

CALIFORNIA COASTAL COMMISSION

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Staff: KFS-LB
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Hearing Date: April 13-15, 2005
Commission Action:

**W24a****STAFF REPORT: APPEAL - SUBSTANTIAL ISSUE****LOCAL GOVERNMENT:** City of Dana Point**LOCAL DECISION:** Approval with Conditions**RECORD PACKET COPY****APPEAL NUMBER:** A-5-DPT-05-091**APPLICANT:** Headlands Reserve LLC**APPELLANTS:** Coastal Commissioners: Meg Caldwell & Sara Wan
Surfrider Foundation**PROJECT LOCATION:** Generally the northwest corner of Street of the Green Lantern and Pacific Coast Highway (Dana Point Headlands) Dana Point, Orange County**DESCRIPTION OF APPEALED PROJECT:** Master Coastal Development Permit CDP04-23 for subdivision of 121.3 acres into 126 numbered lots and 27 lettered lots to allow development of 118 single-family homes, 4.4 acres of Visitor/Recreational Commercial development including one 65-90 room hotel and three lots adjacent to Pacific Coast Highway for commercial development not to exceed 35, 000 square feet with 40-bed hostel, a 27.9 acre conservation park and approximately 40.8 acres of additional parks and open space.**SUMMARY OF STAFF RECOMMENDATION & ISSUES TO BE RESOLVED:**

Plans for development of the Headlands site have been controversial at the local level and before the Commission over the last few years. The Commission approved an LCP amendment for the project in January 2004, which became effectively certified in January 2005. Shortly after effective certification, the City approved the subject coastal development permit. Appeals filed contend the City's approval doesn't follow through on all of the requirements of the LCP. For instance, there are significant questions regarding the extent of work the City's approval would allow upon the revetment in the Strand (which was limited in the LCP to just 'repair and maintenance'). An appeal also contends the City's approval allows impacts to ESHA to occur immediately, but doesn't adequately assure delivery of the public benefits of the project that were required in exchange for allowing those impacts, such as the 40-bed hostel and the filtration and treatment of urban runoff from 17 acres of existing developed area located off-site; but rather defers these benefits to an unspecified future date. These and other allegations raise significant questions regarding the City's approval. Thus, the staff recommends that the Commission, after a public hearing, determine that **A SUBSTANTIAL ISSUE EXISTS** with respect to the grounds on which appeal number A-5-DPT-05-091 has been filed because the locally approved development raises issues of consistency with the City of Dana Point Local Coastal Program and the public access and recreation policies of Chapter Three of the Coastal Act.

At this time, all that is before the Commission is the question of substantial issue. If the Commission determines that a substantial issue exists, a de novo hearing will be held at a subsequent meeting.

SUBSTANTIVE FILE DOCUMENTS:

- City of Dana Point Local Coastal Program (LCP)
- File documents submitted by the City under cover letter dated March 17, 2005

I. STAFF RECOMMENDATION FOR SUBSTANTIAL ISSUE:

A. MOTION AND RESOLUTION FOR SUBSTANTIAL ISSUE WITH REGARD TO APPEAL NO. A-5-DPT-05-091

The staff recommends that the Commission make the following motion and adopt the following resolution:

Motion: *I move that the Commission determine that Appeal No. A-5-DPT-05-091 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

Staff Recommendation:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the Commissioners present.

Resolution to Find Substantial Issue:

The Commission hereby finds that Appeal No. **A-5-DPT-05-091** presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. SUBSTANTIAL ISSUE FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. APPEAL PROCEDURES

1. Appealable Development

Section 30603 of the Coastal Act states:

- (a) *After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:*
- (1) *Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or*

of the mean high tide line of the sea where there is no beach, whichever is the greater distance.

- (2) *Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.*

Sections 30603(a)(1) and (2) of the Coastal Act establish the project site as being appealable by its location between the sea and first public road, the fact the site is within 300 feet of the inland extent of the beach, the mean high tide line, and the top of the seaward face of a coastal bluff (Exhibit 1).

2. Grounds for Appeal

The grounds for appeal of an approval, by a certified local government, of a local CDP authorizing development in the appealable area are stated in Section 30603(b)(1), which states:

- (b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in [the Coastal Act].*

The grounds listed for the current appeals include contentions that the approved development does not conform to the standards set forth in the certified LCP regarding public access and recreation, biological resources, water quality, visual resources, and hazards, or to the public access and recreation policies set forth in the Coastal Act. Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed pursuant to section 30603. If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the de novo public hearing on the merits of the project. The de novo hearing will be scheduled at a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review.

One of the appellants (Surfrider Foundation) argues that the CDP granted by the City cannot be approved because the certified LCP amendment violates the Coastal Act and is currently being challenged in court and is apparently suggesting that the Coastal Act remains the standard of review while the LCP amendment is being challenged. However, that claim is only accurate when application of the LCP amendment has been stayed or prohibited by the court, as established in Section 30520 of the Coastal Act.

In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

3. Qualifications to Testify before the Commission

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the

hearing. As noted in Section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

Upon the close of the public hearing, the Commission will vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project.

At the de novo hearing, the Commission will hear the proposed project de novo and all interested persons may speak. The de novo hearing will occur at a subsequent meeting date. All that is before the Commission at this time is the question of substantial issue.

B. LOCAL GOVERNMENT ACTION

CDP No. 04-23

On January 19, 2005, the City of Dana Point Planning Commission held a public hearing on the proposed project. At the conclusion of the public hearing, the Planning Commission adopted Resolution No.05-01-19-03 (Exhibit 6), which approved with conditions local Coastal Development Permit CDP No. 04-23 for the project.

The Planning Commission's action was appealed to the City Council by Surfrider Foundation. On February 23, 2005, the City Council held a public hearing on the appeal. At the conclusion of the public hearing, the City Council adopted Resolution No. 05-02-23-07 denying the Surfrider Foundation's appeal and upholding the Planning Commission's approval of the master coastal development permit. The City's action was then final for purposes of the local process and an appeal to the Coastal Commission was filed by Surfrider Foundation (Exhibit 5) and two Coastal Commissioners (Exhibit 4) during the Coastal Commission's ten- (10) working day appeal period.

C. APPELLANTS' CONTENTIONS

The Commission received a notice of final local action on CDP 04-23 on February 24, 2005. As stated previously, CDP 04-23 (assigned appeal no. A-5-DPT-05-091) approved subdivision of 121.3 acres into 126 numbered lots and 27 lettered lots to allow development of 118 single-family homes, 4.4 acres of Visitor/Recreational Commercial development including one 65-90 room hotel and three lots adjacent to Pacific Coast Highway for commercial development not to exceed 35,000 square feet with 40-bed hostel, a 27.9 acre conservation park and approximately 40.8 acres of additional parks and open space.

On March 10, 2005, within ten working days of receipt of the notice of final action, Coast Law Group filed on behalf of Surfrider Foundation an appeal (Exhibit 5) of the local approval on the grounds that the underlying LCP against which the local action was reviewed violates Sections 30240, 30253, and 30235 of the Coastal Act and is being challenged in court on those grounds. Furthermore, the appellant contends that the approval violates Section 30213 of the Coastal Act because no mitigation for loss of sandy beach was secured in the local government's approval. The appellant also contends that the approval violates affordable housing provisions and cites Public Resources Code Section 30604, 30607.2 and Government Code Section 65590. The appellant also contends that the City's approval violates the certified LCP because clearing and grubbing authorized by the City would exceed the 11.29 acres ESHA impact cap established in the

LCP (Exhibits 7-9). Finally, the appellant contends the City's CDP allows construction of new protective devices to protect existing development, in violation of both Section 30253 of the Coastal Act and the certified LCP.

Furthermore, on March 10, 2005, on behalf of the Commission itself, Commissioners Caldwell and Wan appealed the local action on the grounds that the approved project does not conform to the requirements of the certified LCP and the public access and recreation requirements of the Coastal Act (Exhibit 4). Briefly, the Commissioners' appeal contends that the City's approval gives authorization for impacts to Environmentally Sensitive Habitat Area (ESHA) and construction of new development reliant on shoreline protection, but doesn't secure all of the required benefits that the LCP requires to off-set those impacts. The Commission's appeal also contends that the City's approval fails to adequately place limits upon the quantity of work that may occur upon the revetment in order for that work to be considered 'repair and maintenance'. The City's authorization also does not appropriately limit geologic remediation activities at the site such that those activities are consistent with LCP requirements.

The City's approval also raises questions about the mechanisms the City is using to assure the development is consistent with the LCP, the delegation of certain key decisions about hazards related deed restrictions to City staff, the failure to secure expungement of all development rights within open spaces, the adequacy of the public funicular to offset access impacts, the siting of private stairways upon slopes adjacent to the beach and privatization of required public accessways, and the adequacy of the proposed plant restoration palette.

D. SUBSTANTIAL ISSUE ANALYSIS

1. Project Location, Description and Background

a. Project Location

The subject site is the 121.3 acre Dana Point Headlands site (herein 'Headlands')(Exhibits 1-2). The Headlands, is one of the last undeveloped coastal promontories in Southern California. Topography of the site is varied. The highest elevation on the site is a conical hill that is approximately 288 feet above sea level (a.k.a. the 'hilltop'). The northern portion of the site is the location of a former trailer park on the bluff face. Some of the ancillary improvements including roads, a clubhouse, and tennis courts, still exist. The area of the trailer park, and the steep eroded hillside to the south of it, is referred to as "the Strand." Slope gradients in the Strand range from 1.5:1 to 2:1. An existing dilapidated revetment currently protects the Strand. A former nursery facility is located east of the Strand and south of Pacific Coast Highway and consists of greenhouses, ornamental plantings and disturbed areas, in an area referred to informally as the 'bowl'. South and east of the nursery facility (including upon the Headlands and Harbor Point promontories and upon the hilltop and bowl) lies a large patch of coastal sage scrub (CSS) with patches of southern coastal bluff scrub occurring along the rim of the 'bowl'. Maritime succulent scrub occurs in the hilltop area and southern needlegrass grassland occurs near the Pacific Coast Highway, in the northwesterly portion of the site. Southern mixed chaparral occurs along the westerly portions of the site closest to Street of the Green Lantern.

b. Project Description

The local government's record indicates that the proposed project is the subdivision of 121.3 acres into 126 numbered lots and 27 lettered lots to allow development of 118 single-family homes, 4.4 acres of Visitor/Recreational Commercial development including one 65-90 room hotel and three lots adjacent to Pacific Coast Highway for commercial development not to exceed 35,000 square feet with 40-bed hostel, a 27.9 acre conservation park and approximately 40.8 acres of additional parks and open space.

The approval includes authorization for a clearing and grubbing plan that would remove certain existing facilities within the Strand area as well as native vegetation within the proposed limits of grading for the development. The approval also includes grading of the subject site including work upon the existing revetment at the Strand. Furthermore, the authorization includes construction of infrastructure to support the planned development (e.g. utilities and roads) and certain public amenities, such as a network of public trails, public parks, and a funicular. The approval also grants authorization for the construction of 118 residential structures, including custom homes in the Strand, with supporting amenities. The authorization delegates review of the individual residential structures to City staff, without further coastal development permit review, provided those structures comply with the development standards identified in the LCP. However, the approval does not authorize construction of the Seaside Inn, the visitor-serving commercial development, nor the 40-bed hostel. The City's authorization requires a subsequent coastal development permit for these facilities.

c. Local Coastal Program Certification

Dana Point is a shoreline community in southern Orange County. Prior to the City of Dana Point's incorporation in 1989, the Commission approved the segmentation of formerly unincorporated Orange County's coastal zone into the Capistrano Beach, Dana Point, Laguna Niguel, and South Laguna segments. Following the City's incorporation in 1989, all of the geographic areas covered by the former Orange County LCP segments of Capistrano Beach, Dana Point, and Laguna Niguel were included within the city limits of the new City of Dana Point. In addition, a portion of the South Laguna segment was within the new City's boundary. The City combined the Capistrano Beach and Dana Point segments, and the portion of the South Laguna segment within its jurisdiction, into one certified LCP segment. After some minor modifications, the City then adopted the County's LCP documents as its first post-incorporation LCP. On September 13, 1989, the Commission approved the City's post-incorporation LCP. Meanwhile, the City did not adopt the LUP which had been certified as the Laguna Niguel segment (which contained the area known as the Strand). In order to differentiate between the new City of Laguna Niguel (which was also incorporated in 1989) and the Laguna Niguel planning area (which was within the new City of Dana Point and not within the new City of Laguna Niguel), the Laguna Niguel LUP planning area was re-named 'Monarch Beach'.

Since initial certification of the City's LCP, the City has taken steps to consolidate the LCP documents and update those documents to reflect the current needs of the City. The first step involved certification of a new land use plan (LUP) and implementation plan (IP) for the Monarch Beach area of the City under LCP Amendment 1-96. This action adopted, with modifications, a new Land Use Plan ("LUP") component consisting of three elements of the City's General Plan: Land Use, Urban Design, and Conservation/Open Space. The implementing actions component of the LCP for the Monarch Beach area is the City's Zoning Code, as changed according to modifications suggested by the Commission (herein referred to as the '1996 LCP'). When the

Monarch Beach area was certified, the City chose to defer any action on 'the Strand'. Thus, the Strand remained uncertified.

The second step involved updating the Capistrano Beach area and incorporating it into the 1996 LCP. Similar to LCPA 1-96, LCPA 1-98 adopted the 1996 LCP comprised of the LUP that consists of the three elements of the City's General Plan and the IP consisting of the City's zoning code. The City adopted the modifications to the LUP and IP suggested by the Commission. The modified LCP for Capistrano Beach was effectively certified on July 13, 1999.

Most recently, the Commission approved the City of Dana Point's Local Coastal Program Amendment 1-03 with suggested modifications at the public hearing held in Laguna Beach on January 15, 2004. On August 11, 2004, the Commission adopted the revised findings supporting the Commission's action in January. The LCP amendment amended the Dana Point Local Coastal Program (LCP) to certify the Dana Strand area and replace the 1986 Dana Point Specific Plan LCP as it pertains to the remainder of the 121.3 acre project site with the LCP that consists of the City's 1996 Zoning Code and the Land Use Element, Urban Design Element, and Conservation/Open Space Element of the City's General Plan and amended those documents, through the Headlands Development Conservation Plan (HDCP) to, among other things, authorize creation of a Planned Development District for the site to authorize development of 125 single family residential lots, a maximum of 110,750 square feet of visitor serving commercial land use including a 65-90 room inn, a 35,000 square foot commercial site with visitor information center and 40-bed hostel and 68.5 acres of public parks, coastal trails and open space, and a funicular to serve Strand beach. The LCP amendment became effectively certified on January 14, 2005.

Those certified portions of the City that have not been updated remain controlled by the former County LCP documents that the City adopted when it incorporated. The City continues to incrementally update these areas to bring them into the 1996 LCP. The areas that remain to be updated are the town center and harbor (both of which are within the former County LCP segment known as the 'Dana Point Specific Plan Local Coastal Program', a.k.a. the '1986 LCP').

2. Analysis of Consistency with Certified LCP and Public Access Section of the Coastal Act

As stated in Section II.A.2 of this report, the local CDP may be appealed to the Commission on the grounds that the proposed development does not conform to the standards set forth in the certified Local Coastal Program (LCP) or the public access policies of the Coastal Act. Pursuant to Section 30625 of the Coastal Act, the Commission must assess whether the appeal raises a substantial issue as to the project's consistency with the certified LCP or the access policies of the Coastal Act.

In making that assessment, the Commission considers whether the appellants' contentions regarding the inconsistency of the local government action with the certified LCP or the public access policies raise significant issues in terms of the extent and scope of the approved development, the factual and legal support for the local action, the precedential nature of the local action, whether a significant coastal resource would be affected, and whether the appeal has statewide significance.

As provided below, the City of Dana Point certified LCP contains policies that protect public access and recreation, biological resources, water quality, visual resources, and require development to address hazards in the coastal zone. Additionally, Section 30213 of the Coastal Act states that

lower cost recreational opportunities must be provided and protected. These policies are also provided below and will be discussed in Subsection II.D.2.c. of this staff report.

a. Local Coastal Program (LCP) Policies

Land Use Element (LUE), Goal 5, introductory narrative states (SM¹ 4):

Development of the Headlands shall occur in a comprehensive manner involving the entire approximately 121 acre site. This comprehensive approach to developing the Headlands will allow for the following project elements (herein 'HDCP Elements'): 1) preservation, enhancement, dedication and perpetual management of all but 11.29 acres of environmentally sensitive habitat areas (ESHAs) known to be present at the Headlands; 2) the dedication of the private portion of Strand beach to the public; 3) the construction and dedication of public parks, a public trail network throughout the Headlands, and vertical and lateral public access to and along Strand beach including realigning the existing revetment an average 5 feet landward or easterly than the existing alignment, implementation of a program to retrieve debris from the beach that impedes public access, and constructing a new lateral public access trail on top or landward of the revetment and seaward of the entire length of the Strand residential development; 4) implementation of extensive water quality management best management practices, including but not limited to the construction and maintenance of structural best management practices to treat off-site and on-site run-off; 5) the preservation of significant landforms including the Harbor Point and Headlands bluffs and promontories and the Hilltop; and 6) the provision of lower-cost overnight accommodations (i.e. hostel) in conjunction with the construction of a luxury inn.

LUE, Goal 5, Policy 5.4 (SM 10): Assure that the height and scale of the development within the Headlands are compatible with development in the community and that the visual impact of the development from coastal areas below the project is minimized. Prohibit new development that significantly degrades public views to and along the coastline including, but not limited to, existing, enhanced or created views from the Hilltop park and greenbelt linkage, the Strand Vista Park, the Dana Point Promontory/Headlands Conservation Park and Harbor Point. (Coastal Act/30251)

LUE, Goal 5, Policy 5.35 (SM 23): Except as noted in this policy, gates, guardhouses, barriers or other structures designed to regulate or restrict access shall not be permitted upon any street (public or private) within the Headlands where they have the potential to limit, deter, or prevent public access to the shoreline, inland trails, or parklands. In the Strand residential area, gates, guardhouses, barriers and other structures designed to regulate or restrict public vehicular access into the residential development may be authorized provided that 1) pedestrian and bicycle access from Selva Road and the County Beach parking lot through the residential development to the beach remains unimpeded; 2) a public access connection is provided that gives direct access from approximately the mid-point of the County Beach parking lot to the Central Strand Access; and 3) an inclined elevator/funicular providing mechanized access from the County Beach parking lot to the beach is constructed, operated and maintained for public use for the duration of the period that public vehicular access through the residential subdivision is regulated or restricted.

LUE, Goal 5, Policy 5.36 (SM 24): Where an inclined elevator/funicular is provided in accordance with Land Use Element Policy 5.35, the facility shall be open to the public every day beginning Memorial Day weekend through Labor Day weekend, and on holidays and weekends the

¹ SM = "Suggested Modification". Provided as a cross-reference to the Suggested Modifications made by the Commission in its approval of Dana Point Headlands LCP Amendment 1-03, which is how these provisions became part of the City's LCP.

remainder of the year, with additional days of operation as necessary to meet demand. If necessary, a fee may be charged for use of the inclined elevator/funicular to recover costs of operation and maintenance, however, that fee (round-trip) shall not exceed the regular cash fare for a single ride on a local route upon a public bus operated by the Orange County Transportation Authority.

LUE, Goal 5, Policy 5.42 (SM 30): The public parks, open space and public trail network shall be offered for dedication and/or conveyed by the landowner/developer to the appropriate public agency or non-profit entity concurrent prior to or with the recordation of the first land division/Final Map(s). The first land division shall encompass the entire 121.3 acre site and shall fully expunge all development rights that may exist within the identified public parks, open space and public trail network that may have existed under any prior land division. All approved public park, open space and public trail network improvements and amenities shall be constructed by the landowner/developer and shall include all such public parks, open spaces, public trails and associated improvements and amenities described in the HDCP. All approved public park and open space improvements and amenities shall be completed and the facilities open to the public for public use prior to the residential certificate of occupancy or final inspection for the first to be completed residential property.

LUE, Goal 5, Policy 5.43 (SM 31): In conjunction with the development of a luxury inn at the Headlands, the developer shall install water quality best management practices, including structural best management practices, that shall treat runoff from the development site as well as at least 17 acres of off-site developed area.

LUE, Goal 5, Policy 5.44 (SM 32): New development of a luxury overnight visitor-serving inn within the Headlands shall only be developed in conjunction with a component of lower cost overnight visitor accommodations (e.g. hostel) as either part of the project or elsewhere within a visitor recreation commercial area within the Headlands. The lower-cost overnight accommodations shall consist of no less than 40 beds and shall be available for use by the general public prior to or concurrent with the opening of the inn.

Conservation Open Space Element (COSE), Goal 2, Policy 2.21 (SM 62): Notwithstanding Conservation Open Space Element Policy 2.28, and in the context of any specific project application that provides all of the HDCP Elements, creation of a residential subdivision of up to 75 homes with associated infrastructure development and public access amenities all dependent upon geologic remediation and the existing shoreline protective device (including such upgrades as are permitted in Conservation Open Space Element Policies 2.22 and 2.23) shall be permitted in the Strand area provided it is consistent with all other applicable policies. Furthermore, in conjunction with any shoreline protective device, a lateral public accessway following the entire length of the protected area shall be constructed seaward of any new residential development and on top of or landward of any shoreline protective device. Maximum feasible mitigation shall be incorporated into the project in order to minimize adverse impacts to resources including local shoreline sand supply. (Coastal Act/30007.5, 30200(b), 30210, 30240, 30250, 30253)

COSE, Goal 2, Policy 2.22 (SM 63): In the context of any specific project application that provides all of the HDCP Elements, and only in conjunction with a proposal that completes the plan as a whole, the revetment in the Strand may be repaired and maintained consistent with Conservation Open Space Element Policy 2.23 and subject to the requirements of Conservation Open Space Element Policy 2.31 in order to protect new development in the Strand provided that the repaired and maintained revetment is set further landward than the existing alignment. The

revetment shall be located at or landward of the existing revetment toe (depicted on Figure 1, Existing Revetment Alignment (TOE), The Keith Companies dated January 8, 2004), such that, the average position of the revetment is moved 5 feet landward or easterly. All components of the existing revetment located seaward of the above identified toe shall be removed from the beach and recycled into the new revetment or properly disposed at an approved disposal site. The top edge of the revetment shall not exceed the top edge of the existing revetment located at +17 feet NGVD. The methods by which the repair and maintenance would be conducted shall remain reviewable for consistency with all applicable policies.

COSE, Goal 2, Policy 2.23 (SM 64): The establishment of a revetment of the same height and footprint size as the southerly 2,240 feet of the existing revetment, along Strand Beach, through the repositioning of rocks that were once part of the existing revetment, and are still in the vicinity thereof, and the importation of up to 50 percent new rock by volume, including excavation and new bedding material and foundation shall constitute repair and maintenance of the existing revetment. In part, for that reason, such work would not constitute “construction of a protective device that would substantially alter natural land forms along bluffs and cliffs.”

COSE, Goal 2, Policy 2.28 (SM 69): All new beachfront and blufftop development shall be sized, sited and designed to minimize risk from wave run-up, flooding and beach and bluff erosion hazards without requiring a shoreline and/or bluff protection structure at any time during the life of the development, except as allowed under Conservation Open Space Element Policy 2.21.

COSE, Goal 2, Policy 2.30 (SM 71): As a condition of approval of a coastal development permit for development on a bluff, beach or shoreline which is subject to wave action, erosion, flooding, landslides, or other coastal or geologic hazards associated with development on a beach, shoreline or bluff, the property owner shall be required to execute and record a deed restriction which acknowledges and assumes said risks and waives any future claims of damage or liability against the permitting agency and agrees to indemnify the permitting agency against any liability, claims, damages or expenses arising from any injury or damage due to such hazards.

COSE, Goal 2, Policy 2.31 (SM 72): As a condition of approval of a shoreline protection structure in the Strand, or repairs or additions to a shoreline protection structure in the Strand, either of which can only occur consistent with the other provisions of this LCP, the property owner shall be required to acknowledge, by the recordation of a deed restriction, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protection structure which extends the seaward footprint of the subject structure shall be undertaken and that he/she expressly waives any right to such activities that may exist under Coastal Act Section 30235 and/or equivalent LCP policies.

COSE Goal 3, Policy 3.12 (SM 78): In the context of any specific project application that provides all of the HDCP Elements, and only in conjunction with a requirement that the plan be completed as a whole, a maximum of 6.5 acres of ESHA may be displaced along the slopes of the bowl to accommodate development within the bowl, and a maximum of 0.75 acres of ESHA located on the Strand bluff face at the southerly boundary of the Strand may be displaced to accommodate development within the Strand. The amount of ESHA permitted to be displaced may be increased as necessary to accommodate construction of a 65-90 room inn, scaled appropriately to the property, within Planning Area 9 provided that lower-cost visitor overnight accommodations are provided consistent with Land Use Element Policy 5.44. The maximum impacts to ESHA identified in this policy do not pertain to or limit vegetation removal necessary to construct and maintain public trails as identified on Figure COS-4.

COSE Goal 3, Policy 3.17 (SM 83): To protect ESHA and minimize adverse visual impacts new structures shall be prohibited on bluff faces excepting repair, re-construction or improvements to existing, formal public trails or stairways identified in this LCP and the new residential development and new public accessways specifically contemplated by this LCP in the Strand, and in that case only in the context of a project application that provides all of the HDCP Elements, and only in conjunction with a requirement that the plan be completed as a whole. Such structures shall be constructed and designed to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

COSE Goal 6, Policy 6.9 (SM 85): As contemplated in the Headlands Development and Conservation Plan, the Headlands area shall be developed as a unified project, with one exception provided at the end of this policy. The first application for land division within the Headlands seeking development pursuant to the Headlands Development and Conservation Plan shall encompass the entire approximately 121 acre Headlands area and shall include a proposal to cause the expungement of any preceding land division within said area, the dedication of all land therein containing ESHA excepting those areas identified in Conservation Open Space Element Policy 3.12 in such a manner as to ensure that the property is conserved in perpetuity as open space, and the dedication of all parks, beaches and accessways identified in this LCP at the Headlands to the City, County or other willing public agency or non-profit entity in such a manner as to ensure their use in perpetuity for public purposes. The one exception to this requirement shall be that, prior to the wholesale re-division of the 121-acre Headlands area, the landowner may apply for, and the City may approve, any lot merger, lot line adjustment, or other land division necessary to enable the landowner to separate out and transfer approximately 27 acres of land on the Headlands promontory, provided that any such approval is conditioned on the requirement that the area so separated is irrevocably deed restricted as conserved open space in conjunction with the land division and is thereafter dedicated in a manner that ensures that it is conserved in perpetuity as conserved open space, in which case the requirement in the preceding sentence shall apply only to the remainder area of the Headlands.

Headlands Development Conservation Plan (HDCP) Section 3.4.B.5:

5. Development Requirements for Planning Area 4

Development of Planning Area 4 shall include the following uses regardless of other development that will occur there:

- a) A 40-bed hostel and Visitor Information Center. The hostel will serve as a lower-cost overnight visitor accommodation and will include a Visitor Information Center that shall provide detailed maps and other information regarding trails, overlooks, open space, parks, beaches and public access thereto, public parking facilities, and other visitor serving recreational and commercial facilities present at the Headlands and in the City of Dana Point and vicinity. Other information may also be provided regarding the biological, historical and cultural aspects of the Headlands, City of Dana Point and vicinity. The hostel and Visitor Information Center shall be constructed and open to the public in accordance with the phasing requirements identified in Section 3.7.C.6. Development Phasing Plan. The Visitor Information Center may be incorporated into the hostel, provided that it is clearly available for use by the general public separate from use of the hostel, or it may be constructed as a separate facility. If separate from the hostel, the Visitor Information Center shall consist of a minimum of 800 sq. ft.

b) Six (6) public parking spaces in Planning Area 4 to serve open space visitors shall be required over and above the parking required as part of the V/RC uses in Planning Area 4. The six parking spaces shall serve visitors intending to utilize the public open space in the project. The parking shall be constructed in accordance with the phasing requirements identified in Section 3.7.C.6 Development Phasing Plan.

HDCP Section 3.4.C.5 (SM 117):

5. Inclined Elevator/Funicular in Planning Area 1

If any gates, guardhouses, barriers or other development designed to regulate or restrict public vehicular access are approved for Planning Area 2, a funicular (inclined elevator) sized to a minimum capacity of eight persons and available to the public shall be built parallel to the North Strand Beach Access and convey passengers from Strand Vista Park to a ramp to the beach. The funicular shall be made available to the public prior to any regulation or restriction of public vehicular access into Planning Area 2. The funicular shall provide sufficient capacity to ferry a family and associated beach recreational paraphernalia (e.g. chairs, coolers, surfboards, etc.) A reasonable fee for the use of the funicular may be collected to recover maintenance and upkeep for the funicular operation, however, any fee collected (round-trip) shall not exceed the regular cash fare for a single ride on a local route upon a public bus operated by the Orange County Transportation Authority. At minimum, the funicular shall be open to the public during daylight hours on weekends, holidays year-round and every day beginning the Memorial Day holiday weekend through the Labor Day holiday weekend. To the maximum extent feasible, maintenance of the funicular shall occur during scheduled periods of inoperation (e.g. evenings during the peak season/weekdays during the off season). If the funicular becomes inoperable for more than 3 consecutive scheduled operating days (e.g. 3 consecutive days during the peak season/a full weekend plus one day the following weekend during the off season) or the funicular is closed or made inoperable indefinitely or for any sustained time period for any reason, including but not limited to irreparable damage and/or an absence of funding for operation and maintenance, any gate, guardhouse, barrier or other development that regulates or restricts public access through Planning Area 2 shall be opened, removed or otherwise made inoperable such that public access is no longer regulated or restricted for the duration of the period the funicular is unavailable for public use. Signs shall be posted declaring the availability of the funicular to the public, the hours of operation, any fee, and the terms leading to the availability of public vehicular access through Planning Area 2. Signs shall be posted at the boarding area for the funicular, at locations visible to vehicles traveling on Selva Road, and elsewhere as reasonably necessary to assure adequate public notification relative to the funicular.

HDCP Section 3.5.E. Environmentally Sensitive Habitat Areas (ESHA) (SM 128), states in relevant part: Excepting up to 0.75 acres of impact in Planning Area 1, 6.5 acres of impact within Planning Area 6, and 4.04 acres of impact to accommodate construction of the seaside inn within Planning Area 9 (all of which are only allowable as provided in Conservation Open Space Element Policy 3.12, new development shall be sited and designed to avoid impacts to ESHA. The maximum impacts to ESHA identified herein do not pertain to or limit vegetation removal necessary to construct and maintain public trails. Impacts to up to 11.29 acres of ESHA shall be fully mitigated, with priority given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site. The coastal development permit shall include conditions that require implementation of all feasible mitigation measures that would significantly reduce adverse impacts of the development...[remainder of section not re-printed]

HDCP Section 3.5.G., Shoreline Protective Device in the Strand (SM 130): Any shoreline protective device repaired and maintained in the Strand as allowed under Conservation Open Space Element Policies 2.22 and 2.23 shall comply with the following development standards:

The shoreline protective device shall be located at or landward of the existing revetment toe (depicted on Figure 1, Existing Revetment Alignment (TOE), The Keith Companies dated January 8, 2004), such that, the average position of the shoreline protective device is moved at least 5 feet landward or easterly.

At the time of repair and maintenance of the shoreline protective device, all components of the existing revetment located seaward of the above identified toe and landward of the location of the intertidal zone shall be removed from the beach and recycled into the repaired and maintained shoreline protective device or properly disposed at an approved disposal site.

The top edge of the repaired and maintained revetment shall not exceed the top edge of the existing revetment located at +17 feet NGVD.

A shoreline protective device maintenance and monitoring plan shall be implemented that, at minimum, provides for the periodic retrieval and re-use or proper disposal of any rock or other components of the device that has become dislodged and/or has fallen to the beach as well as the retrieval and re-use or proper disposal of any rock or other component of any pre-existing device that becomes exposed on the beach for any reason.

HDCP Section 3.7.C.6, Development Phasing Plan (SM 139):

Development shall comply with the following development phasing plan:

Development of the Headlands shall occur in a comprehensive manner involving the entire approximately 121 acre site. The allowance for impacts to up to 11.29 acres of environmentally sensitive habitat areas (excluding public trails) and the allowances relative to the construction of new development in the Strand that is reliant upon significant landform alteration and a shoreline protective device shall only be allowed in the context of a project that: 1) preserves, enhances, dedicates and perpetually manages all but 11.29 acres of environmentally sensitive habitat areas (ESHAs) known to be present at the Headlands; 2) dedicates the private portion of Strand beach to the public; 3) constructs and dedicates the public parks and public trail network described in this HDCP including realigning the existing revetment an average 5 feet landward or easterly than the existing alignment, implementation of a program to retrieve debris from the beach that impedes public access, and constructing a new lateral public access trail on top or landward of the revetment and seaward of the entire length of the Strand residential development; 4) implements extensive water quality management best management practices, including but not limited to the construction and maintenance of structural best management practices to treat off-site and on-site run-off; 5) preserves landforms including the Harbor Point and Headlands bluffs and promontories and the Hilltop; and 6) provides lower-cost overnight accommodations (i.e. hostel) in conjunction with the construction of a luxury inn.

The public parks, open space and public trail network shall be offered for dedication and/or conveyed by the landowner/developer to the appropriate public agency or non-profit entity concurrent with the recordation of the first land division/Final Map(s). The first land division shall encompass the entire 121.3 acre site and shall fully expunge all development rights that may exist within the identified public parks, open space and public trail network that may have existed under

any prior land division. The one exception to this requirement shall be that, prior to the wholesale re-division of the 121-acre Headlands area, the landowner may apply for, and the City may approve, any lot merger, lot line adjustment, or other land division necessary to enable the landowner to separate out and transfer approximately 27 acres of land on the Headlands promontory, provided that any such approval is conditioned on the requirement that the area so separated is irrevocably deed restricted as conserved open space in conjunction with the land division and is thereafter dedicated in a manner that ensures that it is conserved in perpetuity as conserved open space, in which case the requirement in the preceding two sentences shall apply only to the remainder area of the Headlands.

The public parks, open space and public trail network improvements and amenities, including the Nature Interpretive Center and public parking, shall be constructed and open to the public prior to the opening of the luxury inn in Planning Area 9.

The 40-bed hostel shall be constructed and open to the public prior to or concurrent with the opening of the luxury inn in Planning Area 9.

All approved public park, open space and public trail network improvements and amenities, including the Nature Interpretive Center and public parking, shall be constructed by the landowner/developer and shall include all such public parks, open spaces, public trails and associated improvements and amenities described in the HDCP. All approved public park and open space improvements and amenities shall be bonded for final completion (@120% of estimated construction cost) prior to recordation of the first Final Map, and construction shall be completed and the facilities open to the public for public use prior to the residential certificate of occupancy or final inspection for the first to be completed residential property.

The Visitor Information Center in Planning Area 4 shall be constructed and open to the public concurrent with the opening of any other commercial development within Planning Area 4.

The six (6) public parking spaces in Planning Area 4 to serve open space visitors shall be constructed and open to the public prior to or concurrent with the opening of any other commercial development within Planning Area 4.

b. Coastal Act Policies

Coastal Act Section 30210:

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

Coastal Act Section 30213:

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

The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the

identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Section 30604, subsections (b), (c), (f), and (g) of the Coastal Act states:

(b) After certification of the local coastal program, a coastal development permit shall be issued if the issuing agency or the commission on appeal finds that the proposed development is in conformity with the certified local coastal program.

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

(f) The commission shall encourage housing opportunities for persons of low and moderate income. In reviewing residential development applications for low- and moderate-income housing, as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code, the issuing agency or the commission, on appeal, may not require measures that reduce residential densities below the density sought by an applicant if the density sought is within the permitted density or range of density established by local zoning plus the additional density permitted under Section 65915 of the Government Code, unless the issuing agency or the commission on appeal makes a finding, based on substantial evidence in the record, that the density sought by the applicant cannot feasibly be accommodated on the site in a manner that is in conformity with Chapter 3 (commencing with Section 30200) or the certified local coastal program.

(g) The Legislature finds and declares that it is important for the commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone. (Amended by: Ch. 1075, Stats. 1978; Ch. 919, Stats. 1979; Ch. 285, Stats. 1991, Ch. 793, Stats. 2003.)

Section 30607.2 of the Coastal Act states:

(a) Conditions requiring housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, which were incorporated into a coastal development permit issued prior to January 1, 1982, may, at the request of the permittee, be amended or modified by the commission or by a local government having the authority to issue coastal development permits. In approving such amendments or modifications, only those conditions and requirements authorized by Section 65590 of the Government Code may be imposed on the permittee.

c. Surfrider Foundation Appeal - Analysis of Consistency

Surfrider Foundation has appealed the City's approval based on five grounds as follows: 1) the City's CDP cannot be approved because the LCPA violates the Coastal Act and is currently being challenged; 2) the City's CDP fails to meet affordable housing requirements under the Coastal Act; 3) the City's CDP violates Coastal Act Section 30213 because the project doesn't mitigate for the loss of beach; 4) the City's CDP allows more than 11.29 acres of ESHA to be impacted and thus violates the LCP; and 5) the City's CDP allows construction of new protective devices to protect

existing development, in violation of both Section 30253 of the Coastal Act and the certified LCP. Each of these contentions is discussed below:

- i. The City's CDP cannot be approved because the LCPA violates the Coastal Act and is currently being challenged & The City's CDP fails to meet affordable housing requirements under the Coastal Act

The appellant contends that the certified LCPA for the Dana Point Headlands violates Sections 30235, 30240, and 30253 among other sections of the Coastal Act. Since the LCPA is being challenged in court, the appellant contends that the City should not be able to issue a coastal development permit based on the provisions of that LCPA. The appellant also contends that the City's approval fails to meeting Coastal Act requirements relative to affordable housing, citing Sections 30604(g), 30607.2, and Government Code Section 65590.

Section 30603(b)(1) of the Coastal Act states that the grounds for appeal of a local government's action on a coastal development permit are "...limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division." The allegation that the certified LCPA violates Sections 30235, 30240, and 30253 of the Coastal Act is not an allegation that the City's approval does not conform with the certified local coastal program. In addition, the allegation that the local government's action fails to comply with affordable housing provisions contained in the Coastal Act and Government Code also does not amount to an allegation that the City's approval does not conform with the certified local coastal program. Thus, these allegations are not valid grounds for appeal of the local government's action. The appellant also makes a claim that the City's approval does not conform with the public access policies of Chapter 3 of the Coastal Act. This claim is discussed below.

To the extent the appellant is claiming that the normal standard of review should not apply when the very document establishing that standard of review (the LCP) is being challenged, that claim fails to recognize that the Legislature provided for the circumstance in which the Commission must act on an appeal while the validity of the applicable LCP is being litigated. If application of the LCP is prohibited or stayed, the Commission reviews the CDP application for "conformity with the provisions of Chapter 3." Pub. Res. Code § 30520(a). Presumably, then, in the absence of a stay or other prohibition, the Legislature intended the Commission to continue to apply the disputed LCP as the standard of review. Since no stay has been issued in this case, the LCPA remains effective, and the Commission relies upon it for the standard of review.

- ii. The City's CDP violates Coastal Act Section 30213 because the project doesn't mitigate for the loss of beach

The appellant asserts that the City's coastal development permit approves a seawall that will cover sandy beach and will result in additional losses to sandy beach through passive erosion. The appellant claims that the loss of sandy beach, and the failure to require mitigation for such loss, is inconsistent with Section 30213 of the Coastal Act.

In its authorization of the LCP amendment for the Dana Point Headlands, the Commission found that approval of a new shoreline protective device to protect proposed new development in the Strand area would be inconsistent with several Coastal Act policies, including Section 30213 of the Coastal Act. However, the life of the existing revetment could be extended through repair and maintenance, and pursuant to Section 30610(d) of the Coastal Act, such work is normally exempt

from coastal development permit requirements. Although this particular form of work falls within various exceptions to the 30610(d) exemption, under Section 13252(a) of the Commission's regulations, those exceptions only establish that the methods by which the work is performed remain subject to review to ensure consistency with Coastal Act policies or applicable LCP policies designed to protect coastal resources. Accordingly, the certified LCP contains provisions that prohibit the construction of new development that relies on a new shoreline protective devices (COSE 2.28), but allows the repair and maintenance of existing shoreline protective works at the Strand themselves, provided the methods for any such work meet certain criteria (COSE Policies 2.22, 2.23, 2.31, HDCP Section 3.5.G). Since the appellant is not challenging the method proposed for the work, but the continued existence of the seawall itself, the determination of whether the issue raised by the appellant constitutes a 'substantial issue' regarding consistency with Section 30213 hinges upon whether the City's approval limits work upon the revetment to that which can be classified as 'repair and maintenance' or whether such work amounts to 'new development'.

At least one condition imposed by the City attempts to address the above-identified issues. Condition No. 159 (Exhibit 6, page 38) of the City's approval states that "[r]epair and maintenance of the revetment shall be in accordance with plans reviewed and approved by the Director of Public Works and consistent with the HDCP including but not limited to..." the required realignment, the removal of existing dislodged material from the beach, the limitation on height to +17 feet NGVD, and implementation of a maintenance and monitoring plan for the revetment. All of these cited limitations are consistent with requirements identified in COSE Policy 2.22 and HDCP Section 3.5.G in the certified LCP. However, the condition fails to identify the limitations within COSE Policy 2.23 that limits the importation of new rock to no more than 50%.

The record supplied by the City contains a document prepared by Noble Consultants dated January 7, 2005, titled 'Estimate of Maximum Allowable New Revetment Material for Strand Revetment Repair' (Exhibit 10). That document estimates the total volume of the existing revetment is 15,300 cubic yards, and thus concludes that up to 7,650 cubic yards of new rock could be included in the project and still qualify as 'repair and maintenance'. Noble Consultants' analysis states that the repair can be accomplished using less than the identified maximum. However, Noble Consultant's analysis indicates that all of these calculations are estimates that are based on average estimated volumes. Accordingly, actual conditions may vary that could change the quantity of allowable new rock. Given that circumstance, it is particularly important that the all of the key criteria and limitations relative to repair and maintenance be referenced in the conditions of approval so that it remains clear that if field conditions reveal circumstances different from the preliminary estimates, that adjustments are made to assure the work can continue to be considered 'repair and maintenance'. Nevertheless, the City's approval does not identify these key criteria and limitations. As discussed further in the analysis of the Commission's appeal below, these issues become further pronounced given other provisions in the City's approval that would appear to allow unilateral changes to the project at the recommendation of the project geologist or geotechnical engineer.

The appellant goes on to identify at least two mitigation measures, purchase of replacement land, and/or provision of funding for sand replenishment, that the appellant believes ought to have been considered by the City to offset adverse impacts to the beach caused by the revetment. If the work upon the revetment exceeds 'repair and maintenance' then LCP policies and the public access and recreation policies of the Coastal Act would necessitate the consideration of such measures. For instance, COSE Policy 2.21 requires, in part, that "...[m]aximum feasible mitigation shall be incorporated into the project in order to minimize adverse impacts to resources including

local shoreline sand supply". Similarly, Coastal Act Section 30210 requires that "...maximum access..." be provided and Section 30213 of the Coastal Act requires the provision and protection of lower cost recreation facilities (such as beaches). The City's approval does not consider the issues raised by the appellant.

Thus, given the City's failure to clearly establish specifications or limitations relative to the quantity of additional material that may be added to the revetment in their approval, the Commission finds that a substantial issue exists regarding whether the City's approval could be interpreted to permit work upon the revetment that would constitute not only 'repair and maintenance,' but also 'new development'. New development would not be exempt and would thus be subject to the provisions of Section 30213 of the Coastal Act. Accordingly, there is a substantial issue as to whether the City's approval conforms to the requirements of Section 30213 of the Coastal Act.

- iii. The City's CDP allows more than 11.29 acres of ESHA to be impacted and thus violates the LCP

The appellant contends that the City's approval allows impacts to ESHA that exceed the limitations upon ESHA impacts identified in the LCP. Specifically, the appellant contends that Condition No. 154 (Exhibit 6, page 37) allows for the construction of walls within ESHA, and that the approved project allows vegetation removal for a utility line that crosses between the hotel site (Planning Area 9) and the residential development in the bowl area (Planning Area 6) (see Exhibit 2 for location of these planning areas, and Exhibits 8 & 9 for location of utility crossing). The appellant contends these activities could result in ESHA removal that exceeds the 11.29 acres of ESHA impact allowed by the LCP.

The record submitted by the City does not contain rough grading plans, however, certain grading details are identified on the tentative tract map (no. 16331), the 'clearing and grubbing' plan, and an exhibit prepared by the City titled "ESHA Disturbance through implementation of TTM 16331" (herein 'ESHA Disturbance Exhibit') (Exhibit 8). These documents do show the wall and the vegetation clearing identified by the appellant. However, the documents do not support the appellant's claims relative to exceeding the 11.29 acre ESHA impact cap.

The ESHA Disturbance Exhibit identifies the areas of ESHA impact, which shows the development at but not exceeding the 11.29 acre cap. There is no indication on this exhibit, or other file materials, that walls would be placed outside of the development footprint allowed in the LCP. Furthermore, with respect to the utility/water line, there is a notation on the exhibit which indicates that the ESHA impact quantities "...includes a portion of the relocated waterline easement". Installation of the utility line would involve a one-time disturbance, followed by restoration of the area, which would be part of the hilltop conservation park and greenbelt. Clearly, minor adjustments to the limits of vegetation clearing and grading will need to be made to assure the 11.29 acre cap is not exceeded. Nevertheless, there is no indication that the City's authorization fails to recognize the cap. In fact, the City's approval contains two conditions, Condition No. 11 (Exhibit 6, page 9) and Condition No. 46 (Exhibit 6, page 15) that address the cap².

² Given the issues raised and discussed further in the analysis of the Commission's appeal contentions regarding the structure of the City's conditions, those conditions aren't satisfactory. Nevertheless, those conditions, along with the more definitive file documents, support the conclusion that the City's approval recognizes the cap.

Based on the file materials submitted by the City and the conditions of approval, there is no evidence that the City's approval would allow impacts to ESHA that exceed the 11.29 acre cap. Accordingly, this claim does not raise a substantial issue as to conformity with the certified LCP.

- iv. The City's CDP allows construction of new protective devices to protect existing development, in violation of both Section 30253 of the Coastal Act and the certified LCP

This contention alleges that the approval is inconsistent with both Section 30253 of the Coastal Act and with provisions of the LCP. As noted in subsection i., above, an allegation that the LCPA is inconsistent with Coastal Act Section 30253 is not a valid grounds for appeal of a local government's action on a coastal development permit (see Coastal Act Section 30603(b)(1)).

However, the appellant also alleges that the City has authorized shoring, retaining walls, geogrid, MSE walls, soil nail walls and other protective devices along the bluff face and that such approval is inconsistent with COSE Policy 2.28. Other than stating that such devices are proposed "along the bluff face", the appellant hasn't identified specific locations.

A review of the record supplied by the City reveals that the City has authorized use of the devices noted above in a variety of applications within the development areas in the Strand, bowl, the hotel site, and the commercial site along Coast Highway. However, there is no indication such devices are proposed along conserved bluff areas, such as in the Headlands Conservation Park or the Harbor Point promontory, or seaward of the revetment in the Strand. The only proposed development area where the devices described by the appellant are being used as shoreline and/or bluff protection structures is within the Strand area. However, these are not stand-alone devices functioning apart from the revetment and geologic remediation that was allowed in the Strand. While COSE Policy 2.28 prohibits the use of shoreline and/or bluff protection devices to accommodate new development, that policy cross-references COSE Policy 2.21, which specifically allows geologic remediation and reliance upon a repaired and maintained shoreline protective device in the Strand area. The devices cited by the appellant are an integral part of the geologic remediation efforts in the Strand area, and are not stand alone devices functioning apart from the work allowed to occur in the LCP in the Strand.

In Section iii. above, the Commission has found that there is a substantial issue with respect to the work upon the revetment and whether such work constitutes 'repair and maintenance' or 'new development'. To the extent the appellant is alleging that the City has allowed the revetment to be re-constructed in excess of the 'repair and maintenance' limitations established in the LCP, then the above identified issue raises a substantial issue. On the other hand, COSE Policy 2.28 and 2.21 clearly allow geologic remediation within the Strand, within certain limitations, and such remediation would normally include shoring and walls in that area.

d. Commission Appeal – Analysis of Consistency

In the Commission's appeal, the following discrepancies are cited: 1) City's approval gives authorization for impacts to Environmentally Sensitive Habitat Area (ESHA) and construction of new development reliant on shoreline protection, but doesn't secure all of the required benefits that the LCP requires to off-set those impacts; 2) City's approval fails to adequately place limits upon the quantity of work that may occur upon the revetment in order for that work to be considered 'repair and maintenance'; 3) the City's authorization does not appropriately limit geologic remediation activities at the site such that those activities are consistent with LCP

requirements 4) the City's approval raises questions about the mechanisms the City is using to assure the development is consistent with the LCP and the delegation of certain key decisions about hazards related deed restrictions to City staff; 5) the City's approval fails to secure expungement of all development rights within open spaces; 6) the City's approval does not secure an adequate public funicular to offset access impacts; 7) the City's approval allows the siting of private stairways upon slopes adjacent to the beach raising visual impact issues and potential privatization of the required public lateral accessway along the top of the revetment; and 8) the City's approval includes plant species that may be inappropriate in the habitat restoration. Each of these contentions is discussed below:

- i. City's approval gives authorization for impacts to Environmentally Sensitive Habitat Area (ESHA) and construction of new development reliant on shoreline protection, but doesn't secure all of the required benefits that the LCP requires to off-set those impacts

The LCP contains allowances for impacts to Environmentally Sensitive Habitat Areas (ESHA) and for shoreline protection work that accommodates new development, but only in conjunction with a project that delivers certain benefits (see Goal 5, introductory narrative, LUE Policy 5.43, LUE Policy 5.44, COSE Policy 2.21, COSE Policy 2.22, COSE Policy 3.12, COSE Policy 6.9, HDCP Policy 3.5.E, 3.5.G, and 3.7.C.6, among others), as follows: 1) preservation, enhancement, dedication and perpetual management of all but 11.29 acres of environmentally sensitive habitat areas (ESHAs) known to be present at the Headlands; 2) the dedication of the private portion of Strand beach to the public; 3) the construction and dedication of public parks, a public trail network throughout the Headlands, and vertical and lateral public access to and along Strand beach including realigning the existing revetment an average 5 feet landward or easterly than the existing alignment, implementation of a program to retrieve debris from the beach that impedes public access, and constructing a new lateral public access trail on top or landward of the revetment and seaward of the entire length of the Strand residential development; 4) implementation of extensive water quality management best management practices, including but not limited to the construction and maintenance of structural best management practices to treat off-site and on-site run-off; 5) the preservation of significant landforms including the Harbor Point and Headlands bluffs and promontories and the Hilltop; and 6) the provision of lower-cost overnight accommodations (i.e. hostel) in conjunction with the construction of a luxury inn (see Goal 5 of Land Use Element (LUE), and policies LUE 5.42, 5.44, Conservation Open Space Element (COSE) policies 2.21 – 2.23, 3.1, 3.7, 3.12, among others) .

The appellants contend that the approval gives authorization for all of the ESHA impacts and construction of new development reliant on shoreline protection, but doesn't secure all of the required benefits. For example, the approval allows a division of land and grading that impacts ESHA to prepare for development within Planning Area 9 (the Seaside Inn site), but does not require development of the visitor-serving use, the hotel, or require delivery of the beneficial water quality treatment system (including the treatment of off-site acreage) until a future, unspecified time. In addition, delivery of the required 40-bed hostel isn't assured. Rather, its construction is also tied to the hotel development and is deferred to a future uncertain date. On the other hand, the ESHA impacts would occur immediately, without realization of the benefits that substantiated, in part, the encroachment into ESHA.

The above-identified contentions are accurate. The City's approval contains several statements and conditions that suggest that future delivery of the benefits will be provided; however, the time isn't specified and the impacts will be allowed to have occurred. For instance, Condition No. 152

requires delivery of water quality BMPs, and Condition No. 153 (Exhibit 6, pages 36-37) requires delivery of the hostel, both prior to issuance of the certificate of occupancy for the Seaside Inn. However, under Condition No. 122 (Exhibit 6, page 32), the Seaside Inn and the hostel requires a subsequent coastal development permit and neither the timing for application for these facilities nor approval of the Inn or hostel can be guaranteed. Compounding the issue is the fact that Condition No. 122 allows for construction of the homes to commence without first assuring delivery of the water quality benefits and the hostel. Another potential issue is that under Condition No. 30 (Exhibit 6, page 12), “[s]ecurity may be provided to the City in lieu of constructing the facilities...” including “...all required drainage improvements...”. Thus, the developer could simply pay fees to the City, rather than actually construct the required water quality improvements, which is contrary to LCP requirements that the developer be responsible for delivery of these facilities. Meanwhile, the impacts to ESHA could occur immediately upon activation of the City’s permit. One potential way of addressing the above issues would be to prohibit the ESHA impacts until delivery of the water quality benefits and hostel were assured. Thus, the City’s approval raises a substantial issue as to conformity with the certified LCP.

- ii. City’s approval fails to adequately place limits upon the quantity of work that may occur upon the revetment in order for that work to be considered ‘repair and maintenance’ & the City’s authorization does not appropriately limit geologic remediation activities at the site such that those activities are consistent with LCP requirements

The LCP limits the extent of work on the existing revetment at the Strand to that which would constitute “repair and maintenance” (COSE Policies 2.22 – 2.23, among others). More specifically, COSE Policy 2.23, among its other provisions, limits repair and maintenance of the existing revetment to “...the importation of up to 50 percent new rock by volume, including excavation and new bedding material and foundation...”. The appellants contend that the City’s special conditions identify certain limitations, relative to the footprint and height of the structure, but makes no specifications or limitations relative to the quantity of additional material that may be added to the revetment (Condition No. 159, Exhibit 6, page 39). Without such limitations, the appellants contend the City’s approval cannot be found consistent with COSE Policy 2.23.

In addition, certain other City-imposed requirements could be interpreted as unilaterally allowing the project geologist or geotechnical engineer to require work on the revetment above and beyond what would be considered “repair and maintenance” under the LCP, without any other review or approval. For example, the City’s authorization says “...[p]rior to issuance of a grading permit, to ensure that no undue risk is present during and after development of the project, final recommendations from the geotechnical engineer will be incorporated into the project”[emphasis added] (Exhibit 6, page 6). Accordingly, if the geotechnical engineer recommends augmentation to the revetment in excess of the limits allowable under ‘repair and maintenance’ then this provision of the City’s approval indicates the recommendation would be incorporated. If that augmentation were to occur, the work on the revetment would no longer be considered ‘repair and maintenance’ and such reconstruction would be inconsistent with the LCP. These same geologic provisions would allow other unspecified geologic work to occur, without an additional coastal development permit authorization. Such additional work could lead to inconsistencies with the certified LCP.

Some of the issues raised by this contention are also discussed in the discussion of Surfrider Foundation’s appeal contentions in Section II.D.2.c.ii. above. In summary, the Commission agrees that the City’s failure to identify the 50% limitation in their approval raises a substantial issue as to

conformity with the certified LCP, as well as the possible misapplication of adopted special conditions would lead to conflicts with the certified LCP.

- iii. The City's approval raises questions about the mechanisms the City is using to assure the development is consistent with the LCP and the delegation of certain key decisions about hazards related deed restrictions to City staff

The City's action includes Condition No. 3 (Exhibit 6, page 8), which states "All development shall be consistent and comply with all requirements of the HDCP as approved and Local Coastal Program Amendment 01-02 (LCPA 01-02) whether or not such requirement are identified herein". In addition, many of the adopted special conditions include categorical statements that the development/work shall be consistent with the certified HDCP and LCP. While these references could be argued to mandate compliance with the certified LCP, the appellants contend that this approach is an inappropriate means of ensuring resource protection. Typically, revised plans mandating necessary changes for compliance are required, to ensure that developers have all relevant requirements enumerated in their project plans; this also supports enforcement efforts, if needed, and provides clarity for public records. Therefore, the appellants contend that reliance on Special Condition No. 3 and other conclusionary references is problematic.

The Commission concurs that the City's approach raises a substantial issue. For example, in the contention discussed above, there are uncertainties as to whether the City is recognizing the 50% limitation upon augmentation of the existing revetment for such work to be considered 'repair and maintenance' because that limitation is not identified in their special conditions (Condition No. 159, Exhibit 6, page 39). The Commission has found that the failure to identify this limitation raises a substantial issue. However, with Condition No. 3, the City could argue that their approval does contain that limitation because their approval 'incorporates' the provisions of the LCP. On the other hand, one could also interpret the City's failure to list the 50% limitation to mean that the City found the 50% limitation somehow not applicable in this instance and declined to implement it because the geologist/geotechnical engineer recommended additional work on the revetment. Without an explicit statement of the 50% limitation, it is difficult if not impossible for any member of the public, or even for City staff, to know for sure how the City was applying (or not applying) the 50% limitation.

The City's approval also raises a variety of issues relative to required deed restrictions. The LCP requires recordation of deed restrictions advising property owners that they must assume the risk of developing in hazardous bluff and shoreline areas (COSE Policy 2.30). However, the City's approval does not specify those lots that must be restricted. Rather, the determination of which lots must be deed restricted is deferred to the discretion of the Director of Public Works (Condition No. 34, Exhibit 6, page 13). The permit should have defined the areas where a deed restriction will be needed instead of leaving it to the Director of Public Works to make those determinations. Only in that way can the approval be assured be consistent with the LCP's requirement for such restrictions. Furthermore, the City-required deed restriction does not address all the hazards (only bluff retreat), nor does it include the indemnification requirement. The Commission finds this issue raises a substantial issue as to conformity with the certified LCP.

- iv. The City's approval fails to secure expungement of all development rights within open spaces

The LCP requires abandonment of Marguerita Road and restoration, dedication and preservation of the area as part of the open space area. The appellants contend that the proposed tract map identifies an ingress/egress easement across the area that is not required to be extinguished in the City's approval. That easement was granted to certain individuals and allows 'pedestrian and vehicular ingress and egress' upon Marguerita Road. Such ingress/egress by pedestrians and vehicles would result in disturbance to the restored habitat area. Failure to require extinguishment of all development rights/easements that may allow disturbance to the area reserved as open space raises questions of the consistency of the approval with the requirement that the CDP authorization "...fully expunge all development rights that may exist within the identified public parks, open space and public trail network" ... (See Section 3.7.C.6, Development Phasing Plan).

The Commission concurs that the issue raises a substantial issue. Condition No. 144 (Exhibit 6, page 36) of the City's approval requires removal and restoration, or 'security' for such removal and restoration, of Marguerita Road. However, there is no mention of expungement of the easement. Furthermore, the mere provision of 'security' for the road removal and habitat restoration is not adequate; the removal and restoration is the developers' obligation under the LCP. The LCP clearly requires that all development rights within the parks, open spaces and trail network be expunged. The City's authorization contains no such requirement, thus there is no apparent requirement that the ingress/egress easement would be expunged. The easement holder could attempt to exercise that easement in the future, resulting in impacts to sensitive habitat, which would be inconsistent with LCP requirements mandating protection of retained and restored ESHA. Thus, this issue raises a substantial issue as to conformity with the certified LCP.

- v. The City's approval does not secure an adequate public funicular to offset access impacts

Section 30210 of the Coastal Act requires the provision of 'maximum' access to and along the shoreline. However, the Headlands development plan included a prohibition of public vehicular access to the Strand residential community. To address concerns relative to that public access prohibition, the Commission required the inclusion of certain policies in the LCP to assure consistency with the public access and recreation policies of the Coastal Act. For instance, the certified LCP requires that any prohibition upon public vehicular access into the Strand residential area be offset with the provision of a public funicular extending from the County parking area to the beach (LUE Policies 5.35, 5.36, HDCP Section 3.4.C.5, among others). These policies have specific requirements relative to periods of operation, and fees as well as size of the vehicle ("...sized to a minimum capacity of eight persons..." and having "...sufficient capacity to ferry a family and associated beach recreational paraphernalia (e.g. chairs, coolers, surfboards, etc.)").

The appellants contend there are ambiguities relative to the passenger capacity and operational requirements of the funicular in the City's approval. The City's approval contains several conditions pertaining to the funicular. For instance, Condition No. 50 (Exhibit 6, page 16) requires a public funicular if the Strand residential area is gated, but no other details are identified. In addition, Condition No. 142 (Exhibit 6, page 35) states that the entryway street to the Strand residential can't be closed to public vehicular traffic until a certificate of occupancy for the funicular is issued; requires maintenance provisions to be in place before issuance of the building permit, and states that the City will take no responsibility for construction, operation or maintenance of the funicular. The LCP contains many requirements relative to the days of operation, the size of the

funicular, and the maximum fee. Of particular importance, the LCP also contains specific requirements relative to the temporary and/or permanent re-opening of the Strand residential area to public vehicular access should the funicular become inoperable for extended periods. Nevertheless, the City's authorization contains no details regarding the size of the funicular, required days and hours of operation, or the fee for use (if any); nor are there provisions for the re-opening of the Strand when the funicular is inoperable.

The City's record also contains few details regarding the funicular. The only details include a photograph of a vehicle and the general alignment of the facility. Thus, it appears that many of the details regarding the funicular would be left to the discretion of City staff, rather than mandated by the permit. The Commission finds these ambiguities raise a substantial issue as to conformity with the LCP and the public access and recreation policies of the Coastal Act.

- vi. The City's approval allows the siting of private stairways upon slopes adjacent to the beach raising visual impact issues and issues regarding potential privatization of the required public lateral accessways

The appellants contend that the City's approval allows for the construction of stairways on the slope seaward of the seawardmost line of residential structures in the Strand with multiple connections to the public lateral accessway along the revetment. Such structures raise issues relative to visual impacts and privatization of the lateral public accessway that is required to be constructed along the top of the repaired and maintained revetment.

The identified stairways are depicted on a proposed landscape plan and within the 'Design Guidelines' for the Strand residential area dated November 2004. The stairways would descend from the level building pad for the homes upon the graded slope to the public lateral accessway along the revetment (Exhibit 11). There would be at least 13 stairways along the accessway (1 stairway to be shared by 2 adjoining lots).

Land Use Element Policy 5.4 prohibits new development that would significantly degrade public views to and along the coastline. In addition, Conservation Open Space Element Policy 3.17 prohibits new structures on bluff faces. The proposed stairs raise a substantial issue as to conformity with these LCP policies.

The lateral public accessway along the Strand revetment is a key component of the public access program in the certified LCP. When the surf is breaking upon the back beach and the revetment, lateral access upon the sandy beach will be hazardous, if not impossible. The lateral public access along the top of the revetment, thus, would provide the only lateral access along the shoreline during those (potentially extended) periods. This lateral access would run seaward of, and parallel to, the first line of homes in the Strand at a mid-point along a graded slope leading down to the beach. The construction of multiple private stairways with direct linkage to the lateral access, which is located in a confined corridor seaward of the homes, will create the appearance that the lateral accessway is intended to provide access to the private stairways, rather than serve as a lateral public accessway for use by the public. Thus, the privatization of the required lateral public access along the shoreline would not be protective of lower cost recreational facilities and thus would be inconsistent with Section 30213 of the Coastal Act and equivalent LCP policies.

- vii. The City's approval includes plant species that may be inappropriate in the habitat restoration.

The appellants contend that the City's approval allows certain plant species to be planted that are inappropriate within the habitat restoration. A review of the proposed on-site mitigation and revegetation plan (by URS Corporation dated December 2, 2004) does reveal that certain plant species, such as Laurel sumac and coffee berry are proposed but apparently are not currently present within the coastal scrub habitats. Accordingly, those species should be removed from the plan or their presence ecologically justified.

However, the City's approval contains Condition No. 140 (Exhibit 6, page 35) which requires use of only plants native to coastal Orange County and appropriate to the habitat type. Thus, the issue appears to have been adequately addressed in the City's approval. Thus, this issue does not raise a substantial issue as to conformity with the LCP.

e. Significance of Issues Raised by Appeal

The Dana Point Headlands is the last large (approximately 121 acres), relatively undeveloped area of land within the City of Dana Point's coastal zone, and among the few remaining such areas of its size along the Orange County coastline. For its significant habitat, recognizable and visually stunning landforms, and remarkable views, the Dana Point Headlands is one of the California coastline's landmark resources –of local and statewide significance- worthy of the most careful planning efforts.

Development of the subject property involves a number of challenges and constraints, but also certain benefits the Commission found to be significant and thus approved an LCP amendment. Development at the site will impact 11.29 acres of environmentally sensitive habitat area, will require significant geologic remediation in the Strand and reliance upon shoreline protection, and will result in landform alteration. However, the proposal would also place approximately 47 acres of existing ESHA into protected conservation areas with additional lands and would be accompanied by significant habitat restoration and include long-term management provisions. The project allowed by the LCPA also includes dedication of beach, an extensive public trail network, water quality management improvements, and lower cost overnight accommodations (a 40-bed hostel).

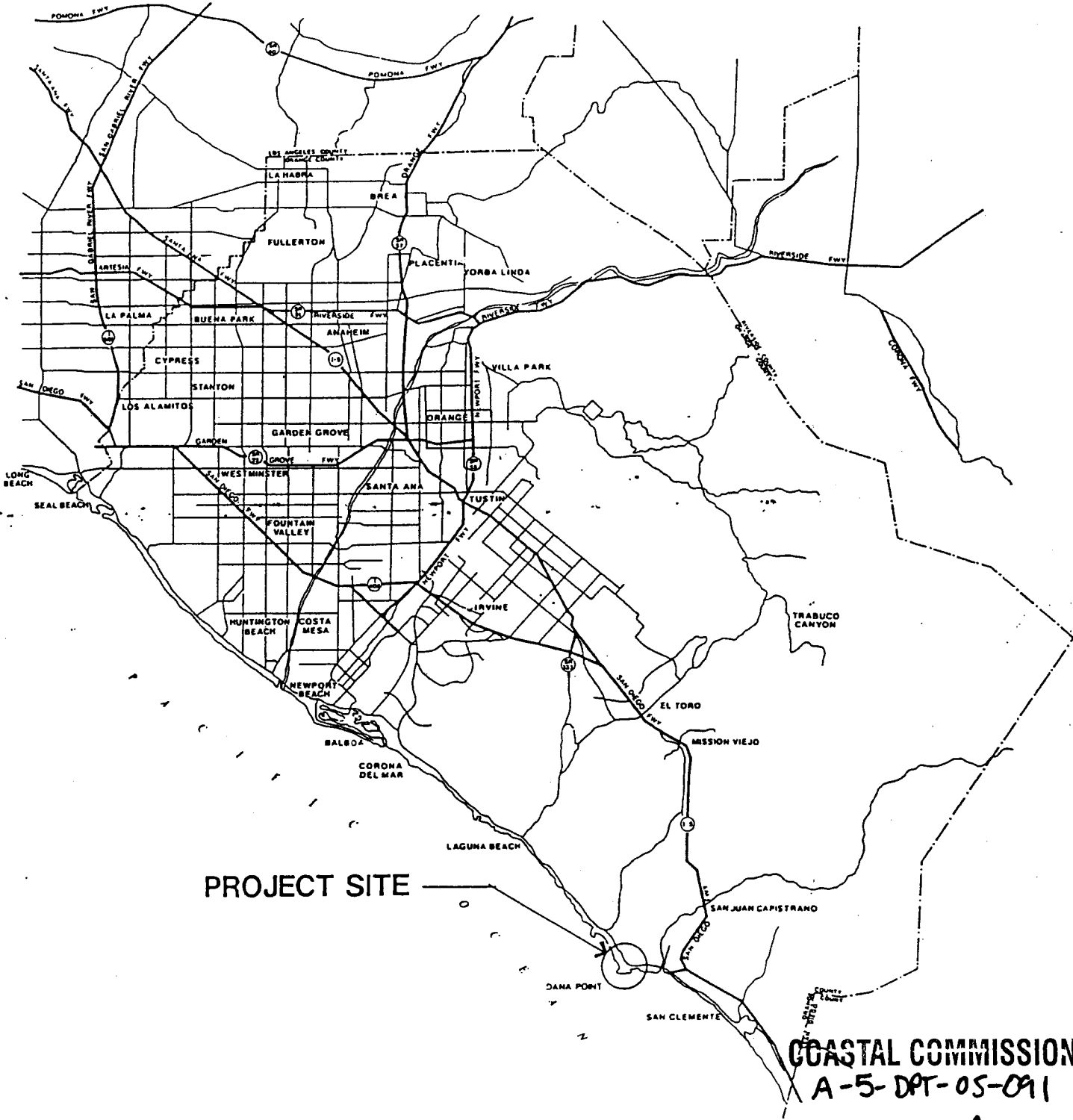
Through certification of the LCP, the City was delegated the responsibility to assure implementation of a development plan at the Headlands that delivers all of the benefits promised to the public in a timely and unambiguous manner. The City's approval allows development to commence at the site, including a land division, significant clearing of sensitive vegetation, and grading of the site to prepare it for construction of homes, commercial, and public amenities. However, that approval contains ambiguities regarding the amount of work allowed upon the revetment and whether appropriate mitigation has been secured for associated beach impacts. In addition, key benefits promised to the public are deferred and their provision is not assured. There are also significant questions regarding the structure and legal adequacy of the City's conditions. The approval granted by the City is critical in that it lays the foundation for development to occur now and in the future at the site. All inconsistencies in the City's approval with the LCP will have lasting effects, including potential long-term enforcement problems, and could result in adverse impacts upon public access, visual resources, and sensitive biological habitat. Accordingly, the appellants' contentions raise concerns about the future interpretation and enforceability of adopted conditions to ensure LCP compliance. In addition, in the absence of securing all the off-setting

benefits proposed in the LCP, while now allowing all the direct impacts to identified ESHA to proceed, it is clear that sufficient mitigation has not been provided and significant coastal resources and public access opportunities are at risk. Therefore, the appeal is both precedential and raises issues of statewide significance.

f. Conclusion

For the reasons stated above, the appeal raises a substantial issue of consistency with the regulations and standards set forth in the certified City of Dana Point LCP and the public access policies of the Coastal Act.

REGIONAL LOCATION
FIGURE 4.1.1



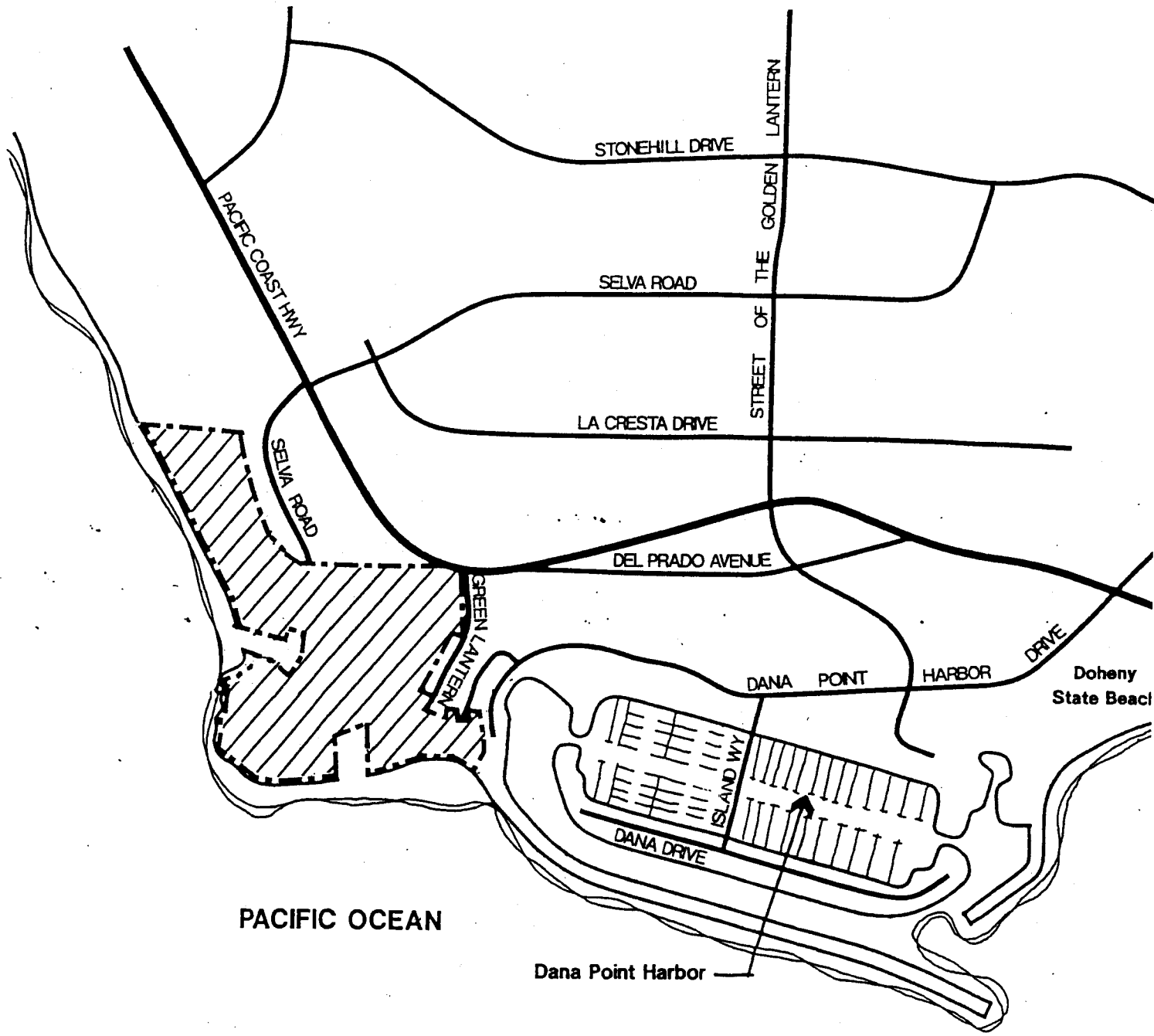
PROJECT SITE

COASTAL COMMISSION
A-5-DPT-05-091

EXHIBIT # 1
PAGE 1 OF 2

**THE HEADLANDS
DEVELOPMENT AND CONSERVATION PLAN**





PACIFIC OCEAN

Dana Point Harbor

COASTAL COMMISSION

EXHIBIT # 1
PAGE 2 OF 2

THE HEADLANDS
DEVELOPMENT AND CONSERVATION PLAN

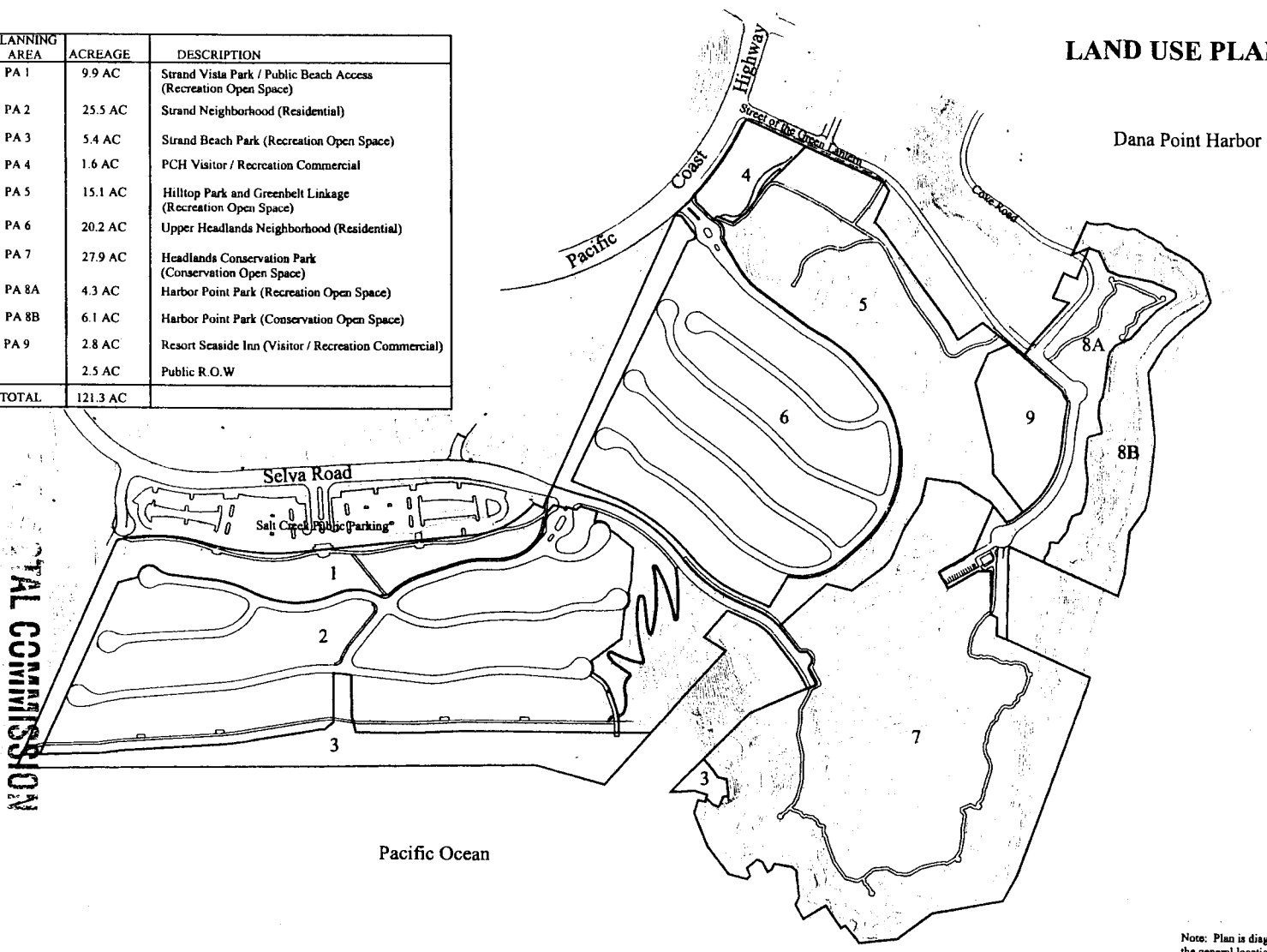


Exhibit From LCP

EXHIBIT # 2
PAGE 1 OF 1

PLANNING AREA	ACREAGE	DESCRIPTION
PA 1	9.9 AC	Strand Vista Park / Public Beach Access (Recreation Open Space)
PA 2	25.5 AC	Strand Neighborhood (Residential)
PA 3	5.4 AC	Strand Beach Park (Recreation Open Space)
PA 4	1.6 AC	PCH Visitor / Recreation Commercial
PA 5	15.1 AC	Hilltop Park and Greenbelt Linkage (Recreation Open Space)
PA 6	20.2 AC	Upper Headlands Neighborhood (Residential)
PA 7	27.9 AC	Headlands Conservation Park (Conservation Open Space)
PA 8A	4.3 AC	Harbor Point Park (Recreation Open Space)
PA 8B	6.1 AC	Harbor Point Park (Conservation Open Space)
PA 9	2.8 AC	Resort Seaside Inn (Visitor / Recreation Commercial)
	2.5 AC	Public R.O.W
TOTAL	121.3 AC	

LAND USE PLANNING AREAS
FIGURE 4.3.1



CITY COMMISSION

**THE HEADLANDS
DEVELOPMENT AND CONSERVATION PLAN**

Note: Plan is diagrammatic in nature and intended to show the general location of land uses. It is subject to change based on final engineering, planning, and design.

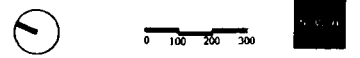
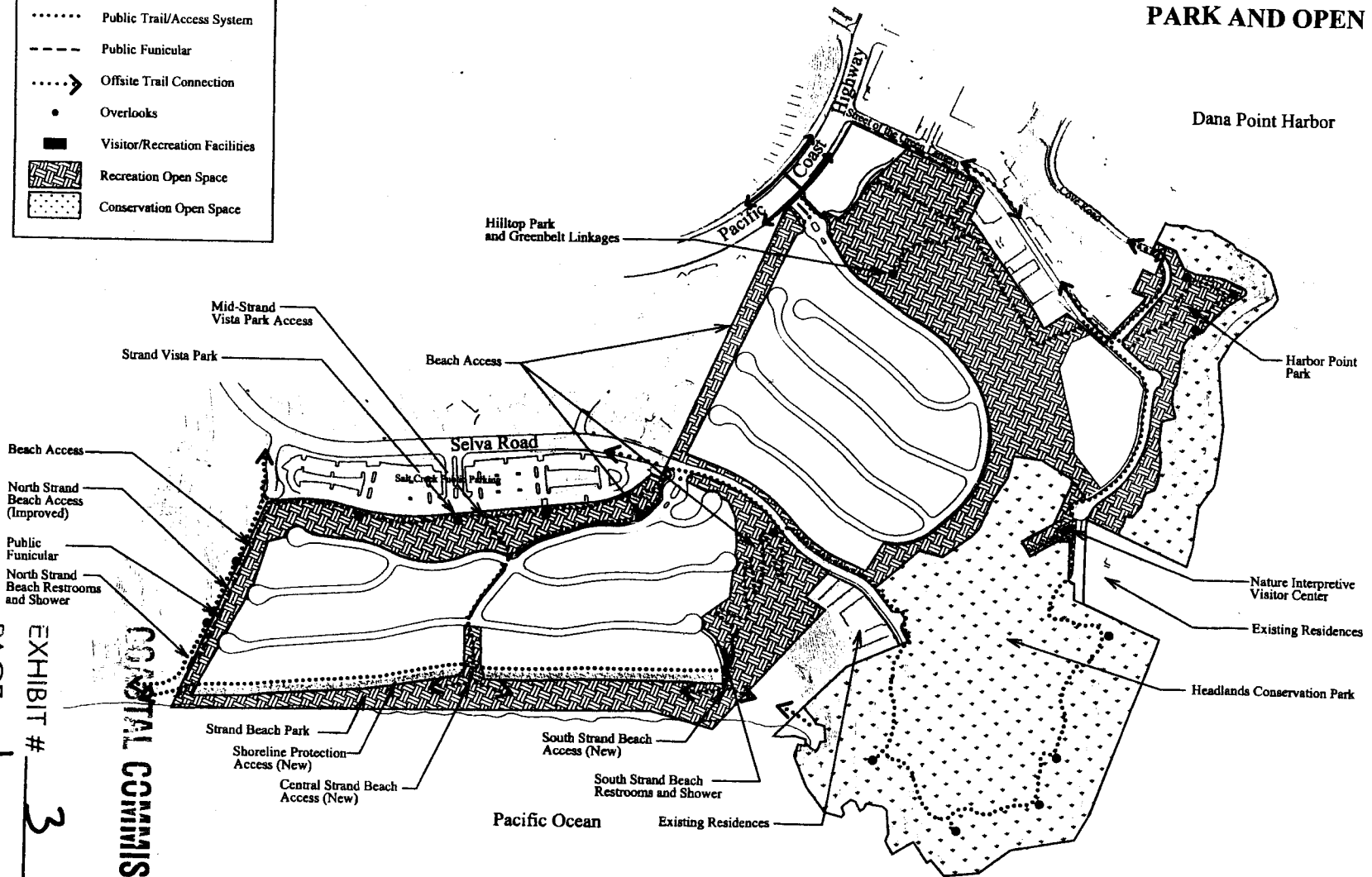


Exhibit from UCP

PARK AND OPEN SPACE PLAN

FIGURE 4.4.1

- Public Trail/Access System
- Public Funicular
-> Offsite Trail Connection
- Overlooks
- Visitor/Recreation Facilities
- ▨ Recreation Open Space
- ▤ Conservation Open Space

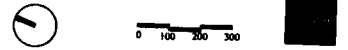


PAGE 1 OF 1
EXHIBIT # 3

COSTA MOUNTAIN

THE HEADLANDS DEVELOPMENT AND CONSERVATION PLAN

Note: Plan is diagrammatic in nature and intended to show the general location of land uses. It is subject to change based on final engineering, planning, and design.



CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



MAR 10 2005

**APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT**

CALIFORNIA
COASTAL COMMISSION

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Coastal Commissioners: Sara Wan & Meg Caldwell
200 Oceangate, Suite 1000
Long Beach, CA 90802 (562) 590-5071

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Dana Point
2. Brief description of development being appealed: Master Coastal Development Permit CDP04-23 for subdivision of 121.3 acres into 126 numbered lots and 27 lettered lots to allow development of 118 single-family homes, 4.4 acres of Visitor/Recreational Commercial development including one 65-90 room hotel and three lots adjacent to Pacific Coast Highway for commercial development not to exceed 35, 000 square feet with 40-bed hostel, a 27.9 acre conservation park and approximately 40.8 acres of additional parts and open space.
3. Development's location (street address, assessor's parcel no., cross street, etc.): Generally the northwest corner of Street of the Green Lantern and Pacific Coast Highway (Dana Point Headlands) Dana Point, Orange County.
4. Description of decision being appealed:
 - a. Approval; no special conditions: _____
 - b. Approval with special conditions: **XX**
 - c. Denial: _____

NOTE: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO:	<u>A-5-DPT-05-091</u>	COASTAL COMMISSION
DATE FILED:	<u>March 10, 2005</u>	<u>A-5-DPT-05-091</u>
DISTRICT:	<u>South Coast</u>	EXHIBIT # <u>4</u>
		PAGE <u>1</u> OF <u>7</u>

5. Decision being appealed was made by (check one):
- a. Planning Director/Zoning Administrator: _____
 - b. City Council/Board of Supervisors: X
 - c. Planning Commission: _____
 - d. Other: _____
6. Date of local government's decision: _____
7. Local government's file number: Master Coastal Development Permit CDP04-23

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties.
(Use additional paper as necessary.)

1. Name and mailing address of permit applicant:
Headlands Reserve LLC
24849 Del Prado
Dana Point, CA 92629
2. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

Mike Lewis
Environ Strategy
Consultants, Inc.
30 Hughes, Suite 209
Irvine, CA 92618

Celia Kutcher
Dana Point Headlands
Conservancy
P.O. Box 3514
Dana Point, CA 92629

Mark Massara

Sierra Club
1642 Great Highway
San Francisco, CA 94122

Surfrider Foundation
P.O. Box 6010
San Clemente, CA 92674-6010

Coast Law Group
169 Saxony Road, Suite
201
Encinitas, CA 92024

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government Coastal Permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page. Please state briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

The proposed development is located in the Headlands area of the City of Dana Point which has a certified Local Coastal Program (LCP). The proposed project raises a substantial issue with the City of Dana Point Local Coastal Program and the public access and recreation policies of Chapter 3 of the Coastal Act for the reasons described below.

The City of Dana Point approved a master coastal development permit for subdivision of 121.3 acres into 126 numbered lots and 27 lettered lots to allow development of 118 single-family homes, 4.4 acres of Visitor/Recreational Commercial development including one 65-90 room hotel and three lots adjacent to Pacific Coast Highway for commercial development not to exceed 35, 000 square feet with 40-bed hostel, a 27.9 acre conservation park and approximately 40.8 acres of additional parks and open space. The approval fails to adequately implement LCP requirements relative to biological resources, water quality, public access and recreation, hazards, visual impacts, and other coastal resources.

The LCP contains allowances for impacts to Environmentally Sensitive Habitat Areas (ESHA) and provisions relative to shoreline protection that accommodates new development, only in conjunction with a project that delivers certain benefits, as follows: 1) preservation, enhancement, dedication and perpetual management of all but 11.29 acres of environmentally sensitive habitat areas (ESHAs) known to be present at the Headlands; 2) the dedication of the private portion of Strand beach to the public; 3) the construction and dedication of public parks, a public trail network throughout the Headlands, and vertical and lateral public access to and along Strand beach including realigning the existing revetment an average 5 feet landward or easterly than the existing alignment, implementation of a program to retrieve debris from the beach that impedes public access, and constructing a new lateral public access trail on top or landward of the revetment and seaward of the entire length of the Strand residential development; 4) implementation of extensive water quality management best management practices, including but not limited to the construction and maintenance of structural best management practices to treat off-site and on-site run-off; 5) the preservation of significant landforms including the Harbor Point and Headlands bluffs and promontories and the Hilltop; and 6) the provision of lower-cost overnight accommodations (i.e. hostel) in conjunction with the construction of a luxury inn (emphasis added) (see Goal 5 of Land Use Element (LUE), and policies LUE 5.42, 5.44, Conservation Open Space Element (COSE) policies 2.21 – 2.23, 3.1, 3.7, 3.12, among others). The approval gives authorization for all of the ESHA impacts and

construction of new development reliant on shoreline protection, but doesn't secure all of the required benefits. For example, the approval allows a division of land and grading that impacts ESHA to prepare for development within Planning Area 9 (the Seaside Inn site), but does not specify development of the visitor-serving use, the hotel, or require delivery of the beneficial water quality treatment system (including the treatment of off-site acreage) until a future, unspecified time. In addition, delivery of the required 40-bed hostel isn't assured. Rather, it's construction is also tied to the hotel development and is deferred to a future uncertain date. On the other hand, the ESHA impacts would occur immediately, without realization of the benefits that substantiated, in part, the encroachment into ESHA.

The LCP places limitations on the extent of work on the existing revetment at the Strand to that which would constitute "repair and maintenance" (COSE Policies 2.22 – 2.23, among others). More specifically, COSE Policy 2.23, among its other provisions, limits repair and maintenance of the existing revetment to "...the importation of up to 50 percent new rock by volume, including excavation and new bedding material and foundation...". The City's special conditions identify certain limitations, relative to the footprint and height of the structure, but makes no specifications or limitations relative to the quantity of additional material that may be added to the revetment. Without such limitations, the City's approval cannot be found consistent with COSE Policy 2.23.

Furthermore, certain other City-imposed conditions could be interpreted as unilaterally allowing the project geologist or geotechnical engineer to require work on the revetment above and beyond what would be considered "repair and maintenance" under the LCP, without any other review or approval. These same geologic provisions would allow other unspecified geologic work to occur, without an additional coastal development permit authorization. Such additional work could lead to inconsistencies with the certified LCP.

The City's action includes Special Condition #3 that states "All development shall be consistent and comply with all requirements of the HDCP as approved and Local Coastal Program Amendment 01-02 (LCPA 01-02) whether or not such requirement are identified herein". In addition, many of the adopted special conditions include categorical statements that the development/work shall be consistent with the certified HDCP and LCP. While these references could be argued to mandate compliance with the certified LCP, it is not the most appropriate course to ensure resource protection. Typically, revised plans mandating necessary changes for compliance are required; this also supports enforcement efforts, if needed, and provides clarity for public records. Therefore, the reliance on Special Condition #3 and other conclusionary references is problematic.

The City's approval also raises a variety of issues relative to required deed restrictions. The LCP requires recordation of deed restrictions advising property owners that they must assume the risk of developing in hazardous bluff and shoreline areas (COSE Policy 2.30). However, the City's approval does not specify those lots that must be restricted. Rather, the determination of which lots must be deed restricted is deferred to the discretion of the Director of Public Works. The permit should have defined the areas where a deed restriction will be needed instead of leaving it to the Director of

Public Works to make those determinations. Furthermore, the City-required deed restriction does not address all the hazards (only bluff retreat), nor does it include the indemnification requirement.

The LCP requires abandonment of Marguerita Road and restoration, dedication and preservation of the area as part of the open space area. The proposed tract map identifies an ingress/egress easement across the area that is not required to be extinguished. Failure to require extinguishment of all development rights/easements that may allow disturbance to the area reserved as open space raises questions of the consistency of the approval with the requirement that the CDP authorization "...fully expunge all development rights that may exist within the identified public parks, open space and public trail network"... (See Section 3.7.C.6, Development Phasing Plan).

The following additional issues are raised by the approval:

- Ambiguities relative to the passenger capacity and operational requirements of the funicular to offset gating of the Strand residential neighborhood.
- Inclusion of stairways on the slope seaward of the residential structures in the Strand with connection to the public lateral access along the revetment. Such structures raise issues relative to visual impacts and privatization of the public accessway.
- Appropriateness of the proposed restoration plant palette.

Accordingly, an appeal of the local action must be made to assure that any approved development is consistent with the requirements of the certified Dana Point Local Coastal Program and the public access policies of the Coastal Act.

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

RECEIVED
South Coast Region

MAR 10 2005

CALIFORNIA
COASTAL COMMISSION

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: *Steve Allen*
Appellant or Agent

Date: 3.10.05

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

697

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

RECEIVED
South Coast Region

MAR 10 2005

CALIFORNIA
COASTAL COMMISSION

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: Mrs. Caldwell
Appellant or Agent

Date: 3.10.05

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370

RECEIVED
South Coast Region



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT COASTAL COMMISSION

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant

Name, mailing address and telephone number of appellant:

Coast Law Group LLP, Todd T. Cardiff, Esq. (Rep. Surfrider Foundation)

169 Saxony Road, Ste. 201, Encinitas,
California 92024 (760) 942-8505
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: CITY OF DANA POINT

2. Brief description of development being appealed: Master Coastal Development Permit CDP 04-23
Tentative Tract Map 16331, Master Site Development Permit
SDP 04-69 (Dana Point Headlands)

3. Development's location (street address, assessor's parcel no., cross street, etc.): Apx. 121.3 acres located generally
south west corner of Pacific Coast Highway and Street of Green Lantern

- 4. Description of decision being appealed:
 - a. Approval; no special conditions: X
 - b. Approval with special conditions: _____
 - c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-5-DPT-05-091

DATE FILED: 3/10/05

DISTRICT: Long Beach

COASTAL COMMISSION

EXHIBIT # 5
PAGE 1 OF 7

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator c. Planning Commission
b. City Council/Board of Supervisors d. Other _____

6. Date of local government's decision: February 24, 2005

7. Local government's file number (if any): CDP 04-25

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Headlands Reserve LLC, Sanford Edward
24949 Del Prado
Dana Point, CA 92629

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) Jeff Oderman, City Attorney - Dana Point
Ratan and Tucker, LLP, P.O. Box 1950
Costa Mesa, CA 92628-1950
- (2) Richards, Watson, & Gershon, APC- Steven H. Kaufmann
555 South Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101
- (3) Monatt, Phelps, and Phillips, LLP - George M. Soneff
11355 W. Olympic Blvd
Los Angeles, CA 90064
- (4) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Underlying LCP is being challenged as violating Pub. Res. Codes sections 30240, 30235, 30253, and other provisions.

The Master CDP violates Pub. Res. code section 30213 by not mitigating for loss of beach. Violates and fails to provide adequate Affordable housing (PRC 30604, 30607.2 and Gov. 65590)

Violates LCPA because cleaning and grubbing plan impacts more than 11.29 acres (walls and utilities impact ESHA).

Please see appeal letter attached.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my knowledge.

Signed *Todd G. Candy*
Appellant or Agent

Date *March 9, 2005*

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed _____
Appellant

Date _____

0016F

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Suite 201
Encinitas, CA 92024

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www.coastlawgroup.com

VIA FEDERAL EXPRESS
March 9, 2005

California Coastal Commission
South Coast District Office
Chuck Damm, Sr. Deputy Director
Deborah Lee, Deputy Director
Teresa Henry, District Manager
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

RE: Appeal of Master Coastal Development Permit CDP04-23
Tentative Tract Map 16331
Master Site Development Permit SDP 04-69
(Dana Point Headlands)

Dear Coastal Commission Staff:

Please consider this letter incorporated into the appeal of the above identified project.

Because the Master Coastal Development Permit is incorporated with the Master Site Development Permit (and tentative map) comments made on the Master CDP are also applicable to the Master Site Development Permit and Tentative Map.

A. The Master Coastal Development Permit CDP04-23; Tentative Tract Map 16331, Master Site Development Permit SDP 04-69 (Dana Point Headlands) cannot be approved because the LCPA violates the coastal act and is currently being challenged.

The LCPA for the Dana Headlands, approved by the Coastal Commission on January 14, 2005, is currently being challenged in San Francisco Superior Court, Case No. CPF-05-505023, for violations of 30235, 30240, 30253 and other sections of the Coastal Act.

The LCPA, as demonstrated by this incredibly destructive and misguided Coastal Development Permit, is grossly out of compliance with the California Coastal Act. The Coastal Commission should deny the permit based on the destruction of the Environmentally Sensitive Habitat Areas (ESHA), building new development on an unstable bluff and requiring the construction of a seawall to support and protect such bluff development.

It is absolutely outrageous that the Coastal Commission approved an LCPA permitting a luxury hotel directly on 4.4 acres of ESHA. It is outrageous that the Coastal Commission permitted single family residences on top of 6.5 Acres of ESHA. The Coastal Commission clearly abused its discretion in approving Dana Points LCPA. The Dana Point Master Coastal Development Permit is grossly out of compliance with the Coastal Act. Pub. Res. Code § 30240.

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In addition, the Master Coastal Development Plan permits the construction of a protective device to protect new development in violation of Public Resources Codes § 30253.

B. The Master Coastal Development Permit Is Insufficient to Meet the Requirement for Affordable Housing.

The Coastal Act mandates that the Coastal Commission "shall encourage housing opportunities for persons of low and moderate income." Pub. Res. Code § 30604.

(g) The Legislature finds and declares that it is important for the commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.
(Cal Pub Resources Code § 30604)

Furthermore, Government Code § 65590, requires that "New housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income."

In this case, the LCPA does not provide any significant affordable housing for low and moderate income people within the Coastal Zone. The Permit relegates affordable housing to 12 residential unit "employee quarters." Those units that do not have "employees quarters" are relegated to paying \$2,500 to the City to participate in the affordable housing in-lieu fee program. (Agenda Report, Exhibit B, General Conditions ¶ 12, p. 14). This is insufficient to meet the Coastal Act requirement.

Furthermore, an "affordable housing in lieu fee program" is not sufficient to comply with Government Code § 65590. Section 65590 requires that the "local government shall require the developer to provide such housing, if feasible to do so, at another location within the same city or county, either within the coastal zone or within three miles thereof." Paragraph 12 of the General conditions is entirely inadequate for affordable housing needs. At most, the entire project will be required to pay approximately \$ 265,000 to the City for mitigation. That is not even enough to purchase one single family home within in the City of Dana Point or County of Orange within three miles of the coast. The Master Coastal Development Permit does not comply with Coastal Act, Government Code § 65590, or the Local Coastal Plan.

C. The Master Coastal Development Permit Violates Coastal Act Section 30213, Because There Is No Mitigation for the Eventual Loss of the Beach.

Public Resources Code § 30213 states, "Lower Cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided...." The beach is considered a lower cost visitor and recreational facility. According to the Master Coastal Development Permit, the beach will be covered by 2,240 linear foot of seawall. Although the seawall will be required to have a walk way, this does not replace the sand that will be lost through passive erosion. Eventually, the walk way on

top of the revetment will be the only access to the ocean. Thus, the Master Coastal Development Permit violates Public Resources Code section 30213 by destroying the beach and not requiring any mitigation for the loss of sand in front of the seawall (and beneath it).

In order to comply with the Coastal Act, the Developer must be required to purchase suitable replacement land, or provide sufficient mitigation to the coastal Commission for sand replenishment to prevent the loss of the beach.

D. The Master Coastal Development Permit Violates the Local Coastal Program by Destroying more than 11.29 acres of ESHA.

The Local Coastal Program permits the direct destruction of 11.29 acres of ESHA. However, the Coastal Development Permit allows for a significant amount of additional acres to be destroyed and impacts a significantly larger amount of ESHA

For example, the Local Coastal Plan states that "if new development engenders the need for fencing or walls to protect adjacent ESHA, the fencing or walls shall be located within the development footprint, rather than within the ESHA." However, the Coastal Development Permit allows for the construction of masonry walls a minimum of 7ft. High between planning areas 4 and 6 and designated ESHA within Planning area 5. (Master CDP, General Conditions ¶ 154, p. 38). Thus, 7 ft. high walls will be directly impacting ESHA above and beyond the 11.29 acres of ESHA.¹

In addition, THE CLEARING AND GRUBBING PLAN demonstrates that more than 11.29 acres of ESHA will be impacted. A straight line of vegetation will be removed within the ESHA between Planning Area 6 and 9. (See Tentative Tract Map 166331, Sheet 14 of 15). It appears that this line of vegetation removal is to accommodate utilities between the Residential development and the hotel. This clearly does not comply with the LCP. (See also Master CDP, Exhibit B, ¶ 56).

E. The Master Cdp Contemplates Building Protective Devices Other than the 2,240 Rip Rap Revetment and Therefore Violated the LCPA and the Coastal Act.

The LCPA misidentifies the construction of a brand new seawall as "repair and maintenance." The seawall construction will consist of the entire removal of a 2,240 feet long rip rap revetment; recompaction of a supporting earthen slope; construction of a 20 foot thick geosynthetically-reinforced compacted fill seaward and down slope of the compacted earth fill; and the importation of up to 50 percent new rip rap boulders by volume at a location 5-10 ft. landward of the existing seawall. This is clearly not "repair and maintenance" and violates Public Resources Code section 30253. In addition, because there are no existing structures, the construction violates section 30235 of the Coastal Act as well.

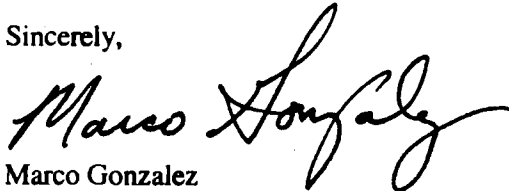
However, that is not the only violation of section 30253, which states that "New

¹ In addition, such walls obstruct the natural aesthetics and wildlife corridors in violation of the LCPA. Note that they are a minimum of 7 ft. tall. There does not appear to be a height limit in the Master CDP.

Development Shall...[not] in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." The Master Coastal Development appears to permit shoring, retaining walls, geogrid, MSE walls, soil nail wall and other protective devices along the bluff face. This violates the LCPA as written, which specifies, "All new beachfront and bluff top development shall be sized, sited and designed to minimize risk frombeach and bluff erosion hazards without requiring a shoreline and/or bluff protection structure at any time during the life of the development." (COSE, Goal 2, § 69).

Clearly, the construction of retaining walls, soil nail walls, and MSE walls constitutes a violation of the LCPA which prohibits such measures except for the "repair and maintenance" of the rip rap revetment.

Sincerely,



Marco Gonzalez
Senior Partner

Todd T. Cardiff
Partner
COAST LAW GROUP LLP

Attorneys for Surfrider Foundation

RESOLUTION NO. 05-02-23-07

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
DANA POINT, CALIFORNIA, DENYING THE APPEAL OF
SURFRIDERS FOUNDATION AND UPHOLDING THE PLANNING
COMMISSION'S APPROVAL OF MASTER COASTAL
DEVELOPMENT PERMIT CDP04-23**

File No.: FF# 0630-30/CDP04-23

WHEREAS, the City of Dana Point has an adopted and certified Local Coastal Program; and

WHEREAS, the Planning Commission did on January 19, 2005 hold a duly noticed public hearing as prescribed by law to consider Master Coastal Development Permit CDP 04-23 and approved the application, subject to certain conditions of approval; and

WHEREAS, on February 3, 2005 an appeal was filed with the City Clerk by Surfrider Foundation; and

WHEREAS, the City Council did on February 23, 2005 hold a duly noticed public hearing as prescribed by law to consider the appeal of Master Coastal Development Permit CDP 04-23; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors relating to the appeal of Master Coastal Development Permit CDP 04-23.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Dana Point as follows:

Section 1. That the above recitations are true and correct;

Section 2. The City Council having considered all testimony and written materials, finds the appeal is without merit and specifically rejects appellant's argument that the Master Coastal Development Permit is inconsistent with the Local Coastal Program and the proposed development's impact to ESHA violates the California Coastal Act.

Section 3. The City Council adopts the findings listed on Exhibit "A" of this Resolution, attached hereto and incorporated herein by this reference.

COASTAL COMMISSION

EXHIBIT # 6
PAGE 1 OF 39

Section 4. The City Council denies the appeal, thereby upholding the Planning Commission's approval of Master Coastal Development Permit CDP 04-23 subject to the conditions of approval shown in Exhibit "B" of this Resolution, attached hereto and incorporated herein by this reference.

Section 5. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 23rd day of February, 2005.


WAYNE RAYFIELD

ATTEST:


SHARIE APODACA
INTERIM CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF DANA POINT)

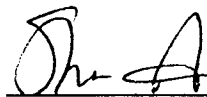
I, Sharie Apodaca, Acting City Clerk of the City of Dana Point, do hereby certify that the foregoing Resolution No. 05-02-23-07 was duly adopted and passed at a regular meeting of the City Council on the 23rd day of February, 2005, by the following roll-call vote, to wit:

AYES: Council Members Chilton, Harkey, Lacy,
 Mayor Pro Tem Anderson, and Mayor Rayfield

NOES: None

ABSTAIN: None

ABSENT: None



SHARIE APODACA
INTERIM CITY CLERK

EXHIBIT A

**MASTER COASTAL DEVELOPMENT PERMIT NO. CDP 04-23
FINDINGS**

1. *The proposed development is in conformity with the certified Dana Point Local Coastal Program as defined in Chapter 9.75 of the Zoning Code (Coastal Act 30333, 30604(b), 14 Cal. Code of Regulations 13096).*

The application requests approval to allow for the subdivision and development of 126 numbered lots and 27 lettered lots for the development of 118 single family dwellings and one private community facility; all related improvements associated with development of each of the residential lots and dwellings, all common area lots, and all lettered lots, 4.4 acres of Visitor/Recreation Commercial uses including a 65-90 room hotel, a maximum of 35,000 square foot commercial development with a 40-bed hostel, vacation and dedication of public rights-of-way; dedication/conveyance of 68.5 acres of public open space, all clearing and grading, and public and private improvements associated with the project with the exception of the private improvements proposed for the V/RC lots (but inclusive of grading, erosion control and related improvements required for the construction of building pads) which shall be subject to individual coastal development permits. The proposed development consists of 118 dwelling units, rather than the 125 dwelling units authorized in the certified Local Coastal Program, resulting in a reduction of approximately 5%. The request proposes uses that are consistent with the land use designations and are within the allowed deviation in area. Together with the conditions of approval, the proposed development will meet or exceed the requirements set forth in the Land Use Program and Local Implementation Plan of the Local Coastal Program.

2. *The proposed development is in conformity with the public access and public recreation policies of Chapter Three of the Coastal Act (Coastal Act 30333, and 30604(c), 14 Cal. Code of Regulations 13096).*

The proposed development provides four new vertical beach public access routes in accordance with the certified Local Coastal Program. Provisions to provide a 5th access as a public funicular are also planned in accordance with the certified Local Coastal Program, because it is currently planned to close Planning Area 2 to public vehicular access. The development also provides increased public recreational opportunities in the form of approximately 68.5 acres of public open space that includes new public parks, trails and conservation areas in accordance with the certified Local Coastal Program.

3. *The proposed development conforms with Public Resource Code Section 21000 and that there are no feasible mitigation measures or feasible alternatives available which would substantially lessen any significant impact that the activity may have on the environment (Coastal Act 30333, 14 Cal. Code of Regulations 13096).*

An Environmental Impact Report and addendum were prepared and certified for the proposed project. The certified EIR and addendum includes a mitigation monitoring plan to mitigate identified impacts to the environment. All mitigation measures of the mitigation monitoring program are conditions of approval by reference. After mitigation, it was determined that there are three impacts to the environment that could not be mitigated below a level of significance and a Statement of Overriding Considerations was adopted by the Dana Point City Council.

4. *The proposed project will provide five public vertical access ways and public lateral access in accordance with the certified Local Coastal Program, and the Headlands Development and Conservation Plan.*

Project plans show the five public vertical access ways (one vertical access is the funicular that is required for the closure of Planning Area 2 to public vehicular access) and the public lateral access required in the certified Local Coastal Program. The conditions of approval further require that the access ways and lateral access be constructed. Maintenance and appropriate insurance is also required for the funicular and the lateral access.

5. *The proposed development will be sited and designed to prevent adverse impacts to environmentally sensitive habitats and scenic resources, except as is provided for in the certified Local Coastal Program, located in adjacent parks and recreation areas, and will provide adequate buffer areas to protect such resources.*

The proposed development is sited in accordance with the certified Local Coastal Program, thereby limiting any impacts to ESHA to those provided for in the certified Local Coastal Program. Numerous measures to protect and enhance the preserved on-site ESHA are part of the project, including but not limited to, perimeter walls, trail fences, construction monitoring and temporary construction fencing, deed restrictions, replacement of disturbed ESHA at a ratio of 3:1 (including 1:1 creation), and an endowment for the management and maintenance of the ESHA. Scenic resources are enhanced by the removal of dilapidated structures and non-native vegetation that currently obscures views, provision of new public access to the Strand Beach and Dana Headlands promontory and up to

three miles of public access, provision of controlled access within ESHA, and restoration of disturbed ESHA within public open space areas.

6. *The proposed development will minimize the alterations of natural landforms and will not result in undue risks from geologic and erosional forces and/or flood and fire hazards.*

The development is designed to avoid disturbance and protect the prominent natural landforms, specifically the Dana Point Headlands promontory and cliffs, Harbor Point, the Strand Beach, and the prominent hilltop and ridge located in the south east portion of the project site. The Environmental Impact Report prepared for the project concluded that the project will not result in undue geologic and erosional conditions and/or flood and fire hazards. Extensive site-specific geotechnical studies have been completed and reviewed by the City. Prior to the issuance of a grading permit, to ensure that no undue risk is present during and after development of the project, final recommendations from the geotechnical engineer will be incorporated into the project.

7. *The proposed development will be visually compatible with the character of surrounding areas, and where feasible, will restore and enhance visual quality in visually degraded areas.*

The project is generally designed to be screened by and conform to the significant natural landforms in the area. The project includes specific design guidelines for development of the residential, Visitor/Recreational Commercial and public open space portions of the site. The guidelines specify developable lot area, height and general design features to be incorporated that ensure the development is compatible with the character of the surrounding areas. The project also includes restoration of ESHA areas that will enhance the visual quality of certain areas that have been degraded by uncontrolled public use. In addition, dilapidated structures in the abandon mobile home park and existing extensive razor wire and chain link fencing will be eliminated through development of the project.

8. *The proposed development will conform with the General Plan, Zoning Code, applicable specific plans, Local Coastal Program, the Headlands Development and Conservation Plan, and any other applicable adopted plans and programs.*

The project has been reviewed by City staff and the Planning Commission for compliance with the General Plan, Zoning Code, the certified Local Coastal Program, and the Headlands Development and Conservation Plan. City staff and the Planning Commission found the project to be in compliance with those documents as it is consistent with the uses, regulations and policies put forth by those documents. Further, the

conditions of approval require continued conformance with these documents.

9. *The proposed development substantially conforms to the project analyzed in the certified Environmental Impact Report, the Addendum and Statement of Overriding Considerations; and therefore, no further environmental documentation is required.*

An Addendum to the certified Environmental Impact Report ("EIR"), minor changes to the mitigation monitoring and reporting program, and a new Statement of Overriding Considerations were prepared and adopted by the City at the time it approved modifications to the Local Coastal Program, as recommended by the California Coastal Commission, and the Headlands Development and Conservation Plan. The certified Environmental Impact Report and the Addendum were intended to satisfy the requirements of CEQA for all aspects of the project and any additional discretionary approvals absent the occurrence of conditions described in Section 15162 of the CEQA Guidelines. As it turns out, the certified EIR and Addendum analyzed a project that was slightly denser (five percent more dwelling units) than the proposed project. The proposed project substantially conforms to the project described in the certified EIR and Addendum and would result in the same or lesser environmental impacts. Moreover, no new information has been discovered since the certification of the EIR and adoption of the Addendum that would require any additional environmental review pursuant to Section 15162 of the CEQA Guidelines. Therefore, no further environmental documentation is necessary.

EXHIBIT B

**MASTER COASTAL DEVELOPMENT PERMIT NO. CDP 04-23
MASTER SITE DEVELOPMENT PERMIT NO. SDP 04-69
CONDITIONS OF APPROVAL**

General Conditions

1. Approval of this application is to allow for the subdivision and development of 126 numbered lots and 27 lettered lots for the development of 118 single family dwellings and one private community facility; all related improvements associated with development of each of the residential lots and dwellings, all common area lots, and all lettered lots, 4.4 acres of Visitor/Recreation Commercial uses including a 65-90 room hotel, a maximum of 35,000 square foot commercial development with a 40-bed hostel, vacation and dedication of public rights-of-way; dedication/conveyance of 68.5 acres of public open space, and all clearing and grading, public and private improvements associated with the project with the exception of the private improvements proposed for the V/RC lots (other than grading, erosion control and related improvements required for the construction of building pads) which shall be subject to individual coastal development permits. Subsequent submittals for this project shall be in substantial compliance with the submitted plans presented to the Planning Commission and in compliance with the applicable provisions of the Headlands Development and Conservation Plan (HDCP), the Dana Point Local Coastal Program, the Dana Point General Plan (General Plan) and the Dana Point Municipal Code (Municipal Code). (Planning)
2. Within sixty (60) days of this approval, all costs incurred in processing this application by the City shall be paid by the applicant or in accordance with Development Agreement DA 01-01. The costs to be paid by the applicant include the fees and costs of the City's attorneys for all applicable legal work performed concerning the project, in accordance with Development Agreement 01-01. (Planning, City Attorney, Finance)
3. All development shall be consistent and comply with all requirements of the HDCP as approved and Local Coastal Program Amendment 01-02 (LCPA 01-02) whether or not such requirements are identified herein. (Planning)
4. The Mitigation Monitoring Program (MMP) of the Final Environmental Impact Report and Addendum prepared for the project shall be conditions of approval by reference. Where there is a conflict between these conditions and the MMP, the more restrictive shall apply as determined by the Community Development Director. (Planning)

5. The applicant and successors in interest shall protect, defend, indemnify, and hold harmless the City, its officers, employees, and agents from any claim, action, or proceeding against the City, its officers, employees, or agents to attack, set aside, void, or annul the approval granted by this Resolution, including attorney's fees and costs, in accordance with Development Agreement 01-01.

The applicant and successors in interest shall further protect, defend, indemnify and hold harmless the City, its officers, employees, and agents from any and all claims, actions, or proceedings against the City, its officers, employees, or agents arising out of or resulting from the negligence of the applicant or the applicant's agents employees, or contractors, including attorney's fees and costs, in accordance with Development Agreement 01-01. (Planning, City Attorney)

6. The applicant and successors in interest shall comply with all conditions of approval. The applicant shall submit to City staff any conditions from other agencies that may arise from future governmental permits or actions on the project site. (Planning)
7. Pursuant to Development Agreement DA 01-01, the applicant and successors in interest shall be responsible for payment of all applicable fees for all future applications and permits. (Planning)
8. All construction shall be performed in accordance with the guidelines established by the City and State building regulations and the Uniform Building Code (UBC) as they relate to energy conservation. (Building)
9. Grading activities, including the removal and hauling operation, shall be limited to the hours between 7:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays when no grading shall be permitted. Construction activity shall be limited to the hours specified in the Municipal Code. Any deviations from these hours or days are subject to approval by the Director of Public Works prior to deviation from the standard. (Public Works)
10. The construction site shall be posted with signage indicating that construction may not commence before 7 a.m. and must cease by 8 p.m., Monday through Saturday, and no construction activity is permitted on Sundays or holidays. (Building)
11. The development shall not impact more than 11.29 acres of designated Environmentally Sensitive Habitat Area pursuant to Dana Point Local Coastal Program Amendment No. 01-02. The development shall comply with all other requirements regarding sensitive habitats as set forth in LCPA 01-02. (Planning)

12. A minimum of 12 residential units within the project shall provide employees' quarters that are available for occupancy by individual lot owners' employees who qualify as low or moderate income persons or families as defined in Section 50093 of the California Health & Safety Code. Any residential unit that does not provide for such an employees' quarters shall be required to participate in the City's affordable housing in-lieu fee program by paying \$2,500 to the City prior to the issuance of a building permit for that residential unit. The City shall implement a monitoring program to ensure that at all times a minimum of 12 employees' quarters within the development are available for occupancy exclusively by individual lot owners' employees who qualify as low or moderate income persons or families. (Planning, City Attorney)

Prior to Approval of a Final Tract Map

13. The applicant shall submit "will serve" letters from the applicable water and sewer districts if not previously provided. (Public Works)
14. The applicant shall submit proof to the satisfaction of the Director of Public Works that the area covered by the Tentative Tract Map has been annexed into the appropriate sanitary sewer improvement district if not currently in the sanitary sewer improvement district service area. (Public Works)
15. Utility easements shall be provided to the specifications of the appropriate utility companies or agency, and subject to review and approval by the Director of Public Works. (Public Works)
16. The applicant shall supply the City with adequate documentation to ensure legal access is provided to all lots, existing and proposed, for the duration of the development of the project. (Public Works, City Attorney)
17. The applicant shall submit a 1" = 100' reproducible scale map of the subdivision to the Engineering Department. Said map shall show all lots and streets within, and adjacent to the project. (Public Works)
18. Final Tract Map No. 16331 is subject to approval by the City Council. The Final Map must be in substantial compliance with the Tentative Tract Map, as determined by the Director of Community Development and the Director of Public Works. If the final map is approved, the map shall be recorded with the Office of the County Recorder. Once recorded, the applicant shall submit, to the Public Works Department, a reproducible 24" x 36" mylar copy of the recorded final map as approved by the City Council and recorded with the Office of the County Recorder. (Planning, Public Works)

19. Prior to Final Map approval, the Applicant shall demonstrate to the satisfaction of the Director of Public Works that the County of Orange has agreed to the construction of proposed Stormwater Media Filters and any other associated BMPs to be located on County property, and that the required level of stormwater treatment can be achieved as outlined in the WQMP. (Public Works)
20. Prior to Final Map approval, the Applicant shall submit, to the satisfaction of the Director of Public Works, verification of a maintenance agreement or maintenance program for the proposed project stormwater BMPs. (Public Works)
21. All existing easements shall be shown and labeled on the map. The map shall also include a note to identify any easements proposed to be vacated with the map. (Public Works)
22. A note shall be placed on the Final Map, or a notice recorded with the map that states:

"The private streets constructed within this map shall be owned, operated and maintained by the applicant, successors or assigns. The City of Dana Point shall have no responsibility therefore unless pursuant to appropriate sections of the Streets and Highways Code of the State of California, the said private streets have been accepted into the City Road System by appropriate Resolution of the City Council of the City of Dana Point."
(Public Works)
23. All street names shall be submitted for administrative review and approval by the Director of Community Development and the Fire Authority. (Planning, Public Works, Fire)
24. All private streets shall be substantially consistent with the standards contained in the HDCP and shall be reviewed and approved by the Public Works Director and Community Development Director prior to approval of the Final Map. (Public Works, Planning)
25. Prior to Final Map approval, the Applicant shall provide to the satisfaction of the Director of Public Works, a written statement from a registered Traffic Engineer to address requirements for the mitigation of traffic safety issues arising from the proposed intersection street grades in excess of those allowed per the Municipal Code. (Public Works)
26. Lots 120, 121, and 122 shall relinquish direct vehicular access rights to Pacific Coast Highway. (Public Works, Planning)

27. Lots 72 through 80 shall relinquish direct vehicular access rights to Dana Strand Road. Emergency vehicle access to Dana Strand Road is allowed. (Public Works, Planning)
28. The surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. (Public Works)
29. The surveyor/engineer preparing the map shall submit, to the County Surveyor, a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Said digital graphic file shall also be submitted to the Director of Public Works. (Public Works)
30. Improvements including, but not limited to the following, shall be designed and constructed in accordance with plans and specifications meeting the approval of the Director of Public Works. Security may be provided to the City in lieu of constructing the facilities:
 - All required streets and street improvement appurtenances, traffic signals, street names, street signs, street lights, roadway striping, red curbing and stenciling on roadways within the map and outside the map boundaries, if required.
 - All required drainage improvements.
 - The water distribution system and appurtenances which shall also conform to the applicable laws and adopted regulations enforced by the County Fire Chief.
 - Sewer distribution system and appurtenances.
 - Monumentation.
 - Undergrounding of utilities located throughout the subdivision.
 - Street striping and signing plans shall be prepared by a registered civil engineer to the satisfaction of the Director of Public Works and submitted at the time along with the required street improvement plans.
 - Public and private improvements as shown on the tentative tract map.
 - Shoring devices and improvements.
 - Grading plans. (Public Works)
31. Maintenance of all public and/or private infrastructure facilities shall be addressed either in the Covenants Conditions & Restrictions (CC&Rs) or in a development/maintenance agreement approved by the City Council prior to recordation of the Final Map. Separate CC&Rs may be developed for the residential area and the two commercial areas depending on the

- number of owner's associations that are created. (Planning, Public Works)
32. Prior to Final Map approval, all public parks and public open space improvements and amenities, including the Nature Interpretive Center and public parking, shall be bonded for final completion at 120% of the estimated construction cost and contingency costs as approved by the Director of Public Works. The improvements and amenities shall be completed and available to the public prior to the issuance of a certificate of occupancy for the first residential dwelling unit. (Public Works)
 33. An offer to dedicate all public parks, public open space and public trails shall be made with the Final Map and/or conveyed by the landowner/developer to the appropriate public agency or non-profit entity concurrent with the recordation of the final map in accordance with the HDCP and LCPA 01-02. Acceptance of the dedication need not occur until all improvements have been completed. (Planning, Public Works)
 34. The applicant shall prepare a deed restriction for review and approval by the City Attorney for those properties that will be subject to potential bluff retreat as determined by the Public Works Director in consultation with the project geologist. The deed restriction shall provide that; (1) the applicant understands that the subject site is subject to bluff retreat and that the owner(s) assumes the liability from these hazards; (2) the owner(s) unconditionally waive any claim of liability on the part of the City or any other public agency from any damage from such hazards; and (3) the owner(s) assume all liability for damages incurred as a result of any required off-site grading. The deed restriction shall be recorded, free of prior liens, to bind the owner(s) and any successors in interest or otherwise recorded to the satisfaction of the City Attorney. (Public Works, City Attorney)
 35. The applicant shall participate in the Master Plan of Drainage in a manner meeting the approval of the Director of Public Works, including payment of fees and/or construction of the necessary facilities and dedication of necessary easements. (Public Works)
 36. If deemed necessary by the Director of Public Works, a drainage and maintenance agreement, in a form suitable for recording, shall be obtained from the upstream and/or downstream property owner(s) permitting drainage diversions and/or unnatural concentrations. (Public Works)
 37. All preserved ESHA and ESHA mitigation areas, on- and off-site, shall be secured through dedication of a conservation easement to the City, Coastal Conservancy, or wildlife agency, prior to or concurrent with recordation of a final map.

38. A habitat management plan shall be prepared and submitted for review and approval by the Community Development Director, wildlife agencies and Executive Director of the Coastal Commission prior to disturbance of any ESHA. The plan shall include provisions for a non-wasting endowment sufficient to maintain the biological values of the retained ESHA/habitat areas within the Headlands that will not be owned by the City or other public agency, and \$2 million paid by the developer to the City, all of which shall be used to establish a non-wasting endowment sufficient to maintain the biological values of retained ESHA/habitat areas within the Headlands that will be owned by and/or maintained by the City. The amount of the endowments shall be identified and documented by a public agency or non-profit entity (e.g. Center for Natural Lands Management) experienced in the estimation of costs for open space management. Management provisions and funding shall be in place prior to any impacts to habitat. At a minimum, monitoring reports shall be prepared and submitted to the Planning Department for at least 5 years after habitat mitigation efforts are completed.

39. The final map shall establish an easement in favor of the Home Owners' Association for retaining wall and slope maintenance purposes along the easterly edge of A, B, D, I, J, K and L streets, from the edge of property line to the approximate top of slope on the adjacent residential lots, to encompass the proposed MSE walls and adjacent slopes. (Public Works)

Ongoing Conditions

40. An encroachment permit application and fee shall be filed with the City, and a permit issued, prior to the commencement of any improvements within a public right-of-way. (Public Works)

41. No significant degradation of public views as provided for in the HDCP shall be permitted. (Planning)

42. All utility services to the residential enclaves shall be maintained during construction. Temporary outages should not exceed four (4) hours during service transfers unless required by the utility provider. A minimum of one (1) week notice will be given to the owners and occupants of all effected dwellings for planned outages. Notice shall also be provided to the Fire and Police Departments. Should it be necessary for an outage to exceed four (4) hours, the Director of Public Works shall be notified. (Public Works, Fire, Police, Planning)

43. All public park, public open space and public trail improvements and amenities within a proposed public park or trail easement shall be constructed by the landowner/developer to the satisfaction of the Director of Public Works and accepted by the City of Dana Point and/or the County

of Orange prior to transfer of ownership to a public agency. The improvements shall include all such public parks, public open space, public trails and associated improvements and amenities as described in the HDCP. (Public Works, Planning)

44. Temporary events shall minimize impacts to public access, recreation and coastal resources. A Coastal Development Permit shall be required for temporary events that meet all of the following requirements:

- a. Are held between Memorial and Labor Day.
- b. Occupy any portion of a public sandy beach area.
- c. Involve a charge for general public admission where no fee is currently required.

A Coastal Development Permit shall also be required for temporary events that do not meet all these requirements, but have the potential to significantly adversely impact public access or coastal resources as determined by the Community Development Director. (Planning)

45. No development shall be permitted on sandy public beaches except that life guard stations, small visitor serving concessions, restrooms, trash and recycling receptacles, and improvements for handicapped access may be permitted when there is no less environmentally damaging feasible alternative and the development is sited and designed to minimize adverse impacts to public access, visual resources, and ESHA. (Planning)

46. A maximum of 6.5 acres of designated ESHA along the slopes of Planning Area 6 (the "bowl"), 0.75 acres in Planning Area 1 (Strand bluffs at southerly end of the Strand) and 4.04 acres in Planning Area 9 (Seaside Inn) may be displaced to accommodate development. The maximum impacts cited do not pertain to or limit vegetation removal necessary to construct and maintain public trails as identified in the Dana Point Local Coastal Program. (Planning)

47. Excepting development in Planning Area 1 and Planning Area 2 where development is contemplated on the bluff face and notwithstanding the minimum bluff edge setback identified in Zoning Code Section 9.27.030(c), all development shall be located a minimum of fifty (50) feet from the bluff edge or a sufficient setback to ensure the proposed development is safe from a threat of erosion and bluff retreat/failure for seventy-five (75) years, whichever is most restrictive. (Planning, Public Works)

48. All future residential development shall be consistent with the design guidelines set forth in "Design Guidelines" dated November 2004. (Planning)

49. An eight (8) foot-wide concrete public access path shall be constructed seaward of the Planning Area 2 residential development on top of the revetment. The path shall be along the entire length of the revetment and contain a minimum of two (2) benches, two (2) picnic tables, and trash receptacles at regular intervals. The picnic tables may also be provided within the public open space/public access that is part of lot 59 of Tentative Tract Map 16331. (Planning, Public Works)
50. The Strand Vista Park shall include five vertical public access pathways: South Strand Beach Access; Mid-Strand Vista Park Access; Central Strand Beach Access; North Strand Access; and if gates, guardhouses, barriers or other development designed to regulate or restrict public access are approved for Planning Area 2, a public funicular (inclined elevator). (Planning, Public Works)
51. A pedestrian trail of decomposed granite/gravel shall provide controlled access to the coastal bluff top in the Conservation Park (Planning Area 7). The bluff top trail alignment shall be designed to minimize impacts to areas of natural resource value, including coastal bluff scrub habitat. The trail shall be located a minimum of 25 feet from the edge of the Coastal Bluff Scrub habitat.
52. Safety fencing shall separate trails from adjacent coastal bluffs. Fencing and/or barrier plantings shall be placed around the entire perimeter of the designated ESHA and along trails that are adjacent to or pass through ESHA to discourage human and domestic animal intrusion into ESHA, direct people toward trails and confine users to trails. The fencing shall be both subordinate to the open space character of the ESHA and impervious to dogs. (Planning, Public Works)
53. Exterior night lighting shall be shielded and directed so that light is directed toward the ground and away from ESHA. (Planning)
54. Existing disturbed areas in the Hilltop Park area (Planning Area 5), including unnecessary trails shall be re-vegetated prior to acceptance of the park by the City. (Public Works, Planning)
55. Fuel modification of any form, including but not limited to thinning, pruning, native vegetation removal, irrigation or plant palette controls, shall be prohibited within retained ESHA and mitigation/restoration areas. (Planning, Public Works)
56. To the extent feasible, existing utilities, including water lines, crossing through open space areas containing ESHA shall be removed or abandoned in place, provided that any alternative alignment minimizes or avoids impacts upon ESHA. (Planning, Public Works)

57. Applicants for food preparation establishments in Planning Areas 4 and 9 shall have contained areas or sinks with sanitary sewer connections and grease traps for disposal of wash waters containing kitchen and food wastes. If located outside, the contained areas and sinks shall be structurally covered to prevent entry of storm water. (Building)

CC&R's

58. At least 45 days prior to the approval of a Final Map, the applicant shall submit three copies of the proposed Covenants, Conditions and Restrictions (CC&Rs) and Articles of Incorporation of the Owners' Association for review and approval of City related issues by the Directors of Public Works and Community Development, and the City Attorney. The CC&Rs shall be recorded with the Final Map. Separate CC&Rs for the visitor/recreational commercial areas (Planning Areas 4 and 9) may be prepared and recorded prior to approval of individual Coastal Development Permits for the commercial areas. (Planning, Public Works, City Attorney)
59. CC&R's shall include a statement that prohibits amendment of the document as it relates to City related issues without review and approval by the City Attorney and the Directors of Public Works and Community Development. Within thirty (30) days of any amendment to the CC&R's, copies of the revised document shall be submitted to the directors of Public Works and Community Development. (Planning, Public Works, City Attorney)
60. CC&R's shall reflect common access easements, and maintenance responsibility of all private recreation areas, common walls, accessways, trails, parking areas, landscaping, grounds and BMPs by the parties common to the CC&R's. The CC&Rs should also include prohibited activities. (Planning, Public Works, City Attorney)
61. The applicant shall provide an acceptable means for maintaining the easements within the subdivision and all the streets, sidewalks, street lights, storm drain facilities and other common area improvements located therein and to distribute the cost of such maintenance in an equitable manner among the owners of the units within the subdivision. An appropriately worded statement clearly identifying these responsibilities shall be placed in CC&R's. Notwithstanding the above, maintenance of such facilities may be provided through one or more maintenance districts, if established by the City. (Planning, Public Works, City Attorney)
62. All concrete terrace drains shall be maintained by the owner's association (if on commonly owned property) or the individual property owner (if on an individually owned lot). An appropriately worded statement clearly

identifying these responsibilities shall be placed in the CC&R's. (Public Works, City Attorney)

63. CC&R's shall provide environmental awareness education materials, made available by the City of Dana Point, the County of Orange or other responsible agencies to all members periodically. These materials will describe the use of chemicals (including household type) that should be limited to the property, with no discharge of specified wastes via hosing or other direct discharge to gutters, catch basins, and storm drains. (Planning, Public Works, City Attorney)
64. CC&R's shall require implementation of trash management and litter control procedures in all common areas, aimed at reducing pollution of drainage water. The owner's associations may contract with landscape maintenance firms to provide this service during regularly scheduled maintenance, which shall consist of litter patrol, emptying of trash receptacles in common areas, and noting trash disposal violations by homeowners or businesses and reporting the violations to the Association for investigation. (Planning, Public Works, City Attorney)
65. CC&R's shall require privately owned catch basins to be inspected monthly during the rainy season and cleaned as needed, with at least one cleaning prior to the storm season, beginning October 1 of each year. Records of inspection and maintenance shall be kept a minimum of five (5) years and provided to the City upon request. (Planning, Public Works, City Attorney)
66. CC&Rs shall include provisions for elimination of potential vector concerns discovered during the inspection of stormwater BMPs to the satisfaction of the Director of Public Works. (Public Works, City Attorney)
67. CC&R's shall require privately owned streets to be swept on the same periodic schedule as the City provided it is not less than weekly as required by the project's mitigation monitoring program. (Planning, Public Works, City Attorney)
68. CC&Rs shall include provisions, which prohibit obstructions within fire protection access easements. The approval of the Fire Chief is required for any modifications such as speed bumps, control gates or other changes within said easement. (Planning, Public Works, City Attorney, Fire)
69. CC&Rs shall include a fire lane map and provisions, which prohibit parking in the fire lanes. A method of enforcement shall also be included. (Planning, Public Works, City Attorney, Fire)

70. CC&Rs shall include provisions for maintenance of all required public art located in areas common to the subdivision. (Planning)

Demolition Permit

71. A City demolition permit and building permit shall be obtained prior to demolition of any structure on the site. (Building, Planning, Public Works)

72. The following measures shall be implemented by the applicant prior to commencement of grading or demolition and carried out throughout the construction period to reduce fugitive dust from construction activities:

- During clearing, grading, earthmoving, excavation, or transportation of cut or fill materials, water trucks or sprinkler systems shall be used to prevent dust from leaving the site and to create a crust after each day's activities cease.
- During construction, water trucks or sprinkler systems shall be used 4 times a day to keep all areas of vehicle movement damp enough to prevent dust from leaving the site. At a minimum, this would include wetting down such areas in the late morning, watering during soil placement, after work is completed for the day, and whenever the wind exceeds 15 mph.
- All materials excavated or graded shall be sufficiently watered to prevent excessive amounts of dust. Watering, with complete coverage shall occur at least twice daily, preferably in the late morning and after work is done for the day.
- After excavation is completed, the entire area of disturbed soil shall be treated immediately with soil bonding agents until the area is landscaped, paved, or otherwise developed so that dust generation will not occur.
- Soil stockpiled for more than one week shall be covered, kept moist, or treated with soil binders to prevent dust generation.
- Trucks transporting soil, sand, cut or fill materials, and/or construction debris to or from the site shall be tarped from the point of origin.
- Wash mud-covered tires and undercarriages of trucks leaving construction sites.
- Provide for street sweeping, as needed or four times a week at a minimum, on adjacent roadways to remove dirt dropped by construction vehicles or mud that would otherwise be carried off site by trucks departing the project site.
- If dust is visibly generated that travels beyond the site boundaries during periods of high wind (i.e., greater than 25 mph averaged over one hour) or during Stage 1 or Stage 2 episodes, clearing,

grading, earth moving, or excavation activities that are generating dust shall cease.

- On-site vehicle speed shall be limited to 15 mph.
- All on-site roads shall be paved as soon as feasible or watered periodically or chemically stabilized
- All material transported off-site shall be either sufficiently watered or securely covered to prevent excessive amounts of fugitive dust. (Public Works, Building)

Prior to Rough Grading Permit Approval

73. A plan demonstrating compliance with the Environmentally Sensitive Habitat Area (ESHA) mitigation per the HDCP and LCPA 01-02 shall be submitted to the Planning Department for review and approval prior to the disturbance of any designated ESHA. (Planning, Public Works)
74. The applicant shall obtain coverage under the NPDES General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit, 99-08-DWQ) from the State Regional Water Quality Control Board (RWQCB). Construction activity subject to this permit includes clearing, grading and disturbances to the ground such as stockpiling, or excavation of one or more acres of land. Under the permit, the applicant shall prepare and implement a Stormwater Pollution Prevention Plan (SWPPP). A copy of the current SWPPP shall be kept at the project site and be available for City review on request. Prior to the issuance of any clear and grub, grading or building permits, the applicant shall demonstrate that coverage has been obtained under California's General Permit for Stormwater Discharges Associated with Construction Activity by providing a copy of the Notice of Intent (NOI) submitted to the Regional Water Quality Control Board and a copy of the subsequent notification of the issuance of a wastewater Discharge Identification (WDID) Number, or other proof of filing. The SWPPP shall be fully implemented at all times, even during periods without activity, until a Notice of Termination (NOT) has been submitted and approved by the RWQCB. (Public Works)
75. All public and private street structural sections shall be submitted for review and approval by the Director of Public Works. Private streets shall be designed to the standard of a public street per the Municipal Code, unless otherwise provided for in the HDCP. (Public Works)
76. The grading/drainage plan shall include the following notes:
 - a. All construction vehicles or equipment, fixed or mobile, operated within 1,000 feet of a dwelling shall be equipped with properly operating and maintained mufflers.

- b. All operations shall comply with all City of Dana Point Noise regulations.
 - c. Stockpiling and/or vehicle staging areas shall be located as far as practicable from existing dwellings. (Public Works)
77. The applicant shall provide evidence to the Community Development Department that, during the project site preparation and construction phases, a screen fence will be installed on the project site. The screen fence will be to substantially block views of those portions of the project site affected by site preparation and grading activities. The portions of the site not under construction or not visible from adjacent public view points are not required to be screened to block views of on-site construction activity. The fencing shall remain in place until construction is completed or interim site preparation and grading is no longer active, subject to review and approval by the Community Development Director. (Planning, Public Works)
78. To reduce short-term construction impacts from emissions from equipment and vehicles, prior to issuance of grading permits, the permit applicant shall include the following measures on construction plans, to the satisfaction of the Director of Public Works:
- The General Contractor shall organize construction activities so as not to interfere significantly with peak hour traffic and minimize obstruction of through traffic lanes adjacent to the site; if necessary, a flag person shall be retained to maintain safety adjacent to existing roadways.
 - The General Contractor shall provide ridesharing and transit incentives for the construction crew, such as free bus passes and preferred carpool parking.
 - The General Contractor shall utilize electric or diesel powered stationary equipment in lieu of gasoline powered engines where feasible.
 - The General Contractor shall provide a statement in construction grading plans that work crews will shut off equipment when not in use. (Planning, Public Works)
79. The Civil Engineer shall include a statement on construction grading plans requiring that all construction equipment be tuned and maintained in accordance with the manufacturer's specifications. Prior to issuance of grading permits, the Director, Community Development Department, shall ensure that such a statement is on construction grading plans. (Planning, Public Works)
80. A construction activity monitor satisfactory to the Director of Community Development shall be retained by the applicant prior to issuance of

grading permit. The monitor shall monitor all activity on a daily basis, keep written daily records, and file monthly activity reports with the Director of Community Development for the duration of grading and infrastructure construction. The monitor shall provide immediate notification of any violation to the Community Development Director. The monitor shall be employed by the applicant or the applicant's contractor. The monitor shall report on the following strategies:

- Construction equipment exhaust shall be minimized by use of:
 - NO_x control technologies, such as fuel injection timing retard for diesel engines and air to air after cooling.
 - Low sulfur fuel (where available).
 - Well maintained equipment and proper planning to minimize trips/use.
 - Log fuel use, hours of operation, and periodic maintenance.
- Fugitive dust shall be controlled as specified in Mitigation Measure 2-2.A and SCAQMD rules and regulations.
- Restrict delivery of construction supplies and off-site hauling of debris to non-peak travel periods whenever feasible, except for concrete and earthwork related activities.
- Construction worker travel in carpools shall be encouraged by:
 - Common carpool registry maintained at the construction site and managed by the applicant or the applicant's contractor.

(Public Works, Planning)

81. The following construction related minimization measures shall be implemented as part of the project:
- a. To the maximum extent practicable, and provided that the biological needs of the Pacific Pocket Mouse do not require restrictions on grading any time between July 15 and February 15 of the following year, unless authorized by USFWS no grading of Coastal Sage Scrub habitat that is occupied by nesting gnatcatchers will occur during the breeding season (February 15 through July 15).
 - b. It is expressly understood that the foregoing provision and the remaining provisions of these "construction-related minimization measures" are subject to public health and safety considerations. These health and safety considerations include unexpected slope stabilization, erosion control measures, and emergency facility repairs. In the event of such public health and safety circumstances, project applicant will provide USFWS/CDFG with the maximum practicable notice (or such notice as is specified in the NCCP/HCP) to allow for capture of gnatcatchers, cactus wrens, and any other CSS Identified Species that are not otherwise flushed and will carry out the following measures only to the extent

- practicable in the context of the public health and safety considerations.
- c. Prior to the commencement of grading operations or other activities involving significant soil disturbance, all areas of CSS habitat to be avoided under the provisions of the NCCP/HCP shall be identified with temporary fencing or other markers clearly visible to construction personnel.
 - d. Additionally, prior to the commencement of grading operations or other activities involving disturbance of CSS, a survey will be conducted to locate gnatcatchers and cactus wrens within 100 feet of the outer extent of project soils disturbance activities, and the locations of any such species shall be clearly marked and identified on the construction/grading plans.
 - e. The landowner will advise USFWS/CDFG at least seven (7) calendar days (and preferably fourteen [14] calendar days) prior to the clearing of any habitat occupied by Identified Species to allow USFWS/CDFG to work with the monitoring biologist in connection with bird flushing/capture activities.
 - f. A monitoring biologist acceptable to USFWS/CDFG will be on site during any clearing of CSS.
 - g. The monitoring biologist will flush Identified Species (avian or other mobile Identified Species) from occupied habitat areas immediately prior to brush clearing and earthmoving activities. If applicable birds cannot be flushed, they will be captured in mist nets, if feasible, and relocated to areas of the site being protected or to the NCCP/HCP Reserve System. It will be the responsibility of the monitoring biologist to assure that Identified Species (bird) will not be directly impacted by brush clearing and earth moving equipment in a manner that also allows for construction activities on a timely basis.
 - h. All areas of CSS habitat to be avoided by construction equipment and personnel will be marked with temporary fencing or other appropriate markers clearly visible to construction personnel.
 - i. No construction access, parking, or storage of equipment or materials will be permitted within such marked areas.
 - j. Waste dirt or rubble will not be deposited on CSS adjacent to development sites that are identified in the NCCP/HCP for protection.
 - k. Preconstruction meetings involving the monitoring biologist, construction supervisors, and equipment operators will be conducted and documented to ensure maximum practicable adherence to these measures. (Planning, Public Works)
82. The developer shall submit written evidence to the Community Development Director that a certified paleontologist and archaeologist have been retained to observe grading activities and to salvage and

catalog resources, should they be present. The paleontologist and archaeologist shall be present at the pre-grade conference, shall establish procedures for paleontological and archaeological resource surveillance, and shall establish, in cooperation with the developer/landowner, procedures for temporarily halting or redirecting work to permit sampling and identification and evaluation of the findings. The paleontologist and archaeologist may be the same person. (Planning)

83. If a "unique archaeological/paleontological resource" is encountered during grading that cannot feasibly remain in an undisturbed state, the Community Development Director, with the assistance of the certified paleontologist/archaeologist, will determine whether studies or testing of the potential site have adequately recovered the scientifically consequential information about the unique archaeological resource. A non-unique archaeological resource, artifact, object, or site need be given no further consideration, other than the recording of its existence. The archaeologist and/or paleontologist shall submit a follow-up report for approval by the Community Development Director that shall include the period of inspection, a catalog and analysis of the artifacts found, and a repository listing for each of the found items. (Planning)
84. If human remains are encountered, the County Coroner shall be notified of the find immediately in accordance with California Health and Safety Code Section 7050.5. If the remains are determined to be prehistoric, the Coroner will notify the Native American Heritage Commission (NAHC), which will determine and notify a Most Likely Descendant (MLD). With the permission of the owner of the land or his/her authorized representative, the MLD may inspect the site of the discovery. The MLD shall complete the inspection within 24 hours of notification by the NAHC. The MLD may recommend scientific removal and nondestructive analysis of human remains and items associated with Native American burials. (Planning)
85. Any grading required outside of the tract boundaries will require the applicant to either obtain slope easements or off-site grading agreements from the affected property owner(s) in a form acceptable to the City Attorney. (Public Works)
86. Unreinforced fill slopes shall not exceed a gradient of 2:1 (horizontal:vertical). Proposed fill slopes steeper than 2:1, including proposed MSE walls/slopes, shall require site specific design. Appropriate subdrain provisions shall be incorporated in the slope designs to maintain potential groundwater levels at acceptable elevations. Design, grading, and construction of proposed fill slopes shall conform to the requirements of the Uniform Building Code, appropriate City grading regulations and the recommendations of the Geotechnical Consultant of record for the project. (Public Works)

87. If a determination is made that hazardous materials are present on site, removal of the contaminated soils or materials described below shall occur prior to issuance of grading permits, or if a grading permit is required to remove the contaminated soils or materials, such removals shall occur concurrent with grading, as approved by the Public Works Director.
- a. Prior to grading of the former nursery area, ten representative surface soil samples shall be collected at approximately one foot below the ground surface. These soil samples shall be analyzed for chlorinated pesticides and herbicides (that are listed in the EPA Region IX Preliminary Remediation Goals). If these contaminants are found to be present in significant amounts in subsurface soils, a soil remediation plan shall be submitted for approval to OCHCA. The approved remediation plan shall be implemented prior to issuance of final grading permits. During removal of the above ground storage tank and concrete pad, soils underneath the concrete pad shall be inspected for discoloration or staining. If discoloration or staining is present, the soil below and adjacent to the concrete pad shall be tested for contamination using such analytical methods as EPA 8015M (gasoline/diesel fuel) and EPA 8020 (benzene/toluene/ethyl benzene/xylene [BTEX] compounds). If contamination is found, soil remediation measures as recommended by OCHCA shall be implemented.
 - b. Five oil filled, wall mounted high-voltage switches in the former mobile home park, two floor mounted electrical transformers in the former mobile home park, and two transformers mounted on a utility pole in the former nursery shall be removed by professionals experienced in PCB handling, removal, and disposal. Soils beneath the utility poles and building floors where transformers were located shall be tested for potential PCB contamination using such analytical methods as EPA 8080. If contamination is found, soil remediation measures as recommended by OCHCA would be implemented. (Public Works)
88. The applicant shall submit a complete hydrology and hydraulic study prepared by a qualified engineer for review and approval by the Director of Public Works. (Public Works)
89. Drainage facilities outletting onto adjacent properties, if any, shall be designed in such a manner as to imitate the manner in which the stormwater is presently crossing said property, or a drainage acceptance and maintenance agreement suitable for recording shall be obtained by the applicant from the downstream property owner. (Public Works)

90. The applicant shall design the following improvements and provide the necessary dedications in a manner meeting the approval of the Director of Public Works:
 - a. All provisions for grading and surface drainage.
 - b. All necessary storm drain facilities extending to a satisfactory point of disposal for the proper control and disposal of storm runoff.
 - c. As determined necessary by the Director of Public Works, the associated easements shall be dedicated to the City or other appropriate agency. (Public Works)

91. The applicant shall submit the following drainage studies for review and approval by the Director of Public Works:
 - a. A drainage study of the subdivision, including off-site areas that drain onto and/or through the subdivision, and justification for any diversions.
 - b. A drainage study evidencing that proposed drainage patterns will not overload existing storm drains.
 - c. Detailed drainage studies indicating how the tract/parcel map grading, in conjunction with the drainage conveyance systems, including applicable swales, channels, street flows, catch basins, storm drains, and flood water retarding, will protect building pads from inundation by rainfall runoff, which may be expected from all storms up to and including the projected 100-year flood. (Public Works)

92. The applicant shall submit erosion control plans for all slopes adjacent to major arterial and local collector roadways, as shown in the General Plan, for review and approval by the Director of Public Works. (Public Works)

93. All grading and improvements on the subject property shall be made in accordance with the Grading Ordinance and to the satisfaction of the Director of Public Works. Grading shall be in substantial compliance with the tentative tract map and the proposed grading that is approved by the Planning Commission. Surety to guarantee the completion of the project grading and drainage improvements, including erosion control, shall be posted to the satisfaction of the Director of Public Works and the City Attorney. (Public Works, City Attorney)

94. The applicant shall obtain coverage under the NPDES Statewide Industrial Stormwater Permit for General Construction Activities from the Regional Water Resources Control Board. Evidence of receipt of permit coverage must be presented to the Director of Public Works. (Public Works)

95. The applicant shall include in the grading plans, any urban runoff control measures deemed necessary by the Director of Public Works and shall

submit to the City for review and approval a Water Quality Management Plan (WQMP) that:

1. a. Fulfills all the requirements of the City's Standard Urban Stormwater Mitigation Plan (SUSMP, also known as the City's WQMP is Exhibit 7.V of the City's Local Implementation Plan).
 2. b. Addresses Site Design BMPs such as minimizing impervious areas, maximizing permeability, minimizing directly connected impervious areas, creating reduced or "zero discharge" areas, and conserving natural areas.
 - c. Incorporates the applicable Routine Source Control BMPs as defined in the SUSMP.
 - d. Incorporates Treatment Control BMPs as defined in the SUSMP.
 - e. Generally describes the long-term operation and maintenance requirements for the Treatment Control BMPs.
 - f. Identifies the entity that will be responsible for long-term operation and maintenance of the Treatment Control BMPs.
 - g. Describes the mechanism for funding the long-term operation and maintenance of the Treatment Control BMPs. (Public Works)
96. The applicant shall exercise special care during the construction phase of this project to prevent any off-site siltation. The applicant shall provide erosion control measures as identified in the SWPPP. The erosion control measures shall be shown and specified on the grading plan and shall be constructed to the satisfaction of the Director of Public Works prior to the start of any other grading operations. Prior to the removal of any erosion control devices so constructed, the area served shall be protected by additional drainage facilities, slope erosion control measures, and other methods as may be required by the SWPPP. The applicant shall maintain the erosion control devices until the Public Works Director approves of the removal of said facilities. (Public Works)
97. The applicant shall prepare a spill contingency plan for hazardous materials used on-site that mandates stockpiling of cleanup materials, notification of responsible agencies, disposal of cleanup materials, and other efforts determined necessary by the Public Works Director. (Public Works)
98. Prior to the issuance of any grading permit, the developer shall prepare a plan for continuous public access to Strand Beach during periods of construction operations utilizing alternate pathways, if necessary, and

submit the plan for review and approval by the Community Development Director. (Planning, Public Works, Building)

99. Prior to issuance of a grading permit, the applicant shall submit a construction area traffic management plan to the City Traffic Engineer for review and approval. The plan shall be designed by a registered civil engineer and shall address traffic control for any street closure, detour, or other disruption to traffic circulation. The plan shall identify the routes that construction vehicles will utilize to access the site, the hours of construction traffic, traffic controls and detours, off-site vehicle staging and parking areas, and proposed construction phasing for the project. The construction traffic management plan will ensure that no new exceedances or worsening of existing exceedances of the City's thresholds criteria for intersections are generated at intersections affected by construction traffic. (Public Works)
100. The developer shall submit a habitat creation, restoration, management, maintenance and monitoring plans for the proposed mitigation area prepared by a qualified biologist and/or resource specialist for review and approval of the Community Development Director prior to the disturbance of any designated ESHA. Any new development that includes impacts to ESHA as permitted under the LCP shall include mitigation for unavoidable impacts. ESHA impact mitigation shall include, at a minimum, creation or substantial restoration of ESHA of the same type as the affected ESHA or similar type. The acreage of ESHA impacted shall be determined based on the approved project. The applicant shall identify an area of disturbed or degraded ESHA of equivalent type and acreage sufficient to provide mitigation of the ESHA impacts at a minimum 3:1 ratio (number of acres of created or restored habitat required for each acre of ESHA impacted). At least 1:1 of the 3:1 ratio shall consist of habitat creation/substantial restoration (i.e. no net loss) preferably on-site within the coastal zone. Habitat creation/restoration shall be located on-site to the maximum extent feasible, but may include an off-site component for the portion that is infeasible to provide on-site. Mitigation measures on land outside the coastal zone may be acceptable if it would clearly result in higher levels of habitat protection and value and/or would provide significantly greater mitigation ratios. The 3:1 mitigation ratio shall be the minimum standard. The removal of vegetation for new trail construction shall comply with the 3:1 mitigation ratio, except where vegetation removal is necessary to realign an existing trail or informal footpath in which case the mitigation ratio shall be 1:1. The plans shall, at a minimum, include ecological assessment of the mitigation site and surrounding ecology; goals, objectives and performance standards; procedures and technical specifications for habitat planting; methodology and specifications for removal of exotic species; soil engineering and soil amendment criteria; identification of plant species and density; maintenance measures and

schedules; temporary irrigation measures; restoration success criteria; measures to be implemented if success criteria are not met; and long-term adaptive management of the restored areas in perpetuity. The area of habitat to be restored shall be restricted from future development and permanently preserved through the recordation of a conservation open space deed restriction that applies to the entire restored area. In addition to the deed restriction, the area may also be dedicated or offered to be dedicated to a public agency or non-profit entity. (Planning)

101. The final grading plans shall include statements regarding the proposed development and any potential impacts to off-site properties to the satisfaction of the Public Works Director. (Public Works)
102. The shoring, geogrid reinforcement, setbacks due to geogrid, MSE walls and the soil nail wall (commercial site) shall be submitted for review and approval by the Public Works Director prior to the issuance of a grading permit. (Public Works)
103. An as graded geotechnical report shall be submitted to the Public Works Department following grading of the site. The report shall include the results of all field density testing, laboratory testing, depth of reprocessing and recompaction, and a map depicting the limits of grading, locations of all density testing, subdrains, and geologic conditions exposed during grading. The report shall include conclusions and recommendations regarding applicable setbacks, foundation recommendations, erosion control and any other relevant geotechnical aspects of the site. (Public Works)
104. The Developer shall submit a construction sequencing plan for review and approval by the Public Works Director prior to the issuance of a grading permit. (Public Works)
105. Prior to the issuance of a grading permit for repairs or additions to a shoreline protection structure in the Strand, either of which can only occur consistent with the provisions of the LCP, the property owner shall record a deed restriction that provides that no further repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective structure which extends the seaward footprint of the subject structure shall be undertaken and that the property owner waives any right to such activities that may exist under Coastal Act Section 30235 and/or equivalent policies.

Prior to Public/Private Improvement Plan Approval

106. The applicant shall submit to the satisfaction of the City Engineer an operation and maintenance (O&M) plan for the proposed Stormwater

BMPs, including, but not limited to the proposed media filters and low flow diversion facilities. The O&M Plan shall include the approvals/agreements from sewer district, diversion deactivation protocol; mechanism for continuing education for contractors/staff and residents, commercial tenants; the Water Quality Monitoring Program; among the other requirements, as identified in the City's November, 2003 WQMP. (Public Works)

107. The applicant shall submit plans for any gated entryway(s) or other access control devices for review and approval by the Director of Public Works and Fire Chief. Said controls shall comply with the standards of the Engineering Department and the Orange County Fire Department. The approved plan shall include the following elements:
- a) The plan shall provide for the installation of a master key override switch system. Extra copies of the master key shall be paid for by the applicant as part of the application fee.
 - b) There shall be a minimum 100 foot setback from the adjacent public street to the gate location. This requirement shall be treated as a general standard. Other setbacks require the approval of the Director of Public Works.
 - c) There shall be a minimum of thirty-eight (38) feet radius turnaround area to ensure unrestricted access to and from the gate area and public street system. This requirement shall be treated as a general standard. Other radii require the approval of the Director of Public Works.
 - d) Fire department review and approval is required.
 - e) The Director of Public Works shall review the plan for other site and topographical layout considerations to ensure that the design of the gate system does not create health and safety hazards.
 - f) The plan shall show the layout of adjacent utility facilities. Any utilities which are in conflict with the proposed gate system, or need to be relocated to provide accessibility as determined by the utility company, shall be relocated at the applicant's expense. (Public Works)
108. All street lights shall be of a quality that meets City standard, installed in compliance with City standards. All street lights on public streets shall be dedicated to the City at the discretion of the Director of Public Works. If not dedicated to the City, the street lights shall be maintained by the adjacent owner's association(s) or by a maintenance district if formed by the City. (Public Works)
109. The phrase "No Dumping - Drains to Ocean" or similar phrase shall be stenciled on catch basins to alert the public to the destination of pollutants discharged into storm water. (Public Works)

110. All street widths and parking shall meet the requirements of OCFA and the City, except as may be allowed by the HDCP. (Fire, Public Works, Planning)
111. Traffic signal preemption equipment plans shall be submitted for review and approval by the Fire Department and the Public Works Director. The equipment shall be installed prior to the acceptance of streets. (Fire, Public Works)
112. Water improvement plans shall be submitted for review and approval by the Fire Chief. The water improvement plans shall provide for adequate fire protection, financial security posted for installation, adequacy and reliability of water system design, location of valves, and the distribution of fire hydrants. (Fire, Public Works)
113. The Fire Department shall review and approve fire hydrants locations on the street improvement plans. (Fire, Public Works)
114. The applicant shall submit evidence of the availability of an adequate water supply for fire protection for review and approval by the Fire Department. All required fire hydrants, water mains, and appurtenances shall be in place and operational to meet fire flow requirements before any combustible building materials are stored at the project site. (Fire, Public Works)
115. All service roads and fire lanes, as determined by the Fire Department, shall be posted and marked prior to opening the street for public use or building occupancy, whichever applies. (Fire, Public Works)
116. The applicant shall obtain an Encroachment Permit from Caltrans for any work that will occur within a State Department of Transportation (Caltrans) right-of-way. (Public Works)
117. The applicant shall execute an agreement with the City of Dana Point to fully fund construction of a traffic signal at the intersection of Street "I" and Pacific Coast Highway prior to the approval of public improvement plans. (Public Works, City Attorney)
118. The applicant shall submit sanitary sewer and water plans for review and approval by the SCWD prior to the approval of public improvement plans by the City. SCWD will forward copies of the approved plans to the City's Director of Public Works.
119. The "first flush" (the initial 0.69 inches of rain within a 24-hour period) shall be captured and filtered to reduce sediment, bacteria and other water quality pollution. Sand filters or BMPs with equivalent or better treatment

capacity shall be located to allow the treatment of on-site development areas and adjacent off-site first flush storm flows. A secondary treatment system utilizing zeolite, clay or similar media filters to minimize nutrients (nitrates/phosphates) from reaching Dana Point Harbor shall be provided. In conjunction with the City and Orange County, the maintenance responsibilities for the filtering devices and similar BMPs shall be determined. BMP devices, that may include separators, sand filtering systems or other features, shall be incorporated into the storm water conveyance design to reduce oil, grease sediment, debris and other pollutants. All storm drain inlets shall include catch basin filters. (Public Works)

120. Facilities to divert low-flow "nuisance" run-off to the sanitary sewer system for treatment to avoid dry weather flows to the beach or harbor shall be provided.

Prior to Issuance of Building Permits

121. When a building permit application is filed for any lot, except those in Planning Areas 4 and 9 which are subject to a separate CDP, the building plans shall be reviewed individually for conformance with the Master Site Development Permit (SDP 04-69), the Master Coastal Development Permit (CDP 04-23), the HDCP, the Design Guidelines and LCPA 01-02. Planning shall verify conformance prior to the issuance of a building permit. (Planning)
122. Coastal Development Permits, including detailed site plans, elevations and floor plans, shall be reviewed and approved by the Planning Commission prior to issuance of a building permits for Planning Areas 4 and/or 9. The CDPs may be submitted separately and shall not affect issuance of building permits for any residential lot. (Planning)
123. The applicant shall prepare and record a Reciprocal Parking, Access and Drainage Agreement for the commercial portions of the project prior to the issuance of a building permit for any lot within commercial Planning Areas 4 and 9 (Planning Area 4: lots 120, 121, and 122; Planning Area 9: lots 123, 124 and 125). A copy of the legal instrument shall be approved by the City Attorney as to form and content and, when approved, shall be recorded in the Office of the County Recorder. The applicant shall submit a copy of the recorded agreement to the Community Development Department. (Planning, City Attorney, Building, Public Works)
124. A rough grade certification is required from the Director of Public Works by separate submittal. (Public Works)

125. The applicant shall submit payment for all applicable fees, which may include but not be limited to school, park, public facilities, affordable housing in-lieu, water and sewer fees. (Building)
126. All proposed habitable structures shall have finished pad elevations higher than 20 to 25 feet above mean sea level. Design recommendations of the Project Coastal Engineer shall be implemented for those elements of the proposed design and construction that are located along the shoreline. (Building, Public Works)
127. The applicant shall comply with the following prior to issuance of a building permit unless otherwise approved by the Director of Public Works:
 - Demonstrate that all structural best management practices (BMPs) described in the Project WQMP have been constructed and installed in conformance with approved plans and specifications,
 - Demonstrate that applicant is prepared to implement all non-structural BMPs described in the Project WQMP,
 - Demonstrate that an adequate number of copies of the approved Project WQMP are available onsite. (Public Works)
128. Mechanical ventilation, such as air conditioning, shall be provided for those residences in Planning Area 6 (PA 6) that are within the 65 dBA CNEL noise contour, unless it can be demonstrated in an acoustical analysis that other measures, such as a sound wall, can provide adequate mitigation and such measures are incorporated into the project. (Building, Planning)
129. All applicable building plans shall indicate by note that an interior fire sprinkler system is required in the structures(s). Plans for the fire sprinkler system shall be submitted for review and approval by the Fire Department. (Fire, Building)
130. As applicable, the applicant shall submit plans for an automatic fire extinguishing system, including any underground piping, for review and approval by the Fire Department. (Fire, Building)
131. The applicant shall submit construction details for any controlled entry access for review and approval by the Fire Department. These details shall include width, clear height, and means of emergency vehicle override. (Fire, Building)
132. Fire access lanes shall be permanently maintained and kept clear of obstructions. If fire lane violations occur and the services of the Fire Department are required, the applicant shall be liable for all expenses. (Fire, Building, Public Works, Code Enforcement)

133. The applicant shall enter into a secured fire protection agreement with OCFA to mitigate impacts to existing fire and rescue services. (Fire, Building)
134. Unless already recorded by the Developer, the applicant for a building permit shall execute and record a deed restriction acknowledging and assuming all risk related to wave action, erosion, flooding, landslides or other coastal and/or geological hazards associated with development on a beach, shoreline or bluff as applicable in a form acceptable to the City Attorney prior to the issuance of a building permit. If the deed restriction was previously recorded by the developer, the applicant shall submit evidence of the deed restriction with his building permit application. Consistent with the provisions of Development Agreement 01-01, the deed restriction shall waive any future claims of damage or liability against the City and agree to indemnify the City against any liability, claims, damages or expenses arising from any injury or damage due to such hazards. (Planning, City Attorney, Building)

Prior to Landscape and Irrigation Plan Approval

135. Landscaping adjacent to street intersections and driveways shall be maintained to ensure adequate sight distance visibility. (Public Works)
136. Private commercial mechanical equipment, such as elevator enclosures, cooling towers, mechanical ventilators, utility vaults, transformers, meter boxes, air conditioning, heating units, or similar mechanical equipment in Planning Areas 4 and 9, shall be screened from the public and adjacent property. All such equipment shall be contained within an enclosed structure or within a portion of the building having walls or visual screening, and integrated with the building architectural design. (Planning)
137. Street trees, 24-inch box size or larger, shall be shown on the plans with the species, location and planting details. The street trees shall be installed in accordance with the approved landscape plans prior to final inspection/acceptance of the streets. (Public Works)
138. The applicant shall execute and record a Landscape and Maintenance Agreement, or as may be provided for in Development Agreement DA 01-01, for landscaping and irrigation located in the public right-of-way. (Public Works)
139. A uniform public sign program that assists the public in locating public visitor facilities such as trail access points, parks, open space, parking

shall be submitted for review and approval by the Community Development Director prior to the approval of landscape plans. (Planning)

140. Except for landscaping on the private residential lots and the visitor/recreation commercial (i.e. Seaside inn) site adjacent to Harbor Point, all landscaping (including temporary erosion control and final landscaping) for all development shall be of plants native to coastal Orange County and appropriate to the natural habitat type. Native plants used for landscaping shall be obtained, to the maximum extent practicable, from seed and vegetative sources on the project site. All landscaping shall be drought tolerant. Use of native plant species is encouraged within the private residential lots and the visitor/recreation commercial (i.e. Seaside inn) site adjacent to Harbor Point. If a future amendment to the LCP modifies the above requirements, this condition of approval shall be amended accordingly. (Planning)
141. No plant species listed as problematic and/or invasive by the California Native Plant Society, California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be utilized anywhere within the Headlands project site, including the landscaping within the private residential lots and the visitor/recreation commercial (i.e. Seaside inn) site adjacent to Harbor Point. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized anywhere within any development area, including within any private residential lots and the visitor/recreation commercial (i.e. Seaside inn) site adjacent to Harbor Point. (Planning)

Prior to Issuance of Occupancy Permits

142. A funicular shall be provided in accordance with the Headlands Development and Conservation Plan if the streets into the Strand residential area (Planning Area 2) are to be closed to public vehicular traffic following final street inspection/acceptance. Following final street inspection/acceptance of "E" Street, as shown on Tentative Tract Map 16331, "E" Street shall not be closed before a certificate of occupancy is issued for the funicular. Maintenance of the funicular shall be provided by the residential Home Owner's Association(s), a maintenance district or other mechanism that ensures adequate maintenance acceptable to the Public Works Director and City Attorney. Maintenance provisions shall be in place before issuance of a building permit for the funicular. The City shall not be responsible for any costs associated with the construction, operation, or maintenance of the funicular. (Planning, Building, Public Works, City Attorney)

143. The developer shall comply with Dana Point Municipal Code Section 9.05.240, Art in Public Places, and shall provide public art according to the terms and provisions established therein. (Planning)
144. Marguerita Road shall be removed and restored, or security provided to ensure the removal and restoration will occur, to a natural state after the completion of Selva Road such that it will allow access to the northern residential enclave and before issuance of a certificate of occupancy for the seaside inn (Planning Area 9). (Public Works, Planning, Fire)
145. Access to the existing residential enclaves shall be maintained at all times. (Public Works, Planning, Fire)
146. The CATV operator is responsible to the applicant for the labor, material, engineering, and installation of the CATV conduit. (Public Works)
147. The applicant shall provide separate sewer, water, gas, and electric services with meters as required to each of the dwelling units. (Building, Public Works)
148. All required fire extinguishing systems shall be operational. (Fire, Building)
149. All fire hydrants shall have a "Blue Reflective Pavement Marker" indicating location on the street or drive, per the OCFA standard. (Fire, Public Works)
150. All street signage and striping shall be installed per the approved signage and striping plan. (Public Works)
151. Prior to issuance of the first building permit for an occupied structure, the project applicant shall execute an agreement with the City of Dana Point to contribute a fair share portion of the total construction costs for street improvements identified at the intersections of Niguel Road and Pacific Coast Highway and Del Obispo/Dana Point Harbor Drive and Pacific Coast Highway. The amount of the fair share fees shall be commensurate with the project's traffic contribution to these intersections. These fees shall be determined by the Public Works Director, based on estimates developed for the City's Capital Improvement Plan, and shall be paid incrementally per lot or development site prior to the issuance of a Certificate of Occupancy for said structure. (Public Works, City Attorney)
152. Prior to issuance of a certificate of occupancy for the Seaside Inn (Planning Area 9 only), the developer shall install water quality BMPs that treat runoff from Planning Area 9 and 17 acres of off-site development, if not previously installed. (Public Works)

153. A certificate of occupancy for the Seaside Inn (Planning Area 9 only) shall not be issued unless a certificate of occupancy for lower cost overnight accommodations (e.g. hostel) within Planning Area 4 of the Headlands has been issued or will be issued concurrently. The lower-cost accommodations shall have a minimum of 40-beds available to the public. (Planning)
154. Solid decorative masonry walls, a minimum of seven (7) feet high, for habitat protection and fire hazard management shall be required between Planning Areas 4 and 6, and designated ESHA within Planning Area 5 prior to the issuance of an occupancy permit for any habitable structure within those planning areas adjacent to a designated ESHA. (Planning, Public Works)
155. A minimum of six (6) parking spaces exclusively for serving visitors to the open space areas shall be provided in Planning Area 4 prior to issuance of a certificate of occupancy for any habitable structure in Planning Area 4. The parking spaces shall be provided in excess of what is required by the zoning ordinance for any use proposed on the site. (Planning)
156. The Developer shall form a Community Facilities District prior to the issuance of a certificate of occupancy for any residential dwelling, which shall consist of existing and future residential and commercial property owners within the project boundaries; such property owners shall pay an annual special assessment in an amount that provides for all of the maintenance costs associated with the public funicular, including but not limited to any costs associated with providing liability insurance therefore. However, any user fees associated with the public funicular shall be first utilized to pay for annual maintenance costs, and only the balance (if any) of such costs shall be paid by the CFD. The City shall not be responsible for any costs associated with the construction, operation, or maintenance of the funicular. (Planning, Public Works, City Attorney)
157. The Developer shall form a Community Facilities District prior to the issuance of a certificate of occupancy for any residential dwelling, which shall consist of existing and future residential and commercial property owners within the project boundaries; such property owners shall pay an annual special assessment in an amount that provides for all of the maintenance costs, including but not limited to any costs associated with providing liability insurance, associated with the public access path referenced in condition 48 and the revetment. (Planning, Public Works, City Attorney)

During Construction

158. Prior to the release of the footing inspection for the development of individual lots, the applicant shall submit certification, by survey or other appropriate method, that the structure will be constructed in compliance with the dimensions approved in the Master Coastal Development Permit and Master Site Development Permit for the building being constructed and in compliance with the setbacks of the Headlands Development and Conservation Plan. (Building, Public Works, Planning)

159. Repair and maintenance of the revetment shall be in accordance with plans reviewed and approved by the Director of Public Works and consistent with the HDCP including but not limited to the following:
 - a. The shoreline protective device shall be located at or landward of the existing revetment toe (depicted on Figure 1, Existing Revetment Alignment (TOE), The Keith Companies dated January 8, 2004), such that, the average position of the shoreline protective device is moved at least 5 feet landward or easterly.

 - b. At the time of repair and maintenance of the shoreline protective device, all components of the existing revetment located seaward of the above identified toe and landward of the location of the intertidal zone shall be removed from the beach and recycled into the repaired and maintained shoreline protective device or properly disposed at an approved disposal site.

 - c. The top edge of the repaired and maintained revetment shall not exceed the top edge of the existing revetment located at +17 feet NGVD.

 - d. A shoreline protective device maintenance and monitoring plan shall be implemented that, at minimum, provides for the periodic retrieval and re-use or proper disposal of any rock or other components of the device that has become dislodged and/or has fallen to the beach as well as the retrieval and re-use or proper disposal of any rock or other component of any pre-existing device that becomes exposed on the beach for any reason. (Public Works, Planning)

Prior to Sale of Residential Lot

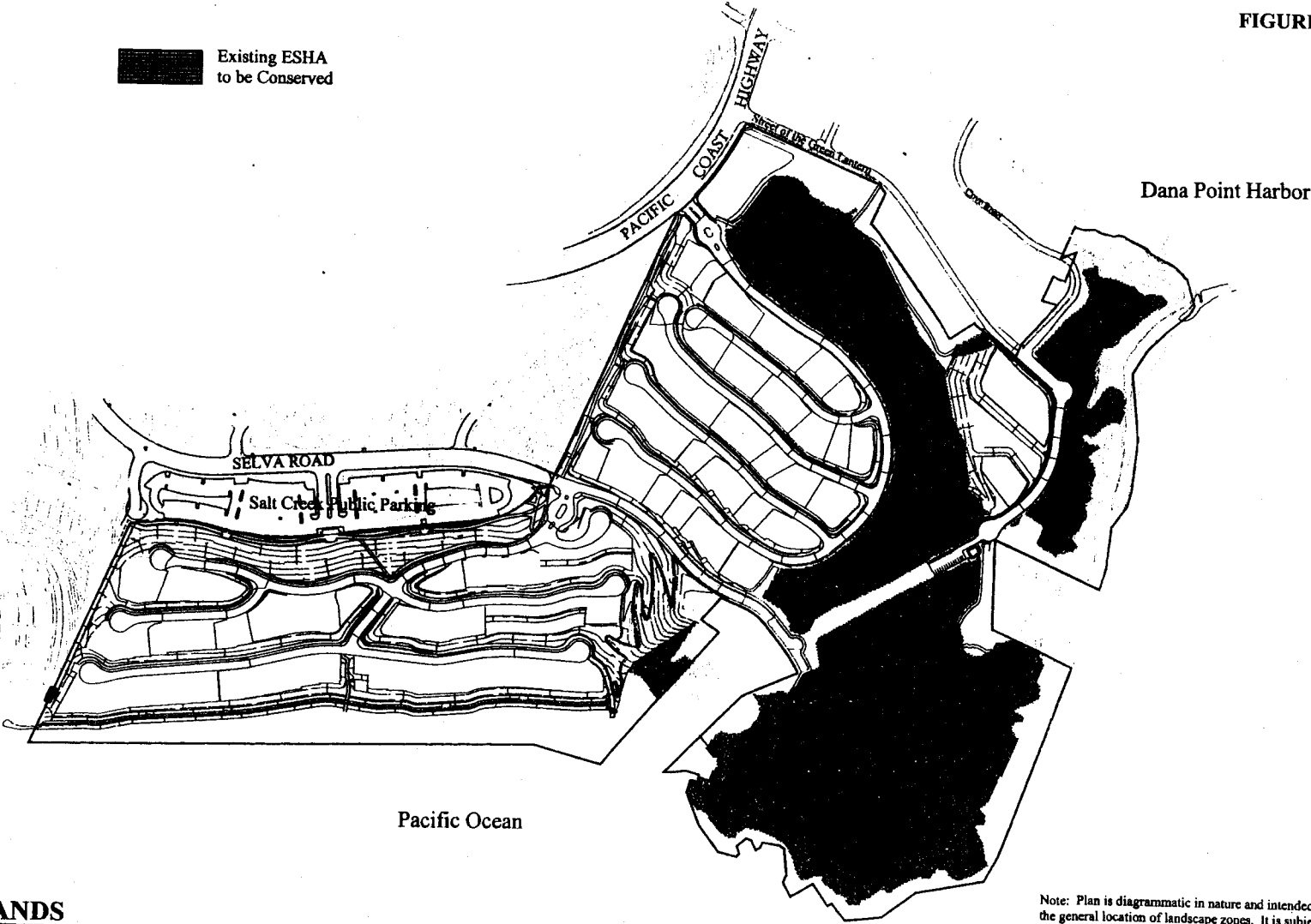
160. Prior to conveyance of any residential lot, the developer shall affirmatively demonstrate to the satisfaction of the City Attorney that the project's Department of Real Estate Public Report ("White Report") shall disclose to each prospective homeowner that: "This property is part of a larger project, Coastal Development Permit CDP04-23, that requires certain public and private improvements be constructed prior to the issuance of the first residential occupancy permit. Should the required public and

private improvements not be completed, the Owner acknowledges that a Certificate of Occupancy shall not be issued until said improvements are completed. The Owner further acknowledges that the dwelling can not be occupied until a Certificate of Occupancy is obtained." Or words to that effect, as determined by the Department of Real Estate. (Planning, City Attorney)

EXISTING ESHA TO BE CONSERVED

FIGURE 4.13.1

Existing ESHA
to be Conserved



Dana Point Harbor

SELVA ROAD

Salt Creek Public Parking

PACIFIC COAST HIGHWAY

Pacific Ocean

COASTAL COMMISSION

EXHIBIT #

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PAGE

OF

1

**THE HEADLANDS
DEVELOPMENT AND CONSERVATION PLAN**

Note: Plan is diagrammatic in nature and intended to show the general location of landscape zones. It is subject to change based on final engineering, planning, and design.



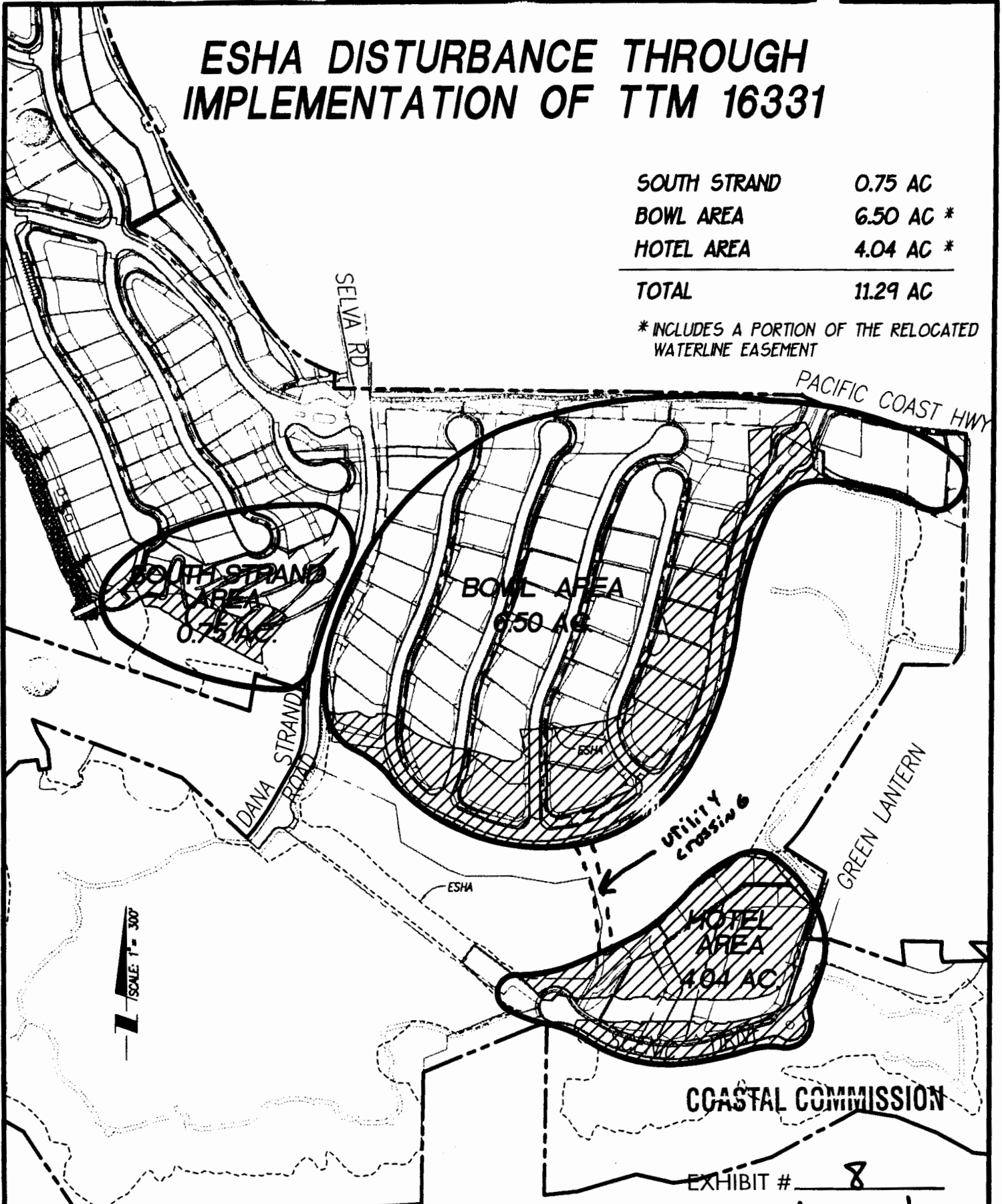
0 100 200 300



ESHA DISTURBANCE THROUGH IMPLEMENTATION OF TTM 16331

SOUTH STRAND	0.75 AC
BOWL AREA	6.50 AC *
HOTEL AREA	4.04 AC *
TOTAL	11.29 AC

* INCLUDES A PORTION OF THE RELOCATED WATERLINE EASEMENT

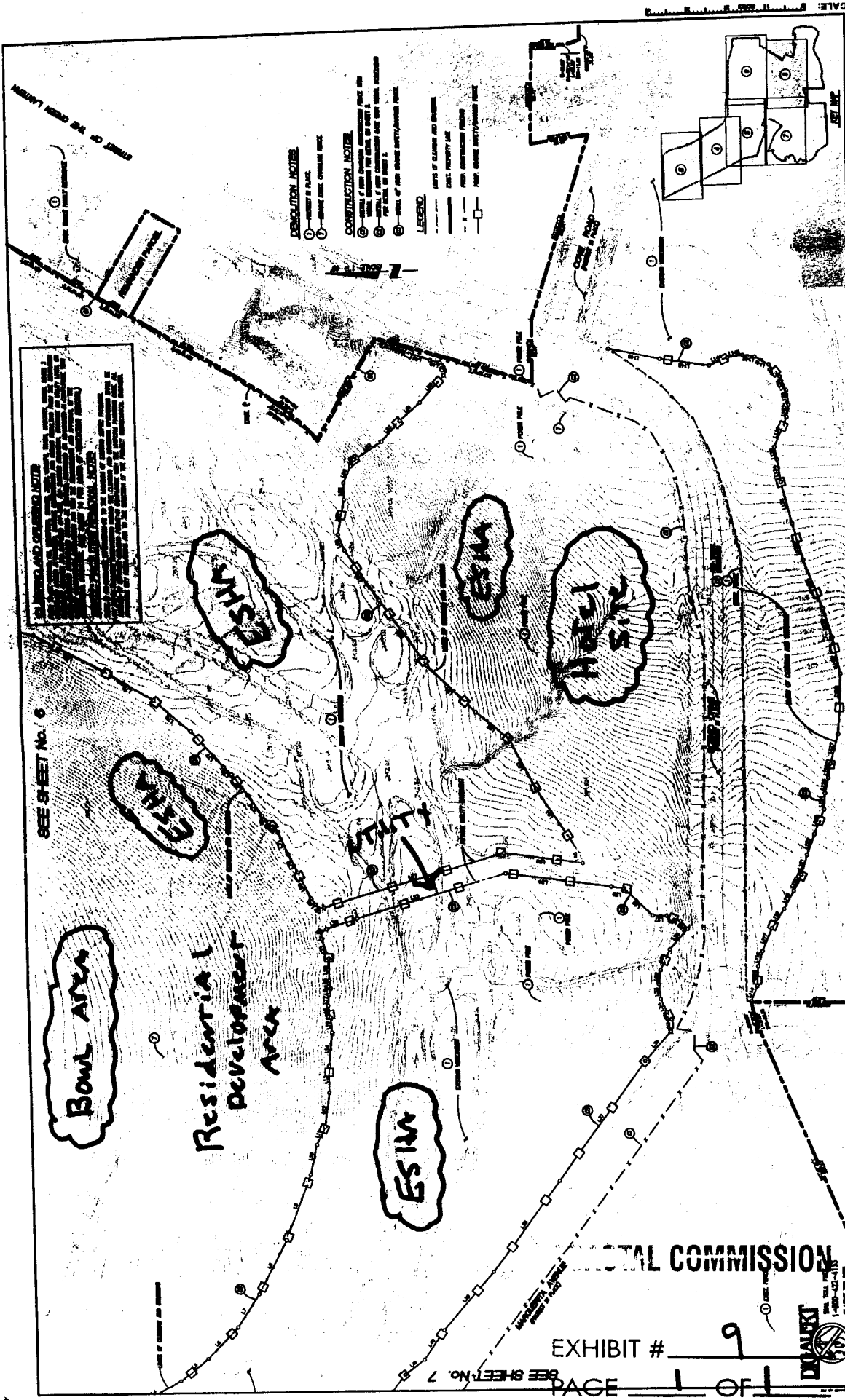


COASTAL COMMISSION

EXHIBIT # 8

PAGE 1 OF 1

SUPPORTING DOCUMENT 11
ESHA Disturbance Exhibit



DEMOLITION AND GRADING NOTES
 1. ALL EXISTING BUILDINGS TO BE DEMOLISHED AND GRADED TO FINISH GRADE.
 2. ALL EXISTING DRIVEWAYS TO BE DEMOLISHED AND GRADED TO FINISH GRADE.
 3. ALL EXISTING UTILITY LINES TO BE REMOVED AND GRADED TO FINISH GRADE.
 4. ALL EXISTING FENCES TO BE REMOVED AND GRADED TO FINISH GRADE.
 5. ALL EXISTING CURBS TO BE DEMOLISHED AND GRADED TO FINISH GRADE.
 6. ALL EXISTING SIDEWALKS TO BE DEMOLISHED AND GRADED TO FINISH GRADE.
 7. ALL EXISTING PAVEMENT TO BE DEMOLISHED AND GRADED TO FINISH GRADE.
 8. ALL EXISTING CONCRETE TO BE DEMOLISHED AND GRADED TO FINISH GRADE.
 9. ALL EXISTING BRICK TO BE DEMOLISHED AND GRADED TO FINISH GRADE.
 10. ALL EXISTING STONE TO BE DEMOLISHED AND GRADED TO FINISH GRADE.
 11. ALL EXISTING METAL TO BE DEMOLISHED AND GRADED TO FINISH GRADE.
 12. ALL EXISTING WOOD TO BE DEMOLISHED AND GRADED TO FINISH GRADE.
 13. ALL EXISTING PLASTER TO BE DEMOLISHED AND GRADED TO FINISH GRADE.
 14. ALL EXISTING GYPSUM TO BE DEMOLISHED AND GRADED TO FINISH GRADE.
 15. ALL EXISTING CARPET TO BE DEMOLISHED AND GRADED TO FINISH GRADE.
 16. ALL EXISTING FLOORING TO BE DEMOLISHED AND GRADED TO FINISH GRADE.
 17. ALL EXISTING CEILING TO BE DEMOLISHED AND GRADED TO FINISH GRADE.
 18. ALL EXISTING WALLS TO BE DEMOLISHED AND GRADED TO FINISH GRADE.
 19. ALL EXISTING ROOFS TO BE DEMOLISHED AND GRADED TO FINISH GRADE.
 20. ALL EXISTING FOUNDATIONS TO BE DEMOLISHED AND GRADED TO FINISH GRADE.

- DEMOLITION NOTES**
- 1 - EXISTING IN PLACE
 - 2 - EXISTING TO BE DEMOLISHED
 - 3 - EXISTING TO BE DEMOLISHED AND RECONSTRUCTED
- CONSTRUCTION NOTES**
- 1 - EXISTING TO BE DEMOLISHED AND RECONSTRUCTED
 - 2 - EXISTING TO BE DEMOLISHED AND RECONSTRUCTED
 - 3 - EXISTING TO BE DEMOLISHED AND RECONSTRUCTED
 - 4 - EXISTING TO BE DEMOLISHED AND RECONSTRUCTED
 - 5 - EXISTING TO BE DEMOLISHED AND RECONSTRUCTED
- LEGEND**
- LOTS OF CLEARING AND GRADING
 - EXISTING PROPERTY LINE
 - EXISTING CONSTRUCTION PERMIT
 - EXISTING CONSTRUCTION PERMIT
 - EXISTING CONSTRUCTION PERMIT

ORIGINAL SCALE: 1" = 40'

CITY OF DANA POINT
 DANA POINT REGULATORY DEPARTMENT AND CONSTRUCTION PLAN
 DEMOLITION PLAN
 CLEARING AND GRADING PLAN FOR TRACT 18881

CONTRACT # 18881
 SHEET # 18
 OF 18

DATE SUBMITTED: 11/03/04 REVISED: 11/03/04

DATE SUBMITTED: 06/15/04 AND 07/27/04 AND 08/07/04 4TH SUBMIT: 10/07/04 5TH SUBMIT: 11/03/04 REVISED: 11/03/04

PLAN CHECK NO. 04-02191 - 1ST SUBMIT: 06/15/04 2ND SUBMIT: 07/27/04 3RD SUBMIT: 08/07/04 4TH SUBMIT: 10/07/04 5TH SUBMIT: 11/03/04

TKC
 THE KETHA COMPANY
 15 TECHNOLOGY DRIVE
 RIVE, CALIFORNIA
 92661

DANA POINT
 18881-02-18

EXHIBIT # 9
 PAGE 1 OF 1



PROJECT MEMORANDUM

2201 DUPONT DRIVE, SUITE 620, IRVINE, CA 92612
FACSIMILE

(949) 752-1530
(949) 752- 8381

To: Kevin Darnall
From: Chia-Chi Lu *CLu*
Date: January 7, 2005
RE: Estimate of Maximum Allowable New Revetment Material for Strand Revetment Repair

As requested, we have performed an estimate of the volume of the existing Strand revetment structure and thus, an estimate of the maximum amount of new revetment material that can be utilized in the revetment repair so as to not exceed the 50% limitation on new material as set forth in Section 13252 of the Natural Resources Code.

The quantity estimate for the existing revetment was based on available documentation from past revetment repair scenarios as well as recent field observations and surveys of the configuration and extent of the revetment structure at Strand Beach. Typical profiles of the existing revetment section have an average crest elevation at +17 feet, NGVD; and the total alongshore length of the revetment structure is approximately 2,240 feet. Using an average cross-section area of 184 square feet calculated from the profile survey conducted by Hunsaker & Associates¹, the total volume of the existing revetment is approximately 15,300 cubic yards².

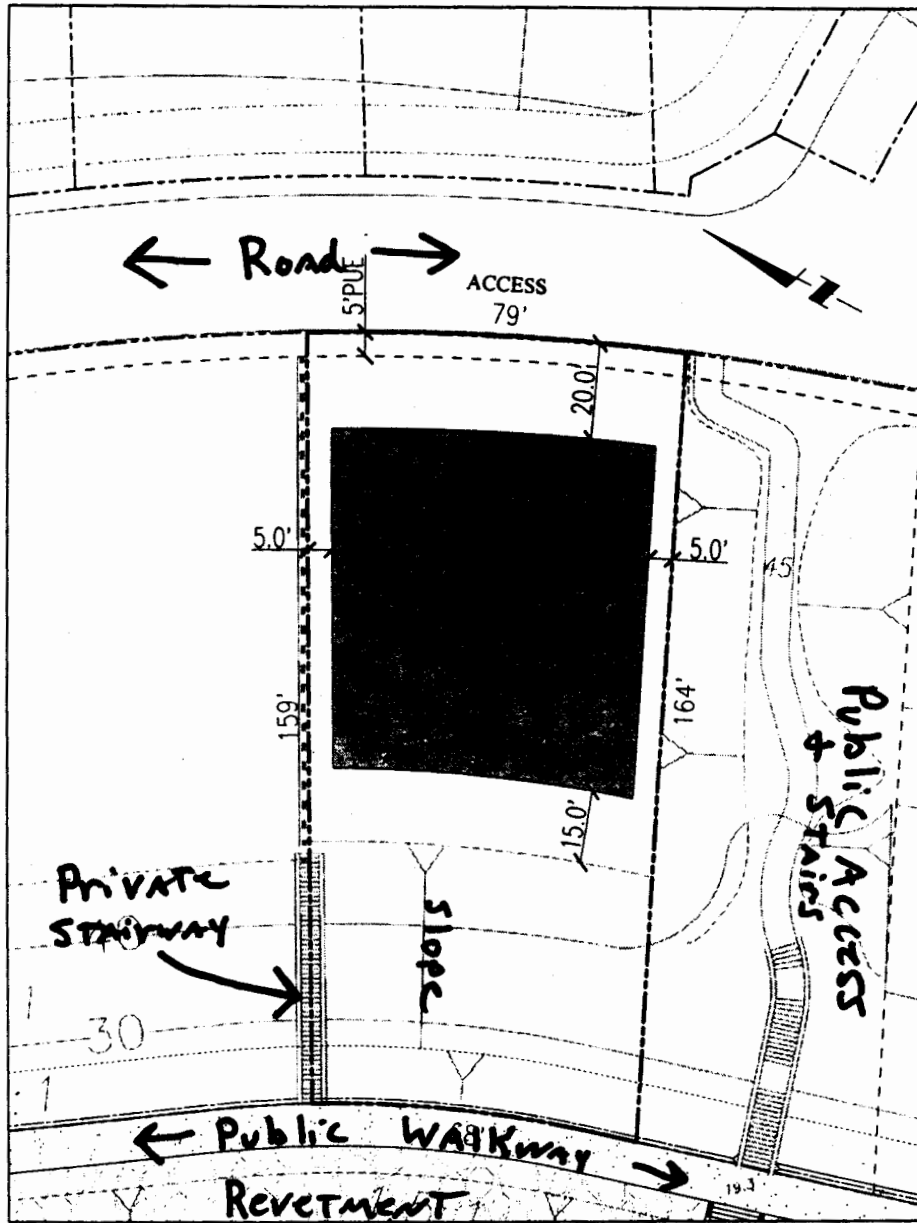
In order to conform to the requirements of Section 13252 as referenced above, less than 7,650 cubic yards (50% of 15,300) of new revetment material (rip rap rock) shall be utilized in the Strand Beach revetment repair. Based on our evaluation of the existing Strand revetment, the proposed repair of the revetment to a maximum height of +17 feet, NGVD as designed, can be accomplished utilizing less than the maximum allowable quantity of 7,650 cubic yards of new rip rap rock. Thus, the repair meets the criteria for repair and maintenance as set forth in Natural Resources Code 13252.

COASTAL COMMISSION

EXHIBIT # 10
PAGE 1 OF 1

¹ Hunsaker & Associates, 2002. "Beach Profile survey data at Stand Beach" dated March 26, 2002.

² AMEC, 2003. "Estimated Volume of Existing Revetment, Headlands Development and Conservation Plan (HDCP), Dana Strand Area" dated December 19, 2003.



LOT 58

LOT SIZE: 11,801 SF
 MAXIMUM LOT COVERAGE: = 4,627 SF
 PAD ELEVATION: 48.5
 FINISHED FLOOR: 49.0

NOTES:

MAXIMUM BUILDING ENVELOPE WITHOUT
 SIDE LOADED GARAGE
 1ST STORY (90%) = 4,164 SF
 2ND STORY (85%) = 3,933 SF

MAXIMUM BUILDING HEIGHT
 2-STORIES: 28-FEET

MINIMUM FRONT YARD SETBACK
 FROM STREET RIGHT-OF-WAY:
 20-FOOT RESIDENCE
 20-FOOT GARAGE FACING STREET
 10-FOOT SIDE ENTRY GARAGE

MINIMUM SIDE YARD SETBACK: 5-FEET

MINIMUM REAR YARD SETBACK: 15-FEET¹

MINIMUM OPEN SPACE (PRIVATE): (30%) = 3,540 SF

MINIMUM LANDSCAPE COVERAGE: (25%) = 2,950 SF²

MINIMUM BUILDING SEPARATION: 10-FEET³

- 1 As measured from the top of slope for the building pad.
- 2 Includes patios, pools, fountains, and decorative landscaping.
- 3 Between primary and secondary buildings, if applicable.

FINAL ELEVATIONS AND SQUARE FOOTAGE SHALL BE IN SUBSTANTIAL CONFORMANCE

EXHIBIT # 11
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COASTAL COMMISSION

LOT 58

