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CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
245 W. BROADWAY, STE. 380
P.O. BOX 1450
LONG BEACH, CA 90802-4416
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Filed: February 21, 1996
49th Day: April 10, 1996
180th Day: August 19, 1996
Staff: John T. Auyong *mm*
Staff Report: February 23, 1996
Hearing Date: March 12-15, 1996
Commission Action:

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 5-92-168A

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

PROJECT LOCATION: Northwest of the intersection of Niguel Road and Pacific Coast Highway. Specifically, northwest of the existing fire station at the intersection of Niguel Road and Stonehill, east and south of the existing golf course in the City of Dana Point, County of Orange

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: The construction of a 400-key resort hotel, related visitor serving facilities, and residential units on 30.5 acres. The proposed hotel and related facilities include restaurants, conference facilities, resort offices, retail spaces, and 835 Hotel parking spaces. The residential portion of the project site will consist of 81 attached units and 5 detached units. The hotel site will be integrated with courtyards, gardens, pathways, resort vehicle system, public trails, and other visitor serving uses. The trail system will link the hotel grounds to Sea Terrace Community Park and the golf course. Grading will consist of 395,000 cubic yards of cut and 45,000 cubic yards of fill. The proposed development is part of the Monarch Bay Resort project.

DESCRIPTION OF AMENDMENT: Deletion of that portion of the project consisting of 14 residential units, located at the subject site's northwest corner. This portion of the subject site will instead be included under a separate coastal development permit application, which will include a proposed golf clubhouse where the 14 residential units had previously been proposed.

LOCAL APPROVALS RECEIVED: City of Dana Point Approval-in-Concept

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit 5-92-188 (Monarch Bay Resort, Inc.); Coastal Development Permit Application 5-96-006 (Monarch Bay Resort, Inc.); Monarch Beach Resort Specific Plan

PROCEDURAL NOTE: The Commission's regulations provide for referral of permit amendment requests to the Commission if:

1) The Executive Director determines that the proposed amendment is a material change,

2) Objection is made to the Executive Director's determination of immateriality, or

3) the proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

The Executive Director determines that the proposed amendment request is a material amendment because (1) the proposed project description amendment is a material change; and (2) another permit amendment application as well as a new permit application are involved.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission approve the proposed development with the proposed amendment, subject to the conditions below, on the grounds that it would be consistent with the Chapter 3 policies of the Coastal Act.

I. STAFF RECOMMENDATION

Staff recommends that the Commission adopt the following resolution:

Approval with Conditions

The Commission hereby grants, subject to the conditions below, an amendment to the permit on the grounds that the proposed development with the proposed amendment, as conditioned, will be in conformity with the certified local coastal program, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. CONDITIONS

All previously approved and imposed standard and special conditions remain in effect for coastal development permit 5-92-168 and are not changed by the proposed amendment. (See Appendix A, "Notice of Intent to Issue Permit" for coastal development permit 5-92-168, for language of previously imposed standard and special conditions)

III. FINDINGS AND DECLARATIONS

A. Proposed Amendment/History

1. Amendment Description

The applicant is proposing to amend permit 5-92-168 to delete 14 of the proposed residential units. The applicant has submitted a separate coastal development permit application for the construction of a golf clubhouse on the site of the 14 residential units to be deleted under this permit amendment request.

The 14 residential units proposed to be deleted would be switched with the golf clubhouse proposed for a different, separate site approved under permit 5-92-188. The golf clubhouse would thus occupy the former location of the 14 residential units, and vice versa.

2. Project History

The subject site is one of several sites approved by the Commission in August of 1992 for the master-planned Monarch Beach Resort proposed by the applicant. The subject coastal development permit 5-92-168 is one of several permits (the others are 5-92-157, 5-92-186, and 5-92-188) approved for the proposed Monarch Beach Resort project involving a proposed hotel, golf clubhouse, public amenities, park improvements, and residential development. None of this development has been constructed to date.

In turn, the resort area proposed by the applicant is part of a much larger master-planned area originally approved for development in concept by "master" coastal development permit P-79-5539. Permit P-79-5539 approved the subject site, in concept, for recreation/conference center uses. Several special conditions of permit P-79-5539, such as those relating to parking, affordable housing, and that the recreation/conference facility be made available to the public for instance, are binding on future development within the original master-planned area. For a more detailed history of the original permit and subsequently proposed and approved but unbuilt development, refer to Appendix B.

The applicant now proposes to switch the location of the golf clubhouse as originally approved at a different site by permit 5-92-188 with 14 residential units located on the subject site approved under permit 5-92-168. To accomplish this, two permit amendment applications and a new coastal development permit application are scheduled to be acted on at this March 12-15, 1996 Commission meeting. The subject permit amendment, 5-92-168A, would delete 14 of the previously approved residential units on the site where the proposed golf clubhouse would now be relocated. Permit amendment application 5-92-188A would replace the originally approved golf clubhouse with 14 residential units. Permit application 5-96-006 is for the actual construction of the golf clubhouse in its new location.

B. Analysis of the Proposed Amendment / Effect on Special Conditions

The proposed amendment would result in the deletion of 14 residential units previously approved by the Commission under coastal development permit 5-92-168. As a result, there would be 14 less residential units proposed for the subject site. The proposed hotel and other public facilities and visitor-serving components of the proposed development would not be changed by the proposed amendment.

In approving coastal development permit 5-92-168, the Commission imposed several special conditions to conform the project to the Chapter Three policies and provisions of the Coastal Act. The effect of the proposed amendment on the special conditions is discussed below.

Section 30210 of the Coastal Act states:

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

Section 30212.5 of the Coastal Act states:

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 or otherwise, of overcrowding or overuse by the public of any single area.

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30250 of the Coastal Act states, in relevant part:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

Section 30252 of the Coastal Act states:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

1. Compliance with Master Permit P-79-5539

As described previously, master permit P-79-5539 approved in concept development for the subject site. Master permit P-79-5539 had special conditions requiring the provision of affordable housing in the area covered by the master permit, including the subject site. These affordable housing special conditions required the payment of in-lieu fees to construction affordable housing in the coastal zone, and to develop a Housing Initiatives Program. In addition, master permit P-79-5539 had special conditions requiring the payment of an in-lieu fee for each market rate residential unit built in the area covered by the master permit, including the subject site. This in-lieu fee was to be paid into an account to fund a Coastal Access Program which provides coastal recreational transit. Because the master permit was vested, the master permit's special conditions have been activated and are binding on future development, including the development approved under coastal development permit 5-92-168.

To conform the residential portion of the development approved under coastal development permit 5-92-168 with the requirements of the master permit P-79-5539, the Commission imposed special conditions requiring compliance with the affordable housing and Coastal Access Program special conditions of permit P-79-5539. Also, the Commission found that imposing the Coastal Access Program special condition on the subject permit 5-92-168 would conform the proposed development to Sections 30250 and 30252 of the Coastal Act.

The deletion of 14 residential units under the proposed amendment would not change these conditions. Although the amount of in-lieu fees to be paid may vary because of the change in number of residential units, the requirements to pay the in-lieu fees for the remaining residential units and to develop the Housing Initiatives Program would continue to remain in effect. Further, the 14 residential units proposed to be deleted from the subject site under this amendment request would actually be relocated to another site approved by coastal development permit 5-92-188. Permit 5-92-188 contains affordable housing and Coastal Access Program special conditions similar to those for the subject permit 5-92-168. Therefore, the 14 deleted residential units would still be subject to the affordable housing and Coastal Access Program requirements, but under a different permit. Finally, the 14 residential units to be deleted under the proposed amendment are not low-income or affordable housing units.

Therefore, the Commission finds that the proposed development with the proposed amendment would be consistent with the provisions of the Coastal Act, including Sections 30250 and 30252.

2. Coastal Access - Parking, Signage, Tram System

In approving the permit 5-92-168, the Commission imposed special conditions to conform the proposed project with Sections 30212.5 and 30252 of the Coastal Act and conditions of the master permit P-79-5539. The special conditions imposed included requirements for a parking monitoring program, signage plan, tram system, and the availability of at least 50% of the recreation facilities to the general public.

These special conditions affect the hotel which is proposed for the subject site. The hotel would not be changed under the proposed amendment. Therefore, the special conditions pertaining to the hotel would not be affected. Thus, the Commission finds that the proposed development with the proposed amendment is consistent with Sections 30212.5 and 30252 of the Coastal Act.

3. Phased Development

In approving the subject coastal development permit 5-92-168, the Commission imposed a special condition requiring compliance with a phasing plan. The subject permit is one of several permits approved for hotel, recreation, park and trail improvements, and residential developments. Section 30222 of the Coastal Act assigns different priorities to different uses, giving preference to visitor-serving and public recreation uses over residential uses. The phasing plan imposed on permit 5-92-168 required that the proposed park and trail improvements be completed first, then the proposed hotel and golf clubhouse, and lastly the proposed residential units.

The proposed amendment involves the deletion of 14 residential units. The remaining residential units would continue to be lowest priority uses under the phasing plan special condition. The 14 residential units to be deleted from the subject permit would be relocated to the site covered by permit 5-92-188 which also has a phasing plan special condition. Therefore, the proposed deletion of the 14 residential units would not affect any phasing conditions, since the residential units would still be lowest priority uses. Thus, the Commission finds that the proposed development with the proposed amendment would be consistent with Section 30222 of the Coastal Act.

4. Future Development

In approving the subject coastal development permit 5-92-168, the Commission imposed a special condition requiring that future development on the property or changes to the approved project would require an amendment to the permit or a new coastal development permit. This would allow the proposed changes or future development to be reviewed for consistency with the Chapter 3 policies of the Coastal Act.

The applicant is proposing to delete 14 previously approved residential units, which is a change to the approved project. By filing this permit amendment request, the applicant is complying with this special condition. The Commission finds that the proposed changes proposed under this amendment would be consistent with the Chapter 3 policies of the Coastal Act. Further, this special condition remains in effect and is unchanged by the proposed amendment. Additional future changes would still require another permit amendment or a new permit.

C. Local Coastal Program

Section 30604(a) of the Coastal Act provides that a coastal development permit shall be issued only if the proposed development would not prejudice the ability of the local government having jurisdiction to prepare a local coastal program (LCP) which conforms with, and is adequate to carry out, the Chapter Three policies of the Coastal Act.

The subject site is located in the area of Dana Point which currently is not certified. The proposed project has been conditioned to conform to the Chapter Three policies of the Coastal Act regarding public access, public recreation, and visitor-serving uses. The proposed amendment would not affect any previously imposed special conditions and would not affect the proposed project's consistency with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that the proposed development, as conditioned, would not prejudice the ability of the City of Dana Point to prepare a local coastal program, for the currently uncertified area, which is consist with the Chapter Three policies of the Coastal Act.

D. California Environmental Quality Act

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

The proposed project with the proposed amendment would result in the deletion of 14 previously approved residential units. The proposed project with the proposed amendment would result in a switch in the locations of previously approved residential units and a previously approved golf clubhouse. No additional development would be proposed. Previously imposed mitigation measures, which would be unchanged and remain in effect with the amendment as proposed, will minimize all adverse impacts.

As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of CEQA.

SOUTH LAGUNA

THREE ARCH BAY

DANA POINT

LANTANA

PACIFIC

OCEAN COASTAL COMMISSION

VICINITY MAP

EXHIBIT # A

PAGE 1 OF 1

5-92-1684

MONARCH BAY COMMUNITY STREETS
ALSO KNOWN AS MONARCH BAY DR

- 1 QUEEN CATHERINE CT
- 2 EMERALD DR
- 3 CONANT DR
- 4 QUEEN ANN CT
- 5 LOUIS XIV CT
- 6 KING JOHN LN
- 7 KING WILLIAM CT
- 8 KING THOMAS DR
- 9 KING CHARLES CT
- 10 KING THOMAS DR
- 11 KING THOMAS DR
- 12 BEACH CLUB DR
- 13 SUNBREAKERS DR
- 14 SUNBREST DR

- SEE 951 NO
- 1 BAYVIEW PL
 - 2 HUNTER PT
 - 3 PLACED HUNTER DR
 - 4 ROCKY PT
 - 5 RINGBELL CT
 - 6 SANDSTONE CT
 - 7 WINDY WATER CT
 - 8 STONECREST
 - 9 WINDY PT

- SEE 951 JS
- 1 SPINNEY CT
 - 2 SANDSTONE CT
 - 3 RINGBELL CT
 - 4 SEASIDE DR
 - 5 SEA VIEW DR
 - 6 STANFORD DR
 - 7 SUNFISH DR

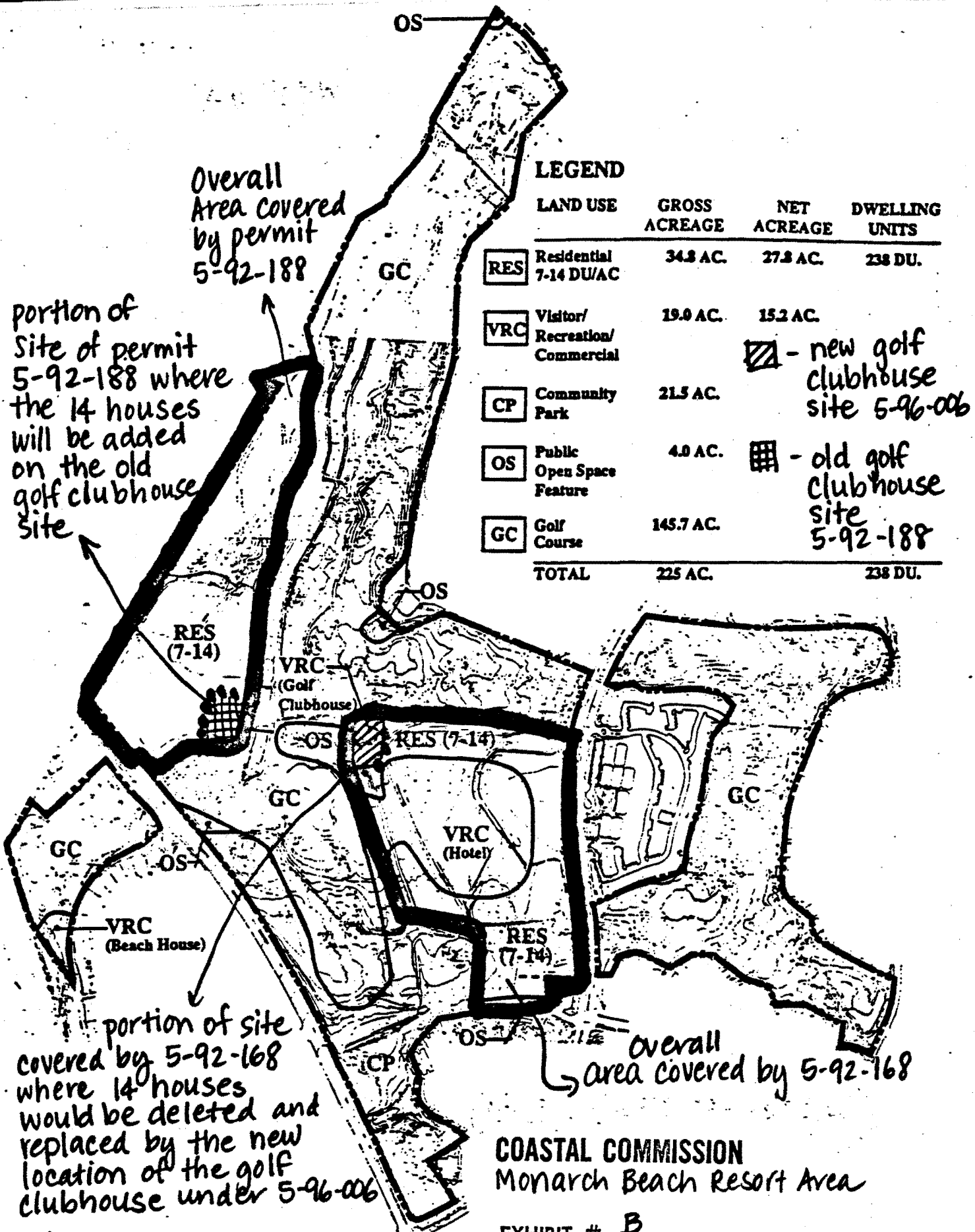
- SEE 951 01
- 1 BIRCHWOOD
 - 2 PICKNEY CLOSE

- SEE 951 J6
- 1 SET OF THE HEDDER LANTANA
 - 2 SET OF THE WESTERN LANTANA
 - 3 SET OF THE LANTANA
 - 4 SET OF THE STANDARD LANTANA
 - 5 SET OF THE PORT LANTANA
 - 6 SET OF THE COVE LANTANA

- SEE 951 H5
- 1 SEA GULL CT
 - 2 SANDY CT
 - 3 YOUNG KING CT
 - 4 BAYVIEW CT
 - 5 SEA SHELL DR
 - 6 EVENING STAR DR
 - 7 SEACALL DR
 - 8 BROWN STAR DR
 - 9 HUNTERS STAR LN

Site

DANA POINT HARBOR



LAND USE PLAN

MONARCH BEACH RESORT
SPECIFIC PLAN

COASTAL COMMISSION
Monarch Beach Resort Area

EXHIBIT # B

PAGE 1 OF 1

5-92-168A

EXHIBIT 2.1



CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA

245 W. BROADWAY, STE. 280

P.O. BOX 1490

LONG BEACH, CA 90802-4416

(310) 390-3071

Page 1 of 7

Date: August 19, 1992

Permit Application No. 5-92-168

NOTICE OF INTENT TO ISSUE PERMIT

On August 11, 1992, the California Coastal Commission granted to MONARCH BAY RESORT INC. Permit 5-92-168, subject to the attached conditions, for development consisting of:

The construction of a 400-key resort hotel and related visitor serving facilities on 30.5 acres. This development is part of the Monarch Bay Resort project. The proposed development includes restaurants, conference facilities, resort offices, retail space, and 835 Hotel parking spaces. The residential portion of the project site will consist of 81 attached units and 5 detached units. The hotel site will be integrated with courtyards, gardens, pathways, resort vehicle system, public trails, and other visitor serving uses. The trail system will link the hotel grounds to Sea Terrace Community Park and the golf course. Grading will consist of 395,000 cubic yards of cut and 45,000 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 Northwest of the intersection of Niquel Road and Pacific Coast Hwy. Specifically, northwest of the existing fire station at the intersection of Niquel Road and Stonehill, east and south of existing golf course in the City of Dana Point.

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: Title: Staff Analyst

5-92-168A Appendix A page 1 of 7

Page 2
5-92-168

ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this notice of the California Coastal Commission determination on Permit No. 5-92-168, 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.

NOTICE OF INTENT TO ISSUE PERMIT

Permit Application No. Page 3 of 7
5-92-168

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:

F. Public Access.

Prior to issuance of the coastal development permit the applicant shall submit to the Executive Director for review and approval a deed restriction which contains the following public access provisions:

- a. A minimum of 50% of all recreational facilities time slots of Hotel Village and the Golf Clubhouse shall be reserved for general fee-paying public use on a daily or hourly basis. If time slots or facilities set aside for non-members are not reserved 24 hours in advance, they may be reserved by members.

- b. General public use (rental) of the banquet/conference center and exhibition hall facilities.
- c. The deed restriction shall also ensure that the hotel area will be dedicated to hotel use, available in accordance with standard hotel practice for the general public, and that the development will not be used for private resort or time-share use which would inhibit or otherwise exclude casual use by the general public.
- d. Public access shall be maintained to all common areas of the development. The deed restriction shall include an exhibit, prepared by the applicant illustrating those areas to be maintained open to the general public. Said areas shall include, but not be limited to, the lobby, restaurants, pool areas, landscaped grounds and walkways.
- e. No gates shall be placed in public access areas unless the applicant obtains a new permit or permit amendment and can show to the Executive Director, that the proposed gates serve a public health and safety purpose. Signs shall be provided at each approved gate indicating the hours that the gates are to be unlocked for public access and how to contact the access owner and operator. The placement of fences, fence heights, location of gates, and hours of operation are subject to the review and approval of the Executive Director through a new permit or permit amendment.

✓ 2. Signage Plans.

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

- a. A detailed signage plan with signs visible from the Coast Highway and Niguel Road, which invites and encourages public use of the public access opportunities. The plan shall clearly state proposed material and colors to be used, locations of signs, dimensions, and sign text. Appropriate signage for trail heads shall be emphasized. Signs shall invite and encourage public use of access opportunities. Signage shall identify, provide information and direct users to all the key locations. Key locations include: public parking, golf course, golf clubhouse, beach access, tunnels, beach parking, park areas, tram operation, hotel areas, trails and other points of interest.

- b. An implementation plan for a primary visitor information center located at the hotel site which shall provide information about the available public uses throughout the resort complex. This information center shall be fully functional concurrent with the opening of the hotel.

3. Public Parking.

Prior to issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and approval a deed restriction which contains the following public parking provisions:

- a. The 835 parking spaces for the hotel shall be available to the general public. The hourly parking fee or total daily fee, for general public use, shall not be greater than that charged at the nearest State Beach Park parking facility. Validation stamps may be used for the parking facilities.
- b. Prior to issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and approval a monitoring plan to gather parking and vehicle occupancy data for the hotel and golf clubhouse. The purpose of this study will be to evaluate the adequacy of parking for both the hotel and golf clubhouse. The monitoring program will collect data for two years, will commence when both the hotel and golf clubhouse are operational, and the applicant shall report annually the results of the study. Should parking prove to be deficient the applicant, through the permit amendment process, shall provide additional onsite parking.

✓ 4. Tram System.

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:

- a. The applicant shall guarantee implementation of the tram system and reasonable use of the tram system by the general public. Priority may be given to hotel guests and all users of the tram will be allowed to carry with them beach gear. The tram shall operate at sufficient interval to meet demand by the general public. In general, the tram shall pick up and drop off riders at established stops including the hotel, golf clubhouse, Sea Terrace Community Park, and the coastal park (Bluff Park) by the existing beach access point between the Ritz Carlton and Ritz Cove.

- b. The operational plans of the tram system must be approved by the Orange County Environmental Management Agency, the City of Dana Point, and the Executive Director.
- c. The applicant shall guarantee that the tram system shall be operational concurrent with the opening of the hotel.

5. 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. 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.

6. 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.

✓ **7. Phased Development.**

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 change to the phased development plan shall require the approval of the Executive Director. Development phasing shall include the creation of a public beach house consistent with local and Coastal Commission approvals.

B. 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. 5-92-168; 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.

SR:tn
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Appendix B
P-79-5539 and Monarch Beach Resort Permit History

On July 23, 1979 the Commission approved coastal development permit P-79-5539 (see Exhibit 2 at the end of the staff report). Permit 79-5539 was for development of a hotel, recreation/conference center, expansion of the Monarch Bay Plaza commercial development, golf course, parks, 3000 residential units and associated grading, road, and utility development on both sides of Pacific Coast Highway. This permit is often referred to as the "Master Permit" for development in the Monarch Beach area of Dana Point.

1. AVCO Community Developers: The original project proposal for this area was submitted by AVCO Community Developers (AVCO) in the early 1970's as the Laguna Niguel Planned Community. The original project site covered approximately 580 acres of unincorporated land. In 1989 the area was incorporated into the City of Dana Point. Highlights of AVCO's proposal included a: 300 room hotel seaward of the Pacific Coast Highway, recreation/conference center, commercial center, coastal park, community park (25.6 acre), golf course, trail system, residential units, coastal access program, grading plan, and runoff control. In 1972-1973 AVCO began rough grading the site.

Work on the overall development was temporarily halted in 1973 as a result of the passage of the California Coastal Act and subsequent litigation by AVCO. In 1976 the California Supreme Court ruled that AVCO did not possess a vested right to proceed and would therefore be required to obtain a coastal zone development permit before resuming work. In 1979 the Coastal Commission issued permit P-79-5539 which has become known as the "Master Permit". Comparisons of the current proposed development by Monarch Bay Resort with the "Master Permit" and other proposals will be made under the Monarch Bay Resort discussion. In 1980 work resumed on portions of the overall project.

Major special conditions of the "Master Permit" included: the requirement that each construction project obtain a separate development permit, provisions for low and moderate cost housing (25% of total), low and moderate cost overnight accommodations, and monetary contributions into a "Coastal Access Fund" in conjunction with the construction of the residential units. The money paid into the "Coastal Access Fund" was to be used to support recreational transit services.

Additional special conditions imposed by the Commission included: a deed restriction requiring that the golf course be open to the public on a daily fee basis, public parking, an open space easement over the golf course area, a public trail system to provide beach access, and a signage program advertising that the facilities are open to the general public.

In 1981, Orange County approved a land use plan which included the project area. By approving this development concept, Orange County formally established the proposed development as a long term policy objective. The development concept was again reaffirmed at the local level by the City of Dana Point through the adoption of the Dana Point General Plan (July 1991) and the Monarch Beach Resort Specific Plan (February 1992). These plans have been to be submitted to the Commission for certification. Staff anticipates that these plans will be presented to the Commission for review later this year.

Appendix B
P-79-5539 and Monarch Beach Resort Permit History

In 1982 the Commission approved permit 5-82-291 for the construction of the Ritz Carlton Hotel by AVCO. This project met the hotel concept of the "Master Permit". The project consisted of a 397 room hotel with two restaurants, meeting rooms, ballroom, pool and deck, public beach access trail, landscaping, and 672 off-street parking spaces on an 18.55 acre bluff top parcel. Niguel Beach Terrace Condominiums (400 units) was constructed by AVCO under permit 5-82-323. An additional 32 units were constructed by Carma Developers under permit 5-83-688. Permit 5-85-94 issued to Stein-Brief governed the development of 103 custom home lots.

2. Stein-Brief Development History: In 1983 AVCO sold the remaining undeveloped land, about 530 acres, to Stein-Brief. In 1985 Stein-Brief unveiled new plans to develop the area as a destination resort. Under permit 5-85-585 Stein-Brief received approval for a resort/conference center. The project, if it had been built, would have covered 37 acres and would have involved the construction of a 550 room hotel, conference center, golf clubhouse, health spa, tennis courts, shops, offices, and parking. Monarch Bay is currently proposing this site for their Hotel Village project (Permit 5-92-168).

Project provisions under Stein-Brief included: mini-tram, trail connections to the community park, that, at a minimum, 50% of the facilities be reserved for public use on a daily fee basis, public use (rental) of the conference center facilities, and conformance with P-79-5539 ("Master Permit").

In 1986 the project was further modified under permit 5-86-503. Stein-Brief received approval for a commercial center. Under the Stein-Brief proposal the commercial center would consist of a 200 room hotel, 132 bed hostel, 1260 seat theatre, retail shops, restaurant, and parking on 14.1 acres. The commercial center was never constructed and was proposed again by the next applicant Hemmeter under permit 5-87-980. Monarch Bay is currently proposing this site for their Clubhouse Village South project (Permit 5-92-188).

In 1986 Stein-Brief transferred some land to Beverly Hills Mortgage Corporation and formed a partnership with Hemmeter Development Corporation. The partnership was named Laguna Niguel Resort Associates. The Laguna Niguel Resort Associate plan is also referred to as the "Hemmeter Project".

3. Hemmeter Development History: In 1987 five coastal development permits (5-87-977 through 981) were approved by the Coastal Commission. Each of the permits and the proposed projects is briefly described below.

Permit 5-87-977 approved the development of Sea Terrace Community Park. Under Hemmeter, Sea Terrace Community Park was to include a conservatory building, lake, fountains, statuary, trail system, and access way under the Pacific Coast Highway. Development plans have been revised and completion of park development are planned to be accomplished by Monarch Bay under permit 5-92-157.

Appendix B
P-79-5539 and Monarch Beach Resort Permit History

Permit 5-87-978 approved an 11,000 square foot "Beach House" as a visitor serving restaurant facility on the bluff at Salt Creek Beach. Under the Monarch Bay Resort proposal the Beach House concept was brought forward in a revised format through permit application 5-92-189. The coastal development permit application for 5-92-189 was denied by the Commission on August 11, 1992. The application was denied based on adverse impacts to the coastal bluff.

Permit 5-87-979 approved the renovation of the 134 acre golf course. Golf course improvements were to include remodeling by lengthening total course distance, replanting, re-grading, view terraces, new lake, and tram system. Under the current submittal by Monarch Bay, this project has been expanded as approved under permit 5-92-158.

Permit 5-87-980 approved a 276 room resort with restaurants, ballroom, conference rooms, retail spaces, spa, and golf course clubhouse. Lower cost visitor accommodations were to be provided through the construction of a hostel. The hostel requirement was met in 1989 through the payment of an in-lieu-fee of \$1,482,000 to the Commission (Crystal Cove Improvement Fund) by Laguna Niguel Resort Associates (Hemmeter). This is the same site that Stein-Brief proposed to build the commercial center under permit 5-86-503. Under the current Monarch Bay proposal, the site would be developed into Clubhouse Village South under permit 5-92-188.

Permit 5-87-981 was for the development of a resort/conference center. The center would include an 850 room hotel/conference center, exhibit hall, retail space, health spa cafe, restaurants, disco, ice rink, and theater. The hotel complex was not constructed. Under the current Monarch Bay proposal (Permit 5-92-168) this would become the site of Hotel Village.

4. BH Mortgage Corporation Amendment: On June 12, 1987 the Commission approved the first amendment to P-79-5539. This amendment was a request by BH Mortgage Corporation (R.B. McComic, Inc., Agent) to modify the special condition which required that 25% of the housing be affordable as it applies to sites 11 and 14. Site 14 is south of Camino Del Avion and the east of Niguel Road. Site 11 is on the other side of Niguel Road (to the west) and also immediately south of Camino Del Avion. The Commission approved this request on the basis that the developers were providing over 25% affordable housing with the proposed construction of an 175 unit affordable senior project, a 325 unit apartment project, and one other affordable multi-family project.

5. Current Monarch Bay Development Proposal: In 1989, the undeveloped portions were sold by Hemmeter to Qintex Australia Ltd. In 1990 Monarch Bay Resort, Inc. took over development of the project from Qintex. Monarch Bay Resort, Inc. is a subsidiary of Nippon-Shimpan Ltd. Exhibit 1, at the end of this report, shows the project sites.

In June of 1992 Monarch Bay Resort submitted six new applications for completing the development of the remaining 225 acres governed by the "Master Permit". The major difference between this project, the "Master Permit" and the other prior permits is that the commercial center concept has been

Appendix B
P-79-5539 and Monarch Beach Resort Permit History

dropped. The lower cost visitor accommodations concept was met in 1989 through an in-lieu-fee payment to the Commission (Crystal Cove Improvement Fund). Therefore, the hostel is not being carried forward by Monarch Bay. The golf clubhouse concept, the recreational component, has been retained but moved from what will be Hotel Village to Clubhouse Village South.

Monarch Bay is now proposing to construct a total of 238 market value residential units. Ninety-seven of the residential units would be in the portion of the area formerly reserved for the commercial center under Hemmeter. Another 55 market value residential units would be built on the site formerly designated as affordable housing by the Laguna Niguel Coastal Plan. The remaining 86 residential units would be built on the Hotel Village Site. Listed below is a brief description of each of the projects and a comparison of the project with prior proposals.

Permit 5-92-157 would complete development of Sea Terrace Community Park. Improvements are to include trails landscaping, restrooms, bike racks, amphitheater, tot lot, parking, fitness course, and picnic area on 21.5 acres.

Under the original concept plan, the park was to be 25 acres in size. However, through an agreement between Monarch Bay and the Capistrano Bay Parks and Recreation District, 5.3 acres of the original park has been transferred to the golf course in return for 5.3 million dollars in park improvements. Under the previously approved Hemmeter proposal, the park would contain fountains, lake, statues, conservatory building, par course, tot lot, picnic tables, grass areas and walkways. Under the current Monarch Bay proposal, the park theme would be more contemporary with picnic tables, tot lot, par course, pedestrian trails, grass areas, amphitheater, park pavilion, and other passive use areas. Additionally Monarch Bay would dedicate to the Capistrano Bay Parks and Recreation District four separate public open space areas to offset the reduction in acreage from the Hemmeter proposal.

Permit 5-92-158 (Golf Course) would expand the existing 134 acre golf course by five acres (Exhibit 7). The proposal includes rerouting and redesign of the 139 acres, trail improvements, open space dedication, two vista points, tunnel undercrossing, restrooms, snack bar, and maintenance buildings. The major difference between this project and the previously approved Hemmeter proposal is that this project expands the golf course by 5 acres.

Permit 5-92-168 (Hotel Village) calls for the construction of a 400-key resort hotel and related visitor serving facilities on 30.5 acres. The proposed development consists of restaurants, conference facilities, resort offices, retail space, 81 attached residential units, 5 detached residential units, and 835 parking spaces. The hotel complex would cover 16.4 acres and the residential area would cover 14.1 acres.

The Monarch Bay Resort Hotel Village proposal is scaled down from the previously approved Hemmeter submittal (5-87-981). Under the Hemmeter proposal the hotel would have consisted of 850 rooms, theater, and ice rink on 30.5 acres. The theater, ice rink, and hostel proposals have been dropped by Monarch Bay, the number of rooms was decreased from 850 to 400, and the square footage of the restaurant areas has been reduced from 46,661 Sq. Ft. to 15,000

Appendix B
P-79-5539 and Monarch Beach Resort Permit History

Sq. Ft., and parking has been reduced from 2,174 spaces down to 835 spaces. An additional distinction is that the Monarch Bay now proposes to construct 86 market value residential units.

Permit 5-92-186 (Clubhouse Village North) would result in the construction of 55 attached residential units on 8.8 acres. This site was not proposed for development under any of the previous permit applications. In the Laguna Niguel Coastal Area Plan the site had been identified for development as affordable housing.

Permit 5-92-188 (Clubhouse Village South) would result in the construction of 97 attached residential units and a 30,000 square foot golf clubhouse. Under all the previous permits this site was identified as the site for the commercial center and recreation/conference center.

The Monarch Bay Resort Clubhouse Village South proposal when compared to the original Hemmeter, project for the same site, deletes the 276 room resort suites hotel, conference rooms, and shops. Monarch Bay intends to retain the golf clubhouse and to convert part of the site from commercial into residential.

Permit 5-92-446 allows 145,000 cubic yards of grading (all cut) (Exhibit 8). This permit authorized the removal of material from five proposed borrow sites on the parcel approved by the Commission for the hotel/residential project (5-92-168). The removed material is to be used for fill dirt for projects outside of the Coastal Zone.

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AUG 30 1983

CA Coastal Commission

COASTAL DEVELOPMENT PERMIT

Application Number: P-79-5539

Name of Applicant: Avco Community Developers, Inc.

Three Monarch Bay Plaza, Laguna Niguel, CA

Permit Type: ☐ Emergency
☒ Standard
☐ Administrative

Development Location: Pacific Coast Highway between Crown Valley
Niguel Road and Pacific Coast Highway, at Selva Road, Laguna Niguel

Development Description: Development of Avco Laguna Niguel Coast's
including hotel, recreation/conference center, expansion of Monarch
Plaza commercial development, golf course, parks, 3000 residential
and associated grading, road, and utility development on both sides
Coast Highway.

1. The proposed development is subject to the following conditions pursuant to the California Coastal Act of 1976:

See attached Page 3 for conditions.

EXHIBIT- 3

Condition/s Met On

5-92-168A

EXHIBIT A

Page

I. The South Coast Commission finds that:

The Commission hereby grants, subject to conditions below, a permit the proposed development, on the grounds that the development as proposed will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will have any significant adverse impacts on the environment within the scope of the California Environmental Quality Act.

It should be noted that this application does not really meet the requirements of a permit application, in that detailed plans, elevations and the like are not included. The application more closely resembles that of a "mini LCP" and additional permits for some elements of this application will be required at a later date. The county has approved this concept as the LCP for the area (see below). The total project concept as conditioned, may still be found to be consistent with the Coastal Act.

II. Whereas, at a public hearing, held on July 23, 1979 at Huntington Beach by a 10 to 2 vote permit application number P-79-5539 is approved.

IV. This permit may not be assigned to another person except as provided in Section 13170, Coastal Commission Rules and Regulations.

V. This permit shall not become effective until a COPY of this permit has been returned to the Regional Commission, upon which copy all permittee or agent(s) authorized in the permit application have acknowledged they have received a copy of the permit and have accepted its contents.

VI. Work authorized by this permit must commence within two years from date of the Regional Commission vote upon the application. Any extension of time of said commencement date must be applied for prior to expiration of the permit.

VII. Issued on behalf of the South Coast Regional Commission on

November 28, 1979

Cont

M. J. Carpenter
M. J. Carpenter
Executive Director

I, *Paul E. Rose*, permittee/agent, hereby acknowledge receipt of Permit Number P-79-5539 and have accepted its

contents

November 28, 1979

Paul E. Rose

HOTEL (1):

1. The concept of a hotel of approximately 300 rooms is approved but a separate coastal permit, based on site plan approval as outlined in (p. 12), shall be required for all facilities on the hotel site. Said application shall provide parking in accordance with the adopted Orange County Guidelines, Parking Criteria. It shall incorporate a design that blends with and does not overpower the public beach and park areas. Proposals shall be included in the permit application. Such signing shall include notification that all areas of the hotel open to general hotel guests are also open to the general public (note: this does not include hotel rooms). Signing shall be located, at a minimum, at conspicuous locations: the beach, the trail linking the beach and the hotel, and the beach hotel parking area(s).

2. At the time of site plan approval, the applicant shall submit a deed restriction indicating that the public spaces of this facility (including lobby outdoor areas, trail connecting hotel and beach, bluff-top plaza etc.) shall be operated as a public hotel facility and not converted to a private resort facility.

RECREATION/CONFERENCE CENTER (2):

1. The concept of a recreation/conference center is approved but a separate coastal permit, based on a site plan approval (refer LNCDP, p. 12), shall be required for all facilities on the recreation/conference center site. Said application shall provide parking in accordance with adopted Orange County Guidelines, Parking Criteria. The proposed design shall include a trail between the center and the adjacent community. All proposed uses listed on page 22 of the coastal permit application document shall be permitted.

2. Prior to issuance of the above mentioned site plan approval, the applicant shall submit a deed restriction agreeing that the recreation club facilities shall be open to the public on a daily or hourly fee as well as to members. At least 50% of the use of the recreation center facilities will be designated for public use by the general fee-paying public; if time/facilities set aside for non-members are not reserved in advance of play/start time, they may be reserved by members. Deed restriction shall allow public use (rental) of the conference facilities.

COMMERCIAL CENTER (3):

1. The concept of a commercial center is approved but a separate coastal permit based on site plan approval (refer LNCDP, p. 12) shall be required for all proposed facilities at the commercial center site. Said application shall provide parking in accordance with the adopted Orange County Guidelines, Parking Criteria. The proposed structure/s shall, as a general rule, not exceed 25 ft. in height above average finished grade (AFG) although portions may be permitted at 30-35 ft. above AFG if that additional height is needed to provide either: a) public vistas from restaurants and similar visitor-oriented uses, b) housing for households of low and moderate income, c) interface of existing commercial with proposed expansion area, or d) hotel uses.

2. The following uses shall be permitted in the commercial center: restaurants, fast food eating facilities, convenience stores, general commercial uses, coastal-oriented specialty shops, overnight low/mod cost accommodation, professional/administrative offices (not to exceed one-third of the total floor area and not to be located on the ground floor), visitor-serving commercial use, and affordable housing.

Low/moderate cost overnight accommodations (including hostel) shall be provided at a ratio of one lower cost unit for each 3 hotel units on the County determines a more suitable location near the project site.

3. At the time of site plan approval, applicant shall submit a deed restriction indicating that parking generally reserved for office use the center shall be open to the public for beach and general parking weekends and holidays. Signing indicating this shall be included.

4. The applicant shall receive authorization from Caltrans for the signalization of the intersection of the commercial center access road and Coast Highway. The applicant shall install said signalization prior to occupancy of any of the new facilities at the commercial center.

COASTAL PARK (4):

1. Prior to improvement, applicant shall submit plans to the executive director showing the proposed improvements and developments within the park to demonstrate compliance with recommended uses. The park shall be primarily oriented toward passive and some active recreation and educational uses. Restrooms, picnic tables, benches, etc. shall be provided. Commercial/vending space may be provided, but the majority of this use shall be directed to the hotel site. Additional parking conforming to the size/design requirements of the Orange County Guidelines. Parking shall be provided adjacent to the existing Niguel Beach parking area in connection with parking provided for the hotel. (Note: Redesign the existing beach parking lot shall be permitted with any "additional" spaces created being counted toward the parking requirements of this condition.) Required plans shall also show trail linkages between the coastal park, hotel, community park, and commercial center. Plans shall include stairways or other means of access over seawall to beach, if necessary.

2. Upon issuance of permit (P-79-5339), applicant will enter into an agreement to offer to dedicate and improve to the standards of the County of Orange Harbors Beaches and Parks District, both the Coastal Park and that portion of the Loop trail with the park. Offer shall be made to County of Orange, Coastal Conservancy, or any other public or private non-profit agency willing to accept the dedication and insure public access and maintenance. Prior to improvement by the applicant, said agency must agree to accept and maintain the Coastal Park and Trails. The offer to dedicate and improve shall run for 5 years and improvement shall be made within 24 months of acceptance. If at the end of this period there is no accepting agency, alternate land uses may be considered which shall require a coastal permit.

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3. Any proposed alterations to submitted plans of park facilities layout shall require a coastal permit.

COMMUNITY PARK (5):

1. Prior to improvement, applicant shall submit plans to the executive director showing the proposed improvement and development within the site to demonstrate compliance with recommended uses. Applicant shall submit plans for park development including active and passive play areas; linkages between the park and the hotel, coastal park, recreation/center, and commercial center, including plans for grade separated ways at Coast Hwy. at both the eastern and western ends (implementing part of the two ocean golf course holes) of the park; plans showing locations of all proposed park improvements.

2. Parking for this park may be provided in conjunction with parking at the recreation center and by joint use of the parking facilities of the proposed school adjacent to the site. Joint use of the school parking may be permitted only if the applicant receives written authorization including provisions for liability, if necessary, from the Capistrano Unified School District.

3. Upon issuance of permit (P-79-5539), applicant will enter into an agreement to offer to dedicate and improve the standards of County of Orange Harbors Beaches and Park District, the Community Park and the portion of the Loop trail with the park. Offer shall be made to the County of Orange, Coastal Conservancy, or any other public or private non-profit agency willing to accept the dedication and insure public access and maintenance. Prior to improvement by the applicant, said agency must agree to accept and maintain the Community Park and Trail. The offer to dedicate and improve shall run for 5 years and improvements made within 24 months of acceptance. If at the end of this period there is no accepting agency, alternate land uses may be considered which shall require a coastal permit.

4. Signing, visible from Coast Hwy., shall be provided indicating that the park is open to the general public. Plans for said signs shall be submitted prior to issuance of this permit. Signs should be of the monument type and should not exceed 24 sq. ft. in size and 9 ft. in height and shall indicate the existence of the park and the golf course and that the public is invited to use the facility. Signs should be located at the corner of Niguel Road and Coast Hwy. and Crown Valley Parkway and Camino del Avion.

GOLF COURSE (6):

1. Prior to improvements, applicant shall submit a deed restriction agreeing that the golf course shall be open to the public on a daily basis as well as to members. At least 50% of the starts must be reserved for non-members. If non-member starts are not reserved within 24 hours of start time, they may be reserved by members.

2. Prior to construction, applicant shall submit to the Executive Director detailed plans of the Salt Creek portion of the golf course of particular concern to the Commission is restoration of the Salt Creek Corridor (including restoration of the creek) and the substantial natural (endemic) vegetation as landscaping throughout this corridor. Proposed plans will be reviewed for compliance with agreement between applicant and the California Department of Fish and Game to insure proposed plans provide maximum restoration of the Salt Creek area. Plans shall also incorporate use of the golf course areas, as needed, to provide runoff and siltation control. Plans shall be submitted showing how trail, park, and beach users in the vicinity of the golf course be protected, primarily from wayward golf balls.

3. Parking for the golf course use shall be provided consistent with requirements of the adopted Orange County Guidelines. Parking Criteria. Parking may either be provided on the site designated for the golf (outside of the Salt Creek Corridor) or at the recreation/conference site. Parking for the golf course may be designated on the recreation center site prior to development of concrete plans for that site and location/configuration altered during final approval of development of the recreation center site.

4. Prior to construction, applicant shall submit an open space easement covering the golf course site.

TRAILS:

1. Prior to construction, applicant shall submit plans to Executive Director, specifying widths and uses as well as location, of all trails within the coastal park, community park, Salt Creek Corridor area. In addition, to all trails shown on page 32 of the coastal permit application document, the plans shall include a trail linking residential areas designated as 9, 10, 11, 12, 13, and 14 on page 37 of said document to the commercial center without use of Coast Highway. (Note: Said trail could follow the edge of the golf course or Camino del Avion.)

2. Trails should be maintained by the developer, homeowners association and/or an assessment district set up to cover this (and other) uses. The trails are to be offered for dedication, the offer to dedicate to run for the same period as that allowed for dedication of the community park.

COASTAL RESIDENTIAL (7 & 8):

1. The concept of coastal residential use is approved but a separate coastal permit based on site plan approval (refer LNCDP p. 12) will be required. At that time applicant shall submit plans and geologic information to the Executive Director demonstrating compliance with recommendations of letter dated July 18, 1979, State Division of Mines and Geology.

2. Prior to construction, applicant shall submit to the Executive Director approved tentative tract maps and plans indicating proposed lot lines (where applicable), unit locations, elevations, typical floor plans and design of any common areas/facilities to demonstrate compliance with requirements of LNCDP, refer p. 36. No minimum or maximum unit size be required. Parking shall be provided in accordance with the adopted Orange County Guidelines. The number of units may not exceed 400. Structures in excess of three levels be proposed by applicant, additional geologic investigation shall be made by a qualified geologist and approved by Division of Mines and Geology, State of California.

INLAND RESIDENTIAL (9 through 16 & 18):

Prior to construction of each area (9 through 16 & 18), applicant shall submit to the Executive Director approved tentative tract maps and plans indicating proposed lot lines (where applicable), unit locations, elevations, typical floor plans and design of any common areas/facilities to demonstrate compliance with design requirements of LNCDP, refer p. 36. No minimum or maximum unit size shall be required. Parking shall be provided in accordance with the adopted Orange County Guidelines. The number of units within each designated location may be determined by applicant provided the total number of units does not exceed 3200 units (including both market rate and low/moderate-cost units); this number refers to the aforementioned sites only (sites 9 through 16 & 18).

SEAWARD SELVA RESIDENTIAL (19):

The concept of development on site 19 is approved but a separate coastal permit, based on site plan approval, shall be required and shall include tentative tract maps and plans for units on this site. The design shall incorporate protection of the view corridor across the site to the ocean and Catalina Island and shall be buffered from Coast Hwy. Plans shall include unit locations, elevations, typical floor plans, and design of any common areas or facilities. Maximum height shall not exceed 35' above AFG, although portions may conform to requirements of LNCDP, p. 36 if that additional height is needed to provide either 1) housing for households of low and moderate income, 2) lower to moderately priced overnight accommodations or other visitor oriented uses. Height of lower than 35' AFG shall be incorporated if necessary to protect public view corridors. Parking shall be provided in accordance with adopted Orange County Guidelines. The number of units shall not exceed 360 (15 dwelling units per acre) if the site is not used as a site for low/moderate-cost housing; if it is a site for low/moderate-cost housing, the number of units may be increased to 400.

LOW- AND MODERATE-COST HOUSING:

1. Upon issuance of permit (P-79-5539), applicant shall enter into an agreement with the Coastal Commission, consistent with the "affordable housing" section of the LNCDP, p. 42, and that provides a number equal to at least 25% of the total number of units built in connection with

this project (including the affordable unit) in a range of prices affordable by families of low and moderate income. A maximum of 3000 market rate units are allowable, in which case 932 low/moderate cost units be required to make a full 25% of the total project "affordable." Five-fifths of the required low/moderate-cost units shall be provided on project site; the other three-fifths may be provided within the Laguna Niguel Planned Community or within the coastal zone of Southern Orange County.

a) The units for households of low/moderate income shall be priced affordable by persons/families in all of the affected income range by the following formula:

50% of median income 10% of low/moderate units (93 units)

60% of median income 10% of low/moderate units (93 units)

70% of median income 10% of low/moderate units (93 units)

80% of median income 10% of low/moderate units (93 units)

90% of median income 15% of low/moderate units (140 units)

100% of median income 15% of low/moderate units (140 units)

110% of median income 15% of low/moderate units (140 units)

120% of median income 15% of low/moderate units (140 units)

The majority of the low/moderate-cost units will be family units.

b) A resale program to assure that subsequent sales following the initial sale of the unit will be at a price which is affordable to household earning substantially the same percentage of the median income as the initial purchasers of the units and shall be recorded as a covenant running with the land, with no prior liens other than tax liens. The agreement shall include substantially the following conditions.

i. The applicant, his successors, and any subsequent purchaser shall give a governmental or nonprofit agency, subject to the approval of the Executive Director, an option to purchase the units. The agency or its designee may assign this option to an individual private purchaser who qualifies as a low- or moderate-income person in substantially the same income range as the person for whom the initial sales price was intended to provide a housing opportunity.

ii. Whenever the applicant or any subsequent owner of the unit wishes to sell or transfer the units he/she shall notify the agency or its designee of his/her intent to sell. The agency, its designee, or assignee shall then have the right to exercise the option within 180

5-92-168A

Appendix C

p. 8 of 10

- 6 -

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in the event of the initial sale of the units by the developer, or within 90 days for subsequent sales. Following the exercise of the option, escrow shall be opened and closed within 90 days after delivery of the notice of exercise of the option.

iii. Following the notice of intent to sell the unit, the agency or its designee shall have the right to inspect the premises to determine whether repair or rehabilitation beyond the requirements of normal maintenance ("deferred maintenance") is necessary. If such repair or rehabilitation is necessary, the agency or its designee shall determine the cost of repair, and such cost shall be deducted from the purchase price and paid to the agency, its designee, or such contractors as the Department shall choose to carry out the deferred maintenance. Such cost shall be expended in making such repairs.

iv. The agency or its designee may charge a fee, to be deducted from the purchase price paid by the assignee for its reasonable costs of qualifying and counseling purchasers, exercising the option, and administering this resale control program.

v. The option price to be paid by the agency, its designee, or assignee, shall be the original sales price of the unit plus an amount to reflect the percentage of any increase in the median income since the time of the original sale.

vi. The purchaser shall not sell, lease, rent, assign, or otherwise transfer the premises without the express written consent of the agency or its designee. This provision shall not prohibit the encumbrance of the title for the sale purpose of securing financing; however, in the event of foreclosure or sale by deed of trust or other involuntary transfer of title to the property shall be taken by the applicant at a cost basis condition "v" above subject to this agreement.

vii. Such other conditions as the Executive Director determines necessary to carry out the purposes of this resale program.

c) Units may be constructed on any of the identified residential sites at the rate of 125 low/moderate-cost units for every 500 units. Low/moderate-cost units to be constructed on the project site shall be constructed prior to those proposed to be located off site.

d) If governmental subsidies for the construction of assisted units are not available, the applicant may dedicate an appropriate amount of land to a public or private agency (such as the Coastal Conservancy) capable of receiving land and building (or causing to be built) low- and moderate-cost housing facilities. Dedicated land shall be at the approval of the Executive Director and shall not necessitate the required units being built at a density higher than the highest density in this proposed project.

e) If the applicant chooses to construct unsubsidized units for persons of low income, the low cost units may replace required moderate cost units at the rate of one low cost unit replacing two required moderate cost units.

f) Note: Units provided under the requirements of this permit shall be counted as the required "affordable" units in any other permit.

COASTAL ACCESS PROGRAM:

Prior to issuance of any permit for hookup to a sewer service system fee of \$275 (or greater if "fair share" is determined to be greater) each conventionally financed residential unit (add \$0 for each "low-income housing" unit) shall be paid into a coastal access fund. This fee shall be adjusted annually according to increases in the Consumer Price Index. The coastal access fund shall be administered by a separate legal entity under binding agreement with the Coastal Commission specifying the limitations on the use of the funds for the provision of coastal recreational transit services pursuant to the terms and conditions of the permit. If within five years of the applicant's commencement of this program an active program has not been set up, the applicant (or successor in interest), the Commission (or successors in interest), and other interested/affected agencies shall decide how those funds will be used for recreation-related transportation in the Laguna Niguel planned community.

GRADING AND RUNOFF CONTROL:

Prior to any grading activities or the issuance of any additional permit whichever comes first, applicant shall submit a grading, drainage and runoff control plan. That plan shall include, at a minimum, the following elements:

a) A runoff control plan that limits runoff to that associated with runoff from the subject site in its natural state (not existing state) system shall be designed with retention basins capable of catching a project runoff in excess of natural flows releasing it at a natural rate. The retention basins and system shall be designed to accommodate runoff generated by a ten-year frequency storm.

b) A hydrology study analysing the proposed development shall be prepared and drainage plans shall be sized in accordance with that study's recommendations.

c) The grading and restoration plan shall include provisions that the land shall be developed in increments of workable size which can be completed during a single construction season both to insure that soils are established well in advance of the rainy season and to assure that no grading activities occur during rainfall periods. All soils disturbed but not completed during the construction season, including graded slopes, shall be planted and stabilized in advance of the rainy season. All disturbed slopes in a completed development involving grading shall be stabilized as soon as possible through planting of appropriate vegetation.

5-92-168A
Appendix C
p. 10 of 10

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CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA

245 W. BROADWAY, STE. 380

P.O. BOX 1450

LONG BEACH, CA 90802-4416

(310) 590-5071

Page 1 of 6

Date: August 19, 1992

Permit Application No. 5-92-188

NOTICE OF INTENT TO ISSUE PERMIT

On August 11, 1992, the California Coastal Commission granted to MONARCH BAY RESORT INC. Permit 5-92-188, subject to the attached conditions, for development consisting of:

The construction of 97 attached residential units and a 30,000 square foot golf clubhouse including grill and lounge on 14.3 acres. This development is part of the Monarch Bay Resort project. The units will be clustered into 20 two story buildings and 4 three story buildings. For 57 of the units, the floor area ranges from 1,400 to 2,700 square feet. The floor area of the remaining 40 units ranges from 2,300 to 2,900 square feet. Overall building height of the three story building height is 41 feet. For the two story structures overall height will be 28 feet. The two story units are located on the southern portion of the site near the Pacific Coast Highway. The four story projects are located in the northern portion of the site. The architectural theme will mimic the character of the Tuscan region of Italy. Grading will consist of approximately 85,000 cubic yards of cut and 33,000 cubic yards of fill. Application 5-92-186 is for a similar project, Clubhouse Village North.

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

The development is within the coastal zone in Orange County at Immediately 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: Title: Staff Analyst

5-92-168A Appendix D p. 1 of 6

ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this notice of the California Coastal Commission determination on Permit No. 5-92-188, 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.

5-92-168A Appendix D p. 2 of 6

NOTICE OF INTENT TO ISSUE PERMIT

Permit Application No. Page 3 of 6
5-92-188

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.

5-92-168A Appendix D p. 3 of 6

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 issuance of the coastal development permit the applicant will 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 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.

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. Parking.

Prior to issuance of this permit, the applicant shall submit to the Executive Director, for review and approval a deed restriction which contains the following public parking provisions: The parking spaces for the golf clubhouse shall be available to the general public. The hourly parking fee or total daily fee, for general public use, shall not be greater than the fee charged at the nearest State Beach Park parking facility.

Prior to issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and approval a monitoring plan to gather parking and vehicle occupancy data for the hotel and golf clubhouse. The purpose of this study will be to evaluate the adequacy of parking for both the hotel and golf clubhouse. The monitoring program will collect data for two years, will commence when both the hotel and golf clubhouse are operational, and the applicant shall report annually the results of the study. Should parking prove to be deficient the applicant, through the permit amendment process, shall provide additional onsite parking.

5. Public Access.

Prior to issuance of the permit the applicant shall submit to the Executive Director for review and approval a deed restriction which contains the following public access provisions:

- a. A minimum of 50% of all recreational facilities time slots of the Hotel Village and the Golf Clubhouse shall be reserved for general fee-paying public use on a daily or hourly basis. If time slots or facilities set aside for non-members are not reserved 24 hours in advance, they may be reserved by members.
- b. General public use (rental) of the meeting rooms.
- c. Public access shall be maintained to all common areas of the development. The deed restriction shall include an exhibit, prepared by the applicant illustrating those area to be maintained open to the general public. Said areas shall include, but not be limited to, the lobby, restaurants, pool areas, landscaped grounds and walkways.

6. Signage Plans.

Prior to the issuance of the permit, the applicant shall submit to the Executive Director for review and approval the following:

- a. A detailed signage plan with signs visible from the Coast Highway and Niguel Road, which invites and encourages public use of the public access opportunities. The plan shall clearly state proposed material and colors to be used, locations of signs, dimensions, and sign text. Appropriate signage for trail heads shall be emphasized. Signs shall invite and encourage public use of access opportunities. Signage shall identify, provide information and direct users to all the key locations. Key locations include: public parking, golf course, golf clubhouse, beach access, tunnels, beach parking, park areas, tram operation, hotel areas, trails and other points of interest.
- b. An implementation plan for a primary visitor information center located at the hotel site which shall provide information about the available public uses throughout the resort complex. This information center shall be fully functional concurrent with the opening of the hotel.

7. 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. 5-92-188; and that any future improvements to the property or changes to the development plan approved herein will require a new permit or permit amendment 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.

SR:tn
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5-92-168A Appendix D p. 6 of 6

