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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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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

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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THIS IS PAGE 1 OF 4 PAGES.

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TO: Members of Coastal Commission

TO: _____

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TO: _____

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FROM: Mark R. McGuire

SPECIAL NOTES:

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

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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

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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 "HDCCP") 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 HDCCP, 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 HDCCP 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 HDCCP requires completion of a public parking lot and street parking (the public parking lot,

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.

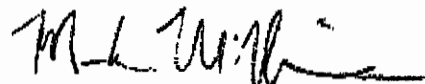
The City's action in vacating the street right of way west of the new terminus of Scenic Drive is straightforward: (1) Public pedestrian and bicycle access is reserved over the entire paved 20-foot wide street, and public pedestrian access is also preserved over the City-maintained pedestrian trail leading 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

Mark McGuire

From: Mark McGuire [mrmcguirelaw@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*

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 OceanGate, 10th Floor
Long Beach, CA 90802-4302
(562) 590-5071

W13a

Filed: April 8, 2014
49th Day: May 27, 2014
Staff: SV-LB
Staff Report: May 2, 2014
Hearing Date: May 14, 2014
Commission Action:

STAFF REPORT: APPEAL - SUBSTANTIAL ISSUE

Local Government: City of Dana Point

Local Decision: Approval with Conditions

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

Applicant: City of Dana Point

Appellants: Coastal Commissioners: Shallenberger and Vargas

Project Location: A portion of Scenic Drive adjacent to 34525, 34551 and 34545 Scenic Drive, Dana Point, Orange County; APN# 672-591-19; 672-262-02, 672-262-01

Project Description: Vacation of a portion of a publicly owned street, Scenic Drive, and lot line adjustments to incorporate the vacated land into adjacent privately owned lots developed with single family residences.

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission determine that **a substantial issue exists** with respect to the grounds on which appeal number A-5-DPT-14-0018 has been filed because the locally approved development raises issues of consistency with the City of Dana Point Local Coastal Program and the public access and recreation policies of Chapter Three of the Coastal Act.

The applicant's proposal to vacate a portion of Scenic Drive and adjust the adjacent property owners' property lines incorporating the vacated road into the adjacent owners' private properties will 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. Scenic Drive is currently the first public road, and only road, fronting the sea in that location of the coast. Removing the public's access to this road raises issue as to the consistency with the City's certified LCP and the public access policies of Sections 30212.5 and 30214(b) in Chapter Three of the Coastal Act.

IMPORTANT NOTE

The Commission will not take public testimony during the 'substantial issue' phase of the appeal hearing unless at least three (3) commissioners request it. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow at a subsequent Commission meeting, during which it will take public testimony. Written comments may be submitted to the Commission during either phase of the hearing.

I. MOTION AND RESOLUTION

Motion: *I move that the Commission determine that Appeal No. A-5-DPT-14-0018 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

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

Resolution to Find Substantial Issue:

*The Commission hereby finds that Appeal No. A-5-DPT-14-0018 presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

II. APPELLANTS' CONTENTIONS

The Commission received a notice of final local action on CDP 11-0018 on March 24, 2014. As stated previously, CDP 11-0018 (assigned appeal no. A-5-DPT-14-0018) approved vacation of a portion of a publicly owned street, Scenic Drive, and lot line adjustments to incorporate the vacated land into adjacent privately owned lots developed with single family residences.

On April 8, 2014, within ten working days of receipt of the notice of final action, on behalf of the Commission itself, Commissioners Shallenberger and Vargas appealed the local action on the grounds that the approved project does not conform to the requirements of the certified LCP and the public access and recreation requirements of the Coastal Act (Exhibit 5). Briefly, the Commissioners' appeal contends that the vacation of a portion of Scenic Drive will 1) adversely impact the public's ability to park in the area; 2) adversely impact public access to a vista point; 3) lead to obstruction of significant public coastal views; 4) adversely impact potential future public accessways; and 5) is not consistent with public access protection policies of the certified Local Coastal Program and the Chapter Three policies of the Coastal Act.

III. LOCAL GOVERNMENT ACTION

On July 22, 2013 and August 6, 2013, the City of Dana Point Planning Commission held public hearings on the proposed project, the vacation of a portion of Scenic Drive, a public right-of-way. At the conclusion of the public hearings, the Planning Commission approved with conditions local Coastal Development Permit CDP No. 11-0018. Coastal Development Permit 11-0018 also rescinded a prior permit application proposing a similar vacation (Local Coastal Development Permit No. 07-20).

On March 18, 2014, the City Council held a public hearing on the permit application. At the conclusion of the public hearing, the City Council adopted Resolution No, 14-03-18-05 authorizing

a coastal development permit with conditions. The City's action was then final. The Coastal Commission South Coast Office received the notice of final action on March 24, 2014. On April 8, 2014 the appeal was filed by two Coastal Commissioners (EXHIBIT 4) during the Coastal Commissions ten (10) working day appeal period. No other appeals were received.

IV. APPEAL PROCEDURES

After certification of Local Coastal Programs (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits.

Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff [Coastal Act Section 30603(a)].

In addition, an action taken by a local government on a coastal development permit application may be appealed to the Commission if the development constitutes a “major public works project” or a “major energy facility” [Coastal Act Section 30603(a)(5)].

Section 30603 of the Coastal Act states:

(a) After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:

(1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.

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

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

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

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

The grounds listed for the current appeals include contentions that the approved development does not conform to the standards set forth in the certified LCP regarding public access and recreation and visual resources, or to the public access and recreation policies set forth in the Coastal Act.

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed pursuant to section 30603. If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the de novo public hearing on the merits of the project. The de novo hearing will be scheduled at a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review.

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

Qualifications to Testify before the Commission

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. As noted in Section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

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

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

V. FINDINGS AND DECLARATIONS

A. Project Description

The subject site is a portion of Scenic Drive adjacent to 34525, 34551 and 34545 Scenic Drive, Dana Point, Orange County. The City authorized the vacation of a portion of scenic drive and lot line adjustments to incorporate the vacated land into the adjacent privately owned parcels that are developed with single family residences. The portion of Scenic Drive that is being vacated is located seaward of the first public road (EXHIBIT 1). Immediately north and west of the vacated area is an open space nature preserve (Headlands Conservation Park) that contains environmentally sensitive habitat area, as well as a public trail system and an interpretive center with parking. South of the vacated area are four privately owned parcels developed with bluff top single family residences. There are undeveloped public access dedications on the seaward side of the single family residences

intended to be used as a bluff top walkway¹. East of the vacated area is the continuation of Scenic Drive that will remain public. The portion of the Scenic Drive right-of-way to be vacated is 60 feet wide (except for narrower areas on the west and east ends) and about 340 feet long. Part of the vacated area is presently developed with a paved roadway that provides pedestrian and vehicular access to the residences, and until recently, contained some paved and unpaved area that could be used by the public for parking². There is also a trail running along the north side of the vacated area that provides public access to the nature preserve. Significant views of the nature preserve and ocean beyond are available down the roadway and from the trail.

Local Coastal Program Certification

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. 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).

B. Substantial Issue Analysis

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

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

As provided below, the City of Dana Point certified LCP contains policies that protect public access and recreation, and visual resources in the coastal zone. Additionally, Section 30213 of the Coastal Act states that lower cost recreational opportunities must be provided and protected. These policies are also provided below.

¹ See Special Condition No. 45 of City-issued Coastal Development Permit No. CDP 01-11(I) adopted by Resolution No. 02-02-20-10 (Coastal Commission Reference No. 5-DPT-02-066)

² Photographs taken by Commission staff on September 29, 2006, show that parking was available and there were no signs prohibiting parking at that time. More recent photographs taken on July 16, 2009, show the installation of "no parking" signs in the subject area. No coastal development permit has been identified that would authorize the installation of new signs or the implementation of parking restrictions.

Local Coastal Program (LCP) Policies

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

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 5.13: 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/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.

LUE, Goal 5, New Policy: Except as noted in this policy, gates, guardhouses, barriers or other structures designed to regulate or restrict access shall not be permitted upon any street (public or private) within the Headlands where they have the potential to limit, deter, or prevent public access to the shoreline, inland trails, or parklands. ...

Headlands Development and Conservation Plan

Table 4.5.2, items 3 – 7: 3: ...7. Parking shall be accommodated along the Street of the Green Lantern, along Scenic Drive, in the Planning Area 8a parking lot next to the proposed nature interpretive center...

Coastal Act Policies

Coastal Act Section 30210:

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

Coastal Act Section 30213:

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

The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Commission Appeal – Analysis of Consistency

The City of Dana Point has granted approval of a coastal development permit that vacates a portion of Scenic Drive and allows that land to be incorporated (via lot line adjustments) into the adjacent

privately owned parcels that are developed with single family residences. The vacation of that area of land is inconsistent with Local Coastal Program policies that only allow potential vacation of about half of that land in order to expand an adjacent nature preserve. Nothing in the LCP allows the City to vacate the land and give it to the adjacent privately owned residential parcels.

Furthermore, vacation of the land will adversely impact public access to and along the coast. The vacated area was and could continue to be used for parking and as an access point to existing and potential future public accessways and/or a public vista point. The proposed vacation would be inconsistent with the public access protection policies of the LCP and Chapter 3 of the Coastal Act. Vacation of the land would lead to obstruction of access to a significant public viewpoint of the nature preserve and ocean beyond, and also be contrary to public view protection policies in the certified LCP.

The City proposes to vacate a portion of Scenic Drive, which is located seaward of the first public road. The City also proposes to adjust the adjacent property owners' property lines in order to incorporate the vacated road into the adjacent owners' private properties. This 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. Removing the public's access to this road is a clear violation of Section 4 of Article X of the California Constitution and the public access policies of Sections 30212.5 and 30214(b) in Chapter Three of the Coastal Act, which respectively state that:

“Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.”

And

“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 and will continue to be able to use the road to access their properties. Vacating this road and conceding the property rights to the adjacent private property owners does, however, place a “*limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution*.” Furthermore, eliminating established public parking violates Section 30212.5 of Chapter Three of the Coastal Act.

The portion of Scenic Drive in question does not only serve the residential enclave, it also serves as public access to the views and has potential to provide access to future public trails within the headlands and along the coast. Resolution 14-03-18-05 is not in conformity with the Coastal Act because it limits public access and would potentially restrict future public recreation opportunities to the nearby coastal trails and coastal trails that have yet to be complete.

Resolution 14-03-18-05 claims to be consistent with the stated goals and objectives of the HDCP. The purpose of this resolution is to vacate the portion of Scenic Drive that is west of the cul-de-sac and surrender ownership of nearly the entire road to the private property owners whose property abuts the southern border of the road. Section 4.6.E of the HDCP states 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....”*

The stated goals and objectives of the vacation of the westerly branch of Scenic Drive in the in the HDCP are to include that portion of Scenic Drive in the Headlands Conservation Park, Planning Area 7 in the HDCP, which maintains the most restrictive land use designation. The intent is not to give the adjacent property owners ownership of the road, but to expand Headlands Conservation Park and to provide the neighboring residents an easement to access their driveways.

The Dana Point Specific Plan Local Coastal Program and the Headlands Development and Conservation Plan (HDCP) contain policies describing a goal of implementing a virtually continuous bluff top walkway in the City. Public access easements have been obtained by the City in furtherance of that goal on the seaward side of the residential properties abutting the Scenic Drive right-of-way. The Scenic Drive right-of-way would provide parking for and a linkage to access those easements. The proposed vacation will eliminate the parking opportunity and create an additional impediment to the easements on the seaward side of the existing homes.

The HDCP (a part of the City’s Local Coastal Program) and the Dana Point Specific Plan Local Coastal Program are the applicable certified documents. The HDCP contains language that allows the northerly half of the Scenic Drive right-of-way in this area to be vacated and added to the Headlands Conservation Park. The remaining southerly half of the right-of-way was to remain a public street (although the adjacent landowners were to maintain any landscaping) and would have continued to provide public pedestrian access and views. Instead of following what was allowed in the HDCP, the City approved the vacation of virtually the entire right-of-way to the private residences. The City’s analysis concludes that the details outlined in the HDCP regarding this segment of Scenic Drive were inconsistent or ambiguous. Given the alleged ambiguity 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 decided that reservation of a non-vehicular public access easement would address that issue. While a public access easement is an important measure, the requirement of such easement does not override the obligation to comply with the LCP. If there are ambiguities or inconsistencies in the HDCP, those should be corrected through an LCP amendment that comprehensively plans for the use of this public right-of-way, not ignored. Furthermore, the allowances and restrictions to be contained in the non-vehicular public access easement are not clearly identified in the City’s action. The details (i.e. allowances and restrictions) of an easement are extremely important in the long term to ensure that public access and recreation are protected. There is no way for the Commission to ensure the easement is adequate without clear standards identified in the City’s action. Thus, the approved vacation is not consistent with the public access protection policies of the certified LCP (e.g. Land Use Element policies 5.13, 5.14, 5.15, 5.18, 5.22) or Chapter Three of the Coastal Act (e.g. 30210, 30212, 30121.5 and 30213).

The vacation not only encroaches upon an existing public accessway legally utilized by the public, it will significantly restrict the public's ability to access the existing physical accessway. The project proposes to designate an easement on the north part of the road which will allow for public access restricted to pedestrian traffic only. The graphics provided depicting this easement are ambiguous and unclear on the proposed easement. It appears the proposed easement to be available for public use is the path that leads from the adjacent Interpretative Center to the trails within the Headland Conservation Park that has already been established and is used as part of the City's public right-of-way. Additionally, as stated in A.5 of Resolution 14-03-18-05, the proposed easement will include a narrow strip along the south side of the established path that lies outside of the fenced area. This narrow strip could not be used by pedestrians or bikers to access views at the end of the street because it is a vegetated area that serves as a buffer between the street and the Headlands Conservation Park.

Furthermore, the HDCP states, in part, that

“Parking will be provided on Scenic Drive and in a public lot at the terminus of Scenic Drive...” (3-39).

Although 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 an approximately 340 additional feet. Public access along the entire stretch of Scenic Drive, including the portion that branches off at the cul-de-sac, has been historically available to the public. It is unclear if public parking along the branched off portion of Scenic Drive is currently available to the public. A fenced in path leads from the parking lot at the Interpretative Center in Planning Area 8A along the northern part of Scenic Drive (the part that branches off at the cul-de-sac) to the Headlands Promontory trails in Planning Area 7. This area is Conservation Open Space, which is the most restricted land use designation. Given the proposed street vacation and easements, not only would there be a reduction in available public parking, but the public would not be able to access the coastal views at the end of Scenic Drive.

In a letter to The Community Development Director of the City of Dana Point dated February 10, 2014, Mr. Mark R. McGuire, an attorney for the residents at 34525 to 34511 Scenic Drive, states that EXHIBIT A, Figure 4.4.2 (EXHIBIT 6) 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 the original proposal for developing Headlands Conservation Park by the City of Dana Point. The exhibit does not explicitly show that Scenic Drive was to terminate at the cul-de-sac (EXHIBIT 6). It shows that there *is* a cul-de-sac and that Scenic Drive continues in a branch off of the cul-de-sac to the west. The exhibit also shows that the driveways and northerly landscaped areas of the parcels encroach into the City's public right-of-way and that the actual property lines are several feet back from the paved road, thus showing that the owners are encroaching into the City's public right-of-way. Nevertheless, that exhibit was *not* approved in the final version of the HDCP that was certified by the Coastal Commission. The exhibit that was approved by the Coastal Commission (EXHIBIT 7) shows exactly how the development took place.

Both the City and the representative for the individual applicants have stated in their records that they believe that the text in Section **4.6.E Scenic Drive**, describing how the portions of the vacated

part of Scenic Drive are to be distributed, is incorrect. They believe that the final certified version was not updated along with Figure 4.4.2. Actually, the text in **Section 4.6.E Scenic Drive** that was certified by the Coastal Commission is correct, and that the City's approval of the Resolutions and Coastal Development Permit 11-008 was done so in error. LCPs and Land Use Plans 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 appropriate to measure intent.

The vacation and lot line adjustment will also lead to obstruction of access to and views from an existing public view point, and result in the loss of a significant opportunity to improve public access and viewing opportunities. By allowing the abutting private property owners to take over the public right-of-way, those owners would be able to argue for the installation of landscaping and vehicular and pedestrian gating that would create physical and visual barriers that would 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 vacated segment of Scenic Drive). These are expansive public views of the ocean and nature preserve. Furthermore, in prior actions the City has previously demonstrated there are feasible opportunities along the vacated portion of Scenic Drive to provide formalized public parking and a valuable public viewpoint developed with seating. Although there are public access and view opportunities from the adjacent Headlands Conservation Park, those opportunities 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. Thus, the City's approval 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 should "[e]stablish and preserve public views from the Headlands to the coastal areas and harbor areas" and 5.4 that states, in part, "...prohibit new development that significantly degrades public views to and along the coastline..." There are many other policies that protect public views in the LCP with which the proposed development is inconsistent.

Therefore, the City's approval of Coastal Development Permit CDP11-0018 is inconsistent with the certified Local Coastal Program and the public access and recreation policies of Chapter 3 of the Coastal Act.

Significance of Issues Raised by Appeal

In previous decisions on appeals, the Commission has been guided by the following factors to establish a finding of substantial issue:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the relevant provisions of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and,

5. Whether the appeal raises local issues, or those of regional or statewide significance.

The Dana Point Headlands is significant for its sensitive habitat, recognizable and visually stunning landforms, access and recreation amenities and remarkable views. The Dana Point Headlands is one of the California coastline's landmark resources –of local and statewide significance- worthy of the most careful planning efforts. The City's action lacks legal support under both the LCP and Chapter 3 public recreation and access policies because its action on the CDP could adversely impact valuable coastal resources, including recreational and access amenities.

Through certification of the LCP, the City was delegated the responsibility to assure implementation of a development plan at the Headlands that delivers all of the benefits promised to the public.

All inconsistencies in the City's approval with the LCP will have lasting effects and could result in adverse impacts upon public access and visual resources.

Accordingly, the appellants' contentions raise concerns about the future interpretation and enforceability of adopted conditions to ensure LCP compliance.


Therefore, the appeal is both precedential and raises issues of statewide significance.

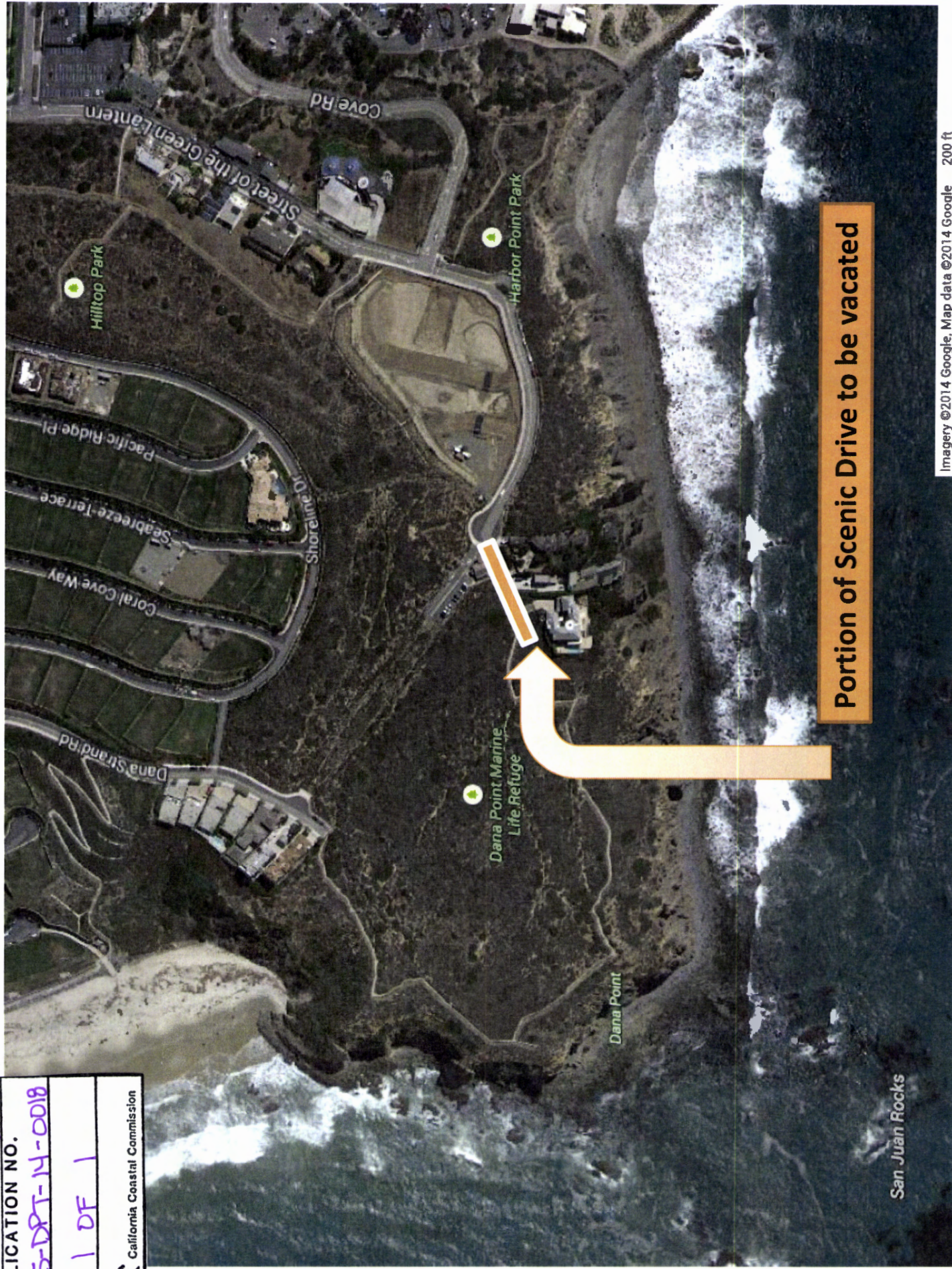
Conclusion

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

SUBSTANTIVE FILE DOCUMENTS:

1. City of Dana Point Local Coastal Program (LCP)
2. Local Coastal Development Permit No. 11-0018
3. Local Coastal Development Permit No. 07-20

EXHIBIT NO. 1
APPLICATION NO. A-5-DPT-14-0018
1 DF 1
 California Coastal Commission



Portion of Scenic Drive to be vacated

San Juan Rocks

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

COASTAL COMMISSION

EXHIBIT # 2
PAGE 1 OF 3

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.

COASTAL COMMISSION

EXHIBIT # 2

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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

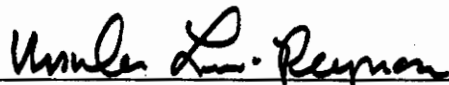
ABSENT: O'Connor

ABSTAIN: None



Gary Newkirk, Chairman
Planning Commission

ATTEST:



Ursula Luna-Reynosa, Director
Community Development Department

COASTAL COMMISSION

EXHIBIT # 2
PAGE 3 OF 3

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.

COASTAL COMMISSION

EXHIBIT # 3

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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

EXHIBIT # 3
PAGE 2 OF 2

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

COASTAL COMMISSION
EXHIBIT # 4
PAGE 1 OF 7

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.**

COASTAL COMMISSION²⁾

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.

COASTAL COMMISSION

EXHIBIT # 4
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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**

COASTAL COMMISSION

EXHIBIT # 4
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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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EXHIBIT # 4
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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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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

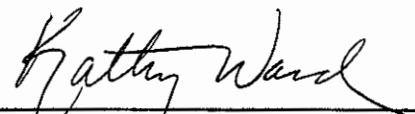
STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF DANA POINT)

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


Kathy Ward
City Clerk

CALIFORNIA COASTAL COMMISSION

South Coast District Office
200 Oceangate, 10th Floor
Long Beach, California 90802-4416
(562) 590-5071 FAX (562) 590-5084
www.coastal.ca.gov

**COMMISSION NOTIFICATION OF APPEAL**

DATE: April 08, 2014

TO:

City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

FROM: Karl Schwing

RE: **Commission Appeal No. A-5-DPT-14-0018**

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

Local Permit #: CDP 11-0018
Applicant(s): City of Dana Point
Description: City's Vacation of a portion of Scenic Drive
Location: 34525 to 34551 Scenic Drive
Local Decision: Approval With Special Conditions
Appellant(s): Coastal Commissioners
Date Appeal Filed: 04/08/2014

The Commission appeal number assigned to this appeal is A-5-DPT-14-0018. The Commission hearing date has not been scheduled at this time. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the County of Orange's consideration of this coastal development permit must be delivered to the South Coast District Office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

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

cc: City of Dana Point
Coastal Commissioners
City Architect/Planning Manager Attn: John Tilton A.I.A

COASTAL COMMISSION

EXHIBIT # 5
PAGE 1 OF 7

CALIFORNIA COASTAL COMMISSION

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



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

SECTION I. Appellant(s)

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

Coastal Commissioners: Shallenberger and Vargas

200 Oceangate, Suite 1000

Long Beach, CA 90802 (562) 590-5071

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Dana Point
2. Brief description of development being appealed: Vacation of a portion of a publicly owned street, Scenic Drive, and lot line adjustments to incorporate the vacated land into adjacent privately owned lots developed with single family residences
3. Development's location (street address, assessor's parcel no., cross street, etc.): 34525 Scenic Drive, 34551 Scenic Drive, 34555 Scenic Drive, and Scenic Drive right of way, Dana Point, Orange County; APN# 672-591-17, -18, -19; 672-262-02, 672-262-01
4. Description of decision being appealed:
 - a. Approval; no special conditions: _____
 - b. Approval with special conditions: XX
 - c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-5-DPT-14-0018

DATE FILED: April 8, 2014

DISTRICT: South Coast

COASTAL COMMISSION

EXHIBIT # 5

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5. Decision being appealed was made by (check one):
- a. Planning Director/Zoning Administrator: _____
 - b. City Council/Board of Supervisors: X
 - c. Planning Commission: _____
 - d. Other: _____
6. Date of local government's decision: March 18, 2014
7. Local government's file number: CDP11-0018

SECTION III. Identification of Other Interested Persons

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

1. Name and mailing address of permit applicant:

City of Dana Point
33282 Golden Lantern, Suite 212
Dana Point, CA 92629

Mr. Bud Bruggeman
34525 Scenic Drive
Dana Point, CA 92629

Karsikko-Gassel
34551 Scenic Drive
Dana Point, CA 92629

Day Plowman, LLC
34545 Scenic Drive
Dana Point, Ca 92629

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

Center of Natural Lands Management
P.O. Box 2162
Capistrano Beach, CA 92624

Headlands Reserve LLC
24849 Del Prado
Dana Point, CA 92629

COASTAL COMMISSION

EXHIBIT # 5
PAGE 3 OF 7

SECTION IV. Reasons Supporting This Appeal

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

The City of Dana Point has granted approval of a coastal development permit that vacates a portion of Scenic Drive and allows that land to be incorporated (via lot line adjustments) into the adjacent privately owned parcels that are developed with single family residences. The vacation of that area of land is inconsistent with Local Coastal Program policies that only allow potential vacation of about half of that land in order to expand an adjacent nature preserve. Nothing in the LCP allows the City to vacate the land and give it to the adjacent privately owned residential parcels. Furthermore, vacation of the land could adversely impact public access to and along the coast. The vacated area was and could continue to be used for parking and as a potential access point to existing and potential future public accessways and/or a public vista point. Vacation of the land would lead to obstruction of access to a significant public viewpoint of the nature preserve and ocean beyond, and also be contrary to public view protection policies in the certified LCP. The City's approval did attempt to address public access by requiring a 'non-vehicular' public access easement over a part of the right-of-way, but the parameters/required content of the easement is not clearly defined, thus, the actual easement may not adequately protect public access. Finally, vacation of a public right-of-way located between the first public road and the sea would potentially be inconsistent with the public access protection policies of Chapter 3 of the Coastal Act.

The portion of Scenic Drive that is being vacated is located seaward of the first public road. Immediately north and west of the area proposed to be vacated is an open space nature preserve (Headlands Conservation Park) that is separated from the road by a fence and contains environmentally sensitive habitat area, as well as a public trail system and an interpretive center with parking. South of the vacated area are four privately owned parcels developed with bluff top single family homes. There are undeveloped public access dedications on the seaward side of these homes intended to be used as a bluff top walkway at a future date. East of the vacated area is the continuation of Scenic Drive that will remain public. The portion of the Scenic Drive right-of-way to be vacated is about 60 feet wide (except for narrower areas on the west and east ends) and about 340 feet long. Part of the vacated area is presently developed with a paved roadway that provides pedestrian and vehicular access to the residences, and until recently, contained some paved and unpaved area within the right-of-way that could be used by the public for parking. Significant views of the nature preserve and ocean beyond are available down the roadway and from almost all points within the right of way.

The Headlands Development and Conservation Plan (HDGP) (a part of the City's Local Coastal Program) and the Dana Point Specific Plan Local Coastal Program are the applicable certified documents. The HDGP contains language that allows the northerly half of the Scenic Drive right-of-way in this area to be vacated and added to the Headlands Conservation Park for a variety of potential purposes (e.g. parking, trail, viewpoint, habitat area, etc.). The southerly half of the right-of-way was to remain a public street (although the adjacent landowners were to maintain any landscaping) and would have continued to provide public pedestrian access and views. Instead of following what was allowed in the HDGP, the City approved the vacation of virtually the entire right-of-way to the private residences. The City's analysis concludes that the details outlined in the HDGP regarding this segment

COASTAL COMMISSION

of Scenic Drive were inconsistent or ambiguous. Given the alleged ambiguity 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 decided that reservation of a non-vehicular public access easement would address that issue. While a public access easement is an important measure, the requirement of such easement does not override the obligation to comply with the LCP. If there are ambiguities or inconsistencies in the HDCP, those should be corrected through an LCP amendment that comprehensively plans for use of this public right-of-way, not ignored. Furthermore, the allowances and restrictions to be contained in the non-vehicular public access easement are not clearly identified in the City's action. Often, the details (i.e. allowances and restrictions) of an easement are extremely important in the long term to ensure that public access and recreation are protected. There is no way for the Commission to ensure the easement is adequate without clear standards identified in the City's action. Thus, the approved vacation is not consistent with the public access protection policies of the certified LCP (e.g. Land Use Element policies 5.13, 5.14, 5.15, 5.18, 5.22) or Chapter 3 of the Coastal Act (e.g. 30210, 30212, 30212.5, and 30213).

The Dana Point Specific Plan Local Coastal Program and the HDCP contain policies describing a goal of implementing a virtually continuous bluff top walkway in the City. Public access easements have been obtained by the City in furtherance of that goal on the seaward side of the residential properties abutting the Scenic Drive right-of-way. The Scenic Drive right-of-way could provide parking for and a linkage to access those easements. The proposed vacation will potentially eliminate the parking opportunity and create a disincentive to opening the blufftop easements on the seaward side of the existing homes to public use.

The vacation and lot line adjustment will also lead to obstruction of access to and views from an existing public view point, and result in the loss of a significant opportunity to improve public access and viewing opportunities. By allowing the abutting private property owners to take over the public right-of-way, those owners would be able to argue for the installation of landscaping and gating that would create physical and visual barriers that would 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 vacated segment of Scenic Drive). These are existing public views of the ocean and nature preserve. Gating and landscaping would also obstruct these valuable views. Furthermore, as shown in prior City analyses related to vacation of this right-of-way, there are feasible opportunities to provide formalized public parking and a valuable public viewpoint developed with seating along the vacated portion of Scenic Drive. Although there are public access and view opportunities from the adjacent Headlands Conservation Park those opportunities are currently time-restricted in order to protect the sensitive resources in the park and are subject to the hours the visitor center is open. A direct access from the street-end through the fence to the park would eliminate this time restriction on use and the feasibility of such an entrance should be considered in connection with the proposed development. Thus, the City's approval 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 should "[e]stablish and preserve public views from the Headlands to the coastal areas and harbor areas" and 5.4 that states, in part, "...prohibit new development that significantly degrades public views to and along the coastline...". There are many other policies that protect public views in the LCP with which the proposed development is inconsistent.

Therefore, the City's approval of Coastal Development Permit CDP11-0018 is inconsistent with the certified Local Coastal Program and the public access and recreation policies of the **COASTAL COMMISSION** Coastal Act.

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

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

SECTION V. Certification

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

Signed: Mary Challenburger
Appellant or Agent

Date: 4/8/14

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

Signed: _____

Date: _____

COASTAL COMMISSION

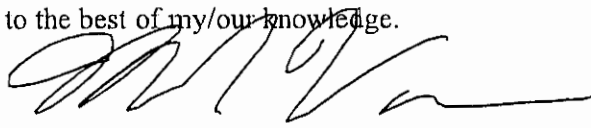
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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date: April 8, 2014

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

Section VI. Agent Authorization

I/We hereby
authorize

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

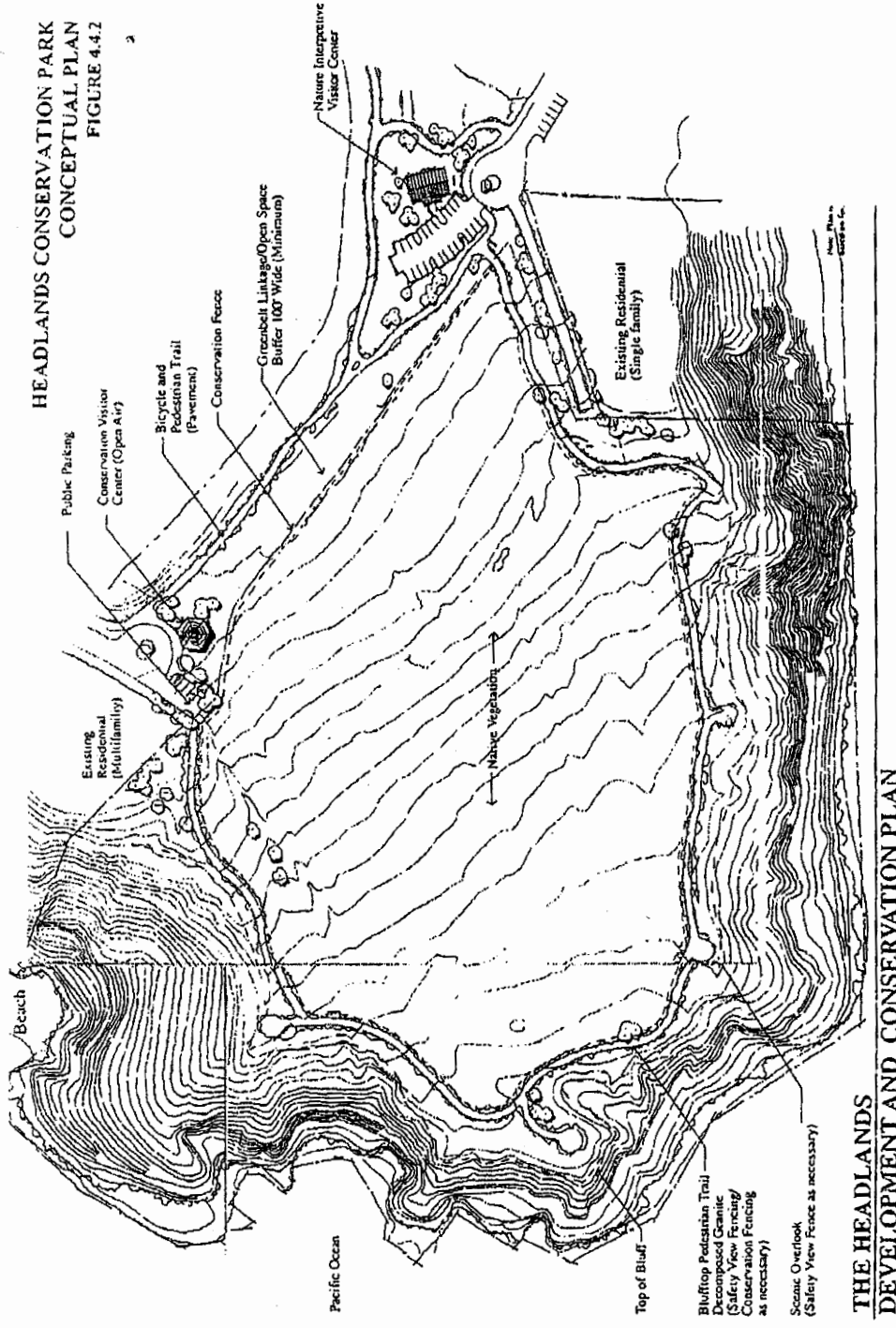
Signature of Appellant(s)

Date: _____

COASTAL COMMISSION

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HEADLANDS CONSERVATION PARK
CONCEPTUAL PLAN
FIGURE 4.4.2

THE HEADLANDS
DEVELOPMENT AND CONSERVATION PLAN

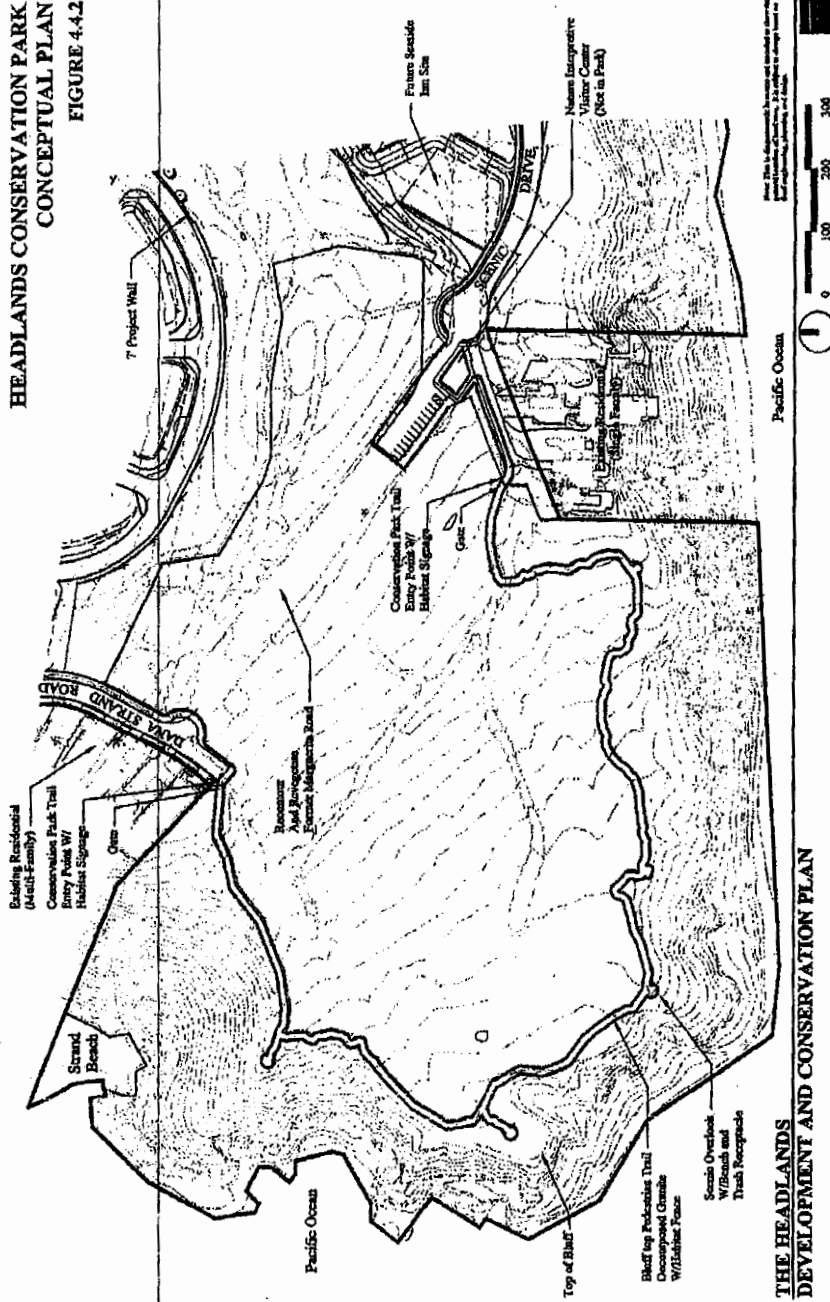
COASTAL COMMISSION

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EXHIBIT A

EXHIBIT B

HEADLANDS CONSERVATION PARK
CONCEPTUAL PLAN
FIGURE 4.4.2



THE HEADLANDS
DEVELOPMENT AND CONSERVATION PLAN

COASTAL COMMISSION

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