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49th Day:	September 20, 2002
Staff:	Robert S. Merrill
Staff Report:	November 21, 2003
Continued Hearing Date:	December 11, 2003
Commission Action:	

REVISED STAFF REPORT: APPEAL

DE NOVO HEARING

APPEAL NO.:	**A-1-FTB-02-018**
APPLICANT:	**Dominic & Robert Affinito**
AGENTS:	Richard Lund, Plageman, Lund & Miller Paula E. Forsyth Donovan, Forsyth Donovan Assoc. Brian Momsen, Carter, Behnke, Oglesby & Bacik
LOCAL GOVERNMENT:	City of Fort Bragg
DECISION:	Approval with Conditions
PROJECT LOCATION:	Adjacent to the north end of the Highway One Noyo Bridge, at 1005 South Main Street, Fort Bragg (APN 018-120-019).
PROJECT DESCRIPTION:	Construction of a 39-room hotel with detached lobby building (21,756 square feet total), 40-space parking lot, emergency access road, exterior lighting, landscaping, and trash enclosure.

APPELLANTS:	1) Commissioners John Woolley and Mike Reilly; 2) Sierra Club Mendocino Group, Attention: Ron Guenther & Friends of Fort Bragg, Attention: Roanne Withers
SUBSTANTIVE FILE: DOCUMENTS	(1) City of Fort Bragg CDP 2-00/SCR 2-96-00/VAR 7-00; and (2) City of Fort Bragg Local Coastal Program

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STAFF NOTES:

1. Continued Public Hearing.

The Commission opened the hearing on this appeal at its meeting of September 11, 2002, and found that the City of Fort Bragg's approval-with-conditions of a coastal development permit amendment for an existing 39-room hotel and associated development raised a substantial issue with respect to the grounds on which the appeal had been filed. The de novo portion of the hearing was continued to the meeting of April 9, 2003, but was continued at the request of the applicants. This report is a revised version of the written staff recommendation published before the April 9, 2003 meeting. The revisions primarily include changes to the special conditions concerning replacement of the building roofs and balcony railings. The revised conditions would give the applicants the option of repainting the roofs and railings or replacing these features. If the applicants choose to repaint the roofs and railings they would be required by a new special condition to maintain the approved colors for the life of the project and repaint the roofs and railings every two years unless the applicant submits evidence for the review and approval of the Executive Director prior to each scheduled painting that demonstrates that repainting that particular year in not needed to maintain the approved colors in good condition. The revisions to the conditions also include the deletion of a special condition that would have specified that the permit shall not become effective until the Mendocino County Superior Court enters a final judgment in *Affinito v. City of Fort Bragg, et al.* The revised report includes corresponding changes to the findings as well as revisions to the water quality finding to correct descriptions of the present drainage from the project site based on information provided in consultations with City staff.

2. Context of Appeal

This appeal of the action of the City of Fort Bragg in approving-with-conditions a coastal permit amendment for an existing 39-room hotel presents the Commission with an

unusual circumstance because litigation entitled *Affinito v. City of Fort Bragg et al.* As is explained more fully in the body of the staff report, the Court in the above case has issued an interlocutory judgment and writ of mandamus ordering the applicants to apply to the City of Fort Bragg for an amendment of their coastal permit to reflect the hotel as it was constructed. The writ prohibits the City and Commission, however, from conditioning any approval on "major or structural revisions to the hotel." The Commission must comply with the terms of the writ. The staff, therefore, is recommending approval of the permit amendment with conditions, although findings are included stating that, were it not for the writ, the staff would be recommending that the permit be denied.

2. <u>Procedure</u>.

Pursuant to Sections 30625 of the Coastal Act and Section 13115 of the Title 14 of the California Code of Regulations, on September 11, 2002, the Coastal Commission found that the appeal of the City of Fort Bragg's approval-with-conditions of a coastal development permit amendment for construction of a 39-room hotel with detached lobby building (21,756 square feet total), 40-space parking lot, emergency access road, exterior lighting, landscaping, and trash enclosure raised a substantial issue with respect to the grounds on which the appeal had been filed. As a result, the City's approval is no longer effective, and the Commission must consider the project *de novo*. The Commission may approve, approve with conditions (including conditions different than those contemplated by the City), or deny the application. Since the proposed project is within an area for which the Commission has certified a Local Coastal Program (LCP) and is between the first public road and the sea, the applicable standard of review for the Commission to consider is whether the development is consistent with the City's certified LCP and the public access and public recreation policies of the Coastal Act. Testimony may be taken from all interested persons at the *de novo* hearing.

3. <u>Incorporation of Substantial Issue Findings</u>.

The Commission hereby incorporates by reference the Substantial Issue Findings contained in the Commission staff report dated August 30, 2002 and in the staff addendum dated September 11, 2002 that was incorporated into the staff recommendation at the September 11, 2002 hearing.

<u>SUMMARY OF STAFF RECOMMENDATION *DE NOVO*:</u>
<u>APPROVAL WITH CONDITIONS</u>

Staff recommends that the Commission approve the project with conditions by adopting the following resolution and findings.

The coastal development permit amendment application seeks authorization after-the-fact, of the construction of the North Cliff Hotel, as-built. The 39-room hotel was

constructed on a visually prominent site on a steep slope at the north end of the Noyo River Bridge on the seaward side of Highway One, in Fort Bragg. The recommended conditions of approval would not require major or structural modifications to the building, but would require certain changes to the development to mitigate the visual impact of the hotel and better blend the hotel into its surroundings and to mitigate water quality impacts. The conditions would require: (a) repainting the existing blue metal roofs a weathered copper color or replacement of the existing roofs with weathered copper color metal roofs (Special Condition No. 9A(1)(a)); (b) repainting the exterior of the hotel, lobby building, and other structures an olive green color for the body of the hotel and other structures and a similar or darker color for the trim (Special Condition No. 9A(1)(b-c)); (c) repainting the white balcony railings with the color selected for the exterior trim of the building or replacement of the white balcony railings with railings of the same color as the selected building trim color (Special Condition No. 9A(1)(e)); (d) installation of a stone façade at the base of the hotel to blend the structure into its surroundings (Special Condition No. 9A(1)(d)); (e) maintaining the approved colors of the building and stone façade in good condition and repainting all roofs and railings every two years unless the permittees demonstrate repainting in any particular year is not needed (Special Condition No. 10); (f) relocation of the trash enclosure and its architectural screen (Special Condition No. 11); (g) planting additional landscaping to soften the appearance of the structure (Special Condition No. 12); (h) modification of the exterior lighting to reduce glare and intensity (Special Condition No. 13); (i) the preparation, approval, and implementation of a runoff control plan to keep polluted runoff from the development from adversely affecting the Noyo River estuary (Special Condition No. 14); (j) that the applicants apply for a permit amendment for any future additions or improvements to the structure (Special Condition No. 16); (k) recordation of a deed restriction imposing the Special Conditions of this permit as covenants, conditions and restrictions against the property (Special Condition No. 15); (l) timely compliance with all of the requirements specified in the other special conditions that the applicants are required to satisfy prior to issuance of the permit (Special Condition No. 17); and finally, (m) compliance with any conditions imposed by the local government pursuant to an authority other than the Coastal Act (Special Condition No. 18).

As explained in detail in the Background finding on pages 15-18 of the report, the development has been the subject of litigation between the applicants, the City of Fort Bragg, and the Commission. The Commission's action on the coastal development permit is limited by a Peremptory Writ of Mandamus issued by the Mendocino County Superior Court that precluded the City in its review of the application and precludes the Commission on appeal from requiring any change in the height of the structure or any other major or structural changes to the hotel.

As stated above, staff is recommending approval with conditions that would not require major or structural modifications to the building but would require certain changes to the development to mitigate the visual and water quality impacts of the hotel. Staff also recommends the adoption of findings indicating that given the court order precluding the

Commission from requiring major or structural modifications to the constructed hotel, the Commission is effectively barred from considering the height, bulk, and front yard setback of the development in its evaluation of whether the project is consistent with LCP policies.

Staff recommends that the Commission approve the project as conditioned by adopting the following resolution and findings.

MOTION, STAFF RECOMMENDATION *DE NOVO*, AND RESOLUTION:

Motion:

I move that the Commission approve Coastal Development Permit No. A-1-FTB-02-018 pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. 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 the Commissioners present.

Resolution to Approve Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development, as conditioned will be in conformity with the certified City of Fort Bragg LCP, is located between the sea and the nearest public road to the sea and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

I. STANDARD CONDITIONS: See attached.

II. SPECIAL CONDITIONS:

Special Condition No. 2 of the original permit (City of Fort Bragg CDP 10-92) has been deleted. All other conditions of the original permit remain in full force and effect (see Exhibit 13). Special Condition Nos. 9-18 are new conditions attached to the permit amendment.

9. <u>Plan for Repainting Buildings, Repainting or Replacing Roofs and Balcony Railings, and Installing Cultured Stone Façade</u>

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and written approval of the Executive Director, a plan for repainting the colors of the exterior body and trim of the hotel, lobby building, and trash/utility screening structure building with colors that are compatible with the surrounding area, repainting in a weathered copper color or replacing the roofs of the structures with metal roofs finished in a weathered copper color, repainting or replacing the white vinyl balcony railings with railings that match the color of the trim, and installing a cultured stone façade along the base of the southeast, south, and northeast elevations of the hotel.

1. The plan shall demonstrate that:

(a) the light blue metal roofs of each structure shall either be repainted with that certain "weathered copper color" as shown in BHP Steel Building Products standard Dutra Tech 5000 colors as submitted to the Fort Bragg City Council during their review of the project or replaced with a metal roof in a non-reflective finish that is similar in hue, chroma, and reflectivity to the above-referenced "weathered copper color."

(b) the exterior body of the hotel, lobby building, and trash/utility screening structure shall be repainted with an olive branch green color shown on the "olive green" color chip, as displayed in "ICI: The Master Palette" 90YY 15/147 and provided to the Fort Bragg City Council during the Council's review of the City approved coastal development permit for the development.

(c) all exterior trim of the hotel, lobby building, and trash/utility screening structure shall be repainted with the same olive branch green color specified in 1(*b*) above or a darker color.

(d) all balcony railings shall either be repainted with the color selected for the exterior trim of the building or replaced with (i) new vinyl railings manufactured to be a color closely similar in brightness and hue to the colors selected for the exterior trim of the building or (ii) new wood or metal railings painted in the same color as the color selected for the exterior trim of the building.

(e) a cultured stone façade comprised of materials and colors that blend with the required olive branch green color that will be used to repaint the buildings shall be installed at the base of the southeast, south, and northeast elevations of the hotel building consistent with the City of Fort Bragg Scenic Corridor Review Permit Approval No. SCR 2-96.

(f) all required repainting or replacement of the roofs, balcony railings, trim, and exterior body of the structures shall be completed within 180 days after final approval of the plan by the Executive Director. The permittee shall notify the Executive Director in writing when the repainting has been completed, and Commission staff shall verify the repainting via a site visit or by examining photographs submitted by the permittees.

(g) the approved colors and materials of the roofs, balcony railings, trim, exterior body of the structures, and the cultured stone façade shall be maintained throughout the life of the structures consistent with the requirements of Special Condition No. 10.

2. The plan shall include, at a minimum, the following components:

(a) building elevation drawings, photos, and/or artist's renderings of the building elevations which (1) show the roofs of all the structures and indicate whether the roofs will be repainted with the color specified in A(1)(a) above or replaced with the metal material specified in A(1)(a) above; (2) show all of the balcony railings and indicate whether the railings will be repainted with the color specified in A(1)(d) above or replaced with the materials specified in A(1)(d) above; (3) illustrate the proposed colors for the trim and exterior body of the structures and indicate which architectural features would be painted with the base, and trim colors; and (4) show the extent of the building to be covered with the cultured stone façade.

(b) a color chip of the proposed color of the exterior trim and specific information identifying the color.

(c) if the roofs are to be replaced, a sample of the proposed roof material with specifications for the hue, chroma, and reflectivity of the color of the roofing.

(d) a color chip of the proposed color of the balcony railings and specific information identifying the color, and if the railings are to be replaced, specifications and samples of the new balcony railing material.

(e) specifications and a sample of the cultured stone façade to be placed along the base of the of the southeast, south, and northeast elevations of the hotel building.

(f) a schedule for the initial repainting of the structures and for subsequent repainting of the roofs and balcony railings to maintain the colors.

(g) a schedule for the installation of the cultured stone façade.

B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittees shall submit, for the review and written approval of the Executive Director, samples of each of the paints which have been purchased for verification that the colors match the requirements of this special condition.

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

10. **Maintenance of Painted Surfaces and Stone Facade**

The permittees shall repaint the buildings and repair the cultured stone façade required by Special Condition No. 9 as needed to maintain the approved colors of the building and the cultured stone façade in good condition throughout the life of the structures. The permittees shall repaint all portions of the roofs of the buildings and the balcony railings at least once every two years from the date of the Commission's approval of the coastal development permit amendment with the colors approved pursuant to Special Condition No. 9 and according to the repainting schedule approved pursuant to Special Condition No. 9 unless no later than 30 days prior to any scheduled painting, the permittees submit evidence for the review of the Executive Director that demonstrates that repainting that particular year is not needed to maintain the approved colors in good condition and the Executive Director subsequently provides written approval of the evidence.

11. **Plan for Relocation of Trash Enclosure**

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittees shall submit, for the review and written approval of the Executive Director, a plan for relocating the trash enclosure to maintain a view corridor across the site to Noyo Bay.

1. The plan shall demonstrate that:

1. the trash enclosure with its architectural screen/fence shall be relocated from its as-built location immediately north of the PG&E transformer to the setback area located immediately south of the transformer.

(b) the relocation of the trash enclosure with its architectural screen/fence shall be completed within 180 days after final approval of the plan by the Executive Director. The permittee shall notify the Executive Director in writing when the relocation has been completed, and Commission staff shall verify the relocation via a site visit or by examining photographs submitted by the permittees.

2. The plan shall include, at a minimum, the following components:

1. a site plan and elevation drawing drawn to scale of the modified architectural screen.

2. a schedule for relocation of the trash enclosure with its architectural screen.

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

12. <u>Landscape Plan</u>

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittees shall submit, for the review and written approval of the Executive Director, a plan for planting additional landscaping along the south and east sides of the hotel to soften the appearance of the hotel and reduce the adverse visual impacts of the development from the Noyo Bridge, Ocean Front Park, the Noyo Bluff Overlook site on the south side of the Noyo River recently acquired by the City of Fort Bragg and other public vantage points. The plan shall be prepared by a licensed landscape architect.

1. The plan shall demonstrate that:

(a) a minimum total of 10 evergreen trees that will reach a minimum height of 20 to 25 feet from the base of the elevation of the hotel in approximately 5-10 years shall be planted, distributed in a minimum of four locations along the south façade of the hotel. The trees may be

arranged and pruned in the future to maintain significant views from hotel windows.

(b) evergreen trees that will reach a minimum height of 25 feet in approximately 5-10 years shall be planted on at least 20-foot centers along the entire length of the Main Street frontage of the site. The trees shall be interspersed with shrubs which will attain a minimum height of 3-4 feet within five years. All trees shall be 24" box stock, and all shrubs shall be a minimum of two-gallon container stock.

(c) all landscaping shall be installed within 90 days after final approval of the landscaping plan by the Executive Director. The permittees shall notify the Executive Director in writing when the vegetation has been planted, and Commission staff shall verify the planting via a site visit or by examining photographs submitted by the permittees.

(d) all required plantings will be maintained in good growing conditions through-out the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan, and

(e) all vegetation planted on the site shall consist of native species or naturalized species commonly found in the Fort Bragg vicinity that are suited to the microclimate at the site and shall not include any invasive exotic species.

(f) an automatic sprinkler irrigation system shall be installed to irrigate all required landscaping and shall be maintained and replaced, as necessary for the life of the project.

2. The plan shall include, at a minimum, the following components:

(a) a map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features, and

(b) a detailed description of all plant species to be planted indicating Latin and common names, whether the species is native or naturalized, relative abundance in the Fort Bragg vicinity with representative specific locations noted, whether the species is considered invasive, the expected rate of growth and height of the species at maturity, establishment techniques (e.g., irrigation, fertilization, etc.), and any special maintenance requirements.

(c) a schedule for installation of plants.

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

13. <u>Plan for Modifying Exterior Lighting</u>

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittees shall submit, for the review and written approval of the Executive Director, a plan for modifying exterior light fixtures to reduce the adverse visual impacts of the exterior lighting of the development. The plan shall be prepared by a licensed architect knowledgeable about exterior lighting design.

1. The plan shall demonstrate that:

(a) all exterior lights, including any lights attached to the outside of the approved buildings or located along walkways driveways, and parking areas, shall be the minimum necessary for the safe ingress and egress of the development, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel,

(b) the amount of glare and intensity of the night-lighting will be reduced to levels similar to those at nearby motels, and

(c) the reduction in glare and intensity shall be accomplished by such means as reducing the wattage of the lights, using “warm spectrum” lighting, providing cut-off shields to screen the light source, reducing the height of the light poles and/or relocating the light fixtures.

(d) all sides of the hotel building facing the Noyo River shall not be illuminated at night.

(e) the approved modification of the lighting facilities shall be completed within 180 days after final approval of the plan by the Executive Director. The permittee shall notify the Executive Director in writing when the modification of the exterior light fixtures has been completed, and Commission staff shall verify completion of the modification of the lighting facilities via a site visit or by examining photographs submitted by the permittees.

2. The plan shall include, at a minimum, the following components:

   (a) a site plan and building elevations showing the location of all exterior lights and the boundaries of their directional cast, including any lights attached to the outside of the approved buildings or located along walkways driveways, and parking areas,

   (b) detail exhibits showing the design, directional cast, wattage, reflectivity, and shielding of each kind and size of light fixture to be utilized,

   (c) a photometric study prepared by a lighting specialist showing how the glare and intensity of lighting compares to the glare and intensity of lighting at nearby motels, and

   (d) a schedule for installation of the lighting modifications.

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

14. <u>Revised Runoff Control Plan</u>

A. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-FTB-02-018, the permittees shall submit, for review and approval of the Executive Director, a revised plan for run-off control.

1) The run-off control plan shall demonstrate that:

   (a) run-off from the project site shall not increase sedimentation in intertidal areas and coastal waters and polluted storm water runoff from the site shall be prevented from entering into coastal waters by use of measures including, but not limited to the following:

      (i) all runoff from all impervious surfaces of the development (i.e., all roofs, driveways, parking lots, walkways) shall be collected and conveyed into the existing or modified catch basins on the site and conveyed through the existing or modified pipelines to the nearby dredge spoils disposal pond for discharge;

(ii) catch basin insert filters, as detailed under Best Management Practice TC6-*Media Filtration* in the California Storm Water Best Management Practices Industrial Handbook, developed by Camp, Dresser & McKee, *et al.* for the Storm Water Quality Task Force or the equivalent, shall be installed within the catch basin(s) that will receive all the runoff from impervious surfaces as required above in subsection 7(A)(1)(a)(i) of this condition.

(iii) the catch basin and catch basin insert filters shall be maintained in accordance with the maintenance provisions detailed under Best Management Practice TC6-*Media Filtration* in the California Storm Water Best Management Practices Industrial Handbook, developed by Camp, Dresser & McKee, *et al.* for the Storm Water Quality Task Force or per manufacturer's specifications.

(b) the applicants have secured all necessary property interests to modify and use the runoff control system detailed above in section (A)(1)(a) of this condition

(c) the installation of all improvements required by the revised runoff control plan shall be completed within 180 days after final approval of the revised runoff control plan by the Executive Director. The permittee shall notify the Executive Director in writing when the runoff control improvements required by the plan have been completed, and Commission staff shall verify completion of the improvements via a site visit or by examining photographs submitted by the permittees.

2) The plan shall include, at a minimum, the following components:

(a) a description of the specific measures to be used to avoid water quality impacts;

(b) a schedule for installation and maintenance of runoff control devices;

(c) a plan for the installation of structural and non-structural best management practices; and

(d) evidence that the applicants have secured all necessary property interests to modify and use the runoff control system specified in this condition.

B. The permittees shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to

the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

15. <u>Recordation of Deed Restrictions and Project Conditions</u>.

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-FTB-02-018, the permittees shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

16. <u>Future Development Restriction</u>

This permit is only for the development described in coastal development permit No. A-1-FTB-02-018. Pursuant to Title 14 California Code of Regulations section 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610 (b) shall not apply to the development governed by the coastal development permit No. A-1-FTB-02-018. Accordingly, any future improvements to the structure authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), shall require an amendment to Permit No. A-1-FTB-02-018 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

17. <u>Condition Compliance</u>

WITHIN 60 DAYS OF COMMISSION ACTION ON THIS CDP APPLICATION, or within such additional time as the Executive Director may grant for good cause, the permittees shall satisfy all requirements specified in the conditions hereto that the permittees are required to satisfy prior to issuance of this permit. Failure to comply with

this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

18. <u>Conditions Imposed By Local Government</u>.

This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

A. <u>Project History / Background</u>.

1. History

On August 19, 1992, Dominic and Juliette Affinito obtained a Coastal Development Permit from the City of Fort Bragg (Coastal Permit 10-92), authorizing demolition of an existing restaurant and the construction of a 43-room resort hotel on an .82-acre site at the north end of the Noyo River Bridge on the seaward side of Highway One. (See Exhibits 1-3, 5) The City provided notice of its approval of Coastal Permit 10-92 to the Commission pursuant to Public Resources Code section 30603(c). The permit decision was not appealed to the Commission.

The hotel authorized by Coastal Permit 10-92 was an entirely different hotel than the one actually built at the site. Coastal Permit 10-92 approved plans for a structure designed to face Highway 1 and step downward in six levels following the slope of the hill toward the ocean. (See Exhibits 5, 9-11) The building was triangular-shaped, fanning out around the slope, with three small towers creating a diverse roofline. Other visual aspects of the design included cedar shake walls, a standing seam sheet metal roof in its natural color, and a rock fascia.

As designed and as approved by Coastal Permit 10-92, the roof height of the hotel did not exceed the City's limitation of 35 feet above grade with the exception of several tower features of the building which are approximately 35 feet above the level of Highway 1. At the lowest point of the slope – the southern side of the hotel – the building did not exceed 24 feet above grade, and was below the level of the Noyo River Bridge.

In addition to Coastal Permit 10-92, the City approved the Affinitos' application for a Scenic Corridor Review Permit ("SCRP 2-92") as required by the City's LCP for projects in sensitive view areas. The City combined Notice of SCRP 2-92 with its Coastal Permit notice to the Commission. The Affinitos never built the hotel as originally designed and as approved by SCRP 2-92 and Coastal Permit 10-92, although they did demolish the existing restaurant.

Instead, in 1996, the Affinitos came back to the City with plans for a newly designed hotel. The new design consisted of a rectangular building that rose up from the sloped ground like a large wedge, with the height of the roof at the southeast corner of the building increased to 64 feet. The new design also included a copper or gray hardislate roof, olive green siding, and a river rock stone base. The Affinitos submitted an application for a new SCRP, but, allegedly following the advice of the City's planning director, they did not apply for a new or amended CDP. The City approved the SCRP application and issued SCRP 2-96 based on the new hotel design. The Commission was not given notice of the City's decision on the SCR application.

In 1997 and 1998, the Affinitos built the North Cliff Hotel. Although it differs dramatically from that contemplated by the 1992 CDP and SCRP, the building structure comports with the design approved by SCRP 2-96. (See Exhibits 4, 9-11) The exterior visual aspects of the new hotel as-built, however, are different from the designs approved in the 1996 SCRP. In particular, the hotel has cream-colored siding, a painted blue roof and no river rock base.

Additionally, the North Cliff Hotel as constructed according to the new design obstructs views from the Noyo River Bridge toward the Pacific Ocean and exceeds local building height restrictions. Section XIV of the Fort Bragg LCP, implementing Coastal Act section 30251, contains a general height limitation: "[p]ermitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas." The City's Municipal Code, section 18.26.004(E), quantifies this policy by setting a 35-foot height limitation as measured from the average grade of the ground covered by the building to the highest point on the roof. The increase in height of the new structure as compared to the original plans brings the building to a level that obstructs views to the ocean from the perspective of Highway 1 and the Noyo River Bridge. In addition, the hotel as originally designed, with the exception of several decorative towers, did not exceed 35 feet as measured vertically from any point on the foundation. In contrast, the hotel as-built reaches a maximum height of 64 feet at the southeastern corner of the building. Unlike the structure in the original plans, the North Cliff Hotel does not comply with the 35-foot height limitation unless the measurement is made from Highway 1, the highest level of the slope. From the level of Highway 1, there is no point on the roof of the hotel that exceeds 35 feet.

Because the Affinitos did not obtain a CDP for the new hotel and the Commission did not receive notice of the City's action on SCRP 2-96, the Commission had no knowledge of the changes to the design of the hotel until Commission staff visited the site in March of 1998. This site visit was triggered by telephone calls from members of the community who complained about the roof color and height of the hotel.

Upon completion of the hotel in the spring of 1998, the Affinitos sought an occupancy permit from the City. The City refused to issue the permit on the grounds that (1) the hotel lacked a valid coastal permit, and (2) the siding color, roof color and material and lack of rock fascia did not comply with SCRP 2-96. On January 21, 1999, after the City's denial of their request for an occupancy permit, the Affinitos filed this action primarily seeking a writ of mandate ordering the City to issue the occupancy permit. On May 10, 1999, the Commission filed a complaint for intervention and cross-complaint for injunctive relief and civil penalties. On September 9, 1999, the Affinitos amended their complaint to allege an inverse condemnation cause of action against the Commission and the City. In this cause of action, the Affinitos allege that the City violated their constitutional rights by refusing to issue a certificate of occupancy for the property, amounting to a "taking" of their property.

2. The Writ of Mandate

On January 6, 2000, the Mendocino County Superior Court issued an Order on the Affinitos' Petition for Writ of Mandate ("Writ Order"). In the Writ Order, the Court directed the City to issue the occupancy permit for the hotel, allowing the Affinitos to commence operation of the hotel. The Court also ordered the Affinitos to obtain a CDP ***amendment*** for the hotel as constructed. In addition, the Court specifically restricted the City and the Commission's ability to review the CDP application. The Writ Order states:

> "Neither the Commission nor the City in acting upon an application to amend CDP 10-92 shall attempt to enforce any height limitation other than a height limitation based upon the 'benchmark' of the Noyo Bridge, and neither shall impose any conditions upon the permit that will require major or structural revisions to the hotel."

On February 18, 2000, the Court entered judgment and issued a peremptory writ of mandate reflecting the terms of the January 6, 2000 Writ Order. All other issues were reserved to the time of trial.

The Commission filed a Return to Writ of Mandate indicating that it would comply with the terms of the Writ Order unless it succeeded in obtaining a stay of the effectiveness of the writ. Simultaneously, it filed a writ of mandate with the Court of Appeal challenging the lower court's Writ Order. Although the Court of Appeal initially issued a temporary stay, it later lifted the stay and summarily denied the writ. On April 14, 2000, the Commission filed an appeal of the February 18 judgment. On July 18, 2000, the Court of

Appeal denied the appeal, noting that no final judgment had been entered and concluding that the partial judgment entered by the court was not an appealable order.

3. Cross Motions For Summary Judgment and Current Status Of Takings Litigation

On February 23, 2001, the Court ruled on the parties' cross motions for summary judgment on the remaining causes of action in the litigation. In his order, Judge Cox granted the Affinitos' motion as to the Coastal Act violations on the issue of height of the hotel and the failure to obtain a CDP in 1996.

The ruling in favor of the Affinitos eliminated all of the Commission's claims except the claim for violation of the 1996 SCRP based on the roof and siding color and rock fascia. On this claim, the Court found that a factual dispute exists as to whether the City's planning director gave the Affinitos verbal permission to deviate from the 1996 SCRP requirements regarding the exterior visual aspects of the building.

In addition, the Court denied the Commission's motion as to the Affinitos' inverse condemnation cause of action. The inverse condemnation cause of action therefore remains to be tried. A trial date has been set for mid-February, 2004.

4. Current Status Of The New CDP

Following the Court of Appeal's dismissal of the appeal of the writ judgment, the Affinitos submitted a CDP application to the City for approval of the hotel as constructed. On July 22, 2002, the City Council issued a Notice of Final Action on the Affinitos' CDP, approving the application subject to eight special conditions. Included among these conditions is the requirement that the Affinitos repaint the exterior of the hotel using an olive green color for the body of the hotel and other structures and white mantle for the trim. Additionally, other conditions require the Affinitos to install a stone façade at the base of the hotel, repaint the metal roof in a weathered copper color, complete landscaping improvements to provide a screen for the structure, revise the exterior lighting to reduce glare and intensity, and relocate a trash enclosure and an architectural screen. Consistent with the Court's order on the writ of mandate, the permit does not include conditions referring to height restrictions or any other major or structural issues. The City's findings, however, note that its discretion is constrained by the writ.

The Commission received two appeals of the City's decision to grant a permit with conditions for the project including an appeal filed jointly by the Sierra Club Mendocino Group & Friends of Fort Bragg (Exhibit 8) and a separate appeal filed jointly by Commissioners Woolley and Reilly (Exhibit 7). The appeals were filed on August 2, 2002 and August 13, 2002, respectively. Each appeal to the Commission was filed in a timely manner within 10 working days of receipt by the Commission on July 30, 2002 of the City's Notice of Final Action. The appeals were placed on the September 11, 2002

agenda. At the September 11, 2002 meeting, the Commission found that the issues of view blockage, street frontage setback, and building height raised a substantial issue. The Commission continued the de novo hearing. The de novo portion of the hearing was continued to the meeting of April 9, 2003, and then continued again at the request of the applicants.

B. **Site Description**.

The coastal development permit application seeks authorization for the previously constructed North Cliff Hotel as-built on an approximately .82-acre site located at 1005 South Main Street, Fort Bragg, Mendocino County. (See Exhibits 1-3)

The hotel is located on a visually prominent bluff-top/bluff face property on the northwest side of the Noyo River, adjacent to the Highway One Bridge over the river. The parcel is immediately visible from Highway One and the Highway One Bridge, and the proposed project places significant new development between the highway and the sea. The bridge crossing of the Noyo River is one of the limited opportunities within the city limits of Fort Bragg where the public is afforded views of the ocean. Most of the Fort Bragg waterfront is devoted to private industrial uses that block views of the ocean and preclude public access to the shoreline. The views of the ocean, the mouth of the Noyo River, and the Noyo River headlands from the bridge, including views from the highway through the project site, are among the most spectacular within the City.

The project site is zoned as Highway Visitor Commercial with a scenic corridor overlay. The site is bordered to the north and northwest by extensive industrial lands that were formerly part of the Georgia Pacific timber mill that has recently shut down. A large grove of approximately 60-foot- high Eucalyptus trees grows immediately northwest of the hotel site. The site is bordered to the east by Highway One which separates the North Cliff Hotel from other commercial development, including the Harbor Lite Lodge, a gas station, coffee shop, and other retail businesses. The site is bordered to the south and southwest by Ocean Front Park and a large dredge disposal pond. The hillside area between the park and the dredged material pond is covered with grasses and an extensive amount of invasive pampas grass. Ocean Front Park is a local park run by the Noyo Harbor District that includes access along the riprap-covered bank of the river and to a sandy beach that extends along the northeast shoreline of the mouth of the river. The large dredge spoil disposal pond is built partially into the hillside and receives much of the material dredged from Noyo Harbor.

The subject property contains no known environmentally sensitive habitat area and no known archaeological resources. No public access through the site to the waterfront exists, although as noted previously, the site is bordered to the south by Ocean Front Park and there is an established public access trail on the east side of Highway One that extends from the Harbor Lite Lodge down the slope to Ocean Front Park.

Prior to construction of the hotel, the site had been developed with a restaurant built on the upper elevations of the property. The 1992 coastal development permit granted by the City authorized demolition of this previously existing restaurant in addition to authorizing a new hotel structure. Although the Affinitos never built the hotel as originally designed and approved by SCR 2-92 and Coastal Permit 10-92, they did demolish the restaurant.

C. <u>Project Description</u>.

1. Current Proposal

The coastal development permit application seeks authorization for the previously constructed North Cliff Hotel as-built. (See Exhibits 4, 9-11) The development consists of a 21,756-square-foot, 39-room hotel including a detached lobby, together with a 40-space parking lot, emergency access road, exterior lighting, landscaping, and trash enclosure. The combined floor area of the two buildings is 21,756 square feet. There is one access road to and from Main Street, located at the northeast corner of the site. On-site access is provided via a one-way looped driveway which extends along the western and eastern boundaries of the triangular shaped parcel. Parking is provided in a lot situated between the two buildings. A nominal amount of grading was performed to prepare the site, and no materials were exported. Almost the entire lot is covered with impermeable surfaces, including structures, parking lots and access ways.

The hotel building is located on the lower elevations of the site, on a relatively steep slope. Because of the site topography, the hotel building appears considerably higher than three stories on its south façade. At the southeast corner, the structure is 64 feet above grade. The building is 35 feet above the elevation of the Noyo Bridge, as viewed from the east. The lobby building is located to the north, on the upper elevations of the site. The North Cliff Hotel is currently clad with Hardiplank siding, painted a tan color with white trim and blue and red accents, and has a light blue standing seam metal roof.

The application for the development was processed by the City of Fort Bragg as an application for a new permit rather than as an amendment to Fort Bragg CDP 10-92 granted in 1992 for the original hotel project. The Commission notes, however, that the Writ of Mandate ordered the City to process a permit amendment. Also, in addition to authorizing a new hotel structure, CDP 10-92 authorized the grading of the site and the demolition of the restaurant previously existing on the site. Therefore, in accordance with this directive, the Commission considers the current application (Coastal Development Permit No. A-1-FTB-02-018) as a proposed modification to the terms and conditions of the 1992 approval granted by the City.

2. Project Approved by Original Coastal Development Permit

The City of Fort Bragg granted Coastal Permit No. 10-92 to Dominic and Juliette Affinito on August 19, 1992. The permit authorized the demolition of an existing restaurant and the construction of a 40-room resort hotel on the .82-acre site. (See Exhibits 3, 9-11)

The hotel authorized by Coastal Permit 10-92 was an entirely different hotel than the one actually built at the site. Coastal Permit 10-92 approved plans for a structure designed to face Highway 1 and step downward in six levels following the slope of the hill toward the ocean. The building was triangular-shaped, fanning out around the slope, with three small towers creating a diverse roofline. Other visual aspects of the design included cedar shake walls, a standing seam sheet metal roof in its natural color, and a rock fascia.

As designed and as approved by Coastal Permit 10-92, the roof height of the hotel did not exceed the City's limitation of 35 feet above grade with the exception of several tower features which were approximately 35 feet above the level of Highway 1. At the lowest point of the slope – the southern side of the hotel – the building did not exceed 24 feet above grade, and was below the level of the Noyo River Bridge.

The City approved Coastal Permit No. 10-92 concurrently with approval of a Scenic Corridor Review permit approval (SCR 2-92). The City adopted one set of conditions common to both the coastal permit approval and the Scenic Corridor Review Approval. A total of 8 conditions were imposed. The adopted conditions are as follows:

1. Ingress and egress to and from the hotel shall be right turns only with the option to allow for left turns after obtaining an approval of appropriate encroachment permit from Caltrans.

2. Applicant shall submit an engineered drainage plan and be approved by the City Engineer prior to the issuance of a building permit. Said plan will address runoff, preventing runoff into the dredge spoils site and including a catch basin at a prior point of contact with Noyo River.

3. There shall be no spotlights, floodlights or other lighting that might blind vessel operators from entering Noyo Harbor.

4. Applicant acknowledges that the Noyo Dredge Spoils Site and Harbor activities have a right to continue.

5. Landscaping shall be properly maintained at all times.

6. Construction plans submitted to the Building Department will be engineered to mitigate against ground shaking, surface rupture caused by an earthquake.

7. Applicant is required to obtain an encroachment permit from Caltrans prior to the issuance of a building permit.

8. Applicant shall install standard curb, gutter and sidewalk along the Main Street frontage.

D. Hotel Use

LCP Provisions

The subject property is designated with the Highway Visitor Serving Commercial (HVC) land use classification. The Land Use Plan lists the primary uses of this land use classification as "*restaurants, hotels, motels, rooming, boarding and guest houses, commercial and non-commercial recreational facilities, grocery stores, delicatessens, liquor stores, gift shops, antique shops, and art galleries*(emphasis added).

LUP Policy IV-1 states in applicable part:

> *"…The City shall provide for and encourage additional visitor serving commercial facilities by…maintaining the 'highway-visitor serving commercial' land use designation as one allowing primarily recreational and visitor serving uses."*

The subject property is similarly zoned as Highway Visitor Serving Commercial (HVC). This zoning district includes as permitted uses a variety of commercial facilities including among others, antique stores, art galleries, auto sales and service, bicycle shops, boat supplies, bowling allies, camper supplies, cleaners, cocktail lounges and bars, coffee shops, delicatessens, diving equipment, fish markets, gift shops, hotels, inns, bed & breakfast places, liquor stores, motels, museums, night clubs, nurseries, public parks and buildings, restaurants, and theaters (emphasis added).

Discussion

The LUP and the zoning ordinance allow for hotels as permitted uses in the Highway Visitor Serving Commercial (HVC) land use designation and zoning district. In addition, LUP Policy IV-1 encourages additional visitor serving commercial facilities within the highway-visitor serving commercial land use designation. The as-built development consists of hotel and accessory structures. Therefore, the Commission finds that the proposed use is consistent with the use provisions of the certified LCP.

E. Services

LCP Provisions

LUP Policies VI-1 and XV-3 state in applicable part, "*New Development to Use City Water and Sewer. All new development constructed in the City coastal zone shall be connected to the City water and sewer systems…*"

LUP Policies XV-9 states in applicable part, "*The City shall determine, when it receives a coastal development permit application, that adequate potable water is available to service the proposed facility, including during peak service demands*."

Fort Bragg Municipal Code Section 18.61.022(A)(1) states in applicable part, "*All new development in the coastal zone for which water or sewer service is needed shall be connected to the City water and sewer systems…*"

Discussion

The hotel project is connected to the municipal water and sewer systems. The hotel replaced a restaurant that previously occupied the site. In reviewing the original 1992 hotel project, the City determined that the average annual water use associated with the restaurant was 1,149,676 gallons per year. In its review of the current application, the City examined water records and determined that the water use at the North Cliff Hotel since July 2000 indicates an average annual water use of 1,012,800 gallons, an amount slightly less than the water usage of the restaurant that formerly occupied the site. Therefore, the City determined that adequate water was available to serve the development, as its water usage would not exceed that of the former use of the site. Therefore, the Commission finds that as the proposed project with the proposed amendment would be connected to the municipal water and sewer systems and as adequate water is available to serve the development, the Commission finds that the proposed development is consistent with LUP policies VI-1, VI-7, XV-3, and XV-9 and FBMC Section 18.61.022(A)(1).

F. Visual Resources.

1. LCP Policies and Standards

LUP Policy XIV-1—General Policy on Visual Resources states: "*New development within the City's coastal zone shall be sited and designated* (sic) *to protect views to and along the ocean, be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.*"

LUP Policy XIV-3 states: "*The views from the bluffs at the mouth of Pudding Creek and the Noyo River shall be protected*."

Fort Bragg Municipal Code Section 18.26.010—General Purpose and Intent states in applicable part: "*The provisions of this zone are intended to address architectural, site planning and access issues and standards to provide for convenience and to ease traffic congestion and* <u>*aesthetic impacts on areas along highways*</u> [emphasis added]."

Fort Bragg Municipal Code Section 18.26.040(D)(1)(a)—Development Standards for Minimum Yard Setback Requirements for Buildings (within the Highway & Visitor Service Commercial District) states in applicable part: "*Street frontage – Five (5)* <u>*feet except: 1) fifteen (15) feet on highways*</u> [emphasis added]…"

Fort Bragg Municipal Code Section 18.61.028—Coastal Visual Resources and Special Communities states in applicable part:

"*A. The following shall be considered Coastal Scenic corridors:*

1. Along the west side of Highway One.

2. Along the bluffs of the Noyo River including any area within viewing distance from the bluff.

B. Permitted development within Coastal scenic corridors, where otherwise consistent with the Coastal Land Use Plan, shall, as determined by the approving authority:

1. Minimize the alteration of natural landforms;

2. Be visually compatible with the character of the surrounding area;

3. Be sited and designed to protect views to and along the ocean and scenic coastal areas.

…"

Fort Bragg Municipal Code Section 18.26.040(E)—Development Standards for Maximum Building Height (within the Highway & Visitor Service Commercial District) states in applicable part: "*Maximum Building Height – thirty-five (35) feet.*"

Fort Bragg Municipal Code Section 18.72.050(A)—Height Limitations-Modifications states in applicable part: "*Height of buildings and structures shall be measured vertically from the average ground level of the ground covered by the building to the highest point of the roof.*"

2. Visual Setting and Analysis Framework

The subject property is located both along the west side of Highway One and along the bluffs of the Noyo River. Therefore, pursuant to Fort Bragg Municipal Code Section 18.61.028, the site is designated as part of a Coastal Scenic corridor.

The hotel is located on visually prominent bluff property on the northwest side of the Noyo River, adjacent to the Highway One Bridge over the river. (See Exhibit 2) The parcel is immediately visible from Highway One and the Highway One Bridge, and the approved project places significant new development between the highway and the sea. The bridge crossing of the Noyo River is one of the limited opportunities within the city limits of Fort Bragg where the public is afforded views of the ocean. Most of the Fort Bragg waterfront has historically been devoted to private industrial uses that blocked views of the ocean and precluded public access to the shoreline. The views of the ocean, the mouth of the Noyo River, and the Noyo River headlands from the bridge including views from the highway through the project site are among the most spectacular within the City. Bridge views are available to both motorists and pedestrians crossing the existing bridge along the narrow sidewalks. The existing bridge is in the process of being replaced by a brand new bridge in the same location. As approved by the Commission under Coastal Development Permit Nos. 1-98-100 and A-1-FTB-99-06, as amended, the new bridge will continue to afford views for motorists and will provide enhanced viewing opportunities for pedestrians as the new bridge will include enhanced walkways along the sides of the bridge that are separated from traffic by vehicle barriers.

The hotel site is also prominent from other public vantage points in the area. As noted previously, Ocean Front Park occupies lands at the base of the slope upon which the hotel is constructed that provide access to the shoreline of the river and a sandy beach to the southwest of the hotel. The constructed hotel looms over the site and together with the Noyo Bridge, dominates views from the park looking away from the river. Because of the site topography, the hotel building appears considerably higher than three stories on its south façade and at its southeast corner rises a maximum of 64 feet above grade. (See Exhibit 10)

The hotel is also visually prominent from the “Noyo Bluff Overlook” site on the south side of the Noyo River. (See Exhibit 9) This property on the south bluff overlooking Noyo Bay was recently acquired by the City of Fort Bragg for use as a public open space/view shed area. Acquisition of this view site was facilitated by the visual mitigation requirements imposed by the Commission in the coastal development permits granted to the Department of Transportation for construction of the replacement for the Noyo River Bridge. This viewpoint offers views primarily to the north across Noyo Bay. The North Cliff Hotel is a prominent part of the viewscape from this location along with the headlands to the west, and the Noyo River Bridge and the Harbor Lite Lodge to the east.

The project required a Scenic Corridor Review Permit amendment from the City as it is located in a designated Coastal Scenic Corridor. When the City approved the Coastal Development Permit for the development that was subsequently appealed to the Commission, the City simultaneously approved Scenic Corridor Review Permit Amendment No. SCR 2-96/00 for the development. The SCR Permit Amendment was subject to the same special conditions that the City conditioned its coastal development permit upon to mitigate impacts to visual resources, including (a) repainting the exterior of the hotel using an olive green color for the body of the hotel and other structures and a white mantle color for the trim, (b) repainting the metal roof a weathered copper color, (c) installing a stone façade at the base of the hotel to blend the structure into its surroundings, (d) revising the exterior lighting to reduce glare and intensity, (e) relocating a trash enclosure and an architectural screen, and (f) planting landscaping to better screen the structure.

LUP Policy XIV-1 and Fort Bragg Municipal Code (FBMC) Section 18.61.028 set forth three principal requirements for new development within scenic corridors with regard to the protection of visual resources. First, the development must protect views to and along the ocean and scenic coastal areas. This requirement is also supported by LUP Policy XIV-3 which states that the views from the bluffs at the mouth of the Noyo River shall be protected. Second, the development must minimize the alteration of landforms. Finally, the development must be compatible with the character of the surrounding area. A number of factors affect the compatibility of the development with the character of the surrounding area including the development's height, setback from Main Street, the bulk of the structure, the roofing material and color, the colors of the siding and trim of the building, the architectural style of the building, exterior lighting, and landscaping. The LCP sets forth certain specific requirements for some of these design elements affecting the compatibility of the development with the surrounding area. The conformance of the project to the three principal visual requirements of the LCP are discussed individually below.

3. Protection of Views To and Along Ocean

As noted above, LUP Policy XIV-1 and FBMC Section 18.61.028 require that new development protect views to and along the ocean and scenic coastal areas. LUP Policy XIV-3 requires that views from the bluffs at the mouth of the Noyo River must be protected. The principal views to and along the ocean and scenic coastal areas through the project site that existed prior to construction of the hotel were those afforded from Main Street (Highway One) from vantage points along the north end of the Noyo River Bridge and further to the north. As noted above, the area around the bridge crossing of the Noyo River is one of the limited opportunities within the city limits of Fort Bragg where the public is afforded views of the ocean.

The project blocks a significant amount of the view that would be afforded over the site if it were vacant. For the person walking or driving south on Main Street, the first views of the mouth of the Noyo River and its headlands begin at the northern tip of the parcel where one can first begin to see around a grove of eucalyptus trees that exists to the west of the northern portion of the subject property. The project blocks virtually all view of the mouth of the river, the headlands, and the ocean for a distance of approximately 430 linear feet until one passes by the southern end of the building.

In comparison with the hotel design approved in 1992 (1992 project), the current project also blocks a significantly greater amount of the view. The 1992 project has a much more pronounced stepped design and the southern portions of the 1992 project are much lower, allowing pedestrians and motorists to look over those portion of the building to see the ocean. The as-built project blocks approximately 100 linear feet more of the view of the mouth of the river and the ocean from the Noyo River Bridge than the 1992 project would have blocked. The difference in view blockage can be gauged by comparing views of the 1992 project and the current project from the 'Noyo Bluff Overlook" site on the south side of the river as shown in Exhibits 9A and 9B. These exhibits essentially provide the reciprocal view to the view that is blocked by looking back to the Noyo River Bridge from the direction of the mouth of the river. A comparison of the exhibits shows how a greater portion of the bridge is visible in the exhibit of the 1992 project. This portion of the bridge is the approximately 100 linear feet of bridge deck from which views of the mouth of the river and the ocean would be blocked by the as-built project but not the 1992 project. The additional view blockage of the as-built project is particularly significant in that it will block views from a significant portion of the enhanced pedestrian walkway that will be provided along the west side of the new Noyo River Bridge currently under construction. The new walkway will likely draw significantly more pedestrians than the walkway on the current bridge as it will be wider and be separated from lanes of vehicular traffic by an interior railing that will make the walkway a more inviting place for people to walk and enjoy views of the mouth of the river and the ocean.

The as-built project is inconsistent with LUP Policies XIV-1 and XIV-3 and FBMC Section 18.61.028 in that it results in the blockage of significant views to and along the ocean and scenic coastal areas which could be avoided by using a hotel design with different structural height and mass such as the 1992 project, a design that includes one more hotel room than the current project. However, the Writ Order precludes the Commission from denying approval on this basis or conditioning the approval to require major or structural modifications to the height and mass of the hotel structure that would reduce the view blockage. These limitations effectively bar the Commission from considering the view blockage impacts resulting from the height and mass of the hotel in its evaluation of the consistency of the project with LUP Policies XIV-1 and XIV-3 and FBMC Section 18.61.028.

However, the Writ Order does not bar the Commission from considering view blockage impacts of aspects of the project that would not require major or structural revisions to the hotel. The as-built project provides a very small view corridor north of the lobby structure that would not have been provided by the 1992 project (Compare Exhibits 11A and 11B). However, this view corridor is limited by the presence of the trash enclosure structure on the north side of a PG&E transformer alongside Main Street. The trash enclosure structure consists primarily of an approximately 5-foot high wall surrounding an approximately 200-square-foot area where the hotel trash dumpsters are located. By relocating the trash enclosure from the north side of the transformer to the south side, the view corridor could be expanded to approximately 30 feet in width near Main Street. This view corridor would open views to a disproportionately larger view of the bluffs around the mouth of the Noyo River as the view corridor widens further back from the street. The view corridor would not be made even wider by also relocating the transformer because portions of the lobby building located beyond the transformer would limit the view corridor anyway.

In its action on the coastal development permit for the as-built project, the City imposed a condition requiring that the trash enclosure be relocated to the south side of the transformer. Such a modification is consistent with the limitations of the Writ Order as the change would not constitute a "major or structural modification" prohibited by the Writ Order because (1) the trash enclosure is not connected to any of the hotel buildings, (2) the trash enclosure does not support a roof or other structural elements, and (3) the trash enclosure is similar to a fence and modification of the enclosure does not affect any major or structural components of the hotel buildings. Therefore, to maximize the protection of views to and along the ocean and scenic coastal areas consistent with the provisions of LUP Policies XIV-1 and XIV-3 and FBMC Section 18.61.028, the Commission imposes Special Condition No. 11. The condition requires the applicants to submit, for the review and approval of the Executive Director, a plan for relocating the trash enclosure to the south side of the PG&E transformer to maximize the view corridor to the mouth of the river at the north end of the project site.

Given the limitations of the Writ Order which effectively bar the Commission from considering the view blockage impacts resulting from the height and mass of the hotel, the Commission finds that the as-built project as conditioned is consistent with LUP Policies XIV-1 and XIV-3 and FBMC Section 18.61.028 as the elements of the current project other than the height and mass of the hotel result in no greater blockage of views than the previously approved hotel project and will maximize the protection of views to and along the ocean and scenic coastal areas consistent with those provisions.

4. Minimizing Alteration of Landforms

FBMC Section 18.61.028(B)(1) requires that new development within Coastal scenic corridors minimize the alteration of landforms. The project site occupies the top and the upper portions of a bluff that slopes down to the harbor dredge spoils disposal pond and

Ocean Front Park to the west and south. The project site has been extensively graded in the past, resulting in the creation of two principal terraces in the upper reaches of the hillside. According to the Mitigated Negative Declaration adopted by the City for the current project, much of this grading was performed in reliance on the City granted coastal development permit for the 1992 hotel project, including approximately 6,150 cubic yards of excavation. The change in hotel design and layout proposed for the current project, however, required little additional grading. The Mitigated Negative Declaration states that a minimal amount of grading was performed and no materials were exported from the site. Therefore, as the development for which the applicants are seeking authorization under the current application involves very little grading, the Commission finds that the project is consistent with the requirements of FBMC Section 18.61.028(B)(1) that new development within Coastal scenic corridors minimize the alteration of landforms.

5. Compatibility with Character of Setting

As noted above, LUP Policy XIV-1 and FBMC Section 18.61.028 require that new development must be compatible with the character of the surrounding area. The LCP sets two specific limitations to help ensure that an approved development will be compatible with the character of the surrounding area. FBMC Section 18.26.040(E) specifies a maximum 35-foot height limit for development within the Highway and Visitor Service Commercial District. FBMC Section 18.26.040(D)(1)(a) specifies a setback for development fronting on highways of 15 feet. Although not addressed by specific LCP requirements, several other elements of the development have a significant bearing on the compatibility of the North Cliff Hotel development with the character of the surrounding area including the bulk or mass of the structure, the roofing material and color, the colors of the siding and trim of the building, exterior lighting, and landscaping. The project elements that affect the project's conformance with the requirement that new development be visually compatible with the character of the surrounding area are discussed individually below.

a. Height

As noted above, FBMC Section 18.026.040(E) establishes a maximum building height of 35 feet in the Highway Visitor Commercial (HVC) district. Section 18.72.050(A) of the code specifies how the height must be measured, indicating that the height shall be measured vertically from the average ground level of the ground covered by the building to the highest point of the roof. Although the approved hotel is a maximum of 35 feet in height above the base elevation of the Noyo Bridge, which runs adjacent to the building and is elevated above the ground in that location, the height of the building greatly exceeds 35 feet from the average ground level of the ground covered by the building. Because of the sloping site topography, the hotel building appears considerably higher than 35 feet on its south façade. At the southeast corner of the hotel structure, the

structure is 64 feet above grade. The southern facing portions of the structure are highly visible from many public vantage points.

The height of the structure adversely affects the compatibility of the development with the character of the surrounding area, as the structure appears much taller than surrounding buildings. No other structures in the area are as tall. One of the most prominent buildings in the surrounding area is the Harbor Lite Lodge, another hotel structure located on the Noyo bluffs opposite of the North Cliff Hotel on the other side of Highway One. The Harbor Lite Lodge and the North Cliff Hotel are the most dominant structures in views of the area from the south such as for motorists driving north across the Noyo River Bridge and for public access users at Oceanfront Park or along the Noyo bluffs along the south side of the river. The contrasting height of the two developments is striking from these vantage points. The Harbor Lite Lodge appears much shorter. (See Exhibits 9 and 10)

The height of the as-built project affects the compatibility of the development with the surrounding area to a much greater degree than the height of the 1992 project. The hotel authorized by Coastal Permit 10-92 was designed to face Highway 1 and step downward in six levels following the slope of the hill toward the ocean. The building was triangular-shaped, fanning out around the slope, with three small towers creating a diverse roofline. As designed and as approved by Coastal Permit 10-92, the roof height of the hotel complied with the City's limitation of 35 feet above grade with the exception of one tower which was 36 feet above the level of Highway 1. At the lowest point of the slope – the southern side of the hotel – the building did not exceed 24 feet above grade, and was below the level of the Noyo River Bridge. The stepped design of the structure would have created relatively low façade heights as viewed from the south, thereby better blending the structure with the sloping terrain of the site and eliminating the major contrast in height between it and the Harbor Lite Lodge and other buildings in the area.

The as-built project is inconsistent with the 35-foot height limitation of FBMC Section 18.026.040(E). However, the Writ Order precludes the Commission from denying approval on this basis or conditioning the approval to require major or structural modifications. These restrictions effectively bar the Commission from considering the true height of the structure and instead require the Commission to only consider the height of the building above the elevation of the Noyo Bridge.

Therefore, the Commission must consider the compatibility of the character of the development with the surrounding area without regard to the impacts resulting from the height and mass of the hotel in its evaluation of the consistency of the project with the maximum 35-foot height requirement of FBMC Section 18.026.040(E).

b. <u>Front Yard Setback</u>

FBMC Section 18.26.040(D)(1)(a) specifies a setback for development fronting on highways of 15 feet. The southeast corner of the hotel building and the trash enclosure structure are located within the 15-foot setback from the highway right-of-way. The encroachment of the structures into the front yard setback from the highway adversely affects the compatibility of the development with the character of the surrounding area, particularly with the replacement of the Noyo River Bridge which is in progress. The replacement bridge is being built to accommodate four lanes of traffic, vehicle shoulders, and public access walkways on both sides. As a result, the new bridge will be much wider than the existing structure and the new bridge structure will fill virtually the entire width of the highway right-of-way adjacent to the hotel. After completion of construction of the bridge, the southeast corner of the building will be as close as eight feet to the bridge. This close proximity of the structure to the highway will not be consistent with the setback of other structures along Highway One (Main Street), which generally conform with the setback requirements. In particular, the unusual site of a hotel room within eight feet of the bridge deck will contribute to a sense of incompatibility of the development with the character of the surrounding area.

The City approved a variance to the front yard setback requirement at the same time that it approved CDP 2-00 for the current project. A variance from the strict application of terms of the zoning ordinance can be granted pursuant to Chapter 18.76 of the FBMC, a part of the certified LCP. The City's adopted findings state that the City does not have a factual basis to make the necessary findings to grant a variance authorizing the encroachment of the hotel structure and trash enclosure structure into the required 15-foot minimum front yard setback, but that based on the requirements of the Writ Order which apply to both the City and the Commission, the City must approve the variance or approve it with conditions which do not involve major modifications to the hotel structure. The hotel cannot be made consistent with the setback requirement without removing or relocating a portion of the structure, an action that would be inconsistent with the terms of the Writ Order. The City found that moving the trash enclosure farther back from the highway to conform with the 15-foot setback requirement would also be inconsistent with the terms of the Writ Order as moving the enclosure would require not only modifications to the enclosure, but also reconfiguration of the site layout and design, elimination of on-site parking, and modifications to the hotel.

The Commission notes that the City's adopted findings for the variance indicate that if not for the Writ Order there would be no basis for granting the variance. Without the variance, the project inconsistencies with the specific 15-foot front yard setback requirement of FBMC Section 18.26.040(D)(1)(a) would make the project inconsistent with the LCP. Therefore, the Commission must consider the compatibility of the character of the development with the surrounding area without regard to impacts resulting from the height and mass of the hotel in its evaluation of the consistency of the project with the 15-foot setback requirement of FBMC Section 18.26.040(D)(1)(a).

c. Bulk

The bulk or mass of a building greatly affects a development's visual compatibility with the character of its surrounding area. In this case, the massing of the hotel structure adversely affects the visual compatibility of the development in comparison with the massing of the hotel project approved in 1992.

As noted previously, the 1992 hotel authorized by Coastal Permit 10-92 was designed to face Highway 1 and step downward in six levels following the slope of the hill toward the ocean. The building was triangular-shaped, fanning out around the slope, with three small towers creating a diverse roofline. The stepped design of the structure would have created relatively low façade heights as viewed from the south, thereby better blending the structure with the sloping terrain of the site. The high degree of architectural variation and depth of the 1992 design also helps it blend more with the natural setting.

The as-built project in contrast, is more monolithic and box-shaped, extending 220 feet across on one axis. Although this structure has three small steps incorporated in its design as indicated by the roofline, the development has 50% fewer steps than the 1992 project and the three steps in the design of the hotel structure do little to reduce the mass of the structure when viewed from the south. The absence of architectural variation near the ground level of the as-built project hotel building contributes to a somewhat stilted and blocky appearance.

The contrast in massing between the as-built project and the 1992 project can best be seen by comparing the photos of the current project against the photo simulations of the 1992 project as seen from Ocean Front Park, Exhibits 10A and 10B, and from the Noyo Bluff Overlook site, Exhibits 9A and 9B.

Both the 1992 and as-built project appear more massive than other development in the surrounding area. One of the larger developments in the surrounding area is the Harbor Lite Lodge. Although the Harbor Lite Lodge spreads laterally for some distance along the top of the northern bluff of the Noyo River east of the Noyo River Bridge, the complex does not extend as far down the bluff face as either the 1992 or current designs for the North Cliff Hotel. As a result, the North Cliff Hotel appears much more massive than the Harbor Lite Lodge as can be seen in the aforementioned exhibits.

Therefore, for all of the above stated reasons, the bulk or mass of the as-built project detracts from the compatibility of the development with the visual character of the surrounding area. If the building were modified to reduce its size and to add variation to the design, the significance of the effects of building mass on the compatibility of the development with the surrounding area would be greatly lessened. However, as discussed above, the Writ Order precludes the Commission from imposing any conditions upon the permit that would require major or structural revisions to the hotel such as eliminating stories of the building or pitch of the roof. Therefore, the Commission must

consider the effects of mass or bulk of the current project without regard to structural modifications that might reduce such impacts.

d. Roof Color/Material

The color of the roof installed on the as-built hotel project adversely affects the development's visual compatibility with the character of its surrounding area. The roof is comprised of a light blue standing seam metal. The roof is steeply pitched with multiple gables. The exposed light blue metal roof is reflective and contrasts greatly with the dark green backdrop of the eucalyptus and pine trees to the north and west of the hotel and increase the hotel's visual prominence. The relatively steep pitch of the roof exposes more of the roof and its light blue color to view, accentuating the prominence and contrast of the roof color with the colors of the background vegetation. The Mitigated Negative Declaration adopted by the City for the as-built project contains correspondence from Caltrans indicating that Caltrans staff "would appreciate any assistance by the City to mitigate the glare/reflection from the North Cliff motel roof." The prominence and contrast of the light blue roof with its surroundings can be seen in Exhibits 9B, 10B, 11B, and 12B.

The roof of the as-built project affects the compatibility of the development with the surrounding area to a much greater degree than the roof of the 1992 project would have. The roof of the 1992 project would have had more architectural variation than the roof of the current project. Instead of a consistent steep pitched roof over the structures, the roofing of the 1992 project reflects the greater architectural variation of the structures themselves and would have been comprised of many separate roofs over the different steps, tower features, and covered walkways and includes a combination of shed roofs and gabled roofs. The roofing material would have been gray metal. Although the gray metal color would also have been reflective and would have contrasted in color with the dark green colors of the background vegetation, the color would have stood out less than the light blue color of the roof of the as-built project. More importantly, the shallow pitches of the roof elements would have obscured the visibility of much of the metal roofing in contrast to the steep pitch of the roof of the current project that makes the blue color of the roof more prominent. The differing compatibility of the 1992 project roof and the as-built project roof with the project surroundings can be seen by comparing photos of the as-built project with photo simulations of how the 1992 project would have appeared. Compare Exhibit 9A with Exhibit 9B, and Exhibit 10A with Exhibit 10B.

The adverse effects of the as-built project roofs on the visual compatibility of the development with the surrounding area could be adequately mitigated by either repainting the roofs a different color or replacing the blue standing seam metal roofs with similar standing seam metal roofs of a different color. In its action on the coastal development permit application for the current project, the City required that the applicants either repaint the blue metal roofs with a certain "weathered copper" color as

shown in BHP Steel Building Products standard Dura Tech 5000 colors, or replace the metal roofs in a non-reflective finish that is similar in hue, chroma, and reflectivity to the weathered copper color. The City specified that the option to paint the roofs rather than replace them with new metal roofs with the non-reflective finish was dependent on the applicants submitting evidence that they had obtained a 5-year warranty for the repainted roof. Otherwise, the applicants were directed to replace the roofs. The City found that the weathered copper roof would help the structures to blend better with the natural setting and would reduce the glare from the roofs.

The Commission finds that changing the color of the reflective light blue roofs is essential to make the current project more compatible with the character of the surrounding area. Therefore, the Commission attaches Special Condition No. 9(A)(1) which requires the applicants to submit for the review and approval of the Executive Director a plan for either repainting the as-built light blue metal roofs of the hotel structures with that certain weathered copper color required by the City or replacing the roofs of the hotel structures with metal roofs with non-reflective finishes similar in hue, chroma, and reflectivity to the same weathered copper color that the City required. The Commission finds that the dark appearance of the weathered copper color selected by the local government would better blend with the dark green colors of the surrounding vegetation and would adequately reduce glare to make the development more compatible with the character of its surroundings.

The Commission finds that replacement of the existing metal roof with a new metal roof treated with a non-reflective finish in the required color would ensure that the weathered copper color is retained over the life of the project. Repainting the existing blue roofs instead would create a need for continual maintenance to ensure that the highly contrasting light blue color of the existing finish is not continually exposed as the copper paint weathers and peels and creates color contrasts and exposures not compatible with the character of the surrounding area. However, if the roofs were repainted at frequent regular intervals to keep the underlying light blue color covered over and the copper color maintained, the roofs would be compatible with the character of the development's surroundings. Therefore, Special Condition No. 9(A)(1)(a) gives the applicants the option of repainting the roofs rather than replacing the roofs. To ensure that if the applicants choose to repaint the roofs instead of replacing them that the roofs are, in fact, repainted at regular frequent intervals to maintain the weathered copper color, the Commission attaches Special Condition No. 10. This condition requires the applicants to repaint all portions of the roofs of the building at least once every two years from the date of the Commission's approval of the permit amendment unless no later than 30 days prior to any scheduled painting the permittees submit evidence for the review and approval of the Executive Director demonstrating that repainting that particular year is not needed to maintain the roof in good condition.

The Commission finds that replacing the metal roofs with similar metal roofs finished in a different color is not a major or structural modification prohibited by the Writ Order.

The new roofs would be of a similar weight as the existing roof and would not require such structural modifications as retrofitting the existing structures to increase their load-bearing capacity. In comparison, during the City's review of the as-built project, evidence was presented that such retrofitting would be necessary to replace the blue metal roofs with Hardislate shingle roofs or other heavier roofing materials.

The Commission further finds that as conditioned to either repaint the reflective, visually prominent light blue roofs of the as-built project with a weathered-copper color or replace the roofs with new weathered-copper colored roofs, the roofing of the building would contribute to the development's visual compatibility with the character of its surroundings in a manner consistent with LUP Policy XIV-1 and FBMC Section 18.61.028.

e. <u>Siding and Trim Colors/Materials</u>

Besides the color of the roofs, the colors of the siding, trim, and other architectural details also adversely affect the development's visual compatibility with the character of its surrounding area. The as-built project is covered with Hardiplank siding, painted a light tan color with white trim and blue and red accents. The balcony railings of the structures are a bright white vinyl material. Just as the existing light blue metal roofs of the structures contrast greatly with the dark green backdrop of the eucalyptus and pine trees to the north and west of the hotel and increase the hotel's visual prominence, the light colors of the existing siding and trim colors contrast with the surrounding dark green vegetation as well. The prominence and contrast of the light siding and trim materials with the project's surroundings can be seen in Exhibits 9B, 10B, and 11B. The effect that building colors can have on the visual compatibility of a structure is shown most clearly in Exhibit 9. The light colors of the existing North Cliff Hotel make the building stand out prominently, whereas the dark colors of the Harbor Lite Lodge, the complex of buildings on the other side of the Highway One Bridge, blend the Harbor Lite Lodge into the surrounding landscape to a much greater degree. The contrast of the colors of the North Cliff Hotel with the colors of the Harbor Lite Lodge itself contributes to the visual incompatibility of the as-built project with its surroundings.

The siding and trim colors of the as-built project affect the compatibility of the development with the surrounding area to a much greater degree than the siding and trim colors of the 1992 project would have. The 1992 hotel project was approved with cedar shingle siding which would have provided a natural weathered wood exterior and a rustic appearance. The differing compatibility of the 1992 project colors and the as-built project colors with the project surroundings can be seen by comparing photos of the as-built project with photo simulations of how the 1992 project would have appeared. Compare Exhibit 9B with Exhibit 9A, and Exhibit 10B with Exhibit 10A.

The adverse effects of the colors of the as-built project on the visual compatibility of the development with the surrounding area could be adequately mitigated by repainting the structure and trim materials and either repainting or replacing the white balcony railings with darker colors. In its action on the coastal development permit application for the as-built project, the City required that the applicants repaint the Hardiplank siding of the hotel, lobby building, and trash enclosure structure an olive branch green color. The City also required that the applicants install a cultured stone façade at the base of the southeast, south, and northeast sides of the hotel building as the City had required when it approved Scenic Corridor Review Approval No. SCR 2-96 back in 1996. The City furthermore required that the exterior trim of the buildings be painted a "white mantle" color. The name of the trim color is somewhat of a misnomer as the color, though very light, is more of a light olive color than a white. The City did not require that the white vinyl railings be modified to change their colors and the adopted findings do not address the impacts of the railings. Exhibits 9C, 10C, 11C, and 12C are photo simulations of what the hotel would look like with the cultured stone façade and the siding and trim colors required by the City.

The Commission finds that changing the color of the siding, trim, and railing materials is an essential part of making the current project compatible with the character of the surrounding area. Therefore, the Commission attaches Special Condition No. 9(A)(1)(b-d) which requires the applicants to submit for the review and approval of the Executive Director a plan for changing the building colors to make the building appearance more compatible with the character of the surrounding area. The special condition requires that the siding of the buildings be painted with the same olive branch color that the City required. The Commission finds that the dark color would better blend with the various dark green colors of the surrounding vegetation than the tan color of the current project and would greatly reduce the prominence of the structure.

The Commission finds that the existing 'white mantle" trim color is not appropriate, as the color is too light to achieve a building appearance that is compatible with the character of its setting. The light trim color would negate some of the value of painting the siding material the olive branch color as the light colored trim would outline the building in a manner that would still make it stand out from its surroundings and stand out from other buildings in the area such as the Harbor Lite Lodge, which has no distinct trim color. Exhibit 9C is a photo simulation of what the building would look like with the olive branch colored siding and the white mantel trim as viewed from the southern Noyo Bluffs. This exhibit demonstrates that the color scheme stands out prominently in comparison with the appearance of the hillside and the appearance of the very dark colored Harbor Lite Lodge. Therefore, Special Condition No. 11 requires that the trim materials be painted either the same olive branch color as the siding is required to be repainted or, if the applicant prefers to retain some sense of contrast between the siding and trim materials, the trim can be painted a darker color than the siding. Although use of a darker trim color than the olive branch color would create contrast, the trim would

not be so bright as to cause the building to stand out as would the white mantle trim color.

Similarly, the white color of the balcony railings would cause the building to stand out from its surroundings in a manner that would negate some of the value of painting the siding of the building the olive branch color. At least 21 of the balcony railings are visible from the Noyo Bluffs viewing area. These balcony railings are evenly spaced along the southwest side of the hotel building in a manner that highlights the long 220-foot expanse of this side of the building. The bright white color of the railings also stands out dramatically from the dark green colors of the surrounding eucalyptus and pine trees. Therefore, the white balcony railings of the current project detract from the visual compatibility of the development with its surroundings. Special Condition No. 9(A)(1)(d) requires that the colors of the balcony railings be modified to the colors selected for the exterior trim of the building. The railings that have been installed are made from a vinyl material that is difficult to paint. Paint does not adhere well to the surface, making it difficult to apply an even coverage of paint and requiring frequent repainting to maintain the color over time. However, if the railings were, in fact, repainted frequently as part of a regular maintenance program to maintain the required color, the railings would not detract from the visual compatibility of the development with its surroundings. Therefore, Special Condition No. 9(A)(1)(d) gives the applicants the option of either replacing or repainting the railings with the same color as the color selected for the exterior trim of the building. If the applicants choose to replace the railings, the railings can be replaced either with new vinyl railings manufactured to be a color closely similar in brightness and hue to the colors selected for the exterior trim of the building, or with new wood or metal railings painted in the same color as the color selected for the exterior trim of the building.

To ensure that if the applicants choose to repaint the railings they are, in fact, repainted at regular intervals to maintain the color selected for the trim of the buildings, the Commission attaches Special Condition No. 10. This condition requires the applicants to repaint all portions of the balcony railings at least once every two years from the date of the Commission's approval of the permit amendment unless no later than 30 days prior to any scheduled painting the permittees submit evidence for the review and approval of the Executive Director demonstrating that repainting that particular year is not needed to maintain the color of the railings in good condition.

Finally, Special Condition No. 9(A)(1)(e) requires that a cultured stone façade be installed along the base of the hotel building except along the side of the hotel facing the parking lot. As noted above, the City had required the installation of such a façade in its approval of SCR 2-96 in 1996. The low stone façade would help to blend the featureless lower portions of the tall sides of the hotel building with the slope below, thereby making them more compatible with the character of its surroundings and enhancing its appearance from public vantage points to the south.

The Commission finds that the requirements of Special Condition 11 are not a major or structural modification prohibited by the Writ order. Application of the façade would not require modifications to the internal framework of the structure, only adding additional material to a portion of the exterior of the building. The Commission further finds that conditioning the project to require the installation of the cultured stone façade and changing the color of the siding, trim, and railing materials to the olive branch color and darker colors will minimize the contrast in appearance between the existing building and the surrounding vegetation and other buildings in the area and will thereby contribute to the development's visual compatibility with the character of its surroundings in a manner consistent with LUP Policy XIV-1 and FBMC Section 18.61.028.

f. Lighting

The exterior lighting of the development adversely affects the compatibility of the development with the surrounding area. The as-built project includes a significant amount of exterior lighting. The project has two "cobra-headed" 35-foot-high halogen light standards that illuminate the parking lot, as well as uplighting on the building and safety lighting along the corridors and stairwells. As noted by City staff, the project is illuminated at an intensity and with the type of lighting fixture that is often used for night lighting of athletic fields. City staff reports note that the night lighting is excessive and unsightly from Main Street and contributes to obscuring the night sky in this area of Fort Bragg. In addition, should lighting be installed to illuminate the massive southern facades of the building in the manner the northern facades are illuminated, the development would be highly visible and prominent at night from Highway One and southern vantage points in the City in a manner incompatible with the character of the area given (1) its prominent location at the north end of the bridge and along the bluffs of the river and (2) the fact that other structures along the bluff edge are not similarly illuminated.

The Commission finds that it is essential that the significant adverse effects of the exterior lighting be mitigated to make the as-built project more compatible with the character of the surrounding area. Therefore, the Commission attaches Special Condition No. 13 which requires that a plan for revisions to the exterior lighting of the development to the reduce the significant adverse visual impacts of the lighting be submitted prior to the issuance of the Coastal Development Permit. The special condition requires that the plan demonstrate that all exterior lights shall be the minimum amount necessary for safety purposes and shall be low-wattage, non-reflective, shielded and have a directional cast downward so that no light will shine beyond the boundaries of the property. The condition also requires that the overall glare and intensity of the night lighting be reduced to levels no greater than those at nearby motels. These two provisions will ensure that the intense glare from the existing parking lot light standards in particular will be reduced to acceptable levels. Finally, the special condition includes a provision prohibiting the illumination of the southern sides of the hotel building, which will ensure that the

visually prominent side of the building along the mouth of the river does not become a significant visual intrusion on nighttime views.

The Commission finds that these lighting restrictions are not a major or structural modification prohibited by the Writ Order as they do not require changes to the buildings themselves, only to the light fixtures. The Commission further finds that conditioning the project to require the necessary revisions to the exterior lighting of the development will reduce the visual impacts of the development at night and thereby contribute to the development's visual compatibility with the character of its surroundings in a manner consistent with LUP Policy XIV-1 and FBMC Section 18.61.028.

g. Landscaping

As discussed previously, the height and mass of the hotel building detract from the visual compatibility of the development with the surrounding area. Landscaping is a design element that could be better utilized to reduce this impact.

The as-built project includes some landscaping along the Main Street frontage of the site but does not include any screening trees that would help to break up the mass of the building as viewed from Main Street. No other landscaping is provided with the current project.

The 1992 project included a greater amount of landscaping. The most significant difference is that the approved 1992 project included two landscaped planters along the Main Street frontage of the site that included numerous Holly Oaks and Leland Cypress trees, both of which grow to a height of 30 to 50 feet. These trees would have helped to break up the mass of the building more effectively than the shrubbery planted in the strip of landscaping provided along Main Street with the current project. The landscaping plan for the 1992 project also called for the planting of various shrubbery and ground cover around other sides of the property, although none of this landscaping would grow tall enough to have screening value.

To better utilize landscaping as a tool for softening the visual impact of the development and improving its visual compatibility with the surrounding area consistent with LUP Policy XIV-1 and FBMC Section 18.61.028, the Commission attaches Special Condition No. 12, which requires the submittal of a landscaping plan prior to issuance of the permit. To help soften the view of the massive southern façade of the hotel structure, the condition requires the planting of a minimum of 10 evergreen trees that will reach a minimum height of 10 to 25 feet within five to ten years. Similarly, to soften the view of the facades of the building fronting on Main Street, the condition requires the planting of similar trees planted on approximately 20-foot centers along the enter length of the Main Street frontage of the site. The condition includes a requirement that the landscaping be

maintained throughout the life of the project to ensure the landscaping retains its value in screening the appearance of the structure.

The Commission finds that conditioning the project to require the necessary landscaping improvements will help reduce the visual intrusiveness of the development and thereby improve the development's visual compatibility with the character of its surroundings in a manner consistent with LUP Policy XIV-1 and FBMC Section 18.61.028.

h. Conclusion on Compatibility with Character of Setting

The above discussion of the elements of the development having a significant bearing on the visual compatibility of the North Cliff Hotel development with the character of the surrounding area indicates that while the compatibility can be significantly improved through the requirements of the special conditions requiring changes to building colors and materials, lighting, and landscaping, these improvements cannot overcome the visual impacts of the excessive overall height of the structure, the encroachment of the structure into the standard 15-foot front yard setback, and the blocky massing of the structure so as to make the project truly visually compatible with the surrounding area. The only way to fully overcome the significant adverse visual impacts caused by the excessive height, encroachment into the front yard setback, and the blocky massing of the structure would be to require major structural modifications such as eliminating the upper floor of the building and removing the portion of the hotel building encroaching into the setback.

However, as is also discussed above, the Writ Order precludes the Commission from attempting to enforce any height limitation other than a height limitation based upon the 'benchmark of the Noyo Bridge and from imposing any conditions that would require major or structural revisions to the hotel. These restrictions effectively bar the Commission from (1) imposing conditions to eliminate the upper floor of the building, remove the portion of the hotel building encroaching into the setback, or require other structural or major revisions that would make the development truly visually compatible with the character of its surroundings consistent with LUP Policy XIV-1 and FBMC Section 18.61.028, or (2) denying the development on the basis that the building heights, mass, or encroachment into the front yard setback make the project inconsistent with the aforementioned policies. Therefore, the Commission is precluded from considering height, building mass, and encroachment into the front yard setback in its evaluation of whether the development is truly visually compatible with the character of its surroundings consistent with LUP Policy XIV-1 and FBMC Section 18.61.028. Given (1) the existence of these court-imposed restrictions on the Commission's discretion and (2) with respect to building materials and colors including roofing materials, lighting, and landscaping, the development is visually compatible with the character of its setting with the attachment of Special Conditions 9-13, the Commission finds that except for the height and bulk of the as-built structure, the project as conditioned is consistent with the visual compatibility requirements of LUP Policy XIV-1 and FBMC Section 18.61.028.

G. <u>Geologic Hazards</u>

1. Policies and Standards

LUP Policy X1-4 states in applicable part, "*The bluff areas annexed to the City…shall be included in the 'demonstration area,' …to demonstrate that the area is stable for development and will neither create a geological hazard nor diminish the stability of the area…The applicant shall file a report evaluating the geologic conditions of the site and the effects of development, to be prepared by a registered geologist, a professional civil engineer with expertise in soils or foundation engineering, or a certified engineering geologist.*"

Fort Bragg Municipal Code Section 18.61.026(A) states, "*Development in Fort Bragg's coastal zone shall (i) minimize risks to life and property in areas of high geologic and flood hazard, (ii) assure structural integrity and stability, (iii) neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs*."

Fort Bragg Municipal Code Section 18.61.026(B) states in applicable part, "*All development occurring in a demonstration area…must demonstrate by credible evidence that the area is stable for development and will neither create a geologic hazard nor diminish the stability of the area pursuant to the following specific standards…2. In a demonstration area, the applicant shall file a report evaluating the geologic conditions of the site and the effects of development, to be prepared by a registered geologist, a professional civil engineer with expertise in soils or foundation engineering, or a certified engineering geologist.*"

2. Discussion

The project site occupies a bluff on the north side of the Noyo River mouth. The site is separated from the actual shoreline by intervening parcels and the shoreline has an existing rock revetment to protect against bluff retreat.

Pursuant to LUP Policy XI-4 and FBMC Section 18.61.026(B), a geotechnical report dated September 4, 1992 was prepared for the 1992 hotel project proposed on the site by BACE Geotechnical Engineers. An update to the report that addressed the as-built project was also prepared by BACE. The update is dated May 27, 1998.

The geotechnical reports address the geological hazards and conclude that the potential geotechnical hazards could be mitigated through engineering and foundation/pier design measures. The 1992 report recommended that the hotel be developed with a drilled pier with connecting grade beam foundation system. The report concludes that such a foundation system, supported in the underlying firm bedrock, would provide a sound

foundation for the proposed hotel structure. The 1998 update examined the drilled piers of the as-built structure and concluded that the drilled piers "…are satisfactory for support of the planned structures." Thus, the potential geologic hazards associated with the development have been addressed through geotechnical investigations. Therefore, the Commission finds that as geotechnical reports meeting the requirements of LUP Policy X1-4 and FBMC Section 18.61.026(B)(2) have been prepared, and as the geotechnical reports have determined that the geotechnical hazards could be mitigated consistent with FBMC Section 18.61.026, the Commission finds that the development as amended is consistent with the geologic hazard policies of the certified LCP.

H. <u>Protection of Water Quality and Intertidal and Marine ESHA</u>

1. LCP Policies and Standards

LUP Policy VI-3 states: *"Special Review of runoff Prone and Runoff Sensitive Areas. The City shall require all development occurring in the runoff ("RO") special review areas on the Coastal Environment Map to undergo the special review process set out in Chapter XVII, Section E. Permitted development in these areas will be designed to protect and maintain the biological productivity and quality of coastal waters, marine resources, and riparian habitats, and to maintain optimum populations of marine organisms."*

LUP Policy VI-4 states: *"Changes in runoff Patterns. Changes in runoff patterns which result from new development, either by virtue of changes in land forms or from increases in impervious surfaces, shall not cause increases in soil erosion or stream sedimentation, nor shall they disturb environmentally sensitive riparian or wetland habitats. Such changes may be allowed only if mitigation measures sufficient to allow for the interception of any material eroded as a result of the proposed development have been provided."*

LUP Policy VI-5 / XI-2 states: *"Alteration of Landforms. The alteration of cliffs, bluff tops, faces or bases, and other natural landforms shall be minimized in the Coastal Zone and especially in runoff ("RO") special review areas. Such changes may be allowed only if mitigation measures sufficient to allow for the interception of any material eroded as a result of the proposed development have been provided."*

LUP Policy IX-1 states: *"General Policy. Environmentally sensitive habitat areas in the City's coastal zone include: Intertidal and marine areas, coastal bluffs, wetlands, and riparian habitats. Such areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas."*

LUP Section T states in applicable part:

T. *Special Review Areas*

Special review areas which have been annexed to the city are designated on the Coastal Environment Map with abbreviations (see Figure 2). Any proposed development on parcels which are located in whole or in part within the special review areas will require a report by a qualified professional as well as review of the report by the City to ensure that Coastal Act and Local Coastal Program policies concerning the sensitive resources or features are properly treated in the specific proposed development. These review requirements are in the addition to the bluff hazard review.

Special studies may be completed prior to submission of an application, as part of an environmental impact report, or as an independent document. In any case, the selection of the professional preparing the report must be with the approval of the permitting agency. A discussion of the special review areas and required reports follows.

…

3. *Runoff (RO)*

The impacts of runoff, erosion and natural landform modification shall be evaluated by a civil engineer. Where induced, runoff may have significant biological effects, a review by a biologist shall be required. The evaluation will identify mitigation measures necessary to minimize the adverse effects of runoff.

…

Fort Bragg Municipal Code Section 18.61.022 states in applicable part:

"Water and Marine Resources

B. *Runoff and Soil Erosion*

New development located in the (RO) Runoff Special Review Areas shall undergo the review process set out in Section XVII E of the Land Use plan and as subject to the following standards.

1. *Runoff shall be controlled in new developments such that biological productivity and quality of coastal waters, marine resources and riparian habitats is protected, maintained and*

where appropriate restored. New development shall not cause increases in soil erosion nor disturb wetland or riparian habitats.

2. *Where there is the threat of such harm associated with new development, report or reports shall be prepared by a soils engineer, biologist and/or other qualified professionals to assess such threats and to recommend measures to eliminate or minimize harm.*

3. *The approving authority shall require that appropriate mitigation measures be adopted prior to project approval. Mitigation measures must be sufficient to intercept any eroded material and provide for disposal.*

4. *Among specific mechanisms or measures which shall be utilized where appropriate to minimize harm are the following:*

    a. *Stripping of vegetation, grading or other soil disturbance shall be done in a manner which will minimize soil erosion.*

    b. *Whenever feasible, natural vegetation shall be retained and protected.*

    c. *The extend of the disturbed area and the duration of its exposure shall be kept within practical limits.*

    d. *Either temporary seeding, mulching or other suitable stabilization measures shall be used to protect exposed critical areas during construction or other land disturbance.*

    e. *Drainage provisions shall accommodate increased runoff resulting from modified soil and surface conditions during and after development or disturbance. Such provisions shall be in addition to all existing requirements.*

    f. *Water runoff shall be minimized and retained on site whenever possible to facilitate water recharge.*

    g. *Sediment should be contained on site when feasible.*

    h. *Diversions, sediment basins and similar required structures shall be installed prior to any onsite grading or disturbance.*

i. Any drainage systems required shall be completed and made operational at the earliest possible time during construction.

j. Interceptor ditches shall be established above all cut and fill slopes and the intercepted water conveyed to a stable channel with adequate capacity.

k. Soil erosion and sediment control measures installed under this ordinance shall be adequately maintained for one year after completion of the approved plan or until such time as soil is permanently established to the satisfaction of the municipal engineer.

l. Runoff from areas of concentrated impervious cover (e.g., roofs, driveways, roads) shall be collected and transported to natural drainage channels with sufficient capacity to accept the discharge without undue erosion.

5. New development shall minimize the alteration of cliffs, blufftops, faces or bases and other natural landforms. Such changes may be permitted by the approving authority only if mitigation measures sufficient to allow for the interception of any material eroded as a result of the proposed development have been provided."

Fort Bragg Municipal Code Section 18.61.025 states in applicable part:

"Environmentally Sensitive Habitat Areas.

A. The City shall protect all environmentally sensitive habitat areas against any significant disruption of habitat values.

1. Development in areas adjacent to environmentally sensitive areas shall be sited and designed to prevent impacts which would significantly degrade such areas.

2. Development shall be compatible with the protection and continuance of environmentally sensitive habitat areas.

B. Specific Criteria

The following standards provide guidelines for development occurring near a sensitive habitat area.

1. <u>Sensitive habitat areas</u>. Environmentally sensitive habitat areas shall include, but not be limited to, the following:

a. Intertidal and marine areas.

b. Coastal bluffs.

c. Wetlands.

d. Riparian habitats.

…"

2. **Discussion**

The above Fort Bragg LCP policies and standards address the protection of sensitive habitat and water quality from the impacts of runoff from new development. Some of these policies and standards apply only in certain runoff special review areas that have been designated on the Coastal Environment Map contained in the LUP. The subject property is not within a designated runoff special review area. However, other policies and standards from the above list apply generally throughout the City's coastal zone and do apply to the as-built project including (1) LUP Policy VI-4: Changes in Runoff Patterns, (2) LUP Policy VI-5/XI-2: Alteration of Landforms; (3) LUP Policy IX-1, a general policy on environmentally sensitive habitat areas; and (4) Fort Bragg Municipal Code Section 18.61.025: Environmentally Sensitive Habitat Areas. These particular policies and standards set forth two main requirements for new development that are applicable to the as-built project. First, changes in runoff patterns caused by new development either from alteration of landforms or increases in impervious can be allowed only if mitigation measures sufficient to allow for the interception of any material eroded as a result of the proposed development have been provided. Second, development in areas adjacent to environmentally sensitive habitat areas such as intertidal and marine areas shall be sited and designed to prevent impacts which would significantly degrade such areas and the development shall be compatible with the protection and continuance of environmentally sensitive habitat areas.

Virtually the entire .82-acre project site is covered with impervious surfaces that will prevent infiltration of stormwater runoff. As a result, the development generates a relatively large amount of runoff. Given the location of the development immediately above the Noyo River, if the runoff from the development is not collected and diverted elsewhere, the runoff would drain to the intertidal and marine habitat areas along the mouth of the Noyo River.

Pollutants generally related to urban non-point source pollution that could be generated at the site and entrained in runoff leaving the site include particulate matter, sediments, chemicals, trash, oil and grease from automobiles using the parking lot and driveways, and heavy metals associated with automobile tires and brake pads. Any runoff from the roofs of the hotel building development that is allowed to flow directly down the steep slope below the hotel to Ocean Front Park and through the park to the Noyo River would erode the soil mantle of the slope on its course to the river and picks- up additional sediment that would also ultimately finds its way to the river. Sediment and other pollutants entrained in runoff from the development that reaches the coastal waters along the mouth of the Noyo River would contribute to degradation of the quality of marine waters and associated sensitive habitat areas. Whether or not the water quality impacts of a development are individually significant, urban runoff from each development can cause serious damage to water quality of the surrounding area from a cumulative perspective.

As the original project was approved by the City and not appealed to the Commission, the Commission has not had the opportunity to review drainage plans for the development. City staff has indicated to Commission staff that all runoff from the site is collected and routed to the City-owned dredged material disposal pond to the west of the project site and does not directly flow into the Noyo River. However, Special Condition No. 2 of the original permit required the applicant to submit an engineered drainage plan for approval by the City that would include a catch basin and direct runoff away from the City-owned dredged materials disposal pond. Special Condition No. 2 has never been deleted or modified by any amendment to the permit. Special Condition No. 2 does not preclude discharges to the Noyo River and does not require any treatment of the collected runoff before discharge.

a. <u>Mitigation of Eroded Material From Runoff Pattern Changes</u>

The as-built hotel has changed runoff patterns on the subject property by greatly increasing the amount of impervious surfaces over the amount that existed when the site was only partially developed for use as a restaurant. The entire area of the site where the main hotel building is now located was undeveloped hillside without any impervious surfaces in the years when the upper portions of the site were developed with the former restaurant (Compare the Exhibit 3 site plan of the site when the site was used as a restaurant with the Exhibit 4 site plan of the as-built hotel project). To be consistent with the first requirement of the runoff policies applicable to the development, runoff from the as-built hotel project could only be allowed to discharge to the hillside above the river if mitigation measures sufficient to allow for the interception of any material eroded as a result of the discharge were provided. One way to provide such mitigation would be to prevent the runoff from being discharged to the hillside above the river in the first place and thereby avoid any runoff-caused erosion from occurring. The runoff could be collected and conveyed instead to the dredge material disposal pond. Collecting the runoff into a centralized drainage system would also provide opportunities to treat the

runoff to remove pollutants. Therefore, the Commission attaches Special Condition No. 14 which requires the applicants to submit for the review and approval of the Executive Director a revised runoff control plan that among other measures, provides that all runoff from all of the impervious surfaces of the development be collected and conveyed into catch basins on the site and then conveyed to the dredge spoils disposal pond.

In consultations with City staff, Commission staff understands that City staff is aware of the use of the dredged materials disposal pond for discharge of runoff from the development and that they do not object to such use of the City-owned facility for this purpose. However, the coastal development permit application does not contain a copy of an easement, encroachment permit, or other proof of legal interest that demonstrates the applicants have the necessary property interests to be able to use the dredged materials disposal pond. Therefore, to ensure that the drainage system can be used as proposed and conditioned, Special Condition No. 14 requires that as part of the revised runoff control plan that must be submitted prior to issuance of the coastal development permit, the applicants must submit evidence that the applicants have secured all necessary property interests to modify and use the runoff control system.

As discussed previously, Special Condition No. 2 of City of Fort Bragg CDP No. 10-92 granted in 1992 for the originally approved project prohibits the discharge of runoff into the dredged materials disposal pond. As this condition conflicts with the terms of Special Condition No. 14, which requires discharge to the pond, Special Condition No. 2 is deleted. As the City staff indicates that they no longer object to use of the pond for runoff discharge and as the provisions of Special Condition No. 15 require the applicant to submit evidence that the applicants have secured all necessary property interests from the City to use the dredge material disposal pond, the provision of Special Condition No. 2 preventing use of the pond is no longer needed.

As conditioned, the Commission finds that the as-built development is consistent with the requirements of LUP Policy VI-4 that changes in runoff patterns caused by new development from increases in impervious surfaces only be allowed if mitigation measures sufficient to allow for the interception of any material eroded as a result of the proposed development have been provided

b. <u>Protection of Environmentally Sensitive Habitat Areas</u>

Due to the project's location above the mouth of the Noyo River, the development has the potential to adversely impact water quality within the marine and intertidal environment. LUP Policy IX-1 and FBMC Section 18.61.025 designate "intertidal and marine areas" such as the mouth of the Noyo River as environmentally sensitive habitat. Therefore, to be consistent with the second requirement of the runoff and ESHA policies applicable to the development, the adverse water quality impacts of the development must be controlled so that the project's impacts on water quality do not degrade the intertidal and marine ESHA or be incompatible with the protection or continuance of the ESHA.

Use of the dredged materials disposal pond provides a unique opportunity for at least partially treating the runoff to remove pollutants. As noted above, most of the water in the pond is allowed to evaporate with entrained sediment and other particulates settling out to the pond bottom. The sediment and other pollutants that settle to the bottom would eventually be removed from the pond when the accumulated dredged material has dried out and is excavated and hauled away for reuse or disposal to make room for additional material from future dredging projects. However, during dredge disposal operations when dredged material is placed in the disposal pond, excess water from the dredged material is discharged from an outlet on the west side of the pond to the beach adjacent to the mouth of the river. Water from this discharge from the pond can enter the marine environment. Thus, any pollutants entrained in the runoff from the hotel that is discharged to the pond can be entrained again in the excess water from the dredged dispersal operation and discharged to the marine environment. Hydrocarbons and fine particulate matters to which other pollutants can absorb are of particular concern in this respect.

Therefore, some level of treatment of the discharge is necessary to ensure that pollutants in the runoff water that is conveyed to the dredged material disposal pond do not eventually become discharged from the pond through the pond outlet and enter the marine and intertidal waters and habitat along the mouth of the Noyo River. Therefore Special Condition No 14 requires that the revised runoff control plan required to be submitted for the review and approval of the Executive Director must contain provisions for installing insert filters into the catch basins that will receive the runoff from the development. These insert filters are a recognized Best Management Practice that are effective at removing sediments, metals and oil from the runoff (see Best Management Practice TC6-*Media Filtration* in the California Storm Water Best Management Practices Industrial Handbook, developed by Camp, Dresser & McKee, *et al.* for the Storm Water Quality Task). The filters can be fitted to existing catch basins. Therefore, retrofitting the existing drainage system to accommodate the filters would not require major structural modifications to the hotel or hotel parking lot. Insert filters require cleaning semiannually to prevent clogging of the filters. Therefore, Special Condition No. 14 also requires that the runoff control plan include provisions for maintaining the filter in accordance with recognized best management practices. This provision will ensure that the filters remain effective at removing pollutants.

Therefore, the Commission finds that as conditioned, because the development as amended will treat project runoff to remove pollutants by filtering collected runoff within the catch basins and allowing any remaining entrained sediments to settle out of the runoff after discharge to the dredged material disposal pond, the runoff from the development as amended will not adversely affect the water quality of the intertidal and marine receiving waters and will thereby prevent impacts to the intertidal and marine environmentally sensitive habitat areas that would significantly degrade the habitat and will ensure the protection and continuance of the habitat consistent with the requirements of LUP IX-1 and Fort Bragg Municipal Code Section 18.61.025.

J. <u>Parking</u>

1. LCP Policies and Standards

Fort Bragg Municipal Code Section 18.71.040(E)-Parking and Loading Requirements, states in applicable part: "*Motels, Inns, Bed & Breakfast Operations – One space for each unit or bedroom, including manager's unit.*"

2. Discussion

The as-built hotel project includes 39 rooms and one manager's unit. Pursuant to the requirements of FBMC Section 18.71.040(E) that one off-street parking space must be provided for each room and the manager's unit, a total of 40 off-street parking spaces must be provided. The project provides the requisite total of 40 off-street parking spaces See the site plan in Exhibit 4. Therefore, the Commission finds that the development as amended is consistent with the parking requirements of FBMC Section 18.71.040(E).

The Commission notes that during the City's review of the application, City staff reports noted that in October 2000, the City amended it's parking standards in a manner that established a requirement of one parking pace for each hotel unit, plus two spaces for the manager or owner. Under this requirement, the project would need to provide 41 spaces rather than the 40 provided. However, an amendment to the LCP parking standards has not yet been submitted for certification to the Commission. Commission staff understands that this amendment may be included in the major LCP update amendment that the City indicates they will submit later this year. As the amendment has not yet been certified, the proposed change to the parking standard is not yet effective and not part of the standard of review for the Commission's consideration of the permit amendment application.

K <u>Traffic Impacts on Highway One</u>

1. LCP Policies and Standards

LUP Policy XV-13 states in applicable part, "*The City shall work with Caltrans to develop improved access to Highway 1…*"

Fort Bragg Municipal Code Section 18.61.040(G) states in applicable part, "*Design of projects shall be executed in such a fashion as to limit access points to highways and to provide easy and safe ingress and egress.*"

2. **Discussion**

The LCP provides that new projects shall be designed to limit access points to highways, including Highway One. The as-built project has only one driveway serving the site. The driveway permits right-turn only ingress and egress onto Highway One. The 1992 hotel project included two separate driveways. Therefore, the as-built project reduces and minimizes the number of access points to Highway One.

The traffic report prepared for the 1992 hotel project indicated that the traffic generated by the 40-room hotel would be approximately 34 peak hour trips and would not significantly impact traffic operations on Highway One. The report noted that overall, the 1992 hotel project would generate approximately half of the traffic associated with the previous restaurant use of the site. The as-built hotel project, based on its similar size, room types, and amenities would generate similar traffic to the 1992 project. Therefore, the as-built project will also not have a significant adverse impact on Highway One traffic.

Therefore, the Commission finds that as ingress and egress to Highway from the development has been limited to one driveway and the development as amended will not have a significant impact on traffic operations on Highway One, the as-built project is consistent with the requirements of LUP Policy XV-13 and FBMC Section 18.61.040(G) that new development be designed to limit the number of access points on highways and provide easy and safe egress and ingress to highways.

L. <u>Public Access</u>

1. Policies and Standards

a. <u>Coastal Act Access Policies</u>

Projects located between the first public road and the sea and within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the LCP. Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Section 30210 states that maximum access and recreational opportunities shall be provided 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 states that 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 states that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is

inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected.

b. LCP Policies and Standards

LUP Policy III-1 states in applicable part:

> Access Standards and Review. *Shoreline access shall be required in the City's coastal zone, as specified in the following policies. The definitions and standards in Section B of this Chapter shall guide the development of public access. Only one vertical accessway need be provided in any one designated location as shown on the Coastal Environment Map*.

LUP Policy III-11 states in applicable part:

> Vertical Access from North Harbor Drive. *One vertical access form the bottom of North Harbor Drive to the proposed lateral access along the north bank of the Noyo River shall be required as a condition of permit approval*.

LUP Policy III-12 states in applicable part:

> Access Along the North Bank of the Noyo. *Lateral access along the entire length of the City's frontage on the north bank of the Noyo River shall be required as a condition of permit approval except where physical conditions make access unfeasible due to topography or safety considerations*.

LUP Policy III-15 states in applicable part:

> *The City will protect the public's constitutionally guaranteed rights of access to and along the shoreline by ensuring that new development will not interfere with the public's right of access where acquired through use*.

LUP Policy III-18 states in applicable part:

> *The City shall work with the California Coastal Conservancy to assure that the proposed access improvements and public facilities are provided on the north bank of the Noyo River. Development other than improving access to the coast and providing visitor serving recreational facilities shall be prohibited within the newly annexed area along the northern bank of the Noyo River labeled "Open Space*."
>
> *A roadway shall be acquired to provide access to the proposed Noyo Point recreational area. This access shall be connected to a westerly extension of North harbor Dr. and provide vehicle access to the Noyo Beach area (Figure 1).*

Fort Bragg Municipal Code Section 18.61.021 states in applicable parts:

Public Shoreline Access

A. The City shall take all necessary steps to protect and defend the public's constitutionally guaranteed rights of access to the shoreline. At a minimum city action shall include:

1. Implementation of land use policies calling for further action, initiation of new programs or acquisition of land or easements consistent with availability of staff and budgeted fund.

2. Requiring the provision of access as a permit condition in new developments as set forth in the Land Use Plan access policies, 2 through 11 and 13, as well as policy 12 where the City has jurisdiction and where it is shown on the Land Use Plan.

3. Initiating legal action to acquire easements to beaches and access corridors for which prescriptive rights may exist consistent with the availability of staff and funds.

4. Accepting offers of dedication which will increase opportunities for public access and recreation consistent with the City's ability to assume facility operation and maintenance costs based on availability of budgeted funds. Should local entities, park and recreation district, local government or other local groups, decline to accept management responsibility, state and federal government agencies and private nonprofit interest groups shall be offered management responsibilities no later than six months after efforts have been made to obtain local management of a public access route. Any entity which proposes to accept responsibility for management of a public access route must demonstrate ability to pen and operate facilities in an expeditious manner.

5. Actively seek other private or public agencies to accept offers of dedications, to assume liability and maintenance responsibility and initiate legal action where appropriate to enforce public rights to beach access.

. . .

2. Discussion

In its application of these policies, the local government and the Commission are limited by the need to show that any denial of a permit application based on this section, or any decision to grant a permit subject to special conditions requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

Although the subject property is located along a coastal bluff, the property is separated from the shoreline of the Noyo River and the river mouth by intervening parcels, including City-owned property containing the harbor dredge material disposal pond. The entire shoreline below the subject parcel extending from the Noyo Bridge to areas well to the west is now part of Ocean Front Park, a public park operated by the Noyo Harbor District that was acquired since certification of the Fort Bragg LCP. Ocean Front Park provides access to the river shoreline as well as to a sandy beach west of the dredge material disposal pond. Vehicular access to the park is provided by North Harbor Drive, the main road into the Noyo Harbor area. Pedestrian access to the park from the bluffs is also provided by an established public access trail on the opposite side of Main Street from the North Cliff Hotel adjacent to the Harbor Lite Lodge. This trail is temporarily closed for safety reasons during construction of the new Noyo River Bridge, but pursuant to conditions of the coastal development permits granted for the bridge reconstruction project, must be reopened upon completion of the bridge project. Therefore, lateral access along the shoreline below the subject parcel and vertical access to the shoreline from the bluff area already exists in close proximity to the subject parcel.

No public access exists currently on the subject parcel itself. No vertical public access trail through the parcel to the shoreline or bluff top viewing area was required by the City in the permit granted in 1992 for the original hotel project and there is no evidence of any possible public prescriptive rights of public access on the site.

No public access is proposed for the project. However, public access to the shoreline already exists in the nearby vicinity that could accommodate the additional demand on access generated by the hotel guests. In addition, the proposed project will generate no greater demand for public access than the original hotel project approved in 1992, as the current project would include one less hotel room than the 1992 project. Furthermore, the proposed project will not interfere with existing access or possible public prescriptive rights of public access. Thus, the project would have no significant adverse impacts on existing or potential public access. Therefore, the Commission finds that the proposed project, which does not include provision of additional new public access, is consistent with the public access policies of the Coastal Act and the City's LCP.

M. <u>Alleged Violation</u>

As noted above, the as-built hotel differs significantly from the 1992 hotel project approved by the City. The changes to the project were made without the benefit of first obtaining either an amendment to the City approved 1992 coastal development permit or any other coastal development permit for the changes. In addition, the as-built hotel

project also differed from the City's 1996 Scenic Corridor Review (SCR) approval in that the applicants failed to obtain either a coastal development permit amendment or a SCR amendment for further changes made to the roof color, siding color, and the elimination of a previously required rock fascia that was previously required to be installed along a portion of the base of the hotel structure

The Commission has attached several conditions to mitigate the visual impact of the hotel and better blend the hotel into its surroundings and mitigate water quality impacts. The conditions would require: (a) replacement of the existing blue metal roofs with weathered copper color metal roofs (Special Condition No. 9(A)(1)(a)); (b) repainting the exterior of the hotel, lobby building, and other structures an olive green color for the body of the hotel and other structures and a similar or darker color for the trim (Special Condition No. 9(A)(1)(b)); (c) repainting or replacement of the white balcony railings with railings of the same color as the selected building trim color (Special Condition No. 9(A)(1)(d)); (d) installation of a stone façade at the base of the hotel to blend the structure into its surroundings (Special Condition No. 9(A)(1)(e)); (e) relocation of the trash enclosure and its architectural screen (Special Condition No. 11); (f) planting additional landscaping to soften the appearance of the structure (Special Condition No. 12); (g) modification of the exterior lighting to reduce glare and intensity (Special Condition No. 13); and (h) the preparation, approval, and implementation of a runoff control plan to keep polluted runoff from the development from adversely affecting the Noyo River estuary (Special Condition No. 14). Thus, as conditioned, the Commission finds that the project is consistent with the resource policies of the certified City of Fort Bragg local coastal program and the public access policies of the Coastal Act.

Consideration of this application by the Commission has been based solely upon the policies of the certified City of Fort Bragg local coastal program and the public access policies of Chapter 3 of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to the cited alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

N. <u>California Environmental Quality Act (CEQA)</u>.

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as modified by any conditions of approval, 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 Commission incorporates its findings on conformity with LCP policies at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were

received prior to preparation of the staff report. As discussed herein in the findings addressing the consistency of the proposed project with the certified LCP, except for the limitations placed on the Commission's review of the project by the Writ Order, the proposed project has been conditioned to be consistent with the City of Fort Bragg LCP and the access and recreation policies of the Coastal Act. Mitigation measures which will minimize all adverse environmental impacts other than the visual impacts caused by the project's height and bulk have been made requirements of project approval. As conditioned and limited by the Writ Order, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

V. EXHIBITS:

1. Regional Location Map
2. Vicinity Map
3. Pre-1992 Site Conditions
4. As-Built (Proposed) Plans
5. 1992 Approved Plans
6. Notice of Final Local Action
7. Commissioners Appeal
8. Sierra Club, Friends of Fort Bragg Appeal
9. Photomontage of Hotel From Noyo Bluff
10. Photomontage of Hotel From Ocean Front Park
11. Photomontage of Hotel From Highway 1 to North
12. Photomontage of Hotel from Highway 1 to South
13. Special Conditions of Original Permit No. 10-92

ATTACHMENT A:

STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director of the Commission.

4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.