every three years thereafter, the permittee shall retain an independent auditing company, approved by the Executive Director, to perform an audit to evaluate compliance with the CDP. The permittee will ensure that the auditing company provides the Executive Director with a report that satisfies the following criteria: 1) The auditor's report will evaluate compliance by the permittee during the prior three-year period 2) The report shall identify the auditor's findings, conclusions and the evidence relied upon, including the sufficiency of both the information required by the CDP to perform the audit and the information made available by the permittee 3) After the first report by the auditing company, the three-year audit period may be extended to five years upon written approval of the Executive Director and 4) The Executive Director may grant such approval if each of the previous audits found compliance with the special conditions in the auditor's opinion, and if confirmed by the Executive Director.~~

7. Marketing and Engagement Plan

~~(a) PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for review and written approval by the Executive Director, a Marketing and Engagement Plan to market the lower cost and moderate cost hotel rooms. The plan shall outline how the permittee will actively promote and publicize availability of the rooms at the lower cost and moderate cost rates described in **Special Condition No. 6** to underserved communities such as low income communities, communities of color, and other communities that have been historically marginalized and face greater barriers to coastal access.~~

~~(b) The Marketing and Engagement Plan shall identify strategies for both online advertising and offline marketing efforts, which shall include targeted outreach to community organizations focused on underserved communities such as local non-profits, environmental justice groups, labor unions, or recipients of public benefits programs by coordinating with local program administrators.~~

~~(c) Marketing and media materials shall be distributed beyond the City of Encinitas to neighboring underserved communities in the greater San Diego area, as well as inland communities in Southern California, and shall acknowledge the California Coastal Commission's role in providing public access at this location. This may include but is not limited to the posting of marketing materials at relevant transit stops.~~

~~(d) The Marketing and Engagement Plan shall also include a language access protocol that outlines how materials will be developed to include English and non-English languages including but not limited to Spanish, tailored to be culturally relevant, and written in plain language to prevent educational and cultural barriers to access to the lower cost and moderate cost rooms.~~

~~(e) The annual monitoring report required pursuant to **Special Condition #6** shall include a summary of Marketing and Engagement methods implemented during the previous year, with visual documentation of marketing materials (physical and virtual media) in action.~~

~~(f) The Marketing and Engagement plan shall be implemented as described above. If determined to be necessary by the Executive Director upon review of the annual monitoring reports required by **Special Condition #6** and subsection (e) of this special condition, the permittee shall identify additional actions or measures that could be taken to improve access to the lower cost and moderate cost rooms by underserved communities (e.g. a targeted voucher program). Any changes to the Marketing and Engagement Plan requested by the permittee shall require an amendment to this coastal development permit unless the Executive Director determines that no amendment is needed.~~

6. 8.-Lower-Cost Overnight Accommodations Fee.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall pay an in-lieu fee totaling ~~\$542,812.50~~1,158,000, including any increases from the date of Commission action due to inflation based on the Turner Building Cost Index from the date of Commission action.

(a) The required total in-lieu fee of ~~\$542,812.50~~1,158,000 including any increases from the date of Commission action due to inflation based on the Turner Building Cost Index, shall be deposited into one or more interest-bearing account(s) to be established and managed by one or more of the following entities approved by the Executive Director of the Coastal Commission: City of Encinitas, California Coastal Conservancy, California Department of Parks and Recreation, a governmental agency or appropriate non-profit organization, or a similar entity approved by the Executive Director. The purpose of the account shall be to establish lower-cost overnight visitor accommodations, such as lower-cost hotel and motel rooms, hostel beds, tent campsites, cabins or campground units, or a similar project to promote access to the coast, at appropriate locations within San Diego County's coastal zone.

- (b) Except for in-lieu fees transferred to the State Coastal Conservancy pursuant to subsection C below, the entire fee and accrued interest shall be used for the above stated purpose, in consultation with the Executive Director, within seven years of the fee being deposited into the account. All development funded by this account will require review and approval by the Executive Director of the Coastal Commission and a coastal development permit if in the coastal zone. If any portion of the fee remains seven years after it is deposited, it shall be donated to one or more of the State Park units or non-profit entities providing lower-cost visitor-serving amenities in a Southern California coastal zone jurisdiction or other organization acceptable to the Executive Director. The Executive Director may extend the aforementioned deadline to expend the funds for good cause if the recipient of the funds requests an extension of the deadline in writing prior to expiration of the deadline.
- (c) Prior to expenditure of any funds contained in this account, the Executive Director shall review and approve, in writing, the proposed use of the funds as being consistent with the intent and purpose of this condition. In addition, prior to the Executive Director's approval of expenditure, the entity accepting the in-lieu fee funds required by this condition shall enter into a memorandum of understanding (MOU) with the Commission (except for the State Coastal Conservancy and State Parks, which are already party to existing MOUs (see subsections D and E, below)), which shall include, but not be limited to, the following: 1) a description of how the funds will be used to create lower-cost accommodations in the coastal zone; 2) a requirement that the entity accepting the funds must maintain operations of the accommodations at a lower-cost rate; 3) the terms provided in subsections (a) and (b) of this condition; and 4) an agreement that the entity accepting the funds will obtain all necessary regulatory permits and approvals, including but not limited to, a coastal development permit for development of the lower-cost accommodations required by this condition.
- (d) If the in-lieu fee is transferred to the State Coastal Conservancy, the funds shall be used pursuant to the existing MOU between the Coastal Commission and the Conservancy, dated August 2018, and for the purposes described in subsection (a), above. In addition, at least thirty days prior to the transfer of the funds, the applicant shall provide the Conservancy with any documentation necessary to the Conservancy, including information needed to effectuate transfer of the Funds to the Conservancy, unless the applicant receives a waiver of this requirement in writing from the Conservancy's Executive Officer. The terms in subsection (b) shall not apply to the State Coastal Conservancy.
- (e) If the in-lieu fee is transferred to State Parks, the funds shall be used pursuant to the existing MOU between the Coastal Commission and State Parks, dated December

2017, and for the purposes described in subsection A, above. As required by the existing MOU, a Project Specific Agreement shall be developed and executed by both agencies prior to the use of any funds.

- (f) The applicant shall provide evidence of payment to the Executive Director within 14 days of payment.

7. ~~9.~~ General Occupancy Agreement.

BY ACCEPTANCE OF THIS PERMIT, the permittee agrees that all hotel facilities shall be open to the general public. No fractional ownership such as time shares, or long-term occupancy of 30 days in any hotel rooms is allowed without an amendment to this permit.

8. ~~10.~~ Conditions Imposed by Local Government.

The permittee is responsible for compliance with all terms and conditions of this coastal development permit in addition to any other requirements imposed by other local government permit conditions pursuant to the local government's non-Coastal Act authority. In the event of conflicts between terms and conditions imposed by the local government and those of this coastal development permit, such terms and conditions of this coastal development permit shall prevail.

9. ~~11.~~ Provision of Affordable Units.

A. BY ACCEPTANCE OF THIS PERMIT, and as proposed by the permittees, the permittees agree that nineteen of the available units shall be maintained as affordable units for the life of the development approved by A-6-ENC-22-0049.

10. ~~12.~~ Public Access Signage Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a public access signage plan for the review and approval of the Executive Director. The public access signage plan shall consist of one (1) sign measuring no less than 2 ft. by 2 ft. informing the public that public coastal access is available to the north of the project site and to be installed along North Coast Highway. The sign shall include an approximate distance to the public coastal accessway and shall include a map.

11. ~~13.~~ Cultural Resources Treatment and Monitoring Plan

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director an

archaeological/cultural resources monitoring plan prepared by a qualified professional, which shall incorporate the following measures and procedures:

- i. The monitoring plan shall ensure that any prehistoric archaeological or paleontological or Native American cultural resources that are present on the site and could be impacted by the approved development will be identified so that a plan for their protection can be developed. To this end, the cultural resources monitoring plan shall require that archaeological and Native American monitors (including a San Pasqual monitor) be present during all grading operations and subsurface construction activity that has the potential to impact cultural resources.
- ii. There shall be at least one pre-grading conference with the project manager and grading contractor at the project site in order to discuss the potential for the discovery of archaeological, cultural, or paleontological resources. A San Pasqual Monitor and archaeological monitor(s) shall be included and present at this meeting.
- iii. If a pre-construction meeting is held, a San Pasqual monitor and archaeological monitor(s) shall be included and present at this meeting, as well as the Resident Engineer and Mitigation Monitoring Coordination.
- iv. Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, a San Pasqual monitor, and the Native American most likely descendent (MLD) when State Law mandates identification of a MLD, shall monitor all project grading and subsurface construction activity (such as trenching for utilities) that has the potential to impact cultural resources, as required in the approved cultural resources monitoring plan required above.
- v. The permittee shall provide sufficient archaeological and Native American monitors to assure that all project grading and subsurface construction activities that has any potential to uncover or otherwise disturb cultural deposits is monitored at all times.
- vi. If any archaeological or paleontological, i.e. cultural deposits, are discovered, including but not limited to skeletal remains and grave-related artifacts, artifacts of traditional cultural, religious or spiritual sites, or any other artifacts, all construction shall cease within at least 50 feet of the discovery, and the permittee shall carry out significance testing of said deposits in accordance with the attached "Cultural Resources Significance Plan Procedures" (Appendix B). the permittee shall report all significance testing results and analysis to the Executive Director for a determination of whether the deposits are significant.
- vii. The permittee shall report all discoveries, such as cultural artifacts, cremation sites, or human remains, to the San Pasqual Band of Indians.

- B. If the Executive Director determines that the discovery is significant, the permittee shall follow the procedures in Appendix B of this staff report to determine if an amendment to this permit is required. If an amendment to this CDP is required, development within at least 50 feet of the discovery shall not recommence until an amendment is approved, and then only in compliance with the provisions of such amendment.

12.14. Assumption of Risk, Waiver of Liability and Indemnity

BY ACCEPTANCE OF THIS PERMIT, the permittee acknowledges and agrees (i) that the site may be subject to hazards, including but not limited to storms, flooding, and earth movement, many of which will worsen with future sea level rise; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; (v) that sea level rise could render it difficult or impossible to provide services to the site (e.g., maintenance of roadways, utilities, sewage or water systems), thereby constraining allowed uses of the site or rendering it uninhabitable; (vi) any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain; and (vii) that the structure may be required to be removed or relocated and the site restored if it becomes unsafe or if removal is required pursuant to the Coastal Act.

13.15. Marine Debris Management Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a robust plan, including a comprehensive monitoring and evaluation framework, to reduce waste and single-use items, including litter, plastic and Styrofoam foodware, containers, and packaging. The plan shall include at a minimum, all of the following, and the applicant shall implement the approved version of the plan:

- A. The applicant shall install and maintain smoke-free signage in all rooms and/or areas of the proposed development, as well as at all beach accessway entrances.
- B. The applicant shall install and maintain educational signage for staff and patrons that promotes and encourages the use of reusable items instead of single-use items.
- C. The applicant shall install and maintain precautionary signage to prohibit litter and debris as well as provide a Service Plan for recycling, trash bins, and compost. The plan shall specify the amount of trash and recycling bins in the project area of the proposed development and weekend maximum usage statistics to ensure that an adequate number of bins are being deployed and that the trash and recycling management program is robust and avoids over-filled bins that might result in adverse impacts to nearby natural resources.
- D. Adhere to the following criteria:
 - i. Only use reusable foodware (including dinnerware, drinkware, silverware, and ramekins/containers) for onsite dining, specifically prohibiting the use of plastic cups, utensils or any other serviceware.
 - ii. Prohibit the use of plastic straws and only provide reusable straws, paper straws, or straws made from naturally occurring materials, upon request.
 - iii. Prohibit the use of expanded polystyrene (aka Styrofoam).
 - iv. Prohibit the use of plastic bags on-site or for takeout/to-go orders.
 - v. Only provide single-use (biodegradable or compostable) utensils, straws, condiments, containers, and other accessory items upon request for takeout/to-go orders.
 - vi. Prohibit the sale of beverages in plastic bottles.
 - vii. Prohibit the use of plastic, single-use shampoo, conditioner, soap and lotion bottles.
 - viii. Follow proper recycling practices for both hotel- and guest-utilized materials.

- ix. Install a microfiber filtration system for all hotel laundry to capture and remove microfibers from the water during the laundering process.
 - x. All waste resulting from restaurant activities shall be exported outside the Coastal Zone.
- E. Participate in a Marine Debris Reduction Program such as the ReThink Disposable Program (RTDP) or Surfrider's Ocean Friendly Restaurants (OFR) or a substantially similar program. Within 90 days of the completion of the proposed development, the applicant shall participate in an established program to reduce waste and single-use plastic foodware and packaging on-site and for takeout orders. The applicant shall be responsible for the fees needed to participate in the program.

The permittee shall provide an annual report for the review and written approval of the Executive Director of the Coastal Commission that includes the Marine Debris and Reduction Program scope and metrics, and total impact of the program. The report shall be provided annually, no later than January 30th, for the preceding calendar year.

The permittee shall undertake development in accordance with the approved plan, unless the Commission amends this permit or the Executive Director issues a written determination that no amendment is legally required for any proposed minor deviations.

14.16. Deed Restrictions

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval, documentation demonstrating that the landowner has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicants' entire parcel. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any

part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

VIII.FINDINGS AND DECLARATIONS

A. Project Description and Background

The applicant is requesting a CDP for the proposed multi-structure, mixed-use development. The only changes to the project as approved by the City, and described in Section IV. A. Project Description and Background above, are in regard to the proposed hotel. At the October 2023 Commission hearing for this item, the applicant revised the project description to include a 32-room market-rate hotel. ~~Since the appeals were filed, Commission staff and the applicant have had multiple discussions regarding the proposed hotel. After these discussions, the applicant has modified its proposal and the hotel will now include 36 rooms (compared to 34 previously). In addition, the applicant is proposing to provide six of the rooms at a rate of no more than \$204/night and three of the rooms at a rate of no more than \$153/night. These rooms will be smaller than the market rate rooms (267 sq. ft. vs. 436 or 513 sq. ft.) with the same style of finishes, flooring, furniture, cabinetry and will be double occupancy.~~

In the Commission's "de novo" review of this application, the standard of review is the City of Encinitas's certified LCP and the public access and recreation policies of the Coastal Act.

B. Lower Cost Accommodations

Section 30213 of the Coastal Act states:

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

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

Policy 1.13 of the Land Use Element states:

The visitor-serving commercial land use shall be located where it will not intrude into existing residential communities. This category applies in order to reserve sufficient land in appropriate locations expressly for commercial recreation and visitor-serving uses such as:

- tourist lodging, including campgrounds (bed and breakfast facilities may be compatible in residential areas)
- eating and drinking establishments
- specialty shops and personal services
- food and beverage retail sales (convenience)
- participant sports and recreation
- entertainment (Coastal Act/30250)

The above listed uses and other uses specifically intended to serve the needs of visitors shall be the principal uses allowed within the visitor-serving land use designation. All other permitted or conditionally permitted uses specified in the Zoning Code for areas zoned as visitor-serving commercial, shall be considered as ancillary uses to the allowable principal uses. Ancillary or non-principal uses and required off-street parking shall not occupy or utilize more than 30% of the ground floor area. Policy 1.13 amended 5/11/95 (Reso. 95-32)

Policy 1.14 of the Land Use Element states:

The City will maintain and enhance the Hwy 101 commercial corridor by providing appropriate community-serving tourist-related and pedestrian-oriented uses. (Coastal Act/30250)

Policy 3.2 of the Recreation Element states:

The City will designate as "Visitor-Serving Commercial" use areas land in the vicinity of primary coastal access routes, particularly in proximity to higher intensity beach use areas. (Coastal Act/30221/30222/30223)

Policy 3.1.2 of the North 101 Corridor Specific Plan states:

3.0 Use and Development Regulations

3.1.2 Commercial Zones

H. Zone: Limited Visitor-Serving Commercial (N-L-VSC) (R-30 OL)

This zone is intended to provide additional residential development opportunities to comply with the City’s Regional Housing Needs Assessment (RHNA) allocation for sites to accommodate lower income housing with a minimum density of 25 units per acre and a maximum of 30 units per acre. Future development will be mixed-use to include residential and visitor-serving commercial uses, as well as a minimum of 30 traditional overnight accommodations. **The eventual proposal will address a full range of affordability for the overnight accommodations.** [Emphasis added]

Section 30213 of the Coastal Act prioritizes visitor-serving and recreational uses over residential, industrial, or general commercial uses within the coastal zone. Section 30213 additionally requires permitted development to protect, encourage and, where feasible, provide lower-cost visitor and recreational facilities. In numerous past actions, the Commission has applied this policy to protect, and require provision of, lower-cost overnight accommodations in relevant development projects.

In addition, and as previously described, Parcels 1 & 2 are zoned Limited Visitor-Serving Commercial with Residential 30 Overlay and Parcel 3 is Commercial Mixed. Pursuant to an LCP amendment approved by the Commission in 2019 (LCP-6-ENC-19-0014-1/Housing Element Update 2013-2021), the City’s LCP requires future development on this specific site to be a mixed-use development that includes residential, visitor-serving commercial, and a minimum of 30 traditional overnight accommodations. The Commission’s findings of approval of that LCPA identified that both the residential and overnight accommodation uses would include an affordable component and require that the proposed overnight accommodations on this site address a full range of affordability.

Trends in Coastal Overnight Accommodations

The Commission has approved hotel development along the coastline as high-priority visitor-serving facilities—however, high room rates can render these visitor-serving hotels exclusive.¹ The Commission has required mitigation for the use of land that would have otherwise been available for lower-cost and visitor-serving facilities.² The Commission has also approved projects and LCP amendments requiring development

¹ [Explore the Coast Overnight- An Assessment of Lower Cost Accommodations](#), published by State Coastal Conservancy on January 8, 2019.

² [NPB-MAJ-1-06, Part A](#) (Marriott Hotel VSC)

of overnight accommodations with facilities that serve a range of incomes.³ In past actions where the development proposed has not provided for a range of affordability onsite, the Commission has required offsite mitigation in the form of payment of an in-lieu fee to fund construction of lower-cost overnight accommodations, including hostels, recreational vehicle (RV) parks, and campgrounds.⁴

In November 2016, Commission staff presented a comprehensive study of lower-cost visitor accommodations eliminated from the coastal zone since 1989.⁵ The study found that since 1989, out of six “cost” categories ranging from “economy” to “luxury,” a total of 24,720 economy rooms had been lost, compared to 11,247 rooms lost of the remaining higher class categories. These survey results indicate that nearly 70% of all hotel rooms eliminated from the coastal zone from 1989 to 2016 were economy rooms, whereas less than 10% of the rooms lost were in the upscale and luxury categories. Meanwhile, of the hotels that are being developed, a greater number of hotels offer high-cost accommodations, exacerbating the supply and demand for lower-cost accommodations.

Although statewide demand for lower-cost accommodations in the coastal zone is difficult to quantify, lower-cost hotels, camping, and hostel opportunities are in high demand in coastal areas and there is an ongoing need to provide more lower-cost opportunities along California’s coast. Furthermore, the supply of affordable overnight accommodations in the coastal zone is an environmental justice issue. Section 30604(h) of the Coastal Act provides that when acting on a coastal development permit, the issuing agency “may consider environmental justice, or the equitable distribution of environmental benefits.” The Commission’s Environmental Justice Policy, adopted in March 2019, indicates that the Commission shall “strive for a no-net-loss of lower-cost facilities in the coastal zone, while implementing a longer-term strategy to increase the number and variety of new lower-cost opportunities.” In California, equitable coastal access and recreation opportunities for all populations has not been realized due to historic and social factors, such as discriminatory land use and economic policies and practices, with greater barriers to access experienced by low-income communities,

³ [HNB-MAJ-2-06](#) (Huntington Beach-Timeshares); [A-5-RPV-2-324](#) (Rancho Palos Verdes-Long Point); [RDB-MAJ-2-08](#) (Redondo Beach); [SBV-MAJ-2-08](#) (Ventura); [5-98-156- A17](#) (Long Beach-Pike Hotel); [LOB-MAJ-1-10](#) (Long Beach-Golden Shore); [A-5-VEN-21-0011](#)(Wynkoop Properties, LLC); [A-5-LGB-21-0060](#) (Pacific Edge Hotel)

⁴ [5-18-0872](#) (Shore Hotel); [6-13-0407](#) (McMillin-NTC, LLC); [5-14-1785](#) (Olson Real Estate Group, Inc.)

⁵ Ref. [Public Workshop: Lower Cost Visitor Serving Accommodations](#), published by Commission staff on October 26, 2016.

communities of color, and underserved communities.⁶ Spatial analysis of 2010 Census data shows a majority of Californians (70.9%) live within 62 miles of the coast, but populations closest to the coast are disproportionately white, affluent, and older than those who live farther inland.⁷

Additionally, a State Coastal Conservancy-commissioned survey in 2017 identified that “low and middle-income households, people of color, and young people are less likely than higher-income, white, or older Californians to stay overnight at the California coast” and also states: “Respondents cited financial concerns as the primary reason they do not stay overnight at the coast. Over 45% of Californians said that overnight accommodations at the coast were inconvenient or unaffordable.”⁸ The limited supply of low-cost accommodations further exacerbates coastal access inequalities by socioeconomic status and disproportionately restricts the ability of individuals from low-income communities to stay overnight on the coast. Most new hotels being developed in the coastal zone are high-cost hotels, while the remaining moderate and lower-cost hotels in the coastal zone include older structures that become less economically viable as time passes. It is often more lucrative for developers to replace these older structures with higher-cost accommodations. Such trends have thus made it difficult for visitors with limited means to access the coast; many of these visitors are traveling from inland locations and cannot easily make the trip to the coast and back home again in a single day. Therefore, by protecting and providing low-cost lodging for the price-sensitive visitor, a broader segment of the population will have the opportunity to visit the coast.

To facilitate provision or retention of lower-cost accommodations in proposed visitor-accommodating development, in previous actions, the Commission has required that applicants either: A) ensure a percentage of the proposed onsite overnight accommodations are provided at lower-cost; B) establish an equivalent number of lower-cost accommodations offsite or nearby; and/or C) ensure an adequate “in-lieu” fee is paid to a fund designated for creation of new lower-cost overnight accommodations. To implement these options, the Commission has first defined what constitutes a lower-cost accommodation (or “lower-cost unit”). The Commission has

⁶ [“Free the Beach! Public Access, Equal Justice, and the California Coast”](#), Robert Garcia & Erica Flores Baltodano, 2 Stanford Journal of Civil Rights and Civil Liberties. 143 (2005)

⁷ [Coastal Access Equity and the Implementation of the California Coastal Act](#), Reineman, et al., (2016) Stanford Environmental Law Review Journal, v. 36. Pages 96-98.

⁸ [Explore the Coast Overnight- An Assessment of Lower Cost Accommodations](#), published by State Coastal Conservancy on January 8, 2019.

then determined how many lower-cost units are required per a given development project and, if necessary, whether an in-lieu fee is appropriate to facilitate provision of these units offsite.

Defining Lower-Cost Accommodations

In a market subject to constant change, it can be difficult to define what price points correspond to low-, moderate-, and high-cost accommodations for a given area. The Commission has utilized varying approaches to define such terms, including considering the unique circumstances for each project and applying a quantitative methodology for determining what is considered “lower cost.” The latter methodology relies on a formula based on California hotel and motel accommodations (single up to double occupancy) and does not account for hostels, RV parks, campgrounds or other alternative accommodations into the equation, as these facilities do not typically provide the same level of accommodation as hotels and motels. Rather, hostels and campgrounds are generally inherently lower-cost and are the type of facilities that might be required as a to compensate for the loss of lower-cost overnight accommodations.

The formula calculates the average daily peak rate (generally July and August) of lower-cost hotels and motels based on the average daily rates of hotels and motels across the entire State of California. Under this formula, “lower-cost” is defined as hotel or motel rooms with a rate that is 75% less than the statewide average daily room rate. To obtain data inputs for the formula, statewide average daily room rates (ADRs) are collected monthly by Smith Travel Research and are available on the “Visit California” webpage. To be most useful, peak season (summer) rates for standard, double occupancy rooms are utilized for the formula, and to ensure that the lower-cost hotels and motels surveyed meet a minimally acceptable level of quality, including safety and cleanliness, standard use of the formula only includes AAA Auto Club-rated properties that are rated one- and two-diamond rated hotels. Following this formula, the Commission has determined that the high-cost rates are generally prices 125% higher than the statewide average daily room rate. By definition, the hotel rooms that are more expensive than lower-cost rooms, but less expensive than high-cost rooms, qualify as moderate-cost rooms. For example: if \$100 was the daily statewide average room rate, low-cost rooms would be 25% less (or \$75) and high cost would be defined as those rooms 125% above the statewide average and include rooms more than \$125 per night. The moderate-cost rooms would range between \$75 to \$125 per night.

Required Number of Lower-Cost Rooms

After defining the project as low-, moderate-, or high-cost, the Commission must next determine how many, if any, lower-cost rooms/units should be provided for a given project to mitigate impacts to existing (or potential) lower-cost visitor accommodations

caused by the proposed development. In past projects, the Commission has required provision of lower-cost rooms (either onsite or off-site) or payment of an in-lieu fee in an amount equal to 25% of the new high-cost rooms proposed in order to adequately provide for a range of affordability. In other words, 25% of the number of proposed high-cost rooms would need to be provided at the identified low-cost rate either onsite, off-site, or through payment of an in-lieu fee.

While the provision of lower-cost accommodations onsite is the preferred method as stated in Section 30212, in previous actions, where onsite provision is determined infeasible, the Commission has alternatively required “in-lieu” payments for the construction of an equivalent number of lower-cost rooms/units (such as hotel beds) offsite. The funds are paid into an account managed by an appropriate entity, such as the local government, State Coastal Conservancy, California State Parks, Hostelling International, or a similar agency familiar with lower-cost accommodations management, to ensure that such funds are spent on new lower-cost units, including new campground and hostel facilities.

~~Proposed Project with Lower Cost and Moderate Cost Accommodations~~

~~After the appeals were filed, and following subsequent discussions with Commission staff, the applicant has revised their proposal in regards to the hotel. The proposed new hotel will consist of 36 rooms, six of which (approximately 17%) will be offered at a rate of no more than \$204/night, inclusive of resort fees and three of which (approximately 8%) will be offered at a rate of no more than \$153/night inclusive of resort fees. The remaining 27 rooms will be offered at market rate. These nine rooms will be distributed throughout the hotel and will have access to the same amenities as the market rate rooms. The proposed hotel will include a swimming pool and spa as well as valet service.~~

Based on 2022 data from Smith Travel Research, the statewide annual average daily rate (ADR) during peak season (July/August) for coastal overnight accommodations was \$204, and based on the above 75% criteria, a daily rate at or below \$153 could be considered lower-cost, a rate between \$153 and \$255 could be considered moderate cost, and a rate \$255 or more could be considered high cost. Thus, the applicants proposed rate of \$204/night for six rooms meets the Commission’s criteria for moderate cost room rates and the proposed rate of \$153/night of three rooms meets the criteria for lower-cost room rates.

~~The proposed provision of three lower cost and six moderate cost rooms along the coast is a significant public access amenity. The City’s LCP specifically requires that this site provide a “full range of affordability” and the three lower cost and six moderate cost rooms will partially fulfill that requirement, as discussed further below. To ensure~~

~~that the proposed lower cost and moderate cost rooms are provided in the number and location approved by the Commission, **Special Condition #1** requires the submittal of final development plans that identify the lower cost and moderate cost accommodations in the hotel. **Special Condition #6** requires the applicant to implement its proposal to provide three lower cost rooms at a rate of \$153/night and six moderate cost rooms at a rate of \$204/night, inclusive of parking costs and resort fees, which may be adjusted in the future on an annual basis according to the Consumer Price Index. Additionally, **Special Condition #6** requires the applicant to submit a yearly monitoring report that provides evidence of operation of the lower and moderate cost accommodations. **Special Condition #7** requires a marketing and engagement plan that discusses how the applicant will actively promote and publicize the proposed affordable accommodations to ensure that underserved communities are made aware of the resource and utilize the lower cost and moderate cost rooms to the maximum extent feasible. The plan should outline how the permittee will promote and publicize the availability of these rooms to underserved communities.~~

In-Lieu Fee

As stated above, the preferred method to ensure consistency with Coastal Act sections 30213 and 30222 is provision of new lower-cost rooms on or near the project site. Further, the City's LCP requires that overnight accommodations on this site provide a "full range of affordability." In past actions, the Commission has considered a "full range of affordability" to mean that 25% of the number of new high-cost rooms must be provided at a lower cost rate. In order to meet this standard, the applicant would need to provide ~~8~~ 6.75 lower cost rooms (32 proposed high-cost rooms x 25% = 6.75). ~~In this case, the applicant has proposed six moderate cost and three lower cost rooms. While the applicant is partially fulfilling the LCP requirement for a range of affordability with their proposal, there remains a deficit of 6.75 — 3 = 3.75 lower cost rooms.~~

In discussions with Commission staff, the applicant has conveyed that it is not economically feasible to offer more than three rooms at the rate the Commission considers lower-cost (\$153/night) based on statewide peak season ADR. The Commission has found in similar past actions that, under most circumstances, for high-cost overnight visitor accommodations where low-cost alternatives are not included on-site, a fee may be used to compensate for the fact that at least 25% of the rooms on-site are not being provided as lower-cost rooms.⁹

⁹ [5-20-0597](#) (Franco), [5-20-0181](#) (B&J Capital Group Investments), [5-14-1785](#) (Olson Real Estate Group, Inc); [6-13-0407](#) (McMillin-NTC, LLC)

In 2014, following Commissioner questions regarding the adequacy of the in-lieu fee for lower-cost accommodations at Commission hearings, Hostelling International provided an updated report representing the true construction costs of a new hostel, which stated that new construction costs approximately \$42,120 per hostel bed without the cost of land acquisition. In order to verify this information, the Commission consulted Maurice Robinson & Associates. Robinson concurred with the figures and stated:

“This lends itself to a two-tiered Index for a representative cost to develop low-cost lodging statewide. The \$42,120 per bed estimate for the structure can be indexed on an annual basis, either by CPI [(Consumer Price Index)] or, alternatively, with a more construction industry-specific index such as the Turner Building Cost Index.”

The Turner Building Cost Index is used widely by federal and state governments to measure costs in the non-residential building construction market in the United States.¹⁰ Robinson further expanded on the cost of providing motel or hotel rooms rather than hostel beds and estimated:

“These new motel rooms would likely cost nearly \$100,000 per room to develop (excluding land), which is more than twice the cost of a hostel bed, mostly due to the fact that motels require approximately twice the gross square footage per person than hostels.”

A hotel or motel room (250 sq. ft. average) represents a much larger space than a single hostel bed (120 sq. ft. average). The cost of constructing new low-cost hotel rooms with new lower cost hotel/motel rooms is significantly higher than replacing them with hostel beds. Following this information and suggestion, the Commission required new high-cost hotel projects, and projects that eliminated existing lower-cost overnight accommodations, to pay an in-lieu fee of \$100,000 per required lower-cost room not provided onsite.¹¹ This requirement was based on information provided in 2015. However, when considering the approximate 45% increase in the Turner Building Cost Index in the last nine years (likely related to inflation and other factors), the estimated cost of constructing a lower-cost hotel or motel room has increased from \$100,000 per room to ~\$144,750 per room.¹²

¹⁰ The Turner Building Cost Index is used widely by federal and state governments to measure costs in the non-residential building construction market in the United States. (Ref. <http://www.turnerconstruction.com/cost-index>)

¹¹ Ref. [CDP 5-18-0872](#) (Sunshine Enterprises, LP), [CDP 5-20-0181](#) (B&J Capital Group Investments)

¹² The Turner Building Cost Index was 943 for 2015 and 1365 for Q2 2023.
 $1365 - 943 = 422 / 943 = 0.45 * 100\% = 45\%$ increase

Robinson also recommended that land cost be calculated separately from construction costs in the in-lieu fee. It is important to note that in-lieu fees are often accepted and used by many public and non-profit organizations. The in-lieu fees provide funding to public agencies and non-profit organizations, including California State Parks and Hostelling International, for the provision of lower cost overnight visitor accommodations within or near the coastal zone. These lower-cost overnight visitor accommodations include, but are not limited to, RV park sites, hostel accommodations, campgrounds, cabins, and lower-cost hotel or motel accommodations. These agencies and organizations often already own land and require solely construction costs. As such, the fee of \$144,750 per lower-cost hotel room does not include land costs. Maurice Robinson & Associates addresses the widely varying cost of land acquisition:

“The range in land costs might be as great as from \$100/sf to \$600/sf in Los Angeles County’s Coastal Zone. For a 10,000 sf parcel of land, the total land costs could be anywhere from \$1 million to \$6 million—a huge range. This variability in the price of land dwarfs the cost of providing the hostel improvements[.] ... This illustrates the need for the Commission to find alternative, lower-cost ways to acquire the land replacement low-cost lodging. As examples, the proposed hostels could be built on land owned by the following non-private-sector types of entities:

- Public agencies, such as State Parks, which have similar social goals;
- Non-profit organizations, which may not require a market-level rate of return; or
- Quasi-public agencies, such as Port Districts, but leased at a below-market rate. Indeed, while the cost to construct the hostel building would be expected to remain fairly constant throughout the State, the land costs could vary dramatically in each case.”

Here, an in-lieu fee that includes the cost of land acquisition is unnecessary because the funds proposed by the applicant would, as set forth in **Special Condition 6**, be directed to the City of Encinitas for the construction of lower-cost accommodations on the coast or to a similar non-profit or government entity that has land available for providing lower-cost visitor amenities in the Southern California coastal zone, with the intention that such projects do not require the purchase of land.

At the October 12, 2023 hearing, the Commission found that the provision of the required lower-cost rooms on-site was infeasible based upon testimony from the applicant, and approved the payment of a mitigation fee in-lieu of constructing the lower-cost rooms as part of the project. As indicated above, the applicant proposes to

~~partially fulfill the provision of 25% lower cost rooms on site with the construction of three lower cost rooms. Thus, a deficit of $6.75 - 3 = 3.75$ lower cost rooms remains. While the applicant has instead proposed to provide six moderate cost rooms and three lower cost rooms, the Commission finds the provision of moderate cost rooms do not address the loss of lower cost accommodations as completely as the provision of lower cost rooms. Thus, the remaining loss of 3.75 lower cost rooms will need to be mitigated through an in-lieu fee.~~

~~Following the Commission's typical formula, an in-lieu fee equal to 25% times the number of high-cost rooms $(32) * \$144,750 = \$4,302,750$, $1,158,000$ is would be required. In this case, because the applicant is proposing to provide six moderate cost rooms onsite in partial compliance with the LCP requirement for a full range of affordability and such rooms will provide some value for public coastal access, it is appropriate to not require offsets for the moderate cost rooms. Further, it is appropriate to reduce the in-lieu fee to account for the proposed on-site lower cost rooms. Thus, the in-lieu fee would be: $(27 \text{ rooms} * 25\%) - 3 = 3.75 \text{ rooms} * \$144,750/\text{room} = \$542,812.50$~~

Special Condition #86 therefore requires the applicant to deposit ~~$\$542,812.50$~~ $1,158,000$ into an interest-bearing account established and managed by one of the following entities approved by the Executive Director of the Coastal Commission: City of Encinitas, California Coastal Conservancy, California Department of Parks and Recreation, a governmental agency or related non-profit organization, or a similar entity approved by the Executive Director. This fee will mitigate the deficit of new on-site lower cost accommodations and will be used in the future to construct lower-cost overnight accommodations elsewhere within the San Diego County coastal zone. As directed by AB 250 and the Coastal Act Section 30607.8, the in-lieu fee may be reclaimed by the Commission if it has not been expended within seven years of the date of its deposit and may be reassigned for use for one or more projects that are consistent with Section 30213. As conditioned, the proposed project is consistent with Section 30213 of the Coastal Act.

Conclusion

In conclusion the Commission finds that the ~~three lower cost rooms, six moderate cost rooms, and $\$542,812.50$~~ $1,158,000$ in-lieu fee is consistent with the Coastal Act and LCP. The ~~provision of lower cost and moderate cost rooms in combination with the in-lieu fee that will support lower-cost opportunities offsite, which will increase the range of opportunities for overnight accommodations. However, to ensure that the rooms remain lower cost and moderate cost over time,~~ **Special Condition #6** memorializes the applicant's proposal to provide a minimum of three rooms onsite at a lower cost rate and six rooms onsite at a moderate cost rate. **Special Condition #7** requires a

~~marketing and engagement plan that discusses how the applicant will actively promote and publicize the proposed lower cost and moderate cost accommodations to ensure that underserved communities are made aware of the resource and utilize the lower cost and moderate cost rooms to the maximum extent feasible. The condition also includes reporting requirements to ensure the applicant provides the required lower cost and moderate cost rooms onsite. **Special Condition #86** requires the applicant to submit an in-lieu fee to make up for the loss of the lower-cost accommodations not provided on-site. Additionally, **Special Condition #9** requires the applicant to keep the hotel facilities open to the public.~~ To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition #1614**, which requires that the property owner record deed restrictions against the properties, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Properties.

Thus, only as proposed and conditioned, the Commission finds that the proposed project is consistent with the Coastal Act and LCP requiring the protection of lower-cost visitor and recreational facilities.

C. Public Access and Recreation

As the proposed development would occur between the first public roadway and the sea, pursuant to Section 30.80.090 of the City's LCP, a public access finding must be made that such development is in conformity with the public access and public recreation policies of the Coastal Act. Additionally, Coastal Act Section 30604(c) requires that a CDP issued for development between the first public road and the sea shall include specific findings that the development is in conformity with the Coastal Act public access and public recreation policies.

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not

limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

In addition, Section 30212 of the Coastal Act is applicable and states, in relevant part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway. [...]

Section 30212.5 of the Coastal Act states:

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

Section 30214 of the Coastal Act states, in relevant part:

The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.
[...]

Public Access policies in the certified LCP include, in part:

Goal 5: The City will continue to provide or coordinate with the State to provide for coastal/shoreline recreation areas, with effective access, including signing [...]

Policy 6.1: The City will continue to defend the public's constitutionally guaranteed right of safe physical access to the shoreline.

Policy 6.2: The City will cooperate with the State to insure that lateral beach access is protected and enhanced to the maximum degree feasible, and will continue to formalize prescriptive rights.

Policy 6.3: The City will encourage continued public vertical access by:

...

Supporting continued use of the existing public sea level and bluff backed beach accessways and the establishment of additional accessways, as determined appropriate to maintain adequate public access to public beaches.

Section 3.2.2 of the North 101 Corridor Specific Plan states, in part:

Parking Strategies

...

The Commercial and Mixed-Use Zones will incorporate several strategies to provide parking. Existing circumstances for properties in these zones dictate that parking must be addressed in ways other than just off-street parking requirements. Specialized parking strategies are provided to meet parking needs while maintaining district design and character. The intent is to apply a combination of these strategies, as applicable, to the total parking requirement for each individual development use.

...

The fourth parking strategy is an incentive for affordable housing. The mixed-use zones allow a limited amount of residential development in conjunction with commercial use. The parking required for these mixed-use units is a maximum of two spaces per dwelling. This specific plan allows a parking reduction for units which are guaranteed affordable to low or very-low income households, as defined under the City's Housing Element, of one space per unit. Note that all

parking for residential units in mixed-use developments must be provided off-street (on-site).

Policies in the adopted LUP Circulation Element include:

Goal 6: The City will make every effort to provide public access and circulation to the shoreline, through private dedications, easements or other methods, and public transportation or other facilities.

Policy 1.3. Prohibit development which results in Level of Service E or F at any intersection unless no alternatives exist and an overriding public need can be demonstrated.

Public Coastal Access

The project site is located approximately 600 feet south of a public accessway at South Ponto Beach via a public path to a vista point and staircase ([Exhibit 1](#)). The beach located at this access is used by local residents and visitors for a variety of recreational activities; however, there is currently no signage located along Coast Highway informing members of the public of the availability of this accessway. To ensure that members of the public visiting the proposed development and surrounding area are aware of the availability of public coastal access nearby, **Special Condition #1210** requires the applicant to install a sign along Coast Highway informing the public that public coastal access is available to the north of the project site and including a map.

Parking

The North Coast Highway 101 Specific Plan includes the following parking requirements:

Required Parking Ratios	
Mixed Use Residential Dwellings:	
<u>Use Type</u>	<u>Spaces Required</u>
Studio units - 1 bedroom units	1.5 spaces per unit
2 or more bedroom units	2.0 spaces per unit
Office and Commercial Developments:	
<u>Use Type</u>	<u>Spaces Required</u>
General offices; professional services	1 space for each 300 sq. ft. of gross building area

Personal service commercial uses including beauty shops, hair salons, nail salons, dry cleaners. Etc.	1 space for each 300 sq. ft. of gross building area
Other individual retail uses and commercial services except as otherwise specified	1 space for each 300 sq. ft. of gross building area
Restaurants, bars, lounges	1 space for each 75 sq. ft. of net building floor area and outdoor dining area
Take-out restaurants, no seating	1 space for each 300 sq. ft. of gross building area

The proposed development consists of eight 3-story buildings, one 2-story building, and two 1-story buildings. The development will include 18,261 sq. ft. of commercial space (retail, restaurant, office), 72,982 sq. ft. of residential space (including 94 apartments, 19 of which are affordable), 6,575 sq. ft. of private open space, and 21,344 sq. ft. of common amenity space including a walking paseo, pedestrian plaza, and an outdoor seating area. The new 3-story, approximately 24,319 sq. ft. hotel will include 36 rooms, an outdoor swimming pool and a spa. For mixed-use development, the certified LCP requires 1.5 parking spaces for studios and one-bedroom apartments, 2 spaces for 2 or more bedroom apartments, 1 space per 300 sq. ft. of general office/professional services, personal service uses like nail salons and dry cleaners, and other individual retail uses, 1 space for 75 sq. ft. of restaurant or bar space, and 1 space for 300 sq. ft. of takeout service. The LUP also requires 1.5 spaces for every hotel room.

For the proposed project, the applicant would be required to provide a total of 247 vehicle parking spaces for the proposed multi-use development. Table 1 details the parking requirements for the proposed development.

Type	Number of Market Rate Units	Number of Affordable Units	Ratio	Required	Provided
Studio Units	4	2	1	6	6
1 Bedroom	55	13	1	68	68
2 Bedrooms	16	4	1.5	30	30
Total Residential	75	19	-	104	104
Hotel (34 rooms total)	26	8	1.25	43	43

Type	Square Feet				
Restaurant/Dining Area	4,356		1/75 SF	59	59
Commercial	12,222		1/300 SF	41	51
Total Parking for Project				247	257

The proposed project will include 257 total parking spaces; 214 will be located in the underground parking structure and 43 will be surface level. A minimum of 15% of the total number of spaces will be electric vehicle (EV) charging spaces and the project will provide 6 bicycle racks. The proposed number of parking spaces meets the requirements of the LCP.

If the proposed development were to cease provision of affordable units, this could potentially impact the onsite parking needs discussed above and may also impact the consistency findings summarized above. Furthermore, any change from the proposed low-income rental units to higher income rentals, or to a market rate residential project, would constitute "development", as defined in Section 30106, and may have an impact on the parking demand generated by the project. However, to ensure that these units remain as low-income rental units as approved by this permit, the Commission imposes **Special Condition #149** requiring that the applicants, through acceptance of the subject CDP, agree that the 19 units will remain affordable for the life of the subject development.

Traffic

The City's Final Environmental Impact Report (FEIR) identified that the project will have a significant and unavoidable Vehicle Miles Traveled (VMT) traffic impact. Specifically, the traffic analysis concluded that the project would change the intersection at La Costa Avenue and Sheridan Road from Level of Service (LOS) D without the project to a LOS E with the project (due to cumulative impacts) ([Exhibit 1](#)). The proposed development is projected to generate a net increase of 1,173 average daily trips (ADT) above existing conditions. While the implementation of Transportation Demand Management (TDM) strategies will not reduce the VMT impact to below a level of significance, they will provide some reduction in impacts. The proposed project includes TDM elements such as: a voluntary employer commute program, the development or promotion of bicycle usage through a bikeshare program, the provision of pedestrian improvements, and the provision of information about maps, routes, and schedules for public transit near the retail buildings.

While the development is projected to change the LOS from D to E at the intersection of La Costa Avenue and Sheridan Road, the FEIR demonstrates the proposed project has no alternatives and that an overriding public need exists. The alternatives analyzed include: no project/no redevelopment, no project/reasonably foreseeable development, reduced residential/increased commercial, and reduced building footprint, increased common space/public amenities. If no development occurred, the ADT would not change, no improvements would be made to enhance mobility, and no roadway improvements would occur. If reasonably foreseeable development occurred, the hotel and at least 33 residential units would be built, impacts related to VMT would be less than significant, and mitigation measures like a bikeshare program and pedestrian improvements would not be implemented. The third alternative would result in the development of the site at a similar intensity with a decrease in the number of residential units and an increase in commercial uses. This would result in an increase of 1,471 ADT, a larger increase than the proposed project (at 1,173 ADT). The final alternative would result in reduced building footprint and increased common space/public amenities including enhanced pedestrian and bicycle facilities. This alternative would result in the same ADT as the proposed project and include expanded on-site bicycle facilities as compared to the project.

The proposed development is providing public benefits as allowed per the LCP. These include the provision of 19 affordable housing units, ~~a full range of affordable hotel rooms (27 market rate, 6 moderate cost, and 3 low cost)~~, and the construction of a roundabout at the entrance of N. Coast Highway 101 to improve traffic circulation and provide bicycle and pedestrian connection. As such, ~~Special Condition #6~~ requires the project to provide ~~6 moderate cost and 3 lower cost accommodations onsite and~~ **Special Condition #86** requires the applicant to pay a fee in-lieu of providing the total required number of lower-cost accommodations onsite. **Special Condition #1** requires the applicant to submit a final plan showing the proposed construction of a roundabout. Finally, **Special Condition #149** requires the applicant to implement their proposal to provide 19 of the residential units as affordable for the life of the development. Therefore, because no alternatives exist and an overriding public need can be demonstrated, the proposed project is consistent with the certified LUP in regards to traffic.

D. Marine Resources and Water Quality

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and, where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will

maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 of the Coastal Act states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

The City's LCP requires that preventive measures be taken to protect coastal waters from pollution. The following policies are applicable:

Resource Management Policy 2.1 states:

In that the ocean water quality conditions are of utmost importance, the City shall aggressively pursue the elimination of all forms of potential unacceptable pollution that threatens marine and human health.

Resource Management Policy 2.3 states, in part:

To minimize harmful pollutants from entering the ocean environment from lagoons, streams, storm drains and other waterways containing potential contaminants, the City shall mandate the reduction or the elimination of contaminants entering all such waterways . . .

The project site is located within an urbanized area. The proposed development will be located within 1000 ft. of the top of the bluffs overlooking the Pacific Ocean. As such, drainage and runoff from the development could potentially affect water quality of coastal waters. To ensure that the project does not produce debris and pollution that could enter coastal waters, **Special Condition #2** requires the submittal of a final

construction staging and storage plan demonstrating that all staging and storage will occur outside of marine and beach areas and in areas that minimize risks of discharge. **Special Condition #2** requires the submittal of a final construction pollution prevention plan adhering to the listed measures to control the spread of debris and its prompt removal if it enters coastal waters, as well as the operation and maintenance of construction equipment during the project. **Special Condition #3** requires the submittal of a final post-development runoff plan that adheres to listed measures to capture, retain, and treat runoff on-site to the greatest extent feasible, in order to limit the amount of runoff flowing into coastal waters. **Special Condition #4** requires that all excess grading material or hazardous material taken off-site must be disposed at a legal site outside the coastal zone. Thus, as conditioned, the development can be found in conformance with the water quality policies of the Coastal Act.

Marine Debris

The replacement of the two existing commercial structures with a mixed-use development that includes both commercial and hotel uses results in an increased demand, relative to the current onsite uses, for food packaging, tableware, and other materials generally used at a restaurant facility. Plastic pollution is a persistent and growing problem worldwide that significantly impacts the health of our oceans and coasts. Plastic has been found in a wide range of marine environments including the seafloor, surface water, the water column, and on beaches and shorelines. In particular, the use of single-use plastics, Styrofoam or other single-use materials that often are used at restaurants could result in adverse effects to marine wildlife, since these materials can make their way to the ocean, causing fish, seabirds, sea turtles, and marine mammals to become entangled in or ingest plastic debris, causing suffocation, starvation, and drowning. The elimination of non-reusable, non-recyclable, and non-compostable products and the reduction of packaging are effective ways to protect the health of wildlife and the environment. Previous applicants for similar hotel developments have participated in Surfrider's Ocean Friendly Restaurants program, and at a minimum, have eliminated expanded polystyrene use (a.k.a. Styrofoam), followed proper recycling practices, used only reusable tableware for onsite dining, provide disposable utensils for takeout food only upon request, prohibit the use of plastic bags, and provide paper straws or straws made from naturally occurring materials/reusables and only upon request. To ensure that the applicant protects marine resources and water quality, **Special Condition #1513** requires the implementation of a marine debris reduction program, which, as detailed in the condition language, would maintain a smoke-free environment to reduce cigarette litter, install recycling receptacles to capture the greatest extent of material feasible, swap out one-time use containers for reusable containers where feasible, and join regional programs that implement and monitor such measures.

Therefore, the Commission finds that the proposed development, as conditioned, conforms to the Coastal Act and LCP requirements regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

E. Visual Resources/Community Character

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Land Use Policy 6.5 states:

The design of future development shall consider the constraints and opportunities that are provided by adjacent existing development.

Land Use Policy 6.6 states:

The construction of very large buildings shall be discouraged where such structures are incompatible with surrounding development. The building height of both residential and non-residential structures shall be compatible with surrounding development, given topographic and other considerations, and shall protect public views of regional or statewide significance.

Section 30.34.020B.8 of the IP states:

The design and exterior appearance of buildings and other structures visible from public vantage points shall be compatible with the scale and character of the surrounding development and protective of the natural scenic qualities of the bluffs.

The proposed project will be located along Coast Highway, a popular through-fare in the City of Encinitas developed with a mix of commercial, residential, and visitor-serving

uses. The subject site is south of the existing Alila Marea resort, east of multi-family residences, and north of a mix of commercial and multi-family residences. The project incorporates the scenic visual quality of North Coast Highway 101 and through improvements of the City's Leucadia Streetscape project, will enhance the overall aesthetics of the corridor with pedestrian, bike, vehicular and landscape improvements that will result in a cohesive and visually enhanced streetscape. Additionally, the project proposes to screen and soften walls greater than 4 feet through the use of flowering vines and will plant trees to provide shade and visual interest. The proposed project blends in well with surrounding development and is consistent with the all the City's development standards with the exception of height. Per the Density Bonus Law, the project proposes to increase the existing height limit for parcel 2 from 35 feet for flat roof structures to 40 feet 6 inches above finished grade, which is 10 feet 5 inches above the height limited allowed within the Coastal Zone, but is allowable per the LCP policies related to Density Bonus. The project also proposes to increase the existing height limit for parcel 3 from 30 feet to a maximum 39 feet 6 inches above grade. To minimize potential visual impacts on surrounding scenic resources from the increased height of structures on Parcels 2 and 3, structures of lesser height will be located adjacent to North Coast Highway 101 and buildings of increased height will be located further back within the property's interior ([Exhibit 3](#)). In order to ensure that the visual benefits of the proposed development are implemented, **Special Condition #1** requires final construction plans detailing the final design of the approved structures. Thus, as conditioned, the proposed project can be found consistent with the visual resource policies of the Coastal Act and certified LCP.

F. Archaeological/Cultural Resources

Coastal Act Section 30244 states:

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

The City of Encinitas Certified LUP states:

Resource Management Goal 7:

The City will make every effort to ensure significant scientific and cultural resources in the Planning Area are preserved for future generations.
(Coastal Act/30250)

Resource Management Policy 7.1:

Require that paleontological, historical and archaeological resources in the planning area are documented, preserved or salvaged if threatened by new development. (Coastal Act/30250)

Resource Management Policy 7.2:

Conduct a survey to identify historic structures and archaeological/cultural sites throughout the community and ensure that every action is taken to ensure their preservation. (Coastal Act/30250/30253(5))

Resource Management Policy 7.4:

The City will encourage the development of cultural facilities to be made available to the public, such as performing arts theaters, museums, and libraries. (Coastal Act/30250)

The FEIR identified two cultural resources as a result of the field survey. The first was a historic built environment resource consisting of four buildings located at 1900 North Coast Highway 101. A prehistoric archaeology site was also identified on-site and consisted of a small, diffuse scatter of four prehistoric artifacts including one fine-grained volcanic primary flake; one granite/quartz fire-cracked rock, one granite flake fragment, and one Santiago Peak Metavolcani formation hammerstone. Evaluation of the resources under the California Register of Historic Resources (CRHR) criterion and Section 15064.5(a)(2)-(3) of the CEQA Guidelines (using the criteria outlined in Section 5024.1 of the California Public Resources Code) determined that neither cultural resource is considered to be a historical resource for the purposes of CEQA and no additional recommendations were made for the resources. Nevertheless, the FEIR includes a variety of cultural resource mitigation measures, including requiring the applicant to provide monitoring through a qualified archaeologist and a traditionally and culturally affiliated (TCA) Native American monitor for any on-site and off-site ground-disturbing activities, developing a Cultural Resource Mitigation Monitoring Program that addresses how identification, evaluation, treatment, and protection of any cultural resources will be handled during the construction of the proposed project, and conducting a Phase II archaeological assessment to determine the boundaries of the two historical resources and to identify any additional potential negative impacts to subsurface tribal cultural resources that have not yet been identified. Cultural resources mitigation monitoring must be noted on all applicable construction documents and the qualified archaeologist and TCA Native American monitor shall attend all applicable pre-construction meetings with the selected contractor or associated subcontractors. The qualified archaeologist and TCA Native American monitor may halt ground-disturbing activities if archaeological artifacts or cultural resources are discovered.

As part of their local review process and preparation of the FEIR, City staff consulted with all local tribes. Because the project site contained two cultural resources and was historically occupied by Native Americans for thousands of years, the City conducted tribal consultation in accordance with AB 52. This included meetings with the San Pasqual Band of Mission Indians. Consultation with the tribes included email correspondence (including transfer of all archaeological studies and data to the tribe well in advance of the conclusion of the CEQA process and public hearings) and a virtual meeting with tribal representatives, City staff, and consulting archaeologists. The City and project applicant also arranged for tribal representatives to conduct an independent site visit. As a result of the consultation efforts, the City's local conditions of approval for the project require that a San Pasqual monitor be present during all earthwork on site. Consistent with the outcome of these efforts, **Special Condition #1311** ensures that any prehistoric, archaeological, or paleontological cultural resources that may be present on site receive proper protections. The special condition requires the applicant to submit a cultural resources treatment and monitoring plan, which includes provisions for both professional archaeologists and Native American monitors (including, specifically a San Pasqual monitor) to be present during construction activities and to stop work if cultural deposits are discovered so that significance testing can be conducted. If an approved Significance Testing Plan reveals that cultural deposits found are significant, a Supplementary Archaeological Plan shall be prepared in order to identify proposed investigation and mitigation measures and further development may only be undertaken consistent with the provisions of the Supplementary Archaeological Plan. This Supplementary Archaeology Plan will be reviewed and be available for written comment by a peer review committee made up of qualified archaeologists. Representatives of traditionally and culturally affiliated Tribes included on an updated NAHC list shall also be given an opportunity to review and submit written comments on the required plans. Therefore, as conditioned, the proposed development is consistent with the certified LCP.

G. Local Coastal Planning

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

In November of 1994, the Commission approved, with suggested modifications, the City of Encinitas LCP. Subsequently, on May 15, 1995, coastal development permit authority was transferred to the City. The project site is located within the City's permit jurisdiction and, therefore, the standard of review is the City's LCP and the public access policies of the Coastal Act. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and the certified LCP.

H. California Environmental Quality Act

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of Encinitas prepared a Draft EIR and Final EIR in compliance with CEQA and the CEQA guidelines. (SCH No. 2021020272, adopted March 2019.) The Final EIR concluded that all significant impacts identified in the EIR could be reduced to less than significant with incorporation of mitigation measures proposed with the exception of transportation impacts associated with vehicle-miles-traveled (VMT) which are considered significant and unavoidable. The City declared that, having reduced the adverse significant environmental effects of the project to the fullest extent feasible by adopting the mitigation measures identified in the EIR; having considered the entire administrative record on the project; and having weighed the benefits of the project against its unavoidable adverse impacts after mitigation, the other benefits of the project separately and individually outweigh the potential unavoidable adverse impacts and render those potential adverse environmental impacts acceptable.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing biological resources, cultural resources, energy conservation and climate change, geology and soils, hazards and hazardous materials, noise, and tribal cultural resources will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen the impact transportation may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Appeal Number A-6-ENC-22-0049
 - A-6-ENC-22-0049 Appendix A
 - A-6-ENC-22-0049 Notification of Appeal
- City of Encinitas Planning Commission Resolution 2022-89
- City of Encinitas certified LCP
- City of Encinitas North Coast Highway Specific Plan
- City of Encinitas 2013-2021 Housing Element
- Planning Commission Agenda Report June 16, 2022
- Final Environmental Impact Report: Marea Village Mixed Use Development Project prepared by Michael Baker International June 2022
 - Section 2.0 Project Description
 - Section 3.4 Cultural Resources
 - Section 3.11 Public Services and Recreation
 - Section 3.12 Transportation
 - Section 3.13 Tribal Cultural Resources
 - Section 5.00 Alternatives
- Explore the Coast Overnight- An Assessment of Lower Cost Accommodations, published by State Coastal Conservancy on January 8, 2019
- CDP Nos.
 - A-5-RPV-2-324 (Rancho Palos Verdes-Long Point)
 - 5-98-156- A17 (Long Beach-Pike Hotel)
 - A-5-VEN-21-0011(Wynkoop Properties, LLC)
 - A-5-LGB-21-0060 (Pacific Edge Hotel)
 - 5-18-0872 (Shore Hotel)
 - 6-13-0407 (McMillin-NTC, LLC)
 - 5-14-1785 (Olson Real Estate Group, Inc.)
 - 5-20-0597 (Franco)
 - 5-20-0181 (B&J Capital Group Investments)
 - 5-18-0872 (Sunshine Enterprises, LP)
- LCPA Nos.
 - RDB-MAJ-2-08 (Redondo Beach)
 - SBV-MAJ-2-08 (Ventura)
 - LOB-MAJ-1-10 (Long Beach-Golden Shore)
 - LCP-6-ENC-19-0014-1
- Public Workshop: Lower Cost Visitor Serving Accommodations, published by Commission staff on October 26, 2016.
- Free the Beach! Public Access, Equal Justice, and the California Coast”, Robert Garcia & Erica Flores Baltodano, 2 Stanford Journal of Civil Rights and Civil Liberties. 143 (2005)

- Turner Building Cost Index
- Coastal Access Equity and the Implementation of the California Coastal Act, Reineman, et al., (2016) Stanford Environmental Law Review Journal, v. 36. Pages 96-98.

APPENDIX B – CULTURAL RESOURCES SIGNIFICANCE TESTING PROCEDURES

A. An applicant seeking to recommence construction following discovery of cultural deposits shall submit a Significance Testing Plan for the review and approval of the Executive Director. The Significance Testing Plan shall identify the testing measures that will be undertaken to determine whether the cultural deposits are significant. The Significance Testing Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the consulting Tribes(s), and the Most Likely Descendent (MLD) when State Law mandates identification of a MLD. The Executive Director shall make a determination regarding the adequacy of the Significance Testing Plan within 30 days of receipt. If the Executive Director does not make such a determination within the prescribed time, the plan shall be deemed approved and implementation may proceed.

1. If the Executive Director approves the Significance Testing Plan and determines that the Significance Testing Plan's recommended testing measures are de minimis in nature and scope, the significance testing may commence after the Executive Director informs the permittee of that determination.
2. If the Executive Director approves the Significance Testing Plan but determines that the testing measures therein are not de minimis, significance testing may not recommence until after an amendment to this permit is approved by the Commission.
3. Once the measures identified in the Significance Testing Plan are undertaken, the permittee shall submit the results of the testing to the Executive Director for review and approval. The results shall be accompanied by both the San Pasqual Monitor's recommendation and the project archaeologist's recommendation as to whether the deposits are significant. The project archaeologist's recommendation shall be made in consultation with the Native American monitors, the consulting Tribe(s), and the MLD when State Law mandates identification of a MLD. The Executive Director shall make the determination as to whether the deposits are significant based on the information available to the Executive Director.
 - i. If the deposits are found to be significant, the permittee shall prepare and submit to the Executive Director and the San Pasqual Cultural Monitor/MLD a supplementary Archaeological Plan in accordance with subsection B of this condition and all other relevant subsections.
 - ii. If the deposits are found to be not significant, then the permittee may recommence grading in accordance with any measures outlined in the

significance testing program. All unearthed archaeological resources or tribal cultural resources will be collected and temporarily stored in a secure location onsite (or as otherwise agreed upon by the archaeological monitor and the traditionally and culturally affiliated Tribe(s)) for later reburial onsite.

B. An applicant seeking to recommence construction following a determination by the Executive Director that the cultural deposits discovered are significant shall submit a Supplementary Archaeological Plan for the review and approval of the Executive Director. The Supplementary Archaeological Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the consulting Tribe(s), the Most Likely Descendent (MLD) when State Law mandates identification of a MLD, as well as others identified in subsection C below. The Supplementary Archaeological Plan shall identify proposed investigation and mitigation measures. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. A good faith effort shall be made to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, capping, and placing cultural resource areas in open space. In order to protect cultural resources, any further development may only be undertaken consistent with the provisions of the Supplementary Archaeological Plan.

1. If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after the Executive Director informs the permittee of that determination.
2. If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.

C. Prior to submittal to the Executive Director, all plans required to be submitted pursuant to this special condition, except the Significance Testing Plan, shall have received review and written comment by a peer review committee made up of qualified archaeologists convened in accordance with current professional practice. Representatives of traditionally and culturally affiliated Tribes included on an updated NAHC list shall also be given an opportunity to review and submit written comments on the required plans. Names and qualifications of selected peer reviewers shall be submitted for review and approval by the Executive Director. The plans submitted to the Executive Director shall incorporate the recommendations of the peer review committee and Native American representatives or explain why the recommendations were

rejected. Furthermore, upon completion of the review process, all plans shall be submitted to the California Office of Historic Preservation (OHP) and the NAHC for their review and an opportunity to comment. The plans submitted to the Executive Director shall incorporate the recommendations of the OHP and NAHC. If the OHP and/or NAHC do not respond within 30 days of their receipt of the plan, the requirement under this permit for that entities' review and comment shall expire, unless the Executive Director extends said deadline for good cause. All plans shall be submitted for the review and approval of the Executive Director.