

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA

45 W. BROADWAY, STE. 380
 P.O. BOX 1450
 LONG BEACH, CA 90802-4416
 (310) 590-5071

Filed: July 30, 1996
 49th Day: September 17, 1996
 180th Day: January 26, 1997
 Staff: John T. Auyong *galm*
 Staff Report: October 24, 1996
 Hearing Date: November 12-15, 1996
 Commission Action:

STAFF REPORT: PERMIT EXTENSION REQUEST

APPLICATION NO.: 5-92-186E3

APPLICANT: Monarch Bay Resort, Inc. AGENT: Melissa Holmes

PROJECT LOCATION: Northeast of the intersection of Pacific Coast Highway and Crown Valley Parkway, and west of the Salt Creek Regional Trail.

PROJECT DESCRIPTION: Construction of 55 attached residential units on 8.8 acres of land. The floor area of the units will range from 2,200 to 3,200 square feet. The units will be clustered into 16 two and three story buildings. The architectural theme will mimic the character of the Tuscan region of Italy. Grading will consist of approximately 38,000 cu. yds. of cut, and 81,000 cu. yds. of fill.

LOCAL APPROVALS RECEIVED: Site Development Permit SDP91-04, Planning Commission Resolution No. 92-05-19-33, Vesting Tentative Tract Map VTTM 14604

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permits (including extensions and amendments) 5-92-157, 5-92-168, 5-92-186, 5-92-188, 5-96-006 (Monarch Bay Resort, Inc.); Permit P-79-5539 (AVCO); Monarch Beach Resort Final Specific Plan; City of Dana Point LCP 1-96 Amendment Request

SUMMARY OF THE STAFF RECOMMENDATION

Staff recommends that the Commission find that the extension is consistent with the Coastal Act and allow the permit to be extended for another one-year term.

PROCEDURAL NOTE.

Section 13169 of the California Code of Regulations provide that permit extension requests shall be reported to the Commission if:

- 1) The Executive Director determines that due to changed circumstances, the proposed development may not be consistent with the Coastal Act, or,
- 2) Objection is made to the Executive Director's determination of consistency with the Coastal Act.

Pursuant to Section 13169(a)(1) of the California Code of Regulations, the Executive Director determined that there were no changed circumstances since the time of original approval of the permit which would affect the approved development's consistency with the Chapter Three policies of the Coastal Act.

As required by Section 13169(a)(1), the Executive Director mailed notice of this determination to interested parties on August 6, 1996. Section 13169(a)(1) provides further that if no written objection is received within ten (10) working days of publishing notice, the determination of consistency shall be conclusive.

The 10 working day period ended on August 20, 1996. On August 12, 1996 and August 14, 1996, written objections were received (see Exhibit B). Therefore, pursuant to Section 13169(a)(2) of the California Code of Regulations, this extension request must be reported to the Commission.

Further, Section 13169(a)(2) provides that if three (3) Commissioners object to an extension request on the grounds that the proposed development may not be consistent with the Coastal Act, the application shall be set for a full hearing as though it were a new application. If three objections are not received, the permit will be extended for an additional one-year period.

I. STAFF RECOMMENDATION

Staff recommends that the Commission not object to the Executive Director's decision to extend the permit for another year on the grounds that there are no changed circumstances which could cause the project, as originally approved, to be inconsistent with the Chapter 3 policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS

A. Project Description/History

The applicant is requesting a one year extension of coastal development permit 5-92-186 for the construction of 55 attached residential units on 8.8 acres of land. The floor area of the units will range from 2,200 to 3,200 square feet. The units will be clustered into 16 two and three story buildings that will conform to the sloping terrain. The architectural theme will mimic the character of the Tuscan region of Italy. Grading will consist of approximately 38,000 cubic yards of cut, and 81,000 cubic yards of fill.

Coastal Development Permit 5-92-186 was originally approved by the Commission on August 11, 1992. Attached as Exhibit C is the Notice of Intent to Issue Permit which contains the special conditions of approval. The subject permit was also extended twice previously (see also Exhibit D).

The proposed project was originally known as Clubhouse Village North. The subject site is located westerly of the existing Links at Monarch Beach golf course. The subject site is located adjacent to and northerly of the applicant's related development approved by coastal development permit 5-92-188. Permit 5-92-188 approved residential development and a golf clubhouse which were known as Clubhouse Village South. However, with the relocation of the golf clubhouse proposed under permit 5-92-188 to a new site approved under new permit 5-96-006 and permit amendment 5-92-188A, the clubhouse which lent it's name to the proposed development would no longer be

nearby. Therefore, the proposed development is now known as Hillside Village North. The adjacent development approved under permit 5-92-188 is now known as Hillside Village South.

B. Analysis of Objections to the Extension Request

Commission staff received two letters of objection to the requested permit extension (See Exhibit B). The objections raised by the letters are discussed below.

1. Standard of Review

The criteria stated in the California Code of Regulations (Section 13169) for extending a coastal development permit is the determination of whether there are any changed circumstances which would affect the consistency of the proposed development with the Coastal Act. In this case, neither objector has specified any changed circumstances that could affect the consistency of the proposed development with the Coastal Act.

There have been other changed circumstances in the form of the expiration of coastal development permit 5-92-157. However, as discussed later in this report, the expiration of permit 5-92-157 does not constitute a changed circumstance which would affect the consistency of the proposed development with the Coastal Act.

2. Time-Shares

In his letter to the Coastal Commission received on August 12, 1996, Marek B. Lepkowski objects to extending this permit and permit 5-92-188E3 on the grounds that the permits would allow the applicant ". . . to build over 150 'time share' units (read hotel) in 3 story buildings." (see Exhibit B) Between the 55 units proposed under the subject permit and the 111 proposed under permit 5-92-188 as amended, the total residential units are 166, in the vicinity of the 150 units mentioned by Mr. Lepkowski.

The approved units are not time-share, hotel, or other visitor-serving units as proposed by the applicant. They are residential dwelling units. The applicant has not filed a permit amendment application requesting that the approved units be converted to time-share or hotel units. Therefore, the objection does not raise a changed circumstance. Thus, the Commission finds that the objection does not constitute a changed circumstance which would cause the proposed development to be inconsistent with the Chapter 3 policies of the Coastal Act.

3. Phasing Plan

a. Objection Raised

In his August 12, 1996 letter to Coastal Commission staff, Mr. P.L. Jim Schlegel objects to the extension of the subject permit. Mr. Schlegel indicates that the City of Dana Point's and Coastal Commission's approval of

the subject permit was ". . . contingent upon construction of their planned hotel before any residential real estate development. Inasmuch as they are apparently NOT requesting an extension on the hotel permit, the consideration of these two parcels is mute [sic]."

The subject permit approved residential development which is one component of a larger mixed-use development project including improvements to Sea Terrace Park, construction of a new hotel, and construction of residential units. The Commission approved the park improvements under coastal development permit 5-92-157, the hotel under coastal development permit 5-92-168, and the residential construction under coastal development permits 5-92-186 (the subject permit of this extension request) and 5-92-188 (See Exhibit E).

The City of Dana Point developed the Monarch Beach Resort Final Specific Plan ("Specific Plan") to address these developments. The Specific Plan requires development to be phased so that the construction of the park improvements approved by coastal development permit 5-92-157 occurs first, the applicant's proposed hotel approved by coastal development permit 5-92-168 occurs second, and lastly the applicant's proposed residential areas approved under coastal development permits 5-92-188 and the subject permit occurs last. This phasing requirement is consistent with Section 30222 of the Coastal Act which gives priority to the development of visitor-serving commercial uses, such as a hotel, over general residential uses. The Specific Plan was not certified as part of the City's local coastal program ("LCP"). However, the Commission imposed on all hotel and residential development permits a special condition requiring adherence to a phasing plan (see Exhibit C, Page 3). This phasing plan was modeled on the Specific Plan's phasing requirements.

Mr. Schlegel is concerned that the applicant may be trying to side-step the requirement to build the hotel prior to the residential units, as required by the Specific Plan's phasing requirements and the subject permit's special conditions of approval. In fact, however, the hotel permit was extended by the Executive Director on August 7, 1996. No objections were received and the extension became final on August 21, 1996. Further, the permittee has not submitted a permit amendment request to delete the special condition requiring adherence to the Specific Plan's phasing requirements. The permittee has not given Commission staff any indication that the development approved under the subject permit would proceed inconsistent with the phasing requirements of the permit.

The phasing plan emphasizes public access and recreation opportunities, and gave preference to visitor serving commercial uses (in the form of the hotel) over private residential uses, consistent with Section 30222. The Commission found the proposed residential development, as conditioned to follow the phasing plan, to be consistent with the Chapter 3 policies of the Coastal Act. Since there has been no change to or elimination of the special condition of approval requiring adherence to phasing requirements, and the hotel permit 5-92-168 has been extended, the Commission finds that the objection raised does not constitute a changed circumstance which would cause the proposed project, as conditioned, to be inconsistent with the Chapter 3 policies of the Coastal Act.

b. Expiration of Coastal Development Permit 5-92-157 for Park Improvements

Coastal development permit 5-92-157 expired on August 11, 1996. The permit was for proposed improvements to the 16.74-acres of "Phase II" of the dedicated public Sea Terrace Community Park in the City of Dana Point. The proposed improvements included trails, landscaping, restrooms, bike racks, amphitheater, tot lot, 80 parking spaces, picnic areas, a maintenance building, signage, and 180,000 cubic yards of grading (50,000 cubic yards of cut and 130,000 cubic yards of fill).

Permit 5-92-157 is linked to the subject permit through the subject permit's phasing plan special condition. As described above, the subject permit contains a special condition which requires adherence to a phasing plan which requires the construction of the park improvements approved by coastal development permit 5-92-157 first, the applicant's proposed hotel approved by coastal development permit 5-92-168 second, and lastly the applicant's proposed residential areas approved under both coastal development permit 5-92-188 and the subject permit.

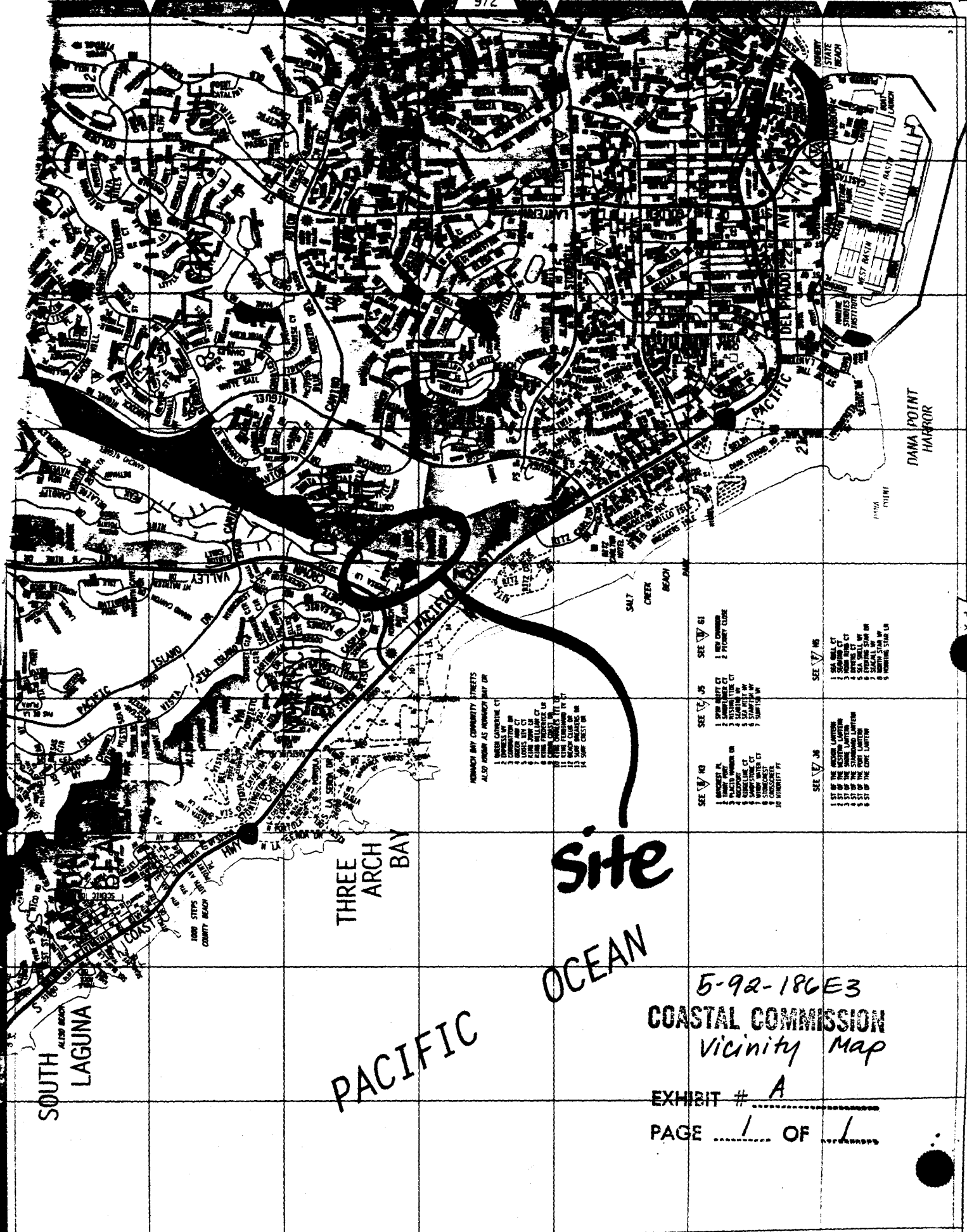
With the expiration of permit 5-92-157, there is no longer a valid approval for the proposed park improvements. The park improvements must be constructed before the permittee can construct the residential units. The expiration of the park permit, however, does not preclude the possibility of construction of the park improvements. The City can reapply to the Coastal Commission, or to itself after certification of the LCP for this area, for another permit for the park improvements. The expiration of the park permit suggests that there may be delays in its construction that could result in delays of construction of the hotel and residential units. However, the existence of the permit did not guarantee when the park improvements would be constructed or even that they would be constructed.

In addition, there is no evidence that the City intends not to go forward with the park improvements. The permittee has paid a performance bond to the City of Dana Point which is being held in an account earmarked for the construction of the Sea Terrace Park improvements. Further, the City has submitted the Specific Plan for certification as part of LCP amendment request 1-96. The phasing plan is part of the Specific Plan. If the Specific Plan is effectively certified with the phasing plan, then the standard of review for future coastal development permits in this area will be the certified LCP, including the Specific Plan and its phasing requirements.

Therefore, the expiration of permit 5-92-157 does not constitute a changed circumstance which would cause the approved project, as conditioned, to be inconsistent with the Chapter 3 policies of the Coastal Act.

c. Conclusion

Therefore, the Commission finds that the permit extension should be granted because there are no changed circumstances which would cause the proposed development as conditioned to be inconsistent with Chapter 3 of the Coastal Act.



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 ALSO INDICATE AS APPROXIMATE ONLY OR

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3. CREEK DR
4. LUNA LN
5. SHERBELL LN
6. SHERBELL CT
7. SHERBELL DR
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13. SHERBELL BLVD
14. SHERBELL BLVD

SEE V G1

SEE V G5

SEE V G3

SEE V M6

SEE V M8

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OCEAN

5-92-186E3
 COASTAL COMMISSION
 Vicinity Map

EXHIBIT # A
 PAGE 1 OF 1

5-92-186E3
COASTAL COMMISSION
Objection Letters

EXHIBIT # B

PAGE 1 OF 2

Marek B. LEPKOWSKI
23268 Atlantic Way
Dana Point

RECEIVED
5-92-186E3

AUG 12 1996

CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

California Coastal Commission
P.O. Box 1450
Long Beach
Attn: J.T. Anyong

Re -
Extension of
permit 5-92-186

Dear Sir

I categorically object giving
-extending permit to Monarch Bay
Resort which will allow them to
build over 150 "time share" units
(read hotel) in 3 story buildings.
I demand hearing in this respect
Sincerely

M. Lepkowski

P. L. Jim Schlegel Jr.

P.O. Box 3367
Princetonville, Ki. 96722
808-826-6434

23288 Pompeii Drive
Monarch Beach, CA 92629
714-248-9856

RECEIVED

John T. Anyong
Coastal Program Analyst
CALIFORNIA COASTAL COMMISSION
South Coast Area
245 W. Broadway, Ste. 380
P.O.Box 1450
Long Beach, CA 90802-4416

AUG 14 1996

CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

14 August 1996

Dear Sir:

7464F & 7465F

As an adjacent homeowner to the property in question I am in receipt of two of your 'Notices of Extension Requests for Coastal Development Permit' for Monarch Bay Resort, Inc., dated 6th & 7th of August 1996.

Monarch Bay Resort is wholly owned by a Japanese company which also owns the Princeville Development Corp., Inc on the island of Kauai, Hawaii where my other home is situated. This company has a long history of disregarding local development requirements in both locations, to wit:

The City of Dana Point's approval and perhaps the Coastal Commission's as well, were contingent upon construction of their planned hotel before any residential real estate development. Inasmuch as they are apparently NOT requesting an extension on the hotel permit, the consideration of these two parcels is mute.

I strongly object to foreign companies attempting to gain special approval without fulfilling their agreed to obligations. On the other hand, if they proceed as originally approved, I will be a supporter.

Respectfully,


P.L. Jim Schlegel

5-92-186E3
COASTAL COMMISSION
Objection Letters

EXHIBIT # B
PAGE 2 OF 2

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
245 W. BROADWAY, STE. 200
P.O. BOX 1480
LONG BEACH, CA 90802-4416
(714) 890-9071

Page 1 of 3

Date: August 19, 1992

Permit Application No. 5-92-186



NOTICE OF INTENT TO ISSUE PERMIT

On August 11, 1992, the California Coastal Commission granted to MONARCH BAY RESORT, INC. PERMIT 5-92-186, subject to the attached conditions, for development consisting of:

The construction of 55 attached residential units on 8.8 acres of land. This development is part of the overall Monarch Bay Resort project. The floor area of the units will range from 2,200 to 3,200 square feet. The units will be clustered into 16 two and three story buildings that will conform to the sloping terrain. The architectural theme will mimic the character of the Tuscan region of Italy. Grading will consist of approximately 38,000 cubic yards of cut and 81,000 cubic yards of fill.

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Orange County at Northeast of the intersection of the Pacific Coast Hwy & Crown Valley Parkway, and west of the Salt Creek Regional Trail.

The actual development permit is being held in the Commission office until fulfillment of the Special Conditions imposed by the Commission. Once these conditions have been fulfilled, the permit will be issued. For your information, all the imposed conditions are attached.

Issued on behalf of the California Coastal Commission on August 11, 1992.

PETER DOUGLAS
Executive Director

By: [Signature]

Title: Staff Analyst

*5-92-186E3
file copy*

ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this notice of the California Coastal Commission determination on Permit No. 5-92-186, and fully understands its contents, including all conditions imposed.

_____ Date

_____ Permittee

Please sign and return one copy of this form to the Commission office at the above address.

COASTAL COMMISSION *5-92-186E3*
Notice of Intent to Issue Permit

EXHIBIT # C

PAGE 1 OF 3

NOTICE OF INTENT TO ISSUE PERMIT

Permit Application No. Page 2 of 5-92-186

STANDARD CONDITIONS:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Compliance.** All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. **Inspections.** The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

1. **Coastal Access Fund.**

Prior to issuance of the coastal development permit, the applicant shall pay a fee of \$545.86 in 1992 dollars (based on the original fee of \$275 in 1979 dollars adjusted according to increases in the Consumer Price Index - U.S. City Average) for each new residential unit. No fee shall be required for each "affordable" unit that is part of an affordable housing program. The fee shall be in renewable Certificates of Deposit, principal and interest payable for recreation and coastal transit or at the direction of the Executive Director of the California Coastal Commission or until such time a Coastal Access Program is established and administered by a separate legal entity. The Certificates of Deposit shall be placed in the possession of the California Coastal Commission for safekeeping.

COASTAL COMMISSION

5-92-186E3

Notice of Intent to Issue Permit

EXHIBIT # C

PAGE 2 OF 3

Upon the execution of a binding legal agreement between the agency implementing and administering the Coastal Access Program and the Coastal Commission and Coastal Conservancy which specifies the limitation on the use of the funds for the provision of coastal recreational transit services or other coastal access purposes in Orange County, the Certificates of Deposit shall then be transferred to that agency for use in implementing the Coastal Access Program.

2. Affordable Housing.

Prior to the issuance of the coastal development permit the applicant shall show evidence, subject to the review and approval of the Executive Director that he has complied with the recorded agreement to provide affordable housing pursuant to the Low-Cost and Moderate-Cost Housing condition of the master permit P-79-5539. The applicant may submit a permit amendment to propose an alternative method of complying with the affordable housing requirements.

3. Phased Development.

PHASING

Prior to issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and approval a written agreement for recording the following:

Development shall be phased and shall comply with the phasing plan of the Monarch Beach Resort Final Specific Plan. Highest development priority shall be given to public open space uses, parks, trails, and public roads. Second priority shall be given to the hotel, tram, and golf clubhouse. Any changes to the phased development plan shall require the approval of the Executive Director. The agreement shall also include the development of a public beach house consistent with local and Coastal Commission approvals.

4. Future Development.

Prior to the issuance of the coastal development permit, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, stating that the subject permit is only for the development described in the Coastal Development Permit No. 5-92-186; and that any future improvements to the property or change in use or operation will require a permit from the Coastal Commission or its successor agency. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.

AFTER YOU HAVE SIGNED AND RETURNED THE DUPLICATE COPY YOU WILL BE RECEIVING THE LEGAL FORMS TO COMPLETE (WITH INSTRUCTIONS) FROM THE SAN FRANCISCO OFFICE. WHEN YOU RECEIVE THE DOCUMENTS IF YOU HAVE ANY QUESTIONS, PLEASE CALL THE LEGAL DEPARTMENT AT (415) 904-5200.

COASTAL COMMISSION 5-92-186E3

SR:tn
5819E

Notice of Intent to Issue Permit

EXHIBIT # C
PAGE 3 OF 3

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
245 W. BROADWAY, STE. 380
P.O. BOX 1450
LONG BEACH, CA 90802-4416
(310) 990-8071



COASTAL DEVELOPMENT PERMIT EXTENSION

Date: 22 August 1994

Re: Extension Request for Permit No. 5-92-186

Original Permit Expiration Date: 11 August 1994

Extended Permit Expiration Date: 11 August 1995

Dear Monarch Bay Resort, Inc.,

The Executive Director has determined that there are no changed circumstances affecting the conformity of the subject development with the California Coastal Act. No objections to this determination have been received at the Commission office. Therefore, the Executive Director grants an extension of the subject permit, subject to the same conditions approved by the Commission, to expire on the Extended Permit Expiration Date indicated above.

5-92-186 E3
COASTAL COMMISSION
Previous extensions

PETER M. DOUGLAS
Executive Director

EXHIBIT # D
PAGE 1 OF 2

By: [Signature]
Title: Coastal Program Analyst

cc: File

SFR:b11

D5: 2602F

5-92-186 E3
file copy

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
245-W. BROADWAY, STE. 380
P.O. BOX 1450
LONG BEACH, CA 90802-4416
(310) 590-5071

COASTAL DEVELOPMENT PERMIT EXTENSION



*5-92-186E3
file copy*

Date: 12/28/95

Re: Extension Request for Permit No. 5-92-186

Original Permit Expiration Date: 8/11/94

Extended Permit Expiration Date: 8/11/96

Dear: Monarch Bay Resort

The Executive Director has determined that there are no changed circumstances affecting the conformity of the subject development with the California Coastal Act. No objections to this determination have been received at the Commission office. Therefore, the Executive Director grants an extension of the subject permit, subject to the same conditions approved by the Commission, to expire on the Extended Permit Expiration Date indicated above.

PETER M. DOUGLAS
Executive Director

By: *John T. Arny*
Title: Staff Analyst

cc: File

6055F
JA:WT

5-92-186E3
COASTAL COMMISSION
Previous Extensions
EXHIBIT # D
PAGE 2 OF 2

Subject permit

5-92-186E3

Monarch Beach Resort permits

EXHIBIT # E
PAGE 1 OF 1

Area covered by permit 5-92-186




Area covered by permit 5-92-188

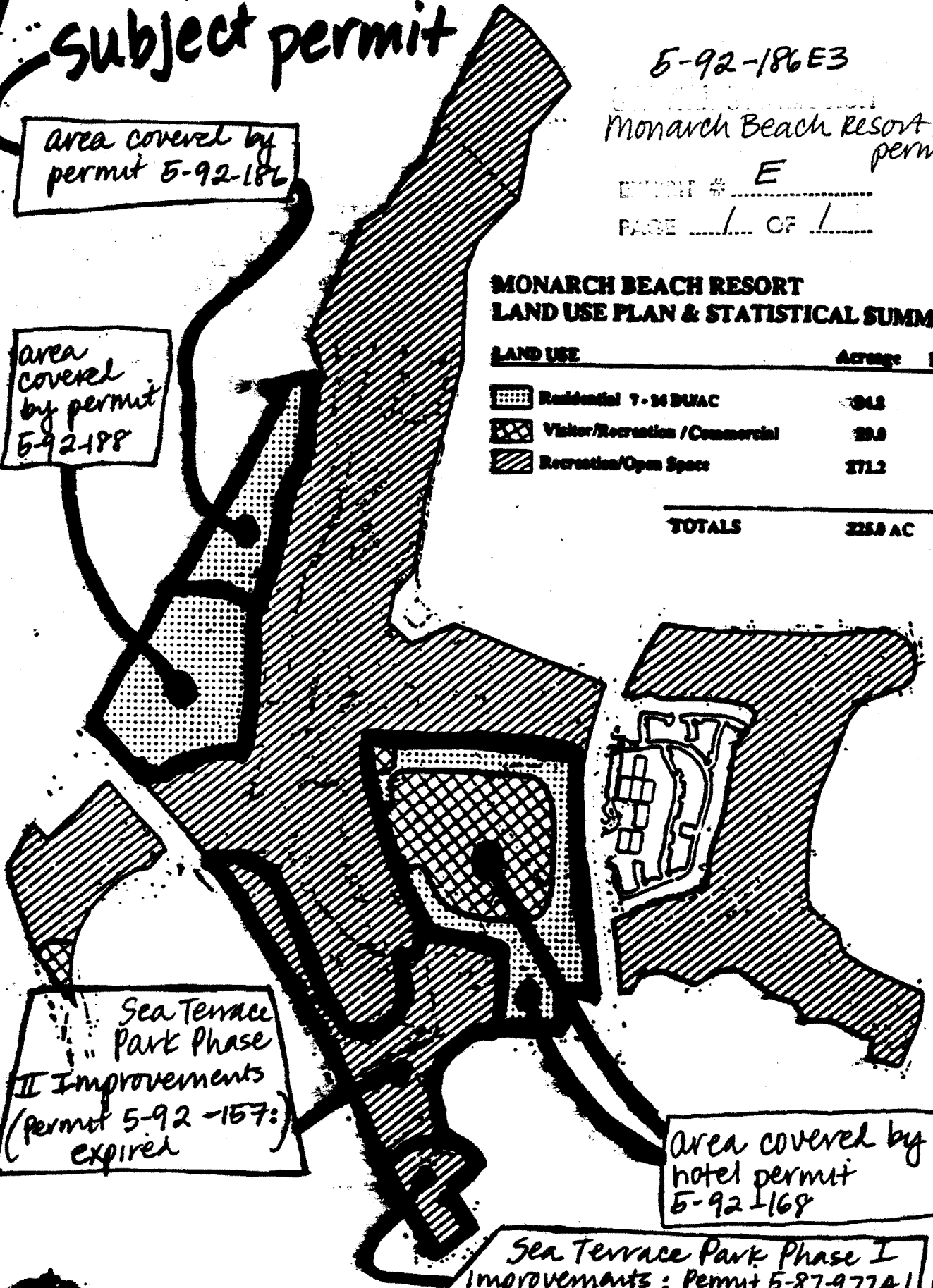
Sea Terrace Park Phase II Improvements (Permit 5-92-157: expired)

Area covered by hotel permit 5-92-168

Sea Terrace Park Phase I Improvements: Permit 5-87-977A-1

MONARCH BEACH RESORT LAND USE PLAN & STATISTICAL SUMMARY

LAND USE	Acres	Dwelling Units
 Residential 7-34 DU/AC	34.2	238
 Visitor/Recreation / Commercial	29.0	.
 Recreation/Open Space	271.2	.
TOTALS	325.0 AC	238 DU



CITY GENERAL PLAN/LAND USE PLAN

MONARCH BEACH RESORT SPECIFIC PLAN

MAY 23 1995 ITEM 8.3

EXHIBIT **LA 29**