

CALIFORNIA COASTAL COMMISSION

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Appeal Filed: August 18, 2005
180th Day: N/A
Staff: Fernie Sy-LB
Staff Report: July 17, 2008
Hearing Date: August 6-8, 2008
Commission Action:



STAFF REPORT: APPEAL – DE NOVO

APPEAL NUMBER: A-5-DPT-05-306

APPLICANTS: Mehrdad Safari; Attn: Abraham Mosaddegh

AGENT: Fleetwood Joiner and Associates, Inc., Attn: Tom Stewart

PROJECT LOCATION: 32354 Caribbean Drive, Dana Point (Orange County)

PROJECT DESCRIPTION: Development of a portion of a 14.66 acre vacant lot containing sensitive habitat with a 19,448 square foot, two-story, single-family residence; a two-story 3,742 square foot, detached theatre/bowling alley; a 400 square foot detached observatory; a detached, 820 square foot caretaker's residence, retaining walls as high as 21 feet to stabilize the slope adjacent to Caribbean Drive and to create vehicular access, building pads, and outdoor living areas for property located in the Residential Single Family 2 (RSF 2) and Open Space (OS) Zones.

SUMMARY OF STAFF RECOMMENDATION

On September 16, 2005, the Commission determined that the appeal raised a substantial issue and overturned the City of Dana Point's approval of the local coastal development permit.

This staff report is for the de novo portion of the hearing on the appeal where the Commission will deny or approve the proposed development. Staff is recommending **DENIAL** of the permit for the reasons listed on Pages One and Two. The motion to deny the permit is on Page Two.

The Commission's de novo public hearing on the merits of the application uses the certified Local Coastal Program (LCP), commonly referred to as the "1996" LCP as the standard of review. This "1996" LCP consists of the three (3) elements of the City's General Plan (the Land Use Element, Urban Design Element, and Conservation and Open Space Element), the City's Zoning Code, the Monarch Beach Resort Specific Plan, and the Headlands Development Conservation Plan. The Commission can approve the coastal development permit only if the proposed development is found to be consistent with the certified LCP of the local government. In this case, that finding cannot be made for the following reasons: 1) the applicant's ESHA determination is inconsistent with the certified

LCP; 2) since the sensitive habitat on site is ESHA, the proposed project has impacts upon ESHA that are inconsistent with the City's LCP (1996 LCP); and 3) the proposed project does not adhere to the landform alteration policies of the LCP.

SUBSTANTIVE FILE DOCUMENTS

1. City of Dana Point Certified Local Coastal Program (1996 LCP).
2. City of Dana Point Planning Commission Resolution No. 5-07-06-028 (MND)
3. City of Dana Point Planning Commission Resolution No. 5-07-06-029 (CDP03-21/SDP03-60(m))
4. Memorandum from John Dixon, PH.D, Commission Staff Ecologist dated May 26, 2007
5. Letter From Commission Staff to Fleetwood B. Joiner & Associates dated May 20, 2008
6. Letter From Fleetwood B. Joiner & Associates dated June 19, 2008.

EXHIBITS

1. Revised Fuel Modification Plans
2. Memorandum from John Dixon, PH.D, Commission Staff Ecologist dated May 26, 2007
2. Letter From Commission Staff to Fleetwood B. Joiner & Associates dated May 20, 2008
3. Letter From Fleetwood B. Joiner & Associates dated June 19, 2008.

STAFF RECOMMENDATION:

Staff recommends that the Commission **DENY** the coastal development permit application by voting **NO** on the following motion and adopting the following resolution:

MOTION: *"I move that the Commission approve Coastal Development Permit A5-DPT-05-306 for the development proposed by the applicants."*

Staff recommends a **NO** vote. Failure of this motion will result in denial of the coastal development permit and adoption of the following resolution and findings as set forth in this staff report or as modified by staff prior to the Commission's vote. The motion passes only by affirmative vote of a majority of the Commissioners present.

I. RESOLUTION: DENIAL

The Commission hereby **DENIES** a coastal development permit for the proposed development on the grounds that the development will not conform with the policies of the certified City of Dana Point Local Coastal Program (1996 LCP). Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION

The proposed site is a vacant 14.66 acre lot located in the City of Dana Point above the Monarch Bay Terrace Community in Monarch Beach (Exhibit #1). The property is located in a Biological Sensitive Area as shown on Figure COS-1 in the Conservation and Open Space Element of the City's Certified LCP. The property is bordered by single-family residential development to the east, to the south, across Caribbean Drive, and at the southwest corner of the property. At the southeastern corner of the property are two (2) water tanks located on lots owned by the South Coast Water District. The remainder of the property is bordered on the west by the Aliso and Wood Canyons Wilderness Park and on the north by a lettered lot located in the City of Laguna Niguel. The subject site contains two (2) zoning/land use designations according to the City's Zoning Map and General Plan Land Use Policy Diagram. The southern portion of the property that has frontage along Caribbean Drive is zoned Residential Single Family 2 DU/AC (RSF 2) and the upper (northern) portion is designated as Open Space (OS) (Exhibit #1).

The subject site was created through the County of Orange's approval of Tentative Parcel Map 77-26 in March 1977. The California Coastal Commission further modified the County's approval in March of 1978, by requiring the recordation of a deed restriction against the property limiting the use of the parcel to single-family dwelling use, and prohibiting further subdivisions of the property. No limitations on the size of the proposed structures were included in the deed restriction.

On April 14, 1997, the City granted emergency Coastal Development Permit CDP97-05 to allow emergency remedial and protective measures necessary to address a landslide which occurred on the southern portion of the property along the Caribbean Drive frontage.

On July 6, 2005, the City of Dana Point Planning Commission approved Resolution No. 5-07-06-29 and Resolution No. 5-07-06-28 allowing development of the proposed project. Concerns raised in the City's approvals centered on the Biological Resources located on the property. The location and potential impacts to two (2) sensitive vegetation communities (*Transitional Southern Maritime Chaparral* and *Coastal Sage Scrub* (CSS)) on the property influenced the scope of the proposed grading, fuel modification, and the size of the project including the elimination of a tennis court and associated structures, and golf cart path on the lower western portion of the property originally proposed with the development.

Three (3) Government Agencies commented on the Mitigated Negative Declaration (MND) for this project when it was circulated. The California Department of Fish and Game (CDFG) and the United States Fish and Wildlife Service (USFWS) provided a joint letter primarily addressing habitat issues. A second letter from the County of Orange Resources & Development Management Department focused on aesthetic issues in addition to the biological resource issues associated with the project. To acknowledge the concerns

raised in these letters and to strengthen mitigation measures included in the MND, additional conditions of approval were added to the project by the City. For example, one of the City's approved conditions requires the applicant to include those areas of chaparral/CSS ecotone located in the RSF 2 Zone in a permanent open space easement, in addition to those areas of preserved *Transitional Southern Maritime Chaparral* and re-vegetated CSS that are to be included in an open space easement pursuant to the MND.

COASTAL DEVELOPMENT PERMIT (CDP03-21)

The City's Coastal Development Permit (CDP03-21) allows the construction of a single-family dwelling and accessory structures ancillary to the main residence and associated improvement on a vacant lot. The primary structure is a 19,448 square foot, two-story, single-family dwelling with a 5,864 square foot basement. The residence is designed with a flat roof to the maximum 24-foot height limit for roofs with pitches less than 3:12. This primary dwelling also includes two (2) permitted projections above the height limit one projection by 3-feet and the other by 5-feet.

Three (3) other accessory structures are proposed in conjunction with the primary dwelling: 1) a detached, two-story, 820 square foot caretaker's (2nd dwelling unit) unit located at the front of the main residence; 2) a detached, 3,472 square foot, two-level theater/bowling alley located at the rear of the main dwelling; and 3) a detached, 400 square foot observatory located at the rear of the primary dwelling and nestled between the theater/bowling alley and proposed retaining walls.

Related site improvements include several retaining walls reaching a maximum height of 21-feet, a 700-foot driveway, pool and spa, and landscaping. A large water feature is also proposed which will cascade down from the slope at the rear of the main dwelling into an aqueduct and larger shallow pond below between the main dwelling and the swimming pool. There are additional hardscape improvements that include on-site guest parking and several firetruck turn out/around areas due to the long access driveway connecting the development to Caribbean Drive. With the exception of landscaping, all the above-mentioned site improvements occur within the boundaries of the RSF 2 Zoning District. The only proposed improvements in the OS District are related to landscaping, and include the associated landscape fuel modification and re-vegetation of displaced habitat area.

SITE DEVELOPMENT PERMIT (SDP03-60(m))

The City's Site Development Permit (SDP03-06(m)) allows the construction of several retaining walls associated with the development. The highest and most visible retaining walls are proposed near the front property line along Caribbean Drive. These retaining walls originate at the proposed driveway entrance to the site at the southeast corner of the lot. The walls are proposed to assist in stabilizing existing landslide areas and to create the access driveway between Caribbean Drive and the proposed development. The lower retaining wall, immediately adjacent to Caribbean Drive, will be 6-feet in height and then will step back before continuing to vary in height as high as 15-feet. The upper retaining wall supporting the access driveway ranges from 12 to 21-feet in height. Both of these walls are crib type and will be landscaped to mitigate the appearance of the walls from surrounding properties and the street. The City conditioned the permit so that these

stabilization walls be constructed prior to commencement of the next rainy season (then Oct. 1, 2005) and prior to commencing construction of the dwelling structures due to the continued sloughing of the slope along Caribbean Drive. In lieu of constructing the retaining walls by that date, the applicant was required to remove the existing "K-Rail" at the base of the slope along Caribbean Drive and replace it with a more attractive yet functional debris wall or fence.

Additionally, in order to create the building pads for the proposed structures, useable outdoor living space, and water features, many retaining walls are proposed at the rear and along the southern side of the main dwelling. These walls vary in height and step up around the back of the lot with the highest walls being 18-feet.

B. ENVIRONMENTALLY SENSITIVE HABITAT AREA (ESHA)

The City of Dana Point through CDP03-21/SDP03-60(m) approved the construction of a single-family residence and ancillary structures on a portion of a vacant lot that results in direct impacts to sensitive habitat (*Bushrue, Coastal Sage Scrub*) and potential impacts (e.g. fuel modification) to sensitive habitat (*Transitional Southern Maritime Chaparral*). These sensitive habitats qualify as Environmentally Sensitive Habitat Areas (ESHA) that are protected from disturbance by policies in the City's certified LCP. Although an ESHA determination is required by the City's LCP, the applicant's ESHA determination is inconsistent with the City's certified LCP. Furthermore, since the sensitive habitat is ESHA (to be discussed below), the proposed project will have impacts upon ESHA that are inconsistent with the City's LCP. The proposed development is located in the Monarch Beach area of the City of Dana Point, which has a certified Local Coastal Program (LCP), commonly referred to as the "1996" LCP. The proposed project is inconsistent with the City of Dana Point's LCP for the reasons described below.

The policies within the City of Dana Point's LCP that protect biological resources in the coastal zone include:

Conservation Open Space Element (COSE) Policy 3.1: Environmentally sensitive habitat areas (ESHAs) are any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments, and include, but are not limited to, important plant communities, wildlife habitats, marine refuge areas, riparian areas, wildlife movement corridors, wetlands, and significant tree stands, such as those generally depicted on Figure COS-1. ESHAs shall be preserved, except as provided in Conservation Open Space Element Policy 3.12¹. Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts that would significantly degrade those areas, and such development shall be compatible with the continuance of those habitat areas. Among the methods to be used to accomplish the siting and design of development to prevent ESHA impacts are the practice of creative site planning, revegetation, and open space easement/dedications. A definitive determination of the existence of environmentally sensitive habitat areas on a specific site shall be made through the coastal development permitting process. For the Headlands,

¹ This 'exception' only applies to development at the Dana Point Headlands.

the extent of environmentally sensitive habitat area presently known to the City is generally depicted on Figure COS-1, and the land use area boundaries at the Headlands recognize the presence of the habitat. The precise boundary of the sensitive habitat at the Headlands shall be determined through the coastal development permitting process, including but not limited to those provisions outlined in Land Use Element Policy 5.29. (Coastal Act/30230, 30240)

Conservation Open Space Element (COSE) Policy 3.2: *Require development proposals in areas expected or known to contain important plant and animal communities and environmentally sensitive habitat areas, such as but not limited to marine refuge areas, riparian areas, wildlife movement corridors, wetlands, and significant tree stands, to include biological assessments and identify affected habitats. (Coastal Act/30230, 30240)*

Conservation Open Space Element (COSE) Policy 3.7: *Environmentally sensitive habitat areas (ESHA) shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas except as provided in Conservation Open Space Element Policy 3.12². Development in areas adjacent to ESHA shall incorporate buffering design elements, such as fencing, walls, barrier plantings and transitional vegetation around ESHAs to serve as transitional habitat and provide distance and physical barriers to human intrusion. Variances or modifications to sensitive resource protection standards shall not be granted. (Coastal Act/30240)*

The City's approval of Coastal Development Permit CDP03-21/SDP03-60(m) is inconsistent with the ESHA protection policies of the certified Local Coastal Program. The project site is identified as an area where sensitive habitat (*Bushrue, Coastal Sage Scrub, Transitional Southern Maritime Chaparral*) is found. Where sensitive habitat is found, COSE Policies 3.1 and 3.2 of the City's LCP requires the City to make a 'definitive determination' as to whether ESHA is present on the site and the boundaries of the ESHA. However, there is no evidence in the City's approval that an analysis was conducted to determine if the site contained ESHA. The failure to make an ESHA determination renders the City's action inconsistent with COSE Policies 3.1 and 3.2.

Furthermore, the Commission's staff ecologist has determined that ESHA is present on the project site and that the Fuel Modification necessary with the approved project will impact ESHA. Such impacts caused by residential development, which is not resource dependent would be inconsistent with COSE Policies 3.1 and 3.7. The Fuel Modification Plan will impact 1.77 acres of *Transitional Southern Maritime Chaparral* (ESHA) in the proposed C and D zones of the plan. Grading for the site will result in a loss of 0.48 acres of *Coastal Sage Scrub* (located near the southeast corner of the project site between existing homes and Caribbean Drive). The City is requiring mitigation for this loss. Grading for the site will also result in the loss of approximately 20 individuals of *Bushrue* on approximately 3.0 acres. *Bushrue* is identified by the California Native Plant Society as a rare plant. No mitigation is proposed for this loss.

In order to determine if ESHA will be impacted on site since there is no evidence in the City's approval that an analysis was conducted to determine if the site contained ESHA (as required by the LCP), the Commission's Staff Ecologist has reviewed the proposed project

² This 'exception' only applies at the Dana Point Headlands.

and completed a memorandum (Exhibit #2) analyzing the presence of ESHA on the site. He explains that *Southern Maritime Chaparral* is recognized as a rare plant community by the California Department of Fish and Game Natural Diversity Data Base. There are 3 distinctive types of *Southern Maritime Chaparral*, which are centered in Laguna Beach in Orange County, Del Mar in San Diego County, and La Fonda in Baja California, Mexico. Furthermore, the memorandum states: "*In Orange County, southern maritime chaparral occurs on coastal hillsides from San Clemente Canyon to Crown Valley Parkway and is defined by the presence of bushrue (Cneoridium dumosum) and an unusual form of big-pod ceanothus (Ceanothus megacarpus), which may be a distinct subspecies. The presence of Nuttall's scrub oak (Quercus dumosa), big-leaved crownbeard (Verbissina dissita), or Laguna Beach dudleya (Dudleya stolonifera) is also diagnostic of the Laguna form of southern maritime chaparral. Soils are typically Soper gravelly loams, which formed in weakly consolidated sandstone and conglomerate.*"

The northeastern portion of the site supports a dense cover of big-pod ceanothus and scattered bushrue. In addition, the memorandum states: "*Although this area was mapped as Southern Maritime Chaparral, the vegetation report (Bomkamp 2006) nevertheless asserts that, "GLA [Glen Lukos Associates] does not concur that southern maritime chaparral occurs on the site. As described above, at best, limited portions of the site are more appropriately characterized as "transitional southern maritime chaparral." Despite this disclaimer, the area mapped as Southern Maritime Chaparral clearly meets the definition"* [mapped by Glen Lukos as area designation 3.6] (Exhibit #1). In addition, an area immediately adjacent to the *Southern Maritime Chaparral* is mapped as *Maritime Chaparral-Sage Scrub* (mapped by Glen Lukos as area designation 3.1.6) (Exhibit #1). While this area does not currently support big-pod ceanothus, bushrue is present. Nevertheless, it is contiguous with the mapped *Southern Maritime Chaparral*. Thus, based on their similar location and qualities, the Commission's Staff Ecologist has determined that the areas identified on the map submitted by Glen Lukos as *Transitional Southern Maritime Chaparral* and *Maritime Chaparral-Sage Scrub* are in fact *Southern Maritime Chaparral*.

The memorandum concludes by stating: "*... that both the habitat mapped as "Southern Maritime Chaparral" and the immediately adjacent habitat mapped as "Maritime Chaparral-Sage Scrub" be considered Southern Maritime Chaparral and, as such, an Environmentally Sensitive Habitat Area under the Coastal Act because it is a rare habitat and it is easily disturbed by human activities.*"³ Thus, the proposed Fuel Modification Zone that will impact *Transitional Southern Maritime Chaparral* and *Maritime Chaparral-Sage Scrub* (both considered *Southern Maritime Chaparral* by the Commission Staff Ecologist) will impact ESHA. The memorandum also goes on to say the rest of the project site appears to have been disturbed sometime in the past by grading roads, terracing, ground clearing, and the placement of sandbags to control erosion. In 1979, the vegetation on the project site appeared to be relatively homogeneous and mostly undisturbed, although at least one road had already been cut across the hillside. The whole site was probably

³ The City's certified LCP includes the same ESHA policies as Chapter 3 of the Coastal Act, therefore a determination that the habitats on-site consist of ESHA under the Coastal Act means that they are also ESHA under the certified LCP.

Southern Maritime Chaparral and the various ruderal and coastal sage scrub now present are probably successional to *Southern Maritime Chaparral*.

Although the City is requiring mitigation (re-vegetation) for the loss of 0.48 acres of *Coastal Sage Scrub*, the mitigation will not render the development consistent with COSE Policies 3.1 and 3.7. Where ESHA is present, the development must be designed to avoid the impacts. Allowing the impacts to occur and then mitigating those impacts does not supplant the ESHA impact avoidance requirements of the LCP. Rather, the proposed project should be redesigned to eliminate all the impacts to sensitive habitats.

CONCLUSION

The City's LCP provides policies to protect sensitive habitat; however, the project, as proposed, significantly impacts sensitive habitat and is thus inconsistent with the Dana Point LCP.

C. LANDFORM ALTERATION

Conservation Open Space Element (COSE) Policy 2.9: *Preserve significant natural features as part of new development. Permitted development shall be sited and designed to minimize the alteration of natural landforms. Improvements adjacent to beaches shall protect existing natural features and be carefully integrated with landforms. (Coastal Act/30240, 30250, 30251, 30253)*

Conservation Open Space Element (COSE) Policy 2.13: *Bluff repair and erosion control measures such as retaining walls and other similar devices shall be limited to those necessary to protect existing structures in danger from erosion to minimize risks to life and property and shall avoid causing significant alteration to the natural character of the bluffs. (Coast Act/30251, 30253)*

The certified City of Dana Point LCP requires that permitted development be sited and designed to minimize the alteration of natural landforms. The proposed project involves extensive grading that will result in significant landform alteration. A geotechnical investigation prepared by Geofirm dated November 11, 2003 indicates that there are three (3) landslides on the site. Two (2) of the landslides are located near the front property line contiguous to Caribbean Drive. The majority of the first landslide located on the southeast portions of the site above Caribbean Drive was removed during emergency repairs to remove debris from Caribbean Drive and to increase temporary slope stability until permanent repairs are completed. The second landslide contiguous to the southwest portions of the site above Caribbean Drive was reactivated during a winter storm several years ago. The report states that complete removal of both of these landslides during grading activities and the inclusion of a new crib wall along the Caribbean Drive street frontage will take place with the project. The third landslide located on the upper northwest portion of the site is also being recommended for removal and reconstruction as a fill slope. However, this suspected landslide is covered by Transitional Southern Maritime Chapparal. It was determined that since the proposed project no longer includes the tennis court or the golf cart path, the remediation of this landslide is no longer proposed. In order to assist in stabilizing existing landslide areas and to create the 700-foot long

access driveway between Caribbean Drive and the proposed development site, retaining walls are proposed and the highest and most visible retaining walls are proposed near the front property line along Caribbean Drive. These retaining walls originate at the proposed driveway entrance to the site at the southeast corner of the lot.

These proposed retaining walls do not adhere to the City's Certified LCP. The retaining walls do not protect existing development. They are needed to allow the new development as proposed and to allow additional grading. Additionally, although two (2) of the three (3) landslides are being completely removed, they claim that the purpose of the retaining walls are for site stability as well as access. The retaining walls will reach a maximum of 21-feet. However, these retaining walls should not be needed to deal with the landslides since they are being completely removed. The retaining walls are necessary for the 700-foot long access driveway. The grading and construction of these three (3) sets of retaining walls (along Caribbean Drive, along the 700-foot long access driveway and surrounding the residential/ancillary development) will significantly alter natural landforms. The proposed development should be designed so that these retaining walls are not necessary and that natural landforms are protected. Alternatives exist, such as moving the development to an area where the access road can be shortened so that such devices to protect new development and/or provide access can be reduced or eliminated. The applicant did not provide information on the quantity of grading, a grading plan or cross sections for the retaining walls.

CONCLUSION

The City's LCP provides policies to minimize landform alteration; however, the project, as proposed, significantly impacts natural landforms and is thus inconsistent with the Dana Point LCP.

D. ALTERNATIVES

APPLICANT'S ALTERNATIVES

Due to the impacts associated with the proposed project, Commission staff requested alternative designs of the proposed project including a reduced footprint and moving the location of the project to an area onsite that will avoid ESHA impacts, such as closer to Caribbean Drive. In response to Staff's concerns regarding impacts to *Southern Maritime Chaparral*, the applicant has submitted a Revised Fuel Modification Plan which includes an alternative building footprint configuration which moves the closest wall of the home to a location 170-feet away from the edge of *Southern Maritime Chaparral* (mapped by Glen Lukos as area designation 3.6) (Exhibit #1). This revised plan also removes the tennis court area that was removed by the City from the proposed project, but had not been updated on the originally submitted project plans. However, this revised plan will still continue to impact *Southern Maritime Chaparral* mapped by Glen Lukos as area designation 3.1.6. Therefore, ESHA impacts will continue to take place with the project.

On May 20, 2008, Commission staff sent a letter to the applicant stating that this alternative was unacceptable and requested additional discussion of alternatives (Exhibit #3). In response, the applicant submitted a letter dated June 19, 2008 (Exhibit #4). The

applicant states that the siting of the proposed residence fits within a “window” of the least sloping portion of the site, which is also the most distant from the neighboring houses and from the street. The siting of the proposed residence was an essential condition of the City of Dana Point Planning Commission when it was reviewed by it. Furthermore, the applicant states that pushing the footprint either uphill or downhill into steeper areas will be very restrictive because the height limits are measured from existing grade. The applicant states that moving the footprint will result in height limit problems; however the applicant does not discuss the possibility of reducing the number of floors of the residence or reducing the overall footprint of the development or moving the development southeast of the present location. There are a number of other alternatives that are possible that will not result in height problems and will avoid impacts to ESHA.

The applicant also states that modifying the siting of the project is limited because of the difficulty in obtaining a functional firetruck and turnaround space. The applicant states that it may be possible to shift the footprint slightly to the east to a steeper portion of the site resulting in a shifted Fuel Modification Zone that will result in reduced ESHA impacts. However, the applicant states that by doing this, there will be more extensive site grading for the residence. The Commission notes that significant grading will occur under the proposed project as the applicant proposes to completely remove two of the three existing on-site landslides. The applicant has not provided a grading plan, therefore the extent of proposed landform alternation is unknown. While the Commission understands the necessity to plan accordingly for fire hazards and to avoid erosion impacts, it does not change the fact that development must adhere to the certified Local Coastal Program. Other alternatives are possible on site, such as reduction of the footprint and moving the development to a location onsite that avoids ESHA impacts.

Also, the applicant states that modification of the proposed project footprint to a location adjacent to Caribbean Drive will exceed substantial conformance to the development plans approved in 2005 by the City of Dana Point Planning Commission. This will require a new evaluation by City Staff and other agencies and approval of the redesign by the Planning Commission and the applicant states that this will lead to hardship, take substantial time and has the potential risk of being denied and is therefore not feasible to consider as an option. The fact that the proposed project may require a new evaluation by the City for approval does not change the fact that it needs to adhere to the certified Local Coastal Program.

Lastly, the applicant proposes to locate a portion of the footprint and the fuel modification areas (that are within the RSF-2 Zone) into a portion of the transitional 3.1.6 vegetation area but totally avoid the 3.6 ESHA vegetation area and consider the scope of this “unavoidable” impact to be “not a significant issue” considering the mitigation measures required by the Conditions of Approval. Commission staff has reviewed this alternative and determined that this will be unacceptable because, as discussed previously, under the City’s LCP, both of these areas, 3.6 and 3.1.6, are ESHA. While the applicant states that the area designated 3.6 will be avoided, the 3.1.6 area will be additionally impacted. ESHA will continue to be adversely impacted. In addition, the applicant states that this alternative will avoid impacting the area designated as 3.6. This alternative does not address the issues identified above, however, with respect to impacts to the other ESHA

areas on site, as the proposed development was already changed from the original submittal to avoid impacts to the area designated 3.6 (Exhibit #1).

COMMISSION STAFF'S ALTERNATIVES

Alternatives to the proposed project exist that will not impact ESHA and will minimize landform alteration.

One alternative would be moving the development to a location on site that will not result in a Fuel Modification Zone impacting ESHA. For example, the development could be moved to the southeastern portion of the lot where no ESHA is located. By moving the development to the southeastern portion of the site, ESHA will be protected since the Fuel Modification Zone would not include ESHA areas and landform alteration will be minimized since the access drive to the site, which will require grading and retaining walls, will be reduced in length. Within this southeastern portion of the site is a potential wetland (this potential wetland area is significantly smaller than the ESHA areas) as identified in the MND. If the development were moved to this location, however, it could be sited to avoid adverse impacts to the wetland, so the presence of this wetland will not preclude the possibility of placing development in this southeastern location.

If additional geotechnical information indicates that retaining walls along Caribbean Drive are still necessary and no significant reduction in landform alteration can be achieved by moving the development closer to Caribbean Drive, a second alternative would be to reduce the size of the residence at its proposed location. Reducing the size of the residence would result in a Fuel Modification Zone that would not impact ESHA. The northwestern portion of the 19,448 square foot residence could be reduced so as to allow a Fuel Modification Zone that will not impact ESHA.

CONCLUSION

The City's LCP provides policies to protect ESHA and minimize landform alteration; however, the project, as proposed, significantly impacts ESHA and natural landforms and is thus inconsistent with the Dana Point LCP. However, alternatives exist such as reducing the size of the development and moving the location of the development on site that would protect ESHA and minimize impacts to natural landforms.

E. LOCAL COASTAL PROGRAM (LCP)

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act:

- (a) Prior to 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 provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to

prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200). A denial of a Coastal Development Permit on grounds it would prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for such conclusion.











The Commission certified the City of Dana Point Local Coastal Program on November 5, 1997. For the reasons stated in this report, the proposed development is not consistent with the certified City of Dana Point LCP. Since the impacted sensitive habitat is ESHA, the proposed project will have impacts upon ESHA that are inconsistent with the City's LCP (1996 LCP). The proposed project does not adhere to the landform alteration policies of the LCP. Therefore, the Commission denies the coastal development permit. Denial of the proposed development will not prejudice the ability of the City to prepare an LCP update for the area that is in conformity with the provisions of Chapter 3 of the Coastal Act.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 Title 14 of the California Code of Regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which will substantially lessen any significant adverse effect which the activity may have on the environment.

The coastal development permit is denied because all adverse impacts have not been minimized and there are feasible alternatives or additional feasible mitigation measures available which will substantially lessen any significant adverse impact which the activity may have on the environment. Feasible alternatives include moving the development to a location on site that will not result in a Fuel Modification Zone impacting ESHA and also reducing the size of the residence or eliminating ancillary structures that would result in a Fuel Modification Zone that will not impact ESHA and minimize landform alteration. Therefore, the Commission finds that the proposed project cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.

**Revised Fuel Modification Plan
(without tennis court)**

-  ESHA (3.6) area within open space zone
-  ESHA (3.6) area within RSF-2 zone
-  Coastal sage scrub (3.1.6) area within open space zone
-  City Weed Abatement zone
-  Landscaped and irrigated area
-  50' Zone "D" 30% thinned
-  50' Zone "C" 50% thinned
-  50' Wet Zone "B"
-  20' Wet Zone "A"
-  Proposed home footprint



CALIFORNIA COASTAL COMMISSION

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MEMORANDUM

COASTAL COMMISSION

FROM: John Dixon, Ph.D.
Ecologist

TO: Fernie Sy

SUBJECT: 32354 Caribbean Drive, Dana Point

DATE: May 26, 2007

EXHIBIT # 2

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Documents reviewed:

Bomkamp, T. (Glenn Lukos Associates). November 18, 2004. Letter to F. Joiner regarding: Revised report of 2002 biological surveys at Simpson property, Dana Point, CA.

Bomkamp, T. (Glenn Lukos Associates). October 2, 2006. Letter to F. Sy (CCC) regarding: "Updated vegetation mapping for approximately 15-acre property at 32354 Caribbean Drive, Dana Point, Orange County, California."

Gray, J. and D. Bramlet. May 1992. Habitat classification system, A report prepared for the Environmental Management Agency, County of Orange, California.

Marsh, K. January 20, 1992. South Laguna Biological Resources Inventory. A report prepared for the City of Laguna Beach.

Merkle & Associates. February 1, 1996. Binion Estates Property, City of Laguna Niguel, Maritime Chaparral Mitigation Program (FEIR 90-01). A report prepared for Bettencourt & Associates and the City of Laguna Niguel.

Watchtel, J. September 1978. Soil Survey of Orange County and Western Part of Riverside County, California. United States Department of Agriculture (Soil Conservation Service and Forest Service) in cooperation with University of California Agricultural Experiment Station.

Southern maritime chaparral is recognized as a rare plant community by the California Department of Fish and Game Natural Diversity Data Base. This unique chaparral occupies a distinct microhabitat. It occurs on well-drained, relatively infertile soils derived from sandstones and conglomerates that are located on coastal hillsides that receive summer fog. It is currently patchily distributed from Laguna Beach to Baja California. There are three distinctive types of southern maritime chaparral, which are

centered on Laguna Beach in Orange County, Del Mar in San Diego County, and La Fonda in Baja California, Mexico. In Orange County, southern maritime chaparral occurs on coastal hillsides from San Clemente Canyon to Crown Valley Parkway and is defined by the presence of bushrue (*Cneoridium dumosum*) and an unusual form of big-pod ceanothus (*Ceanothus megacarpus*), which may be a distinct subspecies. The presence of Nuttall's scrub oak (*Quercus dumosa*), big-leaved crownbeard (*Verbissina dissita*), or Laguna Beach dudleya (*Dudleya stolonifera*) is also diagnostic of the Laguna form of southern maritime chaparral. Soils are typically Soper gravelly loams, which formed in weakly consolidated sandstone and conglomerate.

The subject site is about 0.5 mile west of Crown Valley Parkway and 0.5 mile inland from the coast. Much of the site is on the relatively steep, more-or-less ocean-facing slopes of a roughly north-south oriented ridge line. The soils are principally Soper gravelly loams. The northeastern portion of the site supports a dense cover of big-pod ceanothus and scattered bushrue. Although this area was mapped as southern maritime chaparral, the vegetation report (Bomkamp 2006) nevertheless asserts that, "GLA does not concur that southern maritime chaparral occurs on the site. As described above, at best, limited portions of the site are more appropriately characterized as 'transitional' southern maritime chaparral." Despite this disclaimer, the area mapped as southern maritime chaparral clearly meets the definition.

Based on an examination of aerial photographs from Google Earth and the California Coastal Records Project, the rest of the site appears to have been disturbed sometime in the past by grading roads, terracing, ground clearing, and the placement of sandbags to control erosion. Vegetation clearing and thinning adjacent to the existing residences on the top of the slope to the east is probably ongoing for fire safety. In 1979, the vegetation on the site appears relatively homogeneous and mostly undisturbed, although at least one road had already been cut across the hillside. The whole site was probably southern maritime chaparral. The various ruderal and coastal sage scrub vegetation types that currently dominate much of the site are probably successional to maritime chaparral. This is a common pattern in Laguna Beach following disturbance. It should be determined whether a coastal development permit was issued for the vegetation clearing and ground form alterations.

The area immediately adjacent to the maritime chaparral is mapped as "maritime chaparral-sage scrub." This area does not currently support big-pod ceanothus, although bushrue is present. However, it is contiguous with the mapped maritime chaparral, it has the same type of soil, the same microclimate, and similar slope and aspect. The physical environment, the adjacency to mapped maritime chaparral, and the presence of bushrue all suggest that this habitat is also southern maritime chaparral (Dr. T. Keeler-Wolf, Senior Vegetation Ecologist, Natural Heritage Program, CDFG personal communication to J. Dixon on March 15, 2007).

I recommend that both the habitat mapped as "southern maritime chaparral" and the immediately adjacent habitat mapped as "maritime chaparral-sage scrub" be considered southern maritime chaparral and, as such, an Environmentally Sensitive Habitat Area under the Coastal Act because it is a rare habitat and it is easily disturbed by human activities.

CALIFORNIA COASTAL COMMISSION

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

COASTAL COMMISSION

EXHIBIT # 3
PAGE 1 OF 3

May 20, 2008

Fleetwood Joiner & Associates, Inc.
Attn: Thomas Stewart
P.O. Box 10296
Newport Beach, CA 92658

FILE COPY

Re: Demolition and Construction of a New Single-Family Residence
Safari; Applicant
32354 Caribbean Drive, Dana Point, CA; Location
Coastal Development Permit Application No. A-5-DPT-05-306

Dear Mr. Stewart,

We are presently processing the subject application, which came to the Commission on appeal of the City-approved coastal permit. Since appeal, the project has evolved and our present understanding of the project description is that you are requesting development of a portion of a 14.66 acre vacant lot with a 19,448 square foot, two-story, single-family residence; a two-story 3,742 square foot, detached theatre/bowling alley; a 400 square foot detached observatory; a detached, 820 square foot caretaker's residence, retaining walls as high as 21 feet to stabilize the slope adjacent to Caribbean Drive and to create vehicular access, building pads, and outdoor living areas; as well as all grading and fuel modification necessary for the development. The subject property is located in the Residential Single Family 2 (RSF 2) and Open Space (OS) Zones. The primary concerns Commission staff has raised with the development include impacts to Environmentally Sensitive Habitat Area (ESHA) as a result of project construction and anticipated fuel modification needs. We would like to take this opportunity to explain our present position on your latest proposal and outline a few options for moving forward.

In a memo dated May 26, 2007, our Commission Staff Biologist determined that the proposed project would impact Environmentally Sensitive Habitat Area (ESHA). As we have explained, Section 30240 of the Coastal Act prohibits such impacts for residential development. In response to this, Commission staff met with you and several others on November 29, 2007 to discuss the impacts associated with this project.

Representatives at the meeting included your biologist as well as the Commission's biologist. We discussed some differences of opinion about the presence and location of ESHA. You indicated some additional information would be presented regarding the type and quality of habitat present at the site. We also discussed ongoing disturbances on the site that were causing impacts to on-site vegetation. You indicated that some of this was related to ongoing fuel modification requirements and addressing other issues on the site. We invited you to provide additional information regarding the nature and legality of these activities. We also discussed the need to explore alternatives to the

proposed project that would avoid impacts to ESHA. During our meeting, you indicated that the plans we had on file were outdated because the applicant was no longer proposing certain project elements, such as the tennis courts, thus the impacts to vegetation communities on the property were different (lesser) than Commission staff had known. You indicated you would submit revised plans to reflect your current proposal. Even with those changes, it appeared to Commission staff that impacts to ESHA would remain. Commission staff expressed concern over those remaining impacts. Thus, we requested that you look at additional alternatives, including siting and sizing the development differently so as to reduce/avoid impacts to sensitive vegetation communities, including an alternative that focuses development adjacent to Caribbean Drive.

On March 6, 2008, Commission staff received a set of plans. There was no accompanying letter or other explanation of the changes that were made in those plans. Upon review it became apparent the plans had been revised to remove the once proposed tennis courts, but other changes were not noted or apparent. In addition, the submittal did not appear to respond to staff's request for alternatives, nor any of the other information discussed in our November meeting.

On April 7, 2008, Commission staff sent a message acknowledging the changes that removed the tennis court and modified the fuel modification areas; but also noted that no alternatives to the project were submitted which would reduce/avoid the overall amount of impact to ESHA. In this communication, Commission also requested again alternatives to the proposed project that would lessen the impact upon ESHA. In response, you stated that the revised plan we received on March 6, 2008, did include an alternative footprint configuration which moves the closest wall of the home to a location more than 170-feet away from the edge of southern maritime chaparral area. While this minor change was not noted by you in your previous submittal, upon further study we recognize the change to that wall. However, the change is negligible with regard to the habitat impacts and fuel modification requirements of the project. In addition, you have not submitted any analysis of alternatives akin to what staff requested in our November meeting.

At this stage, Commission staff believes we are at an impasse. The proposed project still results in significant adverse impacts upon ESHA. Commission staff believe those impacts to ESHA are inconsistent with Section 30240 of the Coastal Act. Thus, we would be unable to support the proposal. In addition, we don't believe the information presented to date adequately addresses our request for a serious look at alternatives to the proposed project that would significantly reduce and/or avoid ESHA impacts. We again, extend the offer to you to supply that analysis. We remain willing to work with you to negotiate toward a project that we can support. However, we understand that you may instead wish to proceed with your current proposal. Thus, please advise us on how you wish to proceed as soon as possible, to either 1) continue to discuss alternatives with staff (in which case you agree to provide additional information about such alternatives); or 2) proceed to a hearing on your current proposal. Commission staff request that you submit (for the current proposal) two (2) copies of a

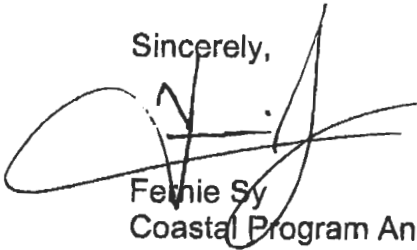
COASTAL COMMISSION

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full size site plan and two reduced copies of a (2) 8'-1/2" x 11' site plan showing the ESHA found on site with an overlay of the proposed development. If we do not hear from you by May 28, 2008, Commission staff will assume you wish for us to proceed to a hearing on your current proposal and will make every effort to schedule the matter, with a denial recommendation, for the July 2008 Hearing. On the other hand, if you wish to work on alternatives, we'll provide you whatever amount of time you desire to prepare those alternatives and to have additional time for discussion.

Thank you for your attention to these matters. If you have any questions, you may contact me at (562) 590-5071.

Sincerely,



Fernie Sy
Coastal Program Analyst II

cc: David Neish, Agent for Applicant

COASTAL COMMISSION

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F L E E T W O O D B. J O I N E R
& A S S O C I A T E S, I N C.

June 19, 2008

Mr. Fernie Sy
California Coastal Commission
South Coast Area Office
100 OceanGate, Suite 1000
Long Beach, CA 90802-4302

COASTAL COMMISSION

EXHIBIT # 4
PAGE 1 OF 2

RE: Safari Residence
32354 Caribbean Drive, Dana Point, CA
CDP Application No. A-5-DPT-05-306

Dear Fernie,

In response to your e-mail message of 6/12/08, we have already proposed reduced impacts to sensitive vegetation by modifying the west wing of the proposed footprint in order to avoid having the 170' of fuel modification zones overlap the 3.6 vegetation area that is within the RSF-2 zone, as you and staff had requested in our last meeting. Your comment in your recent letter was that this modification was "negligible".

We have given serious consideration to other site options as you requested, and there is little modification that can be done to the site design as a truly feasible alternative which would also conform to city zoning regulations, for the following reasons.

The proposed plan is the result of several years of design, working closely with the Dana Point city planners to conform to the height restrictions of the sloping site and to minimize site grading. The project was approved by the city within the guidelines of the certified Local Coastal Program on July 6, 2005. The footprint fits within a "window" of the least sloping portion of the site, and which also is most distant from the neighboring houses and from the street. This was an important condition of the Dana Point Planning Commission's approval. To push the proposed footprint either uphill or downhill into steeper areas would be very restrictive since the height limits are measured from existing grade. It may be possible to shift the footprint slightly to the east to a steeper portion of the site and thereby slightly reduce ESHA impacts by shifting the edge of the fuel modification area, but then much more extensive site grading for the home would be necessary to make this reduction of impact possible. This would in turn violate the goal of the Coastal Act to minimize the alteration of natural landforms.

The biological report approved by the city was a result of site studies conducted by licensed biologists from the applicant as well as from the city.

The additional grading that you requested by shifting the home footprint would in turn greatly impact other areas of 3.1.6 vegetation which are identical to that which Mr. Dixon calls ESHA, but which he does not identify as such because it is not adjacent to the 3.6 areas. Also, we still question the validity of Mr. Dixon's interpretation of 3.1.6 areas adjacent to 3.6 as ESHA, since the areas do not actually contain indications of southern maritime chaparral and therefore do not contain rare species.

We are also limited on a functional location for firetruck access and turnaround space. Your office has requested more extensive grading than has been approved by the city. We are utilizing a centrally located existing landform (currently without vegetation) in our proposal which can be graded minimally to achieve a defensible fire safety location, which currently does not exist. As you know, minimizing risks to life and property due to fire hazards and erosion is also a requirement of the Coastal Act Section 30253 and the certified Local Coastal Program. The Orange County Fire Authority has already approved our plan for wildfire protection which would not only benefit the owner and his family, but would also benefit the neighborhood and the community.

We have endeavored in our proposed design to minimize the intrusion of the home into the natural areas of the site and to minimize site grading. The design strives to conform to the Coastal Act to minimize the alteration of landforms and to provide enhanced fire safety and erosion control, which will also benefit the

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community. We have sought with our proposed design to achieve a reasonable balance of these issues which honors the property rights of the owner and the intent of the Coastal Act. Any unavoidable impact will be mitigated as allowed by the Dana Point Local Coastal Program (Zoning Code Section 9.27.030.)

Dana Point City Planners have told us that your request would exceed substantial conformance (less than 10% change) to the development plans which were approved in 2005. We would be required to apply for a totally new evaluation by city staff and other agencies and approval of the redesign by the City Planning Commission, which could not meet fire safety code and which would certainly be a hardship, take substantial time, expense and potential risk of denial at that time. Based on the public hearing discussion, the major change that you have suggested of siting the home in a location adjacent to Caribbean Drive would not be acceptable to the neighbors or to the Planning Commission, and is therefore not feasible to consider as an option.

We would have an acceptable solution as proposed, if staff would allow us to overlap a portion of the footprint and the fuel mod areas (that are within the RSF-2 Zone) into a portion of the transitional 3.1.6 vegetation area (per the revised exhibit previously sent to you), totally avoiding the 3.6 ESHA vegetation area, and would consider the scope of this unavoidable impact to be "not a significant issue" considering the extensive environmental mitigation measures that have already been required by the Conditions of Approval, as recommended by both the U.S. Fish and Wildlife Service and the California Fish and Game Department in 2005.

Please let us know if there may be some ground for compromise regarding staff disposition to our project, considering in balance the minimized grading and the enhanced fire and erosion safety benefits that also are a goal of the Coastal Act. We would be happy to meet with you to discuss this further before the public hearing.

Please confirm that we definitely scheduled for the August public hearing in Oceanside.

Best regards,

Fleetwood B. Joiner & Associates
Thomas Stewart, Architect

COASTAL COMMISSION

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