OF CALIFORNIA – THE RESOURCES AGENCY

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April 24, 1997

TO: COASTAL COMMISSIONERS AND INTERESTED PERSONS

FROM: CHARLES DAMM; Deputy Director
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STEPHEN F. RYNAS; Supervisor, Orange County
JOHN T. AUYONG; Coastal Program Analyst, Dana Point

SUBJECT: **CITY OF DANA POINT LOCAL COASTAL PROGRAM AMENDMENT REQUEST 1-96 (Monarch Beach [Laguna Niguel] LCP segment and South Laguna subarea only)**

SYNOPSIS

The City of Dana Point ("City") proposed to amend its certified Local Coastal Program ("LCP"). Currently, only a portion of the City is covered by the LCP. The amendment would allow for an additional area of the City -- the Monarch Beach area -- to become certified. The amendment would also revise the existing LCP provisions concerning the area of South Laguna -- basically, the area of the City west of Crown Valley Parkway adjacent to the City of Laguna Beach. Exhibit A shows the areas covered by the LCP and the areas that are the subject of Dana Point LCP amendment 1-96.

The LCP amendment does not allow for certification of the Dana Strands area nor revision of existing LCP policies for the certified portion of the Dana Point Headlands. The LCP status of the Dana Strands and Dana Point Headlands areas will remain unchanged until the City submits another LCP amendment to include land use plan policies and implementing actions for these areas, and the Coastal Commission has effectively certified such an LCP amendment. Thus, the only uncertified area that may be certified as a result of Dana Point LCP amendment 1-96 is the Monarch Beach area. In addition, the only certified area for which LCP provisions which may revised as a result of Dana Point LCP amendment 1-96 is the South Laguna area.

The City currently has two LCP segments; one segment consists of all the areas covered by the existing LCP, and the other segment consists of those areas that are not currently certified. The certified LCP segment consists of three subareas of the City: (1) Capistrano Beach, (2) Dana Point (which includes Dana Point Harbor, Dana Point Town Center, and the certified portion of the Dana Point Headlands), and (3) the portion of South Laguna that is within the City's jurisdiction (which includes the hillside subdivision known as Monarch Beach Terrace, the Monarch Bay Plaza shopping center, and the private community known as Monarch Bay located at the seaward end of Crown Valley Parkway where it intersects Pacific Coast Highway).

The uncertified LCP segment consists of the area of the City generally known as Monarch Beach, located northwesterly of the Dana Point subarea and southeasterly of the South Laguna subarea. The

uncertified segment includes the Ritz Carlton Hotel, Salt Creek Beach and Sea Terrace Community parks, the Links at Monarch Beach golf course, South Shores Church, residential subdivisions/developments such as Niguel Beach Terrace, Niguel Shores, Regatta, Ritz Cove, The Bluffs, and Monarch Beach Tennis Villas, and the residential developments on either side of Niguel Road between Del Avion to the north and Stonehill Drive to the south.

The City is in the process of revising the structure of their LCP. Currently, the LCP consists of specific plans containing both LUP and IP provisions for each of the three subareas, and a coastal development permit ordinance that applies to all three subareas. These specific plans and coastal development permit ordinance were prepared by the County of Orange when the City of Dana Point was still unincorporated. The County created the three subareas and the Monarch Beach segment, with the approval of the Commission. The City adopted the three County-prepared specific plans and coastal development permit ordinance as the City's first post-incorporation LCP. The City did not make any changes to the County's documents other than to change "County of Orange" to "City of Dana Point" and "Board of Supervisors" to "City Council".

However, each of the three specific plans is a physically separate, stand-alone document. In addition, since the City's incorporation, the City has developed and adopted its own General Plan and Zoning Code. This has resulted in two sets of sometimes slightly different standards; one set contained in the County-prepared LCP for coastal development permits, and another set contained in the City-prepared General Plan and Zoning Code which apply to other City discretionary actions like conditional use permits, variances, and site development permits. Further, the adoption of the City's General Plan and Zoning Code increases the number of planning documents which the City must use.

The City's ultimate goal is to revise the LCP so that it consists solely of three elements of the City's General Plan and the City's entire Zoning Code. This would result in only one set of standards for all discretionary actions City-wide. Revising the LCP in this manner would also have the benefit of reducing the number of planning documents needed by the City by eliminating the three existing County-prepared specific plan LCP documents and replacing them with the City's own General Plan and Zoning Code documents. Further, there would be only one LCP for the entire City, rather than two separate LCP segments.

At this time, through the submission of Dana Point LCP amendment 1-96, the City is taking only one of several steps toward this goal. This first step is to have the Commission certify the portions of the three General Plan elements applicable to South Laguna and Monarch Beach, and the entire Zoning Code (except the Dana Point Harbor District) as the LCP for the South Laguna and Monarch Beach areas. The LCP for the Capistrano Beach and Dana Point subareas, which include the Dana Point Headlands, Dana Point Harbor, Dana Point Town Center, and Doheny Village, would not be changed at this time. Thus, the provisions of the currently certified Dana Point and Capistrano Beach specific plans would be unchanged and would continue to apply in those areas.

At some future point in time, the City may take the next steps toward the ultimate goal of revising the LCP to have only three elements of the General Plan and the entire Zoning Code be the City's LCP. The next steps would involve the City submitting LCP amendments to the Commission to replace the Capistrano Beach and Dana Point specific plans with the three General Plan elements and Zoning Code.

Under the proposed Dana Point LCP amendment 1-96, the Land Use Plan ("LUP") for Monarch Beach and the currently certified portion of South Laguna would be the applicable parts of the following three

General Plan Elements: Land Use, Urban Design, and Conservation/Open Space. Any portions of these three General Plan elements that do not apply to South Laguna or to Monarch Beach (e.g. Land Use Element policies for the Dana Point Headlands, Dana Point Harbor, Dana Point Town Center, and Doheny Village) are not proposed to be included in the LCP at this time.

Under the proposed Dana Point LCP amendment 1-96, the implementing actions component of the LCP for Monarch Beach and South Laguna would be all of the City's Zoning Code except the Dana Point Harbor district ordinances. The City's Zoning Code includes the Monarch Beach Resort Specific Plan. The geographic area covered by the Monarch Beach Resort Specific Plan is a portion of the Monarch Beach area. The Monarch Beach Resort Specific Plan contains additional implementing actions tailored specifically to development within the Specific Plan's boundaries.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending that the Commission deny the Dana Point LCP amendment and then approve the amendment with suggested modifications. Staff recommends suggested modifications to: (1) add Coastal Act Chapter 3 policies which are not included in the LUP as submitted, (2) revise some of the LUP policies to bring them into greater conformance with the Chapter 3 Coastal Act policies, (3) add to the IP new streamlined coastal development permitting procedures and De Minimis LCP amendment procedures which have been recently been adopted into the Coastal Act, (4) revise some of the coastal development permitting procedures of the IP to bring them into greater conformance with the Coastal Act and California Code of Regulations, and (4) revise some LUP and IP provisions to reflect the public access and recreation components of existing development in the geographic area covered by the LCP amendment.

CITY COUNCIL APPROVAL OF SUGGESTED MODIFICATIONS

Should the Coastal Commission approve this LCP amendment request, the City of Dana Point City Council would still have another opportunity to review the final suggested modifications, if any, to the LCP amendment approved by the Coastal Commission.

Pursuant to Section 13544(a) of Title 14 of the California Code of Regulations, the City of Dana Point City Council must, by action of its governing body, (1) acknowledge receipt of the Coastal Commission's resolution of certification of the LCP amendment, including any suggested modifications, (2) accept and agree to the suggested modifications and take whatever formal action is required to satisfy the suggested modifications (e.g. adoption of ordinances and Zone Text and General Plan amendments to incorporate the suggested modifications), and (3) agree to issue coastal development permits for the total area included in the certified local coastal program.

If the City Council does not take the actions described above within six months from the date of Coastal Commission approval on the LCP amendment with suggested modifications, then pursuant to Sections 13537(b) and 13542(b) of Title 14 of the California Code of Regulations, the Coastal Commission's approval with suggested modifications expires. At that point, the City of Dana Point would have to submit a new LCP amendment.

ISSUES TO BE RESOLVED

Potential areas of difference which remain between Coastal Commission staff and the City are staff's recommendation that the proposed LCP Amendment be modified to: (1) add procedures regarding

reconsideration of actions on coastal development permits; (2) add requirements to post notice at development sites for coastal development permit applications, (3) not allow newspaper noticing to substitute for mailing lists with more than 1,000 names for local coastal development permits, and (4) specify in the Zoning Code that Coastal Commission retention of jurisdiction over development authorized by coastal development permit P-79-5539.

Regarding Item (4), Coastal Commission staff is recommending retention of authority over P-79-5539 in order to ensure that development complies with the conditions of approval of this permit. The Commission retains condition compliance jurisdiction over all coastal development permits it approves prior to LCP certification. Permit P-79-5539 approved a considerable amount of development, including a hotel, parks, commercial center, recreation/conference center, and 3,000 residential units. The Commission imposed several conditions of approval on P-79-5539, such as affordable housing requirements (including the provision of affordable units and restrictions on the release of the units from their affordable status), the payment of a fee for each residential unit into a coastal access fund, the provision of access through the hotel grounds, grading and runoff control, and setting aside some of the time slots of the recreational facilities for use by the general public (as opposed to private club members).

In some cases, the conditions of permit P-79-5539 require that plans for certain development components be submitted to the Executive Director for approval. In other cases, the conditions of permit P-79-5539 require that certain development components obtain a separate coastal development permit as final approval. Staff has concluded that final approval of development components, whether the approval is through Executive Director approval of plans or Commission approval of a coastal development permit, cannot be delegated to the City. The final approval of development components is a matter of compliance with the conditions of approval of permit P-79-5539. As with all coastal development permits issued by the Commission, the Commission retains jurisdiction over its permits for purposes of condition compliance and amendment. Therefore, the final approval of the development components of permit P-79-5539 must be retained by the Commission as a matter of condition compliance.

However, the authority to permit "new development" within the area of the City of Dana Point covered by permit P-79-5539 <u>would</u> be delegated to the City, as it would in the rest of the Monarch Beach area not covered by permit P-79-5539. For example, improvements to existing structures (such as the Monarch Beach Resort golf clubhouse), or structures permitted by the Coastal Commission after LCP certification as a result of condition compliance with permit P-79-5539, would be acted on by the City of Dana Point.

STANDARD OF REVIEW

The standard of review for the proposed Land Use Plan, pursuant to Section 30512 of the Coastal Act, is conformity with and adequacy to carry out the Chapter Three policies of the Coastal Act as amended (commencing with Section 30200). The standard of review for the proposed Implementation Plan amendment, pursuant to Section 30513 of the Coastal Act, is conformity with and adequacy to carry out the provisions of the Land Use Plan as certified.

ADDITIONAL INFORMATION

For additional information regarding this LCP amendment request or copies of this staff report, please contact John T. Auyong of the Coastal Commission's South Coast Area office at (562) 590-5071. Please send any written comments regarding this LCP amendment request to the attention of John Auyong at the following address after April 28, 1997:

California Coastal Commission
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Long Beach, CA 90802-4302

TABLE OF CONTENTS

I. MOTIONS AND RESOLUTIONS 9

A. LAND USE PLAN AMENDMENT 9
1. Denial of Land Use Plan Amendment as Submitted 9
2. Approval of the Land Use Plan Amendment with Suggested Modifications 9

B. IMPLEMENTATION PLAN AMENDMENT 10
1. Rejection of the Implementation Plan Amendment as Submitted 10
2. Approval of the Implementation Plan Amendment with Suggested Modifications 10

II. PUBLIC PARTICIPATION 11

III. SUGGESTED MODIFICATIONS (Land Use Plan Amendment) 11

A. MODIFICATIONS TO TEXT & POLICIES 11
1. Land Use Element 12
2. Urban Design Element 17
3. Conservation/Open Space Element 17

B. MAP/DIAGRAM CHANGES 21
1. Coastal Zone Boundary 21
2. General Table/Figure Notes 21
3. Land Use Designation Changes 21
4. Figures UD-2 and COS-4 (Relating to Access) 21
5. Figure PS-6 (Relating to Geologic Hazard Abatement) 21

C. MISCELLANEOUS 22
1. Local Coastal Program Reference Matrices 22
2. Coastal Policy Parenthetical Citations 22

IV. SUGGESTED MODIFICATIONS (Implementation Plan): 22

A. MODIFICATIONS TO TEXT OF THE ZONING CODE 22
1. Chapter 9.01 - General Provisions 23
2. Chapter 9.05 - General Development Standards 23
3. Chapter 9.09 - Residential Districts 23
4. Chapter 9.21 - Recreation, Open Space And Conservation Districts 23
5. Chapter 9.27 - Coastal Overlay District 24
6. Chapter 9.31 - Floodplain Overlay District 39
7. Chapter 9.61 - Administration Of Zoning 40
8. Chapter 9.67 - Variances 47
9. Chapter 9.69 - Coastal Development Permit 47
10. Chapter 9.71 - Site Development Permits 73
11. Chapter 9.75 - Definitions And Illustrations Of Terms 73
12. Monarch Beach Resort Specific Plan 79

B. Graphic Modifications 89
1. Section 9.01.080(a) Table 89
2. Chapter 9.11 - Commercial Districts 89

3. Chapter 9.21 - Recreation, Open Space And Conservation Districts 89
4. Monarch Beach Resort Specific Plan Exhibit Changes 89
5. Map Changes 90
6. Table Of Contents 91

V. LCP HISTORY 91

A. PRE-INCORPORATION 91

B. POST-INCORPORATION 92

VI. PROPOSED AMENDMENT REQUEST 92

VII. LAND USE PLAN AMENDMENT (Findings for Denial as Submitted and Approval if Modified) 94

A. CONFORMANCE WITH CHAPTER 3 POLICIES 94
1. Coastal Access 94
2. Recreation/Visitor Serving Facilities 98
3. Environmentally Sensitive Habitat Areas (ESHA) 100
4. Marine Resources 101
5. Hazards 104
6. Visual Impacts/Landform Alteration 106
7. Shoreline Protective Devices/Beaches 107
8. Public Works Facilities 107
9. Coastal Dependent Uses 108

B. Graphic Changes (LUP Amendment) 111
1. Denial as Submitted (Graphic Changes) 111
2. Approval as Modified (Graphic Changes) 111

C. Coastal Policy Parenthetical Citations 112

VIII. IMPLEMENTATION PLAN AMENDMENT (Findings for Denial as Submitted and Approval as Modified) 113

A. CONFORMITY WITH THE CERTIFIED LAND USE PLAN 113
1. Public Access 113
2. Environmentally Sensitive Habitat Areas (ESHAs) 115
3. Wetland Resources 116
4. Recreation/Visitor Serving Facilities 117
5. Hazards 117
6. Landform Alteration/Visual Impacts 118
7. Shoreline Protective Devices 118
8. Cultural Resources 118
9. Monarch Beach Resort Specific Plan 118
10. "Master" Permit P-79-5539 Requirements 123

B. COASTAL DEVELOPMENT PERMIT ORDINANCE - TRANSFER OF COASTAL COMMISSION AUTHORITY 124

1. Permit Requirements 125
2. Notice And Hearing Requirements 132
3. Appeal Procedures And Identification Of Appealable Projects 133
4. Procedures To Implement Open Space And Public Access Requirements 136
5. LCP Amendments (Section 9.61.080(e)) 136
6. Monarch Beach Resort Specific Plan 137
7. Conclusion (Coastal Development Permit Processing Procedures) 137

IX. CALIFORNIA ENVIRONMENTAL QUALITY ACT 137

I. MOTIONS AND RESOLUTIONS

Staff recommends that the Commission adopt the following resolutions:

A. LAND USE PLAN AMENDMENT

1. Denial of Land Use Plan Amendment as Submitted

Motion 1:

"I move that the Commission certify the City of Dana Point Land Use Plan Amendment 1-96 as submitted

Staff recommends a **NO** vote, and the adoption of the following resolution and findings. An affirmative vote by a majority of the appointed Commissioners is needed to pass the motion.

Resolution 1. (Denial of Certification of the LUP amendment):

*The Commission hereby **denies** certification of the City of Dana Point Land Use Plan Amendment 1-96 for the reasons discussed below and that the amendment fails to meet the requirements of and does not conform to the policies of Chapter 3 of the Coastal Act to the extent necessary to achieve the basic goals specified in Section 30001.5 of the Coastal Act.*

2. Approval of the Land Use Plan Amendment with Suggested Modifications

Motion 2:

"I move that the Commission certify the City of Dana Point Land Use Plan Amendment 1-96 if it is modified in conformity with the modifications suggested below."

Staff recommends a **YES** vote, which would result in the adoption of the following resolution and findings. An affirmative vote by a majority of the appointed Commissioners is needed to pass the motion.

Resolution 2. (Certification of the LUP amendment if modified):

*The Commission hereby **certifies** City of Dana Point Land Use Plan Amendment 1-96, subject to the following modifications, and **adopts the findings stated below** on the grounds that, if modified as suggested below, the Land Use Plan Amendment 1-96 will meet the requirements of and conform with the policies of Chapter 3 (commencing with Section 30200) of the California Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act; the Land Use Plan amendment 1-96 will contain a specific access component as required by Section 30500(a) of the Coastal Act; the Land Use Plan Amendment 1-96 will be consistent with applicable decisions of the Commission that shall guide local government actions pursuant to Section 30625(c); and certification of the Land Use Plan Amendment 1-96 will meet*

the requirements of Section 21080.5(d)(2)(i) of the California Environmental Quality Act, as there would be no further feasible mitigation measures or feasible alternatives which could substantially lessen significant adverse impact on the environment.

B. IMPLEMENTATION PLAN AMENDMENT

1. Rejection of the Implementation Plan Amendment as Submitted

Motion 3:

*"I move that the Commission **reject** the Implementation Plan amendment of the City of Dana Point Local Coastal Program Amendment 1-96."*

Staff recommends a **YES** vote which would result in the adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is needed to pass the motion.

Resolution 3. (To Reject the IP):

The Commission hereby rejects the Implementation Plan amendment of the City of Dana Point Local Coastal Program Amendment 1-96 on the grounds that it does not conform with or is inadequate to carry out the provisions of the Land Use Plan as certified. There are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the approval of the Implementation Program would have on the environment.

2. Approval of the Implementation Plan Amendment with Suggested Modifications

Motion 4:

*"I move that the Commission **approve** the City of Dana Point Implementation Plan Amendment 1-96 if it is modified in conformity with the modifications suggested below."*

Staff recommends a **YES** vote for the adoption of the following resolution. The motion requires an affirmative vote of a majority of the Commissioners present to pass the motion.

Resolution 4. (To Certify the IP Amendment if Modified):

The Commission hereby approves certification of the Implementation portions of the City of Dana Point Local Coastal Program Amendment 1-96 based on the findings set forth below on the grounds that the zoning ordinance, zoning map, and other implementing materials conform with and are adequate to carry out the provisions of the Land Use Plan as certified. There are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the approval of the Zoning and Implementation Program if modified would have on the environment.

II. PUBLIC PARTICIPATION

Pursuant to Section 30503 of the Coastal Act and Section 13552(a) of the California Code of Regulations, an LCP amendment submittal must include a summary of public participation at the local level.

The City held a number of public hearings on the General Plan before it was adopted at a public hearing on July 1, 1991. Specifically, from August 23, 1990 up until the July 1991 hearing, the City held five open houses, 29 Planning Commission/City Council Joint Sessions, five Planning Commission meetings, and six City Council meetings regarding the General Plan. At the July 1, 1991 meeting at which the General Plan was adopted, a resolution was passed adopting the General Plan as part of the City's LCP. However, this resolution did not take effect since the General Plan was not submitted for approval to the Coastal Commission at that time.

The City held several public hearings on the proposed Zoning Code before it was adopted at a public hearing on November 23, 1993. From November 19, 1991 to November 23, 1993, there were 24 Planning Commission public workshops, three Planning Commission meetings, and six City Council meetings. At the November 23, 1993 meeting, Ordinance 93-16 was adopted which rescinded the three existing Specific Plans/Local Coastal Programs for Capistrano Beach, Dana Point, and South Laguna, and adopted in their place the newly adopted municipal Zoning Code. Also at this meeting, a resolution was adopted to submit the General Plan previously adopted in 1991, as amended at this meeting, along with the newly adopted Zoning Code, to the Coastal Commission for approval as the City's new LCP.

Since then, the Zoning Code and General Plan have been amended as follows:

City Amendment Number	Planning Commission Mtgs.	City Council Meetings	Resolution or Ordinance #
ZTA94-03	4/20/94	5/10/94 5/24/94	94-09
ZTA94-07	9/7/94 10/19/94	11/22/94 12/13/94	94-21
ZTA95-04	4/5/95	5/23/95	95-11
ZTA95-07	6/21/95	7/11/95	95-14
GPA95-02(a) SP91-01(I)	4/19/95	5/23/95	95-09

III. SUGGESTED MODIFICATIONS (Land Use Plan Amendment)

A. MODIFICATIONS TO TEXT & POLICIES

All policies of the Land Use, Urban Design, and Conservation/Open Space Elements of the General Plan which have not been modified as shown below shall become part of the certified LUP in the form and

content which they existed on July 10, 1996, the date which the proposed LCP amendment request submittal was found by the Executive Director to be in proper order and legally adequate to comply with the requirements of Section 30510(b) of the Coastal Act. Modifications are shown as follows:

1.) **Added text** is shown in underline
2.) **Deleted text** is shown in ~~strikeout~~
3.) **Notes** are shown in {*Italics in brackets*}

1. Land Use Element

Purpose of the General Plan {*Beginning on Page 4 of the Land Use Element*}

Adopted in 1976, the purpose of the California Coastal Act is to generally protect the natural and scenic qualities of the California Coastal Zone. Approximately one-half of the City's land area lies within the California Coastal Zone and is, therefore, subject to requirements of the California Coastal Act (Division 20 of the Public Resources Code commencing with Section 30000). To meet these requirements, the City must have a California Coastal Commission certified Local Coastal Program (LCP) consisting of its "(a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other implementing actions, which, when taken together, meet the requirements of, and implement the provisions and policies of, this division at the local level." (Public Resources Code 30108.6). Therefore, the portions of the City's General Plan, Zoning Ordinance, Zoning Map and other implementing actions effectively certified by the Coastal Commission will constitute its LCP for that portion of the Coastal Zone within its jurisdiction. California Coastal Commission certification of the City's LCP allows the City to assume responsibility for administering coastal development permits in those areas of its coastal zone that are not on submerged lands, tide lands, public trust lands, or state universities or colleges. As a component of the City's LCP, the portions of the General Plan effectively certified by the Coastal Commission includes required coastal resources planning and management policies which are in conformance with and intended to carry out the Chapter Three policies of the California Coastal Act of 1976 ~~within the various elements of the Plan~~. These coastal resources planning and management policies shall be applied in a manner which is most protective of coastal resources and public access. *{no intervening modifications}*

Local Coastal Program Components {*Beginning on Page 7 of the Land Use Element*}

The certified Land Use Plan ("LUP") policies, land use designations, and maps, diagrams, figures, tables and other graphics for the areas covered by the former South Laguna Specific Plan/Local Coastal Program and the formerly uncertified segment (Monarch Beach) are contained in the Land Use, Urban Design, and Conservation/Open Space Elements of the General Plan. Those General Plan policies, land use designations, and maps, diagrams, figures, tables and other graphics which apply specifically to Capistrano Beach, Dana Point Harbor, Dana Point Headlands, Dana Point Town Center, Doheny Village, or other geographic areas of the City which are not within the area covered by the former South Laguna Specific Plan/Local Coastal Program nor the formerly uncertified segment (Monarch Beach) do not apply to development in South Laguna or Monarch Beach. The LUP policies, land use designations, and maps and other graphics contained in the Dana Point Specific Plan/Local Coastal Program and the Capistrano Beach Specific Plan/Local Coastal Program remain in effect.

~~As previously described, the General Plan constitutes a portion of the City's Local Coastal Program (LCP)~~ The Certified LUP carries out the requirements of the California Coastal Act by including coastal

resources planning and management policies described in Chapter 3 of the California Coastal Act. Identification of ~~those portions of each General Plan element which constitute components of the City's LCP~~ the Chapter Three policies is provided by the inclusion of parenthetical references to the applicable section of the California Coastal Act. For example, a policy statement relating to coastal visual resources will be followed by the parenthetical reference (Coastal Act/30251) to indicate that the policy relates to or addresses scenic and visual qualities of coastal areas as required by ~~that section~~ Section 30251 of the California Coastal Act. ~~Each element~~ The Land Use, Urban Design, and Conservation/Open Space Elements also each contain~~s a table or~~ a reference matrix identifying Coastal Act planning and management issue areas and the Chapter 3 Coastal Act policies ~~included in~~ applicable to that element. ~~Table I-2 provides an LCP Reference Matrix describing the Coastal Act issue areas included within each of the General Plan elements.~~

No changes to the Certified LUP policies, land use designations, and maps, diagrams, tables, and other graphics of the Certified Land Use Plan shall be effective unless and until such changes are effectively certified by the Coastal Commission. *{no intervening modifications}*

Policy 1.3: Assure that land use intensities are consistent with capacities of existing and planned public service facilities. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development. (Coastal Act/30250, 30254)

Policy 1.4: Assure that adequate recreational areas and open space are provided as a part of new residential development to assure that the recreational needs of new residents will not overload nearby coastal recreation areas. (Coastal Act/30252) *{no intervening modifications}*

Policy 1.6: ~~Encourage the~~ The development of unified or clustered commercial centers and neighborhood commercial centers rather than continued development of Strip Commercial shall be encouraged to minimize significant adverse individual or cumulative impacts on public access. (Coastal Act/30250, 30252) *{no intervening modifications}*

Policy 1.8: The location and amount of new development should maintain and enhance public access to the coast by facilitating the provision or extension of transit service, providing non-automobile circulation within the development, providing adequate parking facilities or providing substitute means of serving the development with public transportation, and assuring the potential for public transit for high intensity uses. (Coastal Act/30252)

Policy 1.9: New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the certified local coastal program. Special districts which include the coastal zone shall not be formed or expanded except where assessment for, and provision of, the service would not induce new development inconsistent with the City of Dana Point certified local coastal program. (Coastal Act/30254) *{no intervening modifications}*

Policy 2.2: ~~Prohibit onshore support facilities for oil drilling. (Coastal Act/30260-264)~~ *{no intervening modifications}*

Policy 2.4: Develop regulatory mechanisms to mitigate land use conflicts. The portions of the General Plan effectively certified by the Coastal Commission as the Land Use Plan shall take precedence over all other General Plan elements in the area of the City within the Coastal Zone.

Policy 2.5: Encourage the use of shared parking facilities, such as through parking districts or other mechanisms, in a manner that maintains and, where feasible, improves public access to the coast. (Coastal Act/30212.5, 30252)

Policy 2.6: Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry. (Coastal Act/30234)

Policy 2.7: Increased recreational boating use of coastal waters shall be encouraged, consistent with other provisions of the certified local coastal program. (Coastal Act/30224)

Policy 2.8: Coastal-dependent developments, as defined in Chapter 9.75 of the Zoning Code, shall have priority over other developments on or near the shoreline. Except as provided for in Conservation and Open Space Element Policy 3.6, coastal-dependent developments shall not be sited in a wetland. Coastal-related developments should be accommodated within the closest feasible proximity to the coastal-dependent uses they support. (Coastal Act/30255)

Policy 2.9: Coastal water areas suited for water-oriented recreation activities shall be protected for such uses. (Coastal Act/30220)

Policy 2.10: Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area. (Coastal Act/30221)

Policy 2.11: 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. (Coastal Act/30222)

Policy 2.12: The location and amount of new development should maintain and enhance public access to the coast by assuring that the recreational needs of new residents will not overload nearby coastal recreation areas through the correlation of the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development (Coastal Act/30252(6))

Policy 2.13: Oceanfront land that is suitable for coastal dependent aquaculture shall be protected for that use, and proposals for aquaculture facilities located on those sites shall be given priority, except over other coastal dependent developments or uses. (Coastal Act/30222.5) *{no intervening modifications}*

Policy 3.3: Priority should be given to those projects that provide for coastal recreational opportunities for the public. Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Upland areas necessary to support coastal recreational uses shall be reserved for such

uses, where feasible. (Coastal Act/30213, 30222, 30223 ~~30210-212, 30220-224~~) *{no intervening modifications}*

Policy 3.5: Public facilities including parking areas or facilities shall, wherever appropriate and feasible, ~~must~~ be distributed throughout the coastal zone area to ~~eliminate~~ mitigate against the impacts, social and otherwise, of overcrowding and overuse by the public ~~in one~~ of any single area. (Coastal Act/30212.5~~,~~ ~~30254~~) *{no intervening modifications}*

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

Policy 3.11: Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. (Coastal Act/30211)

Policy 3.12: Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, or where adequate access exists nearby, including access as identified on Figures UD-2 and COS-4. (Coastal Act/30212) *{no intervening modifications}*

Policy 4.3: ~~Provide and protect public~~ Public access, which shall be conspicuously posted, and public recreational opportunities, shall be provided to the maximum extent feasible for all the people to the coastal zone area and shoreline consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. (Coastal Act/30210 ~~212.5, 30213, 30220-224~~)

Policy 4.4: Preserve, maintain, and, where feasible, enhance and restore marine resource areas and coastal waters. Special protection shall be given to areas and species of special biological or economic significance. (Coastal Act 30230) *{no intervening modifications}*

Policy 4.10: Regulate the construction of non-recreational uses on coastal stretches with high predicted storm wave run-up to minimize risk of life and property damage. (Coastal Act/30253) *{no intervening modifications}*

Policy 8.2: Assure that adequate public recreational areas and public open space are provided and maintained by the developer as part of a new development. (Coastal Act/30210, 30213, 30240, 30251) *{no intervening modifications}*

Policy 8.6: ~~Provide~~ Maximize the provision of ~~extensive~~ public trail and transit loop systems within the Monarch Beach area. The systems shall include access to and along the ~~beach~~ shoreline and to the visitor-serving and public places within Monarch Beach. (Coastal Act/30210) *{no intervening modifications}*

Policy 8.8: ~~Allow a beach house as a public commercial facility near the beach. This beach house shall only be accessed by the beach, public trail, and transit loop systems.~~ Salt Creek Beach Park shall be a

public park primarily oriented to passive recreational use, with limited active recreational and educational uses which are temporary and non-commercial in nature. (Coastal Act/30210, 30214)

Policy 8.9: Avoid expansion of the golf course or any other land use that occurs at the expense of environmentally sensitive habitat, public park or public areas. (Coastal Act/30210, 30213, 30240) *{no intervening modifications}*

Policy 8.12: Within the Monarch Beach Resort Specific Plan, establish a development phasing plan to achieve first, the primary objective of the development of the public open space, public parks, public trails, and public roads; secondly, the visitor serving resort complex; and lastly, the residential dwellings. Concurrent development ~~will~~ may be permitted only if the primary objective is being satisfied. (Coastal Act/30213, 30222)

Policy 8.13: The existing public trails and public recreational facilities within the Monarch Beach Resort Specific Plan area shall be preserved and maintained. Signs shall be posted at conspicuous locations within the Specific Plan area, and a manned information center established in the Monarch Beach Resort hotel, to inform the general public of the public access and public recreation opportunities available within the Specific Plan area. (Coastal Act/30210-30213, 30220-222, 30223)

Policy 8.14: Visitor-serving facilities within the Monarch Beach Resort Specific Plan area, including but not limited to the recreational time slots of the golf course and the parking lots of the hotel and golf course, shall be open to the public. (Coastal Act/30210, 30212.5, 30213)

Policy 8.15: Preserve, maintain, and where feasible enhance and restore, the riparian habitat, coastal sage scrub habitat, and other environmentally sensitive habitat areas along Salt Creek.

Policy 9.1: Develop regulations to protect and encourage local serving retail and office use adjacent to residentially designated areas. Promote the overlap between visitor and resident serving retail uses by encouraging retail goods and services which serve both market segments in transition areas, such as those designated "Community Commercial," located between primary visitor serving areas and areas designated for residential use as shown on the Land Use Diagram. (Coastal Act/30222) *{no intervening modifications}*

Policy 9.3: Encourage resident-serving uses within walking distance of ~~residents~~ areas designated on the Land Use Diagram for residential use, where possible, to minimize the encroachment of resident serving uses into visitor-serving areas, to minimize the use of primary coastal access roads for non-recreational trips, and to minimize energy consumption and vehicle miles traveled by encouraging the use of public transportation. (Coastal Act/30222, 30252, 30253) *{no intervening modifications}*

Community and Other Designations *{Page 32 of the Land Use Element}*

Recreation/Open Space: The Recreation/Open Space designation includes both public and private recreational uses necessary to meet the active and passive recreational needs of area residents and visitors as well as open space uses necessary to preserve public views, scenic natural land forms such as bluffs, and environmentally sensitive habitat areas. Recreational activities include golf course driving ranges, community recreational facilities, public parklands and indoor and outdoor sports/athletic facilities. Recreation uses include museums, galleries, outdoor theater, and other similar uses. Open Space uses include public view preservation, habitat restoration projects and other similar uses. The standard intensity of development is only an assumed average City-wide and does not apply to each parcel of land.

2. Urban Design Element

Policy 1.5: Develop the Blufftop Trail from Monarch Beach to Doheny State Park. Final designation of the trail alignment through the Headlands shall be determined through the Specific Plan for the Headlands. (Coastal Act/30210, 30212) *{no intervening modifications}*

Policy 2.1: Consider the distinct architectural and landscape character of each community. To the maximum extent feasible, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses. (Coastal Act/30251) *{no intervening modifications}*

Policy 4.3: Develop stronger pedestrian, bicycle and visual linkages between public spaces and to and along the shoreline and bluffs. (Coastal Act/30210, 30212) *{no intervening modifications}*

Policy 4.5: Protect and enhance existing public views to the ocean ~~from the Coast Highway and selected public sites along the Blufftop trail and Capistrano Beach bluffs~~ through open space designations and innovative design techniques. (Coastal Act/30251)

Policy 4.6: Preserve and maintain existing public accessways, and existing areas open to the public, located within visitor-serving developments in the coastal zone. (Coastal Act/30210, 30212)

Policy 4.7: Prohibit the conversion to exclusively private use of existing visitor-serving developments open to the public within the coastal zone. (Coastal Act/30210, 30213) *{no intervening modifications}*

Policy 5.7: Consolidate adjacent parking lots, without reducing the number of parking stalls, in order to decrease the number of ingress and egress points onto arterials. (Coastal Act/30210, 30252)

3. Conservation/Open Space Element

Policy 1.1: Retain, protect, and enhance local drainage courses, channels, and creeks in their natural condition, where feasible and desirable, in order to maximize their natural hydrologic functioning so as to minimize adverse impacts from polluted storm water run-off. (Coastal Act/30231 ~~30235, 30236~~) *{no intervening modifications}*

Policy 1.5: Retain, maintain, protect, and enhance existing riparian habitat adjacent to drainage courses, channels, and creeks through methods such as, but not limited to, the establishment of buffer areas adjacent to such habitats. (Coastal Act/30231)

Policy 1.6: Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible to mitigate the loss of any riparian habitat and any downstream impacts, and shall be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat. (Coastal Act/30236)

Policy 1.7: Maintain and, where feasible, restore the biological productivity and the quality of coastal waters, creeks, and groundwater, appropriate to maintain optimum populations of marine organisms and to protect human health. Measures including, but not limited to, minimizing the adverse effects of waste

water discharges, controlling runoff, preventing the depletion of groundwater supplies, preventing substantial interference with surface water flow, maintaining vegetation buffer areas protecting riparian habitats, minimizing alteration of natural streams, and street sweeping, shall be encouraged. (Coastal Act/30231)

Policy 1.8: Coordinate with the appropriate Regional Water Quality Control Board, the County of Orange and other agencies and organizations in the implementation of the National Pollution Discharge Elimination System Permits (NPDES) regulations to minimize adverse impacts on the quality of coastal waters. (Coastal Act/30231) *{no intervening modifications}*

Policy 2.5: ~~Monitor~~ Lessen beach erosion by ~~periodically evaluating~~ minimizing any natural changes or man-caused activities which would reduce the replenishment of sand to the beaches. (Coastal Act/30235)

Policy 2.6: ~~Consider~~ Encourage public acquisition of significant land resources for open space when funds or opportunities are available. (Coastal Act/30240)

Policy 2.7: Require geotechnical studies for developments that are proposed for steep slopes (4:1 or steeper), on or adjacent to coastal or inland blufftops, and where geological instability may be suspected. (Coastal Act/30253)

Policy 2.8: Minimize risks to life and property, and preserve the natural environment, by siting and clustering new development away from ~~Discourage development in~~ areas which have physical constraints associated with steep topography and unstable slopes; and where such areas are designated as Recreation/Open Space or include bluffs, beaches, or wetlands, exclude such areas from the calculation of net acreage available for determining development intensity or density potential. (Coastal Act/30233, 30253)

Policy 2.9: ~~Consider preserving~~ Preserve significant natural features ~~where feasible~~ as part of new development. Permitted development shall be sited and designed to minimize the alteration of natural land forms. Improvements adjacent to beaches shall protect existing natural features and be carefully integrated with land forms. (Coastal Act/30240, 30250, 30251, 30253)

Policy 2.10: Adopt setback standards which include, at a minimum, a 25 foot setback from the bluff edge or which take into consideration fifty years of bluff erosion, whichever is most restrictive for a particular blufftop site. When necessary, require additional setbacks of buildings and site improvements from bluff faces which will maximize public and structural safety, consistent with detailed site-specific geotechnical report recommendations. (Coastal Act/30253)

Policy 2.11: Preserve Dana Point's bluffs as a natural and scenic resource and avoid risk to life and property through responsible and sensitive bluff top development, including, but not limited to, the provision of drainage which directs runoff away from the bluff edge and towards the street, where feasible, and restricting irrigation and use of water-intensive landscaping within the setback area to prevent bluff erosion. (Coastal Act/30251, 30253)

Policy 2.12: New bluff top development shall minimize risks to life and property in geologically sensitive areas and be designed and located so as to ensure geological stability and structural integrity. Such development shall have no detrimental affect, either on-site or off-site, on erosion or geologic stability, and shall be designed so as not to require the construction of protective devices that would substantially alter natural land forms along bluffs and cliffs. (Coastal Act/30253)

Policy 2.13: Bluff repair and erosion control measures such as retaining walls and other similar devices shall be limited to those necessary to protect existing structures in danger from erosion to minimize risks to life and property and shall avoid causing significant alteration to the natural character of the bluffs. (Coastal Act/30251, 30253)

Policy 2.14: Shoreline or ocean protective devices such as revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply and minimize adverse impacts on public use of sandy beach areas. (Coastal Act/30210-12, 30235)

Policy 2.15: Assure that public safety is provided for in all new seaward construction or seaward additions to existing beachfront single family structures in a manner that does not interfere, to the maximum extent feasible, with public access along the beach. (Coastal Act/30210-212, 30214, 30253).

Policy 2.16: Identify flood hazard areas and provide appropriate land use regulations, such as but not limited to the requirement that new development shall have the lowest floor, including basement, elevated to or above the base flood elevation, for areas subject to flooding in order to minimize risks to life and property. (Coastal Act/30235, 30253)

Policy 2.17: Establish building code, setback, site design and landscaping requirements that assure adequate fire protection to minimize risks to life and property. (Coastal Act/30253)

Policy 2.18: Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems. (Coastal Act/30233)

Policy 2.19: Whenever feasible, the material removed from erosion control and flood control facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of the Local Coastal Program, and where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area. (Coastal Act/30233)

Policy 3.1: ~~Conserve important~~ Environmentally sensitive habitat areas, including important plant communities, ~~and~~ wildlife habitats, ~~such as,~~ marine refuge areas, riparian areas, wildlife movement corridors, wetlands, and significant tree stands, such as those generally depicted on Figure COS-1, shall be preserved. Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which would significantly degrade those areas through such methods as, the practice of creative site planning, revegetation, and open space easement/dedications, and shall be compatible with the continuance of those habitat areas. A definitive determination of the existence of environmentally sensitive habitat areas on a specific site shall be made through the coastal development permitting process. (Coastal Act/30230, 30240)

Policy 3.2: Require development proposals in areas expected or known to contain important plant and animal communities and environmentally sensitive habitat areas, such as but not limited to marine refuge

areas, riparian areas, wildlife movement corridors, wetlands, and significant tree stands, to include biological assessments and identify affected habitats. (Coastal Act/30230, 30240) *{no intervening modifications}*

Policy 3.4: ~~Restrict~~ Ensure urban use of open space lands that have conservation or open space easements is limited to only those uses expressly allowed by the easements. Document those easements to ~~ensure Staff is aware~~ increase knowledge of their existence. (Coastal Act/30240)

Policy 3.5: ~~Prohibit detrimental~~ Ensure that public access to the shore of the marine life refuge is not detrimental to the resources of the refuge. ~~at the base of the Dana Point Headlands.~~ (Coastal Act/30230)

Policy 3.6: The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall only be permitted in accordance with Section 30233 of the Coastal Act. (Coastal Act/30233)

Policy 3.7: Environmentally sensitive habitat areas (ESHA) shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. (Coastal Act/30240)

Policy 3.8: Development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas through, among other methods, creative site planning and minimizing visual impacts, and shall be compatible with the continuance of those parks and recreation areas. (Coastal Act 30240)

Policy 3.9: Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes. (Coastal Act 30230) *{no intervening modifications}*

Policy 3.10: Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Policy 6.1: Mitigate the impacts of development on sensitive lands such as, but not limited to, steep slopes, wetlands, cultural resources, and environmentally sensitive habitats areas through the development review process. (Coastal Act/30233, 30240, 30244, 30253) *{no intervening modifications}*

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

Policy 6.5: ~~Encourage retention of~~ Preserve and protect ~~permanent~~ open space, steep slopes, cultural resources, and environmentally sensitive habitat areas through open space deed restrictions, dedication, or other similar means as a part of the ~~development subdivision/review~~ development and subdivision review process. (Coastal Act/30250) *{no intervening modifications}*

Policy 8.2: Retain and protect ~~significant areas of~~ resources of significant historical, archaeological, or paleontological value for education, visitor-serving, and scientific purposes. (Coastal Act/30213, 30244, 30250, 30253) *{no intervening modifications}*

B. MAP/DIAGRAM CHANGES

1. Coastal Zone Boundary

The coastal zone boundary shall be noted on the Land Use Policy Diagram, both the full-scale version and the reduced version as shown in Figure LU-4 on Page 35 of the Land Use Element.

2. General Table/Figure Notes

All figures, maps and tables in the Coastal Element shall have a note stating the following:

> This Figure has been effectively certified by the Coastal Commission as part of the Certified Land Use Plan. For purposes of development within the coastal zone, use of certified figures shall be in a manner which, on balance, is the most protective of significant coastal resources. This Figure is only a general representation of the coastal resources depicted herein. Site-specific studies shall be conducted as part of individual coastal development permit applications to confirm the extent to which, if at all, the coastal resources depicted in this Figure exist on a particular site.

3. Land Use Designation Changes

The parcel at 33542 Ritz Carlton Drive shall be redesignated from Professional/Administrative to Visitor/Recreation Commercial.

4. Figures UD-2 and COS-4 (Relating to Access)

a. The legends for the Figures UD-2 and COS-4 (located on Page 26 of the Urban Design Element and Page 34 of the Conservation/Open Space Element, respectively), shall be clarified so that it is clear which of the walkway/bikeway/trails, public view overlooks, and coastal accessways are existing versus proposed.

b. Further, any walkways/bikeways/trails, public view overlooks, and coastal accessways (including accessways for which offers-to-dedicate are outstanding) which currently exist but which are not shown on Figures UD-2 and COS-4 shall be added to these figures.

c. In addition, Pacific Coast Highway (State Route One), Crown Valley Parkway, and Niguel Road shall be designated on Figures UD-2 and COS-4 as "Primary Coastal Access" roads.

5. Figure PS-6 (Relating to Geologic Hazard Abatement)

Figure PS-6 as shown on Page 31 of the General Plan Public Safety Element shall be replicated in the Conservation/Open Space Element and then modified according to the following:

a) Revised Note

On this new diagram, the note at the bottom of diagram shall be modified as shown below (added text depicted in underline):

> *NOTE: These recommendations are generalized and are shown for information purposes only. Site specific investigations by a State-licensed geologist are required prior to issuance of any coastal development permit. These investigations may result in geologic hazard abatement recommendations different from those shown above. Any approved abatement measures, protective devices, or mitigative alternatives shall be the least environmentally damaging feasible alternative and shall have appropriate mitigation measures.*

b) Geologically Sensitive Areas

Areas of documented or potential geologic instability, or geologically sensitive areas, shall be mapped on this new COS diagram.

C. MISCELLANEOUS

1. Local Coastal Program Reference Matrices

All Local Coastal Program Reference matrices throughout the entire General Plan shall be deleted, except for those within the Land Use, Urban Design, and Conservation/Open Space Elements. The LCP Reference matrices within the Land Use, Urban Design, and Conservation/Open Space Elements shall be replaced with new matrices which accurately reflect the Chapter 3 Coastal Act policies represented in those elements.

2. Coastal Policy Parenthetical Citations

For all General Plan policies in the Circulation, Public Safety, Housing, Noise, Public Facilities/Growth Management, and Economic Development elements which have a parenthetical citation to a Coastal Act policy, the citation shall be deleted.

IV. SUGGESTED MODIFICATIONS (Implementation Plan):

A. MODIFICATIONS TO TEXT OF THE ZONING CODE

Modifications are shown as follows:

1.) **Added text** is shown in underline
2.) **Deleted text** is shown in ~~strikeout~~
3.) **Instructions** for other modifications are shown in ***{bold italics and brackets}***
4.) **Notes** are shown in *{bracketed italics}*

{The tabs, indents, font styles, and point sizes of the City's original text as submitted have been changed, reduced or eliminated solely for the purpose of reducing space in this report. Coastal Commission staff is NOT suggesting that tabs, indents, font style, or point sizes be changed or eliminated in the actual Zoning Code.}

1. Chapter 9.01 - General Provisions

9.01.050 Relationship to the California Coastal Act

The provisions of this Code are intended to address the requirements of Articles 1 and 2 of Chapter 6 of the California Coastal Act (commencing with Section 30500). ~~as set forth in relevant state law~~ and Chapter 8 of Title 14 of the California Code of Regulations (commencing with Section 13500)~~administrative regulations~~. ~~These regulations are~~ The provisions of this Code are to be ~~a~~ the Implementation part of the City's Local Coastal Program.

2. Chapter 9.05 - General Development Standards

9.05.150 Wetland Buffer

To protect and maintain the City's wetlands resources, a 100-foot buffer area around all identified wetlands located outside the coastal zone shall be provided, unless consultation with the California Department of Fish and Game and the U.S. Fish and Wildlife Service indicates that a lesser buffer will provided adequate protection. The standards for wetland buffers around wetlands within the coastal zone are contained in Section 9.27.030(b)(3).

3. Chapter 9.09 - Residential Districts

9.09.040 Special Development Standards

(a) Special standards for the Residential Beach Road 12 (RBR 12) and Residential Beach Road Duplex 18 (RBRD 18) Zoning Districts *{no modifications to (1) through (3)}*

(4) Notwithstanding other standards of the Local Coastal Program, the only coastal development standards applicable to the RBR12 and RBR18 Zoning Districts are those set forth in the Capistrano Beach Specific Plan/Local Coastal Program.

4. Chapter 9.21 - Recreation, Open Space And Conservation Districts

9.21.010 Intent and Purpose

{no intervening modifications}

(c) Conservation District

The Conservation (CONS) district is intended for those lands that should remain in a natural state. Some minor intrusions from passive recreational uses may be appropriate if the primary goal of conservation and protection is achieved and there is a demonstrated need for such recreational uses.

For areas within the coastal zone designated as the CONS district, "passive recreational uses" shall be limited to hiking, viewing of scenic areas, limited picnicking, and nature study.

5. Chapter 9.27 - Coastal Overlay District

9.27.010 Intent and Purpose

The Coastal Overlay (CO) District preserves and protects the coastal resources within Dana Point, and implements the California Coastal Act (Division 20 of the Public Resources Code) and the General Plan coastal policies which constitute the Land Use Plan portion of the certified Local Coastal Program for the City of Dana Point. The CO District is an overlay district which ~~may~~ shall be combined with any other zoning district that lies within the Coastal Zone of the City of Dana Point. ~~Development permitted by right in the underlying district may require a Coastal Development Permit~~ A Coastal Development Permit, subject to the standards of the specific zoning designation is required for all "development," as defined in Section 9.75.040. Procedures and regulations in Chapter 9.61 "Administration of Zoning", Chapter 9.69 "Coastal Development Permit" and this Chapter constitute additional minimum standards for all development within the Coastal Zone. In the Coastal Overlay District, the standards in this Chapter shall take precedence over other standards in the Zoning Code. The standards in this Chapter shall be applied in a manner which is most protective of coastal resources and public access.

9.27.020 Permitted, Accessory and Conditional Uses

(a) {*no modifications*}

(b) ~~Wetland areas are limited to nature study projects, wetland restoration projects, aquaculture, and similar resource dependent uses.~~ The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted where there is no feasible less environmentally damaging alternative and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411 of the California Coastal Act as amended, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing spaces, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive habitat areas.

(7) Restoration purposes.

(8) nature study, aquaculture, or similar resource dependent activities. {*no intervening modifications*}

(d) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

~~(d)~~(e) Any use or development in conflict with the General Plan coastal policies shall not be allowed. ~~California Coastal Act requirements.~~

(f) Public recreation

Salt Creek County Beach Park shall be a public park which is primarily geared towards passive recreational use. Limited active recreational use or educational use may be permitted provided the use is temporary, as defined in Coastal Commission guidelines for temporary events;

9.27.030 Development Standards

In addition to the development standards for the base zoning districts described in Chapters 9.09-9.25, the following standards apply to all applicable projects within the CO District.

(a) Coastal Access

{delete the existing subsection (a) as submitted and replace with the following}
(1) The purpose of this section is to achieve the basic state goals of maximizing public access to the coast and public recreational opportunities, as set forth in the California Coastal Act; to implement the public access and recreation policies of Chapter 3 of the Coastal Act; and to implement the certified land use plan of the Local Coastal Program which is required by Section 30500(a) of the Coastal Act to include a specific public access component. In achieving these purposes, the provisions of this subsection shall be given the most liberal construction possible so that public access to the navigable waters shall always be provided and protected consistent with the goals, objectives and policies of the California Coastal Act and Article X, Section 4, of the California Constitution.

(2) Definitions

(A) New development

For purposes of implementing the public access requirements of Public Resources Code Section 30212, the City of Dana Point certified land use plan, including Land Use Element Policy 3.12, and of this ordinance, "new development" includes "development" as defined in Section 9.75.040 of this zoning code except the following:

1. Structures destroyed by natural disaster

The replacement of any structure, other than a public works facility, destroyed by a disaster; provided that the replacement structure conforms to applicable existing zoning requirements, is for the same use as the destroyed structure, does not exceed either the floor area, height, or bulk of the destroyed structure by more than 10%, and is sited in the same location on the affected property as the destroyed structure. As used in this section, "disaster" means any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of the owners.

2. Demolition and reconstruction

The demolition and reconstruction of a single-family residence; provided that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

3. Improvements

Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height or bulk of the structure by more than 10 percent, which do not block or impede access, and which do not result in a seaward encroachment by the structure.

4. Repair and maintenance

Repair or maintenance activity which, pursuant to Public Resources Code Section 30610, requires no permit unless the activity will have an adverse impact on lateral public access along the beach.

5. Reconstruction and repair

The reconstruction or repair of any seawall; provided that the reconstructed or repaired seawall is not seaward of the location of the former structure. As used in this section, "reconstruction or repair" of a seawall shall not include replacement by a different type of structure or other modification in design or construction which results in different or greater impacts to shoreline resources than those of the existing structure.

(B) The five (5) types of coastal public access (lateral, bluff top, vertical, trail, and recreational) are defined in Section 9.75.030 of this Zoning Code

(C) Character of accessway use

1. Pass and repass

Refers to the right of the public to walk and run along an accessway. Because this use limitation can substantially restrict the public's ability to enjoy adjacent publicly owned tidelands by restricting the potential use of lateral accessways, it will be applied only in connection with vertical access or other types of access where the findings required by Sections 9.27.030(a)(5) and 9.27.030(a)(5)(D) establish that the limitation is necessary to protect natural habitat values, topographic features (such as eroding bluffs), or privacy of the landowner.

2. Passive recreational use

As used in this section, "passive recreational use" refers to the right of the public to conduct activities normally associated with beach use, such as walking, swimming, jogging, sunbathing, fishing, surfing, picnicking, but not including organized sports, campfires, or vehicular access other than for emergencies or maintenance.

3. Active recreational use

As used in this section, "active recreational use" refers to the right of the public to conduct the full range of beach-oriented activities, not including horseback riding and use of motorized vehicles unless specifically authorized.

(3) Applicability

(A) Access Required.

As a condition of approval and prior to issuance of a permit or other authorization for any class of new development as identified in Sections 9.27.030(a)(3)(A)1. through 9.27.030(a)(3)(A)4. below, except as provided in Section 9.27.030(a)(3)(B), an offer to dedicate an easement (or other legal mechanism pursuant to Section 9.27.030(a)(4)(J)2. for one or more of the types of access identified in Sections 9.27.030(a)(2)(D)1. through 9.27.030(a)(2)(D)5. shall be required and shall be supported by findings required by Sections 9.27.030(a)(5)(A) through 9.27.030(a)(5)(C); provided that no such condition of approval for coastal access shall be imposed if the analysis required by Sections 9.27.030(a)(5)(A)1. through 9.27.030(a)(5)(A)4. establishes that the development will not adversely affect, either individually or cumulatively, the ability of the public to reach and use public tidelands and coastal resources or that the access dedication requirement will not alleviate the access burdens identified.

1. New development on any parcel or location specifically identified in the certified land use plan or in the LCP zoning districts.

2. New development between the nearest public roadway and the sea.

3. New development on any site where there is substantial evidence of a public right of access to the sea acquired through use or a public right of access through legislative authorization.

4. New development on any site where trail, blufftop access or other recreational access is necessary to mitigate impacts of the development on public access.

(B) Exceptions

Section 9.27.030(a)(3)(A) above shall apply to all new development except in the following instances:

1. Projects excepted from the definition of "new development" in Section 9.27.020(a)(2).

2. Where findings required by Sections 9.27.030(a)(5)(A) and 9.27.030(a)(5)(B) establish any of the following:

a. Public access is inconsistent with the public safety, military security needs, or protection of fragile coastal resources; or

b. Adequate access exists nearby.

(C) Exceptions identified in Section 9.27.030(a)(3)(B) shall be supported by written findings required by Section 9.27.030(a)(5)(C) of this Chapter.

(4) Standards For Application Of Access Conditions

The public access required pursuant to Section 9.27.030(a)(3)(A) shall conform to the standards and requirements set forth in Section 9.27.030(a)(4) herein.

(A) Lateral Public Access (Minimum Requirements)

1. A condition to require lateral access as a condition of approval of a coastal development permit (or other authorization to proceed with development) pursuant to Section 9.27.030(a)(3)(A) shall provide the public with the permanent right of lateral public access and passive recreational use along the shoreline (or public recreational area, bikeway, or blufftop area, as applicable); provided that in some cases

controls on the time, place and manner of uses may be justified by site characteristics including sensitive habitat values or fragile topographic features, or by the need to protect the privacy of residential development located immediately adjacent to the accessway.

2. Active recreational use may be appropriate in many cases where the development is determined to be especially burdensome on public access. Examples include cases where the burdens of the proposed project would severely impact public recreational use of the shoreline, where the proposed development is not one of the priority uses specified in Public Resources Code Section 30222 and the policies of the certified land use plan, where active recreational uses reflect the historic public use of the site, where active recreational uses would be consistent with the use of the proposed project, and where such uses would not significantly interfere with the privacy of the landowner. In determining the appropriate character of public use, findings shall be made on the specific factors enumerated in Section 9.27.030(a)(5)(B). Lateral access shall be legally described as required in Section 9.27.030(a)(4)(G).

(B) Vertical Public Access (Minimum Requirements)

1. A condition to require vertical public access as a condition of approval of a coastal development permit (or other authorization to proceed with development) pursuant to Section 9.27.030(a)(3)(A) shall provide the public with the permanent right of access, either (1) located in specific locations identified in the certified Local Coastal Program for future vertical access, or (2) located in a site for which the City of Dana Point has reviewed an application for a development permit and has determined a vertical accessway is required pursuant to the access and recreation policies of the Coastal Act or the applicable provisions of the Local Coastal Program.

2. A condition to require vertical access as a condition of approval of a coastal development permit (or other authorization to proceed with development) pursuant to Section 9.27.030(a)(3)(A) shall provide the public with the permanent right of vertical access and be limited to the public right of passive recreational use unless another character of use is specified as a condition of the development. In determining whether another character of use is appropriate, findings shall be made on the specific factors identified in Section 9.27.030(a)(5)(B).

3. Each vertical accessway shall extend from the road to the shoreline (or bluff edge) and shall be legally described as required in Section 9.27.030(a)(4)(G). The access easement shall be a minimum of 10 feet wide. If a residential structure is proposed, the accessway should not be sited closer than 10 feet (or another distance if specified in the certified land use plan) to the structure.

(C) Bluff Top Access (Minimum Requirements)

1. A condition to require public access along a bluff top as a condition of approval of a coastal development permit (or other authorization to proceed with development) pursuant to Section 9.27.030(a)(3)(A) shall provide the public with the permanent right of scenic and visual access from the bluff top to the public tidelands; provided that in some cases controls on the time, place and manner of uses may be justified by site characteristics including sensitive habitat values or fragile topographic features, or by the need to protect the privacy of residential development located immediately adjacent to the accessway.

2. The bluff top access shall be limited to passive recreational use and coastal viewing purposes unless another character of use is specified as a condition of development. In determining the appropriate character of use findings shall be made on the specific factors identified in Section 9.27.030(a)(5)(B).

3. Each bluff top accessway shall be described in the conditions of approval of the coastal development permit as an area beginning at the current bluff edge extending 25 feet inland, or an area which allows for 50 years of bluff erosion, or another standard determined to be necessary for public safety and/or geologic stability, whichever results in the greatest width of the bluff top accessway.

However, the accessway shall not extend any closer than 10 feet from an occupied residential structure. Due to the potential for erosion of the bluff edge, the condition shall include a mechanism that will cause the accessway to be adjusted inland as the edge recedes. Any permanent improvements should be set back from the accessway by a distance derived by multiplying the annual rate of blufftop retreat by the life expectancy in years of the permanent improvements.

4. The accessway shall be legally described as required in Section 9.27.030(a)(4)(G), with the furthest inland extent of the area possible referenced as a distance from a fixed monument in the following manner:

> "Such easement shall be [insert appropriate distance as described in Section 9.27.030(a)(4)(C)3. above] feet wide located along the bluff top as measured inland from the daily bluff edge. As the daily bluff top edge may vary and move inland, the location of this right of way will change over time with the then current bluff edge, but in no case shall it extend any closer than [specify distance] feet from [specify a fixed inland point, such as for example the centerline of the nearest public road]."

(D) Trail Access (Minimum Requirements)

A condition to require public access as a condition of approval of a coastal development permit (or other authorization to proceed with development) required pursuant to Section 9.27.030(a)(3)(A) shall provide the public with the permanent right of access and active recreational use, either (1) along a designated alignment of a coastal recreational path or trail in specific locations including those identified in the certified LCP for implementation of trail access, or (2) in locations where it has been determined that a trail access is required to link recreational areas to the shoreline or provide alternative recreation and access opportunities pursuant to the access and recreation policies of the LCP and Coastal Act, consistent with other provisions of this chapter; provided that in some cases controls on the time, place and manner of uses may be justified by site characteristics including sensitive habitat values or fragile topographic features, or by the need to protect the privacy of residential development located immediately adjacent to the accessway. In determining if another character of use is appropriate, findings shall be made on the specific factors enumerated in Section 9.27.030(a)(5)(B). The trail access shall be legally described as required by Section 9.27.030(a)(4)(G).

(E) Recreational Access (Minimum Requirements)

A condition to require public recreational access as a condition of approval of a coastal development permit required pursuant to Section 9.27.030(a)(3)(A) shall provide the public with the permanent right of access and use within a designated recreational access area. Conditions required pursuant to this section shall specify the location and extent of the public access area. The form and content should take the form of requirements in Sections 9.27.030(a)(4)(A), 9.27.030(a)(4)(B), 9.27.030(a)(4)(C), and 9.27.030(a)(4)(D) as applicable. The accessway shall be legally described as required in Section 9.27.030(a)(4)(G).

(F) Protection of Historic Public Use

1. Substantial Evidence Determination

Substantial evidence that the area used by the public has been impliedly dedicated shall be determined based on evidence of all of the following:

a. The public must have used the land for a period of five years or more as if it were public land,

b. Without asking for or receiving permission from the owner,

c. With the actual or presumed knowledge of the owner,

d. Without significant objection or bona fide attempts by the owner to prevent or halt the use, and

e. The use must be substantial, rather than minimal, and

f. The applicant must not have demonstrated that the law has prevented the property from being impliedly dedicated.

2. Siting and Design Requirements.

Development shall be sited and designed in a manner which does not interfere with or diminish any public right of access which may have been established based on historic public use. Only when site constraints are so severe that siting of the accessway or recreational use area in its historic location would significantly impair the proposed development and alternative development siting is not feasible, development may be sited in the area of public right of access based on historic use provided that the applicant provides an equivalent area of public access or recreation to and along the same destination and including the same type and intensity of public use as previously existed on the site. Mechanisms for guaranteeing the continued public use of the area or equivalent area shall be required in accordance with Sections 9.27.030(a)(4)(A) through 9.27.030(a)(4)(E) above.

3. Minimum Requirements.

An access condition shall not serve to extinguish or waive public prescriptive rights. In permits where evidence shows the possibility of such prescriptive rights, the following language shall be added to the access condition:

> "Nothing in this condition shall be construed to constitute a waiver of any prescriptive rights which may exist on the parcel itself or on the designated easement."

(G) Legal Description of an Accessway (Recordation)

1. An access dedication required pursuant to Section 9.27.030(a)(3)(A) shall be described in the condition of approval of the permit in a manner that provides the public, the property owner, and the accepting agency with the maximum amount of certainty as to the location of the accessway. As part of the condition of approval, easements shall be described as follows:

a. for lateral access: along the entire width of the property from the mean high tide line to (as applicable): the toe of the bluff, the toe of the seawall, or other appropriate boundary such as stringline or dripline.

b. for blufftop access or trail access: extending inland from the bluff edge or along the alignment of a recreational trail.

c. for vertical access: extending from the road to the shoreline (or bluff edge). A privacy buffer provided pursuant to Section 9.27.030(a)(4)(I) shall be described, as applicable.

2. Prior to the issuance of the coastal development permit, the landowner shall execute and record a document in a form and content acceptable to the Director of Community Development, consistent with provisions of Section 9.27.030(a)(6), irrevocably offering to dedicate to a public agency, non-profit organization, or private association approved by the Coastal Commission an easement for a specific type of access as described in Section 9.27.030(a)(2)(D) and a specific character of use as described in Section 9.27.030(a)(2)(E), as applicable to the particular condition.

3. The recorded document shall provide that the offer to dedicate shall not be used or construed to allow anyone, prior to acceptance of the dedication, to interfere with any rights of public access acquired through use which may exist on the property.

4. The recorded document shall include legal descriptions of both the applicant's entire parcel and the easement area and a map to scale. The offer shall be recorded free of prior liens and any other encumbrances which the Coastal Commission [or local agency authorized by the Commission] determines may affect the interest being conveyed. The offer to dedicate shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

(H) Management Plan (Minimum Requirements)

A management plan may be required in conjunction with a dedication of public access in any case where there is substantial evidence of potential conflicts between public access use and other uses on or immediately adjacent to the site. Examples include access in areas of sensitive habitats, agricultural resources, or significant hazards, or adjoining residential neighborhoods or military security areas. The plan shall be prepared by the accepting agency and approved by the City of Dana Point prior to the opening of the access to public use. Where applicable, the plan should specify management controls on time and intensity of use, standards for privacy buffers, and requirements for maintenance of aesthetic values through such measures as litter control.

(I) Privacy Buffers (Minimum Requirements)

Separation between a public accessway and adjacent residential use may be provided when necessary to protect the landowner's privacy or security as well as the public's right to use of the accessway. Any such buffer shall be provided within the development area. Access should not be sited closer to any residential structure than the distance specified in the certified LUP amendment, or where there is no distance specified, no closer than 10 feet. The buffer can be reduced where separation is achieved through landscaping, fences or grade separation.

(J) Implementation

1. A dedicated accessway shall not be required to be opened to public use until a public agency, non-profit organization, or private association approved in accordance with Section 9.27.030(a)(4)(G) agrees to accept responsibility for maintenance and liability of the access, except in cases where immediate public access is implemented through a deed restriction.

2. In any case where the size and character of a development would impose very substantial burdens on public access, such as a large resort development on the shoreline, and where the applicant has the capacity to operate and maintain the accessway or recreation area, a deed restriction may be required instead of an offer to dedicate in order to assure immediate public use of the area and maintenance of the area by the applicant and successors in interest. In any such case, all other applicable provisions of this ordinance shall apply.

3. Access facilities constructed on access easements (e.g., walkways, paved paths, boardwalks, etc.) should be no wider than necessary to accommodate the numbers and types of users that can reasonably be expected. Width of facilities can vary for ramps or paved walkways, depending on site factors such as the need for privacy buffers, public safety needs, and the need to protect natural resource areas from overuse.

(K) Title Information

As a requirement for any public access condition, prior to the issuance of the permit or other authorization for development, the applicant shall be required to furnish a title report and all necessary subordination agreements. Title insurance may also be required where easements are being granted. The amount of insurance shall reflect the estimated cost to acquire an equivalent accessway or recreational use elsewhere in the vicinity. All offers shall be made free of all encumbrances which the approving authority pursuant to Section 9.27.030(a)(4)(G) determines may affect the interest being conveyed. If any such interest exists which could erase the access easement, it must be subordinated through a written and recorded agreement.

(5) Required Findings And Supporting Analysis For Public Access Dedications

(A) Required Overall Findings

Written findings of fact, analysis and conclusions addressing public access must be included in support of all approvals, denials or conditional approvals of projects between the first public road and the sea (whether development or new development) and of all approvals or conditional approvals of projects (whether development or new development) where an access dedication is included in the project proposal or required as a condition of approval. Such findings shall address the applicable factors identified by Section 9.27.030(a)(5)(B) and 9.27.030(a)(5)(C) and shall reflect the specific level of detail specified, as applicable. Findings supporting all such decisions shall include:

1. A statement of the individual and cumulative burdens imposed on public access and recreation opportunities based on applicable factors identified pursuant to Section 9.27.030(a)(5)(B). The type of affected public access and recreation opportunities shall be clearly described.

2. An analysis based on applicable factors identified in Section 9.27.030(a)(5)(B) and 9.27.030(a)(5)(C) of the necessity for requiring public access conditions to find the project consistent with the public access provisions of the Coastal Act.

3. A description of the legitimate governmental interest furthered by any access condition required.

4. An explanation of how imposition of a public access dedication requirement alleviates the access burdens identified and is reasonably related to those burdens in both nature and extent.

(B) Required Project-Specific Findings

In determining any requirement for public access, including the type of access and character of use, the City of Dana Point shall evaluate and document in written findings the factors identified in Sections 9.27.030(a)(5)(B)1. through 9.27.030(a)5)(B)4. below, to the extent applicable. The findings shall explain the basis for the conclusions and decisions of the City of Dana Point and shall be supported by substantial evidence in the record. If an access dedication is required as a condition of approval, the findings shall explain how the dedication will alleviate or mitigate the adverse effects which have been identified and is reasonably related to those adverse effects in both nature and extent. As used in this section, "cumulative effect" means the effect of the individual project in combination with the effects of past projects, other current projects, and probable future projects, including development allowed under applicable planning and zoning. The following factors shall be analyzed:

1. Project Effects On Demand For Access And Recreation:

a. Identification of existing and open public access and coastal recreation areas and facilities in the regional and local vicinity of the development.

b. Analysis of the project's effects upon existing public access and recreation opportunities.

c. Analysis of the project's cumulative effects upon the use and capacity of the identified public access and recreation opportunities, including public tidelands and beach resources, and upon the capacity of major coastal roads from subdivision, intensification or cumulative buildout.

d. Projection of the anticipated demand and need for increased coastal access and recreation opportunities for the public.

e. Analysis of the contribution of the project's cumulative effects to any such projected increase.

f. Description of the physical characteristics of the site and its proximity to the sea, tideland viewing points, upland recreation areas, and trail linkages to tidelands or recreation areas.

g. Analysis of the importance and potential of the site, because of its location or other characteristics, for creating, preserving or enhancing public access to tidelands or public recreation opportunities.

2. Shoreline Processes (for accessways on sites subject to wave action, such as beachfront and coastal blufftop accessways):

a. Description of the existing shoreline conditions, including beach profile, accessibility and usability of the beach, history of erosion or accretion, character and sources of sand, wave and sand movement, presence of shoreline protective structures, location of the line of mean high tide during the season when the beach is at its narrowest (generally during the late winter) and the proximity of that line to existing structures, and any other factors which substantially characterize or affect the shoreline processes at the site.

b. Identification of anticipated changes to shoreline processes and beach profile unrelated to the proposed development.

c. Description and analysis of any reasonably likely changes, attributable to the primary and cumulative effects of the project, to wave and sand movement affecting beaches in the vicinity of the project; the profile of the beach; the character, extent, accessibility and usability of the beach; and any other factors which characterize or affect beaches in the vicinity.

d. Analysis of the effect of any identified changes of the project - alone or in combination with other anticipated changes - will have upon the ability of the public to use public tidelands and shoreline recreation areas.

e. The rate of blufftop erosion due to wave action as the base of the bluff.

4. Physical Obstructions:

Description of any physical aspects of the development which block or impede the ability of the public to get to or along the tidelands, public recreation areas, or other public coastal resources or to see the shoreline.

5. Other Adverse Impacts On Access And Recreation:

a. Description of the development's physical proximity and relationship to the shoreline and any public recreation area.

b. Analysis of the extent to which buildings, walls, signs, streets or other aspects of the development, individually or cumulatively, are likely to diminish the public's use of tidelands or lands committed to public recreation.

c. Description of any alteration of the aesthetic, visual or recreational value of public use areas, and of any diminution of the quality or amount of recreational use of public lands which may be attributable to the individual or cumulative effects of the development.

(C) Findings for Projects Involving Historic Public Use/Prescriptive Rights:

1. Where an issue as to the existence of public prescriptive rights has been raised during the course of reviewing a coastal development permit application, one of the following findings shall be made:

a. Substantial evidence does not warrant the conclusion that public prescriptive rights exist;

b. Substantial evidence of public prescriptive rights exist, but development will not interfere with those rights;

c. There is an unresolved controversy as to the existence of public prescriptive rights which requires denial of a coastal development permit because of interference with those rights.

d. There is an unresolved controversy as to the existence of public prescriptive rights, but the applicant's dedication of a public access protects the rights of the public and allows an agreement to accept the actual dedication in exchange for giving up the contested claim of implied dedication.

2. In determining any requirement for public access based on historic public use/prescriptive rights, including the type of access and character of use, the City of Dana Point shall evaluate and document in written findings the factors identified in Sections 9.27.030(a)(5)(C)2.a. through 9.27.030(a)(5)(C)2.e. below, to the extent applicable. The findings shall explain the basis for the conclusions and decisions of the City of Dana Point and shall be supported by substantial evidence in the record. If an access dedication is required as a condition of approval, the findings shall explain how the dedication will alleviate or mitigate the adverse effects which have been identified and is reasonably related to those adverse effects in both nature and extent. As used in this section, "cumulative effect" means the effect of the individual project in combination with the effects of past projects, other current projects, and probable future projects, including development allowed under applicable planning and zoning. The following factors shall be analyzed:

a. Evidence of use of the site by members of the general public for a continuous five-year period (such use may be seasonal).

b. Evidence of the type and character of use made by the public (vertical, lateral, blufftop, etc. and for passive and/or active recreational use, etc.).

c. Identification of any agency (or person) who has maintained and/or improved the area subject to historic public use and the nature of the maintenance performed and improvements made.

d. Identification of the record owner of the area historically used by the public and any attempts by the owner to prohibit public use of the area, including the success or failure of those attempts.

e. Description of the potential for adverse impact on public use of the area from the proposed development (including but not limited to, creation of physical or psychological impediments to public use).

(D) Required Findings For Public Access Exceptions

Any determination that one of the exceptions of Section 9.27.030(a)(3)(B) applies to a development shall be supported by written findings of fact, analysis and conclusions which address all of the following:

1. The type of public access potentially applicable to the site involved (vertical, lateral, bluff top, etc.) and its location in relation to the fragile coastal resource to be protected or the public safety concern which is the basis for the exception, as applicable.

2. Unavailability of any mitigating measures to manage the type, character, intensity, hours, season or location of such use so that fragile coastal resources or public safety, as applicable, are protected.

3. Ability of the public, through another reasonable means, to reach the same area of public tidelands as would be made accessible by an accessway on the subject land.

(E) Findings For Management Plan Conditions

Written findings in support of a condition requiring a management plan for regulating the time and manner or character of public access use must address the following factors, as applicable:

1. Identification and protection of specific habitat values including the reasons supporting the conclusion that such values must be protected by limiting the hours, seasons, or character of public use.

2. Topographic constraints of the development site.

3. Recreational needs of the public.

4. Rights of privacy of the landowner which could not be mitigated by setting the project back from the accessway or otherwise conditioning the development.

5. The requirements of the possible accepting agency, if an offer of dedication is the mechanism for securing public access.

6. Feasibility of adequate setbacks, fencing, landscaping, and other methods as part of a management plan to regulate public use.

(6) Section 9.69.080(b) contains standards for the review of recorded documents for access.

(7) Public Access in Private Development

The hotel originally known as the Ritz Carlton Laguna Niguel at the time it opened for business, located on the promontory situated above Salt Creek County Beach Park, shall be operated as a hotel facility open to the general public and shall not be converted to a private resort facility. Existing public access through the hotel site, and signage visible to the public acknowledging the public access, shall be preserved and maintained.

(b) Wetland ~~Buffer~~ Resources

To protect and maintain the City's coastal wetland resources, a minimum 100-foot buffer area around all identified wetlands shall be provided as part of all allowable development within or adjacent to wetlands, unless both the California Department of Fish and Game and the U.S. Fish and Wildlife Service provide a written determination that a lesser buffer will provide adequate protection.

(1) To minimize the disturbance to a wetland from adjacent development, the following minimum requirements shall be incorporated into the design of a buffer area:

(A) Fences and/or natural barriers shall be provided to control the entry of humans and non-wetlands animal species into the wetland. The buffer shall also provide for visual screening in those cases where resident or migratory wetland species are particularly sensitive to human impacts. Development

adjacent to wetlands shall be sited and designed to avoid excessive light or noise, where feasible. The use of walls, berms and other barriers shall be considered where excessive artificial light or noise is unavoidable.

(B) Buffers shall be designed, where necessary, to help minimize the effects of erosion, sedimentation, and pollution arising from urban and industrial activities. Any pollution control devices within the buffer area shall be maintained.

(C) Buffers shall provide habitat for species residing in the transitional zone between wetlands and uplands. The design of buffers should consider the movement of food and energy between habitats as well as the life cycles of organisms that feed or reproduce in the wetland but generally reside outside the wetland. Any revegetation work in the buffer area shall use native species from local sources.

(2) Uses within Buffer Areas

Necessary pollution control devices and passive recreational uses shall be allowed within buffer areas but only if it can be shown that these uses will not have significant adverse impacts on the wetland ecosystem or the buffer's function as described in the above criteria. These uses shall be limited to bird watching, walking, jogging, and bike riding, and may include the construction of paths and interpretive signs and display. Any paths constructed shall minimize adverse impacts to plants and animals in the buffer area.

(c) Development Adjacent to Coastal Bluffs

Development adjacent to coastal bluffs shall minimize hazards to owners, occupants, property, and the general public; ~~and~~ be environmentally sensitive to the natural coastal bluffs; and protect the bluffs as a scenic visual resource. The minimum setback from the bluff edge of a coastal bluff shall be established by the underlying zoning district. However, in no case shall the minimum setback be less than 25 feet or one which provides for 50 years of erosion, whichever is most restrictive. ~~should the geotechnical report indicate bluff stabilization~~ *{insert paragraph break}*

~~However,~~ In addition, should the geotechnical report indicate bluff stabilization is required to ensure proposed development is safe from a threat of erosion and bluff failure for fifty years, additional setbacks ~~and slope stabilization measures~~ will be required. Any approved slope stabilization measures shall be the least environmentally damaging feasible alternative and shall be designed to minimize alteration of the bluffs and be subordinate to the natural character of the bluffs.

Development setbacks from coastal bluff edges may not be the same due to varying geologic conditions and environmental conditions. The following provisions detail the items required for filing, the means by which coastal bluff edges are measured, criteria for review, development standards, and the potential development that may be permitted within the coastal bluff setback area.

(1) Coastal Bluff Edge Measurement

(A) The applicant shall provide an aerial photograph and contour map of the site clearly delineating the current coastal bluff edge, existing topography and the outline of the development proposed.

(B) The applicant shall provide a geotechnical report, prepared within one year of the date of the application submittal, which specifically addresses the coastal bluff edge and delineates the bluff edge on a graphic exhibit on both the grading plan and site plan. The report shall specifically address the methodology used to support the conclusions of the report. *{no intervening modifications}*

(2) Criteria For Review

(A) {*no intervening modifications*}

2. Historic, current, and foreseeable bluff erosion. A minimum of ~~F~~fifty (50) years of historic erosion and fifty (50) years of future erosion should be analyzed.

3. Geologic conditions including, but not limited to, soils, sediment, bedrock, drainage patterns, ~~etc.~~ and structural features such as fault lines and joints. Soils borings to bedrock and the limits and depth of alluvial removal shall be addressed to the satisfaction of the Director of Public Works.

4. Evidence of past and potential landslides and the implication of such ~~decisions~~ conditions on the structural integrity of the proposed development as well as ~~for~~ the proposed development's potential effect ~~of this development~~ on landslide activity. {*no intervening modifications*}

6. Ground and surface water conditions or variations caused by the development, such as the alteration in surface/subsurface drainage, irrigation systems, and proposed drains and subdrains. {*no intervening modifications*}

8. Any other facts that might affect slope stability, including but not limited to the effects of marine erosion on coastal bluffs, and related mitigation measures for potential impacts.

9. Any proposed development, either main structures or minor development, shall be addressed in the report. Said structures and development shall be evaluated with respect to impact on the stability of the bluff to ensure that structures and development are reasonably safe from failure and erosion given a minimum 50-year physical life. {*no intervening modifications*}

11. A bibliography of all information sources, including, but not limited to, dates of site visits.

(3) Development Standards

(A) Drainage

All surface and subsurface run-off shall be directed to a public street or an approved drainage facility to the satisfaction of the Director of Public Works. Transportation of said run-off may require area drains, roof drains, reductions in grading, appropriate pumping mechanisms, and other similar measures. Where feasible, said run-off shall be directed to sewer systems rather than storm drains which lead directly to the ocean.

(B) Landscaping {*no intervening modifications*}

(C) Requirements for Setback Deviation

Should an analysis of the geotechnical report conclude that a greater or lesser setback may be necessary than that required by this Code, the Planning Commission can make a finding that it is in the interest of the public safety to approve an additional or lesser setback as recommended. However, in no case shall a setback of less than 25 feet~~, and/~~ or less than 50 years of bluff erosion, whichever is most restrictive, be permitted.

(5) Permitted Development within the Coastal Bluff Edge Setback

Precautions are required ~~when placing structures close to the bluff edge~~ to ensure that the integrity of the bluff is not threatened. Development within the coastal blufftop setback area shall minimize landform alteration, be subordinate to the natural character of the bluff, and is limited to structures that may include retaining and non-retaining walls, fences, and drought-tolerant landscaping which conform to the setback requirements of this Chapter. Swimming pools and sunken spas are prohibited within

the setback area. ~~Minor developments and improvements may be permitted within the designated bluff edge setback area, but must be a minimum of five (5) feet from the designated bluff edge, or a minimum of fifteen (15) feet from the bluff edge when an irrevocable offer to dedicate a ten (10) foot wide lateral access easement is required~~ Additional setbacks shall be required if recommended in a geotechnical report submitted for the minor development. {*no further modifications to existing text*}

(6) Development at the Base of Coastal Bluffs

Development proposed at the base of coastal bluffs shall be required to submit appropriate geotechnical reports which provide a detailed assessment of the ultimate stability of the bluffs above the subject site. The report(s) shall document the ultimate profile (section) of the bluff face, delineate the buildable portion of the site and shall include recommendations for adequate protective structures for the project as well as recommendations for alternatives which do not require landform alteration of the bluff face nor bluff stabilization. The report(s) shall address all topics relevant to the geologic condition of the subject site and adjacent bluffs and shall be prepared to the satisfaction of the Director of Public Works. Proposals for shoreline protective devices at the base of coastal bluffs shall be consistent with the requirements of Section 9.27.030(f) below.

(7) Development on the face of Coastal Bluffs

New private staircases, the replacement of fifty percent (50%) or more of existing private staircases, or additions to/expansion of existing private staircases, which descend down bluff faces shall be prohibited. Public staircases down bluff faces shall only be permitted if geologic instability would not result, if landform alteration would be minimized, and the staircase would be visually subordinate to the natural character of the bluff face.

(d) Environmentally Sensitive Habitat Areas

(1) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(2) Development adjacent to an environmentally sensitive habitat area (ESHA) shall be required to submit a biological assessment which shall include, at a minimum, a survey of the types and quantities of sensitive species present in the ESHA, the impacts of the development on the ESHA, alternatives to the development, and mitigation measures for unavoidable impacts on the ESHA resulting from the development. Evaluations of the development's impact to the ESHA shall be sought from appropriate state and federal resources agencies.

(e) Grading

Grading activity shall be conducted in a manner that minimizes landform alteration and erosion and ensures geologic stability and structural integrity.

(1) Landform Alteration

(A) Man-made slopes shall be designed so that they can be conveniently maintained so as to minimize erosion, slope failure and unsightly conditions.

(B) Man-made slopes shall be designed to resemble natural terrain where feasible, with a minimum of long, flat, inclined plane surfaces and acute angles.

(C) Man-made slopes shall be no steeper than two (2) feet horizontal to one (1) foot vertical.

(2) Erosion Control

Appropriate mitigation measures shall be employed, including but not limited to prompt revegetation of graded areas with similar types of vegetation which previously existed on-site prior to the commencement of grading activities, and avoiding grading during the rainy season from October 15 through April 15.

Each building pad at or above street level shall drain directly to the street. Where any lot is designed in such a manner that it will not drain with a minimum one percent (1%) grade directly to a street or common drainage facility, it shall be designed in a manner that will conform to the following criteria:

(A) Lots shall be designed in such a manner that man-made slopes are not subject to sheet flow or concentrated runoff from either the same or an adjacent lot. All slopes shall be protected from surface runoff by berms, interceptor ditches, or similar measures.

(B) All water flowing off man-made slopes shall be constrained within an approved drainage device.

(f) Shoreline Protective Devices

Seawalls, revetments, and other such shoreline protective devices or construction that alters natural shoreline processes shall be permitted only if non-structural alternatives are found to be infeasible, and when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures or shoreline protective devices causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible. Any shoreline protective device which may be permitted shall be placed so that no part of a new shoreline protective device is built further onto the beach than a line drawn between the nearest adjacent corners of the nearest adjacent shoreline protective devices.

(g) Water Quality

All drainage facilities shall be designed to carry surface runoff to the nearest practical street or storm drain approved by the City and/or other appropriate governmental agency as the proper place to deposit such waters. Where feasible, structural and non-structural Best Management Practices including, but are not limited to, first flush diversion, detention/retention basins, infiltration trenches/basins, porous pavement, oil/grease separators, street sweeping, and grass swales, and other measures as may be required by State water quality agencies, shall be implemented. All drainage improvements intended or required to convey storm runoff shall be designed and installed or constructed in accordance with the applicable National Pollutant Discharge Elimination System requirements.

(h) Fire Hazards

Fuel modification within environmentally sensitive habitat areas shall be minimized to the extent feasible. Fuel modification plans shall, where feasible, employ selective thinning by hand rather than mass clear-cutting within environmentally sensitive habitat areas.

6. Chapter 9.31 - Floodplain Overlay District

9.31.040 Prohibited Uses and Structures

The following uses and structures are specifically prohibited in the Floodplain Overlay Districts: {*no modifications to (a) through (c)*}

(d) FP-3 District only: {*no modifications to (1) through (2)*}

(3) Seawalls, ~~and or~~ revetments, and shoreline ocean protective devices or construction that alters natural shoreline processes, unless required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and only when positioned, designed and constructed to eliminate adverse impacts on local shoreline sand supply as provided for in Section 9.27.030(f) of this Zoning Code. Seawalls, ~~and or~~ revetments, and other shoreline protective devices or construction that alters natural shoreline processes shall only be permitted as a last resort protective device for coastal areas. Shoreline protective devices need not be subject to the elevation requirements of the FP-3 district. {*no further modifications*}

9.31.050 Administration

{*no modifications to (a) through (b)*}

(c) Nonconforming Uses and Structures in the Floodplain Overlay Districts

{no modifications to (1) and (2); add a new Section (3) as follows}

(3) Notwithstanding other standards of the Local Coastal Program, the Floodplain Overlay District regulations for non-conforming structures set forth in the Capistrano Beach Specific Plan/Local Coastal Program and Dana Point Specific Plan/Local Coastal Program remain in effect.

9.31.060 Provisions for Flood Hazard Reduction

{*no modifications to (a) through (e)*}

(f) Coastal High Hazard Areas

Within coastal high hazard areas established in Section 9.31.020(b) the following standards shall apply: {*no modifications to (1) through (10)*}

(11) The standards for seawalls, revetments, and other shoreline protective devices or construction that alters natural shoreline processes are ~~Seawalls, except as provided~~ contained in Section 9.31.040(d)(3) and in Section 9.27.030(f). {*no further modifications*}

7. Chapter 9.61 - Administration Of Zoning

9.61.010 Intent and Purpose

{Add a new last sentence as follows} Where the standards in this Chapter and Chapter 9.69 "Coastal Development Permit" differ, the standards of Chapter 9.69 shall be used for purposes of processing coastal development permits.

9.61.040 Procedures for Applications Requiring Discretionary Action

{*no modifications to (a) through (c)*}

(d) Conflicts with Other Provisions

When the time limits established by other provisions of this Code (except for Chapter 9.69 "Coastal Development Permit") are in conflict with the time limits established by this Section, the provision with the shorter duration shall apply. *{no intervening modifications}*

(f) Procedure for Applications Made Prior to Code Amendment

When an application is filed, and deemed complete, prior to the adoption of an amendment to the Code (or prior to effective certification of the Code amendment by the Coastal Commission for development in the Coastal Zone), processing of the application may continue exempt from the provisions of the pending amendment. Applications filed or deemed complete after a code amendment is adopted (or after effective certification of the Code amendment by the Coastal Commission for development in the Coastal Zone), shall proceed pursuant to the applicable provisions of the amended Code.

9.61.050 Notice and Conduct of Public Hearing

(a) Notice of Hearings for Review of Applications

No less than ten (10) calendar days prior to the date of a public hearing on development applications, the Director of Community Development shall give notice including the time~~,~~ and the place at which the application will be heard, the identity of the hearing body or officer, nature of the application (including but not limited to the date of filing of the application, the name of the applicant, the file number assigned to the application, and a description of the development), a brief description of the general procedure of the City of Dana Point concerning the conduct of hearing and local actions, and the general location of the property under consideration. If the application is for a coastal development permit which is appealable to the Coastal Commission, the notice shall indicate this fact and shall describe the process for local and Coastal Commission appeals, including any local fees required. (14 Cal. Code of Regulations/13565, 13568). The Director shall observe the following notice requirements: *{no intervening modifications}*

(3) The notice shall be mailed via first class mail to the applicant(s); ~~to the applicant;~~ to the property owner(s) or the property owner's agent(s); to all persons listed as owners of property within five hundred (500) feet of the exterior boundary of the subject property on the notification list required in Section 9.61.040, and if the subject property is located in the Coastal Zone, to the office of the Coastal Commission having jurisdiction over the City of Dana Point and to all persons listed as occupants of dwelling units within one hundred (100) feet of the exterior boundary of the subject property on the notification list required in Section 9.61.040.

Notice shall also be provided to anyone filing a written request and paying the cost for notification and to such other persons whose property might, in the Director's judgment, be affected by the proposed application. For coastal development permit applications, the Director shall also provide notice by first class mail free of charge to all persons who have requested to be on the mailing list for that development project or the mailing list for all coastal decisions within the City of Dana Point. *{no intervening modifications}*

(5) When the proposed entitlement affects more than 1,000 (one thousand) property owners, the required notice may be provided by placing a 1/8 page display advertisement in a newspaper circulated within the City of Dana Point. Such notice shall be considered an acceptable substitute for the published notice required in subsection (2) and the mailed notice required in subsection (3). However, in the case of coastal development permit applications, newspaper notice shall not substitute for the mailed notice required in subsection (3) above. *{no intervening modifications}*

9.61.070 Procedure for Withdrawal of an Application

{add a last sentence, as described below, to the end of the existing text}
The Director of Community Development shall provide to the Coastal Commission written notice of the withdrawal of a coastal development permit application.

9.61.080 Amendments

(a) Scope of Amendments

Amendments may be proposed to change zoning districts, modify district boundaries or to revise the provisions of Title 9 to add, remove, or modify regulations pursuant to the provisions of the Government Code. Amendments may be filed to add, remove, or modify the goals and policies of the General Plan or to change the land use designations therein. Amendments to Title 9 and to the Land Use Element, Urban Design Element, and Conservation/Open Space Element of the General Plan shall not be effective unless and until effectively certified by the Coastal Commission as an amendment to the Local Coastal Program. ~~The Local Coastal Program may also be amended as necessary to reflect changes in the General Plan or Zoning Code or to modify other regulations or procedures.~~ An amendment to the Local Coastal Program shall be processed pursuant to the provisions of Section 9.61.080(e) below. *{no intervening modifications}*

(e) Local Coastal Program Amendments

A Local Coastal Program Amendment (LCPA) is required for ~~may entail~~ modifications to the policies ~~text~~, figures, tables, charts, and graphs, ~~or~~ land use designations, or land use and development standards contained in the portions of the General Plan ~~Land Use Element~~, Land Use Map, Zoning Code or the Zoning Map effectively certified by the Coastal Commission as the LCP. ~~for any property in the Coastal Zone.~~ Amendments to the existing certified Capistrano Beach and Dana Point Specific Plans/Local Coastal Programs shall be processed in accordance with the procedures contained in those LCPs. Otherwise, Local Coastal Program Amendments shall be processed in accordance with the following provisions:

(1) Frequency of Submittals of LCP Amendments to the Coastal Commission

No more than three (3) submittals of "major" LCPAs to the Coastal Commission are permitted per calendar year, although there is no limit to the number of changes which can be included in each ~~amendment~~ submittal. There is also no limit on the number of submittals of "minor" LCPAs which may be submitted to the Coastal Commission. Coastal Act/30514(b))

(2) Types of Amendments

(A) "Major Amendments"

A major amendment is any amendment which does not meet the criteria for a "minor" or a "de minimis" amendment as listed below.

(B) "Minor Amendments"

A "minor" amendment to an LCP includes but is not limited to the following:

~~The California Coastal Commission regulations provide several examples of "minor" LCPA's:~~
~~(A)~~1. Amendments to address the certification of zoning ordinances, zoning district maps or other implementing actions for newly-annexed or detached territory, when either of the following occur:

a. the certified land use plan and zoning designations of the City of Dana Point and the previous or new jurisdiction(s) of the geographic area are equivalent, or;

b. the Coastal Commission has certified proposed pre-annexation zoning for the City of Dana Point.

~~(B)~~2. Wording changes in the implementation program which make a use as designated in the zoning ordinances, zoning district maps or other implementing actions ~~which provide~~ more specific ~~guidance~~ without changing the type, location, or intensity of use and which are found by the Executive Director of the Coastal Commission or the Coastal Commission to be consistent with the land use plan as certified by the Coastal Commission.

~~(C)~~3. Changes in the ~~type~~ kinds, location, intensity or density of uses covering areas specifically certified by the Coastal Commission as acceptable alternative land uses that become effective upon occurrence of specified events (such as the availability of sewer service) as authorized in the Land Use Plan.

~~(D)~~4. For the Land Use Plan only:

a. The correction, reorganization, revisions, or deletion of certified language which when taken together does not change the kind, location, intensity or density of use or modify the resource protection measures for any area or property.

b. Additions or revisions to certified policies which impose further conditions, restrictions or limitations on any use which might adversely affect the resources of the coastal zone, if those amendments do not conflict with any policy of Chapter Three of the Coastal Act or with any other certified land use plan policy.

~~(E)~~5. Change in the notification and hearing procedures that is consistent with the requirements of the Coastal Act. (Coastal Act/30501, 30514(c); 14 Cal. Code of Regulations/13554, 13555)
~~In general, any other proposed change in the type of use would be reviewed as a major LCPA.~~

(C) "De Minimis Amendments"

1. The Executive Director of the Coastal Commission may determine that a proposed local coastal program amendment is de minimis if the Executive Director determines that a proposed amendment would have no impact, either individually or cumulatively, on coastal resources, is consistent with the policies of Chapter 3 of the Coastal Act (commencing with Section 30200), and meets the following criteria:

a. The City of Dana Point, at least twenty-one (21) days prior to the date of submitting the proposed amendment to the Executive Director, has provided public notice, and provided a copy to the Coastal Commission, which specifies the dates and places where comments will be accepted on the proposed amendment, contains a brief description of the proposed amendment, and states the address where copies of the proposed amendment are available for public review, by one of the following procedures:

i. Publication, not fewer times than required by Section 6061 of the Government Code, in a newspaper of general circulation in the area affected by the proposed amendment. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

ii. Posting of the notice by the local government both onsite and offsite in the area affected by the proposed amendment.

iii. Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

b. The proposed amendment does not propose any change in land use or water uses or any change in the allowable use of property.

2. At the time that the City of Dana Point submits the proposed amendment to the Executive Director, the City of Dana Point shall also submit to the Executive Director any public comments that were received during the comment period provided pursuant to subparagraph a. of paragraph 1. above.

3. Determination of De Minimis

a. The Executive Director shall make a determination as to whether the proposed amendment is de minimis within 10 working days of the date of submittal by the City of Dana Point. If the proposed amendment is determined to be de minimis, the proposed amendment shall be noticed in the agenda of the next regularly scheduled meeting of the Coastal Commission, in accordance with Section 11125 of the Government Code, and any public comments forwarded by the City of Dana Point shall be made available to the members of the Coastal Commission.

b. If three members of the Coastal Commission object to the Executive Director's determination that the proposed amendment is de minimis, the proposed amendment shall be set for public hearing in accordance with the procedures for either a major or minor amendment, as determined by the Executive Director, or, at the request of the City of Dana Point, returned to the City. If set for public hearing as a major amendment, the time requirements set by Sections 30512 and 30513 of the Coastal Act shall commence from the date on which the objection to the de minimis designation was made.

c. If three or more members of the Coastal Commission do not object to the de minimis determination, the de minimis local coastal program amendment shall become part of the City's certified local coastal program 10 days after the date of the Coastal Commission meeting. (Coastal Act/30514(d))

(3) Required Findings for submittal of LCPAs to the Coastal Commission:

(A) That the public and affected agencies have had ample opportunity to participate in the LCPA process.

(B) That all policies, objectives, and standards of the LCPA conform to the requirements of the Coastal Act, including that the land use plan as amended is in conformance with and adequate to carry out the Chapter Three policies of the Coastal Act.

(C) That Coastal Act policies concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the kind locations, and intensity of land and water uses.

(D) That the level and pattern of development proposed is reflected in the Land Use Plan, Zoning Code, and Zoning Map.

(E) That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development proposed after certification of the LCPA.

(F) That zoning measures are in place (prior to or concurrent with the LCPA) which are in conformance with and adequate to carry out ~~the an amendment to~~ the coastal policies of the Land Use Plan.

(4) Notice/Public Participation Standards

In addition to Notice standards contained in Section 9.61.050, the following notice provisions shall apply (except for De Minimis LCP amendments in which case the notice provisions provided for in Section 9.61.080(e)(2)(C) above shall apply):

(A) Notice of hearings on LCP documents shall be given general publication and shall be transmitted not less than ten (10) working days before the hearing. Notice of availability of public review drafts of LCPA materials and transmittal of said documents shall be made as soon as public drafts are available, but at a minimum at least six (6) weeks prior to any final action on the documents by the City. Public review drafts shall also be made readily available for perusal in local libraries, at the offices of the Community Development Department and/or other appropriate location at City Hall, and at the Coastal Commission district office having jurisdiction over the City of Dana Point.

(B) At a minimum, notices of public hearings, public review sessions, availability of public review drafts, studies, or other relevant documents or actions pertaining to the preparation and approval ~~for~~ of LCPAs must be mailed free of charge by first class mail to:

~~(A)~~1. Members of the public requesting such notices, including those on a list for all coastal decisions in the City;

~~(B)~~2. Contiguous and affected local governments and special districts;

~~(C)~~3. State and Federal agencies specified ~~by~~ in Appendix A of Local Coastal Program Manual of the California Coastal Commission ~~policies~~ or other regional, state and federal agencies that may have an interest in or be affected by the LCPA, including the Coastal Commission itself; and

~~(D)~~4. Local libraries and media. (14 Cal. Code of Regulations/13515) *{no intervening modifications}*

(6) City Council Resolution

(A) ~~One public hearing is required~~. The LCPA shall be submitted to the California Coastal Commission, after public hearing, pursuant to a Resolution adopted by the City Council which shall certify that the local coastal program is intended to be carried out in a manner fully in conformity with Division 20 of the Public Resources Code as amended, the California Coastal Act of 1976. (Coastal Act/30510, 30605; 14 Cal. Code of Regulations/13551(a))

(B) The resolution shall include an exact description of the nature of the amendment, including but not limited to whether the amendment is to the land use plan, Implementation Plan amendment, or both, and the nature of the proposed changes. Resolutions for amendments involving changes to the land use plan shall certify that the City has found that the land use plan as amended is in conformity with and adequate to carry out the Chapter Three policies of the Coastal Act. Resolutions for amendments involving changes to the Implementation Plan amendment shall certify that the City has found that the Implementation Plan amendment as amended is in conformity with and adequate to carry out the provisions of the certified land use plan. The resolution shall include the numbers of the General Plan, Zone Text, Zone Change, or other amendment(s) being submitted to the Coastal Commission to amend

the certified local coastal program. The resolution shall certify that the amendment will be submitted to the Coastal Commission for review and approval.

(C) The City Council resolution may provide that the amendment will take effect automatically upon Coastal Commission approval, or as an amendment that will require formal approval by resolution of the City Council after approval by the Coastal Commission. (Coastal Act/30501, 30512, 30513, 30519, 30605; 14 Cal. Code of Regulations/13551(b))

(D) Under either alternative in subsection 9.61.080(e)(6)(C) above, the requirements of Section 13544 or 13544.5 of the California Code of Regulations as amended must be fulfilled following Coastal Commission approval of the amendment, including that the City Council acknowledges receipt of the Coastal Commission's certification of the amendment including any terms or modifications which may have been suggested for final certification and agrees to such terms or modifications. (Coastal Act/30501, 30605; 14 Cal. Code of Regulations/13551(b))

(7) Contents of an LCPA Submittal to the Coastal Commission

At a minimum, the following shall be included in an LCPA submittal:

(A) A summary of the measures taken to provide the public and affected agencies and districts maximum opportunity to participate in the LCP amendment process; a listing of members of the public, organizations, and agencies appearing at any hearing or contacted for comment on the LCP amendment; and copies or summaries of significant comments received and of the City's response to the comments.

(B) All policies, plans, standards, objectives, diagrams, drawings, maps, photographs, and supplementary data, related to the amendment in sufficient detail to allow review for conformity with the requirements of the Coastal Act. Written documents should be readily reproducible. An amendment to the "land use plan" portion of the LCP shall include, where applicable, a readily identifiable public access component.

(C) A discussion of the LCPA's relationship to and effect on the other sections of the certified LCP.

(D) An analysis that meets the requirements of Section 13511 or alternatively Section 13514 of the California Code of Regulations as amended. As part of the analysis, the Chapter Three policies of the Coastal Act shall be applied to determine the kind, location and intensity of land and water uses that would be in conformity with the Chapter Three policies.

(E) Any environmental review documents, pursuant to the California Environmental Quality Act, required for all or any portion of the LCPA.

(F) An indication of the zoning measures that will be used to carry out the amendment to the land use plan (unless submitted at the same time as the amendment to the land use plan). (Coastal Act/30501; 14 Cal. Code of Regulations/13552)

Section 9.61.090 Administrative Modification of Standards *{no intervening modifications}*

(d) Basis for Approval or Denial of Administrative Modifications *{no intervening modifications}*

(2) In making such determination, the Director of Community Development shall find that the proposed administrative modifications meets the following criteria: *{no intervening modifications}*

(D) For development within the coastal zone, that the administrative modification would not result in significant adverse impacts either individually or cumulatively to coastal access/recreation opportunities

or coastal resources, and the development would be consistent with the policies of the Local Coastal Program certified land use plan.

Section 9.61.100 Appeal Procedures

{no modifications to (a) through (c)}

(d) Appeals of Coastal Development Permit

{Replace the existing text of Section 9.61.100(d) with the following} After the exhaustion of the appeal procedures described in Section 9.61.100(a) through (c) above, except as provided for in Section 9.69.090(a)(1) of this Zoning Code, the City's final action on a coastal development permit for development that is appealable, as described in Section 9.69.090, may be appealed to the Coastal Commission in accordance with the procedures specified in Section 9.69.090.

8. Chapter 9.67 - Variances

9.67.050 Basis for Approval, Conditional Approval, or Denial of a Variance

(a) The Planning Commission may grant a Variance, with such conditions as are found necessary to protect the public health, safety, and general welfare and assure compliance with the provisions and standards included in this Code, provided the following findings can be made: *{no intervening modifications}*

(9) That granting of the Variance would not result in adverse impacts, either individually or cumulatively, to coastal access, public recreation opportunities, or coastal resources, and the development would be consistent with the policies of the Local Coastal Program certified land use plan.

9. Chapter 9.69 - Coastal Development Permit

9.69.010 Intent and Purpose

The intent and purpose of this Chapter is to establish ~~a~~ procedures for the processing of Coastal Development Permits within the City's Coastal Zone, consistent with the City's certified Local Coastal Program and pursuant to Division 20 of the Public Resources Code and Division 5.5 of Title 14 of the California ~~Administrative~~ Code of Regulations (commencing with Section 13001).

The procedures established by this Chapter shall govern the issuance of coastal development permits by the City of Dana Point pursuant to Section 30600 of the Coastal Act. *{no modifications to the intervening paragraphs}*

The procedures described in this Chapter shall take precedence over other Chapters of the Zoning Code in the coastal zone, except in those areas regulated by the Dana Point Specific Plan/Local Coastal Program and Capistrano Beach Specific Plan/Local Coastal Program. The procedures in this Chapter shall be applied in a manner which is most protective of coastal resources and public access.

9.69.020 Coastal Development Permit Required

A Coastal Development Permit shall be required for all ~~proposed~~ development, as defined in Section 9.75.040, located within the Coastal Overlay District, except for development specifically exempted pursuant to Section 9.69.040. Coastal Development Permits may be required for development which

does not require any other approvals, discretionary or otherwise, from the City. A Coastal Development Permit shall also be required for any proposed development in the area of "Coastal Commission Permit Jurisdiction" as delineated on the Dana Point Local Coastal Program Post Certification Permit and Appeal Jurisdiction Map, filed with the City, or as subsequently amended, in which case the coastal development permit shall be obtained directly from the California Coastal Commission.

9.69.030 Authority To Grant Permit

All development undertaken after November 8, 1972, within the coastal zone as defined in the Coastal Initiative of 1972, or after January 1, 1977, within the coastal zone as defined by the Coastal Act of 1976, shall have a valid coastal development permit issued by the California Coastal Commission or by the City pursuant to provisions of the certified Local Coastal Program. (Coastal Act/30600(a))

(a) The Director of Community Development shall have the authority to approve, conditionally approve, or deny coastal development permits without a public hearing for the following types of administrative coastal development permit applications not located in uncertified areas or in the "Coastal Commission Permit Jurisdiction" area (pursuant to Section 30519 of the Coastal Act and Section 9.69.030(c) of this Zoning Code): *{no intervening modifications}*

(2) Applications or a modification to an application for improvements to existing structures ~~non-residential structures of less than 10,000 square feet of building area~~ which are not located within the appeals areas of the Coastal Overlay District.

(3) Applications for any development, not located within the appeals area of the Coastal Overlay District, which is not a division of land and is specifically authorized as a principal permitted use in the certified local coastal program and does not require a conditional use permit, site development permit, variance, or any other discretionary permit ~~temporary uses and structures described in Section 9.39 of this Code~~.

(4) Applications for any other development not in excess of one hundred thousand dollars ($100,000)~~improvements to create new, or enhance existing, parking facilities and landscaping on existing legal lots in urbanized areas. Such improvements shall include, but not be limited to, expansion, repaving, resurfacing and/or providing new or improved landscaping or irrigation~~.

(5) Notwithstanding the specific uses listed in Sections 9.69.030(a)(1) through 9.69.030(a)(4) above, administrative coastal development permits shall not be processed for any of the following types of development, which shall instead be processed through the regular coastal development permit process as specified in this Chapter:

(A) Any division of land, including but not limited to subdivision pursuant to the Subdivision Map Act, lots splits and lot-line adjustments.

(B) Any development involving a structure or similar integrated physical construction which lies partly inside and partly outside the Coastal Commission's appeal area.

(C) Any development involving a structure or similar integrated physical construction which lies partly inside and partly outside the Coastal Commission's area of retained permit jurisdiction. *{no intervening modifications}*

The Director of Community Development shall process applications for administrative coastal development permits in accordance with the procedures set forth in Section 9.69.110 of this Zoning Code. If the Director of Community Development receives an application for an administrative coastal development permit, and if the Director of Community Development finds that the application does not

qualify as such within the criteria established in Sections 9.69.030(a)(1) through 9.69.030(a)(4) above, she or he shall notify the applicant that the permit application cannot be processed administratively and must comply with the procedures for regular coastal development permits provided in this Chapter. The Director of Community Development, with the concurrence of the applicant, may accept the application for filing as a regular coastal development permit and shall adjust the application fees accordingly.

(b) The Planning Commission shall have the authority to approve, conditionally approve, or deny Coastal Development Permits for the following types of coastal development permit applications not located in uncertified areas or in the "Coastal commission Permit Jurisdiction" area. *{no intervening modifications}*

(3) Applications or a modification to an application for non-residential structures ~~exceeding 10,000 square feet~~ located within the Coastal Overlay District which do not fall into one of the classes of development specified in Sections 9.69.030(a)(1) through 9.69.030(a)(4) above.

(c) The Coastal Commission ~~shall have~~ retains the authority to approve, conditionally approve, or deny Coastal Development Permits for development proposed in uncertified areas of the City of Dana Point, and in the "Coastal Commission Permit Jurisdiction" area delineated on the Dana Point Local Coastal Program Post Certification Permit and Appeal Jurisdiction Map prepared by the Coastal Commission and a copy of which is filed with the City, or as subsequently amended. The areas of Coastal Commission Permit Jurisdiction includes all tidelands, submerged lands, and public trust lands, whether filled or unfilled within the coastal zone. (Coastal Act/30519(b))

However, coastal development permit authority has been delegated to the City for certain public trust lands that have been determined by the Coastal Commission to be filled and developed and which are located within an area which is committed to urban uses. Coastal development permits issued by the City in these areas are appealable to the Coastal Commission. (Coastal Act/30613(a))

(1) Where a proposed development lies partially within the area of "Coastal Commission Permit Jurisdiction" and partially within the Coastal Overlay District, and the development is physically integrated, the Coastal Commission shall be the responsible agency for the issuance of any Coastal Development Permit for the entire development. That portion of the development that lies within the Coastal Overlay District shall be deemed to be within an area of deferred certification and the Commission shall approve a coastal development permit if the entire development is consistent with the policies of Chapter 3 of the Coastal Act. In addition, the Coastal Commission has the authority to approve, conditionally approve, or deny coastal development permits for developments approved by the City but which have been appealed to the Coastal Commission consistent with the requirements of this Zoning Code. Where an appealed development is a physically integrated development that lies both within and without the appeals area shown on the Post Certification Permit and Appeal Jurisdiction Map, the Coastal Commission shall have the authority to act on the entire development on appeal. (Coastal Act/30519, 30603)

(2) The following shall apply to all proposed development in the uncertified Laguna Niguel/Monarch Beach segment of the City of Dana Point for which approval of a coastal development permit application is pending at the time of certification of this Local Coastal Program:

(A) Applications Pending before the California Coastal Commission

1. Any coastal development permit application for development in an uncertified area that was submitted to the Coastal Commission prior to effective certification of a Local Coastal Program and is not filed complete as of the date of effective certification shall be withdrawn and resubmitted to the City. The standard of review for such application shall be the requirements of the certified Local Coastal Program and, for development between the sea and the first public road paralleling the sea, the

Chapter 3 public access and recreation policies of the Coastal Act. Any application fee paid to the Coastal Commission shall be refunded to the applicant.

2. Any coastal development permit application for proposed development within the currently uncertified areas of the City which the City preliminarily approved before effective certification of the Local Coastal Program and for which an application has been filed complete with the Coastal Commission may, at the option of the applicant, remain with the Coastal Commission for completion of review and action. Coastal Commission review of any such application shall be based solely upon the requirements of this certified Local Coastal Program and, for development between the sea and the first public road paralleling the sea, the Chapter 3 public access and recreation policies of the Coastal Act. Alternatively, the applicant may resubmit the proposal to the City through an application for a coastal development permit pursuant to the requirements of this certified Local Coastal Program. The standard of review for such application shall be the requirements of this certified Local Coastal Program and, for development between the sea and the first public road paralleling the sea, the Chapter 3 public access and recreation policies of the Coastal Act. Under this option, any application fee paid to the Coastal Commission shall be refunded to the applicant. (Coastal Act/30501, (14 Cal. Code of Regulations/13546)

(B) Applications Pending before the City of Dana Point

The standard of review for any coastal development permit application pending before the City of Dana Point for proposed development located within the certified areas of the City shall be the requirements of the certified Local Coastal Program. The requirements contained in an amendment to the certified Local Coastal Program shall not be effective in the certified area until the amendment has been effectively certified by the Coastal Commission.

(3) Prior Coastal Commission Approval

(A) In the case of a coastal development permit which was approved by the Coastal Commission, whether or not it has been vested prior to the date of effective certification of the Local Coastal Program, a separate coastal development permit from the City for the same development shall not be required except that:

1. No material change may be made in any such development previously approved by the Coastal Commission without Coastal Commission approval of an amendment to the Coastal Commission's coastal development permit; and,

2. If the coastal development permit approved by the Coastal Commission expires, a new coastal development permit for the same development shall be obtained from the City.

(B) Development authorized by a coastal development permit issued by the Coastal Commission either prior to effective certification of a Local Coastal Program or on appeal after certification remains under the jurisdiction of the Coastal Commission for the purposes of condition compliance, amendment, extension, reconsideration and revocation.

(C) Ritz Cove

The Coastal Commission approved Coastal Development Permit 5-85-94 for the subdivision of 101 residential lots, and the construction of a home on each of those lots, provided the homes are constructed in accordance with the adopted codes, covenants, and restrictions. Therefore, separate coastal development permits are not required for the construction of each of the individual 101 homes, since the construction of the homes is already approved under Coastal Development Permit 5-85-94.

(D) Coastal Development Permit P-79-5539

Development authorized by Coastal Development Permit P-79-5539, including both development approved on condition that an additional coastal development permit be obtained, and development approved on condition of the submission of additional plans for the review and approval of the Executive Director of the Coastal Commission, remains under the jurisdiction of the Coastal Commission for purposes of condition compliance and amendment. Condition compliance includes both obtaining a coastal development permit from the Coastal Commission for development that was approved on condition that a separate coastal development permit be approved, and obtaining approval from the Executive Director of the Coastal Commission for plans for development that was approved on condition of the submission of final plans. Coastal development permits, or approval of plans by the Executive Director of the Coastal Commission, for development authorized by Coastal Development Permit P-79-5539 shall be obtained from the California Coastal Commission.

9.69.040 Exemptions

The types of development listed below ~~Development projects listed in this section~~ are exempt from the requirement to ~~have an approved~~ obtain a Coastal Development Permit. ~~from the City of Dana Point.~~ A current record of all projects which are ~~categorically~~ exempt from Coastal Development Permits shall be available for review by the public and shall be sent to the Coastal Commission and shall include the following information: name of applicant, location of the project, and brief description of the project.

(a) Development projects included in any categorical exclusion list adopted pursuant to ~~the certified Local Coastal Program and to~~ Sections 30610(e) and 30610.5 of the Public Resources Code and Subchapter 5 of Title 14 of the California Code of Regulations (Sections 13240 et. seq.) after certification of the Local Coastal Program.

(b) Improvements to an existing structure which do not changed the use of the structure are exempt, except the ~~following~~ types of improvements listed below, which are not exempt:

For purposes of this subsection, structures on the property normally associated with a single-family residence, such as garages, swimming pools, fences, and storage sheds, but not including guest houses or self-contained residential units, shall be considered part of an existing single-family residence. Further, for purposes of this subsection, landscaping on the lot, and all structures directly attached to the structure being subjected to improvements, shall be considered part of the subject structure, whether the existing structure is residential or not.

(1) Improvements to any structure located on a beach, wetland, or seaward of the mean high tide line or where the ~~dwelling~~ structure or proposed improvement would encroach within fifty (50) feet of the edge of a coastal bluff as described in Chapters 9.27 and 9.75.

(2) Improvements ~~onto~~ any structure located between the sea and the first public road paralleling the sea or within three hundred (300) feet of the inland extent of a beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, or within significant scenic resources areas as designated by the certified Local Coastal Program or the Coastal Commission when such improvements would constitute or result in any of the following:

(A) An increase of ten percent (10%) or more of the internal floor area of the structure ~~the existing structures on the building site~~;

(B) An increase in the floor area in any amount when improvements to the structure have ~~has~~ previously been ~~improved~~ exempted in compliance with ~~these exemptions~~ this subsection;

(C) The construction of an additional story or a loft or any increase in height of more than ten (10) percent of the existing height of the structure (for single-family residential improvements, increases in the height of significant non-attached structures such as garages, fences, shoreline protective devices or docks are subject to this provision also); ~~or~~

(D) The construction, placement, or establishment of any detached structure; or~~.~~

(E) The demolition of more than 50 percent of the exterior walls of an existing structure.

(3) Any significant alteration of land forms~~, or~~ including removal or placement of vegetation in the following areas: on a beach, wetland, or sand dune;~~,~~ in an area of natural vegetation designated by the City of Dana Point by resolution as significant natural habitat; within one hundred (100) feet or, for a single family dwelling, within fifty (50) feet of the edge of a coastal bluff, as described in Chapter 9.27;~~, or in an area of natural vegetation designated by the Coastal Commission as significant natural habitat~~ or, for structures other than single-family residences, within one hundred (100) feet of streams. *{no intervening modifications}*

(5) Improvements in an area which the Coastal Commission has determined to have critically short water supply that must be maintained for the protection of coastal resources or public recreational use, when such improvement would be a major water ~~user~~ using development (not essential to residential use if for a single-family or multiple-family residence) including, but not limited to, swimming pools ~~and~~ or the construction or extension of landscape irrigation systems.

(6) Any improvement when the Coastal Development Permit issued for the original structure indicated that future additions/improvements would require a Coastal Development Permit.

(7) Improvements to any structure or change in occupancy which would result in ~~an~~ a change ~~increase~~ in the intensity of the uses on the building site.

(8) Improvements pursuant to a conversion of existing structures (other than single-family residences and their associated structures) from a multiple unit rental use or visitor serving commercial use to a condominium, stock cooperative, or time share project.

(9) Improvements made to a ~~A~~ public works facility. (Coastal Act/30333, 30610(a) and 30610(b); 14 Cal. Code of Regulations/13250 and 13253)

The improvements listed above which are not exempt require a the coastal development permit in accordance with the requirements of this Chapter.

(c) Maintenance dredging of existing navigation channels or moving dredged material from such channels to a disposal area outside the Coastal Zone, pursuant to a permit from the United States Army Corps of Engineers, or to a disposal facility, area or site within the Coastal Zone for which an approved coastal development permit has been issued or for which a federal consistency determination has been approved by the Coastal Commission. However, Section 9.69.040(d)(2) of this Zoning Code below specifies certain types of dredging which are not exempt. (Coastal Act/30333; 30610(c))

(d) Repair or~~f~~ maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of such repair or maintenance activities, except the following types of development which are not exempt:

(1) Repair or maintenance of a ~~sea wall~~ seawall, revetment, bluff retaining wall, breakwater, groin, culvert, outfall or similar shoreline work which involves one or more of the following: {*no intervening modifications*}

~~(4)~~(D) The presence, whether temporary or permanent, of ~~permanent~~ mechanized construction equipment or construction materials on any sand area or bluff or within twenty (20) feet of coastal waters or streams.

~~(5)~~(2) Any method of routine maintenance dredging that involves: {*no intervening modifications*}

(B) The placement of dredged spoils of any quantity on any sand area, within fifty (50) feet of the edge of a coastal bluff as described in Chapter 9.27, ~~or~~ within an environmentally sensitive habitat area, or within twenty (20) feet of coastal waters or streams;

(C) {no modifications} (Coastal Act/30610(d); 14 Cal. Code of Regulations/13252(a)(2))

~~(6)~~(3) Any repair or maintenance to facilities or structures or work located in any sand area, within fifty (50) feet of the edge of a coastal bluff as described in Chapter 9.27, within fifty (50) feet of or in an environmentally sensitive habitat area; or within twenty (20) feet of any coastal waters or streams that include: {*no intervening modifications*}

(B) The presence, whether temporary or permanent, of ~~permanent~~ mechanized construction equipment or construction materials on any sandy area.

(4) Unless destroyed by natural disaster, the replacement of fifty (50) percent or more of a seawall, revetment, bluff retaining wall, breakwater, groin or similar protective work under one ownership is not repair and maintenance according to this subsection but instead constitutes a replacement structure requiring a coastal development permit. (Coastal Act/30610(d); 14 Cal. Code of Regulations/13252)

(e) The installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and any development approved pursuant to this Chapter. (Coastal Act/30610(f)) {*no intervening modifications*}

{Add the following language at the end of existing subsection (f)} As used in this subsection:

(1) "Disaster" means any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of its owner.

(2) "Bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(3) "Structure" includes landscaping and any erosion control structure or device which is similar to that which existed prior to the occurrence of the disaster. (Coastal Act/30610(g))

{delete the existing text for subsections (g) and (h) and replace with the language from existing subsections (i) and (j), respectively, as modified below}
~~(i)~~(g) Notwithstanding the above provisions, the Director of Community Development shall have the discretion to exempt ~~T~~the ongoing routine repair and maintenance activities of local governments, state agencies, and public utilities (such as railroads) involving shoreline works protecting transportation roadways, as well as the activities described in the "Repair, Maintenance, and Utility Hook-Up Exclusion from Permit Requirements" adopted by the Coastal Commission on September 5, 1978. (Coastal Act/30610(d); 14 Cal. Code of Regulations/13252(c))
~~(j) Minor improvements to an existing structure including:~~

~~(1) Patios, patio covers, decks, windscreens, spas, seating, barbecues or exterior stairways located within the applicable setbacks. Caisson supported decks shall require a Site Development Permit application for properties in Flood Plain Zones as part of the building permit plan check.~~

~~(2)~~(h) Interior modifications to an existing structure that do not result in the enlargement or expansion of the cubic area of the structure, except that a change in the intensity or density of use of the structure, or the reconstruction of fifty (50) percent or more of the exterior walls of the existing structure, is not exempt. Such modifications shall comply with the applicable sections of Chapter 8.06 of the Zoning Code and of this Chapter 9.69.
~~(3) Garages and carports.~~
~~(k) The presence of temporary mechanized construction equipment or construction materials on any sand area or bluff or within twenty (20) feet of coastal waters or streams.~~

(i) Notwithstanding the provisions of Chapter 9.39 "Temporary Uses," temporary events consistent with guidelines adopted by the Coastal Commission may be exempt from coastal development permit requirements.

9.69.050 Application for Coastal Development Permit

For all development proposed to be located within the Coastal Zone or Coastal Overlay District, an application ~~Application~~ for a Coastal Development Permit shall be made to the Director of Community Development in accordance with the following procedures, except in those areas designated as "Coastal Commission Permit Jurisdiction" in which case an application shall be made to the California Coastal Commission or its successor agency.

(a) The application shall be made by the property owner of record, ~~or~~ the owner's authorized agent, or any person with a legal right, interest or other entitlement to use the property for the proposed development or said person's authorized agent. A signed affidavit from the property owner of record may serve as proof of the legal right to use property for a proposed development. Prior to the issuance of a building permit, the applicant shall demonstrate the legal ability to comply with all conditions of approval of the coastal development permit. (Coastal Act/30601.5)

(b) Application for a Coastal Development Permit shall be made on forms provided by the Community Development Department, and shall include, at a minimum, the following information: {*no intervening modifications*}

(4) Where the application includes proposed demolition, the application shall also include the submittal of the following:

(A) A description of the existing structure(s), including but not limited to building height, enclosed and non-enclosed floor area, number of stories, and number of parking spaces.

(B) Building plans of the existing structure(s), if available.

(5) A dated signature by or on behalf of each of the applicants, attesting to the truth, completeness and accuracy of the contents of the application and, if the signer of the application is not the applicant, written evidence that the signer is authorized to act as the applicant's representative and to bind the applicant in all matters concerning the application.

(6) A declaration signed by the applicant certifying that the applicant has posted a notice of the coastal development permit application in accordance with Section 9.69.090(a), and that the applicant will make a good faith effort to maintain, and replace if necessary, the posting until the application has been acted on by the City.

(7) The following additional, current information (which may be in both written and graphic form), specific to the subject site, shall be required if applicable. In addition, plans to mitigate adverse impacts, plans to monitor the mitigation, and an alternatives analysis shall be required where applicable.

(A) For sites adjacent to, containing, or potentially containing wetland resources and/or environmentally sensitive habitat areas, a wetlands determination, biological assessment shall be required. Evaluations of the proposed development's impact on the wetland resources shall be sought from appropriate state and federal resources agencies, including but not limited to the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service.

(B) For sites adjacent to, containing or potentially containing cultural resources, an archaeological and/or paleontological survey prepared by a licensed archaeologist/paleontologist shall be required.

(C) For sites adjacent to, containing or potentially containing areas of geologic instability, a geotechnical report prepared by a licensed geologic engineer shall be required.

(D) For proposed shoreline protective devices, a study on the effects to shoreline sand supply resulting from the device, impacts to public access/recreation and sensitive habitat, effects on adjacent properties, and justification of the necessity for the proposed device, monitoring plans, and the factors described in Section 9.27.030(a)(5)(B)2. of this Zoning Code, prepared by a licensed coastal engineer shall be required.

(E) For proposed development which would provide less parking than required in Chapter 9.35 of this Zoning Code, either a joint use parking plan prepared pursuant to Section 9.35.060(c)(3) or a shared parking program prepared pursuant to Section 9.35.060(c)(4) of this Zoning Code.

(F) For proposed development which would result in significant adverse impacts to public views, a visual impact study prepared pursuant to the requirements of the Urban Design Element of the General Plan.

(G) For proposed development which would result in water quality impacts, a plan shall be submitted to meet state and federal requirements regarding water quality. Such a plan should include, at a minimum, the following: structural and non-structural "best management practices", stormwater pollution prevention plans, drainage plans, and direction of runoff to the sewer system where possible rather than into storm drains which ultimately empty into rivers or the ocean.

(H) A plan to mitigate any unavoidable significant adverse impacts to any of the above coastal resources which reasonably would be known to result from the proposed development shall be submitted.

(8) A written description of the proposed development including any feasible alternatives or any feasible mitigation measures available which would substantially lessen any significant adverse impact which the development may have on the environment. Any approved documents prepared pursuant to the California Environmental Quality Act (commencing with Section 21000 of the Public Resources Code as amended) shall be submitted. Additional environmental impact analysis may be required to make the necessary findings required by the certified Local Coastal Program. For purposes of this subsection, the term "significant adverse impact on the environment" shall be defined as contained in the California Environmental Quality Act and the Guidelines adopted pursuant thereto.

~~(4)~~(9) Any additional information determined by the Director of Community Development to be necessary for evaluation of the proposed development.

(9) The application form shall also provide notice to applicants that failure to provide truthful and accurate information necessary to review the permit application or to provide public notice as required by these regulations may result in a delay in processing the application or may constitute grounds for revocation of the coastal development permit. (Coastal Act/30333; 14 Cal. Code of Regulations/13053.5, 13054(b)) {*no intervening modifications*}

(d) Determination of Class of Development/Appeal Jurisdiction

(1) At the time an application for a proposed development in the coastal zone is submitted, the Director of Community Development (or his/her designee) shall determine and inform the applicant that the proposed development is one of the following:

(A) Within the area of "Coastal Commission Permit Jurisdiction" and thus the applicant must obtain a coastal development permit directly from the Coastal Commission;

(B) Appealable to the Coastal Commission pursuant to Section 9.61.100(d)(2) and requires a coastal development permit from the City;

(C) Not appealable to the Coastal Commission pursuant to Section 9.61.100(d)(2) and requires a coastal development permit from the City;

(D) Exempt or categorically excluded and does not require a coastal development permit pursuant to Section 9.69.040 of this Zoning Code.

(2) The determination that a proposed development is exempt, categorically excluded, non-appealable or appealable shall be based on the certified Local Coastal Program, including any maps, categorical exclusions, land use designations, and zoning ordinances which are adopted as part of the certified Local Coastal Program.

(3) Where an applicant, interested person, or the City of Dana Point has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is exempt, categorically excluded, non-appealable, or appealable:

(A) The Director of Community Development shall make the determination as to what type of development is being proposed (i.e. exempt, categorically excluded, non-appealable, or appealable) and shall inform the applicant of the notice and hearing requirements for that particular development.

(B) If the determination of the Director of Community Development is challenged by the applicant or an interested person, or if the City of Dana Point wishes to have a Coastal Commission determination as to the appropriate designation, the City shall notify the Coastal Commission by telephone of the dispute/question and shall request an Executive Director's opinion;

(C) The Executive Director shall, within two (2) working days of receipt of the City's request (or upon completion of a site inspection where such inspection is warranted), transmit his or her determination as to whether the development is categorically excluded, non-appealable or appealable;

(D) If the Executive Director's determination is not in accordance with the determination of the Director of Community Development, the Coastal Commission shall hold a hearing for purposes of determining the appropriate designation for the development. The Coastal Commission shall schedule the hearing on the determination for the next Coastal Commission meeting in Southern California following the Executive Director's determination. (Coastal Act/30333, 30620; 14 Cal. Code of Regulations/13569)

{Switch the order of, and renumber, Sections 9.69.060 and 9.69.070 as follows}

~~9.69.070~~ 9.69.060 Notice and Public Hearing

For ~~all project applications~~ coastal development permit applications requiring a public hearing, the Planning Commission, City Council on appeal, other approving body as may be specified pursuant to Section 9.69.030, or Director of Community Development shall conduct a noticed public hearing in accordance with the provisions of Section 9.61.050. If any of the notice and public hearing requirements of Section 9.69.060 conflict with the requirements of Section 9.61.050, the requirements of Section 9.69.060 shall take precedence for purposes of coastal development permit applications.

(a) Posting of Site

At the time the application is submitted for filing, the applicant must post, at a conspicuous place, easily read by the public and as close as possible to the site of the proposed development, notice that an application for a permit for the proposed development has been submitted to the City of Dana Point. Such notice shall contain a general description of the nature of the proposed development. The City shall furnish the applicant with a standardized form to be used for such posting. If the applicant fails to submit a signed declaration of posting as required by Section 9.69.050(6), the City shall refuse to file the application.

(b) Conduct of Public Hearing

Public hearings on coastal development permits shall be conducted in accordance with the provisions of Section 9.61.050; provided that interested persons are given a reasonable opportunity to appear before and present their viewpoints to the approving authority holding the public hearing, either orally or in writing. (Coastal Act/30333, 30620; 14 Cal. Code of Regulations/13566)

(c) Notice of City Action when Hearing Continued

If a decision on a development permit is continued by the local government to a time which is neither previously stated in the notice provided pursuant to Section 9.61.050 of this Zoning Code, nor announced at the public hearing as being continued to a time certain, the City of Dana Point shall provide notice of the further hearings (or action on the proposed development) in the same manner, and within the same time limits, as established within Section 9.61.050 of this Zoning Code. (Coastal Act/30333, 30620; 14 Cal. Code of Regulations/13567)

(d) A public hearing is not required for the coastal development permits issued by the Director of Community Development pursuant to Section 9.69.030(a).

(e) Waiver of Public Hearing Requirements

(1) The requirement for a public hearing on a coastal development permit application for "minor development" as defined in Section 9.69.060(e)(2) below, may be waived only if both of the following occur:

(A) A Notice of intent to waive the public hearing requirement containing the information identified below in Section 9.69.060(e)(3) is provided to all persons who would otherwise be required to be notified of a public hearing pursuant to Section 9.61.50 and 9.69.060 of this Zoning Code as well as any other persons known to be interested in receiving such notice. For purposes of this section only, "any person" means anyone, whether a neighbor or not.

(B) No written request for a public hearing on the coastal development permit application in question is received by the Director of Community Development within fifteen (15) working days from the date of sending the notice pursuant to Section 9.69.060(e)(1)(A) above.

(2) For purposes of this section only, "minor development" means a development which both meets the definition of "development" as defined in Section 9.75.040 of this Zoning Code and which the Director of Community Development determines satisfies all of the following requirements:

(A) Is consistent with the certified local coastal program as defined in Chapter 9.75 of this Zoning Code, including but not limited to the land use designation for the site and all applicable land use plan resource protection policies and related implementing Zoning Code provisions and standards;

(B) Requires no discretionary approvals other than a coastal development permit; and

(C) Has no adverse effect either individually or cumulatively (as "cumulatively" is defined in Section 9.75.030 of this Zoning Code) on coastal resources or public access to the shoreline or along the coast.

(3) Content of Notice for Waiver of Public Hearing Requirements

The notice of intent to waive public hearing requirements for a coastal development permit pursuant to this section shall include, at a minimum, the following:

(A) The date of the notice.

(B) An indication that the coastal development permit either is or is not appealable to the Coastal Commission pursuant to Section 9.69.090 of this Zoning Code.

(C) The last date, which shall be no less than fifteen (15) working days from the date of the notice, to submit a written request for a public hearing.

(D) The date the coastal development permit may be granted after the fifteen (15) working day notice period, if a public hearing is not requested in writing within the fifteen (15) working day notice period.

(E) The last date to submit written comments other than a request for a public hearing.

(F) A statement that failure by a person to request a public hearing may result in the loss of that person's ability to appeal to the Coastal Commission any action taken by the Planning Commission on a coastal development permit application which is appealable to the Coastal Commission.

(G) All other information required in a hearing notice pursuant to Section 9.61.050 of this Zoning Code.

(4) If a written request for a public hearing on the subject coastal development permit application is received during the fifteen (15) working day notice period, a noticed public hearing pursuant to Chapters 9.61 and 9.69 of this Zoning Code shall be conducted.

(5) All findings required pursuant to Section 9.69.050 of this Zoning Code shall be made for any coastal development permit application approved through Section 9.69.060(e).

(6) A Notice of Final Action pursuant to Section 9.69.100 of this Zoning Code shall be distributed for any coastal development permit application approved through Section 9.69.060(d). (Coastal Act/30624.9)

~~9.69.060~~ 9.69.070 Basis For Action on Coastal Development Permit Applications

Approval, conditional approval, or denial of any Coastal Development Permit by the City of Dana Point or the Coastal Commission on appeal shall be based upon compliance with the provisions of the

~~Dana Point Zoning Code, Dana Point General Plan,~~ certified Dana Point Local Coastal ~~Plan~~ Program and, for development between the sea and the first public road paralleling the sea, the public access and recreation policies of Chapter 3 of the Coastal Act. ~~and the Public Resources Code Section 30600.~~

(a) Approvals of Coastal Development Permits

In order for a Coastal Development Permit to be approved, all the following findings must be made, in writing, in addition to the findings required to approve other applications being considered concurrently:

{Delete the existing text of Sections (a) through (f). Replace with new language as shown below}
(1) That the proposed development is in conformity with the certified Local Coastal Program as defined in Chapter 9.75 of this Zoning Code. (Coastal Act/30333, 30604(b); 14 Cal. Code of Regulations/13096)

(2) That the proposed development, if located between the nearest public roadway and the sea or shoreline of any body of water, is in conformity with the public access and public recreation policies of Chapter Three of the Coastal Act. (Coastal Act/30333, 30604(c); 14 Cal. Code of Regulations/13096)

(3) That the proposed development conforms with Public Resources Code Section 21000 and following and that there are no feasible mitigation measures or feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment. (Coastal Act/30333; 14 Cal. Code of Regulations/13096)

(b) Denials of Coastal Development Permits

In order for a Coastal Development Permit to be denied, all the following findings must be made, in writing, in addition to the findings required to deny other applications being considered concurrently:

(1) That the proposed development is not in conformity with the certified Local Coastal Program as defined in Chapter 9.75 of this Zoning Code. (Coastal Act/30333, 30604(b); 14 Cal. Code of Regulations/13096)

(2) That the proposed development, if located between the nearest public roadway and the sea or shoreline of any body of water, is not in conformity with the public access and public recreation policies of Chapter Three of the Coastal Act. (Coastal Act/30333, 30604(c); 14 Cal. Code of Regulations/13096)

(c) Additional findings for public access are found in Section 9.27.030(a) of the Zoning Code.

9.69.080 Decision by the Director of Community Development or Planning Commission

(a) A copy of the notice of decision shall be filed with the City Clerk. ~~and mailed within five (5) working days~~ If the decision on a coastal development permit application by the Director of Community Development is not appealed to the Planning Commission, or the decision of the Planning Commission on a coastal development permit application is not appealed to the City Council, in accordance with the appeal provisions of Section 9.61.100(a), then a Notice of Final Action shall be sent to the Executive Director of the Coastal Commission and any person requesting such notice in accordance with the provisions of Section 9.69.100 of this Chapter.

(b) In approving an application for a Coastal Development Permit or other authorization for development, the Director of Community Development or Planning Commission (or City Council on appeal) may impose any conditions necessary to enable the required findings of fact to be fairly made and/or to be sustained in their validity. Such conditions may include, but need not be limited to,

provision for public access and open space or conservation easements and the relocation and/or redesign of proposed site improvements. When conditions requiring the recordation of legal documents ~~pertaining to public access and/or open space or conservation easements~~ are imposed, notification of such action shall be submitted to the Executive Director of the Coastal Commission in accordance with the following:

(1) A copy of the coastal development permit conditions, findings of approval, and drafts of ~~A~~any legal documents ~~used in complying with~~ proposed to implement the required conditions pertaining to public access and open space or conservation easements shall be forwarded to the Executive Director of the Coastal Commission for review and approval ~~of the format~~ of such legal documents prior to the issuance of the Coastal Development Permit.

The Executive Director shall have fifteen (15) working days from the receipt of the documents to review:

(A) the legal adequacy of the document(s) to carry out the purposes of the permit conditions or certified land use plan;

(B) the uniform application of the document(s) with other documents required throughout the coastal zone; and

(C) the document's consistency with the requirements of potential participating agencies.

(2) The Coastal Development Permit shall be issued fifteen (15) working days after ~~mailing~~ the date of receipt of such documents ~~to~~ by the Executive Director of the Coastal Commission, unless the Executive Director has notified the Director of Community Development within the fifteen (15) working days that any such legal documents are inadequate.

(3) If the Executive Director has ~~recommended revisions to the format of~~ notified the Director of Community Development that the legal documents are inadequate, the Coastal Development Permit shall not be issued until the Director of Community Development has been notified by the Executive Director in writing that the inadequacies ~~deficiencies~~ have been resolved to the satisfaction of the Executive Director.

(4) ~~Documents for the recording of any easements shall also be submitted to the Executive Director for review and approval as to the format of such documents, and the~~ The Coastal Development Permit shall not be issued to the applicant until the ~~easements~~ required documents have been recorded and verification of such recordation has been sent to, and receipt acknowledged by, the Executive Director.

(5) Alternatively, only in the case of public access dedications/easements or dedications/easements for open space/conservation areas, the Director of Community Development may request that the Coastal Commission delegate, to the Director of Community Development, the authority to process the recordation of the necessary legal documents, subject to the following:

(A) The Director of Community Development identifies the City department, other public agency, or private or non-profit association that has the resources and authorization to accept, open, operate, and maintain the public accessways and/or open space/conservation areas required as a condition of approval of coastal development permits; and

(B) Upon completion of the recordation of the documents, the Director of Community Development shall forward a copy of the coastal development permit conditions and findings of approval and copies of the legal documents pertaining to the public access and open space/conservation conditions to the Executive Director of the Coastal Commission. (Coastal Act/30333, 30620; 14 Cal. Code of Regulations/13574) *{no intervening modifications}*

9.69.090 Appeals to the Coastal Commission

{delete the existing text of Section 9.69.090 and replace with the following}
The final action by the City, as described in Section 9.69.100(a), on a coastal development permit which is appealable to the Commission as described in Section 9.69.090(b), may be appealed in accordance with the procedures described in this Section.

(a) Exhaustion of Local Appeals

An appellant shall be deemed to have exhausted local appeals where the appellant has pursued his or her appeal to the Planning Commission and/or City Council, as described in the City of Dana Point appeal procedures in Sections 9.61.100(a) through (c) of this Zoning Code; except that exhaustion of all local appeals shall not be required if any of the following occur:

(1) The City of Dana Point requires an appellant to appeal to more local appellate bodies than have been certified as appellate bodies for permits in the Coastal Zone, in the implementation section of the local coastal program.

(2) An appellant was denied the right of the initial local appeal by a local ordinance which restricts the class of persons who may appeal a local decision.

(3) An appellant was denied the right of local appeal because local notice and hearing procedures for the development did not comply with the provisions of this Chapter.

(4) The City of Dana Point charges an appeal fee for the filing or processing of appeals. (Coastal Act/30333, 30620; 14 Cal. Code of Regulations/13111)

(b) A final action taken by the City of Dana Point on a coastal development permit application may be appealed to the Coastal Commission for only the types of development defined in Section 9.75.010 of the Zoning Code under "Appealable Development, Coastal". (Coastal Act/30603(a))

(c) Grounds for appeal to the Coastal Commission

(1) The grounds for an appeal of a coastal development permit approved by the City of Dana Point for a development listed in Section 9.69.090(b) above shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in Chapter Three of the Coastal Act. (Coastal Act/30603(b)(1))

(2) The grounds for any appeal of a coastal development permit denied by the City of Dana Point for a major public works facility or a major energy facility, as such facilities are defined in Section 9.75.130 of the Zoning Code, shall be limited to the allegation that the development conforms to the standards set forth in the certified local coastal program and the public access policies set forth in Chapter Three of the Coastal Act. (Coastal Act/30603(b)(2))

(d) Filing of an Appeal to the Coastal Commission

(1) An appellant may contact the Coastal Commission for the appropriate forms and instructions to file an appeal. An appeal must contain the following information:

(A) the name and address of the permit applicant and appellant;

(B) the date of the local government action;

(C) a description of the development;

(D) the name of the governing body having jurisdiction over the project area;

(E) the names and addresses of all persons who submitted written comments or who spoke and left his or her name at any public hearing on the project, where such information is available;

(F) the names and address of all other persons known by the appellant to have an interest in the matter on appeal;

(G) the specific grounds for appeal which shall be limited to those stated in Section 9.69.090(c);

(H) a statement of facts on which the appeal is based;

(I) a summary of the significant question raised by the appeal.

(2) The appeal must be received in the Coastal Commission district office with jurisdiction over the City of Dana Point before the close of business on the tenth (10th) working day after receipt of the Notice of Final Action (as described in Section 9.69.100 of this Chapter) by the Coastal Commission.

(3) The appellant shall notify the applicant, any persons known to be interested in the application, and the City of Dana Point of the filing of the appeal. Notification shall be by delivering a copy of the completed Notice of Appeal to the domicile(s), office(s), or mailing address(es) of said parties. In any event, such notification shall be by such means as may reasonably advise said parties of the pendency of the appeal. Unwarranted failure to perform such notification may be grounds for dismissal of the appeal by the Coastal Commission. (Coastal Act/30333/30620.6; 14 Cal. Code of Regulations/13111)

(e) Any final action by the City on a coastal development permit for development identified in Section 9.69.090(b) above shall become effective at the close of business on the tenth working day from the date of receipt by the Coastal Commission of the Notice of Final Action required in Section 9.69.100 of this Chapter below, unless an appeal is filed within that time, pursuant to Section 9.69.090(d)(2). (Coastal Act/30603(c))

(f) If an appeal of a final action on an appealable development is filed with the Coastal Commission, the operation and effect of that action shall be stayed pending a decision by the Coastal Commission on the appeal. (Coastal Act/30623)

(g) Persons Who May Appeal

A decision of the Director of Community Development, Planning Commission or City Council on a Coastal Development Permit for development which is appealable to the Coastal Commission pursuant to Section 9.69.090(b) above, may be appealed to the Coastal Commission, after the exhaustion of all local appeals as provided for in Section 9.69.090(a) above, by the following persons:

(1) The applicant.

(2) Any "aggrieved person" as defined in Section 9.75.010 of this Zoning Code.

(3) Any two members of the Coastal Commission.

Where a project is appealed by any two (2) members of the Coastal Commission, there shall be no requirement of exhaustion of appeals to the Planning Commission or the City Council. In the event that the local appeal process was not exhausted, the Planning Commission or City Council, whichever would have been the next higher appellate body for the project in question, may adopt and transmit to

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

9.69.100 Notice of Final Action To Coastal Commission

(a) The City's decision on the Coastal Development Permit application shall be considered final when both 1) all required findings have been adopted, including specific factual findings supporting the legal conclusions that the proposed development is or is not in conformity with the certified local coastal program and, where applicable, with the public access and recreation policies of Chapter Three of the Coastal Act; and 2) all rights to appeals before the Planning Commission and City Council, as described in Section 9.61.100 of the Zoning Code, have been exhausted, or the fifteen (15) calendar day appeals period to the Planning Commission and City Council, as described in Section 9.61.100(b) of the Zoning Code, expires without an appeal being filed. (Coastal Act/30333, 30620; 14 Cal Code of Regulations/13570.

(b) Notice of Final City Action

Within seven (7) ~~five (5) working~~ calendar days of the final City action ~~decision~~ as described in Section 9.69.100(a) of this Section above, a notice of the final City action shall be sent by first class mail free of charge to the Coastal Commission office having jurisdiction over the City of Dana Point and to any person or group requesting notice of such action. The notice shall contain the date on which the appeal period from the approving authority to the next local appellate body expired. The notice shall include all conditions of approval and written findings as described in Section 9.69.100(a) of this Section above. For decisions on developments which are appealable to the Coastal Commission, the notice shall indicate that the City's final action is appealable to the Coastal Commission and shall include attached the procedures described in Section 9.69.090 for appeal of the City decision on the coastal development permit to the Coastal Commission. (Coastal Act/30333, 30620; 14. Cal Code of Regulations/13571(a))

(c) Failure to Act-Notice

A coastal development permit application is deemed approved by operation of law under Government Code Sections 65950 through 65957. The Director of Community Development shall, within seven (7) calendar days of such determination, notify the Coastal Commission and any persons or group entitled to receive notice pursuant to Section 9.61.050(a)(3) of this Zoning Code that the application has been approved by operation of law pursuant to Government Code Sections 65950-65957.1 and, if applicable, that the application may be appealed to the Coastal Commission pursuant to Section 9.69.090 of this Chapter. This section shall apply equally to a determination by the City that the development has been approved by operation of law and to a judicial determination that the development has been approved by operation of law. (Coastal Act/30333; 30620; 14. Cal Code of Regulations/13571(b)(2)) ~~If it is determined by the Director of Community Development or through a judicial action that the time limits established pursuant to Government Code Section 65950 through 65957.1 have expired within five (5) working days of such determination any person or group entitled to receive notice shall be notified that the application has been approved by operation of law and the application may be appealed to the Coastal Commission. This provision shall apply only to City decisions which are appealable to the Coastal Commission.~~

(d) Effective Date of City Action

The City's final action as described in Section 9.69.100(a) above shall not become effective if either of the following occur during the appeal period described in Section 9.69.090(e):

(1) An appeal is filed in accordance with Section 9.69.090 of this Zoning Code; or

(2) The notice of final City action does not meet the requirements of Section 9.69.100(b) above.

When either of the circumstances in Sections 9.69.100(d)(1) or 9.69.100(d)(2) above occur, the Executive Director of the Coastal Commission shall, within five (5) calendar days of receiving the notice of final local government action, notify the City that the operation and effect of the final City action has been stayed. (Coastal Act/30333, 30620; 14 Cal. Code of Regulations/13572)

9.69.110 Administrative Coastal Development Permit ~~Determination of Appeal Jurisdiction~~ ***{delete existing proposed text regarding "Determination of Appeal Jurisdiction" and replace with new text regarding "Administrative Coastal Development Permit" procedures}*** *{Determination of Appeal Jurisdiction moved to new Section 9.69.050(d)}*

(a) The Director of Community Development may, without a public hearing, process as an administrative permit any coastal development permit application for the classes of development identified in Section 9.69.030(a)(1) of this Chapter according to the procedures set forth in this section below.

(b) Content of Application

The application requirements for an administrative coastal development permit are those set forth in Section 9.69.050 of this Chapter.

(c) Notice

(1) Notice shall be posted at the site of the proposed development in accordance with the procedures set forth in Section 9.69.060(a) of this Chapter. The City shall revoke the administrative coastal development permit pursuant to the procedures set forth in Section 9.69.160 of this Chapter if it determines that the administrative coastal development permit was granted without proper notice having been given, and that proper notice would have had the potential of altering the decision of the Director of Community Development to act differently in issuing said permit.

(2) Notice of administrative coastal development permits shall also be mailed by first class mail to the Coastal Commission and to persons known to be interested in the proposed development in accordance with the procedures set forth in Section 9.61.050 of this Zoning Code.

(e) Action of Administrative Coastal Development Permits

The Director of Community Development may deny, approve, or conditionally approve applications for administrative coastal development permits on the same grounds as contained in Section 9.69.070 of this Chapter for a regular coastal development permit application and may include reasonable terms and conditions necessary to bring the project into consistency with the certified local coastal program. Administrative coastal development permits issued shall be governed by the procedures used in approving regular coastal development permits pursuant to the provisions of this chapter relative to format, receipt, and acknowledgment of permit.

(f) Effective Date of Administrative Permit

(1) Any administrative coastal development permit issued by the Director of Community Development shall be reported in writing to the Planning Commission at their first regularly scheduled

meeting after the permit is approved. The Director of Community Development shall prepare a report in writing with sufficient description of the work authorized by the administrative coastal development permit to allow the Planning Commission to understand the development to be undertaken. Such report shall be available at the meeting and mailed free of charge to all persons wishing to receive such notification at the time of the regular mailing of notice for the Planning Commission meeting and any person who requested to be on the mailing list for the project as described in Section 9.69.110(d) above.

(2) If one-third or more of the full membership of the Planning Commission so request, the issuance of an administrative coastal development permit shall not become effective, but shall, if the applicant wishes to pursue the application, be treated as a regular coastal development permit application subject to all provisions of this Chapter.

(3) A decision on an administrative coastal development permit shall not be deemed final and effective until all the following have occurred:

(A) The Director of Community Development has made a decision on the application;

(B) The Planning Commission review of the administrative coastal development permit is complete, and the Planning Commission did not object, as provided for in Section 9.69.110(f)(2) above, to the decision of the Director of Community Development;

(C) All required findings have been adopted, including specific factual findings supporting the legal conclusions that the proposed development is or is not in conformity with the certified LCP; and

(D) When all rights of appeal under City ordinances, including Section 9.69.090 of this Chapter and Section 9.61.100 of this Zoning Code, have been exhausted.

(g) Amendment to Administrative Coastal Development Permits

(1) Amendments to administrative coastal development permits may be approved by the Director of Community Development upon the same criteria and subject to the same reporting requirements and procedures, including public notice and appeals, as provided for the issuance of administrative coastal development permits in Sections 9.69.110(a) through 9.69.110(f) inclusive.

(2) If any amendment would, in the opinion of the Director of Community Development, change the nature of the approved project, or change or delete a previously imposed condition of approval, so that it no longer meets the criteria established for treating the application as an administrative coastal development permit pursuant to Section 9.69.030(a), then the application shall thereafter be treated in the manner prescribed in Section 9.69.130 of this Chapter dealing with amendments to permits other than administrative coastal development permits. (Coastal Act/30624; 14 Cal. Code of Regulations/13165)

9.69.120 Expiration of Coastal Development Permits

Any Coastal Development Permit granted herein shall be conditioned upon the privileges being exercised within 24 months after the effective date thereof, except as otherwise provided within a phasing program contained in: 1) a development agreement entered into between the City and the owners of the subject property; 2) a specific plan applicable to the subject property; or 3) as otherwise provided by resolution approved by the City Council upon recommendation of the Planning Commission. Failure to exercise such permit within such period will automatically cause the coastal development permit to expire, ~~void same,~~ unless an extension of time has been granted as set forth in

Section 9.69.140. De Minimis Waivers issued pursuant to Section 9.69.200 of this Chapter have no expiration date, since they are not permits.

Construction must actually be commenced within the stated period and must be diligently pursued to completion.

9.69.130 Amendments to Coastal Development Permits

(a) The Director of Community Development or the Planning Commission (or City Council on appeal), may grant an amendment to a valid Coastal Development Permit issued by the City if, after considering facts presented in the application, by interested parties, and at the hearing (if a hearing is held), the Director or Commission makes all the findings set forth in Section 9.69.070~~060~~.

(b) An application for an amendment to a Coastal Development Permit shall be in writing and shall include an adequate description of the proposed amendment, including but not limited to maps or drawings where appropriate. The amendment application shall be filed by the owner of record of the property covered by the permit, the owner's agent, any person with a legal right, interest, or other entitlement to use the property covered by the permit for the proposed development, or said person's authorized agent, in accordance with the provisions of Section 9.69.050(a) of this Chapter. The application shall be filed with the Director of Community Development~~, who may require a public hearing on such application if there is indication of sufficient public interest.~~

(c) An application for an amendment shall be rejected if, in the opinion of the Director of Community Development, the proposed amendment would lessen or avoid the intended effect of a partially approved or conditioned coastal development permit unless the applicant presents newly discovered material information which could not, with reasonable diligence, have been discovered and produced before the permit was granted.

(d) In the case of all amendments, the noticing and public hearing requirements of Section 9.69.060 ~~9.61.050~~ shall apply. The decision of the Director of Community Development or Planning Commission shall contain the findings required in Section 9.69.070 of this Zoning Code ~~relied upon in reaching~~ made to support that decision.

~~(e)~~(e) The decision of the Director of Community Development or Planning Commission may be appealed pursuant to the procedures specified in Section ~~2.04.100 et. seq~~ 9.69.090 of this Chapter and Section 9.61.100 of this Zoning Code. (Coastal Act/30333; 14 Cal. Code of Regulations/13166)

9.69.140 Extension of Time

(a) The Director of Community Development of the Planning Commission may grant one or more extensions of time, with no single extension to exceed twelve (12) months, for a valid Coastal Development Permit issued by the City if the Director of Commission finds that there has been no material change of circumstances which may affect the approved project's consistency with the certified Local Coastal Program since the original granting of the permit issued by the City.

(b) An application for an extension of time shall be in writing and shall be filed, prior to the expiration date of the permit, by the record owner or by any other person(s) who can demonstrate a legal right, interest, or other entitlement to use the property covered by the permit. The request shall be filed with the Director of Community Development, who may require a public hearing on such application if there is indication of sufficient public interest. The Director shall hold a public hearing, in accordance with the provisions of Section 9.61.050 of this Zoning Code, if the Director determines that there has been a material change of circumstances which may affect the approved project's consistency with the certified Local Coastal Program since the original granting of the permit. In the

case of all extensions, the noticing and public hearing requirements of Section 9.69.060 ~~9.69.070~~ shall apply. If one-third or more of the full membership of the Planning Commission objects to the granting of the permit extension on the grounds that the proposed development may not be consistent with the certified Local Coastal Program, the application shall be set for a new hearing of the Planning Commission as though it were a new coastal development permit application, in accordance with the provisions of this Chapter. The decision of the Director of Community Development or the Planning Commission shall contain the findings of fact relied upon in reaching the decision.

(c) The decision of the Director of Community Development or Planning Commission may be appealed pursuant to the procedures specified in Section ~~2.04.100 et. seq~~ 9.61.100(d) of this Zoning Code. (Coastal Act/30333; 14 Cal. Code of Regulations/13169)

9.69.150 Emergency Coastal Development Permits

(a) This subsection shall govern procedures for processing an Emergency Coastal Development Permit to perform work to resolve problems resulting from an emergency situation as defined in Section 9.75.050 of this Zoning Code. In the event of a verified emergency, temporary emergency coastal development permit authorization to proceed with remedial measures may be given by the Director of Community Development or his/her designee until such time as a regular coastal development permit application is filed pursuant to Section 9.69.050 of this Zoning Code. Applications for an Emergency Coastal Development Permit shall be made by letter to the Director of Community Development, or in person~~;~~ or by telephone if time constraints do not allow either of ~~those~~ the first two alternatives to be used. (Coastal Act/30333, 30624; 14 Cal. Code of Regulations/13136, 13138)

(b) The following information, to be reported at the time of the emergency (if it is possible to do so), or no later than within three days after the emergency, shall be included in the ~~request~~ application to the Director of Community Development:

(1) Nature of emergency;

(2) Cause of emergency, insofar as this can be established;

(3) Location of emergency;

(4) Remedial, protective, or preventative work required to deal with the emergency; and

(5) Circumstances during the emergency that appeared to justify the course(s) of action taken or to be taken, including probable consequences of failing to take emergency action. (Coastal Act/30333, 30624; 14 Cal. Code of Regulations/13139)

(c) Verification

The Director of Community Development shall verify the facts, including the existence and nature of the emergency action, insofar as time allows. (Coastal Act/30333, 30624; 14 Cal. Code of Regulations/13140)

(d) Granting an Emergency Coastal Development Permit

(1) The Director of Community Development shall grant the emergency coastal development permit with reasonable terms and conditions, including an expiration date and the necessity for a regular permit application later, where the Director finds that:

(A) An emergency exists that requires action more quickly than would be permitted by the normal procedures for acquiring a Coastal Development Permit pursuant to this Chapter, and the development

can and will be completed within 30 days unless otherwise specified by the terms of the emergency coastal development permit.

(B) Public comment on the proposed emergency action has been solicited and reviewed to the extent feasible.

(C) The proposed emergency work would be consistent with the certified Local Coastal Program.

(2) The Director of Community Development shall provide public notice of the emergency work, with the extent and type of notice determined by the nature and time constraints of the emergency. If the nature of the emergency does not allow sufficient time for public notice to be given before the emergency work begins, the Director of Community Development shall provide public notice of the action taken, or being taken, as soon as is practical. Public notice of the nature of the emergency and the remedial actions to be taken shall be mailed by first class mail to the Coastal Commission and to all persons whom the Director of Community Development has reason to know would be interested in such action. (Coastal Act/30333, 30624; 14 Cal. Code of Regulations/13142)

(e) Expiration

An emergency coastal development permit shall be valid for sixty (60) days from the date of issuance by the Director of Community Development. Prior to expiration of the emergency coastal development permit, the permittee shall submit an application for a regular coastal development permit, pursuant to Section 9.69.050 of this Chapter, for the emergency development performed. If the emergency development performed is to be temporary and to be removed after the emergency has passed, the removal of the emergency development shall be included as part of the regular coastal development permit application.

(f) Report to Planning Commission and Coastal Commission

The Director of Community Development shall report in writing the granting of the emergency coastal development permit to the Planning Commission at its next scheduled meeting, and to the Coastal Commission. The report shall include a description of the nature of the emergency, the development involved, and the person or entity undertaking the development. Copies of the report shall be available at the meeting and shall be mailed to the Coastal Commission and to all persons requesting notification of coastal development permit decisions.

(g) Limitations

(1) The Director of Community Development shall not grant an emergency coastal development permit for any development that falls within either the area of "Coastal Commission Permit Jurisdiction" or the Appeals Area, as shown generally on the Post-Certification Jurisdiction Map. In such areas and for such development, a request for an emergency authorization must be made to the Coastal Commission. Further, a waiver from coastal development permit requirements may also be obtained directly from the Executive Director of the Coastal Commission for development in the Appeals Area that is required to protect life or public property in accordance with Section 30611 of the Coastal Act.

9.69.160 De Minimis Project Waivers From Coastal Development Permit Requirements ~~Prior Coastal Commission Approval~~ ***{Delete existing proposed text regarding "Prior Coastal Commission Approval" and replace with new text regarding "De Minimis Project Waivers From Coastal Development Permit Requirements"}*** *{"Prior Coastal Commission Approval" moved to new Section 9.69.030(d)(3)}*

A coastal development permit application is required for all development as defined in Section 9.75.040 of this Zoning Code, including any development for which a "de minimis" permit waiver is requested even if no other local discretionary approvals are required. For a proposed development that is de minimis as defined in Section 9.69.160(a)(2) below and Section 30624.7 of the Coastal Act, the Director of Community Development may issue a waiver from the coastal development permit requirements of this Chapter subject to all of the provisions of this section.

(a) Limit of Applicability

(1) A proposed development is de minimis only if the Director of Community Development determines that it involves no potential for any adverse effects either individually or cumulatively, on coastal resources and public access and that it will be consistent with the certified local coastal program and the public access policies of Chapter Three of the California Coastal Act. The determination shall be made in writing and based upon factual evidence.

(2) A Waiver for a De Minimis Development shall be granted only for development that:

(A) Does not fall in a class of development set forth in Section 9.69.090;

(B) Is not located adjacent to a public accessway, public recreation areas, or sensitive coastal resource areas;

(C) Does not fall within an area in which the Coastal Commission retains direct permit review under Section 9.69.030(c) of this Chapter, or for any work that is appealable to the Coastal Commission under Section 9.69.090 of this Chapter; nor

(D) Involves a structure or similar integrated physical construction which lies partly in and partly outside the appeal area.

(3) A De Minimis Waiver application may be combined with other local discretionary actions. Since a waiver is not an actual coastal development permit, however, conditions of approval cannot be imposed on the waiver.

(b) Notice

(1) The applicant shall post at the site in compliance with Section 9.69.060(a) of this Chapter.

(2) Within ten (10) calendar days of accepting an application for a De Minimis waiver or at least seven (7) calendar days prior to the decision on the application, the Director of Community Development shall provide notice, by first class mail, of the pending waiver of permit requirements. This notice shall be provided to all persons who have requested to be on the mailing list for that development project or site or for coastal decisions within the local jurisdiction, to all property owners and residents within one hundred (100) feet of the perimeters of the parcel on which the development is proposed, and to the Coastal Commission.

(3) The notice shall contain the following information:

(A) The information listed in Sections 9.69.060(b)(1) through 9.69.060(b)(4) inclusive of this Chapter;

(B) The date of the hearing at which the De Minimis waiver may become effective;

(C) The general procedures concerning the submission of public comments either in writing or orally prior to the decision; and

(D) A statement that a public comment period of sufficient time to allow for the submission of comments by mail will be held prior to the decision.

(E) A note or a numbering system which clearly distinguishes the application as being for a De Minimis Waiver and not a coastal development permit.

(c) Findings

The Director of Community Development may only issue a waiver of coastal development permit requirements only if the following written findings are made:

(1) That the waiver falls within the criteria of Section 9.69.160(a) above;

(2) The proposed development has no potential for any adverse impacts, either individually or cumulatively, on public access, public recreation, or coastal resources; and

(3) The proposed development would be consistent with the certified local coastal program.

(d) Issuance of Waiver: Effective Date

(1) A De Minimis waiver of coastal development permit requirements shall not take effect unless the site has been posted and until the waiver has been reported to the Planning Commission, and the Planning Commission has not objected to the issuance of the De Minimis Waiver. If one-third or more of the full membership of the Planning Commission request that the waiver not be effective, the applicant shall be advised that a coastal development permit is required, subject to the provisions for regular coastal development permits of Chapter 9.69 of this Zoning Code, if the applicant wishes to proceed with the development.

(2) A decision on De Minimis waivers shall not be deemed final and effective until all required findings described in Section 9.69.160(c) above have been adopted.

(e) Compliance

(1) Any deviation from the application and plans on file in the Department of Community Development shall constitute grounds for the City of Dana Point to revoke the De Minimis waiver authorization and to require a coastal development permit for the entire project as well as possible enforcement action and penalties subject to Section 9.69.210 of the Zoning Code.

(2) Within seven (7) calendar days of the Planning Commission review of the issuance of a De Minimis waiver, the Director of Community Development shall notify the Coastal Commission and any persons who specifically requested notice of such action by mailing, via first class mail, a Notice of Final Action prepared pursuant to Section 9.69.100 of this Zoning Code describing the issuance and effectiveness of the De Minimis waiver.

9.69.170 Enforcement

In addition to the enforcement provisions contained in this Chapter, the provisions of Chapter 9 of Division 20 of the Public Resources Code shall also apply with respect to violations and enforcement.

9.69.180 Format and Content of Coastal Development Permits

(a) Coastal development permits shall include the following:

(1) The applicant's name;

(2) The project location;

(3) The project description;

(4) The permit number;

(5) A statement setting out the reasons for the City's approval of the permit, including the findings required in Section 9.69.070;

(6) Any other language or drawings, in full or incorporated by reference, that are consistent with the decision to approve the permit, and are required to clarify or facilitate carrying out the intent of the City's action;

(7) Any conditions approved by the City;

(8) Such standard provisions as approved by resolution of the City;

(9) The signature of the Director of Community Development, and

(10) The time for commencement of the approved development except that where the City on original hearing or on appeal has not imposed any specific time for commencement of construction pursuant to a permit, the time for commencement shall be two years from the date of the final vote by the local body on the coastal development permit application. Each coastal development permit shall contain a statement that any request for an extension of the time of commencement must be applied for prior to expiration of the permit. (Coastal Act/30333; 14 Cal. Code of Regulations/13156)

(b) Coastal development permits approved by the Planning Commission or City Council may be in the form of a resolution, provided that all the items described in Section 9.69.180(a) above are contained in the resolution.

(c) Notice of Receipt and Acknowledgment

(1) No building permits shall be issued for development approved by a coastal development permit until the City receives a written acknowledgment signed by the authorized permittee(s) or agent(s) stating that they have received a copy of the coastal development permit and understand and accept its contents, including all conditions of approval.

(2) The signed acknowledgment should be returned within ten (10) working days following issuance of the coastal development permit but in any case prior to issuance of the building permits.

9.69.190 Reconsideration of Action on a Coastal Development Permit

(a) Initial Proceedings

(1) Persons Eligible to Request Reconsideration

Only the applicant of record for the coastal development permit on which the City's decision in question was rendered shall be eligible to request reconsideration of the City's decision. (Coastal Act/30627(b)(1))

(2) Procedures to Request Reconsideration

Any time within thirty (30) days following a final vote upon an application for a coastal development permit which is not appealable to the Coastal Commission pursuant to Section 9.69.090 of this Chapter, the applicant of record may request the City to grant reconsideration of the denial of an application for a coastal development permit or of any term or condition of a coastal development permit which has been granted and which is not appealable to the Coastal Commission pursuant to Section 30603 of the Coastal Act. This request shall be in writing and shall be received by the Director of Community Development within 30 days of the final vote. (Coastal Act/30627(b)(2); 14 Cal. Code of Regulations/13109.2)

(b) Grounds for Reconsideration

The grounds for reconsideration of a decision by the City on a coastal development permit which is not appealable to the Coastal Commission pursuant to Section 9.69.090 of this Chapter shall be either of the following:

(1) that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter, or

(2) that an error of fact or law has occurred which has the potential of altering the initial decision. (Coastal Act/30627(b)(3); 14 Cal. Code of Regulations/13109.4)

(c) Hearing on Reconsideration

Hearings on reconsiderations of decisions by the City on coastal development permits shall be held by the local body which rendered the decision in question and in accordance with the following:

(1) At the next regularly scheduled meeting of the local body, or as soon as practicable after notice to the applicant and all persons the Director of Community Development has reason to know would be interested in the reconsideration of the decision on the coastal development permit in question, the Director of Community Development shall report the request for reconsideration to the local body with a preliminary recommendation on the grounds for reconsideration.

(2) The applicant and all aggrieved parties to the original decision of the City shall be afforded a reasonable time to address the merits of the request. (Coastal Act/30333; 14 Cal. Code of Regulations/13109.5)

(3) The local body which rendered the decision on the coastal development permit in question shall vote on the request at the same meeting.

(4) Reconsideration shall be granted by a majority vote of the members of the local body present at the time of the vote. If reconsideration is granted, it shall be considered a new permit application for a coastal development permit and shall be processed in accordance with the procedures outlined in this Chapter for new coastal development permit applications.

(d) Appeals of Denials of Reconsideration Requests

A decision to deny a request for reconsideration is not subject to appeal. (Coastal Act/30627(c))

(e) A request for reconsideration shall be made only once for any one development application. (Coastal Act/30627(d))

10. Chapter 9.71 - Site Development Permits

9.71.020 Site Development Permit Required

{no modifications to (a)}

(b) Applications for Conditional Use Permits, Variances, Coastal Development Permits and other permits and entitlements of this Code will be reviewed with the same attention to design as Site Developments Permits. All such applications are subject to Site Development Permit requirements, except that all coastal development permit applications shall satisfy all requirements of Chapters 9.27 "Coastal Overlay District" and 9.69 "Coastal Development Permit". *{no further modifications}*

11. Chapter 9.75 - Definitions And Illustrations Of Terms

9.75.010 "A" Definitions and Illustrations

{no intervening modifications}

Aggrieved Person - any person who, in person or through a representative, appeared at a public hearing of the Coastal Commission or City of Dana Point in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing, informed the Coastal Commission or City of Dana Point of the nature of his or her concerns or who for good cause was unable to do either. "Aggrieved person" includes the applicant for a permit and, in the case of an approval of a local coastal program for the City of Dana Point, the City of Dana Point. (Coastal Act/30801) *{no intervening modifications}*

Appealable Development, Coastal - The following types of development may be appealed to the Coastal Commission pursuant to procedures described in Section 9.69.090:

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

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

(3) Developments approved by City of Dana Point not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.

(4) Any development which constitutes a major public works project or a major energy facility, as defined in Section 9.75.130 of this Zoning Code. (Coastal Act/30603(a)) ~~any Coastal Development Permit application that may be appealed to the California Coastal Commission pursuant to the Coastal Act of 1976, as amended~~ *{no intervening modifications}*

Applicant, Coastal - the person, trust, partnership, corporation, other legal entity, or state or local government agency or special district applying for a coastal development permit. (Coastal) *{no intervening modifications}*

Aquaculture - a form of agriculture that is devoted to the controlled growing and harvesting of fish, shellfish, and plants in marine, brackish, and freshwater. (Coastal Act/30100.2) *{no intervening modifications}*

9.75.030 "C" Definitions and Illustrations

California Coastal Act (or) Coastal Act - the California Coastal Act of 1976, Division 20 of the Public Resources Code (commencing with Section 30000), as amended. *{no intervening modifications}*

Certified Coastal Land Use Plan - a land use plan which has been effectively certified by the Coastal Commission pursuant to Section 30512 of the Coastal Act as amended. (See definition of "Land Use Plan (LUP amendment), Coastal" in Section 9.75.120 of this Zoning Code) ~~a plan for the use of property within the Coastal Zone which has been adopted by the local government and certified by the California Coastal Commission pursuant to the Public Resources Code.~~(Coastal).

Certified Local Coastal Program (LCP) - a local coastal program which has been effectively certified by the California Coastal Commission pursuant to Section 30512 and 30513 of the Coastal Act as amended. (See definition of "Local Coastal Program" in Section 9.75.120 of this Zoning Code) ~~a program for the use of property within the Coastal Zone. The Local Coastal Program includes the Land Use Plan and specific regulations, and land use regulation maps, which have been adopted by the local government and certified by the California Coastal Commission pursuant to the Public Resources Code. Local governments with certified LCPs can issue Coastal Development Permits.~~ (Coastal)

Chapter Three Policies or **Chapter 3 Policies** - those policies of the Coastal Act contained in Chapter Three, commencing with Section 30200, which constitute the standards by which the adequacy of local coastal programs and the permissibility of proposed development subject to the provisions of the Coastal Act is determined. *{no intervening modifications}*

Coastal Access, Bluff Top - ~~an area dedicated to~~ provides public access for public viewing of the shoreline along a coastal bluff top area. ~~where no beach area exists and a project is proposed on a shorefront bluff top lot.~~

Coastal Access, Lateral - ~~an area dedicated to~~ provides public access and use along the shoreline or parallel to the sea.

Coastal Access, Recreational - provides public access to coastal recreational resources through means other than those provided by bluff top, lateral, trail and/or vertical coastal access, including but not limited to parking facilities, viewing platforms and bluff top parks.

Coastal Access, Trail - provides public access through a coastal recreational path, including to and along lakes, rivers, streams, freshwater marshes, significant habitat and open space areas or similar resource areas, and which also may link inland recreational facilities to the shoreline.

Coastal Access, Vertical - ~~an area dedicated to~~ provides a public access connection ~~from the first public roadway to the shoreline~~ between the first public road, public use area nearest the sea, or trail and the publicly owned tidelands or established lateral access.

Coastal Bluff - within the Coastal Zone, ~~an escarpment or steep face of rock, decomposed rock, sediments, or soil resulting from erosion, faulting, folding, or excavation of the land mass. It may be flat, curved, or step-like. For the purposes of these regulations, a coastal bluff is limited to those features having vertical relief of ten feet or more.~~ coastal bluffs are: (1) those bluffs, the toe of which is now or was historically (generally within the last 200 years) subject to marine erosion; and (2) those bluffs, the toe of which is not now or was not historically subject to marine erosion, but the toe of

which lies within an area otherwise identified as an Appealable Area. (Coastal Act/30501, 30620.6; 14 Cal. Code of Regulations/13577(h))

Coastal Bluff Edge - the upper termination of a coastal bluff. When the top edge of the coastal bluff is rounded away from the face of the coastal bluff, the edge shall be defined as that point nearest the coastal bluff beyond which the downward gradient of the land surface increases more or less continuously until it reaches the general gradient of the coastal bluff. In a case where there is a step-like feature at the top of the coastal bluff, the landward edge of the top-most riser shall be considered the bluff edge. The termini of the bluff edge along the seaward face of the bluff shall be defined as a point reached by bisecting the angle formed by a line coinciding with the general trend of the bluff line along the inland facing portion of the bluff. (Coastal Act/30501, 30620.6; 14 Cal. Code of Regulations/13577(h)) *{no intervening modifications}*

Coastal Commission - the California Coastal Commission or its successor agency as created pursuant to Division 20 of the Public Resources Code as amended. Whenever the term California Coastal Zone Conservation Commission appears in any law, it means the California Coastal Commission. (Coastal)

Coastal Commission Permit Jurisdiction Area - all tidelands, submerged lands, and public trust lands (whether filled or unfilled) within the Coastal Zone. (Coastal Act/30519(b))

Coastal Dependent Development - any development or use which requires a site on, or adjacent to, the sea to be able to function at all. (Coastal Act/30101)

Coastal-Related Development - any development or use that is dependent on a coastal-dependent development or use. (Coastal Act/30101.3))

Coastal Development Permit - any license, certificate, approval, or other entitlement for use granted or denied by any public agency which is subject to the provisions of Division 20 of the Public Resources Code as amended. ~~a permit to perform or undertake any development as defined by the Coastal Act in the Coastal Zone. Coastal Development Permits include discretionary permits, plans and maps required by the applicable subdivision or district regulations and Coastal Development Permits required by an certified Local Coastal Program and by the provisions of the local district.~~ (Coastal Act/30110). *{no intervening modifications}*

Coastal Plan - the California Coastal Zone Conservation Plan prepared and adopted by the California Coastal Zone Conservation Commission and submitted to the Governor and the Legislature on December 1, 1975, pursuant to the California Coastal Zone Conservation Act of 1972 (commencing with Section 27000). (Coastal)

Coastal Zone - ~~the portion of the City of Dana Point specified on a Coastal Zone map adopted by the State Legislature, as adjusted by the Coastal Commission, pursuant to the requirements of the California Coastal Act.~~ that land and water area of the City of Dana Point, specified on the maps identified and set forth in Section 17 of that chapter of the Statutes of the 1975-76 Regular Session enacting the California Coastal Act of 1976, extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea. (Coastal Act/30103(a)) *{no intervening modifications}*

Cumulative Effect or **Cumulatively** - the effect of an individual project in combination with the effects of past projects, other current projects, and probable future projects. (Coastal) *{no intervening modifications}*

9.75.040 "D" Definitions and Illustrations

Development, Coastal - the placement or erection, on land, in or under water, of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto, construction, reconstruction, demolition, or alteration of the size of any structure; including any facility of any private, public, or municipal utility; and the removal of harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provision of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511). As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line. (Coastal Act/30106) *{no intervening modifications}*

9.7~~3~~5.050 "E" Definitions and Illustrations

Emergency, Coastal - for the purposes of Section 9.69.150 (Emergency Permits) of this Zoning Code, "emergency" shall mean, within the Coastal Zone, a sudden unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. (Coastal Act/30333, 30624; 14 Cal. Code of Regulations/13009) *{no intervening modifications}*

Environmentally Sensitive Habitat Area - any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem ~~,~~ and which could be easily disturbed or degraded by human activities and development. (Coastal Act/30107.5) *{no intervening modifications}*

Estuary - all area within the mean high tide line of any coastal water body, usually semi-enclosed by land, having open, partially obstructed or intermittent exchange with the open sea and in which ocean water is at least occasionally diluted by fresh water runoff from the land. (Coastal Act/30501, 30620.6; 14 Cal. Code of Regulations/13577(c)) *{no intervening modifications}*

9.75.060 "F" Definitions and Illustrations

Feasible - capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors. (Coastal Act/30108) *{no intervening modifications}*

Fill, Coastal - earth or any other substance or material, including pilings placed for purposes of erecting structures thereon, placed in a submerged area. ~~material or substance which is deposited, places, pushed, dumped, pulled, transported, or moved to a new location and the conditions resulting therefrom. Fill also includes pilings placed for the purpose of erecting structures thereon when located in a submerged area.~~ Examples of fill materials include but are not limited to earth, excavated or dredged materials, sand, gravel, rock, rip-rap, and concrete. (Coastal Act/30108.2))

First Public Road Paralleling the Sea - ~~the inland right-of-way of that street or highway~~ that road nearest to the sea ~~which is generally parallel to the sea and~~, as defined in Section 9.75.190, which is: *{no intervening modifications}* (Coastal Act/30501, 30620.6; 14 Cal. Code of Regulations/13577(i))

First Public Roadway - ~~the nearest through public access route (open to vehicular traffic) paralleling the ocean shoreline, which forms a continuous linkage from the northernmost to southernmost limits of~~

~~the City of Dana Point shoreline.~~ (See "First Public Road Paralleling the Sea") (Coastal) *{no intervening modifications}*

9.75.090 "I" Definitions and Illustrations

Inland Extent of the Beach - the inland extent of the beach shall be determined as follows: (1) from a distinct linear feature (e.g. a seawall, road, or bluff, etc.); (2) ~~a back beach or dry beach and all beach area to~~ from the inland edge of the further inland beach berm ~~, to the vegetation line if a beach berm does not exist, or to a linear feature such as a sea wall, a road, or bluff, etc.~~ as determined from historical surveys, aerial photographs, and other records or geological evidence; or (3) where a beach berm does not exist, from the further point separating the dynamic portion of the beach from the inland area as distinguished by vegetation, debris or other geological or historical evidence. (Coastal Act/30501, 30620.6; 14 Cal. Code of Regulations/13577(g)(1), 13577(g)(2)) *{no intervening modifications}*

9.75.120 "L" Definitions and Illustrations

Land Use Plan, Coastal - the Land Use Element, Urban Design Element, and Conservation/Open Space Element of the City of Dana Point General Plan. (Coastal Act/30108.5)

Lateral Access - ~~public access along the shoreline paralleling the water's edge or the coast.~~ (See "Coastal Access, Lateral") (Coastal) *{no intervening modifications}*

Local Coastal Program (LCP) - a local government's (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other implementing actions, which, when taken together, meet the requirements of, and implement the provisions and policies of the California Coastal Act of 1976 (as amended) at the local level. The Local Coastal Program for the City of Dana Point is comprised of the Land Use Element, Urban Design Element, and Conservation/Open Space Element of the General Plan, the Zoning Code, the Dana Point Specific Plan/Local Coastal Program, and the Capistrano Beach Specific Plan/Local Coastal Program. ~~a program for the use of property within the Coastal Zone. The Local Coastal Program includes the Land Use Plan and specific regulations, and land use regulation maps, which have been adopted by the local government and certified by the California Coastal Commission pursuant to the Public Resources Code. Local governments with certified LCPs can issue Coastal Development Permits.~~ (Coastal Act/30108.6)) *{no intervening modifications}*

9.75.130 "M" Definitions and Illustrations

Major Energy Facility - facilities that cost more than one hundred thousand dollars ($100,000) with an automatic annual increase in accordance with the Engineering News Record Construction Cost Index, except for those governed by the provisions of Sections 30610, 30610.5, 30611 or 30624 of the California Coastal Act of 1976. ~~any energy facility exceeding $100,000 or such minimum as may be adopted by the State of California, in actual or estimated cost of construction~~ (Coastal Act/30333; 14 Cal. Code of Regulations/13012(a))

Major Public Works Project - "major public works facilities" are defined as follows:

(1) facilities that cost more than one hundred thousand dollars ($100,000) with an automatic annual increase in accordance with the Engineering News Record Construction Cost Index, except for those governed by the provisions of Sections 30610, 30610.5, 30611 or 30624 of the California Coastal Act of 1976.

(2) Notwithstanding the criteria in (1) above, "major public works" also means publicly financed recreational facilities that serve, affect, or otherwise impact regional or statewide use of the coast by

increasing or decreasing public recreational opportunities or facilities. ~~any public works project exceeding $100,000 or such other minimum as may be adopted by the State of California, in actual or estimated cost of construction~~. (Coastal Act/30333; 14 Cal. Code of Regulations/13012) *{no intervening modifications}*

Mean High Tide Line - the mean high tide line shall be defined as the statistical mean of all the high tides over the cyclical period of 18.6 years, and shall be determined by reference to the records and elevations of tidal benchmarks established by the National Ocean Survey. In areas where observations covering a period of 18.6 years are not available, a determination may be made based on observations covering a shorter period, provided they are corrected to a mean value by comparison with observations made at some suitably located control tide station. (Coastal Act 30501, 30620.6; 14 Cal. Code of Regulations/13577(c))

9.75.150 "O" Definitions and Illustrations

Overlay Zoning District - a zoning district established by ordinance, which ~~may~~ shall be applied to properties ~~only when combined~~ in combination with ~~a base~~ any other zoning district or specific plan or development plan. *{no intervening modifications}*

9.75.160 "P" Definitions and Illustrations

Public Trust Lands - all lands subject to the Common Law Public Trust for commerce, navigation, fisheries, recreation and other public purposes~~,~~. Public Trust lands include ~~including~~ tidelands, submerged lands, beds of navigable lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed, and which were subject to the ~~public trust~~ Public Trust at any time. (Coastal Act/30501, 30620.6; 14 Cal. Code of Regulations/13577(f)) *{no intervening modifications}*

Public Works - *{no intervening modifications}* (Coastal Act/30114))

9.75.190 "S" Definitions and Illustrations

Sea - the Pacific Ocean and all harbors, bays, channels, estuaries, salt marshes, sloughs, and other areas subject to tidal action through any connection with the Pacific Ocean, excluding ~~non-estuarine~~ nonestuarine rivers, streams, tributaries, creeks, and flood control and drainage channels. (Coastal Act/30115) *{no intervening modifications}*

Sensitive Coastal Resources Area - an identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity. A sensitive coastal resources area includes the following:

(a) Special marine and land habitat areas, wetlands, lagoons, and estuaries as mapped generally in the Conservation/Open Space Element Figure COS-1.

(b) Areas possessing significant recreational value.

(c) Highly scenic areas.

(d) Archaeological sites designated by the State Historic Preservation Officer.

(e) Special communities or neighborhoods which are significant visitor destination areas.

(f) Areas that provide existing coastal recreational opportunities for low-and moderate-income persons.

(g) Areas where divisions of land could substantially impair or restrict coastal access. (Coastal Act/30116) *{no intervening modifications}*

Shoreline Protective Works - a man-made structure or system of structures, including but not limited to, seawalls, revetments, rip-rap, jetties, groins, breakwaters, cliff retaining walls, or dams or diversion, used to protect the shoreline from damage caused by storms, wave action, erosion, and/or flooding. (Coastal Act/30235) *{no intervening modifications}*

9.75.200 "T" Definitions and Illustrations

Tidelands - lands which are located between the line of mean high tide and mean low tide. (Coastal Act/30501, 30620.6; 14 Cal. Code of Regulations/13577(d)) *{no intervening modifications}*

9.75.230 "W" Definitions and Illustrations

Wetlands - any land area which may be covered periodically or permanently with shallow water including, but not limited to, saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps and mudflats. (Coastal Act/30121) *{no intervening modifications}*

Chapter 9.75.270 "Definitions of Use"

Coastal Dependent Use - Any use which requires a site on, or adjacent to, the sea to be able to function at all. (Coastal Act/30101) *{no intervening modifications}*

12. Monarch Beach Resort Specific Plan

a) Title

{All references to the Specific Plan shall be corrected as follows:}
Monarch ~~Bay~~ Beach Resort Specific Plan

b) Introduction - Chapter 1.0 *{no intervening modifications}*

1.2 Purpose and Intent

The Dana Point General Plan establishes the basic framework for development of the Monarch Beach Resort Specific Plan area, through its goal, policies, plans, and programs. The purpose of the Specific Plan is ~~two~~three-fold: 1) to implement the General Plan policies through more detailed policies that provide the necessary direction; ~~and~~ 2) to establish zoning standards applicable solely to this master-planned resort community; and 3) to serve as the Implementation Portion of the City of Dana Point certified local coastal program for the Specific Plan area by carrying out the Certified Land Use Plan policies contained under Goal 8 of the General Plan Land Use Element.

The Specific Plan is to be adopted by the Dana Point City Council through two legislative actions. Chapters 1.0 and 2.0 provide the policies statement through plans, programs and guidelines for evaluating detailed development plans and will be adopted by resolutions; Chapter 3.0 provides the zoning standards and regulations for the Specific Plan area and will be adopted by ordinance. Amendments to any portion of the Specific Plan shall constitute an amendment to the Implementation Portion of the City of Dana Point Certified Local Coastal Program and shall not become effective until effectively certified by the Coastal Commission. *{no intervening modifications}*

1.7 Consistency with the General Plan *{no intervening modifications}*

The Land Use Plan, Statistical Summary and guidelines allow for the following uses and intensity of use: *{no intervening modifications}*

- Other Open Space Features (R/OS), including coastal sage scrub restoration/enhancement; and *{no intervening modifications}*

1.8 Review and Adoption Procedures *{no intervening modifications}*

~~At the time of the preparation of this Specific Plan, the City of Dana Point does not have CDP issuance authority for most of the Monarch Beach Specific Plan area because its Local Coastal Program has not been certified by the California Coastal Commission. The Coastal Commission therefore presently retains ultimate discretionary permit authority through its Coastal Development Permit process.~~

Upon effective certification of the Local Coastal Program for the Specific Plan area, Coastal Development Permit authority over new development will ~~revert to~~ be delegated to the City of Dana Point. As specified in Section 9.69.030(c)(3)(D) of the Dana Point Zoning Code, the Coastal Commission shall retain permitting authority over development authorized by Coastal Development Permit P-79-5539. Such development includes development that requires an additional coastal development permit and development that requires the Executive Director of the Coastal Commission to approve final plans, as specified in Section 9.69.030(c)(3)(D) of the Dana Point Zoning Code. However, a ~~SDP/~~CDP approved by the City may be appealed to the Coastal Commission in accordance with the procedures set forth in Section 9.69.090 of the Dana Point Zoning Code~~by any individual or group~~.

~~In the absence of a certified Local Coastal Program~~For development authorized by coastal development permit P-79-5539 which has not yet been built, ~~the~~ an approval in concept by the City must be obtained before a Coastal Development Permit application may be submitted to the California Coastal Commission.

Upon approval in concept of the SDP by the Planning Commission ~~or subsequent to the expiration of any applicable appeal period~~, the applicant may thereupon apply to the California Coastal Commission for a CDP. The Coastal Commission may take action on a CDP application for the Specific Plan area for development authorized by permit P-79-5539 which has not yet been built. ~~, if it has not certified the City's LCP, inclusive of the Specific Plan area.~~

~~Upon receipt of the CDP application for development of the Specific Plan area by the applicant, the Commission staff has up to 30 days to determine adequacy of the permit application. The Coastal Commission typically requires submittal of a Tentative Tract Map and locally certified environmental documentation as part of the application.~~

~~Upon determination that a CDP application is adequate, the Commission must schedule the CDP application for Commission public hearing within 49 days of determination of application adequacy and filing. This is the final discretionary permit action in the approval process.~~

~~In general, should the Coastal Commission approve~~ The coastal development permit is the final discretionary permit action in the approval process. After approval (whether by the City or Coastal Commission) of the CDP, the applicant is permitted to move forward to procuring other permits (e.g. grading and building permits) from the City of Dana-Point. These permits will be issued only after satisfaction of all conditions of approval of the CDP and upon review and acceptance by the ~~City Departments~~ Director of Community Development, the Director of Public Works~~City Engineer~~, and others, of the adequacy and correctness of detailed and fully engineered construction documents. The construction documents must comply with the approved SDP, CDP, and the Specific Plan. Should the

construction documents not be in conformity with the SDP, CDP, and the Specific Plan, amendments to the SDP, the Specific Plan and/or the CDP would required. *{no intervening modifications}*

c) Plans, Policies, Programs, and Guidelines - Chapter 2.0 *{no intervening modifications}*

2.1.2 Visitor Recreation Commercial *{no intervening modifications}*

- Beach House

The beach house concept may be pursued by evaluating new potential locations either in the Specific Plan area or outside of the Specific Plan area. Potential locations for, and design of, the beach house shall take into consideration the need to minimize landform alteration, minimize risks from geologic instability, minimize adverse visual impacts, and maximize public access and lower-cost visitor-serving facilities. The beach house will provide special opportunities for resort visitors and residents as well as the public by offering access to the shoreline, a low-cost limited food and beverage facility, restrooms and storage for beach, such as umbrellas and chairs. ~~(See Exhibit 2.5, following this page.) See Chapter 3.0 for a listing of permitted and conditionally permitted beach house uses.~~ *{no intervening modifications}*

2.2.2 On-Site Roadways

The on-site roadway circulation system will be privately owned and maintained, however, all on-site roads, except those serving the residential enclaves, can be accessed by guests and residents and shall be open to the public. *{no intervening modifications}*

- Clubhouse Entry Road

The Clubhouse Entry Road will provide access from ~~PCH~~ Niguel Road to the Clubhouse. ~~Village and will be comprised of two lanes into the village and two lanes out onto PCH, as well as~~ The road shall provide public pedestrian and public vehicular access. Temporary Clubhouse entry road(s) shall be built and shall be open to the general public until such time as a permanent Clubhouse Entry Road is constructed and open for use by the public. *{no intervening modifications}*

2.2.5 Resort Vehicle System *{no intervening modifications}*

A for-fare public resort vehicle system is planned to link the hotel, golf clubhouse, ~~beach house,~~ and park within the resort community as well as the Salt Creek beach and parking lot. The fare will be modest to encourage public use. The operational plans of the resort vehicle system must be approved by the public agency having jurisdiction over the public trails (including Salt Creek Trail and the Pacific Coast Highway underpasses) which are part of the resort vehicle system's route, the City of Dana Point, and the Executive Director of the Coastal Commission.

~~It is anticipated that~~ ~~t~~The resort vehicle system will originate at the resort hotel and travel to the clubhouse, ~~beach house, and~~ Salt Creek beach (by the existing beach access point between the Ritz Carlton hotel and the Ritz Cove residential community), Sea Terrace Community Park, and return to and terminate at the hotel. The resort vehicle system shall pick up and drop off passengers at the destinations identified above. The vehicle is proposed to utilize the Salt Creek and Beach Trails and the Coastal Highway underpasses. Pathways will be striped, as required by the County of Orange, to insure that pedestrian and bicycle traffic will be separated from the resort vehicle traffic. If a beach house is constructed, it may be served by the resort vehicle system.

Priority may be given to hotel guests. All users of the resort vehicle system, including the general public, shall be allowed to carry with them beach gear. The resort vehicle system shall operate at sufficient intervals to meet demand by the general public. The resort vehicle system shall be operational concurrent with the commencement of operation of the Hotel. *{no intervening modifications}*

2.2.6 Parking

A residential parking program has been developed for the Specific Plan area. The parking program is being forecast on the type and quality of the project. Residential parking will be provided based on the parking standards established in Chapter 3.0. Residential parking will include double garages for each dwelling unit. In addition, on-street parking~~, where feasible,~~ and parking in special bays ~~will~~ shall be provided for guests. On-street parking shall be provided within the Specific Plan area for roads greater that 32 feet in width. Roads between 32 feet and 39 feet in width shall have parallel parking on one side. Roads 40 feet and over in width shall have parallel parking on both sides. Where on-street parking is located within 500 feet of a public trail access point, it shall be made available to the public. The final parking program will be defined during the Site Development Permit process and shall be consistent with this policy.

Pursuant to the General Plan, shared parking will be provided to maximize the usage of parking areas between the Golf Course/Clubhouse and the Hotel. There is adequate parking planned for all hotel guests and no hotel guests will be required to use shared parking. All parking spaces for the Hotel, Golf Course and Golf Clubhouse shall be available for use by the general public without obligation to use the Hotel, Golf Course and Golf Clubhouse facilities. 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. *{no intervening modifications}*

2.3.1 Grading Guidelines *{no intervening modifications}*

Grading for ~~the~~ a beach house will be undertaken with due consideration of the geologic stability of the site and ~~protection of~~ shall minimize alteration of the bluff top and bluff face character, and ensure structural integrity. *{no intervening modifications}*

2.3.5 View Design Guidelines Concepts *{no intervening modifications}*

Beach Golf Zone ~~and Beach House~~

Incorporating varieties of plant materials associated directly with a shoreline environment, the Beach Golf Zone ~~and Beach House~~ will be comprised of primary theme tree with accents of flowering specimens.

2.6 Access Program

An Access Program has been developed to delineate the variety of trails, public recreational facilities, hotel and golf clubhouse common areas, bikeways and resort vehicle system available to residents, resort visitors and the general public.

The Access Program includes an information component. The hotel will contain, in a conspicuous location such as near the bell captain stand, concierge desk, or guest registration desk, a manned visitor information center, designed to orient the general public as well as hotel guests, as to the various uses available for public access and recreational use. Information shall also be made available through the use of brochures, maps and other guides showing the user all the locations, points of interest, and other public access and recreational opportunities within the resort and the surrounding area. The

information center shall be fully functional concurrent with the commencement of operation of the Hotel.

The Access Program also includes a circulation system component. This system incorporates public, guest and private off-road circulation and integrates the bikeways, hiking trails, association accessway, paths, resort vehicle system, at least one public access bridge crossing over Salt Creek connecting the Salt Creek Trail with the Golf Clubhouse, and other components of non-vehicular circulation network. Each component is designed to function as a separate and dedicated route for one of the variety of off-road circulation uses. *{no intervening modifications}*

2.6.2 Public Regional (Salt Creek Corridor) Trail (Types "R-1" & "R-2")

The Salt Creek Trail exists throughout the entire reach between Camino Del Avion and the Salt Creek Beach Park. The plan incorporates resort vehicle uses in portions of the trail (shown as Type "R-2") in the vicinity of Hillside Village South ~~the Golf Club (Site 3)~~ through the Salt Creek underpass (Underpass "U-1") ~~and to the Beach House~~. Other aspects of the resort vehicle system are outlined below in the section entitled "Resort Vehicle System." Salt Creek Trail, which is located on the westerly side of Salt Creek, shall be connected to the Golf Clubhouse on the easterly side of Salt Creek via a Type "W-2" public off-road walkway, as shown on Exhibit 2.26.

2.6.4 Public Off-road Walkways (Type "W-2")

Due to physical constraints (e.g. gradient, barriers, etc.) and safety concerns, bicycle use on portions of the public accessways would not be appropriate. Consequently, a separate component of public pedestrians-only paths is provided in the plan. Bicycles, skateboards and other non-pedestrian uses will be prohibited. As with the bikeways, these walkways will be privately owned as a part of the property and open to the public by easement. At least one of these public walkways shall bridge Salt Creek and provide a safe, public connection between the Salt Creek Trail (Types "R-1" & "R-2") and the Golf Clubhouse.

2.6.10 Service Maintenance Access to Beach House (Type "M-1")

~~Due to the location of the Beach House and access limitations, the existing HBP driveway below the Salt Creek Beach Park and the Salt Creek trail will be utilized for the purpose of service and emergency access to the Beach House. Due to these limitations, the need for service and emergency access should be reduced as much as possible.~~ The Beach House shall be located at a site where service/maintenance access is safe and convenient and would not adversely impact public access. As outlined above in the case of the resort vehicle, it will be necessary to obtain all rights and approvals from the HBP, the City and Caltrans prior to issuance of permits to construct the Beach House. The City will cooperate and assist the developer in its attempts to obtain these interjurisdictional approvals for the resort vehicle system.

2.6.11 Public Access to Hotel and Golf Clubhouse Complexes *{no intervening modifications}*

A minimum of fifty percent (50%) of the time slots of the golf course 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.

General public use (rental) of the banquet/conference center and exhibition hall facilities shall be allowed. The hotel shall not be used for private resort or time-share use. Public access shall be maintained to all common areas, including but not limited to the lobby/entrance areas, restaurants and dining facilities, pool areas, landscaped grounds and walkways.

No gates shall be placed to restrict access to public areas unless it can be demonstrated that the proposed gates serve a public health and safety purpose. Should gates be allowed, signs shall be provided in a conspicuous location, easily read by the public, 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 adjacent to public access areas, exact fence heights, exact location of gates restricting access to public areas, signage, and establishment of hours of operation of the public access areas shall require a coastal development permit. Incorporation into the Specific Plan of standards for the placement of fences and gates across public access areas and hours of operation of public access areas shall subject to a local coastal program amendment and shall not be effective until effectively certified by the Coastal Commission.

2.7.2 Additional Housing Programs

In addition to providing housing pursuant to the City's growth needs for upper income housing, the Monarch Beach Resort Specific Plan provides for an in-lieu fee program to satisfy the California coastal zone affordable housing requirements of the Government Code and a housing initiatives program designed to maximize employment of the local labor force and to make it easier for employees of the resort to afford housing.

2.7.3 In-Lieu Fee Program

An in-lieu fee of $540.00 per residential dwelling unit has been established to satisfy the Government Code's requirement of providing moderate income affordable housing within the Coastal Zone. The Housing Initiatives Program discussed in Section 2.7.4 satisfied the low and very low income affordable housing requirements within the Coastal Zone. The in-lieu fee shall be paid for any proposed dwelling units that have not been approved by Coastal Development Permit P-79-5539 or which have not received a City approved affordable housing credit from the previously constructed affordable units in the Laguna Niguel Planned Community within the City of Dana Point. These funds will be used to address the City's needs for affordable housing. Fees will be collected prior to issuance of certificates of occupancy for each residential unit.

2.9 Signage

The purpose of the provisions of the Monarch Beach Resort Sign Program (the "Sign Program") is to provide a comprehensive, fully-designed and controlled system of signage and other graphic communication devices within the Monarch Beach Resort development. A comprehensive sign program will be required in connection with the Coastal Development Permit and Site Development Permit approvals. The intent of the Sign Program is: *{no intervening modifications}*

- To provide information necessary and helpful to residents and guests of Monarch Beach Resort and to inform the general public about the public amenities available in the hotel and golf clubhouse.

2.9.2 Signage Types and Locations

Signs shall be placed which are visible from Pacific Coast Highway and Niguel Road. These signs shall clearly invite and encourage public use of public access and public recreation opportunities at the golf clubhouse and all its related facilities. The signs shall identify, provide information about, and direct the general public to all locations offering public access and recreation. Key locations include, but are not limited to, parking facilities open to the general public, public beach access points, tunnel undercrossings, Sea Terrace Community Park, Salt Creek County Beach Park, resort vehicle system stops, proposed permanent and temporary Golf Clubhouse parking lots, common areas and meeting rooms of the Golf Clubhouse and Hotel, recreation facilities of the Golf Clubhouse and Hotel, and public walkways/bridges which allow a safe crossing of both the golf course and Salt Creek and which connect the golf clubhouse with the existing Salt Creek public trail on the west side of Salt Creek.

Signs shall also be posted at all key locations, and said signs shall expressly state that the public access and recreation opportunities available at the key locations are open to the general public.

The types of signage categorized by a hierarchical set of criteria~~, as~~ are listed below. The following are the ~~guidelines~~design parameters for the different types of signs. Exhibits 2.27 and 2.28 illustrate signage details and locations. *{no intervening modifications}*

- Facility Identification/Directional Monuments: *{no intervening modifications}*

Within the Community Signage Monument for the Golf Course and Hillside Village, additional signage will identify and direct the residents, and the public, to the resort, Salt Creek and public trails, park and open space areas, and the northern and southern portions of the Hillside Village residential areas. At the entrance to the road leading to the Golf Clubhouse there will be additional signage which will identify and direct residents, the general public and guests to the Golf Clubhouse, the hotel and the northern residential enclave of the Resort Village. Should the entrance road be relocated or additional entrance roads constructed, the additional signage shall be placed at the relocated or additional road(s). The signage shall inform the general public that the Golf Clubhouse facilities are open to the general public. The signage monuments shall be integrated into the project perimeter/security walls, or into the guardhouse structure set within the entrance roadway median. *{no intervening modifications}*

- Future Facility Signage:

Future Facility signs will be planned at appropriate locations within and surrounding the Specific Plan area. These signs will provide information such as project component identity, expected completion dates, contact and telephone number information for future key components of the resort such as the Resort Hotel, the Golf Clubhouse, the Sea Terrace Park and Beach House, and residential developments, and the availability of public amenities in the future facilities. This signage character, although temporary in nature, will implicitly reflect the quality materials and fine detailing of the permanent signage monuments. No future facility sign shall exceed 96" in vertical dimension, nor 144" horizontally.

All signage shall be reviewed and approved as part of the final permitting process by the City of Dana Point for consistency with the Signage Implementation Plan, the special conditions of all valid coastal development permits approved for the Monarch Beach Resort, and the Monarch Beach Specific Plan. Prior to the City of Dana Point's assumption of coastal development permitting authority over the Monarch Beach Resort area, all signage shall be reviewed and approved by the Executive Director of the Coastal Commission. *{no intervening modifications}*

2.15 Phasing

2.15.1 The Phasing Plan *{no intervening modifications]*

The General Plan Land Use Element includes ~~a policy of encouraging the Specific Plan implementation to be completed within five years. The General Plan policy further~~ Policy 8.12 which provides for development of the public open space uses and public roads first, then the hotel complex, and then the residential uses. This policy states that concurrent development ~~is~~may be permissible only if the primary open space and visitor-serving objectives of this policy is being achieved.

A phasing implementation scheme has been created which would allow most work to proceed concurrently, but which would complete first, the primary object of the development of the public open space and roads; secondly, the resort complex; and lastly, the residential dwellings.

To insure implementation of the General Plan phasing policy, the following provisions will apply:

1. Prior to approval of any Site Development Permits and Coastal Development Permits for residential units, the hotel facilities, golf clubhouse, golf course, and Sea Terrace Park must have obtained Site Development Permit approval and Coastal Development Permit approval.

2. Prior to approval of any Tentative map and coastal development permits for residential units, any required Tentative maps for the hotel facilities, golf clubhouse, golf course and Sea Terrace Park must have obtained all necessary approvals, including coastal development permit approval.

3. Prior to recordation of any final subdivision maps for residential units, ~~recordation of~~ all required final subdivision maps for the hotel facilities, golf clubhouse, golf course and Sea Terrace Park must have been ~~accomplished~~ recorded.

4. Prior to the issuance of building permits for any approved residential units within the Specific Plan area, the construction of the park improvements and open space features described in Section 2.4, the hotel facilities, and the golf clubhouse shall be completed.

In the event that any unforeseen factors delay the processing of the Site Development Permit application or subdivision map applications for the hotel facilities, golf clubhouse, golf course, or Sea Terrace Park, the City may permit deviations from the ~~three~~ four provisions outlined above, provided there are adequate safeguards to insure implementation of the General Plan Phasing Policy.

In addition the developer shall prepare and obtain approval of a Phasing Plan (PP) from the Planning Commission prior to the recordation of any Final Map. A primary objective of the PP is that the development of the public open space and roads occur first, and that the hotel construction precede residential construction and that residential units not be completed or occupied prior to completion of the hotel. The PP shall contain and/or address the following:

1. In accordance with the "Release and agreement regarding additional development of Sea Terrace Community Park" dated 20 June, 1991 between Monarch Bay Resort, Inc. and the Capistrano Bay Parks and Recreation District, the developer shall complete the construction of Sea Terrace Park and the other park described in Section 2.4.1 and open space features on or before the ~~earlier of the~~ opening of a resort hotel on Developer Property and prior to the construction of any residential units. ~~or June 1, 1996~~.

2. Prior to the issuance of coastal development permits and building permits for any residential units, coastal development permits and building permits for the hotel must be issued. *{no intervening modifications}*

4. The PP may make provision for the construction of model homes and temporary sales facilities for sales purposes. Coastal development permits and Building permits for model homes may not be issued until coastal development permits and building permits for the hotel are issued. Model homes may not be sold, or occupied for purposes other than sales activities, until after the Certificate of Occupancy for the hotel is obtained. *{no intervening modifications}*

6. If unforeseen circumstances delay compliance with minor aspects of the PP, a provision to insure compliance with these requirements can be facilitated through cash payments or other forms of security acceptable to the City. Prior to or concurrent with acceptance of such cash payments or other forms of security, the City shall develop a program specifically stating how the cash payments or other forms of security will be used to ensure compliance with the PP requirements.

7. The PP will be clearly referenced in each final Map. The PP will be referenced in the title. The PP shall be a condition of approval of all coastal development permits for development proposed in this Specific Plan. Any subsequent developers and/or owners shall submit a letter to the City certifying that they have read the PP and acknowledge and accept all its provisions. *{no intervening modifications}*

d) Zoning and Development Standards - Chapter 3.0

{no intervening modifications}

3.1.1.2 Implement the coastal protection policies contained in the City of Dana Point Certified Land Use Plan in order to ~~applicable policies of the California Coastal Act and~~ preserve, protect and enhance the Coastal Zone resources of particular value to the Dana Point Community, County of Orange, and State of California. The certified Land Use Plan consists of the Land Use, Urban Design, and Conservation/Open Space Elements of the City of Dana Point General Plan. *{no intervening modifications}*

3.1.2.5. The coastal policies and implementing actions as specified in the certified Land Use Plan and Zoning Code shall take precedence over the provisions of this Specific Plan within the Coastal Zone.

3.2 Definitions

Definitions for terms contained in this Specific Plan which are not listed below are found in Chapter 9.75 "Definitions and Illustrations of Terms" in the Zoning Code. Definitions in Chapter 9.75 take precedence over definitions in the Specific Plan. ***{For those definitions in Chapter 9.75 of the Zoning Code which are duplicated here in the Specific Plan, all suggested modifications made to definitions in Chapter 9.75 shall also be made to the duplicated Specific Plan definitions}*** *{no intervening modifications}*

3.3.0 Except as otherwise provided by the Dana Point Zoning Code or the Coastal Act, any person, partnership, corporation or state or local government agency proposing to undertake any development within the Specific Plan area shall obtain a coastal development permit in compliance with the provisions of the City's Certified Local Coastal Program. Coastal Development Permits shall be required and processed in accordance with the provisions of Chapters 9.27 "Coastal Overlay District", 9.61 "Administration of Zoning" and 9.69 "Coastal Development Permit" of the Dana Point Zoning Code. Approvals for development within the Specific Plan area authorized by Coastal Development Permit P-79-5539 shall be obtained from the Coastal Commission in accordance with the provisions of Section 9.69.030(c)(3)(D) of the Dana Point Zoning Code. *{no intervening modifications}*

3.3.3 Any amendment to these Development Standards shall also amend Chapter 2.0 of the Specific Plan ~~Land Use Plan~~, as necessary. Any amendment to ~~the Land Use Plan~~ Chapter 2.0 of the Specific Plan shall also amend the Development Standards, as necessary. All such amendments shall be considered for approval by the Planning Commission and adopted by the City Council, and ~~by~~, if the amendment affects any portion of the Specific Plan area within the coastal zone, the amendment shall be submitted by resolution of the City Council to the California Coastal Commission for certification. ~~, to the extent California Coastal Commission has not assigned, released or otherwise transfer its jurisdiction to City or other agency~~. Any amendment to the Specific Plan which also constitutes an amendment to the Certified Local Coastal Program shall not be effective unless and until effectively certified by the Coastal Commission. The Specific Plan ~~may~~ shall be amended by procedures described in Section 9.33.070 of the Dana Point Zoning Code. An amendment to the Specific Plan which requires a local coastal program amendment shall be processed according to the procedures set forth in Section 9.61.080(e) of the Dana Point Zoning Code. *{no intervening modifications}*

3.4.5.1 Site Development Permit(s):

A Site Development Permit is a permit issued by the City of Dana Point which authorized establishment, operation and maintenance of a specific use, structure or activity of any development, as defined in the Municipal Code. A separate Coastal Development Permit is required to be issued by the

Coastal Commission prior to certification of the City's Local Coastal Program by the Coastal Commission. Any Site Development permits issued either prior or subsequent to the certification of the Local Coastal Program must be consistent with the Specific Plan and the Coastal Resource Overlay District Regulations (Chapter 9.27) of the Zoning Code. Except as otherwise provided by the Dana Point Zone Code or the Coastal Act, any person, partnership, corporation or state or local government agency proposing to undertake any development in the Specific Plan area shall obtain a Site Development Permit in compliance with the provisions of this Chapter. ~~After certification of the City's Local Coastal Program (LCP), Coastal Development Permits shall be processed in accordance with the provisions of the Zoning Code.~~ *{no intervening modifications}*

3.9 Beach Visitor Commercial Development Standards (VRC-BH)

{Delete Section 3.9 in its entirety and replace with the following:} The beach house concept may be pursued by evaluating new potential locations either in the Specific Plan area or outside of the Specific Plan area. Selection of new potential locations and development of a beach house shall ensure that the beach house is in conformance with Chapter 2.0 of the Specific Plan and all other provisions of the certified local coastal program. *{no intervening modifications}*

3.13.3 Signage Program

The sign program shall be approved by the Planning Commission as part of the Site Development Permit and shall be included in the approval of any coastal development permit. The approved signage program shall be consistent with the signage requirements contained in Section 2.9 of the Specific Plan. *{no intervening modifications}*

3.14.1 Parking shall be provided as required by City of Dana Point regulations except as specifically provided for in this section. The minimum number of parking spaces shall conform to the requirements set forth in Table 3.5. The criteria for the establishment of the parking standards contained in Table 3.5 are those found in the "Parking Demand Study: Monarch Beach Resort" by Linscott, Law and Greenspan dated November 1, 1991. All criteria and assumptions contained in this study shall be implemented through the Site Development Permit and shall be complied with by the resort hotel and golf clubhouse operator. Any substantive changes to the assumptions contained in this study at the Site Development Permit, will necessitate a new parking demand study and a possible amendment to the Specific Plan and Local Coastal Program Amendment. The Site Development Permit will be conditioned to insure compliance with the assumptions in the parking demand study.

In addition, to verify the assumptions in the parking demand study, a Parking Monitoring Program to gather parking and vehicle occupancy data for the Hotel and Golf Clubhouse shall be implemented. The purpose of this monitoring program will be to evaluate the adequacy of the parking provided to satisfy the parking demand of both the Hotel and Golf Clubhouse. Data for the monitoring program shall be collected for two years, will commence when both the Hotel and Golf Clubhouse are operational, and the results shall be reported annually to the City of Dana Point and the Coastal Commission. Should the parking monitoring program confirm that the parking supply is less than parking demand, additional parking shall be provided to make up the parking deficiency. This shall necessitate a Local Coastal Program Amendment to the Monarch Beach Resort Specific Plan. *{no intervening modifications}*

3.14.4 Shared Parking

Shared parking between the golf clubhouse and the hotel shall be allowed subject to the criteria and assumptions contained in the "Parking Demand Study: Monarch Beach Resort" and as approved in the Site Development Permit. If the assumptions of the parking demand study are found to be incorrect based on the results of the Parking Monitoring Program, the shared parking plan shall be reevaluated.

B. Graphic Modifications

Modifications are shown as follows:

1.) **Added text** is shown in underline
2.) **Deleted text** is shown in ~~strikeout~~

1. Section 9.01.080(a) Table

All proposed references to the Dana Point Specific Plan/Local Coastal Program and the Capistrano Beach Specific Plan/Local Coastal Program shall be deleted from the "Relationship to Existing Plan Regulations" Table in Section 9.01.080(a). Instead, a note shall be added to the bottom of the Table indicating that both the Dana Point Specific Plan/Local Coastal Program and the Capistrano Beach Specific Plan/Local Coastal Program remain in effect for the purpose of issuing coastal development permits.

2. Chapter 9.11 - Commercial Districts

Visitor/Recreation Commercial District

i. The following uses shall be deleted as "permitted uses" in the Table of Uses for the Visitor/Recreation Commercial (V/RC) District and instead shall be designated as "conditional uses":

"Administrative Office Uses," "Furniture Store," and "Membership organizations."

ii. "Professional Office Use" shall be allowed in the V/RC District according to the following:

On the second floor or above, or below street level	**Permitted**
Street Level	**Conditional**

3. Chapter 9.21 - Recreation, Open Space And Conservation Districts

To better reflect the definitions of "open space" and "open space uses" as proposed in Chapter 9.75, and to ensure the greatest protection of natural resources, the classification of the uses for the Conservation (CONS) District listed below which appear in the Table of permitted uses for Chapter 9.21 as shall be modified according to the following:

USE	CHANGE FROM	CHANGE TO
Cultural Uses	Conditional	**Prohibited**
Equestrian Facility	Conditional	**Prohibited**
Open Space	Permitted	**Conditional**
Open Space Uses	Conditional	**Permitted**
Park, Public	Permitted	**Conditional**
Public Land Uses	Permitted	**Conditional**

4. Monarch Beach Resort Specific Plan Exhibit Changes

Beach House - Delete all references and information in the Specific Plan's tables, figures, charts, and other graphics pertaining to the Beach House

Exhibit 1.1 - Land Use Plan: Exhibit 1.1 shall be modified to change the Visitor/Recreation/Commercial land use designation for the Beach House site to Recreation/Open Space. The acreage figures contained in the exhibit shall be adjusted to reflect this change in land use designation.

Exhibit 1.4 - City General Plan/Land Use Plan: Exhibit 1.4 shall be modified to change the Visitor/Recreation/Commercial land use designation for the Beach House site to Recreation/Open Space. The acreage figures contained in the exhibit shall be adjusted to reflect this change in land use designation.

Exhibit 2.1 - Land Use Plan: Exhibit 2.1 shall be modified to change the Visitor/Recreation/Commercial land use designation for the Beach House site to Recreation/Open Space. The acreage figures contained in the exhibit shall be adjusted to reflect this change in land use designation.

Table 2.1 - Land Use Plan Statistical Area: Table 2.1 shall be modified to delete the reference to the Beach House and revise the acreage figures to reflect the conversion of the Beach House site from Visitor/Recreation/Commercial to Recreation/Open Space.

Exhibit 2.2 - Village Concept Plan: Exhibit 2.2 shall be modified to delete the Beach House site and change the Visitor/Recreation/Commercial land use designation for the Beach House site to Recreation/Open Space.

Exhibit 2.5 - Beach House Building Envelope: Exhibit 2.5. shall be deleted in its entirety.

Exhibit 2.26 - Access/Trails Plan: Exhibit 2.26 shall be modified to include a map note stating the following:

> Roads between 32 feet and 39 feet in width shall have parallel parking on one side. Roads 40 feet and over in width shall have parallel parking on both sides. Where on-street parking is located close to a public trail access point, it shall be made available to the public.

Exhibit 2.27 - Sign Location Plan: Exhibit 2.27 shall be modified to incorporate the changes approved by the Coastal Commission.

Exhibit 3.1 - Zoning Map: Exhibit 3.1 shall be modified to change the VRC/BH land use designation of the specific plan zoning map for the Beach House site to the R/OSF (Recreation/Open Space Feature) land use designation of the specific plan zoning map. Further, the title of the map shall be changed to Specific Plan Land Use/Zoning Designations Map.

Exhibit 3.2 Residential Zones: Exhibit 3.2 shall be modified to change the VRC/BH land use designation of the specific plan zoning map for the Beach House site to the R/OSF and use designation of the specific plan zoning map.

5. Map Changes

a) Coastal Zone Boundary

The Coastal Zone boundary, as depicted on the Zoning Map as the boundary of the Coastal Overlay District, shall be adjusted to reflect the corrected Coastal Zone boundary as determined by the Coastal

Commission. Further, the Coastal Zone boundary shall be depicted on the Monarch Beach Resort Specific Plan maps.

b) Zoning Changes

i. The coastal bluff faces in the gated community of Monarch Bay northerly of Salt Creek shall be redesignated from the "Recreation (REC)" district to the "Conservation (CONS)" district.

ii. The parcel of land at 33542 Ritz Carlton Drive shall be redesignated from the "Professional/Administrative (P/A)" district to the "Visitor/Recreation Commercial (V/RC)" district.

6. Table Of Contents

The Table of Contents of the Zoning Code shall be amended to add any entirely new sections added to the Zoning Code as a result of Coastal Commission action on this LCP amendment.

FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

V. LCP HISTORY

The City's LCP was prepared by the County of Orange ("County") prior to incorporation of the City. Each subarea was certified by the Commission as a separate County LCP segment. The City incorporated in 1989. The City's coastal zone included the entire Capistrano Beach and Dana Point segments, and a portion of the South Laguna segment. The City then adopted the LCP as well as merged these 3 segments into a single certified segment shortly after the City incorporated. The Commission certified these documents as the City's LCP and the segment merger on September 13, 1989. The remainder of the South Laguna segment was divided between the City of Laguna Beach and the newly incorporated City of Laguna Niguel.

The City's non-certified segment was originally referred to as Laguna Niguel when, like South Laguna, Dana Point, and Capistrano Beach, it was a separate County of Orange LCP segment. Subsequently, around the time of incorporation of both the City of Dana Point and the City of Laguna Niguel, the Laguna Niguel segment began to be referred to in some instances as Monarch Beach. This helped differentiate the Laguna Niguel segment, which is entirely within the boundaries of the City of Dana Point, from the new City of Laguna Niguel.

A. PRE-INCORPORATION

Prior to the City's incorporation, the Commission approved the segmentation of formerly unincorporated Orange County's coastal zone now entirely or partially within the current city limits. These LCP segments were Capistrano Beach, Dana Point, Laguna Niguel, and South Laguna. On the following dates, the Commission effectively certified LCP's prepared by the County for these LCP segments:

Segment	Date of Effective Certification
Capistrano Beach: *Main area* *Capistrano Bay Community ADC*	 8-14-86 4-23-87
Dana Point Proper	2-5-86
South Laguna	11-19-87
Laguna Niguel: *Land Use Plan* *Implementation* (Implementation never effectively certified)	 7-22-81 (certified as submitted) 12-14-83 (certified w/suggested modifications)

Each of these certified LCP's was in the form of a "specific plan/local coastal program" ("SP/LCP"). Each of these SP/LCPs included both the Land Use Plan ("LUP") policies and Implementation Plan ("IP") provisions of the respective LCP segment. In addition, each SP/LCP incorporated by reference the coastal development permit ("CDP") ordinance contained in the Orange County Zoning Code. Thus, although LUP policies and IP provisions were tailored to each segment, the CDP ordinance was uniform throughout the three segments. However, the Commission only certified the LUP prepared by the County for the uncertified segment (Monarch Beach). The IP portion was never effectively certified for this segment. Upon incorporation of the City, the LCPs and LUP prepared by the County and certified by the Commission lapsed pursuant to Sections 30519(a), 30600(c) and 30600(d) of the Coastal Act.

B. POST-INCORPORATION

The City of Dana Point incorporated in 1989. All of the former Orange County LCP segments of Capistrano Beach, Dana Point, and Laguna Niguel were included within the city limits of the new City of Dana Point. A portion of the South Laguna LCP segment was also included within the new City of Dana Point. At the same time, a portion of the South Laguna segment was incorporated into the new City of Laguna Niguel, and the remainder of the South Laguna segment was annexed by the City of Laguna Beach.

On September 13, 1989, the Commission approved the City's post-incorporation LCP. In creating its first post-incorporation LCP, the City combined the Capistrano Beach and Dana Point segments, and the portion of the South Laguna segment within its jurisdiction, into one certified LCP segment. In order to retain the permitting authority delegated to the County, the City slightly modified the Capistrano Beach and Dana Point SP/LCPs and that portion of the South Laguna SP/LCP applicable to the new City. The City then adopted these SP/LCPs as its first post-incorporation LCP.

The City did not readopt the County's Laguna Niguel LUP. This was because the segment was not effectively certified. Therefore, the County did not have permitting authority for the segment which could be assumed to the City. Thus, the Laguna Niguel segment remained uncertified. The Laguna Niguel segment was also referred to in some instances as Monarch Beach, to differentiate the segment from the new City of Laguna Niguel.

VI. PROPOSED AMENDMENT REQUEST

It has been the City's intent to eventually replace all pre-incorporation regulatory documents prepared by the County and applicable to all areas within the City's boundaries (both inside and outside the coastal zone) with documents prepared by the City. The purpose of replacing the County documents was to consolidate the myriad County documents into as few documents as possible, as well as reflect the needs of the new City. Thus, eventually the City intends to replace all the County prepared LCP documents with its own certified LUP and certified IP.

The proposed LCP amendment request involves only the South Laguna subarea and the uncertified segment (Monarch Beach), except for the Dana Strands portion of the Uncertified segment (Monarch Beach) which would be deferred (see Exhibit 2). The Dana Strands area would remain uncertified because it is part of the area which would be covered by the City's proposed Dana Point Headlands Specific Plan. However, the specific plan for a variety of reasons is still under development. Thus, there are no LUP policies or Implementation Plan which have been adopted by the City.

As proposed by this LUP amendment request, the Land Use Plan ("LUP") component of the LCP for these areas would consist of three elements of the City's General Plan: Land Use, Urban Design, and Conservation/Open Space. As proposed, the Implementing actions component of the LCP for these areas would be the City's Zoning Code, including all specific plans (except the Dana Point Harbor District which applies only within the Dana Point subarea).

The City proposes to eliminate the South Laguna SP/LCP. The proposed LCP amendment request would result in the replacement of the South Laguna SP/LCP with the three General Plan elements and Zoning Code identified above. Under the proposed LCP amendment request, the land use and zoning designations of the South Laguna SP/LCP would be replaced by similar designations of the City's General Plan and Zoning Code. The LUP policies and IP provisions of the South Laguna, excluding policies and provisions applicable to geographic areas of the South Laguna segment outside of the City, would be replaced with similar, albeit broader and less specific, policies and provisions intended to carry out the requirements of the Coastal Act.

In addition, under the proposed LCP amendment request, the three elements of the City's General Plan and the City's Zoning Code would also fully certify for the first time the Uncertified segment (Monarch Beach), except for the Dana Strands Area of Deferred Certification ("ADC"). The Dana Strands area is proposed to be deferred since it is to be included as part of the Dana Point Headlands Specific Plan which is still being prepared by the City. The City's Zoning Code also includes the Monarch Beach Resort Specific Plan, a separate document from the Zoning Code. The Monarch Beach Resort Specific Plan contains additional Implementing actions tailored specifically for development within the geographic area covered by the Specific Plan. The Monarch Beach Specific Plan area comprises a portion of the Uncertified segment (Monarch Beach).

Further, as proposed by this LCP amendment request, the Laguna Niguel uncertified segment would be eliminated and would be merged with the certified segment. As a result, there would be no segments in the City and, with the exception of the Dana Strands ADC, all areas of the City would be certified under the proposed LCP amendment. In addition, as proposed under this LCP amendment request, the Dana Point Specific Plan/Local Coastal Program and the Capistrano Beach Specific Plan/Local Coastal Program would continue to be the LCP for those two areas.

VII. LAND USE PLAN AMENDMENT (Findings for Denial as Submitted and Approval if Modified)

A. CONFORMANCE WITH CHAPTER 3 POLICIES

The standard of review for a land use plan is conformance with, and adequacy to carry out, the Chapter Three policies of the Coastal Act, as provided for in Section 30512(c) of the Coastal Act which states:

> *The commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200).*

The Land Use, Urban Design, and Conservation/Open Space Elements of the General Plan that have been submitted for certification as the Land Use Plan ("LUP") do not fully meet the requirements of, and are not in conformity with, the policies of Chapter Three of the Coastal Act with respect to coastal access, environmentally sensitive habitat areas, wetlands, recreation, visitor serving facilities, coastal dependent uses, hazards, shoreline protective devices, beaches, public works facilities, new development, water quality, visual impacts, and cultural resources. Therefore, the Commission finds that the land use plan as submitted is not consistent with nor adequate to carry out the Chapter Three policies of the Coastal Act and must be denied. However, the Commission finds that, as modified, the LUP amendment would be in conformity with the Chapter Three policies of the Coastal Act. The specific Chapter 3 policy areas are discussed in further detail below.

1. Coastal Access

a) Conformance of Land Use Plan Access Policies with Chapter 3 Access Policies

Assuring public access to the shoreline is one of the strongest mandates of the Coastal Act. Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

> *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30212 states, in part:

> *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development..*

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

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 non-automobile 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 on-site recreational facilities to serve the new development.*

(1) Denial as Submitted (Public Access)

The proposed LUP policies as submitted generally provide for access to the coastal zone, but not necessarily to and along shoreline areas in particular. As proposed, the LUP policies do not advocate the maximum provision of public access or the posting of such access as required by Coastal Act Section 30210. In addition, as proposed the LUP policies do not provide for provision of access via historic public use. It is important to have such a policy to preserve any future possibility of obtaining access to the short stretch of private beach below the Monarch Bay private community. Without it, opportunities to maximize public access would be lost. Further, the proposed LUP amendment as submitted does not contain a policy similar to Coastal Act Section 30212 setting forth requirements regarding the provision of public access in new development located between the nearest public roadway and the shoreline. Since the private communities of Monarch Bay and Niguel Shores are located between the nearest public roadway and the shoreline, the lack of a policy similar to Section 30212 would result in lost opportunities for the maximum provision of public access. Therefore, the Commission finds that, as submitted, the LUP amendment is not in conformance with, nor adequate to carry out, the public access policies of Chapter Three of the Coastal Act and thus must be denied.

Adequate public and private parking must be provided to ensure adequate access to the coastal zone. When a private development does not provide adequate on-site parking, users of that private development are forced to occupy public parking spaces which should be available to the general public. The majority of the public drives to the coastal zone and relies upon public parking lots, as opposed to private parking lots, when visiting the coastal zone in general and the beach in particular. Therefore, it is important that existing public parking spaces are maintained and, where feasible, that new public parking spaces be provided. Otherwise, a lack of adequate public parking may discourage people from visiting the coastal zone, resulting in adverse impacts to public access. The Commission finds that the LUP amendment as proposed does not ensure the adequate provision of public parking and thus is not consistent with nor adequate to carry out Section 30252(4) of the Coastal Act. Therefore, the Commission finds that the LUP amendment as proposed must be denied.

(2) Parking Modifications

Proposed LUP policies are being modified and new ones added to address the issue of adequate public parking. New Land Use Element policy 1.8 is being suggested to add the complete provisions of Section 30252 of the Coastal Act. New Land Use Element policy 2.5 is being suggested to ensure that the shared use of parking facilities does not result in parking demand exceeding parking supply. Land Use Element policy 3.5 is being modified for consistency with Section 30212.5 of the Coastal Act regarding the distribution of public facilities, including parking facilities, in the coastal zone. Urban Design Element policy 5.7 is being added to allow the City to remedy inefficient parking lot design which results in many curb cuts on arterials by consolidating these parking lots. A lot of curb cuts results in too many cars entering and exiting onto arterials like Pacific Coast Highway and other major coastal access routes, leading to traffic congestion which can discourage visitors driving to the coastal zone. However, the policy also states that parking lots can be consolidated so long as there is no decrease in the number of parking spaces provided. Therefore, as modified, the Commission finds that the LUP amendment conforms with and is adequate to carry out Section 30252(4) of the Coastal Act.

(3) Geographic Specific Access Modifications

Urban Design Element policy 1.5 is being modified in regards to the Blufftop Trail between Monarch Beach and Doheny State Beach. The Land Use Element Policies under Goal 8 are being modified, and new Urban Design Element policies 4.6 and 4.7 are being added, to ensure that the trails and other public access required as special conditions of "master" coastal development permit P-79-5539 and subsequent coastal development permits are implemented and maintained. Permit P-79-5539 approved a large mixed-use development, including 3,000 homes, a golf course, commercial center, conference center, hotel, and park areas. Without policies that maintain the public access opportunities required by permit P-79-5539, the LUP is inconsistent with the Chapter 3 public access policies.

After certification of an LCP, the standard of review for coastal development permits, including those issued by the Commission for development in the certified area, becomes the certified LCP, pursuant to Section 30604(b). Section 30604(c) of the Coastal Act requires that development in a certified area located between the nearest public roadway and the shoreline shall also be consistent with the public access and recreation policies of Chapter 3 of the Coastal Act, in addition to a certified LCP. However, much of the development approved by permit P-79-5539 and subsequent coastal development permits is not located between the nearest public roadway and the shoreline. Therefore, the certified LCP would be the only standard of review for the inland development which still requires final approval as a condition of permit P-79-5539.

Thus, the Commission finds that it is necessary to modify the LUP to include the public access provisions of the Commission's approval of permit P-79-5539 and subsequent coastal development permits to preserve and maintain the public access opportunities and lower-cost visitor-serving amenities, such as access through the Ritz Carlton and Monarch Beach Resort hotels, the development of Sea Terrace Community Park and Salt Creek County Beach Park, and use of the golf course by the general public, approved by the Commission within the P-79-5539 permit area. In addition, the Commission finds that it is necessary to modify the LUP to include the provisions of the Commission's approval of permit P-79-5539 and subsequent coastal development permits to ensure that the LUP is in conformance with and adequate to carry out the Chapter 3 policies of the Coastal Act.

Further, the public access findings for the approval of permit P-79-5539, and subsequent coastal development permits 5-82-291, 5-92-168, and 5-96-006 are included herein by reference. This is

because the reasons why the Commission found that imposition of the public access conditions was necessary to conform the developments to the public access policies of Chapter 3 are the same findings which justify modification of the LUP to include the public access provisions of those permits in order for the LUP to be in conformance with, and adequate to carry out, the public access policies of Chapter 3.

(4) Other Access Suggested Modifications

Land Use Element policy 1.6 which encourages clustered commercial development over strip commercial development is being modified to emphasize that the reason to encourage this is to facilitate the promotion of public transit, consistent with Section 30252. Clustering fosters focal points of development which serve as ideal locations for transit stops, thus reducing reliance on automobile trips and thus minimize adverse impacts on public access. Since a large area of the uncertified segment (Monarch Beach) is still undeveloped, opportunities still exist to plan for clustered development rather than strip development.

New Land Use Element policies 1.8 and 2.13 are being suggested to incorporate the language of Section 30252 of the Coastal Act which states the public access to the coast should not simply be maintained but also enhanced. This would allow for potential upgrading of existing accessways, and provide for maximum access. Further, incorporating the language of Section 30252 into the LUP would add specificity by providing examples of methods to maintain and enhance public access to the coast.

Land Use Element policy 4.3 is being modified to be consistent with Section 30210 by emphasizing requirements to maximize public access and to conspicuously post such access. New Conservation/Open Space Element policy 2.15 is being suggested to ensure that shoreline protective devices do not have significant adverse impacts on lateral shoreline access. This is necessary to ensure that any future seawalls which may be necessary to protect existing blufftop homes in Monarch Bay do not result in adverse impacts to public access on the beach below the bluffs. Urban Design Element policy 4.3 is being modified so that the development of "stronger pedestrian, bicycle and visual linkages between public spaces" is also applicable specifically to the shoreline and bluffs. Land Use Element policy 3.10 is being modified so that street rights-of-way which lead to navigable waters shall not be vacated, thus preserving these public rights-of-way for future vehicular or non-vehicular vertical public access. Policy 3.11 of the Land Use Element is being added to incorporate the provisions of Section 30211 of the Coastal Act so that potential future opportunities to obtain public access to the private beaches in Dana Point are not lost.

(5) Conclusion - Approval as Modified (Access)

Therefore, the Commission finds that, as modified, the LUP amendment is consistent with and adequate to carry out the provisions of Sections 30210, 30211, 30212, 30212.5, and 30252 of the Coastal Act regarding public access.

b) Public Access Component

Pursuant to Section 30500(a) of the Coastal Act and Section 13552(b) of the California Code of Regulations, an amendment must contain a readily identifiable public access component. Further, Section 13540(a) of the California Code of Regulations provides that certification of a land use plan

shall be based upon findings that conclude that the land use plan contains a specific public access component as required by Section 30500(a) of the Coastal Act.

As submitted, there is a parenthetical citation referencing the applicable Chapter 3 policy at the end of each proposed LUP policy. Therefore, each LUP policy intended to carry out the public access policies is denoted with a citation to the applicable public access policy. New suggested access policies not proposed would also have this type of citation. Thus, although the public access policies are not grouped together, they are readily identifiable because of these parenthetical citations. In addition, the access maps are readily identifiable because they are titled as access maps. Therefore, the Commission finds that the LUP amendment contains a specific, readily identifiable public access component, consistent with the requirements of Section 30500(a) of the Coastal Act and Sections 13540(a) and 13552(b) of the California Code of Regulations.

2. Recreation/Visitor Serving Facilities

Section 30213 of the Coastal Act states, in part:

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

Section 30220 of the Coastal Act states:

> *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Section 30221 of the Coastal Act states:

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

Section 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 30223 of the Coastal Act states:

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

Section 30224 of the Coastal Act states:

> *Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing*

additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

Section 30234 of the Coastal Act states:

Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.

Section 30253(5) of the Coastal Act states:

New development shall:

(5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

a) Denial as Submitted (Recreation/Visitor Serving Facilities)

The LUP amendment as submitted contains policies that are inconsistent with the Chapter 3 policies encouraging the provision of opportunities for visitor serving uses and developments. For instance, the LUP has policies that encourage local and neighborhood serving commercial uses but not visitor serving commercial areas in the coastal zone. In addition, there are also no specific policies which assure that lands currently use for recreation and visitor serving uses will be protected for such uses. Development of the area covered by the proposed Monarch Beach Resort Specific Plan has already been approved (by Coastal Commission permit no. P-79-5539). The approved development, some of which has already been built, includes a mix of residential and visitor-serving development. Without policies that maintain the visitor-serving uses, the LUP is inconsistent with the Chapter 3 recreation policies. In addition, the LUP policies do not specifically discuss boating and fishing facilities, whether recreational or commercial in nature.

Further, there is no specific policy emphasizing the protection, encouragement, and provision of lower-cost visitor-serving recreational facilities. Lower-cost visitor facilities allow more people to be able to afford to partake of coastal recreation opportunities. In particular, lower-cost overnight visitor accommodations allow persons who could not otherwise afford more expensive accommodations to stay in the coastal zone for a longer period, allowing for a greater experience of the coastal zone. In the part of the City affected by the proposed LUP amendment, the only existing hotel is the pricey five diamond Ritz Carlton Laguna Niguel resort. The proposed Monarch Beach Resort hotel is also intended to be an upscale hotel. Lower cost visitor serving facilities need to be encouraged to balance the high-end hotels. Therefore, the Commission finds that, as submitted, the LUP amendment is not in conformance with, nor adequate to carry out, the recreation and visitor serving policies of Chapter Three of the Coastal Act and thus must be denied.

b) Modifications for Approval (Recreation/Visitor-Serving Facilities)

New Land Use Element policies 2.10, 2.11, and 2.12 are being added which incorporate the provisions of Sections 30220, 30221, and 30222 respectively, regarding protection of coastal water areas and oceanfront land for recreation, the preference for visitor-serving uses over other types of uses in the coastal zone, and ensuring that new development is correlated with park acquisition and the provision on-site recreational facilities to assure that new residents don't overload existing coastal recreation facilities. Existing Land Use Element policy 3.3 is being expanded to include the provisions of Sections 30213 and 30223 of the Coastal Act, respectively, regarding lower-cost visitor-serving facilities and the use of upland areas to support coastal recreational uses. As stated above, these provisions are necessary to encourage lower-cost visitor-serving facilities to balance the existing and proposed upscale hotels in the area. These policies are also necessary to protect the low-cost recreational facilities that have already been developed (or approved for development) such as Salt Creek County Beach Park and Sea Terrace Community Park.

Urban Design Element policy 2.1 is being modified to incorporate the language of Section 30253(5) of the Coastal Act regarding the protection of special communities and neighborhoods which are popular visitor destinations. Conservation/Open Space Element policy 8.2 has been modified to include visitor-serving purposes as a reason to retain and protect the City's cultural resources. Cultural resources such as historic buildings, for example, can be prime examples of low-cost visitor serving facilities.

New Land Use Element policies 8.13, and 8.14, and New Urban Design Element policies 4.6 and 4.7 are being added, and existing Land Use Element policies 8.6 and 8.8 are being modified, to ensure that the recreation/visitor-serving facilities open to the public that currently exist (as approved by coastal development permit P-79-5539 and subsequent Commission approved coastal development permits) are protected and maintained. The recreation/visitor-serving facilities required by these permits, such as the golf clubhouse, provide the types of lower-cost visitor-serving facilities encouraged by the Chapter 3 recreation policies and thus must be protected. Existing Land Use Element policy 8.12 is being modified to emphasize the public access/recreation aspects of the proposed Monarch Beach Resort phasing plan which encourages recreation/visitor-serving facilities to be built before residential uses, consistent with Section 30222.

Therefore, as modified, the Commission finds that the LUP amendment would be consistent with and adequate to carry out the provisions of Sections 30213, 30220, 30221, 30222, 30223, and 30224 of the Coastal Act regarding recreation opportunities and visitor-serving facilities.

3. Environmentally Sensitive Habitat Areas (ESHA)

Section 30240 of the Coastal Act states:

> *(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
>
> *(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

a) Denial as Submitted (ESHAs)

The ESHA LUP policies as submitted deal primarily with physical landform features or with habitat areas in general, not specifically sensitive habitat values or species which would qualify as environmentally sensitive habitat areas ("ESHA") under the Coastal Act. The policies also do not address the impacts of development which is sited near an environmentally sensitive habitat area, how such development should be sited, nor the uses allowed in such areas. A small coastal sage scrub revegetation project near Salt Creek exists. Also, the developed slopes adjacent to the open space/natural areas of the City of Laguna Beach may contain coastal sage scrub/chaparral as well. Coastal sage scrub in general is considered ESHA because it provides habitat for wildlife species such as the gnatcatcher which are listed as threatened or endangered species. Therefore, the Commission finds that, as submitted, the LUP amendment is not in conformance with, nor adequate to carry out, the ESHA policies of Chapter Three of the Coastal Act and thus must be denied.

b) Approval as Modified (ESHAs)

Conservation/Open Space Element policies 3.7 and 3.8 are being suggested to incorporate the provisions of Section 30240 of the Coastal Act. Proposed Conservation/Open Space Element policies 2.6 and 6.5 are being modified to strengthen the language regarding public acquisition and preservation of land for open space. Conservation/Open Space Element policies are being modified to assure that all environmentally sensitive land resources, as defined by the Coastal Act, are protected. These modifications would ensure protection of the ESHA areas in the City. Land Use Element Policy 8.9 is being modified to ensure protection of the coastal sage scrub restoration site within the Monarch Beach Resort Specific Plan area. Therefore, as modified, the Commission finds that the LUP amendment is in conformance with and adequate to carry out Section 30240 of the Coastal Act regarding environmentally sensitive habitat areas.

4. Marine Resources

Section 30230 of the Coastal Act states:

> *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231 of the Coastal Act states:

> *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of groundwater supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Section 30233 of the Coastal Act states, in part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, . . ., if otherwise in accordance with this division.

(d) Erosion control and flood control facilities constructed on water courses can impede the movement of sediment and nutrients which would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever

feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area.

Section 30236 of the Coastal Act states:

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (l) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

a) Denial as Submitted (Marine Resources)

The LUP amendment as submitted does not have a policy similar to Section 30233 which specifies the eight allowable uses for diking, dredging, and filling of wetlands and open coastal waters. Salt Creek contains riparian areas which would be adversely affected without the protection of an LUP policy similar to Section 30233. Further, the LUP amendment as submitted has policies which relate to the maintenance and improvement of the City's storm drainage system, but none which expressly address the issue of preventing and mitigating pollution of the ocean resulting from waste water discharges and storm water runoff generated by new and existing development and uses. Without this protection, discharges of polluted water into the ocean would result in adverse impacts to the marine refuges off the Dana Point coast. This would also result in adverse impacts to human use of the waters off Salt Creek beach, a popular surfing area. In addition, there are no policies dealing with the channelization of creeks and drainage courses which could eliminate riparian habitat. Without this protection, Salt Creek would be adversely impacted. Therefore, the Commission finds that, as submitted, the LUP amendment is not in conformance with, nor adequate to carry out, the marine resources/wetlands/water quality policies of Chapter Three of the Coastal Act and thus must be denied.

b) Marine Resources/Wetlands/Riparian Habitat Modifications for Approval

Land Use Element policy 4.4 is being modified and Conservation/Open Space Element policy 3.9 is being added to incorporate the provisions of Section 30230 of the Coastal Act regarding marine resources. This would ensure that development would not result in adverse impacts to the offshore marine refuges.

Because wetlands are scarce, sensitive resources, Section 30233 limits the uses allowed in wetlands and only allows these limited uses if there are no other feasible alternatives and only if mitigation occurs. Therefore, it is necessary that a policy be added which is conformity with, and adequate to carry out, Section 30233 of the Coastal Act, especially with regard to the limited types of development and uses which are allowed to be located in and take place in a wetland. Without a specific delineation of the uses allowed in wetlands, development inconsistent with the Coastal Act could be allowed. Therefore, Conservation/Open Space Element 3.6 is being added regarding Section 30233. This would ensure protection of the Salt Creek riparian areas.

A new Conservation/Open Space Element policy 1.6 is being added which incorporates the language of Section 30236 of the Coastal Act regarding the channelization of natural watercourses. This new LUP amendment policy would clearly delineate the three criteria under which substantial alterations of natural watercourses, such as Salt Creek, would be allowed, and require the best measures to mitigate against the loss of natural riparian habitat (which is usually found along natural watercourses) resulting from these alterations, consistent with Section 30236. In addition, a new Conservation/Open Space Element policy 1.5 is being suggested regarding the protection of riparian habitat through such measures as the establishment of buffers. Further, Land Use Element Policy 8.15 is being modified to specifically enhance and restore the riparian habitat of Salt Creek.

c) Water Quality Modifications for Approval

Proposed Conservation/Open Space Element policy 1.1 is being modified so that, in addition to retaining, protecting, and enhancing watercourses, such as Salt Creek, in their natural condition, this policy also states that the natural hydrological functions of watercourses are to be maximized so that the impacts to water quality resulting from polluted water draining into watercourses are minimized. A new Conservation/Open Space Element policy 1.7 is being added which incorporates the language of Section 30231 of the Coastal Act regarding the maintenance and restoration of water quality and methods to do so. This new policy 1.7 also contains additional, more specific methods of minimizing impacts to water quality adequate to carry out Section 30231 of the Coastal Act.

In addition, new Conservation/Open Space Element policies 1.5 and 1.8 are being suggested which delineate methods to reduce the entry of polluted water into drainage systems which empty into coastal waters. New Conservation/Open Space Element 1.8 is being suggested to include the California Regional Water Quality Control Board and other agencies, in addition to the County of Orange which is already listed in the existing policy, which are responsible for implementing federal National Pollution Discharge Elimination System requirements regarding water pollution. This would minimize discharges of polluted water which would adverse affect the offshore marine refuges.

d) Beach Replenishment

New Conservation/Open Space Element policies 2.18 and 2.19 are being added to ensure consistency of the LUP with Sections 30233(b) and 30233(d) of the Coastal Act, and to encourage the use of dredge spoils for beach replenishment. These policies would ensure the replenishment of Salt Creek County beach, a popular public beach, in an environmentally sensitive manner, should replenishment be necessary in the future.

e) Conclusion - Approval as Modified (Marine Resources/Wetlands/Water Quality)

Therefore, as modified, the Commission finds the LUP amendment to be consistent with Sections 30230, 30231, 30233, and 30236 of the Coastal Act regarding marine resources, water quality, wetlands, beach replenishment, and channelization of natural water features.

5. Hazards

Section 30253 of the Coastal Act states, in part:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural land forms along bluffs and cliffs.

a) Denial as Submitted (Hazards)

The LUP amendment/General Plan as submitted contains policies which, while they address erosion and geologic instability, do not directly address structural integrity, protective devices, and minimizing risks to life and property. The areas of the City adjacent to the City of Laguna Beach are hillside areas. Further, the private Monarch Bay and Niguel Shores communities and the Ritz Carlton hotel are located on coastal bluffs. Therefore, these areas are subject to potential geologic instability hazards. The proposed LUP policies do not adequately address this issue. In addition, the policies regarding fire and flood hazards are not adequate to carry out Section 30253 of the Coastal Act. Thus, the Commission finds that the land use plan as submitted does not conform to, nor is it adequate to carry out, Section 30253 of the Coastal Act regarding hazards and must be denied.

b) Geotechnical Hazards Modifications

Proposed Conservation/Open Space Element policies 2.7 and 2.8 are being added to require geotechnical reports for blufftop development and to require siting and clustering development away from steep and unstable slopes, respectively. New Conservation/Open Space Element policies 2.10 through 2.14 are being added to bring the LUP amendment into conformance with the geotechnical hazards provisions of Section 30253 of the Coastal Act. These policies are to assure that blufftop setback, bluff repair work, drainage and erosion control standards are in full conformity with and adequate to carry out Section 30253 of the Coastal Act.

c) Wave/Flooding Hazards Modifications

New Land Use Element policy 4.10 provides that development in high wave hazards areas shall be regulated to minimize risks to life and property. Proposed Conservation/Open Space Element policies 2.15 and 2.16 are being modified so that development in flood hazard areas minimizes risks to life and property.

d) Fire Hazards Modifications

New Conservation/Open Space Element policy 2.17 is being suggested to include setback, site design, and landscaping requirements as methods, in addition to building codes, to assure adequate fire protection to minimize risks to life and property. The policy indicates that such requirements will be established in the implementation portion of the LCP, as opposed to simply encouraged.

e) Conclusions - Approval as Modified (Hazards)

Therefore, as modified, the Commission finds that the LUP Amendment as modified is consistent with, and adequate to carry out Section 30253 of the Coastal Act regarding hazards.

6. Visual Impacts/Landform Alteration

Section 30251 of the Coastal Act states:

> *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

a) Denial as Submitted (Visual Quality/Landform Alteration)

The physical landscape of the City of Dana Point is comprised of many scenic coastal bluffs, as are the adjacent cities of Laguna Beach and San Clemente. Recently, there have been bluff failures in these cities, including a major landslide on the bluffs above the Beach Road area of the City of Dana Point. Bluff stabilization or repair projects often take the form of a proposal to mass grade or otherwise engineer the unstable or failed bluff in a manner which does not take into account the scenic qualities of the bluff nor minimizes landform alteration, inconsistent with the provision of Coastal Act Section 30251.

The policies of the LUP amendment as submitted are not adequate in terms of stating how landform alteration should be minimized. The LUP amendment has policies which protect views from the bluffs but no policies that address views of the bluffs themselves, when one actually is looking at the bluffs. Because the bluffs themselves are scenic, views of the bluffs should be maintained. Further, the policies regarding view protection only relate to views from a few specific identified public viewpoints, but not necessarily from public roads or other areas open to the public. Therefore, the Commission finds that, as submitted, the LUP amendment is not in conformance with, nor adequate to carry out, the visual quality/landform alteration policies of Chapter Three of the Coastal Act and thus must be denied.

b) Land form Alteration Modifications

Modifications are necessary to insure that bluff repair, the construction of protective devices, and new development would not result in significant landform alteration and would protect the scenic quality of bluffs. The Conservation/Open Space Element is also being modified to include the language of Section 30251 so that the proposed LUP amendment will be in conformance with and adequate to carry out Section 30251.

c) Public Views Modifications

Urban Design Element policy 4.5 is being modified so that existing public views to the ocean are protected, not solely those from Coast Highway or selected public viewpoints along the bluffs as proposed. The modification would preserve views from public beach parks to and along the shoreline,

for instance. Conservation/Open Space Element policy 2.9 is being modified so that improvements adjacent to beaches don't detract from the natural setting. New Conservation/Open Space Element policy 2.11 is being suggested to identify the City's bluffs as a scenic as well as natural resource. Conservation/Open Space Element 6.4 is being modified to bring it into conformance with Section 30251 regarding the siting of development to protect views from scenic areas and restore, where feasible, visual quality in visually degraded areas.

d) Conclusion - Approval as Modified (Visual Quality/Landform Alteration)

Therefore, as modified, the Commission finds that the amended LUP amendment is consistent with, and adequate to carry out, Section 30251 of the Coastal Act regarding visual quality.

7. Shoreline Protective Devices/Beaches

Section 30235 of the Coastal Act states:

> *Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structure or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.*

a) Denial as Submitted (Shoreline Protective Devices)

The LUP amendment as submitted does not contain any policies regarding seawalls and other shoreline protective devices. The private Monarch Bay and Niguel Shores communities, as well as the Ritz Carlton hotel, are all located on coastal bluffs. It is conceivable that at some point seawalls may be required to protect these existing developments. Without a policy regarding seawalls, there would be no provisions regarding the design of the protective device or addressing potential adverse impacts on shoreline sand supply and access Therefore, the Commission finds that, as submitted, the LUP amendment is not in conformance with, nor adequate to carry out, Section 30236 of the Coastal Act regarding shoreline protective devices and thus must be denied.

b) Approval as Modified (Shoreline Protective Devices)

Conservation/Open Space Element policy 2.5 is being modified so that activities are minimized so as to lessen beach erosion. New Conservation/Open Space Element Policy 2.14 is being added to conform the LUP with Section 30235 of the Coastal Act regarding the situations in which shoreline protective devices are allowed and their impact on sand supply. New Conservation/Open Space Element Policy 2.17 is being added to require that construction in flood hazard areas be done in a manner that avoids the use of shoreline protective devices to the maximum extent feasible. Therefore, as modified, the Commission finds that the LUP amendment would be consistent with, and adequate to carry out, the provisions of Section 30235 of the Coastal Act regarding shoreline protective devices.

8. Public Works Facilities

Section 30254 of the Coastal Act states, in part:

> *New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; provided, however, that it is the intent of the Legislature that State Highway Route l in rural areas of the coastal zone remain a scenic two-lane road. Special districts shall not be formed or expanded except where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.*

As submitted, the Commission finds that the LUP amendment does not have a policy which adequately conforms to the provisions of Section 30254 and must therefore be denied. However, Land Use Element policy 1.3 has been modified and expanded to include the provisions of Section 30254 regarding the design and permissibility of public works facilities. Therefore, as modified, the Commission finds that the LUP amendment as amended is consistent with and adequate to carry out Section 30254 of the Coastal Act regarding public works facilities.

9. Coastal Dependent Uses

Section 30222.5 of the Coastal Act states:

> *Ocean front land that is suitable for coastal dependent aquaculture shall be protected for that use, and proposals for aquaculture facilities located on those sites shall be given priority, except over other coastal dependent developments or uses.*

Section 30255 of the Coastal Act states:

> *Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.*

Section 30260 of the Coastal Act states:

> *Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division. However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with this section and Sections 30261 and 30262 if (1) alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible.*

Section 30261 of the Coastal Act states:

Multicompany use of existing and new tanker facilities shall be encouraged to the maximum extent feasible and legally permissible, except where to do so would result in increased tanker operations and associated onshore development incompatible with the land use and environmental goals for the area. New tanker terminals outside of existing terminal areas shall be situated as to avoid risk to environmentally sensitive areas and shall use a monobuoy system, unless an alternative type of system can be shown to be environmentally preferable for a specific site. Tanker facilities shall be designed to (l) minimize the total volume of oil spilled, (2) minimize the risk of collision from movement of other vessels, (3) have ready access to the most effective feasible containment and recovery equipment for oil spills, and (4) have onshore deballasting facilities to receive any fouled ballast water from tankers where operationally or legally required.

Section 30262 of the Coastal Act states:

Oil and gas development shall be permitted in accordance with Section 30260, if the following conditions are met:

(a) The development is performed safely and consistent with the geologic conditions of the well site.

(b) New or expanded facilities related to such development are consolidated, to the maximum extent feasible and legally permissible, unless consolidation will have adverse environmental consequences and will not significantly reduce the number of producing wells, support facilities, or sites required to produce the reservoir economically and with minimal environmental impacts.

(c) Environmentally safe and feasible subsea completions are used when drilling platforms or islands would substantially degrade coastal visual qualities unless use of such structures will result in substantially less environmental risks.

(d) Platforms or islands will not be sited where a substantial hazard to vessel traffic might result from the facility or related operations, determined in consultation with the United States Coast Guard and the Army Corps of Engineers.

(e) Such development will not cause or contribute to subsidence hazards unless it is determined that adequate measures will be undertaken to prevent damage from such subsidence.

(f) With respect to new facilities, all oilfield brines are reinjected into oil-producing zones unless the Division of Oil and Gas of the Department of Conservation determines to do so would adversely affect production of the reservoirs and unless injection into other subsurface zones will reduce environmental risks. Exceptions to reinjections will be granted consistent with the Ocean Waters Discharge Plan of the State Water Resources Control Board and where adequate provision is made for the elimination of petroleum odors and water quality problems.

Where appropriate, monitoring programs to record land surface and near-shore ocean floor movements shall be initiated in locations of new large-scale fluid extraction on land or near shore before operations begin and shall continue until surface conditions have stabilized. Costs of monitoring and mitigation programs shall be borne by liquid and gas extraction operators.

Section 30263 of the Coastal Act states:

(a) New or expanded refineries or petrochemical facilities not otherwise consistent with the provisions of this division shall be permitted if (1) alternative locations are not feasible or are more environmentally damaging; (2) adverse environmental effects are mitigated to the maximum extent feasible; (3) it is found that not permitting such development would adversely affect the public welfare; (4) the facility is not located in a highly scenic or seismically hazardous area, on any of the Channel Islands, or within or contiguous to environmentally sensitive areas; and (5) the facility is sited so as to provide a sufficient buffer area to minimize adverse impacts on surrounding property.

(b) New or expanded refineries or petrochemical facilities shall minimize the need for once-through cooling by using air cooling to the maximum extent feasible and by using treated waste waters from inplant processes where feasible.

a) Denial as Submitted

The land use plan as submitted contains Land Use Element Policy 2.2 which expressly prohibits onshore support facilities for oil drilling. This would be inconsistent with the Chapter Three policies of the Coastal Act. Further, the LUP Amendment as submitted contains a policy regarding priority of coastal-dependent development and use which is not consistent with Section 30255. There are also no policies in the LUP Amendment as submitted which expressly address coastal-related developments and their location in proximity to the coastal-dependent uses they support. Therefore, the Commission finds that the land use plan as submitted is not in conformance with, or adequate to carry out Section 30222.5, 30255, and 30261, 30262, and 30263 of the Coastal Act and must therefore be denied.

b) Approval as Modified

New Land Use Element policy 2.9 is being suggested to state not only that coastal-dependent developments have priority on or near the shoreline (as the policy does in its current form), but further that such developments shall not be sited in a wetland (except as provided for in Conservation/Open Space Element policy 3.6 regarding Section 30233 of the Coastal Act), and that coastal-related developments should be accommodated in the closest reasonable proximity to the coastal-dependent uses they support. Thus, as modified, the Commission finds that the LUP amendment is consistent with, and adequate to carry out, Section 30255 of the Coastal Act regarding coastal-dependent and coastal-related developments.

The Commission finds that Land Use Element policy 2.13 incorporating the language of Section 30222.5 regarding aquaculture shall be added as a suggested modification. Thus, as modified, the Commission finds that the LUP Amendment is consistent with, and adequate to carry out the requirements of Section 30222.5 of the Coastal Act regarding aquaculture.

Although the City is not located near existing established oil and gas development facilities, such as the oil rigs off the shoreline of Huntington Beach, Seal Beach, and Long Beach to the northwest, an LUP amendment policy providing for an unconditional, outright ban on oil and gas onshore support facilities in the City of Dana Point would be inconsistent with the oil and gas policies of Chapter Three of the Coastal Act. As submitted, the LUP amendment contains a policy providing for such a ban. Therefore, the LUP amendment as submitted must be denied. The Commission finds that Land Use Element Policy 2.2 prohibiting all oil and gas onshore support facilities must be deleted. Thus, as modified to delete Land Use Element Policy 2.2, the Commission finds that the LUP amendment is in conformance

with and adequate to carry out 30260, 30261, 30262, and 30263 of the Coastal Act regarding the oil and gas policies of Chapter Three of the Coastal Act.

B. Graphic Changes (LUP Amendment)

1. Denial as Submitted (Graphic Changes)

Maps, tables, charts, figures, diagrams and other such graphics are an important part of an LUP, because they provide graphic clarification of what is stated in the text. Further, in the case of maps in particular, graphics can show the spatial relationships between the text of the policies and specific geographic locations. Since graphics are part of the LUP amendment, they need to conform to, and be adequate to carry out, the Chapter Three policies of the Coastal Act. In this regard, the access, hazards, and biotic resources maps as submitted are not clear or specific enough to accomplish this requirement. Thus, the Commission finds that, as submitted, the maps and graphic illustrations in the LUP amendment are not adequate to carry out, nor are they in conformance with, the Chapter Three policies of the Coastal Act.

2. Approval as Modified (Graphic Changes)

a) Coastal Zone Boundary

The Land Use Diagram is being modified so that the coastal zone boundary is generally depicted. This modification would inform the public of the need to determine which areas of the City are located within the Coastal Zone. This is important because the public needs to know which areas of the City are subject to the requirements of the LCP.

b) Land Use Designations

The changes to land use designations in the currently uncertified area of the City are necessary to reflect Commission action on coastal development permits in the area. The Commission denied coastal development permit 5-92-189 for a proposed beach house on the coastal bluff between Salt Creek beach and the pedestrian path. Further, the Commission directed the applicant to pursue an alternative location for the development and thereby leave the bluff in its undeveloped condition, which would be more consistent with Sections 30251 and 30253. This requires a change from the current designation of "visitor-serving recreation commercial" to "open space/conservation." Such a change would be more protective of coastal resources.

In approving coastal development permit 5-94-075, the Commission approved a visitor-serving commercial facility. As part of its local approval of the project, the City changed the land use designation of the site from "professional/administrative" uses to "visitor-serving recreation commercial" uses. However, this change was made after the LUP amendment was submitted. The visitor-serving recreation commercial uses are more consistent with Section 30222 of the Coastal Act than are professional/administrative uses. Therefore the land use designations of the sites must be changed in order to be consistent with the previous Commission permit actions and thus be consistent with the Chapter Three policies of the Coastal Act.

c) Access Maps

As submitted, the LUP amendment's access maps are not adequate and must be denied. The current access graphics in the LUP amendment do not make a clear distinction between existing accessways and specific accessways which are proposed. In addition, the current graphics do not include all the existing shoreline accessways or inland trails. Further, there are no roads currently designated as primary coastal access roads. In adequate maps make it difficult to evaluate development for consistency with the LUP access policies.

At a minimum, Pacific Coast Highway (State Route One) should be designated a primary coastal access road. Also, a note is necessary on the access maps which states that access should not be limited to what is currently shown on the access map, since opportunities for access not currently proposed on the maps may arise in the future. Finally, it is necessary for the access maps to accurately reflect all existing and proposed accessways in order to meet the requirements for a readily identifiable access component, as well as ensure the LUP Amendment's conformance with, and adequacy to carry out, the public access and recreation policies of Chapter Three of the Coastal Act. Thus, as modified to address the deficiencies described above, the Commission finds the access maps in conformance with, and adequate to carry out, the public access and recreation policies of Chapter Three of the Coastal Act.

d) Hazards Maps

The three General Plan elements which would be included in the amended LUP amendment currently do not have a map of the City's hazardous areas. Thus, the LUP amendment is being modified so that a new map, based on the existing Figure PS-6 of the Public Safety Element, is replicated in the Conservation/Open Space Element. This new map would also be required to include areas of documented or potential geologic instability or geologically sensitive areas. This is important to inform the public and present and future property owners of hazardous areas, and the need to obtain current site-specific information detailing the on-site hazards so that development on hazardous sites occurs only where the hazards can be overcome by meeting the minimum factor of safety.

Further, this new hazards map would also be required to have a note regarding hazard abatement. The note would provide that approved abatement measures must be the least environmentally damaging alternative and shall have appropriate mitigation. This is necessary to minimize risks to structures or prevent worsening of a hazardous situation. This is further necessary in order to protect sensitive coastal resources, such as the visual quality of coastal bluffs or environmentally sensitive habitat area which might be on the bluff face. Thus, as modified, the Commission finds that the graphic changes are in conformance with, and adequate to carry out, the hazards policies of Chapter Three of the Coastal Act.

e) Conclusion - Approval as Modified (Graphic Changes)

The Commission finds that, as modified, the graphics within the LUP amendment are in conformance with, and adequate to carry out, the Chapter Three policies of the Coastal Act.

C. Coastal Policy Parenthetical Citations

As submitted, the General Plan policies which are proposed to carry out Chapter Three policies of the Coastal Act are denoted with a parenthetical citation at the end of the policy which contains the number or numbers of the Chapter Three policy or policies for which the General Plan policy is applicable. However, as modified, not all the elements of the General Plan and their policies would be included in the LUP amendment. Further, not all the citations are accurate. Therefore, as submitted, the Commission finds that the LUP amendment is not in conformance with, nor adequate to carry out, the Chapter Three policies of the Coastal Act.

The LUP amendment is being modified so that all parenthetical Coastal Act citations in the six General Plan elements which would not be included in the LUP amendment as modified would be deleted. In addition, where a citation is inaccurate, it is being modified to correct the inaccuracy. Thus, as modified, the Commission finds that the LUP amendment is in conformance with, and adequate to carry out, the Chapter Three policies of the Coastal Act.

VIII. IMPLEMENTATION PLAN AMENDMENT (Findings for Denial as Submitted and Approval as Modified)

Section 30513 of the Coastal Act states, in part:

> *The commission may only reject zoning ordinances, zoning district maps, or other implementing actions on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection specifying the provisions of land use plan with which the rejected zoning ordinances do not conform or which it finds will not be adequately carried out together with its reasons for the action taken.*

The Commission finds that, for the reasons described below, the City of Dana Point Implementation Plan amendment as submitted does not conform with, nor is it adequate to carry out, the provisions of the certified land use plan and must therefore be denied. The Commission also finds that, for the reasons described below, the City of Dana Point Implementation Plan amendment, as modified, would be consistent with and adequate to carry out the certified land use plan.

A. CONFORMITY WITH THE CERTIFIED LAND USE PLAN

1. Public Access

a) Denial (Access)

As submitted, the Implementation Plan amendment is not adequate to carry out the public access policies of the City's Certified Land Use Plan. No provisions detail how and when access dedications shall be obtained, the types of access dedications which may be required, when exceptions are granted, or the necessary project specific findings that must be made. A very small stretch of beach north of the mouth of Salt Creek is also private. Further, the provisions of the IP amendment as submitted are not adequate to carry out the public access policies of the LUP amendment regarding the provision of adequate on-site parking and the provision of vertical, recreation, blufftop, and trail access. In addition, the Monarch Beach Resort Specific Plan does not clearly identify the availability of parking.

Therefore, the Commission finds that the lack of an adequate statement assuring the availability of parking does not meet the intent of the LUP amendment policies regarding the provision of parking and limits the ability of Section 3.14.5 of the Specific Plan to adequately implement parking standards. Therefore, the Commission finds that the Implementation Plan amendment as submitted is not in conformance with, nor is it adequate to carry out, the public access policies of the LUP and must be rejected.

It is necessary that adequate requirements for the provision of access are included in the IP amendment for a variety of reasons. The Coastal Act requires that local coastal programs contain a readily identifiable public access component. The provision of public access is a strong mandate of the Chapter Three policies of the Coastal Act (which is reflected in the City's Certified Land Use Plan). There are opportunities which remain to enhance and acquire additional shoreline beach access throughout the City. The IP amendment as submitted does not contain adequate provisions in this regard and must be rejected.

b) New Access Section 9.27.030(a)

The IP amendment is being modified to replace the existing access provisions which only deals with the Capistrano Beach area of the City with the Commission's standard access ordinance. This standard access ordinance is devoted to the provision of lateral, vertical, trail, blufftop, and recreational public access. This section contains standard and minimum requirements for various types of access as well as provisions for the recordation of access easements. In addition, the access chapter contains provisions regarding historic public use. Historic public use may be applicable to the private beach fronting the Monarch Bay locked-gate community. Inclusion of the Commission's standard access section would provide comprehensive standards for the provision of new public access as well as ensure the existing public access is maintained.

In addition, coastal development permit P-79-5539 contained conditions of approval which were imposed to ensure the development's consistency with the public access policies of Chapter 3 of the Coastal Act. Permit P-79-5539 approved a large mixed-use development, including 3,000 homes, a golf course, commercial center, conference center, hotel, and park areas. Permit P-79-5539 imposed conditions of approval to conform the development to the public access policies of Chapter 3 of the Coastal Act. Permit P-79-5539 required as a condition of approval that certain components, such as the hotel, of the overall P-79-5539 development obtain a separate coastal development permit, to further evaluate the specifics of the development component. In approving the coastal development permits for individual components of the P-79-5539 development, the Commission imposed conditions similar to P-79-5539 conditions, or imposed additional public access conditions, in order to find the individual development components consistent with the public access policies of Chapter 3.

For instance, the Commission imposed a requirement that the hotel approved by permit P-79-5539 and follow-up permit 5-82-291 allow public access through the hotel grounds. Incorporating the public access special conditions of approval of permit P-79-5539 and subsequent valid permits into the IP is necessary to ensure that the current level of public access is protected and maintained. Since the LUP, as modified, requires protection of public access and public recreational facilities, the IP conforms with the LUP, as modified, only if the IP contains provisions specifically protecting the level of public access that is currently provided in the area today.

The public access findings for the approval of permits P-79-5539 and 5-82-291 are included herein by reference. This is because the reasons why the Commission found that imposition of the public access conditions was necessary to conform the developments to the public access policies of Chapter 3 are the same findings which justify modification of the IP to include the public access provisions of those permits in order for the IP to be in conformance with, and adequate to carry out, the public access policies of the certified LUP.

c) Conclusion - Approval if Modified (Public Access)

Thus, as modified, the Commission finds the amended Implementation Plan amendment portion of the City of Dana Point Certified Local Coastal Program to be consistent with and adequate to carry out the public access policies of the City's Certified Land Use Plan.

2. Environmentally Sensitive Habitat Areas (ESHAs)

a) Denial (ESHA)

As submitted, the IP amendment does not identify environmentally sensitive habitat areas that exist within the City, nor does it contain any provisions for protection of ESHAs, uses allowed within ESHAs, or siting development located adjacent to ESHAs. The City contains coastal sage scrub enhancement and restoration projects located along Salt Creek Trail which need to be protected. Coastal sage scrub is ESHA because of the valuable habitat it provides for sensitive wildlife. Therefore, the Commission finds that the Implementation Plan amendment as submitted is not adequate to carry out nor is it in conformance with the LUP policies regarding ESHAs and must be rejected.

b) Allowable Uses/Development Standards (ESHA)

The IP amendment is being modified to add provisions and standards regarding ESHAs. New Section 9.27.020(d) requires that ESHAs be protected against the disruption of habitat values, and that only those uses dependent on the resources of the ESHA shall be allowed. Section 9.27.030(d) reiterates this point as well as requiring a biological assessment of the ESHA for development adjacent to an ESHA. Further, the IP amendment is being modified to add Section 9.69.050(b)(7)(A) to require that a biological assessment as described above be made an application filing requirement.

c) Definitions (ESHA)

Coastal Act policies and provisions use the terms "environmentally sensitive area" and "environmentally sensitive habitat area" interchangeably. For instance, Sections 30107.5 and 30233 of the Coastal Act refer to "environmentally sensitive areas," whereas Section 30240 of the Coastal Act uses the term "environmentally sensitive habitat areas." Many of these Coastal Act policies and provisions have been included in the modifications to the IP. Section 9.75.050 of the IP amendment as submitted already includes the definition of "environmentally sensitive areas" from Section 30107.5 of the Coastal Act. For the sake of clarity and consistency, the City is requesting that only the term "environmental sensitive habitat area" be used. Therefore, the term "environmentally sensitive area" in Section 9.75.050 must be changed to "environmentally sensitive <u>habitat</u> area" (emphasis added), although the actual definition remains the same, consistent with Section 30107.5 of the Coastal Act. As modified, the IP amendment would clarify this matter.

d) Conclusion - Approval if Modified (ESHAs)

Thus, the Commission finds the amended Implementation Plan amendment portion of the City of Dana Point Certified Local Coastal Program, as modified, to be consistent with and adequate to carry out the policies of the City's Certified Land Use Plan regarding ESHAs.

3. Wetland Resources

a) Denial (Wetland Resources)

As submitted, the Implementation Plan amendment is not adequate to carry out Conservation/Open Space Element 3.6 of the City's Certified Land Use Plan. For instance, the IP amendment as submitted does not list the uses allowed within wetlands pursuant to Section 30233 of the Coastal Act as referenced in the LUP amendment policy regarding wetlands. Further, the IP amendment as submitted does not require that site-specific wetlands determinations be prepared. In addition, the provisions for wetland buffers in the IP amendment as submitted do not provide protection measures for the resources within wetland buffers, nor contain minimum standards for the design of wetland buffers. Therefore, the Commission finds that the Implementation Plan as submitted is not in conformance with, nor is it adequate to carry out, the wetlands policies of the LUP.

b) Allowable Uses Within Wetlands

As modified to expand and revise Section 9.27.020(b) of the Zoning Code, the uses allowed within wetlands would now be consistent with those expressly allowed by Conservation/Open Space Element policy 3.6. It is critical that only those uses expressly allowed by Coastal Act Section 30233 and referenced in Conservation/Open Space policy 3.6 be listed in the IP amendment in order to protect wetland resources in the City of Dana Point.

c) Site-Specific Wetlands Determinations

Section 9.69.050(b)(7)(A) is being modified to add provisions which require that site-specific wetlands determinations be conducted for all development within or adjacent to a wetland, and to require that a site-specific wetlands determination as described above be made an application filing requirement. Site-specific wetlands determinations provide current information about the status of the subject wetlands. This is necessary to assist with the identification of significant adverse impacts to wetland resources resulting from a proposed development, as well as determination what types of mitigation are needed.

d) Wetland Buffers

An important part of protection and enhancing wetland resources is the establishment of buffer areas around the wetlands. As Section 9.27.030(b) is modified, the IP amendment will contain adequate provisions regarding standards for the design of wetland buffers and uses allowed within the buffer areas.

e) Conclusion - Approval if Modified(Wetland Resources)

Thus, as modified, the Commission finds the amended Implementation Plan portion of the City of Dana Point Certified Local Coastal Program to be consistent with and adequate to carry out Conservation/Open Space Element policy 3.6 of the City's Certified Land Use Plan.

4. Recreation/Visitor Serving Facilities

As submitted, the Implementation Plan amendment allows furniture stores, administrative uses, and membership Organizations as permitted uses in the Visitor/Recreation Commercial District. Such uses are not generally the types of uses frequented by visitors to the coastal zone and instead are patronized by local residents or do not offer services directly to the public. Thus, as submitted, the Commission finds that the Implementation Plan amendment is not in conformance with, nor is it adequate to carry out, the recreation/visitor serving facilities of the LUP.

However, it is conceivable that, under certain circumstances, such uses could be considered visitor-serving uses. A hypothetical example might be a small, non-warehouse size furniture store that specializes in unique furniture that draws customers from outside the region. Thus, as modified to allow these three uses in the Visitor/Recreation Commercial District on a conditional basis, the Commission finds the Implementation Plan amendment to be in conformance with and adequate to carry out the visitor-serving/recreation policies of the Land Use Plan Amendment.

5. Hazards

a) Geologic Hazards/Blufftop Development

As submitted, the IP amendment contains provisions which would allow development within the blufftop setback area. In addition, the IP amendment as submitted contains an incomplete list of information which must be included in a geotechnical report prepared for geologically hazardous sites. The Commission finds that the Implementation Plan amendment as submitted is not adequate to carry out, nor is it in conformance with, the hazards policies of the LUP and must be rejected.

As Section 9.27.030(c) is modified, the requirements for the submittal of a site-specific geotechnical report are being expanded to ensure that the report contains information which is adequate to assess the geologic hazards of a site. Therefore, as modified, the Commission finds that the Implementation Plan amendment would be adequate to carry out, and be in conformance with, the policies of the Land Use Plan Amendment.

b) Flood Hazards

As submitted, the Zoning Code does not provide standards for seawalls to protect against flood hazards. Thus, the Zoning Code as submitted is not adequate to carry out the flood hazards policies of the certified land use plan. Therefore, the Zoning Code as submitted must be rejected. However, as Chapter 9.31 is modified, the Zoning Code would be in conformance with and adequate to carry out the flood hazards policies of the certified land use plan. Therefore, as modified, the Commission finds the Zoning Code to be consistent with and adequate to carry out the flood hazards policies of the certified land use plan.

6. Landform Alteration/Visual Impacts

As submitted, the Implementation Plan Amendment does not contain adequate provisions to carry out the policies of the Land Use Plan Amendment regarding landform alteration and visual impacts. Thus, the Commission finds that the Implementation Plan amendment as submitted is not in conformance with, nor is it adequate to carry out, the LUP policies regarding landform alteration and visual impacts. As Section 9.27.030(c)(6) is modified, the Implementation Plan amendment would require, for instance, that bluff stabilization projects, when allowed, shall be designed to minimize alteration of coastal bluffs. Section 9.27.030(e) is also being added to provided land form alteration standards. Thus, as modified, the Commission finds the Implementation Plan amendment portion of the City of Dana Point Certified Local Coastal Program to be consistent with and adequate to carry out the policies of the City's Certified Land Use Plan amendment regarding landform alteration and visual impacts.

7. Shoreline Protective Devices

As submitted, the Implementation Plan amendment does not contain standards for the design of shoreline protective devices, nor does it contain criteria which sets forth the circumstances under which shoreline protective devices are allowed. Thus, the Commission finds that the Implementation Plan amendment as submitted is not adequate to carry out, nor is it in conformance with, the LUP policies regarding shoreline protective devices. Standards and criteria for shoreline protective devices are being added to Chapters 9.09, 9.27, and 9.31. Further, the submittal of a study on the effects of a proposed shoreline protective device on sand supply is being added as a filing requirement in Chapter 9.69. Thus, as modified, the Commission finds that the Implementation Plan amendment is consistent with, and adequate to carry out, the policies of the Land Use Plan Amendment.

8. Cultural Resources

Conservation/Open Space Element Policy 8.1 in the Land Use Plan states that mitigation measures need to be required if development is to impact areas with archaeological and paleontological resources. The Implementation Plan amendment as submitted does not have any requirement for mitigation. Thus, as submitted, the Commission finds that the Implementation Plan amendment does not conform to, nor is it adequate to carry out, the LUP policies regarding cultural resources and must be denied.

However, Chapter 9.69 is modified to include, as application filing requirements, site-specific archaeological and paleontological surveys to identify on-site cultural resources, and a plan to mitigate the significant adverse impacts to cultural resources resulting from proposed development on sites adjacent to, containing, or potentially containing cultural resources. As modified, the Commission finds the Implementation Plan amendment portion of the City of Dana Point Certified Local Coastal Program to be consistent with and adequate to carry out Conservation/Open Space Element policy 8.1 of the City's Certified Land Use Plan regarding cultural resources.

9. Monarch Beach Resort Specific Plan

Local governments prepare specific plans to guide development of a significant project on a large parcel of land owned by a single entity. Such was the case with the Monarch Beach Resort Specific Plan. This plan addresses development of a large parcel of land in the uncertified Monarch Beach LCP segment. Development of this parcel of land has already been approved by the Coastal Commission

pursuant to several coastal development permits. The approved development includes a golf clubhouse, a beach house/restaurant, a hotel, residential units, and improvements to Sea Terrace Park. The golf clubhouse has already been built.

The Specific Plan was prepared prior to Commission approval of the development covered by the Specific Plan. Therefore, the Specific Plan reflects, to some extent, the development that has already been approved by the Commission for this area. The Specific reflects the types, location, and densities of the approved development and the mix of uses. It does not provide for any additional development. Thus, it does not provide for the addition of visitor serving uses or any increase in residential density.

However, the Specific Plan fails to reflect the development as it was conditionally approved by the Commission. In particular, the Specific Plan fails to protect certain aspects of the conditionally approved development, such as the set-aside of 50% of the golf course time slots for the general public, ensuring the approve vehicle system serves specific pick-up/drop-off points, and implementation of a parking monitoring program. The Commission found that these lower-cost visitor-serving recreational amenities and public access provisions are necessary to make development of the area consistent with the LUP policies, as modified. The following describes the areas where the Specific Plan fails to protect the development conditionally approved by the Commission and the modifications that are necessary to make the Specific Plan include provisions to protect that development, and thus make the Specific Plan consistent with the LUP policies, as modified.

a) Monarch Beach Resort Specific Plan (Access/Recreation Modifications)

(1) Parking/Entry Roads

The Monarch Beach Resort Specific Plan is being modified so that on-street parking be made available to the general public if such parking is located within reasonable walking distance of an access point to the public trail system in the area, consistent with LUP amendment policies regarding the provision of parking. In accordance with coastal development permits 5-92-168 and 5-92-188, a parking monitoring program will be implemented to ensure that adequate parking is being provided. The purpose of the parking monitoring program is to verify the assumptions made by the project parking study through the collection of actual parking data once the approved development is in operation.

Specific Plan Sections 2.2.2, 2.2.6, 3.14.1, and 3.14.4 must be revised to incorporate the parking monitoring program. These modifications would make the Specific Plan consistent with and adequate to carry out LUP Land Use Element Policy 1.8 regarding the provision of adequate parking facilities in new development. Further, the Specific Plan is being modified so that it is made clear that the entry road to the golf clubhouse provides public vehicular and public pedestrian access to ensure that the public has access to the public recreation amenities of the proposed resort, consistent with LUP Land Use Element Policy 4.3 regarding the maximum provision of public access.

(2) Signage/Public Information

In accordance with coastal development permits 5-92-168 and 5-96-006, a signage plan is part of the approved Monarch Beach Resort hotel. A manned information center is also part of the approved Monarch Beach Resort hotel. The signage and information center are necessary to inform the public of the public access opportunities, such as the trails, golf course time slots, and common areas of the hotel, available to the public in the proposed Specific Plan area. Specific Plan Sections 2.6, 2.9, and

3.13.3 shall be modified to include the signage and public information provisions required by the Commission. Exhibit 2.27 shall be modified to incorporate the approved signage plan. The modifications to the Signage sections and Access Program section of the Specific Plan would carry out LUP Land Use Element Policy 4.3 requiring that maximum public access be provided and such public access be conspicuously posted.

(3) Tram System/Resort Vehicle

The proposed Specific Plan's Section 2.2.5 describes the proposed vehicle system which would transport guests and the general public to and from the various facilities within the resort as well as to the beach. In accordance with coastal development permit 5-92-168, the approved vehicle system must stop at specific points within the resort in order for the proposed vehicle system to be consistent with LUP Land Use Element Policy 1.8 regarding the provision of nonautomobile circulation within new development. The Commission finds it necessary to modify the Specific Plan to include the specific stops required by the Commission's approved permit so that the Specific Plan would be consistent with, and adequate to carry out, LUP Land Use Element Policy 1.8. In addition, the Commission finds it necessary to modify Section 2.2.5 to ensure approval of the operating plans by the public agency having jurisdiction over the trails which would be used by the resort (e.g. Orange County Harbors, Beaches, and Parks in the case of Salt Creek Trail).

(4) Recreational Time Slots

In accordance with coastal development permit 5-96-006, 50% of the existing golf course time slots are made available for the general public over members of any private country club which may be established. This requirement was also a condition of approval of permit P-79-5539. In imposing these conditions, the Commission found that provision of the recreational time slots would be consistent with Section 30252(6) of the Coastal Act requiring that the recreational needs of new residents do not overload the nearby coastal recreational facilities. Thus, the Commission finds that it is necessary to modify Section 2.6.11 of the Specific Plan to include the requirement that 50% of the golf course time slots be set aside for the general public in order for the Specific Plan to be consistent with, and be adequate to carry out, LUP Land Use Element Policy 2.13 requiring that coastal recreational facilities not be overloaded and LUP Land Use Element Policy 8.16 requiring that time slots be set-aside for the general public.

(5) Public Off-Road Walkways

An integral part of the public access program is the Specific Plan's proposed network of public walkway trails (known as Type "W-2" walkways), as described in Section 2.6.4 of the Specific Plan. An especially important component of this network are walkways which bridge Salt Creek and provide a connection between the public Salt Creek regional trail on the westerly side of Salt Creek and the public parking at the Monarch Beach Resort Golf Clubhouse on the easterly side of Salt Creek. This connection is important because the public parking available at the Golf Clubhouse would be the public parking area closest to the approximately one-mile long stretch of Salt Creek trail between Camino del Avion and Pacific Coast Highway. Sections 2.6.2 (which describes Salt Creek Trail) and 2.6.4 of the Specific Plan therefore are being modified to emphasize this important trail connection.

(6) Incorporation of Previous Commission Access Findings

The public access findings for the approval of permits 5-92-168, 5-92-186, 5-92-188, and 5-96-006 are included herein by reference. This is because the reasons why the Commission found that imposition of the public access conditions (such as for payment of the coastal access fee, signage requirements, and setting aside 50% of the golf clubhouse and recreational facilities for members of the public) was necessary to conform the developments to the public access policies of Chapter 3 are the same findings which justify modification of the IP to include the public access provisions of those permits in order for the IP to be in conformance with, and adequate to carry out, the public access policies of the certified LUP.

(7) Conclusion (Monarch Beach Resort Specific Plan -- Access Modifications)

As modified, the Commission finds the Monarch Beach Resort Specific Plan would protect and maintain the public access opportunities and low-cost visitor serving recreational amenities within the Specific Plan area. The Commission also finds that the Monarch Beach Resort Specific Plan, as modified, would be in conformance with, and adequate to carry out, the public access provisions of the certified LUP as modified.

b) Beach House

The Commission found, in denying coastal development permit application 5-92-189, that development of the project site for the proposed Beach House would be inappropriate with respect to land form alterations, geologic hazards, access, and visual resource policies of the Coastal Act. Several sections of the Specific Plan, such as Sections 2.1.2 "Visitor Recreation Commercial", "View Design Concepts", 2.6.10 "Service Maintenance Access to the Beach House (Type "M-1")", and 3.9 "Beach Visitor Commercial Development Standards (VRC-BH)" for example, reference a specific location and design of the Beach House. Therefore, the Commission finds that references to the Beach House in the form it was proposed under coastal development permit 5-82-189 shall be deleted from the Specific Plan since they would be inconsistent with the landform alterations, geologic hazards, access and visual resource policies of the LUP. Instead, the Beach House shall be referenced in more conceptual terms.

The Commission found, in denying coastal development permit application 5-92-189, that development of the project site for a Beach House would be inappropriate with respect to land form alterations, geologic hazards, access, and the visual resource policies of the Coastal Act. Therefore, the Commission finds that the zoning designation of VRC/BH can not be implemented as it would be inconsistent with the LUP amendment policies regarding landform alteration, geologic hazards, access, and visual resources. Therefore, as modified to change the zone of this parcel from VRC/BH to R/OSF (Recreation/Open Space Feature), the Specific Plan would be in conformance with and adequate to carry out the certified land use plan, as amended.

c) Clarification of Affordable Housing

The Specific Plan proposes programs and in-lieu fees regarding affordable housing, separate and apart from the affordable housing requirements of permit P-79-5539 and the Commission's 1985 affordable housing agreement. As submitted, the Specific Plan does not make it clear if the affordable housing proposals are being required because of the Coastal Act or the Government Code. The suggested modifications to Section 2.7.2 and 2.7.3 of the Specific Plan would clarify that the affordable housing programs being proposed by the City are not to fulfill Coastal Act affordable housing requirements, since the Coastal Act no longer contains a Chapter 3 policy regarding affordable housing.

d) Phasing Plan

In accordance with coastal development permits 5-92-168, 5-92-186, and 5-92-188, a phasing plan is part of the approved development. In addition, LUP Land Use Element Policy 8.12 establishes the concept of this phasing plan which provides that public park and recreational facilities shall be developed first, followed by the hotel second, and lastly by the residential units. Section 2.15 of the Specific Plan provides the details of the Phasing Plan and the standards to implement LUP Land Use Element Policy 8.12

The Commission finds that it is necessary to modify Section 2.15. to ensure compliance with and implement the phasing plan of LUP Land Use Element Policy 8.12. In particular, the provisions of the phasing plan which allow minor deviations due to unforeseen circumstances must be modified to minimize these provisions from becoming a loophole for avoiding compliance with the phasing plan. Further, modifications are necessary to tie the Phasing Plan into the coastal development permit process so as to be enforceable under the Coastal Act.

In addition, building permits are the last step in the permitting process before construction can begin on approved development. Once a building permit is issued, there is little other than enforcement action which the City can do to prevent construction from commencing. The Phasing Plan is based on the concept of higher priority visitor-serving uses being completed before, or at the most concurrent with, low priority private residential uses. Therefore, the Phasing Plan must be modified so that, prior to issuance of building permits for lowest-priority residential units, construction of the higher priority uses (e.g. parking and open space improvements, hotel, and golf clubhouse), is completed.

The Commission further finds that the modifications to the Phasing Plan are also necessary to ensure that the Specific Plan is consistent with and adequate to carry out LUP Land Use Element Policy 2.13 regarding the correlation of new development with park acquisition and on-site recreational amenities, and Land Use Element Policy 2.11 regarding priority uses.

e) Graphics Modifications

The Commission found, in denying coastal development permit application 5-92-189, that development of the project site for a Beach House would be inappropriate with respect to land form alterations, geologic hazards, access, and the visual resource policies of the Coastal Act. Therefore, the Commission finds the zoning designation of VRC/BH would be inconsistent with implementing the land use portion of the Specific Plan and must therefore be rejected. The zoning for the site shall be changed to Recreation in order to be consistent with the LUP policies. In addition, the various exhibits which show the precise location of the Beach House, or otherwise reference the Beach House, must be modified to delete those references.

Additionally, the coastal zone boundary runs through the Specific Plan area and this boundary has not been depicted. The Commission finds that the coastal zone boundary shall be depicted in this exhibit to separate the portions of the Specific Plan that will be subject to the certified local coastal program for the City of Dana Point from those portions that are outside of the coastal zone and therefore would not be subject to the certified local coastal program.

The Commission finds that these and the other suggested graphic modifications are necessary to conform the Specific Plan to the policies of the Certified Land Use Plan.

10. "Master" Permit P-79-5539 Requirements

On July 23, 1979, the South Coast Regional Commission approved coastal development permit P-79-5539 ("master" permit) for development in all of the area located in the currently uncertified Monarch Beach area of the City of Dana Point. Permit P-79-5539 approved a large mixed-use development, including 3,000 homes, a golf course, commercial center, conference center, hotel, and park areas. The "master" permit contained various conditions of approval, such as the provision of affordable housing, the payment of in-lieu fees for coastal access/transit, and a cap on the number of residential units which can be developed in the area. These conditions were imposed to conform the development with the Chapter 3 policies of the Coastal Act. Permit P-79-5539 also required as conditions of approval that certain components, such as the hotel, of the overall P-79-5539 development obtain a separate coastal development permit, to further evaluate the specifics of the development component. These components were approved in concept. The master permit sets forth specific requirements for the application of a subsequent coastal development permit for each of the approved in concept developments. Further, certain generic conditions, including the affordable housing condition, applied to the approved in concept development. Thus, although this development could not commence without a subsequent coastal development permit, the development was approved by the Commission subject to these conditions relating specifically to the subsequent permit and relating generically to all development approved under the master permit. Accordingly, the development approved in concept by the master permit is not new development. Rather, it is development that has been approved by the Commission.

The Commission retains the responsibility for insuring that the conditions of approval are complied with. The acceptance of a Commission issued coastal development permit creates a contractual relationship between the Commission and the applicant/permittee and their successors, to which local governments are not a party. Consequently, the Commission's right to insist upon compliance with the terms and conditions of permits it has issued is not transferred to a local government after LCP certification.

Other components of the development approved by the master permit were approved on condition that plans be submitted to the Executive Director for approval prior to commencement of construction. As with the development that was approved in concept, the development approved on condition of submission of additional plans is not new development. Rather, it is development that has been approved by the Commission subject to a variety of conditions. The Commission retains the responsibility for insuring that the conditions of approval are complied with. Because some of the development approved by permit P-79-5539 has been built, the permit has been vested. Therefore, like all other coastal development permits issued by the Commission, permit P-79-5539 remains under the jurisdiction of the Commission for purposes of condition compliance and amendment.

At the time of approval of permit P-79-5539 in 1979, Section 30213 of the Coastal Act contained provisions regarding affordable housing. In order to conform the development to this Chapter 3 policy, the Commission imposed a condition of approval on permit P-79-5539 requiring the developer to provide affordable housing. In 1982, the provision of Section 30213 of the Coastal Act regarding affordable housing was deleted. Therefore, the Commission no longer requires a local coastal program to contain affordable housing provisions.

Although the Commission no longer requires affordable housing policies in LCPs, it does require compliance with housing requirements imposed and agreements entered into prior to 1982, where

consistent with the Coastal Act. An agreement was recorded on March 13, 1985 (Orange County document number 85-086029) against portions of the area covered by the P-79-5539 permit. Not all the residential development which would require the affordable housing provisions pursuant to the 1985 agreement has been built. The Commission retains authority to enforce both the terms of the agreement as well as the affordable housing conditions of permit P-79-5539.

Thus, in order to ensure that the affordable housing provisions of coastal development permit P-79-5539 are implemented, the Commission finds that the LCP must make clear that the Commission retains jurisdiction over permit P-79-5539. This would require a coastal development permit to be obtained directly from the Coastal Commission, at which time the Commission would be able to review the permit for consistency with the certified LCP, the requirements of the P-79-5539 permit conditions, and the 1985 recorded affordable housing agreement.

However, it should be made clear that retention of coastal development permit authority over permit P-79-5539 does not mean that the City would be precluded from issuing coastal development permits for "new development" within the area covered by permit P-79-5539. There is a distinction between "new development" and development authorized by permit P-79-5539. Once all remaining development components approved by permit P-79-5539 have received final coastal development approval by the Coastal Commission and have been built, any improvements made to the constructed development would be subject to coastal development permit applications acted on by the City. In essence then, after all remaining development authorized by permit P-79-5539 is constructed, all development from that point forward (except development which would require an amendment to permit P-79-5539) would be new development. The City would act on those coastal development permit applications for new development. Therefore, Coastal Commission retention of jurisdiction over permit P-79-5539 does not mean that the Coastal Commission would retain permitting authority in perpetuity over all development in the geographic areas covered by permit P-79-5539; only development which is authorized by permit P-79-5539 and not "new development."

B. COASTAL DEVELOPMENT PERMIT ORDINANCE - TRANSFER OF COASTAL COMMISSION AUTHORITY

Section 30519(a) states:

> *Except for appeals to the commission, as provided in Section 30603, after a local coastal program, or any portion thereof, has been certified and all implementing actions within the area affected have become effective, the development review authority provided for in Chapter 7 (commencing with Section 30600) shall no longer be exercised by the commission over any new development proposed within the area to which the certified local coastal program, or any portion thereof, applies and shall at that time be delegated to the local government that is implementing the local coastal program or any portion thereof.*

Section 30519(b) of the Coastal Act lists the exceptions to which Section 30519(a) does not apply. Nevertheless, the California Coastal Act provides for the transfer of much of the Commission's authority to local jurisdictions upon effective certification of an LCP for their geographic area. The Coastal Act and accompanying implementing Code of Regulations therefore require that the Implementation Plan amendment portion of the LCP include procedures for carrying out this transferred authority.

In addition to satisfying the requirements of Section 30519 of the Coastal Act and respective implementing Code of Regulations, an LCP's coastal development permitting ordinance must be adequate to provide for the effective implementation of the certified LUP. It is during the coastal development permitting process that a development is reviewed for consistency with the certified LUP policies, as well as the provisions of the IP. Therefore, if the CDP ordinance in the IP does not allow for proper evaluation of a proposed development for consistency with the certified LUP policies, then development inconsistent with the certified LUP might be permitted. As a result, the certified LUP policies will not be carried out.

As submitted, the proposed IP amendment's CDP ordinance is not adequate to effectively implement the certified LUP. Therefore, the Commission finds that the proposed CDP ordinance must be rejected. If modified as shown below for consistency with the development review authority of the Coastal Act and related implementing Code of Regulations, however, the Commission finds that the proposed CDP ordinance would be adequate to effectively implement the certified LUP.

Five basic groups of procedures must be addressed to adequately fulfill this procedural requirement. These groups of procedures are as follows:

1. Permit Requirements
2. Hearing and Notice Procedures
3. Appeal Procedures
4. Open Space and Access Implementation and Document Review
5. LCP Amendment Procedures

As submitted, the permit processing portion of the City's Implementation Plan is contained primarily in Chapter 9.69 of the proposed Zoning Code and entitled "Coastal Development Permit". Further, in the IP amendment as submitted, local Hearing and Notice Procedures and local Appeal Procedures are contained in Chapter 9.61 "Administration of Zoning" and referenced in Chapter 9.69. Open Space and Access Implementation and Document Review procedures are contained in Chapter 9.69 of the IP amendment as submitted. LCP Amendment Procedures are contained in Chapter 9.61 of the IP amendment as submitted.

The Coastal Development Permit (CDP) Ordinance portions of the Implementation Plan amendment proposed by the City of Dana Point omit or contradict certain procedural requirements of the Coastal Act and its implementing regulations as contained in the California Code of Regulations. Consequently, the procedural portions of Implementation Plan amendment as proposed are inadequate to transfer coastal development permitting authority from the Commission to the City of Dana Point and must be modified. Therefore, Staff is recommending that certain proposed sections of the City of Dana Point's coastal development permit processing procedures be approved only if modified as set forth herein.

1. Permit Requirements

With few exceptions, Section 30600 of the Coastal Act mandates that all new development undertaken within the Coastal Zone requires a coastal development permit. Upon certification of an LCP, most of the Commission's authority to issue coastal permits transfers to the certified local jurisdiction. The coastal development permitting process ensures that development is reviewed for consistency with the provisions of the certified local coastal program. The LCP implementing ordinance must therefore

provide for the assumption of all appropriate authority and ensure that all new development is subject to the coastal permit requirement. The IP amendment as submitted does not contain all the requirements to ensure the delegation of coastal permitting authority must be rejected.

Chapter 9.69 of the proposed ordinance contains the basic coastal development permit requirements, and Chapter 9.75 of the proposed Zoning Code entitled "Definitions and Illustrations of Terms" defines the term "coastal development permit." Maps included within the implementing ordinances identify the coastal zone where the permit requirement applies. Modifications to Chapters 9.61, 9.69 and 9.75 would provide for the assumption of all appropriate authority and ensure that all new development is subject to the coastal development permit requirement.

a) Definitions

(1) "Development" Must Be Defined Consistently With the Coastal Act

As stated above, the Coastal Act requires that all new development undertaken in the Coastal Zone requires a coastal permit. Development is defined in Section 30106 of the Coastal Act. In order to assume the permit authority of the Commission, local governments must establish procedures consistent with Title 14 of the California Code of Regulations. Effective certification of these procedures by the Commission allows the local government to issue coastal development permits.

A definition comparable to that contained in the Coastal Act of what constitutes "development" therefore is essential to a full transfer of authority. A definition of "development" is included in Section 9.75.040 of the Zoning Code. However, this definition is not the complete definition of "development" contained in Section 30106 of the Coastal Act. If modified to be consistent with Section 30106, the Implementation Plan amendment will be adequate to transfer coastal development permit authority to the City.

(2) Other Definitions

Proposed Chapter 9.75 of the City's Proposed CDP ordinance defines critical Coastal Zone Terms. Some of the proposed definitions for terms such as "Appealable Development" and "Major Public Works Project" are defined inconsistent with the definitions of these terms in the Coastal Act and Title 14 of the California Code of Regulations. Other definitions necessary for the Implementation Plan amendment portion of the LCP to transfer authority adequately, such as a qualified appellant, are missing completely from the City's proposed list. Consequently, Chapter 9.75, as proposed, must be rejected. If modified to include the revised and omitted definitions necessary for the Implementation Plan amendment to adequately transfer authority, the proposed section of the City's Zoning Ordinance will be adequate.

b) Exemptions - Coastal Development Permit Not Required

Section 9.69.040 of the proposed CDP ordinance specifies types of "development projects which are exempt". Although the Coastal Act does exempt or provide for categorical exclusion of certain types of development, the types of development which can be exempted or categorically excluded are very specifically defined.

(1) Exemptions other than Categorical Exclusions

First, Section 30610 of the Coastal Act and California Code of Regulations Sections 13250 through 13253 exempt a limited amount of development from coastal permit requirements. However, the Coastal Act and applicable regulations must be read together to determine exactly what type of development is exempt. As proposed, the Implementation Plan amendment's identification of coastal permit exemptions is inconsistent with Coastal Act requirements because it does not define development exempted under the Coastal Act consistently with the California Code of Regulations.

For instance, the Implementation Plan amendment as submitted does not make clear that, although California Code of Regulation Sections 13250 and 13253 (improvements to existing single-family residences and existing structures other than single-family residences, respectively) overlap substantially, nevertheless there are crucial differences between these sections. The differences between exemptions for improvements to existing single-family residences and improvements to existing structures other than single-family residences are not clearly articulated and can be overlooked because of the many similarities involved.

Further, as proposed, the Implementation Plan amendment would automatically exempt certain "minor" development. Minor development is not a category of development defined in the Coastal Act. Moreover, depending on it's location, such as within 50 feet of the edge of a coastal bluff, what is considered "minor" development in the proposed IP amendment could have significant adverse impacts on coastal resources and are not automatically exempt under the Code of Regulations. In addition, as proposed, the codification and wording of the Implementation Plan amendment regarding repair and maintenance activities is not consistent with Section 13252 of the California Code of Regulations.

Thus, the Implementation Plan amendment should be modified to include only the specified exemptions provided by the Coastal Act and its regulations. If modified for consistency with Coastal Act Section 30610 and California Code of Regulations Sections 13250, 13252 and 13253, the Implementation Plan amendment will be adequate to implement the transfer of coastal development permitting authority to the City.

(2) Categorical Exclusions

Second, the Coastal Act provides for the discretionary exclusion of certain types of development by Commission action (Coastal Act Section 30610.5 and 30610(e) and Implementing Regulations 13240 et seq.). Categorical Exclusions approved by the Commission for local government which do not have certified LCP's expire upon LCP Certification (California Code of Regulations 13249(b)). A new "post cert" Categorical Exclusion may be applied for, but because the voting requirements are different, must be processed separately from the LCP. A two-thirds vote of the Commission (California Code of Regulations 13243) is required to approve a Categorical Exclusion, whereas a simple majority is needed for LCP approval. Submittal and action requirements are also different. The Implementation Plan amendment is being modified for minor wording changes regarding categorical exclusions to be consistent with Section 30610(e) of the Coastal Act.

c) Permit Authority Which Passes To Local Government

An important part of coastal development permit procedures is to identify which type of permit authority passes to the City. It must be kept in mind that not all permit authority passes to the local

jurisdiction. For instance, permitting authority does not pass to the City for development located in areas of deferred certification. Only development located within the City's post certification geographic jurisdiction and which is not undertaken pursuant to a Coastal Act Section 30611 emergency waiver will be reviewed by the City upon effective certification. Upon effective certification, the typical coastal development permit application will fall into one of the following four categories:

Original Jurisdiction Development:

Development for which the Commission retains permit jurisdiction as defined in Coastal Act Section 30519(b). Pursuant to Coastal Act Section 30519(b), after effective certification, the Commission retains permit jurisdiction over tidelands, submerged lands and public trust lands.

Pre-Certification Development:

Development which has received a coastal permit from the Coastal Commission. After certification, development authorized by a permit issued by the Coastal Commission remains under the jurisdiction of the Coastal Commission for the purposes of condition compliance, enforcement, amendment, reconsideration, extension, and revocation. Section 30519(a) of the Coastal Act provides in part that the Commission's development review authority is delegated to local governments for new development. Development which has previously been approved by the Commission and completed prior to certification is not new development subject to review by local governments. Further, the acceptance of a Commission issued coastal development permit creates a contractual relationship between the Commission and the applicant/permittee, to which local governments are not a party. Consequently, the Commission's right to insist upon compliance with the terms and conditions of permits it has issued is not transferred to a local government after LCP certification.

Projects "In The Pipeline":

A project "in the pipeline" is a project which has received local approval, and a coastal development permit application for the project has been filed complete with the Coastal Commission, but the Commission had not yet acted on the project prior to certification of the LCP. Pursuant to Section 13546 of the California Code of Regulations, applicants in this situation have the option of either continuing Coastal Commission processing of their application or withdrawing their submittal and re-filing their application with the local jurisdiction to be heard and decided based on the post-certification local coastal permit requirements described below. If the applicant elects to stay with the Coastal Commission process, the coastal permit remains with the Commission, but the standard of review is the certified LCP. Upon effective certification of an LCP, no new applications for coastal development permits within the certified area will be accepted by the Commission offices

Post-Certification Projects:

Projects in certified areas for which a coastal development application had not been submitted to the Coastal Commission prior to certification. Coastal development permit applications for such projects would be filed with the City and acted on pursuant to the certified LCP.

The LCP Implementation Program must ensure that all non-exempt development in the coastal zone has a coastal development permit either issued by the Commission or the certified local government. The Implementation Plan amendment must provide the procedures for determining how applications for coastal development permits will be processed for the types of permit situations described above.

Chapter 9.69 of the City's proposed CDP ordinance, which governs actions on coastal development permits, does not address this issue, nor does it make clear that "pre-certification" development remains under the jurisdiction of the Commission. Consequently, the proposed Implementation Plan amendment as submitted is inconsistent with the Coastal Act requirement that all coastal zone development undertaken after the effective date of the Coastal Act secure a coastal permit -- either from the local government under a certified program or from the Commission -- and thus must be rejected as submitted and then modified to address this procedural issue.

By modifying the Implementation Plan amendment so that it clearly outlines the procedures for processing "permits in the pipeline" and defining responsibility for coastal development permits issued by the Commission, the proposed chapter would be adequate to implement the transfer of coastal development permitting authority to the City. (See Suggested Modification Revising Section 9.69.030 of the City's CDP Ordinance.)

d) Application Requirements

California Code of Regulation Sections 13052 and 13053 identify information requirements which shall be required in every permit application. The Implementation Plan amendment as submitted identifies some but not all of the information needed to evaluate proposed development for consistency with certified LCP policies. If the Implementation Plan amendment is modified to include all the necessary review information, it will be adequate to carry out the transfer of Coastal permitting authority to the City. (See suggested modifications to Proposed Section 9.69.050).

e) Emergency Permits

The Coastal Act provides for two methods of dealing with emergencies. First, Coastal Act Section 30611, and its implementing Regulatory Section 13144, provide for emergency development without a permit only if the development is:

1. Limited to emergencies which threaten life or public property (public works, utilities or services) and;

2. Does not involve the permanent erection of structures valued at more than twenty-five thousand dollars ($25,000).

Notably, however, this authority to waive permit requirements for these specific types of emergencies remains with the Executive Director of the Commission even after certification of an LCP. Therefore, the provisions for this authority which were included in the Implementation Plan amendment as submitted must be deleted.

Second, Section 30624 of the Coastal Act and California Code of Regulations 13136 et seq. provides an emergency permit procedure applicable to all emergencies other than those specified in Section 30611 and is transferable to local government upon LCP certification. Such a procedure is contained

in the Implementation Plan amendment as proposed. However, the implementing ordinance must make clear that only the authority for reviewing the second type of emergency permit requests pursuant to Section 30624 of the Coastal Act will transfer to the City of Dana Point upon certification. As proposed, the Implementation Plan amendment does not distinguish between the type of emergency waiver authority which remains with the Executive Director of the Commission pursuant to Section 30611 of the Coastal Act and the type of emergency permit authority which is transferable to local government upon LCP certification. The authority for issuing Section 30611 Emergency Waivers is retained by the Commission. In addition, as submitted, the Implementation Plan amendment does not specify the expiration of emergency permits nor the need to report their issuance to a local approving authority, for instance, and is not consistent with Section 30624 of the Coastal Act and Section 13136 et seq. of the California Code of Regulations.

As modified, the Implementation Plan amendment would distinguish between the types of emergency waiver authority which remains with the Executive Director of the Coastal Commission and the type of emergency permit authority which is transferred to local government upon LCP certification. Thus, as modified, the proposed Implementation Plan amendment would be adequate to transfer Coastal Act authority to the City. (See Suggested Modifications to Proposed Section 9.69.150 and the replacement of proposed Section 9.69.040(h) with a different topic.)

f) Amendments to Coastal Development Permits

As submitted, the Implementation Plan amendment allows for amendments to coastal development permits. As submitted, however, the Implementation Plan amendment does not contain all of the applicable requirements of the Coastal Act and Section 13166 of Title 14 of the California Code of Regulations. If the Implementation Plan amendment is modified, then it would be adequate to transfer coastal development permitting authority to the City (see suggested modifications to Zoning Code Section 9.69.130).

g) Reconsideration

Section 30519(a) of the Coastal Act provides that, with certain exceptions, the development review authority provided for in Chapter 7 (commencing with Section 30600) of the Coastal Act is delegated to a local government at the time its local coastal program is certified. Reconsideration provisions are part of the development review authority contained in Chapter 7. As submitted, the Implementation Plan amendment does not contain provisions for reconsideration procedures and must be rejected. If modified to include reconsideration procedures as provided for by Section 30627 of the Coastal Act and Sections 13109.1 through 13109.5 of Title 14 of the California Code of Regulations, then the Implementation Plan amendment would be adequate to transfer coastal development permitting authority to the City (see suggested modifications for inclusion of a new Zoning Code Section 9.69.190).

h) Format of Coastal Development Permits

As submitted, the proposed Implementation Plan amendment does not contain requirements for the format, content, and issuance of the actual coastal development permit once the proposed development has been approved. Therefore, as modified for the inclusion of these provisions in a new Zoning Code Section 9.69.180, then the Implementation Plan amendment would be consistent with Section 13156 of

the California Code of Regulations and would be adequate to transfer Coastal Act authority to the City of Dana Point.

i) Administrative Coastal Development Permits

As submitted, the IP amendment administrative permit procedures contained in Section 9.69.030(a) are not consistent with the requirements for administrative permits contained in Coastal Act Section 30624 and Section 13165 of Title 14 of California Code of Regulations and thus must be rejected. As submitted, the IP amendment does not list the correct types of development which qualify for an administrative permit, nor are there any procedures included for the processing of administrative permits. Therefore, Section 9.69.030(a) must be modified to include the correct classes of development which qualify for administrative permits. Further, Section 9.69.110 must be modified to include the procedures for processing administrative permits. As modified, the IP amendment would be consistent with Sections 30624 of the Coastal Act and 13165 of the California Code of Regulations, and thus would be adequate to transfer coastal development permitting authority to the City of Dana Point.

j) De Minimis Waivers

Coastal Act Section 30624.7 and Subchapter 4.5 (Sections 13238-13238.2) of Title 14 of the California Code of Regulations contains provisions to waive permit requirements for De Minimis development, thus helping to streamline permitting procedures. The City of Dana Point has requested that these provisions be included in the Zoning Code. Therefore, Section 9.69.160 is being modified to include De Minimis waiver procedures.

k) Enforcement

The enforcement of the provisions of the certified local coastal program and the enforcement of coastal development permits issued pursuant to the LCP is an important part of ensuring that development in the coastal zone occurs consistent with the provisions of the certified LCP. As submitted, the Implementation Plan amendment does not contain any provision for enforcement and thus must be rejected. As modified for the inclusion of a new Zoning Code Section 9.69.170 regarding enforcement, then the Implementation Plan amendment would be adequate to transfer Coastal Act authority to the City of Dana Point.

l) Variances, Site Development Permits, and Administrative Modifications

Chapters 9.67 "Variances" and 9.71 "Site Development Permits" contain procedures for these types of discretionary actions. Further, Section 9.61.090 of the Zoning Code provides procedures for Administrative Modification of standards, which would be akin to a ministerial variance. As submitted, these provisions do not make clear that variance , site development permit, and administrative modification applications for development within the coastal zone must also be consistent with LCP requirements and must be rejected. These provisions must be modified to make clear that approvals of variances and/or site development permits must be consistent with the certified LCP and not result in adverse impacts, either individually or cumulatively, on coastal resources.

2. Notice And Hearing Requirements

The Post Certification LCP Regulations (California Code of Regulations Section 13560 et seq) outline the notice and hearing requirements for locally issued coastal permits. In summary, these regulations require that the local government notify the Commission and interested persons of all pending coastal permits (appealable and non-appealable, California Code of Regulations Sections 13565, 13568(a)(b)). Additionally, notices from local governments to the Coastal Commission are required for final action in future categorically excluded development (California Code of Regulations Sections 13248, 13315). Finally, local coastal permits are not effective until the Commission has received adequate final local notice (California Code of Regulations Section 13570-13573) and, if appealable, the Commission's appeal period has run and a valid appeal has not been filed.

a) Noticing Requirements

In order to simplify noticing procedures at the City level, the City is proposing that one standardized set of notice procedures be used for all types of coastal development permits as well as other City permits. As submitted, however, the Implementation Plan amendment noticing procedures are not consistent with the noticing requirements of the Coastal Act nor Title 14 of the California Code of Regulations and must be rejected.

(1) Posting of the Site

As submitted, the Implementation Plan amendment does not contain any provisions for providing public notice via the posting of a development site and must be rejected. Section 13054(b) requires that applicants for coastal development permits must post, at the proposed development site, notice of the pending application. Therefore, if modified to include the provisions of Section 13054(b), the Implementation Plan amendment would be adequate to transfer development review authority to the City of Dana Point (see suggested modifications for new Section 9.69.060(a) of the Zoning Code).

(2) Noticing Provisions Prior to Final City Action

Sections 13565 and 13568 of the California Code of Regulations contain different noticing and hearing requirements for appealable versus non-appealable developments. The Implementation Plan amendment as submitted does not contain the minimum requirements and must be rejected.

As modified, the noticing requirements would include the provisions of Section 13565 of the Code of Regulations regarding appealable developments. These would apply to all coastal development permits issued by the City. The noticing requirements for appealable developments encompass the requirements for non-appealable developments. This would ensure that all coastal development permits, whether appealable or not, and requiring a public hearing or not, would be adequately noticed. Thus, as modified, the Implementation Plan amendment would be adequate to transfer coastal development permitting authority to the City (see suggested modifications for proposed Section 9.61.050 of the Zoning Code).

Further, as of 1996 the Coastal Act was amended to add a new Section 30624.9 allowing local governments to waive the local public hearing requirement for specific types of development, thus

helping to streamline the coastal development permitting process. The City of Dana Point has asked that these new procedures be incorporated into the Zoning Code. Therefore, the IP amendment is being modified to add a new Zoning Code Section 9.69.060(e) to include these procedures. Thus, as modified, the IP amendment would be adequate to transfer coastal development permitting authority to the City.

(3) Notice After Final City Action

The standardized notice procedures mentioned above would not apply to notices to the Commission of the City's final action on local coastal development permits. As submitted, Section 9.69.100 of the Zoning Code, as proposed in the Implementation Plan amendment, does not contain procedures which are consistent with the California Code of Regulations for notifying the Commission of a final City decision and must be rejected. As modified to include provisions for notice of final action consistent with Section 13571 of Title 14 of the California Code of Regulations, the noticing procedures of the Implementation Plan amendment would be adequate to transfer Coastal Act authority to the City of Dana Point.

b) Findings Required

In order to adequately implement Sections 30604 and 30519 of the Coastal Act, and Sections 13570 and 13096 of the California Code of Regulations, all decisions on proposed coastal development permits must be accompanied by written conclusions about the consistency of the proposed project with the certified LCP and where applicable, with the public access and recreation policies of Chapter 3 of the Coastal Act. The Implementation Plan amendment identifies the need for findings but does not require: (1) that the findings be written; (2) that findings be made on all permit actions, regardless of whether the permit application is approved or denied; or (3) that the findings conform to the requirements of Coastal Act Section 30604. Further, findings which are not required under the Coastal Act or Code of Regulations are contained in the proposed Implementation Plan amendment. Therefore, the Implementation Plan amendment must be modified.

Section 9.69.060 should be renumbered to Section 9.69.070 so that its location in Chapter 9.69 fits better in the context of the preceding and following sections. Also, if modified for the inclusion of provisions which require specific written findings in support of the legal conclusion that the proposed development is, or is not, in conformity with the certified LCP, and where applicable, with the public access and recreation policies of Chapter 3 of the Coastal Act, then the Implementation Plan amendment will be consistent with the Coastal Act and adequate to transfer Coastal Act authority to the City. (See Suggested Modifications to Proposed Section 9.69.060 which will be Section 9.69.070 as modified.)

3. Appeal Procedures And Identification Of Appealable Projects

The Coastal Act provides for a post-certification appeal process for a limited variety of coastal projects (Coastal Act Section 30603 and 30625, California Code of Regulations Sections 13111-13120, 13565, 13566, 13569, 13572 and 13573). In order to comply with the Coastal Act and attendant regulations, a Implementation Plan amendment must include the following elements:

a. Identification of Appealable Projects
b. Identification of Grounds for Appeal

c. Identification of Qualified Appellants
d. Public Hearing/Notice Requirement for all Appealable Projects
e. Local Appeal Process (Hearing Bodies/Fees)
f. Procedure for Resolving Disputes

After the certification of an LCP for a local government, only a limited number of projects remain appealable to the Coastal Commission. Appealable projects include those developments proposed within the geographic appeal area as defined in Section 30603(a) of the Coastal Act and indicated on the post certification appeals maps, as well as all major public works and energy facilities. With the exception of major public works and energy facilities, only local approvals or approvals with conditions may be appealed to the Commission. Any local action on a major public works or energy facility may be appealed. Post certification appeal maps must also be adopted so that geographic appeal areas are defined consistent with the Coastal Act for the types of local action subject to appeal.

a) Identification of Appealable Development

As submitted, the proposed Implementation Plan amendment does not have a section which identifies what constitutes "appealable development" pursuant to Section 30603(a) of the Coastal Act. As modified for the inclusion of a new Zoning Code Section 9.69.090(b) to define appealable development, the proposed Zoning Code would be revised to include the various types of "appealable development."

b) Identification of Grounds for Appeal

The Coastal Act provides the grounds for appeal of local coastal permits in Section 30603(b). The grounds for appeal must be based on the provisions of the certified local coastal program and the public access policies included within Chapter 3 of the Coastal Act. The Implementation Plan amendment as submitted identifies grounds for appeals of coastal development permits. However, the grounds identified are not correct. If a new Zoning Code Section 9.69.090(c) is added so that the Implementation Plan amendment includes the correct statutory grounds for appeals as identified in section 30603(b) of the Coastal Act, the proposed section of the Implementation Plan amendment governing appeals to the Commission will be adequate to transfer Coastal Act authority to the City.

c) Identification of Qualified Appellant

In order to appeal a local coastal permit, the appellant must be an "aggrieved party" as defined in the Coastal Act (Coastal Act Section 30801, California Code of Regulations Sections 13006 and 13573). A local coastal development permit may also be appealed by two Coastal Commissioners who need not have participated in the local hearing. The proposed Implementation Plan amendment does not include a definition of who is a qualified appellant consistent with Section 30801 of the Coastal Act. If a new Section 9.69.090(g) is added to describe a qualified appellant consistent with Section 30801 of the Coastal Act, then the proposed coastal development permit processing procedures would be adequate to transfer Coastal Act authority to the City.

d) Public Hearing/Notice Requirement for all Appealable Projects

As submitted, the proposed Implementation Plan amendment does not contain the noticing requirements for appealable projects pursuant to Section 13565 of the California Code of Regulations. The proposed Implementation Plan amendment contains, in Zoning Code Section 9.61.050, standardized noticing requirements for all permits, not just coastal development permits, issued by the City. These standardized noticing requirements are not consistent with the requirements of Section 13565 of the California Code of Regulations. If Section 9.61.050 is modified to include all the provisions of Section 13565 of the California Code of Regulations, then the proposed coastal development permit processing procedures would be adequate to transfer Coastal Act authority to the City.

e) Local Appeal Process (Hearing Bodies/Fees)

As submitted, Zoning Code Section 9.61.100 of the proposed Implementation Plan amendment contains procedures for appeals of all City permits (including City-issued coastal development permits) at the local level. California Code of Regulations Section 13573(a) provides that appeals at the local level should follow the requirements of local government appeal procedures, but does not specify any particular requirements which must be contained in those local appeal procedures.

However, as proposed, the Implementation Plan amendment does not make clear that, pursuant to Section 13573(a) of the California Code of Regulations, there are specific circumstances (such as if the local government charges a fee to appeal) under which the local appeal procedures do not have to be exhausted before a City-issued coastal development permit can be appealed to the Coastal Commission. Section 9.69.090 of the Zoning Code contains the procedures for appealing CDPs from the City to the Commission. Therefore, if Section 9.69.090 of the Zoning Code is modified to include these specific circumstances under which all local appeal procedures do not have to be exhausted, then the proposed coastal development permit processing procedures would be adequate to transfer Coastal Act authority to the City.

f) Procedure for Resolving Appeal Determination Disputes

The Implementation Plan amendment as submitted outlines, in Section 9.69.110 of the Zoning Code, procedures by which disputes over determination of appeal jurisdiction shall be resolved. As proposed, however, the Implementation Plan amendment does not provide a procedure for resolving disputes concerning the status of coastal permit applications (appealable, non-appealable, exempt, categorically excluded) consistent with Section 13569 of the California Code of Regulations and must therefore be modified. Section 13569 of the Commission's Regulations indicate that when the Executive Director of the Commission and the local government disagree on the status of an application (appealable, non-appealable, exempt, categorically excluded), the Commission shall make the final determination.

The IP amendment should be modified so that the existing provisions are relocated from Section 9.69.110 to a new Section 9.69.050(d) so that their location and order in the Zoning Code fits better in the context of the preceding and following sections. Further, new Section 9.69.050(d) indicates that the Commission, and not the Executive Director, has the final authority on this issue. If the IP amendment is modified to be consistent with Section 13569 of the California Code of Regulations, then the proposed coastal development permit processing procedures would be consistent with the requirements of the law.

4. Procedures To Implement Open Space And Public Access Requirements

Pursuant to Coastal Act Section 30513 and California Code of Regulation Section 13512, the City of Dana Point's Proposed Implementation Program must specifically implement the coastal access policies contained within its Land Use Plan in order to be legally adequate under the Coastal Act. In addition, Section 13574 of the Commission's implementing Regulations provide for Commission staff review of all legal documents specified in the conditions of approval of a coastal permit for public access and conservation/open space easements.

a) Implementation of LUP amendment Coastal Access Policies

Except for some provisions regarding lateral access in the Beach Road residential districts, the proposed Implementation Plan amendment contains no provision for obtaining public access in terms of the various types of access (e.g. lateral, vertical, blufftop, recreational, historic use), the circumstances under which public access can be obtained, or the findings required to justify obtaining public access.

The replacement of these existing procedures with the Commission's standard access ordinance would provide procedures and provisions which would adequately implement the public access policies of the certified LUP amendment. As Section 9.27.030(a) is modified, the coastal development permit processing procedures would be adequate to transfer Coastal Act authority to the City of Dana Point.

b) Review of Recorded Documents

As submitted, the proposed Implementation Plan amendment contains provisions for the review of recorded legal documents. However, as proposed it is not consistent with Section 13574 of the California Code of Regulations which specify the procedures for the review of recorded documents and must be modified. If modified, then Implementation Plan amendment would be consistent with Section 13574 of the California Code of Regulations. Section 9.69.080(b) is being modified to provide the standards required in Section 13574 of the California Code of Regulations. Therefore, as modified, the coastal development permit processing procedures of the Implementation Plan amendment would be adequate to transfer Coastal Act authority to the City.

5. LCP Amendments (Section 9.61.080(e))

The Coastal Act (Section 30514) and the accompanying Regulations (Section 13551 et seq. and Section 13544, 13544.5, 13587, 13515, 13512, 13511 and 13514) provide for the Amendment of Certified Local Coastal Programs. A maximum of three amendment requests per calendar year may be submitted for Commission review.

The City of Dana Point Implementation Plan amendment as submitted contains provisions for amendments of the Local Coastal Program. However, as submitted, the IP amendment does not contain adequate provisions for amending the Local Coastal Program, particularly in regards to noticing, the required submittal resolution, the findings the City is required to make in approving an LCP amendment, and the contents of a submittal to the Commission. In addition, the proposed Implementation Plan amendment does not contain the new provisions for "de minimis" LCP amendments, nor does the Implementation Plan amendment as submitted describe the characteristics of

a "minor" LCP amendment in a manner which is consistent with Section 30514(c) of the Coastal Act and Section 13554 and 13555 of the California Code of Regulations.

As modified, the provisions for LCP amendments in the Implementation Plan amendment would be consistent with the provisions for LCP amendments in the Coastal Act and California Code of Regulations and would be adequate to transfer Coastal Act authority to the City of Dana Point (see suggested modifications to Section 9.61.080(e)).

6. Monarch Beach Resort Specific Plan

The Monarch Beach Resort Specific Plan contains sections summarizing the coastal development permit process and the LCP process. However, these sections do not accurately described these processes. These sections must be modified to be consistent with the Coastal Act and California Code of Regulations regarding the coastal development process and LCP amendment procedures, as described above.

Sections 1.2, 1.8, and 3.1.2.5 of the Specific Plan briefly summarize the coastal development permitting process and the Specific Plan's role in the LCP. The Commission finds it necessary to modify these sections to be consistent with the Coastal Act and the California Code of Regulations provisions regarding LCP amendments and coastal development permit procedures. The Commission also finds that Section 3.1.1.2 must be modified to clearly state that all coastal policies of the City of Dana Point certified LCP will be implemented. As worded, Section 3.3.3 does not clearly state that amendments of the local coastal program must be certified by the Commission and will not become effective until accepted by the City following Commission action. Therefore, the Commission finds that the wording of Section 3.3.3 must be modified to clearly state that the Coastal Commission must certify amendments to the local coastal program and that the amendments do not become effective until the amendment (with suggested modifications, if any) is accepted by the City following Commission action. In addition, the Commission finds that the wording of Section 3.37 must be modified to make it clear that, for purposes of coastal development permits, it is all aspects of the certified local coastal program, of which the Specific Plan is a part, which is the basis for approving or denying a coastal development permit application. The Specific Plan is not the sole basis for evaluating coastal development permit applications.

7. Conclusion (Coastal Development Permit Processing Procedures)

With the modifications to Chapters 9.61, 9.69, and 9.75, and Sections 9.67.050 and 9.71.020 of the proposed Zoning Code, and with modifications to Chapters 1.0 and 3.0 of the Monarch Beach Resort Specific Plan, the Commission finds that the City of Dana Point LCP Amendment 1-96 would be consistent with the coastal development permit processing procedures of the Coastal Act and California Code of Regulations and would be adequate to transfer coastal development permitting authority to the City of Dana Point.

IX. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program (LCP). Instead, the CEQA responsibilities are assigned to the Coastal Commission.

However, the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare an EIR for each LCP. Nevertheless, the Commission is required in an LCP submittal to find that the LCP does conform with the provisions of CEQA. The City of Dana Point LCP amendment 1-96 consists of a Land Use Plan (LUP) amendment and an Implementation Plan (IP) amendment.

As currently proposed, the LUP amendment raises a number of concerns regarding the Chapter 3 policies of the Coastal Act and thus cannot be found to be consistent with and adequate to carry out the Chapter 3 policies of the Coastal Act. The LUP amendment as submitted is not adequate to carry out and is not in conformity with the policies of Chapter 3 of the Coastal Act with respect to coastal access, environmentally sensitive habitat areas, wetlands, recreation, visitor serving facilities, coastal dependent uses, hazards, shoreline protective devices, beaches, public works facilities, new development, water quality, visual impacts, and cultural resources. Therefore, the Commission has suggested a number of modifications to bring the LUP amendment into full conformance with the requirements of the Coastal Act (see Section II. of this report for suggested modifications). As modified, the Commission finds that approval of the LUP amendment will not result in significant adverse environmental impacts under the meaning of the California Environmental Quality Act.

Relative to the IP amendment, the Commission finds that approval of the IP amendment with the incorporation of the suggested modifications, as listed in Section III of this report, would not result in significant adverse environmental impacts under the meaning of CEQA. Absent the incorporation of these suggested modifications to effectively mitigate potential resource impacts, such a finding could not be made.

Specifically, the Implementation Plan amendment, as modified, would (1) maximize protection of environmentally sensitive habitat areas through design controls, the requirement for the inclusion of biological/wetlands resources assessments and mitigation plans as application filing requirements, and regulation of development on steep slopes and in wetlands and other sensitive habitat areas; (2) minimize public safety risks and geological instability through standards for development on blufftops and in areas subject wave hazards; (3) preserve and protect scenic visual resources through standards for landform alteration; (4) minimize impacts to cultural resources by encouraging their retention and protection; and (5) assure continued public access and the provision of adequate parking in conjunction with new development.

Given the proposed mitigation measures, the Commission finds that the City of Dana Point Local Coastal Program Land Use Plan and Implementation Plan amendments, as modified, will not result in significant adverse environmental impacts under the meaning of the CEQA. Further, future individual projects would require coastal development permits, either issued by the City of Dana Point or, in the case of areas of original jurisdiction, by the Coastal Commission. Throughout the City's Coastal Zone, the specific impacts associated with individual development projects would be assessed through the CEQA environmental review process; thus, the individual project's compliance with CEQA would be assured. Therefore, the Commission finds that there are no feasible alternatives under the meaning of CEQA which would reduce the potential for significant adverse environmental impacts which have not been explored.

LIST OF EXHIBITS

A. Map of areas of the City affected by LCP 1-96
B. City of Dana Point LCP 1-96 submittal resolution.
C. Exhibit of areas covered by coastal development permit P-79-5539 and Site Numbers.
D. Coastal Development Permit P-79-5539

APPENDICES

A. General Plan policies as submitted.
B. Chapters 9.27, 9.61, and 9.69 of the Zoning Code as submitted

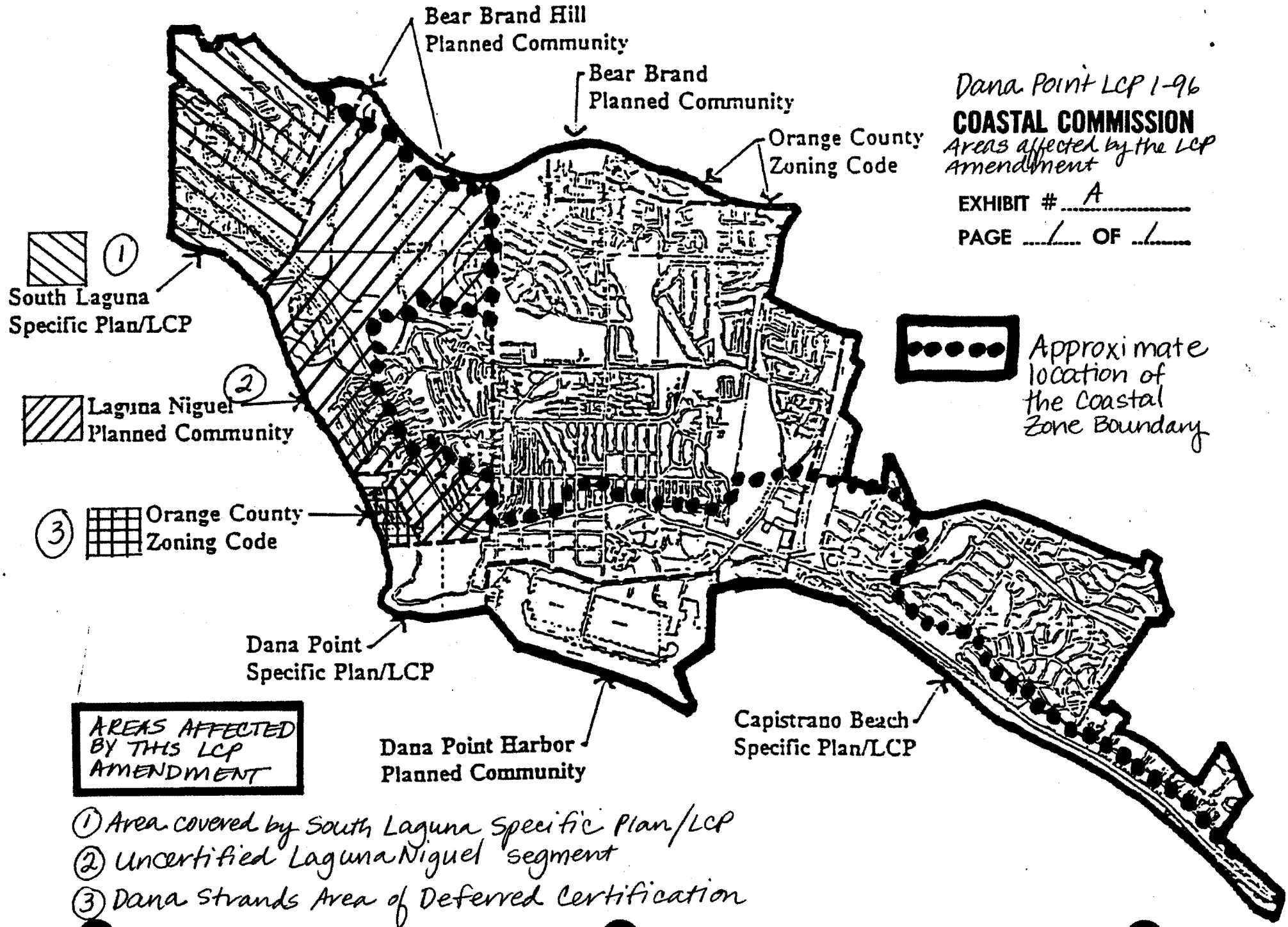
Dana Point LCP 1-96

COASTAL COMMISSION

Areas affected by the LCP Amendment

EXHIBIT # A

PAGE 1 OF 1



AREAS AFFECTED BY THIS LCP AMENDMENT

(1) Area covered by South Laguna Specific Plan/LCP

(2) Uncertified Laguna Niguel segment

(3) Dana Strands Area of Deferred Certification

Inserted Resol.

RESOLUTION NO. 96-04-09-0.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DIRECTING STAFF TO SUBMIT A NEW APPLICATION FOR LOCAL COASTAL PROGRAM AMENDMENT LCPA96-01, CONSISTING OF A COASTAL ELEMENT COMPRISED OF THE LAND USE, CONSERVATION/OPEN SPACE, AND URBAN DESIGN ELEMENTS OF THE DANA POINT GENERAL PLAN AS AMENDED, AND THE DANA POINT ZONING CODE AS AMENDED, ONLY AS THEY APPLY TO THE AREAS CURRENTLY REGULATED BY THE CERTIFIED SOUTH LAGUNA SPECIFIC PLAN/LOCAL COASTAL PROGRAM AND THE NON-CERTIFIED AREAS OF THE LAGUNA NIGUEL PLANNED COMMUNITY/FEATURE PLAN, EXCEPT DANA STRANDS, TO THE CALIFORNIA COASTAL COMMISSION FOR CERTIFICATION AND APPROVAL

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JUN 20 1996
CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

Applicant: City of Dana Point
File No.: FF# 0630-30/LCPA96-01

WHEREAS, the applicant has adopted the Dana Point General Plan, as amended, modifying the Land Use Plan component of the City's Local Coastal Program so as to amend the South Laguna Specific Plan/Local Coastal Program and the Laguna Niguel Planned Community/Feature Plan; and

WHEREAS, the applicant has adopted the Dana Point Zoning Code, as amended, modifying the Implementation component of the City's Local Coastal Program so as to amend the South Laguna Specific Plan/Local Coastal Program and the Laguna Niguel Planned Community/Feature Plan; and

WHEREAS, the proposed amendments are intended to adjust the existing land use and zoning designations or to adjust land use and zoning designation boundaries to recognize the actual developed condition in each location; and

WHEREAS, the proposed amendments are consistent with other components of the Land Use Element text and Map and with all other elements of the General Plan; and

WHEREAS, the Dana Point Zoning Code and Map, as amended, are consistent with the General Plan as amended; and

WHEREAS, the preparation and adoption of the Local Coastal Program Amendment is statutorily exempt from the California Environmental Quality Act pursuant to Section 21080.9 of the Public Resources Code; and

WHEREAS, the Planning Commission did, on July 6, 1993 hold a duly noticed public hearing and, after consideration, adopted Resolution No. 93-07-06-39 recommending City Council approval of the Dana Point Zoning Code and Map as amended; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the Planning Commission considered all factors relating to the Dana Point Zoning Code and Map; and

WHEREAS, the City Council did on August 10, September 28, October 12 and October 26, 1993 hold duly noticed public hearings as prescribed by law to consider said request; and

WHEREAS, at said public hearings, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors relating to the new Zoning Code and Map.

WHEREAS, the Dana Point Zoning Code was duly amended by the City Council on May 24, 1994 by Zoning Text Amendment ZTA94-03, on December 13, 1994 by Zoning Text Amendment ZTA94-07, on May 9, 1995 by Zoning Text Amendment ZTA94-08 and Zoning Text Amendment ZTA95-05/Zone Change ZC95-03, on May 23, 1995 by Zoning Text Amendment ZTA95-03/Zone Change ZC95-02, on June 13, 1995 by Zoning Text Amendment ZTA95-04 and on July 25, 1995 by Zoning Text Amendment ZTA95-07 at duly noticed public hearings as prescribed by law to consider all factors, including all testimony and arguments, if any, of all persons desiring to be heard, relating to said Zone Text Amendments and Zone Changes; and

WHEREAS, the Monarch Beach Resort Specific Plan was duly amended by the City Council on June 13, 1995, by Specific Plan Amendment SP91-01(I) at a duly noticed public hearing as prescribed by law to consider all factors, including all testimony and arguments, if any, of all persons desiring to be heard, relating to said Specific Plan Amendment; and

WHEREAS, Local Coastal Program Amendment LCPA96-01 is submitted to replace Local Coastal Program Amendment LCPA95-01, comprised of the Dana Point General Plan as amended and the Dana Point Zoning Code as amended, in their entirety, which has been withdrawn and is no longer under consideration by the Coastal Commission; and

WHEREAS, Local Coastal Program Amendment LCPA96-01 shall be comprised of a Coastal Element, which shall serve as the Land Use Plan component of the Local Coastal Program, and the Dana Point Zoning Code, which shall serve as the Implementation Plan component of the Local Coastal Program; and

COASTAL COMMISSION
submittal resolution
EXHIBIT # B
PAGE 2 OF 6

Dana Point
LCP 1-96

WHEREAS, said Coastal Element shall consist solely of the policies of the Land Use, Conservation/Open Space and Urban Design Elements of the Dana Point General Plan except for the following: Land Use Element Policy 1.5 and Conservation/Open Space Element policy 6.2 regarding the Dana Point Harbor, Land Use Element policies 5.1 through 5.11 inclusive regarding the development of the Headlands, Land Use Element policies 6.1 through 6.6 inclusive and Urban Design Element policies 3.1 through 3.8 inclusive regarding the Town Center, and Land Use Element policies 7.1 through 7.7 inclusive and Urban Design Element policies 6.1 through 6.7 inclusive regarding Doheny Village; and

WHEREAS, Local Coastal Program Amendment LCPA96-01 shall not include Chapter 9.25 (Harbor District) of the Zoning Code; and

WHEREAS, Dana Strands will remain uncertified under Local Coastal Program Amendment LCPA96-01; and

WHEREAS, that for purposes of this Resolution, Dana Strands shall mean that portion of the Headlands Specific Plan not presently certified by the California Coastal Commission; and

WHEREAS, Local Coastal Program Amendment LCPA96-01, upon effective certification by the California Coastal Commission, shall serve as the Local Coastal Program for the area within the City of Dana Point presently certified and regulated by the existing certified South Laguna Specific Plan/Local Coastal Program and shall replace, within the City of Dana Point, the South Laguna Specific Plan/Local Coastal Program; and

WHEREAS, Local Coastal Program Amendment LCPA96-01, upon effective certification by the California Coastal Commission, shall serve as the Local Coastal Program for the presently non-certified area within the City of Dana Point covered by the Laguna Niguel Planned Community/Feature Plan including the Dana Strands area, which have never been effectively certified;

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Dana Point hereby directs staff to submit a new application for certification of Local Coastal Program Amendment LCPA96-01, comprised of a Coastal Element consisting of the Land Use, Conservation/Open Space, and Urban Design Elements of the Dana Point General Plan as amended, (except Land Use policies 5.1 through 5.11 inclusive regarding development of the Headlands), and the Dana Point Zoning Code as amended excepting Chapter 9.25 (Harbor District), as they apply to the areas regulated by the currently

certified South Laguna Specific Plan/Local Coastal Program and the currently non-certified area covered by the Laguna Niguel Planned Community/Feature Plan, except Dana Strands, to the California Coastal Commission for approval.

BE IT FURTHER RESOLVED that the City Council of the City of Dana Point does hereby resolve, declare, and determine as follows:

1. That the above recitations are true and correct.

2. That the proposed action is consistent with the Dana Point General Plan and Local Coastal Program in that the amendments are intended to make land use designations of the Land Use Element and Land Use Map and their boundaries, and the zoning designations and boundaries of the Zoning Code and Map, correspond with the physical environment and the density of existing developments.

3. That the proposed action complies with all other applicable requirements of state law and local ordinances in that these amendments are proposed in accordance with the provisions of Section 65860 (Zoning consistency with General Plan) and Section 65358 (Amendments) of the State Planning and Zoning Law.

4. That upon California Coastal Commission effective certification of the proposed amendment, the proposed Local Coastal Program Amendment (LCPA96-01) would replace the South Laguna Specific Plan/Local Coastal Program and serve as the sole Local Coastal Program document for the area within the City of Dana Point covered by the South Laguna Specific Plan/Local Coastal Program, as well as serve as the sole Local Coastal Program document for any previously uncertified areas within the City of Dana Point, except Dana Strands which will remain uncertified.

5. That until such effective certification, the existing certified South Laguna Specific Plan/Local Coastal Program, including the Orange County Zoning Code shall remain the standard of review for coastal development permit actions in the area within the City of Dana Point regulated by the South Laguna Specific Plan/Local Coastal Program, and the California Coastal Act shall govern coastal development permit actions in currently uncertified areas of the City of Dana Point.

6. That the preparation and adoption of the Local Coastal Program Amendment is statutorily exempt from the California Environmental Quality Act pursuant to Section 21080.9 of the Public Resources Code.

7. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

BE IT FURTHER RESOLVED that, pursuant to Section 30510(a) of the Coastal Act, Local Coastal Program Amendment LCPA96-01 is intended to be carried out in a manner fully in conformity with the California Coastal Act of 1976 (Division 20 of the Public Resources Code).

BE IT FURTHER RESOLVED that Local Coastal Program Amendment LCPA96-01 shall not apply to the currently certified areas of the City of Dana Point regulated by the existing certified Dana Point Specific Plan/Local Coastal Program and the existing certified Capistrano Beach Specific Plan/Local Coastal Program.

BE IT FURTHER RESOLVED that Local Coastal Program Amendment LCPA96-01 shall be submitted to the California Coastal Commission for approval and certification.

BE IT FURTHER RESOLVED that pursuant to the California Code of Regulations, Section 13551(b)(1), this resolution shall take effect automatically upon Coastal Commission approval without suggested modifications; except that, pursuant to Section 13551(b)(2) of the California Code of Regulations, this resolution shall take effect only upon formal adoption by the City Council of the City of Dana Point after approval by the California Coastal Commission with suggested modifications;

PASSED, APPROVED, AND ADOPTED this 9th day of April, 1996.

Karen Lloreda
KAREN LLOREDA, MAYOR

ATTEST:

Sharon L Waits
SHARON WAITS, CITY CLERK

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Dana Point LCP 1-96
COASTAL COMMISSION
Submittal Resolution

EXHIBIT # B
PAGE 5 OF 6

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

I, SHARON L. WAITS, City Clerk of the City of Dana Point, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 96-04-09-01 adopted by the City Council of the City of Dana Point, California, at a regular meeting thereof held on the 9th day of April, 1996, by the following vote:

AYES:	Council Members Curreri and Gallagher, Mayor Pro Tem Kaufman and Mayor Lloreda
NOES:	None
ABSENT:	Council Member Ossenmacher

(SEAL)

Sharon L Waits
SHARON L. WAITS
CITY CLERK

Dana Point LCP 1-96
COASTAL COMMISSION
Submittal Resolution

EXHIBIT # B
PAGE 6 OF 6

DANA POINT LCP 1-96 Exhibit C

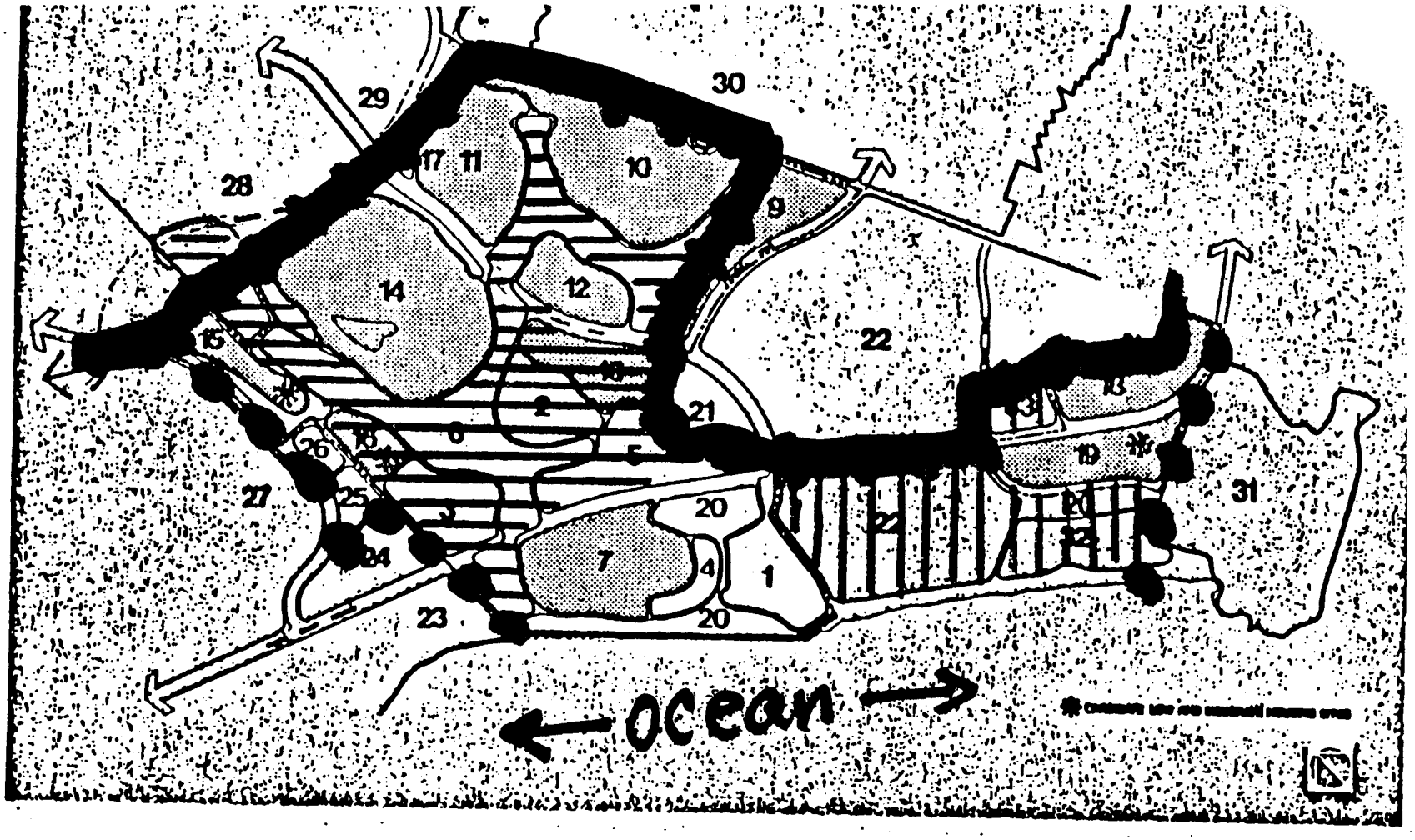
Key:

Coastal Zone boundary

Monarch Beach uncertified LCP segment

Monarch Beach Resort Specific Plan area

Non-P-79-5539 areas (in existence before permit proposal)



Map of AVCO Sites 1-19 approved by coastal development permit P-79-5539

STATE OF CALIFORNIA

EDMUND G. BROWN JR., G

CALIFORNIA COASTAL COMMISSION
SOUTH COAST REGIONAL COMMISSION
666 E. OCEAN BOULEVARD, SUITE 3107
P.O. BOX 1450
LONG BEACH, CALIFORNIA 90801
(213) 590-5071 (714) 846-0648

P79-5539

RECEIVED
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 92677

Permit Type:
- [ ] Emergency
- [x] Standard
- [ ] Administrative

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

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

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

See attached Page 3 for conditions.

Condition/s Met On _____ By _____

Dana Point LCP 1-96

EXHIBIT Exhibit D p. 1 of 10

I. The South Coast Commission finds that:

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

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

II. Whereas, at a public hearing, held on July 23, 1979 at Huntington Beach by a 10 to 2 vote permit applicat 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 that 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 the date of the Regional Commission vote upon the application. Any extensi of time of said commencement date must be applied for prior to expirati of the permit.

VII. Issued on behalf of the South Coast Regional Commission on November 28, 1979.

Dana Point LCP 1-96 Exhibit D, p. 2 of 10

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
(date)

Paul E. Rose
(signature)

Prior to issuance of a permit, applicant shall submit/agree to cond[illegible] outlined in the LNCDP application, including:

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 LNC[illegible] (p. 12), shall be required for all facilities on the hotel site. Said [illegible]lication shall provide parking in accordance with the adopted Orange Co[illegible] Guidelines, Parking Criteria. It shall incorporate a design that blend[illegible] with and does not overpower the public beach and park areas. Proposed [illegible] shall be included in the permit application. Such signing shall includ[illegible] notification that all areas of the hotel open to general hotel guests a[illegible] also open to the general public (note: this does not include hotel gue[illegible] rooms). Signing shall be located, at a minimum, at conspicuous locatio[illegible] the beach, the trail linking the beach and the hotel, and the beach and hotel parking area(s).

2. At the time of site plan approval, the applicant shall submit a deed restruction indicating that the public spaces of this facility (includin[illegible] lobby outdoor areas, trail connecting hotel and beach, bluff-top plaza, etc.) shall be operated as a public hotel facility and not converted to [illegible] 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/confe[illegible]ce center site. Said application shall provide parking in accordance with t[illegible] adopted Orange County Guidelines, Parking Criteria. The proposed design shall include a trail between the center and the adjacent community park. 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 an[illegible] club facilities shall be open to the public on a daily or hourly fee basi[illegible] 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 24 hours in advance of play/start time, they may be reserved by members. A deed restruction 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 genera[illegible] rule, not exceed 25 ft. in hgight above average finished grade (AFG) although portions may be permitted at 30-35 ft. above AFG if that addit[illegible] height is needed to provide either: a) public vistas from restaurants [illegible] similar visitor-oriented uses, b) housing for households of low and moderate income, c) interface of existing commercial with proposed expansi[illegible] area, or d) motel 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/moderat 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 unless 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 uses a the center shall be open to the public for beach and general parking on 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 educatio uses. Restrooms, picnic tables, benches, etc. shall be provided. Commercial/vending space may be provided, but the majority of this use shoul be directed to the hotel site. Additional parking conforming to the size/design requirements of the Orange County Guidelines, Parking Criteri shall be provided adjacent to the existing Niguel Beach parking area or in connection with parking provided for the hotel. (Note: Redesign of 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-79-5539), 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 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 Coastal Park and Trails. The offer to dedicate and improve shall run for 5 years and improvements 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.

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 pa: to demonstrate compliance with recommended uses. Applicant shall submi: plans for park development including active and passive play areas; tra: linkages between the park and the hotel, coastal park, recreation/confe: center, and commercial center, including plans for grade separated acce: ways at Coast Hwy. at both the eastern and western ends (implemented as 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 fc 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 that portion of the Loop trail with the park. Offer shall be made to the County of Orange, Coastal Conservancy, or any other public or privat 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 Trails. 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 ofthis permit. Signs should be of the monument type and should not exceed 24 sq. ft. in size and 9 ft. in heightand 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 restruction agreeing that the golf course shall be open to the public on a daily fee 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 use of 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. Said 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 shall be protected, primarily from wayward golf balls.

3. Parking for the golf course use shall be provided consistent with the requirements of the adopted Orange County Guidelines, Parking Criteria. Parking may either be provided on the site designated for the golf course (outside of the Salt Creek Corridor) or at the recreation/conference center site. Parking for the golf course may be designated on the recreation center site prior to development of concrete plans for that site and the location/configuration altered during final approval of development on 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 associations and/or an assessment district set up to cover this (and other) uses. If the trails are to be offered for dedication, the offer to dedicate must 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 Direc approved tentative tract maps and plans indicating proposed lot line (where applicable), unit locations, elevations, typical floor plans and design of any common areas/facilities to demonstrate compliance with des requirements of LNCDP, refer p. 36. No minimum or maximum unit size sha be required. Parking shall be provided in accordance with the adopted Orange County Guidelines. The number of units may not exceed 400. Shou structures in excess of three levels be proposed by applicant, additiona geologic investigation shall be made by a qualified geologist and approv 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/facilitie 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 the 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 site 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 incl 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 ft. 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 that 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

Dana Point LCP 1-96 Exhibit D p. 7 of 10

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 would be required to make a full 25% of the total project "affordable." Two-fifths of the required low/moderate-cost units shall be provided on this 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 to be 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 households earning substantially the same percentage of the median income as the initial purchasers of the units and shall be recorded as a covenant to run 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 purchasers 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 its assignee shall then have the right to exercise the option within 180 days

Dana Point LCP 1-96 Exhibit D p 8 of 10

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 and 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 encumbrancing 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, title to the property shall be taken by the applicant at a cost based on condition "v" above subject to this agreement.

vii. Such other conditions as the Executive Director determines are 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 not 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 a fee of $275 (or greater if "fair share" is determined to be greater) for each conventionally financed residential unit (add $0 for each "low-mode: 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 th: permit. -If within five years of the applicants commencement of this program an active program has not been set up, the applicant (or success: 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 all 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 provided 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 pads, 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

Dana Point LCP 1-96 Exhibit D p.10 of 10

The Land Use/Local Coastal Element Technical Report, prepared prior to preparation of the Land Use Element, is a supporting background document which contains quantitative information about the distribution of land use in Dana Point. This technical report may be updated periodically as a means of maintaining a data base of current land use conditions in the City.

LOCAL COASTAL PROGRAM

As discussed in the Introduction, the General Plan, Zoning Ordinance, Zoning Map, and other implementing actions constitute the Local Coastal Program (LCP) for that portion of the coastal zone within the City's jurisdiction. The LCP includes several required components and issue areas which relate to the subjects of several different General Plan Elements; therefore, specific components of the LCP are distributed among various elements of the General Plan and are individually discussed within their applicable Plan Element. To fully identify all components of the LCP, a matrix is provided which cross-references LCP components/issue areas with the supporting information included in the elements of the General Plan and Zoning Ordinance. The portion of the Local Coastal Program Reference Matrix that applies to the Land Use Element is provided in Table LU-1, located at the end of the section of this Element entitled "Land Use Element - Local Coastal Program Reference Matrix".

The Land Use Element is a major component of the LCP and consists of "relevant portions of a local government's General Plan...which are sufficiently detailed to indicate the kinds, location, and intensity of land uses, the applicable resource protection and development policies and, where necessary, a listing of implementing actions" (Section 30108.5, Coastal Act). The City's LCP requires certification by the Coastal Commission. After certification the City assumes responsibility for administering coastal development permits in those areas of its coastal zone that are not on submerged lands, tide lands, public trust lands, or state universities or colleges. Development within the City's coastal zone would then be approved only if found to be in conformity with the certified LCP.

Appendix A

Dana Point LCP 1-96
LUP General Plan provisions as proposed
(Land Use, Urban Design, & Conservation/Open Space Elements)

Apx. A page 1

Approximately 2,158 of the City's total 4,148 acres lie within the coastal zone. The City's coastal zone is identified in Figure LU-1.

Identification of those portions of the Land Use Element, and other General Plan elements which constitute components of the City's Local Coastal Program, is provided by the inclusion of parenthetical references to the applicable sections of the California Coastal Act. For example, a policy statement relating to coastal visual resources will be followed by the parenthetical reference (Coastal Act/30251) to indicate that the policy relates to or addresses scenic and visual qualities of coastal areas as required by that section of the California Coastal Act.

RELATED PLANS AND PROGRAMS

The scope and content of the Land Use Element is primarily governed by the *General Plan Law and Guidelines* and the *Planning, Zoning and Development Laws* for the state (California Government Code Sections 65000-66009). In addition, there are a number of other plans and programs that are considered in the formulation, adoption and implementation of land use policy. Relevant plans and programs are described in this section.

County Of Orange Zoning Ordinance and City of Dana Point Zoning Ordinance

Following incorporation and prior to adoption of a City Zoning Ordinance, the City elected to use the County of Orange Zoning Ordinance as an interim means of regulating land use. The County Zoning Ordinance was supplemented directly by City-adopted ordinances which tailored its application to the City of Dana Point. The City adopted its own Zoning Code in 1993 as the primary implementation tool for the Land Use Element, and its goals and policies. The City Zoning Ordinance and Zoning Map will be consistent with the City's General Plan and Land Use Policy Diagram. Together, the Zoning Ordinance and Zoning Map will identify specific types of land use, intensity of use, and development and performance standards applicable to specific areas and parcels of land within the City.

Apx. A p.2

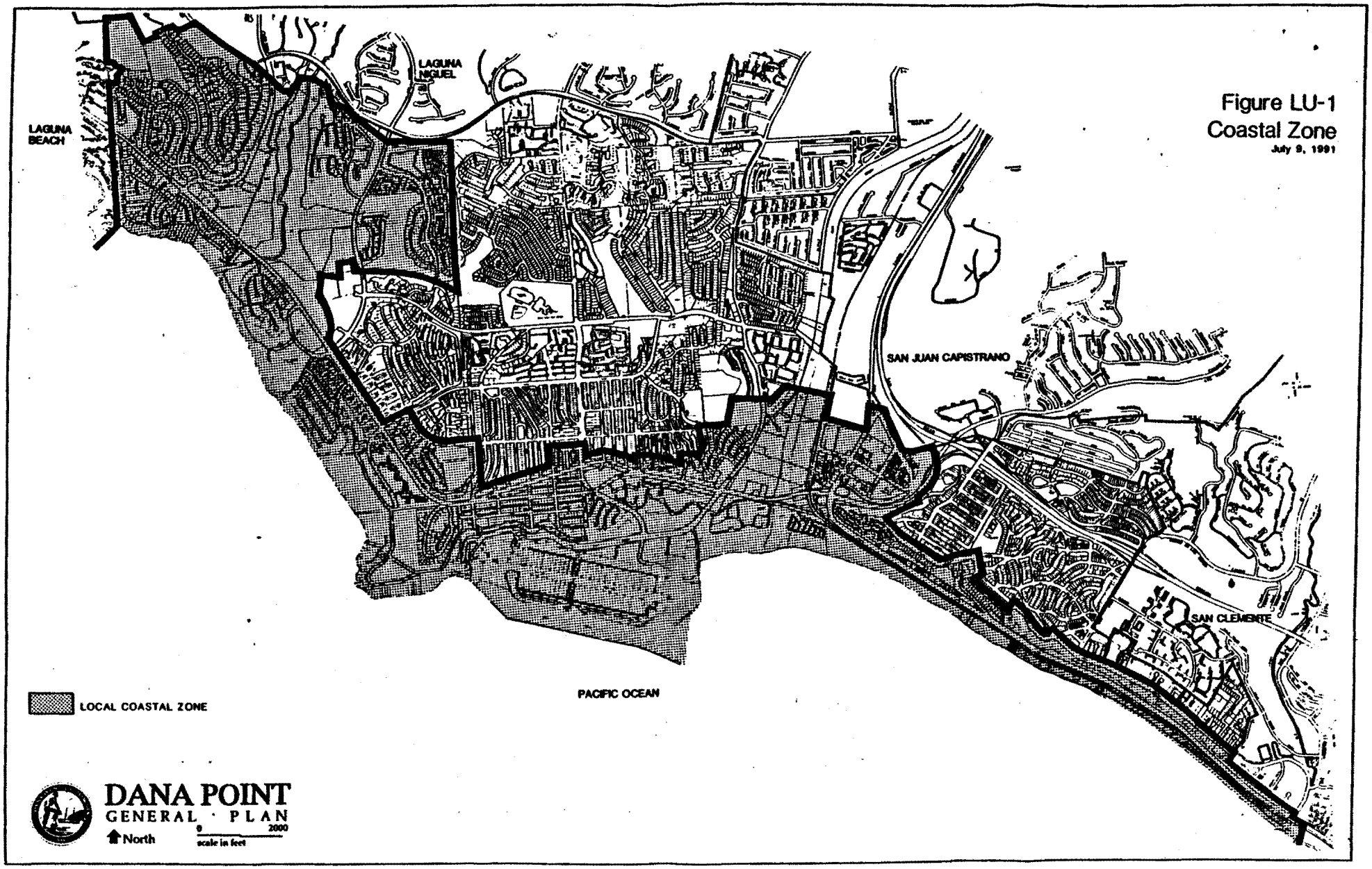


Figure LU-1
Coastal Zone
July 9, 1991

5

Pk A 3

Balancing development within the City requires the inclusion of a mixture of different types of land use - residential, commercial, industrial, community facilities, recreation and open space, and others. A well-balanced community offers a broad range of land uses organized in a desirable pattern and intensity which enhances the overall living environment. By providing for a balanced mixture of land uses, the City can achieve a suitable inventory of housing to meet the needs of all income groups, a stable commercial and employment base, recreational opportunities for inhabitants and visitors, and acceptable public facilities and services. An appropriate pattern and balance of land use is the key to the fiscal and social health of the City.

The existing mix of development within the City has been shaped by pre-incorporation planning efforts. These previous planning efforts generally provided an adequate balance of land uses within the City. However, greater and more appropriate balance is achieved by increasing the overall proportion of non-residential development, particularly in the Town Center and Doheny Village areas. Future employment opportunities within the City are expanded by increasing the percentage of lands designated for industrial, office, and business use and the long-term fiscal condition of the City is strengthened. Community facilities consist primarily of land owned by school, water, sewer, and park and recreation districts. Expansion of the land area designated for community facilities is necessary to accommodate additional City facilities.

GOAL 1: Achieve a desirable mixture of land uses to meet the residential, commercial, industrial, recreational, open space, cultural and public service needs of the City residents.

Policy 1.1: Develop standards for building intensity, including standards for ground coverage, setbacks, open space/landscaping, maximum dwellings per acre, floor area ratios, size and height restrictions.

Policy 1.2: Establish maximum intensities of development for each of the various land use categories.

App A 4

Policy 1.3: Assure that land use intensities are consistent with capacities of existing and planned public service facilities. (Coastal Act/30250, 30254)

Policy 1.4: Assure that adequate recreational areas and open space are provided as a part of new residential development.

Policy 1.5: Work closely with Orange County to plan for the future development within the Harbor Area and to assure that additional development is compatible with existing uses and enhances the scenic, recreational and visitor opportunities for the area. (Coastal Act/30220-224, 30233, 30234, 30250, 30252, 30255)

Policy 1.6: Encourage the development of unified or clustered commercial centers and neighborhood commercial centers rather than continued development of strip commercial. (Coastal Act/30250)

Policy 1.7: Require comprehensive analysis and mitigation for any proposed General Plan Amendment to ensure that the amendment will result in a desirable mixture of land uses meeting the social and fiscal needs of the City and its residents.

COMPATIBILITY AND ENHANCEMENT AMONG LAND USES

As the City develops, new land uses replace existing ones and the characteristics of individual land uses which distinguish them from one another can also be described as differences which cause them to be incompatible when they occur close together. For example, the traffic, night lighting, noise, and odors associated with an otherwise successful commercial area may be perceived as nuisances for nearby residents. An understanding of impacts which occur when different types of land use develop close to one another leads to proper planning and positive impacts on surrounding land uses. The use of horizontal separation, vertical separation of buildings and uses, landscaping, walls, and proper orientation of buildings, lighting, and street access can avoid or minimize land conflicts and impacts, and enhance the overall living environment.

Apx A5

GOAL 2: Achieve compatibility and enhance relationships among land uses in the community.

Policy 2.1: Consider the impacts on surrounding land uses and infrastructure when reviewing proposals for new development. (Coastal Act/30250)

Policy 2.2: Prohibit onshore support facilities for oil drilling. (Coastal Act/30260-264)

Policy 2.3: Visitor serving commercial areas shall not intrude into existing residential communities. (Coastal Act/30250)

Policy 2.4: Develop regulatory mechanisms to mitigate land use conflicts.

DIRECTING GROWTH TO MAINTAIN AND IMPROVE QUALITY OF LIFE

As the City matures, additional demands will be placed on public services and infrastructure (e.g., police, fire and recreation, and streets, water lines, sewer lines, power lines, and others). The infrastructure system serving Dana Point includes major components or "back bone systems" which can provide the capacity to accommodate projected growth. The secondary components, connecting development with the major components of the infrastructure system, must be extended to support new development and replacement of aging portions of the system needs to occur in the future to maintain the present quality of services provided. Continued demand for these public services and facilities requires adequate planning for the financing of future improvements to ensure that the quality of City life is maintained or improved in the future.

GOAL 3: Direct growth of the community so as to maintain and improve the quality of life.

Policy 3.1: Require new development to contribute its share of the cost of providing necessary public services and facilities through equitable development fees and exactions. (Coastal Act/30250)

Apx A 6

Policy 3.2: Coordinate Dana Point's land use and growth policies with the County and other communities in the region to strengthen and promote interjurisdictional communication and cooperation.

Policy 3.3: Priority should be given to those projects that provide for coastal recreational opportunities for the public. (Coastal Act/30210-212, 30220-224)

Policy 3.4: Examine the short term and long term fiscal effects of development and redevelopment decisions.

Policy 3.5: Public facilities must be distributed throughout the coastal area to eliminate overcrowding and overuse in one single area. (Coastal Act/30212.5, 30254)

Policy 3.6: Encourage patterns of development necessary to minimize air pollution and vehicle miles traveled. (Coastal Act/30250)

Policy 3.7: Encourage safe and convenient bicycle and pedestrian access throughout the community. (Coastal Act/30210-212.5, 30250, 30252)

Policy 3.8: Allow increases in intensity up to the maximum floor area ratio identified in the Land Use Element only where development projects demonstrate exceptional design quality, important public amenities or public benefits, or other factors that promote important goals and policies of the General Plan.

Policy 3.9: Designate the right-of-way for Alipaz Street for Recreation/Open Space use if Alipaz Street is removed from the Master Plan of Arterial Highways in the future.

Policy 3.10: Consider designating vacated street rights-of-way for Recreation/Open Space use.

Policy 3.11: Provide congestion management and mitigation for increased demand for affordable housing due to the creation of significant additional employment opportunities.

Apx A7

Portions of the City consist of fragile coastal beaches and bluffs, hillsides, and canyons which are sensitive to changes associated with land development. These fragile areas provide an important sense of place and openness. Preservation of such areas provides a physical buffer protecting persons and improvements from natural and man-made safety hazards. These areas also present opportunities for passive recreation, such as trails for bicycling and hiking, which result in only minimal disruption to sensitive lands.

In the General Plan, bluff demarcation is drawn based on a mean estimation projected across all parcels impacted by coastal bluff areas. The specific location of the bluff line, as it is applied to an individual parcel, will be established consistent with existing policies and criteria in effect when building plans are submitted.

GOAL 4: Encourage the preservation of the natural environmental resources of the City of Dana Point.

Policy 4.1: Exclude areas designated as Recreation/Open Space and areas containing wetlands, beaches, and bluffs from the calculation of net acreage available for determining development intensity or density potential.

Policy 4.2: Consider the constraints of natural and man-made hazards in determining the location, type and intensities of new development. (Coastal Act/30240, 30253)

Policy 4.3: Provide and protect public access and recreational opportunities to the coastal area. (Coastal Act/30210-212.5, 30213, 30220-224)

Policy 4.4: Preserve, maintain and enhance marine resource areas and coastal water. (Coastal Act/30230-232, 30235-236)

Policy 4.5: Consider the environmental impacts of development decisions. (Coastal Act/30240, 30241, 30242, 30243, 30244)

Policy 4.6: Ensure land uses within designated and proposed scenic corridors are compatible with scenic enhancement and preservation. (Coastal Act/30251)

Apx A8

Policy 4.7: Coordinate with appropriate Park, Recreation and Harbor Agencies to enhance Open Space trails and bike paths. (Coastal Act/30210-212.5)

Policy 4.8: Encourage the reasonable regulation of signs to preserve the character of the community. (Coastal Act/30251)

Policy 4.9: Encourage the preservation of significant natural areas as cohesive open space.

DEVELOPMENT OF THE HEADLANDS

Not Part of LUP

Goals 5, 6, & 7 are not part of LUP

The Headlands is one of the most significant land forms and undeveloped properties in the City. The Headlands offers important opportunities for future development and, at the same time, includes sensitive coastal bluffs which represent substantial constraints to development. The property provides spectacular views of the Dana Point Harbor and the coastline to its north and south. Thus the Headlands offers a distinct opportunity to provide a continuous open space corridor along the coast with views and public access to the ocean, coastline and harbor. The property is large enough to accommodate a mixture of land uses that include visitor-serving commercial, residential, recreation, open space, and community facilities.

GOAL 5: Provide for the development of the Headlands area in a manner that enhances the character of the City and encourages the protection of the natural resources of the site.

Policy 5.1: Preserve the opportunity of public views from the Headlands site to the coastal areas and the harbor areas. (Coastal Act/30251)

Policy 5.2: Require geotechnical studies to ensure geological stability in the areas where development is to be permitted and require adequate setbacks from the blufftop areas in accordance with those engineering studies and adopted City regulations. (Coastal Act/30250, 30253)

Policy 5.3: Preserve natural open space in the Headlands area, especially along the coastal bluffs, and provide open areas integrated throughout the development. (Coastal Act/30210-212.5, 30250, 30253)

App. A 9

development. Revitalization efforts could include pedestrian-oriented streetscape and landscaping improvements designed to unify and connect the Village's various areas. These improvements may also provide a means of establishing greater connection between the Village the beach and San Juan Creek.

GOAL 7: Achieve the revitalization of the Doheny Village area as a primary business district in the City.

Policy 7.1: Promote the Doheny Village area as a major shopping and business center in the community.

Policy 7.2: Improve the appearance of the area through revitalization activities such as landscape design and pedestrian amenities.

Policy 7.3: Develop design guidelines that assure that development will be consistent in terms of scale and character. (Coastal Act/30251)

Goals 5, 6, & 7 are Not part of LUP

Policy 7.4: Promote the development of land uses in the Doheny Village area that provide employment opportunities for the community including offices, marine-oriented industrial uses, and other commercial or light industrial business activities or community facilities.

Policy 7.5: Encourage the development of a diversity of housing opportunities including medium density housing in the areas adjacent to the retail areas and also as a part of mixed residential and retail or office uses.

Policy 7.6: Provide for adequate and convenient parking areas. Encourage the provision of shared parking facilities, such as through the establishment of a parking district.

Policy 7.7: Prepare a Specific Plan for revitalization of the Doheny Village Area. The Specific Plan should involve extensive public input.

DEVELOPMENT OF MONARCH BEACH

The Monarch Beach area is indicative of development based on master planning efforts and high quality development

Apx A 10

standards. The Ritz Carlton Resort Hotel and an additional resort hotel site north of Pacific Coast Highway provide focal uses in a community which includes extensive outdoor activities such as golf (The Links at Monarch Beach) and coastal recreation (Salt Creek Beach Park and Dana Strand Beach). Monarch Beach has dramatic public view corridors within the coastal Salt Creek Basin.

GOAL 8: Provide for the development of the Monarch Beach area in a manner that enhances the character of the City and encourages the protection of the natural resources of that area.

Policy 8.1: Preserve the opportunity of public view corridors from Monarch Beach area to the coast. (Coastal Act/30251)

Policy 8.2: Assure that adequate recreational areas and open space are provided and maintained by the developer as part of a new development.

Policy 8.3: Assure that the height and scale of new development is compatible with the existing areas.

Policy 8.4: Promote the development of a mixture of residential, visitor-serving, and open space land uses; with an ultimate residential density cap of 238 dwellings, which shall not be exceeded.

Policy 8.5: Require that the pedestrian and bike trail systems be extended throughout Monarch Beach and connected with the existing and proposed City wide trail system.

Policy 8.6: Provide extensive public trail and transit loop systems within the Monarch Beach area. The systems shall include access to the beach and to the visitor-serving and public places within Monarch Beach.

Policy 8.7: Encourage public access, visitor-serving and residential land uses with a strong public component which allows the public to enjoy such visitor-serving commercial facilities.

Policy 8.8: Allow a beach house as a public commercial facility near the beach. This beach house shall only be accessed by the beach, public trail, and transit loop systems.

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Policy 8.9: Avoid expansion of the golf course or any other land use that occurs at the expense of public park or public areas.

Policy 8.10: Encourage the immediate development of visitor serving resort facilities and land uses of a world class stature to be achieved within five years from the date of adoption of the General Plan. The resort facility shall include a 400 or so key five star resort hotel. If public open space and Visitor/Recreation Commercial land uses are not physically developed and established within five years, it is the policy of the City of Dana Point to revisit other land uses within this area and to assure the provision of open space and Visitor/Recreation Commercial activities.

Policy 8.11: Provide for the temporary landscaping of existing graded pads with perennial wild flowers and other vegetation to assure aesthetic enhancement of the area, reduce soil erosion, and reinforce the ultimate open space and landscaped resort character of the area.

Policy 8.12: Within the Specific Plan, establish a development phasing plan to achieve first, the primary objective of the development of the public open space and roads; secondly, the resort complex; and lastly, the residential dwellings. Concurrent development will be permitted if the primary objective is being satisfied.

PROTECTION OF RESIDENT-SERVING LAND USES

Dana Point citizens have a strong sense of community even though Dana Point is an attraction to many visitors. This sense of community or sharing of common goals and interests includes the desire to protect and maintain those land uses which serve the residents of the area. This involves the encouragement of resident-serving commercial activity which meets local demands for goods and services, as well as locations for offices and business uses which employ City residents.

Apx. A 12

GOAL 9: Protect the resident-serving land uses throughout the City.

Policy 9.1: Develop regulations to protect and encourage local serving retail and office use adjacent to residential areas.

Policy 9.2: Encourage a full range of resident-serving land uses throughout the City to meet the resident demand for goods and services.

Policy 9.3: Encourage resident-serving uses within walking distance of residents, where possible.

RELATED GOALS AND POLICIES

Goals and policies and the Land Use Policy Diagram identified in this element serve as the framework for other General Plan elements. A number of policies included in the Land Use Element constitute coastal resources planning and management policies that are part of the City's Local Coastal Program (LCP). Table LU-1 identifies the required components or issue areas of the LCP included in the Land Use Element.

TABLE LU-1
LAND USE ELEMENT
LOCAL COASTAL PROGRAM REFERENCE MATRIX

Required Component/Issue Area (Coastal Act Section)			
*	Shoreline Access (30210-212.5)	*	Agriculture (30241-242)
*	Visitor Serving and Recreational Facilities (30213)	*	Soil Resources (30243)
*	Water-Oriented Recreation (30220-224)	*	Archaeological/Paleontological Resources (30244)
*	Water and Marine Resources (30230-232)	*	Locating and Planning New Development (30250; 252, 255)
*	Diking, Filling and Dredging (30233)	*	Coastal Visual Resources (30251)
*	Commercial Fishing and Recreational Boating (30234)	*	Hazard Areas (30253)
*	Shoreline Structures/Flood Control (30235-236)	*	Public Works (30254)
*	Environmentally Sensitive Habitat (30240)	*	Industrial Development and Energy Facilities (30260-264)
*	Indicates that the Coastal Act issue areas described in this table are included in the Land Use Element.		

Apx A 13

to equal 35,000 square feet for purposes of calculating density or intensity of land use.

The term "density", in a land use context, is a measure of the population or residential development capacity of the land. Density is described in terms of dwelling units per net acre (du/net ac); thus, the density of a residential development of 100 dwelling units occupying 20 net acres of land is 5.0 du/net ac. A dwelling unit is a building or a portion of a building used for human habitation and may vary considerably in size (square footage) from small apartments at 400-500 square feet to large single family homes exceeding 5,000 square feet. Along with this difference in size is a corresponding difference in the number of persons occupying a given unit (i.e., larger units usually house more persons that smaller units). For purposes of calculating population, an average number of persons per dwelling unit for all dwelling unit types and sizes is assumed as described in the notes beneath Table LU-4. Within land use designations density is often described as a range (i.e., 3.5-7 du/net ac).

Descriptions of each of the land use designations shown on the Land Use Policy Diagram are provided to delineate the general types of uses allowed and their corresponding intensities or densities. These use descriptions, types and limitations are further defined as specific uses within the Zoning Ordinance. The specific uses and development standards contained within the Zoning Ordinance and shown on the accompanying Zoning Map are consistent with the land use designations and standards contained in this Element or shown on the Land Use Policy Diagram.

Residential Designations

Residential 0-3.5: The Residential 0-3.5 and use category provides for the development of low density detached and attached single family dwellings. This designation allows for the construction of a maximum of 3.5 single family detached units per net acre of land. Community facilities which are determined to be compatible with, and oriented toward serving the needs of low density detached and attached single family neighborhoods may also be allowed.

Apx A 14

Residential 3.5-7: The Residential 3.5-7 land use designation provides for the development of low to medium density detached and attached single family dwellings which may include duplexes, condominiums, and townhomes. This designation allows the construction of a maximum of 7 dwelling units per net acre of land. Community facilities which are determined to be compatible with and oriented toward serving the needs of low to medium density detached and attached single family neighborhoods may also be allowed.

Residential 7-14: The Residential 7-14 land use designation provides for the development of medium and higher density detached and attached single family dwellings, as well as multi-family dwellings or apartments. This designation allows the construction of a maximum of 14 dwelling units per net acre of land. Community facilities which are determined to be compatible with and oriented toward serving the needs of medium and higher density detached and attached single family and multi-family neighborhoods may also be allowed.

Residential 14-22: The Residential 14-22 land use designation provides for the development of medium and higher density attached single family dwellings as well as multi-family dwellings or apartments. This designation allows the construction of a maximum of 22 dwelling units per net acre of land. Community facilities which are determined to be compatible with and oriented toward serving the needs of medium and higher density attached single family and multi-family neighborhoods may also be allowed.

Residential 22-30: The Residential 22-30 land use designation provides for the development of higher density attached single family dwellings, multi-family dwellings and apartments. This designation allows the construction of a maximum of 30 dwelling units per net acre of land. Community facilities which are determined to be compatible with and oriented toward serving the needs of higher density attached single family and multi-family neighborhoods may also be allowed.

Commercial Designations

Neighborhood Commercial: The Neighborhood Commercial designation includes smaller-scale business activities which generally provide a retailing or service-oriented function to the surrounding neighborhood. Neighborhood commercial uses serve the needs of local residents who live near the activities. Typical business uses include small food and drug stores, clothing stores, professional and business offices, restaurants and hardware stores, child care, specialty retail, and community facilities. Neighborhood commercial projects typically occur on less than 10 acres of land and include 25,000 to 75,000 square feet or less of building floor area. The standard intensity of development is a floor area ratio of .35:1 and the maximum intensity of development is a floor area ratio of .5:1.

Community Commercial: The Community Commercial designation includes retail, professional office, and service-oriented business activities which serve a community-wide area and population. Community Commercial uses include some neighborhood commercial uses, such as professional and business offices, retail and commercial services, appliance stores, sporting goods, child care, restaurants, and community facilities, along with larger scale indoor uses such as department stores, furniture and appliance outlets, theaters and entertainment uses. Community Commercial development usually occurs on 10 to 30 acres of land and includes 100,000 to 300,000 square feet of building area. The standard intensity of development is a floor area ratio of .4:1 and the maximum intensity of development is a floor area ratio of .75:1.

Visitor/Recreation Commercial: The Visitor/Recreation Commercial designation includes primarily visitor-serving uses, such as restaurants, resort hotels and motels uses, commercial, recreation specialty and convenience retail goods and services, auto service businesses, open space/recreational uses, and community facilities. Other supporting uses include conference facilities and cultural uses, such as museums and theaters. The average intensity of development for hotels is a floor area ratio of .75:1 and the maximum intensity of development for hotels is a floor area ratio of 1.5:1. The standard intensity of development for other uses is a floor area

Mixed Use Designation

Commercial/Residential: The Commercial/Residential designation includes mixtures of commercial, office and residential uses in the same building, on the same parcel, or within the same area. The primary uses within this designation are commercial; residential is only allowable when developed in conjunction with commercial development. Allowable activities include those identified in the Community and Neighborhood Commercial designations, the Professional/Administrative designation and, when developed in conjunction with commercial uses, the Residential 7-14, Residential 14-22, and Residential 22-30 designation. When mixtures of uses occur in the same building, retail uses or offices are usually located on the ground floor with residential or office uses above. The mixed uses are usually located in areas where multiple activities and pedestrian orientation are considered to be desirable objectives. All existing residential uses are allowable activities within this designation; however, the residential density cannot be increased, and any changes of use shall include commercial use as the primary use. The standard intensity of non-residential development is a floor area ratio of .5:1 and the maximum intensity of development is a floor area ratio of 1.5:1. The standard of 10 dwelling units per net acre of land (equivalent to an FAR of .25:1) is allowed when residential development is combined in the same building or on the same parcel as commercial retail or office uses.

Office and Industrial Designations

Professional/Administrative: The Professional/Administrative designation includes primarily single tenant or multi-tenant offices and other supporting uses. These uses include legal and medical services, financial institutions, corporate and government offices, cultural and community facilities and similar uses which together constitute concentrations of office employment or community activity. Also included are small convenience or service commercial activities intended to meet the needs of the on-site employee population. The standard intensity of development is a floor area ratio of .7:1 and the maximum intensity of development is a floor area ratio of 1.0:1.

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Industrial/Business Park: The Industrial/Business Park designation includes parcels of land with mixtures of industrial and commercial uses that may include marine/auto supplies and service, home furnishings and appliances, wholesale businesses, light manufacturing, distribution and sales, storage, research and development laboratories and service commercial business and community facilities. Single room occupancy (SRO) uses as well as other affordable housing may be permitted with a conditional use permit. The standard intensity of development is a floor area ratio of .5:1 and the maximum intensity of development is a floor area ratio of .75:1.

Community and Other Designations

Community Facilities: The Community Facilities designation includes a wide range of public and private uses, distributed throughout the community such as schools, churches, child care centers, transportation facilities, government offices and facilities, public utilities, libraries, museums, art galleries, community theaters, hospitals and cultural and recreational activities. The standard intensity of development is a floor area ratio of .4:1 and the maximum intensity of development is a floor area ratio of 1.0:1.

Open Space: The Open Space designation includes both public and private lands necessary to provide adequate space for relief from the urban environment. The Open Space designation encompasses three classes of open space including recreation, open space and conservation. Recreation Open Space provides areas for passive and active recreational opportunities including beaches, parks, golf courses/driving ranges and indoor or outdoor sports or athletic facilities. Open Space provides for natural areas that offer scenic beauty, provide buffer between areas of more urban development or offer some opportunity for limited, lower intensity recreational activities such as trails, outdoor theaters, museums, galleries and similar uses. Conservation Open Space provides for natural areas which, due to physical constraints or hazards, have limited land use potential. All three classes of the Open Space designation are covered in more detail in the Conservation/Open Space Element of the General Plan. The standard intensity of development is a floor area ratio of .1:1 and the maximum intensity of development floor area ratio is .2:1.

Ex A17

Transportation Corridor: The Transportation Corridor designation applies to the land within the corridors for the Interstate 5 Freeway, the Atchison, Topeka and Santa Fe railway, and Circulation Element roadways. Lands within these corridors are reserved for transportation purposes as the primary use. Secondary uses, such as open space linkages and landscaped areas, public and private parking areas, and other transportation-related activities and facilities are allowed. The standard intensity of development is a floor area ratio of .1:1 and the maximum intensity of development floor area ratio is .2:1.

Harbor Marine Land: The Harbor Marine Land designation includes land-based harbor uses such as marinas, marine-oriented commercial and industrial services, marine-oriented governmental facilities and services, visitor-serving commercial uses, recreation/open space uses and community facilities. The standard intensity of development is .2:1 and the maximum intensity of development is .4:1.

Harbor Marine Water: The Harbor Marine water designation includes harbor-based water uses such as the boat slips and causeways. The standard and maximum intensities of development are 2,500 boat slips.

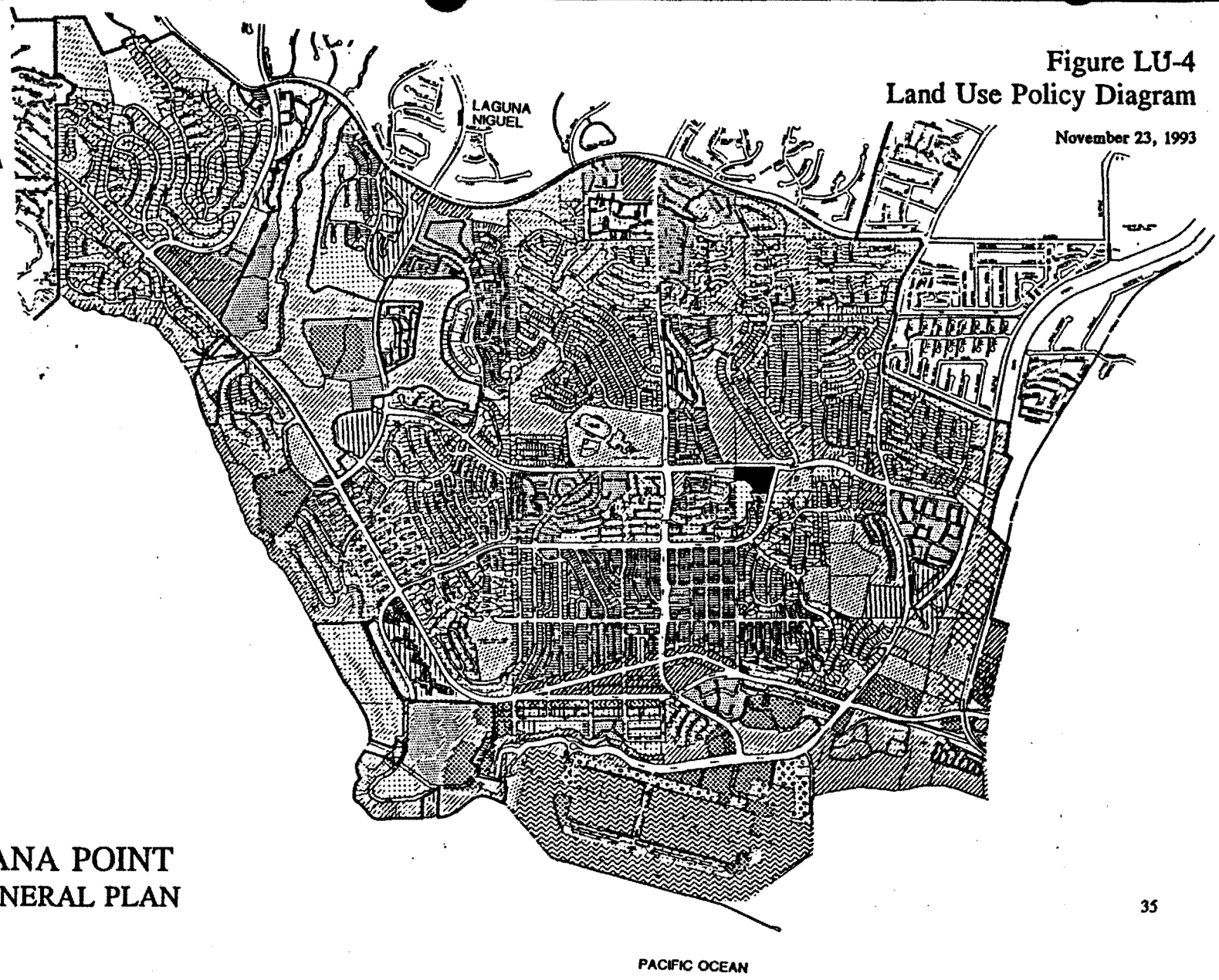
LAND USE POLICY DIAGRAM

The Land Use Policy Diagram for the City of Dana Point is described in Figures LU-3, LU-4 and LU-5. The Land Use designations depicted on the diagrams are those described in the previous section and are represented by patterns which identify future planned land uses for the City.

Atx A 18

Figure LU-4
Land Use Policy Diagram

November 23, 1993



LEGEND

- Residential 0-3.5 DU/AC
- Residential 3.5- 7 DU/AC
- Residential 7-14 DU/AC
- Residential 14-22 DU/AC
- Residential 22-30 DU/AC
- Neighborhood Commercial
- Community Commercial
- Visitor/Recreation Commercial
- Commercial/Residential
- Professional/Administrative
- Industrial/Business Park
- Community Facility
- Recreation/Open Space
- Transportation Corridor
- Harbor Marine Water
- Harbor Marine Land
- 45% Residential 3.5-7 and 55% Recreation/ Open Space

- Specific Plan Area Boundary
- City Boundary

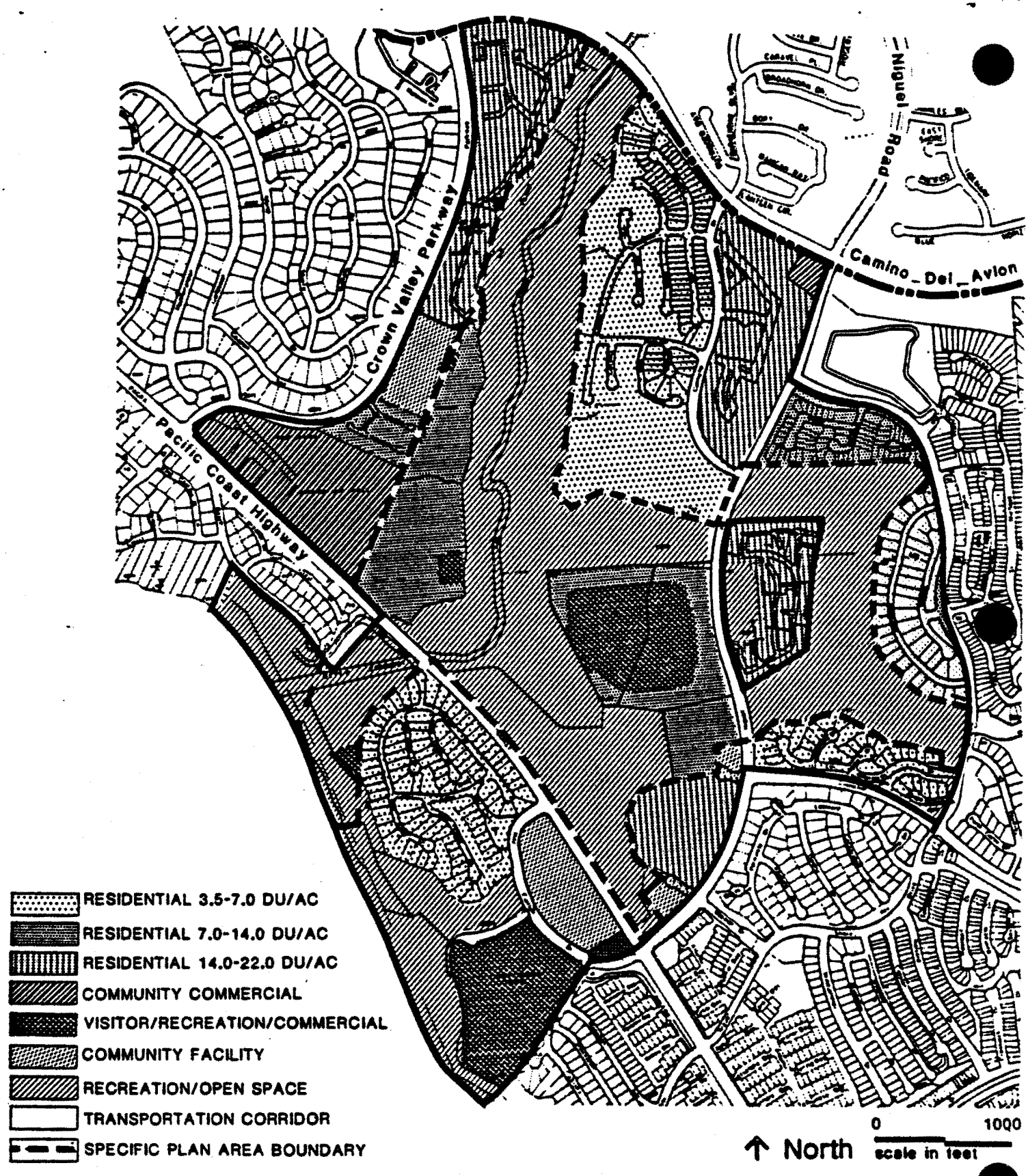
Land Use
Policy Diagram

November 23, 1993

DANA POINT
GENERAL PLAN

3x A 19

Figure LU-9
Monarch Beach



URBAN DESIGN GOALS AND POLICIES

The goals and supporting policies relating to Urban Design establish the overall framework for the concepts discussed in the Urban Design Plan. These goals and policies address specific issues and opportunities that will enable the community to develop in accordance with highest design quality possible.

CITYWIDE VISUAL LINKAGES

Dana Point's public beaches, parks, coastal lookouts and scenic attractions form one of the most spectacular collections of public open space in Southern California. Most of the City's residential neighborhoods are of similar quality and character.

Dana Point's overall image needs to be brought up to the quality of its best parts. Clearer positive visual and circulation linkages between the City's resources are needed, especially along primary streets. This can be accomplished by focused landscape, graphic, lighting and public art improvements in high-visibility places.

GOAL 1: Create Citywide visual linkages and symbols to strengthen Dana Point's identity as a city.

Policy 1.1: Develop citywide linkages through landscaping and lighting along major street corridors. (Coastal Act/30251)

Policy 1.2: Improve the visual character of major street corridors.

Policy 1.3: Make focused improvements at major City entrance points such as landscaped open space and signage.

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

Policy 1.5: Develop the Blufftop Trail from Monarch Beach to Doheny State Park.

Mx. A 21

Policy 1.6: Develop a citywide public signage system with identity and directional graphics to mark public places, recreational opportunities and principal attractions.

Policy 1.7: Initiate a program for public art.

THE COMMUNITIES OF THE CITY

The City's residential neighborhoods are, with few exceptions, stable and well-maintained. They offer a variety of dwelling types from modest, older single family dwellings and apartments to newer luxury custom homes and condominiums. Since the City developed as an incremental series of land subdivisions built over the years without an overall comprehensive plan, most residential neighborhoods are self-contained, with access to a major arterial street but without linkages to adjacent neighborhoods. This pattern reduces through traffic and provides quiet residential streets, but also lessens the sense of community felt Citywide.

In older neighborhoods of Capistrano Beach and "The Lanterns" residential area, the proper size, bulk and height of new infill development is an issue. Escalating land values have encouraged oversized houses and additions. The demolition of older, modest houses, and their replacement with large scale homes has, in some areas, created a discontinuous urban design. This is an issue in most older southern California residential areas, especially along the coastline.

GOAL 2: Preserve the individual positive character and identity of the City's communities.

Policy 2.1: Consider the distinct architectural and landscape character of each community.

Policy 2.2: Adopt development standards and design guidelines for commercial areas that reflect the individual character of each community.

Policy 2.3: Improve public places and recreational facilities as focus points for each community. (Coastal Act/30213)

Policy 2.4: Establish a program to preserve buildings and sites of historical and architectural significance.

Apx. A 27

Policy 2.5: Encourage neighborhood street landscaping programs to improve the quality of public spaces in residential areas.

THE DANA POINT TOWN CENTER

At the present time, the Town Center does not have an environment or image that draws residents or visitors, nor does the Town Center work well as a "shopping district" where businesses benefit each other from an overall collective strength. Instead, the Town Center functions and feels like a roadside or "strip commercial" environment with many small separate commercial buildings and shopping centers that are poorly linked. The Pacific Coast Highway - Del Prado couplet, accompanied by high traffic speeds, has contributed to this problem. The small parcel sizes, lack of consistent site design patterns, diversity of building types and setbacks, and barren quality of the streetscapes are intensify the problems. There are some examples, however, that provide potential ideas for the future. The Plaza works well as a focus and pleasant pedestrian space -more environments like this can be created in the Town Center. San Juan Avenue presents a significant opportunity to create this additional pedestrian focus.

The future of the traffic system will be fundamental to developing site planning and building design guidelines that integrate the area. A major investment in public amenities (street trees, wider sidewalks, parking and side street improvements) will be necessary to transform the area's image and create stronger linkages between the blocks.

Goal 3 is not part of LUP

GOAL 3: Improve the Town Center as one of the City's primary shopping districts with a small town "village" atmosphere.

Policy 3.1: Increase the Town Center's economic vitality and its contribution to the City's economic development goals.

Policy 3.2: Reduce the disruptive and negative impact of traffic movements and high traffic speeds in the Town Center.

Policy 3.3: Improve pedestrian opportunities and create an attractive pedestrian environment within the Town Center. (Coastal Act/30250)

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Policy 3.4: Encourage mixed-use development in selected areas of the Town Center.

Policy 3.5: Develop a parking concept that emphasizes shared parking facilities.

Goal 3 is not part of LUP

Policy 3.6: Create safety buffers of street trees, planters and street furniture between pedestrian walks and the street along both Pacific Coast Highway and Del Prado. Provide widened sidewalks with a special Town Center streetscape design.

Policy 3.7: Develop pedestrian courtyards and other outdoor spaces with planting and street furniture.

Policy 3.8: Encourage pedestrian-oriented building frontages with shops opening to the public sidewalk, and encourage a minimum amount of retail uses on the first floor.

PUBLIC SPACES

A wide variety of recreational and scenic opportunities are available to the public along the City's 6-1/2-mile coastline. Except for a few key locations, public access to the water's edge is excellent. Public places on the coast include Doheny State Beach, Capistrano Beach Park, Dana Point Harbor, Dana Strand Beach and Salt Creek Beach Park.

A unique sequence of parks and lookouts on the coastal terrace above the water offer spectacular views of the ocean and Dana Point Headlands. Pines Park, Gazebo Park, Leyton Park, Lantern Bay Park, Heritage Park, Blue Lantern Overlook and Salt Creek Beach Park are an extraordinary collection of public viewing and recreational settings. The "Blufftop Trail" from the Headlands to Doheny State Beach is an excellent concept which appears to be successfully taking shape. Future development of remaining coastal sites, especially the Headlands, raises many issues of public access and presents opportunities for additional public open space.

GOAL 4: Maintain and enhance the City's public spaces and resources.

Policy 4.1: Create a new Civic Center as a focus point of the City.

Mx A 2

Policy 4.2: Realize the opportunity for public open space throughout the City.

Policy 4.3: Develop stronger pedestrian, bicycle and visual linkages between public spaces. (Coastal Act/30210, 30212)

Policy 4.4: Encourage development of community cultural and recreational facilities. (Coastal Act/30213)

Policy 4.5: Protect existing public views to the ocean from Coast Highway and selected public sites along the Blufftop trail and Capistrano Beach bluffs through open space designations and innovative design techniques. (Coastal Act/30251)

DESIGN QUALITY

Dana Point's commercial districts need stronger design coordination, improved circulation linkages, enhanced outdoor pedestrian spaces and higher-quality architecture that creates more attractive settings for shopping, entertainment and public gathering.

GOAL 5: Achieve design excellence in site planning, architecture, landscape architecture and signage in new development and modifications to existing development.

Policy 5.1: Adopt comprehensive Design Guidelines for the review of all new non-residential and multi-family development in the City.

Policy 5.2: Encourage site and building design that takes advantage of the City's excellent climate to maximize indoor-outdoor spatial relationships. (Coastal Act/30250)

Policy 5.3: Encourage buildings and exterior spaces that are carefully-scaled to human size and pedestrian activity.

Policy 5.4: Encourage outdoor pedestrian spaces, sidewalks and usable open space in all new development.

Policy 5.5: Promote extensive landscaping in all new projects while emphasizing the use of drought-tolerant plant materials.

Policy 5.6: Encourage aesthetic roof treatment as an important architectural design feature.

APX A 25

MARINE RESOURCES

Goal 6 is not part of LUP

GOAL 7: Enhance the City's relationship to marine resources.

Policy 7.1: Develop design concepts to address marine and light industrial activities. (Coastal Act/30260)

Policy 7.2: Develop urban design guidelines for open space areas to ensure the protection and display of natural resources.

Policy 7.3: Encourage design concepts to incorporate the City's coastal influence into site and building design.

RELATED GOALS AND POLICIES

A number of policies included in the Urban Design Element represent coastal resources planning and management policies that are part of the City's Local Coastal Program (LCP). Table UD-1 identifies required components or issue areas of the LCP included in the Urban Design Element.

TABLE UD-1
URBAN DESIGN ELEMENT
LOCAL COASTAL PROGRAM REFERENCE MATRIX

Required Component/Issue Area (Coastal Act Section)			
*	Shoreline Access (30210-212.5)		Agriculture (30241-242)
*	Visitor Serving and Recreational Facilities (30213)		Soil Resources (30243)
	Water-Oriented Recreation (30220-224)		Archaeological/Paleontological Resources (30244)
	Water and Marine Resources (30230-232)	*	Locating and Planning New Development (30250, 252, 255)
	Diking, Filling and Dredging (30233)	*	Coastal Visual Resources (30251)
	Commercial Fishing and Recreational Boating (30234)		Hazard Areas (30253)
	Shoreline Structures/Flood Control (30235-236)		Public Works (30254)
	Environmentally Sensitive Habitat (30240)	*	Industrial Development and Energy Facilities (30260-264)
*	Indicates that the Coastal Act issue areas described in this table are included in the Urban Design Element.		

A number of goals and policies included in the elements support the goals and policies of the Urban Design Element. The supporting goals and policies are identified in Table UD-2.

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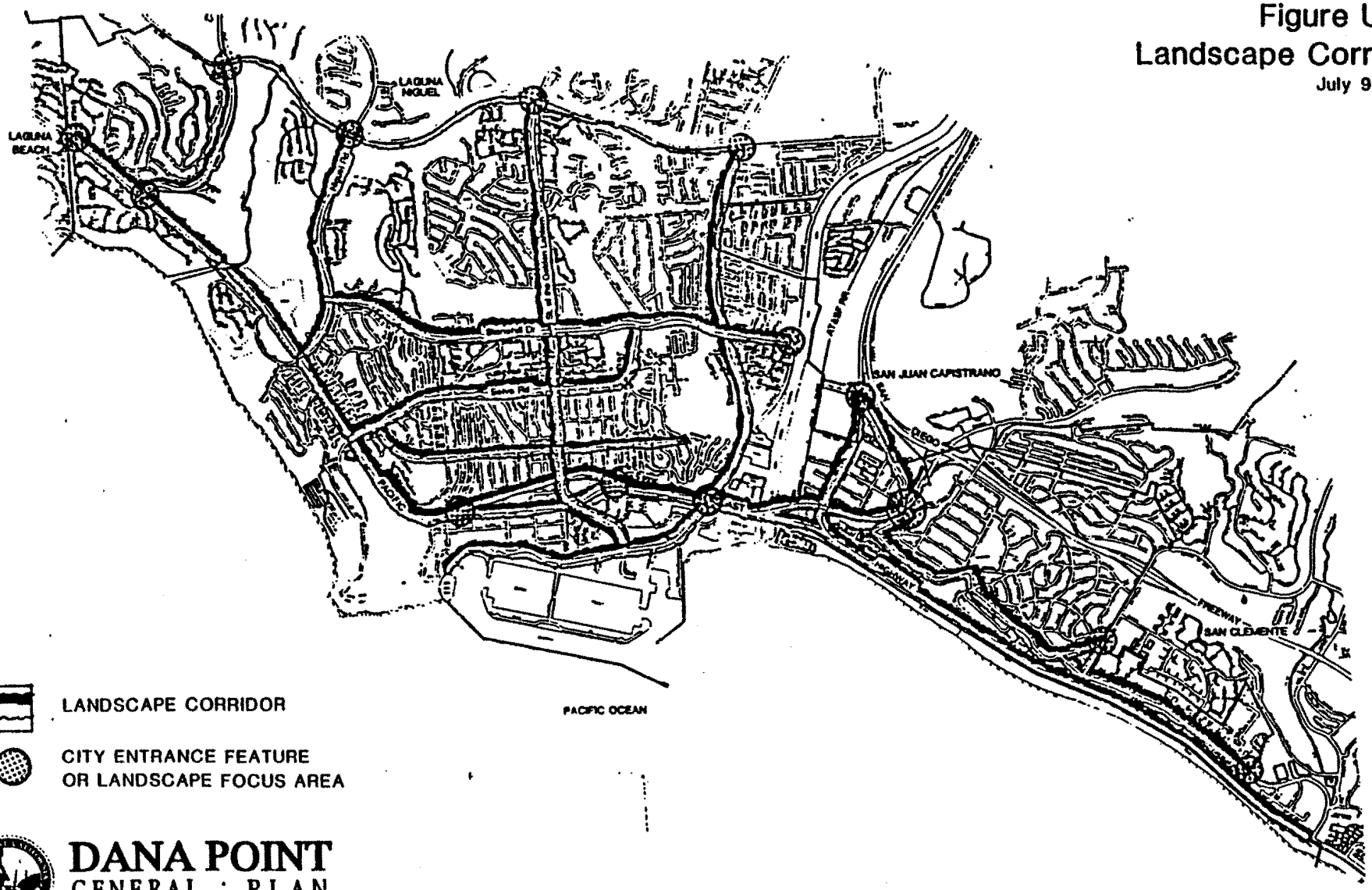
Figure UD-1
Landscape Corridor
July 9, 1991



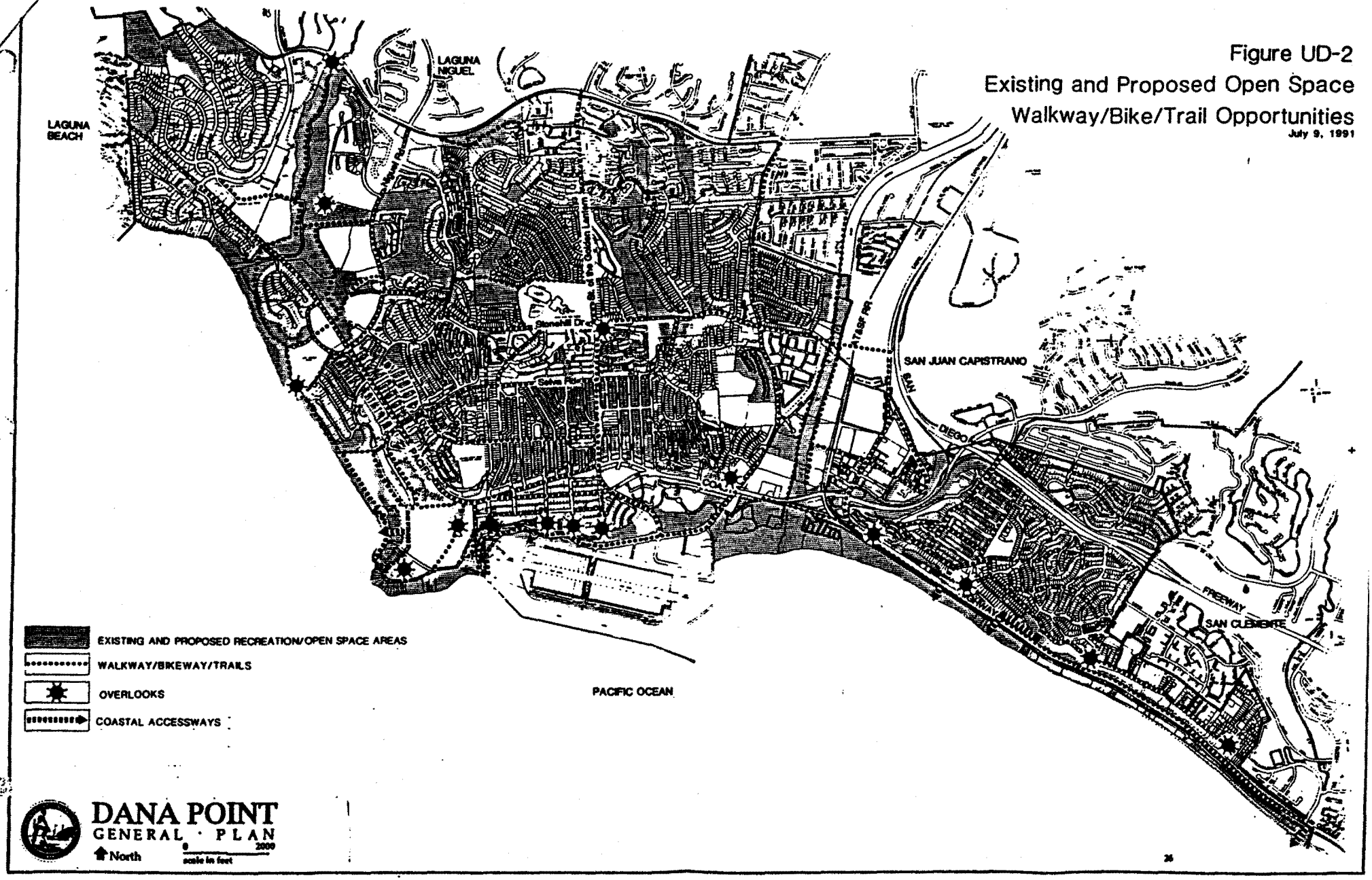


Figure UD-2
Existing and Proposed Open Space
Walkway/Bike/Trail Opportunities
July 9, 1991

CONSERVATION AND OPEN SPACE GOALS AND POLICIES

A substantial portion of the City's natural open space and biological habitat has been replaced with urban development. However, there are significant portions of the community that remain in a natural state. These areas include the Headlands, portions of Monarch Beach, and the Salt Creek and San Juan Creek Basins. Although portions of these areas are planned to be developed in the future, the conservation of open space and the natural landforms can help to preserve the character of the area. The future development of the areas should respect these natural features of the community.

The goals and supporting policies included in this Element address specific issues and opportunities to conserve the City's remaining sensitive lands and to enhance the open space within the City.

CONSERVATION AND PROTECTION OF WATER RESOURCES

Although the City of Dana Point has a high percentage of land that has been developed, areas for future redevelopment may have a significant effect on the water resources of the community. Therefore, it is essential to protect the existing drainage courses in as natural condition as possible. The depletion or pollution of groundwater resources is a concern. Water conservation measures should be adopted by the City to effectively reclaim water and encourage water conservation throughout the development process.

GOAL 1: Conserve and protect surface water, groundwater and imported water resources.

Policy 1.1: Retain and enhance local drainage courses, channels, and creeks in their natural condition, where feasible and desirable. (Coastal Act/30235, 30236)

Policy 1.2: Protect groundwater resources from depletion and sources of pollution.

Policy 1.3: Conserve imported water by providing water conservation techniques, and using reclaimed water, water

Apx. A 29

conserving appliances, and drought-resistant landscaping when feasible.

Policy 1.4: Protect water quality by seeking strict quality standards and enforcement with regard to water imported into the County, and the preservation of the quality of water in the groundwater basin, streams, estuaries, and the ocean. (Coastal Act/30231)

CONSERVATION OF SIGNIFICANT NATURAL FEATURES

The natural features in the Dana Point area have helped to create the desirable character of the area. Topographical features such as the Headlands, Salt Creek and the San Juan Creek watershed, the bluffs, the inland hills, and the beachfront should be protected from insensitive development. Public views should be conserved and the natural vegetation retained as much as possible. The beach areas and bluff area have potential for excessive erosion if not protected.

GOAL 2: Conserve significant topographical features, important watershed areas, resources, soils and beaches.

Policy 2.1: Place restrictions on the development of floodplain areas, beaches, sea cliffs, ecologically sensitive areas and potentially hazardous areas. (Coastal Act/30235, 30236, 30240, 30253)

Policy 2.2: Site and architectural design shall respond to the natural landform whenever possible to minimize grading and visual impact. (Coastal Act/30250)

Policy 2.3: Control erosion during and following construction through proper grading techniques, vegetation replanting, and the installation of proper drainage, and erosion control improvements. (Coastal Act/30243)

Policy 2.4: Require the practice of proper soil management techniques to reduce erosion, sedimentation, and other soil-related problems. (Coastal Act/30243)

Policy 2.5: Monitor beach erosion by periodically evaluating any natural changes or man-caused activities which would reduce the replenishment of sand to the beaches.

Kpk. A 30

Policy 2.6: Consider public acquisition of significant land resources for open space when funds or opportunities are available.

Policy 2.7: Require geotechnical studies for developments that are proposed for steep slopes (4:1 or steeper) and where geological instability may be suspected. (Coastal Act/30253)

Policy 2.8: Discourage development in areas which have physical constraints associated with steep topography and unstable slopes; and where such areas are designated as Recreation/Open Space or include bluffs, beaches, or wetlands, exclude such areas from the calculation of net acreage available for determining development intensity or density potential.

Policy 2.9: Consider preserving significant natural features where feasible as part of new development. (Coastal Act/30240, 30250, 30251)

CONSERVATION OF BIOLOGICAL RESOURCES

The existing development and urbanization of Dana Point has nearly eliminated sizable expanses of undisturbed native vegetation. The remaining vegetation includes small isolated pockets of chaparral and coastal sage scrub. The shoreline areas from north of Dana Point Harbor and extending along Doheny State Beach provide a habitat for a wide variety of marine animals and plants. These areas have been designated by the State of California as Marine Life Refuges. Although there are limited quantities of undisturbed vegetation several sensitive species have been observed with the City including the California Black Tailed Gnatcatcher, the Monarch Butterfly, and the Turkish Ruggish (plant).

GOAL 3: Conserve significant natural plant and animal communities.

Policy 3.1: Conserve important plant communities and wildlife habitats, such as marine refuge areas, riparian areas, wildlife movement corridors, wetlands, and significant tree stands through the practice of creative site planning, revegetation, and open space easement/dedications. (Coastal Act/30240)

Apx A 31

Policy 3.2: Require development proposals in areas expected to contain important plant and animal communities to include biological assessments.

Policy 3.3: Encourage retention of natural vegetation and require revegetation of graded areas.

Policy 3.4: Restrict urban use of open space lands that have conservation or open space easements. Document those easements to ensure Staff is aware of their existence.

Policy 3.5: Prohibit detrimental public access to the shore of the marine life refuge at the base of the Dana Point Headlands.

CONSERVATION OF ENERGY RESOURCES

As with many other communities, Dana Point is facing increased energy costs, both economically and environmentally. These increased costs require expansion into renewable energy sources to meet a portion of the City's needs. These renewable sources include solar, wind, and thermal resources. The City should consider requirements to include solar energy systems in new developments and retrofit systems to offset increasing energy demands. Development standards can also provide for efficient solar use by the siting and the design of buildings.

GOAL 4: Conserve energy resources through use of available technology and conservation practices.

Policy 4.1: Encourage innovative site and building designs, and orientation techniques which minimize energy use by taking advantage of sun/shade patterns, prevailing winds, landscaping, and building materials.

Policy 4.2: Maintain local legislation to establish, update and implement energy performance building code requirements established under State Title 24 Energy Regulations. (Coastal Act/30250)

Apk A 30

REDUCTION OF AIR POLLUTIQN

Air Pollution is a major problem in the rapidly growing areas of Orange County. Regional efforts to control air pollution should be supported by the City. Through effective land use and circulation planning, air pollution can be reduced. The City can also reduce vehicular travel by encouraging alternative modes of circulation by providing pedestrian, bicycle and transit routes serving the entire City.

GOAL 5: Reduce air pollution through land use, transportation and energy use planning.

Policy 5.1: Design safe and efficient vehicular access to streets to ensure efficient vehicular ingress and egress. (Coastal Act/30252)

Policy 5.2: Locate multiple family developments close to commercial areas to encourage pedestrian rather than vehicular travel.

Policy 5.3: Encourage neighborhood parks close to concentrations of residents to encourage pedestrian travel to public recreation facilities.

Policy 5.4: Provide commercial areas that are conducive to pedestrian and bicycle circulation.

Policy 5.5: Actively participate in regional discussions regarding new regional airport facilities and analyze and evaluate potential impacts on the City.

Policy 5.6: Encourage bicycle/trail systems to reduce air pollution.

Policy 5.7: Consider the development of shuttle systems, train or transit facilities, to help reduce vehicular trips and air pollution.

PRESERVATION OF NATURAL RESOURCES AS OPEN SPACE AREAS

The City of Dana Point recognizes the importance of conserving natural resources by preserving open space throughout the

Apx A 33

community. The City will encourage sensitive planning of its remaining open space lands to provide an appropriate transition between urban uses and open space. By designating open space in key locations significant views and public access to the ocean and harbor can be provided.

GOAL 6: Encourage open space areas to preserve natural resources.

Policy 6.1: Mitigate the impacts of development on sensitive lands such as steep slopes, wetlands, cultural resources, and sensitive habitats through the development review process. (Coastal Act/30240)

Policy 6.2: Protect and preserve the public views of the Dana Point Harbor. (Coastal Visual Resources/30251)

Policy 6.3: Maintain an inventory of existing natural resources in the City through periodic updates of the City's Master Environmental Assessment.

Policy 6.4: Preserve and protect the scenic and visual quality of the coastal areas as a resource of public importance. (Coastal Act/30251)

Policy 6.5: Encourage retention of permanent open space through dedication as a part of the development subdivision/review process.

Policy 6.6: Concentrate higher intensity uses in areas containing less sensitive landforms and preserve the most sensitive landforms and natural resources as open space.

Policy 6.7: Evaluate non-developable or constrained areas for possible use as open space or recreational use. (Coastal Act/30240)

Policy 6.8: Preserve public access to the coastal areas through easement dedications thereby providing marine-oriented recreational uses so that transportation corridors may augment the City's open space system. (Coastal Act/30210, 30211, 30212)

Apx A 34

COORDINATION WITH THE PARK AND RECREATION DISTRICT

Local parks and recreation services are provided to the City of Dana Point through the Capistrano Bay Park and Recreation District. Detail planning of specific parks and recreation areas is the responsibility of the District. However, the plans of the Park District must be consistent with the General Plan. In order to assure this consistency the City should work closely with the District to review and provide input into the District's master planning efforts.

GOAL 7: Encourage the development and maintenance of a balanced system of public and private park and recreation facilities in cooperation with the Capistrano Bay Park and Recreation District.

Policy 7.1: Encourage the provision of a range of recreational facilities and programs to meet the needs of City residents and visitors.

Policy 7.2: Utilize utility easements as open space linkages where feasible.

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

Policy 7.4: Encourage priority acquisition and development of parkland in neighborhoods deficient in park facilities.

Policy 7.5: Coordinate park and open space planning with the appropriate State and County agencies.

Policy 7.6: Encourage the development of parks and acquisition of open space areas to serve the needs of visitors as well as local residents.

PRESERVATION OF HISTORIC AND CULTURAL RESOURCES

Although the City of Dana Point is relatively new as an incorporated City, the area has an established heritage that should be preserved and protected. The historical and cultural assets of

Apk A 35

the community should be inventoried and preserved as much as possible.

GOAL 8: Encourage the preservation of significant historical or culturally significant buildings, sites or features within the community.

Policy 8.1: Require reasonable mitigation measures where development may affect historical, archaeological or paleontological resources. (Coastal Act/30244, 30250)

Policy 8.2: Retain and protect significant areas of historical, archaeological, or palentological value for education and scientific purposes. (Coastal Act/30244, 30250)

Policy 8.3: Development adjacent to a place, structure or object found to be of historic significance should be designed so that the uses permitted and the architectural design will protect the visual setting of the historical site. (Coastal Act/30250)

Policy 8.4: Develop and maintain a cultural resource inventory.

RELATED GOALS AND POLICIES

Certain goals and policies included in the Conservation/Open Space Element constitute coastal resources planning and management policies that are part of the City's Local Coastal Program (LCP). Table COS-1 identifies the regional components or issue areas of the LCP included in the Conservation/Open Space Element.

Apx A 36

Figure COS-1
Open Space for Preservation of Natural Resources

July 9, 1991

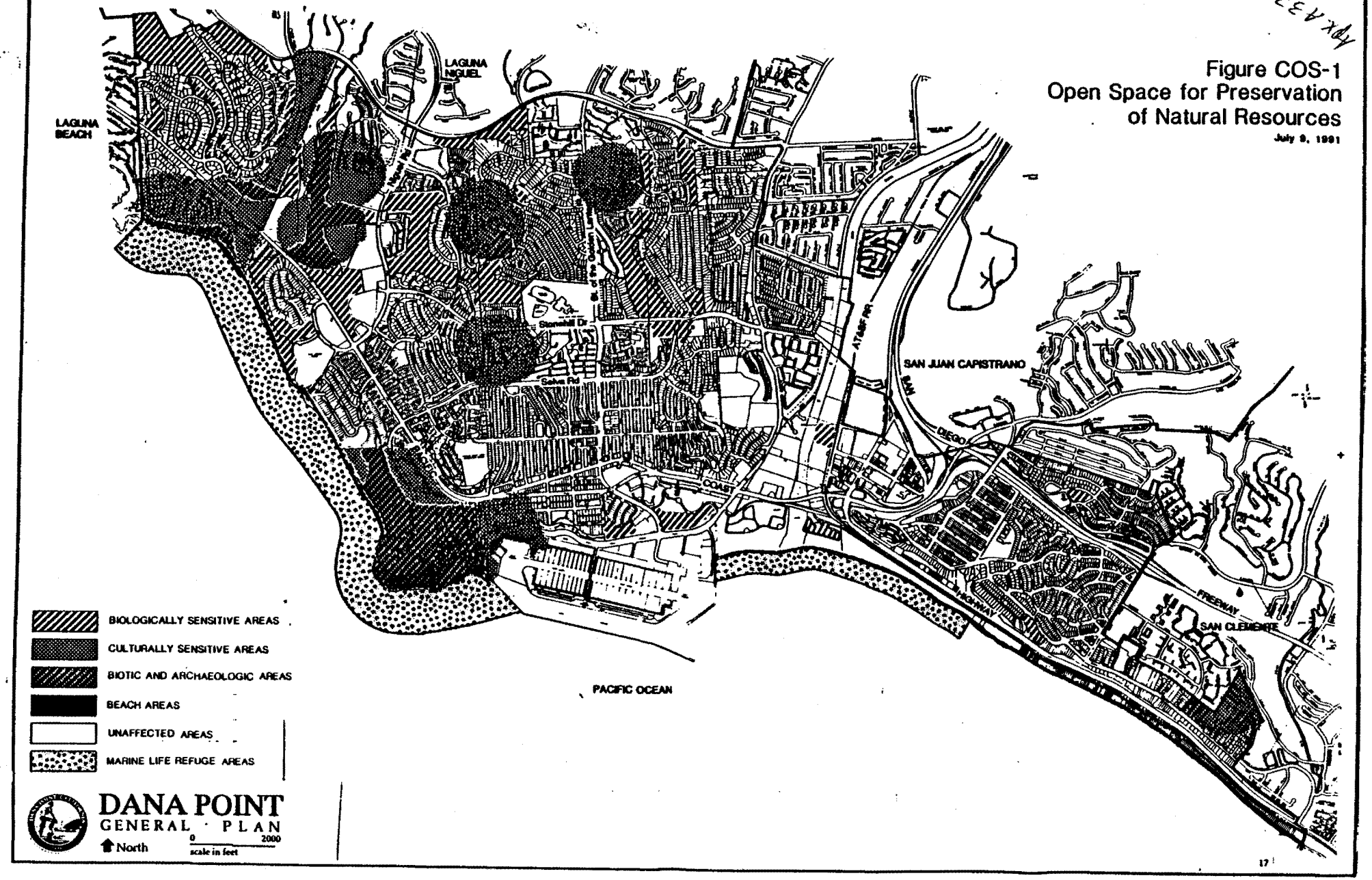
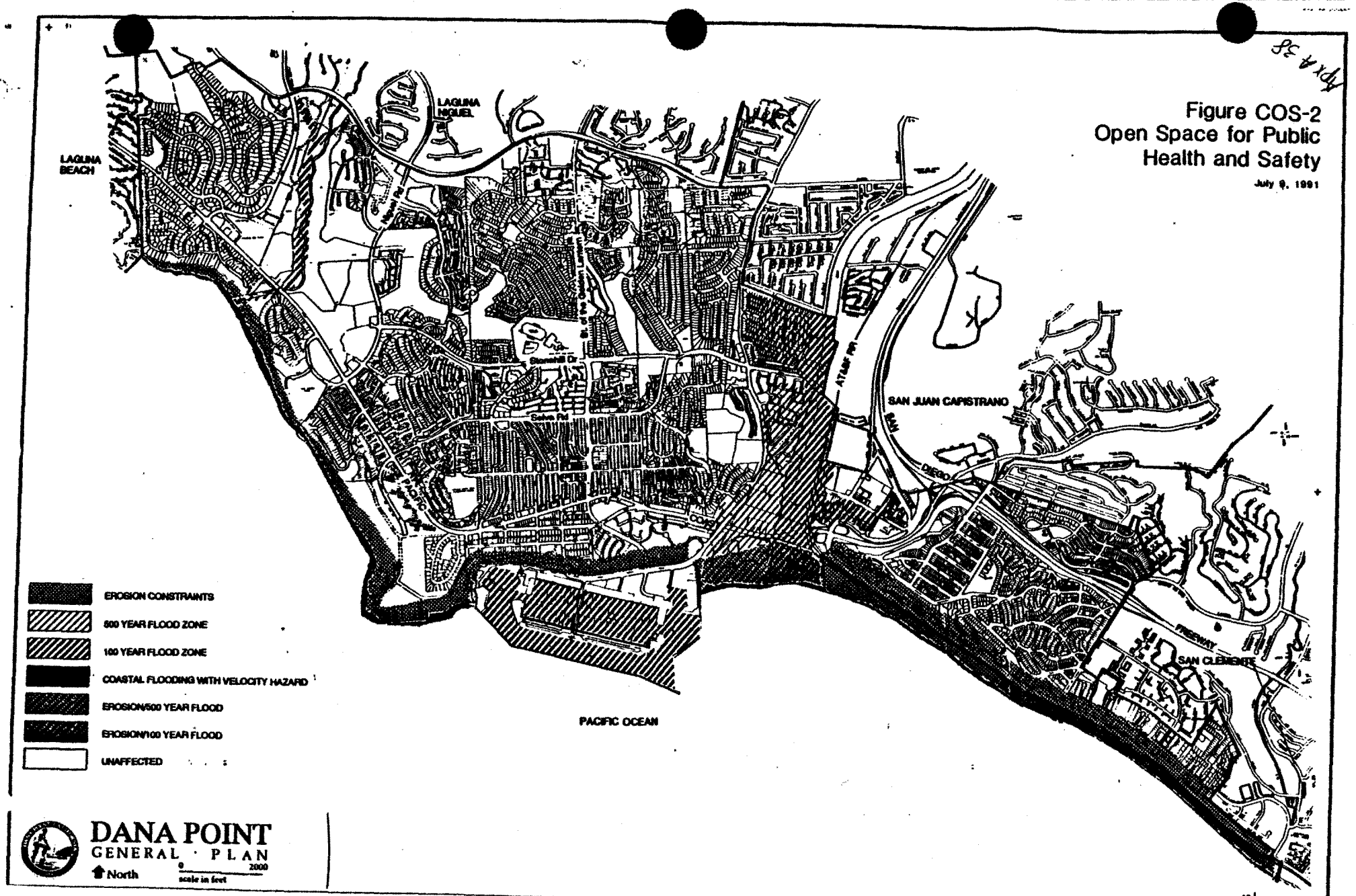


Figure COS-2
Open Space for Public Health and Safety

July 9, 1991



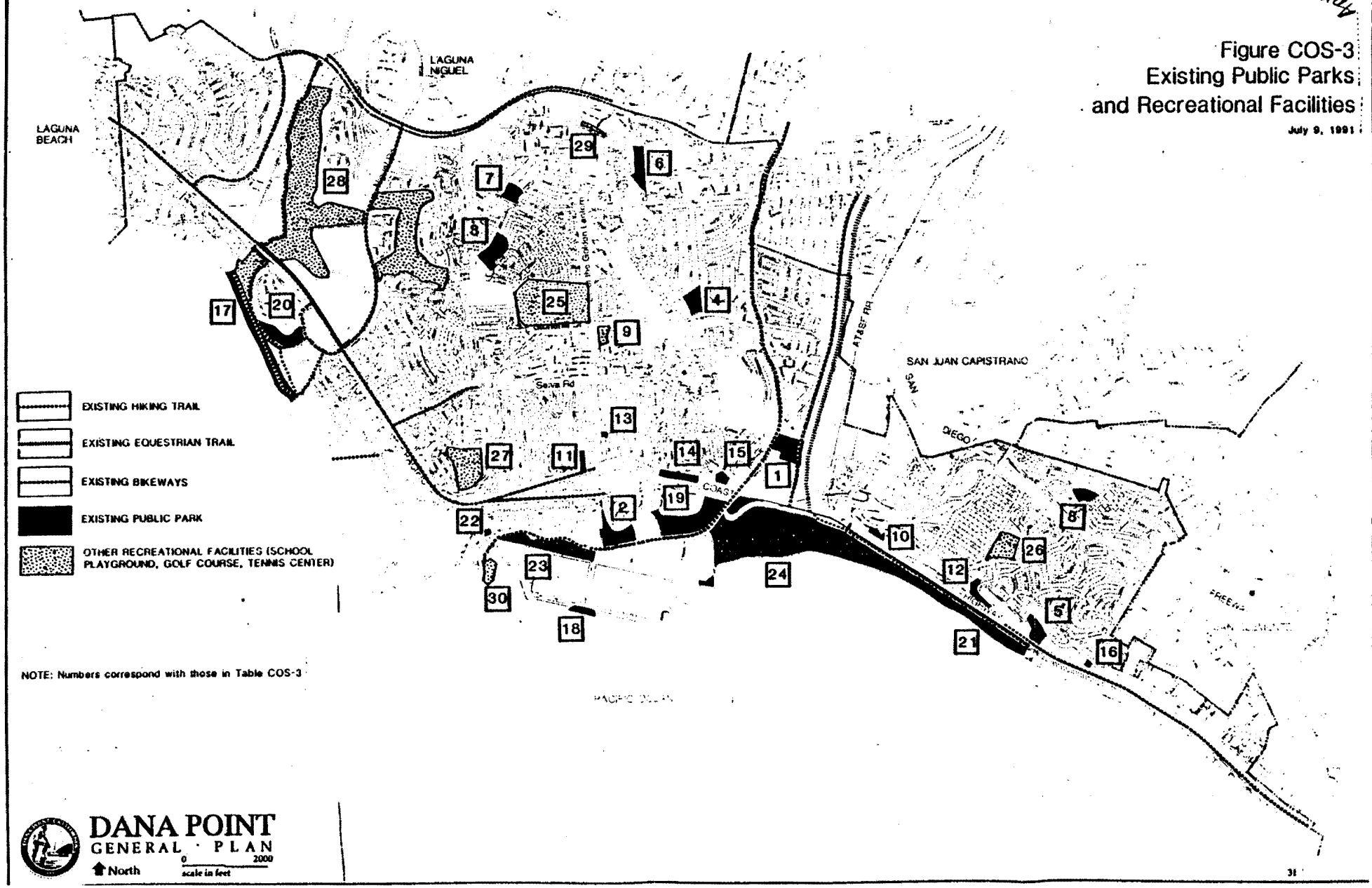
DANA POINT GENERAL PLAN

North

0 2000 scale in feet

Figure COS-3
Existing Public Parks and Recreational Facilities

July 9, 1991



NOTE: Numbers correspond with those in Table COS-3

DANA POINT GENERAL PLAN

North

0 2000 scale in feet

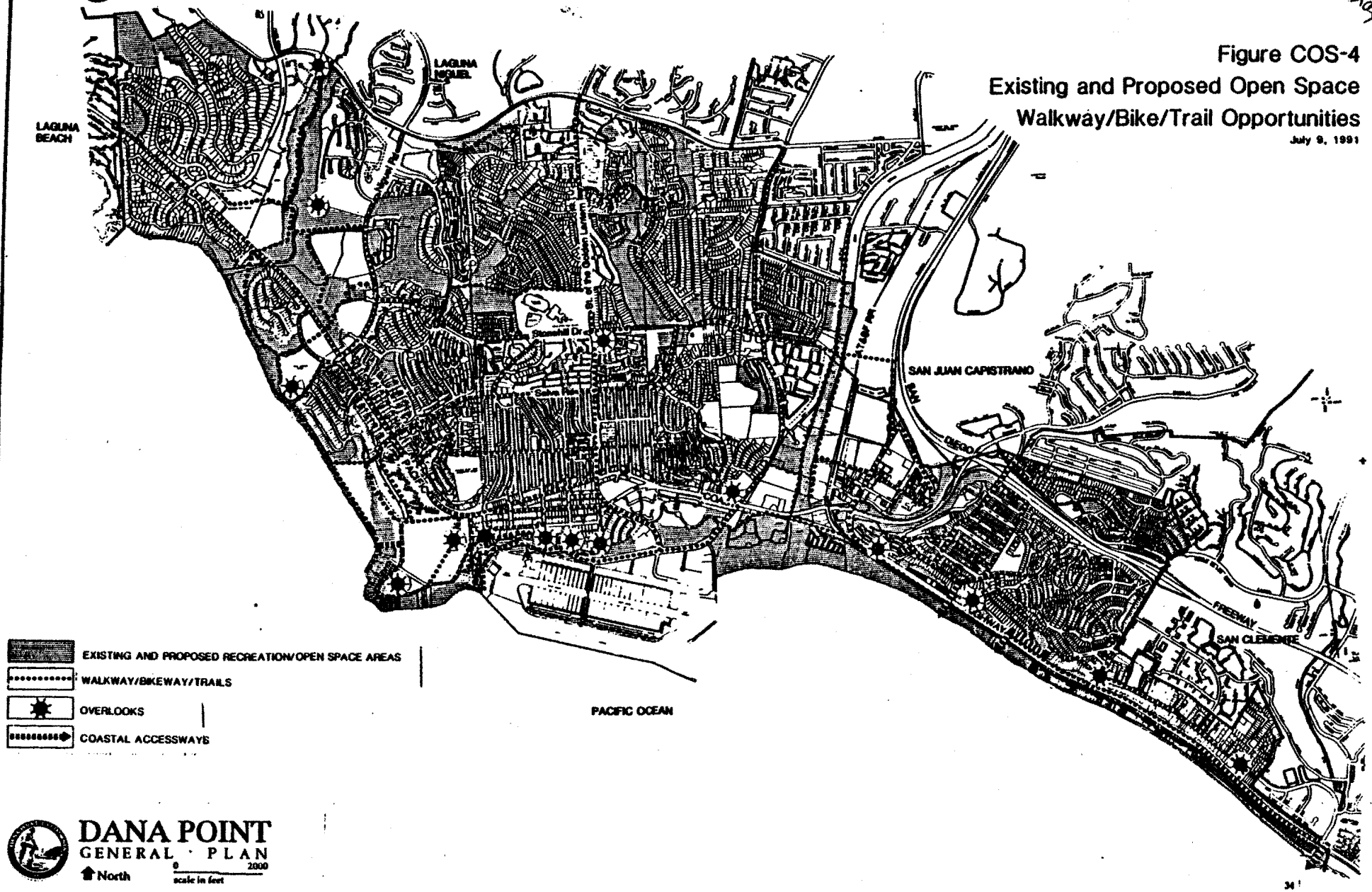


Figure COS-4
Existing and Proposed Open Space
Walkway/Bike/Trail Opportunities
July 9, 1991

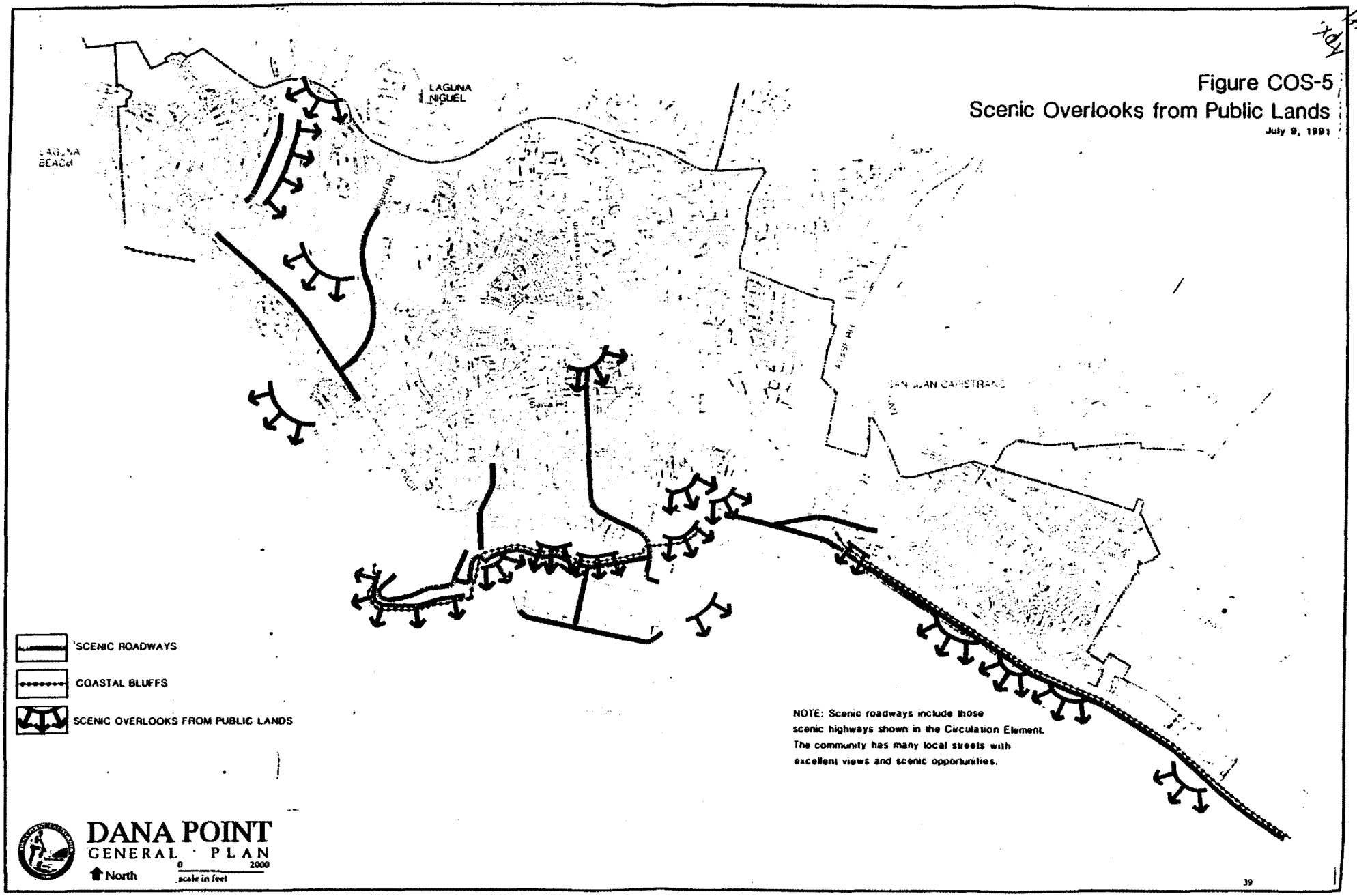


Figure COS-5
Scenic Overlooks from Public Lands
July 9, 1991

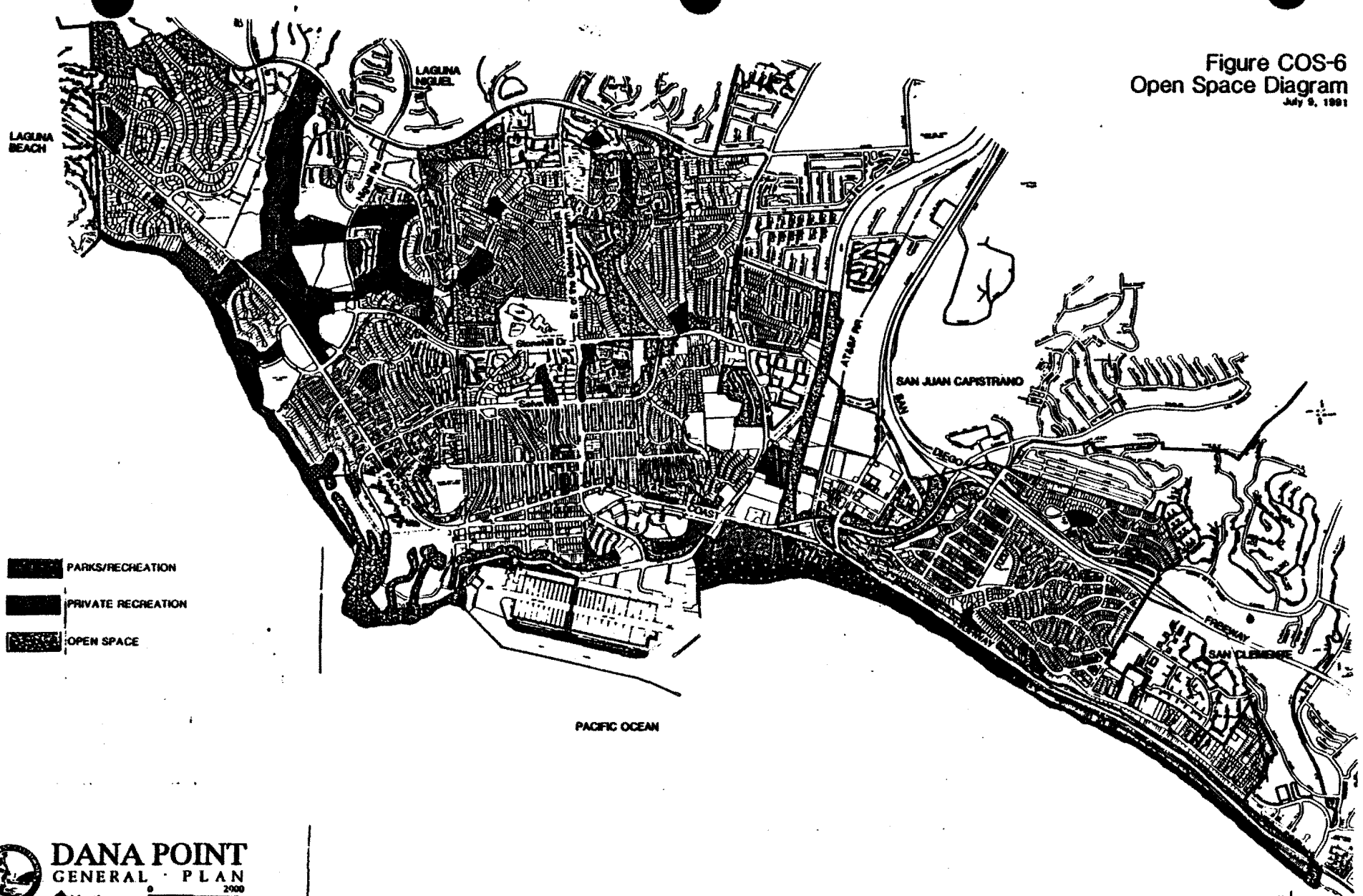


Figure COS-6
Open Space Diagram
July 9, 1991

DANA POINT
GENERAL · PLAN
North
0 2000
scale in feet

CHAPTER 9.27

COASTAL OVERLAY DISTRICT

9.27.010 Intent and Purpose

The Coastal Overlay (CO) District preserves and protects the coastal resources within Dana Point, and implements the California Coastal Act (Division 20 of the Public Resources Code) and the certified Local Coastal Program for the City of Dana Point. The CO District is an overlay district which may be combined with any other zoning district that lies within the Coastal Zone of the City of Dana Point. Uses permitted by right in the underlying district may require a Coastal Development Permit, subject to the standards of the specific zoning designation. Procedures and regulations in this Chapter constitute additional minimum standards for all development within the Coastal Zone.

9.27.020 Permitted, Accessory and Conditional Uses

Permitted, accessory, temporary and conditional uses within the Coastal Overlay district are the same uses as those allowed within the underlying base zoning districts, with the exceptions listed below. Refer to Chapter 9.69 for Coastal Development Permit requirements.

(a) Beach area development in areas other than the Residential Beach Road 12 (RBR 12) and Residential Beach Road Duplex 18 (RBRD 18) Districts, is limited to public lifeguard towers, public restrooms, public piers, shoreline protective works, public access structures, campgrounds, beach concessions, and recreational equipment;

(b) Wetland areas are limited to nature study projects, wetland restoration projects, aquaculture, and similar resource dependent uses;

(c) Coastal bluffs are limited to public coastal access or public park structures, bluff repair, and erosion control projects and structures that may include retaining and non-retaining walls, fences, and landscaping.

(d) Any use in conflict with the California Coastal Act requirements.

Dana Point
LCP 1-96
Appendix B
Chapters 9.27, 9.61, and 9.69
of the Dana Point Zoning Code as submitted

Apx. B 1

9.27.030 Development Standards

In addition to the development standards for the base zoning districts described in Chapters 9.09-9.25, the following standards apply to all applicable projects within the CO District.

(a) Coastal Access

Development which impacts coastal access shall provide its proportional component of the City's overall coastal access system. Coastal access, trails and overlooks shall be provided as described in the Urban Design and Conservation/Open Space Elements of the City's General Plan. Coastal access shall include vertical and/or lateral access easements and improvements.

For all affected new development, public access to the shoreline and blufftops shall be provided, as described in the General Plan Urban Design and Conservation/Open Space Elements. Access shall be provided through execution and recordation of an irrevocable offer to dedicate an easement for public access or as a fully improved and dedicated accessway. Coastal access shall be provided as follows:

(1) Lateral Bluff Access:

For development proposed adjacent to coastal bluffs, a lateral access in compliance with the trail alignments illustrated in Figure COS-4 of the Conservation/Open Space Element of the General Plan, shall be irrevocably offered for dedication to the City. The easement shall be a minimum of 10 feet in width and shall be set back a sufficient distance from the bluff edge to ensure safety from the threat of erosion for 50 years. Accessways shall be designed to minimize conflicts between the easement and adjacent land uses.

(2) Lateral Beach Access:

Lateral accessways represent areas of land that provide access along the water's edge. For all development proposed along the shoreline, a lateral beach access easement, in accordance with the

Apx. B 2

specifications provided in Section 9.09.040(a)(1), shall be irrevocably offered for dedication to the County. Accessways shall be designed to minimize conflicts between the easement and adjacent land use.

The Director of Community Development may waive the requirement for lateral beach access if the following findings can be made:

9.27.030(a)(2) (A) That the provision of such access is inconsistent with the protection of the fragile coastal resources or the preservation of public safety.

(B) That the provision of such access would impose severe design constraints upon development of the site due to the small size and unusual configuration of the parcel or topographic and geologic constraints of the site.

A ten (10) foot buffer area shall be required between the accessway and proposed structures to minimize the impacts associated with the accessways upon adjacent residential uses.

(3) Vertical Access:

A ten foot wide vertical public access easement between the coastal access point and an existing public right-of-way shall be irrevocably offered for dedication to the City. Accessways shall be designed to minimize conflicts between the easement and adjacent land use.

(4) All Accessways:

All easement documents shall be subject to review and approval of the Director of Community Development, Director of Public Works, and City Attorney and shall include legal descriptions of the parcel(s) to be used by the property owner and the easement area. The easement shall be recorded free of prior liens except for the tax liens and free of prior encumbrances which may affect the interest being conveyed. The offers

shall run with the land and shall bind the landowner and his/her successors and assigns, and shall be irrevocable for a period of 21 years from the date of recordation.

9.27.030 (b) Wetland Buffer

To protect and maintain the City's coastal wetland resources, a 100-foot buffer area around all identified wetlands shall be provided, unless both the California Department of Fish and Game and the U.S. Fish and Wildlife Service provide a written determination that a lesser buffer will provide adequate protection.

(c) Development Adjacent to Coastal Bluffs

Development adjacent to coastal bluffs shall minimize hazards to owners, occupants, property, and the general public; and be environmentally sensitive to the natural coastal bluffs. The minimum setback from the bluff edge of a coastal bluff shall be established by the underlying zoning district. However, should the geotechnical report indicate bluff stabilization is required to ensure proposed development is safe from a threat of erosion and bluff failure for fifty years, additional setbacks and slope stabilization measures will be required.

Development setbacks from coastal bluffs may not be the same due to varying geologic conditions and environmental conditions. The following provisions detail the items required for filing, the means by which coastal bluff edges are measured, criteria for review, development standards, and the potential development that may be permitted within the coastal bluff setback area.

(1) Coastal Bluff Edge Measurement

Because each coastal bluff is different in terms of stability, geologic compilation, terrain features, the determination of the coastal bluff edge will be made on a case-by-case basis. This analysis and determination shall be accomplished by the following:

Apx. B 4

9.27.030(c)(1) (A) The applicant shall provide an aerial photograph and contour map of the site clearly delineating the coastal bluff edge, existing topography and the outline of the development proposed.

(B) The applicant shall provide a geotechnical report which specifically addresses the coastal bluff edge and delineates the bluff edge on a graphic exhibit on both the grading plan and site plan. The report shall specifically address the methodology used to support the conclusions of the report.

(C) The Director of Community Development and Director of Public Works or their designee shall conduct an on-site survey of the property and compare the geotechnical report's conclusions with that of actual on-site terrain and bluff top patterns.

(2) Criteria For Review

At a minimum, the following will be required for each application for development adjacent to coastal bluff edges:

(A) Development plans shall be prepared and wet stamped by a State Certified Engineering Geologist knowledgeable in coastal engineering and engineering geology.

(B) A geotechnical report shall address the factors which directly or indirectly cause, promote, or encourage bluff erosion or failure either on site or on adjacent properties, and the measures to control these factors. The report shall include, but shall not be limited to, the following information:

1. Bluff geometry, site topography, and any other condition which may affect the site.

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9.27.030(c)(2)(B) 2. Historic, current, and foreseeable bluff erosion. Fifty (50) years of historic erosion and fifty (50) years of future erosion should be analyzed.

3. Geologic conditions including, but not limited to soils sediment, bedrock, drainage patterns, etc. Soils borings to bedrock and the limits and depth of alluvial removal shall be addressed to the satisfaction of the Director of Public Works.

4. Evidence of past and potential landslides and implication of such decisions for the proposed development's potential effect of this development on landslide activity.

5. Impact of construction activity on the stability of the site and adjacent area. This shall include, but not be limited to, remedial grading, the impact of grading machinery, or other vibration inducing factors on the bluff stability.

6. Ground and surface water conditions or variations caused by the development, such as the alteration in surface/ subsurface drainage, and proposed drains and subdrains.

7. Mitigation measures proposed to be used to ensure minimized erosion problems during and after construction.

8. Any other facts that might affect slope stability and related mitigation measures for potential impacts.

9. Any proposed development, either main structures or minor development, shall be addressed in the report. Said structures and development shall be

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evaluated with respect to impact on the stability of the bluff to ensure that structures and development are reasonably safe from failure and erosion given a 50-year life.

9.27.030(c)(2)(B) 10. Any other information as deemed necessary by the Director of Community Development or Director of Public Works.

(3) Development Standards

(A) All surface and subsurface run-off shall be directed to a public street or an approved drainage facility to the satisfaction of the Director of Public Works. Transportation of said run-off may require area drains, roof drains, and other similar measures.

(B) All landscaping shall be native or drought tolerant which minimize irrigation requirements, and reduce potential slide hazards due to over watering. Irrigation and the use of turf grass, ice plant and similar shallow-rooted plants within the bluff setback shall be specifically prohibited on blufftop developments. Landscaping shall be maintained and installed so as to ensure that, during growing stages as well as at maturity, the landscaping will not obstruct public views.

(4) Requirements for Setback Deviation

A State Licensed Civil Engineering Geologist shall prepare a site specific geotechnical and soils report to address and explain any proposed deviation from the minimum setbacks from the coastal bluff edge in the Zoning Map, and the Draft Dana Point General Plan Coastal Erosion Technical Report dated July 11, 1990. The report shall include:

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9.27.030(c)(4) (A) An explanation and calculation of the deviations, if any, in the setback from the coastal bluff edge.

(B) If caissons are not recommended, the report shall explain why caissons are not needed. If caissons are recommended in the report, the following additional information shall be provided:

1. Indicate the angle of repose.

2. Depth of caisson required for the structure and limits of caissons.

(C) Should an analysis of the geotechnical report conclude that a greater or lesser setback may be necessary than that required by this Code, the Planning Commission can make a finding that it is in the interest of the public safety to approve an additional or lesser setback as recommended. However, in no case shall a setback of less than 25 feet and less than 50 years of bluff erosion be permitted.

(5) Permitted Development Within the Coastal Bluff Edge Setback

Precautions are required when placing structures close to the bluff edge to ensure that the integrity of the bluff is not threatened. Minor developments and improvements may be permitted within the designated bluff edge setback area, but must be a minimum of five feet (5′) from the designated bluff edge, or a minimum of fifteen feet (15′) from the bluff edge when an irrevocable offer to dedicate a ten (10) foot wide lateral access easement is required.

Minor development and improvements are defined as:

(A) Those generally not requiring a building or grading permit and not attached to the main structure; and

Apx. B 8

9.27.030(c)(5) (B) Those developments which protect natural resources or ensure public safety such as fences and low walls.

A Coastal Development Permit pursuant to Chapter 9.69 shall be required prior to any minor development. Minor development may only be approved if the approved geotechnical reports support such development and conclude that the development will not have an impact on bluff stability. All minor development shall be environmentally sensitive to the natural bluff line and public view.

Grading on the coastal bluff shall be kept to a minimum. Raising of the natural grade shall be limited to that level needed to provide a maximum of 1% of fall to the existing top of curb in the street in order to facilitate piping of all bluff drainage to the street by gravity.

A study which details the potential impact of any proposed grading on the coastal bluff may be required at the discretion of the Director of Community Development or the Director of Public Works as the circumstances of the individual lot warrant. The study shall be prepared to address the impacts identified by the City to the satisfaction of the Director of Community Development and/or the Director of Public Works.

(6) Development at the Base of Coastal Bluffs

Development proposed at the base of coastal bluffs shall be required to submit appropriate geotechnical reports which provide a detailed assessment of the ultimate stability of the bluffs above the subject site. The report(s) shall document the ultimate profile (section) of the bluff face, delineate the buildable portion of the site and shall include recommendations for adequate protective structures for the project. The report(s) shall address all topics relevant to the geologic condition of the subject site and adjacent bluffs and shall be prepared to the satisfaction of the Director of Public Works.

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CHAPTER 9.61

ADMINISTRATION OF ZONING

9.61.010 Intent and Purpose

The intent and purpose of this Chapter is to establish regulations for the effective and efficient implementation of this Code. This Chapter contains the procedures for the interpretation of the Code, criteria for acceptance of applications for discretionary actions, standards for processing of applications and requirements for the notice and conduct of public hearings. In combination, the provisions of this Chapter provide for a system of development review that is open to the public and responsive to the needs of the community. This Chapter will work to the benefit of all in the community by providing for the comprehensive management and implementation of this Code.

9.61.020 Interpretation, Administration and Enforcement

(a) Authority and Procedure for Interpretations:

(1) The Director of Community Development is hereby charged with the duty of providing interpretations of the Zoning Code.

(2) The interpretations of the Director of Community Development are subject to the policy directives of the Planning Commission and City Council.

(3) Any appeal of decisions by the Director of Community Development shall be made pursuant to Section 9.61.110, Appeal Procedures.

(4) All interpretations of the Code made by the Director shall be recorded in writing. The record of interpretations made by the Director shall be kept on file in the Community Development Department and shall be available to the public upon request. These interpretations shall be incorporated into the Zoning Code pursuant to the provisions of Section 9.61.080, at such time as is deemed appropriate by the Director.

Apx. B 10

9.61.020 (b) Planning Commission Administration of Code

The Planning Commission of the City of Dana Point is responsible for administering the Zoning Code, making recommendations to the City Council on matters governed by the Code, and initiating amendments to the Code when necessary to promote the public health, safety, or welfare.

(c) Procedure for Enforcement

When any use or structure is found to be in violation of the provisions of this Code, the City Council may direct the City Attorney to commence appropriate civil, administrative, or criminal proceedings for the discontinuation or removal of the illegal use or structure in the manner prescribed by law.

(d) Investigation or Inspection of Property

Any duly authorized city official may enter any premises, building, or structure at any reasonable hour, after either obtaining the consent of the owner or other responsible individual or pursuant to an inspection warrant, for investigation or inspection of such premises, building, or structure to determine whether said building, premises, or structure is in violation of this Code. Every person who denies, prevents, obstructs or attempts to deny, prevent, or obstruct such access pursuant to an inspection warrant is guilty of a misdemeanor.

9.61.030 Penalty for Violation of the Code

Penalty for violation of the Code is described in Dana Point Municipal Code, Title I, Section 1.01.200.

9.61.040 Procedures for Applications Requiring Discretionary Action

(a) Legislative and Judicial Actions

Legislative action, implemented by adoption of an Ordinance by the City Council, is required for General Plan Amendments, Local Coastal Program Amendments, Specific Plans, Zone Change Amendments, and Zone Text Amendments. General Plan Amendments and Specific Plan Amendments may only be initiated in accordance with Section 9.61.080(b).

Apx. B 11

Judicial action, implemented by adoption of a Resolution by the Planning Commission, is required for Specific Plan Amendments, Conditional Use Permits, Variances, Site Development Permits, and Tentative Tract/Parcel Maps.

9.61.040 (b) Initiation of an Application

Applications requiring discretionary or judicial action may be initiated by the City Council, Planning Commission, any person who is able to demonstrate an ownership interest in the proposed application and the subject property, or the authorized agent of any person with an ownership interest in the subject property.

(c) Acceptance of Applications

(1) When a final action on any given application is a denial and conditions surrounding that application have not substantially changed, the Director of Community Development shall reject any new applications for any identical or substantially similar proposal for a period of twelve (12) months from the final action date on the original application.

(2) Upon submittal of a development application by an applicant, in accordance with the Permit Streamlining Act, Government Code Section 65920 et. seq., the Director of Community Development shall have thirty (30) days to review the development application to determine if the application is complete pursuant to subsection (d). Prior to the end of that thirty (30) day period, the City shall notify the applicant in writing of any deficiencies in the application which make the application incomplete. This provision shall not apply to legislative actions by the City.

(3) If an applicant is notified in writing that a development application is incomplete, the applicant shall have three (3) months from the date of notification to revise and resubmit the application. If the applicant fails to revise and resubmit the application within the said three (3) month period, the application shall be deemed withdrawn. Thereafter, a resubmittal of an application for the same site shall

constitute a new development application subject to the payment of new fees and commencing a new timeline for City action on the project.

9.61.040(c) (4) The Director of Community Development, upon written request by the applicant or by the exercise of appropriate discretion, may provide a one time extension of the three month timeline for the revision and resubmittal of an incomplete application. Such extension shall not exceed sixty (60) days.

(5) The Director of Community Development or designee may send a courtesy notice to the applicant that if an incomplete application is not rectified by the submittal of additional information necessary to make the application complete, that the application will be deemed to be withdrawn. However, this notice is strictly a courtesy to an applicant and failure by the City to send, or the applicant to receive such notice shall not operate to negate the effective withdrawal of the application.

(6) The provisions of Government Code Section 65920 et seq., are applicable to City actions in processing development applications but are not applicable to legislative actions of the City.

(d) Time Limit for Final Action on Development Project Applications

(1) Applications Requiring an Environmental Impact Report

Those applications accepted as complete and requiring an Environmental Impact Report pursuant to the California Environmental Quality Act, (CEQA), the State Guidelines and the City of Dana Point CEQA Guidelines, shall be scheduled for a public hearing so that final action may be taken within one (1) year of the acceptance of the compete application unless the applicant requests, or consents to, an extension of time.

Apx. B 13

9.61.040(d) (2) All Other Applications

All other development applications accepted as complete by the Director of Community Development, shall be scheduled for public hearing so that final action may be taken within six (6) months of the date the application was deemed complete, unless the applicant requests, or consents to, an extension of time.

(3) Conflicts with Other Provisions

When the time limits established by other provisions of this Code are in conflict with the time limits established by this Section, the provision with the shorter duration shall apply.

(e) Requirements for Complete Applications

(1) Applications shall be made on a form prescribed by the Director of Community Development and shall contain the following information and other information as requested by the Director. The accuracy of all information, maps, and lists submitted shall be the responsibility of the applicant. The Director may reject any application that does not supply, at a minimum, the following information:

(A) The name and address of the applicant and property owners.

(B) Evidence that the applicant:

1. Is the owner of the premises involved, or

2. Has written permission of the owner or owners to make the application, or

3. Is or will be the plaintiff in an action of eminent domain to acquire the premises involved, or

Apx. B 14

9.61.040(e)(1)(B)

4. Is a public agency negotiating to acquire a portion of the premises involved, and

5. Has paid the required application fees and deposits or is exempt from such fees and deposits.

(C) The location of the subject property (address or vicinity).

(D) The legal description of the subject property and two (2) copies of a recent (within 6 months of the submittal date) preliminary title report for the subject property.

(E) A detailed written description of the nature and specifics of the development proposal or requested action.

(F) Two (2) self-addressed, stamped envelopes to be used for notification of application completeness and final action on the application.

(2) The following submittals are required for any application for a Conditional Use Permit, Variance, Site Development Permit, Coastal Development Permit, or other discretionary entitlements.

(A) All required written information and colors/materials boards shall be submitted in 8½" x 11" format.

(B) All required plans shall be submitted in a format no smaller than 8½" x 11" and no larger than 24" x 36". Larger plans must be folded to 8½" x 11". The 24" x 36" size plans are preferred.

(C) Indicate in writing and with graphics the nature, situation, and development of existing uses, buildings, and structures within one hundred feet (100') of the subject property and

Apx B 15

the effect the proposed application may have on those uses, buildings, and structures.

9.61.040(e)(2) (D) Explain how the requested application will not cause negative impacts, endanger, or otherwise imperil the public health, safety, or general welfare, and will be compatible with and an enhancement to the subject site, surrounding properties and the City (one copy).

(E) Provide a detailed site plan indicating the existing and proposed area and dimensions of a project site; all existing features (streets, alleys, driveways, buildings, vegetation) within fifty feet (50′) of the project boundary; the location, dimension, grades and descriptions of all existing and proposed uses, structures, yards, walls, fences, parking and loading facilities, landscaping, easements, utilities, dedications, and any other use and development features relevant to the application. All site plan drawings shall be drawn to an engineering scale between 1″:10′ and 1″:40′, or other scale appropriate to the project and acceptable to the Director of Community Development (12 sets).

(F) All existing and proposed building and structural elevations, and the materials and colors of all existing and proposed structural and surface components. All architectural elevations shall be drawn to an architectural scale of either 1″:8′ or 1″:4′, or other scale appropriate to the project and acceptable to the Director of Community Development (12 sets).

(G) Floor plans for each existing and proposed floor indicating the size (dimension and area) and use of each room or area. All floor plans shall be drawn to an architectural scale of either 1″:8′ or 1″:4′, or other scale appropriate to the project and acceptable to the Director of Community Development (12 sets).

Apx B 16

9.61.040(e)(2)

(H) The required site plan shall indicate the dimensions and state of improvement of the existing and proposed streets or easements providing access to the subject site. The plans shall include all access features on, and within fifty feet (50′) of the subject site. Applications which propose access from a Circulation Element roadway shall provide plans showing all access features within one-hundred and fifty feet (150′) of the subject site as determined by the Director of Public Works.

(I) A written list and description of other existing or proposed permits or approvals for the subject site (one copy).

(J) Such other information as the Director of Community Development or designee may request in writing to clearly identify the conformity of the application to the General Plan and/or the Dana Point Municipal Code.

(K) Ownership information as follows:

1. Two (2) copies of the most recent County Assessor map, drawn to scale, showing the location of all properties included in the application; the location of all highways, streets, and alleys; and the location and dimensions of all lots or parcels of land within a five hundred (500) foot radius of the exterior boundaries of the subject property. If the subject property is located in the Coastal Zone, a coastal development permit is required, and the map shall also illustrate all lots or parcels of land within a one hundred (100) foot radius of the exterior boundaries of the subject property.

2. A list of the names and addresses of all persons who are shown on the most recent assessment roll of the County of

Apx B 17

Orange as owners of properties within a five hundred (500) foot radius of the exterior boundaries of the subject property. If the subject property is located in the Coastal Zone, the applicant shall also submit a second list of the addresses of all dwelling units within one hundred (100) feet of the exterior boundaries of the subject property.

9.61.040(e)(2)(K) 3. Two (2) complete sets of stamped (first class postage) No. 10 business envelopes which are addressed to the property owners on the above list. If the subject property is located in the Coastal Zone, a coastal development permit application is required, and the applicant shall also submit two (2) complete sets of stamped envelopes which are addressed to the residents of dwelling units within one hundred (100) feet of the subject property.

Both sets of envelopes shall also include envelopes addressed to the property owner, the owner's agent, the project architect and project engineer.

(3) Submittal requirements for General Plan Amendments, Zoning Text Amendments, Local Coastal Program Amendments shall be the same as in Section (1) and (2)(I), (J), and (K) above, and shall include a written statement describing how the proposed amendment will be consistent with the General Plan, beneficial to the surrounding neighborhood and the community as a whole and in keeping with the protection of the public health, safety, and general welfare.

(4) Additional Specific Information

(A) An application for a Conditional Use Permit shall also include evidence to substantiate the

Apx. B 18

basis for approval as provided in 9.65.040, Basis for Approval, Conditional Approval or Denial of a Conditional Use Permit.

9.61.040(e)(4) (B) An application for a Variance shall also include evidence proposed to substantiate the basis for approval as provided in 9.67.040, Basis for Approval, Conditional Approval or Denial of a Variance.

(C) An application for a Coastal Development Permit shall also include evidence proposed to substantiate the basis for approval as provided in 9.69.060, Basis for Approval, Conditional Approval or Denial of a Conditional Use Permit.

(D) An application for Site Development Permit shall also include evidence proposed to substantiate the basis for approval as provided in Section 9.71.040, Basis for Approval, Conditional Approval or Denial of a Site Development Permit.

(f) Procedure for Applications Made Prior to Code Amendment

When an application is filed, and deemed complete, prior to the adoption of an amendment to the Code, processing of the application may continue exempt from the provisions of the pending amendment. Applications filed or deemed complete after a code amendment is adopted shall proceed pursuant to the applicable provisions of the amended Code.

(g) Recommendation by the Director of Community Development

The Director of Community Development shall review the application in accordance with the regulations and standards of this Code and relevant adopted plans and ordinances of the City and transmit a recommendation on the application to the Planning Commission.

Apx B 19

9.61.040 (h) Action by the Planning Commission

(1) A public hearing shall be scheduled before the Planning Commission and notice given pursuant to Section 9.61.040.

(2) The Planning Commission may refer the application back to the Director of Community Development for further review. Such referral shall be accompanied with clear directives for recommended changes to the site plan or design features of the project.

(3) If the application is not referred back to the Director of Community Development, the Planning Commission shall approve, conditionally approve, or deny an application for discretionary approval. Action on the application may be continued to a future meeting pursuant to the applicable provisions of Article 5, Chapter 4.5 of the California Government Code. If applicable, the decision approving or conditionally approving the application shall state the period of time for which the approval shall be valid.

(4) The applicant or any interested party may file an appeal of the Planning Commission action pursuant to Section 9.61.110. The appeal hearing shall be noticed as provided in Section 9.61.050.

(5) When a public hearing is required, notice of the hearing shall be given in accordance with the provisions of Section 9.61.050 of this Code.

9.61.050 Notice and Conduct of Public Hearings

(a) Notice of Hearings for Review of Applications

No less than ten (10) days prior to the date of a public hearing on development applications, the Director of Community Development shall give notice including the time, place, identity of the hearing body or officer, nature of the application, and the general location of the property under consideration. The Director shall observe the following notice requirements:

9.61.050(a) (1) The notice shall be posted in three (3) places in the City of Dana Point designated by Resolution of the City Council.

(2) The notice shall be advertised in a newspaper circulated within the City of Dana Point.

(3) The notice shall be mailed to the applicant(s); to the applicant; to the property owner(s) or the property owner's agent(s); to all persons listed as owners of property within five hundred (500) feet of the exterior boundary of the subject property on the notification list required in Section 9.61.040, and if the subject property is located in the Coastal Zone, to all persons listed as occupants of dwelling units within one hundred (100) feet of the exterior boundary of the subject property on the notification list required in Section 9.61.040.

Notice shall also be provided to anyone filing a written request and paying the cost for notification and to such other persons whose property might, in the Director's judgement, be affected by the proposed application.

(4) If the Director finds that the posting and mailing of notices prescribed in this Section may not give sufficient notice to the affected property owners, then additional notices may be posted at locations which are best suited to reach the attention of, and properly inform those persons who may be affected.

(5) When the proposed entitlement affects more than 1,000 property owners, the required notice may be provided by placing a 1/8 page display advertisement in a newspaper circulated within the City of Dana Point. Such notice shall be considered an acceptable substitute for the published notice required in subsection (2) and the mailed notice required in subsection (3).

(6) The notice shall be sent to public officers, departments, bureaus, or agencies which, in the determination of the Director of Community

Apx. B 21

Development, could be affected by the application or otherwise require noticing.

9.61.050(a) (7) When a Negative Declaration is recommended for adoption pursuant to the California Environmental Quality Act (CEQA), notice of intent to adopt a Negative Declaration shall be published no less than twenty-one (21) days prior to the hearing date, or thirty (30) days prior to the hearing date for applications which require circulation of the Negative Declaration to the State Clearinghouse.

(8) Notice for Timeshare Properties

(A) If a timeshare property falls within the one-hundred (100) foot occupant-notification radius for Coastal Development Permits described in (8) above, all shareholders shall be notified as described in subsection (3) above.

(B) If a timeshare property falls outside the one-hundred (100) foot occupant-notification radius described in subsection (8) above, but within the five hundred (500) foot property owner-notification radius described in subsection (3) above, notices shall be sent to the property manager/sales agent for the timeshare, the shareholders association for the timeshare where one exists, and one notice to each physical unit in the timeshare, addressed to "Occupant."

(b) Notice for General Plan Amendments

Prior to any amendment to the General Plan, the Community Development Department shall forward the proposed action to the following entities:

(1) Any City or County within or abutting the area covered by the proposal, and any special district which may be significantly affected by the proposed action.

Apx B 22

9.61.050(b) (2) Any elementary, high school, or unified school district within the area covered by the proposed action.

(3) The Local Agency Formation Commission.

(4) Any area-wide planning agency whose operations may be significantly affected by the proposed action.

(5) Any Federal Agency if its operations or land within its jurisdiction may be significantly affected by the proposed action.

(c) Notice of Public Hearings for Revocations

The Director of Community Development, in giving notice of a public hearing to revoke a Conditional Use Permit, Variance, or Site Development Permit, Coastal Development Permit, or other entitlement, shall observe the noticing requirements set forth as follows:

(1) Notification shall be provided as prescribed in Section 9.61.050; and

(2) The Director shall serve the owner of the premises involved written notice of such hearing, by registered or certified mail, return receipt requested and by posting a copy of said notice in a conspicuous location on the property.

(d) Continuances

If, for any reason, testimony on a case cannot be heard or completed at the time set for such hearing, the Planning Commission may continue or extend the hearing to another time. Before adjournment or recess, the Planning Commission chairman shall publicly announce the time and place at which the hearing will be continued.

(e) Failure To Receive Notice

The failure of any person or entity to receive notice required pursuant to this Section shall not constitute grounds to invalidate the proceedings or actions of the City in regards to the item for which the notice was given.

Apx B 23

9.61.060 Fees and Deposits

(a) Filing Fees and Deposits

Each applicant for an Amendment, Zone Changes, Conditional Use Permit, Variance, Site Development Permit, Coastal Development Permit or other entitlement or relief provided for in this Code shall pay the fees and costs established by Resolution of the City Council upon the filing of an application such entitlement or relief. Said Resolution may be periodically amended by resolution to reflect the cost of processing such applications.

(b) Waiver of Fees

For special circumstances, the City Council may provide for the waiver or reduction of filing fees or deposits that have been established by Resolution of the City Council. The special circumstances may include, but not be limited to, cases of excessive hardship, projects that provide exceptional benefits to the public, projects sponsored by a non-profit applicant, or projects that provide very low, low, or moderate income housing.

(c) Deficiencies and Refunds

The following provisions apply when full payment has not been made for an application or when an application is withdrawn:

(1) If any application is withdrawn, as provided in Section 9.61.070, within thirty (30) days from the date the application is filed, but prior to the publication of the notice of hearing, the City shall refund fifty percent (50%) of the fees paid.

(2) If any application is withdrawn, as provided in Section 9.61.070 after thirty (30) days from the date the application is filed, but prior to the publication of the notice of hearing, the City shall refund twenty-five percent (25%) of the fees paid.

(3) No refund shall be made after the notice of hearing has been published.

Apy B24

9.61.060(c) (4) If the application fee is a deposit based on an hourly rate, the refund will be the difference between the time expended by the City and the amount of the deposit.

9.61.070 Procedure for Withdrawal of an Application

Any application for Amendment, Zone Change, Conditional Use Permit, Variance, Site Development Permit, Coastal Development Permit, Appeal or other application for permit, entitlement, or relief provided for in this Code may be withdrawn at any time prior to a public hearing by filing with the Director of Community Development a written request for withdrawal. The request for withdrawal shall be signed by all persons who signed the original application or their designated agents or successors. Any such application or petition may be withdrawn after commencement of a public hearing thereon, with consent of the hearing body.

9.61.080 Amendments

(a) Scope of Amendments

Amendments may be proposed to change zoning districts, modify district boundaries or to revise the provisions of Title 9 to add, remove, or modify regulations pursuant to the provisions of the Government Code. Amendments may be filed to add, remove, or modify the goals and policies of the General Plan or to change the land use designations therein. The Local Coastal Program may also be amended as necessary to reflect changes in the General Plan or Zoning Code or to modify other regulations or procedures.

(b) Amendment Initiation

The City Council, the Planning Commission, or staff may initiate an amendment to the text of the Zoning Code. Amendments involving a change in zoning district boundaries or a rezoning of property may only be initiated by the City Council, the Planning Commission, or the owner of the subject property. Only the City Council may initiate General Plan Amendments. Initiation of an amendment by the City Council or the Planning Commission may be directed at a regular meeting of either body. Following

Apx B25

initiation of the amendment, the procedural steps identified in 9.61.080(g) and 9.61.050 will be followed.

9.61.080 (c) General Plan Amendments

(1) Frequency of Amendments

No mandatory Element of the General Plan shall be amended more frequently than four (4) times during any calendar year. This limitation on frequency does not apply to amendments to the General Plan requested and necessary for a single development of residential units, at least twenty-five percent (25%) of which will be occupied or available to persons or families of low or moderate income.

(2) Planning Commission Recommendation

The Planning Commission shall hold at least one public hearing and make a written recommendation on the adoption of an amendment to the General Plan. The Planning Commission shall forward its recommendation to the City Council.

(3) Public Hearing

A General Plan Amendment requires a public hearing before the City Council. Any proposed amendment to the General Plan not excluded by (1) above, requires application and noticing as outlined in this Chapter.

(4) Amendment by Resolution

The City Council shall adopt amendments to the General Plan by Resolution. The City Council may approve, modify, or disapprove the recommendation of the Planning Commission. Any substantial changes proposed by the City Council not previously considered by the Planning Commission shall first be referred to the Planning Commission for its consideration.

Apx B 26

9.61.080 (d) Zoning Code Amendments

(1) Types of Amendments

There are two types of amendments to the Zoning Code including:

Zone Text Amendment - a revision, correction, addition or modification to the text of the Zoning Code, including changes to development standards, use regulations or procedures.

Zone Change - a change to the zoning designation of a property or properties on the Zoning Map.

(2) Planning Commission Recommendation

The Planning Commission shall hold at least one public hearing and make a written recommendation on the adoption of a Zone Text Amendment or Zone Change. Such recommendation shall include the reasons for the recommendation and the relationship of the proposed amendment to the General Plan. The Planning Commission shall send its recommendation to the City Council.

(3) City Council Consideration

The City Council shall hold at least one public hearing for any Zoning Code amendment. The City Council may approve, modify, or disapprove the recommendations of the Planning Commission; provided that any modifications to the proposed amendment are referred to the Planning Commission for report. The Planning Commission is not required to hold a public hearing to review the modifications sent by the City Council. No further City Council action is required when the Planning Commission has recommended disapproval of a Zoning Code amendment.

(4) Amendment by Ordinance

The City Council shall adopt amendments to the Zoning Code by Ordinance.

Apx B 27

9.61.080 (e) Local Coastal Program Amendments

A Local Coastal Program Amendment (LCPA) may entail modifications to the text, or land use designations, or land use and development standards contained in the General Plan Land Use Element, Land Use Map, Zoning Code or the Zoning Map for any property in the Coastal Zone. Local Coastal Program Amendments shall be processed in accordance with the following provisions:

(1) Frequency of LCP Amendments

No more than three (3) LCPAs are permitted per year, although there is no limit to the number of changes in each amendment.

(2) Types of Amendments

The California Coastal Commission regulations provide several examples of "minor" LCPA's:

(A) Amendments to address newly-annexed or detached territory.

(B) Wording changes in the implementation program which provide more specific guidance without changing the type, location, or intensity of use.

(C) Changes in the type or density of use upon occurrence of specified events (such as the availability of sewer service) as authorized in the Land Use Plan.

In general, any other proposed change in the type of use would be reviewed as a major LCPA.

(3) Required Findings

(A) That the public and affected agencies have had ample opportunity to participate in the LCPA process.

(B) That all policies, objectives, and standards of the LCPA conform to the requirements of the Coastal Act.

9.61.080(e)(3)

(C) That Coastal Act policies concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the kind, locations, and intensity of land and water uses.

(D) That the level and pattern of development proposed is reflected in the Land Use Plan, Zoning Code, and Zoning Map.

(E) That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development proposed after certification of the LCPA.

(F) That zoning measures are in place (prior to or concurrent with the LCPA) to carry out the amendment to the Land Use Plan.

(4) Public Participation Standards

In addition to Notice standards contained in Section 9.61.050, notice of public hearings for LCPAs must be mailed to:

(A) Members of the public requesting such notices;

(B) Contiguous and affected local governments;

(C) State and Federal agencies specified by the California Coastal Commission policies; and

(D) Local libraries and media.

(5) Planning Commission Recommendation

The Planning Commission shall hold at least one public hearing on the proposed LCPA and make a written recommendation on the adoption of an amendment to a local coastal program. Such recommendation shall include the reasons for the recommendation and the relationship of the proposed Ordinance or amendment to the Coastal Act, and applicable General Plan and/or Specific Plan policies. The Planning Commission shall send its recommendation to the City Council.

Apx B 29

9.61.080(e) (6) City Council Resolution

One public hearing is required. The LCPA shall be submitted to the California Coastal Commission pursuant to a Resolution adopted by the City Council.

(f) Specific Plan Amendments

(1) Planning Commission Recommendation

The Planning Commission shall hold at least one public hearing and make a written recommendation on the adoption of an amendment to a Specific Plan. The Planning Commission shall forward its recommendation to the City Council.

(2) City Council Public Hearing

Any proposed amendment to a Specific Plan requires application and noticing as outlined in this Chapter. One City Council public hearing is required.

(3) Amendment by Resolution and Ordinance

The City Council may adopt amendments to Specific Plans by Resolution and Ordinance. The City Council may approve, modify, or disapprove the recommendation of the Planning Commission. Any substantial changes proposed by the City Council not previously considered by the Planning Commission shall first be referred to the Planning Commission for its consideration.

(g) Procedural Duties Regarding Amendments

(1) When an application for an amendment is filed in accordance with Section 9.61.040, or when the City Council or Planning Commission has initiated an amendment, the Director of Community Development shall schedule the proposed amendment for a public hearing pursuant to Section 9.61.050 of this Code.

(2) The Planning Commission, upon receiving the recommendation of the Director of Community

Development, shall hold a public hearing to ensure consistency with the General Plan or to provide for the public health, safety, and welfare of the citizens, visitors, and workers in the City of Dana Point.

9.61.080(g) (3) The Planning Commission shall transit a written recommendation on the proposed amendment to the City Council. The recommendation of the Planning Commission may be for approval, conditional approval or denial except when the proposed amendment is a Zone Change, in which case the recommendation shall be for approval or denial.

(4) The Commission may continue a hearing in order to consider new or revised information as it deems necessary. A continuance shall not extend the period of time within which State law requires the City to render a final decision, unless the applicant requests, or consents to, a continuance beyond that period of time.

(5) Upon receiving the recommendation of the Planning Commission, the City Council shall hold a public hearing and shall make a determination and take final action on the amendment. This action shall take place within the time period specified in Section 9.61.040 of this Code.

(6) The Director of Community Development shall maintain an index of all approved amendments to this Code in order to insure that the Code is properly updated.

(7) For amendments in the Coastal Zone, the Director of Community Development shall provide notice of the amendment hearings and action to the California Coastal Commission.

(h) Decision of the City Council

The City Council may approve or deny an application for an amendment. Except for Local Coastal Program Amendments, the action of the City Council shall be final.

Apx B 31

9.61.080 (i) Basis for Denial of Amendments

Amendments to the General Plan, Zoning Code, Zoning Map, Local Coastal Program, or Specific Plan may be denied if they are found to be:

(1) Inconsistent with the General Plan;

(2) Inconsistent with a goal or policy of the General Plan;

(3) Inconsistent with the provisions of the Coastal Act;

(4) Inconsistent with mandatory findings required by State law or by this Code; or

(5) A threat to the public health, safety, and welfare.

9.61.090 Administrative Modification of Standards

(a) Intent and Purpose

Standards may be administratively modified by the Director of Community Development to permit development on property which is constrained due to lot size, shape, location, access restrictions, or other physical constraints. Administrative modifications are used only when deviations from Code standards are truly minor and no potential impact will occur to the health, safety or general welfare of adjacent persons or properties will occur.

(b) Authority of the Director of Community Development

The Director of Community Development shall have the authority to approve, conditionally approve, or deny an application for an administrative modification pursuant to the following limitations:

(1) Reduction of required lot area, minimum floor area, setbacks, courts or open areas, or landscaped areas by five percent (5%) or less of the area required by the Zoning Code;

(2) Increases in the height of both retaining and non-retaining side or rear yard fences, walls, or hedges by

not more than ten percent (10%) of the maximum permitted height. No administrative modification may be granted for any fence, wall or hedge that is located in the required front yard.

9.61.090 (c) Procedure for Administrative Modifications

(1) An application shall be filed with the Community Development Department pursuant to Section 9.61.040.

(2) The Director of Community Development shall review the application and shall determine whether the application is complete as described in Section 9.61.040 and whether the application qualifies as an administrative modification within thirty (30) days of the application date.

(3) Notice of the administrative modification shall be provided to owners of the abutting properties.

(4) When in the public interest and agreed to by the applicant, the Director of Community Development may consider and render decisions on administrative modifications without a public hearing.

(5) If the application qualifies as an administrative modification, the Director of Community Development shall render a decision on the request within thirty (30) days of the application being deemed complete and qualified. If the application does not qualify as an administrative request, the Director shall notify the applicant, and the application may be withdrawn as described in Section 9.61.070.

(6) Appeals of the Director's decision may be made pursuant to the provisions of Section 9.61.110.

(d) Basis for Approval or Denial of Administrative Modifications

(1) The Director of Community Development may impose such conditions as are deemed necessary to protect the public health, safety, and general welfare and assure

Apx 633

compliance with the provisions and standards included in this Zoning Code.

9.61.090(d) (2) In making such determination, the Director of Community Development shall find that the proposed administrative modification meets the following criteria:

(A) That there are practical difficulties or unnecessary hardships created by strict application of the Zoning Code due to physical characteristics of the property; and

(B) The administrative modification does not constitute a grant of special privileges which are not otherwise available to surrounding properties in similar conditions and will not be materially detrimental to the public welfare or to the property of other persons located in the vicinity; and

(C) The administrative modification places suitable conditions on the property to protect the public health, safety, and welfare and surrounding properties.

(e) Notice of Action

The Director of Community Development shall transmit a written Notice of Action to the applicant by first class mail.

9.61.100 Preliminary Review

A preliminary review is a request for a pre-submittal evaluation of a project. The preliminary review will assess the site and architectural design of the proposed project. In addition, this review will consider General Plan consistency, development standards, land use compatibility and community values. The objective of this exercise is to provide the applicant with a sense of the issues that need to be addressed in the formal application. The preliminary review process is not intended and cannot be used as a process to determine the ultimate decision on the formal application. Information gathered through this process can be used to determine whether a formal application should be filed.

Apx B 34

9.61.100 (a) Review Levels

There are two levels of preliminary review available to a prospective applicant, described as follows:

(1) Staff Level Review

Staff level review involves an informal assessment of the proposed project by the Community Development and Public Works Staff. These reviews are conducted during the regular weekly staff meetings. This review provides the applicant with an opportunity to receive preliminary comments from the departments who will ultimately make recommendations on a formal application. Staff will provide comments on the preliminary review within five (5) working days of the staff meeting.

(2) Planning Commission Review

Preliminary review by the Planning Commission is a more formal option available to the applicant. This process is more appropriate for projects which may involve more significant issues of sensitivity or compatibility, or qualitative interpretations of City policy. Through this process, a brief assessment will be prepared by staff to identify the issues pertinent to the proposed project. The applicant will have the opportunity to present the proposal directly to the Planning Commission. Preliminary reviews are considered by the Planning Commission under "New Business" at regular meetings. The Planning Commission is legally limited in the type and amount of input they can provide at this level. Typically, comments are focused on the identification of potential issues which may be raised during consideration of a formal submittal. General feedback on how key issues or policies might apply to the project may also be provided.

(b) Fees

Staff level preliminary reviews require no fee. A fee of in accordance with those set forth in a annual resolution of the

Apx B 35

City Council shall apply to an application for preliminary review by the Planning Commission.

9.61.100 (c) Required Submittals

(1) Staff Level Review

One (1) copy of the conceptual site plan, floor plan(s), building elevations, and any other relevant exhibits.

(2) Planning Commission Review

(A) Ten (10) copies of the conceptual site plan, floor plan(s), building elevations and any other relevant exhibits;

(B) a letter which provides a brief explanation of the proposed project and justification for the project based on General Plan policies and Zoning Code provisions;

(C) a completed planning application form;

(D) a filing fee as required by Section 9.61.100(b).

9.61.110 Appeal Procedures

(a) Decisions May Be Appealed

Any decision rendered by the Director of Community Development may be appealed by the applicant, the Planning Commission, the City Council, or any property owner or resident of property within five hundred feet (500') of the extension boundaries of the subject property. Appeals of decisions by the Director of Community Development shall be heard by the Planning Commission.

Any decision rendered by the Planning Commission may be appealed by the applicant, the City Council, or any property owner or resident. Appeals of decisions by the Planning Commission shall be heard by the City Council.

Apk B 36

9.61.110 (b) Filing of Appeals

Appeals to the Planning Commission and City Council must be made no later than fifteen (15) calendar days after the rendering of the decision being appealed.

Appeals to the Planning Commission shall be filed with the Director of Community Development. Appeals to the City Council shall be filed with the City Clerk.

(c) Appeal Contents

Appeals filed in writing with the Director of Community Development or the City Clerk shall specifically cite the basis of the appeal, including how the person filing the appeal is negatively impacted by the deciding body's determination to approve, conditionally approve, or deny an application.

(d) Appeals of Coastal Development Permits

Appeals of Coastal Development Permits should be filed and processed in accordance with the following provisions:

(1) Grounds for an Appeal

(A) The development fails to provide adequate physical access to or along the shoreline or public or private commercial use; or interferes with such uses.

(B) The development fails to protect public views from any public road or from a recreational area to, and along, the coast.

(C) The development is not compatible with the established physical scale of the area.

(D) The development may significantly alter existing natural landforms.

(E) The development does not comply with shoreline erosion and geologic setback requirements.

Apx B 37

9.61.110(d) (2) Appeal Period

An appeal of an appealable Coastal Development Permit must be filed in an office of the California Coastal Commission within ten (10) working days of the final City action on the permit. The California Coastal Commission appeal period is concurrent with the City's fifteen (15) day appeal period. If an appeal of a Planning Commission decision is filed with the City Council, the California Coastal Commission appeal period will not begin until receipt of the City Council action.

(3) Filing an Appeal

To file an appeal, the appellant should complete, sign, and submit the Appeal from California Coastal Permit Decision of Local Government Form, or submit equivalent signed information in another format.

(4) California Coastal Commission Hearing

The California Coastal Commission hearing on an appeal must be held within forty-nine (49) days from the date the appeal of a City Council decision is received.

(e) Notice of Appeal Hearings

Notice of an appeal hearing shall conform to the requirements of Section 9.61.050 for the original application. The appellant shall be responsible for all noticing materials required in the original application.

(f) Effective Date of Appealed Actions

A decision rendered by the Director of Community Development appealed to the Planning Commission shall not become final until upheld by the Commission. A decision rendered by the Planning Commission appealed to the City Council shall not become final until upheld by the Council.

Apx B 38

9.61.120 Revocations and Modifications

(a) Revocation or Modification of Entitlements

The Planning Commission, on its own motion or by direction from the City Council, may recommend, and the City Council may approve the revocation and/or modification of any previously approved application or granted entitlement, after holding a properly noticed public hearing on the matter where any of the following findings are made:

(1) That the approved application or entitlement was obtained by fraud; or

(2) That the approved application or entitlement is not being exercised; or

(3) That the approved application or entitlement has ceased or has been suspended for a period of time and is causing detriment to the public health, safety and welfare or constitutes a public or private nuisance; or

(4) That the use for which the approved application or entitlement was granted or permitted is being or has been operated or used contrary to the terms or conditions of such approval, or in violation of any statute, ordinance, law, or regulation; or

(5) If any provision of an approved application or entitlement is held or declared invalid, the approved application or entitlement shall be void and all privileges granted thereunder shall lapse.

(b) Notice of Action

(1) Notice of the action taken by the City Council at a hearing for a revocation or modification of an approved application or entitlement shall be sent by certified mail, return receipt requested, to the person owning and operating the property, structure, or use.

(2) Notification of the action by the City Council shall be made by serving a notice in the manner required by law.

Apx B 39

9.61.120 (c) Effective Date of Revocations and Modifications

An order by the City Council revoking or modifying an entitlement shall become effective immediately.

9.61.130 Expiration and Extensions

(a) Expiration

When the activity for which a discretionary permit (Conditional Use Permit, Coastal Development Permit, or Site Development Permit) was granted is not implemented or utilized within the time frame specified in the permit, or within two (2) years if no timeframe is specified in the permit, the discretionary permit shall become null and void and of no effect, unless the permit is extended as provided below.

(b) Extensions

A discretionary permit may be extended indefinitely in accordance with the following provisions:

(1) An application, consisting of a letter requesting an extension, shall be submitted to the Community Development Department prior to the expiration date of the subject discretionary permit.

(2) A fee, in accordance with the annual fee resolution adopted by the City Council shall be submitted with the letter.

(3) Action on the first extension request may be taken administratively by the Director of Community Development. Any subsequent extension requests must be presented to the Planning Commission for action.

(4) The action of the Planning Director or Planning Commission on a request for extension may be appealed in accordance with Section 9.61.110.

(5) No single extension request may be granted for any period of time exceeding one (1) year.

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9.61.130(b) (6) A request for extension may be approved, conditionally approved or denied. An action to conditionally approve or deny a request for extension may be based on the existence of new requirements or standards which were not in effect at the time of the original approval. Such requirements or standards may be contained in the City's Zoning Code or in the Municipal Code, including the Health, Safety and Building Codes.

(7) While the discretionary permit is deemed active during the consideration of an extension request, if the expiration date has passed, the permit may not be implemented unless and until the extension request has been approved.

(c) Exception

Where a proposal to acquire land for a governmental enterprise in conjunction with a discretionary permit has been approved, no time limit shall apply to the utilization of said permit, provided that within one (1) year of the date of approval, the subject governmental agency has either acquired the subject property or has commenced legal proceedings for its acquisition."

9.61.140 General Plan Consistency Requirements

(a) Projects involving the acquisition, dedication, disposition, vacation, or abandonment of real property shall not be authorized until the location, purpose, and extent of the action has been submitted to and reported upon by the Planning Commission for consistency with the adopted General Plan. The following actions are exempt from this requirement:

(1) The disposition of the remainder of a larger parcel which was acquired and used in part for street purposes;

(2) acquisitions, dispositions, or abandonments for street widening; or

Apx B 41

9.61.140(a) (3) alignment projects, providing such dispositions for street purposes, acquisitions, dispositions, or abandonments for street widening or alignment projects are of a minor nature.

(b) Applications for a General Plan Consistency finding shall be subject to review by the Planning Commission. At the discretion of the Director of Community Development, such applications may be processed in accordance with Section 9.61.040, "Procedures for Applications Requiring Discretionary Action".

(c) The Planning Commission shall render a report as to conformity of the project with the General Plan within forty (40) days after the application for the matter was deemed complete.

CHAPTER 9.69

COASTAL DEVELOPMENT PERMIT

9.69.010 Intent and Purpose

The intent and purpose of this Chapter is to establish a procedure for the processing of Coastal Development Permits within the City's Coastal Zone, consistent with the City's certified Local Coastal Program and pursuant to the Public Resources Code and the California Administrative Code of Regulations.

The Coastal Zone is a distinct and valuable natural resource of vital and enduring interest to all people of the City and exists as a delicately balanced ecosystem.

The permanent protection of coastal resources, both natural and scenic, is a paramount concern to the present and future residents of the City, State, and Nation.

This Chapter provides for the protection of the ecological balance of the Coastal Zone and the prevention of its deterioration and destruction which is necessary in the interest of promoting public health, safety, and welfare and to protect public and private property, wildlife, marine resources and the natural environment.

Existing developed uses, and future developments that are carefully planned and developed consistent with the City adopted Local Coastal Program, are essential to the economic and social well-being of the people of the City.

In recognition of the unique qualities of the Coastal Zone, its special communities and fragile natural resources, this Chapter provides for maximum public participation in the review of all coastal development which may have a potential to adversely affect such resources.

9.69.020 Coastal Development Permit Required

A Coastal Development Permit shall be required for all proposed development located within the Coastal Overlay District, except for development specifically exempted pursuant to Section 9.69.040. A Coastal Development Permit shall also be required for any

Apx. B 43

proposed development in the area of "Coastal Commission Permit Jurisdiction" as delineated on the Dana Point Local Coastal Program Post Certification Permit and Jurisdiction Map, filed with the City, or as subsequently amended.

9.69.030 Authority To Grant Permit

(a) The Director of Community Development shall have the authority to approve, conditionally approve, or deny Coastal Development Permits for the following types of coastal development applications not located in the "Coastal Commission Permit Jurisdiction" area:

(1) Applications or a modification to an application for individual single family residences which are not located within the appeals area of the Coastal Overlay District.

(2) Applications or a modification to an application for non-residential structures of less than 10,000 square feet of building area which are not located within the appeals area of the Coastal Overlay District.

(3) Applications for temporary uses and structures described in Section 9.39 of this Code.

(4) Applications for improvements to enhance existing parking facilities and landscaping on exisitng legal lots in urbanized areas. Such improvements shall include, but not be limited to, expansion, repaving, resurfacing and/or providing new or improved landscaping or irrigation.

All decisions of the Director of Community Development are subject to appeal, as described in Section 9.69.090, to the Planning Commission within ten (10) days of the decision. The Director of Community Development may refer any application for a Coastal Development Permit to the Planning Commission for consideration.

(b) The Planning Commission shall have the authority to approve, conditionally approve, or deny Coastal Development Permits for the following types of coastal

Apx B 44

9.69.030 (b) (1) Applications or a modification to an application for an individual single family residence located within the appeals area of the Coastal Overlay District.

(2) Applications or a modification to an application for more than one single family residence or multiple family residences located within the Coastal Overlay District.

(3) Applications or a modification to an application for non-residential structures exceeding 10,000 square feet located within the Coastal Overlay District.

All decisions of the Planning Commission are subject to appeal, as described in Section 9.69.090, to the City Council within ten (10) days of the decision. The Planning Commission may refer any application for a Coastal Development Permit to the City Council for a final decision.

(c) The Coastal Commission shall have the authority to approve, conditionally approve, or deny Coastal Development Permits for development proposed in the "Coastal Commission Permit Jurisdiction" area as delineated on the Dana Point Local Coastal Program Post Certification Permit and Jurisdiction Map filed with the City, or as subsequently amended. Where a proposed development lies partially within the area of "Coastal Commission Permit Jurisdiction" and partially within the Coastal Overlay District, the Coastal Commission shall be the responsible agency for the issuance of any Coastal Development Permit.

9.69.040 Exemptions

Development projects listed in this section are exempt from the requirement to have an approved Coastal Development Permit from the City of Dana Point. A current record of all projects which are categorically exempt from Coastal Development Permits shall be available for review by the public and the Coastal Commission and shall include the following information: name of applicant, location of the project, and brief description of the project.

(a) Development projects included in any categorical exclusion list adopted pursuant to the certified Local Coastal Program, and to Section 30610(e) of the Public Resources Code.

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9.69.040 (b) Improvements to an existing structure, except the following, which are not exempt:

(1) Improvements to any structure located on a beach, wetland, or seaward of the mean high tide line or where the dwelling or proposed improvement would encroach within fifty feet (50′) of the edge of a coastal bluff as described in Chapter 9.27.

(2) Improvements on any structure located between the sea and the first public road paralleling the sea or within three hundred feet (300′) of the inland extent of a beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, or within significant scenic resources areas as designated by the certified Local Coastal Program or the Coastal Commission when such improvements would constitute or result in any of the following:

(A) An increase of ten percent (10%) or more of the internal floor area of the existing structures on the building site;

(B) An increase in the floor area in any amount when the structure has previously been improved in compliance with these exemptions;

(C) The construction of an additional story or a loft; or

(D) The construction, placement, or establishment of any detached structure.

(3) Any significant alteration of land form, or removal or placement of vegetation on a beach, wetland, sand dune, within one hundred feet (100′) or, for a single family dwelling, within fifty feet (50′) of the edge of a coastal bluff, as described in Chapter 9.27, or in an area of natural vegetation designated by the Coastal Commission as significant natural habitat.

(4) Expansion or construction of a water well or septic system.

Apx B46

9.69.040(b) (5) Improvements in an area which the Coastal Commission has determined to have critically short water supply that must be maintained for the protection of coastal resources or public recreational use, when such improvement would be a major water user not essential to residential use including, but not limited to, swimming pools and landscape irrigation systems.

(6) Any improvement when the Coastal Development Permit issued for the original structure indicated that future additions would require a Coastal Development Permit.

(7) Improvements to any structure or change in occupancy which would result in an increase in the intensity of the uses on the building site.

(8) Improvements pursuant to a conversion of existing structures from a multiple unit rental use or visitor serving commercial use to a condominium, stock cooperative, or time share project.

(9) A public works facility.

(c) Maintenance dredging of existing navigation channels or moving dredged material from such channels to a disposal area outside the Coastal Zone, pursuant to a permit from the United States Army Corps of Engineers.

(d) Repair of maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of such repair or maintenance activities, except the following which are not exempt:

(1) Repair or maintenance of a sea wall revetment, bluff retaining wall, breakwater, groin, culvert, outfall or similar shoreline work which involves substantial alteration of the foundation, including pilings and other surface and subsurface structures.

(2) The placement, whether temporary or permanent, of rip rap, or artificial berms of sand, or any other form of solid material, on a beach or in coastal waters,

Apx B 47

streams, wetlands, estuaries, or on shoreline protective works.

9.69.040(d) (3) The replacement of twenty percent (20%) or more of the materials of an existing structure with materials of a different kind.

(4) The presence of permanent mechanized construction equipment or construction materials on any sand area or bluff or within twenty feet (20′) of coastal waters or streams.

(5) Any method of routine maintenance dredging that involves:

(A) The dredging of 100,000 cubic yards or more within a twelve (12) month period;

(B) The placement of dredged spoils of any quantity on any sand area, within fifty feet (50′) of the edge of a coastal bluff as described in Chapter 9.27, or environmentally sensitive habitat area, or within twenty feet (20′) of coastal waters or streams;

(C) The removal, sale, or disposal of dredged spoils of any quantity that would be suitable for beach nourishment in an area the Coastal Commission has declared by Resolution to have a critically short sand supply that must be maintained for protection of structures, coastal access or public recreational use.

(6) Any repair or maintenance to facilities or structures or work located in any sand area, within fifty feet (50′) of the edge of a coastal bluff as described in Chapter 9.27 or environmentally sensitive habitat area; or within twenty feet (20′) of any coastal waters or streams that include:

(A) The placement or removal, whether temporary or permanent, of riprap, rocks, sand or other beach materials or any other forms of solid materials;

Apx. B 48

9.69.040(d)(6) (B) The presence of permanent mechanized construction equipment or construction materials.

(e) The installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and any development approved pursuant to this Chapter.

(f) The replacement of any structure, other than a public works facility, destroyed by natural disaster, provided such replacement structure conforms to applicable current zoning regulations; is designed and intended for the same use as the destroyed structure; does not exceed the floor area, height or bulk of the destroyed structure by more than ten percent (10%); and is sited in the same location on the same building site as the destroyed structure.

(g) Development projects on tidelands, submerged lands, or on public trustlands, whether filled or unfilled, when such projects are permitted pursuant to a Coastal Development Permit issued by the Coastal Commission.

(h) Projects normally requiring a Coastal Development Permit but which are undertaken by a public agency, public utility or person performing a public service as an emergency measure to protect life and property from imminent danger or to restore, repair of maintain public works, utilities, and services during and immediately following a natural disaster or serious accident; provided the Director of Community Development and the Executive Director of the Coastal Commission are notified within three days after the disaster or discovery of the danger regarding the type and location of the emergency measures to be performed. This exemption does not apply to the erection, construction or placement of any structure with an estimated cost or market value in excess of $25,000 in a permanent location.

(i) The ongoing routine repair and maintenance activities of local governments, state agencies, and public utilities (such as railroads) involving shoreline works protecting transportation roadways.

Apx B49

9.69.040 (j) Minor improvements to an existing structure including:

(1) Patios, patio covers, decks, windscreens, spas, seating, barbecues or exterior stairways located within the applicable setbacks. Caisson supported decks shall require a Site Development Permit application for properties in Flood Plain Zones as part of the building permit plan check.

(2) Interior modifications to an existing structure that do not result in the enlargement or expansion of the cubic area of the structure. Such modifications shall comply with the applicable sections of Chapter 8.06 of the Municipal Code.

(3) Garages and carports.

(k) The presence of temporary mechanized construction equipment or construction materials on any sand area or bluff or within twenty feet (20') of coastal waters or streams.

9.69.050 Application

Application for a Coastal Development Permit shall be made to the Director of Community Development in accordance with the following procedures.

(a) The application shall be made by the property owner of record or the owner's authorized agent.

(b) Application for a Coastal Development Permit shall be made on forms provided by the Community Development Department, and shall include the following information:

(1) A location map showing the area to be developed in relation to nearby lots, streets, highways, any major natural features such as the ocean, beaches, wetlands, streams, and other major landforms.

(2) A site plan, drawn to scale, which is in sufficient detail to illustrate the compliance of the project with the certified Local Coastal Plan. The site plan shall, at a minimum, provide the following information:

Apx B 50

9.69.050(b)(2) (A) Site topography, including existing and proposed elevations.

(B) The location of existing and proposed buildings and structures.

(C) The lot lines and dimensions of the building site.

(D) The location of existing and proposed circulation facilities, including streets, alleys and pedestrian accessways.

(E) The height, material and location of existing and proposed walls.

(F) Existing and proposed off-street parking.

(G) Tabulations of lot area, proposed gross floor area and proposed lot coverage.

(3) Where the application includes proposed construction, the application shall also include the submittal of the following additional information:

(A) Building elevations with dimensions to indicate the proposed finished floor levels and building height.

(B) Proposed building setbacks.

(C) A landscape plan.

(D) Site Development Permit application and certifications for properties located in a Flood Plain Zone.

(4) Any additional information determined by the Director of Community Development to be necessary for evaluation of the proposed development.

(c) Prior to, or concurrently with the filing of the application, the applicant shall pay to the City a fee or deposit equal to the estimated cost of processing said application. The fee or

Commission, unless the Executive Director has notified the Director of Community Development that any such legal documents are inadequate.

9.69.080(b) (3) If the Executive Director has recommended revisions to the format of legal documents, the Coastal Development Permit shall not be issued until deficiencies have been resolved to the satisfaction of the Executive Director.

(4) Documents for the recording of any easements shall also be submitted to the Executive Director for review and approval as to the format of such documents, and the Coastal Development Permit shall not be issued to the applicant until the easements have been recorded and verification of such recordation has been sent to, and receipt acknowledged by, the Executive Director.

(c) The decision of the Planning Commission shall be final subject to the appeal procedures set forth below.

9.69.090 Appeals

(a) Appeals to the Planning Commission

The decision of the Director of Community Development may be appealed to the Planning Commission in accordance with Section 2.04.100 et. seq..

(b) Appeals to the City Council

The decision of the Planning Commission may be appealed to the City Council in accordance with Section 2.04.100 et. seq..

(c) Appeals to the Coastal Commission

Appeals to the Coastal Commission shall be filed as specified under the Public Resources Code Sections 30602 or 30603. Appeals to the California Coastal Commission may be made only after appeals to the City Council, provided for in Section 9.69.090(b) above, have been exhausted.

App B52

9.69.090 (d) Persons Who May Appeal

A decision of the Director of Community Development, Planning Commission or City Council on a Coastal Development Permit may be appealed by the following persons:

(1) The applicant.

(2) Any person who protested the application by filing written comments prior to the considerations of the matter or appeared and protested at the public hearing.

(3) Any City officer, Planning Commissioner, or City Council member.

(4) Any two members of the Coastal Commission where the permit is appealable to the Coastal Commission.

9.69.100 Notice of Final Action To Coastal Commission

(a) The City's decision on the Coastal Development Permit application shall be considered final when 1) all required findings have been adopted; and 2) all rights to appeals before the Planning Commission and City Council have been exhausted.

(b) Within five (5) working days of the final City decision, a notice of the final city action shall be sent by first class mail to the Coastal Commission and to any person or group requesting notice of such action. The notice shall include conditions of approval and written findings. For decisions on developments which are appealable to the Coastal Commission, the notice shall include procedures for appeal of the City decision.

(c) If it is determined by the Director of Community Development or through a judicial action that the time limits established pursuant to Government Code Sections 65950 through 65957.1 have expired within five (5) working days of such determination any person or group entitled to receive notice shall be notified that the application has been approved by operation of law and the application may be

Apx B53

appealed to the Coastal Commission. This provision shall apply only to City decisions which are appealable to the Coastal Commission.

9.69.110 Determination of Appeal Jurisdiction

The determination as to whether any proposed development for which a permit is sought lies within the appeals area shall be made by the Director of Community Development based on the Dana Point Local Coastal Program Post Certification Maps filed with the City at the time the application is submitted. The determination of the Director of Community Development may be challenged by the applicant or any interested person, and a determination requested from the Executive Director of the Coastal Commission in accordance with Coastal Commission regulations.

9.69.120 Expiration of Coastal Development Permits

Any Coastal Development Permit granted herein shall be conditioned upon the privileges being exercised within 24 months after the effective date thereof, except as otherwise provided within a phasing program contained in: 1) a development agreement entered into between the City and the owners of the subject property; 2) a specific plan applicable to the subject property; or 3) as otherwise provided by resolution approved by the City Council upon recommendation of the Planning Commission. Failure to exercise such permit within such period will automatically void same, unless an extension of time has been granted as set forth in Section 9.69.140. Construction must actually be commenced within the stated period and must be diligently pursued to completion.

9.69.130 Amendments to Coastal Development Permits

(a) The Director of Community Development or the Planning Commission (or City Council on appeal), may grant an amendment to a valid Coastal Development Permit if, after considering facts presented in the application and at the hearing (if a hearing is held), the Director or Commission makes all the findings set forth in Section 9.69.060.

(b) An application for an amendment to a Coastal Development Permit shall be in writing and shall be filed by the owner of record of the property covered by the permit. The

ApxB54

application shall be filed with the Director of Community Development, who may require a public hearing on such application if there is indication of sufficient public interest. In the case of all amendments, the noticing and public hearing requirements of Section 9.61.050 shall apply. The decision of the Director of Community Development or Planning Commission shall contain the findings relied upon in reaching that decision.

9.69.130 (c) The decision of the Director of Community Development or Planning Commission may be appealed pursuant to the procedures specified in Section 2.04.100 et. seq..

9.69.140 Extension of Time

(a) The Director of Community Development or the Planning Commission may grant one or more extensions of time, with no single extension to exceed 12 months, for a valid Coastal Development Permit if the Director or Commission finds that there has been no material change of circumstances since the original granting of the permit.

(b) An application for an extension of time shall be in writing and shall be filed by the record owner or by any other person(s) who can demonstrate a legal right, interest, or other entitlement to use the property covered by the permit. The request shall be filed with the Director of Community Development, who may require a public hearing on such application if there is indication of sufficient public interest. In the case of all extensions, the noticing and public hearing requirements of Section 9.61.050 shall apply. The decision of the Director or the Planning Commission shall contain the findings of fact relied upon in reaching the decision.

(c) The decision of the Director of Community Development or Planning Commission may be appealed pursuant to the procedures specified in Section 2.04.100 et. seq..

9.69.150 Emergency Permits

(a) Applications for an Emergency Coastal Development Permit shall be made by letter to the Director of Community Development or in person; or by telephone if time

App B 55

constraints do not allow either of those two alternatives to be used.

9.69.150 (b) The following information shall be included in the request:

(1) Nature of emergency;

(2) Cause of emergency;

(3) Location of emergency;

(4) Remedial, protective, or preventative work required to deal with the emergency; and

(5) Circumstances during the emergency that justify the course of action taken or to be taken, including probable consequences of failing to take emergency action.

(c) Verification

The Director of Community Development shall verify the facts, including the existence and nature of the emergency, to the extent that time allows.

(d) Granting an Emergency Permit

(1) The Director of Community Development shall grant the emergency permit with reasonable terms and conditions, including an expiration date and the necessity for a regular permit application later, where the Director finds that:

(A) An emergency exists that requires action more quickly than would be permitted by the normal procedures for acquiring a Coastal Development Permit.

(B) Public comment on the proposed emergency action has been solicited and reviewed to the extent feasible.

Apx B 56

9.69.150(d)(1) (C) The proposed emergency work would be consistent with the certified Local Coastal Program.

(2) The Director of Community Development shall provide public notice of the emergency work, with the extent and type of notice determined by the nature and time constraints of the emergency.

9.69.160 Prior Coastal Commission Approval

No coastal development project that obtained approval of a Coastal Development Permit from the California Coastal Commission prior to the effective date of this Code shall be required to obtain a new Coastal Development Permit pursuant to the provisions of this Chapter, development is exempt from the provisions of this Chapter except that:

(a) No substantial change may be made in any such development approved without prior authorization from the California Coastal Commission; and,

(b) Construction of the project pursuant to the approved Coastal Development Permit must commence within a two-year period from the date of permit issuance, or within such other time period as may be specified in the permit, or the Coastal Development Permit shall be deemed null and void.

App B 57