

CALIFORNIA COASTAL COMMISSION

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Filed: April 24, 2009
49th Day: June 12, 2009
180th Day: October 21, 2009
Staff: Liliana Roman, LB
Staff Report: May 28, 2009
Hearing Date: June 10-12, 2009
Commission Action:

**Item TH 23a**

COMBINED STAFF REPORT:
RECOMMENDATION ON APPEAL FINDING SUBSTANTIAL ISSUE AND
APPEAL - DE NOVO HEARING

APPEAL NUMBERS: A-5-LGB-09-077

LOCAL GOVERNMENT: City of Laguna Beach

DECISIONS: Approval with Conditions

APPLICANT: Billy Fried

AGENT: Sherman Stacy

PROJECT LOCATION: Public beach at 30801 Coast Highway,
Laguna Beach (Orange County)

PROJECT DESCRIPTION: Commencement of a commercial kayak staging/rental/lesson/tour
operation on the public beach in front of the Montage Resort/Spa

APPELLANTS: Commissioners Larry Clark & Sara Wan; attn: Liliana Roman, Coastal
Planning Analyst and South Laguna Civic Association, attn: Bill Rihn,
President

SUMMARY OF STAFF RECOMMENDATION & ISSUES TO BE RESOLVED:

The staff recommends that the Commission, after a public hearing, determine that **A SUBSTANTIAL ISSUE EXISTS** with respect to the grounds on which appeals number A-5-LGB-09-077 has been filed because the locally approved development raises issues of consistency with the Treasure Island certified Local Coastal Program (LCP) related to commercial activities on the public beach; public access and recreation; and biological resources (see Motion, page 2).

Staff further recommends that the Commission, after a public de novo hearing, approve the permit, with special conditions set forth in the staff report. As conditioned, the proposed development will be consistent with the policies of the LCP and Coastal Act regarding commercial activities on the public beach; public access and recreation; and biological resources (see Motion, page 15).

The site is located on a public beach in front of the Montage Hotel/Spa Resort. The Commission certified the Treasure Island LCP in 1999 for the redevelopment of the site from a mobile home park to a destination resort. Primary issues associated with the proposed kayak staging/rentals/lessons/tours concession include assurance that the proposed development is

consistent with the marine resource protection policies and coastal access policies of the certified Treasure Island LCP. Specifically whether the staging and launching/landing of kayaks in Planning Area 1 of the LCP area is consistent with the long-term maintenance of habitat and protection of marine wildlife policies of the LCP.

The shoreline in front of the Montage Hotel/Spa Resort is divided into two planning areas in the LCP. Planning Area 1 (Marine Reserve) includes tidepools, Goff Island and other sensitive shoreline habitat and the policies and land use restrictions in place for that area are designed to encourage low intensity, passive recreational use with an emphasis on marine resource protection, education and observation. Planning Area 2 (Sandy Beach) contains less sensitive resource areas and the land uses and policies encourage concentration of higher intensity recreational uses in this area. The applicant is proposing to conduct a commercial kayak business including kayak rentals, lessons and guided tours from both Planning Areas 1 and 2. The LCP contains provisions that would prohibit the conduct of a commercial operation like this in Planning Area 1, but would allow it in Planning Area 2. Nevertheless, the City approved operation of the kayak business from both planning areas. Upon a finding that the appeals raise a substantial issue, Commission staff recommends the Commission approve a coastal development permit for this kayak business, but with conditions that prohibit operation of the business within Planning Area 1 (Marine Reserve). The conditions also address other aspects of the kayak business such as signage, location of concession kiosk/table to conduct transactions, the location where kayaks may be staged during operating hours and where they are stored overnight, assurance that all members of the public have equal access to the kayaks (i.e. no preference for the resort), among other issues.

SUBSTANTIVE FILE DOCUMENTS:

Treasure Island Local Coastal Program (LCP)

LIST OF EXHIBITS:

1. Vicinity Map
2. City of Laguna Beach Resolution No. 09.033 of the City Council adopted 4/07/09
3. Proposed kayak concession staging/launching/landing locations – Site Map
4. Proposed kayak concession staging/launching/landing locations – Photographs
5. Copy of the Appeals by Commissioners Larry Clark and Sara Wan; and South Laguna Civic Association

I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

MOTION AND RESOLUTION FOR SUBSTANTIAL ISSUE WITH REGARD TO APPEAL NO. A-5-LGB-09-077

MOTION: I move that the Commission determine that Appeal No. A-5-LGB-09-077 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 appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-5-LGB-09-077 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. APPEAL PROCEDURES

After certification of a local coastal program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on Coastal Development Permits. Developments approved by cities or counties may be appealed if they are located within the appealable areas, such as those located between the sea and the first public road paralleling the sea, or within three hundred feet of the inland extent of any beach, mean high tide line, or the top of the seaward face of a coastal bluff. Furthermore, developments approved by local County governments may be appealed if they are not the designated “principal permitted use” under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county [Coastal Act Section 30603(a)].

The Treasure Island Destination Resort Community LCP was certified by the Commission on August 13, 1998 and November 6, 1998. The City of Laguna Beach approval of the proposed project is appealable because the project is located between the sea and the first public road paralleling the sea.

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 establishes the project site as being appealable by its location between the sea and first public road and within 300 feet of the bluff edge (Exhibit 1).

Grounds for Appeal

The grounds for appeal of an approved local CDP 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 this division.

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 for appeal. 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 the same hearing or a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. 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.

The grounds for the current appeal include contentions that the approved development does not conform to the standards set forth in the certified LCP regarding public access and recreation and marine resource policies.

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 three minutes per side to address whether the appeal raises a substantial issue. 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.

The Commission will then 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.

The de novo hearing is scheduled at the same hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. 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.

III. APPELLANTS' CONTENTIONS

The City of Laguna Beach approval of the proposed development was appealed on April 24, 2009 by two appellants. The project was appealed by the California Coastal Commissioners Larry Clark and Sara Wan; and by the South Laguna Beach Civic Association (Bill Rihn, President). The appellants contend that the proposed development is not consistent with the access and biological resource protection policies of the Coastal Act and does not conform to the requirements of the Local Coastal Program.

The appeal by the California Coastal Commission contends that the proposed project is inconsistent with the following policies and regulations of the Treasure Island LCP:

1. Treasure Island LCP Part II, Specific Plan Section 11.4 Conservation Planning Area Regulations and Standards – Planning Area 1: Marine Reserve; specifically Section 11.4.4 (Prohibited Uses), prohibits *commercial uses* (emphasis added) and structures; including all uses prohibited by the State of California based upon the current designation of the adjoining waters as part of the South Laguna Marine Life Refuge, or as part of any future designation as an Ecological Reserve or other designation adopted to protect the marine resources of the area.
2. Treasure Island LCP Part II, Specific Plan Section 11.5 Open Space and Recreation Planning Area Regulations and Standards – Planning Area 2: Sand Beach; specifically Section 11.4.4 (Prohibited Uses), prohibits *commercial uses* (emphasis added) and structures. And includes all uses prohibited by the State of California based upon the current designation of the adjoining waters as part of the South Laguna Marine Life Refuge, or as part of any future designation as an Ecological Reserve or other designation adopted to protect the marine resources of the area.
3. Treasure Island LCP Part 1, Land Use Plan (LUP) Section 6.2.2 Resort Center Design Policies, Policy #7 reads, "The Resort Center may operate portable facilities near the terminus of the public access ramp at the back of the public Sand Beach (i.e., at elevation 12-16 +/- feet). These portable facilities may provide or support visitor-serving commercial recreation activities, such as a rental/sales area for beach items/supplies, a pantry/storage for towels, and serving/holding facilities for snacks and drinks."

Furthermore, Section 6.2.2 Policy #8 reads, "The Resort Center shall be permitted to operate the following daytime uses open to the public on the Sand Beach adjacent to the hotel: a. seating area around the portable facilities; b. moveable chairs, tables, lounges; c. umbrella shade areas; and d. small "beachable" boats (e.g., kayaks, catamarans, etc.)."

4. Treasure Island LCP Part II, Specific Plan Section 14 Design Guidelines includes Section 14.3 -Services and Temporary Facilities on the Beach which notes "1. Food, beverage, beach equipment rental, and related or similar services available to guests and the public should be located on a portion of the beach in close proximity to the hotel, with service access from the hotel."

The appeal by the South Laguna Beach Civic Association contends inconsistencies with:

1. LCP Section 3.0 General Resource Protection Policies and LCP Section 9.1.1 Resource Management Program Purpose and Intent regarding the use of Conservation Area/Marine Reserve for commercial activity/kayak concession
2. Failure to comply with LCP signage conditions, LCP Section 9.2.2 – inconsistent and excessive signage
3. Violates maintaining and protecting wildlife habitat – detrimental and destructive impacts to marine life and intertidal zones per the City of Laguna Beach Open Space/Conservation Element Policy #2D, #8C and #8O
4. Violates LCP Parking Policies - Operation and storage of kayaks and beach concession items in parking area designated for employees of the Montage Resort displaces employee parking on site at the Resort impacting the surrounding community and decreasing the availability of public parking
5. Privatization of the public beach for the exclusive use of Montage Resort paying guests – No reference to LCP policies
6. Use of public beach and access points for operation of commercial enterprise – impediment to public access due to storage, hauling, launching activities and competition for and loss of recreational water space and dry sand beach space
7. Unwanted precedence setting action

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Location

The subject site is located on the public beach in front of the Montage Resort and Spa located at 30801 Coast Highway in the southern portion of the City of Laguna Beach on the seaward side of Coast Highway just north of Aliso Beach (Exhibit #1).

The applicant, Billy Fried of La Vida Laguna proposes a kayak business operation consisting of kayak rentals, kayak lessons, and kayak “eco” tours on the public beach in front of the Montage Resort and Spa. The proposed operation would operate from 9:00 a.m. to 5:00 p.m. beginning May 1, 2009 and ending September 30, 2009 and operated on weekends only during the months of May and September. The proposed kayak staging and launching/landing areas are on the public beach within the Treasure Island Specific Plan Area developed in conjunction with the Treasure Island Local Coastal Program (LCP) (LCP background is included in the next section, Section IV B).

Kayak staging and launching/landing is proposed at one of two possible locations depending on daily surf and shore-break conditions. During good weather, the kayak business would operate in Planning Area 2 – Sand Beach as identified in the LCP Figure 8.2-1 and during rough weather conditions in Planning Area 1 – Marine Reserve, as identified in the LCP Figure 8.2-1 (Exhibit #3).

As proposed, the staging areas would be located near the end of the northern and southern beach access ramps, depending on the location from which they plan to launch kayaks. If launching from Planning Area 1 - Marine Reserve, kayaks would be stored near the back of the beach, at the toe of the bluff, near the end of the northerly paved beach access ramp taking up a beach footprint area no larger than 10' x 20'. If launching from Planning Area 2 - Sand Beach, when not in use during the permitted hours of operation, kayaks would be staged/stored near the back of the beach, at the toe of the bluff, near the end of the southerly paved beach access ramp taking up a beach footprint area no larger than 10' x 20'. The applicant proposes a maximum of eight (8) kayaks (four single kayaks and four double kayaks).

Monetary transactions and signing of waiver forms would take place on a small portable concession table at the existing concrete pad at the bottom of the Sand Beach public access ramp. This concrete pad is also currently used by the Resort for food and beverage concessions.

Signage for the kayak business operation would consist of two (2) temporary signs – one 1'x2' sign attached to the concession table and one sign at the bluff top of the access ramp to Planning Area 2 – Sand Beach to be displayed only during the approved Temporary Use Permit operation dates. The signs would be consistent with the theme of existing Montage Resort signage (Exhibit 4, page 4).

Kayaks would be stored overnight in the Montage Resort's equipment and furniture storage area located within the parking garage and would be towed via kayak trailer pulled by one of the Resort's motorized carts to the beach no earlier than 8:00 a.m. and returned to the storage area at the end of the business day, no later than 6:00 p.m.

B. Local Coastal Program Background

On August 13, 1998, the Coastal Commission approved the Treasure Island Local Coastal Program (LCP as a project specific amendment to the City of Laguna Beach Local Coastal Program. The LCP allows for the development of the site with a resort complex consisting of a resort center on 10.63 acres with a visitor-serving hotel, condominiums and single-family residences, dedication of nearly 14 acres into public ownership, public bluff top park, public beach and the enhancement of public access throughout the site. The approximately 30-acre coastal bluff top lot had previously been a private 268-space trailer park.

The LCP includes two parts: Part I, Land Use Plan (LUP) and Part II, Specific Plan.

The LUP provides for two basic land use areas within the property: 1) a 12.5-acre Open Space, Conservation and Recreation Area dedicated to the City of Laguna Beach (which now includes Planning Areas 1 and 2 that are the topic of this report). This includes the sand beaches, rocky points, Goff Island, and Bluff-top Park and bluff face, and 2) a 17.60-acre Resort Development Area. This includes most of Mesa bluff-top resort community, public areas and parking for guests and general public. The LUP sets forth policies as required by the Coastal Act including: resource protection policies, public access and recreation policies, circulation/transportation policies, resort development policies, phasing and financing policies.

The Specific Plan provides the specific guidelines, requirements, standards, regulations and permitting procedures to implement the policies established in the LUP section of the Local Coastal Program.

A Resource Management Plan prepared by Coastal Resources Management dated July 1999 was created to implement the resource protection policies of the LCP and provide the framework for the long-term management of the Treasure Island Ecological Reserve. The Resource Management Plan included designs for an education booklet that provides ways to prevent damage to the intertidal and subtidal habitats; designs for public signage at key access points; recommendations for enforcement personnel in dealing with the public and issues of marine conservation; baseline environmental studies; and a 5-year biological monitoring program of rocky intertidal resources and subtidal reef resources.

In the mid-1990s, the shoreline at the Treasure Island along with the entire City of Laguna Beach coastline was given Marine Life Refuge (MLR) status in an attempt to protect intertidal organisms. The Resource Management Plan required that the site also be nominated as a State of California Ecological Reserve; to date the site has not yet acquired Ecological Reserve status.

C. Description of Local Approval

On December 10, 2008, City of Laguna Beach Planning Commission approved Coastal Development Permit 06-63 and Temporary Use Permit 08-11 for the project with the following conditions of approval:

- Coastal Development Permit 06-63 and Temporary Use Permit 08-11 valid for a maximum of one-year after the date of any project appeal. Kayak operations limited daily from 9am-5pm from Memorial Day to Labor Day, including weekends during April, May, September and October.
- Kayaks may not be placed on the beach earlier than 8am and must be removed no later than 6pm
- Kayaks to be stored in Resort's equipment/furniture area within parking garage. Storage of trailers/kayaks shall not interfere with any marked parking in the Resort's parking garage.
- Kayaks shall be launched in Planning Area 2 – Sand Beach and may be launched in Planning Area 1 – Marine Reserve only on days when the surf and shore-break conditions do not permit safe launching at the Sand Beach.
- The allowed kayak staging area for both launching areas shall be in Planning Area 2 – Sand Beach near the back of the beach at the toe of the bluff near the end of the southerly beach access ramp (adjacent to the existing Resort concession area).
- A max of eight (8) kayaks may be stored within a beach area no larger than 10'x20' at the toe of the bluff.
- Kayaks shall not be stored/staged in Planning Area 1 – Marine Reserve
- Money transactions must occur off-site and shall not take place on the beach and/or public park. Concession table to sign required waiver/liability forms may be located on the existing paved concession area.
- Signs shall not be allowed in conjunction with the Temporary Use Permit.

- Kayakers shall be instructed to remain at least 25' from swimmers and marine mammals.
- Kayakers shall be instructed on the protection of the City's tide-pools. Kayaks shall not be launched/landed on any rocks or tide-pools and shall keep at least 5' from tide-pools and/or rock areas.

The applicant considered some of the Planning Commission's conditions of approval too restrictive to ensure a successful kayak rental business and appealed the Planning Commission's action to the City Council. On April 7, 2009 the Laguna Beach City Council acted on the appeal by the applicant requesting the City Council **remove** the following three (3) Planning Commission required conditions of approval:

- Kayaks shall not be staged/stored in Planning Area 1 – Marine Reserve
- Monetary transactions must occur off-site
- Signs shall not be allowed in conjunction with the Temporary Use Permit

The applicant claimed that LCP language allowed commercial activity at the existing concrete pad at the bottom of southerly public access ramp in Planning Area 2 – Sand Beach and that LCP language also allowed for directional signage in the park to inform the public of the availability of recreational amenities. In response to the Planning Commission restriction to only stage kayaks in Planning Area 2 – Sand Beach, the applicant asserted that due to regular unsafe launch conditions in Planning Area 2 – Sand Beach, most launches would occur in Planning Area 1 – Marine Reserve and that the transport of kayaks up the ramp, 300 yards across the park and down the ramp is inefficient and would cause customers to wait an inordinate amount of time and place undue stress on the kayak concession staff.

The City Council sustained the applicant's appeal at its April 7, 2009 hearing and approved the project with the removal of the three aforementioned conditions. The final City Council resolution approving Coastal Development Permit 06-63 and Temporary Use Permit 08-11 allowed for kayaks to launch and stage at both Planning Area 1 – Marine Reserve and Planning Area 2 – Sand Beach, for money transactions to take place on the existing concrete pad at the bottom of southerly public access ramp in Planning Area 2 – Sand Beach and for two (2) temporary signs – one 1'x2' sign attached to the concession table and one sign at the bluff top of the access ramp to Planning Area 2 – Sand Beach to be displayed only during the approved Temporary Use Permit operation dates.

D. Substantial Issue Analysis

As previously stated, the local CDP may be appealed to the Commission on the grounds that it does not conform to the standards set forth in the certified Local Coastal Program (LCP) or the public access policies 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 raise significant issues in terms of the extent and scope of the approved development, the support for the local

action, the precedential nature of the project, whether a significant coastal resource would be affected, and whether the appeal has statewide significance.

In the current appeals of the project approved by the City of Laguna Beach City Council the appellants contend that the City's approval of the project does not conform to various provisions of the certified LCP and requirements set forth in the Coastal Act. Not all of the contentions raised can be considered valid appeal arguments, as the grounds for an appeal are limited to an allegation that the development does not conform to the certified LCP or the public access policies of the Coastal Act. Where Coastal Act sections are directly incorporated into the text of the City's certified LCP, the appeal contention is considered valid. Grounds for appeal that rely on Coastal Act sections (other than the public access policies) that have not been incorporated into the LCP and/or do not reference specific LCP policies are considered invalid.

For clarification, the appellants' contentions have been grouped into the following categories: Valid and Invalid. Within the Valid Contentions Section, the appeals are determined to either raise "Substantial Issue" or "No Substantial Issue." Of the valid appeal contentions raised, Commission staff has recommended that the Commission find that a substantial issue exists with respect to the grounds on which the appeals have been filed—Public Access and Marine Resources. Staff has also recommended that the Commission find that no substantial issue exists with regard to consistency with CEQA, LCP parking policies and Municipal Code inconsistencies. Invalid contentions are addressed on page #14 of the Substantial Issue portion of this staff report.

Valid Contentions

Those contentions determined to have valid grounds for appeal are included in the subsequent section. Section (a) describes those contentions that are found to raise a substantial issue and Section (b) addresses those which are not found to raise substantial issue with the City's certified LCP and public access provisions of the Coastal Act.

a. Substantial Issue

The following contentions made by both appellants raise a substantial issue of consistency with the regulations and standards set forth in the certified LCP:

1. Prohibited Commercial Uses on Public Beach and Conservation Area/Marine Reserve

Treasure Island LCP Part II, Specific Plan/IP Section 11.4 Conservation Planning Area Regulations and Standards: Planning Area 1 – Marine Reserve Section 11.4.4 (Prohibited Uses), prohibits **commercial uses** (emphasis added) and structures in Planning Area 1 – Marine Reserve. It also includes all uses prohibited by the State of California based upon the current designation of the adjoining waters as part of the South Laguna Marine Life Refuge, or as part of any future designation as an Ecological Reserve or other designation adopted to protect the marine resources of the area.

Treasure Island LCP Part II Specific Plan Section 11.5 Open Space and Recreation Planning Area Regulations and Standards: Planning Area 2 – Sand Beach; specifically Section 11.5.5 (Prohibited Uses), prohibits **commercial uses** (emphasis added) and structures except those described in Section 11.5.2.3. Section 11.5.2.3 reads, "*Portable facilities that require no*

construction on the beach and provide or support visitor-serving commercial recreation activities shall be allowed within a designated area toward the back of the beach near the public beach ramp to serve visitors to the beach, including, but not limited to, food and drink sales, rental facilities for beach/outdoor recreation goods, and other public visitor-serving facilities which may or may not be directly associated with the Resort Center."

These two aforementioned regulations/standards are taken from the Specific Plan/Implementation Plan section of the LCP. These Specific Plan/IP regulations implement the policies established in the LUP section of the Local Coastal Program. Specifically, Treasure Island LCP Part I Land Use Plan (LUP) Section 6.2.2 Resort Center Design Policies, Policy #7 which reads, *"The Resort Center may operate portable facilities near the terminus of the public access ramp at the back of the public Sand Beach (i.e., at elevation 12-16 +/- feet). These portable facilities may provide or support visitor-serving commercial recreation activities, such as a rental/sales area for beach items/supplies, a pantry/storage for towels, and serving/holding facilities for snacks and drinks."* And Policy #8 reads, *"The Resort Center shall be permitted to operate the following daytime uses open to the public on the Sand Beach adjacent to the hotel: a. seating area around the portable facilities; b. moveable chairs, tables, lounges; c. umbrella shade areas; and d. small "beachable" boats (e.g., kayaks, catamarans, etc.)."*

Therefore, both the LUP and the Specific Plan/IP provide for visitor serving commercial recreation activities, such as kayak rentals, however, only within a designated area in Planning Area 2 – Sand Beach. That designated area is "the back of the beach near the public beach ramp." Commercial uses are prohibited on Planning Area 1 – Marine Reserve.

Therefore, the proposed project is inconsistent with this LUP policy and the corresponding Specific Plan implementing regulation as the applicant proposes to stage/store kayak equipment (i.e., kayak trailer, kayaks, paddles, life vests) on the dry sandy beach in Planning Area 1 – Marine Reserve and Planning Area 2 – Sand Beach instead of on the concrete pad specifically built to support visitor-serving commercial recreation activities. As proposed, only the monetary transaction would occur on the concrete pad and the actual corresponding commercial activity (i.e., kayak staging/storage, kayaking lessons and tours) would occur in both Planning Area 1 and 2 and thus would be inconsistent with the Treasure Island LCP Part I Land Use Plan (LUP) Section 6.2.2, Treasure Island LCP Part II, Specific Plan/IP Sections 11.4.4 and 11.5.5.

Public Access to Beach Areas

Furthermore, Treasure Island LCP Section 14 Design Guidelines includes Section 14.3 - Services and Temporary Facilities on the Beach notes *"1. Food, beverage, beach equipment rental, and related or similar services available to guests and the public should be located on a portion of the beach in close proximity to the hotel, with service access from the hotel."*

The LCP permitted "daytime uses" include food, beverage and beach equipment rental (including small beachable boats such as kayaks). However, such permitted services should be "located on a portion of the beach in close proximity to the hotel, with service access from the hotel." Staging of equipment on the concrete platform in Planning Area 2 – Sand Beach or immediately adjacent on the sandy beach may be considered "located on a portion of the beach in close proximity to the hotel" as permitted by the LCP. However, staging of kayak equipment in Planning Area 1 – Marine Reserve is 300 yards from the concrete pad may not be

considered “located on a portion of the beach in close proximity to the hotel” and therefore not in compliance with the LCP Section 14.3 of the Design Guidelines.

The Montage Resort & Spa currently does provide “Services and Temporary Facilities” (i.e., food and beverage concessions) on the concrete platform at the foot of the southerly public access ramp in Planning Area 2 - Sand Beach. None of the Resort’s permitted commercial activities require equipment to be staged on the public sandy beach that may impede public access to dry sandy beach areas.

The City’s approved project allows for the staging/storing of up to eight (8) kayaks on the sandy beach at the toe of the bluff near the end of the southerly paved beach access ramp in Planning Area 2 within a 10’ x 20’ area of the sandy beach. The sandy beach taken up by the kayak storage area could otherwise be used by the general beach-going public. Equipment staging on the sandy beach during peak use periods is not typically considered to comply with public access policies of Chapter 3 of the Coastal Act. Alternatives need to be considered to avoid or minimize public access impacts caused by staging/storage of kayak equipment on the beach.

Open Space and Marine/Biological Resource Protection

The appellants cite LCP Part I LUP Section 3.0 General Resource Protection Policies and the LCP Part II Specific Plan/IP Section 9.1.1 Resource Management Program Purpose and Intent. Section 9.1.1 reads, *“The Resource Management Program (RMP) is the first major component of the Treasure Island Specific Plan. The purpose of the RMP is to comprehensively implement the Resource Protection Policies (i.e., the coastal/marine, physical, cultural, and visual/scenic resource policies) set forth in Chapter 3 by providing the necessary requirements and regulations to effectively serve as the Implementing Action Program for the Land Use Plan (LUP) portion of the LCP.”*

Furthermore, the appellants cite the following City of Laguna Beach LCP Open Space/Conservation Element Policies:

- Policy 2D *“As part of the City’s resource management program, include provisions for monitoring of tide pools to ensure a proper balance between public beach access and the preservation of marine resources.”*
- Policy 8C *“Identify and maintain wildlife habitat areas in their natural state as necessary for the preservation of the species.”*
- Policy 8O *“Preserve and protect fish and/or wildlife species for future generations.”*

The LCP provides for “active” recreation on Planning Area 2 (Sand Beach) and “passive” recreation on Planning Area 1 (Marine Reserve). As set forth in the LCP, Planning Area 1 is meant to preserve and protect the marine resources which make up the rocky shoreline and tide pools. Active recreation such as kayak launching is more appropriate from a wide sandy beach (Planning Area 2); commercial kayak staging and launching may not be appropriate in this sensitive Marine Life Refuge due to potential adverse impacts on marine life and habitat.

The applicant has not provided a biological study or any information to prove that the proposed project including the sustained launching and landing of kayaks in Planning Area 1 – Marine Reserve will not have adverse impacts upon the sensitive marine resources present at the site.

Therefore, the proposed project component to stage and launch/land kayaks in Planning Area 1 is inconsistent with the Treasure Island LCP provisions for the preservation and protection of existing marine resources in Planning Area 1.

b. Unsubstantial Issue

The following contentions are valid, but raise no substantial issue of consistency with the policies and standards set forth in the certified LCP.

Signage

The applicant proposes a 1'x2' sign reading "kayak rentals, lessons and tours" posted on a small portable concession table on the concrete pad at the bottom of the southern public beach access ramp and one temporary sign in the planter area at the top of the southern public beach access ramp adjacent to the Bluff top Park public pathway. This temporary signage would only indicate "kayaking" and an arrow pointing the direction down the beach access ramp (Exhibit #4, page 4). The sign is designed to be consistent with the theme, size, height, and material as the Montage Resort signs.

The appellants content that the proposed project is inconsistent with LCP Part II Specific Plan Section 9.2.2 asserting excessive signage. Section 9.2.2 reads,

"While the rocky coastline serves as a natural barrier to high volume public pedestrian traffic within the Marine Reserve, the RMP [Resource Management Plan] seeks to establish two additional forms of protection (a) Signage designed to inform the public of Marine Reserve resources and restrictions, and to communicate permitted activities within the area will be located at the top of both beach access ramps in the Bluff top Park, at the western beach boundary of the LCP area, and at the eastern edge of the public beach; and (b) Both the Marine Reserve and the Sand Beach will be included in the Maintenance and Monitoring Program to track the ecology of the LCP's coastline."

The applicant contends that the proposed project conforms to the LCP's signage policy citing LCP Part I LUP Section 3.0 General Resource Protection Policies which includes Section 3.4.2 Policy #10

"The Specific Plan shall regulate signage so that it is only a minor visual element – limited to what is essential for public safety, welfare, convenience, and to inform the public of the availability of public coastal access and recreational amenities. Signage shall be of a consistent coastal resort theme."

The applicant proposes one temporary sign at the Bluff top Park adjacent to the top of the southern public beach access ramp designed to be consistent with the theme, size, height, and material as the existing directional/informational Montage Resort signs and a 1'x2' sign reading "kayak rentals, lessons and tours" posted on the proposed small portable concession table on the concrete pad at the bottom of the southern public beach access ramp. The temporary sign at the Bluff top Park is meant to be a directional/informational sign to the public of the available recreational amenities on the beach and is not designed to appear as a business advertising tool. There currently are no signs at the top of either beach access ramps advertising the existing Resort's food/beverage concessions available at the beach. Exhibit #4, page 5

provides photographs of existing signs located at the top of both beach access ramps in Bluff top Park.

LCP Section 9.2.2 refers to the usage of signage in the Marine Reserve itself and at the top of both beach access ramps as an addition form of protection by providing information to the public of the Marine Reserve resources and restrictions. However, the LUP portion of the LCP (e.g., Section 3.4.2 Policy #10) provides broader policy language that permits limited signage outside the Marine Reserve to inform the public of the availability of public coastal access *and* recreational amenities. Therefore, the two proposed directional/informational temporary signs are considered an allowable use under the LCP.

Conformance with LCP Parking Policies

The appellant cites the Treasure Island LCP – Land Use Plan Modifications J, Section 5.2.3 Parking Policies. Condition 6 stipulates that off-site parking may be utilized consistent with Chapter 25.52 of the City's Zoning Code to satisfy a portion of the Resort Center's required parking provided that the location of the off-site parking is vacant and under the same ownership as the Resort Center.

The appellants contend that the operation and storage of the kayak concession in conjunction with the Montage Resort and Spa contributes to the growing displacement of employee parking on site at the Resort adding to the parking impacts in the surrounding community and decreases the availability of public parking.

Public access parking spaces are available at the Resort. Furthermore, the City addressed the Resort's parking requirements in its CDP approval which includes an off-site parking agreement. The applicant and the City of Laguna Beach have both indicated that the proposed overnight storage of the kayaks would be in a storage area of the Resort's parking garage, specifically designed for furniture storage and will not interfere with any existing parking spaces. Storage of the kayak trailer/kayaks would not interfere with any marked employee or visitor parking spaces in the Resort's parking garage. Any beach-going visitor parking in residential neighborhoods is not an activity inconsistent with Treasure Island LCP or the City of Laguna Beach LCP.

Invalid Contentions

Not all of the contentions raised by the appellants can be considered valid appeal grounds, as the grounds for an appeal are limited to an allegation that the development does not conform to the certified LCP or the public access policies of the Coastal Act. Some of the appellants' contentions cite project inconsistency with Coastal Act issues unrelated to public access even if the cited Coastal Act sections have not been incorporated into the LCP. These appeals fail to address inconsistency with the policies and standards of the certified LCP, limiting their appeal to consistency with Coastal Act policies that have not been incorporated into the certified LCP. Therefore, appeals that cite only Coastal Act sections and/or do not reference specific LCP policies are considered invalid. These are discussed below.

Conformance with City Municipal Code

The appellants assert the City Council's action is not in accord with the City's Municipal Code Section 18.04.015(a) which states, "Except as expressly provided by this code, no person shall sell, offer to sell, or display for sale, or rent, offer to rent, or display for rent, goods, wares, merchandise, foodstuffs, refreshments or other kinds of property or services on any beach or park."

Although the Commission agrees that commercial activities on the public beach is a valid concern, the Commission may only take into consideration the language of the certified LCP in its evaluation and not the City Municipal Code which is not certified by the Commission.

Consistency with the California Environmental Quality Act (CEQA)

Appellants contend that the project requires consistency with CEQA and that Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

As the lead agency for California Environmental Quality Act (CEQA) purposes, the City of Laguna Beach Community Development Department conducted the required project CEQA review. On December 10, 2008, the City deemed the proposed project Categorically Exempt pursuant to CEQA Guidelines Section 15301 (Existing Facilities) as the proposed project is located on an existing public beach and all infrastructure necessary to serve the site exists in the area. No further CEQA review is required.

V. STAFF RECOMMENDATION ON THE DE NOVO HEARING

Staff recommends that the Commission adopt the following:

I. MOTION, STAFF RECOMMENDATION AND RESOLUTION FOR A-5-LGB-09-077:

Staff recommends that the Commission make the following motion and adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit #A-5-LGB-09-077 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a permit, subject to the conditions below, for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the provisions of the certified Local Coastal Program and the public access policies of Chapter 3 of the California Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/ or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternative that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **Incorporation of Special Conditions from the City of Laguna Beach Resolution No. 09.033**

By acceptance of this permit, the applicant acknowledges and agrees to the conditions imposed by the City of Laguna Beach in Resolution No. 09.033 issuing Temporary Use Permit 08-11/CDP 08-63 as adopted by the City Council of the City of Laguna Beach on April 7, 2009, except as follows:

- a. Deletion of Condition 14;
- b. deletion of Condition 15;
- c. deletion of Condition 16;
- d. deletion of Condition 19.

2. Final Revised Plans

Prior to the issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director for review and written approval, final site and operations plan, revised as follows:

A. The site and operations plan shall be revised, such that the staging/storage area for kayaks/all other kayak equipment and concession table shall only be located on the concrete pad at the foot of the southern public access ramp in Planning Area 2 (Sand Beach). The site and operations plan shall clearly depict the exact location of the kayak equipment staging on the concrete pad. At no time shall the kayak staging on the concrete pad be an impediment to access to the beach. No staging/storing of kayaks or any other equipment related to a commercial kayak operation, nor provision of kayak rental/lesson/tour services, including launching, is permitted in Planning Area 1 (Marine Reserve).

B. Motorized transport may operate on the beach only during two periods each day, in the morning and in the evening, to deliver and retrieve the kayak equipment for overnight storage. Any interim transport of kayaks, kayak equipment shall be conducted on foot.

C. Signage consisting of (i) a single 1'x2' or 18" square sign placed on or adjacent to the portable concession table advising "kayak rentals, lessons and tours open to the public" and (ii) a single temporary sign designed to be consistent with the theme, size, height, and material as the existing directional/informational Montage Resort signs simply indicating "kayaking" and an arrow pointing the direction down the beach access ramp placed in the planter area at the top of the southern public beach access ramp that leads to Planning Area 2 (Sand Beach) adjacent to the Bluff-top Park public pathway.

D. No reservation system shall be implemented to secure use of the kayaks by hotel guests or members of the public. Kayak concession services shall be available on a first come first serve basis to anyone.

3. Assumption of Risk, Waiver of Liability and Indemnity

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

4. Term of Permit

The subject permit authorizes the proposed activities from the date the CDP is issued to the end of September 2009. Any continuation of the concession services for 2010 or beyond will require a new coastal development permit or amendment to this permit. Any

application for a future permit or amendment to this permit shall include documentation of how the concession operated in 2009 with respect to kayak launching sites and public versus hotel guest use. The documentation may consist of daily or weekly counts, and may tally results in either actual numbers or percentages.

5. Future Development

This permit is only for the development described in Coastal Development Permit A-5-LGB-09-077. Pursuant to Title 14 California Code of Regulations section 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610 (b) shall not apply to the development governed by the Coastal Development Permit A-5-LGB-09-077. Accordingly, any future improvements to the development and activities authorized by this permit, including but not limited to an increase in the intensity of use (i.e., expansion of the number of kayaks permitted for rental, expansion of the dates of operation) identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), shall require an amendment to Permit A-5-LGB-09-077 from the Commission unless the Executive Director determines that no amendment or new permit is legally required.

VI. FINDINGS AND DECLARATIONS FOR ED NOVO HEARING

The Commission hereby finds and declares as follows:

A. Project Description and Location

The project description and location is hereby incorporated by reference from Section IV of Substantial Issue portion of this staff report on pages 5 thru 6.

B. Public Access and Recreation Policies

The Coastal Act public access policies are provided as follow:

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.

Section 30211

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

The Treasure Island LCP has incorporated the Coastal Act public access and recreation policies as follows:

Part I – Land Use Plan, Section 4.3.1 – Overall [Coastal Act] Consistency Plan

In response to the aforementioned Coastal Act requirements, the LCP contains policies and plans for public access and public recreation/visitor-serving opportunities while respecting the environmentally sensitive tide pools and other marine resource areas (Coastal Act Section 30210, 30212, 30213 and 30252(6)).

As documented in the EIR and by studies undertaken by CA State Fullerton, the habitat resources are valuable and suggest a primarily passive public access, recreation, and visitor-serving plan for Treasure Island's Marine Reserve area. This plan showcases the unique coastal resources at Treasure Island, while protecting the tide pools and rocky points from inappropriate uses, deliberate misuse and inadvertent overuse (Coastal Act Section 30210 and 30214)

The core components of this plan are:

- 1. Landowner/Master Developer dedication of the entire 6.3 acre shoreline, including Sand Beach and the rocky points, tide pools, and coves which make up the Marine Reserve;*
- 2. Public pedestrian walkways taking visitors from PCH through the Bluff top Park to the Sand Beach down a new ADA-compliant public access ramp;*
- 3. Observation points and overlooks along the continuous Bluff top Park above the Sand Beach and Marine Reserve;*
- 4. Surfing, windsurfing, sea kayaking in the ocean adjacent to the Sand Beach;*
- 5. Observation-only snorkeling (no spear fishing or resource removal) within and adjacent to the Marine Reserve;*
- 6. Passive recreation and visitor-serving facilities at appropriate locations including a 0.3 acre Resort Center Garden adjacent to the north end of the Coast Highway Scenic Corridor;*
- 7. Seventy (70) public parking spaces on-site to serve the needs of people using the publicly dedicated areas of the project; and*
- 8. Resort guest and public services near the active Sand Beach;*

These policies fulfill the policies of the Coastal Act by creating significant new public access and recreation/visitor serving opportunities at little or no cost (Coastal Act Section 30222)...By virtue of these new access and recreation opportunities, the LCP will significantly increase the quality and diversity of coastal access and recreation/visitor-serving uses in this area in ways that will serve to protect coastal resources including the Treasure Island Marine Reserve (Coastal Act Section 30210, 30212, 30214 and 30252(6))

The Specific Plan/Implementation Plan portion of the LCP provides for certain permitted and prohibited uses specifically as follows:

Treasure Island LCP Part II, Specific Plan/IP Section 11.4.2 – Principal Permitted Uses Requiring a Coastal Development Permit in Planning Area 1 (Marine Reserve)

(4) "swimming, skin diving, scuba diving, and non-motorized boating with no connection to spear fishing or prohibited uses."

Treasure Island LCP Part II, Specific Plan/IP Section 11.4.4 – Prohibited Uses in Planning Area 1 (Marine Reserve)

(2) *Commercial uses and structures*

(7) *All uses prohibited by the State of California based upon the current designation of the adjoining waters as part of the South Laguna Marine Life Refuge, or as part of any future designation as an Ecological Reserve or other designation adopted to protect the marine resources of the area.*

(9) *Uses not provided for by Section 11.4.2 and 11.4.3 of this Chapter shall be prohibited; however, certain permitted uses are defined generally, and may require interpretation by the City's Director of Community Development.*

Treasure Island LCP Part II, Specific Plan/IP Section 11.5.2 – Principal Permitted Uses Requiring a Coastal Development Permit in Planning Area 2 (Sand Beach)

(1) *Active Sand Beach recreation areas.*

(3) *Portable facilities that require no construction on the beach and provide or support visitor-serving commercial recreation activities shall be allowed within a designated area toward the back of the beach near the public beach ramp to serve visitors to the beach, including, but not limited to, food and drink sales, rental facilities for beach/outdoor recreation goods, and other public visitor-serving facilities which may or may not be directly associated with the Resort Center."*

Treasure Island LCP Part II, Specific Plan/IP Section 11.5.5 – Prohibited Uses in Planning Area 2 (Sand Beach)

(2) *Commercial uses and structures with the exception of those described in LCP Section 11.5.2.4*

(9) *Uses not provided for by Section 11.5.2 and 11.5.3 of this Chapter shall be prohibited; however, certain permitted uses are defined generally, and may require interpretation by the City's Director of Community Development.*

Treasure Island LCP Part I, Land Use Plan (LUP) Section 6.2.2 Resort Center Design Policies, Policy #7

"The Resort Center may operate portable facilities near the terminus of the public access ramp at the back of the public Sand Beach (i.e., at elevation 12-16 +/- feet). These portable facilities may provide or support visitor-serving commercial recreation activities, such as a rental/sales area for beach items/supplies, a pantry/storage for towels, and serving/holding facilities for snacks and drinks."

Treasure Island LCP Part I, Land Use Plan (LUP) Section 6.2.2 Resort Center Design Policies, Policy #8

"The Resort Center shall be permitted to operate the following daytime uses open to the public on the Sand Beach adjacent to the hotel: a. seating area around the portable facilities; b. moveable chairs, tables, lounges; c. umbrella shade areas; and d. small "beachable" boats (e.g., kayaks, catamarans, etc.)."

Permitted Uses in the Treasure Island LCP Area

LCP Section 4.3.1 refers to Planning Area 1 (Marine Reserve) as having valuable habitat resources requiring a plan for primarily '**passive**' public access and recreation such as observation-only snorkeling; while Planning Area 2 is planned for '**active**' recreation such as surfing, windsurfing, sea kayaking in the ocean adjacent to the Sand Beach. In this manner, *"This plan showcases the unique coastal resources at Treasure Island, while protecting the tide pools and rocky points from inappropriate uses, deliberate misuse and inadvertent overuse."*

Kayaking is considered "non-motorized" boating and therefore is a permitted activity in Planning Area 1 (Marine Reserve) and in Planning Area 2 (Sand Beach) according to the LCP. However, a **commercial use** such as the proposed business operation of kayak equipment rental, staging/storage, kayaking lessons and tours is considered a prohibited use in Planning Area 1 (Marine Reserve) by LCP Section 11.4.4. Such commercial use is only allowed by LCP Section 11.5.2.3 in Planning Area 2 (Sand Beach) within a designated area toward the back of the beach near the public beach ramp.

Both the LUP and the Specific Plan/IP Sections of the LCP provide for visitor serving commercial recreation activities, such as kayak rentals, however, only within a designated area in Planning Area 2 (Sand Beach). That designated area is "the back of the beach near the public beach ramp." Commercial uses are prohibited in Planning Area 1 (Marine Reserve).

Policies such as the LCP Part I, LUP Section 4.3.1, Policy #5 which allows for uses such as *"Observation-only snorkeling (no spear fishing or resource removal) within and adjacent to the Marine Reserve,"* is an example of the policies contained in the LUP portion of the LCP providing for public access and public "**passive**" recreation/visitor-serving opportunities while providing protection to the environmentally sensitive tide pools and other marine resources of Planning Area 1 (Marine Reserve) as a core component of the LCP's Resource Management Program.

LCP Section 6.2.2 allows for the operation of portable facilities to provide or support visitor-serving commercial recreation activities near the terminus of the public access ramp at the back of the public Sand Beach at an elevation of 12-16 +/- feet. At the time the Montage Hotel/Spa Resort was developed, a concrete pad was specifically constructed to support such visitor-serving commercial recreation activities. As proposed, only the monetary transaction would occur on the concrete pad and the actual corresponding commercial activity (i.e., kayak staging/storage, kayaking lessons and tours) would occur in both Planning Area 1 and 2 and thus be inconsistent with the Treasure Island LCP Part I Land Use Plan (LUP) Section 6.2.2, Treasure Island LCP Part II, Specific Plan/IP Sections 11.4.4 and 11.5.5 as commercial activities are not permitted in Planning Area 1. In order to bring the proposed project into conformity with the certified LCP, the Commission imposes **Special Condition No. 2**, which, among other requirements, prohibits the applicant from staging or storing kayaks or any other equipment related to a commercial kayak operation in Planning Area 1 and prohibits provision of kayak rental/lesson/tour services, including launching and landing, in Planning Area 1 (Marine Reserve).

Public Access

The applicant proposes to operate this kayak concession during the summer of 2009, until September 30, 2009. The proposed site is an existing public beach in front of the Montage Hotel Resort/Spa. It is a widely popular beach, attracting local and regional visitors. As proposed, the kayak concession would store/stage up to eight (8) kayaks, four single and four double and associated kayak equipment (i.e., kayak trailer, paddles, life vests) either on the dry sandy beach

at the toe of the bluff in Planning Area 1 (Marine Reserve) or the dry sandy beach at the toe of the bluff in Planning Area 2 (Sand Beach) depending on daily surf break conditions. The equipment staging area would take up approximately a 10' x 20' sandy beach area at the foot of the bluff. The sandy beach taken up by the kayak storage area could otherwise be used by the general beach-going public. Equipment staging on the sandy beach during peak use periods is not typically considered to comply with public access policies of Chapter 3 of the Coastal Act.

In order for the project to be in full compliance with the policies of the LCP, including those providing protection to the valuable habitat resources in Planning Area 1, the entire kayak operation should only be permitted in the active recreation area of Planning Area 2 with both the monetary transaction and the storage/staging of all necessary equipment taking place on the concrete pad thereby avoiding possible public access impacts. Special Condition 2 requires all kayaks and kayak equipment to be staged on the concrete pad and not impede through access to the beach. Should the staging of up to eight (8) kayaks on the concrete pad impede public access by in any way, shape or form blocking the access ramp then a lesser number of kayaks would be required to be staged on the concrete pad. Any changes to the staging plan would require an Executive Director determination.

Public Availability

As this is a private business operation on a public beach, several significant public access issues are raised. Although the concession is proposed to be open to everyone, hotel guests and the general public alike, it is important that it does not present a "private" appearance, such that the general public would hesitate to use the kayak services. To this end, appropriate signage must inform the general public that the kayak concession is available for public use. To be fully available to the public, the concession must also be available on a first come first serve basis, with no reservation system in place. Furthermore, priority must not be given to Montage Resort hotel guests.

Signage

The applicant proposes one temporary sign in the planter areas at the top of the south public beach access ramp adjacent to the Bluff-top Park public pathway. This signage would only indicate "kayaking" and an arrow pointing the direction down the beach access ramp (Exhibit #4, page 4). A second 1'x2' sign reading "kayak rentals, lessons and tours" is proposed to be posted on a small portable concession table placed on the concrete pad at the bottom of the southern public beach access ramp.

LCP Part I LUP Section 3.0 General Resource Protection Policies which includes Section 3.4.2 Policy #10

"The Specific Plan shall regulate signage so that it is only a minor visual element – limited to what is essential for public safety, welfare, convenience, and to inform the public of the availability of public coastal access and recreational amenities. Signage shall be of a consistent coastal resort theme."

LCP Part II Specific Plan Section/IP 10.2.2 Public Access and Recreation Plan – Bluff-top Park

"Permanent improvements to this bluff-top area will be limited to a viewpoint gazebo, interpretive signage, and unobtrusive park furniture such as benches."

LCP Part II Specific Plan Section/IP 11.5.6 Site Development Standards, Policy #5 Directional and Interpretive Signs

“Directional and interpretive signs shall be permitted in accordance with Section 11.8 (Sign Regulations). A comprehensive signage program for all public access/visitor-serving recreation facilities shall be approved by the Planning Commission and implemented with the construction of those facilities, and shall inform the public of the availability of, and provide direction to, the on-site recreation amenities of the Treasure Island Specific Plan Area.”

The applicant proposes one temporary sign at the Bluff top Park adjacent to the top of the southern public beach access ramp designed to be consistent with the theme, size, height, and material as the existing directional/informational Montage Resort signs and a 1'x2' sign reading “kayak rentals, lessons and tours” posted on the proposed small portable concession table on the concrete pad at the bottom of the southern public beach access ramp. The temporary sign at the Bluff top Park is meant to be a directional/informational sign to the public for the available recreational amenities on the beach and is not designed to appear as a business advertising tool. As proposed, signage for the kayak concession is in compliance with the signage policies of the LCP.

C. Marine and Land Resources

The LCP incorporates the Coastal Act marine resource policies as follows:

Treasure Island LCP Part 1, LUP Section 3.1.2 – General Marine Resource Policies

(1) Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes. (Coastal Act Section 30230)

(2) The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored...”

(5) The redevelopment of the LCP [area] shall serve, where possible, to improve conditions on the site and adjacent marine resource areas. To this end the RMP shall provide for the protection of biological productivity and water quality within the LCP area.

(6) Propose to the State Fish and Game Commission that it designate a Treasure Island Marine Reserve from the shoreline seaward out to 1,200 feet offshore and propose its candidacy for Ecological Reserve status to the State Department of Fish and Game, the State Fish and Game Commission, and the State Lands Commission...

Part II, Specific Plan/IP Section 9.1.2 – Resource Management Program (RMP) Objectives

The Resource Management Program has five (5) primary objectives:

- 1. Designate a Treasure Island marine Reserve for Planning Area 1 and propose its candidacy for Ecological Status...*
- 2. Create a public Bluff-top Park that protects the bluff face and bluff-top resources while offering passive recreation and view appreciation of the coastal/marine resources from the top of the terrace.*
- 3. Provide and improve public access to a public sand beach area with a full range of resort and general public opportunities for active and passive recreation within the Coastal Zone.*
- 4. Provide and improve the adjacent portion of the Coast Hwy Scenic Corridor to protect and enhance the existing public streetscape and views of the site and coastline.*
- 5. Provide three reasonable public view corridors through the resort community...*

Part II, Specific Plan/IP Section 9.2.2 – Marine Resources Protection Requirements

“The public dedication of the Sand Beach and the significantly improved public access afforded by the new walkways, public parking, and the operation of the destination resort necessitates equally-improved diligence to preserve the coves and tide pool areas. While the rocky coastline serves as a natural barrier to high volume public pedestrian traffic within the Marine Reserve, the RMP [Resource Management Plan] seeks to establish two additional forms of protection (a) Signage designed to inform the public of Marine Reserve resources and restrictions, and to communicate permitted activities within the area will be located at the top of both beach access ramps in the Bluff top Park, at the western beach boundary of the LCP area, and at the eastern edge of the public beach; and (b) Both the Marine Reserve and the Sand Beach will be included in the Maintenance and Monitoring Program to track the ecology of the LCP’s coastline.”

Part II, Specific Plan/IP Section 9.6.1 – Public Access

The Resource Management Plan (RMP) recognizes the need to optimize opportunities for public access to the Sand Beach while, at the same time, providing sustainable protection to the ecosystem of the Specific Plan Area, with particular focus on the Marine Reserve.

Observation points, interpretive trails, scientific research, and educational programs/study opportunities are permitted within the Marine Reserve to the extent they are consistent with the long-term maintenance of habitat and protection of marine wildlife values.

Part II – Specific Plan/Implementation Plan, Section 9.6.2 – Public Interpretation/Education

To reduce disturbance to the Marine Reserve, the following guidelines shall be applied to public improvements and usage:

- 1. Rock climbing (e.g., Goff Island and the bluffs within the Bluff top Park) will be discouraged;*
- 2. Dogs and other domestic animals will not be allowed;*
- 3. Commercial and recreational fishing, spear-fishing, collecting, gathering, and trapping will not be allowed; and*

4. *Motorized boats and water craft will not be allowed.*

Enforcement of these guidelines will allow for a sustainable balance between resource protection and public access and enjoyment.

Currently, Planning Area 1 (referred to as Marine Reserve) does not have CA Department of Fish and Game Ecological Reserve/Marine Reserve status. The City applied to the State Department of Fish and Game for nomination of Treasure Island for 'Marine Park' classification as required by the LCP. However, at this time, it remains unclear if that process was finalized or whether it remains on-going. Currently, under the Marine Life Protection Act (MLPA) the entire Laguna Beach coastline is classified as a State Marine Conservation Area. In addition to the added measures of protection granted to the entire Laguna Beach coastline under this State classification, the certified Treasure Island LCP provides the afore listed specific policies for the protection of biological/marine resources present in Planning Area 1. ¹ The LCP does not rely on State Marine Conservation Area protections but provides separate marine resource protections to implement the policies of the Coastal Act.

Both the LUP and Specific Plan/IP parts of the Treasure Island LCP contain policies aimed to provide a sustainable balance between biological resource protection and public access to Planning Area 1. The LCP recognizes the need for greater public access restrictions in Planning Area 1 in order to protect the sites' sensitive biological/marine resources as evidenced in policies of Section 9.6.1 and Section 9.6.2.

As previously noted in the "Permitted Uses" Section of this staff report above, LCP Section 4.3.1 refers to Planning Area 1 (Marine Reserve) as having valuable habitat resources requiring a plan for primarily '**passive**' public access and recreation such as observation-only snorkeling; while Planning Area 2 is planned for '**active**' recreation such as surfing, windsurfing, sea kayaking in the ocean adjacent to the Sand Beach. In this manner, *"This plan showcases the unique coastal resources at Treasure Island, while protecting the tide pools and rocky points from inappropriate uses, deliberate misuse and inadvertent overuse."*

¹ State Marine Conservation Area [36700(c) PRC]

A "state marine conservation area," is a non-terrestrial marine or estuarine area that is designated so the managing agency may achieve one or more of the following:

1. protect or restore rare, threatened or endangered native plants, animals or habitats in marine areas;
2. protect or restore outstanding, representative or imperiled marine species, communities, habitats and ecosystems;
3. protect or restore diverse marine gene pools;
4. contribute to the understanding and management of marine resources and ecosystems by providing the opportunity for scientific research in outstanding, representative or imperiled marine habitats or ecosystems;
5. preserve outstanding or unique geological features; or
6. provide for sustainable living marine resource harvest.

Restrictions [36710(c) PRC]: it is unlawful to injure, damage, take or possess any specified living, geological or cultural marine resources for certain commercial, recreational, or a combination of commercial and recreational purposes. In general, any commercial and/or recreational uses that would compromise protection of the species of interest, natural community, habitat or geological features may be restricted by the designating entity or managing agency.

Allowable uses [36710(c) PRC]: research, education and recreational activities, and certain commercial and recreational harvest of marine resources may be permitted.

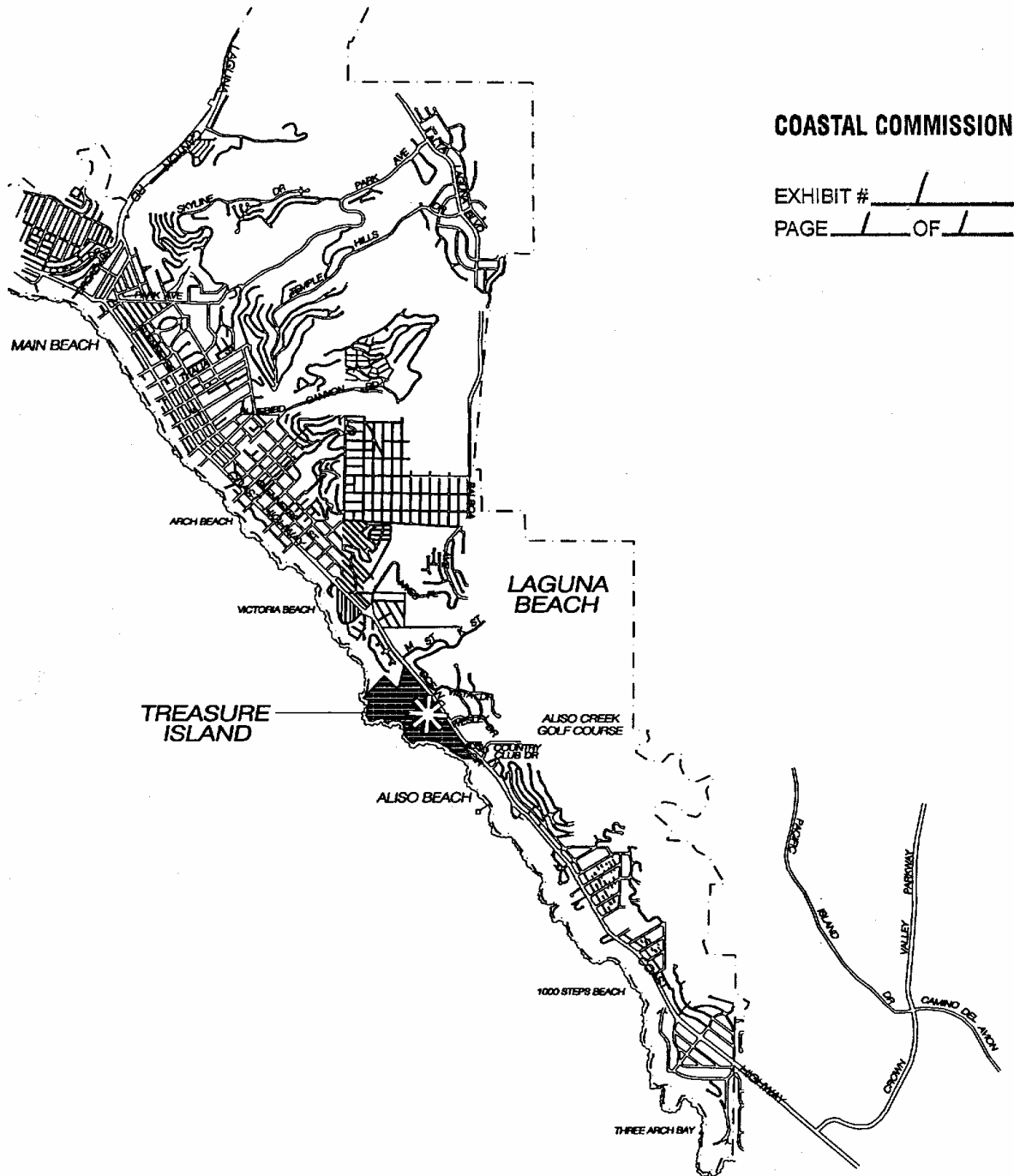
The project proposes 'active' recreation activities such as kayak staging/launching/landing as well as the conduct of classes which the LCP recognizes is more appropriate to the intent of opening Planning Area 2 (Sand Beach) to public access. LCP Section 9.6.1 further recognizes that Planning Area 1 is more suitable for passive/observation/educational/research activities; as opposed to active recreation activities for the long-term maintenance of habitat and protection of marine wildlife values. Kayak staging and launching is therefore not appropriate in Planning Area 1 (Marine Reserve) due to potential adverse impacts on marine life and habitat.

However, the applicant has not provided a recent biological study/information to prove that the proposed kayak concession including the sustained launching and landing of kayaks in Planning Area 1 (Marine Reserve) will not have adverse impacts upon the sensitive marine resources present at the site. Furthermore, the LCP forbids commercial operations in Planning Area 1. Thus, even if a determination could be made that the kayak concession will not have adverse impacts on biological resources, the LCP does not provide for any discretion to approve a commercial operation in Planning Area 1. Therefore, the proposed project component to stage and launch/land kayaks and conduct classes in Planning Area 1 is inconsistent with the Treasure Island LCP provisions for the preservation and protection of existing marine resources in Planning Area 1. Only as conditioned, for staging/launching/landing of kayaks in Planning Area 2 (Sandy Beach) and not in Planning Area 1 (Marine Reserve) will the project comply with the LCP policies and avoid potential adverse impacts on marine life and habitat.

D. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications 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 would substantially lessen any significant adverse effect which the activity may have on the environment.

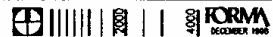
As conditioned, there are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the proposed project is found consistent with CEQA and the policies of the Coastal Act.



Treasure Island
LAGUNA BEACH, CALIFORNIA

Local Coastal Program

Figure 1.1-3
VICINITY MAP



COASTAL COMMISSION

RESOLUTION NO. 09.033

EXHIBIT # 2
PAGE 1 OF 8

A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF LAGUNA BEACH
SUSTAINING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION
APPROVAL, WITH AMENDED CONDITIONS, OF
TEMPORARY USE PERMIT 08-11 and
COASTAL DEVELOPMENT PERMIT 08-63

WHEREAS, an application has been filed by the operator of business located on the public beach associated with 30801 Coast Highway requesting a Temporary Use Permit in accordance with the provisions of Municipal Code Section 25.05.035 to allow temporary kayak rentals, kayak lessons and kayak "eco" tours on the beach in front of the Montage Resort and Spa; and

WHEREAS, the Planning Commission of the City of Laguna Beach, acting in accordance with the provisions of Municipal Code Section 25.05.035, conducted legally noticed public hearings regarding the application on December 10, 2008, January 14, 2009 and February 11, 2009; and

WHEREAS, the Planning Commission carefully considered the oral and documentary evidence and arguments presented at the hearing; and

WHEREAS, on March 24, 2009 and April 7, 2009, the City Council conducted a legally noticed public hearing of the appeal of the Planning Commission approval of Temporary Use Permit 08-11; and

WHEREAS, the City Council of the City of Laguna Beach considered all of the evidence and arguments presented in support of and in opposition to the application and appeal; and

WHEREAS, the proposed project is exempt from the provisions of the California Environmental Quality Act in accordance with Section 15301, Class 1 of the State CEQA Guidelines; and

WHEREAS, the City Council has made the following findings in regard to Temporary

COASTAL COMMISSION

EXHIBIT # 2
PAGE 2 OF 8

Temporary Use Permit 08-11 and
Coastal Development Permit 08-63
April 7, 2009
Page 2

Use Permit 08-11:

1. The temporary use is consistent with the General Plan in that non-motorized boating with no connection to spear fishing or prohibited uses and portable facilities that require no construction on the beach and provide or support visitor-serving commercial recreation activities are allowed uses pursuant to Treasure Island Specific Plan/Local Coastal Program.
2. The proposed temporary use is a reasonable request for an interim or temporary use desirable for the community and is consistent with the health, safety and general welfare of persons residing and working in the community.
3. The proposed temporary use, as conditioned, will have no detrimental effects upon surrounding properties and the community, and will not violate any other ordinance or regulation of the City.

WHEREAS, the City Council has made the following findings with regard to Coastal Development Permit 08-63:

1. The project is in conformity with all the applicable provisions of the General Plan, including the certified Local Coastal Program in that non-motorized boating with no connection to spear fishing or prohibited uses and portable facilities that require no construction on the beach and provide or support visitor-serving commercial recreation activities are permitted uses, subject to the Planning Commission approval of a Coastal Development Permit, as indicated by the Treasure Island Specific Plan/Local Coastal Program.
2. The project is in conformity with the certified local coastal program and with the public access and public recreation policies of Chapter 3 of the Coastal Act in that the proposed

COASTAL COMMISSION

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PAGE 3 OF 8

Temporary Use Permit 08-11 and
Coastal Development Permit 08-63
April 7, 2009
Page 3

temporary project will not impede public access to the beach and will augment recreational and visitor-serving facilities of coastal scenic resources.

3. The proposed project will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act in that conditions have been included to avoid and/or mitigate potential environmental impacts.

NOW, THEREFORE, BE IT RESOLVED that Temporary Use Permit 08-11 and Coastal Development Permit 08-63 are hereby granted to the following extent:

Approval to allow temporary kayak staging and launching, kayak lessons and kayak "eco" tours on the beach in front of the Montage Resort and Spa.

BE IT FURTHER RESOLVED, that the following conditions are imposed to protect the health, safety and general welfare of the community and to assure the intent and purpose of the City's regulations:

1. The Temporary Use Permit and Coastal Development Permit shall be subject to review and modification to the conditions of approval by the Director of Community Development if written complaints are received or operating conditions warrant revisions to mitigate a potential adverse impact.

2. It is understood that the conditions of approval apply herein to any future operators operating under this Temporary Use Permit. This means in legal terms that the conditions of approval for the Temporary Use Permit shall be and hereby are obligations of and binding upon the applicant and his/her heirs, successors, assigns, agents and representatives. Failure to comply with such conditions, and each of them, and any other related federal, state and local regulations may be

COASTAL COMMISSION

EXHIBIT # 2
PAGE 4 OF 8

Temporary Use Permit 08-11 and
Coastal Development Permit 08-63
April 7, 2009
Page 4

grounds for modification or revocation of the Temporary Use Permit.

3. If required, a Certificate of Use and Occupancy shall not be issued until City staff has verified compliance with all conditions of approval.

4. In the absence of specific provisions or conditions herein to the contrary, the application and all plans or exhibits attached to the application are relied upon, incorporated and made a part of this resolution. It is required that such plans or exhibits be complied with and implemented in a consistent manner with the approved use and other conditions of approval. Such plans and exhibits for which this Temporary Use Permit has been granted shall not be changed or amended except pursuant to a subsequent Temporary Use Permit as might otherwise be required or granted pursuant to the terms of Title 25 of the City of Laguna Beach Municipal Code.

5. No additions, enlargements or modifications of uses or structures upon property for which this Temporary Use Permit has been granted shall be allowed except pursuant to a subsequent Temporary Use Permit or Variance as might otherwise be required or granted pursuant to the terms of Title 25 of the City of Laguna Beach Municipal Code.

6. The applicant shall defend, indemnify and hold harmless the City and its officers, employees and agents from any claim, action, proceeding, cause of action, demand, damage, loss or liability in any way arising out of or resulting from the use and occupancy of the subject property and the activities authorized pursuant to the project approval.

7. The applicant shall require all kayak users (employees and renters) to sign the Participant Release of Liability and Assumption of Risk Agreement, as amended by the City Attorney and/or City's Risk Management Department. The City and City employees shall be named and

COASTAL COMMISSION

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PAGE 5 OF 8

Temporary Use Permit 08-11 and
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April 7, 2009
Page 5

1 included in the Participant Release of Liability and Assumption of Risk Agreement as "defended,
2 indemnified and held harmless from any claim, action, proceeding, cause of action, demand,
3 damage, loss or liability in any way arising out of or resulting from the use and occupancy of the
4 subject property and the activities authorized pursuant to the project approval." The Participant
5 Release of Liability and Assumption of Risk Agreement shall be reviewed and approved by the
6 City Attorney and the City's Risk Management Department prior to use and occupancy of the
7 subject property and the activities authorized pursuant to the project approval.
8

9 8. The applicant shall furnish and maintain liability insurance in an amount and term that is
10 acceptable to the City's Risk Management Department. The insurance documents shall include
11 the City and City Employees as insured. The City's Risk Management Department shall review
12 and approve the insurance documents prior to use and occupancy of the subject property and the
13 activities authorized pursuant to the project approval.
14

15 9. Temporary Use Permit 08-11 and Coastal Development Permit 08-63 are valid only until
16 September 30, 2009.
17

18 10. The kayak operations are limited daily from 9:00 a.m. to 5:00 p.m., beginning May 1, 2009
19 and ending September 30, 2009, and operated on weekends only during the months of May and
20 September.
21

22 11. The kayaks may not be placed on the beach earlier than 8:00 a.m. and must be removed no
23 later than 6:00 p.m.
24

25 12. The kayaks will be stored in the Resort's equipment and furniture storage area, within the
26 parking garage, and will be brought down daily via a kayak trailer and towed behind one of the
27
28

COASTAL COMMISSION

EXHIBIT # 2
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Temporary Use Permit 08-11 and
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Page 6

1
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3
4 Resort's motorized vehicles. The Resort vehicle and kayak trailer will travel down Shreve
5 Drive, from the parking garage, to the public beach park and be immediately returned to the
6 parking garage after kayak drop-off.

7 13. The storage of the kayak trailers and/or kayaks shall not interfere with any marked/required
8 parking in the Resort's parking garage.

9 14. The kayaks may be launched in Planning Area 2 (Launching Area 1) and in Planning Area 1
10 (Launching Area 2), depending on the daily surf conditions. The allowed staging areas may be
11 located near the end of the northern and southern beach access ramps. Launching Area 1 will be
12 located adjacent to the staging area and Launching Area 2 will be located near the south-facing
13 protected cove (Goff Beach). Launching Area 2 will be used only on days when the surf and
14 shore-break conditions do not permit safe launching at Launching Area 1.

15 15. Kayaks may be staged in Planning Area 1 - Marine Reserve.

16 16. When not in use during the permitted hours of operation, a maximum of eight kayaks may be
17 stored near the back of the beach, at the toe of the bluff, near the end of the southerly paved
18 beach access ramp in Planning Area 2 and within a beach area no larger than 10' x 20.'

19 17. A table to sign required waiver/liability forms may be located on the existing paved
20 concession area at the end of the access ramp in Planning Area 2. The kayak rental operation
21 shall only include a small portable table, one chair and any miscellaneous and administrative
22 items needed to operate the temporary use (pens, pencils, paper, etc.).

23 18. Monetary transactions must occur only on the cement platform at the bottom of the access
24 ramp to Planning Area 2 (Treasure Island Beach).

25
26
27
28

COASTAL COMMISSION

EXHIBIT # 2
PAGE 7 OF 8

Temporary Use Permit 08-11 and
Coastal Development Permit 08-63
April 7, 2009
Page 7

19. One sign may be allowed in conjunction with the Temporary Use Permit at the top of the access ramp to Planning Area 2 (Treasure Island Beach).

20. During inclement weather, the kayak operations shall discontinue and not proceed until weather conditions improve.

21. No aspect of the operation of this Temporary Use Permit shall interfere with Marine Safety personnel operations.

22. All users of the kayaks shall be instructed to remain at least 25 feet from swimmers and marine mammals.

23. All users of the kayaks shall be thoroughly instructed on safe kayaking procedures and any associated dangers/risks.

24. All users of the kayaks shall wear life jackets and life jackets shall be of new/good condition. Torn or weathered life jackets shall not be permitted to be used. Life jackets shall be stored adjacent to the kayaks, within the kayak staging area, in an orderly fashion within a small container.

25. All users of the kayaks shall be instructed on the protection of the City's tide-pools and provided a copy of the Tide Pool Education Handout and Rules.

26. Kayaks shall not be launched/landed on any rocks or near the City's tide-pools and all users of the kayaks shall keep the kayak at least five feet from tide pools and/or rock areas.


BE IT FURTHER RESOLVED that the above decision was rendered on April 7, 2009.

COASTAL COMMISSION

EXHIBIT # 2
PAGE 8 OF 8

Temporary Use Permit 08-11 and
Coastal Development Permit 08-63
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Page 8

ADOPTED this 7th day of April, 2009.



Kelly Boyd, Mayor

ATTEST:



City Clerk


I, Martha Anderson, City Clerk of the City of Laguna Beach, California, do hereby
certify that the foregoing Resolution No. 09.033 was duly adopted at a Regular Meeting of the
City Council of said City held on April 7, 2009, by the following vote:

AYES: COUNCILMEMBER(S): Pearson, Iseman, Egly, Boyd

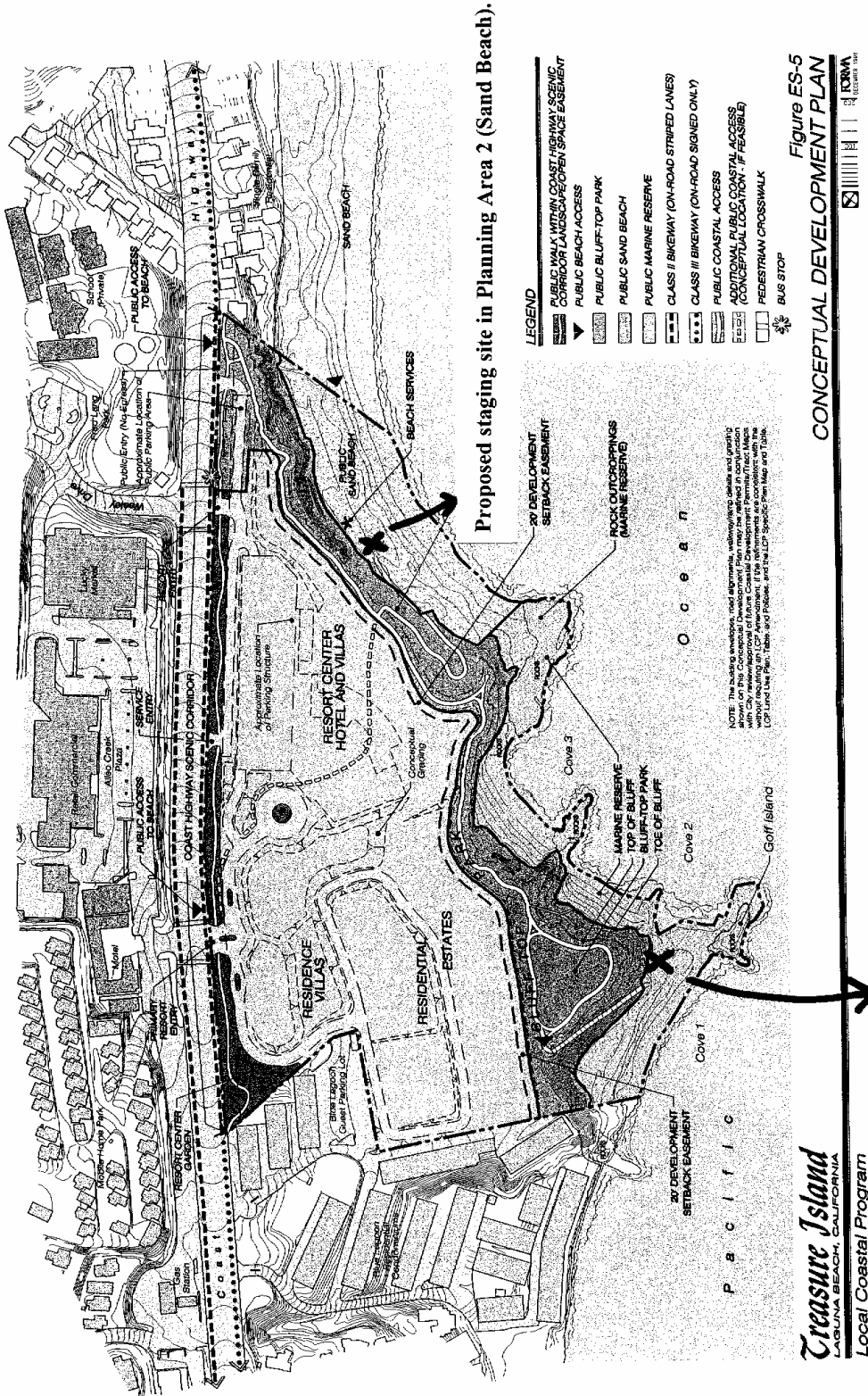
NOES: COUNCILMEMBER(S): None

ABSTAIN: COUNCILMEMBER(S): None

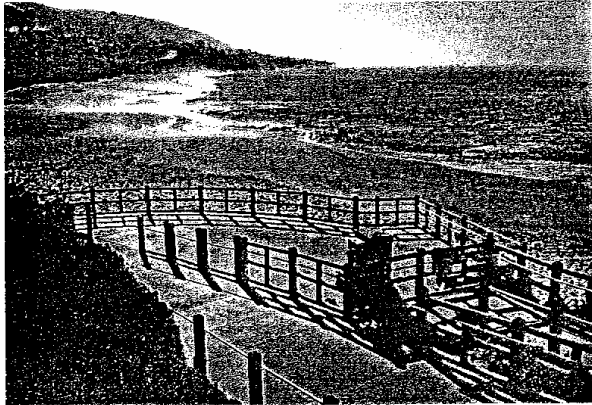
ABSENT: COUNCILMEMBER(S): Rollinger



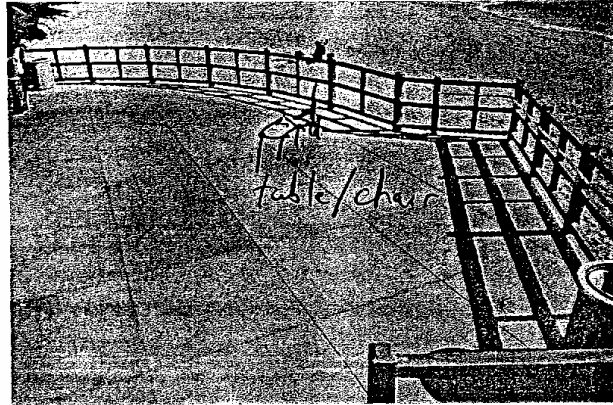
City Clerk of the City of Laguna Beach, CA



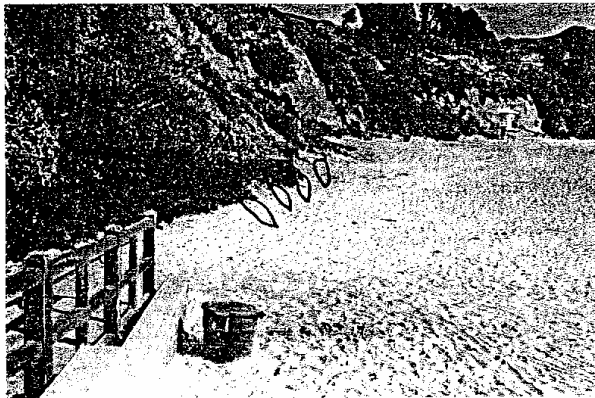
Proposed staging site in Planning Area 1 (Marine Reserve).
 Kayak launching landing proposed within the sandy beach cove,
 away from rocky points and tide pools.



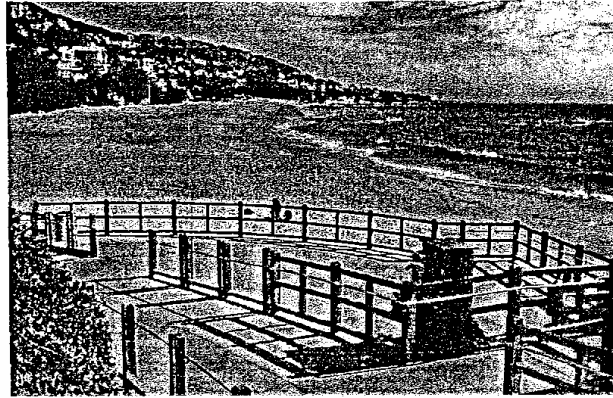
Public Beach Ramp
Planning Area 2



pad at bottom of
public beach ramp for
Kayak "concession"

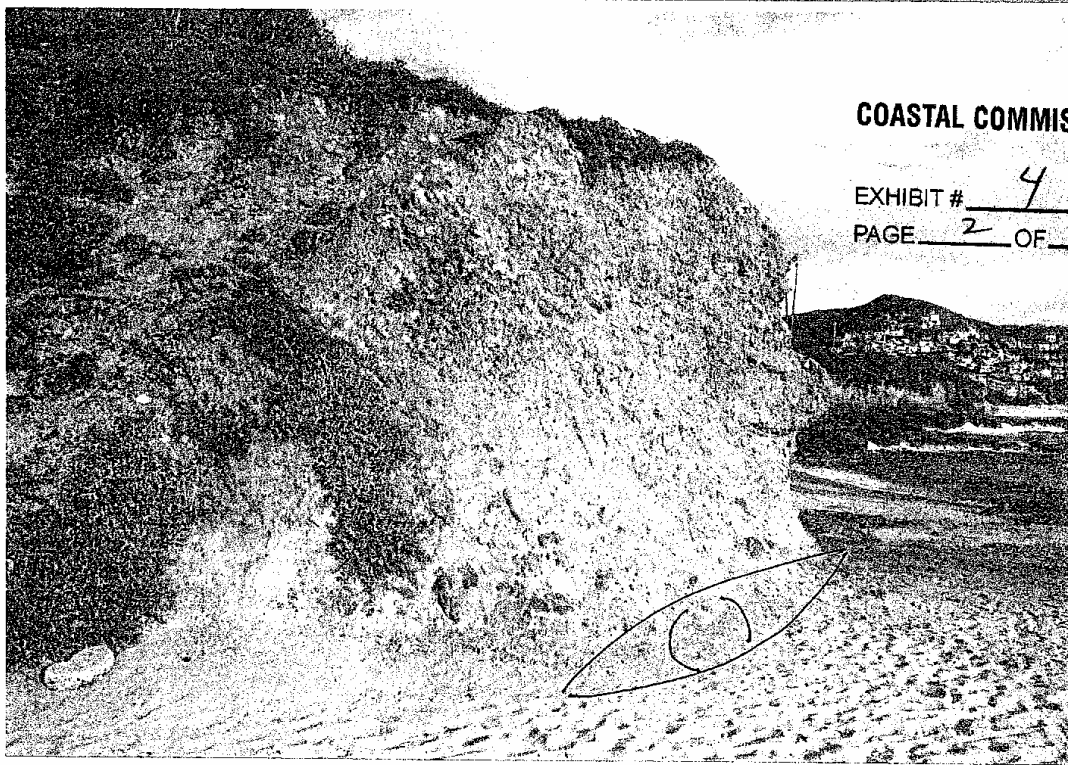
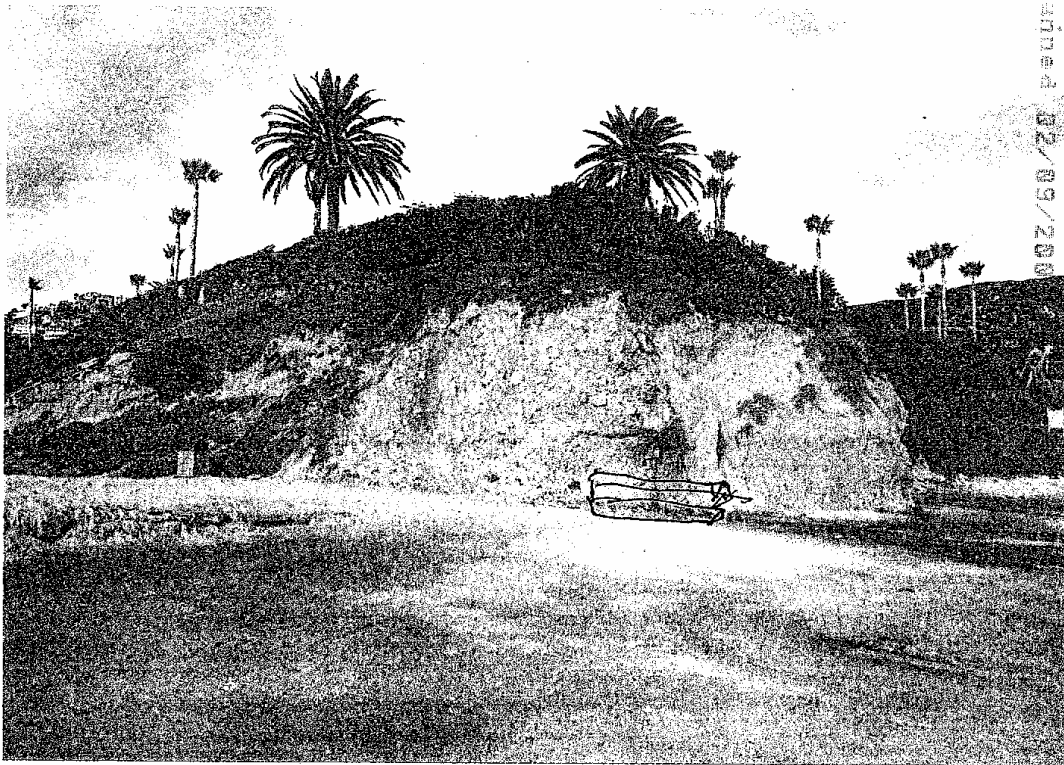


Kayaks at back of beach



COASTAL COMMISSION

EXHIBIT # 4
PAGE 1 OF 5



COASTAL COMMISSION

EXHIBIT # 4
PAGE 2 OF 5

Proposed Kayak staging location at Planning Area 1 - just beneath bluff



DSC_0040.JPG

Overnight storage of kayaks in designated
'furniture storage' section of the Montage Resort
parking garage.

COASTAL COMMISSION

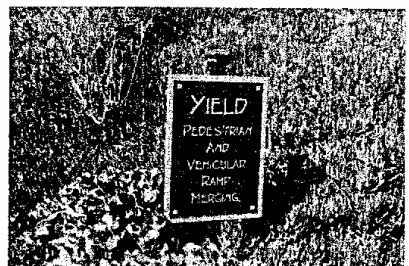
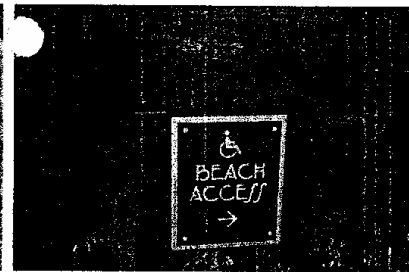
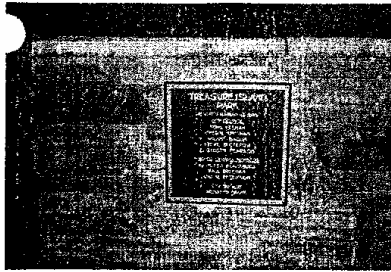
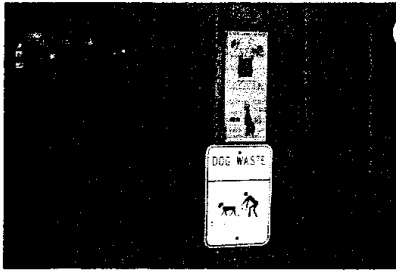
EXHIBIT # 4
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Planning Area 2 - Top of Ramp
Proposed Signage

COASTAL COMMISSION

EXHIBIT # 4
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Signs throughout Treasure Island Park
 LaVida Laguna proposes the following
 in same style:



COASTAL COMMISSION

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 PAGE 5 OF 5

STATE OF CALIFORNIA - THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
200 OCEANGATE, 10TH FLOOR
LONG BEACH, CA 90802-4416
VOICE (562) 590-5071 FAX (562) 590-5084

RECEIVED
South Coast Region

APR 24 2009

ARNOLD SCHWARZENEGGER, Governor



**CALIFORNIA
COASTAL COMMISSION**

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

COASTAL COMMISSION

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

SECTION I. Appellant(s)

EXHIBIT # 5
PAGE 1 OF 16

Name: South Laguna Civic Association, Bill Rihn, president

Mailing Address: 31681 Third Ave.

City: Laguna Beach

Zip Code: 92651

Phone: (949) 415-1312

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Laguna Beach

2. Brief description of development being appealed:

Temporary Use Permit (TUP) to allow kayak rentals at Treasure Island Beach (a public beach)

3. Development's location (street address, assessor's parcel no., cross street, etc.):

30801 Coast Highway, Laguna Beach (adjacent to the Montage Resort)

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions
☒ Approval with special conditions:
☐ 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-LGB-09-077

DATE FILED: 4/24/09

DISTRICT: South Coast / Long Beach

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

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

COASTAL COMMISSION

- ☐ Planning Director/Zoning Administrator
☒ City Council/Board of Supervisors
☐ Planning Commission
☐ Other

EXHIBIT # 5
PAGE 2 OF 16

6. Date of local government's decision: April 7, 2009

7. Local government's file number (if any): CDP 08-63, TUP 08-11

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:

La Vida Laguna/ Billy Fried
987 Glenneyre St.
Laguna Beach, CA 92651

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) Arnold Hano
1476 Santa Cruz
Laguna Beach, CA 92651

(2) Armando Baez
30729 Driftwood Dr.
Laguna Beach, CA 92651

(3) Johanna Felder
2680 Park Ave.
Laguna Beach, CA 92651

(4) Charlotte Masarik
761 Oak St.
Laguna Beach, CA 92651

COASTAL COMMISSION

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

EXHIBIT # 5
PAGE 3 OF 16

SECTION IV. Reasons Supporting This Appeal

PLEASE 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.
- 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.)
- This 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.

There are several reasons for this appeal:

First, what the planning commission did.

The Laguna Beach Planning Commission met first on December 10, 2008. See the enclosed minutes of the Planning Commission meeting on that date. When the Planning Commission came to their final decision on February 11, 2009, the approval included some very important conditions: no kayak storage, and only very limited launching, in the Marine Reserve area (Goff Island), prohibiting any signage and commercial transactions (i.e. monetary transactions) on Treasure Island Beach.

Second, what the City Council did.

When the Planning Commission approval was appealed to the City Council, the city staff recommended that the Council uphold the Commission's decision; see enclosed Agenda Bill (which includes the minutes of the Planning Commission meeting of Feb. 11, 2009.) However, the Laguna Beach city council overturned the decisions and approval of their Planning Commissioners and eliminated the most important of the Commission's conditions, as described in the City's FONMA.

Commercial operations on a public beach.

We assert that the Council's action is not in accord with the City's Municipal Code nor the Coastal Act. Municipal Code, section 18.04.015, titled, Display or sale of merchandise prohibited, states:

(a) Except as expressly provided by this code, no person shall sell, offer to sell, or display for sale, or rent, offer to rent, or display for rent, goods, wares, merchandise, foodstuffs, refreshments or other kinds of property or services in any beach or park.

It has been contended that this section of the Municipal Code is superseded by the Treasure Island LCP. However, that seems quite unreasonable to this organization. We believe that a Specific Plan (e.g. the Treasure Island LCP) might very well impose more stringent environmental requirements than the overarching Municipal Code – but not the other way around.

Furthermore, looking at the Treasure Island LCP and focusing on the Prohibited Uses, at section 11.4.4 for the Marine Reserve (Conservation Area) and at section 11.5.5 Open Space (Sand Beach), one finds these prohibited uses: "Commercial uses and structures." These prohibitions are the principal reason for my appeal. Everyone believes that kayaking is a good and beneficial activity. But we and many other Laguna Beach residents are opposed to commercial activities on our public beaches.

Let there be no mistake, kayaking is a great sport, good exercise and a good experience. But what we think is not good is any commercial activities on public beaches. Just as with boogie boards and surfboards, we have absolutely no problem with folks bringing kayaks to any beach. But the notion of commercial activities on a public beach is just plain a bad idea.

Here are four additional points in support of this appeal:

COASTAL COMMISSION

1. Competition for and loss of recreational water space.

At this location there is really nice snorkeling very close to the beach and near the rocks. It's not at all uncommon for snorkelers to unintentionally bump into, or nearly bump into, swimmers. It's not because of carelessness. And it's not a problem. It's just that the snorkelers are looking down and their masks restrict their peripheral vision. People - children, grownups, elders, locals and visitors (many non-English speaking) alike - just say 'excuse me' or 'sorry', or smile and move along. It's not a big deal. However, if kayaks occupy the same water, they will preclude snorkeling and swimming because kayaks are bigger, harder and unwieldy, and the snorkelers and swimmers will leave the area to avoid collisions. Why would would a swimmer or snorkeler want to tangle with a kayak? Swimmers and snorkelers won't want themselves or their children to be in harm's way if they foresee the danger, or will simply have to suffer an 'encounter' and experience the consequences if they don't anticipate the risk.

EXHIBIT # 5
PAGE 4 OF 16

2. More on competition for water space: Water entry and exit.

There is almost always some shore break in this location, and the sand drop-offs immediately beyond where the water hits the beach. One has to time the surge to get out without falling down or stumbling. If a kayak is entering or exiting the water at the same time as a swimmer or snorkeler, it will dominate by 'right of weight' and size. Further, when the kayak paddler gets off their craft at the shore, there will now be 3 potential hazards for swimmers to contend with: the big hard rocking or tumbling kayak, the stumbling paddler and the paddler's paddle. Look out!

3. Competition for and loss of beach space.

This area is a beautiful spot on the sand for simply enjoying the beach, and is in high demand on summer days. Many prime dry sand

beach spots will have to be given up to allow an open pathway for the kayaks to be carried across the sand going to and from the water, plus additional pathway width needed for the kayaking concession employees and customers toting the boats and gear, and for friends and families tagging along. It's likely that the kayak rental concessionaires will be inclined to use orange cones, ropes, flags, etc. to keep the areas they need on the beach clear (thus restricting or prohibiting free access), will have to ask people to get out of the way on the pathways, access road and beach, and will bump into beachgoers trying to enjoy the sand near the water's edge. Further, it can't be overlooked that the kayak concession employees will need to sit somewhere, need to write on something and need to store their materials, equipment and accessories someplace. The net result is that beachgoers - the public, the owners of this very valuable beach - will lose a sizable chunk of this precious public beach real estate for the operation of a private concession enterprise.

4. The expansion of previous approval of commercial activity on public beach and the 'green' activity argument.

In addition to the above intrusions, the beachgoing and outdoor experience at this location will be even further diminished by the expansion of commercial activity (which commenced with the Montage resort's uses) at the water's edge - transportation of equipment, transactions, signage, additional facilities and amenities needed by the concession - and a precedent will be created for the introduction of more. Why should opportunities for enterprise and special privileges be limited to or for this one concession? What shouldn't there be other things for sale or rent to whoever comes to the beach? What about beach chairs and umbrellas? Ice cream, snacks and beverage sales? What about jewelry, trinkets and souvenirs? To expand on the theme, what's the difference whether it's kayaks or beach toys being rented? What about masks, fins and snorkels and other fun items like inflatables and floats? Are any on this list less 'green' than kayaking? Couldn't all be considered offshoots of 'eco-tourism'?

Keeping this public beach commercial-free preserves the beauty, enjoyment and experience of that beauty free for the public, and the spaces open and less cluttered, the days more carefree. It keeps this beach a special place rather than turning it into just another tourist spot to drop and shop.

Referencing the FONA and particularly Resolution No. 09.033 attached thereto, condition #12 requires that the Montage Resort is to have an active role in the storage and transport of the kayaks. There is no other information about the relationship between the applicant, La Vida Laguna, and the Montage Resort. Left unsaid is what benefits the Montage derives from this arrangement. This begs the question whether Montage guests are to get extraordinary preferences for kayak rentals and eco-tours (whatever those are) as compared with the general public - an outcome which seems to be at odds with the intent of the Coastal Act.

COASTAL COMMISSION

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COASTAL COMMISSION

This appeal stems from an April 7, 2009 action by the City of Laguna Beach approving commercial activity (kayak concession) in a Marine Reserve/Conservation Area at Treasure Island/Golf Cove where such activity is clearly prohibited to insure protection of the natural resources in this very high value area that is currently under review by the Marine Life Protection Act (MLPA) for even greater protection (please note comments in attached LCP Excerpts). This timely appeal is brought pursuant to Public Resources Code §30603(a)(1). The standard of review for this appeal as set forth in provisions of the Coastal Act, City of Laguna Beach certified Local Coastal Program "LCP" (certified January 13, 1993 and amended July 20, 2004) and the Treasure Island Destination Resort Community LCP approved by Laguna Beach City Council on June 2, 1998 by Resolutions No. 98.032 and 98.033 on November 17, 1998 and Resolutions 98.074 and 98.075 on December 1, 1998, and Ordinance 1349. Approved with suggested modifications by the California Coastal Commission on August 13, 1998 and November 6, 1998. Excerpts attached as reference.

The project under appeal violates several provisions of the certified LCP including: 1) use of a Conservation Area/Marine Reserve for commercial activity/kayak concession; 2) inconsistent and excessive signage; 3) maintaining and protecting wildlife habitat; 4) storage of kayaks and beach concession items in parking area designated for employees of the Montage Resort; 5) privatization of a public beach for the exclusive use of Montage Resort paying guests; (6) use of public beach and multiple accesses for operation of commercial enterprise; 7) proposed project would set unwanted precedent. The Laguna Beach LCP also includes Chapter 25 (Zoning Ordinance) of the Laguna Beach Municipal Code wherein the project applicants failed to comply with ordinances contained therein. Furthermore, the Commission has a right to original jurisdiction under Public Resources Code §30519(b) due to the project's location on public trust tidal lands. An analysis Pursuant to Chapter 3 of the Coastal Act fails due to failure to protect biological resources. Furthermore, after repeated attempts during public testimony at the City's Planning Commission and City Council hearings, the City has refused to adhere to its own LCP and the Specific Plan for the Treasure Island Destination Resort Community. The City has refused to abide by its own Municipal Code that does not allow for commercial activity on its public beaches and also refuses to comply with the conditions of the LCP that very clearly state commercial activity in a Marine Reserve/Conservation Area is prohibited.

1. Use of a Conservation Area/Marine Reserve for commercial activity/kayak concession

In Section 3.0 General Resource Protection Policies, item 9 clearly states that:

Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. This is the first of many, many references to protection of resources in this area. Please see attached excerpts for exhaustive references.

9.1.1 Purpose and Intent

....a major goal of the RMP is to avoid, minimize and mitigate impacts to the coastal marine ecosystem that will be associated with land dedication and increased public use of the area. This will be accomplished by a balanced and practicable approach to resource conservation and management.

Note: The City Council conditioned the applicant to store the kayaks near the bluffs which is also discouraged in the LCP due to the fact that the bluff contains an additional set of natural resources that require protection. As the LCP states in section 3a. Coastal Bluff Scrub, "This natural community supports relatively high plant diversity in areas of low disturbance."

COASTAL COMMISSION

2. The proposed project fails to comply with signage conditions set forth in the LCP

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Pursuant to the LCP, signage should be "designed to inform the public of the Marine Reserve resources and restrictions." Additional signage that will obstruct public access and contribute to overcrowding and overuse by the public in a single area is prohibited.

3. The proposed project fails to protect critical habitat and wildlife.

Open Space / Conservation Element Policy 2D As part of the City's resource management program, include provisions for monitoring of tidepools to ensure a proper balance between public beach access and the preservation of marine resources.

Open Space / Conservation Element Policy 8C Identify and maintain wildlife habitat areas in their natural state as necessary for the preservation of the species.

Open Space / Conservation Element Policy 8O Preserve and protect fish and/or wildlife species for future generations.

Every aspect of this commercial operation is located near critical tide pools and/or marine life protected areas. The attached LCP excerpts address this in detail on numerous occasions.

4. The proposed project violates parking conditions as stipulated in LCP 1-98 for Treasure Island – Land Use Plan Modifications J, Section 5.2.3 Parking Policies.

Condition 6 stipulates that off-site parking may be utilized consistent with Chapter 25.52 of the City's Zoning Code to satisfy a portion of the Resort Center's required parking provided that the location of the off-site parking is vacant and under the same ownership as the Resort Center. ...Additionally, event or other activities which trigger the requirement to use off-site parking shall not adversely impact the public's ability to use...spaces designated for public access purposes.

Since the Montage Resort & Spa opened in 2003, there have been major parking impacts to the surrounding community and to public parking/access. Please note attached Field Observations from January 2005, detailing the extensive off-site parking of Montage employees. The operation and storage of this kayak concession in conjunction with the Montage Resort & Spa further contributes to the growing displacement of employee parking on site at the Resort. This displacement of employee parking only adds to the impacts in the surrounding community and decreases the availability of public parking.

This ongoing public parking issue has been brought to the Commission on multiple occasions since 2003. Staffing constraints have not allowed for enforcement action on this issue, but adding to the problem is certainly unacceptable. Multiple PowerPoint presentations that were delivered during Coastal Commission hearings are on file on CD at the Long Beach CCC office.

5. Privatization of a public beach for the exclusive use of Montage Resort paying guests

As noted in the attached photos, this commercial enterprise is operated in full or in part by employees of the Montage Resort & Spa. As evidenced during public testimony at the Laguna Beach Planning Commission and City Council, the Montage concierge will process guest reservations and this service will be promoted as an amenity of the Montage Beach Club.

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6. Use of public beach and multiple accesses for operation of commercial enterprise

Please also reference photos to identify impacts to the public beach, paths and walkways created by this commercial enterprise. In addition to the kayaks, the Montage hauls, stages and stores a wide variety of beach amenities for its paying guests. This is all part and parcel with the kayak concession.

7. The proposed project would set unwanted precedent

Commercial activity on Laguna Beach beaches is prohibited under the City's General Plan and LCP, however, the City Council has decided that these prohibitions should be waived for this concession. This will set an unwanted precedent throughout Laguna Beach, and specifically in areas of very-high value.

Consistency with the California Environmental Quality Act (CEQA)

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

Thank you for your time and consideration of our submittal. Should you require further supporting documentation for any of the issues brought forth in this appeal, please do not hesitate to contact us as we have volumes of both written and photographic documentation.

Other items of concerns not covered in detail

- Project not in conformity with General Plan, LCP or Coastal Act
- Eco Tours were never defined by the applicant as required by the City's Planning Commission
- Detrimental and destructive impacts to marine life and intertidal zone
- Visitor-serving recreational use very questionable based on anecdotal evidence gleaned from Laguna Beach lifeguards during summer of 2008, wherein they advised that Montage guests were given "priority reservations" over general public
- Impedement to public access (storage, hauling, launching activities)
- Written complaints and opposition to this concession have been received and ignored by City Council
- Questions as to future of co-operator(s) conditioned under City's TUP and CDP

Attachments:

- Original Agenda Bill submitted by Councilmember Toni Iseman – July 22, 2008
- Minutes of Planning Commission hearing – December 10, 2008
- Agenda Bill – April 7, 2009-04-22
- Resolution No. 09-033
- Excerpts of Treasure Island LCP
- Photos of kayak operation utilizing Montage Resort & Spa staff and equipment – June 2008
- Montage Parking Field Observations – January 2005

COASTAL COMMISSION

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

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

Bill Riko
Signature of Appellant(s) or Authorized Agent

Date: April 23, 2009

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

COASTAL COMMISSION

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STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

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

FILE COPY



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

RECEIVED
South Coast Region

APR 24 2009

SECTION I. Appellant(s)

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

Coastal Commissioners: Larry Clark and Sara Wan
200 Oceangate, Suite 1000
Long Beach, CA 90802 (562) 590-5071

CALIFORNIA
COASTAL COMMISSION

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SECTION II. Decision Being Appealed

1. Name of local/port government: City of Laguna Beach
2. Brief description of development being appealed: CDP 08-63 and Temporary Use Permit 08-11 for temporary kayak storage, rentals, lessons and "eco" tours on the public beach.
3. Development's location (street address, assessor's parcel no., cross street, etc.): Public sandy beach in front of the Montage Resort located at 30801 Coast Hwy, Laguna Beach (Orange County). APN #656-181-01
4. Description of decision being appealed:
 - a. Approval; no special conditions: _____
 - b. Approval with special conditions: X
 - 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-LGB-09-077
DATE FILED: 4/24/09
DISTRICT: South Coast / Long Beach Office

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5. Decision being appealed was made by (check one) PERMIT # 5
a. Planning Director/Zoning Administrator: PAGE 12 OF 16
b. City Council/Board of Supervisors: X
c. Planning Commission: _____
d. Other: _____
6. Date of local government's decision: April 7, 2009
7. Local government's file number: CDP 08-63

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:
Billy Fried
887 Glenneyre Street
Laguna Beach, CA 92651
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.
 - a. Penny Elia
30632 Marilyn Drive,
Laguna Beach, CA, 92651
 - b. _____

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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 grounds for this appeal of the City of Laguna Beach City Council approved project are that the development does not conform to the standards set forth in the certified Treasure Island Local Coastal Program (December 1998).

In summary, the reasons supporting this appeal are as follows:

1. Treasure Island LCP Section 11.4 Conservation Planning Area Regulations and Standards – Planning Area 1: Marine Reserve; specifically Section 11.4.4 (Prohibited Uses), prohibits *commercial uses* (emphasis added) and structures; including all uses prohibited by the State of California based upon the current designation of the adjoining waters as part of the South Laguna Marine Life Refuge, or as part of any future designation as an Ecological Reserve or other designation adopted to protect the marine resources of the area.
2. Treasure Island LCP Section 11.5 Open Space and Recreation Planning Area Regulations and Standards – Planning Area 2: Sand Beach; specifically Section 11.4.4 (Prohibited Uses), prohibits *commercial uses* (emphasis added) and structures. And includes all uses prohibited by the State of California based upon the current designation of the adjoining waters as part of the South Laguna Marine Life Refuge, or as part of any future designation as an Ecological Reserve or other designation adopted to protect the marine resources of the area.
3. Treasure Island Land Use Plan (LUP) Section 6.2.2 Resort Center Design Policies, Policy #7 reads, "The Resort Center may operate portable facilities near the terminus of the public access ramp at the back of the public Sand Beach (i.e., at elevation 12-16 +/- feet). These portable facilities may provide or support visitor-serving commercial recreation activities, such as a rental/sales area for beach items/supplies, a pantry/storage for towels, and serving/holding facilities for snacks and drinks." Furthermore, Section 6.2.2 Policy #8 reads, "The Resort Center shall be permitted to operate the following daytime uses open to the public on the Sand Beach adjacent to the hotel: a. seating area around the portable facilities; b. moveable chairs, tables, lounges; c. umbrella shade areas; and d. small "beachable" boats (e.g., kayaks, catamarans, etc.)."
4. Treasure Island LCP Section 14 Design Guidelines includes Section 14.3 - Services and Temporary Facilities on the Beach which notes "1. Food, beverage,

COASTAL COMMISSION

beach equipment rental, and related or similar services available to guests and the public should be located on a portion of the beach in close proximity to the hotel, with service access from the hotel."

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Treasure Island LCP Section 11.4.2 lists the permitted uses on Planning Area 1 (Marine Reserve) and Section 11.5.2 lists the permitted uses on Planning Area 2 (Sand Beach) which includes "swimming, skin diving, scuba diving, and non-motorized boating with no connection to spear fishing or prohibited uses." Kayaking is considered "non-motorized" boating and therefore a permitted activity on Planning Area 1 (Marine Reserve) and on Planning Area 2 (Sand Beach). Treasure Island LUP Section 6.2.2 permits visitor-serving commercial recreation activities, such as kayak rentals in Planning Area 2 (Sand Beach) only. Commercial uses are prohibited on Planning Area 1 (Marine Reserve). However, the City Council approved permit authorizes a commercial kayak rental and eco-tour operation to provide lessons, including staging and launching of kayaks within the sensitive Marine Reserve planning area even though such commercial uses are prohibited.

Additionally, the City finds that the project will not impede public access to the beach and will augment recreational and visitor-serving facilities in conformity with the LCP and the public access and recreation policies of Chapter 3 of the Coastal Act. However, the City's approval allows for the storing of up to eight (8) kayaks on the sandy beach at the toe of the bluff near the end of the southerly paved beach access ramp in Planning Area 2 within a 10 foot by 20 foot area of the sandy beach. The sandy beach taken up by the kayak storage area could otherwise be used by the general beach-going public. Equipment staging on the sandy beach during peak use periods is not typically considered to comply with public access policies of Chapter 3 of the Coastal Act. As previously noted, Treasure Island LCP Section 14 Design Guidelines includes Section 14.3 -Services and Temporary Facilities on the Beach clearly states that beach equipment rental, and related or similar services available to guests and the public should be located on a portion of the beach in close proximity to the hotel, with service access from the hotel. Alternatives need to be considered to avoid or minimize public access impacts.

Lastly, the City finds the project as conditioned will not have any significant adverse impacts on the environment. The LCP provides for "active" recreation on Planning Area 2 (Sand Beach) and "passive" recreation on Planning Area 1 (Marine Reserve) which has been designated by the State as a portion of the South Laguna Beach Marine Life Refuge. Planning Area 1 is to preserve and protect the marine resources which make up the rocky shoreline and tide pools. Active recreation such as kayak launching is appropriate from a wide sandy beach (Planning Area 2) but kayak staging and launching may not be appropriate in a Marine Life Refuge due to potential adverse impacts on marine life and habitat.

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.)

COASTAL COMMISSION

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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: B.E. [Signature]
Appellant or Agent

Date: 4/24/09

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

Signed: _____

Date: _____

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3

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Appellant or Agent

Date: 4/24/09

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

Signed: _____

Date: _____