

From: [Alexandria Latragna](#)
To: [Ted Faturous](#); [Carrie Tai, AICP](#)
Subject: FW: zoning and Highrose project
Date: Tuesday, February 8, 2022 9:30:31 AM



ALEXANDRIA LATRAGNA
POLICY AND MANAGEMENT ANALYST

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From: Rudkin, George H <George.Rudkin@va.gov>
Sent: Tuesday, February 8, 2022 7:30 AM
To: List - City Council <CityCouncil@manhattanbeach.gov>
Subject: [EXTERNAL] zoning and Highrose project

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I urge the council to reject housing mandates from Sacramento (senate bills 9/10) and to take legal action to fight them. Local citizens have the right to exercise control over zoning through local governance. I ask that the Highrose project be rejected as currently envisioned.

Regards
George Rudkin
1504 Pine

From: [Alexandria Latragna](#)
To: [Ted Faturios](#); [Carrie Tai, AICP](#)
Subject: FW: [EXTERNAL] MB Highrise
Date: Tuesday, February 8, 2022 9:29:58 AM

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-----Original Message-----

From: Mary Chieffe <mary.chieffe@gmail.com>
Sent: Monday, February 7, 2022 10:56 PM
To: List - City Council <CityCouncil@manhattanbeach.gov>
Subject: [EXTERNAL] MB Highrise

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Dear Councilmembers,

I'm writing to let you know that I don't favor the large multi-family project proposed in north Manhattan Beach. The congestion, traffic and limited parking will be detrimental to our city. Please search for solutions that will keep our city laws in tact and maintain the integrity of Manhattan Beach.

Sincerely,

Mary Chieffe
616 North Ardmore Avenue

Sent from my iPhone

From: [Alexandria Latragna](#)
To: [Ted Faturros](#); [Carrie Tai, AICP](#)
Subject: FW: [EXTERNAL] The Highrose Proposal
Date: Tuesday, February 8, 2022 2:34:44 PM

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-----Original Message-----

From: Michael Macheret <mmacheret@yahoo.com>
Sent: Tuesday, February 8, 2022 2:34 PM
To: List - City Council <CityCouncil@manhattanbeach.gov>
Subject: [EXTERNAL] The Highrose Proposal

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The recent laws passed by the state to override local government zoning rules is an affront to our democracy. I count on our representatives to assert our democratic rights to determine the environment best suited to our community.

Higher density housing is available in other beach cities, and that is the choice they made. Furthermore there are environmental concerns and damage to the climate and the ocean to consider with higher-density housing. The voters of Manhattan Beach should be the ones to determine what type of community we want to live in, not some extremists in Sacramento.

Michael Macheret

Sent from my iPad

From: [Alexandria Latragna](#)
To: [Carrie Tai, AICP](#); [Ted Faturos](#)
Subject: FW: [EXTERNAL] Highland and Rosecrans is just an insane project
Date: Wednesday, February 9, 2022 10:15:58 AM



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From: bill@wggraves.com <bill@wggraves.com>
Sent: Wednesday, February 9, 2022 10:15 AM
To: List - City Council <CityCouncil@manhattanbeach.gov>
Subject: [EXTERNAL] Highland and Rosecrans is just an insane project

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

We have lived with our MB zoning laws for years, they work well and protect us all. Building such a tall monstrosity in our city is just crazy. It blocks a view to the north and the beaches and Santa Monica Bay.

Beyond issues of view and simple building code fairness, the Highland and Rosecrans corner cannot handle more traffic. Highland South is just one lane (and a left turn lane) at Rosecrans. There is already a lot of congestion especially in the late afternoon. The right turn from Rosecrans to Highland North backs up because of pedestrians using that crosswalk in the summer time.

AND what about parking in that part of town. There are restaurants serviced by the existing parking lot. There is beach traffic parking there as well.

This project must be delayed as much as possible and stopped as soon as possible. Please listen to the local residents and fight this crazy pre-emption of our sensible local zoning.

Bill Graves
MB Resident and homeowner for 45 years!

Bill@wggraves.com

From: [Alexandria Latragna](#)
To: [Ted Faturos](#)
Subject: FW: City Panning Department Support of Highrose Development?
Date: Wednesday, February 9, 2022 10:45:42 AM
Attachments: [image002.png](#)



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From: Lynne Davis <ldavis@imclawinc.com>
Sent: Wednesday, February 9, 2022 10:40 AM
To: List - City Council <CityCouncil@manhattanbeach.gov>; Carrie Tai, AICP <ctai@manhattanbeach.gov>
Subject: [EXTERNAL] City Panning Department Support of Highrose Development?

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

Hello City Council and Ms. Tai –

I was talking with someone yesterday who is connected with the Highrose development. I was voicing my concerns and opposition to the development. This person informed me that there has been misinformation spread by the City and that the planning department has been a big cheerleader for the development. This person said that the developer even discussed dissolving the permits for the project, but they were told by the planning department not to do so as it supports the development. I do not know if this is accurate or not, but I wanted to raise with you my concerns about any City support for a development of this nature in a highly dense area. I am not opposed to affordable housing – that is not the issue. Any large development of this scale in the proposed location is simply ludicrous. I live on 34th and Vista, and there is no way that congestion, traffic, parking and sheer density problems will not overwhelm this area. I implore you to do

anything you can to stop it – including joining other cities to oppose the bill that allows for projects of this nature to be built with essentially very little oversight, without thorough environmental impact studies and studies on residential impact and without the requirements all other projects have been and are subjected to during the building process. Gelsons – on Sepulveda – went through a rigorous review on parking, ingress/egress, safety, residential impact, etc.

If it is true that the City is a proponent of this project, then I am very disappointed.

Best regards,
Lynne

Lynne M. Davis
President
IMC, Inc.
ldavis@imclawinc.com

[PLEASE NOTE OUR NEW ADDRESS AND PHONE NUMBER](#)

(310) 582-5877
1590 Rosecrans Avenue, Suite D230
Manhattan Beach, California 90266



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From: [Alexandria Latragna](#)
To: [Ted Faturos](#); [Carrie Tai, AICP](#)
Subject: FW: [EXTERNAL] Against State mandates on low income housing
Date: Thursday, February 10, 2022 8:56:21 AM

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-----Original Message-----

From: Denise Mazzotta <denisemazzotta33@gmail.com>
Sent: Wednesday, February 9, 2022 5:48 PM
To: List - City Council <CityCouncil@manhattanbeach.gov>
Subject: [EXTERNAL] Against State mandates on low income housing

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

I'm against the State's overreach and violation of our local city zoning and density rules and regulations. Please fight any project like the monstrosity planned at the corner of Rosecrans and Highland!!! Thank you Denise Mazzotta 649 33rd St

Sent from my iPhone

From: [Alexandria Latragna](#)
To: [Carrie Tai, AICP](#); [Ted Faturios](#)
Subject: FW: [EXTERNAL] Highrose Project
Date: Thursday, February 10, 2022 8:45:38 AM

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-----Original Message-----

From: Maurine Jennings <majennings52@aol.com>
Sent: Wednesday, February 9, 2022 5:06 PM
To: List - City Council <CityCouncil@manhattanbeach.gov>
Subject: [EXTERNAL] Highrose Project

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

Dear City Council Members,

“The only thing necessary for the triumph of evil is for good men to do nothing.”

So now you are called to the task for which you were elected; which is to serve the residents of our city and defend what is best for us; not at the expense of us and to our detriment. Only the most hard hearted of people do not grieve for the ills of this world and wish to help others, but two wrongs never make a right and the Highrose project (and others like it) is most certainly wrong and will cause lasting and ever-increasing harm to our city and her residents.

We ask you to please be our voice against this evil and we WILL stand to support your efforts.

In grateful appreciation,

Maurine Jennings
(46-year MB homeowner)

Sent from my iPhone

From: coastaldefendermb@gmail.com
To: [Hildy Stern](#); [Joe Franklin](#); [List - City Council](#); [Richard Montgomery](#); [Steve Napolitano](#); [Suzanne Hadley](#)
Cc: [Bruce Moe](#); [Quinn Barrow](#); [Paige Meyer](#); [Liza Tamura](#); [Martha Alvarez](#); [Carrie Tai, AICP](#); [Talyn Mirzakhanian](#); [Ted Faturos](#)
Subject: [EXTERNAL] RE: Request for Highrose Business Agenda Item, Tuesday February 15
Date: Friday, February 11, 2022 2:58:40 PM
Attachments: [220211-Exhibits-Highrose-Compiled.pdf](#)

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

11 February 2022

Hildy Stern, Mayor
City of Manhattan Beach
Via Email: citycouncil@citymb.info

Subject: Highrose Code-Compliant Concept

Mayor Stern and Councilmembers,

A councilmember advised me to use this format, so I hope it works for you.

This letter provides a concept that could result in a zoning-code-compliant Highrose project, even if questions exist regarding applicability of the California Environment Quality Act ["CEQA"] to appeals of the forthcoming Community Development decision on the project.

The concept proposes that the city council employs their discretionary authority to require a 100% affordable code-compliant project as outlined in Attch-Exhibit 1. Even if it questionable whether CEQA applies to the appeals, it seems unlikely that Sacramento will litigate a project that provides 75 affordable units, instead of the Highview six.

Likewise, if the applicant sues, it seems unlikely that a court would find the city guilty of improperly using their discretionary authority to more than comply with the spirit of the many and complex state regulations that mandate affordable housing.

For projects such as Highrose, developers are in it to make a fortune. Investors have no interest in projects that merely make a reasonable profit. Per my recent experience in litigating a project in Encinitas, the developers abandoned their approved nightclub disguised as a hotel, when faced with a long-running CEQA challenge. [Attch-Exhibit 2]

It appears that the 101 S. Sepulveda hotel in Manhattan Beach headed for the same fate, unless the investors repurpose their project as a 50-foot-high residential project with 150 units having fabulous ocean views, all based on only six affordable units.

If faced with this code-compliant concept, the Highrose applicant might accept a 100% affordable building. The city may not deny that, because it counts as a valid CEQA mitigation measure.

The section below outlines the Highrose permitting process based on environmental review, independent of questions whether CEQA applies to this case.

It appears, however, that CEQA does require an environmental review, as follows:

*“Once an application is deemed complete, a lead agency must first determine whether an activity is subject to CEQA before conducting an initial study. An activity is **not subject** to CEQA if: (1) **The activity does not involve the exercise of discretionary powers** by a public agency.”*[CEQA Guidelines § 15060(c)(1); **Note the emboldened double negative**]

100% Affordable Highview Project as a CEQA Mitigation Measure.

The city has stated that Highrose not related to the 6th Cycle Housing Element Update, which additionally not in force. Nevertheless, the state mandates a program to provide 774 affordable units. The city does conduct such a program that has provided 368 units to date. None of these, however, have entailed a cumulative environmental analysis of the program to provide the remaining 406 affordable units.

When Highrose appealed to the planning commission [“PC”] for their exercise of discretionary power, before the appeal public hearing, staff has:

“30 days to review for completeness applications for permits or other entitlements for use.” [CEQA Guidelines § 15060(a)]

Furthermore:

“Accepting an application as complete does not limit the authority of the lead agency to require the applicant to submit additional information needed for environmental evaluation of the project.” [ibid.]

Thus, staff has considerable flexibility to ensure they have all the facts regarding environmental review prior to the appeal of Highrose to the PC.

In that appeal, the PC must consider:

*“When assessing whether a cumulative effect requires an EIR, the lead agency shall consider whether the **cumulative impact** is significant and whether the effects of the project are cumulatively considerable.”* CEQA § 15064 (h)(1)

Without question, the city program for 70-plus 50-foot-high buildings with inadequate parking to provide 406 affordable units at a rate of six each per project constitutes substantial evidence of **significant cumulative** effects on the environment.

Thereby in the appeal, the planning commission may direct an EIR prepared, per:

“If the lead agency can determine that an EIR will be clearly required for a project, the agency may skip further initial review of the project and begin work directly on the EIR process” [CEQA Guidelines § 15060(d)]

The EIR can identify two top-level mitigation measures, summarized as:

- 1) Highrose as 100 % affordable, zoning-code compliant, if the applicant accepts that; or,
- 2) A city-owned similar 100% affordable property based on an eminent domain acquisition in a more appropriate location than the beach. A private lessee will develop and operate the property.

City Compliance with Affordable Housing for Highrose.

For appeals to the city discretionary authority on Highrose, CEQA appears to apply.

In either of the two-above CEQA mitigation-measure cases, the city complies in spirit with state affordable housing legislation.

Thanks for considering the above CEQA mitigation measures for the Highrose project.

Don McPherson

1014 1st St, Manhattan Beach CA 90266

Cell 310 487 0383

coastaldefendermb@gmail.com

From: coastaldefendermb@gmail.com <coastaldefendermb@gmail.com>

Sent: Thursday, 10 February, 2022 07:33

To: 'Hildy Stern' <hstern@citymb.info>; 'Joe Franklin' <jfranklin@citymb.info>; 'MB Council' <citycouncil@citymb.info>; 'Richard Montgomery' <rmontgomery@citymb.info>; 'Steve Napolitano' <snapolitano@citymb.info>; 'Suzanne Hadley' <shadley@citymb.info>

Cc: 'Bruce Moe' <bmoeb@citymb.info>; 'Quinn Barrow' <qbarrow@citymb.info>; 'Paige Meyer' <pmeyer@manhattanbeach.gov>; 'Liza Tamura' <LTamura@citymb.info>; 'Martha Alvarez' <malvarez@citymb.info>; 'Carrie Tai' <ctai@citymb.info>; 'Talyn Mirzakhianian' <tmirzakhianian@citymb.info>; 'Ted Faturos' <tfaturos@citymb.info>

Subject: Request for Highrose Business Agenda Item, Tuesday February 15

At your HEU public hearing last night, City Attorney Barrow raised the possibility of having a business item on the agenda for the regular meeting on February 15, to consider whether CEQA will apply in an appeal of the Highrose project.

This email shall serve as my request for that business item.

Thanks,

Don McPherson

1014 1st St, Manhattan Beach CA 90266

Cell 310 487 0383

coastaldefendermb@gmail.com

EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

coastaldefendermb@gmail.com

From: coastaldefendermb@gmail.com
Sent: Monday, 31 January, 2022 21:31
To: Hildy Stern; Joe Franklin; MB Council; Richard Montgomery; Steve Napolitano; Suzanne Hadley
Cc: Bruce Moe; Quinn Barrow; Paige Meyer; Liza Tamura; Martha Alvarez; Ted Faturos
Subject: : Solution to HEU Affordable Housing
Attachments: 220128-AffordableHousing-Solution-Final.pdf

1 February 2022

Hildy Stern, Mayor
City of Manhattan Beach

Via Email: citycouncil@citymb.info

Subject: Solution to HEU Affordable Housing

Mayor Stern and Councilmembers.

The attachment summarizes a solution for the city to provide the 407-unit shortfall in affordable housing by 2029, in compliance with both CEQA and the zoning code. No bonus-density waivers needed for this version of the Housing Element Update ["HEU"]

Starting with the Highrose project at Rosecrans and Highland, the city can purchase the property and lease it to developers for construction and operation of 100% affordable housing. That way, the public-housing operation remains in the private sector. The city, however, will have landlord authority to ensure compatibility with law, specifically, the General Plan, the Local Coastal Program and the General Plan. Same as they do for Metlox.

The city will have total control, rather than the developers, with their unending demands for financial incentives.

The city will need only five such 100% affordable projects to meet the 407-unit quota. In contrast, to provide that many units, the current HEU will require 68 projects the size and 50-foot height of Highrose, considering its meager six affordable units.

The costs easily managed. Based on a professional appraisal for a coastal property almost identical to Highrose, the city can finance the five acquisitions with a piddly increase in property taxes, amounting to \$376-\$522 per year per each taxpayer, for interest rates 4%-7%.

To ensure the purchases, the city could pay twice the appraised value, upon which the above property-tax increases based.

If an owner refuses to sell for twice the property value, the city can then exert its power of eminent domain to acquire the property at that price. That an incredible negotiating tool.

The attachment also establishes that the environmental impact report for the HEU blatantly violates CEQA. Consequently, the HEU invalid, as it stands. The solution outlined above eliminates the CEQA violations.

I request that the city council directs staff to pursue the above 100% affordability solution in the HEU. Otherwise, as is, it will start dead on arrival, as have all in California cities during past decades.

Thanks for considering this solution to the affordable housing enigma,

EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

Don McPherson, President

Coastal Defender

1014 1st St, Manhattan Beach CA 90266

Cell: 310 487 0383

coastaldefendermb@gmail.com

EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

HOUSING ELEMENT UPDATE VIOLATES CEQA; CITY PROPERTY PURCHASE SOLVES PROBLEM!

1.0 EXECUTIVE SUMMARY.

Per the Housing Element Update [“HEU”], Manhattan Beach has a quota of 407 new-affordable units to acquire by 2029.¹ The HEU Environmental Impact Report, however, violates the California Environmental Quality Act [“CEQA”], by failing to evaluate impacts from CEQA factors, such as: 1) Increased traffic; 2) New services needs; and, 3) Population growth.

The Environmental Impact Report [“EIR”] lacks an affordable-housing model to evaluate environmental impacts, yet it declares all CEQA factors as either ‘Less than Significant Impact’ or ‘No Impact.’ For example, the EIR states, “*potential air quality impacts including potential sensitive receptors are unknown at this time.*”² [Emphasis added] Then in an unsupported statement, the EIR claims air-quality impacts as ‘Less than Significant Impact’. [ibid. PDF p. 58]

Such conflicting EIR statements repeatably made for the 21 CEQA evaluation factors.

Staff currently evaluates the Highrose affordable-housing project at Highland and Rosecrans, which provides a proxy to model and evaluate environmental impacts. The project has six affordable units, which qualify it for: 1) 50-foot height vs 30-ft code; 2) Floor Area Factor [“FAF”] 2.2 vs 1.5 code; and, 3) A 51 parking-space reduction from code. The FAF of 2.2 equates to a 47% increase in floor area permitted by the municipal code requirement of 1.5 FAF.

Do the math: 407 required affordable units/6 Highrose affordable units = **68 Highrose projects, all 50-feet high**, to meet the 407 affordable-unit quota.

Why did the Highrose developer not increase the number of affordable units?

Answer: Developers know that profits maximize at the minimum threshold needed to qualify for affordable housing. For proof, consider the above three waivers of 50-ft height, floor-area increase of 47% and parking reduction of 51 spaces. At the beach, who would need anything more than that to make a financial killing?

The 68 projects will also increase the city population by 31%, from 35,058 to 45,802.³ To maximize profits, developers will build mostly west of Sepulveda Blvd for ocean views from the 50-ft high buildings. This will increase Hill- and Sand-Section populations more than 36%.

PROBLEM SOLVED! Starting with Highrose as 100% affordable housing, the city can purchase the property and lease it to developers for construction and operation, **compliant with municipal code**. That way, the public-housing operation remains in the private sector, but the city will have landlord authority to ensure compatibility with city policies.

Per below, the city will need only five such 100% affordable multi-units to meet the 407 quota. The costs easily managed. Based on a professional appraisal for a coastal property almost identical to Highrose, the city could finance the five acquisitions by a small increase in property taxes, amounting to \$188-\$261 per year per each taxpayer, for interest rates 4%-7%.

To ensure purchases, the city could pay twice the appraised value, raising the annual tax increase to \$376-\$522, a piddly amount for solving such an intractable problem. If an owner refuses to sell for twice the property value, the city can exert its power of eminent domain.

After 30 years, the mortgage paid-off and the city will receive market-rate rents.

¹ 6th Cycle *Housing Element*, PDF p. 13, last ¶; Dudek; January 2022

² *Final Negative Declaration*, 6th Cycle Housing Element Update, PDF p. 58, last ¶; Dudek; January 2022.

³ Footnote 1, PDF p. 78, last ¶; Dudek; January 2022

EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

HOUSING ELEMENT UPDATE VIOLATES CEQA; CITY PROPERTY PURCHASE SOLVES PROBLEM!

2.0 THE FACTS: THE HEU EIR VIOLATES CEQA.

CEQA Guidelines § 15074(b) states:

*“Prior to approving a project, the decision-making body of the lead agency shall consider the proposed negative declaration or mitigated negative declaration together with any comments received during the public review process. The decision-making body shall adopt the proposed negative declaration or mitigated negative declaration only if it finds on the basis of the whole record before it (including the initial study and any comments received), **that there is no substantial evidence that the project will have a significant effect on the environment** and that the negative declaration or mitigated negative declaration reflects the lead agency’s independent judgment and analysis.”* [Emphasis added]

A comprehensive critique of the mortally flawed EIR not possible herein. This report shall serve to provide some, but not all, substantial evidence of significant effects on the environment. Other substantial evidence incorporated by reference to the EIR and HEU.

The EIR lacks a model to evaluate environmental impacts from creating 407affordable units by 2029. For a model to assess environmental impacts, this report uses 68 proxies of the Highrose project located at Highland and Rosecrans, which has the following municipal code waivers: 1) 50-ft height; 2) FAR of 2.2; and, 3) A 51-space parking reduction. [Exhibit 1⁴] It assumed that Highrose complies with the myriad regulations for affordable housing.

EIR^[2] 3.17 Transportation; CEQA Violations.

The EIR did not conduct a level-of-service traffic analysis of the impacts that will result from the 31% increase in population created by the 68 Highrose proxies.

Driven by ocean views from lofty fifty-foot-high buildings, this population increase will locate mostly in the Sand and Hill Sections. The traffic will aggregate on Manhattan Ave, Highland Ave, Manhattan Beach Blvd and Rosecrans Ave in the coastal zone and on Sepulveda Blvd at the east boundary of the Hill Section, all heavily used corridors.

Without conducting any traffic analysis of vehicle-miles traveled or other measures, the EIR concludes less than significant traffic impacts from the 31% increase in city population concentrated around the coastal and Sepulveda corridors. The EIR states no conflict with CEQA Guidelines § 15064.3(b), which simply states that the lead agency must analyze traffic impacts by whatever means applicable. [EIR PDF p. 172] The city has failed to analyze traffic impacts from the 31% population increase, so therefore, has violated CEQA.

The HEU summarizes potential sites for affordable-housing projects at Table 15, EIR PDF pp. 313-316. The survey does not include the property at 600 S. Sepulveda Blvd [“600 PCH”], temporarily used by Skechers for parking and a cafeteria. This property with 81,775 sq-ft area would almost double the Highrose unit count, namely 148 units versus 79, both having only six affordable units to qualify for the municipal code waivers.

The 600 PCH property currently in litigation from a CEQA lawsuit, for which traffic impacts a major argument. Exhibit 2 provides the opening brief, which shall serve as evidence in the record for CEQA violations by the HEU.

⁴ *Plans for Highrose Development* [Annotated], Community Development, City of Manhattan Beach; Undated

EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

HOUSING ELEMENT UPDATE VIOLATES CEQA; CITY PROPERTY PURCHASE SOLVES PROBLEM!

EIR^[2] 3.19 Utilities and Service Systems; CEQA Violations.

Would the project “Require or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?” [EIR PDF p. 185]

The EIR states less than significant impact for five candidate sites that have multi-acre areas that greatly exceed the Highrose 43,549 sq-ft area, exactly one acre.

These five sites listed in HEU Table 15, PDF pp. 313-316, namely: 1) # 20, 5 AC; 2) # 31, 4.8 AC; 3) # 32, 7.5 AC; 4) #33, 5.4 AC; and, 5) # 34, 3.3 AC.

It absurd that the EIR states development of these sites for hundreds of units each, including the six affordable units, would not require major construction of water, electric power, natural gas and telecommunication facilities.

This CEQA argument for utilities and service systems included in the Exhibit 2 opening brief for 600 PCH at p. 11.

EIR^[2] 3.14 Population and Housing; CEQA Violations.

Would the project “induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?” [EIR PDF p. 153]

The EIR answers this question by citing the city population decreased by 0.22% during 2010-2021. [EIR PDF p. 150] It states, “As an essentially built-out city, there continues to be few opportunities for growth, except through redevelopment/infill on existing parcels.” [ibid.]

In their EIR, looking backwards, the city completely ignores the 31% increase in population that will result from the 68 Highrose proxy projects. At only six affordable units per project, it takes 68 to reach the 407-unit goal.

Furthermore, the city relies on CEQA exemption from infill projects, not only for the Population and Housing factor, but for all CEQA factors listed in the EIR. The city has no 50-foot high buildings in the commercial and residential zones. It never has conducted an EIR for 50-foot high projects in the zones. Consequently, every cite in the EIR to the infill exemption invalid. That counts as 42 violations of CEQA.

3.0 THE CITY PROPERTY PURCHASE SOLUTION.

This section summarizes the solution to the above CEQA violations, by city purchase of property for 100% affordable housing and leasing to developers for construction and operation. The project financed by a 30-year bond paid for by a piddly increase in annual property taxes.

The financing discussed first.

Project Financing.

Exhibits 3 & 4 address a February 2019 appraisal conducted by Epic Land Solutions, Inc. [“Epic”], for a commercial property that closely resembles Highrose. Exhibit 3 illustrates that the Encinitas Portofino Hotel located in the coastal zone, a ten-minute walk to the beach, like Highrose. Encinitas a high-value real-estate market, same as Manhattan Beach.

EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

HOUSING ELEMENT UPDATE VIOLATES CEQA; CITY PROPERTY PURCHASE SOLVES PROBLEM!

Epic estimated the Portofino Hotel had a 2019 value of \$3.9 MM. [Exhibit 4, PDF p. 2] Scaling this appraisal to Highrose by parcel areas results in an appraised value of \$11.5 MM. Consider: [(43,549 sq-ft Highrose/14,728 sq-ft Portofino)*\$3.9 Portofino = \$11.5 MM Highrose]

The total purchase cost of five Highrose proxies amounts to \$57.5 MM. For a 30-year bond, this equates to an average annual payment of \$188-\$261 per taxpayer, 17,510 of them.

This report proposes that the city will negotiate payments to property owners of twice the appraised values, which increases the average property tax increase to \$376-\$522 per year.

If an owner refuses to receive twice the value of their property, the city can take it at that value by exercising their power of eminent domain.

100% Affordable Housing.

The 100% affordable-housing approach greatly reduces the luxurious floor areas in the Highrose design, of 512 sq-ft for studios and 1,724 sq-ft for three bedrooms. [Footnote 4, p. 1] As result, the Highrose project will fit into the top two floors of a code-compliant 30-ft-high building and will comply with CEQA.

The ground level dedicated to reserved business employee parking, thus freeing up invaluable city parking for the public, a big plus for Coastal Commission approval. Per the Highrose design, residents will have code-compliant parking in two subterranean levels.

This approach will provide the first expansion of city public parking in many decades.

Exhibit 5 illustrates a 350 sq-ft studio in Encinitas, as posted on the Zillow real-estate posting service. This rental in the coastal zone at 225 Melrose Ave, per Exhibit 3. Compare that with the 512 sq-ft studio for Highrose.

The 100% affordable approach adds 150 sq-ft bedrooms to the studio design, for floor areas of: 1) 1-bedroom, 500 sq-ft; 2) 2-bedrooms, 650 sq-ft; and, 3) 3-bedrooms, 800 sq-ft. This provides 75 affordable units that fit into the 2nd and 3rd floors of the Highrose design.

During the week ending January 22, the Exhibit 5 posting, listed at \$1,500 per month, received 6,600 hits, with over 70 persons emailing interest. The typical Zillow posting receives a couple 100 hits a month. The \$1,500 rent corresponds to a \$4,500 per month income, consistent with the Housing and Urban Development very low income for Los Angeles County, Exhibit 6.⁵

The facts show that a 100% affordable housing project at Highrose will work.

4.0 THE HEU EIR VIOLATES CEQA; 100% AFFORDABLE HOUSING SOLVES THE PROBLEM.

- The HEU EIR fails to evaluate impacts from factors, such as: 1) Increased traffic; 2) New services needs; and, 3) Population growth, thereby violating CEQA;
- Solution: The city can purchase properties for 100% affordable housing and lease them to developers for construction and operation, **compliant with municipal code and CEQA;**
- At purchase prices twice the appraised value, five 100 % affordable projects will provide the required 407 units, at average cost to a taxpayer of \$376-\$522 per year; and,
- The city must amend the Housing Element Update with the 100% affordable solution.

⁵ FY 2021 Income Limits Documentation System, Los Angeles County; Housing and Urban Development

EXHIBIT 1. SUMMARY OF HIGHROSE PROJECT DEVELOPMENT
Highrose El Porto EXHIBIT 1. AFFORDABLE HOUSING SOLUTION



Plans for Highrose El Porto Development

Public Comment

If you'd like to make a comment about the project, please email tfaturos@manhattanbeach.gov and your comment will become part of the public record.

Public comment received through January 19, 2022

Public comment received on January 20, 2022

Public comments received between January 20, 2022 and January 24, 2022

Floor Area Factor 1.5 for CNE zoning
HighRose: $96,217/43549=2.21$
Code: $43549 \times 1.5=65,323.5$
100%: $39,546/43549=0.9081=0.9081$ or
 $(39536/2) \times 3=59,319/43549=1.3621$

FREQUENTLY ASKED QUESTIONS

Where is the project located and what is being proposed?

The project is proposed on two contiguous lots, 401 Rosecrans Avenue and 3770 Highland Avenue, which are proposed to be merged into a single 43,549 square-foot parcel to accommodate the project. The project proposes demolition of a banquet facility (Verandas) and multiuse commercial building (Tradewinds Village building) and subsequent construction of a 96,217 square-foot multifamily residential building with 79 rental dwelling units. The developer is utilizing a density bonus pursuant to State law, inclusive of waivers and concessions.

The 79 dwelling units would include 21 studio apartments, 11 one-bedroom apartments, 40 two-bedroom apartments, and seven three-bedroom apartments. The apartments range in size from 512 square feet to 1,727 square feet, comparable to standard rental units throughout the City. Six of the 79 dwelling units will be set aside for "very low

$10,752 + 8,250 + 48,000 + 12,089 = 79,091$ SF living area/2 39,546 SF two-story living space

EXHIBIT 1. SUMMARY OF HIGHROSE PROJECT DEVELOPMENT

EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

income” households, with the remaining 73 dwelling units being market-rate dwelling units.

MBMC 10.64.030. $79 \text{ units} \times 2 = 158 \text{ spaces}$. $79 \text{ units} \times 0.25 \text{ guest spaces} = 19.8 + 158 \text{ spaces} = 177.8$ or 178 spaces vs 127 = 51 space deficit

The project proposes two floors of subterranean parking, containing a total of 127 automobile parking spaces, seven motorcycle parking spaces, and 27 bicycle parking spaces. The minimum required number of parking spaces for the project under State Density Bonus laws is 103 parking spaces.

The public notice for the project was mailed on January 6, 2022 after the project application was deemed complete.

How is “very low income” defined?

The US Department of Housing and Urban Development (HUD) calculates the median family income for the Los Angeles-Long Beach-Glendale, CA area, and then defines “Very Low Income” in relation to the median family income.

For fiscal year 2021, HUD has calculated that the median family income for the Los Angeles-Long Beach-Glendale, CA area to be \$80,000, with the “very low income” determined to be \$59,100 for a family of four, or \$41,400 for an individual. More information regarding income limits can be found on HUD’s website.

Is the project subject to discretionary review?

Pursuant to State and local regulations, the utilization of density bonus law and the incorporation of affordable housing qualify the project for a streamlined, administrative, non-discretionary Precise Development Plan review, which subjects all components of the application to a ministerial review process.

Staff conducts a ministerial review of the project for compliance with Municipal Code requirements and applicable State law, but the City has no authority to conduct a discretionary review process. Furthermore, administrative non-discretionary projects are not subject to the California Environmental Quality Act (CEQA), therefore environmental review is not required. State law does require expeditious processing of density bonus projects; in compliance with this requirement, the City’s administrative non-discretionary process for density bonus projects has been in place since 2013.

When will a decision be made on whether the City will approve or deny the project?

The affordable housing component of this project subjects the application to a ministerial (non-discretionary) process, which means that the decision is made at the staff level (i.e. Director’s decision) and based solely on compliance with applicable regulations. No public hearing is required for staff level decisions. **The Director of Community Development is expected to issue a decision on the project during the first week of February 2022.** To clarify, no decision has yet been issued on this project.

In accordance with MBMC 10.100.010, decisions of the Community Development Director may be appealed to the Planning Commission, and decisions of the Planning Commission may be further appealed to the City Council. The appeal period ends at the close of the business day for City Hall on the 15th day following the Director’s decision. If the 15th day falls on a day when City Hall is closed, the appeal period ends at the close of business on the next working day.

EXHIBIT 1. SUMMARY OF HIGHROSE PROJECT DEVELOPMENT

EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

The fee to file an appeal is \$500. All persons who submitted a public comment will receive a notice of decision via email, once the decision is issued. Detailed instructions on how to file an appeal will be in that email. Appeals are limited to whether the project complies with established development standards and regulations and must maintain a non-discretionary process. Again, the project would be scheduled on the agenda for a Planning Commission meeting only if the Director's decision is appealed.

What role do State Density Bonus regulations and the City's Affordable Housing Density Bonus and Incentive Program play in the project?

State Density Bonus laws (California Government Code Sections 65915 – 65918) include a range of incentives for developers to incorporate affordable housing into their residential developments. Among other things, State Density Bonus laws allow developers to exceed the maximum density requirements as specified in a City's zoning code if certain criteria are met, like setting aside a certain percentage of the total units in the project aside for very-low income occupants. In addition, State Density Bonus laws allow developers to request waivers from development standards, like setback and height requirements. Furthermore, the utilization of density bonus law and the incorporation of affordable housing qualify the project for a streamlined, administrative, non-discretionary Precise Development Plan review, which subjects all components of the application to a ministerial review process.

The City's Municipal Code (MBMC Chapter 10.94 and MBLCP Chapter A.94) mirror State Density Bonus laws by allowed for similar waivers and concessions from development standards in order to build affordable housing projects in the City.

What waivers and concessions has the developer requested under State Density Bonus laws, MBMC Chapter 10.94, and MBLCP Chapter A.94?

As allowed under State law and local regulations, the developer has requested waivers for the maximum buildable floor area (BFA), the maximum numbers of stories, the maximum height, and a setback waiver for portions of the structure with walls greater than 24 feet in height.

As allowed under State law and local regulations, the developer has requested a concession for the maximum height of a wall/fence within the front setback.

How many units would be allowed on the site if State Density Bonus laws and the City's Affordable Housing Density Bonus and Incentive Program were not utilized?

Per MBMC 10.16.030 (A), MBLCP A.16.030 (A), MBMC 10.12.030, and MBLCP A.12.030, a total of 51 units would be allowed on the site if no State Density Bonus laws were utilized.

How much Buildable Floor Area (BFA) would be allowed on the site if State Density Bonus laws and the City's Affordable Housing Density Bonus and Incentive Program were not utilized?

EXHIBIT 1. SUMMARY OF HIGHROSE PROJECT DEVELOPMENT

EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

Per MBMC 10.16.030 (A), MBLCP A.16.030 (A), MBMC 10.12.030, and MBLCP A.12.030, a total of 74,033 square feet of BFA would be allowed on the site if no State Density Bonus laws were utilized.

Why did I not receive a notice in the mail?

Per MBLCP A.96.110, “property owners and residents within 100 feet of the perimeter of the subject parcel” must receive a notice. All mailings must be prepared in accordance with the Community Development Department’s Radius Map Packet instructions. A notice was mailed on January 6th after the project application was deemed complete.

Why wasn't I notified earlier?

Per MBLCP A.96.110, the notice “shall be given within 10 days of acceptance of the application or at least seven days prior to the local decision date.” The notice was mailed on January 6, 2022 after the project application was deemed complete, and the Director of Community Development is expected to make a decision (aka “the local decision”) during the first week of February, 2022. **Thus, the notification period exceeds the minimum required window of time for a notice.**

Is this a SB 9 project?

No, this project does not utilize SB 9. More information on the City's actions on SB 9 can be found on our website.

Is the land where the City-owned parking lot (Lot 4) at the northeast corner of Highland Avenue and Rosecrans Avenue being demolished and being incorporated into the project?

Lot 4 is **not** being demolished or affected by the project. All public parking spaces at Lot 4 would remain. A wall/fence located on the project site is being proposed between the development and Lot 4.



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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF LOS ANGELES**

13 MB POETS)

CASE NO.: 20STCP04201

14 Petitioner,)

15 v.)

PETITIONER'S OPENING BRIEF

16 CITY OF MANHATTAN BEACH)

17 Respondent;)

(California Environmental
Quality Act, Manhattan Beach Municipal Code,
and the Brown Act)

18 _____)
19 MB HOTEL PARTNERS, LLC; JAN HOLTZE, an)
20 individual; LIVE OAK PROPERTIES LLC)
21 and)
22 DOES 1 – 10)

Petition Filed: December 22, 2020

23 Real Parties in Interest)

The Honorable Mary H. Strobel
Department 82

Hearing: April 14, 2022

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<i>Kings County Farm Bureau v. City of Hanford</i> (1990) 221 Cal.App.3d 692	13
<i>Lewis v. Seventeenth Dist. Agricultural Assn.</i> (1985) 165 Cal.App.3d 823	12, 18
<i>Muzzy Ranch Co. v. Solano County Airport Land Use Com.</i> (2007) 41 Cal.4th 372	10

EXHIBIT 2. OPENING BRIEF ON CEQA VIOLATIONS BY 600PCH PROJECT
EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

1 *No Oil, Inc. v. City of Los Angeles*
 (1974) 13 Cal.3d 68 10, 16

2 *Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist.*
 3 (2004) 116 Cal.App.4th 396 13

4 *Pocket Protectors v City of Sacramento*
 5 (2004) 124 Cal.App.4th 903 13

6 *Salmon Protection & Watershed Network v. County of Marin*
 7 (2004) 125 Cal.App.4th 1098 18

8 *San Joaquin Raptor Rescue Center v. County of Merced*
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10 *Santa Monica Chamber of Commerce v. City of Santa Monica*
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11 *Save Our Carmel River v. Monterey Peninsula Water Management Dist.*
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13 *Sierra Club v. County of Sonoma*
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15 *Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.*
 16 (2013) 215 Cal.App.4th 1013 17

17 *Voices for Rural Living v. El Dorado Irrigation Dist.*
 18 (2012) 209 Cal.App.4th 1096 12

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1 **I. INTRODUCTION**

2 This action challenges the City of Manhattan Beach’s (“City’s”) failure to comply with the
3 California Environmental Quality Act (“CEQA”), the City’s Municipal Code, and the Brown Act in
4 approving a retail commercial project at 600 Sepulveda Avenue in the City proposed by MB Hotel
5 Partners, LLC. This proposed project provides for the development of a new 162-room, 81,775 square-
6 foot hotel and a 16,348 square foot retail and office building at 600 S. Sepulveda (“Project”). The
7 proposal would make this the tallest building along Sepulveda Boulevard in Manhattan Beach. Parking
8 would be severely lacking, as only 152 parking spaces would be provided, despite the Project requiring
9 243 parking spaces under applicable provisions of the Municipal Code. The Project would have
10 relatively significant impacts in an area of Manhattan Beach renowned for its peace and quiet, known as
11 “the Poets Section,” with streets named after celebrated poets Keats, Tennyson, and Shelley.

12 The Project requires a discretionary approval of a Master Use Permit, thus necessitating
13 compliance with CEQA. This discretionary review provided the City the ability to impose conditions of
14 approval to reduce the impacts associated with the Project. For example, restrictions on the height,
15 design, building placement, and hours of operation were imposed but would not eliminate impacts.

16 The City improperly approved this impactful Project based upon a Class 32 categorical
17 exemption to environmental review under CEQA for infill development that has no unusual impacts.
18 This categorical exemption is inapplicable because the Project would result in traffic impacts due to
19 increased commercial traffic using quiet residential streets and busy city thoroughfares, increased traffic
20 on a state highway (Sepulveda Boulevard) with short sightline distances in this critical area, and create a
21 parking demand in severe excess of the parking capacity of the site. The Project would also have
22 adverse noise impacts on the surrounding residential community both during construction and
23 operations. The use of a categorical exemption is also improper because the Project required conditions
24 of approval to mitigate potential impacts. No exemption is permissible where mitigation measures are
25 necessary to reduce impacts below a level of significance. For all of these reasons, the City should have
26 required a full environmental impact report (EIR) to determine the extent of the Project’s impacts, and
27 require Project revisions and mitigation measures to address those impacts.

1 **II. STATEMENT OF FACTS**

2 **A. The Project Site.**

3 The Project site is located at 600 South Sepulveda Boulevard in the City of Manhattan Beach.
4 (Administrative Record (“AR”) 1: 1; 6: 46.) The site is zoned CG-D8, General Commercial- Sepulveda
5 Boulevard Corridor Overlay. (AR 6: 53.) The surrounding properties are zoned CG-D8 to the north,
6 CG General Commercial to the south, RS Single-Family Residential to the east, and a narrow
7 commercial strip and Single Family Residential to the west. (AR 2: 25; 7: 99.)

8 The site was formerly used as an El Torito restaurant. However, that restaurant vacated the site
9 in late 2018. The site is stated to be a 65,419 square foot lot. (AR 124:5396). The restaurant occupied
10 8,500 square feet of the site. (AR 6:54.) Skechers occupied the site since 2019, using the restaurant
11 building as a cafeteria and meeting space while using the parking lot as parking for Skechers employees
12 impacted by construction at Skechers’ new office buildings along Sepulveda Boulevard. (AR 6:54.)

13 **B. The Project.**

14 In early 2019, the City approved the Sepulveda Boulevard Corridor Overlay. (AR 1:2.) Among
15 other changes to long-standing zoning and land use restrictions in the area, this Overlay allowed a 40-
16 foot height limit for hotel uses in the D8-Sepulveda Corridor Overlay Zone. (AR 2:27.) No
17 environmental review of the Overlay Zone was conducted. (AR 68:2475.) The Ordinance approving
18 the Overlay stated: “Future discretionary development projects shall be subject to CEQA and shall be
19 subject to environmental review.” (Ordinance No. 19-0004, section 7.)¹ Despite this statement the
20 City approved the Project with no environmental review and claimed it was exempt from CEQA.

21 On August 9, 2019, the Community Development Department received an application
22 requesting a Master Use Permit for a new 162-room, 81,775 square-foot, four-story hotel and a separate
23 new 16,348 square foot two-story retail and office building at 600 S. Sepulveda, at the northeast corner
24 of Sepulveda Boulevard and Tennyson Street. (AR 124:5395; 144:9754.)

25 The Planning Commission conducted a public hearing on October 14, 2020 to consider the
26 request for the Master Use Permit. (AR 7:101.) Numerous public comments were submitted in

27 _____
28 ¹ Judicial Notice of excerpts of relevant City Ordinances, Municipal Code sections, and General Plan provisions is sought in the concurrently filed Request for Judicial Notice.

1 opposition to this proposal. (AR 7:101.) The hearing was continued to November. (AR 7:102.)

2 On November 18, 2020, the Planning Commission held another public hearing. (AR 7:102.)
3 Again, numerous public comments were submitted, most of them in opposition to the Project as
4 proposed. MB Poets submitted detailed comments objecting to various aspects of the Project, and
5 included expert testimony regarding parking, traffic, noise, and land use impacts. (AR 126:6680-85;
6 129:6702-14.) Despite these many and detailed objections, the Planning Commission adopted a
7 resolution approving the Project. (AR 6:56.)

8 Following the approval by the Planning Commission, but prior to the expiration of the 15-day
9 appeal period provided by the Manhattan Beach Municipal Code, the City prepared a Notice of
10 Exemption and it was prematurely filed. (AR 122:5297-98.) MB Poets appealed the Planning
11 Commission approval to the City Council by delivering an appeal to the City on November 25, 2020.
12 (AR 120: 5234-93.) The City initially set a hearing of MB Poets' appeal on January 19, 2021, then
13 February 2, 2021, and eventually rescheduled for May 4, 2021. (AR 58:1715-16.) At the May 4, 2021
14 appeal hearing for the Project, City Attorney Quinn Barrow stated, "Since we're coming back with a
15 resolution with *draft conditions*, the applicant [and] the appellants, *everyone can discuss those*
16 *conditions.*" (AR 17:273, emphasis added.)

17 At the May 4, 2021 appeal hearing, the City Council directed staff to amend only a few
18 conditions, related to alcohol-service closing hours and parking. (AR 19:287; 17:275.) The meeting
19 minutes state "City Attorney Barrow clarified that the applicant will have the opportunity to discuss the
20 aforementioned conditions when the draft resolution presented to the City Council." (AR 19:287.)

21 In contrast with the direction for limited changes, the new resolution contained 188
22 replacements, insertions and deletions, compared to the resolution approved by the Planning
23 Commission on November 18, 2020. (AR 50:1088.) Consequently, the resolution of the City Council
24 had many changes never previously considered in a public hearing. Despite commitments there would
25 further opportunity for discussion at a public hearing, the Project appeared as a consent calendar item
26 on the June 15 agenda. (AR 12:125.) One-half hour before that meeting commenced, Community
27 Development Director Tai emailed a member of MB Poets that the City Council would not consider
28

1 any further evidence other than that received prior to closure of the May 4 appeal. (AR 49:1087.) At
2 the June 15, 2021 meeting, the matter was called off the consent calendar for public hearing and over
3 further objections, the City Council voted to approve the Project. (AR 13:134.)

4 **III. STANDARD OF REVIEW**

5 **A. California Environmental Quality Act**

6 An agency's reliance upon a categorical exemption necessitates two inquiries, with a shifting
7 burden for review. First, a court must determine whether an agency has correctly determined that a
8 project is categorically exempt from CEQA review. The interpretation of the language of the guidelines
9 implementing CEQA or the scope of a particular CEQA exemption presents "a question of law, subject
10 to de novo review by this court." (*Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1251;
11 *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165,
12 1192 ("Azusa Land").) Thus, the first question before the Court is "to determine whether, *as a matter*
13 *of law*, the [project] met the definition of a categorically exempt project." (*Santa Monica Chamber of*
14 *Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786, 792.) In determining whether the
15 project comes within the categorical class of exemptions, courts "apply a de novo standard of review,
16 not a substantial evidence standard." (*Ibid.*) "[T]he agency invoking the [categorical] exemption has the
17 burden of demonstrating" that substantial evidence supports its factual finding that the project falls
18 within the exemption. (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th
19 372, 386.) Further, the agency decides whether a project is categorically exempt as a part of its
20 preliminary review without reference to any mitigation measures. (*Azusa Land, supra*, 52 Cal.App.4th
21 1165, 1199-2000.) If an agency establishes that the project fits an exemption, a party challenging the
22 exemption may produce evidence that the project is not exempt because it falls within one of the
23 exceptions listed in CEQA Guidelines section 15300.2. (*Berkeley Hillside Preservation v. City of*
24 *Berkeley* (2015) 60 Cal.4th 1086, 1105.) The party invoking an exception to an exemption "need only
25 show a reasonable possibility of a significant effect due to [an] unusual circumstance" such as a
26 project's "size or location." (*Ibid.*) Courts determine whether there is a reasonable possibility of a
27 significant effect on the environment due to the unusual circumstances using the fair argument
28 standard. (*Berkeley Hillside, supra*, 60 Cal.4th 1086, 1116.) The fair argument standard is a "low
threshold" that requires preparation of environmental review whenever there is any substantial evidence
a project may have an adverse impact, even if there is evidence to the contrary, without deference to an
agency's determination. (CEQA Guidelines § 15064, subd. (f)(1); *No Oil, Inc. v. City of Los Angeles*

1 (1974) 13 Cal.3d 68, 75; *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1317-18.)

2 **B. Municipal Code and Brown Act.**

3 Municipal Code violations are reviewed as a question of law. (*Audio Visual Services Group,*
4 *Inc. v. Superior Court* (2015) 233 Cal.App.4th 481, 489.) Brown Act violations based on undisputed
5 facts are reviewed as a question of law. (*San Joaquin Raptor Rescue Center v. County of Merced*
6 (2013) 216 Cal.App.4th 1167, 1175.)

7 **IV. ARGUMENT**

8 **A. The City's Approval of the Project Violates CEQA,**

9 **1. The Project Does Not Fit Within a Class 32 Exemption Due to Its Impacts.**

10 The City relies upon a Class 32 categorical exemption to exempt the Project from environmental
11 review under CEQA. (AR 1:2; see CEQA Guidelines § 15332.) Categorical exemptions are strictly
12 construed, "in order to afford the fullest possible environmental protection." (*Save Our Carmel River v.*
13 *Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697.) A Class 32 exemption
14 only applies if the project meets specific conditions, for which it is the City's burden to prove, including
15 that approval of the Project "would not result in any significant effects relating to traffic, noise, air
16 quality, or water quality" and the Project site "can be adequately served by all required utilities and
17 public services." (CEQA Guidelines § 15332.) The City failed to meet its burden. As discussed below,
18 the Project will likely have significant traffic, noise, parking, land use, and public utility impacts that
19 have not been mitigated. Furthermore, the Project's inconsistency with Municipal Code requirements
20 prevents its reliance on an exemption.

21 **2. The Project Falls Within Exceptions to the Claimed Categorical Exemption.**

22 Recognizing that projects that would otherwise qualify for a categorical exemption may cause
23 significant adverse environmental impacts under certain circumstances, CEQA contains exceptions to
24 categorical exemptions. (CEQA Guidelines §15300.2; *Wildlife Alive v. Chickering* (1976) 18 Cal.3d
25 190, 206.) Here, even if the Project did fit within the Class 32 categorical exemption, which it does not,
26 the exemption would be inapplicable because several exceptions to categorical exemptions apply.

27 A categorical exemption is inapplicable when "there is a reasonable possibility that the activity
28 will have a significant effect on the environment due to unusual circumstances." (CEQA Guidelines §
15300.2, subd. (c).) This Project is unlike the typical project for which the Class 32 categorical
exemption was developed due to its size, the nearby residential neighborhoods, and the Municipal Code
requirements to which the Project does not conform. These unusual circumstances result in a reasonable

1 possibility the Project will have significant adverse impacts, preventing reliance on an exemption.

2 **a. Unusual Circumstances Would Result in Significant Impacts.**

3 CEQA prohibits use of a categorical exemption when “there is a reasonable possibility that the
4 activity will have a significant effect on the environment due to unusual circumstances.” (CEQA
5 Guidelines § 15300.2, subd. (c).) Under this exception, two determinations must be made; first is
6 whether there is substantial evidence of unusual circumstances. (*Berkeley Hillside, supra*, 60 Cal.4th
7 1086, 1114-16.) Without a definition in CEQA, courts have opined that “whether a circumstance is
8 ‘unusual’ is judged relative to the typical circumstances related to an otherwise typically exempt
9 project.” (*Voices for Rural Living v. El Dorado Irrigation Dist.* (2012) 209 Cal.App.4th 1096, 1109.)
10 Additionally, “the significance of an activity may vary with the setting.” (CEQA Guidelines § 15064,
11 subd. (b)(1).) Thus, unusual circumstances negating categorical exemptions include a project’s size and
12 context. (*Azusa Land, supra*, 52 Cal.App.4th 1165, 1207-08; *Lewis v. Seventeenth Dist. Agricultural*
13 *Assn.* (1985) 165 Cal.App.3d 823, 829.)

14 Here, the Project will have four stories, a first for the city, which violates General Plan Goal LU-
15 1, “Maintain the low-profile development and small-town atmosphere of Manhattan Beach.” (City
16 General Plan, p. LU-23; AR 50:1096; 73:2805; 45:1019.) Additionally, on March 6, 2019 without
17 environmental review, the City amended the zoning code to permit four-story hotels in the Sepulveda
18 Corridor. (AR 1:2; 17:230 [public commenting that City “never studied these impacts”]; 17:262.) This
19 occurred just five months before receiving the Project application on August 9, 2019. (AR 144:9754.)
20 Therefore, the city has never conducted an environmental review of four-story buildings. The
21 unprecedented four-story nature of the Project nestled among residential neighborhoods exacerbates
22 noise, traffic, and parking impacts and constitutes an unusual circumstance that requires an EIR. In an
23 email to staff for the Project’s initial public hearing on October 14, 2000, Planning Commissioner
24 Richard Thompson, who qualifies as an expert and served as Community Development Director during
25 1996-2014 (AR 61:1955), wrote: “I was surprised that an initial study wasn’t prepared for this due to
26 the size, nature and potential public controversy associated with the development of this site.” (AR
27 61:1959.) Additionally, Sepulveda Boulevard has unusually short sightline distances in this critical area.
28 (AR 20:304; 129:6703.)

**b. A Categorical Exemption is Unavailable Due to Cumulative and Project
Specific Traffic Impacts.**

A categorical exemption is also “inapplicable when the cumulative impact of successive projects

1 of the same type in the same place, over time is significant.” (CEQA Guidelines § 15300.2(b).) The
2 cumulative impacts result from the incremental impact of a project when added to other related past,
3 present, and reasonably foreseeable probable future projects. (CEQA Guidelines, § 15355, subd. (b).)
4 The cumulative impact exception ensures that a project’s potential cumulative impacts are not
5 overlooked when a categorical exemption is applied because “environmental damage often occurs
6 incrementally from a variety of small sources.” (*Kings County Farm Bureau v. City of Hanford* (1990)
7 221 Cal.App.3d 692, 720.) This exception to a categorical exemption applies if the lead agency is
8 presented with “evidence that there was a *fair argument* that the cumulative impact exception applied.”
9 (*Aptos Residents Assn. v. County of Santa Cruz* (2018) 20 Cal.App.5th 1039, 1052, emphasis added.)
10 Expert comments and relevant personal observations qualify and substantial evidence of a fair argument
11 that the Project may have noise, traffic, parking and land use impacts. (*Keep Our Mountains Quiet v.*
12 *County of Santa Clara* (2015) 236 Cal.App.4th 714, 735; *Ocean View Estates Homeowners Assn., Inc. v.*
13 *Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 402; *Pocket Protectors v City of Sacramento* (2004)
14 124 Cal.App.4th 903, 931–932.) Due to the Project’s potentially significant cumulative impacts, a
15 categorical exemption is unavailable.

16 The Project would result in adverse traffic impacts that prevent reliance on a Class 32 exemption.
17 Transportation engineer Craig S. Neustaedter opined that the traffic analysis improperly omits Keats
18 Street, Chabela Drive, Shelley Street, Prospect Avenue and 30th Street, which are the residential streets
19 adjoining or near the Project. (AR 114:4799.) Furthermore, the analysis of Kimley-Horn and
20 Associates (“KHA”), the applicant’s traffic consultant relied upon by the City, failed to analyze
21 cumulative impacts to 30th Street, which carries project traffic to and from the beach and is used by
22 traffic from the multiple, large, new Skechers buildings that when occupied would impact the area
23 immediately proximate to this development. (AR 114:4799; 129:6706.) A categorical exemption is
24 “inapplicable when the cumulative impact of successive projects of the same type in the same place,
25 over time is significant.” (CEQA Guidelines § 15300.2, subd. (b).) The City failed to address
26 cumulative impacts of the Skechers project. One of the mitigation measures for the Skechers project is
27 to require a lengthened left turn pocket onto Tennyson for southbound traffic. (AR 129:6706; 6:62.)
28 This additional left turn capacity plus Project traffic will substantially increase vehicle trips on Tennyson
and Chabela, which lead to and from the residential area on the east, unaccounted for by KHA.

KHA relies on a baseline traffic level that includes traffic from the former El Torito restaurant
onsite, which is improper under CEQA. (AR 124:5437; 117:4805.) CEQA review requires using a

1 baseline that represents the “actual environmental conditions existing at the time of CEQA analysis . . .
2 rather than the level of development or activity that could or should have been present according to a
3 plan or regulation.” (*Communities for a Better Environment v. South Coast Air Quality Management*
4 *Dist.* (2010) 48 Cal.4th 310, 321.) During Skechers construction, the site temporarily operates as a
5 private parking lot. (AR 6:54.) Its existing traffic levels should be used as the baseline for CEQA
6 analysis. Instead, the Project’s traffic analysis improperly deducts vehicle trips associated with the
7 Project site’s former use as a restaurant. (AR 124:5437; 117:4805.)

8 **c. A Categorical Exemption is Unavailable Due to Project Noise Impacts.**

9 Noise from heating and air conditioning equipment on the rooftop can have substantial impacts
10 that require preparation of an EIR. Public comments at hearings that the air conditioners are very noisy
11 can be “sufficient to raise a fair argument of significant noise impacts.” (*Citizens for Responsible &*
12 *Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1340.) Where evidence
13 supports a fair argument that Project-related crowd noise may have significant noise impacts on
14 surrounding residents, an EIR is required. (*Keep Our Mountains Quiet v. County of Santa Clara* (2015)
15 236 Cal.App.4th 714, 734.)

16 Substantial evidence presented by acoustic expert Steve Rogers illustrates that significant noise
17 impacts will result from the Project. (AR 55:1650 and 62:2017-2023.) Therefore, the City may not rely
18 on a Class 32 exemption from CEQA. Mr. Rogers’s analysis shows noise impacts will be significant.
19 (AR 62:2017-23; 86:3505-08; 113:4794-97; 120:5272-80.) The analysis by the Project applicant’s
20 noise experts Michael Baker International (“MBI”) and relied upon by the City, significantly understated
21 the Project’s operational noise impacts. (AR 55:1658; 124:5774-5809)

22 Condition 16 in Resolution PC 20-10 required that noise be inaudible at the property lines. (AR
23 2:29; 124:5317.) However, this condition was deleted from the June 15, 2020 City Council resolution.
24 (AR 1:12). Roughly 50 feet from the west property line, both the fourth-floor open-air terrace and the
25 ground-level patio will serve alcohol to hundreds of patrons until 1 AM seven days a week. (AR
26 61:1746 and 1750; 1:16 [hours of operation].) Twenty feet from the east property line, a veritable
27 wall of noise sources exists: 45 openable hotel-room windows, an open garage with patrons talking
28 loudly and slamming doors at 1 AM, and a rooftop crammed with chugging air-conditioner compressors
and whining fans. (AR 61:1750-51.) These noise impacts occur because of the unusual circumstance

1 of siting an overly-tall commercial structure nestled within a quiet residential area.

2 Heating, ventilation and air-conditioning (“HVAC”) noise would be significant. MBI assumed
3 that only one of the 25 pieces of HVAC equipment on the roof would be operating at any given time.
4 (AR 117:4844, 4847.) Noise impacts on the nearby residential uses would be the combined effect of
5 multiple fans and condenser units operating simultaneously. (AR 55:1650, 1653.) MBI provided an
6 incomplete response alleging a wall would reduce noise (AR 100:4395), but it did not count all
7 equipment depicted in project plans. (AR 62:2022.)

8 Crowd noise would be significant. (AR 55:1654.) MBI assumed a single talker using an
9 unrealistically low level of speech effort in the rooftop bar, roof terrace and hotel bar patio. (AR
10 55:1654.) However, the rooftop bar/terrace could accommodate 200 people, with room for dozens
11 more on the first-floor patio. (AR 55:1654.) Taking into consideration the noise impacts of multiple
12 speakers, as well as the noise analysis’ inadequate assumptions for speech effort and failure to factor in
13 alcohol consumption, acoustic expert Steve Rogers concluded the true impact of crowd noise in the
14 outdoor gathering area of the hotel would be at least 30 dBA higher than MBI predicted – i.e., a net
15 noise level of 53 dBA, which would exceed the 50 dBA nighttime exterior noise standard in Manhattan
16 Beach Municipal Code section 5.48.160. (AR 55:1654.) MBI claimed occupancy of 150 (AR 65:2095)
17 but this was incorrect (AR 62:2017). MBI also claimed noise receptors would be indoors (AR 65:2096),
18 but this assumption had no valid basis (AR 62:2018).

19 Amplified music noise would be significant. MBI does not address potential noise impacts
20 associated with amplified music playback in the hotel, including live music performances and DJ sets on
21 the rooftop terrace. (AR 55:1655.) MBI does not address noise impacts on the residential uses located
22 on El Oeste Drive, to the west of the project site that would have a direct line-of-sight to the rooftop
23 bar/terrace, approximately 300-feet away. (AR 55:1650.) MBI claimed amplified music is prohibited by
24 Condition 16 (AR 100:4396) but that Condition does not prevent noise (AR 62:2022) and was deleted
25 by the City (compare AR 16 with AR 29). MBI claimed impulsive noise does not include music (AR
26 100:4396) but this is incorrect (AR 62:2019).

27 Noise impacts from the ground level parking lot and the open-to-the-air underground parking lot
28

1 adjacent to the residential neighbors would be significant. There is no wall, acoustic sealing of the
2 underground lot or other measure to reduce the impacts of cars and human activity in the parking lot.
3 (See AR 54:01360; 61:01975 [Shade Hotel CUP requiring acoustic sealing].) MBI attempted to respond
4 to public and expert comments in April 2021 (AR 64:2080) and June 2021 (AR 100:4394). However,
5 MBI's responses did not rebut the points made by noise experts regarding rooftop occupancy generating
6 crowd noise (AR 62:2017, 2018), the exceedance of noise limits at homes on El Oeste (AR 62:2017),
7 impulsive noise (AR 62:2018) and HVAC noise (AR 62:2022). MBI's rebuttals were unsubstantiated
8 (AR 62:2020-21). Even had they been substantiated, where there are conflicting assertions between
9 experts, an EIR is necessary. (*County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 814.) As stated in the
10 CEQA Guidelines, "if a lead agency is presented with a fair argument that a project may have a
11 significant effect on the environment, the lead agency shall prepare an EIR even though it may also be
12 presented with other substantial evidence that the project will not have a significant effect (*No Oil, Inc.*
13 *v. City of Los Angeles* (1974) 13 Cal.3d 68.)" (CEQA Guidelines § 15064 (f)(1).)

14 **d. Inconsistency with City Code Requirements for Parking Prevent**
15 **Application of an Exemption.**

16 A Class 32 exemption is unavailable because the Project violates the City's Municipal Code
17 requirements for parking. Staff stated that Manhattan Beach Municipal Code ("MBMC") Section
18 10.64.030 requires 243 spaces be provided for the site based on proposed uses. (AR 132:6861;
19 124:5396.). The City claimed this amount could be reduced to 152 total spaces (91 less than 243),
20 pursuant to MBMC Section 10.64.050 (B). (AR 1:8-9)

21 The MBMC, however, limits the allowable reduction to 15% of total spaces required, which in
22 this case would be only 37 spaces. (MBMC Section 10.64.040.) As result, the parking violates MBMC
23 section 10.64.040, Collective Provision for Parking. This statute permits a maximum reduction of 15%
24 in spaces if multiple uses on site share the parking at different times of day. (AR 126:6682.) The
25 Municipal Code permits a 36-space (i.e., 243 x 0.15) reduction in requirements, whereas the applicant
26 erroneously took a 91-space reduction, a larger reduction than permitted by Code. (AR 114:4799;
27 126:6681.) As result, the City violated its parking ordinance to approve the Project.

28 Insufficient parking at a project can lead to environmental impacts from increased vehicle

1 emissions and vehicle miles traveled and overflow parking in the nearby residential neighborhoods.
2 “CEQA considers a project's impact on parking of vehicles to be a physical impact that could constitute
3 a significant effect on the environment.” (*Taxpayers for Accountable School Bond Spending v. San*
4 *Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013, 1051.) The parking analysis performed by
5 KHA makes unjustifiable assumptions that are not based on substantial evidence. For example, the
6 KHA parking analysis uses unjustifiably low levels of parking demand based on unsupportable
7 application of parking ratios. (AR 132:6886-89.) The Institute of Transportation Engineer’s (“ITE”)
8 standard requirement for spaces is 1.55 spaces per hotel room on Saturdays, but the applicant uses a
9 ratio of only 0.64. (AR 114:4800; 124:5426.) This results in a peak-parking demand that is only 41% of
10 the industry standard. (AR 126:6681; 129:6705.)

11 Transportation engineer Neustaedter’s analysis discloses that the KHA parking analysis excludes
12 parking demand from public use of hotel alcohol-serving venues. Condition 15 in the June 15, 2021
13 City Council Resolution restricts alcohol service to hotel patrons only. (AR 1:16.) The application,
14 however, specifies a Type 47 on-sale general license. (AR 124:5413.) Per Ms. Lauren Tyson, former
15 official of the Department of Alcoholic Beverage Control (“ABC”), an on-sale license requires a bona
16 fide public eating place, open to the public and not restricted to guests. (AR 61:1874-81.) For traffic
17 and parking analyses, the general license would correspond to ITE hotel model Class 310 Hotel, with
18 much higher traffic and parking demands, not a Class 312 Business Hotel. (AR 54:1357-58.) The
19 impact of the significant underparking of the Project site would mean that cars would need to leave the
20 site (adding disruption of traffic flow on Sepulveda and surrounding streets) and then circle the nearby
21 area or try to park there.

22 **e. Impacts to Sewer Capacity Would be Significant.**

23 The Project would require substantial upgrades to local sewer and potable water pipelines, which
24 is a significant impact that renders an exemption from CEQA inapplicable. (AR 68:2124-27; 124:6173.)
25 The public submitted evidence that sewer capacity would not be sufficient for the over-sized Project,
26 objecting specifically to the City’s underestimate of sewage generated by the Project, as well as the
27 City’s contention that the Project’s “consistency with the General Plan” would ensure sufficient
28

1 capacity. (AR 68:2124-27). The City responded simply that its efforts to modify the water and sewer
2 infrastructure would be sufficient once such modifications were made, and General Plan compliance
3 with the General Plan was sufficient. (AR 67:2113-14, 2119.) The City’s response failed to address the
4 public’s specific evidence showing that the Project cannot be adequately served by sewer and water
5 utilities. (See *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173,
6 210–211 [compliance with the Building Code not sufficient to address energy impact concerns].)

7 **3. CEQA Does Not Permit Use of Mitigation Measures for an Exemption.**

8 The City has improperly relied upon mitigating conditions to grant a categorical exemption from
9 CEQA for the Project. (*Salmon Prot. & Watershed Network v. Cnty. of Marin* (2004) 125 Cal.App.4th
10 1098, 1102.) Categorical exemptions are prohibited for projects that may have a significant
11 environmental impact. (Pub. Resources Code § 21084; CEQA Guidelines §§ 15300.2; 15061.) “An
12 agency should decide whether a project is eligible for a categorical exemption as part of its preliminary
13 review of the project... not in the second phase when mitigation measures are evaluated.” (*Azusa Land*,
14 *supra*, 52 Cal.App.4th 1165 at 1199-1201; *City of Pasadena v. State of California* (1993) 14
15 Cal.App.4th 810, 820.) Reliance on conditions of approval or other measures to mitigate a project’s
16 potential impacts “involves an evaluative process ...and that process must be conducted under
17 established CEQA standards and procedures for EIRs or negative declarations.” (*Salmon Prot. &*
18 *Watershed Network, supra*, 125 Cal.App.4th 1098, 1108; *Lewis v. Seventeenth Dist. Agricultural Assn.*
19 (1985) 165 Cal.App.3d 823, 830.)

20 Here, the Project was revised in an attempt to address the noise, traffic, parking, and land use
21 incompatibility impacts identified by the public. Operational limitations were placed on the location and
22 hours of operation of rooftop decks to address the Project’s inevitable noise impacts. (AR 1:16.) “The
23 very fact the [City] took steps in mitigation makes it manifest there was a possibility of a significant
24 effect. If steps in mitigation lessen the ‘adverse change,’ such steps may qualify the [City] to file a
25 negative declaration, but not to find itself outside the law.” (*Lewis, supra*, 165 Cal.App.3d 823, 830.)

26 “An agency should decide whether a project is eligible for a categorical exemption as part of its
27 preliminary review of the project without reference to or reliance upon any proposed mitigation
28 measures” (*Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098,
1106.) Reliance on such measures “involves an evaluative process ...and that process must be
conducted under established CEQA standards and procedures for EIRs or negative declarations.” (*Id.* at

1 1108.) *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th
2 1165, 1191, 1201 holds an agency may not “evade these standards by evaluating proposed mitigation
3 measures in connection with the significant effect exception to a categorical exemption.”

4 In a futile attempt to mitigate noise, traffic, parking, and aesthetic impacts, the Project was
5 conditioned upon a number of modifications. (AR 1:14-22.) The conditions of approval require
6 development in accordance with site plans that were revised to create a stepped design and attempt to
7 camouflage the building façade with foliage. (AR 1:14-15; 70:2541, 2583.) Conditions of approval
8 were devised to set hours of operation for the rooftop deck in an attempt to address the concerns raised
9 regarding noise impacts. (AR 1:16.) The conditions required by the City are extensive but likely to be
10 ineffectual in reducing the Project’s significant impacts. Eating and drinking hours of operation,
11 including alcohol service and amplified music on the outdoor 4th story terrace, are 7 a.m. to 1 a.m.
12 Friday and Saturday and 7 a.m. to 11 p.m. Sunday through Thursday. (AR 1:16 [Condition 13].);

13 The City deleted a Planning Commission condition that noise be inaudible at the property lines
14 (AR 2:29 [Resolution No. PC 20-10, Condition 16].) Parking is to be “discourage[d]” on adjacent
15 residential streets (AR 1:19 [Resolution 21-0044, Condition 38]) but no measure to enforce this is
16 provided. These measures are likely to be ineffective as shown by the experience of residents around
17 the Residence Inn further north on Sepulveda Boulevard. (See, e.g., AR 127:6686; 63:2044.)

18 By definition, a project does not qualify for a categorical exemption unless the agency has
19 determined environmental impacts cannot occur and mitigation measures are *unnecessary*. Here, the
20 City has imposed conditions of approval to mitigate the Project’s likely impacts. For this reason, the
21 City cannot rely on a Class 32 categorical exemption to CEQA review.

22 **B. The Project’s Approval Violates the City’s Municipal Code.**

23 Approval of the Project violates the Manhattan Beach Municipal Code (MBMC) in various
24 ways. As described above, the Project fails to provide the amount of parking required pursuant to
25 MBMC Section 10.64.040 by reducing required parking more than the 36 permitted by code. (AR
26 114:04799; 126:6681.) As described above, the Project fails to comply with the noise ordinance
27 pursuant to MBMC sections 5.48.140 [Noise Disturbances] and 5.48.160 [Exterior Noise Standards]

1 because it would generate noise measurable at a level of 53 dBA at nearby residential properties. (AR
2 1654.) MBMC section 10.60.120 (A) incorporates the noise ordinance into the zoning code.

3 **C. The City Violated the Brown Act During the Project’s Approval Process.**

4 The Brown Act requires that at least 72 hours before a regular meeting, a legislative body must
5 post an agenda containing a “brief description” of each item of business to be acted upon at the meeting.
6 (Gov. Code § 54954.2, subd. (a)(1).) The legislative body may not take any action on an item not
7 appearing on the posted agenda, with limited exceptions not applicable here. (Gov. Code §§ 54952
8 subd. (a)(3), 54954.2 subd. (b).) Public agencies must also provide the public with an opportunity to
9 participate in public hearings. (Gov. Code § 54954.3, subd. (a).) The purpose of the Ralph M. Brown
10 Act is to “aid in the conduct of the people’s business” by encouraging public participation in
11 government decision making. (Gov. Code § 54950.) (*San Joaquin Raptor Rescue Center v. County of*
12 *Merced* (2013) 216 Cal.App.4th 1167, 1176.)

13 The City violated the Brown Act at the regular City Council meeting held on June 15, 2021.
14 (AR 12:125 [Consent Calendar Item No. H(9)].) The Project agenda item, as discussed by the City
15 Council on June 15, 2021, was not properly noticed because the City did not provide notice that
16 members of the public would be permitted to speak on this issue because the City agendized the item on
17 the consent calendar. This failure to post accurate notice of the public’s ability to speak violated the
18 Brown Act and, therefore, any actions that it took at that meeting are null and void.

19 Agenda Item No. 9(H), the approval of the Project, involved the administrative appeal filed by
20 MB Poets. The City initially set a hearing of MB Poets’ appeal on May 4, 2021. (AR 19:285-87.) At
21 the May 4, 2021 appeal hearing for the Project, the City agreed to amend a few of the Project’s
22 conditions of approval related to alcohol-service closing hours and parking. (AR 19:287.) The City’s
23 minutes for the May 4 meeting state, “City Attorney Barrow clarified that the applicant will have the
24 opportunity to discuss the aforementioned conditions when the draft resolution presented to the City
25 Council.” City Attorney Quinn Barrow stated, “Since we're coming back with a resolution with draft
26 conditions, the applicant will have an opportunity to, um, discuss those conditions just like anybody
27 else, the appellants, *everyone can discuss those conditions.*” (AR 17:273, emphasis added.)
28

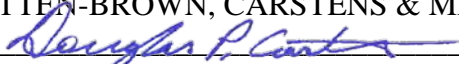
1 Half an hour before the June 15, 2021 City Council meeting commenced, Community
2 Development Director Tai emailed a member of MB Poets that the City Council would not consider any
3 further evidence except that which was received prior to closure of the May 4 appeal. (AR 49:1087.).
4 Because of this message and the placement of the Project on the consent calendar, members of MB
5 Poets and others refrained from attending the City Council meeting so were unable to speak on the item.

6 A councilmember pulled the consent-calendar item to discuss pay parking. (AR 13:136.) The
7 City permitted public testimony on agenda item No. 9(H), but the public could not anticipate this with
8 sufficient time beforehand. Therefore, public comment was suppressed by the City's inclusion of the
9 item on the consent agenda and by Community Development Director Tai's email stating that public
10 comment would not be considered. The agenda states that the consent items "are enacted by a single
11 motion with the exception of items previously removed by a member of the City Council." (AR
12 12:124.) To the extent the public could comment, remarks were not prepared ahead of time with proper
13 notice. Fair and full public participation was particularly important because the amended resolution for
14 the Project contained 188 changes, as compared to the version approved by the Planning Commission on
15 November 18, 2020- including deleting Condition 16 regarding noise limits. (AR 50:1088 and 1092.)
16 The public was not informed that they would have the opportunity to speak on this agenda item, as
17 anticipated on May 4, 2021 (AR 17:273). The City violated the Brown Act in failing to provide the fair
18 notice to the public and hindered the public's ability to participate in the public hearing of the Project.

19 **V. CONCLUSION.**

20 The Project should not have been exempted from CEQA review. The Project would have
21 significant noise, traffic, parking, and land use impacts on the quiet residential neighborhoods that
22 adjoin it because of its unprecedented size and scale. The City violated the Brown Act as it sought to
23 approve the Project without giving the public adequate notice or a fair opportunity to participate in
24 shaping its approval. The City's approval of the Project must be set aside.

25 DATE: January 28, 2022

26 Respectfully Submitted,
27 CHATTEN-BROWN, CARSTENS & MINTEER LLP
28 By: 
Douglas P. Carstens
Attorneys for Petitioner

PROOF OF SERVICE

I am employed by Chatten-Brown, Carstens & Minter LLP in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2200 Pacific Coast Highway, Ste. 318, Hermosa Beach, CA. On January 28, 2022, I served the within documents:

PETITIONER'S OPENING BRIEF

VIA UNITED STATES MAIL. I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. I enclosed the above-referenced document(s) in a sealed envelope or package addressed to the person(s) at the address(es) as set forth below, and following ordinary business practices I placed the package for collection and mailing on the date and at the place of business set forth above.

VIA OVERNIGHT DELIVERY. I enclosed the above-referenced document(s) in an envelope or package designated by an overnight delivery carrier with delivery fees paid or provided for and addressed to the person(s) at the address(es) listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

VIA ONE LEGAL E-SERVICE. By submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at www.onelegal.com.

VIA ELECTRONIC SERVICE. Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the above-referenced document(s) to be sent to the person(s) at the electronic address(es) listed below.

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 28, 2022, at Hermosa Beach, California.

/s/ Cynthia Kellman

Cynthia Kellman

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EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

EXHIBIT 3.

ENCINITAS PORTOFINO HOTEL SIMILAR PROPERTY TO MANHATTAN BEACH HIGHROSE PROJECT

ENCINITAS, SAN DIEGO NORTH COUNTY COASTAL ZONE



EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO
EXHIBIT 1. AFFORDABLE HOUSING SOLUTION



Epic Land Solutions, Inc. 

APPRAISAL REPORT

Hotel Property

ADDRESS: 186 N. Coast Highway 101, Encinitas, CA, 92024
APN: 256-392-11
DATE OF REPORT: February 7, 2019
DATE OF VALUE: January 30, 2019
EPIC PROJECT CODE: EA-19003

Prepared For:

Donald McPherson
1014 1st Street
Manhattan Beach, CA 90266

Prepared By:

Epic Land Solutions, Inc.
Appraisal Group
16496 Bernardo Center Drive Suite 207
San Diego, CA 92128

EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO
EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

Epic Land Solutions, Inc.

16496 Bernardo Center Drive Suite 207
San Diego, CA 92128

Ph: 619-573-6048

February 7, 2019

Donald McPherson
1014 1st Street
Manhattan Beach, CA 90266
Telephone: (310) 487-0383
Email: dmmcpherson@gmail.com

Re: Hotel Property Appraisal
186 N. Coast Highway
Encinitas, CA 92024
APN 256-392-11
Project Code: EA-19003

Dear Mr. McPherson,

At your request and authorization, I have prepared a summary appraisal report of the market value for the above referenced real property. To fulfill the intended use of this appraisal, I have provided both the market value of the property on an "as is" basis as well as the value of the underlying land as if it were vacant and available for development to its highest and best use. Data, information, and calculations leading to the value conclusions are incorporated in the report following this letter. The report, in its entirety, including all assumptions and limiting conditions, is an integral part of, and inseparable from, this letter. Your attention is directed to the Addenda which contains the assumptions and limiting conditions.

The following appraisal sets forth the most pertinent data gathered, the techniques employed, and the reasoning leading to the opinion of value. The analyses, opinions and conclusions were developed, and this report has been prepared, in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP) and the Code of Professional Ethics of the Appraisal Institute.

The appraisal has been completed subject to the Assumptions & Limiting Conditions contained within the report. Extraordinary Assumptions and Hypothetical Conditions, if any, may have an impact on the assignment results.

By virtue of my experience and based upon my investigation, it is my opinion that the value conclusions within this assignment are as follows:

As-Is (Hotel) - \$3,900,000
Land Value - \$2,167,000
Building Value - \$1,733,000

EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO
EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

Please refer to the attached appraisal report, plus exhibits, for a summary of the supporting documentation of these value estimates contained herein.

Respectfully submitted,



Kent J. Carpenter, MAI
Certified General Real Estate Appraiser
Senior Appraiser
Epic Land Solutions, Inc.
California License AG003087

EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO
EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

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Introduction

Executive Summary

Property Reference:	EA-19003
Property Address:	186 N. Coast Highway, Encinitas, CA 92024
APN(s):	256-392-11
Property Type:	Hotel
Zoning:	North 101 Corridor Specific Plan (N-CM-2)
General Plan:	GC (General Commercial)
Report Format:	Narrative
Date of Appraisal Report:	February 7, 2019
Date of Value:	January 30, 2019
Date of Site Inspection:	January 30, 2019
Real Estate Interest Appraised:	Leased Fee/Fee Simple
Function of the Appraisal:	To establish the contributory value of the building improvements as improved.
Location:	The subject is located along the Coast Hwy in the north county city of Encinitas, CA.
Improvements Description:	The property is improved with a 14,728 square foot, 45-room hotel that is currently being operated as the Portofino Beach Inn. The hotel is three-story in design, with the ground level consisting of covered parking spaces and support operations for the hotel operation. The balance of the site is improved with paved open parking spaces.
Site Description:	The site is an interior lot with good access and exposure and is irregular in shape. The site has frontage on both N. Coast Highway and Melrose Avenue, and contains 21,670 square feet.
Highest and Best Use "As Is":	Continued use of existing improvements
Highest and Best Use "As if Vacant":	Development with retail/commercial
Concluded Property Value:	\$3,900,000
Concluded Land Value:	\$2,167,000
Concluded Building Value:	\$1,733,000 (\$117.67 per square foot)
Extraordinary Assumptions and Hypothetical Conditions:	<ol style="list-style-type: none"> 1. Notwithstanding its recent closure, it is assumed that the hotel is operational and is constructed and configured to meet current building codes and parking requirements. 2. No interior inspection of the property was made. All descriptions and conclusions regarding the building improvements were based on inspection of the property from exterior locations. 3. It is assumed in this report that a buyer of the property for continued hotel use would be able to use the existing parking spaces for hotel guests on a conforming basis.

Overview of Appraisal

Purpose of Appraisal

The purpose of this appraisal is to estimate the Market Value of the subject property as defined. The market value estimates will include (1) as-improved (hotel) and (2) land value as if the property were vacant and available for development to its highest and best use.

Intended User

The intended user of this appraisal report is the client, Mr. Donald McPherson and his assigns. Anyone else using or relying on this appraisal is considered an unintended user and no fiduciary obligation is owed by the appraiser to that party

Intended Use

The intended use of this appraisal report is for use in establishing the contributory value of the building improvements as presently used. The appraisal cannot be used for evaluation for collateral for a loan, collateral for bond funding, appealing taxes, submission to Superior Court for condemnation, etc.

Definition of Market Value

The purpose of this report is to render an opinion of current Market Value of the leased fee interest in the subject property. Market Value, as used in this report, is defined as follows:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their own best interests;
3. A reasonable time is allowed for exposure in the open market
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.¹

Date of the Appraisal

The effective date of value is January 30, 2019. The property was inspected on January 30, 2019. The date of this appraisal report is February 7, 2019.

¹ 12 C.F.R. Part 34.42(g); 55 *Federal Register* 34696, August 24, 1990, as amended at 57 *Federal Register* 12202, April 9, 1992; 59 *Federal Register* 29499, June 7, 1994

Owner of Record & Property History

According to public records, the subject is currently owned by 101 Hotel LLC. Public records indicate that the subject was acquired by its current owner in January of 2015 at a price of \$3,780,000, or \$84,000 per room. As contact with the property owner is not permissible, it is unknown if there have been any listings or written offers on the property in the past three years.

Scope of Work

In order to complete this assignment, I identified all assignment conditions; determined an appropriate scope of work; collected general and specific data on the district, neighborhood, market area, subject property and comparable properties; analyzed the data gathered; applied the appropriate approaches to value; and reconciled all indications of value into a final value estimate. As no interior inspection of the property was possible, no receipt of financial information occurred, and no contact with the property owner was possible, the valuation of the property, as currently utilized, relied on the published sales and operating performance of other similar limited service hotels rather than the actual operating performance of the subject property.

My investigation, value opinion and analyses comply with the Uniform Standards of Professional Appraisal Practice and is unbiased and impartial. No predetermined value or opinion formed the basis of any conclusions stated in this appraisal. The depth of the investigation and analysis is meant to be in keeping with the purpose and intended use of the appraisal. In valuing the property as presently used (hotel), both the sales comparison approach and the income capitalization approaches were used. In valuing the property as though it were vacant and available for redevelopment, the sales comparison approach was used.

Hotel Market Summary

San Diego County

Per Costar Comps, sales of limited service hotels in San Diego County over the past three years is presented below. The criteria used was for hotels under the size of 100 rooms that sold within San Diego County.

2016

Comps Statistics					
	Low	Average	Median	High	Count
Hospitality					
Sale Price	\$1,250,000	\$5,977,500	\$4,850,000	\$15,000,000	14
Building Size	3,800 SF	23,568 SF	16,612 SF	50,421 SF	14
Price per SF	\$29.85	\$253.78	\$273.04	\$757.82	14
Actual Cap Rate	4.50%	6.80%	6.80%	9.10%	2
# of Rooms	8	60	44	195	14
Price per Room	\$25,000	\$98,918	\$110,348	\$322,500	14
Days on Market	100	238	164	441	7
Sale Price to Asking Price Ratio	88.36%	97.72%	97.62%	110.53%	5

2017

Comps Statistics					
	Low	Average	Median	High	Count
Hospitality					
Sale Price	\$1,000,000	\$5,949,722	\$5,985,000	\$15,190,000	18
Building Size	4,211 SF	15,551 SF	10,682 SF	35,716 SF	18
Price per SF	\$157.63	\$382.59	\$397.77	\$1,001.43	18
Actual Cap Rate	5.77%	7.98%	8.00%	8.97%	7
# of Rooms	9	44	30	139	18
Price per Room	\$75,067	\$134,038	\$111,878	\$427,778	18
Days on Market	100	284	260	570	7
Sale Price to Asking Price Ratio	85.34%	89.05%	87.94%	95.00%	4

EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO
EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

2018

Comps Statistics					
	Low	Average	Median	High	Count
Sale Price	\$780,000	\$4,164,231	\$4,100,000	\$8,000,000	13
Building Size	3,094 SF	19,761 SF	18,288 SF	43,000 SF	13
Price per SF	\$79.29	\$210.73	\$215.44	\$749.97	13
Actual Cap Rate	5.50%	7.31%	6.90%	9.19%	7
# of Rooms	10	47	41	134	13
Price per Room	\$54,851	\$88,168	\$95,833	\$230,833	13
Days on Market	70	352	296	762	5
Sale Price to Asking Price Ratio	70.73%	81.02%	82.24%	88.89%	4
Totals					

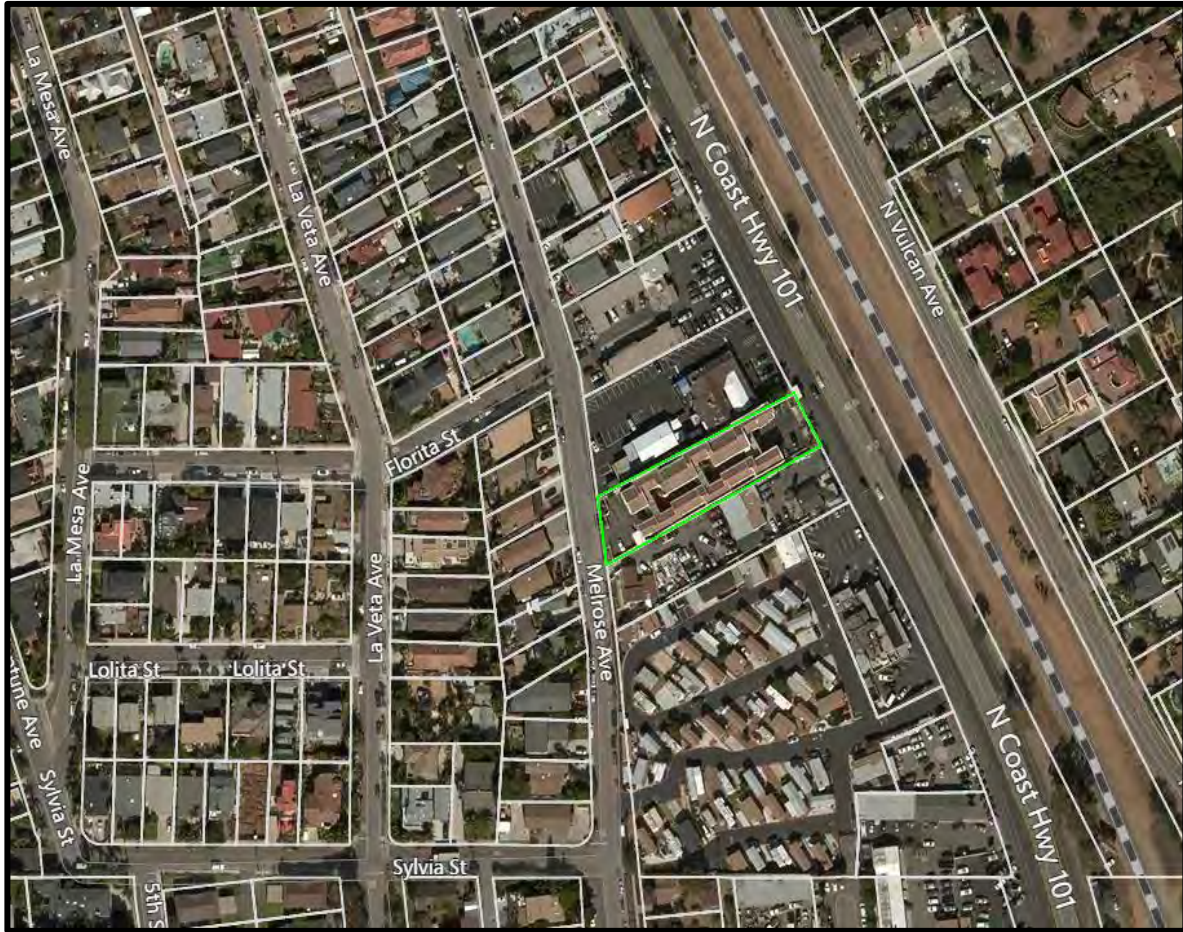
Conclusions

The hospitality market has several sectors which include both full service and limited service properties that cater to group, leisure and business demands. The statistics above are intended to focus on those limited service hotels like the subject property with less than 100 rooms. A look at the median annual performance of limited service hotels over the past three years shows that compared to 2017 which was a record year, the trends are declining except for overall capitalization rates which have improved. However, generally speaking, hotels in coastal locations like the subject property outperform inland hotels and maintain their value due to the relatively constant demand which exists for lodging near the beach. This is illustrated by the renovation that is planned for the subject property which despite its below average quality, functionality and achievable room rates, will continue operating as a hotel rather than razing the improvements in favor of an alternative use.

Category	2016	2017	2018	Trend
Sale Price	\$4,850,000	\$5,965,000	\$4,100,000	Declining
Overall Cap Rate	6.80%	8.0%	6.90%	Improving
# Rooms	44	30	41	Level
\$/Room	\$110,348	\$111,878	\$95,833	Declining
Days on Mkt	164	260	296	Declining
SP/Asking Ratio	97.62	87.94%	82.24%	Declining

Subject Property and Project Description

Aerial View of Subject Property



Location of subject property is approximate.

EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

Subject Property Photographs

Photograph 1



Viewing subject from No. Coast Hwy 101

Photograph 2



Covered parking stalls under 2nd floor guest rooms

Photograph 3



Connecting walkway from north to south side of building
Photograph 4



Viewing floor/walkway layout and 3-story design of hotel

Photograph 5



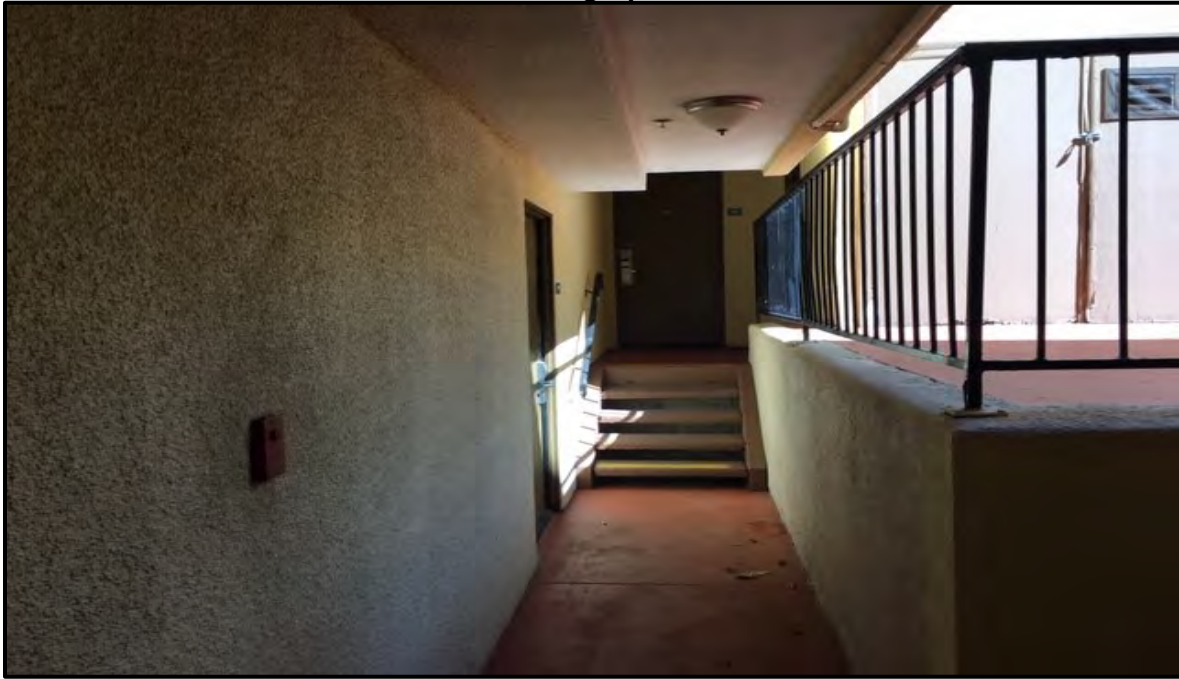
View of hotel (guest rooms and garages) from Melrose Avenue

Photograph 6



Viewing open parking spaces and access to property from Melrose Avenue

Photograph 7



Below parking grade rooms on Level 0 (per submitted plans) of the hotel

Photograph 8



Uncovered parking space at front of property facing N. Coast Hwy 101

Photograph 9



Looking west at central drive lane, covered parking and connecting bridges of hotel
Photograph 10



Viewing trains tracks from subject property along east side of No. Coast Hwy 101

EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO
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Photograph 11



Looking north along No. Coast Hwy 101 with subject property at left

Photograph 12



Looking north along Melrose Avenue with subject property at right

EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO
EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

Site Description

General Site Information

Address: 186 N. Coast Highway, Encinitas, CA 92024
Location: Located along No. Coast Highway 101 in the city of Encinitas.
Current Owner(s): 101 Hotel, LLC
5 Year Sales History: The property sold in January of 2015 at a price of \$3,780,000.
Zoning/GP: North 101 Specific Plan (SP-4) -N-CM-2 zoning
General Plan: GC (General Commercial)
Assessor Parcel Number(s): 256-392-11
Assessed Value Land: \$1,901,278
Assessed Value Improvements: \$2,029,441
Total Assessed Value: \$3,930,719
Taxable Value: \$3,930,719
Assessment Year: 2018-19
Taxes: \$50,084

Physical Characteristics of the Site

Total Site Area: 21,670 square feet
Frontage: 71 feet on N. Coast Hwy; 82 feet on Melrose Avenue
Shape: Nearly Rectangular
Topography: Level
Access: N. Coast Hwy & Melrose Avenue
Corner Influence: No
Easements: No title report submitted, with the appraisal assuming typical utility easements and no adverse easements.
Encroachments: None noted with appraisal assuming none exist.
Utilities to Site: All utilities in adjoining roads & connected
Flood Designation: Zone X (Map 060294 – 06073CO761G) dated 5/16/12) indicating minimal flood hazard in area outside of 100 and 500-year floodplains.
Surface Drainage: Appears adequate
Environmental/Soils: No on-site inspection was undertaken. Furthermore, the appraiser is not qualified to detect hazardous waste and/or toxic materials. Such determination would require investigation by a qualified expert in the field of environmental concerns. The presence of substances such as asbestos, urea-formaldehyde foam insulation or other potentially hazardous material may affect the value of the subject property. The value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any environmental conditions, or for any expertise or engineering knowledge required to discover them. This appraisal is based on the assumption that there are no unusual soils problems

EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO
EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

associated with the property and that load bearing capacity and drainage are adequate. No soils report was provided.
Subsurface Conditions: Unknown
Improvements: Limited-Service Hotel

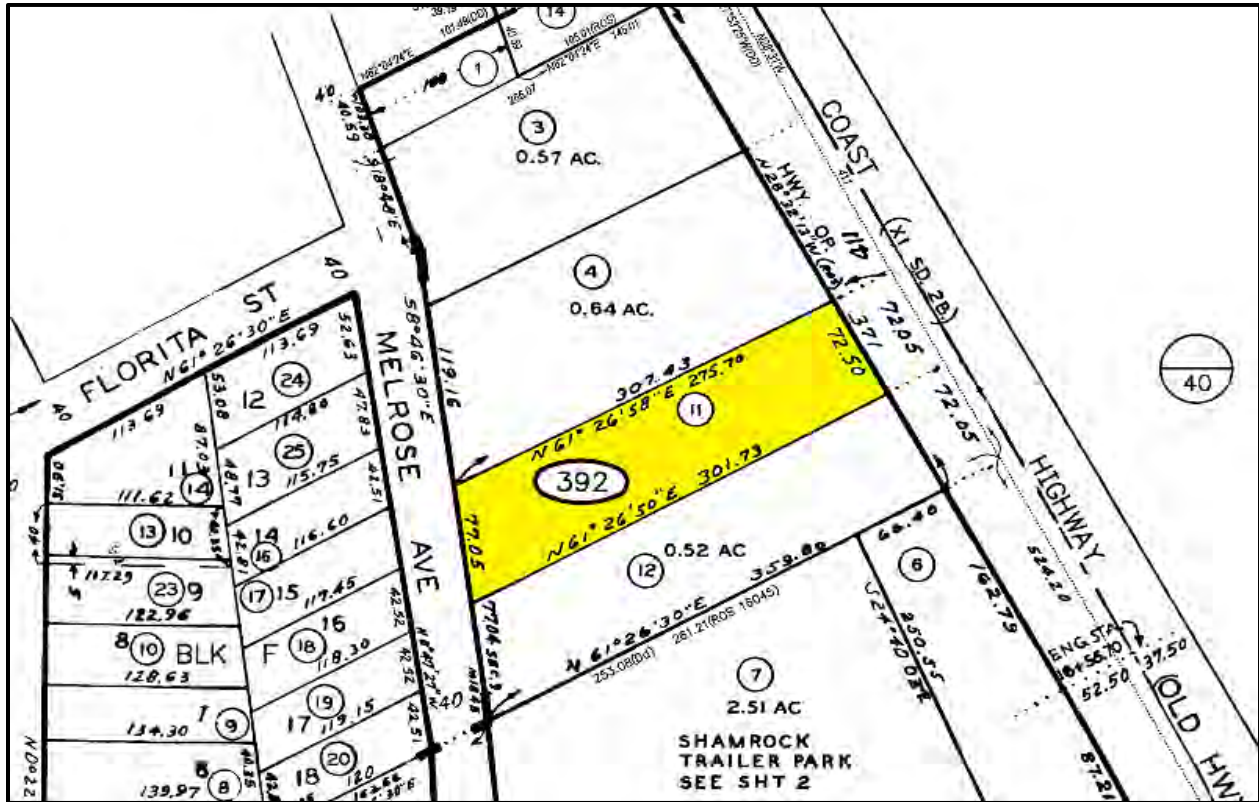
Economic Factors Affecting the Site

Supply of Vacant Tracts: Undersupply
Demand for Vacant Tracts: Good
Traffic Pattern: Above average count due to scenic coastal road (N. Coast Hwy.) and neighborhood connector road (Melrose Avenue).
Neighboring Uses: Multi-family, SFR's, Retail/Commercial
Zoning: Typical for area
Major Flaws in Site: None.
Overall Site Analysis: Usable site with potential for continued use of hotel or redevelopment

EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

Plat Map

Following is a plat map showing the size, shape and location of the subject parcel.



Improvements Description

The building improvements are located at 186 N. Coast Highway 101 in the city of Encinitas California. The property has dual access from both No. Coast Hwy 101 as well as Melrose Avenue on the west and is an economy hotel that capitalizes on its proximity to the beach.

Currently, this limited -service hotel facility offers 45 hotel rooms and a one-bedroom apartment. The guest rooms are generally located on the 2nd and 3rd floor, with covered parking located underneath the rooms at grade level. The facility also includes a lobby, office, spa, two storage rooms, laundry room and trash enclosure. Based on an exterior inspection of the property, there are 39 on-site parking stalls with 16 being uncovered spaces in the front and back of the property and 23 being covered spaces under guest rooms. A submitted parking study review indicated that 37 of the parking spaces do not conform to current city standards. Additionally, on-site inspection of the property as well as hotel reviews indicate that the parking spaces are substandard in size and difficult to access. Notwithstanding this information and based on the historical use of these parking spaces by hotel guests, it is assumed in this report that a buyer of the property for continued hotel use would be able to use the existing parking spaces for hotel guests on a conforming basis.

The hotel was constructed in 1986, is of wood frame construction, with the gross area of the hotel being 14,728 square feet. As addressed in the income capitalization approach, the interior décor of the hotel is reported to be outdated and maintenance of the building neglected.

EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

Floor Plans & Elevations

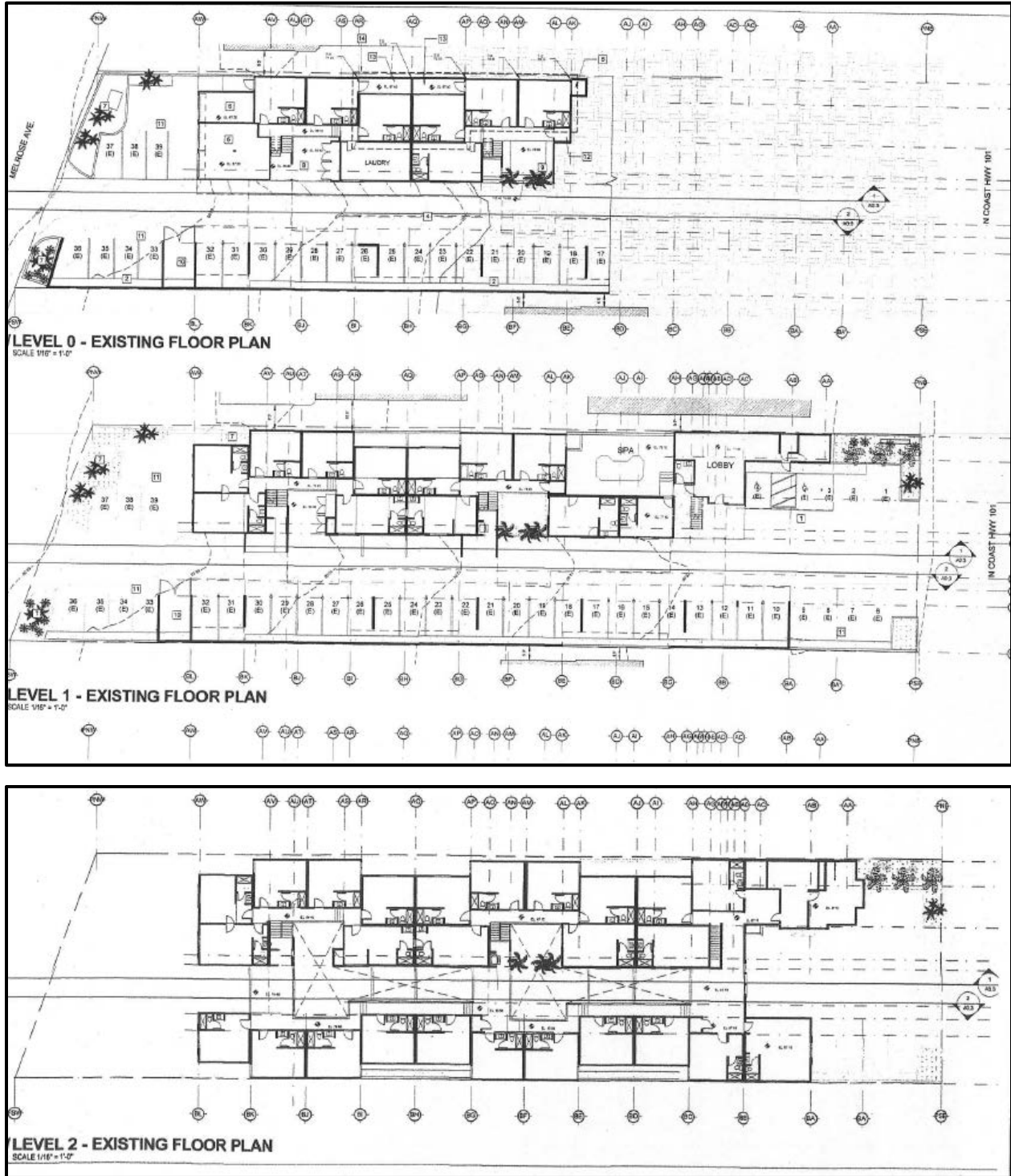


EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

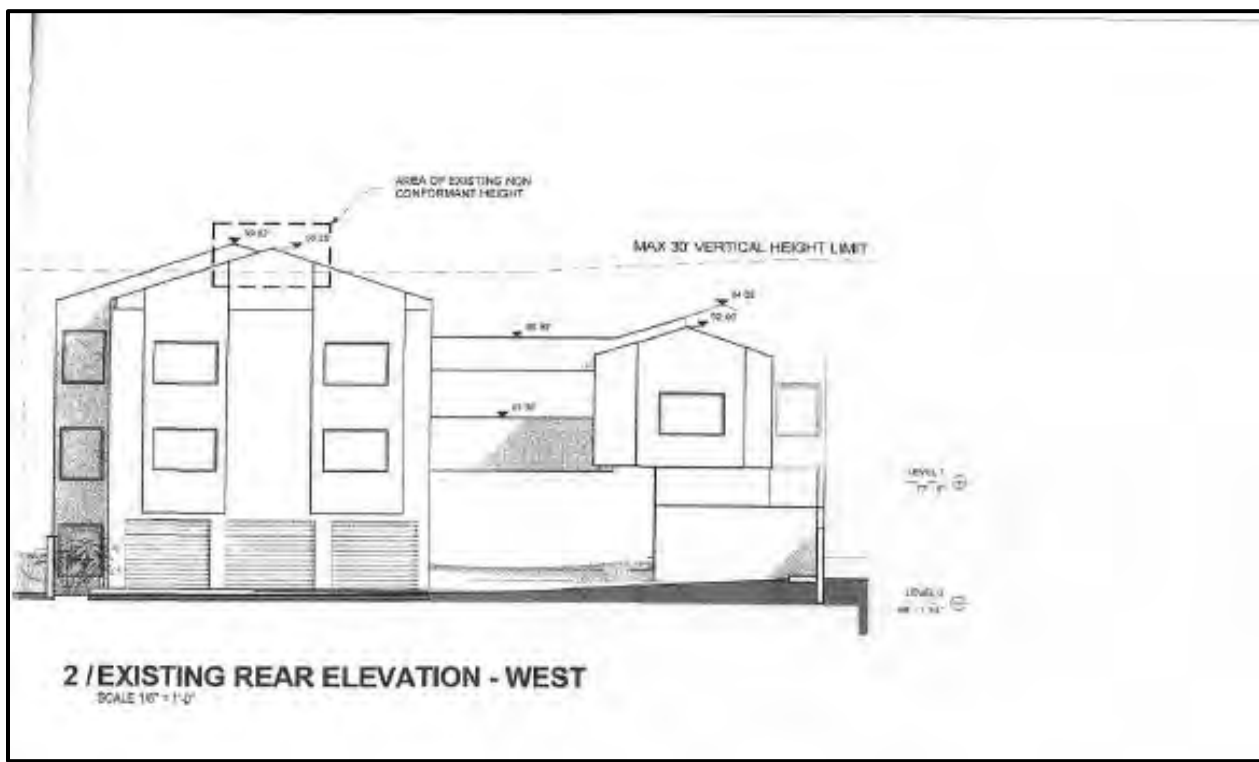


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EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

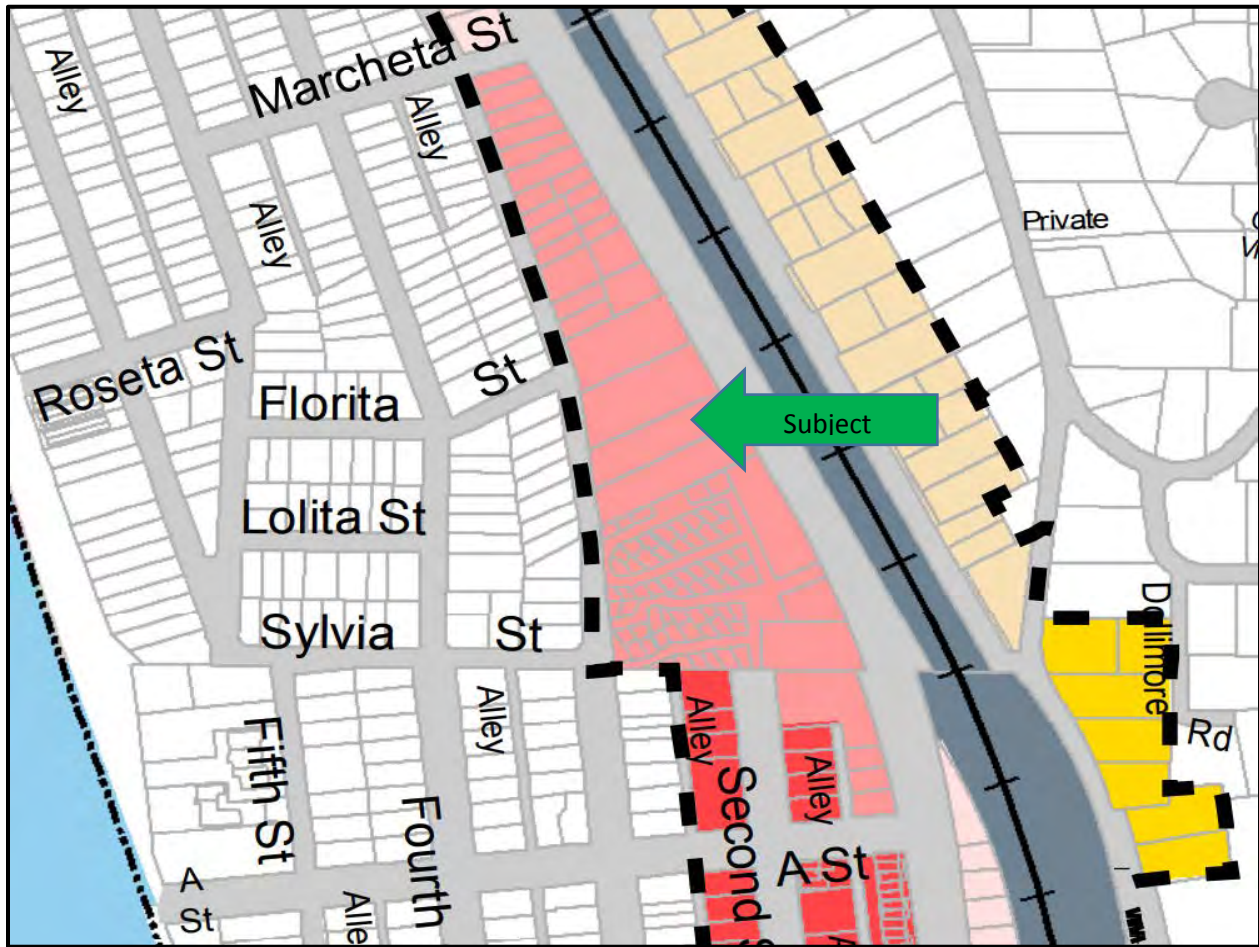
General Plan Land Use & Zoning

The zoning characteristics for the subject property are summarized below:

Zoning Summary	
Current Zoning:	North 101 Specific Plan (SP-4); N-CM-2 (Commercial Mixed – 2 zone.
Permitted Uses:	This zone is intended to provide a zoning district where the development of general commercial uses, including auto-related uses, and mixed use may be allowed. The zone provides for a variety of development opportunities including 1) stand-alone commercial; or 2) mixed use, with general commercial use types. Commercial allows a wide range of general commercial activities, including auto-related uses, retailing, service, and visitor-serving uses, with the intent of accommodating citywide or regional needs and serving the needs of persons visiting the city for business and recreational purposes. Mixed Use allows commercial and residential uses at a maximum density of 25.0 dwelling units per net acre on the same property or in the same structure, with the intent of providing opportunities for housing and live/work or artisan loft arrangements, while also mitigating the impacts between commercial and residential uses.
Development Standards	
Minimum Lot Size:	6,000 square feet
Minimum Width:	75 feet
Minimum Depth:	80 feet
Minimum Setbacks:	
Front:	0 feet
Rear:	0 feet
Side:	0 feet
Maximum Building Height:	33 feet or 3 stories
Lot Coverage (maximum)	90%
Landscaping:	10%
Maximum Coverage	Not specified
Parking Requirement	General Offices; Profess. Services – 1 space per 300 sf bldg. Personal Service / Commercial Uses – 1 space per 300 sf bldg. Retail Uses/Commercial Services – 1 space per 300 sf bldg. Restaurants/Bars/Lounges – 1 space per 75 sf bldg. Take Out Restaurants – 1 space per 300 sf bldg.

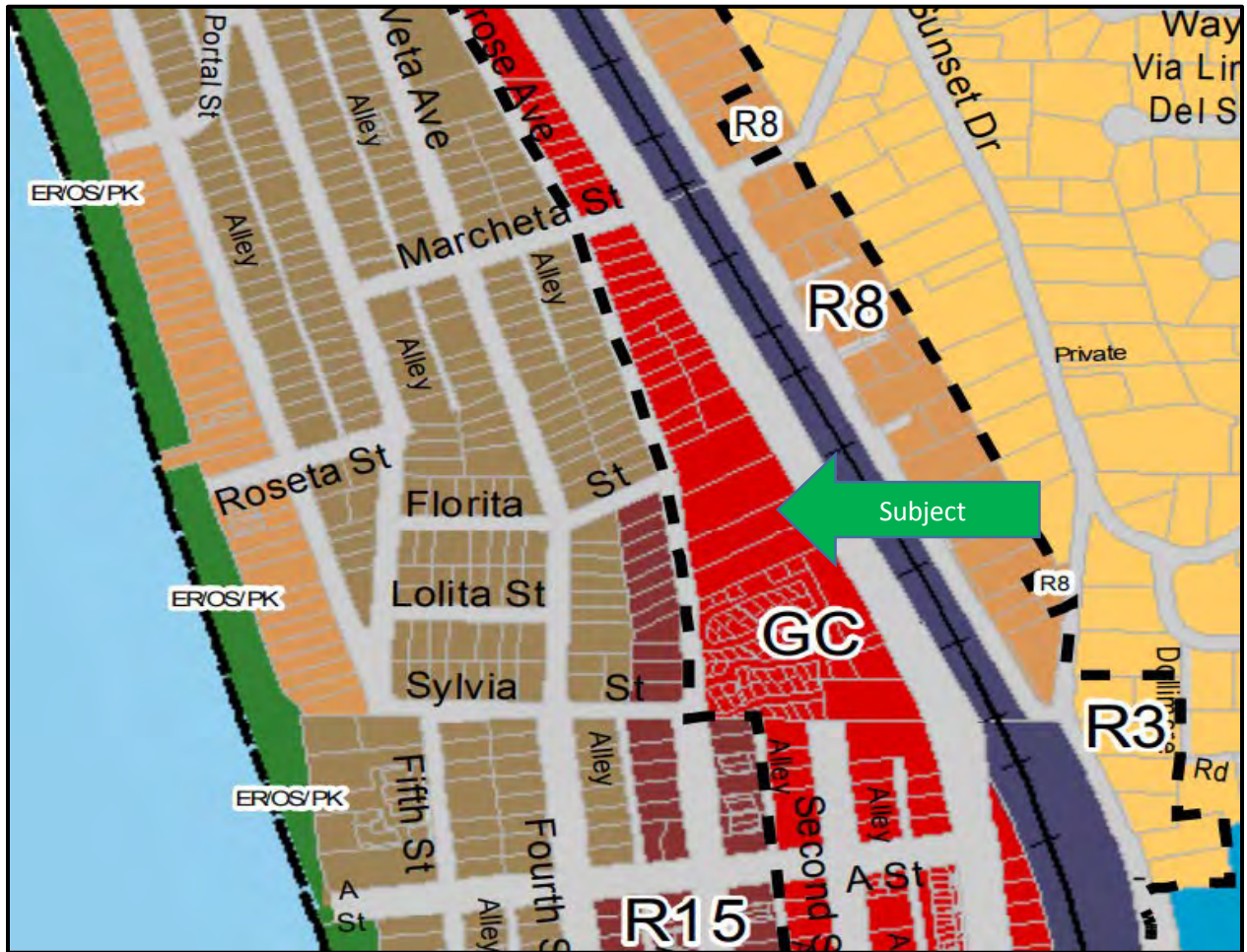
Zoning Map

EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO
 EXHIBIT 1. AFFORDABLE HOUSING SOLUTION



General Plan Map

EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO
 EXHIBIT 1. AFFORDABLE HOUSING SOLUTION



Rural Residential 0.00-0.25 du/ac (RRFP)*	Mobile Home Park (MHP)
Rural Residential 0.26-0.50 du/ac (RR)*	Office Professional (OP)
Rural Residential 0.51-1.00 du/ac (RR1)	Local Commercial (LC)
Rural Residential 1.01-2.00 du/ac (RR2)	General Commercial (GC)
Residential 2.01-3.00 du/ac (R3)	Visitor Serving Commercial (VSC)
Residential 3.01-5.00 du/ac (R5)	Light Industrial (LI)
Residential 5.01-8.00 du/ac (R8)	Public/Semi Public (P/SP)
Residential 8.01-11.00 du/ac (R11)	Transportation Corridor (TC)
Residential 11.01-15.00 du/ac (R15)	Ecological Resource/Open Space/Park (ER/OS/PK)
Residential 15.01-25.00 du/ac (R25)	

Valuation Analysis

Highest and Best Use

The highest and best use of any property depends upon the physical and legal restrictions imposed by the size, shape, location and zoning of the site, and the size, siting, quality and condition of the improvements. An improved site like the subject property would be analyzed for its highest and best use on both an “as though vacant” and “as-improved” basis. Considerations under each of these analyses will include uses that are (1) physically possible, (2) legally permissible, (3) financially feasible, and (4) maximally productive.

As Though Vacant

Physically Possible - The subject property is of sufficient size and shape to be a developable site. It is generally level at street grade, has utility connections immediately available, and has access from and frontage on both a major arterial (N. Coast Highway), and a neighborhood connector street (Melrose Avenue) which generally runs parallel to N. Coast Highway 101 and abuts the subject property on the west. This rectangular shaped parcel is generally similar in size to many other parcels along N. Coast Highway, yet larger than many parcels that have been subdivided and developed with residential uses.

Legally Permissible - The subject is in the No. 101 Corridor Specific Plan with a mixed-use zoning designation (N-CM-2). The zone allows for a variety of development opportunities including 1) stand-alone commercial; or 2) mixed use, with general commercial use types. Commercial allows a wide range of general commercial activities, including auto-related uses, retailing, service, and visitor-serving uses, with the intent of accommodating citywide or regional needs and serving the needs of persons visiting the city for business and recreational purposes. Mixed Use allows commercial and residential uses at a maximum density of 25.0 dwelling units per net acre on the same property or in the same structure, with the intent of providing opportunities for housing and live/work or artisan loft arrangements, while also mitigating the impacts between commercial and residential uses. The surrounding land use patterns support the allowable uses within this zone.

Financially Feasible – The surrounding uses, size and access to and from the property would render development of a variety of uses possible. However, based primarily on the retail and commercial land use patterns along Coast Highway 101, the heavy traffic and pedestrian activity along No. Coast Hwy 101, and the existence of train tracks directly in front of the subject property on the east side of No. Coast Hwy 101, the maximally productive use of the site would be for some form of retail or commercial development that would take advantage of the high traffic and exposure afforded by No. Coast Highway 101.

Maximally Productive – Considering the legally permissible, physically possible and financially feasible uses in the current market, the highest and best use is for some form of retail or commercial development.

As Improved

The subject property contains a two-story hotel property that contains 45 guest rooms and tuck under parking. Like many other coastal properties with older building improvements that identify with nearby ocean access and local shops and establishments, the strong location of the property has sustained the continued use of the improvements notwithstanding their older age.

At the time of inspection, the hotel has ceased operation, which is confirmed by the inability to make reservations at the site and a statement on the internet reservation site which indicated the property has been closed. It is assumed that this closure is in response to a proposed development on the site to be known as Hotel 101, which will reduce the number of hotel rooms to 35, add an additional 11 parking stalls, restrict access to Melrose Avenue, add an electronic gate at the entrance off No. Coast Hwy 101, and provide on-site valet operations. Additional modifications to the property on the lower level (ground floor area) of the proposed project includes lobby check-in and public-seating, lobby bar, sunken fire pit, manager's office, two unisex bathrooms, a full-service kitchen without dining area, laundry room, two patios with seating and 10 hotel rooms. The second level of the proposed project includes three hotel suites, a meeting area, a unisex restroom, 22 hotel rooms, and three raised sitting areas. The public roof deck of the proposed project includes an open-air deck with alcohol service, with the private roof deck covering 752 square feet.

Notwithstanding the recent closure of the property, the status of the property as a hotel and the entitlement/approval status of the proposed development, it is assumed in this appraisal report that an operational hotel exists at a quality and condition commensurate with that which existed at its last date of operation. This premise is necessary to achieve the intended use of the appraisal which is to establish the contributory value of the building improvements as a viable hotel operation.

As will be shown later in the report, the indicated land value is less than the overall value as a hotel operation, with the building improvements contributing value over and above land value. Both the sales comparison and income approaches to value provided a reconciled value of \$3,900,000 for the property as operated with a hotel. As such, it is concluded that the highest and best use of the property, as improved with a hotel, is for continued use as a hotel.

EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO

EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

Appraisal Procedures Followed, Methodologies

For the appraisal of the subject property, both the sales comparison approach and the income capitalization approach are applicable approaches in valuing the property as a hotel. However, only the sales comparison approach is applicable and will be use in valuing the land as if vacant and available for development to its highest and best use.

The sales comparison approach derives a market value opinion by making a comparative analysis of recently sold properties having similar physical and economic characteristics to the property being appraised. Each sale property is compared to the subject property focusing on similarities and differences that influence value.

The income capitalization approach is a method of valuation suited for investment properties because the foundation of the estimate is anticipated income, which is the primary reason investors buy this type of property. The price they are willing to pay is directly related to the income it is capable of producing and its prospect for change in value. The income approach will also be used in this appraisal as the subject property would be viewed by potential buyers of the property as a long term or short term (interim income while obtaining entitlements for redevelopment) investment property. Current market participants are purchasing properties similar to the subject property based on this type of analysis and listing agents would be pricing or selling properties based on this analysis. The cost approach was not employed in the valuation of the subject property because the subject property contains very old improvements, has a significant amount of depreciation that is difficult to measure, and buyers are not purchasing property based on a depreciated replacement cost analysis.

Sales Comparison Approach

Several sales and listings of hotel properties have been selected to process the sales comparison approach to value. On a following page is a summary of the market data, followed by a Market Data Map which shows the relative location of each sale to the subject property. After this is a discussion of each of the sales, comparing each to the subject property for each relevant element of comparison and from this analysis an appropriate value indication is concluded in the reconciliation section of the appraisal report.

As hotel properties are pursued by investors on a more regional basis, the sale properties are all located within the County of San Diego and were selected primarily on reported room rates, number of rooms and building age/condition. These transactions are considered good alternative to a purchase of the subject property. All sales have occurred in either 2017 or 2018 and are considered suitable alternatives for a buyer interested in purchasing the subject property. The properties range in size from 12 to 118 rooms, which brackets the subject's 45 rooms. Overall, this is considered a very reasonable data set from which to estimate the market value of the subject property on an as-is basis.

Attempts were made to verify each sale with a party to the transaction but some of the sales information is based solely on public records; Costar, MLS, RealQuest, LandVision, and personal inspection.

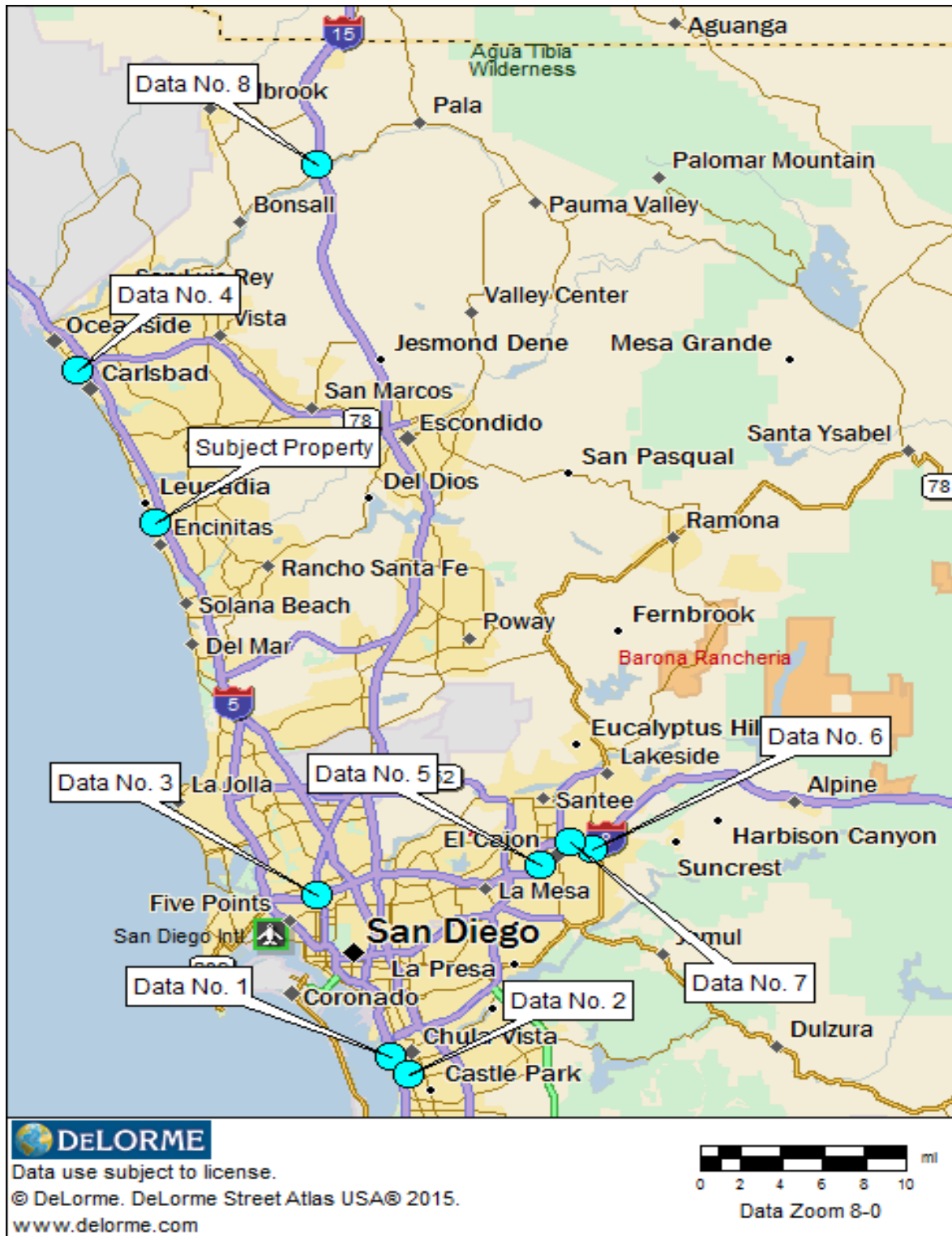
EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO
 EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

Comparable Sales Summary

IMPROVED COMPARABLES SUMMARY									
	1	2	3	4	5	6	7	8	
Location	186 N. Coast Hwy 101	778 Broadway	641 Camino Del Rio So.	2020 S. Coast Hwy	771 El Cajon Blvd	1355 E. Main Street	650 Mollison Ave	3135 Old Hwy 395	
Community/Sub-Market	Encinitas	Chula Vista	San Diego	Oceanside	El Cajon	El Cajon	El Cajon	Fallbrook	
Zip Code	92024	91910	92108	92054	92020	92021	92021	92028	
Assessor Parcel No.	256-392-11	571-200-19	444-120-23	155-032-20	492-641-04	489-180-77	484-321-09, 11	125-060-57	
Land Area (SF)	21,670	30,492	77,537	13,068	14,327	40,075	76,230	79,715	
Building Area (SF)	14,728	33,393	63,000	4,211	6,383	20,547	43,000	19,031	
No. Rooms	45	50	169	12	24	47	95	41	
Year Built/Condition	1988/Average	1960/Average	1985/Average	1961/Average	1988/Average	1987/Average	1989/Average	1988/Average	
Quality/Design/Appeal	Average	Average	Good	Average	Average	Average	Average	Average	
Seller	Golden Globe Group LLC	Yih-ruey & Chan-yung Chang	Pinnacle Mission Valley LP	Shrikant & Sunita Sawant	Ajay & Jagruti Patel	Michael H. Kim APC Law Firm	TCFC Limited Partnership 25%	Kamia Hotels	
Buyer	101 Hotel LLC	Best Choice LLC	Kabir Bluestar LLC	South O LLC	Nexen LLC	Vista International Inc.	Ramona & Main LLC	KP Hospitality, Inc.	
Document No.	15-0019184	18-04765-49	18-000624	17-0153172	18-0040356	18-0101215	18-0135547	18-0355237	
DOV/Recording Date	1/30/2019/1/15/2015	6/19/2018	1/2/2018	4/5/2017	1/31/2018	3/14/2018	3/23/2018	8/29/2018	
Financing	Assume All Cash to Seller	All Cash to Seller	All Cash to Seller	All Cash to Seller	All Cash to Seller	All Cash to Seller	All Cash to Seller	All Cash to Seller	
Sale Price	\$3,780,000	\$4,000,000	\$19,500,000	\$1,000,000	\$2,300,000	\$5,100,000	\$8,000,000	\$4,100,000	
Price Per SF	\$256.65	119.79	309.52	237.47	360.33	248.21	186.05	215.44	
Price Per Room	\$84,000	\$80,000	\$115,385	\$83,333	\$95,833	\$108,511	\$84,211	\$100,000	

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Market Data Map



Market Data Description

Data 1- Days Inn Wyndham Hotel located adjacent to the Interstate 5 freeway in the south bay community of Chula Vista. Located just south of the E Street offramp, the published rates for rooms (1 King or 2 queen beds) is \$75 per night plus tax. The room rate includes a continental breakfast.

Data 2 – 50-room Best Choice Hotel located in the community of Chula Vista. At the time of sale, only 40 of the 50 rooms were operable, with the buyer planning on doing some renovations this year. The property appears to be in fair to average condition, with the published room rates being \$65 per night plus tax.

Data 3 – Larger La Quinta hotel located in the central San Diego community of Mission Valley. The property is in good condition and well maintained. The location caters to SeaWorld visitors, with the published rates being \$119 plus tax.

Data 4- This was an off-market transaction of an older, smaller bed & breakfast property (Ocean Breeze Inn) in the coastal city of Oceanside. The property contains 12 rooms (11 rooms plus 3-bedroom manager apartment), with the buyer planning on doing a large renovation of the property. Like the subject property, this property is now closed for business. However, the latest listing of the property indicated that the average daily rate for the property was \$60, with the REVPAR (accounts for vacancy) being \$55.

Data 5 -Sale of a 24- room hotel that was built in 1988, located in the east County community of El Cajon. The property will continue to be operated under the name Villa Serena Motel. The buyer purchased the property as an investment and plans on running the business himself. There are living quarters on the premises, with the 2-story building being complemented with 14 onsite parking spaces. According to on-site management, the room rate is \$68 including tax resulting in the basic room rate being about \$60.

Data 6 – Sale of a well-maintained hotel (Courtesy Inn) located in the east county city of El Cajon. The property has 47 rooms with the average daily rate reported at \$87.00 at the time of sale. The property has 35 surface parking spaces, is 3-story in design, with the room rate including a continental breakfast. The property sold on a 6.90% overall capitalization rate.

Data 7 is the sale of a 95-room Best Western Continental Inn located in the city of El Cajon. The building was constructed in 1989 and is 2-story in design. There are 60 open surface parking spaces. The property sold on a 9.13% overall capitalization rate. Published rates have the rooms at \$71 per night plus tax.

Data 8 is the sale of a Comfort Inn located in the inland community of Fallbrook. Located along the Interstate 15 freeway, the property has 41 rooms with the building constructed in 1988. The property is 2-story in design and has 55 surface parking spaces. The property has no suites, no lounge or meeting rooms. Included in the sale was a vacant 1,850 square foot restaurant. At the time of sale, the property was 65.61% occupied and had a \$91.29 average daily rate.

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Adjustment Considerations

The sale comparables indicate a price range of \$80,000 to \$115,385 per room, with the lower indications attributed to inferior location, older ages, and lower room rates. Conversely, the higher indications are attributed to superior quality/condition, newer ages, and higher room rates. The subject property was purchased by its current owner in January of 2015 at a price of \$84,000 per room which is at the lower end of the comparables range. While the subject also falls within the \$ per square foot range indicated by the comparables, hotel properties are not purchased on a \$/per square foot basis, with a \$/per square foot analysis not being considered.

The subject's average daily rate at the time of purchase was reported at \$76.00 which is within the \$60 to \$119 nightly rate range indicated by the comparables. It is recognized that an average daily rate considers all discounted rates and will be lower than the advertised rates to the public. However, absent both rack rates and average daily rate information for each of the properties, some correlation can still be drawn that shows the subject room rates being comparable to the sales.

A summary of the sales in relation to the subject is shown as follows:

Ranking Analysis		
Data No	Price/Room	ADR/Rack Rate
3	\$115,385	\$119
8	\$100,000	\$91
6	\$108,511	\$87
1	\$97,458	\$75
7	\$84,211	\$71
Subject	\$84,000	\$76
2	\$80,000	\$65
4	\$83,333	\$60
5	\$95,833	\$60

While income does not tell the whole story in the value of investment properties, there is a strong correlation between the two factors. Age and quality of improvements as well as highest and best use issues also have an impact on value. As shown, the subject's last sale price falls within the comparables indications, with the correlation between its higher ADR and a lower sale price (compared to the sales transactions), indicating a higher overall capitalization rate. This is consistent with older properties that are positioned for redevelopment as is the case with the subject property.

The operating performance of the subject property since January 2015 cannot be ascertained as no financials are available. Furthermore, the motivation behind the purchase of the property (redevelopment) would suggest that steps necessary to increase value (new capital improvements, increased marketing and higher room rates, and reduced expenses) have most likely not been undertaken, and thus the net operating income for the property would not be expected to increase substantially from its sale price in January 2015. This is supported by some

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of the property reviews provided by guests that stayed in the hotel during the years 2016 and 2018. A summary of these reviews is as follows:

- The atmosphere of this hotel is not that great
- The TV was awful – “old fashioned TV” – can you believe that?
- The carpet in the room doesn’t look so clean
- Coffee maker was broken; asked for a replacement and never got one
- There was no housekeeping
- Bad parking, ants in bathtub, and bad water pressure
- The place has gone downhill since new ownership took over; they used to have coffee and donuts in the lobby, but they even took that away.
- They assigned me an already occupied room, so I had to wait for the desk person to sort that out, and staff was not friendly.
- The place could use some maintenance and sprucing up.
- The parking under the rooms was a challenge as the spaces were very narrow.
- Old facility – TV didn’t work.
- Room was musty and new paint left something to be desired; TV remote was on the fritz, and carpet was old and buckling.
- The place is old and tired and needs updating with minor repairs being overlooked; exterior walkways are not as clean as they can be, with the quality of towels changing from day to day.
- The rooms are ancient and definitely overdue for a remodel. Beds come with sand, and the décor is super outdated. Carpet was very dirty, with walls, outlets, furniture very beat up with bad scuff marks. There is also a TV that dates back to the 90’s and is apparently just for décor since it has no working channels.
- The mattress springs broke my back! The parking stalls are narrow; no more continental breakfast as before. Paying in advance? That was new.

These comments suggest that the hotel has not been upgraded since its last purchase. As such, it is concluded that the January 2015 sale is the strongest indication of value and that a value of \$84,000 per room is supported for the subject property via the sales comparison approach. This results in a value of \$3,780,000 for the property (45 rooms x \$84,000).

Income Capitalization Approach

The income capitalization approach analyzes a property’s capacity to generate net income. The subject is analyzed using techniques similar to those a potential purchaser/investor would use. For purposes of this analysis, the direct capitalization method has been relied on, which is the most commonly used method employed by buyers and sellers of hospitality properties. However, due to the nature of this assignment (no contact with property owners), the analysis will not have the benefit of the actual operating performance figures from the subject property.

In the direct capitalization method, an overall capitalization rate derived from market data is applied to the net operating income to indicate market value. The data and analysis used in the direct capitalization analysis are presented on the following pages.

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Potential Gross Income

The first step in the income capitalization approach is estimating the potential gross income for the property. This analysis considers both the contract rent (rent currently being achieved) as well as comparable leases being obtained in the market. As the subject property is now closed, the latest room rate information available for the subject property indicated an average daily rate of about \$76, and an estimated rack rate of \$83.60 (10% higher). Both rates are before taxes.

Market Rent

A summary of comparable hotel properties in the immediate area is presented as follows:

ROOM RATE COMPARABLES

Property/Location	City	# of Rooms	Room Rate	Yr Built
Econo Lodge 410 N. Coast Hwy 101	Encinitas	32	\$75	1987
Best Western Encinitas 85 Encinitas Blvd.	Encinitas	90	\$114	1990
Holiday Inn Express 1661 Villa Cardiff Drive	Encinitas	100	\$109	2004
Leucadia Beach Inn 1322 N. Coast Hwy 101	Encinitas	22	\$84	1975
Days Inn Wyndham 133 Encinitas Blvd.	Encinitas	124	\$70	1985
Rodeway Inn 1444 N. Coast Hwy 101	Encinitas	52	\$57	1991
Quality Inn 607 Leucadia Blvd.	Encinitas	101	\$79	1986
Holiday Inn Express 751 Raintree Drive	Carlsbad	125	\$89	2013
La Quinta Inn & Suites 760 Macadamia Drive	Carlsbad	110	\$100	1989
Moonlight Beach Motel 233 2nd Street	Encinitas	24	\$120	1975
Ramada by Wyndham 751 Macadamia Drive	Carlsbad	121	\$63	1989
Motel 6 Carlsbad Beach 750 Raintree Drive	Carlsbad	160	\$67	1989
Royal Motor Inn 1488-96 N. Coast Hwy 101	Encinitas	9	\$50	1965
Averages		82	\$83	1988

Market Rent Discussion

As shown, the room rate comparables consist of 10 economy hotels in Encinitas and four economy hotels in Carlsbad and indicate a room rate range (before taxes) between \$50 - \$120 per night. The lowest rate is for a single story, poor condition motor lodge located on N. Coast Hwy 101, with the other lower rate hotels attributed to average quality/condition hotels with a large number of rooms. The highest rates are attributed to higher quality, better located or superior amenity (kitchenettes) properties which warrant their higher rates. The quality/condition and beach proximity for the subject falls within the middle of the comparables as shown by the average rates of the comparables (\$83.00) and the last rate information available for the subject (\$83.60).

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Based on the comparables information, it is concluded that the room rate being achieved at the subject property is representative of market rent, with the concluded market room rate being \$83.50.

Vacancy and Collection Loss

The historical occupancy of the subject property is unknown. Typically, properties with a smaller number of rooms with proximity to the ocean can keep their occupancies up, with location trumping property deficiencies and lack of maintenance. Due to the lack of occupancy information for the subject, occupancy information pertaining to local and regional hotel will be used in estimating occupancy.

Operating Expenses

The operating expenses for the subject property are unknown. As such, the expenses will be based on operating expenses that are incurred for properties similar to the subject property in three categories – rate (\$75 - \$115), geography (Mountain/Pacific), and number of rooms (<100 rooms). This information is provided by CBRE Hotels. A summary of these operating expense figures as well as the occupancy, ADR and RevPAR for the hotels from the information is derived is shown below.

Hotel Operating Statistics (PKF)				
Classification	\$75- \$115	Mtn/Pacific	< 100 Rms	Average
Revenues				
Rooms	98.3%	97.2%	97.7%	97.7%
Other Oper Depts	1.1%	1.8%	1.3%	1.4%
Misc Income	<u>0.6%</u>	<u>1.0%</u>	<u>1.0%</u>	<u>0.9%</u>
Total	100.0%	100.0%	100.0%	100.0%
Dept Expenses				
Rooms	28.4%	26.7%	27.0%	27.4%
Other Oper Depts	<u>69.5%</u>	<u>46.7%</u>	<u>68.9%</u>	<u>61.7%</u>
Total	28.7%	26.8%	27.3%	27.6%
Undist. Oper Expense				
Admin & General	8.8%	8.3%	9.0%	8.7%
IT Systems	1.0%	1.1%	1.5%	1.2%
Sales & Marketing	11.4%	10.7%	11.8%	11.3%
Prop Oper & Maint	5.2%	4.3%	4.7%	4.7%
Utilities	<u>4.4%</u>	<u>3.4%</u>	<u>3.8%</u>	<u>3.9%</u>
Total	30.8%	27.8%	30.8%	29.8%
Management Fees				
	3.0%	3.2%	3.5%	3.2%
Non Oper Expenses				
Rent	2.6%	5.7%	4.4%	4.2%
Property/Other Taxes	3.9%	3.2%	3.6%	3.6%
Insurance	0.9%	0.9%	1.1%	1.0%
Other	<u>0.5%</u>	<u>0.6%</u>	<u>1.1%</u>	<u>0.7%</u>
Total	7.9%	10.4%	10.2%	9.5%
Total Expenses	70.4%	68.2%	71.8%	70.1%
EBITDA	29.6%	31.8%	28.2%	29.9%
Occupancy Percent				
ADR	70.0%	74.2%	72.4%	72.2%
RevPAR	\$95.63	\$121.91	\$115.34	\$110.96
	\$66.99	\$90.45	\$83.48	\$80.31

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As shown, the expenses in each of the classifications as a percentage of total revenues for each of the categories (department expense, undistributed operating expense, management fees, and non-operating expenses) are strongly supportive of each other. Furthermore, the total expenses as well as the EBITDA (net operating income) are strongly supportive of each other. As such, the average of each of the classifications will be used in the income analysis of the subject.

Overall Capitalization Rate

The subject is a hotel that has deferred maintenance and a lower room rate structure. However, its strong coastal location and reduced risk associated with achievable rooms rates (whatever that level is) suggests that a relatively strong overall capitalization rate can still be achieved by a seller of the property. As such, the capitalization rate for the subject property will be selected from the following sales data.

Overall Rate Summary							
Data #	Address	City	Sale Date	Price	# Rooms	Age	OAR
1	1060 Adella Avenue	Coronado	7/19/2018	\$8,874,000	17	1906	6.80%
2	33961 Bailey Meadow Rd	Palomar Mtn	10/10/2018	\$1,450,000	14	2000	6.00%
3	419 W. Beech Street	San Diego	10/26/2017	\$2,850,000	30	1909	6.19%
4	1355 E Main Street	El Cajon	3/14/2018	\$5,100,000	47	1987	6.90%
5	1549 E. Main Street	El Cajon	3/1/2017	\$5,630,000	75	1973	5.77%
6	1410 Rosecrans Street	San Diego	10/5/2018	\$5,540,000	24	1961	5.50%
7	655 San Ysidro Blvd.	San Ysidro	3/8/2018	\$6,700,000	100	1960	6.57%
Concluded OAR							6.75%

The subject property is older and has higher risk associated with it compared to the sales due to lower income (economy room rates) and a higher level of expenses (higher maintenance & repairs). As such, an overall capitalization rate toward the upper end of the range indicated by the comparables, or 6.75% is concluded for the subject property.

Direct Capitalization Analysis

Using the analysis and conclusion above, the indicated value for the subject property via direct capitalization is shown as follows:

DIRECT CAPITALIZATION WORKSHEET 186 No. Coast Hwy 101						
Revenue	No. of Rooms	Rates	Days	Totals	% Total Oper Rev	
Rack Rate		\$84.50				
ADR		\$76.05				
Occupancy		72.20%				
RevPAR	45	\$54.91	365	\$901,866		97.70%
Rooms				\$12,626		1.40%
Other Operating Departments				\$8,117		0.90%
Miscellaneous				\$922,608		100.00%
Total Operating Revenue						
Operating Expenses						
Department Expense				\$254,640		27.6%
Undistributed Operating Expenses				\$274,937		29.8%
Management				\$29,523		3.2%
Non-Operating Expenses				\$87,648		9.5%
Total Operating Expenses				\$646,749		70.1%
EBITDA (Net Operating Income)				\$275,860		
Overall Capitalization Rate						6.75%
Indicated Value				\$4,086,814		
Rounded Value				\$4,090,000		
Per Room				\$90,889		

Reconciliation

The two approaches indicate the following market value for the subject property on a “stabilized” basis:

Sales Comparison Approach	\$3,780,000
Income Capitalization Approach	\$4,090,000

In this appraisal, the sales comparison and income capitalization approaches were used to derive an indication of market value for the subject property. Market participants would give little or no consideration to the cost approach when estimating an opinion of value for properties such as the subject. Therefore, this approach was not used in this appraisal.

The sales comparison approach is important when there are enough recent and reliable transactions to indicate value patterns in the market for a particular type of property. Sales of comparable improved properties often provide the best indication of buyer/seller actions in the marketplace. The inability of the appraiser to make an interior inspection of the subject property and to ascertain the physical and functional condition of the property renders the sales comparison approach less reliable. However, the sales do provide a reasonable valuation point of reference on a price per room basis for other similar hotel properties in San Diego county. Property reviews for guests who have stayed at the property as well as public information was relied on for a profile of the property.

The income capitalization approach reflects the thought process of the potential investor of income-producing properties. Well informed buyers in today's marketplace will consider this approach to be significant in estimating market value. All the rent comparables used in this report would be considered a suitable alternative for a prospective purchaser of the property. However, the lack of an operating history for the subject property (income & expenses) over the past three years render the income approach less reliable than the credibility that is normally achieved. Expenses were based on published information for hotels that fall into similar categories as far as room rate, geographical location and size of properties is concerned. Capitalization rates were derived from actual sales and opinions of market participants.

Based on conversations with market participants, prospective buyers will consider both approaches, but will generally give most weight to the income capitalization approach, particularly for investment properties like the subject. However, due to the lack of specific financial information as well as the lack of an on-site inspection of the property which impacts the credibility of both approaches, similar weight will be given to the value indication for each of the approaches. This results in a market value estimate for the subject property of \$3,900,000.

\$3,900,000

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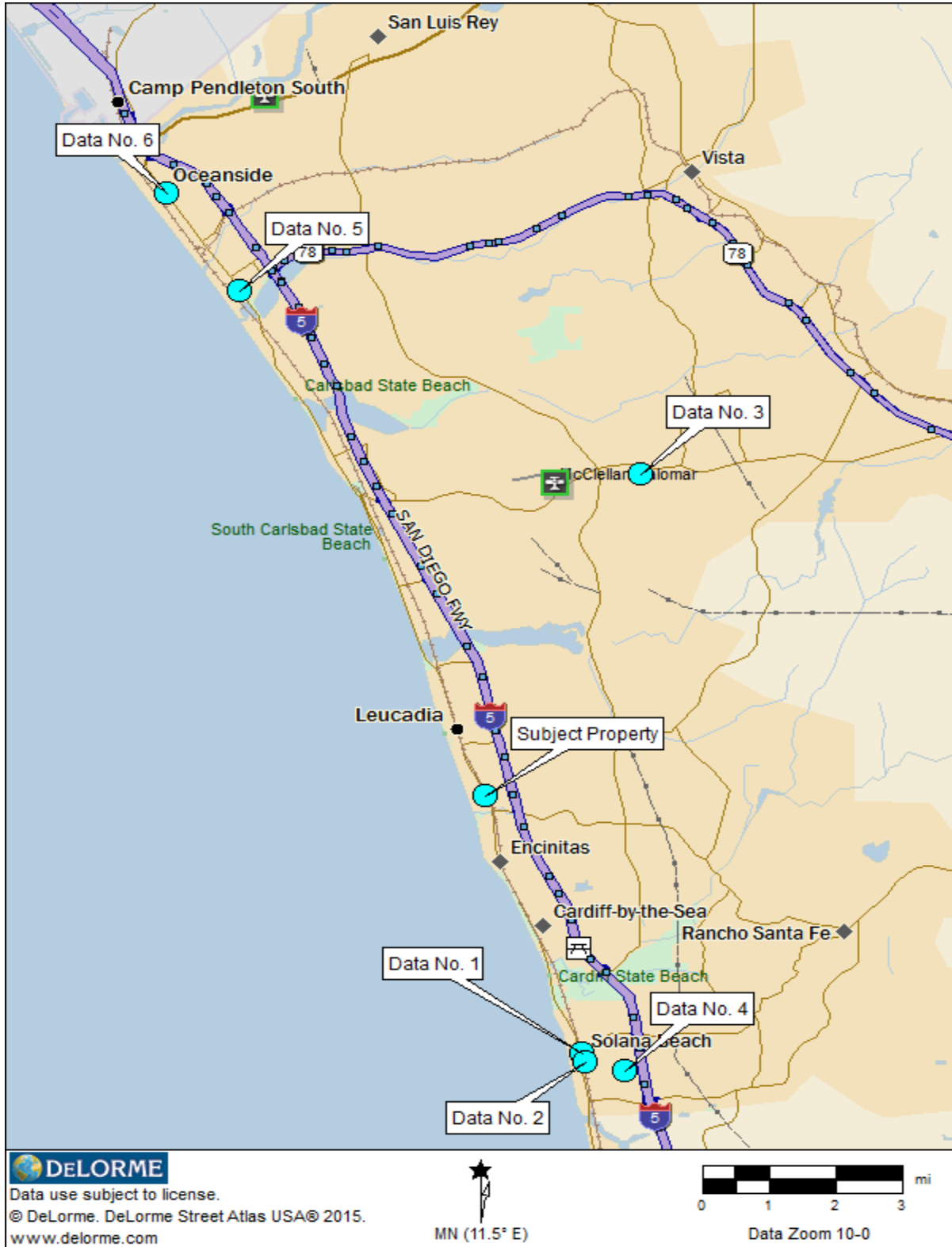
Land Value

To establish the contributory value of the building improvements, the value of the subject’s land “as if vacant” and available for development to its highest and best use must be estimated. The sales comparison approach will be used to estimate the value of the subject’s land. The sales collected and analyzed will focus on coastal parcels purchased with a similar level of development potential to that of the subject property. A summary of the transactions is presented as follows:

Land Sales Summary											
Data #	Location	City	APN	Sale Date	Doc #	Seller	Buyer	Price	Size (SF)	SP/SF	Zoning
1	143 S Cedros Ave	Solana Beach	298-074-05, 06	4/7/2017	159487	Going	Hodges	\$1,000,000	10,454	\$95.66	SC (Spec Comm)
2	330 S Cedros Ave	Solana Beach	298-076-13	4/12/2017	165114	Harker	Pacifica Neutral	\$5,500,000	40,946	\$134.32	SC (Spec Comm)
3	Colt Place	Carlsbad	213-262-07	4/4/2017	150251	HCP LS Carlsbad	Shea Homes	\$12,500,000	96,268	\$129.85	C-2Q (Gen Neigh Comm)
4	700 Stevens Ave	Solana Beach	298-131-22,27,28	9/12/2018	379506	Stevens St. LLC	City of Solana Bch	\$2,800,000	28,976	\$96.63	GC (Gen. Comm)
5	2001 S. Coast Hwy	Oceanside	155-031-01	11/21/2017	543681	Italia Trust	Cazador LLC	\$4,000,000	32,343	\$123.67	CR(Comm Rec/RH (Res HD)
6	102-116 S. Coast Hwy	Oceanside	147-283-02,03,04,05,08	6/30/2017	KJW Coast Hwy LLC	PCH Invest Ptners	\$5,000,000	54,886	\$91.10	C2 (Gen Comm)	

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Land Comparables Map



Discussion of Land Comparables

Data No. 1 – Sale of two adjoining lots located in Solana Beach that are adjacent to parcels already owned by the buyer. The parcels purchased are currently being used for parking purposes under terms of a lease with the buyer being the lessee. While the purchase price is shown as \$1,000,000, another \$500,000 was paid to reflect the value of the lease. This property is slightly smaller than the subject and while more removed from the beach, it is located in the Cedros Design District of Solana Beach, a highly desirable district that is seeing considerable redevelopment both planned and underway.

Data No. 2 – Like Data No. 1, this is the sale of a parcel purchased for land value, located in the Cedros Design District of Solana Beach. The property was purchased by the same entity that owns the subject property, with the intent of redevelopment. The buildings on the property at the time of purchase were given no value. The buyers planned development includes a 26,000 square foot mixed-use project which integrates 3,200 square feet of high-end restaurants, 5,000 square feet of ground-floor retail, 8,000 square feet of office, and eight multifamily units.

Data No. 3 – This is the sale of a 2.21-acre parcel located just south of Palomar Airport Road and west of El Fuerte Street. The property is a portion of a four-parcel purchase of a planned mixed-use development (Lots 29-32 of Bressi Ranch totaling approximately 18 acres) that was purchased for 26.5 million dollars, or \$33.80 per square foot. This sale (Lot 30) sold separately from the other three lots and was purchased for development of 125 luxury condominiums but will be complemented with mixed-use development on the other three parcels that will consist of a food market, a drive through drug store, restaurants, and a specialty market. The entire mixed-use development is across from Bressi Village Retail Center that features a Trader Joe's, a Stater Brothers, some restaurants, offices, a hotel and other businesses. The two transactions covering this development were in escrow for approximately 3.5 years. Due to the large, multiple parcel purchase with above average upside potential, the conditions of sale accompanying this transaction were considered superior.

Data No. 4 is the sale of a 28,976 square foot parcel that was purchased by the city of Solana Beach for expansion of the adjoining neighborhood park known as La Colonia County Park. The property is less than one mile from the Del Mar Race Track, the Cedros Design District, and the Highway 101 corridor. While the intended use is low in intensity, the price paid is reflective of its zoning which allows for development of mixed-use. The parcel was originally listed for sale at \$2,950,000, with the zoning being commercial and allowing for 13 residential units in a mixed-use concept. The site was previously entitled for a 16,740 square foot office building.

Data No. 5 -This is the sale of a split zoned property that is currently improved with two older retail/commercial buildings and 20 older residential units (converted motel). The property was purchased for interim use of the existing improvements, with redevelopment at some future point in time. The property has direct exposure and access to Coast Hwy and has a variety of land use options. While inferior in location, this property is superior in site improvements (interim use of building improvements).

Data No. 6 – This is the sale of multiple adjacent parcels at the corner of Seagaze Drive and S. Coast Hwy in the city of Oceanside. The property is currently improved with a variety of older auto sales and service structures, with the buyer's purchase motivation being future redevelopment. This is a resale of the property which was purchased by the seller in 2016 at a

price of \$2,800,000. While inferior to the subject in location, this property is considered similar in access and street frontage due to its location on Coast Highway.

Additional Market Activity

- There is a listing of a 10,175 square foot property (2 adjoining parcels) located at 777,779 & 793 2nd Street in the city of Encinitas. Located not too far south of the subject property within a superior residential neighborhood in the Downtown Encinitas Specific Plan, the property is zoned Commercial Mixed 2 (D-CM -2) which allows for mixed-use development which includes both commercial and residential uses (single & multi-family). However, its location off Hwy 101 suggests a strong likelihood upon redevelopment for multi-family residential development. The property is located one street west of No. Coast Hwy 101, has redevelopment appeal and potential, but is being marketed as an improved property. The asking price is \$3,500,000, or \$343.98 per square foot of land area. The income generating improvements on the property (3 residential units and a garage) amount to a reported monthly income of approximately \$4,300 or \$51,600 on an annual basis. With an adjustment for listing status (15%), a low tax base and tenant covered expenses, and an estimated overall rate of 3.0%, the land value estimated is \$1,430,000 or \$140.54 per square foot. This item of market data is mentioned for information purposes due to its close location to the subject but is not directly comparable to the subject property.
- There was an older sale of a 9,037 square foot parcel located at 754-766 N. Coast Hwy 101 in the city of Encinitas that sold on August 28, 2015 at a price of \$1,000,000. Included in the sale price was \$240,000 for the value of the small businesses, resulting in a value of \$760,000 for the real estate only (\$84.10 per square foot). The older improvements on the property totaling 2,250 square feet consisted of a lawn mower shop, a chiropractic office, and a small workshop. A higher price per square foot is indicated by this sale for the subject property due to improving market conditions for land since this sale occurred.

Value Conclusion

The land sales indicate a range in value between \$95.66 and \$134.32 per square foot for parcels ranging in size between 10,454 and 96,268 square feet. An analysis of land value for properties like the subject, which have mixed use possibilities, has increased sensitivity based on whether residential, retail or commercial uses are constructed. Typically, commercial/retail uses which characterize the Hwy 101 corridor where the subject is located, will not support the higher prices per square foot paid for land purchased for multi-family residential development. This is particularly true for coastal locations where the sale prices and rents are much higher than inland locations.

While the subject property has mixed-use potential, the land use patterns along No. Coast Hwy 101 and the subject's frontage on this heavily traveled corridor suggests that commercial/retail development will take precedent over multi-family development.

An adjustment grid using qualitative analysis for the subject comparable sales is presented below. Noteworthy adjustments include parcel size which, based on market evidence and conversations with brokers, is premised on larger parcels in coastal locations where developable land is scarce as being superior to smaller parcels.

EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO
EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

Adjustment Summary						
	Data 1	Data 2	Data 3	Data 4	Data 5	Data 6
Address	143 S. Cedros Ave.	330 S. Cedros Ave.	Colt Place	700 Stevens Ave.	2001 S. Coast Hwy	102-116 S. Coast Hwy
Sale Price (PSF)	\$95.66	\$134.32	\$129.85	\$96.63	\$123.67	\$91.10
Transactional						
Interest Conveyed	Similar	Similar	Similar	Similar	Similar	Similar
Conditions of Sale	Similar	Similar	Superior	Similar	Similar	Similar
Financing	Similar	Similar	Similar	Similar	Similar	Similar
Market Conditions	<u>Similar</u>	<u>Similar</u>	<u>Similar</u>	<u>Similar</u>	<u>Similar</u>	<u>Similar</u>
Comparison	Similar	Similar	Superior	Similar	Similar	Similar
Physical						
Location	Similar	Similar	Inferior	Inferior	Inferior	Inferior
Access	Inferior	Inferior	Inferior	Inferior	Similar	Similar
Street Frontage	Similar	Similar	Similar	Similar	Similar	Similar
Size/Shape	Inferior	Superior	Superior	Similar	Superior	Superior
Zoning/HBU	Similar	Superior	Superior	Similar	Similar	Similar
Site Imp	<u>Similar</u>	<u>Similar</u>	<u>Similar</u>	<u>Similar</u>	<u>Superior</u>	<u>Similar</u>
Overall Comparison	Inferior	Superior	Superior	Inferior	Superior	Inferior
Indicated Value PSF	> \$95.66	< \$134.32	< \$129.85	> \$96.63	< \$123.67	> \$91.10

Based on the above analysis, the subject property should be valued at something greater than 96.63 per square foot, and something less than \$123.67 per square foot. The subject's strengths are access/exposure, and its large parcel size in a coastal community with diverse development potential. Its weaknesses are its traffic and noise which discourage residential development, parking overflow from adjoining businesses along Highway 101 and the older commercial/retail improvements along the highway which somewhat influence and limit development possibilities.

It is concluded that a land value for the subject property of \$100.00 per square foot, or \$2,167,000 is supported by the land comparables (21,670 square feet x \$100.00).

Value Conclusions Summary

As shown in the report, the property as improved for hotel use is concluded to have a value of \$3,900,000, with the land value conclusion being \$2,167,000. This results in a contributory value of the buildings, as presently utilized, of \$1,733,000. The contributory value of the improvements equates to \$117.67 per square foot of building area.

Certification

The undersigned appraiser certifies that, to the best of his knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial and unbiased professional analyses, opinions, and conclusions.
- I have no present, prospective, direct or indirect interest in the property that is the subject of this report, nor personal interest or bias with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved in this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Practice of the Appraisal Institute, which include the Uniform Standards of Professional Appraisal Practice.
- Kent J. Carpenter, MAI has not made an interior inspection of the property that is the subject of this report. Inspection of the property consists of only those areas that could be seen from exterior locations.
- No one provided significant real property appraisal assistance to the appraiser signing this certification.
- The appraiser signing this appraisal report has not provided an appraisal of the subject property in the three years immediately preceding acceptance of this assignment. There have been no other services, as an appraiser, or in any other capacity, in the previous three years.
- As of the date of this report, Kent Carpenter, MAI, has completed the continuing education program of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

Very Truly Yours,
Epic Land Solutions, Inc.



Kent J. Carpenter, MAI
Certified General Real Estate Appraiser
Senior Appraiser-
Epic Land Solutions, Inc.
California License AG003087

EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO
EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

Improved Sale Comparables

Data 1 Photo – 225 Bay Blvd.



Data No. 2 Photo – 778 Broadway



EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO
EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

Data No. 3 Photo – 641 Camino Del Rio South



Data No. 4 Photo – 2020 S. Coast Hwy



EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO
EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

Data No. 5 Photo – 771 El Cajon Blvd.



Data No. 6 Photo – 1355 E. Main Street



EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO
EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

Data No. 7 Photo – 650 No. Mollison Ave.



Data No. 8 Photo – 3135 Old Hwy 395



EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

Land Sale Comparables

Data No. 1 Photo –



Assessor's Parcel Map

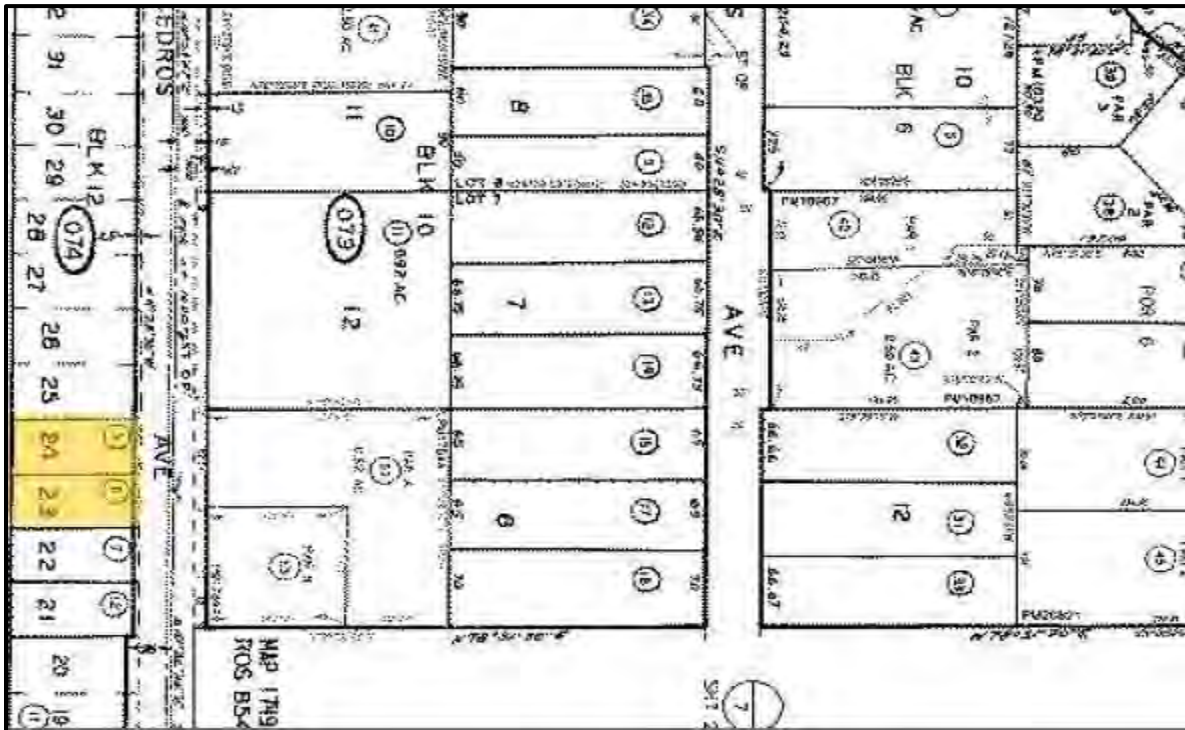
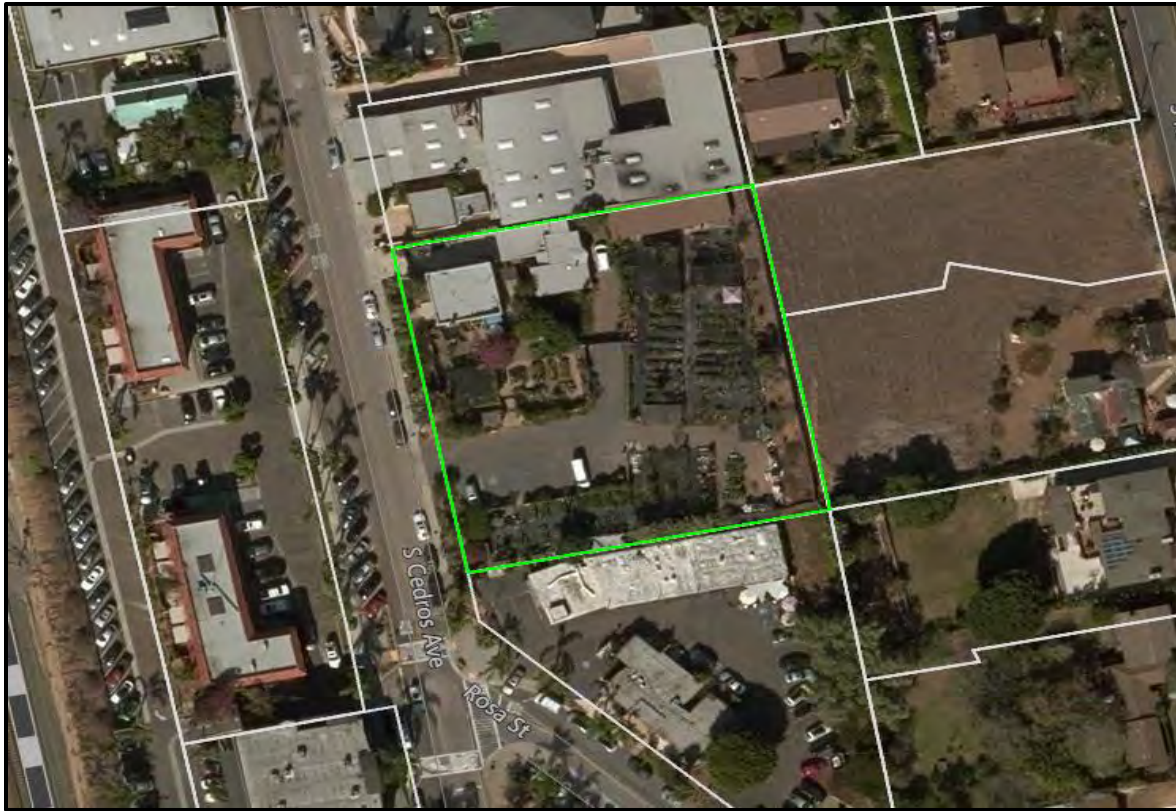


EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

Data No. 2 Photo



Assessor's Parcel Map

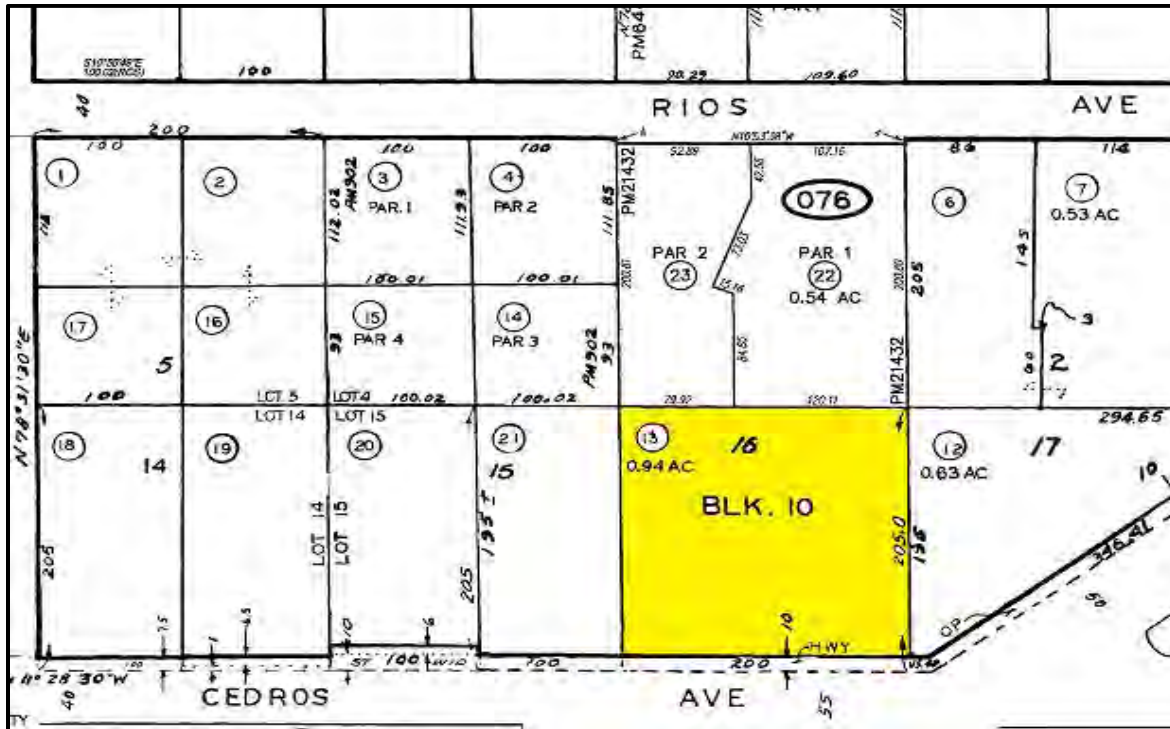
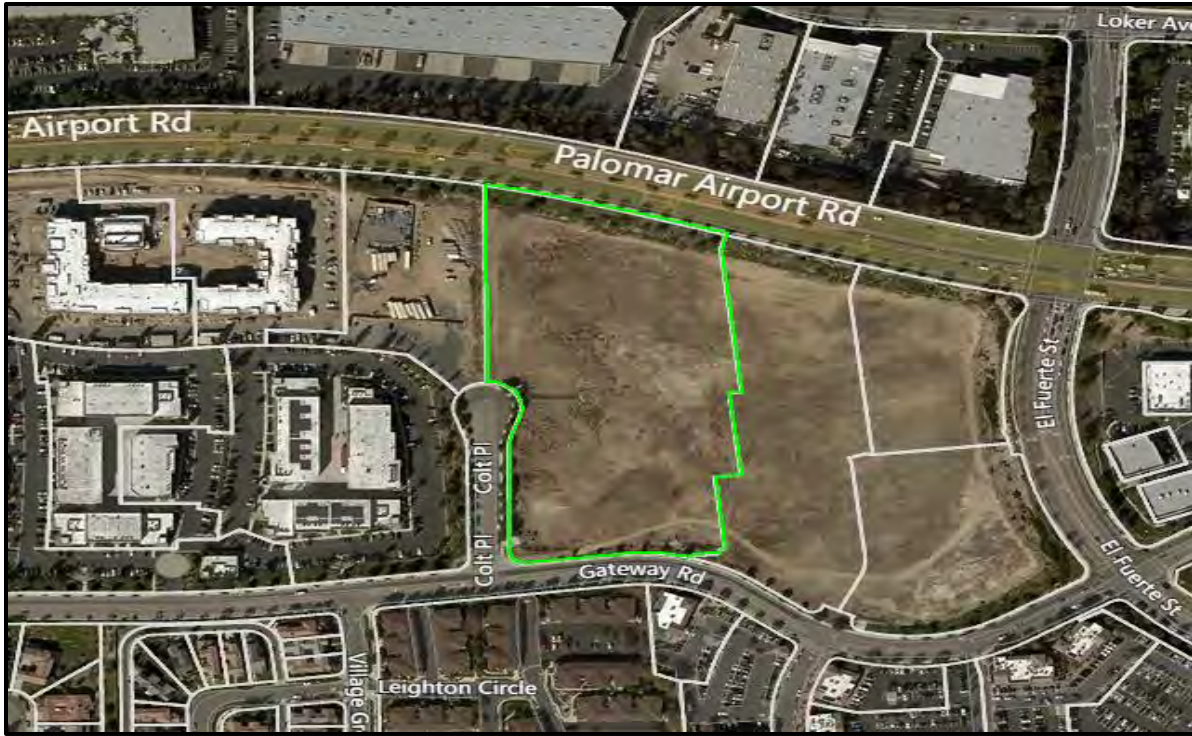


EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

Data No. 3 Photo



Assessor's Parcel Map

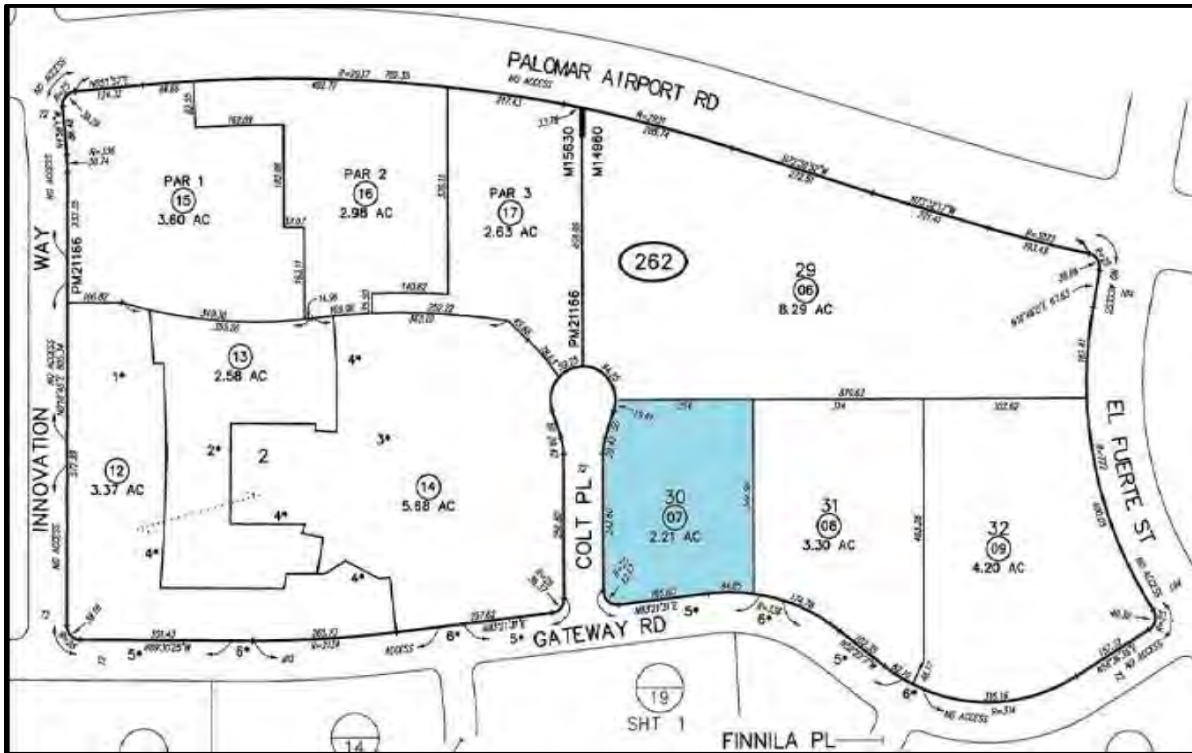


EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

Data No. 4 Photo



Assessor's Parcel Map

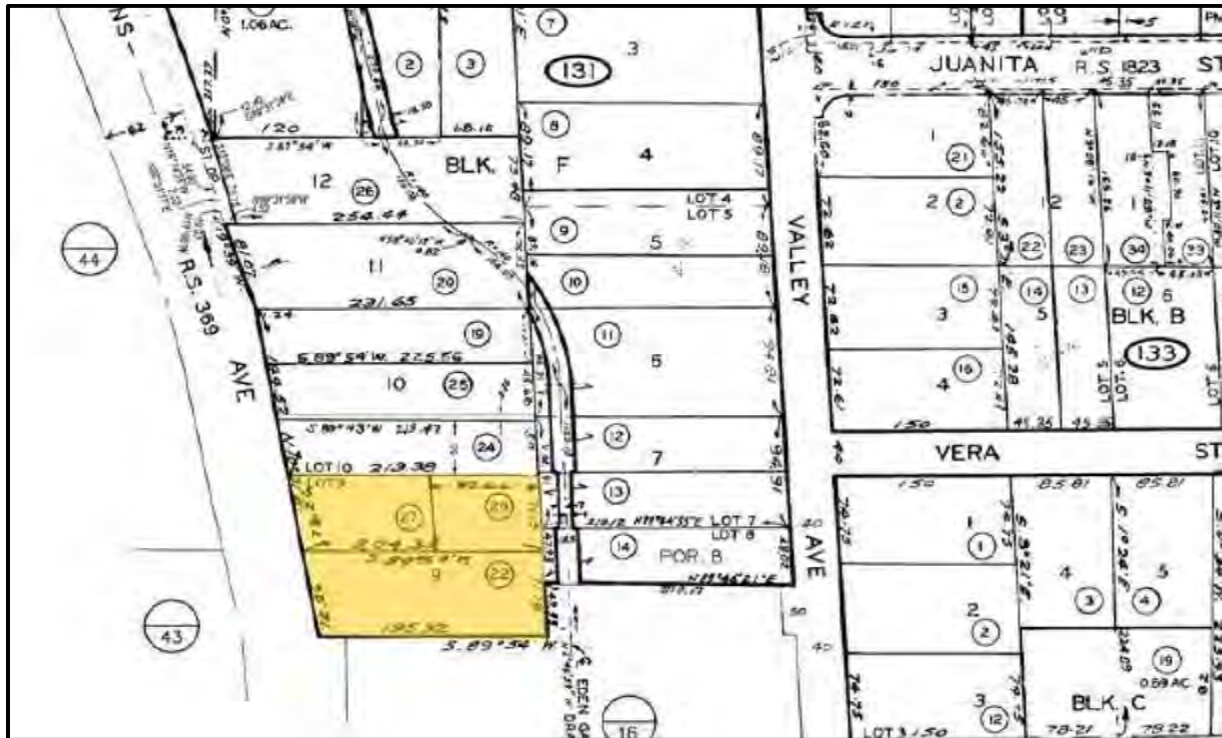


EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO
 EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

Data No. 5 Photo



Assessor's Parcel Map

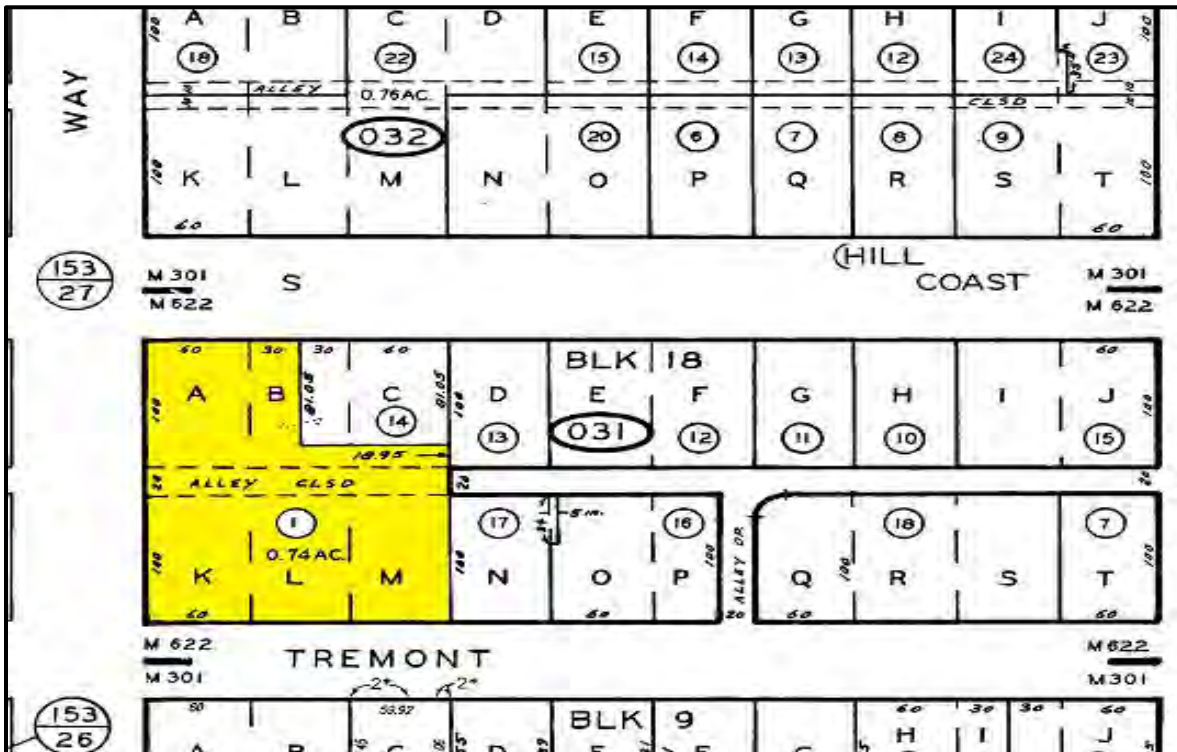


EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

Data No. 6 Photo



Assessor's Parcel Map



Addenda

Assumptions & Limiting Conditions

This report is made expressly subject to the standard assumptions and conditions which are a normal part of any real estate appraisal.

1. The term "Market Value", as used in this report is defined previously.
2. The date of value to which the conclusions and opinions expressed in this report apply, is as set forth previously in this letter. Further, the dollar amount of any value opinion rendered in this report is based upon the purchasing power of the American dollar existing on that date.
3. The appraiser assumes no responsibility for economic or physical factors which may affect the opinions in this report which occur after the date of this letter transmitting the report.
4. The information furnished by others is believed to be reliable. However, no warranty is given for its accuracy.
5. The appraiser reserves the right to make such adjustments to the analyses, opinions and conclusions set forth in this report as may be required by consideration of additional data or more reliable data that may become available.
6. No opinion as to title is rendered. Title is assumed to be marketable and free and clear of all liens, encumbrances, easements and restrictions except those specifically discussed in the report. The property is appraised assuming it to be under responsible ownership and competent management, and available for its highest and best use.
7. The appraiser assumes no responsibility for hidden or unapparent conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for arranging for engineering studies that may be required to discover them.
8. The property is appraised assuming it to be in full compliance with all applicable federal, state, and local environmental regulations and laws, unless otherwise stated.
9. The property is appraised assuming that all applicable zoning and use regulations and restrictions have been complied with, unless otherwise stated.
10. The property is appraised assuming that all required licenses, certificates of occupancy, consents, or other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based, unless otherwise stated.
11. No engineering survey has been made by the appraisers. Except as specifically stated, data relative to size and area was taken from sources considered reliable and no encroachment of real property improvements is considered to exist.
12. No opinion is expressed as to the value of subsurface oil, gas or mineral rights or whether the property is subject to surface entry for the exploration or removal of such materials except as expressly stated.
13. Maps, plats and exhibits included in this part are for illustration only as an aid in visualizing matters discussed within the report. They should not be considered as surveys or relied upon for any other purpose, nor should they be removed from, reproduced, or used apart from the report.

EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO
EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

14. No opinion is intended to be expressed for matters which require legal expertise or specialized investigation or knowledge beyond that customarily employed by real estate appraisers
15. That possession of this report, or a copy of it, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the appraiser, and in any event only with proper written qualification and only in its entirety.
16. Unless specifically stated, this appraisal does not take into consideration the possibility of the existence of asbestos, PCB transformers or other toxic, hazardous, or contaminated substances and/or underground storage tank (hazardous material), or the cost of encapsulation or removing thereof. Should the client have concern over the existence of such substances on the property, we consider it imperative for you to retain the services of a qualified independent engineer or contractor to determine the existence and extent of any hazardous materials, as well as the cost associated with any required or desirable treatment or removal thereof.
17. Notwithstanding its recent closure, it is assumed that the hotel is operational and is constructed and configured to meet current building codes and parking requirements.
18. No interior inspection of the property was made. All descriptions and conclusions regarding the building improvements were based on inspection of the property from exterior locations.
19. It is assumed in this report that a buyer of the property for continued hotel use would be able to use the existing parking spaces for hotel guests on a conforming basis.

EXHIBIT 4. EPIC APPRAISAL FOR ENCINITAS HOTEL PORTOFINO EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

Background & Qualifications

▪ Kent Carpenter, MAI, Senior Appraiser ¶



Total Years of Experience: 33 ¶
Years with Firm: <1 ¶

Education: Bachelor of Science, Financial Planning & Counseling, Brigham Young University ¶

Graduate Courses, San Diego State University ¶

Registrations/Certifications: ¶
Certified General Real Estate Appraiser, State of California, License # AG003087 ¶

Associations/Organizations: ¶
MAI Designated Member, Appraisal Institute ¶

Officer, San Diego Chapter of the Appraisal Institute, 2008 ¶

Kent J. Carpenter has over 30 years of experience in the valuation of residential, commercial, industrial, agricultural and special-purpose properties in California. Prior to joining Epic, Carpenter worked as Managing Director for the San Diego offices of Hilco Real Estate Appraisal and Grubb & Ellis Landauer Valuation Services. Additionally, he was a principal at a top San Diego County appraisal firm — Lipman, Stevens & Carpenter, Inc. Carpenter's extensive experience includes expert witness testimony in federal bankruptcy court, San Diego Superior Court and arbitrations/depositions involving real estate values. Clients include government entities, financial institutions, accounting firms, insurance companies, law firms, developers and private property owners. ¶

Please note: The appraisal group works independently within the Epic organization to ensure complete objectivity and impartiality for all appraisal opinions and conclusions. ¶

▪ Relevant Experience ¶

Valuation Specialties: ¶

- Special-purpose properties → Condemnations ¶
- Agricultural Land → Partial Interests ¶
- Industrial/Flex Buildings → Multi-Family ¶
- Shopping Centers → Hotels ¶
- Retail Properties → Offices ¶

Government Clients: ¶

- United States Department of the Interior → General Services Administration (GSA) ¶
- Los Angeles County Community Development Commission → Port of San Diego ¶
- San Diego Metropolitan Transit System (MTS) → County of San Diego → City of San Diego ¶
- City of La Mesa → City of National City → San Diego Unified School District ¶
- Perris Elementary School District ¶

Financial Institution Clients: ¶

- Teachers Insurance & Annuity Association — College Retirement Equities Fund (TIAA-CREF) ¶
- ING (Retirement & Insurance Products & Services) ¶
- Capital Source Lending → Bank of America → Wells Fargo Bank → Union Bank ¶
- California Bank & Trust → Bank of the West → Metro United Bank → City National Bank → ¶
- Embarcadero Bank → Ironstone Bank → Rabobank → Resmark Equity Partners ¶


Real Estate Clients: ¶

- Quadrant Real Estate Advisors → BAE Systems → Moss Adams → Internal Revenue Service ¶

EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

EXHIBIT 2

6,600 VIEWED THIS POSTING FOR A 350 SQ-FT STUDIO; OVER 70 EMAILED



225 MELROSE AVE 225 Melrose Ave, Encinitas, CA 92024

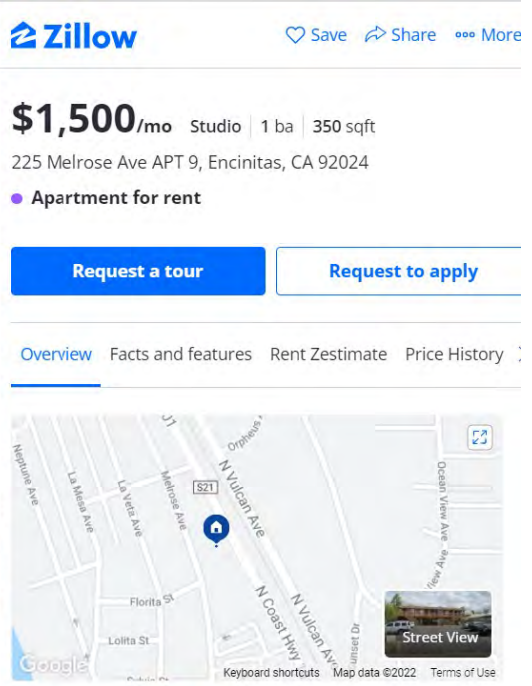
MOONLIGHT BEACH COASTAL ACCESS

ENCINITAS BLVD N 101 COAST HWY

Listing Date: Aug 24, 2010

11 S. 4722231 99 m E. 13656659 93 m N. elev. 0 ft

Eye alt. 2799



Zillow Save Share More

\$1,500/mo Studio | 1 ba | 350 sqft


225 Melrose Ave APT 9, Encinitas, CA 92024

Apartment for rent


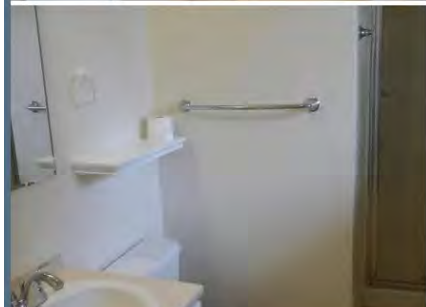



Request a tour Request to apply

Overview Facts and features Rent Zestimate Price History

Travel times Add work destination



UNIT 9



Overview

Days Listed 0 | Contacts 0

Covid-19 Note: Applicants must wear a face covering, use provided new nitrile exam gloves and agree to a non-contact forehead temperature measurement. Only applicants allowed in the unit, one at a time. Social distancing required. Studio No. 9, west of Hwy 101, only 1/2-mile to Moonlight Beach and the Encinitas Downtown. Ten-minute walk to Moonlight Beach and Main St. restaurants. Quiet and safe single-family neighborhood. We will show the apartment Saturday January 22, from 10:00 AM to 1:00 PM. We have owned and operated these units for over 30 years. Our careful person-to-person screening process ensures tenant compatibility and quiet enjoyment of their homes by residents. No short-term vacation rentals. Our tenants stay for years. The unit has one reserved off-street parking place. Floor area: 350 sq-ft. Ceiling fan. Front-to-back ventilation from sea breezes. Recent carpeting and bicycle rack in back of building. No smoking or vaping in units or on the property. No pets, service dogs or emotional-support animals. One-year lease. \$1,500 per month and \$1,500 security deposit. Tenant pays for electricity and communications; we provide water and trash. NOTE: YOU MUST INCLUDE YOUR EMAIL ADDRESS FOR US TO SEND AN APPLICATION. Zillow will not forward attachments. We will show this apartment Saturday January 22, from 10:00 AM to 1:00 PM. Please do not go on the property or contact the tenants.

We will show the property January 22. 225 Melrose Ave, No. 9, Encinitas 92024. \$1,500 rent, \$1,500 security deposit. Tenant pays for electricity & communications. We pay for water & trash. One reserved off-street parking place. Ten-minute walk to Moonlight Beach and Encinitas Downtown.

EXHIBIT 6. HUD VERY LOW INCOME CAN PAY \$1,500 FOR RENT EXHIBIT 1. AFFORDABLE HOUSING SOLUTION FY 2021 I. COME LIMITS DOCUMENTATION SYSTEM



HUD.gov [HUD User Home](#) [Data Sets](#) [Fair Market Rents](#) [Section 8 Income Limits](#) [MTSP Income Limits](#) [HUD LIHTC Database](#)

FY 2021 Income Limits Summary

Selecting any of the buttons labeled "Click for More Detail" will display detailed calculation steps for each of the various parameters.

FY 2021 Income Limit Area	Median Family Income Click for More Detail	FY 2021 Income Limit Category	Persons in Family							
			1	2	3	4	5	6	7	
Los Angeles-Long Beach-Glendale, CA HUD Metro FMR Area	\$80,000	Very Low (50%) Income Limits (\$) Click for More Detail	41,400	47,300	53,200	59,100	63,850	68,600	73,300	78,
		Extremely Low Income Limits (\$)* Click for More Detail	24,850	28,400	31,950	35,450	38,300	41,150	44,000	46,
		Low (80%) Income Limits (\$) Click for More Detail	66,250	75,700	85,150	94,600	102,200	109,750	117,350	124

NOTE: Los Angeles County is part of the **Los Angeles-Long Beach-Glendale, CA HUD Metro FMR Area**, so all information presented here applies to all of the **Los Angeles-Long Beach-Glendale, CA HUD Metro FMR Area**. HUD generally uses the Office of Management and Budget (OMB) area definitions in the calculation of income limit program parameters. However, to ensure that program parameters do not vary significantly due to area definition changes, HUD has used custom geographic definitions for the **Los Angeles-Long Beach-Glendale, CA HUD Metro FMR Area**.

The **Los Angeles-Long Beach-Glendale, CA HUD Metro FMR Area** contains the following areas: Los Angeles County, CA;

* The FY 2014 Consolidated Appropriations Act changed the definition of extremely low-income to be the greater of 30/50ths (60 percent) of the Section 8 very low-income limit or the poverty guideline as [established by the Department of Health and Human Services \(HHS\)](#), provided that this amount is not greater than the Section 8 50% very low-income limit. Consequently, the extremely low income limits may equal the very low (50%) income limits.

Income Limit areas are based on FY 2021 Fair Market Rent (FMR) areas. For information on FMRs, please see our associated FY 2021 [Fair Market Rent documentation system](#).

For last year's Median Family Income and Income Limits, please see here:

[FY2020 Median Family Income and Income Limits for Los Angeles-Long Beach-Glendale, CA HUD Metro FMR Area](#)

Select a different county or county equivalent in California:

Merced County ▲

Modoc County

Mono County

Monterey County

Napa County

Nevada County ▼

[Select county or county equivalent](#)

Select any FY2021 HUD Metropolitan FMR Area's Income Limits:

Los Angeles-Long Beach-Glendale, CA HUD Metro FMR Area ▼

[Select HMFA Income Limits Area](#)

Or press below to start over and select a different state:

EXHIBIT 1. AFFORDABLE HOUSING SOLUTION

[Update URL For bookmarking or E-Mailing](#)

Prepared by the [Program Parameters and Research Division](#), HUD.

EXHIBIT 2. REVOCATION OF ENTITLEMENTS AS RESULT OF LITIGATION



PLANNING COMMISSION AGENDA REPORT
Development Services Department

Agenda Item:	6C
Project Name:	Portofino Hotel Entitlement Withdrawal
Request:	Public hearing to withdraw entitlements approved as part of Planning Commission Resolution No. PC 2019-19 (Case No. 15-285 MUP/DR/CDP) for the Portofino Hotel.
Discretionary Actions:	Revoke Minor Use Permit Modification (USE) Revoke Design Review Permit (DR) Revoke Coastal Development Permit (CDPNF)
CEQA Recommendation:	Exempt
STAFF RECOMMENDATION:	REVOKE
Project Numbers:	MULTI-004650-2021, USE-004653-2021, & CDPNF-004652-2021
Location:	186 North Coast Highway 101
Community:	Leucadia
APN:	256-392-11-00
Applicant:	Christopher Miller
Representative:	Christopher Miller
Project Planner:	Laurie Winter, Associate Planner lwinter@encinitasca.gov
Commission Meeting Date:	October 21, 2021
City Council Hearing Required?	No
Report Approval:	<input checked="" type="checkbox"/> Anna Colamussi, Planning Manager
Recommended Actions:	1. Conduct the public hearing; and 2. Revoke Resolution PC 2019-19

From: [Carrie Tai, AICP](#)
To: [Ted Faturos](#)
Subject: Fwd: [EXTERNAL] OPPOSE: Highrose El Porto
Date: Saturday, February 12, 2022 4:24:21 PM

Sent from my iPhone

Begin forwarded message:

From: "Mark Nelson (Home Gmail)" <menelson@gmail.com>
Date: February 11, 2022 at 22:30:28 PST
To: "Carrie Tai, AICP" <ctai@manhattanbeach.gov>
Subject: [EXTERNAL] OPPOSE: Highrose El Porto

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

The City of Manhattan Beach should DENY all, non "by right" variances requested, such as, joining the lots and exceeding height and number of floors. Absent that, this will result in an appeal.

What waivers and concessions has the developer requested under State Density Bonus laws, MBMC Chapter 10.94, and MBLCP Chapter A.94?

As allowed under State law and [local regulations](#), the developer has requested waivers for the maximum buildable floor area (BFA), the maximum numbers of stories, the maximum height, and a setback waiver for portions of the structure with walls greater than 24 feet in height.

As allowed under State law and local regulations, the developer has requested a concession for the maximum height of a wall/fence within the front setback.



CARRIE TAI, AICP
DIRECTOR OF COMMUNITY DEVELOPMENT

310-802-5503
ctai@manhattanbeach.gov

The City of Manhattan Beach continues to care about your health and safety. The [Citizen Self Service \(CSS\) Online Portal](#) is available for City permit and planning applications and inspections. Most Community Development services are available [online](#) and various divisions can be reached at (310) 802-5500 or [Email](#) during normal City business hours.

CITY OF MANHATTAN BEACH 1400 Highland Avenue Manhattan Beach, CA 90266

Office Hours: M-Th 8:00 AM-5:00 PM | Fridays 8:00 AM-4:00 PM | Not Applicable to Public Safety

Reach Manhattan Beach Here for you 24/7, use our click and fix it app

Download the mobile app now



From: [Carrie Tai, AICP](#)
To: [Ted Faturous](#); [Talyn Mirzakhanian](#)
Subject: Fwd: [EXTERNAL] Highrose El Porto Development
Date: Sunday, February 13, 2022 4:35:13 PM
Attachments: [Highrose Comment Letter.pdf](#)

Sent from my iPhone

Begin forwarded message:

From: David Pedersen <davepede@verizon.net>
Date: February 13, 2022 at 14:02:33 PST
To: "Carrie Tai, AICP" <ctai@manhattanbeach.gov>
Cc: Bruce Moe <bmo@manhattanbeach.gov>, List - Planning Commission <PlanningCommission@manhattanbeach.gov>, Hildy Stern <hstern@manhattanbeach.gov>, Steve Napolitano <snapolitano@manhattanbeach.gov>, Richard Montgomery <rmontgomery@manhattanbeach.gov>, Joe Franklin <jfranklin@manhattanbeach.gov>, Suzanne Hadley <shadley@manhattanbeach.gov>, apedersen@sikand.com, David Pedersen <davepede@verizon.net>
Subject: [EXTERNAL] Highrose El Porto Development
Reply-To: David Pedersen <davepede@verizon.net>

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

Dear Ms. Tai,

Please consider the attached comment letter regarding the Highrose El Porto Development. Thank you.

Sincerely,

David and Alisa Pedersen

MB Logo



CARRIE TAI, AICP

DIRECTOR OF COMMUNITY DEVELOPMENT

310-802-5503

ctai@manhattanbeach.gov

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February 13, 2022

Ms. Carrie Tai, AICP
Director of Community Development
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

HIGHROSE EL PORTO DEVELOPMENT: INADEQUATE PUBLIC NOTIFICATION AND DANGEROUS CONDITION/TRAFFIC SAFETY CONCERNS

Dear Ms. Tai:

As you prepare to make the Director's decision on the Highrose El Porto Development, we ask that you consider the following major concerns with the proposed 79-unit, 96,217-square-foot multifamily residential development project.

Inadequate Public Notification

The public notification process for a proposed project of this scale and potential impact to the community was categorically inadequate. The [Manhattan Beach Strategic Planning Framework](#) espouses a vision to be achieved through six "*pillars*" of success, including "*strong governance that values meaningful resident engagement*". Unfortunately, there has been an overall lack of meaningful resident engagement on this project due to the City relying on its minimum notification standards under its Local Coastal Development Permit Procedures to inform a very limited number of residents of the proposed project approximately 45 days before your pending local decision. This is unacceptable.

We own the property at 452 Rosecrans Avenue and were shocked to learn about the Highrose Project in mid-January by a neighbor/friend rather than the City itself. We wondered how we could have missed the public notice about a project of this significance. When we inquired with City staff, we were directed to a web-page with Frequently Asked Questions, explaining that only residents within 100 feet of the subject parcel were notified and referencing MBLCP A.96.110. A review of the Certified Notification Map showed that only 11 property owners on the southern side of Rosecrans Avenue, which has a 100-foot-wide public right-of-way, were notified and that our property was not included. Ironically, none of the properties that are most likely to have their ocean views affected by the proposed 50-foot-tall building were notified.

If the City truly values meaningful resident engagement, it should not rely on minimum notification standards under its Local Coastal Development Permit Procedures for this project. Instead, the City should develop a more reasonable and defensible notification plan to ensure that those residents affected by the project are afforded an opportunity to provide input and feedback. The 100-foot radius used by the City is much too small, particularly when the abutting roadway has a 100-foot-wide public right-of-way.

Dangerous Condition/Traffic Safety Concerns

As proposed, the project site includes a single point of entry and exit for vehicles on Rosecrans Avenue near the location of the existing Verandas driveway. Vehicles exiting the site to travel eastbound on Rosecrans Avenue will need to make an uncontrolled left-hand turn, creating a dangerous condition when crossing the westbound traffic lanes.

Vehicle accident data will reveal the high number of serious accidents along Rosecrans Avenue between Bell Avenue and Highland Avenue. The westbound lanes along Rosecrans Avenue at this location are particularly dangerous because motorists need to decelerate quickly through a combination horizontal/vertical curve in the roadway. Residents like us who have lived on Rosecrans Avenue are well aware of the vehicle accidents, including at least one fatality immediately adjacent to Verandas.

Conclusion

In light of the inadequate public notification and dangerous condition/traffic safety concerns, we urge you to take additional time to evaluate the proposed Highrose El Porto Development before making your Director's decision. At a minimum, we recommend that the City reissue the public notification to include all residents who are expected to be affected by the project and re-evaluate the vehicle ingress/egress configuration. Thank you in advance for considering our comments.

Sincerely,

 *Alisa Pedersen*

David and Alisa Pedersen
452 Rosecrans Avenue
Manhattan Beach, CA 90266

cc: Bruce Moe, City Manager
Planning Commission
City Council