CALIFORNIA COASTAL COMMISSION
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Tue 22b/22c

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STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Oceanside

DECISION: Approval with Conditions

APPEAL NO.: A-6-OCN-02-121/6-03-23

APPLICANT: CH Oceanside LLC

PROJECT LOCATION: South side of San Luis Rey River, west of Coast Highway and east of Pacific Street, Oceanside, San Diego County. APN: 143-040-21, 143-040-23, 143-040-43 and 143-010-23

PROJECT DESCRIPTION: Construction of 96-unit condominium development in two 65 ft. high structures, division of 7.5-acre site (3 lots) into 5 lots and a remainder "Not a Part" lot, parking, landscaping, drainage improvements and on-site mitigation.

APPELLANTS: Nancy Craig, Mira Mar Community and Coastal Commissioners Sara Wan and Shirley Dettloff

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STAFF NOTES:

In August, 2002 Commissioners Dettloff and Wan and Nancy Craig and Mira Mar Community filed an appeal of the City's approval of this residential development, citing that the project was inconsistent with the certified LCP. The applicant waived its right to a hearing within 49 days of the appeal. In November 2002, the Commission found the project raised a substantial issue with respect to the grounds on which the appeal was filed.

In addition to the subject appeal, a related application, CDP #6-03-23 is also before the Commission at its October 2003 meeting. This is because a portion of the project is located within the Commission's original jurisdiction. The de novo staff report on the appeal has been combined with the staff report for that portion of the proposed development that extends into the Commission's original jurisdiction area.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission approve the combined de novo/coastal development permit applications with several special conditions. The proposal raises concerns related to protection of visual resources within a highly scenic area, protection of environmentally sensitive habitat areas and public access. Relative to protection of visual resources, the proposed development will not result in direct public view blockage. However, the development involves the construction of two 65-foot high buildings along the shore of the San Luis Rey River. The City's LCP provides that new development may be allowed such height if certain development standards and design considerations are met. As conditioned, staff has determined that the project complies with this requirement and other LCP design requirements that allow the project to achieve the height. Further protection of visual resources and public views associated with the proposed development will be addressed through landscaping and coloring requirements. Public access is also an issue as there is visual evidence that the public has historically used the project site to gain access to the river, beach and the recently completed public bike path that runs through the site. In response, the applicant has proposed to allow and construct a vertical accessway through the site from Pacific Coast Highway to the existing bike path.

While the proposed development is located adjacent to the San Luis Rey River, no impacts to wetland resources are proposed. However, the project will impact approximately 0.86 acres of disturbed coastal sage scrub habitat. The Commission's staff biologist has reviewed the project and found that the 0.86 acres of disturbed coastal sage scrub habitat proposed for impact is not an Environmentally Sensitive Habitat Area (ESHA).

Other conditions include assumption of risk, submittal of access and staging plans and other conditions typical of the Commission's review in sensitive areas. With the attached conditions, the project can be found consistent with the certified LCP and Chapter 3 policies of the Coastal Act.

SUBSTANTIVE FILE DOCUMENTS: Certified City of Oceanside Local Coastal Program (LCP), Notice of Final Action dated August 13, 2002; City of Oceanside Resolution No.02-R320-3, Final Supplemental Environmental Impact Report for the Proposed Renaissance Terrace Condominiums (March 7, 2002), Technical Appendices to the Draft Supplemental Environmental Impact Report for the Proposed Renaissance Terrace Condominiums (November 15, 2001); Tentative Map, Development Plan, Regular Coastal Permit, Conditional Use Permit, Variation, Biological Resources Report by Dudek & Associates, dated November 14, 2000; Water Resources Technical Report prepared by Rick Engineering, dated May 15, 2001; Letter of Map Amendment approved by FEMA November 29, 2000; Sewer Capacity and Impact Analysis by Dexter Wilson Engineering, dated June 7, 2001; Preliminary Geotechnical Report by Leighton and Associates,

dated March 23, 2001, Conceptual Mitigation/Revegetation and Monitoring Plan by Dudek & Associates, dated October 2002

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

A. **MOTION I:** ***I move that the Commission approve Coastal Development Permit No. 6-03-23 for the development proposed by the applicant.***

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

B. MOTION II: ***I move that the Commission approve Coastal Development Permit No. A-6-OCN-02-121 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 THE 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 LCP and the public access and recreation policies of the Coastal Act. Approval of the permit complies with the

California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall comply with **either** of the following:

A. Transfer of Title. The applicant shall submit written evidence that fee title of the 3.8-acre parcel located along the river as shown on Exhibit #7 has been conveyed pursuant to a settlement agreement between the property owner and the State of California. The land shall then be held in trust by the City of Oceanside. The deed shall be in a form acceptable to the Executive Director and shall limit uses in the area to drainage, public access and habitat enhancement improvements.

OR

B. Offer to Dedicate Open Space Easement. Prior to the issuance of a coastal development permit, the applicant shall record an irrevocable offer to dedicate to a public agency, or to a private association acceptable to the Executive Director, an open space easement over the area shown on the attached Exhibit #7and generally described as the 3.8-acre parcel located along the San Luis Rey River. The document shall include legal descriptions of both the applicant's entire parcel(s) and the easement area. Said open space easement shall prohibit any development, including but not limited to, alteration of landforms, placement or removal of vegetation, or erection of structures of any type, unless approved by the California Coastal Commission or its successor in interest.

The offer shall be irrevocable for a period of 21 years, shall run in favor of the People of the State of California, binding successors and assigns of the applicant and/or landowners, and shall be recorded prior to all other liens and encumbrances, except tax liens. The offer to dedicate shall be in a form and content acceptable to the Executive Director.

2. Open Space Restriction.

A. No development, as defined in section 30106 of the Coastal Act shall occur over

the area generally described as portions of Lots 2 and 3 and the sedimentation basin in Lot 6 that propose habitat creation/enhancement as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for:

(1) Removal of existing invasive and exotic vegetation and planting of native coastal sage scrub vegetation.

(2) Construction and maintenance of drainage improvements, public access path and habitat enhancement improvements.

B. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit # 10 attached to this staff report.

3. Conformance with Site Mitigation Plan /Final Coastal Sage Scrub Mitigation Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, a final Mitigation/Revegetation and Monitoring Plan" developed in consultation with the California Department of Fish & Game. The plan shall first be approved by the City of Oceanside and shall include a final site plan of the coastal sage scrub impact and mitigation areas that substantially conforms with the "Conceptual Mitigation/Revegetation and Monitoring Plan" by Dudek & Associates, dated October 2002. The plan shall include a clear statement of the goals and objectives of the project and performance standards related to those goals. The plan shall include the following requirements:

a. A qualified restoration ecologist shall be identified and made responsible for project implementation, monitoring, and remediation activities.

b. Within 30 days of completion of initial restoration work, submittal of "as built" plans demonstrating that the mitigation site has been established in accordance with the approved design and construction methods.

c. A five-year monitoring period.

d. Performance standards that include minimum requirements for overall vegetative cover and the diversity of dominant species in the shrub and herbaceous layers based on appropriate literature citations or sampling of high quality reference sites. Cover by exotic species shall not be greater than 10 percent.

e. The monitoring plan shall insure that sampling to estimate vegetative cover is done with sufficient replication to provide an estimate of the mean with 90% confidence limits no greater than 10% of the mean or an absolute confidence interval based on sampling high-quality reference sites.

f. Final performance monitoring shall take place after 3 years with no remediation or maintenance activities other than weeding.

g. If success criteria are not met, an amendment to this coastal development permit shall be submitted.

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

4. Public Access Restriction.

A. A bike/pedestrian access path shall be provided from Highway 101 to the existing bike path. Such access shall be (1) open from sunrise to 10:00 p.m. daily; (2) not restricted in any way by gates; (3) open and available for public use prior to occupancy of any residential units; (4) a five-foot wide (or wider if necessary to meet Americans with Disabilities Act [ADA] and/or California Code of Regulations Title 24 standards) improved path paved or covered with decomposed granite or other material acceptable to the Executive Director; and (5) located as shown on attached Exhibit #8 as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit.

B. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit # 8 attached to this staff report.

5. Public Access Signage. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a plan for signage to be installed on the site at Coast Highway and at the bike path. The plan shall require the signage (1) to be clearly visible to the public along the Coast Highway and on the bike path, (2) to notify the public of access opportunities to and from the existing pedestrian/bike path, (3) to specify that the path connecting the Coast Highway to the existing bike path is open to the public from sunrise to 10 p.m., and (4) to be constructed prior to occupancy permits for the approved units.

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

6. Staging Areas/Access Corridors. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, detailed plans incorporated into the construction bid documents for the location of access corridors to the construction sites and staging areas. Access corridors and staging areas shall be located in a manner that has the least impact on environmentally sensitive areas. Staging of equipment or supplies in environmentally sensitive areas is prohibited. If more than one staging site is utilized, the plans shall indicate which sites are connected with which portions of the overall development, and each individual site shall be removed and/or restored immediately following completion of its portion of the overall development. No overnight storage of equipment or materials shall occur within 20 feet of the San Luis Rey River. During the construction stages of the project, the permittee shall not store any construction materials or waste where it will be or could potentially be subject to flooding.

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

7. Grading/Erosion Control/Monitoring. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final grading, erosion control and monitoring plans and a grading schedule that are in substantial conformance with the plans submitted with this application, dated August 22, 2002 by Tait Consulting. Grading within the rainy season is prohibited. However, if breeding restrictions imposed by the resource agencies to protect endangered or migrating avians require grading within the rainy season (October 1- April 1), the grading plans shall indicate that all permanent and temporary erosion control measures shall be developed and installed prior to or concurrent with any on-site grading activities and include, at a minimum, the following measures:

a. Placement of a silt fence and fiber rolls around the project anywhere there is the potential for runoff. Check dams, sand bags, straw bales and gravel bags shall be installed as required in the City's grading ordinance. Hydroseeding, energy dissipation and a stabilized construction entrance shall be implemented as required by the City. All disturbed areas shall be revegetated after grading. Small incremental amounts of daily grading are required; the site shall be secured daily

after grading with geotextiles, mats and fiber rolls. Concrete, solid waste, sanitary waste and hazardous waste management BMPs shall be used.

b. Demonstration that all on-site temporary and permanent runoff and erosion control devices are installed and the City of Oceanside Engineer has determined that all measures are in place to minimize soil loss from the construction site.

c. The monitoring program shall include, at a minimum, monthly reports beginning one month from the date of Commission action on this permit approval, continuing to April 1. The reports shall be completed by a licensed engineer and shall describe the status of grading operations and the condition of erosion control devices, including temporary and permanent desilting basins. Any potential modifications to the approved grading schedule shall be indicated. Maintenance of temporary erosion control measures is the responsibility of the applicant, including replacement of any devices altered or dislodged by storms. Desilting basin maintenance, including removal of accumulated silt, shall occur prior to the onset of the rainy season and on an as-needed basis throughout the winter.

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

8. Exterior Building Materials. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the executive director, a color board or other indication of the exterior building materials and color scheme to be utilized in the construction of the proposed development. The color of the structures permitted hereby shall be restricted to colors compatible with the surrounding natural environment (earth tones) including deep shades of brown, gray and green, with no white, light or bright colors except as minor accent features. All windows shall be comprised of non-glare glass.

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

9. Revised Landscaping Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and written approval of the Executive Director, a final landscaping plan approved by the City of Oceanside. Said plan shall be in substantial conformance with the draft landscape plan submitted August 22, 2002 by Lightfoot Planning Group but shall be revised to include the following:

a. Special emphasis shall be placed on the treatment of all portions of the site visible from public roads, beaches, the San Luis Rey River and bike/pedestrian trails. Therefore, with the exception of the side of the project facing the mobile home park, the perimeter of the site shall be planted with screening trees and shrubs. A plan showing the type, size, extent and location of all trees and shrubs on the site shall be submitted. Said treatment shall include adequate plantings to break up large expanses of wall or roof. To screen the project from the above areas, no more than 15 linear feet of separation is permitted between trees surrounding the site. Said trees shall be tall and wide enough (24-inch box minimum) to adequately screen the project from public areas and not include palms.

b. Drought tolerant and native plant materials are required.

c. A planting schedule that indicates that the planting plan shall be implemented within 60 days of completion residential construction.

d. A written commitment by the applicant that all required plantings shall be maintained in good growing conditions, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape screening requirements.

e. Five years from the date of issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

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

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

10. Water Quality. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, a final water quality Best Management Practices (BMPs) program approved by the City of Oceanside. Said program shall comply with the provisions of the proposed Water Resources Technical Report ("water quality plan") prepared by Rick Engineering, dated May 15, 2001, and shall include the following:

(a) Selected BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter stormwater from each runoff event, up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor, for flow-based BMPs.

(b) Runoff shall be conveyed off site in a non-erosive manner. Energy dissipating measures shall be installed at the terminus of all outflow drains.

(c) Drainage from all roofs, parking areas, driveway area, and other impervious surfaces on the building pad shall be directed through vegetative or other media filter devices effective at removing and/or mitigating contaminants such as petroleum hydrocarbons, heavy metals, and other particulates. A Vortechnics storm water treatment filtering unit shall be utilized instead of the CDS unit approved by the City of Oceanside.

(d) Opportunities for directing runoff into pervious areas on-site for infiltration and/or percolation of rainfall through grassy swales or vegetative filter strips, shall be maximized where geotechnical concerns would not otherwise prohibit such use.

(e) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. The plan shall include an identification of the party or entity(ies) responsible for maintaining the various drainage systems over its lifetime and shall include written acceptance by the responsible entity(ies). Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to and during each rainy season, including conducting an annual inspection no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

In addition, the following BMPs shall be implemented:

(1) No construction materials, equipment, debris, oil, liquid chemicals, or waste shall be placed or stored where it may be subject to stormwater, or where it may contribute to or come into contact with nuisance flow;
(2) Any and all debris resulting from construction activities shall be removed from the site within 1 day of completion of construction;
(3) No machinery or construction materials not essential for project improvements shall be allowed at any time in any intertidal zone or in the river;
(4) Sand from the river shall not be used for construction material;
(5) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
(6) A protective barrier shall be utilized to prevent concrete and other large debris from falling into the river;
(7) All debris and trash shall be deposited of in the proper trash and recycling receptacles at the end of each construction day;
(8) The discharge of any hazardous materials into the river or any receiving waters shall be prohibited.
    - Equipment and Materials shall be confined to the proposed access and staging areas
    - Hazardous materials including small amounts of fuel to refuel hand-held equipment shall be stored within secondary containment.
    - No fuel containers or hazardous materials will be placed or stored in the river/wetland areas.
    - Any fuel containers, repair materials and/or stockpiled material that are left on site overnight will be secured in secondary containment and covered with plastic at the end of each work day.
    - All trash and debris will be contained, removed from the site, and properly disposed at the end of each work day.
    - Heavy equipment and smaller portable equipment (generators, pumps, etc.) containing fuel will be staged within secondary containment in the proposed access and staging areas. Secondary containment can include: sandbag dike with impervious liner, trough, or metal/plastic tray.
    - Equipment shall be well maintained.
    - Equipment and containers shall be inspected daily for leaks.
    - Off-site maintenance and repair shops shall be used as much as possible.
    - If maintenance must occur on-site, fuel/oil pans or appropriate containment shall be used to capture spills/leaks.
    - off-site fueling stations shall be used as much as possible.
    - Use drain pan, drop cloth, absorbent pads, or other secondary containment underneath nozzle to catch spills/leaks and drips while fueling.
    - The transfer of fuel into portable equipment shall be performed using a funnel and/or hand pump, and a spill pad shall be used to absorb any incidental spills/drips.

- Refueling of portable equipment shall only be done within the proposed staging area over secondary equipment. No refueling of portable equipment shall be done in wetland/river areas.
- The applicant will monitor on-going weather reports to determine if BMPs will be required in advance of anticipated rain events.
- When the probability of a rain event more than .25 inches during the preceding 24 hours is 50 percent or greater, the following steps shall be implemented:
- The work area will be inspected to ensure that all areas of active land disturbance are identified and all erosion controls measures are in place.
- Where necessary, additional BMPs associated with stored materials, fuels, and potential spill/contamination sources are deployed (including additional containment, covers, removal from site).
- Should the rain event persist for a period greater than 24 hours, all erosion control measures and BMPs shall be in place and maintained in a working condition.
- At the end of each storm event, all erosion control measures and BMPs for performance and any additional maintenance shall be inspected.
- Any water collected within secondary containment structures/devices shall be pumped out into containers, removed from the site, and properly disposed. No dewatering shall occur into the river or its wetlands.
- A spill from containers in the access/staging area shall be contained within a spill pallet for small container handling, or secondary containment.
- A spill response kit will be located on-site for easy access. The spill response kit will include plastic sheeting, tarps, absorbent pads, kitty litter, labeled buckets with lids to contain contaminated material, and shovels.
- Oil booms and absorbent pads will be located on-site for easy access to deploy in the river and its wetland areas if necessary.
- Spills Onto the Ground (Soil)
  - Clean up the spill immediately.
  - Apply absorbent material, berm, divert or contain the spill.
  - Collect spilled material and place into labeled drums.
  - Collect absorbent and other material used to clean up the spill, label the container, and properly dispose of waste at an approved disposal facility.
  - Report spill to the appropriate parties.
- Decontaminate the affected area, equipment and surfaces that have contacted the spilled material.
- Spills Into the River/Wetland
  - Stop the source of the spill immediately.
  - Shut down all equipment and ignition sources in the area.
  - Deploy boom and absorbent pads to contain the spill
  - Collect absorbent and other material used to clean up the spill
  - Label the container, and properly dispose of waste at an approved disposal facility.

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

11. Other Permits. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicant shall submit copies of all other required local, state or federal discretionary permits for the development herein approved to the Executive Director. The applicant shall inform the Executive Director of any changes to the project or mitigation measures required by other public agencies. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

12. Revised Final Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, in consultation with the California Department of Fish and Game, revised plans for the proposed project that have been approved by the City of Oceanside. Said final plans shall be in substantial conformance with the submitted plans dated August 22, 2002 by Tait Consulting, but shall be revised as follows:

a. Pedestrian and bicyclist access shall be provided through the project site from Coast Highway to the existing public/pedestrian trail (Exhibit 8).

b. The State Lands Commission Title Settlement Agreement Line shall be plotted.

c. Building height - No portion of any building shall exceed 65 ft. in height

d. Outdoor lights shall be directed away and shielded from the San Luis Rey River.

e. Incorporation of the following building design changes to mitigate the project's visual impact at its northern elevation. The upper levels (plaza through 4th level) shall be set back a minimum of five (5) feet further south than the two garage levels below such that the upper levels "step back" from the lower levels. The roofline shall include varied-height and curved parapets utilizing proposed vertical and horizontal planes with offsets as shown in Exhibit 10b. A five-foot planter and walkway shall be added at the ground level to further minimize the visual impact of the structure from the bike path.

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

13. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

14. Other Special Conditions of the Oceanside Regular Coastal Permit. Except as provided by this coastal development permit, this permit has no effect on conditions imposed by the City of Oceanside pursuant to an authority other than the Coastal Act.

15. Disposal of Graded Spoils. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall identify the location for the disposal of graded spoils. If the site is located within the coastal zone, a separate coastal development permit or permit amendment shall first be obtained from the California Coastal Commission or its successors in interest.

16. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval, documentation demonstrating that the applicant has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant's entire parcel or parcels. 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.

V. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description/Permit History. The proposed project is located on 7.74 acres on the south side of the San Luis Rey River, west of Coast Highway and east of Pacific Street in Oceanside (Ref. Exhibit #1). With the exception of a bike trail (CDP #6-99-32, City of Oceanside), the project site is currently undeveloped, bisected by

several unimproved dirt trails, and located in an area with a variety of habitat and vegetation types including coastal sage scrub, eucalyptus woodland, freshwater marsh, southern willow scrub, wetland, and open water.

Proposed is the subdivision of three (3) lots into five (5) lots (3 for condo use and 2 for open space) and creation of a 3.8-acre parcel located near and in the river. The river parcel is also the site where the majority of the mitigation is proposed for project impacts to disturbed Coastal Sage Scrub (d-CSS) (Ref. Exhibit #2).

The project also includes the construction of two six-story, 65-foot high buildings, including a two-story underground parking garage (215 parking spaces) and 96 living units ranging up to 1,651 square feet in size. A common recreation area including a pool, spa, barbeque and meeting area is proposed between the two buildings. Other development includes an access drive, landscaping, detention basin, drainage outlet pipe and dissipater structure that would discharge into the San Luis Rey River. The grading quantities are approximately 30,000 cubic yards of cut, and 1,000 cubic yards of fill, for a net export of approximately 29,000 cubic yards of material outside the coastal zone. Special Condition #15 requires the export site to be identified.

Surrounding features include the San Luis Rey River to the north, the 173-unit Mira Mar Community mobile home park to the south, the NCTD railroad to the west and the Guesthouse Inn, retail buildings, vacant lands and Coast Highway to the east.

The main access to the site is from Coast Highway via a private street. Additionally, an emergency-only access is proposed on the western side of the project site near the railroad tracks.

In CDP #6-99-32 (City of Oceanside), the Commission approved the construction of an 8-foot wide, approximately 1,600-foot long paved segment of bikeway along the southern side of the San Luis Rey River. A portion of the completed bike path is located within the project site between the proposed development and the San Luis Rey River.

The applicant and the State Lands Commission have completed a state trust land delineation on the property. The boundary line agreement between the State Lands Commission and the applicant establishes the public trust land boundary north of the development area and detention basin (ref. Exhibit #7). The City of Oceanside will hold this land as trustee for the State.

Portions of the development are in the Commission's original jurisdiction and as such require a state coastal development permit. They are (1) the subdivision itself, which includes the resubdivision of the property, including the 3.8-acre parcel along the river and (2) physical improvements, including drainage facilities and mitigation for project impacts to Coastal Sage Scrub (CSS)(Exhibit 3).

The remainder of the development is in the Commission's appeal jurisdiction. As noted, the Commission previously found the project raised a "substantial issue" with regard to

the project's consistency with the certified LCP. Now, on de novo review, the entire development authorized by the appealed local CDP is subject to Commission review.

The standard of review for the de novo review is consistency with the certified City of Oceanside Local Coastal Program and the public access and recreation policies of the Coastal Act. The standard of review for the portion of the development within the Commission's original jurisdiction is Chapter 3 of the Coastal Act.

2. Environmentally Sensitive Habitat. As noted above the project site is currently vacant and is located directly adjacent to the San Luis Rey River. There are several sensitive plant communities/habitats within the project site (southern willow scrub and freshwater marsh along the margins of the San Luis Rey River, disturbed wetlands adjacent to the railroad bridge crossing of the river, open water in the river channel, disturbed coastal sage scrub habitat bordering the edges of existing dirt access roads) as well as disturbed habitat from previous temporary road access and off-highway vehicle activity. The following Coastal Act policies are applicable to the proposed development and state, in part:

Section 30231

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

Section 30233

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(l) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game

pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

Section 30240

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

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

In addition, the Oceanside LUP and the San Luis Rey Specific Plan contain the following provisions for protection of sensitive biological areas:

1. In order to protect the sensitive resources of the river area the City shall:

   a. Post signs at appropriate locations noting regulations on littering, off-road vehicles, use of firearms, and leash laws.

b. Encourage the California Department of Fish and Game to actively enforce the Fish and Game Code in the river area.

c. Require property owners to remove debris from their properties when fire or health hazards exist.

d. Monitor future public use of the river area to identify areas of overuse. If such areas are identified, take steps to restrict access commensurate with the carrying capacity of the resources.

e. Continue police and code enforcement against litterers, trespassers, off-road vehicles, and other violators.

2. Developers proposing projects in the San Luis Rey Specific Plan study area shall:

a. Maintain adequate buffers surrounding sensitive habitat areas, using setbacks, fencing and/or vertical separation.

b. Protect habitat for the endangered Dudleya viscida. Where habitat impacts are unavoidable, the developer shall transplant the species to a protected location.

[…]

7. Any deficiencies in the river area sewer and water facilities shall be corrected by developers at the time of development.

8. New developments in the river area shall incorporate to the maximum extent feasible, native and/or drought tolerate plants into project landscape design.

Objectives:

- The City shall protect, maintain and enhance the river's existing sensitive habitats.

- The water resources of the river shall be maintained, enhanced and, where feasible, restored.

- New development shall be sited and planned in a manner which utilizes the San Luis Rey River environs to the fullest, but retains the aesthetic and resource values present.

The certified "Standards For The Identification And Protection of Sensitive Habitat Areas", an implementing ordinance document, provides the following regarding permitted uses within sensitive areas:

A. Permitted Uses Within Sensitive Habitat Areas.

1. Nature education and research or similar resource dependent activities

2. Fishing; birding; biking; and hiking where designated by signs and trail systems.

3. Very minor incidental public service facilities including, but not limited to, burying cables and pipes and maintenance of existing intake and outfall lines when specifically approved by the State Department of Fish and Game.

4. Necessary water supply projects—streams and rivers only, provided that any substantial alterations incorporate the best mitigation measures feasible to minimize adverse environmental effects.

5. Flood control projects providing the project is necessary for public safety or to protect existing development and there is no other feasible method for protecting existing structures in the floodplain.

6. Habitat restoration measures specifically approved by the State Department of Fish and Game.

Any land use and/or development determined to have a significant adverse impact on sensitive habitat areas will be required to mitigate such impact. If the adverse impact of an endangered species is unavoidable, mitigation measures shall include transplantation of the endangered vegetation.

Mitigation Measures

The following mitigation measures are intended to protect sensitive habitat areas from adverse environmental impacts caused by adjacent development. Any development proposed in an undeveloped area within a distance of up to 500 feet from a sensitive habitat area would be considered adjacent to that habitat. All required mitigation measures will be provided at applicant's expense.

1. Buffer Zones

A buffer zone of 100 feet shall be established around all sensitive habitats. The buffer zone shall be generally 100 feet for small projects on existing lots. If the project requires substantial improvements or increased human impacts, a much wider buffer area shall be required. Likewise, a reduced buffer area will be considered if, in consultation with the State Department of Fish and Game it can be demonstrated that 100 feet is unnecessary to protect the resources of the habitat area. The biological significance of adjacent lands, sensitivity of species to disturbance and susceptibility of parcel to erosion shall all be factors taken into consideration in the determination of the adequate width of the buffer zone. Such

evaluation shall be made on a case-by-case basis. Where feasible, existing cultural features, such as roads and dikes, should be used to buffer habitat area.

For a wetland, the buffer area should be measured from the landward edge of the wetland. For a watercourse, the buffer zone should be measured from the landward edge of riparian vegetation, if no vegetation exists, from the top edge of the bank.

No principal structures shall be permitted within the buffer zone. Development shall be limited to access paths, fences necessary to protect the habitat area and similar developments which have beneficial effects or no significant adverse effects.

Prior to the transmittal of a coastal development permit, the permittee shall submit a runoff control plan designed by a licensed engineer qualified in hydrology and hydraulics, which would assure no increase in peak runoff rate from the developed site over the greatest discharge expected from the existing undeveloped site as a result of a 10 year frequency storm over a six hour duration (10 year, 6 hour rainstorm). Runoff control shall be accomplished by such means as on-site detention/desilting basins. Energy dissipating measures at the terminus of outflow drains shall be constructed. The runoff control plan including supporting calculations shall be submitted to and determined adequate in writing by the City Engineer.

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

- All grading activities for roads, future building pads, utilities and installation or erosion and sedimentation devices shall be prohibited within the period from November 1 to March 31 of each year.

- Prior to commencement of any grading activity, the permittee shall submit a grading schedule which indicates that grading will be completed within the permitted time frame designated in this condition and that any variation from the schedule shall be promptly reported to the City Engineer.

- All areas disturbed by grading shall be planted prior to November 1 with temporary or permanent (in the case of finished slopes) erosion control vegetation. Said planting shall be accomplished under the supervision of a licensed landscape architect and shall consist of seeding, mulching, fertilization and irrigation adequate to provide 90% coverage within 90 days. Planting shall be repeated if the required level of coverage is not established. This requirement shall apply to all disturbed soils including stockpiles, and to all building pads.

- Prior to transmittal of a coastal development permit, a detailed landscape plan indicating the type, size, extent and location of plant materials, the proposed

irrigation system, and other landscape features shall be submitted, reviewed and determined to be adequate. Drought tolerant plant materials shall be utilized to the maximum extent feasible.

The project site contains a variety of habitat and vegetation types including eucalyptus woodland, freshwater marsh, southern willow scrub, wetland and open water and 0.65 acre of coastal sage scrub habitat (CSS) and 2.16 acres of disturbed coastal sage scrub habitat (D-CSS). The ordinance defines "Sensitive Habitats" as any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. All wetlands, riparian areas and habitats containing rare or endangered plants as defined by DFG as "rare or endangered". Because the project site contains wetlands and riparian habitat, the site contains sensitive habitat. However, no impacts to riparian or wetland species are proposed and the development meets the minimum 100-ft. and 50-ft. buffers from the respective resources. At its closest point the development is more than 200' from the San Luis Rey River. While the drainage facilities and basin are within the buffer, they are developments which have beneficial effects or no significant adverse effects and as such are a permitted use as identified in the LCP.

Regarding other sensitive upland areas (i.e., coastal sage scrub), according to the "Conceptual Mitigation/Revegetation and Monitoring Plan" by Dudek & Associates, no plant species recognized by DFG as rare or endangered are located on the site. As discussed below, the undisturbed CSS on site is not considered ESHA. One California Native Plant society listed species, sticky dudleya (dudleya viscida) consisting of seven plants is located within a proposed open space area which will be enhanced (weeding and coastal sage scrub revegetation) per the mitigation plan. Dudleya is not on the DFG list as rare or endangered.

Two sensitive birds, Cooper's Hawk and white tailed kite, identified by DFG as rare or species of concern, have been observed foraging on the site, though no nests were detected. The mitigation plan proposes a survey for nesting raptor species prior to construction/habitat removal. If active nesting is occurring, then a 100-foot buffer is proposed around the nest. Focused surveys for the federally threatened California gnatcatcher and Pacific Pocket mouse were negative.

The proposed development would impact approximately 0.86 acres of D-CSS to construct buildings, parking, and the sedimentation basin and drainage outlet. After review of the development proposal, the Commission's staff biologist has determined that although some coastal sage species are present, the site is extremely disturbed and dominated by exotics and therefore does not constitute ESHA.

To mitigate project impacts to upland species, a combination of revegetation, creation and enhancement is proposed. The Commission's biologist has reviewed the proposed mitigation plan and concurs with its provisions with several changes that are detailed in Special Condition #3. These revisions include a requirement that a qualified restoration

ecologist be formally responsible for the implementation of the project, its success, and all monitoring. Additionally, within 30 days of completion of initial restoration work, submittal of "as built" plans demonstrating that the mitigation site has been established in accordance with the approved design and construction methods. A five-year monitoring period is required rather than the proposed three year period. The monitoring plan shall insure that sampling to estimate vegetative cover is done with sufficient replication to provide an estimate of the mean with 90% confidence limits no greater than 10% of the mean or an absolute confidence interval based on sampling high-quality reference sites. Performance standards are required that include minimum requirements for overall vegetative cover and the diversity of dominant species in the shrub and herbaceous layers based on appropriate literature citations or sampling of high quality reference sites. Cover by exotic species shall not be greater than 10 percent. Final performance monitoring shall take place after 3 years with no remediation or maintenance activities other than weeding. If success criteria are not met, an amendment to this coastal development permit shall be submitted.

To ensure mitigation will go forward as proposed and recommended above, Special Condition #3 requires submittal of a revised mitigation/monitoring plan that requires the above described changes and compliance with the provisions of the "Conceptual Mitigation/Revegetation and Monitoring Plan" by Dudek & Associates. Any proposed changes to the mitigation plan must be reported to the Executive Director and will not become effective unless the Commission approves a permit amendment or the Executive Director determines that no amendment is legally required.

To ensure the resource values of the mitigation site will be preserved in perpetuity, Special Condition #1 requires that the applicant provide evidence of either a transfer of title of the 3.8-acre parcel located along the river pursuant to the settlement agreement between the property owner and the State of California (as proposed) or an irrevocable offer to dedicate an open space easement be recorded. Removal of existing invasive and exotic vegetation and planting of native coastal sage scrub vegetation and maintenance of drainage, public access and habitat enhancement improvements are permitted within the open space.

In addition to the river parcel, portions of Lots 2,3 and 6 are proposed as mitigation sites. These lots are immediately upland and contiguous to the river parcel. Special Condition #2 requires those areas of the lots proposed for coastal sage scrub vegetation be restricted as open space (exhibit #9). Removal of existing invasive, exotic vegetation and construction and maintenance of drainage, public access and habitat enhancement improvements are allowable uses within the open space area.

Due to the sensitive location of the project, Special Condition Nos. 6 and 7 require submittal of access/staging and grading plans. If more than one staging site is utilized, the plans shall indicate which sites are connected with which portions of the overall development, and each individual site shall be removed and/or restored immediately following completion of its portion of the overall development.

Approximately 20,000 cubic yards of grading is proposed. On a project by project basis, the SLRSP prohibits grading during the rainy season (November 1 through March 31) to protect the river from erosion and sedimentation. The Commission has supported proposals to grade within the rainy season when seasonal nesting and breeding restrictions imposed by the resource agencies to protect endangered avians result in a limited timeframe to grade. Often, when several endangered or migratory birds inhabit or visit an area, there is only a few months when grading can occur due to the differing breeding seasons associated with each species. The resource agencies have found that noise associated with grading and site preparation can affect whether or not offspring will occur. In this case the USFWS has indicated that grading should occur outside of the normal breeding season of migratory birds that may be on-site and that at a minimum a survey should be conducted prior to grading. If nesting birds are present, no grading should occur so that no nesting birds will be harmed as a result of project implementation. The nesting season occurs from February 15 through August. In recognition of this constraint, the Commission finds grading may go forward in the rainy season provided erosion control measures are employed to ensure that no off-site sediment impacts would occur and with concurrence of the City engineer.

Special Condition #11 requires copies of all other required local, state or federal discretionary permits for the development herein approved. Any mitigation measures or other changes to the project required through said permits shall be reported to the Executive Director and shall not be incorporated into the project until an amendment to this permit is approved, unless it is determined that an amendment is not required.

Special Condition #12 requires revised final plans indicating outdoor lights shall be directed away and shielded from the San Luis Rey River so as to not interfere with nesting and foraging behaviors of avian wildlife. The condition also requires that the State Lands Commission Title Settlement Agreement Line shall be plotted on the final plans.

Special Condition #9 requires a landscape plan that utilizes native and drought tolerant plants only. This is necessary to ensure that any proposed landscaping will not be invasive or incompatible with the surrounding riverine environment.

Special Condition #16 requires that a deed restriction be recorded to alert current and subsequent owners of the units to the Commission’s permit requirements.

In summary, the development as proposed and conditioned above, will be designed in a manner which minimizes disruption of coastal and river resources, natural land forms and significant vegetation. No direct encroachment into wetland or riparian areas is proposed; these areas will then be permanently protected in open space. The project will preserve and protect the majority of CSS onsite; impacts to upland vegetation has been determined to not involve ESHA and will be mitigated onsite with enhancement and revegetation of areas which are currently heavily disturbed. The mitigation, in combination with the offsite revegetation required in CDP #6-99-32, would establish a contiguous corridor of CSS between the development area and the north boundary of the

site on the San Luis Rey River, and promote connectivity to other habitat proposed for preservation and restoration to the east along the river and in Lawrence Canyon. Therefore, the Commission finds the proposal, as conditioned, consistent with Sections 30231, 30233 and 30240 of the Act and the habitat protection policies of the certified LCP.

3. Water Quality. Section 30231 of the Coastal Act states:

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

In addition, the San Luis Rey River Specific Plan states:

> In order to protect water quality in the river area, the City shall:
>
> a. Allow natural tidal circulation between the San Luis Rey lagoon and the ocean through the culverts under Pacific Street.
>
> b. As part of its environmental review process, establish measures on a project-by-project basis to minimize the introduction of grease, oil paints, pesticides, construction waste, and other pollutants into the San Luis Rey River.
>
> The water resources of the river shall be maintained, enhanced and, where feasible, restored.
>
> On a project-by-project basis, developers proposing activities in the San Luis Rey River study area shall:
>
> Direct storm run-off away from the river whenever possible.
>
> Maximize penetrable surfaces for percolation, and if necessary, provide sediment settling basins, grease traps and/or energy dissipaters.
>
> Use strict erosion and sedimentation controls which include:
>
> (1) Retaining all run-off from construction areas on-site in percolation-settling ponds, or channeled into culverts that possess adequate energy dissipaters to prevent erosion and sedimentation into the river and lagoon.

(2) Prohibiting grading from November through March.

(3) Revegetating slopes upon completion of grading.

(4) Minimizing the alteration of land forms.

The Coastal Act and the certified LCP require that urban pollutants must be minimized into the San Luis Rey River and its floodplain. The project site is currently vacant and the proposed development will include large areas of impervious surfaces that include the buildings themselves as well as the access driveway and surface parking. Thus, as the site is located directly adjacent to the San Luis Rey River, the potential for adverse impacts on off-site water quality resulting from the proposed development is a concern. A comprehensive Water Resources Technical Report assessing project impacts in regards to flooding, drainage and local water quality issues as they relate to storm waters and runoff was prepared. The report includes an analysis of water quality, and concludes that the project will improve the existing conditions by channeling and treating offsite and onsite runoff which currently goes untreated. The project proposes a storm water detention basin that will accommodate on and off site runoff. This basin is generally located near the northwestern edge of the property in Lot 6. The detention basin is located within Subdistrict 10, adjacent to, but outside the San Luis Rey River floodplain. According to the Commission's water quality staff, the detention basin has been sized appropriately to handle runoff volumes and velocities associated with the 85th percentile storm. Storm water run-off from the site will be collected and routed into the river through a drain pipe to an energy dissipater. It is not feasible to direct the runoff away from the river.

To address water quality, the applicant is proposing the use of an in-line storm water treatment unit and a catch basin filter insert known as a CDS unit. Pollutants include pesticides, fertilizers, bacteria, nutrients, oil, grease, gasoline, fine-grained sediments, synthetic organic pollutants and other urban pollutants. Commission water quality staff indicates that although the CDS unit is effective at removing larger debris flows, it is ineffective at removing the full range of pollutants. Special Condition #10 requires submittal of a final water quality improvement plan that has been approved by the City and includes the use of a Vortechnics unit instead of the proposed CDS unit. The special condition also requires provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development as well as other measures necessary to insure that the water quality of the river will not be adversely affected during construction or operation of the project. For example, the required plan must include an identification of the party or entity(ies) responsible for maintaining the drainage system over its lifetime and shall include written acceptance by the responsible entity(ies). The plan shall also specify provisions for insuring that all debris and trash shall be deposited of in the proper trash and recycling receptacles at the end of each construction day and the discharge of any hazardous materials into the river or any receiving waters shall be prohibited. No construction materials, equipment, debris, oil, liquid chemicals, or waste shall be placed or stored where it may be subject to stormwater, or where it may contribute to or come into contact

with nuisance flow. The applicant shall monitor weather reports to determine if BMPs will be required in advance of anticipated rain events.

In summary, as proposed and conditioned, the proposed development is designed to contain and filter stormwater from each runoff event to mitigate any adverse impacts to water quality from the project to insignificant levels. Therefore, the Commission finds the proposed project is consistent with Section 30231 of the Coastal Act and the water quality policies of the LCP.

4. Public Access/Recreation. Because the proposed development is located between the sea and the first public road, Section 30604(c) requires that a specific access finding be made. In addition, many policies of the Coastal Act address the provision, protection and enhancement of public access to and along the shoreline, in particular, Sections 30210, 30211, 30212 and 30223. These policies address maintaining the public's ability to reach and enjoy the water, preventing overcrowding by providing adequate recreational area, and protecting suitable upland recreational sites.

Section 30210 of the Coastal Act states:

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

Section 30211

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

Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(l) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, [or]

(2) adequate access exists nearby....

Section 30223

> Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

In addition, the access policy group of the Oceanside LUP contains the following policies relative to public access:

In order to enhance access in the river area, the City shall:

- Encourage passive, recreation activities such as hiking, fishing and viewing.

- Where appropriate, require developers to participate in construction of on- and off-site site bicycle and pedestrian facility improvements.

- The bike path along Highway 76 shall be extended under I-5 and the railroad track to the river mouth on the south side of the San Luis Rey River if and when funds become available.

- The City shall maximize public access in the San Luis Rey River and environs consistent with natural resource values.

- Low cost recreation and visitor serving facilities shall be a priority land use in the river area, commensurate with public demand for such facilities.

As noted, the project site is located along the south shore of the San Luis Rey River, just west of Pacific Street. The site currently contains several informal trails that indicate past and present public use of the property. This area is accessible from the ocean, the City's Harbor District located across the river to the north and from residential areas to the south. Additionally, the site contains an existing public bike path that the Commission approved in CDP #6-99-32. The bike path is part of the San Luis Rey River Recreational Trail, which is an inland trail that goes along the riverbank and connects to a trail in the Camp Pendleton Marine Base and to public streets and eventually the ocean west of the site. The trail provides an important non-vehicular link to coastal areas and resources for residents in the eastern portion of the City and eventually unincorporated areas of the County. The completed bikeway enables tourists and residents expanded recreational opportunities and afford expanded opportunity for low cost coastal recreational activity including access and views to scenic areas.

In recognition of past public use and recreational/access opportunities within the site, the applicant has proposed to allow (via a deed restriction) vertical access from Coast Highway to the existing bike path. As proposed, the public would have use of a sidewalk that is proposed parallel to the main access road from Coast Highway and eventually connects to the existing bike path in the western part of the site (#Exhibit 8). To assure the access path is available for public use, Special Condition #4 requires that the path be constructed and open for use by the public prior to occupancy of any of the proposed residential units and that the access path be open daily from sunrise to 10 p.m. Additionally, Special Condition #5 requires that signage will be installed on the site at Coast Highway and next to the bike path to notify the public of access opportunities through the site.

In summary, existing access opportunities would not be adversely affected as public access will remain available to those who use the existing bike path and an additional access segment will be provided from Coast Highway to the bike path. This is consistent with the above LUP policy that provides that developers be required to participate in construction of on- and off-site site bicycle and pedestrian facility improvements. Thus, the Commission finds the project is consistent with the above access policies of the Coastal Act and of the certified Oceanside Local Coastal Program.

5. Visual Resources. Because the San Luis Rey River and its viewshed is both an environmentally sensitive area and major recreational resource, it was the subject of a detailed Land Use Plan prepared by the City and certified by the Coastal Commission. In response to Section 30251 of the Coastal Act, one of the issues addressed in the Land Use Plan was the preservation of views to and from the river.

Section 30251

> The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The LUP states that the City shall regulate erection of on-site signs in the river area as follows:

a. Require any free-standing signs to be constructed of wooden and/or masonry materials with external illumination, not to exceed six feet in height.

b. Prohibit any signs which would detract from the visual quality of the area and cause excessive glare or annoyance to surrounding properties.

- In areas of significant natural aesthetic value, new developments shall be subordinate to the natural environment.
- The City shall maintain existing view corridors through public rights-of-way;
- The City shall ensure that all new development is compatible in height, scale, color and form with the surrounding neighborhood.

Additionally, two objectives of the same section provide:

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

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

The certified San Luis Rey Specific Plan includes the following objectives and policies:

> New development shall be sited and planned in a manner which utilizes the San Luis Rey River environs to the fullest, but retains the aesthetic and resource values present.
>
> New development in the river area shall be designed to be subordinate to the natural environment. Design themes which compliment the natural setting and history of the area are encouraged. Such themes include rustic (using rough hewn wood, pitched roofs, heavy beams, etc.) Spanish or Early California Mission design.

Finally, the following LCP standard provides:

> In sub Districts 7A and 7B, the maximum height limit shall be 45', except that a height limit of up to 65' may be permitted within an approved master plan where the total building floor coverage, (footprint) of the development does not exceed more than 35% of the total developable area of the master plan, and the following criteria are met:
>
> i The architectural elevations shall vary in height along any road or street especially along Hill Street.
>
> ii Roof liner shall be pitched with flat roof lines allowed only for intermittent visual relief in character.
>
> iii The maximum achievable elevation shall not extend for the entire roofline of the given building. (The use of jogs, offsets, height differentiations and other architectural features shall be used to reduce the appearance of a constant roof height.)
>
> iv The use of a full roof, not flat, with appropriate pitch, shall be used whenever possible. (A full roof aids in the reducing any environmental noise pollution by providing proper sound attenuation.)
>
> v In no case shall a building elevation exceed 45 feet in height unless developed under the auspices of a Disposition and Development Agreement, Owner Participation Agreement, Development Agreement or Conditional Use Permit (CUP). In such case, each such Agreement or CUP shall require a site plan and design criteria approval by the CDC.
>
> vi No structure within 50' of the 100 Year Flood-plain boundary shall exceed 45' in height.

The project site is located on the south bank of the San Luis Rey River which is one of only two rivers in the coastal zone that has a sizable amount of native vegetation. As the only publicly accessible coastal riparian stream corridor in San Diego County, the area has significant resource and scenic value. Five distinct plant communities (riparian woodland, freshwater marsh, coastal sage scrub, southern California grassland, and coastal salt marsh) are found in the San Luis Rey River area and contribute to the diversity of this contiguous ecosystem. As noted, there are several plant communities/habitats within the project site. Regarding the project area, substantial open area exists between residential development and the southern banks of the river, west of 1-5.

The development proposes two separate four-story residential buildings over two levels of parking (to a maximum of 65 ft. in height), portions of which would be below existing grade. The buildings vary from approximately 45 feet above existing grade (at the southern edge of the property, adjacent to the existing residential mobile home park) to 65 feet above grade at the north side, where the existing grade slopes downward. A large, open common area would be located between the buildings. This area between the buildings would be oriented northwest to take advantage of views, and would also preserve a view corridor for existing mobile home property at a higher elevation south and east of the property. While the project will not result in direct view blockage of the coast from off-site public areas, the development is located in a highly scenic area and therefore, the project's compatibility with the visual character and scale of the San Luis Rey River must be found consistent with Chapter 3 policies and the LCP. Exhibits #4, #5 and #6a are simulated views of the project.

The property is visible from a number of public vantage points. Views of the development area from public vantage points would be affected as follows:

> Public beach west of intersection of Harbor Dr. South and Pacific Street. Currently, the view of the property from the beach is of the San Luis Rey River and the adjacent slopes, although Pacific Street, the railroad bridge and several large buildings are located in the distance on both sides of the river. The scale and massing of the proposed buildings would be comparable to that of the adjacent Guesthouse Inn and the North Coast Village condominiums to the west; the development would be of a smaller bulk and scale than the Trend West time-share condominiums located on the north side of the San Luis Rey River.
>
> Coast Highway Bridge. Looking west from the Coast Highway Bridge as it crosses the San Luis Rey River, there is a spectacular view of the San Luis Rey River corridor and the ocean. This view is the most significant public view of the river and ocean in the coastal zone; it would not be blocked by the proposed development, although the adding of another building to the existing visual setting would result in cumulative visual impacts to the view shed. However, it is comparable to neighboring developments and does not introduce urban mass and scaling not already present.

Pacific Street. Public views of the property are available looking east from Pacific Street, which is located beyond the railroad tracks west of the development. The view looking onto the property from Pacific Street is partially screened by trees located near the road. The development would not create significant adverse visual impacts from Pacific Street, nor would views of the river be blocked, as the development is pulled back from the river.

Oceanside Harbor. Views of the site from the Oceanside Harbor's recreational and commercial facilities are partially screened by the existing levee along the north side of the San Luis Rey River, although the proposed development would be visible from the Oceanside Harbor.

Bike Path. The proposed development would be located immediately above and upland of the existing bike path [10-feet at its closest point]. Therefore, the proposed development would be highly visible from the bike path, but is inland of the path and will not block views towards the coast.

Mira Mar Mobile Home Park. The Mira Mar Mobile Home Park is not a LCP identified public vantage point so views from this private development are not required to be preserved. A view corridor (approximately 120 feet wide), is proposed between the buildings so a number of units within the mobile home park would retain views toward the ocean.

As noted above, the LCP identifies that in sub District 7A the maximum height limit is 45 feet, although 65 feet may be permitted if the project footprint is not more than 35% of the "developable" area (area that is not encumbered by floodplain, sensitive resources or steep slopes) and certain design considerations are met. The portion of the project that is within Subdistrict 7A is 3.38 acres or 147,168 sq.ft; the building coverage is 51,011 sq.ft., giving a ratio of 34.7%. While consistent with the LCP standard relative to building coverage, other LCP design criteria must be met to receive the added height. According to the applicant, the project is in compliance with each of these criteria as follows (the numbered paragraphs are taken from the applicant's analysis of the project's compliance with the LCP's design standards):

1. *The architectural elevations shall vary in height along any road or street.* The proposed project is not located along any public road; however, the buildings have been designed to follow the grade along the private access drive within the project, stepping down from east to west. Further several jogs in the roofline of each building occur as the buildings go east to west. Most importantly, a view corridor creating the ultimate variation in height breaks up the building height.

2. *Rooflines shall be pitched with flat roof lines allowed only for intermittent visual relief in character.* The project roofline includes varied-height parapets, and the proposed Irving Gill-inspired architectural style utilizes various vertical and horizontal planes with offsets, height differentiations and other architectural treatments that provide visual interest and relief along the building elevations.

The varying flat rooflines are an integral component of the architectural style and are intermittently broken up by the use of trellis structures. This style was used to allow intermittent visual relief to the community within the meaning of the LCP. Further, we have varied the front elevation through revision to the design using a stepped back structure on the first floor along with stepped back balconies to ease the bulk and mass of the building. Lastly, we will incorporate the use of varying components in the roofline during our final design whenever it is in compliance with the 2001 California Building Code, the City of Oceanside LCP and the Oceanside Municipal Code.

3. *The maximum achievable elevation shall not extend for the entire roofline of the given building. The use of jogs, offsets, height differentiations and other architectural features shall be used to reduce the appearance of a constant roof height.* The height is measured from existing grade, which is an incline grade that is higher toward the south and lower towards the north. As a result, the entire building is not proposed to be at the maximum height. The buildings vary from approximately 45 feet above existing grade (at the southern edge of the property, adjacent to the existing residential mobile home park) to 65 feet above grade at the north side, where the existing grade slopes downward. The proposed design results in a more open and varied site plan, with more building modulation than would be achieved using the 45-foot height limit with no restriction on building coverage. Further, the height varies from east to west.

4. *The use of a full roof, not flat, with appropriate pitch, shall be used whenever possible. (A full roof aids in the reducing any environmental noise pollution by providing proper sound attenuation.)* As noted above, the flat rooflines are an integral component of the architectural style and include architectural features that provide intermittent visual relief in the roof area. The project acoustical analysis did not request or require any modifications to the roof design to achieve acceptable sound levels.

5. *In no case shall a building elevation exceed 45 feet in height unless developed under the auspices of a DDA, OPS or CUP. Required site plan and design criteria approval by the CDC.* A Conditional Use Permit (CUP) for the increased height was approved by the Oceanside CDC following site plan and design review.

6. *No structures are located within 50 feet of the 100-year flood-plain boundary shall exceed 45 feet in height.* There are only minor structural modifications that are located within the 50-foot setback line, and all of these are below the 45 -foot height limit.

While the applicant has indicated compliance with the above cited LCP provisions, the Commission is concerned that the proposed residential buildings have a “boxy” appearance and do not appear to comply with the above provisions nor are they subordinate to the surrounding natural environment. The project proposes basically a flat

roof whereas the LCP identifies that rooflines shall be pitched with flat roof lines allowed only for intermittent visual relief in character. Flat roofs generally sit atop boxy rectangular buildings which present large unbroken facades to viewers. In contrast, pitched roofs allow greater variety and flexibility in building shape and design. In addition, the proposed buildings do not "step-back" as viewed from the river and adjacent bike path, giving the appearance of a "giant wall" looming over the bike path. Thus, the project does not appear to be in conformance with the above cited LCP provisions.

The applicant reviewed a number of alternatives to address the identified view concerns. One alternative would be to design the project so that it is lower on the north, near the bike path. In this way development would be "stepped up" the hillside as it moves away from the river and bike path, resulting in less visual impact as seen from these public areas. According to the applicant, this alternative was rejected because it would result in a greater view impact for the neighboring mobile home park to the south, although the Commission notes the LCP does not protect private views. Another possible alternative is to redesign the project as a single structure (no view corridor between buildings) at a maximum height of 45-feet. While this would result in a lower structure, its footprint would be greater resulting in a larger more boxy design than the proposed project.

To address the visual concerns, the applicant has proposed additional design modifications to the buildings that includes added articulation on the roofs to limit the "flat roof" look and revisions to the north elevation to help soften the project's visual impact (Exhibit 10). The applicant states the buildings have been designed to follow the grade along the private access drive stepping down from east to west to further diminish the visual impact. The revised roofline proposes varied height parapets and curved parapets utilizing various vertical and horizontal planes that provide visual interest and relief. Additionally, the applicant states a proposed five-foot planter and walkway has been added on ground level to provide a stepped back feel which serves to further minimize the visual impact of the structure from the bike path (Exhibit 10).

The Commission notes the redesign has revised the roofline to include varied-height and curved parapets utilizing vertical and horizontal planes with offsets as shown in Exhibit 10b. However, the project will continue to be visually prominent from the bike path despite the applicant's modifications. Special Condition #12 requires final plans showing the following modifications to reduce the project's visual impact along its northern (river) elevation. The upper levels (plaza through 4th level) must be set back a minimum of five (5) feet further south than the two garage levels below such that the upper levels "step back" from the lower levels. As revised, the upper levels will be setback from the planter, walkway and the two lower levels which will result in a decrease in the bulk and scale of the buildings as viewed from the bike path. The Commission finds that as revised and with the limited design options available to either resite or redesign the project and based on the project's conformity with the other LCP criteria, the project meets the LCP requirements to exceed the 45 ft. height. However, in addition to the recommended redesign, to further reduce the visual impacts of the development, other measures are required.

As noted, the LCP requires use of pitched roof "where possible." In this case a pitched roof is not possible because incorporating a pitched roof would require other changes to the project that are themselves inconsistent with LCP standards. Additionally, a pitched roof is unnecessary to accomplish one of the stated purposes of the pitched-roof requirement, i.e., sound attenuation. Special Condition #8 requires final plans that include a color board verifying that the buildings will be finished in deep earth tones compatible with the surrounding river corridor to assure they will blend in visually with the environment.

Landscaping is also important in minimizing visual impacts. According to the applicant, the plans were designed specifically to block the building from public views from the bike path. Although the landscape plans propose no more than 15 linear feet of separation between the trees surrounding the site, the majority of the trees are queen palms which do not provide effective screening. Special Condition #9 requires submittal of a revised landscaping plan proposing native and drought-tolerant plants only. Required landscaping must break up large expanses of walls and roofs; consequently, screening trees must not only be located at least every 15-feet along the interface with the river environment but be of sufficient screening breadth to effectively soften the project's visual impact. No palms are permitted.

In summary, as proposed and conditioned, the proposed development will not result in an unacceptable visual impact and no direct view blockage will occur. The project is set back from the river and the foreground view of the river and public trail is preserved as open space. The project proposes revegetation and open space preservation on approximately half of the 7.5-acre site adjacent to the San Luis Rey River. As redesigned herein, the project's visual impact from the bike path would be further mitigated. The mass, bulk, and scale of the development is comparable to existing buildings in the area. Coloring of the units and enhanced landscaping would further reduce visual impacts from public places. Thus, the Commission finds the development would be in compliance with Section 30251 of the Coastal Act and the Oceanside LCP regarding protection and preservation of visual resources.

6. Hazards. The certified D District Additional Use Regulations (Implementing Ordinance) of the certified Oceanside LCP address development in hazardous areas and provides:

- All floodplain development shall be capable of withstanding periodic flooding without the construction of flood protective work. Existing environmentally sensitive habitat area will not be adversely affected. There will be no increase in the peak runoff rate from the developed site as compared to the discharge that would be expected once every (10 years) during a six (6) hour period. There will be no significant adverse water quality impacts and no downstream bank erosion or sedimentation may result from site improvements. All development shall be reviewed for conformance with the policies and standards of the San Luis Rey River Specific Plan.

- The city shall protect the public safety and welfare in areas of the river subject to flood or geologic hazards.

- In order to protect life and property in the river area from flood hazards, the City shall:

    a. Prevent encroachment of permanent structures into the floodway.

    b. Allow only flood compatible uses and structures, per the Federal Flood Insurance Agency's regulations, within the 100-year floodplain.

    c. Cooperate with Army Corps of Engineers to ensure completion of the flood control project, as proposed.

    d. The City will periodically review the Specific Plan in light of changing conditions and needs in the river area.

In addition, Section 30253 of the Coastal act states, in part:

Section 30253.

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and 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.

The proposed development is located adjacent to the 100-year floodplain of the San Luis Rey River. The floodplain falls on the property near the private street that provides access from Coast Highway and wraps around the detention basin (Exhibit 3). A Letter Of Map Amendment was approved by FEMA to document the 100-year flood plain line; the main development area was designed upland of the 100-year flood plain line. Notwithstanding the mitigation site and drainage outlet, the lowest elevations of the proposed project are greater than one-foot above all known water surface elevations for the 100-year storm event; therefore, the project should be safe from flood hazard. Although located in the flood plain, the above improvements will be safe because they can withstand occasional flooding. Special condition #13 requires the applicant to waive any liability on the part of the Coastal Commission in the event of any flooding of the site. The assumption of risk documents serve to both notify the owner and future assignees, as well as relieve liability on the Commission for permitting the development. Therefore, as conditioned, the Commission finds the project consistent with Section 30253 of the Act and all applicable LCP provisions.

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

The City of Oceanside has a certified LCP. The project is located in the certified LCP "Downtown District", within zoning sub districts: 7A and 10. Sub district 7A is a high density residential zone and allows for single-family and multi-family development at 29-43 du/ac. The proposed project density is 28 du/ac. Sub district 10 is designated for open space and recreational uses within the floodplain of the San Luis Rey River. Permitted uses include utilities, commercial recreation and entertainment, eating and drinking establishments, horticulture and commercial parking. The residential development is proposed on the portion of the site within Sub district 7A. The portion of the project within Sub district 10 is proposed as open space, and includes the drainage improvements and the mitigation site for the project. The site is also within the LCP certified San Luis Rey River Specific Plan area. As conditioned, the proposed uses are consistent with their respective LCP designations. Special Condition #14 states that except as provided by this coastal development permit, this permit has no effect on the existing permit conditions of the City of Oceanside.

The proposed development will also occur in areas where the Commission retains permit jurisdiction (i.e. the river parcel where the drainage improvements and the mitigation is proposed). As such, Chapter 3 policies of the Coastal Act are the standard of review for those areas. As conditioned, the development is consistent with all applicable Chapter 3 policies of the Coastal Act. The Commission, therefore, finds that approval of the proposed development, as conditioned, will not prejudice the ability of the City of Oceanside to continue to implement its certified Local Coastal Program.

8. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit 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 that the activity may have on the environment.

As discussed herein, the proposed project will not cause significant adverse impacts to the environment. Specifically, the project as conditioned, has been found consistent with the environmentally sensitive habitat, visual, water quality, hazard and public access and recreation policies of the certified LCP and the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally

damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

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

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

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

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

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

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