

CALIFORNIA COASTAL COMMISSION

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Appeal Filed: 4/8/2014
180th Day: N/A
Staff: SV - LB
Staff Report: 9/25/2014
Hearing Date: October 9, 2014



Th10b

STAFF REPORT: APPEAL - DE NOVO HEARING

Local Government: Dana Point, Orange County

Appeal Number: A-5-DPT-14-0018

Applicants: City of Dana Point; Marketta Kariskko-Gassel, Owner 34551 Scenic Drive; Boyd & Carol Plowman and Benjamin & Michelle Day, Owners 34545 Scenic Drive; Ann & Lewis Bruggeman, Owners 34525 Scenic Drive

Agents: John Tilton A.I.A., City Architect/Planning Manager; and Mark McGuire, Attorney

Appellants: Coastal Commissioners: Shallenberger and Vargas

Project Location: 34525 – 34551 Scenic Drive, Dana Point, Orange County

Project Description: Vacation of the seaward portion of a public right-of-way, Scenic Drive, lot line adjustments to incorporate the vacated land into adjacent privately owned lots developed with single-family residences and a public access easement over the paved portion of the right-of-way.

Staff Recommendation: Denial

SUMMARY OF STAFF RECOMMENDATION

On May 14, 2014, the Commission, determined that a substantial issue exists with the City's approval of the local coastal development permit for the proposed vacation of the seaward portion of the Scenic Drive public right-of-way, including an approximately 18-foot wide public access easement over the paved portion of the right-of-way, and to transfer ownership of the right-of-way to the adjacent property owners via lot line adjustments (City of Dana Point Local Coastal Development Permit No. 11-0018). The primary ground for the appeal was that the proposed project contradicts explicit provisions of the City's certified Local Coastal Program (LCP). Furthermore the proposed project would adversely affect public access to the coast by changing the use of the road from public use to private use.

Staff recommends that the Commission, after a de novo public hearing, **deny** the coastal development permit application. Not only does the proposed vacation contradict the certified LCP, but Scenic Drive is currently the first public road, and only road, fronting the sea in this location. Denying the proposed vacation would preserve the public's right of access to this road as required by the City's certified LCP and the public access policies of Sections 30212(c) and 30214(b) in Chapter Three of the Coastal Act.

Section 4.6.E (page 4-58) of the certified Headlands Development Conservation Plan (HDCP), which is part of the certified LCP, states in part that “*Scenic Drive, currently consisting of a 60’ right-of-way, will terminate in a cul-de-sac just east of the existing, single family residential enclave. That portion of Scenic Drive that fronts the existing single family residential enclave will be vacated and added to the Headlands Conservation Park, creating a 30’ right-of-way servicing the residential enclave.*” In the event that the City wishes to vacate any portion of the Scenic Drive right-of-way, the policy explicitly requires that the vacated area be added to the Headlands Conservation Park, not to the private properties that abut it.

The City and the property owners believe the text in Section 4.6.E is incorrect and not consistent with the City’s intent for build-out of development in this area. However, the text in section 4.6.E was certified by the Coastal Commission, and is therefore the correct standard, and the City’s approval of Local CDP No. 11-0018 was done so based on incorrect assumptions. The public access policies of the Coastal Act preserve the public’s right to use existing public rights-of-way, and prevent such rights to access the coast to be adversely affected by turning over such accessways to private property owners.

The portion of Scenic Drive proposed to be vacated offers expansive coastal and bluff top views to the public. Additionally, the City’s certified LCP calls for a continuous bluff top walk way to be completed along the Headlands at a future date. The views available to the public from the right-of-way are similar to those offered in the adjacent conservation park, however, the conservation park is not able to accommodate those with limited physical abilities and restricts the hours that it is open to the public in order to protect the sensitive resources in the park. The vacation and privatization of this public right-of-way will unduly compromise the public’s ability to freely access the shoreline views available from the Dana Point Headlands. Furthermore, any future attempts to complete a continuous bluff top trail system, could be stifled.

The proposed vacation must be denied in order to be in conformance with the City’s certified LCP and to avoid the adverse public access impacts of the proposed vacation. **The motion to carry out the staff recommendation is on Page Four of this report.**

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I. MOTION AND RESOLUTION

Motion: *I move that the Commission approve Coastal Development Permit No.A-5-DPT-14-0018 for the development proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL

Staff recommends a **NO vote**. Failure of this motion will result in denial of the CDP and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commission present.

RESOLUTION TO DENY THE PERMIT

The Commission hereby denies a coastal development permit for the proposed development and adopts the findings set forth below on the grounds that the development will not be in conformity with the City of Dana Point Local Coastal Program policies and the access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures and/or alternatives that could be incorporated that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS

A. Project Description

On March 18, 2014, the City of Dana Point approved Local Coastal Development Permit No. 11-0018 authorizing the vacation of the seaward portion of Scenic Drive that sits atop the Dana Point Headlands between an approximately 60-acre open space nature preserve (Headlands Conservation Park) and three private single-family homes (**EXHIBIT #2**). The City's approval includes a requirement to record a public access easement over the entire, approximately 18-foot wide, paved portion of the vacated right-of-way.

The proposed vacation would relieve ownership of a public right-of-way from the City and grant it to the three adjacent private property owners via lot line adjustments with the condition that the property owners would maintain a non-vehicular public accessway over the paved portion of the right-of-way on an undetermined time restricted basis. (**EXHIBITS #7 & #8**).

The 340-foot long public right-of-way proposed to be vacated is about 60 feet wide – except for the westerly most approximately 90 feet where it is 30 feet wide and at the east end where the width tapers down slightly. The right-of-way extends westward approximately 80 feet past the paved portion of the road into the adjacent nature preserve (Headlands Conservation Park), which is immediately north and west of the site. The open space nature preserve is separated from the right-of-way by a fence and contains environmentally sensitive habitat area (ESHA), as well as a public trail system and an interpretive center with parking.

South of the public right-of-way are four privately owned parcels developed with three bluff-top single-family homes (**EXHIBITS #2 & #11**). The City's LCP calls for public dedications on the seaward side of the homes intended to be developed as a public bluff-top walk way at a future date. To date, only the western most property has recorded an irrevocable offer to dedicate for the public accessway described in the City's LCP. It is unknown if the City accepted it. East (inland) of the segment of the public right-of-way that is proposed to be vacated is the continuation of Scenic Drive, which is to remain public. Part of the public right-of-way is developed with a paved roadway that provides non-vehicular public access along the road and vehicular access to the residences. Until recently, a portion of the right-of-way contained some paved and unpaved area that was open to vehicles and used by the public for parking. "No Parking" signs have been posted along the street without a coastal development permit. Significant views of the nature preserve and the ocean beyond are available down the roadway and from almost all points within the public right-of-way.

B. Public Access and Visual resources

The portion of Scenic Drive proposed to be vacated and privatized is located seaward of the first public road. The vacation would change the use of the road from public use to private use and would no longer allow the public to *freely* access that portion of the road. A representative of the property owners has stated that the road would be available to the public on an undetermined time restricted basis as a result of an easement that would be granted once the proposed vacation removes the road from public ownership.

As a de novo permit matter, the standard of review for the proposed development is the City of Dana Point certified LCP. Since the proposed project is located between the first public road and the sea, the

proposed development must also conform with the public access and recreation policies of Chapter 3 of the Coastal Act.

Dana Point is a shoreline community in southern Orange County that incorporated as a City in 1989. On September 13, 1989, the Commission approved the City's post-incorporation LCP. The City's LCP is comprised of a variety of planning documents. At the subject site, the applicable documents are the 1986 Dana Point Specific Plan LCP, which applies to the southerly half of the subject road and the adjacent residential parcels; and the remainder half of the site would be regulated by the City's 1996 Zoning Code and the Land Use Element, Urban Design Element, and Conservation/Open Space Element of the City's General Plan, and the Headlands Development Conservation Plan (HDCP).

Certified Local Coastal Program (LCP) Policies

Policies of the Dana Point Specific Plan, Local Coastal Program:

Headlands Conservation Development Plan Section 4.6.E

“Scenic Drive, currently consisting of a 60’ right-of-way, will terminate in a cul-de-sac just east of the existing, single family residential enclave. That portion of Scenic Drive that fronts the existing single family residential enclave will be vacated and added to the Headlands Conservation Park, creating a 30’ right-of-way servicing the residential enclave.”

Section II.B.5 (Scenic Resources), introductory narrative:

“Scenic resources of Dana Point include vistas and panoramas of the Pacific Ocean, the Dana Point Harbor, distant views as far as the Palos Verdes Peninsula to the north, La Jolla to the south, and Catalina Island to the west...”

Section II.B.5 (Scenic Resources), Policy 28.b.1-3

- 1. The bluff top walk should connect to the regional trail entering the Dana Point Headlands from Laguna Niguel.*
- 2. The bluff top walk should connect to Doheny State Park, a regional recreation area.*
- 3. The bluff top walk should link to the proposed open space proposals in the Dana Point Headlands southwest of Cove Road; the Lantern Bay Lookout Park; and the existing and proposed lookout points.*

Section II.C.3 (Parking)

Adequate parking shall be provided in close proximity to each recreation and visitor-serving facility.

Section II.D.7 (Access Policies)

When publicly owned rights-of-way exist the feasibility of using them for pedestrian access should be explored.

A bluff top public walkway will be provided, and integrated with future land uses.

For all proposed development which lies between Pacific Coast Highway and the shoreline, public access to the shoreline and coast will be provided....for all development proposed along the shoreline bluff top, a lateral easement will be irrevocably offered for dedication to a public agency...

Policies of the General Plan/Land Use Plan

LUE Policy 3.10: Consider designating vacated street rights-of-way for Recreation/Open Space use. Any public rights-of-way which lead to navigable waters shall not be vacated, and may be used for public recreation/open space or public pedestrian purposes if not needed for vehicular traffic. (Coastal Act/30210-212, 30213)

LUE Policy 4.3: Public access, which shall be conspicuously posted, and public recreational opportunities, shall be provided to the maximum extent feasible for all the people to the coastal zone area and shoreline consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. (Coastal Act/30210)

LUE Policy 5.2: To protect the County's visual amenities and historical values through the permanent preservation of scenic areas as open spaces. (Coastal Act/30210-212, 30213, 30251)

LUE Policy 5.3: Public ownership of notable landmarks, geologic features and vista sites should be achieved through the selection of park sites, institutional grounds, etc., whenever possible. (Coastal Act/30251)

LUE Policy 5.6: Use of the Land Conservation Act, scenic easements or open space easements should be pursued to preserve scenic areas or vista sites. (Coastal Act/ 30251)

LUE Policy 5.7: To determine requirements; plan or assist in the planning for, and assume management responsibility when appropriate for open space areas used for outdoor recreation, including but not limited to, areas of outstanding scenic, historic and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas which serve as links between major recreation and open space reservations, including utility easements, greenbelts, banks of rivers and streams, trails and scenic highway corridors. (Coastal Act/ 30210-212, 30213, 30221, 30251)

LUE Policy 5.13: Create new public view and coastal access opportunities by establishing additional public shoreline access, an integrated, on-site public trail system, and coastal recreational facilities. (Coastal Act/30212, 30222, 30251)

LUE Policy 5.14: Develop pedestrian, bicycle and visual linkages between public spaces, the shoreline and the bluffs. (Coastal Act/30210, 30212)

UDE Policy 1.4: Preserve public views from streets and public places. (Coastal Act/30251)

COSE Policy 6.4: Preserve and protect the scenic and visual quality of the coastal areas as a resource of public importance as depicted in Figure COS-5, "Scenic Overlooks from Public Lands", of this Element. Permitted development shall be sited and designed to protect public views from identified scenic overlooks on public lands to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. (Coastal Act/30251)

COSE Policy 7.3: Preserve public and private open space lands for active and passive recreational opportunities. (Coastal Act/30213)

...Prohibit new development that significantly degrades public views to and along the coastline including, but not limited to, existing, enhanced or created views from the Hilltop park and greenbelt linkage, the Strand Vista Park, the Dana Point Promontory/Headlands Conservation Park and Harbor Point. (Coastal Act/30251)

LUE, Goal 5, Policy 5.6: Require that a continuous scenic walkway or trail system be integrated into the development and conservation plan for the Headlands and that it provide connection points to off-site, existing or proposed walkways/trails, including integration with the California Coastal Trail. The alignment of the walkway and trail system shall be consistent with their depiction on Figure COS-4, Figure COS-5, and Figure COS-5a in the Conservation Open Space Element. (Coastal Act/30210, 30212)

LUE, Goal 5, Policy 5.23: Off-street parking shall be provided for all new residential and commercial development in accordance with the ordinances contained in the LCP to assure there is adequate public access to coastal resources. A modification in the minimum quantity of parking stalls required through the variance process shall not be approved. Valet parking shall not be implemented as a means to reduce the minimum quantity of parking stalls required to serve the development. Provide on-street and off-street public parking facilities strategically distributed to maximize public use and adequately sized to meet the needs of the public for access to areas designated for public recreation and public open space uses at the Headlands, as measured by the standards set forth in the City regulations. Where existing adjacent public parking facilities are presently underutilized and those facilities are also anticipated to be underutilized by projected future parking demand, use those existing adjacent public parking facilities, where feasible, to serve the needs of the public for access to areas designated for recreation and public open space uses at the Headlands. (Coastal Act/30212.5, 30252)

LUE, Goal 5, New Policy: The implementation of restrictions on public parking along Selva Road, Street of the Green Lantern, and Scenic Drive that would impede or restrict public access to beaches, trails or parklands, (including, but not limited to, the posting of "no parking" signs, red curbing, physical barriers, and preferential parking programs) shall be prohibited except where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety. Where feasible, an equivalent number of public parking spaces shall be provided nearby as mitigation for impacts to coastal access and recreation.

Coastal Act Policies

The proposed project, which is located between the first public road and the sea, must also conform with the following public access and recreation policies of the Coastal Act.

Section 30210 of the Coastal Act states:

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 of the Coastal Act states:

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.

Section 30213 of the Coastal Act states:

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

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Sections 30212(c) and 30214(b) of the Coastal Act state, respectively:

“Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 Article X of the California Constitution.”

“It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public’s constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.”

Maintaining this part of Scenic Drive as a public road does not place any undue burdens on the adjacent property owners. The property owners can continue to use the road to easily access their driveways. Vacating this road and conceding the property rights to the adjacent private property owners would, however, be inconsistent with public access and recreation policies in Chapter 3 of the Coastal Act and those in the LCP

The certified Headlands Development Conservation Plan (HDCP) (a part of the City's Local Coastal Program) contains language that would permit the vacation of the right-of-way, adding the area to the Headlands Conservation Park and creating a 30-foot wide right-of-way to allow the residents to access their driveways. The southerly 30 feet of the right-of-way is to remain a public street (although the adjacent landowners are to maintain landscaping) under the plan and will continue to provide public access and shoreline views. Instead of following the policy set forth in the HDCP, the City approved the vacation of the entire segment of the public right-of-way to the private residences with the paved portion subject to an easement allowing public non-vehicular access on an undetermined time-restricted basis. Currently, there are no such time restrictions on this right-of-way and imposing such would have the effect of reducing public access opportunities at the site. While a public access easement is an important measure, the requirement of such easement does not override the obligation to comply with the LCP. Furthermore, the use of the street for public parking, which supports public access, would also be prohibited with the proposed vacation.

The applicants contend that the HDCP was certified with an error in the description of how the contested portion of Scenic Drive is to be allocated. City staff believes that "[u]pon examining the various changes that occurred to this part of the HDCP as reflected in Figure 4.4.2, it is [City] Staff's belief that a small amount of text in the final HDCP was inadvertently left unchanged and failed to reflect the approved/required changes. More specifically, the text on page 4-58 still reflects what was envisioned for this area at the time the City approved the HDCP, not what was required pursuant to the final certified HDCP." (**EXHIBITS #10 & #11**)

The figures that the City is referring to can be found in **EXHIBITS #10 & #11** of this report. EXHIBIT A (**EXHIBIT #10**) is an early draft of the Headlands Conservation Park Conceptual Plan and was not certified. It shows Scenic Drive converging in a cul-de-sac northeast of the residential enclave. North of the cul-de-sac, is the parking lot, the trailhead and the Interpretive Center. The Interpretive Center sits east of the parking lot and the trailhead is shown directly west of the parking lot. There are other developments shown in the figure that were eventually removed or changed from the plan. EXHIBIT B (**EXHIBIT #11**), which was certified as part of the HDCP, also shows Scenic Drive converging in a cul-de-sac. The configuration of the parking lot, Interpretive Center and trailhead were changed. The Interpretive Center was moved from the east side of the parking lot to the west side of the parking lot; the foot print of the parking lot was straightened out and slightly reduced; the trailhead was moved further west of the parking lot to the northwest corner of the right-of-way at the boundary of the conservation park and the right-of way; and a trail leading from the Interpretive Center to the trailhead, along the northern boundary of the right-of-way, was added. This is the development configuration that exists today.

In a letter to The Community Development Director of The City of Dana Point dated February 10, 2014, Mr. Mark Maguire, an attorney for the residents, whose property fronts the contested portion of Scenic Drive, stated that EXHIBIT A of Figure 4.4.2 (**EXHIBIT#10**) of the Headlands Conservation Park Conceptual Plan, "shows that Scenic Drive was always designed to terminate in

a cul-de-sac *east* of the residential enclave.” That exhibit was part of the original proposal for developing Headlands Conservation Park by the City of Dana Point. The exhibit shows that there *is* a cul-de-sac at the top of Scenic Drive, it also shows Scenic Drive continuing to the west of the cul-de-sac. Additionally, the applicants believe that the change in the location of the Interpretative Center from one side of the parking lot to the other and the change in the location of the start of the trailhead provide further evidence that the text was not properly updated.

The exhibit that was approved as Figure 4.4.2 (**EXHIBIT #11**) shows the development of the Interpretive Center, the trailhead, the parking lot and the Scenic Drive right-of-way fronting the residences exactly how it took place. The text that supports the figure (**EXHIBIT #4**), does indicate that Scenic Drive will terminate at the cul-de-sac east of the residential enclave. It also describes the vacation of the westerly portion of Scenic Drive (fronting the residences) and its intent to be absorbed into the Headlands Conservation Park. There is no indication in the text or either of the figures that shows that the vacated right-of-way should be absorbed into the private residential parcels.

The City’s analysis concluded that the details outlined in the HDCP regarding this segment of Scenic Drive are inconsistent with the intent of the proposed vacation. Given the alleged text errors in the HDCP, the City reasoned that vacating the right-of-way could be found consistent with the HDCP so long as public access issues were addressed. The City determined that reservation of a non-vehicular public access easement would be adequate to protect the public’s right to access the area. In fact, the text in Section 4.6.E that was certified by the Coastal Commission is correct, and the City’s approval of Local Coastal Development Permit 11-008 was done so based on incorrect assumptions. LCPs and LUPs go through several changes before they are certified by the Coastal Commission. Comparing an exhibit of a plan that was not certified to what was certified by the Coastal Commission is not necessarily an appropriate metric to measure intent. Regardless of their argument, a change in the locations of the Interpretative Center and start of the trail has no bearing on the intent of the road vacation.

In any case, if the City believes that there are typos or inconsistencies in the HDCP, the City should propose to address those issues through an LCP amendment. Additionally, the allowances and restrictions to be contained in the non-vehicular public access easement were not clearly identified in the City’s action in approving the local CDP. The details (i.e. allowances and restrictions) of an easement are extremely important to ensure that maximum public access and recreational opportunities that currently exist at the site are adequately protected. The Commission cannot find that the proposed easement adequately protects public access without clear definitions of what is allowed or not allowed in the easement area. Thus, the proposed vacation is not consistent with the public access protection policies of the certified LCP (e.g. Land Use Element policies 5.2, 5.3, 5.6, 5.7, 5.13, 5.14) or Chapter 3 of the Coastal Act (e.g. Sections 30210, 30212, 30121 and 30213).

The portion of Scenic Drive in question does not only serve the residential enclave, it also serves as public access to the scenic views and has potential to provide access to future public trails within the headlands area and along the coast. The proposed vacation is not in conformity with the City’s LCP or the Coastal Act because it limits public access and could restrict future public recreation opportunities to the nearby coastal trails and coastal trails that have yet to be complete, including a bluff-top walk way.

The proposed project has the potential to disrupt expansive public views. The public views afforded by this right-of-way include expansive panoramas of the ocean and nature preserve. Furthermore, there are feasible opportunities along the portion of Scenic Drive that is proposed to be vacated to provide formalized and valuable public viewpoints developed with seating. Although there are public access and view opportunities from the adjacent Headlands Conservation Park, those opportunities do not accommodate people with physical limitations and are time-restricted in order to protect the sensitive resources in the park. Parking and a viewpoint at Scenic Drive would provide a readily available alternative to enjoy views similar to those available within the park for people of varying physical abilities.

Scenic areas and vista points are designated as protected and sought after resources in the City's certified LUP (as noted above). Correspondingly, Section 30251 of the Coastal Act states in part that "[t]he scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance..." Changing the use of this right-of-way from public to private affords the potential to limit, obstruct and eliminate the public from appreciating the views offered along the road by the legal interest to seek installation of landscaping and vehicular and pedestrian gating that will create physical and visual barriers and result in the loss of access to the existing informal viewpoint available from the westerly end of Scenic Drive (and views present all along the segment of Scenic Drive proposed to be vacated). Furthermore, this portion of Scenic Drive serves as an opportunity for those who do not have the physical capacity to access the trail system to enjoy the sweeping seascapes and tranquil landscapes that they would otherwise be unable to admire from within the confines of the preserve. Vacation of this segment of a public right-of-way to private property owners would result in prohibiting public access to the scenic vista points along the right-of-way, inconsistent with visual resource protection policies of the City's LCP and the Coastal Act.

Thus, the proposed project is inconsistent with the view protection policies of the certified LCP. Among those policies is Land Use Element Policy 5.1 which states the City shall "preserve the opportunity of public views from the Headlands site to the coastal areas and harbor areas" and 5.3 which requires the City to, "[p]reserve natural open space in the Headlands area, especially along the coastal bluffs, and provide open areas integrated throughout the development."

Moreover, the proposed development is inconsistent with LCP policies that call for the vacation of the public right-of-way in order to expand the adjacent nature preserve (Headlands Conservation Park). Nothing in the LCP allows the City to vacate the public right-of-way and grant it to the adjacent privately owned residential parcels

In sum, the proposed development is inconsistent with the certified LCP and the Chapter 3 access and recreation policies of the Coastal Act. Therefore, for the foregoing reasons, staff recommends that the Commission deny the proposed development.

C. Unpermitted Development

Development has occurred on the project site without the required coastal development permit. The unpermitted development includes, but may not be limited to, placement of a chain-link fence across the public right-of-way and posting of "No Parking" signs along the street, thus impeding public use of the right-of-way. The unpermitted fence is a continuation of the fence that delineates the adjacent private property. The fence may have been erected within the public right-of-way by the adjacent private

property owner. The unpermitted fence is not proposed to be retained as part of the proposed project. Therefore enforcement action will be considered in order to resolve this issue.

Although unpermitted development has taken place on the project site prior to Commission action on this permit application, consideration of the application by the Commission is based solely upon the policies contained in the certified LCP, where applicable, Chapter 3 policies of the Coastal Act. Commission action on this permit application does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

Appendix A - Substantive File Documents

1. City of Dana Point certified Local Coastal Program (LCP), 12/10/1986.
2. City of Dana Point Headlands Conservation Development Plan (HDCP) 9/22/2004.
3. Coastal Development Permit No. A-5-DPT-14-0299 (City of Dana Point).
4. Local Coastal Development Permit No. 11-0018 (Property Owners at 34525 – 34551 Scenic Dr., Dana Point).
5. City of Dana Point Resolution 14-03-18-05 (Property Owners at 34525 – 34555 Scenic Dr., Dana Point).
6. City of Dana Point Resolution 13-07-22-16 (City of Dana Point)
7. City of Dana Point Resolution 13-07-22-15 (City of Dana Point)
8. City of Dana Point Agenda Report, 3/18/2014
9. City of Dana Point Resolution 14-03-18-XX (Property Owners at 34525 – 34555 Scenic Drive, Dana Point)
10. City of Dana Point Planning Commission Agenda Report, 7/22/2013
11. City of Dana Point Planning Commission Regular Meeting Minutes, 7/22/2013



West end of Scenic Drive, Dana Point and entrance to Headlands Conservation Park.

Dana Point, CA

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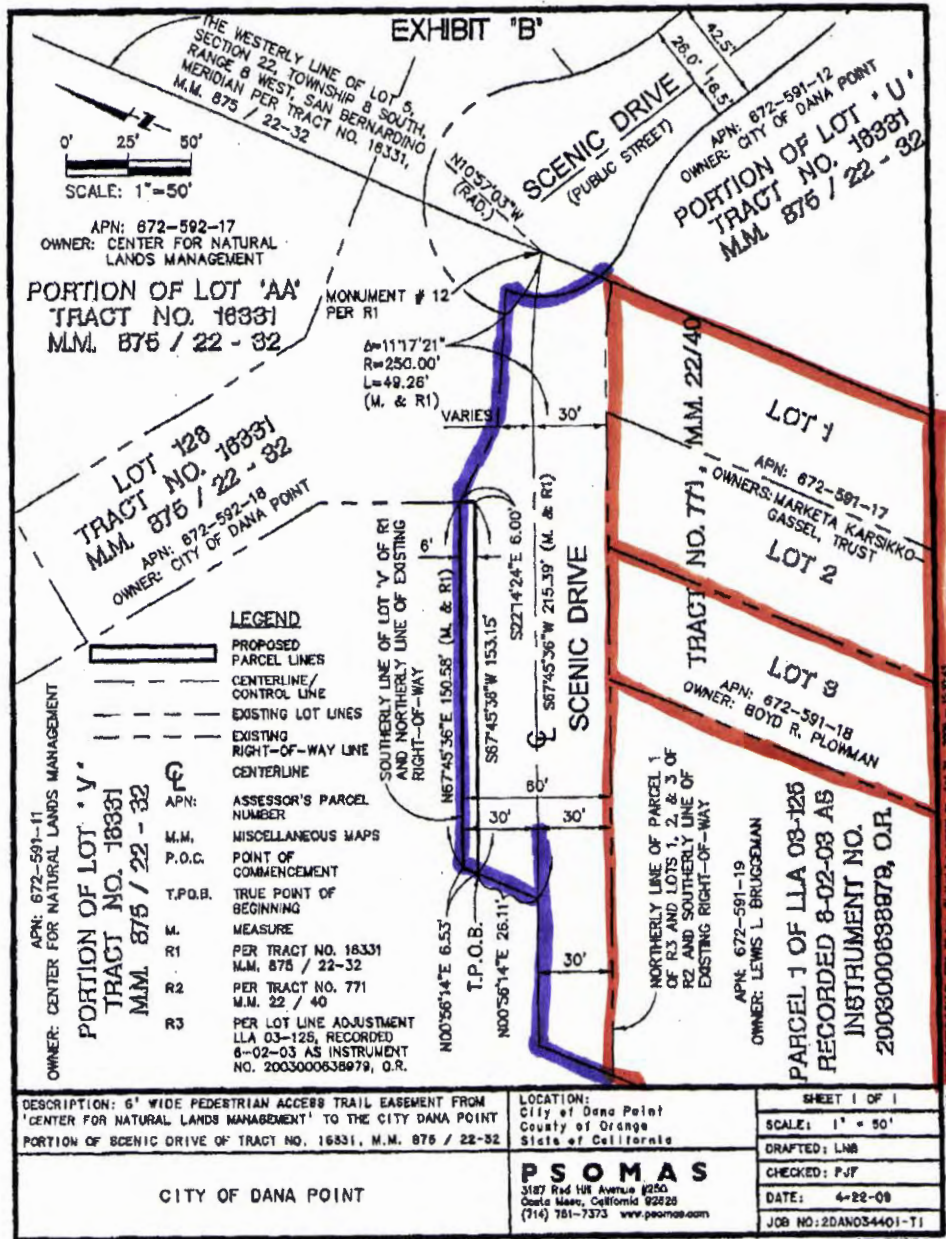
EXHIBIT # 1

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Imagery ©2014 Google, Map data ©2014 Google 200 ft

Contested Portion of Scenic Drive



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C. Street of the Green Lantern

Street of the Green Lantern (Street of the Blue Lantern and Santa Clara for outbound trips to PCH) provide secondary access to the project site. Street of the Green Lantern intersects with PCH and Cove Road, and provides access to Planning Area 5, Hilltop Park and Greenbelt Linkages, Planning Area 7, Headlands Conservation Park, Planning Area 8, Harbor Point Park, and Planning Area 9, Seaside Inn Visitor Recreation Commercial.

Green Lantern will be realigned to a traffic circle with Scenic Drive. Metered head-in and/or parallel parking along the realigned Street of the Green Lantern and Scenic Drive provides access to the adjacent parks, open space and public trail system.

D. Cove Road

Cove Road is an existing two-lane road, which connects Green Lantern and Scenic Drive to Harbor Drive. Cove Road provides access to Planning Area 9, Seaside Inn Visitor/Recreation Commercial. No changes to Cove Road are proposed.

E. Scenic Drive

Scenic Drive exists on-site and provides access for the existing residential enclaves. With the implementation of the project, the multi-family residential enclave will take access via the extension of Selva Road (Dana Strand Road). Marguerita Road is a private easement. It will be removed and converted to open space. Scenic Drive will be realigned at the Green Lantern traffic circle. Portions of Planning Area 7, Headlands Conservation Park, Planning Area 8, Harbor Point Park, and Planning Area 9, Seaside Inn Visitor/Recreation Commercial, take access from Scenic Drive.

Scenic Drive, currently consisting of a 60' right-of-way, will terminate in a cul-de-sac just east of the existing, single family residential enclave. That portion of Scenic Drive that fronts the existing, single family residential enclave will be vacated and added to the Headlands Conservation Park, creating a 30' right-of-way servicing the residential enclave. To the extent feasible, the existing vegetation in this parkway area abutting the existing residential uses will be retained during reconstruction of the pavement. Any trees or shrubs removed to provide the roadway relocation will be replaced at a ratio of 1:1 (space permitting and subject to appropriate design) with specimens selected from HDCP Tables 4.16.1, Native Landscape Plant Palette and 4.14.1, Revegetation Plant Palette. Screening capability at maturity will be utilized as an important species selection criterion. Replacement trees will be sized at 24" box and shrubs at a mix of five and 15 gallon. Once the landscaping and irrigation is installed, maintenance will become the responsibility of the abutting homeowner. Restricted hourly parking (3-hour minimum) is proposed for the new parking lot adjacent to the Scenic Drive cul-de-sac. Metered (3-hour minimum) parking along Scenic Drive provides additional access to the adjacent parks, open space and public trail system.

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EXHIBIT # 4

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RESOLUTION NO. 13-07-22-15

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DANA POINT, CALIFORNIA, FINDING THE PROPOSED VACATION OF SCENIC DRIVE AND PROPOSED LOT LINE ADJUSTMENTS AND QUITCLAIM DEEDS GENERALLY LOCATED ADJACENT TO THE HEADLANDS, BETWEEN 34525 AND 34551 SCENIC DRIVE IS CONSISTENT WITH THE DANA POINT GENERAL PLAN (GPC13-0002).

APPLICANT: City of Dana Point

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

WHEREAS, the City Council of the City of Dana Point at its meeting of August 21, 2007, adopted a Resolution of Intent to Vacate, relating to the proposed vacation of Scenic Drive generally located adjacent to the Headlands and Headlands Conservation Park, between 34525 and 34551 Scenic Drive; and

WHEREAS, pursuant to the Resolution of Intention and Government Code Section 65402, the Planning Commission is required to make a determination whether the proposed vacation of Scenic Drive is consistent with the Dana Point General Plan; and

WHEREAS, Scenic Drive is located within, and is part of, the Headlands Development and Conservation Plan (HDCP). The HDCP is part of the City's, Headlands' and California Coastal Commission's approved Local Coastal Program for the Headlands. The vacation of Scenic Drive is an implementation action in accordance with the HDCP; and

WHEREAS, the Planning Commission did, on the 22nd day of July, 2013, review the said request and considered all factors relating to GPC13-0002.

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.
- B) Based on the evidence presented, the Planning Commission adopts the following findings:
 - 1) The vacation of Scenic Drive and associated lot line adjustments and quitclaim deeds generally located adjacent to the Headlands, between 34525 and 34551 Scenic Drive is consistent with the Headlands Development and Conservation Plan (HDCP), the Dana Point General Plan and Local Coastal Program in that the HDCP specifically states that this portion of Scenic Drive is to be vacated. Scenic Drive currently does provide vehicular access to three (3) single-family residential lots

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abutting Scenic Drive. Access to the residential lots will not change and the vacation will not have any impact on surrounding properties. Furthermore, the HDCP acts as the relevant General Plan and Local Coastal Program for the property at issue and as a result is consistent with the General Plan.

- 2) The proposed vacation and associated lot line adjustments and quitclaim deeds complies with all other applicable requirements of state law and local ordinances.
- 3) The proposed vacation complies with the City of Dana Point Zoning Code and Local Coastal Program.

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EXHIBIT # 5

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PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Dana Point, California, held on this 22nd day of July 2013, by the following vote, to wit:

AYES: Claus, Denton, Newkirk

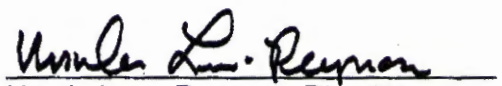
NOES: Whittaker

ABSENT: O'Connor

ABSTAIN: None


Gary Newkirk, Chairman
Planning Commission

ATTEST:


Ursula Luna-Reynosa, Director
Community Development Department

COASTAL COMMISSION
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EXHIBIT # 5
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RESOLUTION NO. 13-07-22-16

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DANA POINT, CALIFORNIA, RESCINDING APPROVAL OF COASTAL DEVELOPMENT PERMIT CDP07-20 PERTAINING TO THE CONDITIONAL VACATION OF SCENIC DRIVE AS SPECIFIED IN THE HEADLANDS DEVELOPMENT AND CONSERVATION PLAN AND RELATED LOT LINE ADJUSTMENTS AND QUITCLAIM DEEDS

APPLICANT: City of Dana Point

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

WHEREAS, a verified application was filed for a Coastal Development Permit in 2007 for the vacation of Scenic Drive as specified in the Headlands Development and Conservation Plan (HDCP) and related lot line adjustments and quitclaim deeds;

WHEREAS, the Planning Commission did hold a duly noticed public hearing as prescribed by law on June 1, 2009, which hearing remained open and was continued successively to June 15, 2009, then to July 6, 2009, and finally to July 20, 2009; and

WHEREAS, at said public hearing, the Planning Commission considered all factors relating to Coastal Development Permit CDP07-20 and adopted a resolution finding the proposed vacation and associated lot line adjustments and quitclaim deeds are consistent with the Dana Point General Plan as well as adopted a resolution approving CDP07-20; and

WHEREAS, following the approval by the Planning Commission, the City Council held a duly noticed public hearing to consider CDP07-20 on June 8, 2009, which hearing remained opened and was continued to July 27, 2009. On July 27, 2009, the City Council also approved Coastal Development Permit CDP07-20; and

WHEREAS, following the Planning Commission and City Council approval of CDP07-20 in 2009, an agreement was reached between the existing property owners relative to the use and maintenance of Scenic Drive as well as specific private improvements that could be built within the street, if a portion of it is vacated by the City. As a result of the new agreement among the property owners, a revised Coastal Development Permit application was submitted in 2011.

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.

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EXHIBIT # 6

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- B) Based on the evidence presented and, to avoid confusion with CDP07-20, the Planning Commission is rescinding Coastal Development Permit (CDP07-20) due to the above-referenced circumstances.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Dana Point, California, held on this 22nd day of July 2013, by the following vote, to wit:

AYES: Claus, Denton, Newkirk

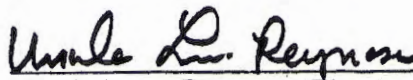
NOES: Whittaker

ABSENT: O'Connor

ABSTAIN: None


Gary Newkirk, Chairman
Planning Commission

ATTEST:


Ursula Luna-Reynosa, Director
Community Development Department

COASTAL COMMISSION
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EXHIBIT # 6
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RESOLUTION NO. 14-03-18-05

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, GRANTING THE APPEAL AND MODIFYING THE CONDITIONS OF APPROVAL OF THE PLANNING COMMISSION'S APPROVAL OF COASTAL DEVELOPMENT PERMIT CDP11-0018 FOR THE CONDITIONAL VACATION OF SCENIC DRIVE AS SPECIFIED IN THE HEADLANDS DEVELOPMENT AND CONSERVATION PLAN (HDCP) AND RELATED LOT LINE ADJUSTMENTS AND QUITCLAIM DEEDS

Applicants/Property Owners:
(Property owners at 34525 to 34555 Scenic Drive)

The City Council of the City of Dana Point does hereby resolve as follows:

WHEREAS, on December 9, 2011, the applicants filed a verified application for a Coastal Development Permit, for the vacation of Scenic Drive and associated Lot Line Adjustments. The portion of Scenic Drive to be vacated is located between 34525 and 34551 Scenic Drive and is generally located adjacent to the Headlands and Headlands Conservation Park; and

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

WHEREAS, Scenic Drive is located within, and is part of, the Headlands Development and Conservation Plan (HDCP). The HDCP is part of the City's Local Coastal Program and the California Coastal Commission has approved the Local Coastal Program for the Headlands. The vacation of Scenic Drive is an implementation action in accordance with the HDCP; and

WHEREAS, this Coastal Development Permit for the vacation of Scenic Drive and associated lot line adjustments and quitclaim deeds are contingent upon the City Council's decision to vacate the street pursuant to California Streets and Highways Code; and

WHEREAS, the Planning Commission did, on the 22nd day of July, 2013, 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 and approved Coastal Development Permit CDP11-0018 and;

WHEREAS, on August 6, 2013, the applicants filed an appeal of the Planning Commission decision; and

WHEREAS, the City Council did, on the 18th day of March, 2014, hold a duly noticed public hearing as prescribed by law to consider said request; and

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public hearing as prescribed by law to consider the appeal; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Council considered all factors relating to the appeal of CDP11-0018.

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

- A) The above recitations are true and correct.
- B) Based on evidence presented at the public hearing, the City Council adopts the following Findings with modifications to conditions 1 and 2 of the Planning Commission approval of CDP11-0018, subject to the following Findings and Conditions.

Findings:

- A) Based on the evidence presented at the public hearing, the City Council adopts the following findings and approves Coastal Development Permit CDP11-0018 relative to the conditional vacation of Scenic Drive subject to the conditions noted below:
- 1) That the proposed project is consistent with the Dana Point General Plan and Local Coastal Program in that the Headlands Development and Conservation Plan (HDCP) does not require that the access drive servicing the residential enclave (i.e., west of where Scenic Drive terminates in a cul-de-sac) remain a public street, and a public non-vehicular access easement is being reserved over the asphalt portion of the vacated right of way. The HDCP is part of the City's, Headlands' and California Coastal Commission's approved Local Coastal Program for the Headlands. The vacation of Scenic Drive is an implementation action in accordance with the HDCP. In addition, the HDCP acts as the relevant General Plan and Local Coastal Program for the property at issue and is therefore consistent with the General Plan.
 - 2) That the proposed project 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 impact public access or public recreation opportunities.

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That the proposed project conforms with Public Resources Code Section 21000 (the California Environmental Quality Act) in that the Headlands development project was evaluated and discussed in

Environmental Impact Report (SCH#2001071015) which was prepared and certified for the development. The proposed project is consistent with the EIR and the Headlands Development and Conservation Plan. As a result, no further environmental documentation is necessary.

- 4) That the proposed project 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 Scenic Drive was specifically referenced in the Development Guidelines of the HDCP to terminate in a cul-de-sac east of the residential lots abutting Scenic Drive to the west of the cul-de-sac. Access to the residential lots will not change as a result of the vacation of Scenic Drive. Additionally, the project will have no impact on public accessways or public views to and along the coast and a public access easement shall be retained (in addition to the public trail that was already constructed and opened to the public within that portion of the Scenic Drive right of way already vacated).
- 5) That the proposed project 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 street vacation is located in an area that has already been graded in conjunction with the Headlands development and existing residential properties. As a result, the vacation of Scenic Drive will not have any adverse impacts to sensitive habitats as the access drive will remain in its existing location. While the location of the proposed street vacation is adjacent to the established Native Interpretive Center within the Headlands Conservation Park, existing vegetation in the parkway area already exists to serve as a landscaped buffer between the vacated street and the Headlands Conservation Park and the three (3) residential properties.
- 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 been previously graded and paved as a public street. The vacation of Scenic Drive will not involve any alterations to natural landforms.

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- 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 physical improvements that have been completed within the already-vacated portions of Scenic Drive were specifically referenced in the HDCP and no new improvements are proposed other than landscaping between the existing asphalt and the retaining wall and fence adjacent to the existing public trail. Attachment "F" (CC&R's) includes restrictions to the landscaped area plant height to avoid adverse visual impacts. The street vacation will be compatible with the character of the surrounding residential area, would further the stated goals and objectives of the HDCP and would enhance the visual quality of the area.
- C). Based on the evidence presented at the public hearing, the City Council adopts the following findings and approves Coastal Development Permit CDP11-0018 relative to the proposed conditional Lot Line Adjustments and proposed conditional quitclaim deeds subject to the conditions noted below. Final approval of specified quitclaim deeds and lot line adjustments are contingent upon approval of Coastal Development Permit CDP11-0018:
- 1) That the proposed project is consistent with the Dana Point General Plan and Local Coastal Program in that the proposed Lot Line Adjustments & quitclaim deeds qualifies as development under the Coastal Act and therefore requires a Coastal Development Permit. In connection with the aforementioned vacation of Scenic Drive, the Lot Line Adjustments and quitclaim deeds are necessary to ensure that the existing residential homeowners retain access to their respective properties by use of the existing street abutting their respective properties. The vacation of Scenic Drive is specifically referenced in the HDCP, which serves as the relevant General Plan and Local Coastal Program for the property at issue; the Lot Line Adjustments and quitclaim deeds are further implementation of the HDCP and is therefore consistent the General Plan.
- 2) That the proposed project 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 impact public access or public recreation opportunities.
- 3) That the proposed project conforms with Public Resources Code Section 21000 (the California Environmental Quality Act) in that the Headlands development project (including the improvements

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completed within vacated portions of Scenic Drive) was evaluated and discussed in Environmental Impact Report (SCH#2001071015) which was prepared and certified for the development. The proposed Lot Line Adjustments and quitclaim deeds, an implementation mechanism for the vacation of the remaining portions of Scenic Drive to be vacated (i.e., the remaining right of way west of where Scenic Drive terminates in a cul-de-sac per the HDCP), would extend the Homeowners' lot line to the northern edge of the existing street, allowing the Homeowners to retain full use of the existing street after the vacation. Furthermore, the proposed Lot Line Adjustments and quitclaim deeds would be exempt under CEQA Guidelines Section 15305(a) which references minor lot line adjustments not resulting in the creation of a new parcel. No new parcels would be created as a result of the Lot Line Adjustments and quitclaim deeds. Therefore, the proposed project is consistent with the EIR and the Headlands Development and Conservation Plan. As a result, no further environmental documentation is necessary.

- 4) That the proposed project 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 Lot Line Adjustments and quitclaim deeds would serve as a means to implement the vacation of Scenic Drive, which was specifically referenced in the Development Guidelines of the HDCP. The proposed Lot Line Adjustments and quitclaim deeds will not have any impact on surrounding properties, nor will it have any impact on public accessways or public views to and along the coast and a public access easement shall be retained.
- 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 Lot Line Adjustments and quitclaim deeds are located in an area that has already been graded in conjunction with the Headlands development and existing single-family residential properties. The proposed Lot Line Adjustments and quitclaim deeds will relocate the Homeowners' lot lines to the northern edge of the existing street, thereby allowing the Homeowners to retain full use of the street for access after the vacation. As a result, the vacation of Scenic Drive will not have any adverse impacts to sensitive habitats. While the location of the proposed

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street vacation, quitclaim deeds and subsequent Lot Line Adjustments are adjacent to the Headlands Conservation Park, existing vegetation in the parkway area already exists to serve as a landscaped buffer between the vacated street and the Headlands Conservation Park and the three (3) residential properties.

- 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 been previously graded and paved as a public street. The vacation of Scenic Drive, quitclaim deeds and subsequent Lot Line Adjustments will not involve any alterations to natural landforms.
- 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 Lot Line Adjustments and quitclaim deeds would serve as a means to implement the vacation of Scenic Drive, which was specifically referenced in the Development Guidelines of the HDCP. As a result of the Lot Line Adjustments and quitclaim deeds, the Homeowners would retain full use of the existing street and the Center for Natural Lands Management would only obtain property rights as to undeveloped portion of the right-of-way north of the existing street. The proposed Lot Line Adjustments and quitclaim deeds would further the stated goals and objectives of the HDCP with respect to the street vacation and would provide visual enhancement to the area.

Conditions:

General:

The following conditions shall be met by the homeowners prior to recordation of a City Council resolution indicating approval of the proposed street vacation:

1. Within 120 days of the CDP being approval by the City Council or the Coastal Commission (if appealed and ultimately acted on by the Coastal Commission), the owners of the three single-family residential lots abutting Scenic Drive (the "Homeowners") shall deliver to the City for recording an executed and notarized copy of the Covenants, Conditions And Restrictions, Grant Of Reciprocal Access Easements, And Maintenance Agreement document (the "CC&Rs") and legal descriptions for vacation, the associated lot line adjustments and proposed pedestrian access easement as provided in Attachments "F", "G", "H" and "I", or such similar document as the City Manager may

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approve in writing. The CC&Rs shall provide legal private access and use rights, as well as shared maintenance obligations, to all Homeowners over all portions of the Proposed Vacation to be used for street purposes, as indicated in the CC&Rs.

2. A series of lot line adjustments and quitclaim deeds with legal descriptions from the homeowners shall be delivered to the City for processing the vacation and recording, extending the Homeowners' respective property boundaries in a northerly direction substantially similar to that indicated in Attachment "F" within 120 days of the CDP being approval by the City Council or the Coastal Commission (if appealed and ultimately acted on by the Coastal Commission).
3. A Coastal Development Permit is obtained for the Proposed Vacation and Lot Line Adjustments and quitclaim deeds. (as will occur if the Council adopts the accompanying Resolution).
4. The Homeowners shall pay the City \$25,000.00 as reimbursement for City staff, engineering costs, and legal costs associated with the conditional vacation. It should be noted that the accumulated staff time for the project through 2009 from a Planning/Engineering/Legal perspective exceeds \$100,000.00. In order to facilitate resolution of this complex matter, the City staff is recommending that only \$25,000.00 of the total costs be reimbursed. Payment of all costs and fees incurred since May 23, 2012 shall be payable to the City prior to the City of Dana Point sending the Notice of Final Action to the Coastal Commission.
5. Pursuant to Streets and Highways Code §§ 8340(a) and (c), that the City reserve and except from the Proposed Vacation an easement for City facilities, water, sewer, gas, electric, and communication utilities, including but not limited to the maintenance, operation, and replacement thereof when the vacation occurs.
6. CNLM shall execute and deliver to the City for recording (30 days prior to the scheduled vacation of Scenic Drive): (1) a quit claim deed deeding any interest they might otherwise have as a result of the vacation effecting that portion of the existing right-of-way which is north of the existing centerline and south of the newly constructed trail (encompassing the area from the existing northerly right-of-way edge to 6 feet south), with such quit claim deed transferring any interest of CNLM in the land in question to the adjacent Homeowners; and (2) an easement in favor of the City for public use and maintenance of that portion of the existing right-of-way that has been developed as a trail (encompassing the area from the existing northerly right-of-way edge to 6 feet south).

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EXHIBIT # 7
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7. City shall execute and cause to be recorded a quit claim deed clarifying any interest it might otherwise obtain in that portion of the vacated Scenic Drive right of way located north of the centerline and adjacent to lot 126 is transferred to the adjacent Homeowners.
8. Applicant shall prepare the required public pedestrian access easement and associated legal description, which shall be subject to review and approval by the City of Dana Point.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Dana Point, California, held on this 18th day of March, 2014.


LISA A. BARTLETT, MAYOR

ATTEST:


KATHY WARD, CITY CLERK

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

I, Kathy Ward, City Clerk of the City of Dana Point, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 14-03-18-05 adopted by the City Council of the City of Dana Point, California, at a regular meeting thereof held on the 18th day of March, 2014, by the following vote:

AYES: Council Members Brough, Olvera, Schoeffel, Mayor Pro Tem Weinberg, and Mayor Bartlett

NOES: None

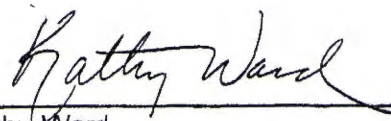
ABSENT: None

COASTAL COMMISSION

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Kathy Ward
City Clerk

SUPPORTING DOCUMENT C

Mark R. McGuire

ATTORNEY AT LAW
A Professional Corporation
2311 Calle Las Palmas
San Clemente, CA 92672
(949) 584-1126 • (949) 492-9290 (fax)
Email: mrmcguirelaw@cox.net

RECEIVED
CITY OF DANA POINT
COMMUNITY DEVELOPMENT DEPT

2014 FEB 11 A 11:53

February 10, 2014

Ms. Ursula Luna-Reynosa
Community Development Director
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

Re: Appeal—CDP 11-0018 and CDP 13-0009 (Scenic Drive)

Dear Ms. Luna-Reynosa:

The property owners fronting the historic Scenic Drive right of way the City proposes to vacate hereby submit this letter in support of their appeal of Coastal Development Permit 11-0018 (the "CDP"), which is associated with the vacation. As indicated in prior correspondence, the residents support the vacation of the right of way, and only wish to modify certain of the CDP conditions. The residents also wish to provide documentation in support of the City's determination that issuance of the CDP is consistent with the City's certified Local Coastal Program policies embodied in the Headlands Development and Conservation Plan (the "HDCP").

The HDCP was a complicated LCP amendment. Changes to the final form of the HDCP occurred up to and during the final Coastal Commission hearing wherein the Commission approved the HDCP subject to "suggested modifications." Most of the required revisions were captured and reflected consistently throughout the final certified HDCP. However, certain intended changes that are clearly evident in the HDCP (i.e., clear from the totality of the certified plan), were not reflected in all of the text in the HDCP due to a failure to update the text to conform to the revisions.

Specifically, at the final hearing before the Coastal Commission, modifications were made to the configuration of the Headlands Conservation Park and surrounding areas, including the adjacent Nature Interpretive Center/public parking lot and the historic Scenic Drive right of way fronting the existing single-family residential enclave. This letter will elaborate in considerable detail what those changes were.

I apologize in advance for the length and detail of this letter. However, the length and detail are needed to show the clear intent of the final Coastal Commission certified HDCP, and to

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demonstrate where the HDCP's text was inadvertently left unchanged (inconsistent with the HDCP's intent).

A. A Tale of Two Figures

In the version of the HDCP originally approved by the City in 2002 (prior to review by the Coastal Commission), the Headlands Conservation Park was planned to be 24.2 acres. Attached Exhibit A is Figure 4.4.2, Headlands Conservation Park Conceptual Plan, from the version of the HDCP approved by the City prior to Coastal Commission review.

As can be seen on Exhibit A and as described in the original text of the HDCP, a portion of the historic Scenic Drive right of way was planned to be vacated and folded into the Conservation Park (the northern half of the right of way fronting the existing single-family residential enclave). A new "access drive" intended for "servicing the existing single-family residential enclave" was to be constructed (primarily in the area south of the current pavement). In response to input from the residents of the single-family enclave, text was added to the HDCP to make clear that, to the extent feasible, the existing landscaping in front of the residences was to be retained during the road relocation. The residents agreed to be responsible for the retained landscaping as well as any replacement landscaping.

Exhibit A shows that Scenic Drive was always designed to terminate in a cul-de-sac *east* of the residential enclave. Access to public parking for the Conservation Park and Nature Interpretive Center was planned to be accessible from the end of the cul-de-sac. The Nature Interpretive Center was to be located *inland* of the parking lot, and a trail from the parking lot was to proceed both west *immediately* into the Conservation Park (a pedestrian only path) and north toward the existing multi-family residential enclave located on Dana Strand Road (a pedestrian and bicycle path). The inland (eastern) boundary of the Conservation Park was planned to parallel the ocean-side edge of the right of way for Marguerita Road (the r.o.w. shown on the recorded 1920s tract map).

While Exhibit A and the above paragraphs describe what the City approved in 2002, several changes were made to this part of the plan by the time the HDCP was approved (with suggested modifications) by the Coastal Commission in 2004. Attached Exhibit B is the final Figure 4.4.2, Headlands Conservation Park Conceptual Plan, from the Coastal Commission certified HDCP. Scenic Drive is still shown terminating in a cul-de-sac east of the single family residential enclave. However, the parking lot for the Conservation Park and Nature Interpretive Center was moved westward so that it would largely fall within the already-disturbed footprint from Marguerita Road. The updated Figure 4.4.2 also shows that the pavement was to be removed from Marguerita Road and, except for the parking lot area, the roadbed was to be re-contoured and re-vegetated with coastal sage scrub.

In the revised Figure 4.4.2, the inland boundary of the Headlands Conservation Park was moved to the east a considerable distance—well past the former Marguerita Road right of way. The bike and pedestrian path from the parking lot toward the multi-family residential enclave

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was eliminated altogether. The acreage comprising the Conservation Park increased from 24.2 acres to over 27 acres.

Of particular significance for the street vacation CDP, the Nature Interpretive Center was moved seaward, adjacent to Scenic Drive cul-de-sac and *partially within the northern half of the historic Scenic Drive right of way fronting the single-family residential enclave*. The trail from the parking lot no longer was planned to enter directly into the Conservation Park; instead, it is shown *outside the Conservation Park, within the northern half of the historic Scenic Drive right of way fronting the single-family residential enclave*. The Conservation Park fence is shown along the northernmost edge of the Scenic Drive right of way. The public pedestrian trail is then shown entering the Conservation Park via a gate approximately 150-feet west of the parking lot.

Finally, the existing pavement for the access drive, which is located primarily within the northern half of the Scenic Drive right of way fronting the single-family residential enclave, is shown intact. The adopted plan does *not* show a new access drive being created within the southern half of the right of way. No place in the HDCP is there any mention of ripping out the old pavement, relocating utilities within that portion of the right of way, or restoring the roadbed to coastal sage scrub, in contrast to the description applicable to Marguerita Road. The landscaped area in front of the residences, which was always required to be avoided to the maximum extent feasible, is shown as largely intact (only impacted up at the cul-de-sac).

B. Relict Text Not Updated to Reflect Certified HDCP Requirements

After carefully examining the various changes that occurred to this part of the HDCP, all of which are reflected in Figure 4.4.2 (they are reflected elsewhere in the HDCP, but Figure 4.4.2 best reflects all of the relevant changes), one conclusion becomes inescapable: a small amount of the text in the final HDCP was inadvertently left unchanged and failed to reflect the approved/required changes. Specifically, the final paragraph of page 4-58 of the HDCP still reflects what was envisioned for this area at the time the City approved the HDCP in 2002, not what was envisioned pursuant to the actual certified HDCP.

The text in that paragraph on page 4-58 describes Scenic Drive terminating in a cul-de-sac east of the residential enclave, and this component of the plan stayed the same. However, the text still describes vacating the northern half of the right of way fronting the residential enclave *and adding it into the Conservation Park*. The text also still describes relocating the roadway entirely within the southern 30 feet of right of way fronting the residential enclave. The text does not make any mention of placing the Nature Interpretive Center within a portion of the right of way. The text makes no mention of placing a public trail within the right of way but outside of the Conservation Park (nor does the text describe the trail entering the Conservation Park via a gate approximately 150 feet west of the parking lot).

Simply put, the text describes to a "T" the initial version of the HDCP that the City approved in 2002, but *not* the HDCP later approved by the Coastal Commission, which included required modifications reflected in the updated Figure 4.4.2 included in the certified HDCP.

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The text and updated Figure 4.4.2 (as well as other figures and text in the certified HDCP) cannot be reconciled.

The Commission-approved Conservation Easement exhibit for the Conservation Park, which is attached as Exhibit C, provides additional evidence that Figure 4.4.2 (and not the outdated text on 4-58) depicts the true intent of the final HDCP. The exhibit depicts the Conservation Park boundaries precisely as depicted on final Figure 4.4.2, in contrast to the description in the text.

The plans approved as part of the Headlands Master Coastal Development Permit and the development completed in furtherance of those plans are also consistent with final Figure 4.4.2 rather than the text on page 4-58. Specifically, as shown on the aerial photo attached as Exhibit D: the Nature Interpretive Center lies partly within the historic right of way fronting the single-family residential enclave; the Conservation Park fence parallels the northernmost edge of the right of way fronting the single-family residential enclave; the public trail from the parking lot was designed and built within a portion of the right of way and *outside* of the Conservation Park for a distance of approximately 150-feet, whereupon it enters the Conservation Park via a gate, as shown on Figure 4.4.2; except where the cul-de-sac was constructed, the pavement for the access road servicing the single-family residential enclave was never ripped up, nor was new pavement placed further to the south within the right of way; and finally, virtually all of the landscaping in front of the residences was left intact.

The physical conditions present today, which are the result of implementing development in accordance with the Headlands Master CDP, are fully consistent with the intent of the certified HDCP. The Headlands Master CDP was appealed to the Coastal Commission by two Commissioners and the Surfrider Foundation. However, in neither appeal was the configuration of the Conservation Park, the location of the Nature Interpretive Center, the location of the public trail just south of the Conservation Park, or the plan to leave in place the existing pavement for the access drive servicing the single-family residential enclave raised as a basis for the appeal. In addition, the Coastal Commission found no substantial issue and rejected both appeals.

C. Vacation of the Remaining Street Right of Way is Fully Consistent with the HDCP

Neither the Coastal Commission nor its staff has ever asserted that any of the physical improvements described above are contrary to the certified HDCP. They clearly are not. The next question is whether vacating the remaining street right of way fronting the single-family residential enclave in the manner proposed by the City would run afoul of any of the policies or overall intent of the HDCP. We agree wholeheartedly with the City that the answer is "No."

Please note that small portions of the right of way fronting the single-family residential enclave were already vacated by virtue of the recordation of the Headlands final tract map. Pursuant to the Headlands Final tract map, a portion of the right of way was incorporated into the parcel that now serves as the Nature Interpretive Center and parking lot. Also pursuant to the final map, a portion of the right of way on the western end of the residential enclave was

COASTAL COMMISSION

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incorporated into the Conservation Park (Lot V). Both final map parcels conform to the tentative tract map approved as part of the Headlands Master CDP.

With respect to the remaining portions of the street right of way, the HDCP requires completion of a public trail within the northernmost portion of the right of way, parallel to the Conservation Park fence and extending from the parking lot westward until it enters the Conservation Park. That trail has been completed and is operational. A public trail easement will be retained by the City as part of the vacation and the trail will continue to be utilized by the public in the exact same manner it is today. It will simply no longer lie within street right of way.

Moving southward from the public trail to the area between the trail and the existing pavement, there is a low retaining wall and fence and then a landscape area (there are utilities underlying the landscaped area). Upon vacation of the street right of way, this area and these features will be maintained by the property owners living within the single-family residential enclave. The CDP requires any planting in this area to utilize plants on the HDCP-approved plant palette and to be kept free of erosion.

Continuing southward, the next feature within the right of way is the paved roadway that has long served as an access drive for the single-family residential enclave. It is approximately 20-feet in width. Consequently, fire lane requirements prohibit parking along it. Nowhere in the HDCP is there any text, nor are there any exhibits that show the paved access drive providing any public parking or public access (other than the trail leading from the parking lot into the Conservation Park, which already exists and will continue to be maintained by the City). The paved drive was simply viewed as an access drive servicing the residential enclave.

Nevertheless, in response to concerns raised by the Coastal Commission staff, the residents have agreed to accept the vacated right of way *subject to reservation of a permanent public easement for pedestrian and bicycle use over the entire paved roadway*. The hours of access pursuant to the easement will be longer than the hours of the adjacent public trail leading into the Conservation Park (though limited at night to deter unauthorized access into the Conservation Park and to protect the privacy of adjacent residents).

The remainder of the right of way south of the paved access drive consists of landscaping and driveways leading to each of the homes within the single-family residential enclave. The HDCP text specifically envisioned that the residents would be responsible for any remaining landscaped areas, so vacating these areas such that the underlying fee interest reverts back to the residents is fully consistent with the HDCP.

To recap: (1) Upon completion of the vacation, the City will retain control of the current public trail leading from the Nature Interpretive Center parking lot down into the Conservation Park; (2) The homeowners will own and be responsible for all landscape areas within the vacated right of way; (3) The homeowners will own and be responsible for the repair and maintenance of the paved access drive servicing the residential enclave; and (4) There will be a permanent public bicycle and pedestrian access easement over the paved access drive. The

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homeowners understand that no additional development will be permitted within the vacated right of way without a coastal development permit, and any future proposed development would need to also comply with all applicable requirements of the HDCP.

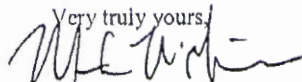
D. Possible Future Discussion With Coastal Staff About Controlling Vehicular Access

In my prior letter, the residents withdrew their request to construct a gate and related improvements across the access drive (the improvements were proposed up near the Scenic Drive cul-de-sac). As you know from attending the meeting at the Coastal Commission offices in Long Beach, the Commission's staff has asserted that any proposed gate controlling access would require an amendment to the HDCP. I believed at one point that we had convinced the staff that the HDCP does not preclude gates *per se*. If so, they did not remain convinced.

I am hopeful (though unsure) that the Commission staff remains convinced of the following benefits of completing the vacation as currently proposed: (1) Prevention of unnecessary motorized vehicular access down an access drive that is intended to service the existing single-family residential enclave and which is not suited to accommodate vehicle trips beyond those needed to service the residential enclave; and (2) Prevention of unauthorized night-time access into the Conservation Park via climbing the Conservation Park fence at the end of the access drive. In a 2010 e-mail to me attached as Exhibit E (partially excerpted below), Commission staff appeared to be amenable to and see the merits of the street vacation—provided a public pedestrian and bicycle easement was reserved. It appeared that staff understood the benefits street vacation could provide:

The idea of allowing the vacation to occur but to reserve an allowance for public pedestrian and bicycle usage is something we believe is workable. Furthermore, we understand that continued public vehicular access onto this street is a significant concern for the adjacent property owners, particularly CNLM. So, we are open to the idea of limiting vehicular access down the street, while maintaining some public pedestrian and bicycle use. We also understand the concerns that CNLM has with regard to late night public use of the street. However, the manner of controlling vehicular and pedestrian access is something that still needs work.

At some point in the future, the residents may attempt to meet with the Commission staff regarding what additional methods of controlling vehicular and night-time pedestrian access might make sense, and what procedural steps would be required to pursue an agreed-upon approach. In the meantime, however, the only manner of controlling unauthorized access will be signage and enforcement.

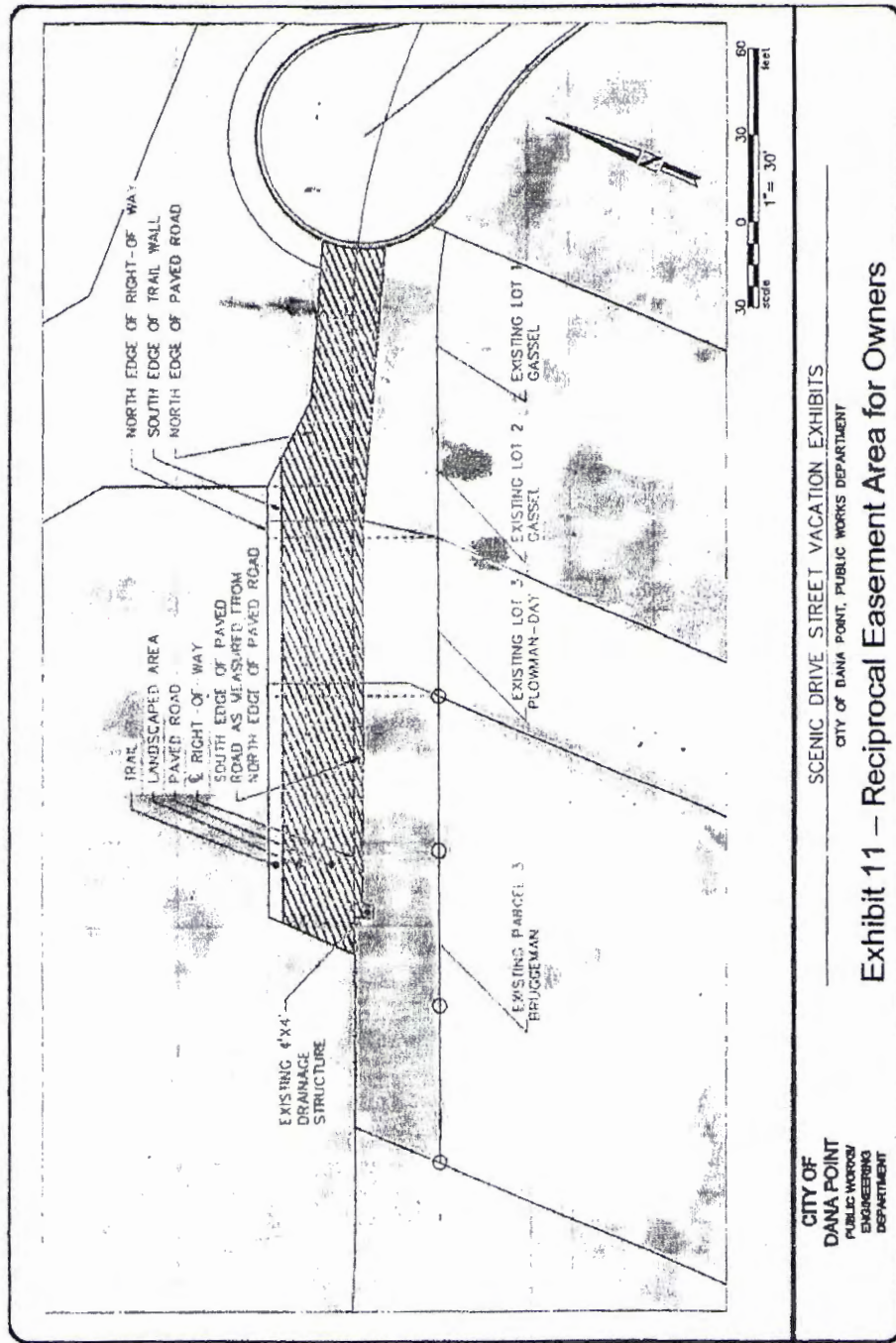
Very truly yours,

Mark R. McGuire

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EXHIBIT # 8

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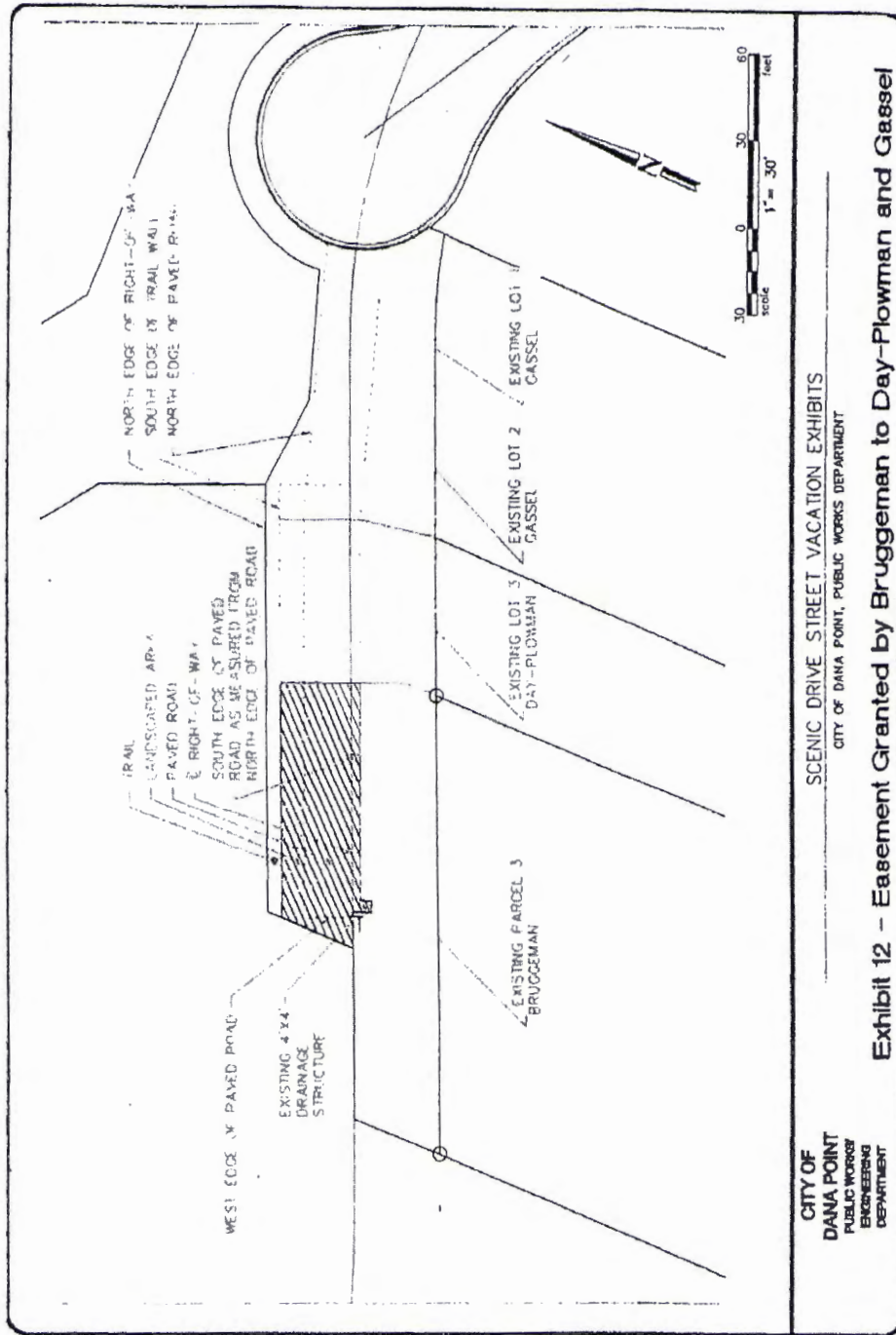


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EXHIBIT # 9

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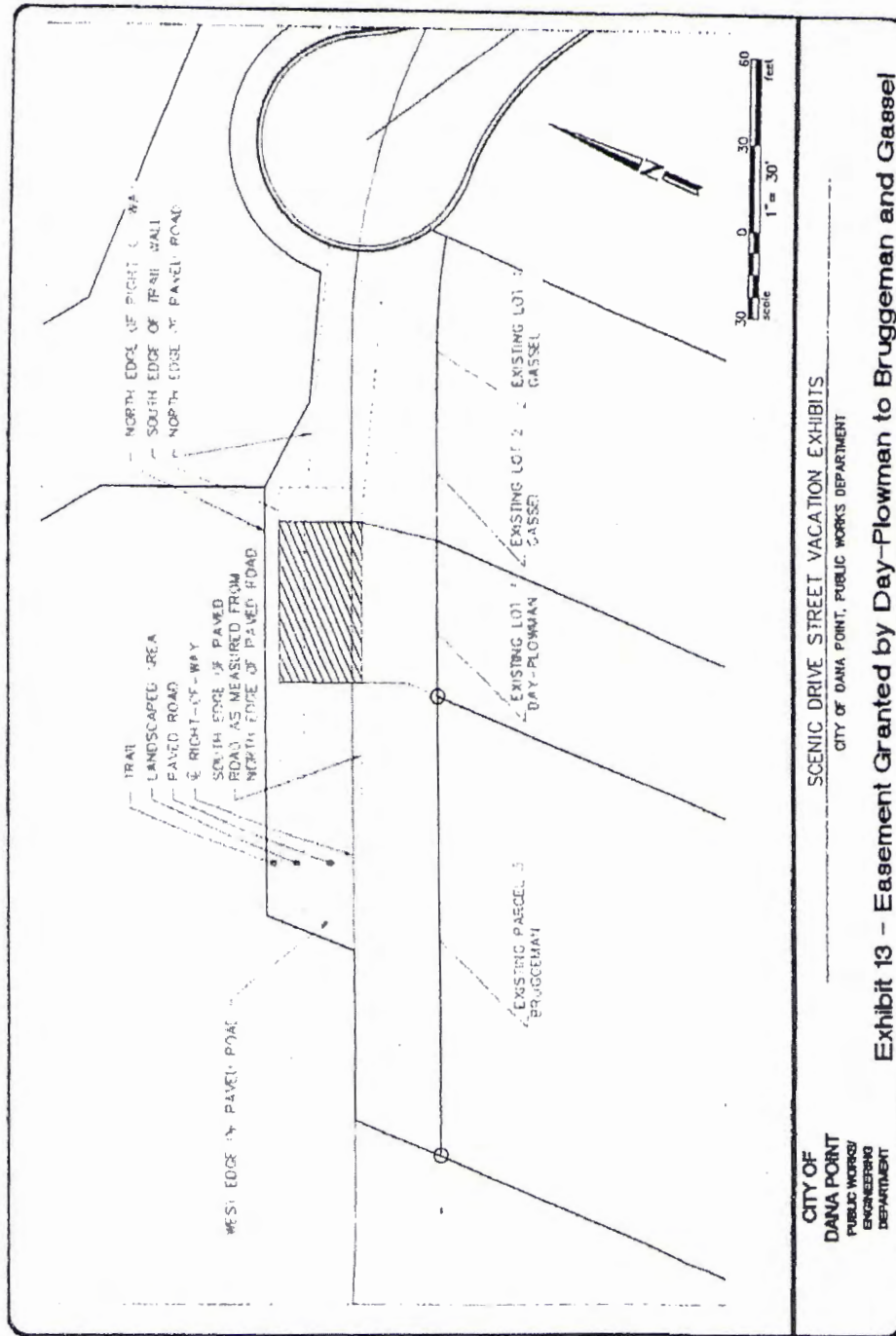


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EXHIBIT # 9

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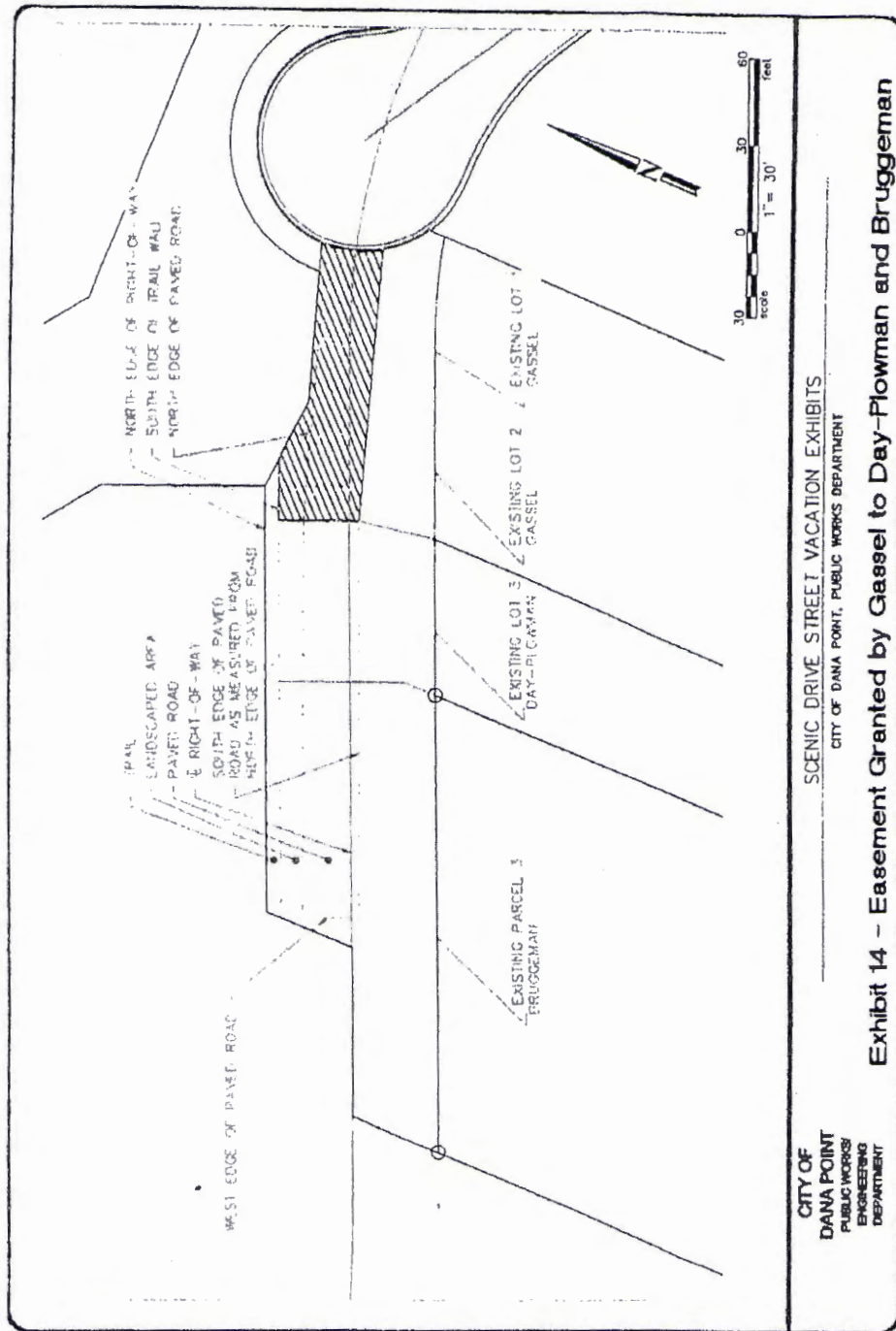


CITY OF
DANA POINT
PUBLIC WORKS
ENGINEERING
DEPARTMENT

SCENIC DRIVE STREET VACATION EXHIBITS
CITY OF DANA POINT, PUBLIC WORKS DEPARTMENT

Exhibit 13 - Easement Granted by Day-Plowman to Bruggeman and Gassel

13
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A-S-DPT-14-0018
EXHIBIT # 9
PAGE 3 OF 9

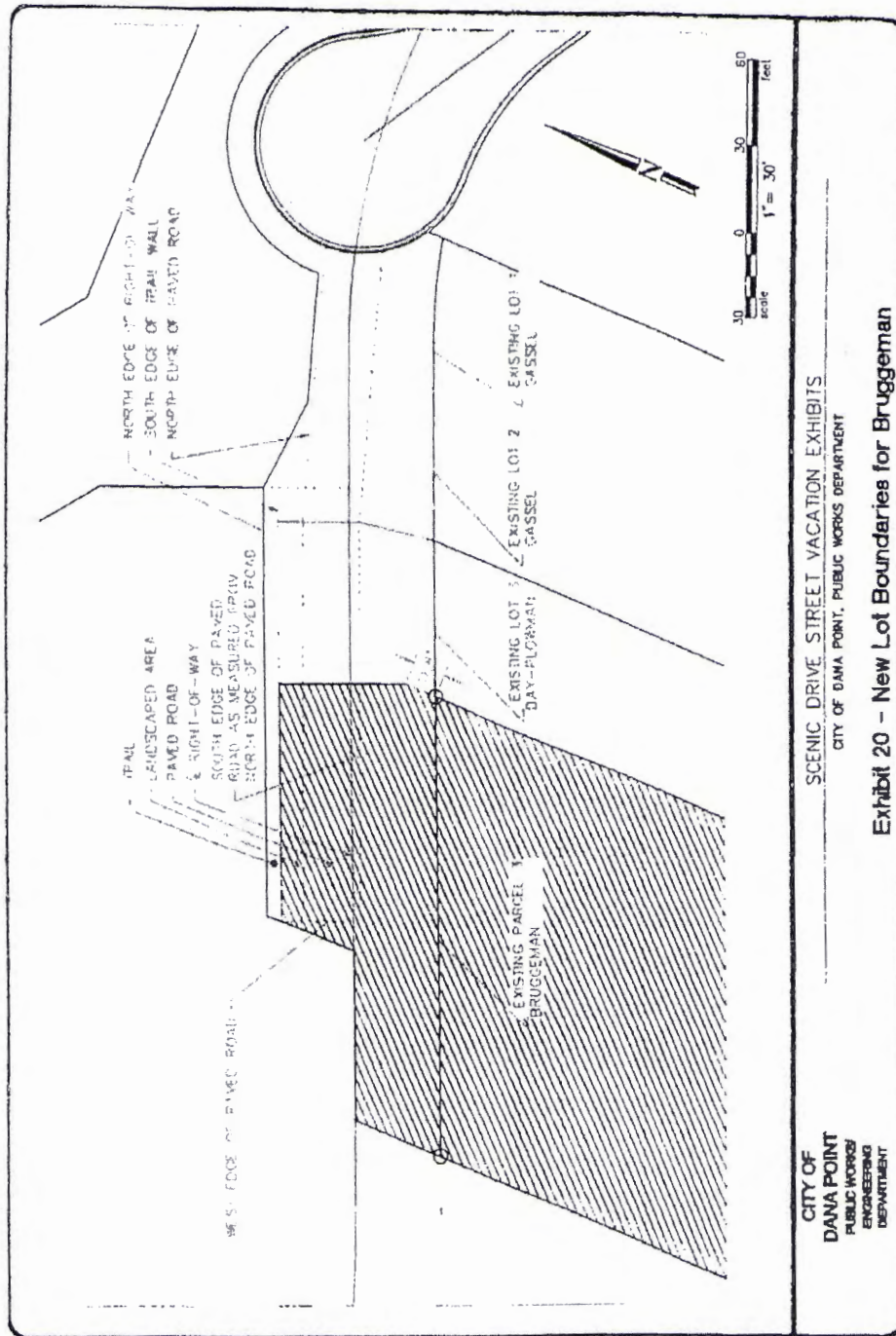


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ENGINEERING
DEPARTMENT

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Exhibit 14 - Easement Granted by Gassel to Day-Plowman and Bruggeman

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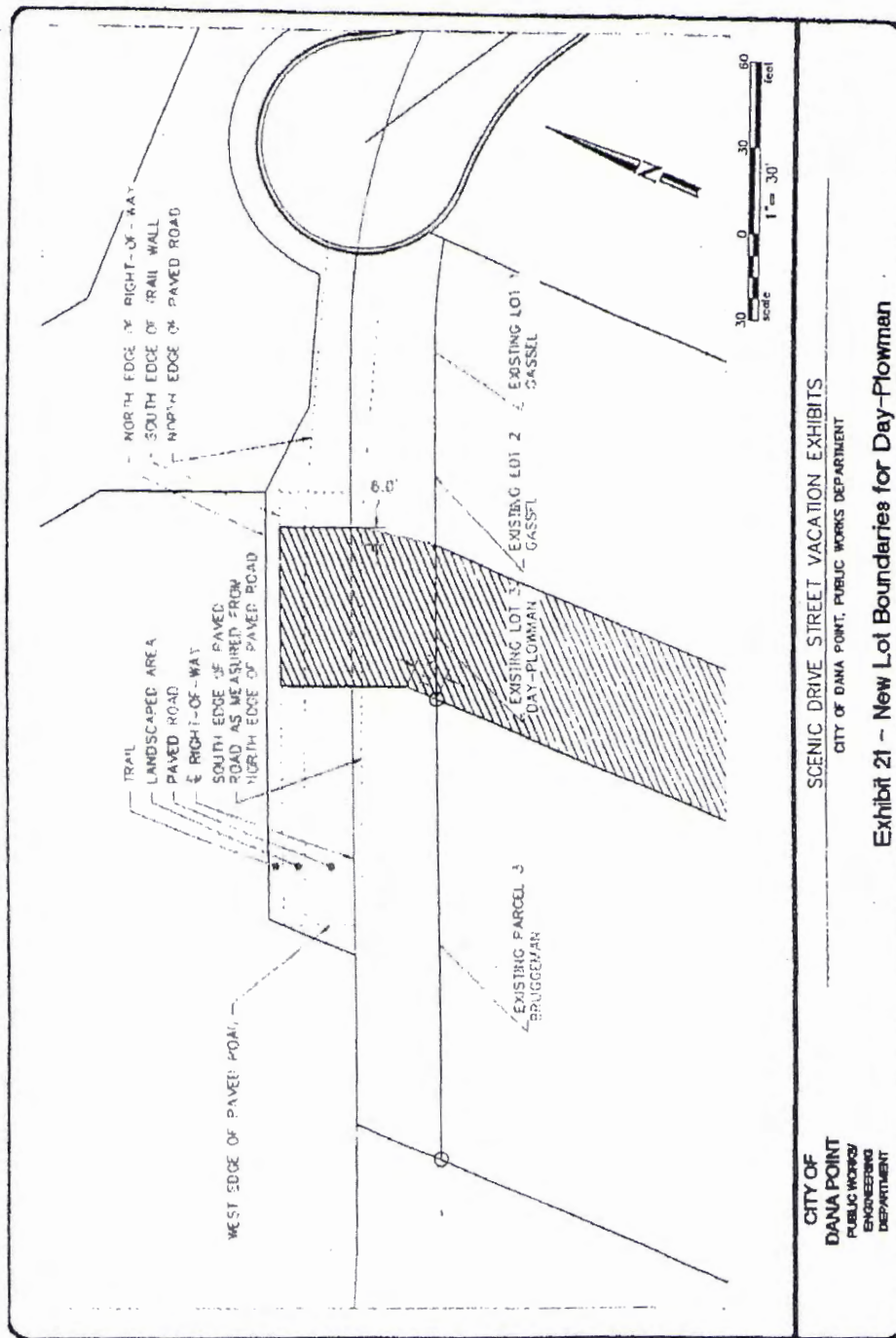


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Exhibit 20 - New Lot Boundaries for Bruggeman

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EXHIBIT # 9
PAGE 5 OF 9



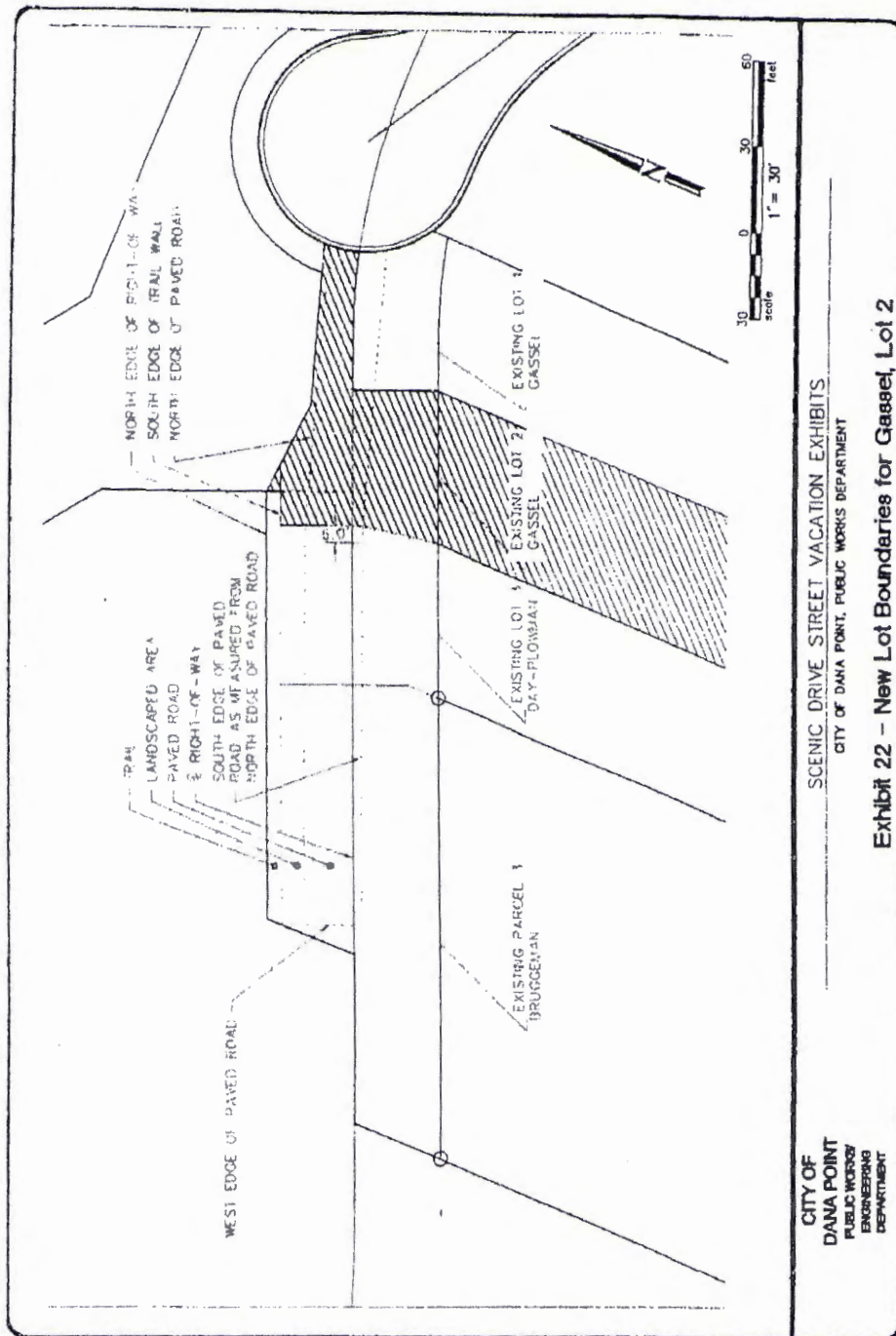
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ENGINEERING
DEPARTMENT

SCENIC DRIVE STREET VACATION EXHIBITS
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Exhibit 21 - New Lot Boundaries for Day-Flowman

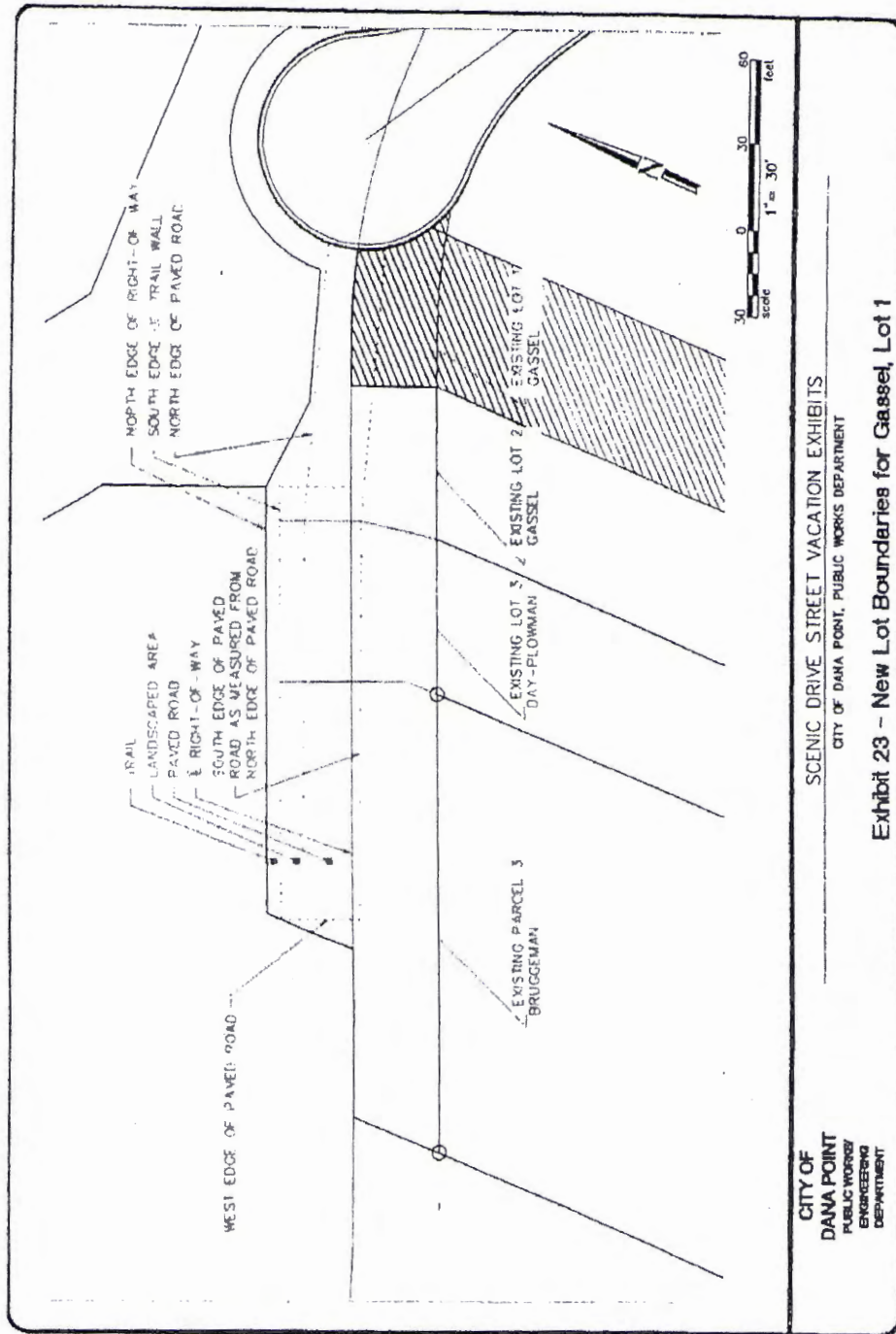
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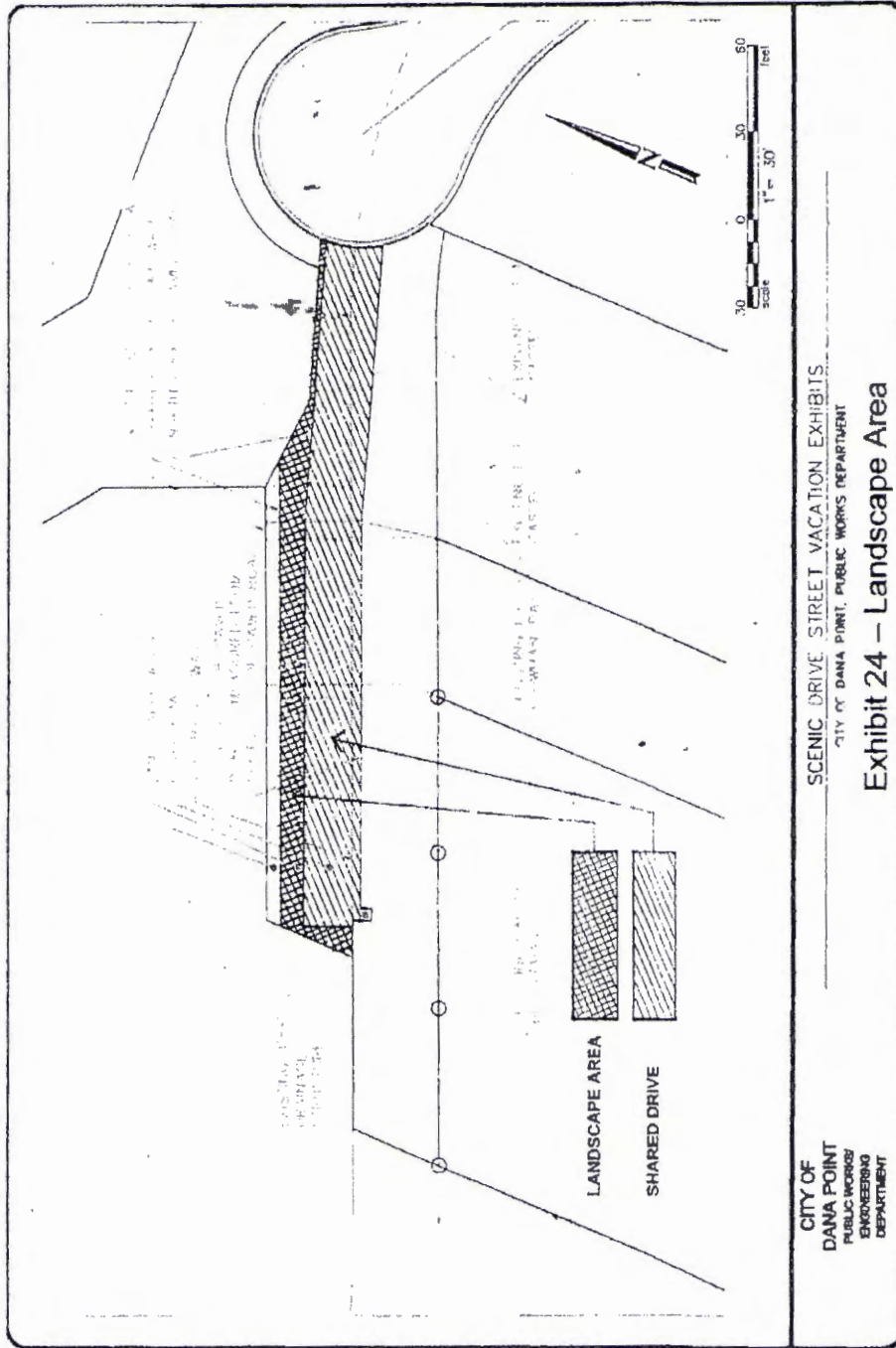
Exhibit 23 - New Lot Boundaries for Gassel, Lot 1

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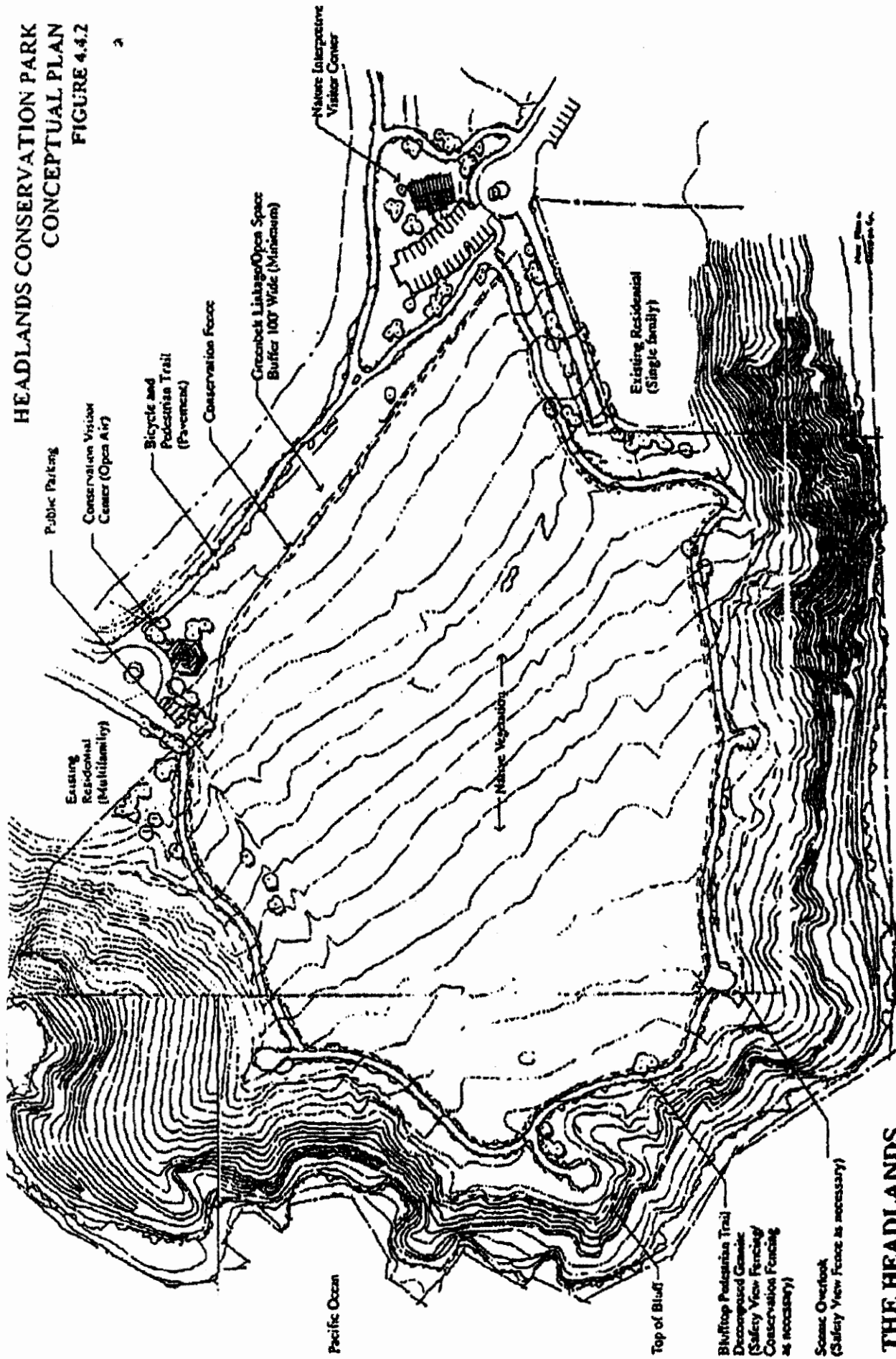
EXHIBIT # 9

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HEADLANDS CONSERVATION PARK CONCEPTUAL PLAN FIGURE 4.4.2

2



THE HEADLANDS DEVELOPMENT AND CONSERVATION PLAN EXHIBIT A (NOT CERTIFIED AS PART OF THE HDCP)

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A-S-DPT-14-0018

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PAGE 1 OF 1

APPEAL:##A-5-DPT-14-0018

Lennie De Caro

Orange County resident

May 8, 2014

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

W13a

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South Coast Region

MAY 09 2014

CALIFORNIA
COASTAL COMMISSION

To whom it may concern,

I support the Commissioners appeal of the Dana Point City Council permit decision. My main concern is the fact that the vacation of a portion of Scenic Drive is to be incorporated into *private ownership*. Once the land is in private hands, you have precluded the option of extending this area for any future potential public accessways. The public has had access, (both pedestrian & vehicular) to a portion of the potentially vacated property.

It appears to me that there was never an intention to allow private residences to obtain title to this proposed vacated area. Instead, the development agreement allowed for the vacation of the northerly half of the right-of-way only if it were to become part of the Headlands Conservation Park; the southern half of the right-of-way was to remain a public street that would continue to provide pedestrian access. I can't understand why the vacation of the portion of Scenic Drive was considered as there doesn't appear to be any implicit decision to allow conversion to private ownership. Therefore, I submit that if or until the Headlands Conservation Park requests vacating and adding the northerly portion to their Park, I believe any consideration to consider vacating any portion of the Drive to be premature. Further, I don't believe this property should ever be converted to private ownership and I thereby support the Commissioner's appeal.

Regards,


Lennie De Caro**COASTAL COMMISSION**

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EXHIBIT # 12PAGE 1 OF 1

MARK R. MCGUIRE

Attorney at Law

2311 Calle Las Palmas
San Clemente, California 92672
(949) 584-1126 • (949) 492-9290 (Fax)
Email: mrmcguirelaw@cox.net

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South Coast Region

MAY 12 2014

CALIFORNIA
COASTAL COMMISSION**FACSIMILE TRANSMISSION**THIS IS PAGE 1 OF 4 PAGES.DATE: 5/12/14TO: Members of Coastal CommissionFAX NO: (415) 904-5400

TO: _____

FAX NO: _____

TO: _____

FAX NO: _____

TO: _____

FAX NO: _____

FROM: Mark R. McGuire

SPECIAL NOTES:

Please forward letter to Commissioners.Relates to My Agenda Item W139.

IF YOU EXPERIENCE ANY DIFFICULTY IN RECEIVING THIS TRANSMISSION,
PLEASE CALL (949) 584-1126.

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EXHIBIT # 13PAGE 1 OF 4

Mark R. McGuire**ATTORNEY AT LAW**

A Professional Corporation
2311 Calle Las Palmas
San Clemente, CA 92672
(949) 584-1126 • (949) 492-9290 (fax)
Email: mrmcguirelaw@cox.net

RECEIVED
South Coast Region

May 12, 2014

MAY 12 2014

Via Fax

California Coastal Commission
45 Fremont Street, Suite 3000
San Francisco, CA 94105-2219

CALIFORNIA
COASTAL COMMISSION

Re: Agenda Item W13a—Appeal A-5-DPT-14-00018 (Substantial Issue Hearing)

Dear Chairman Kinsey and Members of the Commission:

The staff report prepared for the Commission's Substantial Issue Hearing on the City of Dana Point's vacation of street right-of-way is replete with factual errors. The Commission's staff does not have a clear understanding of the City's action. An accurate characterization of the vacation, which includes reservation of a public access easement over the entire paved street as well as the City's continued maintenance and operation of a public hiking trail already constructed within the street right of way, would show that there are in fact no substantial issues on appeal.

It is extremely disappointing that the one paragraph "Summary of Staff Recommendation" wrongly asserts that the vacation "would no longer allow the public to freely access that portion of the road" being vacated when in fact there will be a permanent public access easement over the road. Failure to mention that pedestrians and bicyclists will be able to freely access the vacated street (only those in cars won't) gives a false impression of the vacation.

Surprisingly, the staff report erroneously asserts that the Headlands Development and Conservation Plan (the "HDCP") does not call for Scenic Drive to terminate in a cul-de-sac east of the residential enclave adjacent to the to be vacated street right of way. Staff claims instead that "[a]lthough there is a cul-de-sac at the top of Scenic Drive, that is not the terminus. Scenic Drive branches off at the cul-de-sac to the southwest and continues down for approximately 340 additional feet." Staff ignores the plain language of the HDCP, which states: "Scenic Drive, currently consisting of a 60' right of way, will terminate in a cul-de-sac just east of the existing single family residential enclave." The HDCP says nothing about Scenic Drive "branching off to the southwest for 340 feet."

Staff's basic error about where Scenic Drive terminates leads staff to mischaracterize where the HDCP requires completion of a public parking lot and street parking (the public parking lot.

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which has been built, is north of the cul-de-sac, and public parking is provided all along Scenic Drive up until its termination at the cul-de-sac). Staff also ignores the fact that the HDCP describes the purpose of a narrow "access drive" extending from the cul-de-sac as "servicing the existing residential enclave." The access drive provides access to the few residences along it, and also serves as a fire lane. There is no parking or requirement for parking along this access drive. The City properly vacated the right of way containing this access drive such that public motorized vehicular access would be precluded, but not public pedestrian and bicycle access.

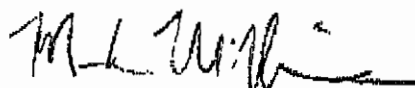
The City's action in vacating the street right of way west of the new terminus of Scenic Drive is straightforward: (1) Public pedestrian and bicycle access is reserved over the entire paved 20-foot wide street, and public pedestrian access is also preserved over the City-maintained pedestrian trail leading into the Conservation Park; (2) Public automobile and truck access over the access drive is precluded because it dead ends a short distance from the cul-de-sac (it is 220 feet long, not 340 feet), has no parking and conflicts with protection of the habitat in the Conservation Park and use of the public pedestrian and bicycle easement; and (3) The adjacent residents become responsible for the maintenance of the access drive intended to service their residential enclave and responsible for the landscaping within the right of way (the HDCP specifically indicated that all avoided landscaped areas would become the obligation of the residents).

The staff report's laundry list of newfound concerns is particularly odd because Commission staff previously appeared to view vacation of this right of way as "workable." In an e-mail back in 2010 (full e-mail attached), Commission staff indicated that:

The idea of allowing the vacation to occur but to reserve an allowance for public pedestrian and bicycle usage is something we believe is workable. Furthermore, we understand that continued vehicular access onto this street is a significant concern for the adjacent property owners, particularly [the Center for Natural Lands Management]. So, we are open to the idea of limiting vehicular access down the street, while maintaining some pedestrian and bicycle use.

The vacation as approved by the City maintains public pedestrian and bicycle use over the entire paved street and public pedestrian access over the City-maintained trail leading into the Conservation Park (which was also constructed within the street right of way). The vacation properly described raises none of the concerns staff now claims to be at issue. There is no substantial issue raised in the appeal.

Very truly yours,



Mark McGuire

COASTAL COMMISSION

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PAGE 3 OF 4

Mark McGuire

From: Mark McGuire [mmcguirelsw@cox.net]
Sent: Monday, May 12, 2014 3:04 PM
To: 'Mark McGuire'
Subject: FW: Scenic Drive

From: Karl Schwing [mailto:kschwing@coastal.ca.gov]
Sent: Friday, April 30, 2010 12:09 PM
To: Mark McGuire
Cc: Sherilyn Sarb; KYLE BUTTERWICK
Subject: RE: Scenic Drive

Hi Mark.

As you know it has been a busy couple weeks, however, we did have some more discussion about this matter late yesterday. The idea of allowing the vacation to occur but to reserve an allowance for public pedestrian and bicycle usage is something we believe is workable. Furthermore, we understand that continued public vehicular access onto this street is a significant concern for the adjacent property owners, particularly CNLM. So, we are open to the idea of limiting vehicular access down the street, while maintaining some public pedestrian and bicycle use. We also understand the concerns that CNLM has with regard to late night public use of the street. However, the manner of controlling vehicular and pedestrian access is something that still needs work. I don't see how we could support the idea of a solid barrier/gate across the street, with similar gating across the pedestrian/bicycle access. We may be open to allowing for a swing-arm device to control vehicles (i.e. like you see at the entry/exit to many parking lots), and bollards to prevent vehicles from going around the swing-arm (but still allowing public pedestrians/cyclists to get around the swing arm to make use of the street), and signs identifying hours for pedestrian/cyclists use. I think a gate across the accessway is a non-starter as that is clearly inconsistent with the LCP in our view. The hours posted are something we would need to work on. However, aligning the hours for use of the road to be the same as the interpretive center and parking lot (as you had suggested in the past) isn't going to work, those hours are way too restrictive.

You could also look at adding some type of significant offset/mitigation, such as creating a viewpoint or other kind of access amenity in the vicinity. One idea I've had along those lines would be to create a trail with viewpoint along the easterly side of the residence on "Lot 1" (as shown on various exhibits)(I believe this is the Gassel property) were there is currently a fuel mod zone. We would have to look at the habitat impacts of this if that is an idea you think if worth exploring further. Also, an LCP amendment might be needed for this approach. If you or the City have other ideas, lets talk about those.

Those are my thoughts for now. If you want to discuss, lets talk next week.

Karl Schwing
California Coastal Commission
South Coast Area Office/Long Beach

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1

Figure COS-5
Scenic Overlooks from Public Lands
July 9, 1991

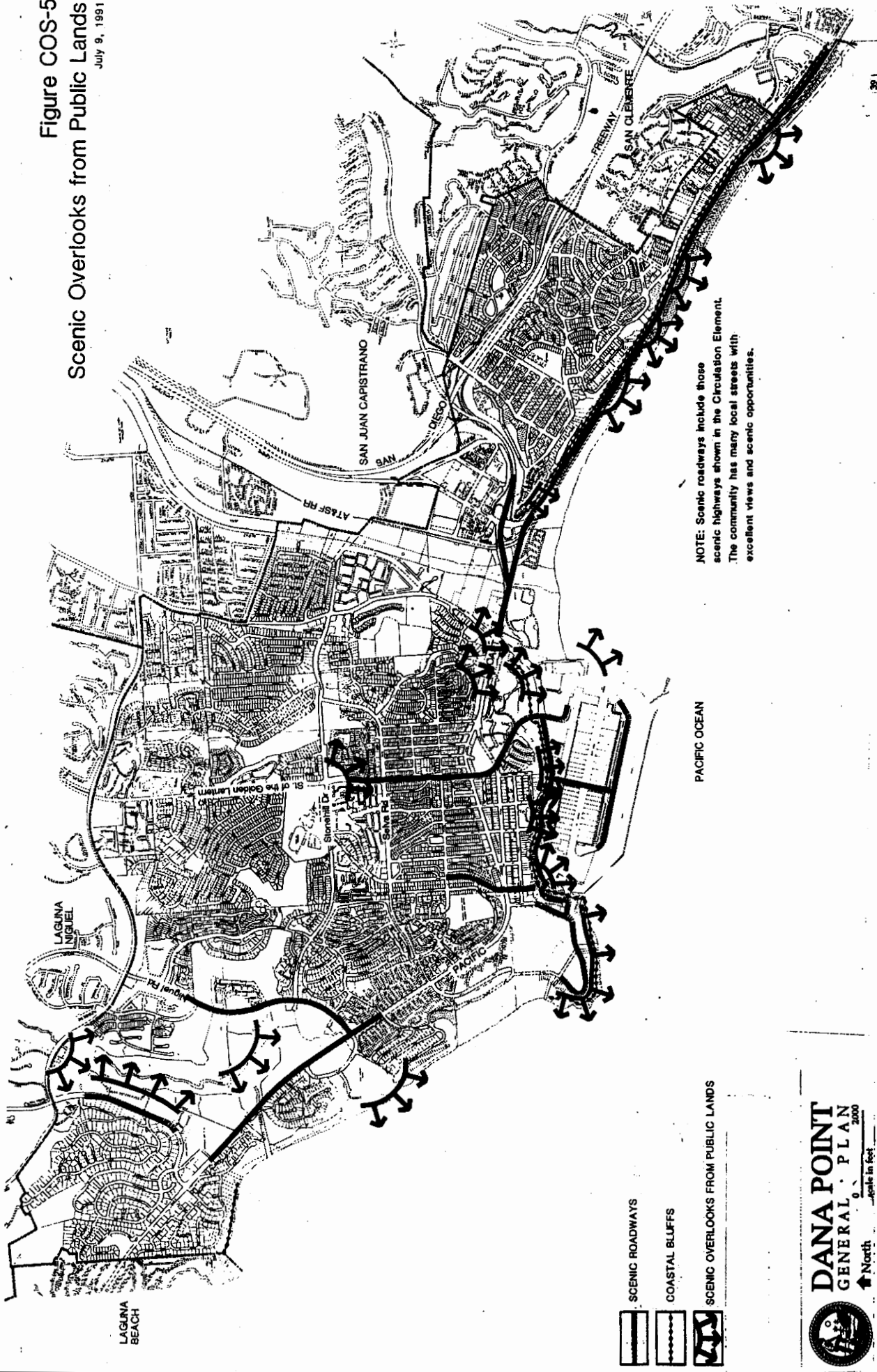


Figure COS-4
Existing and Proposed Open Space
Walkway/Bike/Trail Opportunities
July 9, 1991

