



MITIGATED NEGATIVE DECLARATION

THE CITY OF SAN DIEGO

Project No. 231328
SCH No. 2014081073

SUBJECT: **Inn at Sunset Cliffs:** COASTAL DEVELOPMENT PERMIT (CDP) and a SITE DEVELOPMENT PERMIT (SDP) for the construction of a new 170-foot-long secant pile seawall. Additionally, the project would remove the following improvements: remnants of an existing seawall, approximately 2,120 square feet of a lower concrete deck and two (2) existing keystone block firepits. The original seawall was constructed in 1953 and has had multiple failures due to high tides which lead to the collapse of the concrete deck both in December 2015 and January 2019. All proposed work would occur on private property and within the footprint of the existing shoreline protection devices (seawall and lower deck). The subject property is 0.542 acres, of which the total disturbed area is less than 0.131 acres. There are no existing easements, and none are proposed. The project is located at 1370 Sunset Cliffs Boulevard in the RM-5-12 (Residential-Multiple Unit) Zone, Coastal Overlay Zone (Appealable), Designated Historic District: Ocean Beach Cottage Emerging District, Coastal Overlay Zone First Public Roadway, Coastal Height Limit Overlay Zone, Transit Priority Area, Parking Impact Overlay Zone (Coastal Impact/Beach Impact), Residential Tandem Parking Overlay Zone, Sensitive Coastal Overlay, ALUCP Airport Influence Area (AIA): San Diego International Airport - Review Area 2, Designated Medium Density Residential within the Ocean Beach Community Plan. (LEGAL DESCRIPTION: MAP 1889, BLOCK 27, LOT I, EXC SW 125 FT, APN 448-341-0100).
APPLICANT: Inn at Sunset Cliffs- Gavin Fleming

UPDATE:

8/25/2022: Minor revisions have been made to the draft Mitigated Negative Declaration (MND). Specifically, the typographical errors and clarifications were made to the final environmental document. Added language appears in a strikeout and underlined format. CEQA Guidelines section 15073.5(a) requires a lead agency to recirculate a negative declaration when the document must be substantially revised after public notice of its availability has previously been given. Pursuant to CEQA Guidelines section 15073.5(b), a "substantial revision" includes two situations: (i) a new, avoidable significant effect is identified, and to reduce that effect to a level of insignificance, mitigation measures or project revisions must be added; or (ii) the lead agency determines that the mitigation measures or project revisions originally included in the negative declaration

will not reduce potentially significant impacts to a level of insignificance, and new mitigation measures or project revisions are required. CEQA is clear that recirculation is not required if "new information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration." (CEQA Guidelines, §15073.5(c)(4).) None of the revisions made meet the recirculation requirements. As such, recirculation is not required.

See attached Initial Study.

II. ENVIRONMENTAL SETTING:

See attached Initial Study.

III. DETERMINATION:

The City of San Diego conducted an Initial Study which determined that the proposed project could have a significant environmental effect in the following areas(s): **Biological Resources**. Subsequent revisions in the project proposal create the specific mitigation identified in Section V of this Mitigated Negative Declaration. The project as revised now avoids or mitigates the potentially significant environmental effects previously identified, and the preparation of an Environmental Impact Report will not be required.

IV. DOCUMENTATION:

The attached Initial Study documents the reasons to support the above Determination.

V. MITIGATION, MONITORING AND REPORTING PROGRAM:

A. GENERAL REQUIREMENTS

Plan Check Phase (prior to permit issuance)

1. Prior to Bid Opening/Bid Award or beginning any construction related activity on-site, the Development Services Department (DSD) Director's Environmental Designee (ED) shall review and approve all Construction Documents (CD) (plans, specification, details, etc.) to ensure the MMRP requirements have been incorporated. In addition, the ED shall verify that the MMRP Conditions/Notes that apply ONLY to the construction phases of this project are included VERBATIM, under the heading, "ENVIRONMENTAL/MITIGATION REQUIREMENTS."
2. These notes must be shown within the first three (3) sheets of the construction documents in the format specified for engineering construction document templates as shown on the City website: <http://www.sandiego.gov/developmentservices/industry/information/standtemp.shtml>.
3. The TITLE INDEX SHEET must also show on which pages the "Environmental/Mitigation Requirements" notes are provided.
4. **SURETY AND COST RECOVERY.** The DSD Director or City Manager may require appropriate surety instruments or bonds from private Permit Holders to ensure the long-term performance or implementation of required mitigation measures or programs. The City is

authorized to recover its cost to offset the salary, overhead, and expenses for City personnel and programs to monitor qualifying projects.

Post Plan Check (After permit issuance/Prior to start of construction)

5. PRE-CONSTRUCTION MEETING is required ten (10) working days prior to beginning any work on this project. The Permit Holder/Owner is responsible to arrange and perform this meeting by contacting the City Resident Engineer (RE) of the Field Engineering Division and City staff from Mitigation Monitoring Coordination (MMC). Attendees must also include the Permit Holder's Representative(s), Job Site Superintendent, and the following consultants:
 - Qualified biologist
 - Qualified archaeologist and Native American monitor

Note: Failure of all responsible Permit Holder's representatives and consultants to attend shall require an additional meeting with all parties present.

CONTACT INFORMATION:

- a. The primary point of contact is the RE at the Field Engineering Division – 858-627-3200.
- b. For clarification of environmental requirements, applicant is also required to call RE and MMC at 858-627-3360.
6. MMRP COMPLIANCE. This Project, Project Tracking System (PTS) Number 658785 and/or Environmental Document Number 658785, shall conform to the mitigation requirements contained in the associated Environmental Document and implemented to the satisfaction of the DSD's Environmental Designee (MMC) and the City Engineer (RE). The requirements may not be reduced or changed but may be annotated (i.e., to explain when and how compliance is being met and location of verifying proof, etc.). Additional clarifying information may also be added to other relevant plan sheets and/or specifications as appropriate (i.e., specific locations, times of monitoring, methodology, etc.).
- Note: Permit Holder's Representatives must alert RE and MMC if there are any discrepancies in the plans or notes, or any changes due to field conditions. All conflicts must be approved by RE and MMC BEFORE the work is performed.
7. OTHER AGENCY REQUIREMENTS: Evidence of compliance with all other agency requirements or permits shall be submitted to the RE and MMC for review and acceptance prior to the beginning of work or within one week of the Permit Holder obtaining documentation of those permits or requirements. Evidence shall include copies of permits, letters of resolution or other documentation issued by the responsible agency: **None required.**
8. MONITORING EXHIBITS: All consultants are required to submit to RE and MMC, a monitoring exhibit on a 11x17 reduction of the appropriate construction plan, such as site plan, grading, landscape, etc., marked to clearly show the specific areas including the limit of work, scope of that discipline's work, and notes indicating when in the construction schedule that work will be performed. When necessary for clarification, a detailed methodology of how the work will be performed shall be included.
- Note: Surety and Cost Recovery- When deemed necessary by the DSD Director or City Manager, additional surety instruments or bonds from the private Permit Holder may be required to ensure the long-term performance or implementation of required mitigation measures or programs. The City is authorized to recover its cost to offset the salary, overhead, and expenses for City personnel and programs to monitor qualifying projects.
9. OTHER SUBMITTALS AND INSPECTIONS: The Permit Holder/Owner's representative shall submit all required documentation, verification letters, and requests for all associated inspections to the RE and MMC for approval per the following schedule:

DOCUMENT SUBMITTAL/INSPECTION CHECKLIST

Issue Area	Document Submittal	Associated Inspection/ Approvals/Notes
General	Consultant qualification letters	Prior to preconstruction meeting
General	Consultant construction monitoring exhibits	Prior to preconstruction meeting
Biological Resources	Monitoring reports	Following construction monitoring

B. SPECIFIC MMRP ISSUE AREA CONDITIONS REQUIREMENTS

BIO-1 Biological Resource Protection During Construction: Prior to Bid Opening/Bid Award or beginning any construction related activity on-site, the Environmental Designee shall verify that the following project requirements are shown on the construction plans:

Prior to Construction

- **Biologist Verification** – The owner/permittee shall provide a letter to the City's Mitigation Monitoring Coordination (MMC) section stating that a Project Biologist (Qualified Biologist) as defined in the City of San Diego's Biological Guidelines (2012), has been retained to implement the project's biological monitoring program. The letter shall include the names and contact information of all persons involved in the biological monitoring of the project.
- **Preconstruction Meeting** – The Qualified Biologist shall attend the preconstruction meeting, discuss the project's biological monitoring program, and arrange to perform any follow up mitigation measures and reporting including site-specific monitoring, restoration or revegetation, and additional fauna/flora surveys/salvage.
- **Biological Documents** – The Qualified Biologist shall submit all required documentation to MMC verifying that any special mitigation reports including but not limited to, maps, plans, surveys, survey timelines, or buffers are completed or scheduled per City Biology Guidelines, Multiple Species Conservation Program (MSCP), Environmentally Sensitive Lands Ordinance (ESL), project permit conditions; California Environmental Quality Act (CEQA); endangered species acts (ESAs); and/or other local, state or federal requirements.
- **Biological Construction Mitigation/Monitoring Exhibit** – The Qualified Biologist shall present a Biological Construction Mitigation/Monitoring Exhibit (BCME) which includes the biological documents in C above. In addition, include: restoration/ revegetation plans, plant salvage/relocation requirements (e.g., coastal cactus wren plant salvage, burrowing owl exclusions, etc.), avian or other wildlife surveys/survey schedules (including general avian nesting and USFWS protocol), timing of surveys, wetland buffers, avian construction avoidance areas/noise buffers/ barriers, other impact avoidance areas, and any subsequent requirements determined by the Qualified Biologist and the City ADD/MMC. The BCME shall include a site plan, written and graphic depiction of the project's biological mitigation/monitoring program, and a schedule. Prior to the issuance of grading permits, the BCME shall be approved by MMC and referenced in the construction documents.
- **Resource Delineation** – Prior to construction activities, the Qualified Biologist shall supervise the placement of orange construction fencing or equivalent along the limits of disturbance adjacent to sensitive biological habitats and verify compliance with any other

project conditions as shown on the BCME. This phase shall include flagging plant specimens and delimiting buffers to protect sensitive biological resources (e.g., habitats/flora & fauna species, including nesting birds) during construction. Appropriate steps/care should be taken to minimize attraction of nest predators to the site.

- **Education** – Prior to commencement of construction activities, the Qualified Biologist shall meet with the owner/permittee or designee and the construction crew and conduct an on-site educational session regarding the need to avoid impacts outside of the approved construction area and to protect sensitive flora and fauna (e.g., explain the avian and wetland buffers, flag system for removal of invasive species or retention of sensitive plants, and clarify acceptable access routes/methods and staging areas, etc.).

During Construction

- **Monitoring** – All construction (including access/staging areas) shall be restricted to areas previously identified, proposed for development/staging, or previously disturbed as shown on "Exhibit A" and/or the BCME. The Qualified Biologist shall monitor construction activities as needed to ensure that construction activities do not encroach into biologically sensitive areas, or cause other similar damage, and that the work plan has been amended to accommodate any sensitive species located during the pre-construction surveys. In addition, the Qualified Biologist shall document field activity via the Consultant Site Visit Record (CSV). The CSV shall be emailed to MMC on the 1st day of monitoring, the 1st week of each month, the last day of monitoring, and immediately in the case of any undocumented condition or discovery.
- **Subsequent Resource Identification** – The Qualified Biologist shall note/act to prevent any new disturbances to habitat, flora, and/or fauna onsite (e.g., flag plant specimens for avoidance during access, etc.). If active nests or other previously unknown sensitive resources are detected, all project activities that directly impact the resource shall be delayed until species specific local, state, or federal regulations have been determined and applied by the Qualified Biologist.

Post Construction Measures

- In the event that impacts exceed previously allowed amounts, additional impacts shall be mitigated in accordance with City Biology Guidelines, ESL and MSCP, State CEQA, and other applicable local, state, and federal law. The Qualified Biologist shall submit a final BCME/report to the satisfaction of the City ADD/MMC within 30 days of construction completion.

BIO-2

An abalone survey shall be performed within all intertidal and subtidal areas within 5 meters of the proposed in-water work area (riprap removal area). The abalone survey shall be conducted within 7 days of the start of in-water work. The survey shall be considered valid for 30 days and therefore repeated if in-water work takes more than 30 days or is delayed. If abalone are identified, the Project will be delayed until NOAA Fisheries can be consulted and a plan to protect in place or abalone relocation can be performed.

VI. PUBLIC REVIEW DISTRIBUTION:

Draft copies or notice of this Negative Declaration were distributed to:

United States Government

U.S. Fish and Wildlife Service (23)
U.S. Army Corps of Engineers (26)
U.S. Environmental Protection Agency (19)
NOAA Fisheries West Coast Region

State of California

State Clearinghouse (46A)
California Coastal Commission (47)

City of San Diego

Mayor's Office (91)
Council member Jennifer Campbell District 2

Jeffrey Szymanski (MS 501)

Martha Blake (MS 501)

James Quinn (MS 501)

Phil Lizzi (MS 501)

Central Library Department (81 a)

Office of the City Attorney, Corrine Neuffer (59)

Other Individuals or Groups

Ocean Beach Planning Board (367)

Ocean Beach Town Council (367A)

Coastal Right Foundation Craig Sherman, Esq.

Friends of Sunset Cliffs

Barbara Houlton

Livia Borak Beaudin, Coastal Law Group

Sunset Cliffs Natural Park Council (388)

Sierra Club (165)

San Diego Audubon Society (167)

Mr. Jim Peugh (167A)

California Native Plant Society (170)

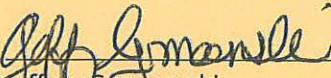
RESULTS OF PUBLIC REVIEW

VII. RESULTS OF PUBLIC REVIEW:

- () No comments were received during the public input period.
- () Comments were received but did not address the accuracy or completeness of the draft environmental document. No response is necessary and the letters are incorporated herein.

- (X) Comments addressing the accuracy or completeness of the draft environmental document were received during the public input period. The letters and responses are incorporated herein.

Copies of the Mitigated Negative Declaration and any Initial Study material are available in the office of the Development Services Department for review, or for purchase at the cost of reproduction.



Jeffrey Szymanski
Senior Planner
Development Services Department

October 14, 2021

Date of Draft Report

August 25, 2022

Date of Final Report

Analyst: Jeff Szymanski

Attachments: Initial Study Checklist
Figure 1- Regional Location Map
Figure 2- Site Plan

COMMENTS

RESPONSES



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Marine Region
1933 Cliff Drive, Suite 9
Santa Barbara, CA 93109
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



November 30, 2021

Mr. Jeffrey Szymanski
Environmental Management Director
City of San Diego
1222 1st Avenue
San Diego, California 92101
szymanski@sandiego.gov

Sunset Cliffs Inn (Project) Draft Initial Study/Mitigated Negative Declaration (Draft IS/MND) SCH # 2014081073

Dear Mr. Szymanski:

The California Department of Fish and Wildlife (Department) received a Draft Initial Study/Mitigated Negative Declaration (Draft IS/MND) from the City of San Diego (City) for the Inn at Sunset Cliffs Inn Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

A-1

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide biological impact and mitigation comments regarding those aspects of the Project that the Department, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

DEPARTMENT ROLE

The Department is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the state. (Fish & G. Code, Section 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines Section 15386, subd. (a).) The Department, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, Section 1802.) Similarly for purposes of CEQA, the Department is charged by law to provide, as available, biological expertise during public agency environmental review efforts,

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

A-1: This comment is primarily an introduction with specific comments to follow.

COMMENTS

RESPONSES

Jeffery Szymanski, Project Manager
City of San Diego
November 30, 2021
Page 2 of 4

focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources. The Department is also responsible for marine biodiversity protection under the Marine Life Protection Act in coastal marine waters of California, and ensuring fisheries are sustainably managed under the Marine Life Management Act. Pursuant to our jurisdiction, the Department has the following comments and recommendations regarding the Project.

PROJECT DESCRIPTION SUMMARY

Proponent: Sunset Cliffs Inn

Objective: The objective of the Project is to construct a new secant pile seawall, and to comply with the permitting process for a Coastal Development Permit (CDP) and a Site Development Permit (SDP). The Project will include the following construction elements:

- Removal of the remnant existing seawall.
- Removal of 2,120 square feet of a lower concrete deck.
- Remove two existing keystone block firepits.
- Removal of quarry rock revetment at the bottom of the seawall, which currently covers a portion of the natural rocky intertidal reef.
- Construction of a new 170-foot-long secant pile seawall.

A-2

The original seawall was constructed in 1953 and has had multiple failures due to daily high wave energy, which led to the collapse of the concrete deck both in December 2015 and January 2019. All proposed work would occur on private property and within the footprint of the existing shoreline protection devices (seawall and lower deck). The subject property is 0.542 acres, of which the total disturbed area is less than 0.131 acres.

Location: 1370 Sunset Cliffs Blvd., San Diego, San Diego County, California.

COMMENTS AND RECOMMENDATIONS

The Department offers comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

Abalone and Intertidal Rocky Reef Impacts

Comment: The Department agrees with the Intertidal Biological Assessment (IBA) Report, MTS, 2020, Rev. 2021 within the Draft IS/MND that supports the proposed Project. The Draft IS/MND states any unanticipated damage or loss of rocky intertidal habitat mapped in Figure 4 would be considered a significant impact and would require mitigation. The Department also agrees with the IBA report regarding the recommended pre-construction abalone spp. survey to be conducted seven days prior to the start of the intertidal quarry rock removal to reduce the intertidal rocky reef impacts to less than significant. The Department has the following additional recommendations shown below.

A-2: The comment does not raise an issue related to the adequacy of the analysis of the Draft MND.

COMMENTS

RESPONSES

Jeffery Szymanski, Project Manager
City of San Diego
November 30, 2021
Page 3 of 4

Recommendations and Mitigation Measures:

The Department recommends the Final IS/MND include the following additional recommendations and mitigation measures to reduce the risk of abalone spp. and intertidal rocky reef adverse impacts to less than significant:

- **Recommendation:** The Department and National Marine Fisheries Service (NMFS) should be notified if any abalone spp. are found during the pre-construction intertidal quarry rock survey. If abalone are detected, collaboration with the Department will be necessary to identify next steps, including potential authorization for abalone spp. relocation.
- **Recommendation:** If any garbage, construction debris or quarry rock is dropped on reef habitat or ocean water, these items should be removed as soon as possible.

A-3

ENVIRONMENTAL DATA

A-4

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). Information on submitting data to the CNDDB can be found at: <https://wildlife.ca.gov/Data/CNDDB/Submitting-Data>.

FILING FEES

A-5

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by Department. Payment of the fee is required for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

Conclusion

The Department appreciates the opportunity to comment on the Draft IS/MND. If you have any questions or comments, please contact Loni Adams, Environmental Scientist, at 858-204-1051 or loni.adams@wildlife.ca.gov.

Sincerely



Craig Shuman, D. Env
Marine Regional Manager

cc: Becky Ota, Environmental Program Manager
Department of Fish and Wildlife
Becky.Ota@wildlife.ca.gov

A-3: Prior to the release of the Draft MND for Public Review the City coordinated with the National Oceanic and Atmospheric Administration (NOAA), who reviewed the biological technical report. No additional mitigation measures or conditions were identified. Please see mitigation measure B-2 within the Final MND, which includes the requirement to contact NOAA in case of discovery of Abalone.

A-4: The City will report any special status species and/or natural communities detected during required Project surveys.

A-5: The City understands that the applicant will be required to pay the filing fees when the Notice of Determination is filed.

COMMENTS

RESPONSES

Jeffery Szymanski, Project Manager
City of San Diego
November 30, 2021
Page 4 of 4

Eric Wilkins, Senior Environmental Scientist Supervisor
Department of Fish and Wildlife
Eric.Wilkins@wildlife.ca.gov

Loni Adams, Environmental Scientist
Department of Fish and Wildlife
Loni.Adams@wildlife.ca.gov

Alexander Llerandi, Coastal Analyst
California Coastal Commission
Alexander.Llerandi@coastal.ca.gov

Eric Becker, Senior WRC Engineer
San Diego Regional Water Quality Control Board
Eric.Becker@waterboards.ca.gov

Habitat Conservation Program Branch CEQA Program Coordinator
California Department of Fish and Wildlife
ceqacommentletters@wildlife.ca.gov

Office of Planning and Research, State Clearinghouse
state.clearinghouse@opr.ca.gov

Robert R. Smith, P.E.
U.S. Army Corp of Engineers
robert.r.smith@usace.army.mil

COMMENTS

RESPONSES



1140 South Coast Hwy. 101
Encinitas, CA 92024

Tel 760-942-8505
Fax 760-942-8515
www.coastlawgroup.com

November 19, 2021

Jeffrey Szymanski
City of San Diego Development Services
1222 First Avenue MS 501
San Diego, CA 92101

Via Electronic Mail
DSDEAS@Sandiego.gov

RE: Draft Mitigated Negative Declaration: Inn at Sunset Cliffs
CERF Comments

Dear Mr. Szymanski:

Please accept the following comments on behalf of our client Coastal Environmental Rights Foundation ("CERF") regarding the Draft Mitigated Negative Declaration ("MND") for the Inn at Sunset Cliffs ("Project"). CERF is a nonprofit environmental organization established to aggressively advocate, including through litigation, for the protection and enhancement of coastal natural resources and the quality of life for coastal residents.

B-1

CERF has a long history with the subject property and is intimately familiar with the Project applicant's attempts to evade enforcement action and circumvent applicable permit requirements. Since 2004, the City has cited the Inn for maintaining an unlawful patio (the lower deck or terrace). In 2009, frustrated with the lack of progress, the Coastal Commission demanded the City enforce the Coastal Act. The City thereafter issued a Notice of Violation for the lower deck and the Inn's intensification of use. Since that time, however, the City has succumbed to the pressures of intense lobbying and enabled the Inn's continued disregard for the City's permit requirements.

Twice in recent history the Inn's lower deck has collapsed. One such collapse occurred just after the Inn's consultant, Walt Crampton, opined that the seawall was stable and no geologic impacts would result. The same consultant's flawed geotechnical report forms the basis of the City's current California Environmental Quality Act ("CEQA") review.

Following a scrapped DEIR and a CEQA exemption based on a recommendation of denial of the Project, the MND is fundamentally flawed in numerous respects, as it fails to analyze all applicable standards and regulations, is inconsistent with the applicable community plan and Local Coastal Plan (LCP), and fails to address the Project's significant geological impacts. In short, the MND fails to serve its informational purpose.

B-1: The comment is primarily an introduction with specific concerns to follow.

COMMENTS

RESPONSES

Inn at Sunset Cliffs MND, SCH No. 2014081073
CERF Comments
November 19, 2021
Page 2 of 10

B-2

A. The Project Description is Inconsistent and Incomplete.

Though an MND need only provide a “brief description” of the Project, it must still reflect the City’s good faith effort at compliance and disclosure.¹ Throughout the CEQA documents, the Project description is inconsistent. The MND also omits key aspects of the Project. For example, the MND Project description includes construction of only one new item: a 170-foot-long secant pile seawall.² The supporting Climate Action Plan Consistency (“CAP”) Checklist, however, describes the Project as:

Project proposes a new tie-back, anchored secant seawall and stairway, and removal of the existing seawall; lower concrete deck; geotubes; and fill and other materials seaward of the proposed wall, associated with an existing 24 room hotel.³

The December 24, 2020 Geotechnical Report prepared by TerraCosta Consulting Group Inc. also contains inconsistent information. It includes a Site Map that depicts the proposed seawall extending just north of the stairs⁴ and a Concept Plan that shows the new seawall extending past and around the stairs.⁵ This inconsistent and unstable Project description thwarts public participation. The MND must be revised to include all aspects of the Project and clear up any confusion.

B-3

B. The MND’s GHG Emissions Analysis is Flawed.

The MND’s greenhouse gas analysis is flawed and incomplete in numerous respects. First, the MND erroneously relies on the CAP Consistency Checklist for greenhouse gas (“GHG”) analysis. A recent appellate court ruling clarified the use of the use of the Checklist alone for projects that do not go on to “Step 2” is improper.⁶ Therefore, the MND must provide a Project-specific greenhouse gas (“GHG”) analysis.⁷

In that regard, the MND fails to account for the Project’s intensification of use and resultant GHG emissions. It is indisputable that the Inn relies heavily on special events (weddings in particular) for its viability. As a result of the most recent lower deck

¹ Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296, 305.

² MND, pp. 8-9; Notice of Availability, p. 1.

³ CAP Consistency Checklist, p. 3.

⁴ TerraCosta Geotechnical Report, December 24, 2020, p. 44 o.f pdf [Figure Number 2].

⁵ Id., p. 55 of pdf [Figure Number 18]

⁶ McCann v. City of San Diego (2021) 70 Cal.App.5th 51 [“All that is required is that the City analyze each project’s consistency with the specific greenhouse gas reduction measures included in the Climate Action Plan. Until such an analysis is completed, it is impossible for the City to know the environmental impact of its [non-housing] projects.”].

⁷ CEQA Guidelines Section 15064.4(a) (14 Cal. Code Regs).



B-2: The project is to construct a new secant pile seawall and comply with the permitting process for a Coastal Development Permit (CDP) and a Site Development Permit (SDP). The project will include the following construction elements:

- Removal of the remnant existing seawall.
- Removal of 2,120 square feet of a lower concrete deck.
- Remove two existing keystone block firepits.
- Removal of quarry rock revetment at the bottom of the seawall currently covers a portion of the natural rocky intertidal reef.
- Construction of a new 170-foot-long secant pile seawall.

The CAP checklist has been updated and no longer contains a reference to a stairway. Per the description above, the project is not proposing a new stairway but would maintain the existing southern stairway.

The project description is complete and consistent with the proposed project.

B-3: The CAP Checklist has been revised to reflect the recent court ruling. Step 2 of the checklist has been completed, and impacts associated with climate change have not been identified.

City Staff previously reviewed the question of weddings and other events being held at the Inn and determined they could be allowed at the Inn at Sunset Cliffs as accessory uses. Uses of

COMMENTS**RESPONSES**

the Inn and associated events at the Inn are not part of this project as they exist and are allowed by-right uses.

Removing the existing seawall and lower deck totals approximately 2,800 square feet. The surfacing associated with the replacement seawall totals approximately 2,120 square feet. The area available for by-right uses thus is decreasing by 680 square feet.

There is no established “baseline” of allowed by-right uses and events. Uses and events associated with the Inn are not part of this project as they exist and are allowed by-right uses. To meet the new wall on the landward side, the existing deck will be extended approximately 12 feet for an increase in square footage of approximately 2,120 square feet. Protection of the proposed wall from landward hydrostatic pressure from wave overtopping and stormwater is provided by the extension of the existing upper deck to meet the landward side of the secant pile wall. The existing use is not proposed to be changed or altered by this project.

COMMENTS

RESPONSES

Inn at Sunset Cliffs MND, SCH No. 2014081073
CERF Comments
November 19, 2021
Page 3 of 10

failure and the pandemic, weddings and other events at the Inn have been significantly curtailed.⁸ In light of the lower deck's repeated collapse, and the impossibility of permitting the lower unlawful deck, the current reduced level of events and weddings is the baseline from which impacts must be measured.

Should the upper deck be significantly expanded as proposed, the frequency and intensity of events will dramatically increase. Wedding attendees, vendors, caterers, photographers, and the like will all result in increased traffic, air quality impacts, and GHG emissions. Compounding the effect, the Inn's weddings and events tend to increase in the summer, when traffic impacts in coastal communities are more pronounced. Because the MND fails to quantify these impacts, it fails to adequately disclose significant GHG impacts and assess its conformance to the City's Climate Action Plan.

C. The Project Results in Land Use and Geologic Impacts.

The MND's Land Use impact analysis is extremely short and omits an analysis of the City's Environmentally Sensitive Lands ("ESL") regulations and Community Plan/LCP.⁹ The omission is particularly troubling where, as here, the Project directly impacts sensitive coastal bluffs and coastal beaches.¹⁰ The purpose of the ESL regulations "is to protect, preserve and, where damaged, restore, the environmentally sensitive lands of San Diego and the viability of the species supported by those lands."¹¹

It is further intended for the Development Regulations for Environmentally Sensitive Lands and accompanying Biology, Steep Hillside, and Coastal Bluffs and Beaches Guidelines to serve as standards for the determination of impacts and mitigation under the California Environmental Quality Act and the California Coastal Act.¹²

B-4

Thus, inconsistency with the ESL regulations necessarily supports a finding of a significant environmental impact. The Project's significant deviation from the ESL regulations is evidence of the Project's significant impacts to geology and soils. Below are a few of the ESL regulations with which the Project does not comply.

B-5

⁸ "In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project." (CEQA Guidelines § 15064(d)).

⁹ MND, pp. 29-30.

¹⁰ SDMC § 143.0110(a).

¹¹ SDMC § 143.0101.

¹² *Id.* (emphasis added); see also, General Plan, Conservation Element, p. CE-15.



B-4: All land areas within the existing project area and the proposed project area have been significantly disturbed since the development of the apartment building (which later became the hotel) on the site and its attendant seawall in the early 1950s. The proposed location of the replacement seawall will restore the tidal habitat where the existing deck is now located. Per the Environmentally Sensitive Lands Regulations, the location of the replacement seawall "maximizes physical and visual public access to and along the shoreline" (Section 143.0101). The proposed use is allowed within Environmentally Sensitive Lands (Section 143.0130). This Section allows "[b]luff repair and erosion control measures, when necessary to protect existing primary structures and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply."

COMMENTS

Inn at Sunset Cliffs MND, SCH No. 2014081073
CERF Comments
November 19, 2021
Page 4 of 10

B-5

- "Erosion control measures are exempt from the *steep hillside* development area regulations in Section 143.0142(a) if they are determined to be the only feasible means of erosion control necessary to protect the existing primary structures or public improvements."¹³
- Bluff repair and erosion control measures are allowed within sensitive coastal bluff areas "when necessary to protect existing primary structures and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply."¹⁴
- "No development is permitted on the face of a sensitive coastal bluff, except as permitted in Section 143.0143(g) and (h), and the coastal bluff face shall be preserved as a condition of permit approval."¹⁵
- (f) All development including buildings, accessory structures, and any additions to existing structures shall be set back at least 40 feet from the coastal bluff edge, except as follows:

(1) The City Manager may permit structures to be located between 25 and 40 feet from the bluff edge where the evidence contained in a geology report indicates that the site is stable enough to support the development at the proposed distance from the coastal bluff edge and the project can be designed so that it will not be subject to or contribute to significant geologic instability throughout the anticipated life span of the primary structures, and no shoreline protection is required.¹⁶

*Accessory structures and landscape features customary and incidental to residential uses shall not be closer than 5 feet to the coastal bluff edge provided, however, that these shall be located at grade. Accessory structures and features may be landscaping, walkways, unenclosed patios, open shade structures, decks that are less than 3 feet above grade, lighting standards, fences and walls, seating benches, signs, or similar structures and features, excluding garages, carports, buildings, pools, spas, and upper floor decks with load-bearing support structures.*¹⁷

RESPONSES

B-5: There are no significant impacts on geology and soils. The geologic site conditions consist of the very strong and erosion-resistant 80-million-year-old Cretaceous-age Point Loma Formation that extends up to about 11 feet, which is overlain by some friable terrace deposits non-expansive and, although highly susceptible to wave-induced erosion. Hence, the need for shoreline stabilization; these soils provide excellent foundation support for most any type of urban development. Moreover, these surface terrace deposits mantle the entire coastal terrace along the San Diego County coastline.

Erosion control measures are the only feasible means of erosion control along this section of the City's coastline. The Corps of Engineers initially assisted the City of San Diego in stabilizing the coastal bluffs southerly of the site. Importantly, in the 1940s and 1950s, the City encouraged private bluff-top property owners to stabilize their existing bluff-top improvements, which led to the construction of the original seawall in 1953. Numerous other seawalls were also constructed to the north around the same time.

As indicated above, erosion control measures were required in the early 1950s to protect both of the existing primary bluff-top structures. The presence of the highly erosion-resistant, cliff-forming Point Loma Formation has minimal impact on the local shoreline sand supply.

¹³ SDMC § 143.0111(c) (bold and underline added).

¹⁴ SDMC § 143.0130(a)(12) (bold added).

¹⁵ SDMC § 143.0143(a) (bold added).

¹⁶ SDMC § 143.0143(f)(1) (bold added).

¹⁷ SDMC § 143.0143(f)(2) (bold added).



COMMENTS**RESPONSES**

As indicated above, the City of San Diego, likely with support from the Corps of Engineers, was encouraging private bluff-top property owners to stabilize this section of the City's coastline, fully 20 years before the City's more contemporary policies that no longer allow development on the face of a sensitive coastal bluff. In keeping with the City's more contemporary bluff-top development guidelines, the subject wall is being removed in its entirety. A replacement wall is to be constructed from 13 to 33 feet to the east to maintain the necessary protection for the existing bluff-top principal structures while providing approximately 2,800 square feet of new intertidal habitat and access at the base of the replacement wall. The subject wall was permitted by the City of San Diego and constructed more than 20 years before the adoption of the California Coastal Act and the various City Municipal Code requirements that now limit bluff-top development. The entire site has been developed and disturbed; the proposed project is contained within the previously developed and disturbed areas.

The existing wall and the bluff-top development, legally permitted by the City of San Diego, are considered non-conforming improvements and therefore allowed to remain in their existing condition. As indicated above, and for various reasons, the project proposes to remove the existing aging seawall and construct a replacement wall from 13 to 33 feet closer to the existing bluff-top improvements, with the newly proposed secant pile wall still necessary to protect the existing legal bluff-top primary structures.

COMMENTS**RESPONSES**

B-6: As indicated above, the subject wall was permitted by the City of San Diego and constructed more than 20 years before adopting the California Coastal Act and the various City Municipal Code requirements that now limit bluff-top development.

The existing wall and the bluff-top development, legally permitted by the City of San Diego, are considered non-conforming improvements and therefore allowed to remain in their existing condition. As indicated above, and for various reasons, the project proposes to remove the existing aging seawall and construct a replacement wall from 13 to 33 feet closer to the existing bluff-top improvements, with the newly proposed secant pile wall still necessary to protect the existing legal bluff-top primary structures.

COMMENTS

RESPONSES

Inn at Sunset Cliffs MND, SCH No. 2014081073
CERF Comments
November 19, 2021
Page 5 of 10

B-7

- (g) Coastal bluff repair and erosion control measures may occur on the bluff face only if they comply with the following:
 - (1) Coastal bluff repair and erosion control measures may be allowed on the coastal bluff face only if determined to be the only feasible means of erosion control and when necessary, to protect the existing primary structures or to protect public improvements that cannot feasibly be relocated
 - (2) Coastal bluff repair and erosion control measures shall not cause significant alteration of the natural character of the bluff face.
 - (3) The applicant shall submit a geotechnical report that documents the need for an erosion control measure to the City Manager. The geotechnical report shall identify the type and design of the erosion control measure necessary for protection of the existing primary structures, based upon site-specific conditions and analysis of alternatives. The report must be accepted as adequate by the City Manager before any erosion control measures can be approved.
 - (4) Air-placed concrete, including gunite or shotcrete, retaining walls, fills or other similar erosion control measures shall be designed and implemented in accordance with generally accepted engineering standards and specifications and shall also incorporate existing and adjacent landform characteristics including color coating, texturing, landscape, and topographical features.¹⁸

In addition, all development occurring on sensitive coastal bluffs shall be in conformance with the Coastal Bluffs and Beaches Guidelines in the Land Development Manual.¹⁹ The Point Loma Ave area is listed on the City's Geologic Hazard Map as a Hazard Category 43, which is generally unstable and considered a "sensitive coastal bluff" pursuant to the Coastal Bluffs and Beaches Guidelines.²⁰ Sensitive coastal bluffs include the bluff face and the area of the top of bluff located *within 100 feet of the bluff edge*.²¹

The Coastal Bluffs and Beaches Guidelines clearly prohibit the type of Project proposed here:

Air-placed concrete, retaining walls, and buttress fills shall only be used to protect existing principle [sic] structures, or public improvements not capable of being relocated, and if it is determined that no other feasible less impacting method will

¹⁸ SDMC § 143.0143(g)(1)-(4) (bold added).

¹⁹ SDMC § 143.0143(i).

²⁰ Coastal Bluffs and Beaches Guidelines, Section 1.B.

²¹ *Id.*



B-7: The December 24, 2020, geotechnical report for the project describes the original construction of the seawall in 1953, with the site development almost 20 years before the voter-approved formation of the California Coastal Act. The proposed coastal bluff repair and erosion control measures propose removing the original 1953 seawall, creating approximately 2,800 square feet of additional tidal habitat. The construction of a new, more landward wall located entirely behind the controversial lower concrete deck through a secant pile wall was determined to be the only feasible means of erosion control to protect the existing primary structures at the top of the coastal bluff. The existing wall and the bluff-top development, legally permitted by the City of San Diego, are considered non-conforming improvements and therefore allowed to remain in their existing condition. As indicated above, and for various reasons, the project proposes to remove the existing aging seawall and construct a replacement wall from 13 to 33 feet closer to the existing bluff-top improvements, with the newly proposed secant pile wall still necessary to protect the existing legal bluff-top primary structures.

As indicated above, the natural bluff face was altered in 1953, almost 20 years before the formation of the Coastal Act. The currently proposed bluff repair and erosion control measures will return approximately 2,800 feet of tidal habitat with a naturalized, architecturally treated wall that blends in with the

COMMENTS**RESPONSES**

adjacent geologic exposure, blending in with the natural character of the bluff face.

TerraCosta Consulting Group, Inc. (April 1, 2021) provided the following discussion of alternatives:

“Although an alternatives analysis was provided in the 2005 Geotechnical Basis of Design & Alternatives Analysis for the Inn, we have provided below a somewhat revised alternatives analysis, reflecting the currently-proposed tied-back secant pile wall, which, as we have previously indicated, represents the minimum environmental impact to the study area. It must also be recognized that without the proposed wall, the bluff-top structures, patrons of the Inn, and the beach-going public are at risk.

Underpinning

The initially proposed repair concept developed by GEI involved underpinning via large-diameter drilled piers supporting the undermined wall, as described in their February 2004 “Report of Sea Cliff Edge Evaluation and Deck Support Recommendations.” Discussions with several contractors indicate that not only is this a complex repair to implement, but the original plan would have maintained the more seaward wall alignment. In contrast, the currently proposed tied-back secant pile wall is located landward and along the eastern edge of the existing lower deck at The Inn. If one were to consider underpinning of the existing structures in the absence of a wall, under this condition, the very erosive wave environment would

COMMENTS**RESPONSES**

continue to assail the upper terrace deposits, eroding the existing surface well landward of the western end of the Inn itself, and ultimately destroying the Inn.

Rock Riprap

An alternative to the proposed secant pile wall would be the placement of rock riprap either in front of the existing failing wall or at a more landward location high enough to protect the upper sloping terrace deposits and the bluff-top structures, likely requiring the crown of the revetment to extend up to about elevation 25 feet, with a corresponding revetment footprint over 50 feet in width, the presence of which would completely obliterate the tide pools that would be created with the currently proposed project. A rock riprap alternative thus would have a more significant environmental impact than the proposed project.

No Project

Another alternative would be to have no project, eventually allowing the existing Inn to collapse. This alternative presumes that nothing would be done, allowing the existing failing wall to remain, with more of the wall eventually collapsing into the ocean, posing the most significant risk to the beach-going public and the patrons of the existing visitor-serving facility. Moreover, the emergency stabilization measures placed in mid-2019 were also conditioned upon their removal, and thus a no-project alternative is not allowable under the existing Coastal Commission permit requirements.

COMMENTS**RESPONSES****Relocation of Structures/Removal of Portion of Structures**

As currently situated, if the seawall were to fail, the northerly bluff-top structure would likely be at risk and need to be relocated, or the bluff stabilized. The northerly structure is currently situated 30 feet from the wall. The structures are also relatively close to Sunset Cliffs Boulevard and the Point Loma Avenue right-of-way easements. Thus, it is unlikely that the structures could be moved or rebuilt further from the edge of the existing bluff.

Proposed Tied-Back Secant Pile Wall

The proposed tied-back secant pile wall is to be located landward of and along the eastern edge of the existing lower deck at the Inn, with the project including the removal of all existing improvements seaward of the wall, returning a low tide habitat and its associated tide pools, which would result in a significant environmental betterment of the site.”

COMMENTS

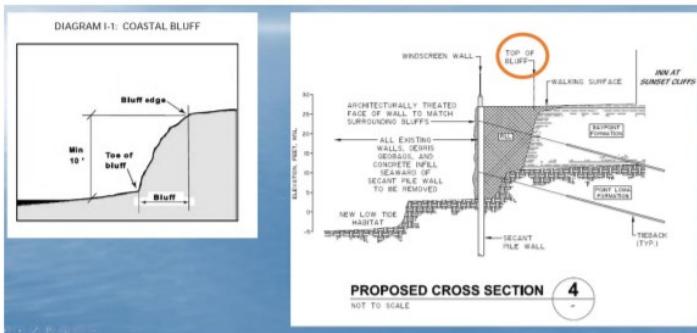
Inn at Sunset Cliffs MND, SCH No. 2014081073
CERF Comments
November 19, 2021
Page 6 of 10

accomplish the erosion control. Alternatives may include relocation or removal of existing improvements, if feasible, to avoid significant alteration of the bluff. Such measures shall not be used to accommodate proposed development nor to increase the area of the top of bluff.

The installation of erosion control measures shall not affect the location of the coastal bluff edge.²²

As illustrated below, the Project's proposal to build directly on the bluff and increase the area of the top of the bluff is in direct violation of the Guidelines.

B-8



Rather, removal of the upper deck and relocation of some improvements may be warranted to avoid significant alteration of the bluff. The applicant's proposed construction contradicts the Coastal Commission's Sea Level Rise Policy Guidance, contributing to negative physical impacts:

Shoreline protective devices can also adversely affect a wide range of other coastal resources and uses that the Coastal Act protects. They often impede or degrade public access and recreation along the shoreline by occupying beach area or tidelands, by reducing shoreline sand supply, and by fixing the back of the beach, ultimately leading to the loss of the beach. Shoreline protection structures thus raise serious concerns regarding consistency with the public access and recreation

²² *Id.*, Section II.D., emphasis added.



RESPONSES

B-8: The proposed seawall is not being used to accommodate the proposed development. It is being used to protect *existing* development. It is also not being used ... to increase the area of the top of the bluff. The fill behind the wall and the surfacing over the fill are used to stabilize the top part of the wall against wave forces, reduce hydrostatic pressures on the eastern side of the wall that would be caused by wave overtopping, and direct drainage away from the bluff. Nothing in Section II.D of the Coastal Bluffs and Beaches Guidelines indicates that an erosion control measure cannot incidentally create a flat surface on top of a seawall, especially where the bluff is already disturbed. A flat (or flatter) surface is a common byproduct of a seawall.

Moreover, this project's lower deck area of approximately 2800 square feet is being removed. The surfacing associated with the replacement seawall totals approximately 2120 square feet. Thus, the total surface area is decreasing by 680 square feet.

COMMENTS

RESPONSES

Inn at Sunset Cliffs MND, SCH No. 2014081073
CERF Comments
November 19, 2021
Page 7 of 10

policies of the Coastal Act. Such structures can fill coastal waters or tidelands and harm marine resources and biological productivity in conflict with Sections 30230, 30231, and 30233. They often degrade the scenic qualities of coastal areas and alter natural landforms in conflict with Section 30251. Finally, by halting shoreline erosion, they can prevent the inland migration of intertidal habitat, salt marshes, beaches, and other low-lying habitats that rising sea levels will inundate.²³

For these and similar reasons, the Ocean Beach Community Plan/LCP recommends prohibition of coastal bluff development.²⁴ Coastal protective devices are allowed only when necessary to protect existing development and as consistent with other provisions of the Land Use Plan.²⁵ The Project is inconsistent with numerous policies in the LCP, including the 40-foot set back requirement from coastal bluffs.²⁶

B-8

LCP Recommendation 7.3.2 is to “[e]nsure the preservation of the coastal bluffs in their natural state by working cooperatively with the community, City officials, and the California Coastal Commission.” The Project is inconsistent with this recommendation as it proposes to place fill over the entire sensitive coastal bluff face. It is also at odds with Section 30253 of the Coastal Act, which states new development shall not require protective devices that would substantially alter natural landforms along bluffs and cliffs.²⁷

LCP Recommendation 7.3.4 is to allow placement of shoreline protective devices only when there is no other feasible means to protect existing principal structures. Such devices should be soft and natural and blend into the surrounding shoreline. As noted in Mr. Wohlmuth’s analysis, a more sinusoidal design would be consistent with this requirement and the design used at Bermuda Avenue. In contrast, the instant Project is designed to maximize the expanded upper deck.

The LCP further recommends siting and designing development so it does not rely on existing or future shoreline protective devices. Placing a “walking surface” directly adjacent to the seawall and on top of the sensitive coastal bluff is in direct contravention of this recommendation. The proposed deck is completely reliant on the new seawall. Further, the ornamental deck itself has been disingenuously wrapped into

²³ California Coastal Commission Sea Level Rise Policy Guidance, *Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs and Coastal Development Permits*, p. 168, available at https://documents.coastal.ca.gov/assets/slri/guidance/2018/0_Full_2018AdoptedSLRGuidanceUpdate.pdf.

²⁴ Ocean Beach Community Plan/LCP, Recommendation 7.1.2.

²⁵ Id.

²⁶ Ocean Beach Community Plan/LCP, Recommendation 7.3.1.

²⁷ Ocean Beach Community Plan/LCP, p. CE-99.



B-8: The comment mischaracterizes the new landward construction of the secant pile wall, pushing the proposed shoreline stabilization from 13 to 33 feet easterly of the existing seawall that has been in place for over 65 years. As noted, the replacement seawall is the only feasible means of erosion control to protect the Inn and the public improvements adjacent to the Inn. The project is consistent with the Ocean Beach Community Plan policies. The project does not significantly impact geology, public health, safety, and welfare. The project protects the remnant coastal bluff while protecting the Inn and adjacent public improvements. The comment, provided by does not identify what improvements could be relocated or how that would even be feasible. The project does not propose to build any new structures; therefore, the requirement to site structures at least 40 feet from the bluff edge does not apply.

The project is consistent with LCP Recommendation 7.3.2 because the bluff is already highly disturbed. The project will improve the natural character by protecting the bluff from marine erosion and coloring and texturing the wall to improve its natural appearance and compatibility with other walls and bluffs in the area.

Section 30253 of the Coastal Act does not apply because the seawall is proposed to protect existing structures, not a new development. The applicable provision of the Coastal Act is section 30235, which requires that “[r]evetments, breakwaters,

COMMENTS

RESPONSES

... seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes *shall be permitted* when

Inn at Sunset Cliffs MND, SCH No. 2014081073

CERF Comments

November 19, 2021

Page 8 of 10

the shoreline protective device framework, ensuring one crack or hole in the proposed deck would serve as further justification for emergency repairs and improvements.

Lastly, Recommendation 7.3.8 states the CDP approval process should be used to require additions and accessory structures to be *landward* of the bluff edge setback line. In contrast, the Project proposes to build an accessory structure (the expanded deck) on the bluff face.

The applicant's tortured justification for the ornamental upper deck is suspect given the Inn's decades long attempts to justify and make permanent the unlawful lower deck. The latest Geotechnical Report is also suspiciously silent on potential alternatives to the proposed design, notwithstanding the clear Municipal Code directive to explore alternatives and justify the proposed project as the *only* feasible means of erosion control. The applicant's less than candid response in that regard – along with the Project's inconsistency with the LCP and Coastal Bluffs and Beaches Guidelines and aesthetic impacts – led to the Ocean Beach Planning Board's recommendation of denial of the Project.²⁸

Moreover, feasible alternatives do exist – ones which more closely align with the LCP, Municipal Code, Coastal Act, and Coastal Bluffs and Beaches Guidelines. CERF's consultant, engineer Kevin Wohlmuth, has provided feasible alternatives which do not involve expansion of the top of the bluff, track the natural bluff line, do not involve development on the sensitive coastal bluff face, and attempt to preserve the bluff face. In light of these feasible alternatives, the Project cannot be deemed compliant with applicable Land Use regulations and policies. As a result, the Project will result in significant land use impacts to geology and the public health, safety, and welfare.²⁹

D. The Geotechnical Report Is Suspect

Throughout the Project's history, the applicant has relied on the technical expertise of TerraCosta Consulting Group and Mr. Walt Crampton to opine on both the necessity of the Project in its various iterations, as well as the safety of the proposed

²⁸ See, Minutes of Ocean Beach Planning Board July 7, 2021 Meeting, Action Item #1, available at http://oceanbeachplanning.org/files/2021/08/2021_7-FINAL-MinutesOBPPBPlanningBoard.pdf.

²⁹ See, *Kutze v. City of San Diego* (2017) 11 Cal.App.5th 1034, 1041 [“The City denied approval of the project because it could not make these findings and instead found the project was inconsistent with the Peninsula Community Plan, the proposed deviations were inappropriate for the project’s location and would not result in a more desirable project, and the project would be detrimental to public health, safety, and welfare. The City also found the project’s mitigated negative declaration was inadequate, particularly as to the project’s potential impacts on geology, land use, and public services.”].



B-8

B-9

COMMENTS

RESPONSES

required ... to protect existing structures ... in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply." (Emphasis added.)

The project is consistent with LCP Recommendation 7.3.4 because the project's geotechnical report demonstrates that the wall is the only feasible means to protect the existing principal structures of the hotel. The wall will be colored and textured to provide a natural appearance and thus is soft and natural and blends into the surrounding shoreline. The location and configuration of the wall are necessary to (1) tie into the existing headwall to the north of the property; (2) roughly follow the contours of the bluff and existing improvements; (3) keep the wall a sufficient distance from the existing structures, so that wave overtopping does not damage the existing structures. A "more curvilinear wall alignment," as proposed by consultant engineer Kevin Wohlmuth, would not necessarily appear any more natural, though that would seem to be a subjective judgment. A "more sinusoidal design" would make only an aesthetic difference and would not serve any environmental or geological purpose.

Moreover, according to Mr. Crampton (the project's geotechnical consultant, TerraCosta Consulting Group, Inc.), the suggested indentation through the center of the property would result in wave focusing and increase erosion and habitat destruction within the low-relief tidal habitat. The proposed roughly linear alignment coincides with the toe of the existing, visible bluff. It minimizes any wave energy focusing within the

newly created low tidal habitat seaward of the new proposed seawall.

The walking surface does not rely on the shoreline protective device; instead, the shoreline protective device relies on the walking surface, which is an integral part of the shoreline protective device. The impermeable concrete walking surface improves drainage away from the seawall. It reduces the potential for water infiltration from wave overtopping or other sources from saturating the seawall backfill and increasing potentially adverse hydrostatic wall pressures.

COMMENTS**RESPONSES**

The upper concrete walking surface is not an addition or accessory structure but part of the proposed erosion control measure concerning the application of the San Diego Municipal Code requirements.

Section 7.3.8 encourages “the retreat of existing development from the coastal bluff edge and the removal of shoreline protective devices with development proposals.” Again, with the elimination of the existing aging seawall and the establishment of approximately 2,800 feet of tidal habitat, the project is conformance with all of the applicable sections of the Ocean Beach Community Plan.

The project’s geotechnical consultant, TerraCosta Consulting Group, Inc., has analyzed and addressed potential project alternatives as required by the San Diego Municipal Code and determined that the proposed project is necessary to protect the existing structures is the environmentally superior alternative. Therefore, based on the consultant's analysis, the proposed project is considered the only feasible means of erosion control.

COMMENTS

RESPONSES

Inn at Sunset Cliffs MND, SCH No. 2014081073
CERF Comments
November 19, 2021
Page 9 of 10

improvements. No matter how inconsistent the proposals, Mr. Crampton has found a way to justify the applicant's preferred design.

For example, in 2018 an Environmental Impact Report (EIR) was prepared for a proposed project consisting of secant pile walls and repair of the lower concrete deck. The EIR concluded the Point Loma Formation shelf rock was very stable, with a factor of safety against slope instability well in excess of 1.5.³⁰ The project's geologic impacts were found insignificant in reliance on Mr. Crampton's expert opinion.

The proposed secant pile walls would be constructed at specific locations where breaches have developed under the seawall in order to prevent voids developing beneath the lower concrete terrace in the future. The project's geotechnical consultant indicated that with this measure installed the lower concrete terrace would be safe and suitable for continued use. Therefore, impacts would be less than significant.

In connection with the EIR, Mr. Crampton prepared a geotechnical analysis that "strongly" recommended the seawall and lower deck remain in their existing condition.³¹ Shortly thereafter, in January 2019, the lower deck once again collapsed.

In 2016, in connection with the applicant's attempt to obtain after-the-fact permits for its 2015 emergency repairs, the Inn's consultants opined that the existing seawall could survive another 75 years with improvements and would only need to be raised 20 inches to address rising sea levels and act as a wave deflector.³² However, because the seawall and part of the lower deck exist below the mean high water mark, it was always necessary to move the seawall inland.³³

With rising sea levels, the passage of time, and pressure from the Coastal Commission – including recorded notices of violation – it became clear the applicant would not be able to obtain the necessary permits to keep the unlawful lower deck.³⁴

The preferred option foreclosed, the applicant has proposed a second-best option: to enlarge the upper deck, moving it seaward as the seawall moves landward. The Project comes at the expense of the sensitive coastal bluff face, but the applicant's consultant has

³⁰ PN1300#231328 Draft EIR, 6-13-2018, p. 5.1-16.

³¹ May 3, 2018, Appendix B, pp. 39-40.

³² December 22, 2016, Project Design Consultants Response to Cycle Issues 9-27-16 Letter, p. 6.

³³ See 2013 recorded survey (enclosed herewith). Since 2013 the mean high tide line has likely moved even farther inland.

³⁴ See, July 3, 2019 Commission Letter re Coastal Act Violations and June 25, 2019 Notice of Violation V-6-06-2016

B-9: These comments generally do not address the proposed project or the geotechnical report and addenda supporting the project. The comments appear to conflate geotechnical documents prepared for previously abandoned projects with the currently proposed project, which only serves to mislead understanding of the project and relevant geotechnical documents prepared by licensed professionals. The Geology Section of Development Services has reviewed the geotechnical documents addressing the proposed subject project. Based on that review, the project's geotechnical consultant has adequately addressed the site conditions and proposed a conceptual project for environmental review. In addition, the geotechnical documents submitted for the proposed project are in substantial accordance with City regulations and standards applicable to the environmental review of the subject conceptual project.

COMMENTS

RESPONSES

Inn at Sunset Cliffs MND, SCH No. 2014081073
CERF Comments
November 19, 2021
Page 10 of 10

once again concocted a purported technical justification for the blatant violation of the City's Municipal Code, the LCP, and the Coastal Act. Mr. Crampton opines – only at the prompting of City staff and nowhere to be found in the publicly available MND documents – that the proposed Project is the only feasible design.³⁵ As noted above, feasible alternatives do exist and would better align with applicable regulations. Therefore, the City should find the current Geotechnical Report and the consultant's responses to staff inquiries lacking foundation and credibility.

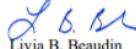
E. Conclusion

Unsurprisingly, the Project MND lacks the necessary geology and land use impact analysis because a thorough review would reveal significant environmental impacts. However, the applicant's decade of delay should not be rewarded with administrative atrophy. Though the Project presents an improvement to the prior design, it is still fundamentally flawed. The MND must be revised to reflect the Project's inconsistencies with applicable regulations and to disclose the Project's land use, geologic, and greenhouse gas impacts.

Thank you in advance for your consideration of our comments.

Sincerely,

COAST LAW GROUP LLP



Livia B. Beaudin

Enclosures: 2013 Recorded Survey
2019 Coastal Commission NOV and Letter
Summary of Scripps Institution of Oceanography Coastal Bluffs Study
OBPB Minutes
Kevin Wohlmut Letters, dated November 18, 2021, June 15, 2021,
July 22, 2018

B-10: The project is consistent with all applicable regulations, as explained herein and in the materials previously submitted. Comment noted.

B-10

³⁵ April 1, 2021, Project Design Consultants Response to Cycle 80 Review Comments, pp. 12-14.



COMMENTS

RESPONSES

Craig A. Sherman
A Professional Law Corporation
1901 FIRST AVENUE, SUITE 219
SAN DIEGO, CA 92101

TELEPHONE (619) 702-7892
FACSIMILE (619) 702-9291
November 17, 2021

Via Email
DSDEAS@sandiego.gov

c/o Jeffrey Szymanski, Senior Planner
CITY OF SAN DIEGO
Development Services Department
1222 First Avenue, MS 501
San Diego, CA 92101

C-1

Re: *Comments to Draft MND*
Inn at Sunset Cliffs, Project No. 231328 (SCH 2014081073)

This comment letter is presented on behalf of Barbara and Tim Houlton ("Houlton"), owners and residents of the property located at 4820 Point Loma Avenue. This comment is made in response to the above-referenced Draft Mitigated Negative Declaration ("Draft MND") and its stated "Project" as submitted by the applicant Inn at Sunset Cliffs ("Applicant" or "IASC").¹

This letter questions, challenges, and objects that the proposed negative mitigated declaration (MND) is a procedurally and legally adequate CEQA document for a decision of the City of San Diego ("City") to review and possibly approve the Project. Houlton contends that an Environmental Impact Report (EIR) is required for considering and possible approval of the Project.

C-2

A. The Standard to Determine the Scope of CEQA Review for the Project

The process of environmental review under CEQA is generally set out in three tiers. (*San Lorenzo*, (2006), 139 Cal.App.4th 1372-1374.) The first tier is a determination of whether the Project is subject to CEQA – which is not at issue here. The second tier is to perform an initial study (Cal. Code of Regs., Title 14 ("CEQA Guidelines") § 15063), whereby City is to determine whether a negative declaration or mitigated negative declaration may be prepared *rather* than an EIR.

¹ As set forth herein, the "Project" listed in the October 20, 2021 Notice of Availability is legally defective because it is incomplete and uninformative as to both the historical actions for which environmental review is required, and the multiple project features the Applicant seeks to shoehorn into the Project under the auspices of simply a relocated seawall. (Section C, below)

C-1: The comment is primarily an introduction with specific concerns to follow.

C-2: Comment acknowledged.

COMMENTS

RESPONSES

Page Two
November 17, 2021
Comments on Draft MND, Project No. 231328



If the initial study reveals that the project will not have a significant environmental effect, the agency may prepare a negative declaration, briefly describing the reasons supporting that determination. (CEQA Guidelines §§ 15063, subd. (b)(2), 15070.) A mitigated negative declaration may be used if there are potentially significant effects on the environment, but revisions in the project plans that would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur. (Pub. Res. Code § 21064.5.)

However, a mitigated negative declaration may not be used where substantial evidence supports a fair argument that a proposed project "may have a significant effect on the environment." (*Laurel Heights Improvement Assn. v. Regents of Univ. of California*, (1993) 6 Cal.4th 1112, 1123.) Instead, an EIR must be prepared. This is known as the *fair evidence standard* of review.

"If a court finds the fair argument test has been met but the agency failed to prepare an environmental impact report, 'the court must set aside the agency's decision to adopt a negative declaration [or a mitigated negative declaration] as an abuse of discretion in failing to proceed in a manner as required by law.'" (*Farmland Protection Alliance v. County of Yolo*, No. C087688, 2021 WL 5103355, at *5 (Cal. Ct. App. Nov. 3, 2021), quoting *City of Redlands v. County of San Bernardino*, (2002) 96 Cal.App.4th 398, 405.)

Here, a mitigated negative declaration may not be used, and the third step in the CEQA process requires the preparation of a full environmental impact report. (*Davidon Homes v. City of San Jose*, (1997) 54 Cal.App.4th 106, 113, citing Public Resources Code §§ 21100 and 21151, and CEQA Guidelines, §§ 15063, subd. (b)(1) & 15080.)

The EIR is the "heart of CEQA" and there is a judicial preference for finding that an EIR is required. (*San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School District*, (San Lorenzo) (2006) 139 Cal.App.4th 1356, 1373.) It is only when a lead agency is excused from preparing an EIR that this critical function of CEQA can be avoided. (*Id.* at p. 1374.)

City's failure to prepare an EIR for the Project is an abuse of discretion. An agency like City "abuses its discretion" by failing to proceed in a manner required by law if its action or decision does not substantially comply with the requirements of CEQA. (Pub. Res. Code §§ 21168, 21168.5; *Communities for a Better Environment v. South Coast Air Quality Management District*, (2010) 48 Cal.4th 310, 319.)

As contained in Appendix F and the below comments and references thereto, there has and continues to be fair argument evidence that the construction and implementation of the Project may have a significant effect on the environment. City also has not complied with the procedural requirements under CEQA, such that the MND cannot be certified and form the basis for possible approval of the Project.

C-2: Comment noted.

C-2

COMMENTS

RESPONSES

Page Three
November 17, 2021
Comments on Draft MND, Project No. 231328



**B. Substantial Evidence, including Unaddressed Subjects and Issues,
Demonstrate a Fair Argument of Potentially Adverse Impacts to the
Environment that Preclude the Use of a MND**

City's Draft MND does not account for the numerous potentially significant adverse impacts to the environment, and the initial study makes conclusionary statements based on references to untested thresholds and lacking the necessary assessment to determine whether there is a potential for significant environmental impacts. This is in contravention of the requirements of CEQA which "contemplates serious and not superficial or pro forma consideration of the potential environmental consequences of a project." (*Leonoff v. Monterey County Bd. of Supervisors*, (1990) 222 Cal.App.3d 1337, 1347.)

The fair argument test is a "low threshold" test for requiring the preparation of an EIR. (*Pocket Protectors v. City of Sacramento (Pocket Protectors)*, (2004) 124 Cal.App.4th 903, 928, *citing No Oil, Inc. v. City of Los Angeles*, (1974) 13 Cal.3d 68, 84 *et al.*) A public agency must prepare an EIR whenever substantial evidence supports a fair argument that a proposed project "may have a significant effect on the environment, known as the "fair argument" standard." (*Laurel Heights Improvement Association v. Regents of University of California*, (1993) 6 Cal. 4th 1112, 1123.) "It is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency's determination." (*Pocket Protectors* at p. 928.)

A "significant effect" on the environment means a substantial, or potentially substantial, adverse change in the environment. (Pub. Res. Code § 21068; *see also* CEQA Guidelines § 15382.)

"Substantial evidence" means "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Guidelines, § 15384, subd. (a); *Pocket Protectors, supra*, 124 Cal.App.4th at p. 927.) As stated in *Sierra Club v. California Department of Forestry & Fire Protection*, (2007) 150 Cal.App.4th 370, the fair argument standard of review differs in its application of substantial evidence. (*Id.* at p. 381.) Under fair argument, "if substantial evidence establishes a reasonable possibility of a significant environmental impact, then the existence of contrary evidence in the administrative record is not adequate to support a decision to dispense with an EIR." (*Id.*)

When the fair argument test is met, an EIR *must* be prepared. "If a court finds the fair argument test has been met but the agency failed to prepare an environmental impact report, 'the court must set aside the agency's decision to adopt a negative declaration [or a mitigated negative declaration] as an abuse of discretion in failing to proceed in a manner as required by law.'" (*Farmland Protection Alliance v. County of Yolo*, No. C087688, 2021 WL 5103355, at *5 (Cal. Ct. App. Nov. 3, 2021), quoting *City of Redlands v. County of San Bernardino*, (2002) 96 Cal.App.4th 398, 405.)

C-3: The comment describes the standard for finding that a potential adverse impact is "significant" but does not cite evidence of any such impact.

C-3

COMMENTS

RESPONSES



Page Four
November 17, 2021
Comments on Draft MND Project No. 231328

1. There are Potential Adverse Impacts to Coastal Resources Set as Delineated and Expected as Set Forth in the Community Plan, City's Municipal and Environmentally Sensitive Lands Codes, and the California State Coastal Act

C-4

The Project is located in the Sunset Cliffs region of the city and contain coastal bluffs that are specifically designated and protected as environmentally sensitive land. (See Coastal Bluffs and Beaches Guidelines, as amended June 6, 2000 at p. 4 [“Although they technically meet the definition of steep hillsides, sensitive coastal bluffs are regulated by a separate regulation section in the Environmentally Sensitive Lands Regulations (**Section 143.0143**) and are subject to the Coastal Bluffs and Beaches Guidelines.”], bold in original.)

The location of the Project on environmentally sensitive coastal bluffs militates heavily in favor of the preparation of an EIR. This is especially true where the Project seeks to alter and potentially encapsulate such coastal bluffs with a sea wall.

a. The Project Has Not Been Properly Assessed for Compliance with City's ESL Codes

C-5

The Municipal Code of City requires that additional supplemental analysis and findings must be made when considering or granting SDP's located in the Coastal Zone and on sensitive coastal bluffs. These mandates include, but are not limited to, requiring minimal disturbance to ESL lands, alteration of natural landforms, and that the development will not result in undue risks from geologic or erosional forces. (San Diego Municipal Code (SDMC) § 126.0501 et seq. [SDP], (specifically § 126.0505, subd. (c) [required supplemental findings for ESL deviations]; SDMC § 143.0110 et seq. [ESL].)

The purpose of these required supplemental findings is clear. Development on coastal bluffs anticipates the need to mitigate significant impacts for development in these areas by significantly constraining the type of development. Therefore, any development on coastal bluffs requires a close assessment under an initial study during the CEQA process. This further reinforces the presumption that an EIR should be prepared. (*San Lorenzo, supra*, 139 Cal.App.4th at p. 1374.) Indeed, a court of law would likely find here that the IASC's proposed development of the coastal bluff will require an EIR. City has woefully failed to make a full assessment, nor can it meets its burden that *what it did assess* is sufficient to overcome the presumption that favors an EIR. For example, here, the Draft MND fails to consider presumed adverse impacts to coastal bluffs and related coastal landforms where sea walls and other developments are located seaward of the coastal bluff, and are not avoiding the protected resource. This is a violation of city policy and presumes an adverse and unmitigated environmental impact.

C-4: The comment has not identified any deviation from the ESL regulations. The ESL regulations specifically allow “repair and erosion control measures … on the coastal bluff face … if” (1) “determined to be the only feasible means of erosion control and when necessary, to protect the existing primary structures”; (2) the “repair and erosion control measures [do] not cause significant alteration of the natural character of the bluff face”; (3) the applicant “submit[s] a geotechnical report that documents the need for an erosion control measure”; and (4) the “erosion control measures [are] designed and implemented by generally accepted engineering standards and specifications and … incorporate existing and adjacent landform characteristics including color coating, texturing landscape, and topographical features.” (SDMC § 143.0143, subd. (g).) The geotechnical report submitted by the applicant demonstrates that the project satisfies each of these requirements and will improve, rather than degrade, the natural character of the bluff face by incorporating natural color coating, texturing, and topographical features. Therefore, the statement that the “location of the Project on environmentally sensitive coastal bluffs militates heavily in favor of an EIR” is unsupported by substantial evidence. Likewise, the assertion that the project “seeks to alter and potentially encapsulate” the bluff is false. The construction of the 1953 seawall encapsulated the bluff at that time. Therefore, the “encapsulated bluff condition” represents existing conditions before the proposed project.

COMMENTS**RESPONSES**

The proposed wall will take the place of an existing wall built in 1953, well before the implementation of the City's ESL regulations and the State's Coastal Act. The existing coastal bluff was east of the original seawall and deck area, and the bluff was disturbed then.

The proposed project will not substantially affect the natural bluff face because it was already substantially altered by the placement of fill soils in the 1950s. The slope to the east of the replacement wall is proposed to be filled and covered with a concrete slab to improve drainage and reduce the potential for water infiltration resulting in adverse hydrostatic pressures on the seawall. This surface covering is integral to the proposed erosion control measures and provides additional protection to the proposed seawall from potential wave overtopping. Moreover, and recognizing that the coastal bluff needs to be armored to protect the existing bluff-top improvements, the only practical way to mitigate marine erosion is by constructing a seawall, a rock revetment, or a combination of the two. Although a rock revetment is more economical, the relatively large footprint of a rock revetment negatively impacts both marine and intertidal habitats. Thus, a seawall is the only feasible way to protect the existing hotel.

C-5: Supplemental findings are not required under Section 126.0505, subd. (c), because the project is not requesting a deviation from ESL regulations. Also, the comment fails to identify what potential adverse impacts the MND fails to

COMMENTS

RESPONSES



Page Five
November 17, 2021
Comments on Draft MND, Project No. 231328

C-6

b. The Project Causes Potentially Significant Inconsistencies with Local Plans

City proposes to adopt an MND based on the conclusion in the Initial Study that “The project would be consistent with the City of San Diego General Plan (2008) and Ocean Beach Community Plan/Local Coastal Program (LCP) (adopted July 2014) land use designations and City Municipal Code.” However, City makes this conclusion without any detailed, requisite, or supporting evidence or analysis. City cannot simply reach its stated and desired conclusions; rather, it must provide a route between evidence and findings to support its conclusions and the ultimate action. (*Topanga Association for a Scenic Community v. County of Los Angeles*, (1974) 11 Cal.3d 506, 515.)

Specifically, the Project is subject to the Peninsula Community Plan (PCP) and Local Coastal Program Land Use Plan, dated July 14, 1987; the Draft MND fails to assess the policies and requirements of the PCP. (See Attachment E.) As set forth in the PCP, there are potential adverse impacts that may result if the Project is approved and built.

Furthermore, state law requires all local government land use approvals be consistent with the applicable general and specific plans. (Gov. Code §§ 65860, 66474; *Napa Citizens for Honest Government et al. v. Napa County Bd. of Supervisors*, (2001) 91 Cal.App.4th 342; *Lesher Communications, Inc. v. City of Walnut Creek*, (1990) 52 Cal.3d 531, 536 [a development approval (or other land use decision) is valid only “to the extent that it is consistent with the [City’s] General Plan, i.e., to the extent that it is compatible with the General Plan’s objectives, policies, general land uses and programs.”].) The Project may be deemed inconsistent even where it conflicts with one important or mandatory policy. (*San Bernardino Valley Audubon Society, Inc. v. County*, (1984) 155 Cal.App.3d 738, 753.)

There is a fair argument of potentially significant impacts that may result from the Project that requires the preparation of an EIR, and the Project’s inconsistencies with the PCP are impermissibly conflicted such that the Project may not be approved as currently proposed.

c. The Project Must be Reviewed and Assessed Under the Coastal Act

The California Coastal Act serves to control and protect coastal views, coastal access, coastal bluffs and other landforms, and biological resources at and near the Project site. For example, there are restrictions for the ISAC to protect rocky intertidal animals whereby prior emergency actions that allowed the IASC to repair the prior sea wall were conditioned upon further environmental review and approval to be assessed in an EIR. (Attachment F, Comment re Draft MND at pp. 28-29.) Additionally, because the Project involves coastal development between the nearest public road and the sea, the Applicant must demonstrate that the Project will comply with the requirements of Chapter 3 of the Coastal Act, including for public access. The below sections describe potential and unmitigated adverse impacts to coastal resources that will likely result from development and implementation of the Project.

consider or why potential adverse impacts must be addressed when the project has been demonstrated to conform with the city’s ESL regulations.

C-6: Comment noted. The comment does not identify the inconsistencies between the proposed project, the General Plan, or any of the Local Plans. The comment also fails to identify what “potential adverse impacts … may result if the Project is approved and built.”

C-7: The California Coastal Commission will review the project for consistency with the Coastal Act once the City’s discretionary permitting process is concluded.

COMMENTS

RESPONSES



Page Six
November 17, 2021
Comments on Draft MND, Project No. 231328

2. The Project May Result in Potentially Significant Adverse Impacts to Views

The Project will likely have substantial adverse effects on scenic vistas, scenic view corridors, and view cones.

C-8

The Draft MND identifies only a single view cone identified in the Ocean Beach Community Plan (OBCP) to the Pacific Ocean at the terminus of Point Loma Boulevard. (Draft MND at p. 13, Aesthetics section (a).) There is substantial evidence of scenic view corridors, vistas, and view cones (collectively "Ocean Views") that were omitted by City from the Draft MND.

Photographs taken from multiple viewpoints demonstrate the visual impact of the Project on ocean and coastal views. (See Attachment G, July 27, 2018 Comment Ltr. to DEIR, Section 1.b. [pp. 2-3] and Exhibits B and C thereto; *see also* Attachment D at p. 1.)² Consistent with evidence and comments in Appendix F, as well as prior comments and evidence made on the 2017-2018 DEIR, all or part of the new sea wall and proposed expanded concrete deck is to be constructed on protected coastal bluff that can, and will, be seen from view areas, view corridors, view cones, beaches, and promontories such as those existing to the south (from the Sunset Cliffs Nature Park) and to the north (from the beach and end of the street at Point Loma Avenue, and points north). (E.g., Attachment C-2 and the photograph dated November 6, 2021.) The impacts to the defined view corridor and view cone from the west end of Point Loma Avenue is also not recognized or assessed.

Further, the Draft MND also fails to consider the area of expanded accessory and recreation surface deck, as a "level viewing area" and "walking surface," that will be constructed above and beyond the current protected coastal bluffs. This significantly expanded entertainment and bluff use area will have direct and indirect coastal zone impacts. (E.g., Attachment C-2 at p. 6.)

C-9

3. The Project May Result in Potentially Significant Adverse Impacts to Coastal Access

Pursuant to SDMC §126.0707, subdivision (d), conditions can and should be imposed to require and include a provision for public access, and open space, or conservation easements or the relocation or redesign of proposed site improvements. Without such access, the public will not have access to the beach and lower bluffs for an expansive multi-block and coastal area. To the extent the Project will be minimizing, impacting, and not allowing coastal access, a MND cannot be adopted for the Project and an EIR must assess and seek to mitigate (or override) the absence of public access via the stairway on both the north and south sides of the ISAC property as was historically present and should currently be provided.

C-8: No parts of the project will impact designated public views; views will be enhanced from all potential public viewpoints, including from the west end of Point Loma Avenue, by removal of the existing seawall and lower deck and locating the replacement seawall approximately 21 to 34 feet to the east of the existing wall and lower deck. The project does not impact the view cone identified in the Ocean Beach Community Plan.

C-9: The comment does not identify any project impact on public access. A public access point exists immediately to the north of the project site at the west end of Point Loma Avenue. In addition, the destroyed access at Bermuda Street is scheduled to be repaired, opening another public access point within proximity. The Bermuda improvements are not part of this project. Similar to the private property directly to the north and south of the Inn at Sunset Cliffs, there is no public access provided through private property.

² References to "Attachment" are to this document and all references to "Exhibits" are to those attached with Attachment G.

COMMENTS

RESPONSES



Page Seven
November 17, 2021
Comments on Draft MND, Project No. 231328

C-10

4. The Project May Result in Potentially Significant Adverse Impacts to Protected Bluffs and Landforms

As previously explained, with supporting facts and law, uses and impacts of the lower deck were never reviewed and considered as a part of any development project, permit, or environmental review and approvals related thereto. (Attachment G at pp. 10-14, discussing the history of code enforcement, deed restriction, and limited emergency work allowed related thereto.)

City is required to assess and account for the harm to coastal resources and the coastal bluff, including purported “emergency” construction, and the impacts from past and current construction of temporary roadways to access the Project site. Historical photographic evidence demonstrates substantial alteration of the bluff to create and support the ISAC’s commercial and emergency activities. (E.g., Attachment A at pp. 1-10, 15, 17-20.)

Despite the Project paving over unresolved violations of the lower deck area, there remain multiple state and local Code and environmental problems associated with this proposal to expand the IASC entertainment deck area. The Draft MND and supporting records fail to adequately address and fully mitigate the loss of coastal bluff resources. The MND also fails to address and account for the indirect adverse impacts that will arise from expanded view deck and entertainment areas. This is inclusive of traffic and circulation, direct and cumulative GHG effects, event noise and impacts to the nearby Sunset Cliffs Nature Park, parking, lack of public access to beach resources, and impacted views/aesthetics. (Attachment G, p. 4 and Exhibits C, E, F, G, and H thereto.)

C-11

5. The Project May Result in Potentially Significant Adverse Impacts to Biological Resources

City has not met its obligations to assess potential environmental impacts in the Initial Study for Biological Resources. In the Biological Resources section of the Initial Study [Section IV.a.] City does not perform an assessment. Rather, City cites to a biological review of the project site performed by the Applicant in October 2011. (Draft MND at p. 18.) While City makes the conclusion that “City staff has verified the conditions of the project site and no change has been identified. . .” no information is provided that any purported verification was actually made. Further, for the assessment in the Initial Study, City simply copy-pastes sections of the September 29, 2021 *Coastal Bluff Stabilization Project at the Inn at Sunset Cliffs: Intertidal Biological Assessment* (Applicant Biological Assessment), prepared by Finimarine Taxonomic Services, LTD for Gavin Fleming, General Manager of IASC. (Cf. Draft MND at pp. 18-19; Applicant Biological Assessment at p. 11.) It should be self-apparent that City cannot simply delegate its assessments in the initial study to the Project Applicant. (Cf. *Sundstrom v. County of Mendocino*, (1988) 202 Cal.App.3d 296, 307 [“It is also clear that the conditions improperly delegate the County’s legal responsibility to assess environmental

C-10: The lower deck's prior “uses and impacts” are not part of this project. The project proposes a replacement sea wall to remove the existing seawall and lower deck, reducing the overall surface area associated with the project. The bluffs and landform have been disturbed since the initial development in 1953, before CEQA and the Coastal Act were enacted.

C-11: Please see Section IV of the Initial Study, which contains the analysis of biological resources. Before the preparation, a complete analysis was completed (Marine Taxonomic Services, September 2021). The report was reviewed not only by qualified City staff but by NOAA Fisheries as well. The report did not identify any impacts on resources that could not be reduced to below a level of significance by implementing mitigation measures.

The proposed project is required to implement the mitigation measures identified in the MND. The mitigation measures include a pre-construction survey and construction monitoring on-site to detect and eliminate any potentially significant adverse impacts on biological resources. The construction monitor will have the authority to halt construction if a potential impact on biological resources occurs. The proposed project will remove the prior emergency construction and restore the lower bluff to its natural state.

COMMENTS

RESPONSES

Page Nine
November 17, 2021
Comments on Draft MND, Project No. 231328



C-11

impacts. (*Center for Biological Diversity v. California Department of Conservation, etc.*, (2019) 36 Cal. App. 5th 210, 236, 248.)

The Draft MND fails to consider the impacts of the entertainment and other commercial activities of the proposed new and expanded concrete terrace that will be constructed and created by the Project. The Project, as currently proposed, seeks to import 500 cu. yds. of first fill to cover the existing coastal bluff and expand the accessory and recreation deck as a "walking surface" and "level viewing area." (TerraCosta Consulting Group, Geotech. Rpt., Dec. 24, 2020, p. 55 [Figure No. 18]; Development Plans, Sheet Nos. 2, 4, Drawing Nos. C-1, C-4 [cross sections 3, 4].) This expanded transient lodging and commercial use area must be analyzed pursuant to CEQA for the direct and indirect impacts arising therefrom.

C-12

The Draft MND does not address direct, indirect, and cumulative impacts from the type, duration, timing, and frequency of events held at the ISAC property. ISAC has historically held numerous large events. ISAC currently advertises its outdoor deck area for multiple types of events. (E.g., Attachment H hereto, with printouts of advertisements for 2022/2023 events (<http://innsatsunsetcliffs.com/events/>) (accessed Nov. 15, 2021); see also Attachment G and Exhibits C, E, F, G and H hereto [advertised and actual].)

Further, there are a number of indirect and cumulative impacts that result from the expanded use of the deck area. There is no proposed mitigation to limit the number of attendees, nor the types and frequency of the events to be held. (Cf. *Taxpayers for Accountable School Bond Spending v. San Diego Unified School District*, (2013) 215 Cal. App. 4th 1013, 1037 [CEQA mandates that an EIR must inform decision makers and the public of the project's significant environmental impacts which includes the operational frequency of events].)

City cannot assume and accept that the Project is simply a continuation of prior bluff top and coastal zone entertainment and commercial uses based on past use of the lower sea wall deck. This is because the Applicant had no underlying authorized rights or use for that area as cited by the Coastal Commission and known by both applicant ISAC and City. (Attachment B, August 29, 2012 Notice of Violation, Violation No. V-6-06-016) With the known expansion of the entertainment deck area, there will likely be direct and indirect physical impacts to the environment from this new and added entertainment use area that has never been considered, analyzed, or approved pursuant to CEQA.

Here, the MND wholly fails to address (or mitigate) potential adverse traffic, parking, greenhouse gas, noise, and views/aesthetics impacts arising from frequent and large-scale events on the expanded upper sea wall deck. These operational and implementation impacts are exemplified in the attachments hereto. (Attachment D, pp. 1, 5; Attachment H; and Attachment G and Exhibits C, E, F, G, H thereto.)

C-11: The comment does not provide evidence that prior work by the project damaged biological resources. To avoid future damage to biological resources, the proposed project will be conditioned to require a pre-construction survey and construction monitor onsite to detect and eliminate any potentially significant adverse impacts on biological resources. The construction monitor will have the authority to halt construction if a potential impact on biological resources occurs.

The Initial Study has analyzed the whole of the project as described in the project description. The existing uses and operation of the Inn have been determined to be permissible by staff. No impacts associated with them have been identified and are not included in the proposed project.

C-12: Removing the existing seawall and lower deck totals approximately 2,800 square feet. The additional surfacing associated with the replacement seawall totals approximately 2,120 square feet. The proposed project will have a net reduction of 680 square feet of surfaced area. The existing site is not a part of this project, and its use continues to be permitted by right by the City of San Diego. Please see the attached City of San Diego Classification of Land Use (CLU) letter dated August 23, 2011. The letter notes, "Staff has reviewed the submitted material and upon further research has determined weddings can be allowed at the Inn at Sunset Cliffs as an accessory use."

COMMENTS

RESPONSES

Page Ten
November 17, 2021
[Comments on Draft MND, Project No. 231328](#)



C-13

a. GHG Impacts

City relies on a separate Climate Action Plan Cap Consistency Checklist (CAP Checklist) in order to assess the potential impacts to greenhouse gases (GHG). In this case, the CAP Checklist is insufficient because City only found that the Project is consistent with Step 1 of the CAP Checklist, and therefore assumed the proposed project would have less-than significant GHG impacts. City erroneously determined that it was not required to complete Step 2 of the CAP Checklist per footnote 5. Footnote 5 thereto provides that "Actions that are not subject to Step 2 would include . . . use permits or other permits that do not result in the **expansion or enlargement of a building** (e.g., decks, garages, etc.). . ." (CAP Checklist, fn. 5, bold added.)

Here, the Project *does* expand the deck area (*see above*) of the establishment currently on site, and City cannot rely on compliance with the CAP Checklist. City is instead required to make an assessment of indirect and cumulative GHG from the Project. The increased deck space will permit larger and more frequent events (and other events). This will include evening events that increase power usage. It will also increase traffic and circulation to the Project site on the already congested streets of the Point Loma neighborhood (increasing GHG emissions). Further GHG emissions will come from the catering, barbecuing and other event related activities. There is a fair argument that these will cause additional GHG that may have a potentially significant effect on the environment.

b. Direct Impacts from Parking and Indirect and Cumulative Impacts to Traffic and Congestion

In addition to the facts and evidence provided herein, the ISAC website indicates that catering is available for the events that will be held at the Project site. Again, with the expansion of the deck, the already limited and precious costal resources will be increased and have an additional effect of loss of parking and access from both event attendees and the presence of kitchen, banquet, food, and entertainment support services for events. (*Cf. Taxpayers for Accountable School Bond Spending v. San Diego Unified School District, supra*, 215 Cal. App. 4th 1013, 1051 ["[C]ars and other vehicles are physical objects that occupy space when driven and when parked. Therefore, whenever vehicles are driven or parked, they naturally must have some impact on the physical environment."].)

Attendees and food service will also have an effect on the traffic and circulation from vehicles arriving at and leaving events which will cause indirect and cumulative impacts to traffic and circulation in Point Loma due to increased congestion.

There is no need to analyze the existing by-right uses associated with the Inn at Sunset Cliffs.

C-13: Please see response B-3. Step 2 of the checklist has been completed, and impacts associated with climate change have not been identified. In addition, the current and ongoing uses associated with the Inn at Sunset Cliffs are not a part of the project.

C-14: As noted, the current and ongoing uses associated with the Inn at Sunset Cliffs are not a part of the project.

C-14

COMMENTS

RESPONSES

C-15



Page Eleven
November 17, 2021
Comments on Draft MND, Project No. 231328

c. Direct Noise Impacts

City wrongly concluded that "There would be no permanent operational noise source associated with the project and would not result in a permanent substantial increase to the existing noise environment." (Draft MND at p. 31.) To the contrary, the expanded deck area will include events with music and/or live bands. (Attachment H.) Music, especially live bands, will often create noise during evening hours and are a potentially significant noise impact.

d. Direct and Indirect Night Lighting and Glare Impacts

Again, City makes an inaccurate statement in the Draft MND by claiming that "The project does not propose any use of outdoor lighting . ." Evening events will require significant lighting, and many special events are almost certainly to be decorated with significant additional lighting, causing an impactful night lighting and glare source. (Attachment H.)

e. City's Assessment of Likely Cumulative Impacts is Defective and Not Mitigated

CEQA Guidelines § 15355 defines cumulative impacts as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." (Id.) "The individual effects may be changes resulting from a single project . ." (CEQA Guidelines § 15355, subd. (a).)

The Draft MND acknowledges that: "The Inn at Sunset Cliffs would result in potential impacts . ." (Draft MND at p. 39.) However, there are no specific mitigation measures set forth or considered. The Draft MND merely states "the required mitigation would avoid impact to resources." This is wholly circular and ineffective where City has found potential cumulative impacts to exist, but only they would be mitigated *someday*. (*Sundstrom v. County of Mendocino, supra*, 202 Cal.App.3d at p. 306 [The critical feature of a mitigated negative declaration is the requirement that a project must have specific mitigation as part of the project plan prior to approval.].) As the state office of Planning and Research discussion following Guidelines Section 15070 explains: "A Mitigated Negative Declaration is not intended to be a new kind of document. . [It] provides efficiencies in the process where the applicant can modify his project to avoid all potential significant effects. The applicant can avoid the time and costs involved in preparing an EIR and qualify for a Negative Declaration instead. The public is still given an opportunity to review the proposal to determine whether the changes are sufficient to eliminate the significance of the effects." (*San Bernardino Valley Audubon Society v. Metropolitan Water District*, 71 Cal.App.4th 382, 390, quoting discussion CEQA Guidelines § 15070 and Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar, 1997) CEQA Guidelines, p. 1119.)

C-16

C-17

C-15: The current and ongoing by-right uses of the Inn at Sunset Cliffs are not a part of this project. The removal of the existing seawall and lower deck and construction of the replacement seawall will comply with the City's requirements for construction activities. The usable area after completion of the project will be smaller than the existing usable area. It will have a similar noise signature to the deck it replaces and seawalls throughout the Ocean Beach community.

C-16: The current and ongoing by-right uses of the Inn at Sunset Cliffs are not a part of this project. The removal of the existing seawall and lower deck and construction of the replacement seawall will comply with the City's requirements for construction activities. There is no new or additional outdoor lighting associated with the project.

C-17: Potential impacts on biology will be mitigated to a level of significance and include the required pre-construction survey and ongoing construction monitoring.

COMMENTS

RESPONSES

C-18



Page Twelve
November 17, 2021
Comments on Draft MND, Project No. 231328

By City's own admission, there is a fair argument of potentially significant cumulative impacts without the required changes to the Project that would adequately mitigate these identified impacts to a less than significant level.

7. Unaddressed Geotechnical: Historical Collapses and Unaddressed North Sea Wall Undermining and Caves

The Draft MND fails to assess the potential significant erosion and collapse issues in the north area of the proposed Project and sea wall. There are at least four sea caves the visual show an undermined north side of the IASC coastal bluff that has been ignored, not addressed, and defectively omitted from the proposed Project. (See photographs in Attachment C-1, including pp. 23-24.) Other than removal of the existing wall, and creation of the new secant wall, there has been no investigation or disclosure as to the extent of the undermined north wall and caves as to what effect and further construction (or biological/landform/geological) impacts that may be involved.

The Geology and Soils Analysis of the Initial Study [Draft MND section VII.a, pp. 23-24] wholly relies on Terracosta Consulting Group, Inc. (Terracosta) for its determination that severe and very likely significant environmental impacts to geology and soils is less than significant (Draft MND, Initial Study Sections VII.A, subds. (a)(i-iv), (b), and (c).) Particularly troubling is City's statement in the Initial Study that:

TerraCosta Consulting Group, Inc., the project's geotechnical consultant, has investigated the site conditions and in their report of December 2020 opined that the potential for liquefaction of subsurface soils at the site is negligible.

(Draft MND at p. 23)

To the contrary, in addition to the actual and current north area sea cave observations, the entirety of the IASC sea front site has been subject to *multiple* dangerous collapse incidents that have occurred over the years.

The Draft MND fails to fully assess the historic instability of the deck area above the South Sea Wall. As demonstrated in attached photographs (Attachment C-2), there is significant historical evidence of erosion, liquefaction, and the potential for collapse. (*See also* Attachment D, p. 3) In response to the absence of investigation and evidence, the Draft MND simply concludes that "the potential for liquefaction of subsurface soils at the site is negligible. The potential for lateral spreading or collapse is related to potential for liquefaction. No impact would occur." (Id. at p. 24.) This double-speak is neither investigation nor evidence and City has abdicated its duties under CEQA.

C-18: The alignment of the proposed secant pile wall is to be constructed from 13 to 33 feet to the east of the existing wall to maintain the necessary protection for the existing bluff-top principal structures. The new secant pile wall ties into the City of San Diego's storm drain headwall on the north. The continuous secant pile wall extends down to elevation -20 feet, completely penetrating any existing sea caves, including the four referenced by the appellant. To the extent that any overlapping drilled shafts penetrate the sea caves, these drilled shafts would be temporarily cased to advance the overlapping drilled piers past and below the sea caves. After construction, any voids behind the wall associated with any sea caves would then be grouted full. The seaward portions of any sea caves westerly of the secant pile wall would not be touched in any way. The only difference after the project is that the back face of the sea cave would coincide with the seaward face of the secant pile wall. This construction approach ensures no environmental disturbance or any impact on the aquatic environment.

Specific to the appellant's Attachment C-1 (Comment C-23), all of the comments and accompanying photographs show existing improvements that will be removed in their entirety with this project, as they are all seaward of the proposed secant pile wall alignment. These existing improvements will be removed from the underlying native low-habitat bedrock foreshore.

COMMENTS

RESPONSES



Page Thirteen
November 17, 2021
[Comments on Draft MND, Project No. 231328](#)

C-19

C. The Draft MND Lacks a Stable, Finite, and Accurate Project Description

CEQA's environmental review process requires a definite and unambiguous project description. (*Stopthemillenniumhollywood.com v. City of Los Angeles*, (2019) 39 Cal.App.5th 1, 16, 251, citing *County of Inyo v. City of Los Angeles*, (1977) 71 Cal. App.3d 185, 189.) "[A] project description that gives conflicting signals to decision makers and the public about the nature and scope of the project is fundamentally inadequate and misleading . . ." (*Communities for a Better Environment v. City of Richmond*, (2010) 184 Cal.App.4th 70, 85–89.)

There are multiple issues that are not addressed and that are side-stepped in the Draft MND. For instance, the Project description of the Draft MND [pp. 8-9] is incomplete and insufficient because it has multiple defects, inconsistencies, and omits multiple specific details and features of the Project. (Attachments A and F hereto.) Also, as mentioned above, the project description fails to describe the expansion of the accessory walking deck area to the edge of the new seawall. The Project, as currently proposed, seeks to import 500 cu. yds. of first fill to cover the existing coastal bluff and expand the deck as a "walking surface" and "level viewing area." (TerraCosta Consulting Group, Geotech. Rpt., Dec. 24, 2020, p. 55 [Figure No. 18]; Development Plans, Sheet Nos. 2, 4, Drawing Nos. C-1, C-4 [cross sections 3, 4].)

The inaccurate and incomplete Project description has directly caused City to omit necessary assessment of potentially significant environmental impacts and has infected the entire Initial Study and MND.

D. Concluding Remarks

Thank you for the opportunity to comment and provide some details and clarification for the City to properly account, disclose, avoid, and mitigate potential impacts arising from the proposed Project such that the public and decisions-makers can be best informed for review and decisions pertaining to the Project and its approval actions.

If you would like or need any further clarification of the above matters, please do not hesitate to contact this office.

Sincerely,

A handwritten signature of Craig A. Sherman.

Craig A. Sherman

Enclosures (list on next page)

The appellant incorrectly states significant historical evidence of erosion, liquefaction, and the potential for collapse. The appellant then dismissed the Draft MND's conclusion, "The potential for liquefaction of subsurface soils at the site is negligible. The potential for lateral spreading or collapse is related to the potential for liquefaction. No impact would occur." To be clear, liquefaction can only occur with saturated, relatively loose sands subject to seismic shaking. There are no clean sands at the site. Notably, behind the proposed secant pile wall, the geotechnical conditions consist of well-indurated sandstones and hard siltstones of the 80-million-year-old Cretaceous-age Point Loma Formation, with its geologic contact near +11 feet, which is in turn overlain by non-saturated, cemented terrace deposits consisting of clayey sands. The elevation of the terrace deposits prevents them from ever becoming saturated and susceptible to liquefaction. The extremely hard and erosion-resistant Point Loma Formation materials will not and cannot liquefy under any seismic scenario. There is no potential for liquefaction at the subject site.

C-20

COMMENTS

RESPONSES



Page Fourteen
November 17, 2021
Comments on Draft MND, Project No. 231328

ENCLOSURES

- Attachment A - Site Plan Defects and Bluff Impact Photo History (31 pp.)
- Attachment B - August 29, 2012 Notice of Violation, Violation No. V-6-06-016 (4 pp.)
- Attachment C-1 - North Sea Wall and Deck (6 pp.)
- Attachment C-2 - South Sea Wall and Deck Expansion Area (6 pp.)
- Attachment D - Photos re Adverse Impact Areas (5 pp.)
- Attachment E - Peninsula Community Plan (example of unaddressed issues)(1 p.)
- Attachment F – Detailed Evidence and Comments on MND (30 pp.)
- Attachment G - DEIR Comment Letter 7-27-18 (w/attachments)(90 pp.)
- Attachment H – Advertisements of Prospective Events (4 pp.)

C-19: The plans for the project are incorporated into the MND and they, along with the written project description, provide a clear and concise project description. The comment does not identify any specific defects, inconsistencies, or omissions in the project description.

COMMENTS**RESPONSES****C-21:**

1. Noted.

2. Noted

3. The comment does not specify what “unpermitted work” is referred to. Assuming the comment refers to the concrete surface on the lower deck and fire pits, these will be removed under the proposed project.

4. Noted.

5. Noted.

6. The comment does not specify what “Northern and Southern walls and sections” are unidentified, but it is clear from the plans that all sections of the existing wall seaward of the secant pile wall will be removed.

7. Noted.

ATTACHMENT A - SITE PLANS

The following Site plans and photos are provided:

C-21

1. The Site Plan in the MND (page 44) and the Geotechnical Report. Implied date: December 24, 2020.
2. The Site Plan presented as final to the Ocean Beach Planning Board. A small part of Sheet 2 of the drawings. There is no cross-section provided for the Northern section of the lower area. Plan Dated April 12, 2021.
3. Site Plan presented as “Existing as-built.” This is “as built” with Emergency permits and unpermitted work. Plan Dated April 12, 2021.
4. Sample drawing from the MND drawing showing Cross Section for C-C', Southern portion. Upper deck expansion approximate size of lower deck previously in use. From *Geotechnical Report*, December 24, 2020.
5. Site Plan from Prior EIR showing extensive hydrology requirements, January 3, 2018.
- Additional Information:
6. Complete set of most-recent plans available to the public, presented to the Ocean Beach Planning Board. Three sections marked, “All existing walls, debris, and concrete infill seaward of secant pile wall to be removed.” Northern and Southern walls and sections unidentified as to removal. Differs from plans in *Geotechnical Report*.
7. Photographs demonstrating bluff augmentation, 2016, presented to the OB Planning Board.

COMMENTS

RESPONSES

ATTACHMENT B

STATE OF CALIFORNIA - THE NATURAL RESOURCES AGENCY
CALIFORNIA COASTAL COMMISSION
San Diego Coast District Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402
(819) 787-2370

EDMUND G. BROWN, JR., Governor

August 29, 2012

Nicole Pedone, Deputy City Attorney
City of San Diego
Code Enforcement Unit
1200 Third Avenue, Suite 700
San Diego, CA 92101

Violation File Number: V-6-06-016

Property Location: 1370 Sunset Cliffs Blvd, City of San Diego, San Diego County.

Violation Description: Unauthorized construction, maintenance, and use of lower deck; erection and modification of fencing/windscreens and landform alteration on a coastal bluff.

FILE COPY

C-22

C-22: The previous actions regarding the existing seawall and lower terrace are irrelevant since they are not part of this project.

COMMENTS

RESPONSES

V-6-06-016
City of San Diego; Inn at Sunset Cliffs
Page 2 of 4

Background

On October 11, 2006, the Coastal Commission granted CDP No. 6-05-131 to the property owners of the Inn. The permit authorized the filling and repair of an eroded seawall along the seaward property line. CDP No. 6-05-131 states (in relevant part):

"1. Detailed Project Description/History"

One of the issues that raised a lot of concern at the original Commission hearing regarding the proposed project was with regard to the legality of the concrete deck which is immediately inland of the seawall proposed for repair. In several aerial photographs that have been submitted by the project applicant, project opponents, and aerial photographs at the Commission's office, it can be seen that at one time the slope between the upper deck and the lower concrete patio was not covered with concrete. In one particular photo, ice plant or vegetation is seen on the slope. In another photograph it appears that the lower area where the deck now exists was also a dirt area that was unimproved. The applicant, to date, has not submitted evidence that the concrete deck was ever legally permitted by the City. The applicant has neither sought nor been asked by the City to obtain a permit for the existing deck...The applicant's agent was able to obtain a copy of a permit from the City of San Diego issued on January 6, 1978 which describes the work to be done as "rebuild existing wall and patio slab..." This work shown on those plans is to the westernmost portion of the upper patio deck before it slopes down in elevation to the lower part of the site where the existing lower patio deck exists. Thus, the building permit from 1978 was for work that occurred to the upper patio deck and not the lower patio deck. In any case, the applicant has not provided, nor has the Coastal Commission been able to locate any evidence that a coastal development permit has been issued for the concrete lower patio deck prior to the City of San Diego taking over coastal development permit jurisdiction in 1988."

Additionally, Section 2. Geologic Hazards states (in relevant part):

"According to the information contained in the applicant's earlier geotechnical report submitted with the original permit application, the seawall predates the Coastal Act, having been constructed in the early 1960's. As referenced in a 1960 photo contained in the geotechnical report, it appears that sand existed landward of the top of the seawall, extending up to the upper patio and pool areas."

As detailed above, the Commission determined in its analysis for CDP 6-05-131 that the lower terrace area was unpermitted. Commission Enforcement staff proceeded to open a violation case on the matter and, since it is within the City's permit jurisdiction, referred it to the City's Neighborhood Compliance Department for investigation.

However, in light of your recent letter, Commission staff revisited the information in our files including historic aerial photography. Our review of the 1972 aerial from the Coastal Records Project¹ (Image 7242012) led us to the following conclusions: 1)

¹ California Coastal Records Project, 1972 Inn at Sunset Cliffs Historical Aerial, Image No 7242012, <http://www.californiacoastline.org/cgi-bin/captionlist.cgi?searchstr=7242012>

C-22

COMMENTS

RESPONSES

V-6-06-016
City of San Diego; Inn at Sunset Cliffs
Page 3 of 4

there was no concrete material on the lower slope in 1972; 2) the access stairs in the 1972 photo from the upper terrace to the lower slope do not appear to extend all the way down and; 3) the lower sloped area was not used as a patio area until 2002. All of these facts contradict the claim that use of the lower terrace area as a lower deck/terrace predates the Coastal Act.

In addition, although the aerial photographs do not provide clear contours of the sloped area, it appears that landform alterations took place in order to extend the previously existing staircase down to the lower terrace and to excavate, level, and define the lower terrace as it exists. The permit file contains an aerial photograph that is undated (but is in color) that was submitted to permit staff as evidence that the lower terrace was not pre-coastal by one of the appellants of CDP 6-05-131; it clearly shows there was a change in the contours of the lower terrace area that entailed landform alterations. Again, these changes constitute "development" and require a coastal development permit.

C-22

In reviewing the historical photographs from 1972 to the present, it is clear that formalized use of the lower terrace consisting of the construction of stairs connecting the upper and lower terrace with associated windscreens/fencing, some form of land alteration of the two terraces, placement of concrete on the lower terrace, and ongoing modifications to fence alignment and windscreens that all took place after 1972. All of the aforementioned improvements constitute development as defined by the Coastal Act and its predecessor and the City of San Diego Municipal Code, thus requiring a coastal development permit.

Finally, as previously mentioned, CDP No. 6-05-131 addressed the unpermitted patio and specifically prohibited any repair work or changes to it. Specifically, the adopted Special Conditions stated (in relevant part):

SPECIAL CONDITIONS

2. Final Plans

- a. No work is authorized to the existing unpermitted deck/patio area; only repair work to the existing seawall and filling of the void behind the seawall with erodible concrete is authorized.

The applicants agreed to the special condition and exercised their permit. However, it is clearly evident in the 2010 aerial that the following changes have also taken place:

- 1) The lower terrace concrete has been treated or redone.
- 2) Landform alteration and vegetation removal occurred sometime between 2008 and 2010 on the northwestern (seaward of the dumpsters) upper and lower deck area with beach chairs fronting a sandy area that used to be vegetated.
- 3) Modification to the windscreen awning has occurred on the lower deck.

COMMENTS

RESPONSES

V-6-06-016
City of San Diego; Inn at Sunset Cliffs
Page 4 of 4

Considering all of the information and evidence reviewed, Commission staff does not agree with the conclusions detailed in your letter dated March 5, 2012. Development of the lower terrace area, as described above, does not predate the Coastal Act and constitutes a violation of the Coastal Act and the City of San Diego Municipal Code.

Resolution

The Inn at Sunset Cliffs is located within the jurisdiction of the City of San Diego, and the City has indicated its intent to resolve the alleged violations at issue here. However, Commission staff wishes to express its disagreement with the City's conclusion that the lower terrace area development (described above) is pre-coastal and, thus, a legal, non-conforming use. Furthermore, it appears that landform alterations took place (without permits) to create the leveled lower terrace area as it exists today. We do not believe that this work could be approved pursuant to the City of San Diego Municipal Code or the Coastal Act and it is in direct non-compliance with Special Condition 2 of CDP No. 6-05-131. Thus, Commission staff would not support after the fact authorization of such work.

C-22

Therefore, in order to resolve this matter, the Commission requests that the City: 1) halt the construction, maintenance, and use of the lower terrace area and related improvements and; 2) order the removal of all unpermitted development and restoration of the area to its pre-violation condition.

Thank you for your attention to this matter. We look forward to working with you and City staff to resolve this matter quickly and amicably. If you have any questions regarding this letter, please feel free to contact me at (619) 767-2370. We are available to meet with City staff to discuss this matter further and appreciate your assistance in resolving this matter. We are happy to share our documentation with you if your office is interested.

Sincerely,

Marsha Venegas
San Diego District Enforcement

cc: Lisa Haage, Chief of Enforcement, CCC
Sherilyn Sart, Deputy Director, CCC
Patrick Veesart, Southern California Enforcement Supervisor, CCC
Lee McEachern, District Regulatory Supervisor, CCC
Alex Helperin, Staff Counsel, CCC
Robert Vacchi, Code Compliance Deputy Director, City of San Diego

COMMENTS**RESPONSES**

ATTACHMENT C-1 - CURRENT PHOTOGRAPHS OF STATUS OF AREAS REPAIRED UNDER
EMERGENCY PERMITS IN 2015/2016/2018.
Geotechnical Report in MND December, 2020.

NORTH FACING SEA WALL



C-23

Four sea caves underneath the North wall have resulted in the sinking of the deck poured in 2016 with an Emergency Permit. Approximately 50 loads of cement were poured behind the sea wall. Although the permitting process requires approval or removal, no mention is made of the current conditions in the proposed solution analyzed in this MND. The deck is cracking, and the posts along the perimeter are sinking. A significant failure here would put the lower deck into the ocean as it falls forward.

C-1

C-23: Noted. As indicated in Comment C-18, the entire northern facing seawall, shown in Attachment C-1, is to be removed, with the secant pile wall tying into the City of San Diego's headwall and removing all of the sea caves noted in the first photograph in Attachment C-1.

COMMENTS**RESPONSES**

A closer view of the damage to one of the fence posts and the wall.

C-23



This fence post has broken directly over one of the voids, and the fence is propped up with a stake.

C-2

Attachment C-1, Page 2

COMMENTS**RESPONSES**

C-23: Noted; the lower deck will be removed as part of the project.

C-23



Two pictures of the same Northern deck area.

C-3

Attachment C-1, Page 3

COMMENTS**RESPONSES**

C-23



Photo showing larger area. May signify shifting of the underlying cement layers.

C-23: Noted; the lower deck will be removed as part of this project.

C-4

Attachment C-1, Page 4

COMMENTS**RESPONSES**

C-23

View looking South, upper area of wall failing. Northern view of the collapsed fence post with fence propped up.



Same view with a closer look at damage.

C-5

Attachment C-1, Page 5

C-23: Noted; the lower deck will be removed as part of this project.

COMMENTS**RESPONSES**

Augmented upper bluff on Nth End. Bluff Edge on prior Geotechnical Report defined by gravel.

C-23



Crack and cave in sea wall is directly below cracking recently appeared in deck. This photo 4-2021.

C-23: Noted; the seawall will be removed and replaced as part of this project. Please recall that the upper bluff was entirely buried in 1952-53 when the site was initially developed. The project is simply building a new full-height secant pile wall much closer to the since-buried top-of-bluff, with that full-height secant pile wall extending over to the City's storm drain headwall, removing all artificial improvements seaward of the secant pile wall. Two photos that the appellant includes on Page C-6 show the base of the slope descending to the lower patio, which coincides with the proposed alignment of the secant pile wall, except at its northern end, where it essentially follows the lower seawall alignment and fence line as illustrated in the bottom photograph, eventually tying into the City's double-barrel storm drain headwall. With the construction of the secant pile wall, there will still be no exposed upper bluff along the northern portion of the property or Point Loma Avenue, for that matter.

COMMENTS

RESPONSES

Attachment C - CURRENT SOUTH SIDE OF SEAWALL INN AT SUNSET CLIFFS
EMERGENCY PERMIT 2019.

C-24



The Southern facing area and second Emergency Permit appears more dramatic because the seawall fell in when the deck collapsed.

C-7

Attachment C-2, Page 1

C-24: Noted; the lower deck and debris will be removed as part of this project.

COMMENTS**RESPONSES**

C-24: Noted; the existing seawall will be removed and replaced as part of this project.

C-24



C-8

Attachment C-2, Page 2

COMMENTS

RESPONSES

C-24



More moderate fencing than the North face, but not IAW Municipal Code.
Vegetated slope to be removed for expansion of upper deck by flattening to the height of the upper deck.



A strange fence at the foot of the stairs.

C-24: Noted. The fencing in the two photographs is on the property line and does not need to be replaced. The project does not propose to “remove []” the vegetated slope. The project includes fill behind the secant pile wall to support the wall against wave energy. The project proposes to surface the filled area behind the wall to (1) prevent hydrostatic pressure from building behind the wall; and (2) appropriately direct runoff away from the bluff.

COMMENTS**RESPONSES**

C-24: Noted; the existing lower deck and seawall will be removed as part of this project. Geobags and other debris will be removed as well.



C-24

The South end is starting to sink and separate. The back of the lower sea wall as a boundary undefined.



Although it appears unstable here, the geobags with decomposed granite seem to be immovable.

C-10

Attachment C-2, Page 4

COMMENTS**RESPONSES**

C-24



It appears that the debris is on the neighboring property.

C-24: Noted; the existing lower seawall and debris will be removed as part of this project.

C-11

Attachment C-2, Page 5

COMMENTS

RESPONSES



C-24

April 26, 2021: This picture demonstrates how much deck space the Inn will pick up due to using bluff toe instead of bluff edge to define their new sea wall. It also demonstrates the lack of definition of demolition. The April southern boulders behind the sea wall are no longer visible, (no explanation). They seem to be black bags now. The cracking and sinking visible in the other and current pictures were not visible in April, 2021. How can the wall be built at the East side of the deck where there is no deck? This picture shows the small lattice fence adjacent to the stairway. The terminus of the stairway is at the corner of the failed fire-ring deck.

C-24: Noted; the existing lower deck, seawall, and attendant debris will be removed as part of this project. The new seawall will, by necessity, be located along the bluff toe to protect the development behind the bluff and the bluff itself from wave action. The project does not “pick up” deck space. The project will lose the entire lower deck space, resulting in a net reduction of 680 square feet.

C-12

Attachment C-2, Page 6

COMMENTS**RESPONSES**

ATTACHMENT D
PHOTOS FOR EVALUATION OF ENVIRONMENTAL IMPACTS

C-25



I. AESTHETICS – Current View Cone.



I. AESTHETICS – Closer view of View Cone (above).

D-1

Attachment D, Page 1

C-25: The structures shown here are not a part of this project.

COMMENTS

RESPONSES

C-25

IV Biological Resources



Biological Resources protected in Deed Restriction, Photo 2004
Coastal Commission Records for 2005 CCC hearing..
Anemones and sand worm coral in sea caves



Owl Limpet colony outside of sea wall of particular interest to California Coastal Commission.
Largest known colony outside of protected habitats, thriving because of inaccessibility.

D-2

Attachment D, Page 2

C-25:

9. **Protection of Rocky Intertidal Animals.** PRIOR TO COMMENCEMENT WITH PROJECT CONSTRUCTION, a biological survey of the sea cave and the project vicinity shall be performed to determine whether or not there are any rocky intertidal animals that will be adversely affected by the proposed project. If any rocky intertidal animals are identified, the applicant shall arrange to have the species relocated prior to commencement with project construction. The removal of the rocky intertidal animals shall be performed by a biologist familiar with intertidal systems to ensure that the species is relocated in a manner which does not result in overcrowding or other negative impacts to their survival rate.

The project will result in the loss of intertidal invertebrates as identified in the project's Intertidal Biological Assessment dated January 23, 2020 (revised September 29, 2021). However, these impacts are insignificant because the species present are common, and no sensitive species were observed during the survey. Therefore, the relocation of all rocky intertidal animals is not proposed.

The project will include a mitigation measure requiring a pre-construction survey to ensure no sensitive species are present. If any sensitive abalone species are identified, the project will be delayed until NOAA Fisheries can be consulted to protect or relocate the abalone.

The relocation of intertidal animals is not proposed because sensitive species are not represented in the biological community at the project site and because relocation can have potentially deleterious effects on the receiver site community. Numerous small rock reefs characterize the surrounding habitat. These reefs functionally act as islands that prevent

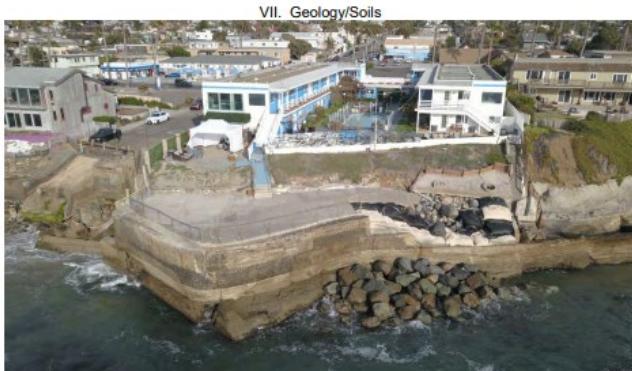
COMMENTS**RESPONSES**

the migration of mobile invertebrates such as snails, chitons, and limpets that cannot cross the sand or cobble habitat between reefs. While the carrying capacity for any given species is unknown, it stands to reason that these “islands” cannot support high numbers of these invertebrates. Introducing other invertebrates could lead to additional competition for resources and the temporary collapse of the community. Relocation of non-sensitive species, therefore, is not recommended.

Additionally, as noted in the Intertidal Biological Assessment, the project will effectively return the area beneath the Inn at Sunset Cliffs to a more natural condition. Removing the wall and riprap will expose the native rock and bluff face that was exposed before the placement of those structures. This will provide a natural substrate which intertidal invertebrates and algae will rapidly colonize. The “sea cave” present is primarily a condition resulting from the wall. Although this feature will change, that change will not necessarily be negative. The natural rock and bluff will have natural cracks, fissures, and micro-habitat features that will provide for a diverse community consistent with that currently surrounding the site. This post-construction condition should be viewed as more favorable than currently as it provides a set of conditions more like the natural surroundings and conditions under which native intertidal flora and fauna evolved.

COMMENTS

RESPONSES



This 2021 photo demonstrates the nearby swimming pool and the potential for liquification from the quantity of water and the unknown and unstated condition of seepage or cracking.

C-25



This picture shows the stairway extending well beyond the current "deck," and there is no plan nor justification for its use or its extent. It appears that the end of the stairs is the edge of the new upper sea wall, although this is by no means clear.

D-3

Attachment D, Page 3

C-25: The project's geotechnical consultant has evaluated the site conditions and opined that based on site and subsurface conditions, the potential for liquefaction of subsurface soils at the site is negligible and would not be significant.

The northern stairway will be removed as part of the project, and the southern stairway will remain. It is unclear which stairway is referenced in the lower photograph's caption. Sheet C-3 of the project's drawings shows the location of the secant pile wall running along the toe of the slope in both photographs.

COMMENTS

RESPONSES

Hydrology/Water Quality

The March 17, 2017 addressed the requirement for drainage. The previous requirement for Drainage has been removed, with no clear analysis of why and no explanation provided for the decision. Since this decision, an additional collapse occurred in 2019. This statement is prior to the second emergency permit.

- (From Cycle 23)
- 47 SDMC Section 143.0143(d) states: All drainage from the improvements on the premises shall be directed way from any coastal bluff and either into an existing or newly improved public storm drain system or onto a street developed with a gutter system or public right-of-way designated to carry surface drainage run-off. All drainage from any unimproved area shall be appropriately collected and discharged in order to reduce, control, or mitigate erosion of the coastal bluff.

- (New Issue)
- 48 Prior to the issuance of any construction permits, the Owner/Permittee shall construct a private berm ditch on the upper deck adjacent to the existing stucco wall, and an outlet pipe that extends and discharges at the face of curb on Point Loma Avenue, to the satisfaction of the City Engineer.

- (New Issue)
- 49 Prior to the issuance of any building permits, the Owner/Permittee shall obtain an Encroachment Maintenance Removal Agreement, from the City Engineer, for the sidewalk underdrain in the Point Loma Avenue Right-of-Way. (New Issue)

- 45 With the understanding that the sea wall and deck are to be utilized solely as a coastal protective device, Engineering Review has determined that the storm water drainage of the device does not need to be diverted from the deck of the device to the public street as outlined in Municipal Code section 143.0143(d), because the purpose of the device is to reduce, control, or mitigate erosion of the coastal bluff which is the primary reason for diversion of the drainage from improved portions of the premises. (Continued below) (New Issue)

- 46 This determination may be re-evaluated if the structure is modified to include uses other than reducing, controlling, and mitigating erosion of the coastal bluff. (New Issue)

C-25



The condition of the swimming pool in terms of leaks or cracks is undefined in the geotechnical report and represents a potential drainage issue which needs to be addressed.

C-25: The new deck area will help to direct surface runoff to the public stormwater conveyance system in Point Loma Avenue and away from the bluff. The previously proposed drainage systems were associated with the lower deck being removed by this project and are not now proposed. The existing swimming pool is not part of this project. Still, a new seawall built to current engineering and construction standards would be preferred over the existing, failing wall in the unlikely event of leaks or cracks in the pool.

COMMENTS**RESPONSES**

C-25: The existing, ongoing use of the Inn at Sunset Cliffs is allowed by right and not a part of this project.

XVII. Transportation



C-25



XVII. TRANSPORTATION – Sample photos - parking of Inn catering services.

D-5

Attachment D, Page 5

COMMENTS

RESPONSES

ATTACHMENT E – PENINSULA COMMUNITY PLAN DETAILS RELATED TO MND

Reference: Peninsula Community Plan and Local Coastal Program Land Use Plan, July 14, 1987.
1. Introduction

The Geotechnical Report correctly identifies the location as within the Ocean Beach Community, subject to the Ocean Beach Community Plan. It also correctly identifies it as part of the Sunset Cliffs area. More specifically, it is part of the Sunset Cliffs Community, and as a result identified as having requirements under the Peninsula Community Plan. Although Ocean Beach Community Planning Board is responsible for the permitting, the Environmental aspects are covered in the Peninsula Community Plan.

The Inn at Sunset Cliffs property is explicitly contained in the Peninsula Plan:

"The Sunset Cliffs neighborhood is located south of Point Loma Avenue, between Catalina Boulevard and the ocean."

None of the areas and recommendations in the Peninsula Community Plan are addressed in the MND.

Examples from the Peninsula Community Plan:

"Recommendations: Sunset Cliffs Shoreline Park should be protected as a significant public resource and wildlife habitat. ..."

"Any erosion control/cliff stabilization program which is developed along the Sunset Cliffs should consider the visual compatibility with the adjacent area, any adverse effects on the marine environment of sandy beach areas ... "

"Develop a timetable and financing options for construction of the bicycle facilities designated in the City's Master Bikeway Plan which are located within the Peninsula community. • These facilities are as follows: ... Class 3 bike route on Point Loma Avenue from Sunset Cliffs to Canon"

"Pedestrian Circulation and Shoreline Access: There are several pedestrian trails and paths in the Peninsula area. There is a path from Sunset Cliffs Park to the Ocean Beach Pier. "

"A number of view corridors exist throughout the Peninsula planning area, providing views of the bay, ocean, downtown, Coronado, Mission Bay and Pacific Beach. These vistas occur primarily from existing roadways which include: ... Point Loma Avenue and Sunset Cliffs Boulevard. "

These examples demonstrate the applicability of the *Peninsula Community Plan* to this MND

C-26: The proposed project will continue to protect the Inn at Sunset Cliffs. The relocation of the seawall landward will create natural tidal habitat and lateral access.

The visual compatibility of the replacement seawall will be enhanced by the design and color of the exterior to reflect both natural conditions and the existing seawalls in the vicinity.

The proposed project does not create any impacts or needs relative to bicycle infrastructure. Bicycle lanes exist in the vicinity and along Sunset Cliffs Boulevard.

No impacts to existing or proposed public access are associated with the proposed project.

There are no impacts on the existing view cone within the Ocean Beach Community Plan, as evidenced by the submitted materials. The City does not regulate private views.

C-26

COMMENTS**RESPONSES**

C-27

COMMENTS ON THE PUBLIC NOTICE OF AVAILABILITY
AND THE DRAFT ENVIRONMENTAL DETERMINATION
SAP No. 24001513

INN AT SUNSET CLIFFS Project No. 231328

General Project Information:

Project Name: INN AT SUNSET CLIFFS
Project No. 231328
SCH No. 2014081073
Community Plan Area: Ocean Beach
Council District: 2

SUBMITTED TO: The City Of San Diego
Jeffrey Szymanski, Senior Planner
619-446-3324
DSDEAS@SanDiego.gov

FROM: Tim and Barbara Houlton
4820 Point Loma Avenue
San Diego CA 92107

18 November 2021

C-27: Noted.

COMMENTS

RESPONSES

*Comments on the Public Notice and Preparation of an Environmental Determination of
[Draft] Mitigated Negative Declaration
Project # 231328, SAP No. 2400153*

INTRODUCTION

The following comments and objections to the *Draft Mitigated Negative Declaration SAP No 2014081073 Project # 231328* are submitted IAW the directions and process outlined in the *Notice of Availability Draft Mitigated Negative Declaration. SAP No. 24001513*.

This project is insufficiently defined by the plans which govern the project approval to make an Environmental Determination. The Site Plan presented is not current and there is no Demolition Plan. The Grading Permit was left incomplete and is not mentioned. The deed restriction requiring Biological Monitoring has been ignored since 2005. All other violations have been ignored because there was a project in process.

The plans ignore the North and South facing sea walls. They ignore the undercutting East and North in the construction plans. The drainage system for the upper deck which was required in the former EIR has been removed. Although detailed in the varying project descriptions, the extent of construction is not reflected in the plans submitted for permit approval.

Ass the applicant stated that the City Attorney is involved in the determination, please note the following quote:

From the OFFICE OF
THE CITY ATTORNEY,
**28 July 2008: A MEMORANDUM OF LAW to the City Council:
ANALYSIS**
Adequacy of FEIR Project Description and Need for Recirculation

"The 'heart of CEQA' is the EIR, whose purpose is to inform the public and government officials of the environmental consequences of decisions before they are made." *Communities for a Better Environment v. South Coast Air Quality Management District*, 158 Cal. App. 4th 1336, 1353 (2007) (quoting *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco*, 102 Cal. App. 4th 656, 687-688 (2002)).

Without an accurate, stable, and finite project description, the purpose of the EIR in providing information to the public and City decision-makers is thwarted. As the California Court of Appeals has explained:

C-27: The comment incorrectly references the north- and south-facing seawalls. All of the referenced undercutting will be eliminated because the referenced north- and south-facing seawalls will be removed, with a new short return wall along the north side tying into the City's double-barrel storm drain headwall, substantially improving the stability of both the private property and City street-end. The new design includes a small amount of additional bluff-top flatwork westerly of the pool and buildings draining to the street, utilizing the existing bluff-top drainage infrastructure.

The comment does not identify what deed restriction has been "ignored" or how it relates to this project. A pre-construction biological survey and construction monitor will be required for this project.

COMMENTS

RESPONSES

[A]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199 [139 Cal. Rptr. 396].) However, "[a] curtailed, enigmatic or unstable project description draws a red herring across the path of public input." (Id. at p. 198.) "[O]nly through an accurate view of the project may the public and interested parties and public agencies balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives" (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454 [263 Cal. Rptr. 340].)
San Joaquin Raptor Rescue Center v. County of Merced, 149 Cal. App. 4th 645, 655 (Cal. App. 5th Dist. 2007) *

There is a second and seemingly opposite point of view. There is too much information on a project filed in 2011, which has been through 83 review cycles. Many complete project descriptions have been written. The deck physically collapsed twice when it had been determined to be geologically stable, resulting in two Emergency Permits with conditions. Many documents cannot be classified by DSD as no longer applicable – deed restrictions, emergency permit conditions, City of San Diego Code Violations, Coastal Commission Violations – all of which have disappeared. A Public Records Act Request has been made to the City to provide the submissions that apply to the decision to be made by the Hearing Officer, but this has yet to be answered. The City has not provided a list of formal documents submitted by the applicant to define the current project.

In particular, the approach to Biology is to require Biologist verification before and during construction. This approach ignores the biological damage done by the two prior Emergency Permits and the deed restriction, specifically ignored during prior construction and emergency permits. The intertidal animals protected by the California Coastal Commission are long since dead due to construction at the site location. Although unmentioned, it is this deed of restriction that has prompted the updated Biological Study:

9. Protection of Rocky Intertidal Animals. PRIOR TO COMMENCEMENT WITH PROJECT CONSTRUCTION: a biological survey of the sea cave and the project vicinity shall be performed to determine whether or not there are any rocky intertidal animals that will be adversely affected by the proposed project. If any rocky intertidal animals are identified, the applicant shall arrange to have the species relocated prior to commencement with project construction. The removal of the rocky intertidal animals shall be performed by a biologist familiar with intertidal systems to ensure that the species is relocated in a manner which does not result in overcrowding or other negative impacts to their survival rate.

C-27: The comment does not explain how or why the project description contains too little information. The requirement of a biological survey before an earlier project is irrelevant to this project. In any event, a similar biological survey will be required for this project. The comment does not provide evidence that any "intertidal animals protected by the California Coastal Commission" died due to prior construction by the project or its predecessors. The impacts of prior construction, much of which will be removed, are irrelevant to this project because they are not involved in the proposed project.

C-27

COMMENTS

RESPONSES

C-28: The project has changed over the past decade; this analysis is for the proposed project. It does not apply to the previous project iterations.

OUTLINE

The following documents were provided by the City for this environmental determination:

- Notice of Availability
- Mitigated Negative Declaration
- Intertidal Biological Assessment
- Climate Action Plan Consistency Checklist
- Geotechnical Investigation Report

The Draft Mitigated Negative Declaration (MND) contains subsections of:

- Mitigated Negative Declaration
- Initial Study Checklist
- Environmental Factors and Determination
- Initial Study Checklist References
- Location Map
- Site Plan

C-28

Several environmental impact determinations have been made, including those associated with Emergency work. Comments submitted for the previously required Environmental Impact Report (EIR) are valid and are to be included by reference as comments applicable to the current notice.

Two emergency permits were granted due to deck failures, one in 2015 and one in 2019. These carried temporary forms of Negative Declarations, with the understanding the work would be addressed with the regular permit. These permits, with their revisions and Stop Work orders, are not reflected in the submitted plans.

Another Negative Declaration was issued when the City of San Diego announced an intent to recommend denial of the project. The applicant negotiated a different approach which resulted in this new project.

Detailed objections are provided later for each section. The following are general objections applicable in two areas, the Site Plans the Project Descriptions.

OBJECTIONS TO THE SITE PLANS

The Site Plan in the Draft *Mitigated Negative Declaration* does not match the updated Site Plan provided to the Ocean Beach Planning Board. Details on the plan which will be approved are now removed. There is no demolition plan. Removal of Emergency Work for the current submission have been omitted. The Plan submitted here appears to be from December, 2020. The site plan from the 2018 EIR showed extensive upper drain solutions (Hydrology) which have been deleted. The expansion of usable upper-deck space is inadequately addressed. This plan

COMMENTS

RESPONSES

more than doubles the space in the northern (A, A') area. Site plans are provided for Comparison in Attachment A. The final plan should be presented and discrepancies which are relevant addressed. There is no site plan, cover sheet, or any plan page known which presents the completed project.

In addition, Permits to be granted conflict with permit applications. Three permit applications are on file with the city of San Diego for the current Project ID 231328 and none have been withdrawn. These are the Site Development Permit (SDP), the Coastal Development Permit (CDP), and the Neighborhood Development Permit (NDP). These are the permits that will be heard by the hearing officer and potentially granted to the project. The CDP-permitting authority has been granted to the California Coastal Commission. The NDP is not referenced in this Draft MND but has serious environmental impacts. Below is the list of approval types with Project ID 231328.

City of San Diego Data OpenDSD Types:

Approval ID	Approval Type	Approval Status	Street Address	Project ID	Title	Change in DU
827698	Coastal Development Permit	Created	1370 SUNSET CLIFFS BL	231328	DIGITAL - INN AT SUNSET CLIFFS	
1612524	Site Development Permit	Created	1370 SUNSET CLIFFS BL	231328	DIGITAL - INN AT SUNSET CLIFFS	
2025455	Neighborhood Development Permit	Created	1370 SUNSET CLIFFS BL	231328	DIGITAL - INN AT SUNSET CLIFFS	

OBJECTIONS TO THE PROJECT DESCRIPTIONS

The problems with the project definition are demonstrated in the various statements for project description provided with this Draft MND. In particular, the applicants originally proposed to remove all construction west of the seawall, including the unpermitted deck. Very careful caveats are provided in some but not all of the descriptions. Details of problems with the description are also provided with each section¹. A project description should be provided which agrees with the project plane.

The list below does not include a discussion of the approval types just described. The NDP consistently refers to CDP/NDP. Although descriptions seem the same, there are underlying purposes for the differences, particularly in references to what might be removed. The following summarizes the DRAFT MND differences:

Description Draft Mitigated Negative Declaration Notice: "the construction consists of a new 170-foot long secant pile seawall. Additionally, the project would remove the following improvements: remnants of an existing seawall, approximately 2,120 square feet of a lower concrete deck The seawall has had multiple failures ... leading to the collapse of the concrete

¹ The demolition of the keystone block firepits documented in the Emergency Permit is not included in the summaries quoted.

COMMENTS

RESPONSES

C-29: These descriptions are all consistent, except that the existing southern stairway will not be removed, and no new stairway will be constructed. This does not change any environmental impact of the project.

deck both in December 2015 and January 2019. All proposed work would occur ... within the footprint of the existing shoreline protection devices (seawall and lower deck)."

Project Description Draft Mitigated Negative Declaration Subject: Identical to the separately issued *Project Description Mitigated Negative Declaration Notice*.

Initial Study Check List, Description: "The removal of the remnants of an existing seawall, removal approximate 2,120 square feet of a lower concrete deck,... and construction of a new secant pile wall immediately landward of the landward edge of the lower deck. The original seawall ... has had multiple failures, leading to the destruction of approximately one-third of the concrete deck. ... All proposed work would occur ... within the footprint of the existing shoreline protection devices (seawall and lower deck)."

Phases, Initial Study Check list: "After the upper level of tiebacks is locked off, the lower deck and existing seawall would be incrementally removed... . After the installation of the lower tiebacks and hydraulers, the area immediately seaward of the secant pile wall would then be excavated down to the variable elevation bedrock seafloor."

Biological Assessment: "The proposed project includes the installation of a new overlapping drilled pier (secant pile) wall immediately behind the existing 66-year old cast-in-place concrete seawall below the Inn at Sunset Cliffs property. The existing masonry block wall on top of the cast-in-place wall along the Northern half of the property will be removed... . The wall along the southerly edge of the existing failed lower deck will be reconstructed, as will the southerly property line stairway."

CAP Consistency Checklist Submittal Application: "Project proposed a new tieback anchored secant seawall and stairway, and removal of the existing seawall; lower concrete deck; geotubes, and fill and other material seaward of the proposed wall... ."

Geotechnical Report Project Description: "The Project has been revised to move the seawall to the eastern, or land side, of the existing lower concrete deck.... All existing walls, debris, and concrete stairs, slab, and infill seaward of the proposed wall would be removed."

SUMMARY: The project descriptions should consistently and correctly identify the proposed construction, which consists of demolition and construction. The Environmental Review process should request the descriptions to be modified to agree with the plans. The plans should adhere to the conditions of the emergency permits and deed restrictions to attain code compliance instead of violation. THE Draft MND should reconcile the statements previously made in the EIR. The Inn should state on the plans and in the MNP that all material West of the constructed sea wall will be removed if that is their intent. It does not do so.

C-29

COMMENTS

RESPONSES

C-30

DETAILED OBJECTIONS BY SECTION

The following sections address objections individually to the documents and document sections listed in:

1. Notice of Availability Draft Mitigated Negative Declaration. SAP No. 24001513, October 20, 2021
2. Mitigated Negative Declaration, Project No. 231328, SCH No. 1024081073, signed October 14, 2021

OBJECTIONS TO THE NOTICE OF AVAILABILITY DRAFT MITIGATED NEGATIVE DECLARATION SAP No. 240101513

Objections to the Project Description

As briefly stated in the introduction, this project description includes many items not on the plans and are not documented elsewhere. The plans should confirm the subject description in the environmental determination. Many objections were submitted for previous environmental descriptions. Specific objections to the current submission are:

1. The Neighborhood Development Permit (NDP) is still active and is not referenced. The intent seems to be to piecemeal the project after the expanded upper deck (sea wall) is approved.
2. The responsibility for the CDP was previously ceded to the California Coastal Commission but not addressed.
3. The removal of 2,120 square feet of the deck, INCLUDING the firepit area, does not define the area to be removed.
4. There is no documentation that the seawall was constructed in 1953. It has been constructed incrementally. There is a Coastal Commission Violation that addresses this aspect (Attachment B).
5. The statement: "There are no existing easements, and none are proposed" is in response to requests for public access. The proposed Southern stairway access has been removed, and its purpose left undefined.

C-30:

1. A Neighborhood Development Permit ("NDP") is not required for this project under SDMC §§ 126.0402(a)(1), (a)(2), or (a)(3) because of the current uses of the hotel including for weddings, are allowed by right and thus are not a previously conforming use, as explained below. The project also does not involve "[m]aintenance, repair, or alteration of a previously conforming structure" (id. § 126.0402(a)(1)), "[r]econstruction of a structure" (id. § 126.0402(a)(2)), "[e]xpansion or enlargement of a previously conforming structural envelope" (id. § 126.0402(a)(4)), or "[e]xpansion or enlargement of a previously conforming structure" (id. § 126.0402(a)(5)). An NDP is not required under the City's Table 143-01A because this project does not involve the construction of "[s]ingle dwelling units on individual lots equal to or less than 15,000 square feet."
2. The previously approved and referenced Classification of Use Assessment letter stated, "Staff has reviewed the submitted material and upon further research has determined weddings can be allowed at the Inn at Sunset Cliffs as an accessory use." The attached Classification of Use Assessment letter (attached) further notes that "The Inn at Sunset Cliffs is still required to pursue a Coastal Development Permit and Site Development Permit for unpermitted construction

COMMENTS**RESPONSES**

on the bluff and may need to change the areas on the site that they utilize for weddings.” No new or different uses are proposed in connection with this project.

3. The California Coastal Commission will process a coastal development permit application for this project after the City completes all discretionary reviews under City jurisdiction.
4. The approximately 2,800 square feet of lower concrete deck and seawall will be removed entirely, exposing the natural tidal habitat. Drawing C-3 of the current construction drawings shows the area and extent of proposed improvements to be removed, including the firepit area. The secant pile wall creates a curvilinear wall alignment, seaward of which all man-made improvements will be removed, clearly defining the extent of removal.
5. The seawall is shown in the following series of photographs spanning 1962 to 1992, and there has been no incremental change in the seawall. The more recent work on the seawall was performed under emergency CDPs. This is irrelevant, however, because the wall will be removed.
6. Public access was included in a previously proposed project, which would have kept the wall and lower deck in their current configuration. That project is not currently under consideration. Instead, the projects include removing the wall and lower deck and constructing a wall along the toe of the

COMMENTS

RESPONSES

bluff. The currently proposed project has no impact on public access.



1962

COMMENTS

RESPONSES



1982



1983

COMMENTS

RESPONSES



1992

COMMENTS

RESPONSES

OBJECTIONS TO THE DRAFT MITIGATED NEGATIVE DECLARATION PROJECT # 231328, SCH No. 201081073

The Project Description is the same as the Notice of Availability; the objections in the above statement are applicable.

OBJECTIONS TO THE INITIAL STUDY CHECKLIST

The Initial study checklist describes the process in more detail under "Generally, the project consists of the following:" but those details described are missing from the plans submitted.

The project description in the *Notice of Availability*, *Introduction to the Mitigated Negative Declaration* and the *Initial Study Checklist* do not match. Primarily missing from the *Initial Study Checklist* is the information that the concrete deck collapsed twice after the filing of this permit, "once in December 2015 and January 2019," resulting in complete collapse of the area in total. The Initial Study checklist states that it has had "multiple failures, leading to the destruction of approximately one-third of the concrete deck..." This statement is not true. There is no prior documentation that suggests that the entire under-deck is not a result of emergency work. The existing deck was poured in 2016 an 2019.

Other objections are:

1. The address is incorrectly listed as 1370 Point Loma Blvd. The address is 1370 Sunset Cliffs Blvd.
2. Although it states that the CDP and SDP constitute the project, an NDP was proposed and is still on file. The NDP cannot be considered separately from SDP and CDP, and the CDP will be issued by the Coastal Commission under the current agreement.
3. The project description no longer states that all of the lower deck will be removed. It states that 2,120 square feet will be removed. No basis for this number is provided. The statements are not supported in the submitted plans.
4. The statement defines the condition: "1/3 of the concrete deck was destroyed in a failure", but neglects to note the failure in 2015 of the other 2/3, replaced by the currently existing deck and fully documented. In addition, that portion is currently experiencing cracking, sinkage, and undercutting, undocumented (Attachment C).

C-31

C-31: The proposed project includes all required discretionary approvals, except the coastal development permit that the State will process upon conclusion of this process.

1. The correct address is noted.
2. A Neighborhood Development Permit ("NDP") is not required for this project under SDMC §§ 126.0402(a)(1), (a)(2), or (a)(3) because of the current uses of the hotel including for weddings, are allowed by right and thus are not a previously conforming use, as explained below. The project also does not involve "[m]aintenance, repair, or alteration of a previously conforming structure" (id. § 126.0402(a)(1)), "[r]econstruction of a structure" (id. § 126.0402(a)(2)), "[e]xpansion or enlargement of a previously conforming structural envelope" (id. § 126.0402(a)(4)), or "[e]xpansion or enlargement of a previously conforming structure" (id. § 126.0402(a)(5)). An NDP is not required under the City's Table 143-01A because this project does not involve the construction of "[s]ingle dwelling units on individual lots equal to or less than 15,000 square feet."
3. This project will remove the existing seawall, lower deck, and attendant debris.
4. See #3 language above.

COMMENTS**RESPONSES**

C-31

5. The applicant admits that there will be no public access by stating "there are no existing easements, and none are proposed," although they previously proposed a southern public access.
6. Consistent with later checklist information, this document focuses on construction while ignoring the final project. There is no clear definition of the final result or its use.
7. The "durable surface landward of the wall" is an extension of the upper deck beyond the cliff edge, a proposal previously rejected by the City in 2004 and not in conformance with the City of San Diego Municipal Code. .
8. The required draining into the street inlet to the public drainage system is missing, although it was required on prior project plans and documented in the previously issued EIR.
8. The construction described in this section is not contained in the plans.

The City has defined the project and the baseline definition incorrectly. Before the purchase by the current owner, The Inn at Sunset Cliffs LLC, the majority of the area defined now as the terrace was sloped. The existing condition began existence in 2002 when the Inn was purchased by the current owner and cement was poured as a condition of escrow. It was certainly not there in 1991 when the large, Northern expanse fell in. The frequent statement that the seawall was constructed in 1953 is incorrect. The building was built with a permit. Only the owner has access to this file, and he has not seen fit to produce it.

Extensive supporting information was provided to the City during the DOD Cycle Review process. Below is a sample email from 9 October, 2012 email evidence sent to the City project Review staff regarding the sea wall and deck:

"The Inn at Sunset Cliffs deck is not one thing - it is a patchwork of different cement pours. The North portion has always had issues; the condition of the South portion is unknown. On 15 March, 2012, I sent Will Zounes an email with pictures documenting the collapse of the deck in 1991 and the subsequent violation, obtained from city files. This issue was never legally corrected, resulting in erosion beneath the deck. This was documented in a web site in 2004, showing the roof of the sea cave to be the bottom of the cement deck. A copy was sent to Will Zounes on 6 May, 2012. There have been no inspections or direct permitting to correct this condition. The sea wall repair did not solve the problem; the foundation on the North is currently splitting."

The California Coastal Commission also commented in 2012, and the letter is attached, stating "the Commission requests that the city: 1) halt the construction, maintenance, and use of the lower terrace area and related improvements and 2) order the removal of all unpermitted development and restoration of the area to its pre-violation condition." This letter demonstrates that the removal of the lower area is not a new idea.

C-31:

5. This project is impacting no public access; therefore, no new public access is proposed and required.
6. The proposed project is approving and constructing a new seawall and associated improvements.
7. The surface east of the new seawall is necessary to prevent wave over-topping and stormwater from creating hydrostatic pressure on the inland side of the new seawall.
8. The previously proposed drainage was associated with the lower deck and seawall, which are being removed by this project.

C-32: The existing seawall, lower deck, and attendant debris will be removed under this project.

C-33: This project will achieve the California Coastal Commission's stated goals by removing the existing seawall, lower deck, and attendant debris and retreating the shore protection landward.

The comment refers to the City requirement to prevent nuisance water from flowing over the top of the lower concrete deck and thus the need for the previous drainage system discharging to the public street. The revised project eliminated this lower portion of the site below the street elevation, which required the capture and pumping of site drainage to the street. The revised project eliminates any low

C-32

COMMENTS**RESPONSES**

elevation drainage areas, and the entire site now flows directly to the street.

COMMENTS

RESPONSES

C-34: The comment is regarding permitting process and does not address the adequacy of the MND. However, City staff has processed the project consistent with the City's Municipal Code.

*Checklist - Inn at Sunset Cliffs Project # 231328
Response to Draft Copy Of Mitigated Negative Declaration
Sch No. 2014081073, October 21, 2021*

INTRODUCTION

This is the sixth Environmental Determination published for Project # 231328 and the two Emergency Permits associated with it. The first Emergency Permit was issued December 22, 2015. A Stop Work Order was issued January 15, 2016. A revised Emergency Permit was issued February 3, 2016. The second, separate emergency resulted in a 2019 Emergency Permit. As an example of conditions, the 2016 Emergency Permit stated:

10. Any development or structures constructed pursuant to this emergency permit shall be considered temporary until authorized by a follow-up CDP/SDP, and that the issuance of an emergency CDP/SDP shall not constitute an entitlement to the erection of permanent structures. Any development authorized by this emergency permit must be removed unless a complete application for a regular CDP/SDP for the development is filed and deemed complete within 90 days of issuance of the emergency permit. If a regular CDP/SDP authorizing permanent retention of the development, or a portion of the development, is denied, then the development that was authorized in the emergency permit, or the denied portion of the development, must be removed.

This information is to provide a context for the Environmental Determinations and the current Mitigated Negative Declaration.

These are:

Negative Declaration
Negative Declarations, 2016 Emergency Permit and 2019 Emergency Permit
Environmental Impact Report, Notice of Availability of DEIR, June 13, 2018
Statutory Exemption from CEQA with Intent to Deny the Project, August 20, 2020
Current Mitigated Negative Declaration

C-34

COMMENTS

RESPONSES



1953

COMMENTS

RESPONSES



February 1980

COMMENTS

RESPONSES

OBJECTIONS TO FACTORS USED TO ESTABLISH ENVIRONMENTAL DETERMINATION

DETERMINATION

The following objections outline the reasons that the following determinations are inappropriate:

The proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required. Comments are provided as follows:

- I. Aesthetics — Objections: View corridor and Community Plan issues.
- II. Agriculture and Forestry Resources — No comments.
- III. Air Quality — Objections to odor management.
- IV. Biological Resources — Objections based on deed restriction.
- V. Cultural Resources — No objections.
- VI. Energy — No objections.
- VII. Geology/Soils — Major objections based on plans and *Geotechnical Report*.
- VIII. Greenhouse Gas Emissions — Objections referred to CAP.
- IX. Hazards & Hazardous Materials — No objections.
- X. Hydrology/Water Quality — Major objections based on prior requirements.
- XI. Land Use/Planning — Objections based on Project Permitting.
- XII. Mineral Resources — No objections.
- XIII. Noise — Objections to definitions for construction but not use.
- XIV. Population/Housing — No objections.
- XV. Public Services — No objections.
- XVI. Recreation — Objections based on proximity to Sunset Cliffs Natural Park.
- XVII. Transportation — Objections.
- XVIII. Tribal Cultural Resources — No objections.
- XIX. Utilities/Service System — No objections.
- XX. Wildfire — No objections.
- XXI. Mandatory Findings of Significance — Cumulative major objections.

COMMENTS

RESPONSES

Issue	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

Differences from the presented Environmental Objective Determinations are in red/darkened along. The proposed impact remains as presented.

I. AESTHETICS –

Would the Project:

- a) Have a substantial adverse effect on a scenic vista?

The existing unpermitted additions, previously on the Site Plan, are no longer addressed. The most recent fencing installation consists of a tall chain-link fence, latticework, an artificial leaf-colored wall, a gazebo, and a second wall. This fencing is documented as illegal in a California Coastal Commission violation. The open fence required is defined by the City municipal code as "a fence that has at least 35 percent of the vertical surface area of each 6-foot section open to light. Within the Coastal Overlay Zone, open fence means a fence designed to permit public views that has at least 75 percent of its surface area open to light." The current application ignores the prior 10 years of application for this project and the sequence of reviews and comments preceding it. The continuing blocking of public view makes this a potentially significant impact, with no indication the applicant is willing to mitigate the impacts. A photo of the current status is provided in Attachment D.

C-35

The portion of the retained deck, fencing, and accoutrements are unidentified in the site description or site plan, providing no definition to substantiate the absence of a substantial adverse effect on the scenic vista.

The current DMND concurs that the "view cone" is identified at the end of Point Loma (Avenue, although they call it Boulevard). Scenic vistas will be blocked by lattice fence/gate development as specified on the current plans but not on prior plans or any prior submissions by Inn at Sunset Cliffs for decking. The existing fencing is unpermitted and does not meet the definition of "existing." The lattice fencing is not IAW SD Municipal Code for Coastal Use. Lattice fencing is also documented in the Coastal Commission Violation. The existing fencing is unpermitted and does not meet the definition for "existing." It has a substantial adverse effect, particularly on winter sunsets. There is no proposed mitigation.

The fencing on the south prevents Northern Views in the same manner, but it is not a part of a defined view cone. The view-blocking from the north is exceptional, particularly in an area where ADA accessibility is available from the street-end bluff top.

- b) Substantially damage scenic resources, including but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?

Scenic resources damaged include Sunset Cliffs, Sunset Cliffs Natural Park, sea life, and small sand-stone islands. Although these are adjacent to Sunset Cliffs Natural Park, they are not within a state scenic highway. However, the item states, "including but not limited to." Additional protection is provided in the Peninsula Community Plan, which is not referenced in this document. The proximity to Sunset Cliffs makes this a particularly damaging aspect.

C-35: There are no impacts on the view cone, as previously submitted information demonstrates. There are no property line fences associated with this project.

COMMENTS

RESPONSES

Issue	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less than Significant Impact	No Impact
c) In non-urbanized areas, substantially degrade the existing view character or quality of public view of the area? (public views are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

See I. a) above. This is a rare instance of view blocking on a property near Sunset Cliffs Natural Park. This property is included in the **Peninsula Community Plan as well as the Ocean Beach Community Plan (see Attachment E)**. This item states "not limited to," as the view cone is not within a state scenic highway. The "existing" fencing is unpermitted and does not meet the definition of "existing." It was stated at the Ocean Beach Planning Board that the latticework is temporary. In that case, it should be removed from the site. There is no proposed mitigation.

This Northern fence does not conform to the City of San Diego Municipal Code and is in the view cone corridor, blocking a view of Sunset Cliffs Natural Park. This fence is not in conformance. A photo is provided in Attachment D. In addition, it blocks ADA viewing, although the Inn holds an ADA Upgrade Permit.

d) Create a new source of substantial light or glare that would adversely affect day or nighttime views in the area?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--	-------------------------------------	--------------------------	--------------------------	-------------------------------------

The applicant's attempt to limit all scrutiny to the seawall ignores the previous 10 years of documentation and requirements. Mitigation could have been proposed, but it was not. Events and functions with temporary lights would adversely affect nighttime views when floodlights, event lighting, and other strong light sources are used. A photo of fire dancing is provided in Attachment D. There is no proposed mitigation.

C-36: The project will improve, not degrade, views. The new wall will be approximately 21-34 feet from the existing wall and lower terrace. It is not clear what fencing the comment is referencing. The latticework is not part of this project. The project's holding of Special Events is an existing, established use that the City has determined allowable by right. No change in use of the property is proposed under this project.

C-36

COMMENTS

RESPONSES

Issue	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

II. AGRICULTURAL AND FOREST RESOURCES – No comments.

III. AIR QUALITY

The applicant checked no boxes for item d). Item d) is the only applicable item in this section.

- d) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?

The use of this property is for events, usually involving catering and alcohol for up to 150 people. The source of the odors is catering. There have been multiple complaints to the City regarding taco, pizza, and barbecue odors, which occur weekly. If this project has been redefined as the building of a seawall only, then Project 3 231328 should be closed and a new project opened because of this redefinition, which the consultant continuously states "no impacts would occur."

Project Number 38229, Inn at Sunset Cliffs Assessment Letter, Assessment Letter, August 9, 2004, stated:

"H. Outdoor Cooking Area: The project plans need to be clarified to show the location of the outdoor cooking area and proposed utility connections. The provisions of the off-site development regulations at SDMC §142.0710, "Air Contaminant Regulations," will apply to the outdoor cooking area. Fumes cannot emanate beyond the boundaries of the premises upon which the use emitting the contaminants is located. Please demonstrate on the plans the appropriate ventilation to ensure compliance with this provision of the Municipal Code."

IV BIOLOGICAL RESOURCES

Would the project: (For all responses, see summary at the end)

- a) Have a substantial adverse effect either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

- b) Have a substantial adverse effect on any riparian habitat or on other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

C-37: The existing, ongoing, and by-right use of the property is not part of this project and has been deemed allowable by the City. No change in use is proposed.

Potential biological impacts are mitigated through the requirement of a pre-construction survey and ongoing project monitoring.

Neighbors' complaints about alleged existing noises and "taco, pizza, and barbecue odors" are not relevant under CEQA. (See *Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, 196 ["Even if the noise generated by the [applicant] adversely impacted the ability of the [neighbor] to continue operation as a viable business, the impact on the [neighbor] alone would be insufficient to support the preparation of an EIR."].)

C-37

COMMENTS

RESPONSES

Issue	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less than Significant Impact	No Impact
c) Have a substantial adverse effect on any federally protected wetlands (including but not limited to marsh, vernal pools, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native residents or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or site habitat conservation plan?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

C-38

Biological resources were of great interest to the Coastal Commission during the 2005 hearing for seawall repair. As a result, the plans were also signed by Chris Larson, City of San Diego, on XXX. The Permit required a deed restriction. That deed restriction has not been met, and will be subject to Coastal Commission study, potential liability for the City of San Diego as a result of the assessment of the loss of sea life associated with the two Emergency Permits...

As stated, a biological review of the project site was first conducted in October 2011 (Project Design Consultants 2011). No biological studies have addressed the deed restriction. Construction during the two emergency permits essentially destroyed the habitat for shoreline species. An examination is required and will show that the deed restrictions have not been met.

The current Intertidal Biological Assessment (Marine Taxonomic Services, September 2021) results from a two-hour visit to the site. It does not appear to reflect what was stated in the prior biological assessment or the more important deed restriction. With no Demolition plan removing the lower deck, it is difficult to assess the impact of this item. No description in the application provides for removal of the existing sea wall and deck behind it, no matter how described in various reports.

Seals get out of the way when the world is falling in on them, and thus there is no impact. There are no significant abalone colonies in this area, and the protection of an abalone habitat is meaningless. No mention is made of lobsters, which abound nearby.

C-38: The comment does not explain what provision of the deed restriction has been violated, how it has been violated, or how it is even relevant to this project. The repair work authorized by that CDP will be removed, so any conditions of that permit will no longer be in effect. Further, the comment does not include evidence that the project will impact biological resources. Approval of the project will require a preconstruction biological survey and monitoring during construction, with the monitor having authority to halt construction if a potential impact on biological resources is identified.

COMMENTS

RESPONSES

Issue	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less than Significant Impact	No Impact
V. CULTURAL RESOURCES – No comments.				
VI. ENERGY – No comments.				
VII. GEOLOGY AND SOILS				
The previous EIR found that Geology and Soils represented significant environmental impacts, stating "Through scoping activities, the City determined that the project would have the potential to result in the following significant Environmental Impacts: Geology and Soils." There is no substantiation for the reversal of this determination in this MND.				
Would the project:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
a) Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death, involving:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
The failure of the deck or the sea wall support of the deck during a major event with 100+ people on it will create the documented adverse effect. The area has unexpectedly collapsed twice. There is no proposed mitigation. The geological hazard category of "4.3" submitted on the plans is not discussed. The two emergency failures after statements of safety were fortunate that no loss of life occurred.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Although there are no new habitable structures, the potential failure due to seismic hazards would directly affect the loss, injury, or death of 100+ participants who will routinely utilize the deck during events. There is no proposed mitigation. The geological hazard category of "4.3" submitted on the plans is not discussed.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ii) Strong seismic ground shaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
See iii below.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii) Seismic related ground failure, including liquefaction?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
MND: TerraCosta Consulting Group, Inc., the project's geotechnical consultant, has investigated the site conditions and in their report of December 2020 opined that the potential for liquefaction of subsurface soils at the site is negligible. No impact would occur.				
OBJECTION: The incoming tides gaining access to the site through sea caves results in liquefaction inside the sea caves, eroding the subsurface soils. This is observed via the mud running out of the sea cave entrances. This is because of the crevasses between the cement				

C-39

C-39: The impacts represented in the City's documents refer to the potential for an additional collapse of the lower deck resulting from the ongoing undermining of the nearly 70-year-old seawall. The proposed project removes the old seawall and the lower deck and builds a new seawall entirely behind all of the surge channels that have undermined the nearly 70-year-old seawall. The proposed project avoids adverse impacts associated with marine erosion.

This seismic impact also has to do with the potential for further destabilizing the nearly 70-year-old seawall and the associated risk to the public and lower deck. As indicated previously, the old wall and lower deck are being removed entirely, and an entirely new structure is being built landward of the lower deck, eliminating this impact. Seawall design following the California Building Code will reduce the risk of damage from strong seismic ground shaking to an acceptable level.

Similar to the above discussion, the comment's objections revolve around storm surf entering through the joints and fissures, which eventually breached the foundation under the nearly 70-year-old seawall, causing scour of the fill material supporting the deck. This concern is eliminated by removing the old seawall and the lower deck. Moreover, the potential for any new surge channels forming below the new seawall has been eliminated by the secant pile wall extending to a depth of 20 feet below sea level. As a result, marine erosion along

COMMENTS**RESPONSES**

fractures and jointing in the rock should be arrested by the new proposed secant pile seawall.

COMMENTS

RESPONSES

Issue	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less than Significant Impact	No Impact
and the soil. This forms a channel inside the seawall. When the water reaches the seam between a hard surface and a soft surface, the soft surface erodes. Although not the classic definition of liquefaction, it is the result of water action on the site.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iv) Landslides?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
The two occurring collapses were effectively landslides. There is no documentation that take the responsibility of saying further occurrences will not occur. This failure could be mitigated by engineering the repair to the sea wall. The engineer does not guarantee the stability of the sea wall beyond the date of his letter. There is no proposed mitigation. The geological hazard category of "4.3" submitted on the plans is not discussed.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
No comment on Item b).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Be located on a geologic unit or soil that is unstable or that would become unstable as a result of the project, and potentially result in on-or-off-site landslide, lateral spreading, subsidence, liquefaction, or collapse?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
MND: A stability analysis of the natural geologic slopes (without the protective seawall and backfill) was completed for the site by Terra Costa Consulting Group, Inc. The analysis from the geotechnical report indicated that the slope has factors of safety ranging from 1.4 against a shallow failure within the terrace deposits, to a high of 4.0 against a deep-seated failure for gross stability. The construction of the seawall would not negatively impact the slope stability and as noted in the report would improve conditions. No impact would occur.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
OBJECTIONS: The response above references the Geotechnical Report. In addition to comments in VI-a-iv, no engineering has been performed after the void fill, and the engineering report only analyzes the bluff edge. The original engineering report provided shows that part of the area is fill. There is evidence that the deck area is sinking due to the instability of the underlying space. The impact is unknown.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994) creating substantial risks to life or property?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
MND: The geotechnical investigation of the site did not identify expansive soils as a potential hazard for the site. No impact would occur.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
OBJECTION: The Geotechnical Report does not include the geotechnical investigation of the site. The impact is unknown.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
VIII. GREENHOUSE GAS EMISSIONS:- See CAP comments.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
IX. HAZARDS AND HAZARDOUS MATERIALS – No comments.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

C-40

C-40: The comment is about addressing the lower deck failures. As indicated in previous comments, the concern revolves around past breaches below the aging seawall and the subsequent collapse of the lower deck. The proposed project removes the older seawall and deck. Therefore, future foundation breaches below the old seawall and lower deck are irrelevant.

C-40: The comment references slope stability analyses provided in an earlier geotechnical report that did not include the presence of any voids. Those slope stability analyses reflected the factors of safety against slope instability, assuming no shoreline stabilization at the site (a requirement of both the City of San Diego and the California Coastal Commission for the project under review). As indicated, the existing aging seawall and deck will be removed entirely, and a new seawall will be constructed landward of the lower deck in an area where no voids exist. As a result, there will be no slope stability concerns upon completion of the proposed project.

Geotechnical Exploration, Inc. completed a comprehensive geotechnical investigation of the site and, in their February 2, 2004, report titled, “Report of Sea Cliff Edge Evaluation and Deck Support Recommendations, Inn at Sunset Cliffs, 1370 Sunset Cliffs

COMMENTS

RESPONSES

Issue	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

X. HYDROLOGY AND WATER QUALITY

A quote from the previous EIR for this project:

"This section is reproduced from TerraCosta's September 17, 2012, letter in response to DSD's May 15, 2012, geotechnical related comments.

PROJECT DESIGN CONSULT ANTS

Project No. 2317

LDR - Engineering Review (Jack Canning)

November 10, 2017

Page 53

Item 5: SDMC section 143.0143(d) states: Any drainage from the improvements on the premises shall be directed away from any coastal bluff and onto a street developed with a gutter system or public right-of-way designated to carry surface drainage run-off. Show and call out how drainage will be collected and discharged in order to reduce, control, or mitigate erosion of the coastal bluff. The 2018 EIR addressed Hydrology and Water quality, quoting the EIR: "A drainage and water quality letter report dated October 19, 2011 was prepared for the project by PDC, and was subsequently updated on August 15, 2017." No update to that report was provided and the materials in it are not addressed.

C-41

The EIR stated:

"The project would install a wet well, pump, and outlet pipe at the existing low point in the reconstructed terrace to drain water from the terrace and transport it to Point Loma Avenue, where the water would flow into the existing storm water conveyance system. The project would also install a second wet well and pump at the northwest corner of the top tier patio, and an outlet pipe would be extended to the face of the curb at Point Loma Avenue, where collected runoff would be discharged. The project would also construct a berm ditch along the western edge of the reconstructed terrace that would collect and convey runoff to the proposed wet well at the existing low point in the reconstructed terrace for discharge to the existing storm water drainage system on Point Loma Ave. *

Following the Emergency Permit, the following requirements were placed by the City:

Water Quality		
Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	15	Please see comments from Engineering staff. All drainage from the improvements on the premises shall be directed away from any coastal bluff and either into an existing or newly improved public storm drain system or onto a street developed with a gutter system or public right-of-way designated to carry surface drainage run-off. All drainage from any unimproved area shall be appropriately collected and discharged in order to reduce, control, or mitigate erosion of the coastal bluff.

A drainage report will be required. (New Issue)

Until the most recent incarnation of this project, the drainage described above was a feature. This drainage requirement has been abandoned. The drainage planning and approval are not addressed in the analysis below, even though the prior application included a drainage system. The original EIR stated details as provided in the "2011 b Drainage and Water Quality Letter

Boulevard, San Diego, California," indicated that no expansive soils exist on site.

C-41: As noted, the previously proposed drainage system was associated with continued use of the lower deck. This project removes the existing seawall, lower deck, and attendant debris. The existing and the additional surface area east of the replacement seawall will direct runoff to the adjacent public right of way. Rainfall on the upper deck simply flows through existing bluff-top drainage infrastructure and out to the street.

COMMENTS

RESPONSES

Issue	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less than Significant Impact	No Impact
Report, and "2017 Update Drainage and Water Quality Letter Report," by Terra Costa Engineering. These reports are missing from the current analysis.				
Would the project:				
a) Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater quality?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MND: "... This will be addressed through the project's Conditions of Approval; therefore impacts would be less than significant, an no mitigation required."				
OBJECTION: The above response is inadequate, given the previous requirement that a drainage system was required.				
The drainage system drains onto Point Loma Avenue. Before the storm drains were installed, the street served as the drainage for local stormwater and runoff, with a visible spillway at the end of the street. As a result, the street slopes toward the ocean to facilitate the original run-off into the ocean. The previously proposed drainage system took these facts into account. In the past, there has been flooding on Point Loma Avenue from stormwater. One purpose of the stormwater system is to process polluted water which would otherwise enter the Ocean. The pollution effects are undocumented by the engineering.				
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
The MND only addresses the construction and does not address the final configuration.				
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or through the addition of impervious surfaces, in a manner which would result in substantial erosion or siltation on- or off-site	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
The MND only addresses the construction and does not address the final configuration.				
i) result in substantial erosion or siltation on- or off-site.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
References only to b) above, stating "impacts would not occur."				
ii) substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

C-42

C-42: The comment correctly notes that TerraCosta's 2017 Update Drainage and Water Quality letter report addressed runoff on the fill slope and lower deck, which is to be removed as part of the proposed project. The proposed project simplifies drainage with a new 2,180-square-foot upper surface draining to Sunset Cliffs Boulevard and Point Loma Avenue through the existing drainage infrastructure. This results in a less than significant impact.

The proposed project results in no groundwater infiltration and has no impact on groundwater supplies within the groundwater basin.

The proposed project improves site drainage, eliminating the need for pumping runoff from the lower deck up to Point Loma Avenue. Accordingly, there is no impact.

The proposed project eliminates the previous fill slope; thus, the current project has no exposed soil slopes and no potential for erosion or siltation on or off-site.

The proposed project reduces the on-site watershed area and the amount of surface runoff or the potential for flooding on or off-site.

COMMENTS

RESPONSES

Issue	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less than Significant Impact	No Impact
References X. C0 ii) above, stating "impacts would not occur."				
iii) create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff, or	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
No justification for the final product, as no Drainage Study exists.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
The total response in the Draft MND states "the construction of the seawall does not have the ability to impede or redirect flows that would result in an impact. Impacts woul not occur." However, this is not supported by the findings in the prior EIR. This site has a large swimming pool potentially more than 50 years old.				
d) In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
The response is not justified.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
XI. LAND USE AND PLANNING				
a) No objections.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Cause a significant environmental impact due to a conflict with any applicable land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating a environmental effect?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The Draft Mitigated Declaration determination attempts to address this issue by referring to the *Geotechnical Report*, addressing the following issue:

"Recommendation 7.3.4 from the Community Plan, allows for the placement of shoreline protective devices, such as concrete seawalls, and revetments, only when required to serve coastal-dependent uses or when there is no other feasible means to protect existing principal structures, such as homes, in danger from erosion. The geotechnical report has indicated that

C-43: As indicated above, the on-site drainage area has been reduced, and there is no impact on the capacity of existing stormwater drainage systems.

As indicated previously, the on-site watershed has been reduced, with the project having no impact on impeding or directing flood flows.

In contrast to the original design, the proposed project, with a higher seawall, eliminates the potential for flood hazards, tsunamis, or seiches inundating the project, with no potential for release of pollutants.

As indicated previously, eliminating the lower fill slope and the lower deck below Point Loma Avenue improves water quality since stormwater and wave overtopping will not flow over the disturbed (to be removed slope). Moreover, with the elimination of the exposed fill slope, there is no infiltration and no impact on the groundwater management plan.

C-43

COMMENTS

RESPONSES

Issue	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

the proposed shoreline stabilization project is necessary to prevent the continued erosion of the lower bluff threatening the bluff-top structures and to prevent flanking of the adjacent walls to the north and south.

OBJECTION: The response does not also address the Peninsula Community Plan. The question answered is not the question asked. The question is NOT "Are shore protective devices allowed or prohibited?" That is the question that is answered. It also addresses the North and South with protection "to prevent flanking of the adjacent walls to the north and south." This position for North and South protection is not reflected in the plans.

This project conflicts with the Local Coastal Program, the Zoning Ordinance, the *Ocean Beach Community Plan*, and the *Peninsula Community Plan*. Many elements do not conform to the SD Municipal Code and the Local Coastal Program. References in the Peninsula Community Plan are addressed in Attachment E. This question is not answered in the CEQA Mitigated Negative Declaration.

XII MINERAL RESOURCES – No Comments

XIII. NOISE –

Would the project result in:

- a. Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standard the local general plan or noise ordinance, or applicable standards of other agencies?

Commercial events in the RM-5-12 zone generate noise above standards in the Municipal Code. The amplified music and entertainment all occur outdoors, directly adjacent to and across the street from residentially-zoned and inhabited properties. There is no proposed mitigation.

- b) Generation of excessive groundborne vibration or groundborne noise levels?

The loudspeakers generate groundborne vibration.

Events include outdoor amplification, event preparation, and event cleanup, causing a substantial increase in ambient noise, especially fully amplified events. There is no mitigation for amplified music, particularly the vibrating lower ranges (bass).

- c) For a project located within the land use plan, or where such plan has not been adopted, within two miles of a public use airport would the project expose people residing or working in the area to excessive noise levels?

C-44: The proposed project is for the protection of an existing low-income visitor-serving public use that has been in existence within the Ocean Beach Community for almost 70 years. Removing the lower deck improves water quality since stormwater and wave overtopping will not flow over the disturbed (to be removed slope), provides approximately 2,800 square feet of additional tidal habitat, and improves the visual quality of the area. The proposed project complies with the Ocean Beach Community Plan's Land Use Plan policies and regulations.

There are no noise impacts associated with the project. The existing and ongoing allowed by-right uses would continue conformance with applicable noise requirements.

C-44

COMMENTS

RESPONSES

Issue	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

No comments on item c).

XII. POPULATION AND HOUSING – No comments.

XV. PUBLIC SERVICES – No comments.

XVI. RECREATION – No comments

XVII. – TRANSPORTATION

Although there are no specific comments on Item a) through f), the inclusion of 24 parking spaces on the plans without identifying their locations certainly has the potential for traffic impact. Point Loma Avenue is a dead end street, and the Inn does not use their garages for parking. So the location of these parking spaces, as yet unprovided by the applicant, could have significant impact on the TRANSPORTATION/TRAFFIC Item. This discipline was removed from the city review process after the parking reviewer at the City raised objections. These parking spaces are totally undocumented, did not exist on prior applications, and consequently may have substantial impact based on their implementation.

C-45

Would the project?

- a) Conflict with an adopted program, plan, ordinance or policy addressing the transportation system, including transit, roadways, bicycle and pedestrian facilities?

No plan addresses the Bike Path requirements outlined for Sunset Cliffs Blvd. in the Peninsula Community Plan.

- b) Would the project or plan/policy result in VMT exceeding thresholds identified in the City of San Diego Transportation Study Manual? Conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)?

- c) Substantially increase hazards due to a geometric design feature (e.g. sharp curves or dangerous intersections or incompatible uses (e.g. farm equipment)?

C-45: On-site parking issues were resolved by the City in 2011 by the Inn's restoration of all on-site parking spaces to parking use. The proposed project does not impact or create the need for bicycle circulation. The project has no impact on the circulation system design or implementation.

COMMENTS

RESPONSES

C-46: This project does not impact parking. Parking is not an impact addressed under CEQA.

Issue	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less than Significant Impact	No Impact
d) result in inadequate emergency access?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

This project was originally filed to address two Notices of Violation. The use of the public-right-of way for private parking was one of the items. An additional ADA Parking violation is still open as of this date. Point Loma Avenue is a dead end street, and all previous applications tried to address that by having 24 parking spaces approved. The letter from Nicole Pedone regarding the Inn specifically leaves the parking as an outstanding problem. The City of San Diego parking discipline was removed from the city review process after the parking reviewer at the City raised objections. All documentation for parking spaces is completely unaddressed in this application, and thus may have substantial impact based on their implementation.

The Inn at Sunset Cliffs routinely blocks the public areas marked "NO PARKING" with their catering trucks and delivery vehicles, although they have a loading area in the front.

Photographs are provided in AttachmentD.

XVIII. Tribal Cultural Resources – No comments.

XIX. UTILITIES AND SERVICE SYSTEM – No comments.

XX. WILDFIRE – No comments.

C-46

COMMENTS

RESPONSES

Issue	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

XXI. MANDATORY FINDINGS OF SIGNIFICANCE

- a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California History or prehistory?

Potentially significant impacts to the environment resulting from the proposed project have been identified for the areas of biological resources. The mitigation proposed in the Biological Report was based on a two-hour visit to the site by a biologist. The report does not discuss the wildlife population that has already been destroyed by two Emergency Permits. Please see the Biology section for additional information supporting a significant impact.

C-47

- b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects?)

When viewed in connection with the effects of construction after this project was filed, the cumulative effect since filing should be considered, in addition to future effects, future effects which are considerable. SD DSD, in their review of the applicant's Project 38229, provided questions in these areas which were never answered, such as comments regarding fires and cooking. DSD comments on Project 38229 are provided as a Reference. Project 38229, "Add Deck and Screening," was withdrawn by the Inn at Sunset Cliffs but is a likely example of the probable future project, as is the previously planned roof bar and liquor license.

The applicant has swept away the use of this site, zoned R-M-12 (Residential Multiple) as a commercial site. The City has placed no limit on the number of attendees nor the type of event permissible at the site. The Inn ignores the end-of-street NO PARKING signs designed to permit lifeguard access promptly. The lower deck, now in limbo, is starting to crack, and the northernmost fence posts are crumbling. When the effect of two undocumented Emergency construction projects is considered, the cumulative effect is not at this point mitigable without further documentation.

- c) Does the project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?

C-47: Potential biological impacts are mitigated by the required pre-construction survey and ongoing project monitoring. The comment does not provide evidence of significant environmental impacts associated with fires and cooking. Special Events are an existing and established, by-right use of the property as the City has previously determined. This project does not propose any change to existing users.

COMMENTS

RESPONSES

Issue	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

The current study does not address the issues from the existing EIR. That EIR was accepted by the City, but never issued because of the second emergency collapse. Although this study did not identify any significant impacts to human beings, the reality of the project, code compliance violations, requirements of two different emergency projects, and changes in the project description since original filing are ignored in the current DMND. With minimum engineering description and project definition, including no plan for demolition or grading, this project will cause significant impact to human beings directly as a substantial adverse impact. Objections to Aesthetics, Geology and Soils, Hydrology and Water Quality, Noise and Transportation and Traffic potentially affect human beings with the potential for substantial adverse effects. Refer to the City's prior Environmental Decision that an Environmental Impact Report is required for this project.

C-48

The EIR contained the following statement:

"A draft Negative Declaration (ND) was circulated and published for public review on August 5, 2013. Public comments on the draft ND include expert opinions from geotechnical/seawall consultants, which disagree with the conclusion of applicant's geotechnical consultant that the original lower concrete terrace does not affect the structural integrity of the seawall. Based on expert opinions, the public comments state that the project may have a significant impact on the environment and request the preparation of an EIR. Section 15064(g) of the CEQA Guidelines states, 'If there is disagreement among expert opinion supported by the facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant, and shall prepare an EIR.'

With minimum engineering description and project definition, this project may significantly impact human beings directly as a substantial adverse impact. Objections to sections: Aesthetics, Geology and Soils, Hydrology and Water Quality, Noise, and Transportation and Traffic potentially affect human beings with the potential for substantial adverse effects.

By recognizing the project's environmental impacts with a full EIR, decision makers will have a better understanding of the physical and environmental changes that would accompany the project's approval.

C-48: There is no existing certified EIR. The project for which the EIR was drafted is not under consideration as the project has been changed. For the currently proposed project, which is quite different, a Mitigated Negative Declaration was deemed appropriate because the project's impacts are mitigated as described and conditioned. Furthermore, the comments concerning the fair argument test are erroneous. The question is not whether the project will "potentially affect human beings," as asserted by the comment. Instead, "the question is whether the project may have a significant effect *on the environment*." (*Newtown Preservation Society v. County of El Dorado* (2021) 65 Cal.App.5th 771, 788.) The comment does not identify any evidence of a significant environmental effect.

COMMENTS

RESPONSES

OBJECTIONS TO INITIAL STUDY CHECKLIST REFERENCES

The following objections are made to the Initial Study Checklist References:

1. For government documents, the assumption is that the latest date prior to the issuance of the Draft MND is the valid date. For applicant-produced documents, the document titles should include the dates because there are multiple versions of the same document. The list should contain all documents that apply.
2. The *Ocean Beach Community Plan* is the primary governing community plan. However, the *Peninsula Community Plan* identifies the area on Sunset Cliffs Blvd South of Point Loma Avenue applicable to the Inn at Sunset Cliffs Property. Although this seems a discrepancy, it includes it because of the nearby Sunset Cliffs Natural Park requirements for bikeways, biological preservation, and other factors specific to the Sunset Cliffs area. The areas of Public Service, Recreational Resources, and Transportation are covered in the *Peninsula Community Plan*, in addition to the *Ocean Beach Community Plan*. Details of the *Peninsula Community Plan* are provided in Attachment E.
3. The *Kearny Mesa Community Plan* is incorrect for Aesthetics and Biology.
4. Land Use and Planning sections also references the *Geotechnical Report: the Inn at Sunset Cliffs*, omitted from the checklist.
5. Reports are available from the previously distributed EIR and are not referenced or replaced.
 - UPDATE REPORT, GEOTECHNICAL / COASTAL CONDITIONS, THE INN AT SUNSET CLIFFS, SAN DIEGO, CALIFORNIA, November 10, 2017.
 - Memo, Inn at Sunset Cliffs, Project 231328, Drainage and Water Quality Letter Report, August 15, 2017

C-49

OBJECTIONS TO SITE PLAN

These are minimal comments as the site plan in the Draft MND is not the latest. The site plan has changed since the Geotechnical Report was published.

1. The site plan does not agree with the Site plan available to the public as presented at the Ocean Beach Planning Board in July 2021. The site plan agrees with the Geotechnical Report which was published in December, 2020. Each iteration of the proposed project removes detail, and the initial Site-plan for earlier iterations had the most detail, identifying the areas of Emergency Permitting, while the current description ignores the conditions of the Emergency Permitting. Attachment A provides a variety of site plans for the current project.
2. The requirements for drainage in prior submissions has disappeared, with no explanation.
3. The wall extends seaward of defined boundaries on the North end.
4. The purpose of the stairway to nowhere is not presented.
5. Only the Western facing seawall is provided in any detail. The North and South facing seawalls are ignored.

C-49: The Ocean Beach Community Plan is the appropriate community plan. The comment does not cite evidence that the project will impact “bikeways, biological preservation, or other factors specific to the Sunset Cliffs area.”

As the comment is well aware, the proposed project site plan completely removes and eliminates the aging seawall, lower deck, and all associated man-made improvements to provide approximately 2,800 square feet of new, natural tidal habitat. The site plan shows the construction of a new seawall landward of the existing lower deck and the removal of many elements that had been objectionable to the Coastal Commission, the City of San Diego, and project opponents.

Associated with these plan changes, the comment is correct that drainage plans for the lower deck area in prior submissions no longer apply, with the current plan providing much more straightforward and better drainage and use of the site.

COMMENTS**RESPONSES**

The new, more landward, drilled pier secant pile wall will remain entirely within the earlier footprint of the older wall, except for a short extension of the north return wall so that it can tie into the City's double-barrel storm drain headwall. This small change benefits the City of San Diego: it substantially cleans up old improvements constructed by past private property owners and the City of San Diego. It mitigates the potential undermining of Point Loma Avenue.

The existing southern stairway was discussed and will continue to provide access to the formation shelf rock that extends to the south around elevation +12 feet.

The comment regarding the north- and south-facing seawalls being ignored is correct because these walls were eliminated from the proposed project with the proposed landward seawall.

COMMENTS

RESPONSES

OBJECTIONS TO CAP CONSISTENCY CHECKLIST SUBMITTAL APPLICATION

Objections:

1. The Property Address is incorrect. It is 1370 Sunset Cliffs Blvd. It is not 1370 Point Loma Blvd.

2. The applicant's name is Gavin Fleming. It is not Gary Fleming.

3. Brief Description: Project Description:

The projected description states: Project proposes a new tie-back, anchored secant seawall and stairway, and removal of the existing seawall, lower concrete deck geotubes; and fill and other materials seaward of the proposed wall, associated with an existing 24 room hotel."

1. The stairway description is incorrect. No new stairway is proposed. The plans do not indicate a new stairway but retention of an existing stairway (with no destination point). The purpose of the stairway is not indicated.

2. In this document, the applicant expands upon their rights. The claim to expanded "accessory uses permitted in conjunction with hotels" does not apply to RM-5-12 zoning. The property was permitted as an apartment building and is zoned Residential Multiple (R M): R-M-12. It has no commercial uses associated with a hotel. The quoted "accessory uses" defined in the Land Development Code are not referenced. This project purports to be for a "sea wall" only also re-introduces the use issues. Although the applicant states that it is for a seawall only, the applicant has a Neighborhood Development Permit that is not completed and describes these extensive other uses on file.

Step 1: Land Use Consistency.

3. The "allowed by right" reference does not provide a direct reference within the Land Development Code (LDC). No references to the Peninsula Community Plan are included.

Step 2: CAP Strategies Consistency

The questions all refer to residential uses. With the zoning of RM-5-12 (Residential Multiple), the claim that the project is exempt from these requirements is questionable.

Strategy 3: Bicycling, Walking, Transit & Land Use

The Peninsula Community Plan includes this property, primarily for its proximity to Sunset Cliffs Natural Park, and in particular to bicycling, walking, and transit issues. Although The Ocean Beach Planning defines voting authority, the two plans have some overlap of areas. Attachment E contains details of the Peninsula Community Plan.

The unlimited attendance for events at this location also raises CAP questions, as well as Greenhouse Emission questions. There is insufficient information to completely analyze the impact.

C-50

Attachment F, Page 27

C-50: Correction of the project's name and address is appropriate. The existing southern stairway is proposed to remain.

A Neighborhood Development Permit ("NDP") is not required for this project under SDMC §§ 126.0402(a)(1), (a)(2), or (a)(3).

Per San Diego Municipal Code section 131.0406, the "RM-5-12 zone permits visitor accommodations or medium density multiple dwelling units at a maximum density of 1 dwelling unit for every 1,000 square feet of lot area." The previously approved and referenced Classification of Use stated, "Staff has reviewed the submitted material and upon further research has determined weddings can be allowed at the Inn at Sunset Cliffs as an accessory use." No new or different uses are proposed in connection with this project.

The proposed project conformed to the CAP Checklist as submitted with minor corrections to the address and name noted above.

The project falls under the Ocean Beach Community Plan, not the Peninsula Community Plan. Regardless, this shore project presents no inconsistency with the Peninsula Community Plan and no impact on bicycling, walking, or transit. This project does not involve a change of existing uses. Therefore, questions of CAP strategies consistency and greenhouse gas emissions do not arise.

COMMENTS

RESPONSES

**OBJECTIONS TO THE COASTAL BLUFF STABILIZATION PROJECT AT THE INN AT
SUNSET CLIFFS INTERTIDAL BIOLOGICAL ASSESSMENT
JANUARY 23, 2020, [REVISED SEPTEMBER 29, 2021]**

"Without an accurate, stable, and finite project description, the purpose of the EIR in providing information to the public and City decision-makers is thwarted.

The biology report attempts to limit their findings to a definition of the city's threshold as current conditions. This project is unique in the City of San Diego because it has been in process for ten years. The Biological Survey referenced in the Draft MND addresses some portions of the current biological status. Because the project was filed in 2011 and has since had work done under two emergency permits, each with multiple revisions and one Stop Work Order, the question is more complex than the current Draft MND reflects. Should the construction that occurred during the permit processing for Project # 231328 be taken into consideration?

The responses to the Biology checklist ignore the demolition. The demolition will destroy all remaining habitat and all living intertidal species in the sea caves and on the exterior of the sea wall, assuming the current sea wall is indeed destroyed. The responses given are inaccurate for that reason. The completed project will have no biological resources to protect.

The applicant submitted a Biological Survey in 2018 as part of the published documentation for the Inn at Sunset Cliffs Environmental Impact Report (EIR). However, the Draft MND is not consistent with biological issues previously identified and documented in the 2018 EIR. What happened to them, and how did the prior documented conditions disappear under the same project?

The current owner was granted a Coastal Development Permit (CDP) in 2005, with plans signed by Chris Larsen from the City of San Diego, resulting in a Deed restriction addressing Biological Resources, which is not addressed. Although this deed restriction was presented in the introduction, it is provided again here because of its significance: This restriction was placed by the Coastal Commission and the plan associated with it was signed off by the City of San Diego Representative, Chris Larsen. The restriction is:

9. Protection of Rocky Intertidal Animals. PRIOR TO COMMENCEMENT WITH PROJECT CONSTRUCTION, a biological survey of the sea cave and the project vicinity shall be performed to determine whether or not there are any rocky intertidal animals that will be adversely affected by the proposed project. If any rocky intertidal animals are identified, the applicant shall arrange to have the species relocated prior to commencement with project construction. The removal of the rocky intertidal animals shall be performed by a biologist familiar with intertidal systems to ensure that the species is relocated in a manner which does not result in overcrowding or other negative impacts to their survival rate.

The last city review was received on March 3, 2020 from Will Zounes on the 77th Review Cycle. The City filed a Negative Declaration to recommend a denial of the project. The applicant filed an appeal, which was never heard at the City Council. Notification was provided in an email on 2/12/2021 10:28 that the appeal had been withdrawn. Apparently, the project is now on its 83rd review cycle.

C-51

C-51: The impacts, if any, of prior seawall repair and maintenance projects under separate permits are not relevant here because they are not included in the proposed project. The entire seawall and lower deck will be removed under the proposed project. The demolition will be performed above the tide, and all material will be removed from the site. The comment cites no evidence that “[t]he demolition will destroy all remaining habitat and all living intertidal species in the sea caves and the exterior of the sea wall”

As indicated in response C-25, the project will result in a temporary and *de minimis* loss of intertidal invertebrates as identified in the project's Intertidal Biological Assessment dated January 23, 2020 (revised September 29, 2021). These impacts are insignificant because the species present are common, and no sensitive species were noted during the survey. Therefore, the relocation of all rocky intertidal animals is not proposed.

The project will be required to conduct a pre-construction survey to ensure no sensitive species are present. If any sensitive abalone species are identified, the project will be delayed until NOAA Fisheries can be consulted to protect or relocate abalone.

The relocation of intertidal animals is not proposed because sensitive species are not represented in the biological community at the project site and because relocation can have

COMMENTS**RESPONSES**

potentially deleterious effects on the receiver site community. Numerous small rock reefs characterize the surrounding habitat. These reefs functionally act as islands that prevent the migration of mobile invertebrates such as snails, chitons, and limpets that cannot cross the sand or cobble habitat between reefs. While the carrying capacity for any given species is unknown, it stands to reason that these “islands” cannot support high numbers of these invertebrates. Introducing other invertebrates could lead to additional competition for resources and the temporary collapse of the community. Like the project, any perturbation would be short-lived as the community rapidly recolonizes. This means that the impacts at the project site and associated with moving the species are de minimis and less than significant. Performing one action to offset the other is not warranted because it results in no net biological benefit.

Additionally, as noted in the Intertidal Biological Assessment, the project will effectively return the area beneath the lower terrace to a more natural condition. Removing the wall and riprap will expose the native rock and bluff face that was exposed before the placement of those structures. This will provide a natural substrate which intertidal invertebrates and algae will rapidly colonize. The “sea cave” present is primarily a condition resulting from the existing wall, which will be removed. Although this feature will change, that change will not be harmful. The natural rock and bluff will have natural cracks, fissures, and micro-habitat features that

COMMENTS

RESPONSES

The general problems associated with other aspects of the Draft MND also apply to the Biological Assessment. These problems with the current approach

1. The project is not defined and the records are not available to the public.
2. Previous conditions required are ignored in the current permit application.
3. The deed restriction is ignored.
4. The Coastal Commission Hearing Transcript is ignored.
5. The Violations and Emergency Permits are ignored.

Although the deed restriction refers to rocky intertidal animals, the biological resources identified consist of seagrass, turf algae and kelp, all plants. These plants are not subject to the deed restriction.

It appears no rocky intertidal animals were ever relocated, and no record presented to any public agency that this deed restriction has been met. The restrictions request a survey, and the report provides an assessment, with Section 4 presenting the Survey. Details are provided in the checklist for the Biology section.

The animals observed barnacles, mussels, chitons, and limpets. Crabs were also observed but not previously identified as part of the fauna destined for relocation. The quality of the limpet population when the deed restriction was issued was of particular interest to the California Coastal Commission.

The rocky intertidal habitat has largely been destroyed due to the construction that has occurred since the deed restriction was placed. The potential impacts do not identify their prior locations as observed habitats. The regulatory setting imposed by the California Coastal Commission is not addressed. The site was entirely disrupted by two Emergency Permits in 2016 and 2019. The biological impacts of that work were never thoroughly addressed. No survey associated with them was submitted with this revised Site Development Project (SDP), Coastal Development Project (CDP), and Neighborhood Development Project (NDP) application. Although the City states that there is no Environmental Impact that cannot be mitigated, the changes since the 20018 Biology Report require explanation.

The Emergency Permit work must either grant the emergency work under a regular permit or be removed. In the case of biological resources, the mitigation is undefined. The emergency states:

10. The processing of Coastal Development Permit No. 827666/Site Development Permit No. 1612524 shall continue and disclose the processing of this emergency Coastal Development Permit/Site Development Permit.

This project is not starting with a clean slate where rocky intertidal animals existed, and these aspects need to be addressed in the Draft MND, which should in turn disclose the above conditions.

will provide for a diverse community consistent with that currently surrounding the site. This post-construction condition should be more favorable than currently, as it provides a set of conditions more like the natural surroundings and conditions under which native intertidal flora and fauna evolved.

The permit condition for the 2005 CDP required a preconstruction survey to be performed before that project. That condition was specific to that project and did not apply to this project. In any event, a preconstruction survey and ongoing biological monitoring will be required for this project to ensure no impact on biological resources.

C-52: None of these items are ignored by the draft MND: the project is well defined, previous conditions (if applicable) will be applied, potential impacts to biological resources are mitigated as earlier described, the Coastal Commission transcript is not identified and is not part of the project, and the current project seeks to resolve the remaining outstanding alleged violation (removal of the unpermitted deck). The use of the property for weddings is long-established, existing use and has been found by the City to be an allowable use under the property's current zoning. The comment provides no evidence that the project has destroyed or destroyed any plants or animals. On the contrary, the project will create an environmental benefit by opening new intertidal habitat.

C-52

COMMENTS

RESPONSES

**OBJECTIONS TO THE GEOTECHNICAL REPORT THE INN AT SUNSET
CLIFFS, SAN DIEGO, CALIFORNIA
PROJECT NO. 2317-01, DECEMBER 24, 2020**

This constitutes comments as the report is referenced in the Draft MND, not a complete review of the Geotechnical Report. Although the *Geotechnical Report* is included, no direct references occur in the Draft MND except to the document as a whole in "Environmental Factors potentially affected".

As two prior *Geotechnical Reports* were accepted by the City of San Diego, only to have the site fail before further action, the optimistic approach presented has not been borne out by history.

The *Geology and Soils Checklist* is based in some cases on the *Geotechnical Report*. All potential issues are marked "NO IMPACT" except for "Strong seismic ground shaking." No objections are raised to "Earthquake and seismic ground failure" (a.1), (a.2), (a.3) and (a.4). These adverse effects do not directly reference ocean storm, runoff, and high tide potential adverse effects, including the risk of loss, injury, or death. Detailed objections were provided with the individual items.

The *Geology and Soils checklist* only references *The Geotechnical Report* for items 1.iii, c, and d. It is also referenced for one item in Land use and Planning, Item b. The other responses contain no justification.

The following objections relate to the Draft MND:

1. The proposed site plan is dated 4-12-2021, after the date of all Draft MND-provided site plans. The Site Plan contained in the report does not match the current site plan.
2. The expansion of usable upper-deck space is inadequately addressed. This plan more than doubles the space in the northern (A, A') area.
3. The Report issued December 24, 2020 does not address issues observed since that date. The area sea-ward of the bluff edge is U-shape. The report does not address the current potential failure of the North and South segments due to failures, cracking of the deck, and visible undercutting. (Attachment C).
4. Facts concerning issues defined in the 2018 EIR such as Hydrology are not addressed.
5. There is no discussion or hint of demolition. Plans that concurred with the *Initial Study Checklist* would be required and welcomed.

The proposed project site plan substantially conformed with the site plan contained in the draft MND, with no effect on the conclusions provided in the draft MND.

The proposed project removes the lower concrete deck and all man-made improvements, creating approximately 2,800 square feet of tidal habitat. The construction of the non-permeable surface results in approximately 2,120 square feet of additional usable upper-bluff deck space. As discussed previously, structures should be set back a minimum of 30 feet from the top of the seawall to prevent damage from overtopping waves. Moreover, the proposed alignment and the additional usable upper deck space — over already disturbed soils — were negotiated with Coastal Commission staff as a reasonable compromise in exchange for eliminating the aging existing seawall and lower deck and returning this private property to its natural tidal habitat.

As described previously, the proposed secant pile wall eliminates the concerns stated in Attachment C. In addition, the four sea caves referenced in the first photograph of Attachment C-1 are eliminated.

C-52

COMMENTS**RESPONSES**

The earlier hydrology studies addressed the lower watershed comprising the graded fill slope and lower concrete deck; all will be removed, obviating the previous requirement to contain and prevent uncontrolled water discharges over the bluff.

The proposed secant pile wall will provide a relatively straightforward demolition plan, as described in the following paragraphs.

Before demolition, the secant pile wall would be constructed per the lines and grades shown on the 4-sheet set of development permit plans: Coastal Bluff Stabilization – The Inn at Sunset Cliffs, 1370 Sunset Cliffs Boulevard dated 4/12/2021.

After installation, the wall will be backfilled, and the bluff-top improvements will be completed landward of the wall, per the construction documents.

After the wall is backfilled and before any demolition, the upper row of tiebacks providing additional stability to the secant pile wall will be installed at an elevation of 23 feet. After installation and lock-off of the upper row of tiebacks, demolition would then commence with the careful removal of all existing improvements seaward of the wall down to an elevation of +8 feet to facilitate installation of the lower row of tiebacks, with the lower row of tiebacks at elevation +10 feet, per the construction documents.

COMMENTS**RESPONSES**

The contractor would likely start the demolition process using a small excavator with a breaker bar on the lower deck, along with a crane positioned at the Point Loma Avenue street-end and equipped with a grapple (see below photo) to pick up broken pieces, which would then be placed directly into 10-yard dumps parked on Point Loma Avenue. This is a reasonably standard demolition process, and it should be easy to pull all loose, broken pieces into the property, with virtually no construction debris falling into the ocean. Large rocks, if any, may be drilled and broken with expanding grout to reduce their size to enable the grapple to pick up manageable sizes of rock and debris.

COMMENTS**RESPONSES**

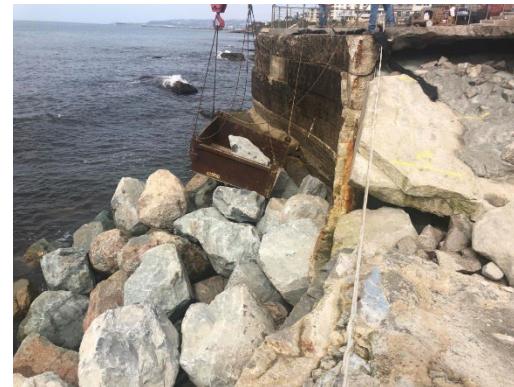
Crane with Grapple

After installation, load testing, and locking off the lower row of tiebacks, demolition would continue, again using a small excavator with a breaker bar as necessary, advancing the lower construction pad, along with the crane positioned at the Point Loma Avenue street-end, using a grapple to continue picking up broken pieces and placing them directly into 10-yard dumps. As indicated previously, it should be easy to pull all loose, broken pieces into the property with virtually no construction debris falling into the ocean.

All of the recently placed emergency stones will be individually picked up using a grapple and hauled off-site. As small materials accumulate near the bottom of the excavation, a material skip would likely be used to remove smaller debris that can be placed into the skip using a small excavator. The below photo shows the material skip used by the contractor to place the rock during the emergency stabilization work at The Inn in February 2019.

COMMENTS**RESPONSES**

After removal of all of the debris, additional hand cleaning would be conducted, essentially removing all debris from the bedrock sea floor, leaving some variable elevation tide pools similar to what exists at the Cabrillo Tide Pools. These tide pools would be accessible at low tide and would ultimately result in new, natural tidal habitat.



Material Skip

COMMENTS

RESPONSES

C-53: Noted the previously submitted letter. This letter addresses a draft EIR for a different project. It does not address the current project.



A Professional Law Corporation
1901 FIRST AVENUE, SUITE 219
SAN DIEGO, CA 92101

TELEPHONE
(619) 702-7892

FACSIMILE
(619) 702-9291

July 27, 2018

Via Email and Hand Delivery

DSDEAS@sandiego.gov
c/o Jeffrey Szymanski, Senior Planner
CITY OF SAN DIEGO
Development Services Department
1222 First Avenue, MS 501
San Diego, CA 92101

Re: *Comments on June 13, 2017 Draft EIR
Inn at Sunset Cliffs, Project No. 231328 (SCH 2014081073)*

This comment letter is presented on behalf of Barbara and Tim Houlton, owners and residents of the property located at 4820 Point Loma Avenue adjacent to the Inn at Sunset Cliffs, who have 45 years of substantial personal knowledge about the content and history of events as set forth herein

C-53

The below comments are made for the purpose of fleshing-out and determining whether a proper and full analysis and scope (type and intensity) of reasonably foreseeable adverse impacts may arise from either the development and operation of the proposed project as set forth in the above-referenced DEIR and its defined "Project" for the Inn at Sunset Cliffs ("Applicant" or "IASC").

As mandated under the statutory paradigm and decisional law of CEQA, and as applicable to all of the below comments presented herein, please ensure that (1) all reasonably foreseeable significant adverse impacts are identified, discussed, and are avoided/eliminated/mitigated so that no adverse effect will occur as a result of the project, and (2) all comments presented herein are fully and substantively addressed and responded to in writing according to all CEQA authorities, including but not limited to *Laurel Heights Improvement Assn. v. Regents of University of California*, (1988) 47 Cal.3d 376, 401 [all reasonably foreseeable impacts], Public Resources Code § 21002 [purpose to avoid and reduce all adverse effects], and Public Resources Code § 21092.5 and CEQA Guidelines § 15088 [written responses to DEIR comments required].

1. Overview of Significant Misstatements and Omissions in the DEIR

The following summary discusses significant misstatements and omissions in the DEIR: the insufficient project definition, the omitted impact on nearby Sunset Cliffs Nature Park, the failure of the Project to conform with the Ocean Beach Community Plan/Local Coastal Program (OBCP/LCP) and the Peninsula Community Plan (PCP), and the intended and planned use and events with the licensing and serving of alcohol on the proposed permitted lower coastal bluff deck.

COMMENTS

RESPONSES



Page Two
July 27, 2018
Comments on DEIR, Project No. 231328

Throughout this comment, the term "Special Events" or "Events" is used to describe use as an entertainment venue, for weddings, catered and privately provided banquets and receptions, private parties, commercial events, and private clubs. These Events may include the service of alcoholic beverages, either catered, through an obtained California liquor license, or privately provided by the hosts and often include "guests" or guest with the definition of guests being any Event invitee who does not require an overnight stay at the hotel.

Further, the term "Ancillary Use" is used to describe non-hotel and non-Event use of the terrace, including the use and promotion of regularly scheduled yoga and the use as a "sport fishing" location.

a. Project Definition

C-54

The Project Site was originally permitted and built as an Apartment Building. The DEIR states in multiple places and throughout the DEIR that "The project site was developed in 1953 with a 24-room motel consisting of two 2-story buildings and a swimming pool situated between the buildings." (E.g., DEIR, pp. S-1, 3-1) This needs to be corrected to identify and describe that the project site was applied for, permitted, and constructed as an apartment complex, that did not include hotel service, or support services or use areas for Special Events and related Ancillary Uses. (See history of development and use in [Exhibit A](#))

In fact, the project site has the following 1953 description:

"Permission is hereby granted to Guy Slusser to erect a 25-unit apartment house and twelve garages, with 14-foot access court and walking deck above, portion of Lot 1, Block 27, Sunset Cliffs, corner of Point Loma Ave. and Sunset Cliff Blvd. Zone R-4; on condition that the Building Dept. and Fire Marshal's requirements are complied with."

([Exhibit P](#), attached hereto)

C-55

b. Expected Adverse Impacts Arising from Adjacency to the Sensitive Bluff, Shoreline, and Sunset Cliffs Nature Park

There are multiple sensitive site receptors and coastal and natural resources that may be adversely affected by development and operation of the proposed project. The DEIR is defective for omitting identification and discussion of the potential adverse impacts to the local neighborhood, including the Sunset Cliffs Nature Park, arising from Land Use, Traffic/Circulation, Biological Resources, Noise, Visual Quality, Neighborhood Character, Landform Alterations, and other effects found not to be significant in the DEIR.

C-54: Whether the principal structure was initially constructed in 1953 as an apartment building or hotel is not relevant to the proposed project, which is solely for shore protection.

C-55: The proposed shore protection project will not impact the neighborhood, which in any event is not an issue with which CEQA is concerned.

COMMENTS

RESPONSES

C-56: The proposed project will remove the concrete deck addressed in the comment.



Page Three
July 27, 2018
Comments on DEIR, Project No. 231328

For example, the DEIR must describe how and why the proposed permit(s) for development and use of the *concrete surface lower terrace* complies and/or conflicts with coastal bluff development policies and recommendations as set forth in the Sunset Cliffs Nature Park Master Plan, the Peninsula Community Plan ("PCP"), and Ocean Beach Community Plan, including the protection of Sunset Cliffs Nature Park views from lookouts and promontories including the Spalding Pool Promontory just south of the IASC project site. (See aerial photo of project site and Sunset Cliff Nature Park attached as Exhibit B, as well photos showing impacted protected coastal views from Sunset Cliffs Nature Park attached as Exhibit C) The impacts to the defined view corridor and view cone from the west end of Point Loma Avenue is also not described or addressed.

All or part of the proposed lower concrete deck is proposed to be constructed on protected coastal bluff that can be seen from view areas, view corridors, view cones, beaches, and promontories such as those existing to the south (Sunset Cliffs Nature Park) and to the north (from the beach end of the street at Point Loma Avenue, and points north).

C-56

The current municipal code prohibits and discourages development and use of protected coastal bluffs based on adverse impacts to visual resources. Multiple provisions of the OBCP/LCP prohibit and discourage development on protected coastal bluffs such as the coastal bluff at the subject IASC property because of adverse impacts and new uses to visual resources. Multiple provisions for the OBCP/LCP require that new development be located and setback certain distances away from coastal bluffs to prevent adverse impacts to visual and other resources.

The Peninsula Community Plan, including the area commencing at Point Loma Avenue and southward, contains multiple land use and community protection policies that are not, but should be, addressed in the DEIR. (See attached Exhibit D identifying and describing relevant topics and policies in the Peninsula Community Plan.)

As mentioned above, the DEIR must describe how and why the proposed permit(s) for development and use of the *concrete surface lower terrace* comply and/or conflict with coastal bluff development policies and recommendations as set forth in the Ocean Beach Community Plan and Local Coastal Program ("OBCP/LCP"). With particular reference to Policies/Recommendation Nos. 7.1.2, 7.1.7, 7.3.1, 7.3.8, and 7.3.8.b set forth in the OBCP/LCP, please identify, describe and explain (a) potential adverse impacts to the coastal bluff, and (2) conflicts with adopted policies for development at and within this subject bluff location. With respect to policies and recommendations set forth in the Peninsula Community Plan, as outlined in Exhibit D, the same or similar policies apply. Therefore, please also identify, describe, and explain potential adverse impacts in relation to the requirements of the Peninsula Community Plan. All potential impacts affecting the above development and land use plans and policies need to be addressed and recirculated in a new DEIR.

COMMENTS

RESPONSES



Page Four
July 27, 2018
Comments on DEIR, Project No. 231328

c. Expected Adverse Impacts Arising from Use as a Planned Entertainment Venue and Special Events at the Lower Concrete Terrace

In association with the primary project objective to “*address the code violations of the original concrete surface on the lower terrace*” (Section S.1.3, p. S-3), because the applicant intends to hold Special Events there, the impacts arising from such uses there must be addressed in the DEIR. As indicated by the recent application to the Alcoholic Beverage Commission, the Applicant intends to sell alcohol for both hotels guest and registered attendees for “recorded music, amplified music and live entertainment.” (See attached Exhibit H)

Further, based on current advertising (Exhibit E and Exhibit R) and past attempted and hosted entertainment and other special group events (Exhibit F), even including open fire pit and fire-dancing events (Exhibit G), the current application and DEIR for the construction, permitting, and operations of the *concrete surface lower terrace* must disclose, address, avoid, or at a minimum, mitigate all direct and indirect potential adverse impacts arising from the same.

In addition to the below further elaborated objection that there is no right or entitlement to hold Special Events and private parties at the subject facility (that has no banquet or event facilities), the current requested permits, construction and use thereon represent an intention and enabled opportunity for expanded parties, clubs, events, including the ability to serve alcoholic beverages (of all types including Beer, Wine and Distilled Spirits) between the hours of 6 a.m. and 2 a.m. This is exemplified by both the attached alcohol permit application (Exhibit H) as well as the array of advertised and promoted commercial events (Exhs. E, F, & G), and including

d. Summary

Therefore, as it pertains to one or more of the descriptions of the Project set forth in the Public Notice circulated June 13, 2018 and DEIR (Section S.1.2, pp. 1, S-2), and the Special Events with the proposed *concrete surface lower terrace* venue, the DEIR must describe the planned and anticipated uses, hours of operation, and all potential adverse impacts arising at and from development and use being advertised as “almost a brand new hotel with the largest deck on the entire US western coastline!” (Exhibit R) and its intention for use as a Special Event venue of the *concrete surface lower terrace* for which development permits are being processed.

Set forth below are specific comments regarding other missing, incomplete, and inaccurate information in the DEIR.

C-57

C-57: The proposed project will remove the concrete deck discussed in the comment. The use of the hotel for Special Events is an existing, established use that the City has already determined to be allowable.

C-58: The proposed project will remove the concrete deck discussed in the comment. The use of the hotel for Special Events is an existing, established use that the City has already determined to be allowable.

C-58

COMMENTS

RESPONSES



Page Five
July 27, 2018
Comments on DEIR, Project No. 231328

2. Comment Regarding the Duties of City Under CEA to Examine All Potential Impacts Regardless of City's Enforcement Policy

C-59

Being that there are no prior development permits for construction and use of the *concrete surface lower terrace* (the proposed new development and use of a *concrete surface lower terrace*, that is intended to provide for and host Special Events, including the sale and provision of alcohol), must be analyzed and considered for approval pursuant to current ESL and other City and Coastal Act development codes and regulations. City's cessation of the prior "weddings" use code enforcement matter has no effect on City's current duties under CEQA.

The DEIR makes the following incorrect legal and factual unsupported finding that no significant impacts from Special Events will be considered:

The City previously made a determination that weddings are a permitted accessory use of hotels within all areas of the City. Use of the site for weddings and other private events is, therefore, not part of this discretionary approval, and would occur on the property with or without the concrete terrace, which is nature of this project and approval.

(Section S.3 [no. 1], p. S-3)

The above statement purportedly relies on a determination that the current intended Special Events are Accessory uses for the IASC, however, the determination is not applicable for use of the subject proposed concrete lower deck. There are impacts to coastal resources and the local neighborhood environment arising from expansion of Special Events for the proposed project's *concrete surface lower terrace*. The DEIR needs to identify and discuss the impacts these events that may result at this new expanded and proposed development location. Procedurally and substantively CEQA requires that all potential adverse impacts be identified and reduced to below a level of significance. (Pub. Res. Code § 21178, subd. (a))

Please identify, describe, and explain in the DEIR whether such Special Events may occur beyond the coastal bluff edge as a developed and permitted use, and address all possible adverse impacts arising from the same.

3. Comments Regarding the Adequacy of the Project Synopsis

C-60

As referenced and acknowledged in this section of the DEIR, the discussion and analysis in the DEIR must include "the proposed Inn at Sunset Cliffs project." (DEIR, Section S.1, p. S-1) A major aspect of the proposed project is to obtain development permits for the right to construct and operate a commercial *concrete surface lower terrace* for Special Events. (Id. at p. S-2 [terrace includes infrastructure for Special Events].) The DEIR fails to identify,

C-59: The proposed project will remove the concrete deck discussed in the comment. The use of the hotel for Special Events is an existing, established use that the City has already determined to be allowable.

C-60: The proposed project will remove the concrete deck discussed in the comment. The use of the hotel for Special Events is an existing, established use that the City has already determined to be allowable.

COMMENTS

RESPONSES



Page Six
July 27, 2018
Comments on DEIR, Project No. 231328

analyze, avoid, eliminate, or mitigate potential adverse impacts to coastal zone resources and the local community such as those adversely affecting parking, access, noise, views, aesthetics, and biological resources arising from such development and use. This comment letter demands, directs, and attempts to assist lead agency City in identifying these impacts and omissions, however it is incumbent on the responsible agency City to do so. (See *Schellinger Brothers v. City of Sebastopol*, (2009) 179 Cal.App.4th 1245, 1257-1258 [“An EIR is a document of accountability that is intended to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.”].)

4. Comments Regarding the Adequacy of Statements in the Project Location and Environmental Setting Sections of the DEIR

The DEIR states that “the project site lies *atop* the coastal bluffs abutting the seawall...” (DEIR, p. S-1, emphasis added). This needs to be corrected to clearly disclose and describe that the project proposes to development within and tiered-down the coastal bluff face. (See, DEIR Figure 3-1, p. 3-5)

C-61

The DEIR states that “The terrace, safety railing, stairs, and access ramp [] were originally constructed prior to the current version of the LDC.” (E.g., DEIR, Section 3.3.3, p. 3-4) So that the decision-makers and public can determine what impacts occurred and what rules apply to such developments, the DIR must identify and describe when construction of each of the developments occurred, including the *terrace*, what were the state and local laws in place at the time that regulated or controlled such development? This review must include all known and provided facts, not just a conclusion that City is not absolutely certain. This review should be conducted with provided factual and historic information contained herein, (e.g., Ex. A and Exh.) and as previously provided by other responsible agencies, including the Coastal Commission.

The DEIR states that under the “emergency permit, the applicant . . . repaired the entire lower terrace surface in like-kind with a six-inch concrete mix over coated rebar in order to protect the primary structure by preventing failure of the seawall.” (E.g., DEIR, Section 3.4.1, p. 3-4) So that the decision-makers and public can determine what potential impacts may from development and use of the terrace lower developments, what activities and uses of the bluffsides lower terrace are intended and planned? More particularly, is the *concrete surface lower terrace* intended for Special Events and Ancillary Use, in addition to the stated purpose “to protect the primary structure by preventing failure of the seawall?” If so, what are the types and number of Events that may arise from such use and Events?

C-61: The proposed project will remove the lower concrete deck and terrace discussed in the comment.

COMMENTS

RESPONSES



Page Seven
July 27, 2018
Comments on DEIR, Project No. 231328

The DEIR states that "The lower concrete terrace, even prior to the concrete surfacing, has been used by motel guests for various activities for decades." (E.g., DEIR, Section 3.4.1, p. 3-4) As it relates to possible prior and current impacts and previously conforming developments and uses, what activities were located at the lower terrace and what evidence is there that they occurred? Further, what are new Special Events and Ancillary Use that will occur if the Project is approved? What are the potential cumulative impacts and policy considerations arising from capped seawalls being used for Special Event and Ancillary Use?

The DEIR states that "an approximately 2,800-square foot terrace between the seawall and coastal bluff was constructed. At some point, concrete surfacing was installed on top of the terrace without required permits, although the exact date is unknown." (E.g., DEIR, Section 4.0, p. 4-1) What was the approximate date or date range that concrete was first poured on the lower terrace? Again, please respond to this requested information with context and all known information such as that provided in the History and Timeline exhibit and as previously noted by other responsible agencies, including the Coastal Commission.

5. Comments Regarding Statements in the DEIR in the Project Objectives and Areas of Controversy Sections

While the below comments are derived from the *Project Objective* and *Controversy* sections of the DEIR, they are applicable to disclosure and omission defects throughout the DEIR and therefore should be responded to in the context of all applicable sections for proper CEQA review, including each subject impact area.

C-62

As it relates to the permits requested by the Applicant, the proposed activities and uses of the proposed new *concrete surface lower terrace* must be considered, and findings made, with such potential impacts analyzed in this project EIR. (S.D. Mun. Code § 126.0501 et seq. [SDP], (specifically § 126.0505, subd. (c) [required supplemental findings for ESL deviations]; S.D. Mun. Code § 126.0401 et seq. [NDP], § 126.0404, subd. (b) [required supplemental findings for ESL deviations]; S.D. Mun. Code § 143.0110 et seq. [ESL].)

A formal legal objection is made here that the internal and preliminary determination – "that weddings are a permitted accessory use of hotels within all areas of the City," is incorrect and not applicable to the subject small hotel in the RM-5-12 residential zone and without supportive original permitting authority and without supportive kitchen/food service, parking, meeting or banquet area facilities for the same. Thus, in association with a primary stated *project objective* to "Resolve issues addressed in a code violation relating to the original concrete surface on the lower terrace" and the *project description* "to authorize previously unpermitted concrete surfacing on the lower terrace"; (a) any such entertainment and private event rental facility aspects of the proposed project must be part of the discretionary considerations and determinations under the applied-for SDP/NDP/CDP

C-62: The proposed project will remove the lower concrete deck and terrace discussed in the comment. The use of the hotel for Special Events is an existing, established use that the City has already determined to be allowable, and this is not a forum for objections to such use.

COMMENTS

RESPONSES



Page Eight
July 27, 2018
Comments on DEIR, Project No. 231328

permits; and (b) any additional permit(s) required for such a Special Events hosting venue must be reviewed and obtained concurrently with the subject project application and proposal. (S.D. Mun. Code §§126.0103, 112.0103 [requires concurrent application and processing of required permit; CEQA Guidelines § 15378. [CEQA requires projects be evaluated based on the "whole" of a project.]

- a. *Special Entertainment and Group Events Are Not Allowed In and On the Applicant's Proposed Lower Concrete Surface Lower Terrace.*

i. Municipal Code, Zoning, and Other Land Use Restrictions

The DEIR incorrectly assumes and adopts City's interpretation and application of the zoning code's restrictions and limitations regarding "visitor accommodation" and "assembly and entertainment" at the subject IASC property.

As a hotel and visitor accommodation facility as identified in the Ocean Beach Community Plan/Local Coastal Program (OBCP/LCP), and defined in San Diego Municipal Code (S.D.M.C.) § 131.0112(a)(6), the IASC falls into a "Commercial Service Use Category," and more specifically a "Visitor Accommodations" subcategory. This subcategory is described in the Code as follows:

(K) Visitor Accommodation -- Uses that provide lodging, or a combination of lodging, food, and entertainment, primarily to visitors and tourists.

Large gatherings of people, including wedding receptions would also fall under S.D.M.C. § 131.0112(a)(6) subcategory for Assembly and Entertainment, which is described as follows:

(I) Assembly and Entertainment - Uses that provide gathering places for large numbers of people for recreation, physical fitness, entertainment, or other assembly.

If the IASC property were located in a commercial zone, both the Visitor Accommodation and Assembly and Entertainment uses would be permitted by right. However, because the IASC is located in RM-5-12 zone, only the Visitor Accommodation use is permitted. It should be noted that, under the existing Municipal Code, the existing facility could be constructed today only if one parking space per room were provided.

While it is not uncommon for the Assembly and Entertainment uses to occur with the Visitor Accommodation use, since both are allowed by right in *commercial zones*, this is not the case for the IASC because (1) Special Events such as weddings never occurred when the IASC conformed under the previous Code, and (2) assembly-type uses were not included within the

C-63: The proposed project will remove the lower concrete deck and terrace discussed in the comment. The use of the hotel for Special Events is an existing, established use that the City has already determined to be allowable, and this is not a forum for objections to such use.

C-63

COMMENTS

RESPONSES

C-64: The proposed project will remove the lower concrete deck and terrace discussed in the comment. The use of the hotel for Special Events is an existing, established use that the City has already determined to be allowable, and this is not a forum for objections to such use.

C-64



Page Nine
July 27, 2018
Comments on DEIR, Project No. 231328

old hotel definition.¹ Thus, Assembly and Entertainment uses are not a previously conforming use or right for the intended use, increased intensity of use, and proposed development of the IASC for a specialty-marketed entertainment Events venue currently proposed by the application for development and use permits for the *concrete surface on the lower terrace*.

In order to allow wedding receptions as a previous conforming use, current versions of the San Diego Municipal Code require proof that wedding receptions occurred on the site prior to the zoning code change. Based upon the documented information provided herein, Applicant IASC does not (and cannot) provide any proof that wedding receptions are a previously conforming operation and permitted use. Thus, the Neighborhood Development Permit (NDP) provisions under §126.0401 et seq. do not apply because §126.0402 requires that a NDP must be based on a previously conforming use. Therefore, the project analysis for possible approval must be applied, reviewed and approved under City's conditional use permit requirements as stated in the attached memorandum (Exhibit K), as well as the Neighborhood Use Permit (NUP) provisions under §126.0201 et seq.:

The purpose of these procedures is to establish a review process for developments that propose new uses, changes to existing uses, or expansions of existing uses that could have limited impacts on the surrounding properties. The intent of these procedures is to determine if the development complies with all applicable regulations of the zone and any supplemental regulations pertaining to the use, and to apply conditions that may be necessary to help ensure compliance.

(Exhibit I, emphasis added.)

As above, the DEIR incorrectly states that "The City previously made a determination that weddings are a permitted accessory use of hotels within all areas of the City. Use of the site for weddings and other private events is, therefore, not part of this discretionary approval, and would occur on the property with or without the concrete terrace, which is nature of this project and approval." This needs to be corrected to identify and describe that the project site was not used for accessory wedding and entertainment events, and never had permit for the same, until after construction of the unpermitted (now proposed reconstructed) deck.

As indicated in the attached timeline and history, prior to 2004, as indicated by reference to 990 occurrences in the Union-Tribune, historical records show advertisements with no mention of weddings, events, or assembly and entertainment. Thus, there is essentially no history or precedence of the IASC conducting unpermitted outside Special Events, entertainment, or weddings at the hotel, and certainly none on the bluff face deck. When weddings and events first commenced around 2004, the City's Neighborhood Code Compliance (NCC) immediately shut them down.

¹ See discussion re history and approval for development and use. (Ex. A and Ex. P)

COMMENTS

RESPONSES



Page Ten
July 27, 2018
Comments on DEIR, Project No. 231328

When the advertising and outside events started up again in 2010, they were again shut down by NCC and the IASC was required to apply for an appropriate use permit if it wanted to include and expand to hold such events. The IASC originally included an application for such a “use permit” in Project No. 231328 as part of its application to address its other multiple deck and seawall Coastal Development Permit (CDP) violations and problems.

While IASC and its lobbyists were successful in 2011 in getting the Development Services Department (DSD) and city attorney’s office to terminate its code enforcement action based on a determination that weddings are allowed “ancillary uses” of all city hotels, IASC has never obtained (and has since removed) the “use permit” request from Project No. 231328.

Notwithstanding the above legal objection – that weddings and other Special Events are not allowed as an accessory use for small hotels in a residential zone and without supportive facilities for the same – the DEIR must identify and analyze impacts arising from (a) the expansion of the IASC facility and the increased use (i.e., number of persons, types, and number of events) due to the prominent bluff side *concrete surface lower terrace*, and (b) quantify and describe the difference of having wedding events for guests, as opposed to invited, ticketed, marketed commercial entertainment music and food Special Events. ([Ex H](#) and [Ex F](#))

b. Deed Restriction

C-65

As explained further below, the Applicant’s accepted findings and conditions *that the seawall deck surface was unlawful and unpermitted that was recorded in a Deed Restriction that exists to this current day*. The Applicant accepted and proceeded with development on such terms and conditions.

c. The Proposed NDP is an Improper Vehicle to Expand Use and Convert the Seawall Deck to a Hotel Entertainment and Event Venue

C-66

As mentioned above, according to S.D.M.C. § 126.0201, et seq., a Neighborhood Use Permit (NUP) is required for an expansion of use as *necessary to protect the public health, safety, and welfare*. An NUP is also required for eating and drinking establishments abutting residential zones that seek to expand existing accessory use areas. Because the current zone does not allow for such a coastal bluff deck and entertainment venue, the Applicant also needs to apply for and possibly obtain either a zone change a conditional use permit. The legal arguments in the attached [Exhibit K](#), Memorandum of D. Potter dated October 20, 2016, are incorporated herein. The need to address parking impacts is also set forth in the attached [Exhibit J](#) Memorandum of D. Potter dated October 17, 2016.

C-65: The proposed project will remove the lower concrete deck and terrace discussed in the comment.

C-66: The proposed project will remove the lower concrete deck and terrace discussed in the comment. The use of the hotel for Special Events is an existing, established use that the City has already determined to be allowable, and this is not a forum for objections to such use.

COMMENTS

RESPONSES



Page Eleven
July 27, 2018
Comments on DEIR, Project No. 231328

6. Comments Regarding – Baseline Conditions

The change of environmental baseline, from that first given on January 16, 2014 to the revised one given on August 22, 2014, and the one now present and forming the basis of environment analysis in the DEIR (DEIR, Section 5.0, p. 5-2), does not properly serve to apprise the public or decision-makers of potential adverse impacts that will likely arise from issuing development and use permits for the construction and use of the *concrete surface lower terrace*.

In code enforcement matters, it is essential that baseline is not chosen that frustrates and obviates the enforcement action and the environmental effect that may arise from the proposed project and its uses.

C-67

CEQA requires that the Applicant and lead agency City must identify both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects." (Pub. Resources Code, § 21002.) To do this, an EIR "must delineate environmental conditions prevailing absent the project, defining a baseline against which predicted effects can be described and quantified." (*Neighbors for Smart Rail v. Exposition Metro Line Const. Authority*, (2013) 57 Cal.4th 439, 447.)

By defining and analyzing potential adverse environmental effects with the wrong baseline, the DEIR fails, as one of CEQA's most basic purposes, to "[i]nform government decision-makers and the public about the potential, significant environmental effects of proposed activities." (Cal. Code Regs., tit. 14, § 15002, subd. (a)(1).)

Furthermore, the rationale given in the revised August 22, 2014 NOP – "that there is no substantial evidence that clearly demonstrates what existed prior to the construction of the paved terrace, which is estimated to have been in existence since March of 1982 (approximately 32 years)" – is not supported by facts or evidence and seeks to impose an incorrect "clear evidence" standard.

While the lead agency City may have some discretion in choosing between conflicting evidence and expert conclusions under CEQA courts review agency baseline determinations for substantial evidence. (Pub. Res. Code §§ 21168, 21168.5.) "Substantial evidence" is defined by the CEQA Guidelines to mean:

[E]nough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency.

C-67: The proposed project will remove the lower concrete deck and terrace discussed in the comment.

COMMENTS

RESPONSES

Page Twelve
July 27, 2018
Comments on DEIR, Project No. 231328



(CEQA Guidelines, § 15384, subd. (a); see also *Pala Band of Mission Indians v. County of San Diego*, (1998) 68 Cal.App.4th 556, 579; *CalBeach Advocates v. City of Solana Beach*, (2002) 103 Cal.App.4th 529, 535-536.) Pursuant to Public Resources Code section 21168, the DEIR's findings of fact are subject to the abuse of discretion standard under Code of Civil Procedure section 1094.5. Code of Civil Procedure section 1094.5 includes a requirement that an agency must set forth findings that "bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga Association for a Scenic Community v. County of Los Angeles ("Topanga")*, (1974) 11 Cal.3d 506, 515 & 516.

In this case, the City does not set forth or describe supporting facts and history (other than conclusory statements) and ignores both objective and documented evidence (e.g. [Exhibit A](#)), and permit review and file of the responsible agency California Coastal Commission (CCC) containing "Special Conditions" that were accepted by the Applicant on September 17, 2008 by way of a deed restriction for permit issuance. ([Exhibit L](#))

The prior-obtained 2008 Coastal Development Permit (with conditions and covenants) agreed and accepted that the seawall capped deck was not permitted and was not a previously conforming structure.

The Applicant's accepted findings and conditions *that the seawall deck surface was unlawful and unpermitted*, including special permit conditions that "no work is authorized to the existing un-permitted deck/patio area" is no longer subject to objection and challenge by the Applicant after accepting and proceeding with the prior CDP, its determination, and conditions. (*Lynch v. California Coastal Commission* (Case No. S221980, decided July 6, 2017). The Applicant's efforts to proceed with continued use and development is a legal and factual nullity.

The DEIR fails as an informational document because it fails to disclose and discuss the results regarding CDP No. 6-05-131 and its subsequent implementation that involved review of objective historic photographic evidence (e.g., from the Coastal Records Project, image 72422012) which shows there was no prior existing deck, reception, or entertainment area on the bluff and seawall. The DEIR fails to disclose, explain or address this evidence.

Once again, the finding that "that there is no substantial evidence that clearly demonstrates what existed prior to the construction of the paved terrace, which is estimated to have been in existence since March of 1982 (approximately 32 years)" is not supported by either fact or law because it omits review and discussion of actually *available* information and evidence. It is also legally defective if impermissibly flips the query, that should otherwise be, what, if any, evidence is there for the City and Applicant to rely on that *the seawall deck surface was lawfully constructed and in existence at a time that no permits were required for such bluffsides development and use*. The DEIR must set forth and explain what information and evidence it is relying on for such a conclusion.

C-68: The proposed project will remove the lower concrete deck and terrace discussed in the comment.

C-68

COMMENTS

RESPONSES



Page Thirteen
July 27, 2018
Comments on DEIR, Project No. 231328

In a code compliance and violation case, such as the current cases pending before the City and Coastal Commission, the inquiry is based on the Applicant's ability to show and prove that development was authorized and permitted. (see S.D. Mun. Code § 143.0113, subd. (a) [for determining location of environmentally sensitive lands – “In connection with any permit application for development on a parcel, the applicant shall provide the information used to determine the existence and location of *environmentally sensitive lands* in accordance with Section 112.0102(b).”], emphasis in original.) The inquiry is not based on a lack of information about the timing of unauthorized improvements – especially where development occurred due to an “emergency” of Applicant’s own making. (*Barrie v. Cal. Coastal Commission*, (1987) 196 Cal.App.3d 8, 17-18 [court refused to allow homeowner the benefit of a vested right of building a seawall without a public approval process because of an emergency of homeowner’s own making].)

C-69

Even if CEQA allowed the flipping and advancement of baseline conditions, due to illegal conduct or emergency (which this comment letter asserts - it does not), the requirements and findings for the issuance of permits, based on current existing legal requirement and standards does not change.

It is factually and legally incorrect for City and its DEIR to find that “an existing unpermitted paved terrace...” is the assumed baseline condition for a code enforcement action, rather, to give effect to the policy of identifying significant adverse effects of a proposal, an EIR “must delineate environmental conditions prevailing absent the project, defining a baseline against which predicted effects can be described and quantified.” (See *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 447.)

As the City correctly and initially required (but flipped), the DEIR document baseline should be the baseline without the pavement because the project is an “after-the-fact” approval of the pavement and should be reviewed as if the project was coming in new without construction taking place. The Applicant has provided no case law that supports that illegally and unpermitted development should be the baseline conditions for review and approval of the subject permits.

Thus, the DEIR fails as an informational and disclosure document by not presenting and discussing the particular current requirements required for issuance (and findings) to be made for each of the proposed permits (SDP/NDP/CDP) currently under review and consideration.

C-69: The proposed project will remove the lower concrete deck and terrace discussed in the comment.

COMMENTS

RESPONSES



Page Fourteen
July 27, 2018
Comments on DEIR, Project No. 231328

7. Further Comments Regarding Baseline Conditions – Comparison of Emergency Seawall Cap (to Protect from Overtopping and Erosion of Backfill) Versus a Permanent Concrete Surface Lower Terrace (for Entertainment and Accessory Uses)

Clear evidence shows that backfill of the original and historic seawall was never built or used as an entertainment or special event terrace. In fact, admission by the City Attorney's Office concedes that the prior area was a "sandy area where the deck is now." (City Attorney letter dated March 5, 2015)

The instant application and baseline involves adding a project purpose and request for permits for the *concrete surface lower terrace* so as to make it permanent for Accessory and non-seawall Special Event uses. Thus, a prior baseline is indicated by the fact that (1) the emergency permit prohibited legitimizing any permit or use of the seawall surface and deck, (2) a deed restriction was imposed prior development was allowed and conditioned upon a deed restriction prohibiting such use, and (3) the applicant is now proceeding with a SDP/NDP/CDP application so that the emergency seawall cap can be permanently permitted for development and use as an Accessory hotel facility and entertainment deck.

All prior permits only allowed protection of the seawall by backfilling voids and a cap to prevent overtopping and backwash. The emergency permit signed by the City (Chris Larsen) recognized the deck as unpermitted: "No work is authorized to the existing un-permitted deck/patio area; only repair work to the existing seawall and filling of the void behind the seawall with erodible concrete is authorized." Therefore, the DEIR must disclose and explain how the current application for development and use of *concrete surface terrace* expands the purpose, use, and development above and beyond being a mere seawall cap.

As explained above, the Deed Restriction agreed to by the Applicant (recorded on September 17, 2008) also unambiguously solidified the fact that there was no existing or preexisting right to use the seawall deck and cap for any other use but to prevent erosion of wall backfill. (Exhibit L)

The Applicant's current request for permits to construct and operate the seawall cap as an entertainment deck (not solely a cap for seawall protection) does not arise from the grant of any emergency permit, but rather is a result of illegal and unpermitted development.

Assuming, without conceding, that City can waive and reset the baseline conditions of previous nonconforming (unpermitted/illegal) for purposes of CEQA impact analyses, it may not do so for the purposes of issuing SDP and CDP for developments that never had lawful development or operating permits. As such, it must be treated as new development and comply with laws in effect at the time of review and approval.

C-70

C-70: The proposed project will remove the lower concrete deck and terrace discussed in the comment. The use of the hotel for Special Events is an existing, established use that the City has already determined to be allowable, and this is not a forum for objections to such use.

COMMENTS

RESPONSES



Page Fifteen
July 27, 2018
Comments on DEIR, Project No. 231328

C-71

8. Permit Issuance and Findings for the SDP/NDP/CDP Permits are Based on Unpermitted Conditions and Whether Findings Can be Made to Supporting Such Structures and Uses

The attempted advancement and shift in the *CEQA environmental baseline* to post-deck construction conditions and current uses do not apply to the considerations and findings required for the proposed development and use permits for the *concrete surface lower terrace*.

This is true because the law pertaining to environmental baseline for the purpose of environmental impact analysis under CEQA is not the same for permit issuance made under other applicable and particular codes, regulations, and laws. The plans, policies and laws now in effect control, not City's attempted improper shift and advancement of a CEQA study baseline.

9. Comments Regarding Prior Permit History and Land Use Considerations

To the extent Applicant and/or responsible agency City contends that development and use of the land and bluff area comprising the *concrete surface lower terrace* is a "previously conforming use," please identify and describe any prior City permit given for development and use of said area.

Describe how and if the previously constructed *concrete surface lower terrace* ever obtained any development permit (other than the subject emergency permit), and what development and use conditions where required in association with any such permit(s).

The DEIR fails to address or establish how the construction a lower concrete terrace is or may be a previously nonconforming structure under City's municipal codes and ordinances.

The DEIR fails to address or establish how the development and use of a lower concrete terrace, as an accessory banquet, entertainment, or Special Events area, is or may be a previously nonconforming use under City's municipal codes and ordinances.

The emergency and post-emergency conditions requiring application and request for the subject after-the-fact seawall repair permit (as a required condition of the emergency permit) relates to the emergency seawall permit – which was solely a *below-deck seawall backfill construction project, and seawall cap*.

Please explain that applications or permits exist for construction of a usable seawall deck, and whether the emergency permit authorized construction of a deck.

C-71: The proposed project will remove the lower concrete deck and terrace discussed in the comment. The use of the hotel for Special Events is an existing, established use that the City has already determined to be allowable, and this is not a forum for objections to such use.

C-72: The proposed project will remove the lower concrete deck and terrace discussed in the comment. The use of the hotel for Special Events is an existing, established use that the City has already determined to be allowable, and this is not a forum for objections to such use.

C-72

COMMENTS

RESPONSES



Page Sixteen
July 27, 2018
Comments on DEIR, Project No. 231328

Please describe if and how the after-the-fact seawall repair permit is different from the permit request for development, construction, and hotel Accessory use of the *concrete surface lower terrace*.

10. Comments Regarding Potential Unaddressed Adverse Noise Impacts

The DEIR fails altogether to discuss, address, or mitigate anticipated noise arising from the project's use and development permits for the *concrete surface lower terrace*. Section 9.4 of the DEIR only addresses construction and pump operation noise. (DEIR, p. 9-4)

The DEIR fails to identify the number and types of Special Events (whether weddings, banquets, dining events, music and/or drinking entertainment) that may generate noise affecting adjacent sensitive site receptors.

The DEIR also fails to identify the sensitive nearby or adjacent site receptors that may be adversely impacted by the occurrence of outdoor noise and Events that will take place on the *concrete surface lower terrace*.

11. Comments Regarding Potential Unaddressed Adverse Biological Resources Impacts

The DEIR fails to address whether unpermitted development and use of the coastal bluff by the Applicant and its predecessor changed any of the plants, vegetation and land forms of the subject coastal bluff.

As part of the current application and request for after-the-fact development permits, what part of the coastal bluff is intended to be restored and revegetated?

As part of the current application and request for after-the-fact development permits, what part of the coastal bluff is intended to be set aside and restricted from use and development so as to protect the integrity, aesthetics, and resources of the coastal bluff as required by currently adopted policies for coastal bluff preservation and restricted uses?

12. Comments Regarding Potential Unaddressed Adverse Traffic, Circulation, Access, and Parking Impacts

An expanded Accessory use or Special Events area on the lower concrete deck create and/or exacerbate impacts to surrounding neighborhood and coastal resources. The Applicant is currently marketing the IASC to be a venue with a prominent coastal bluff and ocean front deck for overnight and Special Events guests. ([Exhibit R](#) and [Exhibit E](#)) The website for the IASC also questionably advertises its lower ocean deck for rent for Accessory Use and Special Events.

C-73

C-74

C-75

C-73: The proposed project will remove the lower concrete deck and terrace discussed in the comment. The use of the hotel for Special Events is an existing, established use that the City has already determined to be allowable, and this is not a forum for objections to such use.

C-74: The proposed project will remove the lower concrete deck and terrace discussed in the comment.

C-75: The proposed project will remove the lower concrete deck and terrace discussed in the comment. The use of the hotel for Special Events is an existing, established use that the City has already determined to be allowable, and this is not a forum for objections to such use. Moreover, “impacts to the surrounding neighborhood” are not relevant under CEQA.

COMMENTS

RESPONSES



Page Seventeen
July 27, 2018
Comments on DEIR, Project No. 231328

The DEIR concludes, without explanation or support, that "The project would not add or intensify on-site uses, and therefore, would not generate any additional trips or require any modifications to the circulation system surrounding the site. Consequently, the project would not alter traffic patterns or roadway design, increase hazards, or place incompatible uses on existing roadways. The project would not result in inadequate emergency access. The project would not alter existing roadways, traffic patterns, emergency access routes, or add additional traffic to the roadway system." (DEIR, Section 9.2, p. 9-2) This conclusion is incorrect because it fails to disclose or discuss potential direct and indirect impacts arising from the requested permits (under the SDP/NDP/CDP) to locate and formalize an Accessory Use and Events facility on the *concrete surface lower terrace*. All anticipated and foreseeable direct and indirect impacts arising from such use must be analyzed in a quantitative and qualitative manner to determine if adverse environmental impacts may result.

C-76

Visitors - What are the number of anticipated average and maximum visitors expected for Special Events (weddings, banquets, and other hosted Events) may occur under the requested permits, development, and use of the subject *concrete surface lower terrace* area?

Events - Describe the number and types of different Events (whether weddings, banquets, dining events, music and/or drinking entertainment) that may be held at the IASC that may involve use of the subject *concrete surface lower terrace* area?

Parking Location - Where will visitors park for anticipated weddings, banquets, and other hosted Special Events that may occur under the requested development and use permits for the subject *concrete surface lower terrace* area?

What impacts may arise from lack of available or assigned parking for anticipated visitors for Special Events that may be held under the requested development and use permits for the subject *concrete surface lower terrace* area?

Is there currently enough onsite parking spaces for guests of the 24-room hotel and those attending Special Events? How might the Applicant's current proposed Accessory facility expansion at the concrete surface lower terrace adversely affect or impede neighborhood and coastal sidewalk access and use along the south side of Point Loma Avenue. (See Exhibit M)

As part of the evaluation of available parking and the proposed expansion of development and use of the *concrete surface lower terrace* (including use for weddings, entertainment, and special events), the DEIR fails to address how existing onsite parking can concurrently accommodate hotel guests, Special Events and Accessory Use visitors. The DEIR also fails to address what offsite and street parking demands will arise from development and use of the *concrete surface lower terrace* during Special Events.

C-76: The proposed project will remove the lower concrete deck and terrace discussed in the comment. The use of the hotel for Special Events is an existing, established use that the City has already determined to be allowable, and this is not a forum for objections to such use. Moreover, impacts on the "neighborhood" are not relevant under CEQA.

COMMENTS

RESPONSES



Page Eighteen
July 27, 2018
Comments on DEIR, Project No. 231328

The analysis and disclosure of indirect adverse impacts arising from insufficient on-site parking should include public safety, noise, and air pollution impacts (including greenhouse gasses) arising or generated from guests and visitors driving around and looking for parking.

Outside Service Truck Delivery - Due to the lack of kitchen, banquet, or food service support services for Special Events, what are the anticipated and probable impacts to street parking and coastal access arising from delivery and outside support services during Special Events anticipated to be held at and under the proposed development and use permits for the *concrete surface lower terrace*. (E.g., Exhibit Q.)

13. Comments Regarding Potential Unaddressed Adverse Water, Greenhouse Gas, and Concrete Impacts

C-77

The project and its location and function as a seawall renders it susceptible to storms (see DEIR at p. S-2) and changes in sea level due to climate change. What are the potential impacts from seawall damage and flooding that will likely occur due to both storm and climate change (temporary and permanent) increases in sea level?

14. Comments Regarding Potential and Unaddressed Conflicts and Inconsistencies with Adopted Plans, Policies and Development Codes

C-78

The DEIR incorrectly states that "the project, including the retention of the repaired lower concrete terrace, is consistent with all relevant policy documents and would not result in a conflict with the environmental goals, objectives, and recommendations of the Ocean Beach Community Plan." (DEIR, Section 9.1, p. 9-1) The DEIR omits discussion how development and use of the *concrete surface lower terrace* is inconsistent current laws (S.D. Mun. Code § 143.0143) and adopted plans (e.g. Policy 7.1.2 of the Ocean Beach Community Plan), that have been adopted and are in place to prevent development and use on *sensitive coastal bluffs and coastal bluff faces*. To be a meaningful disclosure and informational document, the DEIR must list each of the land use plans, development codes, and policies that the proposed development and use of the *concrete surface lower terrace* is inconsistent or in conflict with.

The DEIR is defective because it fails to address the below listed potential land use conflicts and issues. Therefore, the DEIR must be corrected to disclose, address, reduce, avoid, or mitigate adverse potential impacts arising from the following:

- All or part of the proposed lower concrete deck is proposed to be constructed on protected coastal bluff.
- The current municipal code prohibits and discourages development on protected coastal bluffs such as the coastal bluff at the subject IASC property.

C-77: The seawall's susceptibility to the effects of climate change is not relevant under CEQA. (See, e.g., *Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, 194 (holding consideration of "existing environmental hazards, unchanged by the project, [is] not proper under CEQA").) Regardless, the proposed project will remove the seawall discussed by the comment. The robustness of the proposed new seawall to the effects of climate is addressed in the geotechnical report.

C-78: The proposed project will remove the lower concrete deck and terrace discussed in the comment.

COMMENTS

RESPONSES



Page Nineteen
July 27, 2018
Comments on DEIR, Project No. 231328

- Multiple provisions for the OBCP/LCP prohibit and discourage development on protected coastal bluffs such as the coastal bluff at the subject IASC property.
- Multiple provisions for the OBCP/LCP require that new development be located and setback certain distances away from coastal bluffs such as the coastal bluff at the subject IASC property.
- Being that there was never any lower concrete deck, the proposed development is not a previously nonconforming structure.
- Being that there was never any lawfully permitted seawall deck at the IASC property, the proposed development is not a previously nonconforming structure.
- Being that there was never any lawfully permitted seawall deck to be an Accessory Use area or hold Special Events, how does the proposed development qualify as a previously nonconforming use of the subject coastal bluff area.

15. Comments Regarding Potential Unaddressed Adverse Impacts to Visual Resources and Aesthetics

All or part of the new lower concrete deck is proposed to be constructed on protected coastal bluff that can be seen from sensitive site locations to the north and south of the IASC property.

C-79

The DEIR is defective because it fails to address the below potential impacts to view areas, viewsheds, beaches, and promontories such as those from the south from the Sunset Cliffs Nature Park and to the north (from the beach and west end of Point Loma Avenue).

The current municipal code prohibits and discourages development on protected coastal bluffs based on adverse impacts to visual resources. Multiple provisions for the OBCP/LCP prohibit and discourage development on protected coastal bluffs (such as the coastal bluff at the subject IASC property) because of adverse impacts to visual resources. Multiple provisions for the OBCP/LCP require that new development be located and setback certain distances away from coastal bluffs (such as the coastal bluff at the subject IASC property) to prevent adverse impacts to visual resources. Please ensure that all potential impacts and land use conflicts are disclosed and addressed in the DEIR.

The DEIR fails to detail, analyze, and mitigate direct and indirect impacts arising from nighttime lighting located at and on the *concrete surface lower terrace* that are anticipated to be needed and used for the proposed development and its holding of nighttime Special Events.

C-79: The proposed project will remove the lower concrete deck and terrace discussed in the comment.

COMMENTS

RESPONSES

C-80: The proposed project will remove the lower concrete deck, terrace, and seawall discussed in the comment.



Page Twenty
July 27, 2018
Comments on DEIR, Project No. 231328

16. Defects in the DEIR's Consideration of Geological Impacts and Defective Alternatives Analysis

The project alternatives were only analyzed with respect to minimizing impacts to geology and soils, and preventing impacts to the original seawall and blufftop apartment/hotel buildings – referred to as “primary structures”. (E.g., “None of the alternatives analyzed above would reduce impacts of the project and may result in greater impacts related to geology and soils...” [Section S.5.3, p. S-7])

However, as explained below, there are major defects (omissions) in the DEIR with respect to additional undisclosed and unanalyzed potential direct and indicated adverse impacts to the existing and adjacent coastal bluffs, landforms, and overall geological stability of the area.

C-80

The DEIR and its alternatives analysis also omit whole categories of adverse impacts (such as parking, noise, visual/aesthetics impacts and land use conflicts) arising from the creation, permitting, and operation of a coastal bluff entertainment venue on the *concrete surface lower terrace*. Each of three alternatives need to be expanded and reanalyzed based on reducing or eliminating impacts arising from use and operational impacts.

The DEIR inaccurately states that “wave [] overtopping currently occurs on almost a weekly basis.” (DEIR Section S.5.2, p. S-7) This general statement, as do many in the DEIR, is dramatically exaggerated and overstated. Please correct and refine this statement with both (1) the number of events per year, and (2) the physical conditions (i.e. weather and tide) that wave overtopping occurs.

The DEIR omits known and available information about the existence of damage and holes in both the north and south wings of the subject seawall. (See photographs attached hereto as Exhibit N (north end of wall) and Exhibit O (south end of wall)) Please ensure the DEIR, geology studies, and application for permits and proposed development presents an accurate and comprehensive plan for addressing these additional known and/or anticipated issues. Analysis, consideration and proposals for such correction should not be segmented from the current DEIR.

The statement and proposed finding that the “Remove Concrete Terrace Alternative would not meet any of the project objectives nor would it result in the reduction of any impacts associated with the proposed project” is inaccurate, unsupported, and needs to be corrected. This alternative would achieve the first two items of the project description and would reduce impacts associated with use and operation of the *concrete surface lower terrace* as a Special Events and Accessory Use venue (for activities including *weddings, receptions, and other private events*).

COMMENTS

RESPONSES



Page Twenty One
July 27, 2018
Comments on DEIR, Project No. 231328

Based on the above, the DEIR is defective as it does not propose or present a reasonable range of project alternatives that both meet the goals and purposes of the proposed project and minimizes significant adverse impacts to important and site sensitive resources. For instance, an alternative that restored the coastal bluff face to unpermitted development conditions, with natural material, would achieve most of the project objectives, satisfy the description and project purposes, and minimize many of the significant adverse impacts to land use and coastal resources.

The DEIR fails to address prior indicated and/or required grading, among other things, to correct and repair the original condition of the coastal bluff. The DEIR needs to fully explain this condition that was contained in the emergency permit, what was done or not done, what remains to be done, and what can be done to fully restore to the coastal bluff to its original natural condition.

The DEIR incorrectly claims that there is "no native soil present on-site" and that there is only non-native ice plants maintained by the Applicant on the coastal bluffs. Not only is this incorrect, but it skews the review and analysis about protecting and improving the coastal bluff sensitive and protected environmental resource. The DEIR needs to be corrected to identify and describe actual conditions and redevelopment potential to natural conditions existing prior to the Applicant's and its predecessor's unpermitted development of the subject coastal bluff.

17. Defects in the Project Description

As required by the August 22, 2014 NOP Scoping Letter (at p. 5) requirements for the subject EIR, "This section shall describe all discretionary actions needed to implement the project (e.g. Site Development Permit, Planned Development Permit, Tentative Map, etc.) including **all permits required from federal, state, and local agencies**. The description of the project shall include all major project features, including density, grading (cut and fill), **relocation of existing facilities, land use, retaining walls, landscaping, drainage design, improvement plans, including any off-site improvements, vehicular access points and parking areas associated with the project**. The project description shall describe any off-site activities necessary to construct the project."

The DEIR omits and fails to consider the above-mentioned subjects and study areas and therefore needs to be revised and recirculated for public review and comment after doing so.

C-81

C-81: The project description referenced by the comment is irrelevant because that description was for a different project.

COMMENTS

RESPONSES



Page Twenty Two
July 27, 2018
Comments on DEIR, Project No. 231328

C-82

18. Comments Regarding Improper Segmentation of CEQA Study in the DEIR

The project description and objectives relate only to the physical repair of the seawall and associated structures, it does not address the use of the project site for Accessory use and Events. (DEIR at S-2 to S-3.) The failure to study the intended use of the Project site is an unlawful segmentation of the project because it fails to study the whole of the project. Such segmentation can minimize consideration of a project's true environmental consequences and is a violation of CEQA. (*Burbank-Glendale-Pasadena Airport Authority v. Hensler*, (1991) 233 Cal.App.3d 577, 591.) To comply with CEQA, an agency must evaluate the whole of any project that may result in either direct or reasonably foreseeable impacts on the environment. (CEQA Guidelines, § 15378, subd. (a).)

The DEIR attempts to excuse consideration of the "whole of the project" based on a finding that City "previously made a determination that weddings are a permitted accessory use of hotels within all areas of the City." (DEIR at p. S-4) Based on this argument City has concluded that: "Use of the site for weddings and other private events is, therefore, not part of this discretionary approval, and would occur on the property with or without the concrete terrace, which is the nature of this project and approval." (Id.) This conclusion is contrary to both fact and law.

CEQA requires that a lead agency consider the whole of the project before it, and the agency cannot avoid this requirement "by chopping up a proposed project into bite-sized pieces which, individually considered, might be found to have no significant effect on the environment." (*Kings County Farm Bureau v. City of Hanford*, (1990) 221 Cal.App.3d 692, 716-717.) Here, the DEIR ignores facts that if the project is approved it will create and facilitate an expanded Accessory Use area that Special Events may be held, causing an increase in traffic, noise, and parking adverse impacts.

19. Concluding Remarks

If you need any clarification or would like to discuss any of the above matters, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig A. Sherman".

Craig A. Sherman

Enclosures (List of Exhibits – Exhibits A through R)

C-82: The proposed project will remove the lower concrete deck and terrace discussed in the comment. The use of the hotel for Special Events is an existing, established use that the City has already determined to be allowable, and this is not a forum for objections to such use. This is not improper segmentation, as the project does not propose any change to existing uses in connection with the project.

INITIAL STUDY CHECKLIST

1. Project title/Project number: Inn at Sunset Cliffs/231328
2. Lead agency name and address: City of San Diego, 1222 First Avenue, MS-501, San Diego, California 92101
3. Contact person and phone number: Jeff Szymanski / (619) 446-5324
4. Project location: 1370 Point Loma Sunset Cliffs Boulevard San Diego CA, 92107
5. Project Applicant/Sponsor's name and address: Inn at Sunset Cliffs-Gavin Fleming, 1370 Point Loma Boulevard San Diego CA, 92107
6. General/Community Plan designation: Medium Density Residential
7. Zoning: RM-5-12 zone
8. Description of project (Describe the whole action involved, including but not limited to, later phases of the project, and any secondary, support, or off-site features necessary for its implementation.):

The project proposes a ~~Coastal Development Permit (CDP)~~ and a Site Development Permit (SDP) for the removal of the remnants of an existing seawall, removal of approximately 2,120 square feet of a lower concrete deck, removal of two (2) existing keystone block firepits, and construction of a new secant pile seawall immediately landward of the landward edge of the lower deck. The original seawall, constructed in 1953, has had multiple failures, leading to the destruction of approximately one-third of the concrete deck. All proposed work would occur on private property and within the footprint of the existing shoreline protection devices (seawall and lower deck). The subject property is 0.542 acres, with the total disturbed area less than 0.131 acres. There are no existing easements, and none are proposed.

Generally, the project consists of the following:

- ~~Install temporary erosion control.~~
- Empty and remove Sand-filled geotubes from previous repairs.
- Demolish the existing walls, concrete infills (and debris to be hauled offsite).
- Drill piles, place forms, and install rebar for the proposed sea wall
- Drill and place hydraugers.
- Place concrete to form secant piles.
- Apply architectural treatment to the sea wall face to match the surrounding bluffs for a natural aesthetic.

- Place fill and durable surface landward of the wall to prevent overtopping waves from undermining the proposed new sea wall.
- Remove previously placed I-TON riprap from the shoreline.

Prior to construction of the seawall, the contractor would first build a temporary construction access road from the end of Point Loma Avenue to the lower deck area to access and drill the overlapping drilled piers to create the secant pile wall. The steel reinforcing for every other drilled pier would extend above the ground surface up to the final top-of-wall elevation of 27.7 feet. While the overlapping drilled piers would be filled up to the construction subgrade (which varies from about elevation 24.2 feet at the north end of the wall down to about elevation 20 feet at the lower deck, and then up to 27.7 feet at the extreme southeasterly edge of the wall above the construction subgrade), horizontal reinforcing would be added to the exposed vertical steel reinforcing, wood forms placed on both sides of the exposed portion of the secant pile wall, and then concrete placed to create the upper exposed portion of the wall. Tiebacks would be drilled, installed, grouted, and then locked off. The wall would be approximately 170 feet long and an architectural treatment would be used on the wall face to match the surrounding bluffs.

After the upper row of tiebacks is locked off, the lower deck and existing seawall would be incrementally removed. The contractor would use a small excavator with a breaker bar on the lower deck, along with a crane (parked at the Point Loma Avenue street-end) with a grapple to pick up broken pieces, then setting them directly into 10- yard dumps parked on Point Loma Avenue. Any large rocks may be drilled and broken with expanding grout to reduce the size to enable the grapple to pick up manageable sizes of rock and debris. All of the recently placed stone and rip rap would be individually picked with a grapple and hauled off-site.

The seaward demolition work of the lower deck and existing seawall would temporarily stop at an interim pad elevation of around +8 feet MSL to enable the installation of the lower row of tiebacks and hydraugers. The demolition work would then continue, removing all construction materials.

After the installation of the lower tiebacks and hydraugers, the area immediately seaward of the secant pile wall would then be excavated down to the variable elevation bedrock seafloor while still leaving the more seaward lower portion of the existing wall to provide construction-period storm protection to enable the architectural treatment along the seaward face of the wall, after which the remaining seaward portion of the original seawall would be removed down to the underlying bedrock. After removing all of the debris, additional hand cleaning would be conducted, essentially removing all debris from the bedrock sea floor and leaving some variable elevation for potential creation of tide pools.

9. Surrounding land uses and setting:

The site is surrounded by residential and commercial uses to the north, institutional use (church) to the east, residential use to the south with the ocean on the west.

10. Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement):

California Coastal Commission

11. Have California Native American tribes traditionally and culturally affiliated with the project area requested consultation pursuant to Public Resources Code section 21080.3.1? If so, has consultation begun?

No, see Section XVIII of the Initial Study.

Note: Conducting consultation early in the CEQA process allows tribal governments, lead agencies, and project proponents to discuss the level of environmental review, identify and address potential adverse impacts to tribal cultural resources, and reduce the potential for delay and conflict in the environmental review process. (See Public Resources Code section 21083.3.2.) Information may also be available from the California Native American Heritage Commission's Sacred Lands File per Public Resources Code section 5097.96 and the California Historical Resources Information System administered by the California Office of Historic Preservation. Please also note that Public Resources Code section 21082.3(c) contains provisions specific to confidentiality.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

<input type="checkbox"/>	Aesthetics	<input type="checkbox"/>	Greenhouse Gas Emissions	<input type="checkbox"/>	Public Services
<input type="checkbox"/>	Agriculture and Forestry Resources	<input type="checkbox"/>	Hazards & Hazardous Materials	<input type="checkbox"/>	Recreation
<input type="checkbox"/>	Air Quality	<input type="checkbox"/>	Hydrology/Water Quality	<input type="checkbox"/>	Transportation
<input checked="" type="checkbox"/>	Biological Resources	<input type="checkbox"/>	Land Use/Planning	<input type="checkbox"/>	Tribal Cultural Resources
<input type="checkbox"/>	Cultural Resources	<input type="checkbox"/>	Mineral Resources	<input type="checkbox"/>	Utilities/Service System
<input type="checkbox"/>	Energy	<input type="checkbox"/>	Noise	<input type="checkbox"/>	Wildfire
<input type="checkbox"/>	Geology/Soils	<input type="checkbox"/>	Population/Housing	<input type="checkbox"/>	Mandatory Findings Significance

DETERMINATION: (To be completed by Lead Agency)

On the basis of this initial evaluation:

- The proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- Although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- The proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- The proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect (a) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and (b) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but must analyze only the effects that remain to be addressed.
- Although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or (MITIGATED) NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or (MITIGATED) NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

EVALUATION OF ENVIRONMENTAL IMPACTS:

- 1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis.)
- 2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
- 3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.
- 4) "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from "Earlier Analyses", as described in (5) below, may be cross-referenced).
- 5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or (mitigated) negative declaration. *Section 15063(c)(3)(D)*. In this case, a brief discussion should identify the following:
 - a. Earlier Analysis Used. Identify and state where they are available for review.
 - b. Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
 - c. Mitigation Measures. For effects that are "Less Than Significant With Mitigation Measures Incorporated", describe the mitigation measures that were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.
- 6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.
- 7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
- 8) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.
- 9) The explanation of each issue should identify:
 - a. The significance criteria or threshold, if any, used to evaluate each question; and
 - b. The mitigation measure identified, if any, to reduce the impact to less than significant.

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

I. AESTHETICS – Except as provided in Public Resources Code Section 21099, would the project:

- a) Have a substantial adverse effect on a scenic vista?

Per the City of San Diego CEQA Significance Determination Thresholds (City's Thresholds) projects that would block public views from designated open space areas, roads, or parks or significant visual landmarks and scenic vistas may result in a significant impact. The Ocean Beach Community Plan (OBCP) identifies a “view cone” to the Pacific Ocean at the terminus of Point Loma Boulevard, just north of the project site. The proposed seawall would be located downslope from the view cone and would not impede any viewing opportunities to the Pacific Ocean. Therefore, the project would not have an adverse effect on scenic vistas. No impact would occur.

- b) Substantially damage scenic resources, including but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?

In order to construct the secant sea wall, piles would be drilled and then filled with concrete. The piles would be drilled into the toe of the slope and would generally follow the outline of the bluff. The seawall would abut the bottom of the bluff edge while the upper portion of the seawall would require backfill to prevent erosion by overlapping wave action. An alteration to the bluff would occur; however, the exposed face of the seawall would be architecturally treated and painted to match surrounding bluffs. The exposed face would be molded and colored to blend in with the adjacent natural geologic exposures and adjacent walls to the north. Impacts would be less than significant.

- c) In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?

According to the City's Thresholds projects that severely contrast with the surrounding neighborhood character may result in a significant impact. To meet this threshold one or more of the following conditions must apply: the project would have to exceed the allowable height or bulk regulations and the height or bulk of the existing patterns of development in the vicinity of the project by a substantial margin; have an architectural style or use building materials in stark contrast to adjacent development where the adjacent development follows a single or common architectural theme (e.g., Gaslamp Quarter, Old Town); result in the physical loss, isolation or degradation of a community identification symbol or landmark (e.g., a stand of trees, coastal bluff, historical landmark) which is identified in the General Plan, applicable community plan or local coastal program; be located in a highly visible area (e.g., on a canyon edge, hilltop or adjacent to an interstate highway) and would strongly contrast with the surrounding development or natural topography through excessive height, bulk signage or architectural projections; and/or the project

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

would have a cumulative effect by opening up a new area for development or changing the overall character of the area.

Seawalls have been constructed at several locations in Ocean Beach and in close proximity to the Inn at Sunset Cliffs Project. There are two previously permitted seawalls to the north of the project at the end of Bermuda Avenue (Avery Seawall and Davenport Seawall), and another seawall that has been approved but not constructed (Houlton's Seawall). The Houlton Seawall is directly to the north of the project on the north side of Point Loma Boulevard. The Inn's seawall proposes an architectural treatment and design that will be consistent with these previously approved seawalls and would not starkly contrast with the adjacent neighboring seawalls. The aesthetic appearance of the proposed seawall would be similar to neighboring seawalls. Further, the OBCP allows for coastal protective devices when protecting existing development, therefore, no impacts would occur.

- d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?

Per the City's Thresholds, projects that would emit or reflect a significant amount of light and glare may have a significant impact. To meet this significance threshold, one of the following must apply:

- a. The project would be moderate to large in scale, more than 50 percent of any single elevation of a building's exterior is built with a material with a light reflectivity greater than 30 percent (see LDC Section 142.07330(a)), and the project is adjacent to a major public roadway or public area.
- b. The project would shed substantial light onto adjacent, light-sensitive property or land use, or would emit a substantial amount of ambient light into the nighttime sky. Uses considered sensitive to nighttime light include, but are not limited to, residential, some commercial and industrial uses, and natural areas.

The project does not propose any use of outdoor lighting or building materials with highly reflective properties, such as highly reflective glass or high-gloss surface colors. Therefore, the project would not create any new sources of light pollution that could contribute to skylight, light trespass, or glare and adversely affect day or nighttime views in the area. No impact would occur.

- II. AGRICULTURAL AND FOREST RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. – Would the project:

- a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

Agricultural land is rated according to soil quality and irrigation status; the best quality land is called Prime Farmland. Unique farmland is land, other than prime farmland, that has combined conditions to produce sustained high quality and high yields of specialty crops. Farmland of Statewide Importance may include tracts of land that have been designated for agriculture by State law. In some areas that are not identified as having national or statewide importance, land is considered to be Farmland of Local Importance. The Farmland Mapping and Monitoring Program (FMMP) maintained by the California Department of Conservation (CDC) is the responsible state agency for overseeing the farmland classification. In addition, the City's Thresholds state that in relation to converting designated farmland, a determination of substantial amount cannot be based on any one numerical criterion (i.e., one acre), but rather on the economic viability of the area proposed to be converted. Another factor to be considered is the location of the area proposed for conversion. The project site is not classified as farmland by the California Department of Conservation's FMMP. No Prime Farmland, Unique Farmland, or Farmland of Statewide Importance occurs on site or within the area immediately surrounding the project site. Therefore, the project would not result in impacts related to the conversion of farmland to a non-agricultural use. No impact would occur.

- b) Conflict with existing zoning for agricultural use, or a Williamson Act Contract?
- | | | | |
|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|--------------------------|--------------------------|-------------------------------------|

The Williamson Act, also known as the California Land Conservation Act of 1965, enables local governments to enter into contracts with private landowners for the purpose of restricting specific parcels of land to agricultural or related open space use; in return, landowners receive property tax assessments which are much lower than normal because they are based upon farming and open space uses as opposed to full market value. The Williamson Act is only applicable to parcels within an established agricultural preserve consisting of at least 20 acres of Prime Farmland, or at least 40 acres of land not designated as Prime Farmland. The Williamson Act is designed to prevent the premature and unnecessary conversion of open space lands and agricultural areas to urban uses.

As stated in response II (a) above. The proposed project site is not zoned for agricultural use. There are no Williamson Act Contract lands on or within the vicinity of the project. The project would not affect properties zoned for agricultural use or conflict with a Williamson Act Contract. No impact would occur.

- c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 1220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?
- | | | | |
|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|--------------------------|--------------------------|-------------------------------------|

The project would not conflict with existing zoning for, or cause rezoning of, forest land, timberland, or timberland zoned for Timberland Production. The project site is zoned for residential use; no designated forest land or timberland occurs within the boundaries of the project. No impact would occur.

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

- d) Result in the loss of forest land or conversion of forest land to non-forest use?

Refer to response II (c) above. The project would not convert forest land to non-forest use. No impact would occur.

- e) Involve other changes in the existing environment, which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or conversion of forest land to non-forest use?

Refer to responses II (a) and II (c) above. No existing farmland or forest land are located in the proximity of the project site. No changes to any such lands would result from project implementation. No impact would occur.

III. AIR QUALITY – Where available, the significance criteria established by the applicable air quality management district or air pollution control district may be relied on to make the following determinations – Would the project:

- a) Conflict with or obstruct implementation of the applicable air quality plan?

According to the City's Thresholds, a project may have a significant air quality impact if it could conflict with or obstruct implementation of the applicable air quality plan. The San Diego Air Pollution Control District (SDAPCD) and San Diego Association of Governments (SANDAG) are responsible for developing and implementing the clean air plan for attainment and maintenance of the ambient air quality standards in the San Diego Air Basin (SDAB). The County Regional Air Quality Strategy (RAQS) was initially adopted in 1991 and is updated on a triennial basis (most recently in 2016). The RAQS outlines the SDAPCD's plans and control measures designed to attain the state air quality standards for ozone (O₃). The RAQS relies on information from the California Air Resources Board (CARB) and SANDAG, including mobile and area source emissions, as well as information regarding projected growth in San Diego County and the cities in the county, to project future emissions and then determine the strategies necessary for the reduction of emissions through regulatory controls. CARB mobile source emission projections and SANDAG growth projections are based on population, vehicle trends, and land use plans developed by San Diego County and the cities in the county as part of the development of their general plans.

As such, projects that propose development that is consistent with the growth anticipated by local plans would be consistent with the RAQS. However, if a project proposes development that is greater than that anticipated in the local plan and SANDAG's growth projections, the project might conflict with the RAQS and may contribute to a potentially significant cumulative impact on air quality.

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

The proposed seawall is allowed by the City's Municipal Code and OBCP and would be consistent at a sub-regional level with the underlying growth forecasts in the RAQs and would not obstruct implementation of the RAQs. As such, impacts would be less than significant.

- b) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?
- | | | | |
|--------------------------|--------------------------|-------------------------------------|--------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|--------------------------|--------------------------|-------------------------------------|--------------------------|

The City's Thresholds state that a significant impact may occur if a project violates any air quality standard or contribute substantially to an existing or projected air quality violation.

Short-term Emissions (Construction)

Project construction activities would potentially generate combustion emissions from on-site heavy-duty construction vehicles and motor vehicles transporting the construction crew and necessary construction materials. Exhaust emissions generated by construction activities would generally result from the use of typical construction. Variables that factor into the total construction emissions potentially generated include the level of activity, length of construction period, number of pieces and types of equipment in use, site characteristics, weather conditions, number of construction personnel, and the amount of materials to be transported on or off site. It is anticipated that construction equipment would be used on site for four to eight hours a day; however, construction would be short-term and impacts to neighboring uses would be minimal and temporary.

Fugitive dust emissions are generally associated with land clearing and grading operations. Construction operations are subject to the requirements established in Regulation 4, Rules 52, 54, and 55 of the SDAPCD rules and regulations. The project would include standard measures as required by the City grading permit to minimize fugitive dust and air pollutant emissions during the temporary construction period. Therefore, impacts associated with fugitive dust are considered less than significant and would not violate an air quality standard or contribute substantially to an existing or projected air quality violation. Impacts related to short-term emissions would be less than significant.

Long-term Emissions (Operational)

Long-term air pollutant emission impacts are those associated with stationary sources and mobile sources related to any change caused by a project. Once constructed the project would not generate any new trips (beyond construction) or project-related emissions. Therefore, long-term operation of the project would not result in additional air emissions compared to existing conditions, and long-term operational emissions would not violate any relevant federal, state, or regional air quality standards for the SDAB.

Seawalls do not generate emissions Overall so the project is not expected to generate substantial short- or long-term emissions that would violate any air quality standard or contribute to an existing or projected air quality

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

violation: therefore, impacts would be less than significant.

- c) Expose sensitive receptors to substantial pollutant concentrations?

The project is for the construction of a seawall and once in operation there would be no use of a substantial amount of pollutants. No impacts would occur.

- d) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?

The City's Thresholds state that for a project proposing placement of sensitive receptors near an existing odor source, a significant odor impact will be identified if the project site is closer to the odor source than any existing sensitive receptor where there has been more than one confirmed or three confirmed complaints per year (averaged over a three- week period) about the odor source. Moreover, for projects proposing placement of sensitive receptors near a source of odors where there are currently no nearby existing receptors, the determination of significance should be based on the distance and frequency at which odor complaints from the public have occurred in the vicinity of a similar odor source at another location. The project is for the construction of a seawall and none of the above applies to the proposed project. No impacts would occur.

IV. BIOLOGICAL RESOURCES – Would the project:

- a) Have substantial adverse effects, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

The City's Thresholds state that significance of impacts to biological resources are assessed by City staff through the CEQA review process and through review of the project's consistency with the Environmentally Sensitive Lands (ESL) regulations, the Biology Guidelines (2018) and with the City's MSCP Subarea Plan (1997).

A biological review of the project site was first conducted in October 2011 (Project Design Consultants 2011). Since that time City staff has verified the conditions of the project site over the life of the project through site visits and photo documentation and no change has been identified. The upper portion of the project is composed largely of hardscape and ornamental landscaping. The slope between the top tier patio and the collapsed deck is covered by ornamental ice plant. No native species were observed on the sloped area. The project site is developed, and no changes to the existing condition relative to biological resources have occurred since the time of the initial review. No impact would occur.

In addition, to document the current proposed project an Intertidal Biological Assessment (Marine Taxonomic Services, September 2021) was also conducted. MTS biologists conducted a marine

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

biological survey at the Inn at Sunset Cliffs on December 23, 2019 between the hours of 1000 and 1400 during a period of low tides (2.0 feet mean lower low water (MLLW) at 1030 and -0.75 feet MLLW at 1400). The 0' MLLW boundary and the toe of the riprap revetment at the foot of the vertical seawall were mapped utilizing a differential global positioning device (dGPS). Rocky reef habitat identified below the toe of the riprap revetment, along with the shoreward extent of marine algal growth was also surveyed.

The report determined that the proposed project would have no significant impact on surveyed rocky reef habitats adjacent to the toe of the riprap revetment, the riprap revetment itself, or the existing vertical seawall. Although the rocky reef habitats surveyed were found to support a diverse assemblage of marine species, no rocky reefs would occur within areas where construction activity would occur. Furthermore, the existing rock riprap revetment surveyed was not found to support a unique intertidal community. Because the proposed secant pile wall would be installed behind the existing vertical seawall, none of the marine algae or invertebrates surveyed on both the seawall and inside of the small opening within the seawall would be impacted during installation. Moreover, the demolition of the cast in place wall and block wall in front of the secant pile wall will not impact sessile intertidal communities because those features are above the high tide line. Turbidity impacts would not occur as a result of the installation of the proposed secant pile wall as all drilling would be contained behind the existing cast-in-place concrete wall.

While no sea turtles or marine mammals were observed by MTS biologists during the intertidal biological survey, sea lions and harbor seals are very common throughout San Diego, and no barriers currently exist that would prevent them from utilizing the Project area. Significant impacts could occur to any sea lion, harbor seal, or sea turtle if those species were to occupy the Project area during construction. Any Project actions that result in modification of behavior would be considered Level B harassment of these sensitive species. Injury could result if riprap or other materials were dislodged and allowed to fall toward any of these sensitive species; this would represent Level A harassment (injury or death). These impacts would be considered significant.

However with the implementation of mitigation measure BIO-1, which would require a biological monitor to be present on site during construction of the project, impacts to sea lion, harbor seal, and green sea turtle can be mitigated through monitoring regardless of the potential to below a level of significance. During in-water construction activities such as the removal of riprap, a marine biological observer shall be on site to monitor construction activities. The observer shall have the authority to halt or modify construction activities in the event any sensitive species is observed and if the marine biological observer feels the activity has the potential to harm the sensitive species. Note that the previous draft of this report indicated a potential need for marine mammal monitoring due to the potential to produce noises that could disturb marine mammals. After consultation with the engineer relative to construction means and methods, it is the opinion of MTS that the potential for noise impacts to marine mammals because of landside drilling is less than significant.

Additionally, removal of the riprap may result in injury or death of any abalone species that occurs on the riprap or any adjacent surface where riprap could fall during removal. Although abalone were not observed during this survey, the Project area does contain suitable abalone habitat and abalone could colonize the Project area prior to construction. Any impact to abalone species would be considered significant. To avoid an impact, the following mitigation measure (BIO-2) is proposed. An

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

abalone survey shall be performed within all intertidal and subtidal areas within 5 meters of the proposed in-water work area (riprap removal area). The abalone survey shall be conducted within 7 days of the start of in-water work. The survey shall be considered valid for 30 days and therefore repeated if in-water work takes more than 30 days or is delayed. If abalone are identified, the Project will be

delayed until NOAA Fisheries can be consulted and a plan to protect in place or abalone relocation can be performed.

These mitigation requirements shall be incorporated into Section V of the MMRP and would reduce potential impacts to biological resources to below a level of significance. Therefore, the project would not have substantial effects on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.

- b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?
- | | | | |
|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|--------------------------|--------------------------|-------------------------------------|

No federally, state, or locally protected wetlands, including marsh, vernal pools, or coastal wetlands, are present on the project site. The project is adjacent to the Pacific Ocean but the construction of the seawall would not result in impacts. Therefore, the project would not result in impacts to wetlands.

- c) Have a substantial adverse effect on federally protected wetlands (including but not limited to marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?
- | | | | |
|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|--------------------------|--------------------------|-------------------------------------|

See IV. b), the project would not have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including but not limited to marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means. No impacts would occur.

- d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?
- | | | | |
|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|--------------------------|--------------------------|-------------------------------------|

Due to the project location on a developed site with no native vegetation, project implementation would not interfere with the movement of any native resident or migratory fish or wildlife species,

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites, as none exist within the project area.

- e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

The project would not conflict with any local, regional, or state habitat conservation plans because the project site also does not contain any sensitive habitat or is within the Multi-Habitat Planning Area within the City's Multiple Species Conservation Plan. The project is consistent with the City's Biology Guidelines (2018) and ESL Regulations; and no conflict with local policies or ordinances protecting biological resources would occur. As such, no impact would occur.

- f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

Please see response IV(a) above. The project would not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan. No impacts would occur.

V. CULTURAL RESOURCES – Would the project:

- a) Cause a substantial adverse change in the significance of an historical resource as defined in §15064.5?

The purpose and intent of the Historical Resources Regulations of the Land Development Code (Chapter 14, Article 3, and Division 2) is to protect, preserve and, where damaged, restore the historical resources of San Diego. The regulations apply to all proposed development within the City of San Diego when historical resources are present on the premises. Before approving discretionary projects, CEQA requires the Lead Agency to identify and examine the significant adverse environmental effects which may result from that project. A project that may cause a substantial adverse change in the significance of a historical resource may have a significant effect on the environment (sections 15064.5(b) and 21084.1). A substantial adverse change is defined as demolition, destruction, relocation, or alteration activities, which would impair historical significance (sections 15064.5(b)(1)). Any historical resource listed in, or eligible to be listed in the California Register of Historical Resources, including archaeological resources, is considered to be historically or culturally significant.

Archaeological Resources

The project site has been previously disturbed by development of the existing motel and seawall. Ground-disturbing activities would be limited to installation of the secant pile walls into formation soil that lacks cultural material. Qualified City staff did prepare a record search of the California Historic Resources Information System (CHRIS) digital database to determine the presence or absence of potential resources within the project site. The record search was negative. Based upon

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

the negative CHRIS search and the previously disturbed nature of the site, qualified staff was able to conclude that the project would not result in significant impacts to cultural resources. Similarly, there would be no potential for inadvertent discovery of Native American or other human remains. Therefore, impacts to cultural resources would be less than significant.

Built Environment

The remnants of the seawall and collapsed patio lack integrity and are not historical resources as defined by CEQA Section 15064.5. The removal of debris associated with these features and subsequent construction of the proposed seawall, therefore, would not cause a substantial adverse change to the significance of an historical resource. No impact would occur.

- b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?

Please see V. a), impacts to archaeological resources would not occur.

- c) Disturb any human remains, including those interred outside of dedicated cemeteries?

Based upon response V. a) there would be no potential for the inadvertent discovery of Native American or other human remains.

VI. ENERGY – Would the project:

- a) Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?

Once constructed the seawall would not expend or consume energy. Based upon Title 24 requirements the construction of the seawall would not result in a significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources. Impacts would be less than significant.

- b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?

The proposed project is consistent with the General Plan and Community Plan land use designations and is required to comply with Title 24. Therefore, the project would not conflict or obstruct renewable or efficiency plans. No impacts would occur.

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

VII. GEOLOGY AND SOILS – Would the project:

- a) Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:

- i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.
- | | | | |
|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|--------------------------|--------------------------|-------------------------------------|

The site is not located in an Earthquake Fault Zone defined by the State Geologist and is not located within a fault zone identified on the City of San Diego Geologic Hazards and Fault Maps. The project's geotechnical consultant, TerraCosta Consulting Group, Inc., in their report of December 2020, indicated they reviewed available information and opined that the potential for ground rupture to be very low. No impact would occur.

- ii) Strong seismic ground shaking?
- | | | | |
|--------------------------|--------------------------|-------------------------------------|--------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|--------------------------|--------------------------|-------------------------------------|--------------------------|

The site is in a seismically active area prone to strong seismic ground shaking from occasional earthquakes in the region. Through the grading and building permit process the proposed project will be required to implement the seismic design provisions of the California Building Code and potential impacts due to earthquake ground shaking will be reduced to an acceptable level of risk. Impacts would be less than significant.

- iii) Seismic-related ground failure, including liquefaction?
- | | | | |
|--------------------------|--------------------------|-------------------------------------|--------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|--------------------------|--------------------------|-------------------------------------|--------------------------|

TerraCosta Consulting Group, Inc., the project's geotechnical consultant, has investigated the site conditions and in their report of December 2020 opined that the potential for liquefaction of subsurface soils at the site is negligible. No impact would occur

- iv) Landslides?
- | | | | |
|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|--------------------------|--------------------------|-------------------------------------|

A stability analysis of the natural geologic slopes (without the protective seawall and backfill) was completed for the site by TerraCosta Consulting Group, Inc. The analysis from the geotechnical report indicated that the slope has factors of safety ranging from 1.4 against a shallow failure within the terrace deposits, to a high of 4.0 against a deep-seated failure for gross stability. The construction of the seawall would not negatively impact the slope stability and as noted in the report would improve conditions. No impact would occur.

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Marine erosion threatens the coastal site and has been the chief cause of partial collapse of the lower deck and seawall. TerraCosta Consulting Group, Inc., the geological consultant for the project indicated in the referenced geotechnical report, that "even with a relatively high factor of safety against slope instability, in the absence of the seawall, the bluff-top improvements (including the two buildings) are at risk of damage from coastal erosion, with the southerly building at imminent risk (absent the seawall), with a reasonable probability of storm-induced damage occurring within the next two years." According to TerraCosta Consulting Group, Inc., December 2020: "The proposed shoreline stabilization projects, is necessary to prevent continued erosion of the lower bluff threatening the bluff-top structures and to prevent flanking of the adjacent walls to the north and south." The seawall project is chiefly to prevent impacts from marine erosion. No impact would occur.

- c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?
- | | | | |
|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|--------------------------|--------------------------|-------------------------------------|

A stability analysis of the natural geologic slopes (without the protective seawall and backfill) was completed for the site by TerraCosta Consulting Group, Inc. The geotechnical report indicates that the slope has factors of safety ranging from 1.4 against a shallow failure within the terrace deposits, to a high of 4.0 against a deep-seated failure for gross stability. The construction of the seawall would not negatively impact the slope stability and as noted in the report would improve conditions. No impact would occur.

As indicated above, TerraCosta Consulting Group, Inc., has investigated the site conditions and in their report of December 2020 opined that the potential for liquefaction of subsurface soils at the site is negligible. The potential for lateral spreading or collapse is related to potential for liquefaction. because the seawall is designed to prevent marine erosion and stabilize the bluff. No impact would occur.

- d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?
- | | | | |
|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|--------------------------|--------------------------|-------------------------------------|

The geotechnical investigation of the site did not identify expansive soils as a potential hazard for the site. No impact would occur.

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

- e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?

The proposed project does not propose the use of septic tanks or alternative water disposal systems. No impacts would occur.

- f) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?

In areas of high sensitivity for paleontological resources grading in excess of 1,000 cubic yards of soil and 10 feet would result in significant impacts to paleontological resources. In order to construct the seawall, the project proposes to grade approximately 0.012 acres, with a cut quantity of .20 cubic yards. The grading amount does not exceed the City's thresholds and impacts to paleontological resources would not occur.

VIII. GREENHOUSE GAS EMISSIONS – Would the project:

- a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?

In December 2015, the City adopted a Climate Action Plan (CAP) that outlines the actions that City will undertake to achieve its proportional share of State greenhouse gas (GHG) emission reductions. The purpose of the Climate Action Plan Consistency Checklist (Checklist) is to, in conjunction with the CAP, provide a streamlined review process for proposed new development projects that are subject to discretionary review and trigger environmental review pursuant to the California Environmental Quality Act (CEQA).

Analysis of GHG emissions and potential climate change impacts from new development is required under CEQA. The CAP is a plan for the reduction of GHG emissions in accordance with CEQA Guidelines Section 15183.5. Pursuant to CEQA Guidelines Sections 15064(h)(3), 15130(d), and 15183(b), a project's incremental contribution to a cumulative GHG emissions effect may be determined not to be cumulatively considerable if it complies with the requirements of the CAP.

This Checklist is part of the CAP and contains measures that are required to be implemented on a project-by-project basis to ensure that the specified emissions targets identified in the CAP are achieved. Implementation of these measures would ensure that new development is consistent with the CAP's assumptions for relevant CAP strategies toward achieving the identified GHG reduction targets. Projects that are consistent with the CAP as determined through the use of this Checklist may rely on the CAP for the cumulative impact analysis of GHG emissions. Projects that are not consistent with the CAP must prepare a comprehensive project-specific analysis of GHG emissions, including quantification of existing and projected GHG emissions and incorporation of the measures

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

in this Checklist to the extent feasible. Cumulative GHG impacts would be significant for any project that is not consistent with the CAP.

~~The proposed project would not result in new occupancy and therefore is not required to complete Step 2 of the Checklist per footnote 5. Therefore, since the project is consistent with Step 1 of the CAP Consistency Checklist, the proposed project would not result in significant GHG impacts.~~

The submitted Climate Action Plan (CAP) Consistency Checklist was reviewed by EAS staff and based upon the review the project was determined to be consistent with the CAP. The CAP Consistency Checklist includes a three-step process to determine project the project would result in a GHG impact. Step 1 consists of an evaluation to determine the project's consistency with existing General Plan, Community Plan, and zoning designations for the site. Step 2 consists of an evaluation of the project's design features compliance with the CAP strategies. Step 3 is only applicable if a project is not consistent with the land use and/or zone, but is also in a transit priority area to allow for more intensive development than assumed in the CAP.

Under Step 1 of the CAP Consistency Checklist, the project is consistent with the existing General Plan and Downtown and Barrio Logan Community Plan land use designations and zoning for the site. Therefore, the project is consistent with the growth projections and land use assumptions used in the CAP. Furthermore, completion of Step 2 of the CAP Consistency Checklist demonstrates that the project would be consistent with applicable strategies and actions for reducing GHG emissions.

The project would be consistent with the City of San Diego General Plan (2008) and Ocean Beach Community Plan/Local Coastal Program (LCP) (adopted July 2014) land use designations and City Municipal Code. The site is zoned RM-5-12, which permits visitor accommodations or medium-density multiple dwelling units at a maximum density of 1 dwelling unit for each 1,000 square feet of lot area. The Inn at Sunset Cliffs is allowed by right in an RM-5-12 zone, along with accessory uses permitted in conjunction with hotels as defined by the Land Development Code (LDC). Recommendation 7.3.4 from the Community Plan, allows for the placement of shoreline protective devices, such as concrete seawalls, and revetments, only when required to serve coastal dependent uses or when there is no other feasible means to protect existing principal structures, such as homes, in danger from erosion.

The seawall once constructed is not expected to emit any emissions that would impact the environment. Furthermore, completion of Step 2 of the CAP Consistency Checklist demonstrates that the project would be consistent with applicable strategies and actions for reducing GHG emissions. Impacts would be less than significant.

- b) Conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases?

Please see VII. a), based upon the CAP Checklist the project would not conflict with plans that would reduce greenhouse gases.

IX. HAZARDS AND HAZARDOUS MATERIALS – Would the project:

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

- a) Create a significant hazard to the public or the environment through routine transport, use, or disposal of hazardous materials?
- | | | | |
|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|--------------------------|--------------------------|-------------------------------------|

The project site was not listed in any of the databases for hazardous materials including being listed in the State Water Resources Control Board GeoTracker system, which includes leaking underground fuel tank sites inclusive of spills, leaks, investigations, and cleanups and the Department of Toxic Substances Control EnviroStor Data Management System, which includes CORTESE sites.

Construction activities for the project would involve the use of potentially hazardous materials including vehicle fuels, oils, transmission fluids, paint, adhesives, surface coatings and other finishing materials, and cleaning solvents. However, the use of these hazardous materials would be temporary, and all potentially hazardous materials would be stored, used, and disposed of in accordance with manufacturers' specifications, applicable federal, state, and local health and safety regulations. As such, impacts associated with the transport, use, or disposal of hazardous materials would not be significant. No impacts would occur.

- b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?
- | | | | |
|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|--------------------------|--------------------------|-------------------------------------|

Refer to response VIII (a) above.

- c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?
- | | | | |
|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|--------------------------|--------------------------|-------------------------------------|

Please see VIII b), the project would not emit hazardous materials. No impact would result.

- d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?
- | | | | |
|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|--------------------------|--------------------------|-------------------------------------|

A hazardous waste site records search was completed using Geotracker <https://geotracker.waterboards.ca.gov/> The records search showed that no hazardous waste sites exist onsite or in the surrounding area. No impacts would occur.

- e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety
- | | | | |
|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|--------------------------|--------------------------|-------------------------------------|

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

hazard or excessive noise for people residing or working in the project area?

The proposed project is located within the AA Part 77 Noticing Area (Lindbergh and NAS North Island NAS. However, the construction of the seawall is downslope from street grade and would not result in a safety hazard or excessive noise. No impacts would occur.

- f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

The project would construct a seawall and would not impair implementation or physically interfere with an adopted emergency response plan or emergency evacuation plan. No impacts would occur.

- g) Expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires?

The project is adjacent to the Pacific Ocean and there are no wildlands in the vicinity of the project. The construction of the seawall would not expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands. No impact would occur.

X. HYDROLOGY AND WATER QUALITY - Would the project:

- a) Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater quality?

The project would comply with all storm water quality standards during and after construction, and appropriate Best Management Practices (BMP's) will be utilized and provided for on-site. Implementation of these BMP's would preclude any violations of existing standards and discharge regulations. This will be addressed through the project's Conditions of Approval; therefore, impacts would be less than significant, and no mitigation measures are required.

- b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?

The project does not require the construction of wells. The project would construct a seawall and remove prior construction debris. The project may generate an incremental use of water during construction but would not substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level. No impact would occur.

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or through the addition of impervious surfaces, in a manner which would:

- i) result in substantial erosion or siltation on- or off-site;

See VII-X b), impacts would not occur.

- ii) substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site;

Please see response X. c) i). No impact would occur.

- iii) create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or

The project would not introduce any new conditions that would create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff. No impact would occur.

- iv) impede or redirect flood flows?

The construction of the seawall does not have the ability to impede or redirect flows that would result in an impact. Impacts would not occur.

- d) In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?

The project does not propose the active use of pollutants, impacts would not occur.

- e) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

The project would comply with all storm water quality standards during and after construction, and appropriate BMPs will be utilized and provided for on-site. Implementation of these BMP's would preclude any violations of existing standards and discharge regulations. The Implementation of these BMPs will be addressed through the project's Conditions of Approval; therefore, impacts would not occur.

XI. LAND USE AND PLANNING – Would the project:

- a) Physically divide an established community?

The project does not propose the introduction of new structures or infrastructure, such as major roadways, water supply systems, or utilities to the area. Therefore, the project would not significantly disrupt or divide the established community. No impact would occur.

- b) Cause a significant environmental impact due to a conflict with any applicable land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?

The project would be consistent with the City of San Diego General Plan (2008) and Ocean Beach Community Plan/Local Coastal Program (LCP) (adopted July 2014) land use designations and City Municipal Code. The site is zoned RM-5-12, which permits visitor accommodations or medium-density multiple dwelling units at a maximum density of 1 dwelling unit for each 1,000 square feet of lot area. The Inn at Sunset Cliffs is allowed by right in an RM-5-12 zone, along with accessory uses permitted in conjunction with hotels as defined by the Land Development Code (LDC). However, due to the project's location a Coastal Development Permit, is required by LDC Section 126.0702(a) and is appealable to under the jurisdiction of the California Coastal Commission.

Recommendation 7.3.4 from the Community Plan, allows for the placement of shoreline protective devices, such as concrete seawalls, and revetments, only when required to serve coastal-dependent uses or when there is no other feasible means to protect existing principal structures, such as homes, in danger from erosion. The geotechnical report has indicated that the proposed shoreline stabilization project is necessary to prevent the continued erosion of the lower bluff threatening the bluff-top structures and to prevent flanking of the adjacent walls to the north and south.

Additionally, the community plan recommendation also states that all coastal protective devices should be designed to blend with the surrounding shoreline and provide lateral public access. The project would apply architectural treatments to the wall face to match the surrounding bluffs but is not proposing public beach access. The project is inconsistent with this community plan recommendation. As mentioned in the City's Thresholds, Land Use impacts would occur only when there is a secondary physical environmental impact associated with a potential conflict with a land

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

use plan. The lack of access does not have a negative impact on the physical environment. No impacts would occur.

XII. MINERAL RESOURCES – Would the project:

- a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?

The area surrounding the project site is not being used for the recovery of mineral resources and is not designated for the recovery of mineral resources on the City of San Diego General Plan Land Use Map. Therefore, the project would not result in the loss of availability of a known mineral resource. No impact would occur.

- b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?

See XII. a), no impacts would occur.

XIII. NOISE – Would the project result in:

- a) Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?

The City's Thresholds identify that a significant impact would occur if:

Traffic generated noise impacts could result in noise levels that exceed a 45 weighted decibel (dBa) Community Noise Equivalent Level (CNEL) interior of 65 dBa CNEL exterior for single- and multi-family land uses, 75 dBa exterior for office, churches, and professional uses, and 75 dBa exterior for commercial land uses.

- A project which would generate noise levels at the property line which exceed the City's Noise Ordinance Standards is also considered a potentially significant impact. Additionally, Temporary construction noise which exceeds 75 dB (A) L_{EQ} at a sensitive receptor would be considered significant.
- Temporary construction noise which exceeds 75 dB (A) Leq at a sensitive receptor. Construction noise levels measured at or beyond the property lines of any property zoned residential shall not exceed an average sound level greater than 75-decibels (dB) during the 12-hour period from 7:00 a.m. to 7:00 p.m. In addition, construction activity is prohibited between the hours of 7:00 p.m. of any day and 7:00 a.m. of the following day, or on legal holidays as specified in Section 21.04 of the San Diego Municipal Code, with exception of Columbus Day and Washington's Birthday, or on Sundays, that would create disturbing,

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

excessive, or offensive noise unless a permit has been applied for and granted beforehand by the Noise Abatement and Control Administrator, in conformance with San Diego Municipal Code Section 59.5.0404.

- If noise levels during the breeding season for the California gnatcatcher, least Bell's vireo, southern willow flycatcher, least tern, cactus wren, tricolored blackbird or western snowy plover would exceed 60dB(A) or existing ambient noise level if above 60dB(A).

There would be no permanent operational noise source associated with the project and would not result in a permanent substantial increase to the existing noise environment. Therefore, the project noise would not exceed noise level limits established in the Noise Element of the General Plan or Section 59.5.0401 of the City's Noise Abatement and Control Ordinance. There would be no operational impact.

Construction noise is regulated by Section 59.5.0404 of the City's Noise Abatement and Control Ordinance. Section 59.5.0404 states that construction noise levels shall not exceed a 12-hour average sound level of 75 A-weighted decibel 12-hour average sound level (dB(A) Leq(12)) at the nearest residential property line. Noise generated during the construction of the project would be associated with workers driving to the project site and using equipment including sledge hammers, a jack hammer, shovels, and a dump truck. A concrete saw (82.6 dB(A) Leq at 50 feet) and a jackhammer (81.9 dB(A) Leq at 50 feet) generate the loudest noise levels. Construction of the secant pile walls landward of the existing seawall would generate noise as a result of drilling piles within the footprint of the repaired lower concrete terrace and existing seawall down into soil. The typical drill rig used for this activity generates a noise level of 85 dB(A) at 50 feet with a duty cycle of 20 percent, which results in an average noise level of 78 dB(A) Leq at 50 feet. This noise level would attenuate to 71 dB(A) Leq at the nearest residence.

Construction activities would be required to comply with the construction hours specified in the City's Municipal Code (Section 59.5.0404, Construction Noise), which are intended to reduce potential adverse effects resulting from construction noise. Impacts would be less than significant.

- b) Generation of, excessive groundborne vibration or groundborne noise levels?

The project would require drilling for the shoring piles. Ground vibrations in an outdoor environment are generally not perceptible (Federal Transit Administration [FTA] 2006). According to the FTA, vibration levels are 0.089 inch per second peak particle velocity (PPV) at 25 feet. Using FTA's recommended procedure for applying a propagation adjustment to these reference levels, vibration levels would exceed recommended thresholds (0.1 inch per second PPV) at distances of 20 feet or less. The nearest structure is more than 20 feet from potential drilling activities; thus, vibration impacts would be less than significant.

- c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people?

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

residing or working in the project area to excessive noise levels?

Please see responses XIII a) and b), the project would not result in substantial noise increase that would expose people residing or working in the area to a noise impact. Impacts would not occur.

XIV. POPULATION AND HOUSING – Would the project:

- a) 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)?

- b) Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?

See XIV a) impacts would not occur.

XV. PUBLIC SERVICES

- a) Would the project result in substantial adverse physical impacts associated with the provisions of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

i) Fire protection;

The project would not affect existing levels of residents in the area and would not require the construction or expansion of a fire facility. The project is located in a developed area where fire services exist and would not increase the demand on fire facilities over that which currently exists and would not result in any increase in demand for these services. Impacts would not occur.

ii) Police protection;

The project would not affect existing levels of residents in the area and would not require the construction or expansion of police facilities. The project would not increase the demand on police facilities over that which currently exists and is would not result in any increase in demand for these services. Impacts would not occur.

iii) Schools;

The project would not affect existing levels of students and would not require the construction or expansion of a school facility. The project site is located in a developed area where public school services are available. The project would not increase the demand on public schools over that which

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

currently exists and is not anticipated to result in any increase in demand for public educational services. Impacts would not occur.

- iv) Parks:

The project would not affect existing levels of residents in the area and would not require the construction or expansion of a park and is located in an area with existing parks. The project would not increase the demand on parks over that which currently exists and is not anticipated to result any increase in demand for these services. Impacts would not occur.

- v) Other public facilities?

The project site is located in a developed area where City services are already available. The project would not adversely affect existing levels of demand of public services and would not require the construction or expansion of any governmental facilities. Therefore, no new public facilities beyond existing conditions would be required. Impacts would not occur.

XVI. RECREATION

- a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?

The project would not increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur.

- b) Does the project include recreational facilities or require the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment?

The project is the construction of a seawall at an existing private hotel that does contain some recreational opportunities. The project would not increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur.

XVII. TRANSPORTATION- Would the project?

- a) Conflict with an adopted program, plan, ordinance or policy addressing the transportation system, including transit, roadways, bicycle and pedestrian facilities?

The project would not affect existing levels of residents in the area and would not change road patterns or congestion. The project would not conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

account of all modes transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit. In addition, the project would not require the redesign of streets, traffic signals, stop signs, striping or any other changes to the existing roadways or existing public transportation routes or types are necessary. No impact would result due to implementation of the project.

- b) Would the project or plan/policy result in VMT exceeding thresholds identified in the City of San Diego Transportation Study Manual? Conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)?

The project would not affect existing levels of residents in the area and would not result in additional VMT. The project would not exceed VMT thresholds identified in the City of San Diego Transportation Study Manual.

- c) Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

The project is not required to make any improvements to roads or streets and no dangerous road hazards would be introduced by the project. The construction of the seawall is an allowed use and impacts would not occur. Due to the design of the seawall the project would be a compatible use and no impacts would occur.

- d) Result in inadequate emergency access?

The project is not required to make any improvements to roads or streets and would not affect emergency access. The construction of the seawall would not result in impacts.

XVIII. TRIBAL CULTURAL RESOURCES – Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

- a) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), or

The project would not cause a substantial adverse effect to tribal cultural resources, as there are no recorded sites listed or sites eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined by the Public Resources Code. No impact would occur.

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

- b) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

Tribal Cultural Resources include sites, features, places, cultural landscapes, and sacred places or objects that have cultural value or significance to a Native American Tribe. Tribal Cultural Resources include “non-unique archaeological resources” that, instead of being important for “scientific” value as a resource, can also be significant because of the sacred and/or cultural tribal value of the resource. The City, as lead agency, determined that Tribal Cultural Resources pursuant to subdivision Public Resources Code Section 5024.1(c) would not have the potential to be impacted through project implementation. No impact would occur.

XIX. UTILITIES AND SERVICE SYSTEMS – Would the project:

- a) 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 would cause significant environmental effects?

The project is not proposing any change to any water services and would not interrupt existing sewer service to the project site or other surrounding uses. The construction of the seawall would not increase demand for wastewater disposal or treatment as compared to current conditions. Wastewater treatment facilities used by the hotel would continue to be operated in accordance with the applicable wastewater treatment requirements of the Regional Water Quality Control Board (RWQCB). Additionally, the project site is in a developed area and adequate services are already available to serve the project and no mitigation measures are required. No impact would occur.

- b) Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?

The project does not meet the CEQA significance threshold that would require the preparation of a water supply assessment. The existing project site currently receives water service from the City, and adequate services are available to serve the proposed project without required new or expanded entitlements. No impact would occur.

- c) Result in a determination by the wastewater treatment provider which

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

serves or may serve the project that it has adequate capacity to serve the project's demand in addition to the provider's existing commitments?

See XIX b), impacts would not occur.

- d) Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------	-------------------------------------	--------------------------

All construction waste from the project site would be transported to an appropriate facility, which would have adequate capacity to accept the limited amount of waste that would be generated by the project. Long-term operation of the proposed seawall is not anticipated to generate additional solid waste. Furthermore, the project would be required to comply with the City's Municipal Code for diversion of both construction waste during the demolition phase and solid waste during the long-term, operational phase. Impacts would be less than significant.

- e) Comply with federal, state, and local management and reduction statutes and regulations related to solid waste?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

The project would comply with all Federal, State, and local statutes and regulations related to solid waste. The project would not result in the generation of large amounts of solid waste, nor would it generate or require the transportation of hazardous waste materials. All demolition activities would comply with City of San Diego requirements for diversion of both construction waste during the demolition phase and there would be no solid waste generated during the long-term, operation of the project. No impact would occur.

XX. WILDFIRE – If located in or near state responsibility area or lands classified as very high fire hazard severity zones, would the project:

- a) Substantially impair an adopted emergency response plan or emergency evacuation plan?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

The City of San Diego participates in the San Diego County Multi-Jurisdictional Hazard Mitigation Plan. The project complies with the General Plan and is consistent with the OBCP land use and the Land Development Code's zoning designation. The project is located in a developed area of San Diego and construction of the seawall would not disrupt any emergency evacuation routes as identified in the Hazard Mitigation Plan. Therefore, the project would not impact an emergency response and evacuation plan during construction and operation. No impact would occur.

- b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of wildfire?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

The project is surrounded by existing development and the Pacific Ocean to the west and there are no wildlands in the area. Due to the location of the project, the project would not have the potential to expose occupants to pollutant concentrations from a wildfire or the uncontrolled spread of wildfire. Therefore, impacts would not occur.

- c) Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?

The site is currently serviced by existing infrastructure which would service the site after construction is completed. No new construction of roads, fuel breaks, emergency water sources, power lines, or other utilities would be constructed that would exacerbate fire risk, therefore impacts would not occur.

- d) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?

Refer to response XX (b) above. Additionally, the project would comply with the City's appropriate Best Management Practices (BMP) for drainage and would not expose people or structures to significant risks as a result of run-off, post-fire slope instability, or drainage changes. Therefore, impacts would not occur.

XXI. MANDATORY FINDINGS OF SIGNIFICANCE –

- a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?

Potentially significant impacts to the environment resulting from the proposed project have been identified for the areas of biological resources. However, the project would not substantially degrade the quality of the environment, cause fish or wildlife populations to drop below self-sustaining levels or threaten to eliminate a plant or animal community. The project has the potential to cause direct and indirect impacts to sensitive species but impacts would be reduced to below a level of significance through the implementation of mitigation measures.

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

- b) Does the project have impacts that are individually limited but cumulatively considerable ("cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?
- | | | | |
|--------------------------|-------------------------------------|--------------------------|--------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
|--------------------------|-------------------------------------|--------------------------|--------------------------|

Cumulative environmental impacts are those impacts that by themselves are not significant, but when considered with impacts occurring from other projects in the vicinity would result in a cumulative impact. Related projects considered to have the potential of creating cumulative impacts in association with the project consist of projects that are reasonably foreseeable and that would be constructed or operated during the life of the project.

The Inn at Sunset Cliffs would result in potential impacts but the required mitigation would avoid impact to resources. Other future projects within the surrounding area would be required to comply with applicable local, state, and federal regulations to reduce potential impacts to less than significant, or to the extent possible. As such, the project is not anticipated to contribute to potentially significant cumulative environmental impacts. Project cumulative impacts would be less than significant with mitigation.

- c) Does the project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?
- | | | | |
|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|--------------------------|--------------------------|-------------------------------------|

The Initial Study did not identify any significant impacts to human beings. Therefore, the project would not create conditions that would significantly directly or indirectly impact human beings. No impacts would occur.

INITIAL STUDY CHECKLIST REFERENCES

I. Aesthetics / Neighborhood Character

- City of San Diego General Plan
- Community Plan: Kearny Mesa Ocean Beach Community Plan
- Other: California State Scenic Highway Mapping System

II. Agricultural Resources & Forest Resources

- City of San Diego General Plan

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<input type="checkbox"/>	U.S. Department of Agriculture, Soil Survey - San Diego Area, California, Part I and II, 1973			
<input type="checkbox"/>	California Agricultural Land Evaluation and Site Assessment Model (1997)			
<input type="checkbox"/>	Site Specific Report:			
<input checked="" type="checkbox"/>	Other: California Department of Conservation. 2016. California Important Farmland Finder.			
III. Air Quality				
<input type="checkbox"/>	California Clean Air Act Guidelines (Indirect Source Control Programs) 1990			
<input checked="" type="checkbox"/>	Regional Air Quality Strategies (RAQS) - APCD			
<input type="checkbox"/>	Site Specific Report:			
<input type="checkbox"/>	Other:			
IV. Biology				
<input checked="" type="checkbox"/>	City of San Diego, Multiple Species Conservation Program (MSCP), Subarea Plan, 1997			
<input type="checkbox"/>	City of San Diego, MSCP, "Vegetation Communities with Sensitive Species and Vernal Pools" Maps, 1996			
<input checked="" type="checkbox"/>	City of San Diego, MSCP, "Multiple Habitat Planning Area" maps, 1997			
<input type="checkbox"/>	Community Plan – <u>Kearny Mesa Ocean Beach Community Plan</u>			
<input type="checkbox"/>	California Department of Fish and Game, California Natural Diversity Database, "State and Federally-listed Endangered, Threatened, and Rare Plants of California," January 2001			
<input type="checkbox"/>	California Department of Fish and Game, California Natural Diversity Database, "State and Federally-listed Endangered and Threatened Animals of California, "January 2001			
<input type="checkbox"/>	City of San Diego Land Development Code Biology Guidelines			
<input checked="" type="checkbox"/>	Site Specific Report: Coastal Bluff Stabilization Project at the Inn at Sunset Cliffs: Intertidal Biological Assessment (Marine Taxonomic Services, LTD., September 2021)			
V. Cultural Resources (includes Historical Resources)				
<input checked="" type="checkbox"/>	City of San Diego Historical Resources Guidelines			
<input type="checkbox"/>	City of San Diego Archaeology Library			
<input type="checkbox"/>	Historical Resources Board List			
<input type="checkbox"/>	Community Historical Survey			
<input type="checkbox"/>	Site Specific Report:			
<input checked="" type="checkbox"/>	Other: California Historic Resources Information System (CHRIS)			
VI. Geology/Soils				
<input checked="" type="checkbox"/>	City of San Diego Seismic Safety Study			
<input type="checkbox"/>	U.S. Department of Agriculture Soil Survey - San Diego Area, California, Part I and II, December 1973 and Part III, 1975			
<input type="checkbox"/>	Site Specific Report: Geotechnical Report, The Inn at Sunset Cliffs (TerraCosta Consulting, December 2020.)			
<input checked="" type="checkbox"/>	City of San Diego General Plan			
VII. Greenhouse Gas Emissions				
<input checked="" type="checkbox"/>	Site Specific Report: Climate Action Plan Consistency Checklist.			
VIII. Hazards and Hazardous Materials				
<input type="checkbox"/>	San Diego County Hazardous Materials Environmental Assessment Listing			

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<input type="checkbox"/> San Diego County Hazardous Materials Management Division				
<input type="checkbox"/> FAA Determination				
<input type="checkbox"/> State Assessment and Mitigation, Unauthorized Release Listing, Public Use Authorized				
<input type="checkbox"/> Airport Land Use Compatibility Plan – MCAS Miramar; Montgomery Field				
<input type="checkbox"/> Site Specific Report:				
<input type="checkbox"/> Other:				

IX. Hydrology/Drainage

- Flood Insurance Rate Map (FIRM)
- Federal Emergency Management Agency (FEMA), National Flood Insurance Program-Flood Boundary and Floodway Map
- Clean Water Act Section 303(b) list, http://www.swrcb.ca.gov/tmdl/303d_lists.html
- Site Specific Report:

IX. Hydrology/Drainage

- Flood Insurance Rate Map (FIRM)
- Federal Emergency Management Agency (FEMA), National Flood Insurance Program-Flood Boundary and Floodway Map
- Clean Water Act Section 303(b) list, http://www.swrcb.ca.gov/tmdl/303d_lists.html
- Site Specific Report:

X. Land Use and Planning

- City of San Diego General Plan
- Ocean Beach Community Plan
- Airport Land Use Compatibility Plan
- City of San Diego Zoning Maps
- FAA Determination:
- Other Plans:

XI. Mineral Resources

- California Department of Conservation - Division of Mines and Geology, Mineral Land Classification
- Division of Mines and Geology, Special Report 153 - Significant Resources Maps
- City of San Diego General Plan: Conservation Element
- Site Specific Report:

XII. Noise

- City of San Diego General Plan
- Ocean Beach Community Plan
- San Diego International Airport - Lindbergh Field CNEL Maps
- Brown Field Airport Master Plan CNEL Maps
- Montgomery Field CNEL Maps
- San Diego Association of Governments - San Diego Regional Average Weekday Traffic Volumes
- San Diego Metropolitan Area Average Weekday Traffic Volume Maps, SANDAG

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<input type="checkbox"/> Site Specific Report:				
XIII. Paleontological Resources				
<input checked="" type="checkbox"/> City of San Diego Paleontological Guidelines				
<input type="checkbox"/> Deméré, Thomas A., and Stephen L. Walsh, "Paleontological Resources City of San Diego," Department of Paleontology San Diego Natural History Museum, 1996				
<input type="checkbox"/> Kennedy, Michael P., and Gary L. Peterson, "Geology of the San Diego Metropolitan Area, California. Del Mar, La Jolla, Point Loma, La Mesa, Poway, and SW 1/4 Escondido 7 1/2 Minute Quadrangles," <i>California Division of Mines and Geology Bulletin</i> 200, Sacramento, 1975				
<input checked="" type="checkbox"/> Kennedy, Michael P., and Siang S. Tan, "Geology of National City, Imperial Beach and Otay Mesa Quadrangles, Southern San Diego Metropolitan Area, California," Map Sheet 29, 1977				
<input type="checkbox"/> Site Specific Report:				
XIV. Population / Housing				
<input checked="" type="checkbox"/> City of San Diego General Plan				
<input checked="" type="checkbox"/> Community Plan				
<input type="checkbox"/> Series 11/Series 12 Population Forecasts, SANDAG				
<input type="checkbox"/> Other:				
XV. Public Services				
<input checked="" type="checkbox"/> City of San Diego General Plan				
<input checked="" type="checkbox"/> Ocean Beach Community Plan				
XVI. Recreational Resources				
<input checked="" type="checkbox"/> City of San Diego General Plan				
<input type="checkbox"/> Community Plan				
<input type="checkbox"/> Department of Park and Recreation				
<input type="checkbox"/> City of San Diego - San Diego Regional Bicycling Map				
<input type="checkbox"/> Additional Resources:				
XVII. Transportation / Circulation				
<input checked="" type="checkbox"/> City of San Diego General Plan				
<input checked="" type="checkbox"/> Ocean Beach Community Plan				
<input type="checkbox"/> San Diego Metropolitan Area Average Weekday Traffic Volume Maps, SANDAG				
<input type="checkbox"/> San Diego Region Weekday Traffic Volumes, SANDAG				
<input type="checkbox"/> Site Specific Report:				
XVIII. Utilities				
<input type="checkbox"/> Site Specific Report:				
XIX. Water Conservation				
<input type="checkbox"/> Sunset Magazine, <i>New Western Garden Book</i> , Rev. ed. Menlo Park, CA: Sunset Magazine				
XX. Water Quality				
<input type="checkbox"/> Clean Water Act Section 303(b) list, http://www.swrcb.ca.gov/tmdl/303d_lists.html				
<input type="checkbox"/> Site Specific Report:				

Issue	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
-------	--------------------------------	--	------------------------------	-----------

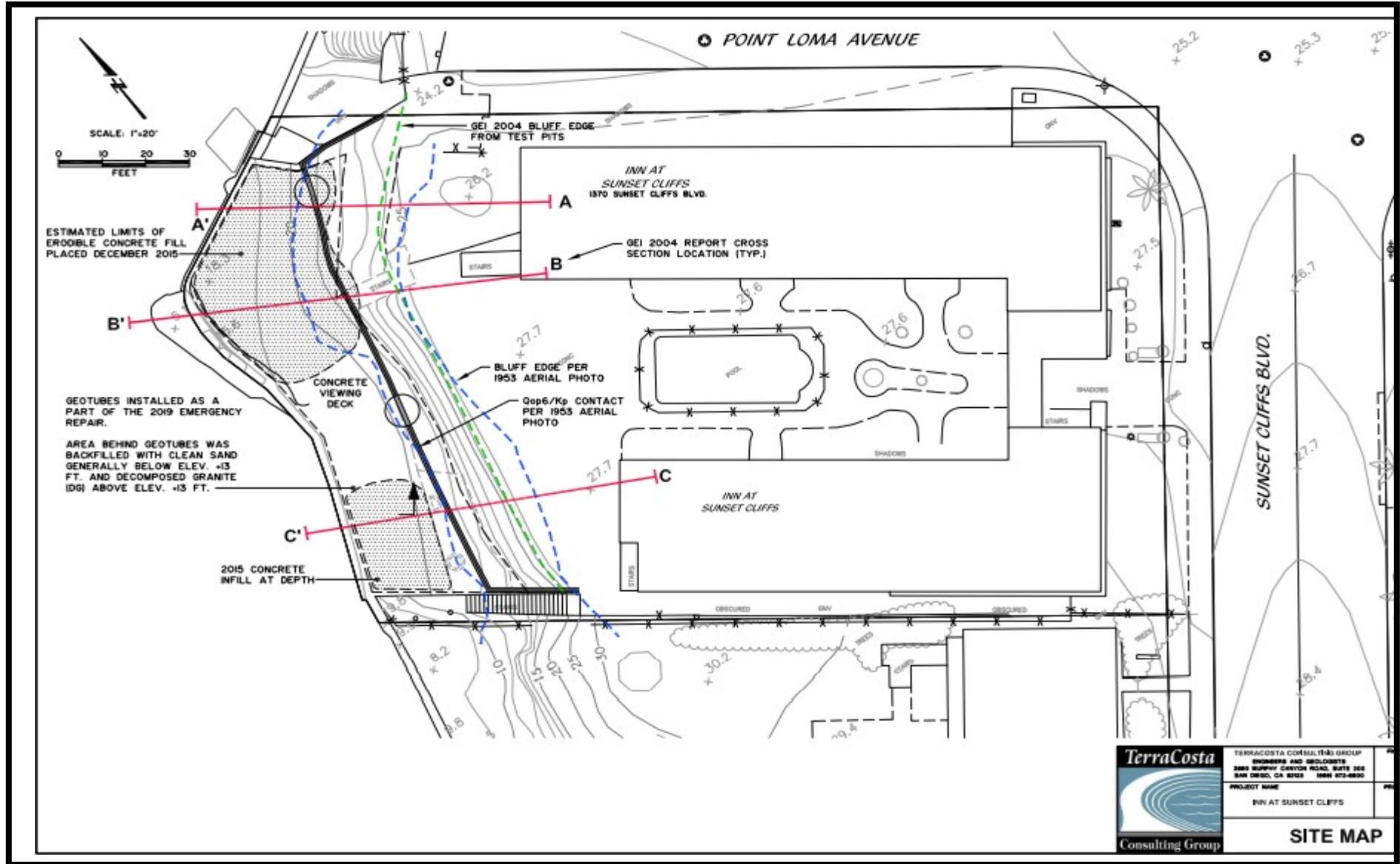


Location Map

Inn At Sunset Cliffs/Project No. 231328

City of San Diego – Development Services Department

**FIGURE
No. 1**



Site Plan

Inn at Sunset Cliffs / Project No. 321328

City of San Diego – Development Services Department

FIGURE No. 2