

**CALIFORNIA COASTAL COMMISSION**

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

**W8a**

Date: February 16, 2012

TO: Coastal Commissioners

FROM: Sherilyn Sarb, Deputy Director, South Coast Area Office  
Teresa Henry, District Manager, South Coast Area Office  
Karl Schwing, Supervisor, Orange County, South Coast Area Office  
Fernie Sy, Coastal Program Analyst II, South Coast Area Office

RE: Appeal A-5-DPT-12-035-(Bergman)  
23482 Seaward Isle, Dana Point, Orange County

Click here to see  
additional correspondence  
received.

**Recommendation:** Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which appeal A-5-DPT-12-035 was filed. Staff recommends a **YES** vote on the following motion and resolution:

**Motion and Resolution.** *I move that the Commission determine and resolve that: Appeal Number A-5-DPT-12-035 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Coastal Act Section 30603 regarding consistency with the certified Local Coastal Program and/or the public access policies of the Coastal Act.*

Passage of this motion and resolution will result in a finding of no substantial issue and adoption of the following findings. The local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

**Findings:** On December 19, 2011, the City of Dana Point's Planning Commission approved Coastal Development Permit No. CDP11-0006 and Site Development Permit No. SDP11-0014(M) or demolition of an existing three-story (two-story and basement) 6,385 square foot single-family dwelling with a 513 square foot attached garage and construction of a new three-story (two-story and basement), 8,922 square foot single-family dwelling with a 625 square foot attached garage on a coastal bluff lot and associated retaining walls exceeding 30 inches in height (**Exhibit #3**). The subject site is located at 23482 Seaward Isle in Dana Point, see **Exhibit #1**. The site is in the Niguel Shores private, gated residential community. Pursuant to Coastal Act Section 30603, this approval is appealable to the Commission because the project is located between the first public road and the sea, is within 300 feet of the top of the seaward face of a coastal bluff and is within the Coastal Commission appeal jurisdiction, as shown on the Commission adopted Post-Local Coastal Program (LCP) Certification and Permit Appeal Jurisdiction map contained in the certified Dana Point LCP.

**Exhibit #4** is the appeal to the Commission from Judith Hummer. Without citing any specific policies of the certified LCP, the appellant claims that this approval raises the following concerns:

1. Concerns with construction issues.
2. That the City did not consider this a coastal bluff and thus did not take this into consideration during approval of the project.
3. The proposed single-family dwelling does not provide adequate parking.
4. Wildlife will be impacted by the proposed development.
5. The project will impact private views.
6. If the bluff face collapses, no one has been identified as the responsible entity to deal with the bluff face failure.

7. The proposed mass and 35'-height of the single-family dwelling is unusual for the neighborhood.

Coastal Act section 30625(b) requires the Commission to hear an appeal unless it determines that no substantial issue exists with respect to the grounds on which the appeal has been filed.<sup>1</sup> Pursuant to Coastal Act section 30603, the grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies of Chapter 3 of the Coastal Act. Commission staff has analyzed the City's Final Local Action Notice for the development (**Exhibit #2**), the appellant's claims (**Exhibit #4**), the relevant requirements of the LCP, and records that are part of the City's file. The appeal raises no substantial issue with respect to the LCP as follows.

1. The appellant raises a number of construction related issues, such as number of dump trucks to be used during construction, staging of these dump trucks, air quality, etc. that she feels will result in damage to her and adjacent properties. Traffic and parking issues generally relate to coastal access. Policies related to coastal access in the certified LCP include Policy 4.3 of the Land Use Element (LUE) and Policy 4.6 in the Urban Design Element (UDE) of the Land Use Plan (LUP). The project site is not located on a major coastal access way and is also located within a gated community, so it would not result in impacts to coastal resources. Thus, staff has determined that these issues do not raise any inconsistencies with the City's certified LCP or the public access and recreation policies of the Coastal Act. These issues are best dealt with by the local authorities.
2. The appellant claims that that City did not consider the site to be a coastal bluff; thus the City didn't consider issues related to bluff top development in their review. This statement by the appellant is incorrect. Policies related to coastal bluff development are found in Chapter 9.27 "Coastal Overlay District" in the certified LCP (Zoning Code/Implementation Plan). The project site is located within this Coastal Overlay District; therefore, the project must adhere to these coastal bluff development standards. One such standard is bluff top setbacks. While the existing residence does not currently adhere to the 25-foot bluff top setback, the proposed residence will be moved landward and adhere to this setback. The City enforced the bluff edge setback requirement in this case. Therefore, the project design has taken into account that the site is located on a coastal bluff top. Additionally, findings in the City's approval acknowledge that the site is a coastal bluff top.
3. The appellant states that the proposed residence does not provide adequate parking since they are only providing parking spaces for two cars and one golf cart. Policies related to parking are found in Chapter 9.35 "Access, Parking and Loading" in the certified LCP (Zoning Code/Implementation Plan). The City's LCP requires two parking spaces per residence. Thus, staff has determined that the residence is adequately parked and consistent with the City's certified LCP.
4. The appellant claims that when the Headlands development project in Dana Point began that it caused animals to flee into the community of Niguel Shores, where the proposed project is taking place. She states that this has resulted in rats, voles, skunks, raccoons, mountain lions and a bobcat family to inundate the area. More specifically, she states that the bobcat family has taken residence on her property. With the proposed construction, she expresses concern for the well being of these animals. The project site and adjacent area is fully developed with similar single-family dwellings and the adjacent Ritz Carlton hotel. A policy related to sensitive wildlife in the certified LCP includes

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<sup>1</sup> The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues, or those of regional or statewide significance.

Policy 3.1 of the Conservation and Open Space Element (COSE) of the Land Use Plan (LUP). No evidence has been submitted that any sensitive wildlife is present on the subject site that would be adversely impacted by the proposed development. Thus, staff has determined that this issue does not raise any inconsistencies with the City's certified LCP.

5. The appellant claims that private views will be impacted. Private view impacts are not protected by the City's certified LCP. However, public views must be protected. A policy related to public views in the certified LCP includes Policy 6.4 of the Conservation and Open Space Element (COSE) of the Land Use Plan (LUP). The proposed project is the replacement of an existing single-family dwelling with another single-family dwelling, consistent with all required setbacks. Since the project site is inside a private, gated community, there are no public views across the site, looking seaward. The site may be visible from the public beach located at the toe of the bluff, however, no adverse public view impacts are anticipated because the proposed project complies with bluff setback requirements and is in alignment with adjacent development. In addition, the proposed residence has been designed to be thinner and lower than the existing residence. Thus, staff has determined that this issue does not raise any inconsistencies with the City's certified LCP.

6. The appellant claims that no entity has been identified to be financial responsible if the coastal bluff of the project site collapses because of construction of the proposed single-family dwelling. The appellant is concerned that as a member of the Niguel Shores Homeowners Association, that she may be financially responsible for it. Policies related to coastal bluff development are found in Chapter 9.27 "Coastal Overlay District" in the certified LCP (Zoning Code/Implementation Plan). A third party geotechnical review of the proposed project has approved the bluff edge and corresponding bluff top setback, as well as the stability analysis of the site given its proposed location, foundation and slab recommendations, and the subsurface geologic conditions of the site provided in the geotechnical investigation for the proposed project. Thus, the site is stable and the bluff top setback is adequate. While the site is safe and stable, the City has imposed a typical deed restriction condition to make the applicant aware of potential issues with bluff top development and also to hold them accountable for any potential hazards on site. The deed restriction imposed by the City requires that: *(1) the applicant understands that the subject site is subject to bluff retreat and that the owner(s) assumes the liability from these hazards; (2) the owner(s) unconditionally waive any claim of liability on the part of the City or any public agency from any damage from such hazards; and (3) the owner(s) assume all liability for damages incurred as a result of any required off-site grading.* Therefore, the responsible entity for any potential coastal bluff failures resulting from the project has been identified.

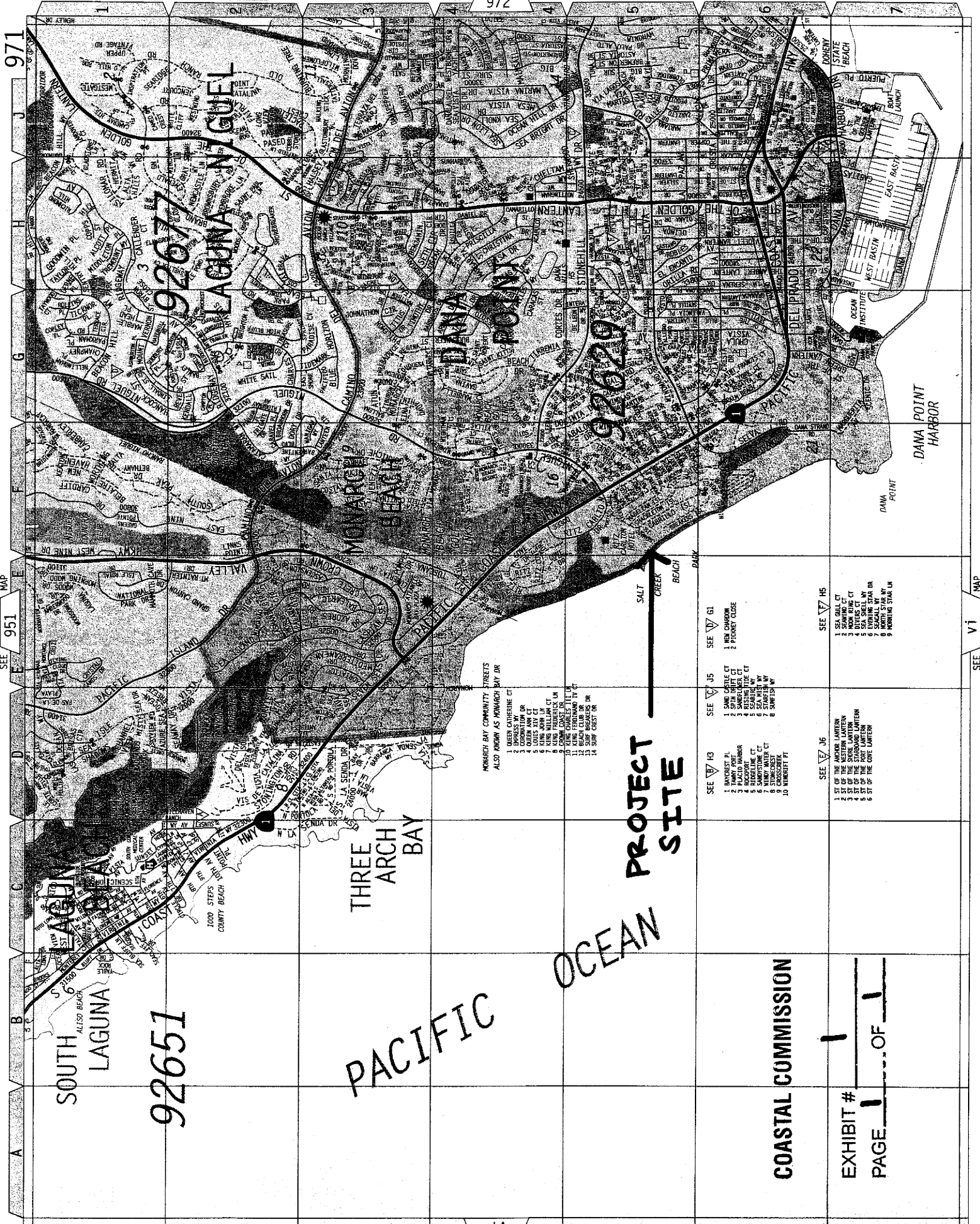
7. The applicant claims that the massing and 35'-height of the new proposed single-family dwelling is unusual for the area. The existing dwelling is 6,385 square feet with a 513 square foot attached garage and the proposed dwelling is 8,922 square feet with a 625 square foot attached garage. While the new dwelling will be larger in square footage, the footprint of the proposed residence is smaller than the existing and would be similar to the other residences in the area. Thus, the massing of the proposed residence is not out of character. Regarding the proposed 35'-height of the residence, the lot is located within the Planned Residential Development PRD 3 area, as described in Chapter 9.29 of the certified LCP (Zoning Code/Implementation Plan). The PRD 3 allows residences a maximum height of 35'. Therefore, the height of the proposed residence is consistent with the allowed heights of residences in the area.

Therefore, the Commission finds that there is adequate factual and legal evidence in the record to support the City's approval of a CDP for this project when it found that the project is consistent with the relevant LCP policies. The appellant also raises issues regarding the City of Dana Point Planning Commission voting procedure and the Planning Commission's receptiveness of her testimony during the Planning Commission meeting. However, these issues do not raise any inconsistencies with the City's certified LCP. Approval of this CDP will not create an adverse precedent for future interpretations of the LCP, and the project is not expected to adversely impact coastal resources.

Thus, the Commission finds that the appeal raises no substantial issue with respect to the grounds on which the appeal was filed.

**List of Exhibits:**

1. Vicinity Map
2. Notice Of Final Action for Coastal Development Permit No. CDP11-0006 and Site Development Permit No. SDP11-0014(M)
3. Proposed Project Site Plan, Demolition Plan, Exterior Elevations, Section Plans and Geologic Cross Section
4. Appeal from Coastal Permit Decision from Judith Hummer
5. Letter from owner responding to Judith Hummer's points of appeal



92651

THREE ARCH BAY

PACIFIC OCEAN

OCEAN

PROJECT SITE

SEE V1 G1

SEE V1 J5

SEE V1 H3

SEE V1 J6

SEE V1 H5

COASTAL COMMISSION

EXHIBIT # 1 OF 1

MONARCH BAY COMMUNITY STREETS  
ALSO KNOWN AS MONARCH BAY DR

- 1 QUEEN CATHERINE CT
- 2 EXPRESS WAY DR
- 3 LOUIS XIV CT
- 4 QUEEN ANN CT
- 5 KING WILLIAM CT
- 6 KING JAMES CT
- 7 KING JAMES CT
- 8 KING JAMES CT
- 9 KING JAMES CT
- 10 KING JAMES CT
- 11 KING JAMES CT
- 12 KING JAMES CT
- 13 KING JAMES CT
- 14 KING JAMES CT

- 1 NEW JORDON
- 2 PROJECT CLOSE

- 1 SHAW CIRCLE CT
- 2 SHAW CIRCLE CT
- 3 SHAW CIRCLE CT
- 4 SHAW CIRCLE CT
- 5 SHAW CIRCLE CT
- 6 SHAW CIRCLE CT
- 7 SHAW CIRCLE CT
- 8 SHAW CIRCLE CT
- 9 SHAW CIRCLE CT
- 10 SHAW CIRCLE CT

- 1 BANCROFT PL
- 2 PACIFIC HARBOR
- 3 PACIFIC HARBOR
- 4 PACIFIC HARBOR
- 5 PACIFIC HARBOR
- 6 PACIFIC HARBOR
- 7 PACIFIC HARBOR
- 8 PACIFIC HARBOR
- 9 PACIFIC HARBOR
- 10 PACIFIC HARBOR

- 1 SEA GULL CT
- 2 MOON RISE CT
- 3 SEA GULL CT
- 4 SEA GULL CT
- 5 SEA GULL CT
- 6 SEA GULL CT
- 7 SEA GULL CT
- 8 SEA GULL CT
- 9 SEA GULL CT
- 10 SEA GULL CT

- 1 OF THE WATER LANTERN
- 2 OF THE WATER LANTERN
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DATE: January 4, 2012

TO: South California District Office  
California Coastal Commission  
200 Oceangate, Suite 1000  
Long Beach, California 90802

FROM: City of Dana Point  
Community Development Department  
33282 Golden Lantern, Suite 212  
Dana Point, California 92629

COASTAL DEVELOPMENT PERMIT APPLICATION  
NOTICE OF FINAL ACTION

The following project is located within the City of Dana Point's Coastal Zone. A Coastal Development Permit application for the project has been acted upon.

**Applicant:** C. J. Light & Associates, Architect  
**Address:** 1401 Quail Street, Suite 120, Newport Beach, CA 92660  
**Telephone:** (949) 851-8345

RECEIVED  
South Coast Region

JAN 10 2012

**Project Address:** 23482 Seaward Isle  
**Assessor's Parcel No.:** 672-061-22

CALIFORNIA  
COASTAL COMMISSION

**Application File No.:** Coastal Development Permit CDP11-0006 and Site Development Permit SDP11- 0014(M)

**Project Description:** Coastal Development Permit and Minor Site Development Permit requested to demolish an existing single-family dwelling and construct a new three-story, 8,922 square foot single-family dwelling with a 625 square foot attached garage on a coastal bluff lot and associated retaining walls exceeding 30 inches in height.

**Filing Date:** April 25, 2011 – Application Deemed Complete: December 7, 2011

**Action Date:** December 19, 2011

**Action became final on:** January 3, 2012

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**Action:**  Approved  
 Approved with conditions  
 Denied

EXHIBIT # 2  
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Draft Findings and Conditions are attached.

Appealable to the Coastal Commission.  
Reason: Appeals Jurisdiction per the Post LCP Certification Map 2/6/91

**City of Dana Point Contact:** Kurth B. Nelson III, Senior Planner  
Phone: (949) 248-3572

**9.69.090 Appeals to the Coastal Commission.**

The final action by the City, as described in Section 9.69.100(a), on a coastal development permit which is appealable to the Commission as described in Section 9.69.090(b), may be appealed in accordance with the procedures described in this Section.

- (a) Exhaustion of Local Appeals. An appellant shall be deemed to have exhausted local appeals where the appellant has pursued his or her appeal to the Planning Commission and/or City Council, as described in the City of Dana Point appeal procedures in Sections 9.61.100(a) through (c) of this Zoning Code; except that exhaustion of all local appeals shall not be required if any of the following occur:
  - (1) The City of Dana Point requires an appellant to appeal to more local appellate bodies than have been certified as appellate bodies for permits in the Coastal Zone, in the implementation section of the local coastal program.
  - (2) An appellant was denied the right of the initial local appeal by a local ordinance which restricts the class of persons who may appeal a local decision.
  - (3) An appellant was denied the right of local appeal because local notice and hearing procedures for the development did not comply with the provisions of this Chapter.
  - (4) The City of Dana Point charges an appeal fee for the filing or processing of appeals. (Coastal Act/30333, 30620; 14 Cal. Code of Regulations/13111).
- (b) A final action taken by the City of Dana Point on a coastal development permit application may be appealed to the Coastal Commission for only the types of development defined in Section 9.75.010 of the Zoning Code under "Appealable Development, Coastal". (Coastal Act/30603(a)).
- (c) Grounds for appeal to the Coastal Commission.
  - (1) The grounds for an appeal of a coastal development permit approved by the City of Dana Point for a development listed in Section 9.69.090(b) above 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 Chapter Three of the Coastal Act. (Coastal Act/30603(b)(1)).
  - (2) The grounds for any appeal of a coastal development permit denied by the City of Dana Point for a major public works facility or a major energy facility, as such facilities are defined in Section 9.75.130 of the Zoning Code, shall be limited to the allegation that the development conforms to the standards set forth in the certified local coastal program and the public access policies set forth in Chapter Three of the Coastal Act. (Coastal Act/30603(b)(2)).
- (d) Filing of an Appeal to the Coastal Commission.
  - (1) An appellant may contact the Coastal Commission for the appropriate forms and instructions to file an appeal. An appeal must contain the following information:
    - (A) The name and address of the permit applicant and appellant;
    - (B) The date of the local government action;
    - (C) A description of the development;
    - (D) The name of the governing body having jurisdiction over the project area;

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Commission a resolution requesting that it receive a copy of the Coastal Commissioner appeals. The Coastal Commissioners' appeal may be suspended pending a decision on the merits of the project by the appropriate appellate body. If the decision of the subject appellate body modifies or reverses the decision of the lower approving authority, the Coastal Commissioners shall be required to file a new appeal from the decision of the Planning Commission or City Council. (Coastal Act 30333/30620; 14 Cal. Code of Regulations/13573).

(Added by Ord. 93-16, 11/23/93; amended by Ord. 97-05, 9/9/97)

**9.69.100 Notice of Final Action to Coastal Commission.**

- (a) The City's decision on the Coastal Development Permit application shall be considered final when both 1) all required findings have been adopted, including specific factual findings supporting the legal conclusions that the proposed development is or is not in conformity with the certified local coastal program and, where applicable, with the public access and recreation policies of Chapter Three of the Coastal Act; and 2) all rights to appeals before the Planning Commission and City Council, as described in Section 9.61.100 of the Zoning Code, have been exhausted, or the fifteen (15) calendar day appeals period to the Planning Commission and City Council, as described in Section 9.61.100(b) of the Zoning Code, expires without an appeal being filed. (Coastal Act/30333, 30620; 14 Cal Code of Regulations/13570).
- (b) Notice of Final City Action.
- (1) Within seven (7) calendar days of the final City action as described in Section 9.69.100(a) of this Section above, a notice of the final City action shall be sent by first class mail free of charge to:
- (A) the Coastal Commission office having jurisdiction over the City of Dana Point; and
- (B) to any person or group requesting notice of such action.
- (2) Contents of Notice:
- (A) The notice shall contain the date on which the appeal period from the approving authority to the next local appellate body expired.
- (B) The notice shall include all conditions of approval and written findings as described in Section 9.69.100(a) of this Section above, Section 9.69.110(e)(3)(C) below, or Section 9.69.160(c) below.
- (C) For decisions on developments which are appealable to the Coastal Commission, the notice shall indicate that the City's final action is appealable to the Coastal Commission and shall include attached the procedures described in Section 9.69.090 for appeal of the City decision on the coastal development permit to the Coastal Commission. (Coastal Act/30333, 30620; 14. Cal Code of Regulations/13571(a))
- (c) Failure to Act—Notice. A coastal development permit application is deemed approved by operation of law under Government Code Sections 65950 through 65957. The Director of Community Development shall, within seven (7) calendar days of such determination, notify the Coastal Commission and any persons or group entitled to receive notice pursuant

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RESOLUTION NO. 11-12-19-25

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT CDP11-0006 AND MINOR SITE DEVELOPMENT PERMIT SDP11-0014(M) TO DEMOLISH AN EXISTING SINGLE-FAMILY DWELLING AND CONSTRUCT A NEW THREE-STORY, 8,922 SQUARE FOOT SINGLE-FAMILY DWELLING WITH A 625 SQUARE FOOT ATTACHED GARAGE ON A COASTAL BLUFF LOT AND ASSOCIATED RETAINING WALLS EXCEEDING 30 INCHES IN HEIGHT LOCATED AT 23482 SEAWARD ISLE

**Applicant/Owner:** C. J. Light & Associates/Martin A. Bergman Trust

The Planning Commission for the City of Dana Point does hereby resolve as follows:

WHEREAS, the applicant filed a verified application for a Coastal Development Permit and Minor Site Development Permit to demolish an existing single-family dwelling and construct of a new three-story, 8,922 square foot single-family dwelling with a 625 square foot attached garage on a coastal bluff lot and associated retaining walls exceeding 30 inches in height at 23482 Seaward Isle (APN: 672-061-22); and

WHEREAS, said verified application constitutes a request as provided by Title 9 of the Dana Point Municipal Code; and

WHEREAS, the Planning Commission did, on the 19<sup>th</sup> day of December, 2011, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission considered all factors relating to Coastal Development Permit CDP11-0006 and Minor Site Development Permit SDP11-0014(M);

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning Commission of the City of Dana Point as follows;

- A) The above recitations are true and correct.

Findings:

- B) Based on the evidence presented at the public hearing, the Planning Commission adopts the following findings and approves a Coastal Development Permit CDP11-0006, subject to conditions:

- 1) That the proposed project is consistent with the Dana Point General Plan and Local Coastal Program in that, the design of the proposed improvements promote Conservation/Open Space Element Goal 2 Policy 2.11:

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*“Preserve Dana Point’s bluffs as a natural and scenic resource and avoid risk to life and property through responsible and sensitive bluff top development, including, but not limited to, the provision of drainage which directs runoff away from the bluff edge and towards the street, where feasible, and restricting irrigation and use of water-intensive landscaping within the setback area to prevent bluff erosion.”*, by removing existing irrigation on the bluff face and/or within the bluff edge setback, while incorporating the use of drought tolerant vegetation and sump pumps diverting site run-off to the street and minimizing bluff erosion. The proposal also promotes Conservation/Open Space Element Goal 2 Policy 2.12: *“New bluff top development shall minimize risks to life and property in geologically sensitive areas and be designed and located so as to ensure geological stability and structural integrity. Such development shall have no detrimental affect, either on-site or off-site, on erosion or geologic stability, and shall be designed so as not to require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.”*, by locating the proposed dwelling landward of 25-foot bluff edge setback and does so without the need for protective devices such as deepened foundations.

- 2) That the proposed development is located between the nearest public roadway and the sea or shoreline of any body of water, and is in conformity with the public access and public recreation policies of Chapter Three of the Coastal Act in that the proposed development does not alter existing public access and public recreation areas in the vicinity.
- 3) That the proposed development conforms with Public Resources Code Section 21000 (the California Environmental Quality Act) in that, the project qualifies for a Categorical Exemption Type 3 since the project involves the demolition and construction of one single-family residence in a residentially zoned property.

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That the proposed development will not encroach upon any existing physical accessway legally utilized by the public or any proposed public accessway identified in an adopted Local Coastal Program Land Use Plan, nor will it obstruct any

existing public views to and along the coast from any public road or from a recreational area in that, the proposed dwelling is positioned farther landward than the dwelling it replaces and associated improvements will be sited such that they are not visible from public view, and the site is located within a privately gated community where no such public accessway or view would be impacted.

- 5) That the proposed development will be sited and designed to prevent adverse impacts to environmentally sensitive habitats and scenic resources located in adjacent parks and recreation areas, and will provide adequate buffer areas to protect such resources in that, the proposed development is not immediately adjacent to any such resources and the proposed development is proposed in compliance with required setbacks from the coastal bluff edge and proposes new drought tolerant native vegetation.
- 6) That the proposed development will minimize the alterations of natural landforms and will not result in undue risks from geologic and erosional forces and/or flood and fire hazards in that the site has already been significantly graded due to previous development on the site and, although there is some cutting of soils to facilitate the creation of the lower level of the new dwelling positioned landward of the existing dwelling, the impacts of the grading have been assessed in the project geotechnical report which has been reviewed and approved by the City's third party geotechnical consultant and the inclusion of fire sprinklers for the dwelling and drainage improvements will reduce the risk of fire and/or flood damage while reducing the risk of bluff erosion and/or failures through diversion of water through a mechanical pump.
- 7) That the proposed development will be visually compatible with the character of surrounding areas, and, where feasible, will restore and enhance visual quality in visually degraded areas in that, the proposed development is located on a previously developed site with the same use with no degraded areas and the development will introduce a new dwelling with updated materials and architecture that will be compatible with the surrounding neighborhood.

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- 8) That the proposed development will conform with the General Plan, Zoning Code, applicable Specific Plan, Local Coastal Program, or other applicable adopted plans and programs in that the proposed project conforms with the City's regulations regarding development of single-family dwellings adjacent to coastal bluffs and the requirements of the Planned Residential Development 3 (PRD 3) /Residential Single Family 4 (RSF 4) Zoning District designation of the Dana Point Zoning Code, and the Residential 3.5-7 DU/AC designation in the City's General Plan, while the proposed development will correct some of the nonconforming issues related to bluff edge setback requirements, site drainage, and the use of drought tolerant plants within the coastal bluff edge setback.
- C) Based on the evidence presented at the public hearing, the Planning Commission adopts the following findings and approves Minor Site Development Permit SDP11-0014(M), subject to conditions:
- 1) That the site design is in compliance with the development standards of the Dana Point Zoning Code in that the proposed retaining walls are sited and positioned in a manner that impacts to the wall will be mitigated through the use of landscape screening and finish wall materials and they will be positioned in a manner so as not to be visible from public views.
- 2) That the site is suitable for the proposed use and development in that the site is fully developed as an existing single-family dwelling and the retaining walls proposed in conjunction with the current project are contemplated in compliance with limitations of the Dana Point Zoning Code as well as the City's Coastal Overlay District in that the retaining walls will either be mitigated through landscape screening and/or more decorative finish wall materials or positioned away from public views along the coast.
- 3) That the project is in compliance with all elements of the General Plan and all applicable provision of the Urban Design Guidelines in that the proposed retaining walls are sited sensitively, incorporate finishes consistent with the dwelling proposed for the site and will not visually impact

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surrounding properties or views from the coast below.

- 4) That the site and structural design is appropriate for the site and function of the proposed use, without requiring a particular style or type of architecture, **in that the minor site development permit request is for retaining walls which are appropriate for the site and function and of the unchanged use and do not require a specific architectural style.**

Conditions:

**A. General:**

1. Approval of this application is to allow demolition of an existing single-family dwelling and construction of a new three-story, 8,922 square foot single-family dwelling with a 625 square foot attached garage on a coastal bluff lot and associated retaining walls exceeding 30 inches in height at 23482 Seaward Isle. Subsequent submittals for this project shall be in substantial compliance with the plans presented to the Planning Commission, and in compliance with the applicable provisions of the Dana Point General Plan/Local Coastal Program, and the Dana Point Zoning Code.
2. This discretionary permit(s) will become void two (2) years following the effective date of the approval if the privileges authorized are not implemented or utilized or, if construction work is involved, such work is not commenced with such two (2) year time period or; the Director of Community Development or the Planning Commission, as applicable grants an extension of time. Such time extensions shall be requested in writing by the applicant or authorized agent prior to the expiration of the initial two-year approval period, or any subsequently approved time extensions.
3. The application is approved for the location and design of the uses, structures, features, and materials, shown on the approved plans. Any relocation, alteration, or addition to any use, structure, feature, or material, not specifically approved by this application, will nullify this approving action. If any changes are proposed regarding the location or alteration to the appearance or use of any structure, an amendment to this permit shall be submitted for approval by the Director of Community Development. If the Director of Community Development determines that the proposed change complies with the provisions and the spirit and intent of this approval action, and that the action would have been the same for the amendment as for

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the approved plans, he may approve the amendment without requiring a new public hearing.

4. Failure to abide by and faithfully comply with any and all conditions attached to the granting of this permit shall constitute grounds for revocation of said permit.
5. The applicant or any successor-in-interest shall defend, indemnify, and hold harmless the City of Dana Point ("CITY"), its agents, officers, or employees from any claim, action, or proceeding against the CITY, its agents, officers, or employees to attack, set aside, void, or annul an approval or any other action of the CITY, its advisory agencies, appeal boards, or legislative body concerning the project. Applicant's duty to defend, indemnify, and hold harmless the City shall include paying the CITY's attorney's fees, costs and expenses incurred concerning the claim, action, or proceeding.

The applicant or any successor-in-interest shall further protect, defend, indemnify and hold harmless the City, its officers, employees, and agents from any and all claims, actions, or proceedings against the City, its officers, employees, or agents arising out of or resulting from the negligence of the applicant or the applicant's agents, employees, or contractors. Applicant's duty to defend, indemnify, and hold harmless the City shall include paying the CITY's attorney's fees, costs and expenses incurred concerning the claim, action, or proceeding.

The applicant shall also reimburse the City for City Attorney fees and costs associated with the review of the proposed project and any other related documentation.

6. The applicant and applicant's successors in interest shall be fully responsible for knowing and complying with all conditions of approval, including making known the conditions to City staff for future governmental permits or actions on the project site.
7. The applicant and applicant's successors in interest shall be responsible for payment of all applicable fees along with reimbursement for all City expense in ensuring compliance with these conditions.

8. The construction site shall be posted with signage indicating that construction shall not commence before 7 a.m. and must cease by 8

**COASTAL COMMISSION**

EXHIBIT # 2  
PAGE 9 OF 17

p.m., Monday through Saturday, and no construction activity is permitted on Sundays or Federal holidays.

9. The applicant, property owner or successor in interest shall prepare a Waste Management Plan to the City's C&D official per the Dana Point Municipal Code. A deposit will be required upon approval of the Waste Management Plan to ensure compliance.
10. The Waste Management Plan shall indicate the estimated quantities of material to be recycled and the locations where the material is to be taken for recycling. Said plan shall be reviewed and approved by the City's C&D Compliance Official prior to issuance of any permits.
11. The applicant shall be responsible for coordination with water district, sewer district, SDG&E, AT&T California and Cox Communication Services for the provision of water, sewer, electric, telephone and cable television services.
12. A grading permit shall be obtained prior to any work including demolition activities.
13. The applicant shall exercise special care during the construction phase of this project to prevent any off-site siltation. The applicant shall provide erosion control measures of a type, size and location as approved by the Director of Public Works. The erosion control measures shall be shown and specified on the grading plan and shall be constructed to the satisfaction of the Director of Public Works prior to the start of any other grading operations. Prior to the removal of any erosion control devices so constructed, the area served shall be protected by additional drainage facilities, slope erosion control measures and other methods as may be required by the Director of Public Works. The applicant shall maintain the erosion control devices until the Director of Public Works approves of the removal of said facilities.
14. Separate review, approval, and permits are required for:
  - Separate Structures
  - Retaining walls
  - Fire sprinklers
  - Demolition of Structures
  - Swimming Pool/Spa
  - Site Walls over 3'

**COASTAL COMMISSION**

EXHIBIT # 2  
PAGE 10 OF 17

15. Improvements to nonconforming decks and stairs within the required 25-foot bluff edge setback or on the bluff face shall not result in the removal of the supporting retaining walls. Removal of such nonconforming retaining walls shall result a revision to the grading, landscape, and building plans as well as the project geotechnical report clearly illustrating compliance with current requirements of the Dana Point Zoning Code and in accordance with the limitations for the removal of nonconforming portions of structures identified in Section 9.63.040(b).
16. All existing irrigation and associated any associated equipment located within the 25-foot bluff edge setback and on the bluff face shall be removed prior to issuance of a grading permit.
17. Prior to the issuance of any permits the applicant and/or contractor shall schedule a pre-construction meeting at the subject site with City Planning Staff.
18. During construction, the project shall implement and maintain all applicable minimum construction Best Management Practices (BMPs), assigned by priority level and/or as required by the Director of Public Works or designee. Applicable minimum BMPs, for the project's priority as determined by the Urban Runoff Threat Assessment Form may be found in the City's Construction Urban Runoff Best Management Practices (BMPs) Requirements Manuals.
19. During the construction phase, all construction materials, wastes, grading or demolition debris, and stockpiles of soil, aggregates, soil amendments, etc. shall be properly covered, stored, managed, secured and disposed to prevent transport into the streets, gutters, storm drains, creeks and/or coastal waters by wind, rain, tracking, tidal erosion or dispersion.

**B. Prior to the issuance of a grading permit the applicant shall meet the following conditions:**

20. The applicant shall submit a grading plan, in compliance with City standards, for review and approval by the Director of Public Works. The applicant shall include all plans and documents in their submittal as required by the current Public Works Department's plan check policies, City of Dana Point Municipal Code and the City of Dana Point Grading Manual and City's Municipal Separate Storm Sewer Systems (MS4s) Permit requirements.

**COASTAL COMMISSION**

EXHIBIT # 2  
PAGE 11 OF 17



21. The applicant shall pay a deposit and submit to the City for review and approval a project-specific Water Quality Management Plan (WQMP) that fulfills all the requirements of the City's WQMP. The City's WQMP and WQMP template is available from the City's Water Quality Engineer.
22. The applicant shall submit a geotechnical report in compliance with all the City of Dana Point standards for review and approval.
23. The applicant shall execute the City's standard deed restriction or, if prepared by the owner(s), shall be submitted for review and approval by the City Attorney. The deed restriction shall provide that; (1) the applicant understands that the subject site is subject to bluff retreat and that the owner(s) assumes the liability from these hazards; (2) the owner(s) unconditionally waive any claim of liability on the part of the City or any other public agency from any damage from such hazards; and (3) the owner(s) assume all liability for damages incurred as a result of any required off-site grading. The deed restriction shall be recorded, free of prior liens, to bind the owner(s) and any successors in interest or otherwise recorded to the satisfaction of the City Attorney.
24. The applicant shall prepare a deed restriction for review and approval by the City Attorney. The deed restriction shall provide for ongoing maintenance of any sump pumps by the owner(s) and any successors in interest. The deed restriction shall be recorded, free of prior liens, to bind the owner(s) and any successors in interest or otherwise recorded to the satisfaction of the City Attorney.
25. The applicant shall submit a final landscape and irrigation plan for review and approval by the Public Works & Engineering Department and Community Development Department. The plan shall be prepared by a State licensed landscape architect and shall include all proposed and existing plant materials (location, type, size, quantity), an irrigation plan (if irrigation utilized), note wall/fence locations, a grading plan, an approved site plan and a copy of the entitlement conditions of approval. The plan shall be in substantial compliance with the applicable provisions of the Zoning Code, the preliminary plan approved by the Planning Commission and further, recognize the principles of drought tolerant landscaping especially within the bluff edge setback and no irrigation, temporary or otherwise, shall be permitted seaward of the required 25-foot bluff edge setback. Landscape documentation shall also comply with

**COASTAL COMMISSION**

EXHIBIT # 2  
PAGE 12 OF 17

Chapter 9.55 (Water Efficient Landscape Standards and Requirements) of the Dana Point Zoning Code as may be applicable. Landscaping shall be maintained and installed so as to ensure that, during growing stages as well as at maturity, the landscaping will not obstruct public views along the coast.

26. If an automatic irrigation system is proposed for this project, it shall be designed to avoid excess watering resulting in irrigation runoff. The system shall be designed to automatically shut off in case of a pipe break or other malfunction. The automatic shut-off system, moisture shut-off sensors, and other advanced controls will be required for the installation of an automatic irrigation system.

**C. Prior to Building Plan Check Submittal**

27. The cover sheet of the building construction documents shall contain a blue-line print of the City's conditions of approval and it shall be attached to each set of plans submitted for City approval or shall be printed on the title sheet verbatim.

28. Building plan check submittal shall include 2 sets of the following construction documents:

- Building Plans (3 sets)
- Energy calculations
- Structural Calculations
- Soils/Geology Report
- Drainage Plan

All documents prepared by a professional shall be wet-stamped and signed.

29. Fire Department review is required. Submit three (3) separate sets of building plans directly to the Orange County Fire Authority for review and approval.

30. Fire sprinkler system is required or waiver from the Fire Chief. (All new residential; all commercial over 5000 s.f.; Additions that increase the total floor area by 50% of 750 s.f. in a two year period or a second story addition regardless of s.f. or an alteration of 50% or greater in a two year period or any building that had fire sprinklers already installed.)

31. Building(s) shall comply with 2010 California Code of Regulations

**COASTAL COMMISSION**

EXHIBIT # 2  
PAGE 13 OF 17

Parts 1-12 and any local amendments thereto. Building(s) shall comply with 2008 T-24 Energy Conservation Regulations.

32. Undergrounding of all on-site utilities is required. An approved SDG&E Work Order and Undergrounding Plan are required prior to permit issuance.
33. Foundation system to provide for expansive soils and soils containing sulfates unless a soils report can justify otherwise. Use Type V cement, w.c. ration of 0.45, F'c of 4,500 psi.
34. Minimum roofing classification of type "A" is required.

**D. Prior to Issuance of a Building Permit or release on certain related inspections, the applicant shall meet the following conditions:**

35. The applicant shall obtain a grading permit and complete rough grading (establishment of building pads) in accordance with the approved grading plans and reports.
36. The applicant shall submit a rough grade certification from the Civil Engineer of Record and the Geotechnical Engineer of Record for review and approval by the City Engineer by separate submittal. The rough grade certification by the civil engineer (along with the City's standard Civil Engineer's Certification Form for Rough Grading) shall approve the grading as being substantially completed in conformance with the approved grading plan and shall document all pad grades to the nearest 0.1-feet to the satisfaction of the City Engineer the Director of Community Development. The civil engineer and/or surveyor shall specifically certify that the elevation of the graded pad is in compliance with the vertical (grade) position approved for the project. The rough grade certification by the geotechnical engineer (along with the City's standard Geotechnical Engineer's Certification Form for Rough Grading) shall approve the grading as being substantially completed in conformance with the recommendation of the project geotechnical report approved grading plan from a geotechnical standpoint.

**COASTAL COMMISSION**

An as graded geotechnical report shall be prepared by the project geotechnical consultant following grading of the subject site. The report should include the results of all field density testing, depth of reprocessing and recompaction, as well as a map depicting the limits of grading. Locations of all density testing, restricted use

zones, settlement monuments, and geologic conditions exposed during grading. The report should include conclusions and recommendations regarding applicable setbacks, foundation recommendations, erosion control and any other relevant geotechnical aspects of the site. The report shall state that grading of the site, including associated appurtenances, as being completed in conformance with the recommendations of the preliminary geotechnical report.

38. All approvals from outside departments and agencies are the responsibility of the applicant.
39. The applicant shall submit payment for any and all supplemental school, park, and Transportation Corridor fees.
40. Prior to commencement of framing, the applicant shall submit a foundation certification, by survey that the structure will be constructed in compliance with the dimensions shown on plans approved by the Planning Commission, including finish floor elevations and setbacks to property lines included as part of CDP11-0006 and SDP11-0014(M). The City's standard "Line & Grade Certification" form shall be prepared by a licensed civil engineer/surveyor and be delivered to the City of Dana Point Building and Planning Divisions for review and approval.
41. Prior to release of the roof sheathing inspection, the applicant shall certify by a survey or other appropriate method that the height of the structure is in compliance with plans approved by the Planning Commission and the structure heights included as part of CDP11-0006 and SDP11-0014(M). The City's standard "Height Certification" form shall be prepared by a licensed civil engineer/surveyor and be delivered to the City of Dana Point Building and Planning Divisions for review and approval before release of final roof sheathing is granted.

**E. Prior to the issuance of a certificate of occupancy, the applicant shall meet the following:**

42. All landscaping and irrigation shall be installed per the approved final landscape and irrigation plan. A State licensed landscape architect shall certify that all plant and irrigation materials have been installed in accordance with the specifications of the final plan and shall submit said certification in writing to the Director of Community Development.

**COASTAL COMMISSION**

43. The automatic fire sprinkler system shall be operational in a manner meeting the approval of the Fire Chief.
44. A Final Geotechnical Report shall be prepared by the project geotechnical consultant in accordance with the City of Dana Point Grading Manual.
45. A written approval by the Geotechnical Engineer of Record approving the grading as being in conformance with the approved grading plan from a geotechnical standpoint.
46. A written approval by the Civil Engineer of Record approving the grading as being in conformance with the approved grading plan and which specifically approves construction of line and grade for all engineered drainage devices and retaining walls.
47. An As-Built Grading Plan shall be prepared by the Civil Engineer of Record.
48. All structural best management practices (BMPs) described in the Project's WQMP have been constructed and installed in conformance with approved plans and specifications via the City's WQMP Construction Certification letter template, available from the City's Water Quality Engineer.
49. The applicant shall demonstrate that they are prepared to implement all non-structural BMPs described in the Project WQMP.
50. The applicant shall schedule a final inspection with the Community Development Department at the site that shall include a review of, among other things, landscaping, finish architecture/materials, approved through discretionary action, and compliance with any outstanding project conditions of approval.

**COASTAL COMMISSION**

EXHIBIT # 2  
PAGE 16 OF 17

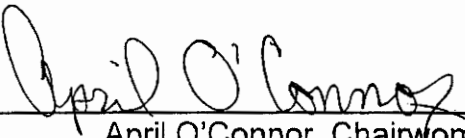
PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Dana Point, California, held on this 19<sup>th</sup> day of December, 2011, by the following vote, to wit:

AYES: Claus, Denton, Newkirk, O'Connor, Preziosi

NOES: None

ABSENT: None

ABSTAIN: None

  
\_\_\_\_\_  
April O'Connor, Chairwoman  
Planning Commission

ATTEST:

  
\_\_\_\_\_  
Kyle Butterwick, Director  
Director of Community Development

**COASTAL COMMISSION**

EXHIBIT # 2  
PAGE 17 OF 17



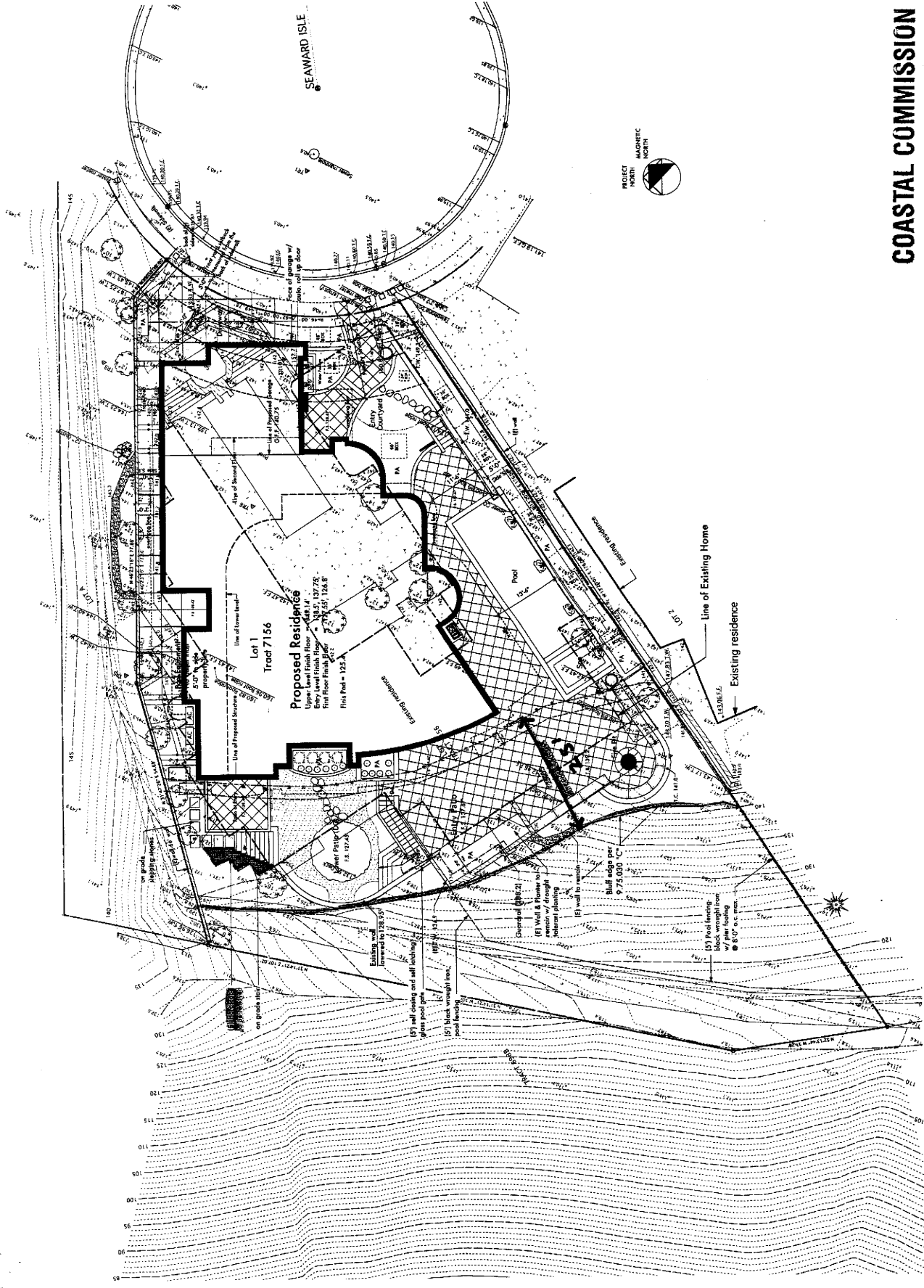
Charles K. Light - Architect  
 1401 Quail Street, Suite 120  
 Newport Beach, CA 92660  
 (949) 851-8045  
 Fax (949) 851-1116

Bergman Residence  
 23482 Seaward Isle  
 Dana Point, California 92629

Site Plan

Job Number: 1002  
 Scale: 1/8" = 1'-0"  
 Date: April 19, 2011  
 City Planning No. 10, July 25, 2011  
 City Planning No. 10, Sept. 12, 2011  
 City Planning No. 10, Nov. 8, 2011  
 City Planning No. 10, Dec. 7, 2011

SP1



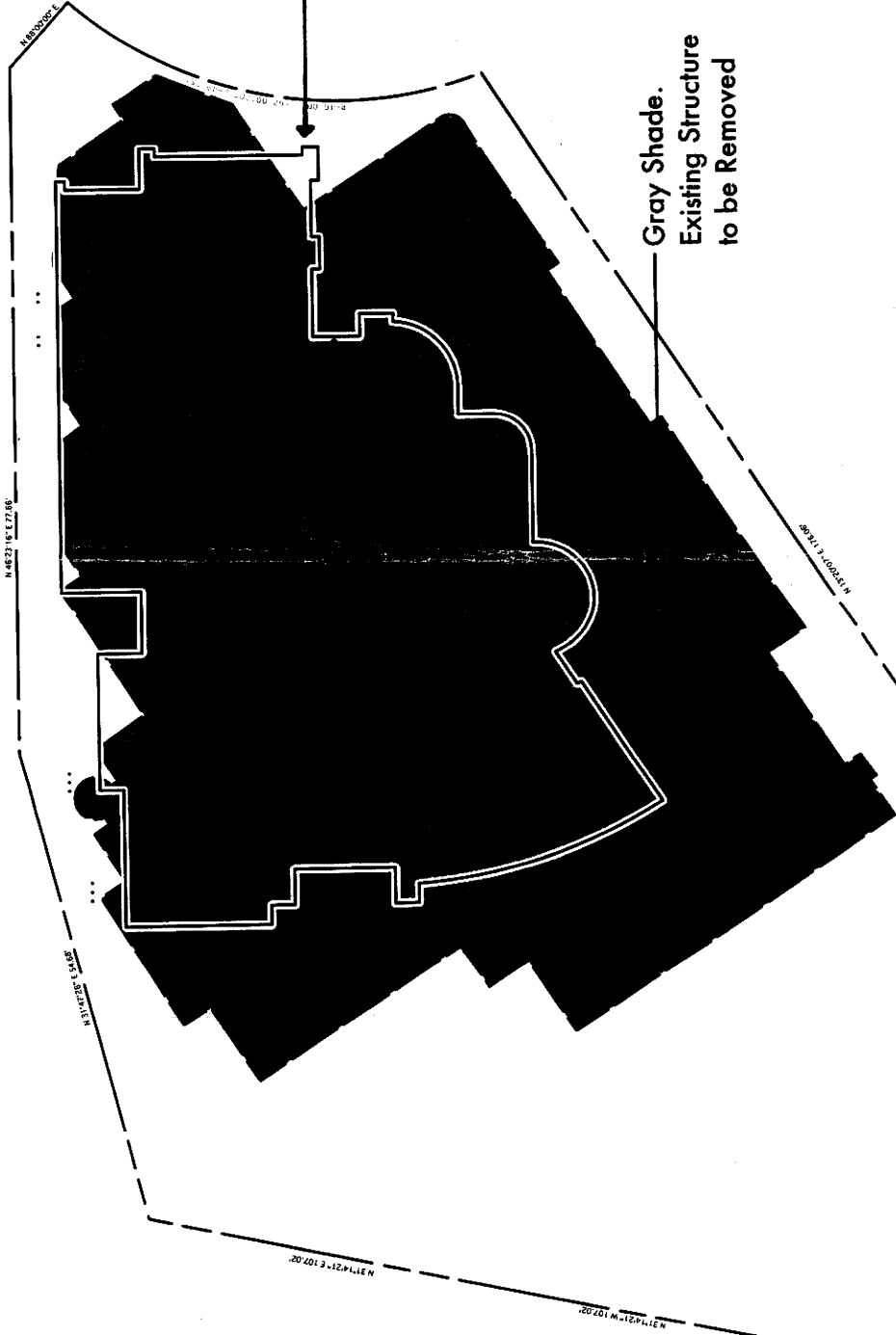
COASTAL COMMISSION

EXHIBIT # 3  
 PAGE 1 OF 7

RECEIVED  
South Coast Region  
FEB 14 2012  
CALIFORNIA  
COASTAL COMMISSION

PROPOSED  
RESIDENCE

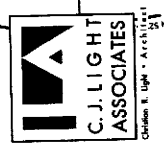
Gray Shade.  
Existing Structure  
to be Removed



Existing House Demolition  
Scale: NTS December 16, 2011

# Bergman Residence

23482 Seaward Isle • Dana Point • 92629



COASTAL COMMISSION

EXHIBIT # 3  
PAGE 2 OF 7









C.J. LIGHT ARCHITECT

1401 Dowd Street, Suite 100  
 Newport Beach, CA 92660  
 (949) 851-8348  
 Fax: (949) 851-1116

We warrant that the drawings were prepared by a duly licensed architect or other professional person qualified to prepare the same, and that they are in accordance with the laws and regulations of the State of California, and the laws and regulations of the local jurisdiction. We warrant that the drawings were prepared in accordance with the professional standards and practice of the architectural profession. We warrant that the drawings were prepared for the specific project and site described in the accompanying contract documents. We warrant that the drawings were prepared for the specific use and purpose described in the accompanying contract documents. We warrant that the drawings were prepared for the specific jurisdiction described in the accompanying contract documents. We warrant that the drawings were prepared for the specific date and time described in the accompanying contract documents. We warrant that the drawings were prepared for the specific owner and client described in the accompanying contract documents. We warrant that the drawings were prepared for the specific project and site described in the accompanying contract documents. We warrant that the drawings were prepared for the specific use and purpose described in the accompanying contract documents. We warrant that the drawings were prepared for the specific jurisdiction described in the accompanying contract documents. We warrant that the drawings were prepared for the specific date and time described in the accompanying contract documents. We warrant that the drawings were prepared for the specific owner and client described in the accompanying contract documents.

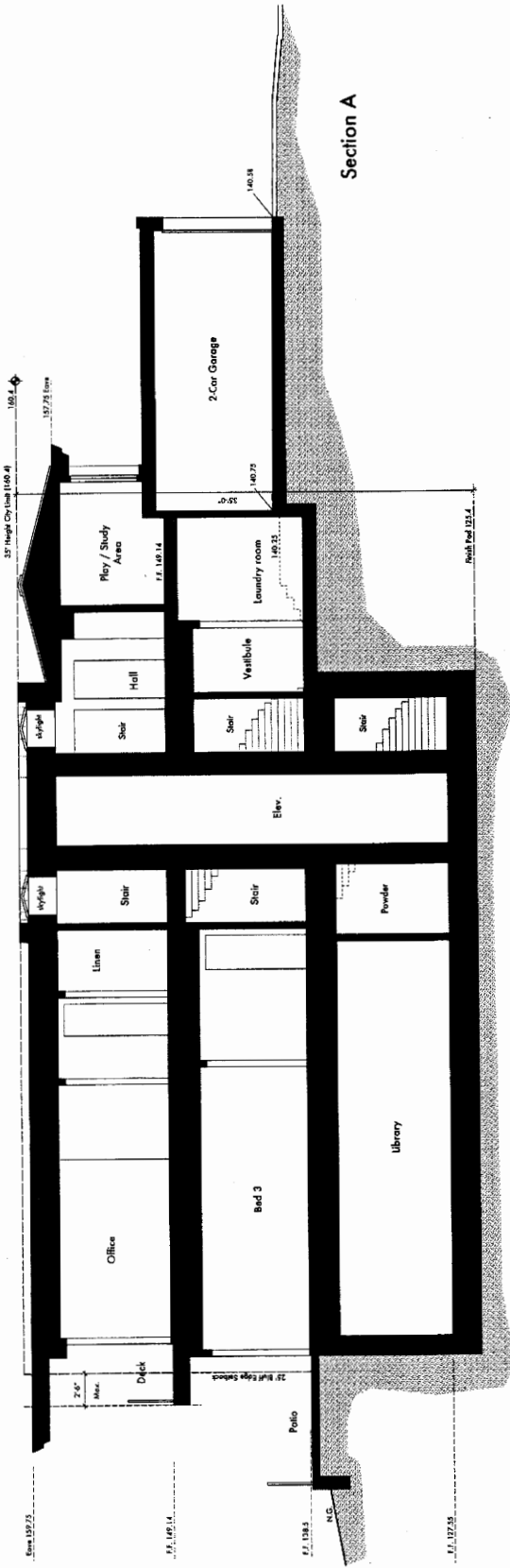
Bergman Residence  
 23482 Seaward Isle  
 Dana Point, California 92629

Sections

Job Number 1002  
 Scale 1/4" = 1'-0"

Date  
 City Planning Sub. April 19, 2011  
 City Planning Re-sub. April 25, 2011  
 August 31, 2011  
 City Planning Re-sub. Sept. 13, 2011  
 City Planning Re-sub. Nov. 19, 2011

A7





Christian R. Light - Architect  
 1401 Cloud Street, Suite 120  
 Newport Beach, CA 92660  
 (949) 851-8343  
 Fax: (949) 851-1116

All drawings, specifications, and other documents prepared by or for the Architect shall remain the property of the Architect. They shall not be used, copied, reproduced, or otherwise disseminated without the written consent of the Architect. The Architect shall not be responsible for any errors or omissions in these drawings, specifications, or other documents, or for any consequences arising therefrom, whether or not such errors or omissions are caused in whole or in part by negligence. The Architect shall not be responsible for any construction methods, techniques, or materials used in the construction of the project, or for any consequences arising therefrom, whether or not such methods, techniques, or materials are specified in these drawings, specifications, or other documents. The Architect shall not be responsible for any construction delays, or for any consequences arising therefrom, whether or not such delays are caused in whole or in part by negligence. The Architect shall not be responsible for any construction costs, or for any consequences arising therefrom, whether or not such costs are specified in these drawings, specifications, or other documents. The Architect shall not be responsible for any construction safety, or for any consequences arising therefrom, whether or not such safety is specified in these drawings, specifications, or other documents. The Architect shall not be responsible for any construction accidents, or for any consequences arising therefrom, whether or not such accidents are specified in these drawings, specifications, or other documents. The Architect shall not be responsible for any construction injuries, or for any consequences arising therefrom, whether or not such injuries are specified in these drawings, specifications, or other documents. The Architect shall not be responsible for any construction deaths, or for any consequences arising therefrom, whether or not such deaths are specified in these drawings, specifications, or other documents. The Architect shall not be responsible for any construction damages, or for any consequences arising therefrom, whether or not such damages are specified in these drawings, specifications, or other documents. The Architect shall not be responsible for any construction lawsuits, or for any consequences arising therefrom, whether or not such lawsuits are specified in these drawings, specifications, or other documents. The Architect shall not be responsible for any construction claims, or for any consequences arising therefrom, whether or not such claims are specified in these drawings, specifications, or other documents. The Architect shall not be responsible for any construction disputes, or for any consequences arising therefrom, whether or not such disputes are specified in these drawings, specifications, or other documents. The Architect shall not be responsible for any construction litigation, or for any consequences arising therefrom, whether or not such litigation is specified in these drawings, specifications, or other documents. The Architect shall not be responsible for any construction judgments, or for any consequences arising therefrom, whether or not such judgments are specified in these drawings, specifications, or other documents. The Architect shall not be responsible for any construction awards, or for any consequences arising therefrom, whether or not such awards are specified in these drawings, specifications, or other documents. The Architect shall not be responsible for any construction penalties, or for any consequences arising therefrom, whether or not such penalties are specified in these drawings, specifications, or other documents. The Architect shall not be responsible for any construction fines, or for any consequences arising therefrom, whether or not such fines are specified in these drawings, specifications, or other documents. The Architect shall not be responsible for any construction sanctions, or for any consequences arising therefrom, whether or not such sanctions are specified in these drawings, specifications, or other documents. The Architect shall not be responsible for any construction convictions, or for any consequences arising therefrom, whether or not such convictions are specified in these drawings, specifications, or other documents. The Architect shall not be responsible for any construction convictions, or for any consequences arising therefrom, whether or not such convictions are specified in these drawings, specifications, or other documents. The Architect shall not be responsible for any construction convictions, or for any consequences arising therefrom, whether or not such convictions are specified in these drawings, specifications, or other documents.

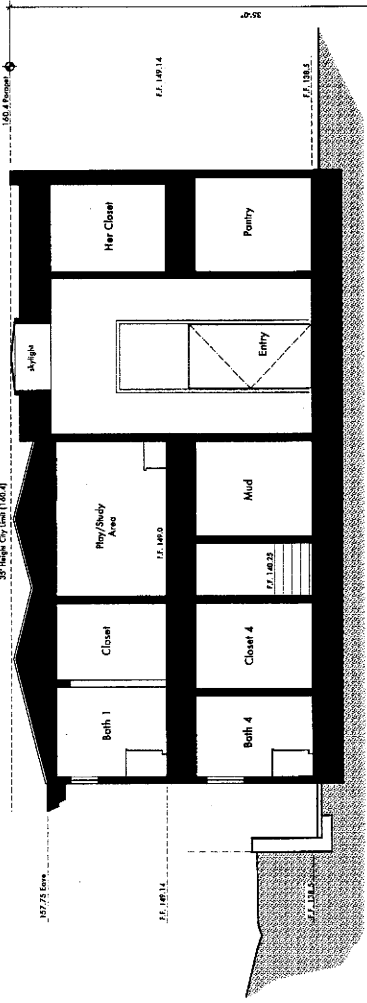
**Bergman Residence**  
 23482 Seaward Isle  
 Dana Point, California 92629

Sections

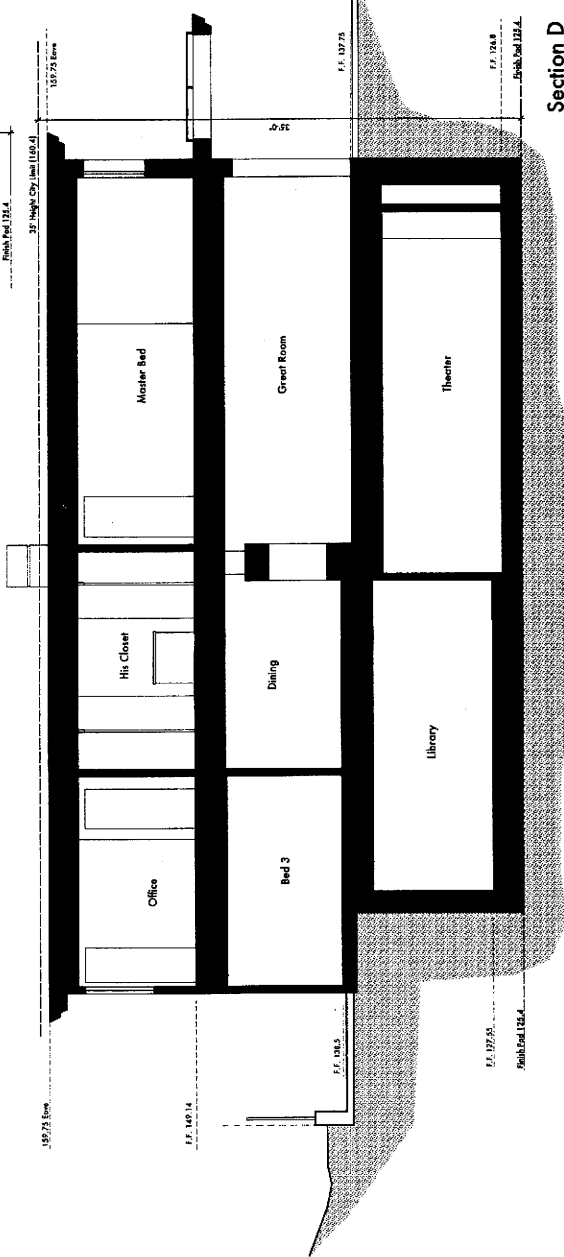
Job Number 1002  
 Scale 1/4" = 1'-0"

Date  
 City Planning Code: April 10, 2011  
 City Planning Code: July 21, 2011  
 City Planning Code: August 11, 2011  
 City Planning Code: November 14, 2011

A8

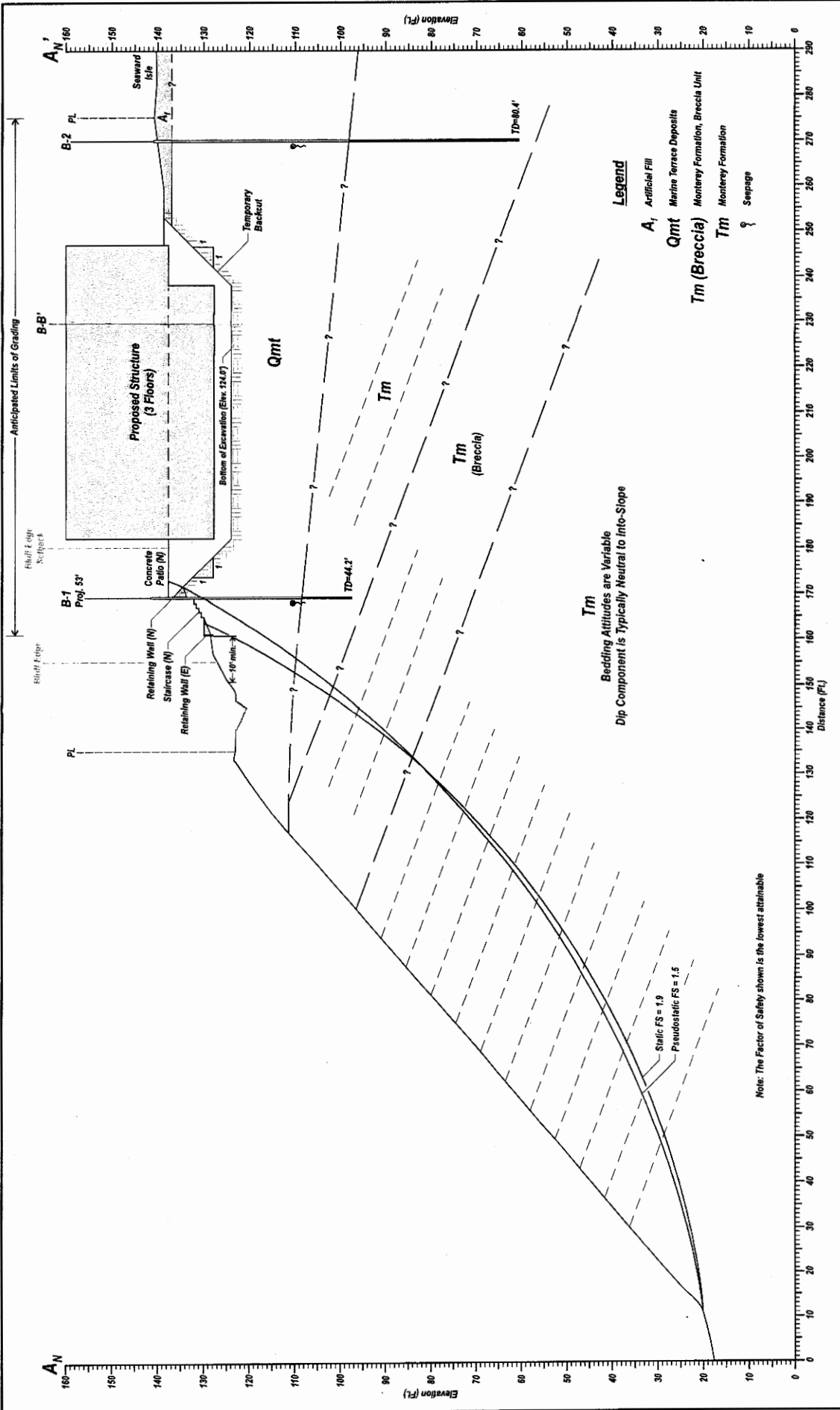


Section C



Section D

**COASTAL COMMISSION**



SECTION A<sub>N</sub>-A<sub>N</sub>'  
 Bergman Property  
 23482 Seaward Isle  
 Dana Point, California

SFC 5279-02 | NOVEMBER 2011 | PLATE 5B



SPC Geotechnical, Inc.

**COASTAL COMMISSION**

EXHIBIT # **3**  
 PAGE **7** OF **7**

**CALIFORNIA COASTAL COMMISSION**

SOUTH COAST DISTRICT

200 Oceangate, 10th Floor  
 LONG BEACH, CA 90802-4416  
 (562) 590-5071 FAX (562) 590-5084  
 www.coastal.ca.gov

**FILE COPY****COMMISSION NOTIFICATION OF APPEAL**

DATE: January 31, 2012  
 TO: Kurth Nelson, Project Manager  
 City of Dana Point, Community Development Department  
 33282 Golden Lantern, Suite 212  
 Dana Point, CA 92629  
 FROM: Fernie Sy, Coastal Program Analyst  
 RE: **Commission Appeal No. A-5-DPT-12-035**

Please be advised that the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Sections 30603 and 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to Public Resources Code Section 30623.

Local Permit #: 11-0006  
 Applicant(s): C. J. Light & Associates, Architects  
 Description: Coastal Development Permit CDP11-0006 and Site Development requested to demolish an existing single-family dwelling and construct a new three-story, 8,922 square foot single-family dwelling with a 625 square foot attached garage on a coastal bluff lot and associated retaining walls exceeding 30 inches in height.  
 Location: 23482 Seaward Isle, Dana Point (Orange County) (APN(s) 672-061-22)  
 Local Decision: Approved w/ Conditions  
 Appellant(s): Ms. Judith Hummer  
 Date Appeal Filed: 1/23/2012

The Commission appeal number assigned to this appeal is A-5-DPT-12-035. The Commission hearing date has not yet been established for this appeal. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the City of Dana Point's consideration of this coastal development permit must be delivered to the South Coast District office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact Fernie Sy at the South Coast District office.

cc: C. J. Light & Associates, Architects

**COASTAL COMMISSION**

EXHIBIT # 4  
 PAGE 1 OF 8

RECEIVED  
South Coast Region

STATE OF CALIFORNIA - THE RESOURCE AGENCY

EDMUND G. BROWN JR., Governor

CALIFORNIA COASTAL COMMISSION

JAN 23 2012

SOUTH COAST DISTRICT OFFICE  
200 OCEANGATE, 10<sup>TH</sup> FLOOR  
LONG BEACH, CA 90802-4418  
VOICE (562) 590-5071 FAX (562) 591-5084



CALIFORNIA  
COASTAL COMMISSION

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: JUDITH HUMMER  
Mailing Address: P.O. BOX 577  
City: DANA POINT Zip Code: 92629 Phone: 949-443-1248

SECTION II. Decision Being Appealed

- Name of local/port government:  
DANA POINT
- Brief description of development being appealed:  
SINGLE FAMILY RESIDENCE ON COASTAL BLUFF;  
TEAR DOWN, EXCAVATION AND REMOVAL OF  
DIRT, NEW CONSTRUCTION
- Development's location (street address, assessor's parcel no., cross street, etc.):  
23482 Seaward Isle / PARCEL NO. 672-061-23  
DANA POINT
- 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-DPT-12-035
DATE FILED:	1/23/2012
DISTRICT:	SOUTH COAST

COASTAL COMMISSION

EXHIBIT # 4  
PAGE 2 OF 9

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

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

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

6. Date of local government's decision: ACTION 12/19/11 FINAL ACTION 1/3/12

7. Local government's file number (if any): COASTAL DEN. PERMIT CDP 11-0006  
SITE DEN. PERMIT SDP 11-0014(n)

**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:

ARCHITECTS  
C.J. LIGHT & ASSOC.  
1401 QUAIL ST., SUITE 120  
NEWPORT BEACH, CA 92660

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) SELF

(2)

(3)

(4)

**COASTAL COMMISSION**

EXHIBIT # 4  
PAGE 3 OF 8



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

**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.

SEE ATTACHED SHEETS (3)

**COASTAL COMMISSION**

EXHIBIT # 4  
PAGE 4 OF 8

These are my sincere concerns for this construction plan at 23482 Seaward Isle:

1. It is my belief that the property in question is located on a coastal bluff and should be considered as a coastal bluff property when planning for its use. At the Dana Point Planning Commission meeting of January 9, 2012, it was stated by city staff that NO property in Niguel Shores is located on a coastal bluff because all properties in Niguel Shores are "manufactured slopes." "None of these properties is qualified as a coastal bluff." "...same as an inland property." "...safe and stable by virtue of being a manufactured slope." Because of this belief by city staff that this 'slope' is 'no different than any other manufactured slope located anywhere inland' they have not properly judged this construction plan.
2. A planning commissioner stated at the January 9, 2012 meeting that it was his belief that he had to say 'yes' to any project that city staff supported. I believe it is his duty to say 'no' if he felt uncomfortable with it. Otherwise, what is his job?
3. It is my belief that this project was essentially pre-approved by the city planning commission prior to the December 19, 2011 Planning Meeting. I believe that they did not listen to my own presented concerns, nor answer any of their own stated questions at the meeting. I believe that listening to the public and answering questions are part of the Local Coastal Program planning process.
4. Specifically, the question of how many truck loads of dirt will be required to remove 2120 cubic yards of coastal bluff dirt was never answered. Neither before the meeting at the city offices, nor during the meeting of December 19th, nor after the meeting. No one wants to answer that question. How big are the trucks that are going to be required to rumble through my neighborhood and how many truck loads of dirt will be required to be removed? To my knowledge there has never been any excavation of coastal bluff close to this size in Niguel Shores before.
5. Where are these big rigs going to park and line up? On Magellan Isle? In the past few years, frequently when someone has a construction project going on the ocean side of PCH, their contractors like to stage on Magellan Isle. Specifically outside my own home. My house is located where Magellan Isle begins to level out. It is the highest point on the street. At my garage doors when it rains half of the rain heads north and half of the rain heads south. It splits right there. Just a few weeks ago I asked a big rig driver why he was parked outside my home. He told me that it is "very convenient" as he can park, unload his equipment, go do the job all day leaving his big rig parked, reload his equipment, and drive right out the gate on Cabrillo Isle and Ritz Cove Drive. I would like to be reassured that the many contractors for this job will NOT line up NOR stage on Magellan Isle. They can line up on Cabrillo Isle as close to this project as possible. They will not be able to line up or stage on Seaward Isle as it is not a real road but a small little cul de sac. (Trucks will have to back into Seaward Isle; beep, beep, **COASTAL COMMISSION**)

6. Which brings us to parking. This house as planned has a highly unrealistic parking on site plan of two cars and one golf cart. Two cars! Where will the staff for a 9,000 square foot house park? If the owners have even one child they will need to park the third car on the street when they reach driving age. As a comparison, my own 3000 square foot home has a three car garage.
7. Will the new sewer line from South Coast Water District, that services over half of Monarch Beach and all of the Headlands, be damaged? It was placed into the sand with multiple cave in's and great difficulty. It runs by pump from the beach parking lot at the end of Niguel Shores Drive, up to Magellan Isle, where it reaches its zenith and highest point under the street, then drops by gravity down the entire length of Magellan, turns at Cabrillo Isle, goes out under the gate, then turns again at Ritz Cove Drive, then turns again onto PCH. I still have cracked tiles in my laundry room from the placement of the new line. A big rig that parked outside my home last summer left a dent in the new asphalt pavement. Any trucks heading for this project will have to cross this sewer line a minimum of twice.
8. Who will be financially responsible if the bluff face collapses? No one wants to answer this question either. Shouldn't this liability issue be answered before construction begins? Is the city responsible for approving the plan? The homeowner for doing it? The association responsible for the slope maintenance? That ends in an enormous drop-off (I call it a cliff) all the way down to the Orange County bathroom structure below. As a member of the Niguel Shores Homeowners Association I would like to be reassured that I am NOT in any way financially responsible for this irresponsible construction project.
9. Land moves in this area. We have experienced slope failure on Shackleton Isle, Magellan Isle, Brigantine Drive, Niguel Shores Drive, Abalone Drive, and Dosinia Drive that I know about. Niguel Shores has numerous underground springs.
10. Will these truckloads of dirt and construction equipment interrupt usage of the Cabrillo exit gate that services so many homes and the Ritz Cove Drive/Niguel Road and Pacific Coast Highway intersection traffic? I and my neighbors are in and out of that gate and through that intersection numerous times a day. We don't even have a crosswalk nor traffic light where the gate enters Ritz Cove Drive. For my daughter to go to the library she must walk or bike to the end of Magellan Isle, cross Cabrillo Isle to the sidewalk, then recross Cabrillo Isle from the sidewalk at the 'fake' gate (permanently locked gate at the end of the sidewalk) where there is NO crosswalk, cross in front of two gates, entrance and exit, to the sidewalk that has a pedestrian gate. And that's without big trucks. It's plenty dangerous now. I have complained to no avail about the lack of a pedestrian crosswalk there.
11. Air Quality issues concern me when I don't know how many trucks with exhaust, nor how much dirt will be moved around, repacked, etc., for how many days. I am downwind of this construction.

**COASTAL COMMISSION**

EXHIBIT # 4  
PAGE 6 OF 8

12. Where will the bobcat family go? When the Headlands project began and the bulldozers went to work, animals came fleeing into Niguel Shores. Somehow no one planned for that in any environmental report. We suddenly were inundated with rats, voles, skunks, raccoons, mountain lions and a bobcat family. I have personally had to pay for private trapping on my property and experienced damage. It is well-known within the community that we are hosting an entire family of bobcats now...at 23482 Seaward Isle! They stopped at the strip of land between the Ritz Carlton Hotel and Niguel Shores. I guess the Hotel proved too big a barrier for them to cross. Where are they expected to go when this construction begins? How can they be helped to get to the Salt Creek Corridor?
13. The City of Dana Point needs to decide where it stands on Niguel Shores. Is it going to protect the views? City Staff claim that the city lets the Niguel Shores Community Association make all design and land use decisions and merely double-checks construction plans. But the homeowners association is under tremendous legal strain and is run by volunteers. If the City believes that the CC&R's of the association have enough merit to accept, then shouldn't they have enough merit to defend?
14. Is Niguel Shores Community Association authorized to judge and protect the California Coastal Act?
15. Niguel Shores is a view-protected neighborhood. Why is the city not protecting the view? Please preserve the view.
16. This home is planned for ten skylights. That will be a reflection nightmare.
17. This home, already too large for the neighborhood, is expanding even larger. If you look at the current structure it already dominates the landscape from the beach. When is mass too much?
18. The City Planning Commissioners stated that a 35' private home is very unusual for Dana Point, then why are they allowing it in a neighborhood of 15' homes where the current height was already against rules? I myself was held tightly to the 15' height limit when I built just a few years ago. Why is it ok for big lawyers?
19. A full three-story home planned for a one-story neighborhood under the CC&R's. Strange mathematics that includes slope as flat land, and bluff edge that anyone can see, called not bluff edge. Every Niguel Shores property includes the slope behind the house as part of your 'property' or 'lot.' But the fact is you cannot build on your slope nor plant anything on it nor maintain it yourself. It belongs to you but don't touch it. Yet the plans for this building are very generous to the new owner in what they call slope, berm, and build-able lot and how they calculate percentages.
20. For all these reasons I believe that a Negative Declaration and exemption from CEQA was entirely unreasonable. There are many questions left unanswered.

COASTAL COMMISSION

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.

[Handwritten Signature]  
Signature of Appellant(s) or Authorized Agent

Date: 1/21/12

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**

EXHIBIT # 4  
PAGE 8 OF 8

FEB 15 2012

**CALIFORNIA**  
**COASTAL COMMISSION**

RE: 23482 Seaward Isle and appeal received from Judith Hummer.  
FROM: Owner – Martin Bergman.  
DATE: 2.13.2012.

Judith Hummer is a resident of Niguel Shores who lives three blocks away from our property (see accompanying photos). Her complaints and opinions appear to be unsupported by any sort of research or evidence of proof.

Here are the answers to the list of points she makes in her letter to the Coastal Commission, realizing that many of these issues will be of no interest to the Commission. I have condensed Ms. Hummer's concerns in red, realizing the full versions are available via her letter of appeal. Forgive me if I repeat myself, but I am anxious to refute every one of Ms. Hummer's points.

HUMMER: I believe this property is not located where the city officials, the Niguel Shores' association, the architect, the owner, the engineers and indeed the map say it is.

1. The property is located within the city's coastal overlay boundary area and the proposed project was conceived to comply with the residential development standards applied to coastal bluff developments. Please note that there is an existing, substantial house on the property that has been there since the early 1970s. This property is part of the community of Niguel Shores. Our intent is to lessen the building footprint that exists presently. Everyone we've spoken to, other than Ms. Hummer, recognizes that this will be a major improvement.

HUMMER: I believe one of the Dana Point planning commissioners failed to do his job properly and was intimidated into a "yes" vote:

2. The planning commissioners seem to me to execute their offices extremely diligently. If Ms. Hummer feels a particular commissioner is incompetent, there are no doubt appropriate channels through which to register that complaint; writing to the Coastal Commission does not seem one of them. The vote was unanimous, incidentally.

HUMMER: The Planning Commission hearing was fixed in advance and I wasn't listened to.

3. This is simply untrue. Ms. Hummer was given maximum time to state her case and the committee was extremely patient with her and gave her points far more credence than I felt they deserved. The project was approved because it's a well-conceived project that will improve on what's there now and because it obeys all the rules and regulations pertaining to this plot of land.

HUMMER: Lots of enormous trucks will be involved in this project.

4. This is not a large project. It's similar in scope to the individual houses being built at The Strand, and perhaps a little smaller. The fact that it is situated at the end of a cul de sac also helps. Ms. Hummer seems to think and indeed implies it will be as large an undertaking as the entire Strand complex! Rest assured we intend to be as minimally invasive as possible and will make every effort to be mindful of all our

**COASTAL COMMISSION**

EXHIBIT # 5  
PAGE 1 OF 8

neighbors. We anticipate the project will be completed within 12 to 14 months. The excavation is made much easier by there already being a two level and a basement house in place. The demolition will take days rather than weeks and the slowest part will be Habitat For Humanity taking what they can use from the existing property.

HUMMER: Trucks will park outside my house.

5. Most of the vehicles will park in Seaward Isle. It's a far more substantial road than Ms. Hummer describes in her letter (see accompanying photo). We enjoy good relationships with all of our neighbors in Seaward Isle. Ms. Hummer is the only voice of dissent, and the neighbors we have spoken to all recognize that this improvement is going to have an advantageous effect on their own properties. It's highly unlikely any vehicles will go anywhere near to Ms. Hummer's house which is three blocks away.

HUMMER: The planned three car garage is too small for the vast number of people (including staff) who are going to live in this house.

6. We only have two cars and are thinking of downsizing to one. We don't have a golf cart, even though that's what's marked on the plan. Our only daughter is nine. If and when she does drive, the golf cart port is large enough to accommodate a suitable vehicle for a teenage girl prior to college. We have no staff, so there's just the three of us. My elderly parents may join us, but neither drives anymore.

HUMMER: The sewer line that I acknowledge runs nowhere near Seaward Isle may be damaged by traffic.

7. Many cars and trucks traverse the roadways of Niguel Shores every day. Once again, no expert knowledge is offered whatsoever for this assertion that's based on the idea that the sewer line was presumably installed by people who failed to recognize that traffic exists.

HUMMER: Who will be responsible when the bluff collapses and lands on the beach?

8. The bluff face is not going to collapse because of our construction (!) just as it didn't when the original house was constructed or the Ritz Carlton next door was constructed. Again, Ms. Hummer is ignoring and discounting the substantial amount of work and effort that has gone into this project by experts, both on our side and the city's. Ms. Hummer consistently fails to acknowledge the fact that the footprint of the existing property is being moved back substantially. A most conservative decision was reached as to where the bluff begins and we moved back from that the required distance. The construction will also use the opportunity to modernize the irrigation of this area. As recognized by the planning commissioners, this project is actually good for the bluff and lends an opportunity to update and improve.

HUMMER: Land moves in this area.

9. Land moves throughout Southern California. So? Should all construction cease?

**COASTAL COMMISSION**

EXHIBIT # 5  
PAGE 2 OF 8

HUMMER: Will usage of the Cabrillo exit gate be interrupted?

10. No, and see my response to points 4 and 5.

HUMMER: My personal air quality may be affected by the construction.

11. Ms. Hummer's property is a long way away from the property in question (see accompanying map). This is a specious point.

HUMMER: The Headlands project brought wildlife into Niguel Shores. Where will the bobcats go?

12. Ms. Hummer is once again confusing a single property project with a large-scale, entire neighborhood project. To compare building a single house to the vast project at The Headlands is illogical. As for the bobcat family that she feels is apparently residing at our house, none of us have ever seen a bobcat. Again, no proof is offered, just the assertion "it is well-known within the community." I assume the neighborhood association would have been in touch with me if there was a problem, and I have received zero notification.

HUMMER: What about my view?

13. As far as I can tell, Ms. Hummer's house doesn't have much of a view. However, there will be zero impact on anybody's view. The house will be thinner and lower than the house that's there presently.

HUMMER: Is the Community Association authorized to judge and protect the California Coastal Act?

14. This I frankly don't understand.

HUMMER: Yes, but what about my view again?

15. There will be zero impact on anybody's view.

HUMMER: The skylights will be a "reflection nightmare."

16. The skylights are non-reflective and all to code. Ms. Hummer will be entirely unaffected. I very much doubt she'll even be able to see our roof or skylights from her house.

HUMMER: The home is larger than the one that's there; too much mass.

17. This is incorrect. The house is a smaller footprint and will look far less dominant from the beach than the house that is there now. This has been carefully explained to Ms. Hummer by city officials.

**COASTAL COMMISSION**

EXHIBIT # 5  
PAGE 3 OF 8



HUMMER: The height of the home will be bigger than mine, as is the home that's there now. Why?

18. The new home will certainly be no higher than the existing two-level and daylighted basement of the old home and in places will be smaller. This plot, due to its unique situation at the end of a cul de sac and because it has no houses to its immediate rear is allowed to be built up to 18'. Houses in other streets and parts of the neighborhood that impact the views of the properties to their rear must build to 15'. Ms. Hummer's property clearly impacts the house directly behind her and consequently her height is restricted to 15 feet (see map).

HUMMER: The property location has been incorrectly calculated and flouts the Association's CC&Rs.

19. As previously noted, the house that exists is already two-levels and a basement as allowed by the city's Planned Residential Development Regulations. The new basement level will not be seen from the street or the beach; the existing one can be seen from the beach. The impact to the landscape from the beach of a smaller-footprinted house placed farther back will be a noticeable aesthetic improvement over what exists presently. The planned house has received total approval from the Niguel Shores' Association, pending final City approval, and adheres to all the association's architectural rules and regulations.

HUMMER: Many questions have been left unanswered.

20. No questions have been left unanswered. Ms. Hummer has refused to accept the answers, which is a different problem. This exhaustive process has taken almost two years and has cost almost half a million dollars. We have agreed to everything the City of Dana Point has rigorously insisted upon throughout this process, especially our honoring of the bluff setback placement. I have written two letters to Ms. Hummer offering to answer any other concerns she may possess, and I have given her my personal cell phone number and email address. I have yet to receive any sort of response whatsoever.

**COASTAL COMMISSION**

EXHIBIT # 5  
PAGE 4 OF 8

Magellan Isle (turns streets up from Seaward Isle).



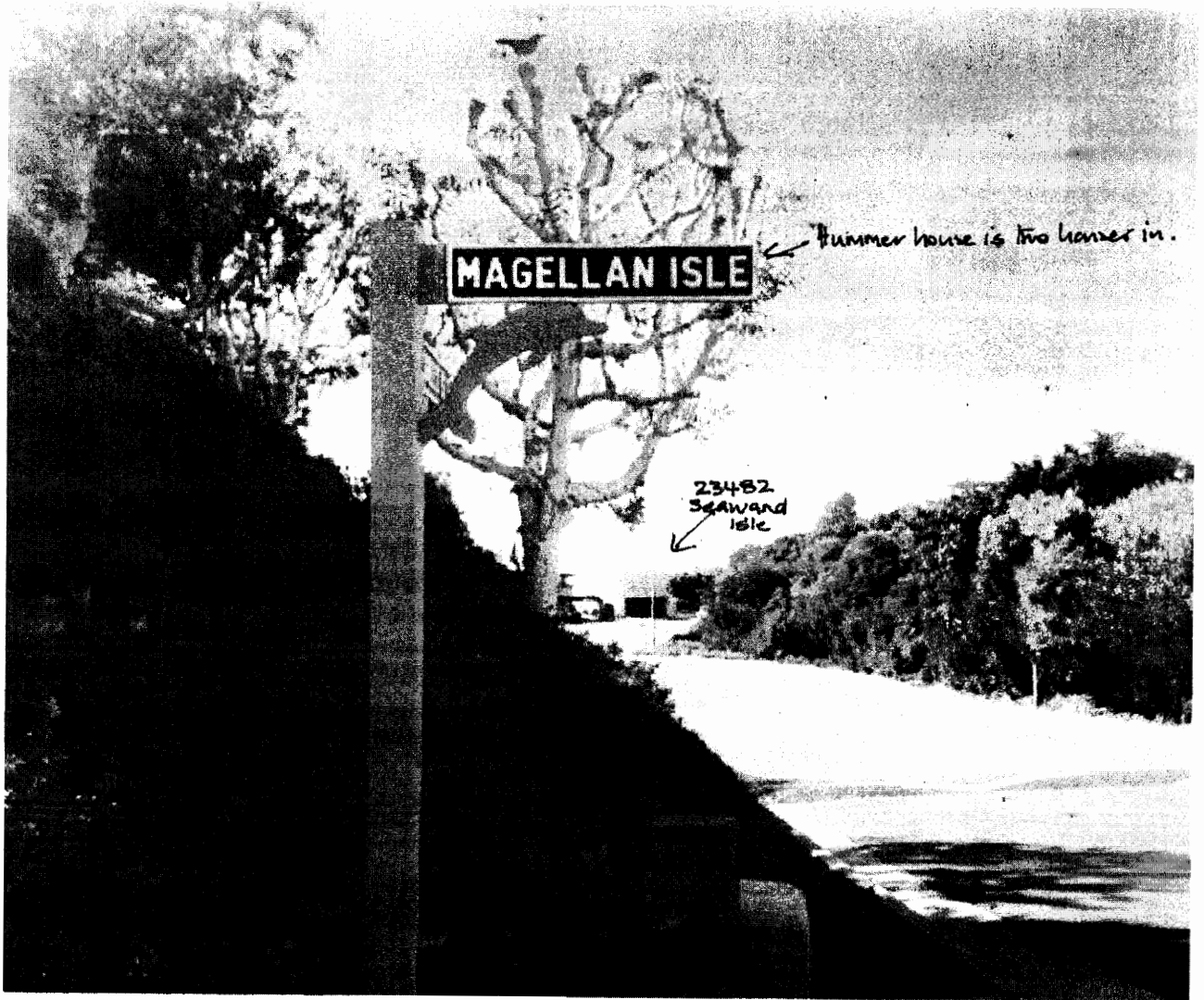
← parking →

SEAWARD  
ISLE

↙ OUR HOUSE (photo taken from sidewalk).

**COASTAL COMMISSION**

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PAGE 5 OF 8

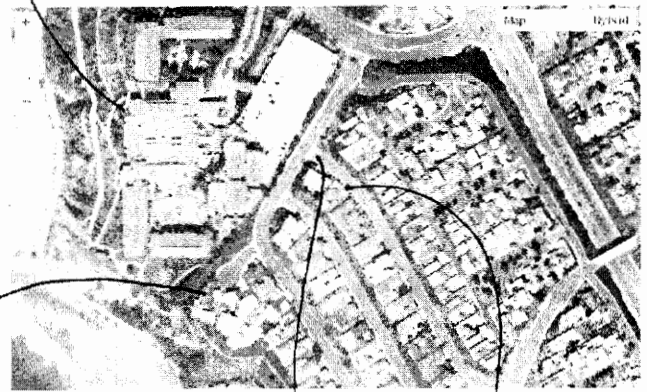


**COASTAL COMMISSION**

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Ritz  
Caulkins  
Hotel

Dana Point, CA  
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 33641 Magellan Isle Dana Point CA 92629  
 Home Facts | **Map & Nearby** | Refinance | Comparables | Sales Trends | Schools  
 Schools | Gas Stations | Grocery Stores | Restaurants | Banks



23482  
Seward  
Isle

Magellan Isle

32641 Magellan Isle

West Tanglewood - Best of Dana Point

Overall area rating:  
Good

Top rated categories:  
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 Parks & Recreation  
 Schools  
 Community Involvement

Total ratings: 369 | View all ratings  
 Last updated 19 hours ago

Rate this area:  Rate it

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 Single-Family Home

24 Cordova Pl, Dana Point, CA  
 \$910,000  
 2 br / 3 full, 1 partial  
 ba  
 2,069 sqft  
 Single-Family Home

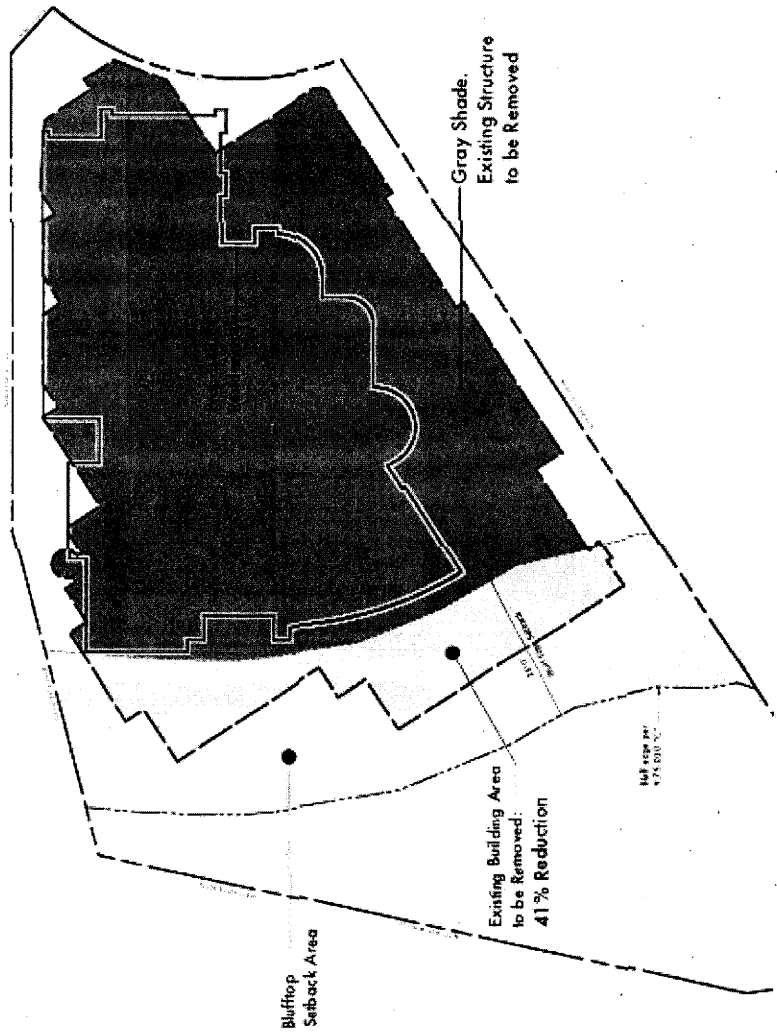
4161 North Grande Dr, Dana Point, CA  
 \$988,000  
 4 br / 3 full, 1 partial  
 ba  
 3,648 sqft  
 Single-Family Home

10 New York St, Dana Point, CA  
 \$849,500  
 0 br / 2 full, 1 partial  
 ba  
 1,817 sqft  
 Single-Family Home

View all homes near 33641 Magellan Isle

COASTAL COMMISSION

EXHIBIT # 6  
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**Building Impact Reduction**  
 Scale: NTS December 16, 2011

**Bergman Residence**  
 23482 Seaward Isle • Dana Point • 92629



**COASTAL COMMISSION**

EXHIBIT # 5  
 PAGE 8 OF 8

W 8a

Judith Hummer  
P.O. Box 577  
Dana Point, CA 92629  
949-443-1248

RECEIVED  
South Coast Region

MAR 1 2012

CALIFORNIA  
COASTAL COMMISSION

Mr. Karl Schwing  
Orange County Area Supervisor  
California Coastal Commission  
200 Oceangate  
10th Floor, Suite 1000  
Long Beach, CA 90802

February 28, 2012

Dear Mr. Schwing,

Thank you for identifying the owner as the responsible party in case of any bluff top failure. Financial responsibility was my primary concern.

Since Mr. Bergman states that "Ms. Hummer will be entirely unaffected. I doubt very much she'll even be able to see our roof or skylights from her house." I am enclosing several photographs of Mr. Bergman's house taken by my cell phone this morning from inside my house, from it's backyard on Shackleton Isle, and from my raised balcony.

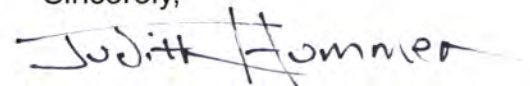
I am glad to know that Mr. Bergman will not have any reflective material in his skylights, skylight trim, or any reflective attachment to his property that will affect my view.

The reason I could not reply to Mr. Bergman's notes slipped under my gate was simple: the first one ominously threatened a lawsuit because I filed the appeal with the California Coastal Commission. While the second one simply contained a command to withdraw it.

I had planned to invite him to my home to speak in person, but clearly that was not possible. His letter to you and accompanying photographs were puzzling.

Thank you very much for your consideration of my questions in the appeal.

Sincerely,



Judith Hummer

cc. NSCA, Mr. Bergman











