

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA

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LONG BEACH, CA 90802-4302
90-5071

File



October 15, 1998

TO: COASTAL COMMISSIONERS AND INTERESTED PERSONS

FROM: DEBORAH LEE; Deputy Director
TERESA HENRY; District Manager, South Coast Area
STEPHEN F. RYNAS; Supervisor, Orange County
JOHN T. AUYONG; Coastal Program Analyst, Dana Point

SUBJECT: **City Of Dana Point Local Coastal Program Amendment Request 1-98
(Capistrano Beach)**

{Staff Note Regarding Timing of Commission Action: The Commission must take action on this proposed LCP amendment at the November 1998 hearing in order to meet the 90 day time limit required for Commission action on LCP amendments containing Land Use Plans, pursuant to Section 30512(a) of the Coastal Act. Alternatively, at the November 1998 hearing, the Commission may grant a one-year extension of this deadline pursuant to Section 30517 of the Coastal Act.}

SYNOPSIS

The City of Dana Point ("City") is proposing to amend its certified Local Coastal Program ("LCP"). The primary purpose of the proposed LCP amendment is to revise the existing LCP provisions concerning the area of Capistrano Beach -- basically, the area of the City's coastal zone east of San Juan Creek. Exhibit 1 shows the Capistrano Beach area. The revision involves the replacement of the existing LCP document covering Capistrano Beach prepared by Orange County (effectively certified by the Commission in 1987) with the City's General Plan and Zoning Code, in the format they were certified by the Commission in 1996 for the Monarch Beach area of the City (see discussion below).

The proposed LCP amendment also consists of a request to include three amendments to the City's Zoning Code, which serves as the IP portion of the LCP, which the City recently processed for the Monarch Beach area of the City. These three changes to the Zoning Code would then be applicable Citywide and would affect Monarch Beach in addition to Capistrano Beach. The three proposed Zoning Code changes include, among other things, provisions for deck extensions over slopes, a change to the definition of basement, and the location of pool equipment. The Commission has not previously certified these three changes.

There are three primary geographic subareas of the City's coastal zone: 1) Capistrano Beach at the eastern end (which includes Doheny Village, the Capistrano bluffs, and the private

City Of Dana Point LCP Amendment 1-98

Capistrano Bay District residential community also known as Beach Road), 2) Dana Point in the central portion (which includes Dana Point Harbor, Dana Point Town Center, and the certified portion of the Dana Point Headlands), and 3) Monarch Beach at the western end.

The City is in the process of revising the structure of their LCP. The three subareas were formerly LCP segments, created by the County and certified by the Commission (except for Laguna Niguel, which was not certified), when the City was still unincorporated Orange County. The County prepared separate specific plans for each certified segment containing both LUP and IP components. The coastal development permit ordinance for each segment was the County's standard coastal development permit ordinance, which applied to all County LCP segments.

The City, upon incorporation, adopted the three County-prepared specific plans and coastal development permit ordinance as the City's first post-incorporation LCP. The City only made basic modifications to the County's documents such as changing "County of Orange" to "City of Dana Point" and "Board of Supervisors" to "City Council". At the same time, the City also merged the three certified LCP segments (Capistrano Beach, Dana Point, and a portion of South Laguna) into one LCP segment. The uncertified Laguna Niguel LCP segment was not changed. The Commission certified these changes in 1989. Thus, the City's LCP consisted of three physically separate, stand-alone LCP documents and a single coastal development permit ordinance that applied to all three subareas.

Since the City's incorporation, the City has developed and adopted its own General Plan and Zoning Code which closely parallels, but does not exactly duplicate, the County documents. 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.

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. The County-prepared documents would no longer be used. This would result in only one set of standards for all discretionary actions Citywide. 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.

At this time, through the submission of Dana Point LCP amendment 1-98, the City is taking the second of several steps toward this goal. The first step involved the effective certification of Dana Point LCP amendment 1-96, which: 1) replaced the South Laguna LCP document with the three City General Plan elements and the Zoning Code, 2) certified the Laguna Niguel segment (except for Dana Strands), and 3) merged the Laguna Niguel segment into the remainder of the City's coastal zone. The current proposed LCP amendment involves the replacement of the Capistrano Beach LCP document prepared by the County with the three City General Plan elements and the Zoning Code.

City Of Dana Point LCP Amendment 1-98

The LCP amendment does not apply to the area covered by the City's contemplated Dana Point Headlands Specific Plan, which is still in the process of the being developed by the City. This LCP also does not apply to Dana Point Harbor. The City is still in the process of updating the plans for the harbor area. The LCP status of these areas will remain unchanged until the City submits another LCP amendment to specifically address these areas. Thus, the provisions of the certified Dana Point Specific Plan/Local Coastal Program originally prepared by the County of Orange and readopted by the City would remain unchanged and would continue to apply in the Headlands and harbor until an LCP amendment is processed for these areas.

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) maintain the existing floodplain regulations regarding non-conforming structures, (2) conform proposed miscellaneous amendments with the certified LUP, and (3) clarify coastal development permit and local coastal program procedures.

CITY COUNCIL APPROVAL OF SUGGESTED MODIFICATIONS

Should the Coastal Commission approve this LCP amendment request with suggested modifications, the City of Dana Point City Council would have the opportunity to review the suggested modifications 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

Two potential areas of difference which remains between Coastal Commission staff and the City involves staff's recommendation that the proposed LCP Amendment be modified: (1) to retain the existing LCP limitations on improvements to existing non-conforming structures in the

City Of Dana Point LCP Amendment 1-98

floodplain district, and (2) to delete stringline access provisions which would identify the area subject to lateral access according to a generalized formula.

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 Implementing actions, 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

To request additional copies of this staff report prior to the hearing, please call (562) 590-5071 and provide the clerical staff with a mailing address. For additional information regarding this LCP amendment request, please contact John Auyong of the Coastal Commission's South Coast Area office at (562) 590-5071 or <jauyong@coastal.ca.gov>. Please send any written comments regarding this LCP amendment request to the attention of John Auyong at the following address, at least three working days prior to the hearing:

California Coastal Commission
200 Oceangate, Tenth Floor
Long Beach, CA 90802-4302

After October 29, 1998, please direct all inquiries and correspondence regarding this LCP amendment request to Steve Rynas of this office.

City Of Dana Point LCP Amendment 1-98

TABLE OF CONTENTS

I. MOTIONS AND RESOLUTIONS	7
A. LAND USE PLAN AMENDMENT	7
1. Denial of Land Use Plan Amendment as Submitted	7
2. Approval of the Land Use Plan Amendment with Suggested Modifications	7
B. IMPLEMENTATION actions	8
1. Rejection of the Implementation Actions as Submitted	8
2. Approval of the Implementation Actions with Suggested Modifications	9
II. PUBLIC PARTICIPATION	9
III. SUGGESTED MODIFICATIONS (LAND USE PLAN AMENDMENT)	11
A. Land Use Element	11
B. Urban Design Element	12
C. Land use diagram	12
IV. SUGGESTED MODIFICATIONS (IMPLEMENTATION ACTIONS):	12
A. Modifications to Text of the Zoning Code	12
1. Chapter 9.05 – General Development Standards	12
2. Chapter 9.09 - Residential Districts	13
3. Chapter 9.27 - Coastal Overlay District	14
4. Chapter 9.31 - Floodplain Overlay District	14
5. Chapter 9.61 - Administration Of Zoning	15
6. Chapter 9.69 - Coastal Development Permit	18
B. Graphic Modifications	21
1. Section 9.01.080(a) Table	21
2. Table Of Contents	21
V. LCP HISTORY	22
A. Pre-Incorporation	22
B. Post-Incorporation	22
C. Most Recent LCP Overhaul	23
VI. PROPOSED AMENDMENT REQUEST	24

City Of Dana Point LCP Amendment 1-98

VII. LAND USE PLAN AMENDMENT (FINDINGS FOR DENIAL AS SUBMITTED AND APPROVAL IF MODIFIED)	25
A. Incorporation of Previous Findings	25
B. Modifications Involving Capistrano Beach	26
1. Public Access and Recreation	26
2. Existing Capistrano Beach Specific Plan/Local Coastal Program	27
VIII. IMPLEMENTATION ACTIONS (FINDINGS FOR DENIAL AS SUBMITTED AND APPROVAL AS MODIFIED)	27
A. CONFORMITY WITH THE CERTIFIED LAND USE PLAN	27
1. Incorporation of Previous Findings	27
2. Public Access	28
3. Hazards	30
4. Visual Impacts	35
5. Landform Alteration	36
B. COASTAL DEVELOPMENT PERMIT ORDINANCE - TRANSFER OF COASTAL COMMISSION AUTHORITY	37
1. Incorporation of Previous Findings	38
2. Additional Modifications	39
3. Permit Authority Which Passes To Local Government	39
4. Notice And Hearing Requirements	41
5. LCP Amendments (Section 9.61.080(e))	41
6. Conclusion (Coastal Development Permit Processing Procedures)	42
IX. CALIFORNIA ENVIRONMENTAL QUALITY ACT	42

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 1-98 as submitted.

Staff recommends a **NO** 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 1. (Denial of Certification of the LUP amendment):

The Commission hereby denies certification of the City of Dana Point Land Use Plan Amendment 1-98 as submitted and adopts the findings stated below on the grounds that the amended land use plan 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; the Land Use Plan amendment as submitted is not consistent with applicable decisions of the Commission that guide local government actions pursuant to Section 30625(c) of the Coastal Act, and certification of the Land Use Plan amendment as submitted does not meet the requirements of Section 21080.5(d)(2)(A) of the California Environmental Quality Act, as there are feasible alternatives or feasible mitigation measures which would substantially lessen significant adverse effects on the environment.

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 1-98 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.

City Of Dana Point LCP Amendment 1-98

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

*The Commission hereby **certifies** City of Dana Point Land Use Plan Amendment 1-98, 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 1-98 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 1-98 will contain a specific access component as required by Section 30500(a) of the Coastal Act; the Land Use Plan Amendment 1-98 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 1-98 will meet the requirements of Section 21080.5(d)(2)(A) of the California Environmental Quality Act, as there are no further feasible mitigation measures or feasible alternatives which would substantially lessen significant adverse impact on the environment.*

B. IMPLEMENTATION ACTIONS

1. Rejection of the Implementation Actions as Submitted

Motion 3:

*"I move that the Commission **reject** Amendment 1-98 to the Implementation Actions of the City of Dana Point Local Coastal Program as submitted."*

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 Amendment):

*The Commission hereby **rejects** Amendment 1-98 to the Implementation Action of the City of Dana Point Local Coastal Program as submitted for the reasons discussed below on the grounds that it does not conform with or is inadequate to carry out the provisions of the Land Use Plan as certified. Approval of the Implementing Actions would not meet the requirements of Section 21080.5(d)(2)(A) of the California Environmental Quality Act in that 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.*

City Of Dana Point LCP Amendment 1-98

2. Approval of the Implementation Actions with Suggested Modifications

Motion 4:

"I move that the Commission approve Amendment 1-98 to the Implementation Actions of the City of Dana Point local coastal program 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 Amendment 1-98 to the Implementation Actions of the City of Dana Point Local Coastal Program, if modified as suggested below, based on the findings set forth below on the grounds that the zoning ordinance, zoning map, and other implementing actions conform with and are adequate to carry out the provisions of the Land Use Plan as certified. Approval of the implementing actions, as modified, meets the requirements of Section 21080.5(d)(2)(A) of the California Environmental Quality Act in that 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 Title 14 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 would rescind 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

City Of Dana Point LCP Amendment 1-98

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.

Subsequently, the City submitted an LCP amendment request to the Coastal Commission proposing its General Plan and Zoning Code as the new City-wide LCP which would replace the three existing Specific Plan/Local Coastal programs as well as certify all uncertified areas of the City. The City ultimately withdrew this LCP amendment request. Since the November 23, 1993 adoption of the Zoning Code described above, the Zoning Code and General Plan have been amended several times (see table below listing the public hearings held for these amendments). In 1996, the City submitted LCP Amendment 1-96 which proposed to use three elements of the General Plan, as well as the entire Zoning Code, as the LCP for Monarch Beach (see LCP history in Section V of this report). LCP Amendment 1-96 included all the amendments listed below, with the exception of those marked with an asterisk.

Summary of City public hearings on General Plan and Zoning Code amendments proposed since November 23, 1993			
City Amendment Number	Planning Commission Mtgs.	City Council Meetings	Resolution or Ordinance #
ZTA94-03	April 20, 1994	May 10, 1994 May 24, 1994	Ord. 94-09
ZTA94-07	September 7, 1994 October 19, 1994	November 22, 1994 December 13, 1994	Ord. 94-21
ZTA95-04	April 5, 1995	May 23, 1995	Ord. 95-11
ZTA95-07	June 21, 1995	July 11, 1995	Ord. 95-14
GPA95-02(a) SP91-01(I)	April 19, 1995	May 23, 1995	Ord. 95-09
ZTA96-04	September 18, 1996	October 22, 1996	Ord. 96-13*
ZTA97-01	July 2, 1997	July 22, 1997	Ord. 97-02*
GPA97-02 (Adopting LUP Suggested Mods. For LCP 1-96)	July 16, 1997	August 26, 1997	Resolution 97-08-26-03
ZTA97-02 (Adopting IP Suggested Mods. For LCP 1-96)	July 16, 1997	August 26, 1997	Ord. 97-05
ZTA97-03	November 5, 1997	November 14, 1995 December 12, 1995 November 12, 1996 November 12, 1997	Ord. 97-12*
*Ordinances 96-13, 97-02, and 97-12 have not been certified by the Coastal Commission and are included as part of the proposed LCP 1-98 amendment request.			

City Of Dana Point LCP Amendment 1-98

Except for the three ordinances marked with an asterisk, the three elements of the General Plan and the Zoning Code, as proposed in current LCP Amendment 1-98, have been reviewed at public hearings before the Coastal Commission for certification via LCP Amendment 1-96 as well as at the City level through the adoption of the suggested modifications for LCP Amendment 1-96. The proposed LCP Amendment 1-98 includes the amendments to the Zoning Code marked with an asterisk, which have not been reviewed by the Commission but which have been adopted by the City pursuant to duly noticed public hearings.

III. SUGGESTED MODIFICATIONS (LAND USE PLAN AMENDMENT)

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, as submitted to the Coastal Commission on April 24, 1998 pursuant to City of Dana Point City Council resolution 98-02-10-02. 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}*

A. LAND USE ELEMENT

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)~~ all areas of the City of Dana Point's coastal zone, excepting the uncertified Dana Strands area and the area covered by the existing certified Dana Point Specific Plan/Local Coastal Program, are contained in the Land Use, Urban Design, and Conservation/Open Space Elements of the General Plan. ~~The 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~~ and other geographic areas of the City which are covered by the existing Dana Point Specific Plan/Local Coastal Program are contained within the Dana Point Specific Plan/Local Coastal Program. ~~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.~~ These 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 for local coastal program purposes for those specific geographic areas.

City Of Dana Point LCP Amendment 1-98

B. URBAN DESIGN ELEMENT

{Goal 6: Doheny Village}

Policy 6.5: Improve pedestrian opportunities and create an attractive pedestrian environment within Doheny Village. Reserve as an open space corridor for public recreational improvements the top of the east bank of the San Juan Creek Channel. (Coastal Act/30210, 30213 ~~30250~~)

C. LAND USE DIAGRAM

The City shall amend, if necessary, the base map of the Land Use Diagram to ensure that the Recreation/Open Space land use designation of San Juan Creek includes the top of the east bank of San Juan Creek.

IV. SUGGESTED MODIFICATIONS (IMPLEMENTATION ACTIONS):

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 underline 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 9.05 – General Development Standards

{no modifications to intervening sections}

9.05.080 Maximum Projections into Required Yard Areas

Except for the Residential Beach Road 12 (RBR 12), and the Residential Beach Road Duplex 18 (RBR 18) zoning districts, the items indicated in the following Table may be placed in required yards or extend beyond maximum height limits subject to the conditions placed upon those items by the table, except that for blufftop lots in the Coastal Overlay District, the limitations on development in the blufftop setback described in the blufftop setback requirements of Chapter

City Of Dana Point LCP Amendment 1-98

9.27 (Coastal Overlay District) shall supersede the provisions of the following Table. {no modifications to intervening sections}

9.05.270 Deck Extensions Over Slope Areas

Where a deck is proposed to extend over a slope area, the following regulations shall apply, except that for slope areas on blufftop lots in the Coastal Overlay District, decks shall not project past the bluff edge, and the limitations on development in the blufftop setback described in the blufftop setback requirements of Chapter 9.27 (Coastal Overlay District) shall supersede the following regulations. {no modifications to intervening sections}

2. Chapter 9.09 - Residential Districts

{no modifications to intervening sections}

9.09.040 Special Development Standards

(a) Development in the Residential Beach Road 12 (RBR 12) and Residential Beach Road Duplex 18 (RBRD 18) Zoning Districts shall comply with the following standards.

(1) The following Table provides the requirements for structural stringlines, patio stringlines, ~~lateral access lines~~ and front yard setbacks for properties in the Residential Beach Road 12 (RBR 12) and Residential Beach Road Duplex 18 (RBRD 18) Districts.

{Delete the lateral access stringline column from this table. Delete all references to the lateral access stringline in the Zoning Code}

Footnotes for Section 9.09.040(a)(1): *{no modifications to intervening sections}*

~~(c) The lateral access stringline is subject to periodic review. {no modifications to intervening sections}~~

(4) Offers to dedicate easements for public pedestrian access laterally along the beach at Capistrano Beach will be required as a condition of any new development project, as defined in public access ordinance (Section 9.27.030(a)(2)(A) of this Zoning Code), requiring a coastal development permit along Beach Road, consistent with the requirements of the public access ordinance (Section 9.27.030(a) of this Zoning Code). 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. {no modifications to intervening sections}

City Of Dana Point LCP Amendment 1-98

3. Chapter 9.27 - Coastal Overlay District

{no modifications to intervening sections}

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 *{no modifications to intervening sections}*

(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 the structural and patio stringlines as described in Section 9.09.040(a)(1) of this Zoning Code (the Residential Beach Road 12 (RBR 12) and Residential Beach Road Duplex 18 (RBRD 18) Zoning Districts), or dipline. *{no modifications to intervening sections}*

(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.

Seawalls in the northern portion of the Capistrano Bay District private community along Beach Road (north of Pines Park located in the inland bluffs above the community), when permitted in accordance with the other requirements of this Chapter, shall have a scour blanket consisting of rip-rap stone placed at the seaward toe of the seawall to minimize beach erosion. *{no modifications to intervening sections}*

4. Chapter 9.31 - Floodplain Overlay District

{no modifications to intervening sections}

9.31.050 Administration

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

City Of Dana Point LCP Amendment 1-98

(c) Nonconforming Uses and Structures in the Floodplain Overlay Districts. Any use or structure lawfully existing on any premises that is made nonconforming by the application of this Chapter, or by any amendment of this Chapter, shall be subject to the provisions of Chapter 9.63, Nonconforming Uses and Structures, except as follows:

(1) Any nonconforming structure located outside the coastal zone may be expanded, enlarged, reconstructed or structurally altered without conforming to the standards of this Chapter, provided that such expansion, enlargement, reconstruction or structural alteration does not constitute a substantial improvement. Any substantial improvement to a nonconforming structure shall be subject to all the regulations of this Chapter.

(2) Any nonconforming structure located outside the coastal zone which sustains substantial damage shall be subject to all the regulations of this Chapter.

{Delete proposed language and reinsert existing certified language as indicated below}

~~(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. The following regulations shall apply to nonconforming uses and structures located in Floodplain Overlay Districts in the coastal zone:~~

(A) No nonconforming use or structure shall be enlarged, expanded, reconstructed or structurally altered unless the entire structure is made to conform with the development standards contained in this Chapter (excepting the provisions contained in subsections (c)(1) and (c)(2) above). However, that work done in any period of twelve (12) months on ordinary alterations or replacement of walls, fixtures or plumbing not exceeding ten percent (10%) of the value of the building, as determined by the Director of Community Development, shall be permitted provided that the cubical contents of the building, as it existed at the time this subsection or amendments thereto take effect, are not increased.

(B) If any nonconforming use or structure shall be destroyed or damaged to any extent by flood or wave action, then said use or structure and the land on which said use or structure was located or maintained shall be subject to all the regulations of this Chapter (excepting the provisions contained in subsections (c)(1) and (c)(2) above). (Coastal Act/30600(e)) {no modifications to intervening sections}

5. Chapter 9.61 - Administration Of Zoning

{no modifications to intervening sections}

City Of Dana Point LCP Amendment 1-98

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 in the coastal zone for local coastal program purposes unless and until effectively certified by the Coastal Commission as an amendment to the Local Coastal Program. 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 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 ~~these~~ that LCPs. Otherwise, Local Coastal Program Amendments shall be processed in accordance with the following provisions: *{no intervening modifications}*

(6) City Council Resolution

(A) The LCPA shall be submitted to the California Coastal Commission, after public hearing, pursuant to a Resolution adopted by the City Council. The resolution shall include the following:

1. ~~which shall certify~~ A statement certifying that the City will carry out 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)~~2. 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~~ implementing actions, or both, and the nature of the proposed changes.

3. 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.

4. Resolutions for amendments involving changes to the implementing actions ~~Implementation Plan amendment~~ shall certify that the City has found that the implementing actions ~~Implementation Plan amendment~~ as amended is ~~are~~ in conformity with and adequate to carry out the provisions of the certified land use plan.

City Of Dana Point LCP Amendment 1-98

5. 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.

6. The resolution shall ~~certify~~ include a statement certifying that the amendment will be submitted to the Coastal Commission for review and approval.

~~(C)~~(B) 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)~~(C) Under either alternative in subsection ~~9.61.080(e)(6)(C)~~ 9.61.080(e)(6)(B) 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, including;

1. a listing of members of the public, organizations, and agencies appearing at any hearing or contacted for comment on the LCP amendment, and copies of speaker slips for all persons testifying at said hearing(s);

2. ~~and copies~~ or written summaries of significant comments received and of the City's response to those comments;

3. Copies of hearing notices for all public hearings at which the LCPA was discussed or scheduled for discussion;

4. Proof of publication. *{no modifications to intervening sections}*

(C) A written discussion of the LCPA's relationship to and effect on the other sections of the certified LCP. *{no modifications to intervening sections}*

(G) Copies of City staff reports for all public hearings at which the LCPA was discussed or scheduled for discussion.

(H) Copies of final, adopted Ordinances and Resolutions approving the LCPA.

(I) Copies of final, approved minutes of all public hearings at which the LCPA was discussed or scheduled for discussion. *{no modifications to intervening sections}*

City Of Dana Point LCP Amendment 1-98

6. Chapter 9.69 - Coastal Development Permit

9.69.010 Intent and Purpose

{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 existing certified Dana Point Specific Plan/Local Coastal Program remains in effect in those areas covered by the Dana Point Specific Plan/Local Coastal Program for local coastal program purposes. The procedures in this Chapter shall be applied in a manner which is most protective of coastal resources and public access.

9.69.030 Authority to Grant Permit

{no modifications to intervening sections}

(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 for development 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) or in the appeals area (Pursuant to Section 30603(a) of the Coastal Act and as defined in Section 9.75.010 of this Zoning Code): *{no modifications to intervening sections}*

9.69.40 Exemptions

{no modifications to intervening sections}

(j) A coastal development permit is not required for any of the following projects, except that notification by the agency or public utility performing any of the following projects shall be made to the City within 14 days from the date of the commencement of the project:

(1) Immediate emergency work necessary to protect life or property or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(2) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. This paragraph does not exempt any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide from the requirement to obtain a coastal development permit from the City.

City Of Dana Point LCP Amendment 1-98

9.69.100 Notice of Final Action To Coastal Commission

{no modifications to intervening sections}

(b) Notice of Final City Action.

(1) Within seven (7) calendar days of the final City action 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:

(A) the Coastal Commission office having jurisdiction over the City of Dana Point; and

(B) to any person or group requesting notice of such action.

(2) Contents of Notice:

(A) The notice shall contain the date on which the appeal period from the approving authority to the next local appellate body expired.

(B) The notice shall include all conditions of approval and written findings as described in Section 9.69.100(a) of this Section above, Section 9.69.110(e)(3)(C) below, or Section 9.69.160(c) below.

(C) 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)) *{no modifications to intervening sections}*

(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 described 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 that circumstance, ~~final local government action~~, notify the City that the operation and effect of the final City action has been stayed.

When the circumstance described in Section 9.69.100(d)(2) above occurs, the City shall then transmit a revised notice of final action which meets the requirements of Section 9.69.100(b) above. When the Coastal Commission office having jurisdiction over the City of Dana Point receives the revised notice of final action, and the Executive Director has determined that the revised notice of final action meets the requirements of Section 9.69.100(b) above, the appeal period shall commence. (Coastal Act/30333, 30620; 14 Cal. Code of Regulations/13572)

9.69.110 Administrative Coastal Development Permit

{no modifications to intervening sections}

City Of Dana Point LCP Amendment 1-98

(e) Effective Date of Administrative Permit

{no modifications to intervening sections}

(3) A decision on an administrative coastal development permit shall not be deemed final and effective until all the following have occurred: *{no modifications to intervening sections}*

(E) Notice of Final Action prepared in accordance with Section 9.69.100 of this Zoning Code has been received by the Coastal Commission.

(f) Amendment to Administrative Coastal Development Permits

(1) Amendments to administrative coastal development permits issued by the Director of Community Development 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. *{no modifications to intervening sections}*

(g) The Director of Community Development shall not approve amendments to administrative permits issued by the Executive Director of the Coastal Commission. *{no modifications to intervening sections}*

9.69.130 Amendments to Coastal Development Permits

(f) Amendments to coastal development permits approved by the Coastal Commission, either prior to certification of the local coastal program or on appeal after certification of the local coastal program, shall not be processed by the City and instead shall be processed by the Coastal Commission. (Coastal Act/30333, 30519(a); 14 Cal. Code of Regulations/13166) *{no modifications to intervening sections}*

9.69.150 Emergency Coastal Development Permits

{no modifications to intervening sections}

(g) Limitations *{no modifications to intervening sections}*

(2) For emergency permits issued by the Coastal Commission in the appeals area pursuant to Section 30624 of the Coastal Act, an application for the required follow-up regular coastal development permit for the emergency work shall be submitted to the City, in accordance with the requirements of Section 9.69.050 of this Zoning Code, no later than 60 days from the date of issuance of the emergency permit granted by the Executive Director of the Coastal Commission. The City may process the follow-up regular coastal development permit application concurrently with the Coastal Commission processing of the emergency permit application.

9.69.160 Di De Minimis Project Waivers From Coastal Development Permit Requirements

{no modifications to intervening sections}

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

City Of Dana Point LCP Amendment 1-98

(A) Does not fall in a class of appealable development set forth in Section 9.69.090(b) of this Chapter or as defined in Section 9.75.010 of this Zoning Code; {no modifications to intervening sections}

B. GRAPHIC MODIFICATIONS

Modifications are shown as follows:

- 1.) **Added text** is shown in underline
- 2.) **Deleted text** is shown in ~~strikeout~~
- 3.) **Instructions** are shown in *{bracketed italics}*

1. Section 9.01.080(a) Table

9.01.080 Relationship to Existing Specific Plans, Planned Communities and Local Coastal Programs.

(a) The provisions of this Code shall supersede and replace the development regulations portions of the plans listed below as they apply to areas within the City of Dana Point:

{Reinsert the Capistrano Beach Specific Plan/Local Coastal Program back into the table}

Footnote for Section 9.01.080(a) Table: ~~Both the~~ The Dana Point Specific Plan/Local Coastal Program and the Capistrano Beach Specific Plan/Local Coastal Program remains in effect for the purpose of issuing coastal development permits in the area covered by the Dana Point Specific Plan/Local Coastal Program. The Land Use, Urban Design, and Conservation/Open Space Elements of the General Plan shall become the Land Use Plan portion of the City's local coastal program for all certified areas of the City not governed by the Dana Point Specific Plan/Local Coastal Program. This Zoning Code shall become the Implementing Actions of the City's local coastal program for all certified areas of the City not governed by the Dana Point Specific Plan/Local Coastal Program.

2. Table Of Contents

The Table of Contents of the Zoning Code shall be updated to reflect changes to the Zoning Code as a result of Coastal Commission action on this LCP amendment.

City Of Dana Point LCP Amendment 1-98

FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

V. LCP HISTORY

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 LCPs prepared by the County for these LCP segments:

Segment	Date of Effective Certification
Capistrano Beach: <i>Main area</i>	8-14-86
<i>Capistrano Bay Community ADC</i>	4-23-87
Dana Point Proper	2-5-86
South Laguna	11-19-87
Laguna Niguel: <i>Land Use Plan</i>	7-22-81 (certified as submitted)
<i>Implementation (Implementation never effectively certified)</i>	12-14-83 (certified w/suggested modifications)

Each of these certified LCPs 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

City Of Dana Point LCP Amendment 1-98

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.

C. MOST RECENT LCP OVERHAUL

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 Commission approved LCP Amendment 1-96 which involved 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 1). The Dana Strands area remained uncertified because it is part of the area which would be covered by the City's proposed Dana Point Headlands Specific Plan, which for a variety of reasons is still under development. Monarch Beach includes a portion of the former South Laguna LCP segment, which contains the hillside subdivision known as Monarch Beach Terrace, the Monarch Bay Plaza shopping center, and the private Monarch Bay community. Monarch Beach also includes the former Laguna Niguel LCP segment, which contains the Ritz Carlton Hotel, Salt Creek Beach and Sea Terrace Community parks, the Links at Monarch Beach golf course, residential subdivisions/developments such as Ritz Cove, a portion of Niguel Shores, and the subdivisions on either side of Niguel Road between Del Avion and Stonehill Drive.

As approved by LCP Amendment 1-96, the Land Use Plan ("LUP") component of the LCP for the Monarch Beach area consists of three elements of the City's General Plan: Land Use, Urban

City Of Dana Point LCP Amendment 1-98

Design, and Conservation/Open Space. As approved, the implementing actions component of the LCP for these areas are the City's Zoning Code, including all specific plans (except the Dana Point Harbor District which applies only within the Dana Point subarea).

The LCP amendment eliminated the South Laguna SP/LCP prepared by the County. The South Laguna SP/LCP was replaced with the three General Plan elements and Zoning Code identified above. In addition, under the approved LCP amendment request, the three elements of the City's General Plan and the City's Zoning Code certified for the first time the previously uncertified segment (Monarch Beach), except for the Dana Strands Area of Deferred Certification ("ADC"). The Dana Strands area was deferred since it is to be included as part of the Dana Point Headlands Specific Plan which is still being prepared by the City.

As approved by LCP Amendment 1-96, the Laguna Niguel uncertified segment was eliminated and merged with the certified segment. As a result, there are no LCP segments in the City and, with the exception of the Dana Strands ADC, all areas of the City are now certified. In addition, as approved by LCP Amendment 1-96, 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.

VI. PROPOSED AMENDMENT REQUEST

The City is now proposing to replace the existing certified Capistrano Beach Specific Plan/Local Coastal Program with the three City General Plan elements identified above and the City's Zoning Code. This proposal is similar to the replacement of the South Laguna Specific Plan/Local Coastal Program with the City's three General Plan elements and Zoning Code approved by LCP Amendment 1-96.

The City is also proposing the inclusion of Ordinances 96-13, 97-02, and 97-12 which amend the Zoning Code. In addition to affecting Capistrano Beach, these ordinances would affect the Monarch Beach area of the City which already uses the Zoning Code for its implementing actions. Ordinance 96-13 includes revisions to the Zoning Code regarding height, development on graded lots containing fill material, and, most significantly, the ability to construct decks which extend over slope areas. Ordinance 97-02 redefines the term "basement". Ordinance 97-12 includes provisions for Minor Automotive Uses and, most significantly, provisions for the placement of pool equipment closer to the edge of property lines.

The proposed LCP amendment 1-98 was submitted on April 24, 1998. On May 6, 1998, the Executive Director notified the City in writing pursuant to Section 13553 of Title 14 of the California Code of Regulations of additional information needed for review of the LCP submittal. On September 3, 1998, all of the information requested by the Executive Director was received and the proposed LCP amendment was found to be properly submitted and deemed complete for filing.

VII. LAND USE PLAN AMENDMENT (FINDINGS FOR DENIAL AS SUBMITTED AND APPROVAL IF MODIFIED)

The standard of review for a land use plan is conformance with the Chapter Three policies of the Coastal Act, as provided for in Section 30512(c) of the Coastal Act which states:

(c) 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).

In certifying a land use plan ("LUP"), the Commission may suggest modifications to bring the LUP into conformance with Chapter 3, as provided for in Section 30512(b) of the Coastal Act which states:

(b) If the commission determines not to certify a land use plan, in whole or in part, the commission shall provide a written explanation and may suggest modifications, which, if adopted and transmitted to the commission by the local government, shall cause the land use plan to be deemed certified upon confirmation of the executive director.

A. INCORPORATION OF PREVIOUS FINDINGS

The Land Use, Urban Design, and Conservation/Open Space Elements of the General Plan have been submitted for certification as the revised LUP for the Capistrano Beach subarea, as proposed by LCP Amendment 1-98. In its review of these elements as part of Dana Point LCP amendment 1-96 for the Monarch Beach subarea of the City, the Commission denied the LUP as submitted and certified the LUP with suggested modifications on May 13, 1997, to bring them into conformance with the Chapter 3 policies of the Coastal Act. The City's incorporation of the suggested modifications into the LUP was found legally adequate by the Executive Director. On November 5, 1997, the Commission concurred with the Executive Director's determination, thus resulting in the effective certification of Dana Point LCP 1-96.

The Land Use, Urban Design, and Conservation/Open Space Elements of the General Plan, as submitted for proposed LCP Amendment 1-98, contain the LUP suggested modifications as certified under LCP amendment 1-96. As discussed above, the Commission found that the suggested modifications were required to bring these General Plan elements into conformity with the Chapter 3 policies of the Coastal Act. Thus, the Commission finds that the findings for the certification with suggested modifications of the LUP portion of Dana Point LCP 1-96 shall be incorporated herein by reference.

City Of Dana Point LCP Amendment 1-98

B. MODIFICATIONS INVOLVING CAPISTRANO BEACH

The LUP portion of the proposed LCP amendment 1-98 as submitted contain policies which specifically apply to the Capistrano Beach subarea. These policies were not included in the certification of LCP amendment 1-96 which dealt only with the Monarch Beach area of the City.

1. Public Access and Recreation

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 30213 of the Coastal Act states, in relevant 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 30223 of the Coastal Act states:

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

The Commission finds that Urban Design Element Policy 6.5, which applies to the Doheny Village area of the City on the east side of San Juan Creek in Capistrano Beach, must be denied as submitted because it is not in conformity with the public access and recreation policies of Chapter 3. The San Juan Creek is an area that is distinctly suitable to provide recreation facilities along its banks and trail access which would link inland areas with the coastal zone. As proposed, the LUP amendment does not reserve this area for public recreational opportunities. Further, the mid-scale land use map submitted is not detailed enough to confirm whether the Recreation/Open Space land use designation for San Juan Creek extends to the top of the east bank. Therefore, the Commission finds that the proposed LUP amendment must be denied. As modified to reserve the top of the east bank of the creek for public recreational opportunities, the Commission finds that the proposed LUP amendment would be consistent with the Chapter 3 policies of the Coastal Act.

City Of Dana Point LCP Amendment 1-98

2. Existing Capistrano Beach Specific Plan/Local Coastal Program

The only additional modification necessary for the proposed LUP amendment involves clarification that the existing certified Capistrano Beach Specific Plan/Local Coastal Program prepared by the County of Orange would no longer be in existence or applicable, as a result of this proposed LUP amendment. Such a modification has been suggested to the introduction to the Land Use Element. Thus, as modified, the Commission finds that the proposed LUP amendment would be consistent with the Chapter 3 policies of the Coastal Act.

VIII. IMPLEMENTATION ACTIONS (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 proposed amendment to the certified City of Dana Point implementing actions, as submitted, does not conform with, nor is it adequate to carry out, the provisions of the certified land use plan ("LUP") and must therefore be rejected. The Commission also finds that, for the reasons described below, the City of Dana Point's proposed amendment to the certified implementing actions, as modified, would be consistent with and adequate to carry out the certified LUP.

A. CONFORMITY WITH THE CERTIFIED LAND USE PLAN

As described previously, the certified LUP consists of the Land Use, Urban Design, and Conservation/Open Space Elements of the City's General Plan. The following abbreviations will be used below: "LUE" for Land Use Element, "UD" for Urban Design Element, and "COS" for Conservation/Open Space Element.

1. Incorporation of Previous Findings

The City of Dana Point Zoning Code has been submitted for certification as the revised implementing actions plan ("IP") for the Capistrano Beach subarea. In its review of the Zoning Code as the IP portion of Dana Point LCP amendment 1-96 for the Monarch Beach subarea of the City, the Commission rejected the IP as submitted and certified the IP with suggested

City Of Dana Point LCP Amendment 1-98

modifications on May 13, 1997. The City's incorporation of the suggested modifications into the LUP was found legally adequate by the Executive Director. On November 5, 1997, the Commission concurred with the Executive Director's determination, thus resulting in the effective certification of Dana Point LCP 1-96.

The City's Zoning Code, as submitted for proposed LCP Amendment 1-98 involving Capistrano Beach, contains the IP suggested modifications as certified under LCP amendment 1-96 solely involving Monarch Beach. The Commission found that the suggested modifications were required to bring the Zoning Code into conformity with the certified LUP. Thus, the Commission finds that the findings for the certification with suggested modifications of the IP portion of Dana Point LCP 1-96 shall be incorporated herein by reference.

However, the effective certification of LCP Amendment 1-96 did not include IP provisions involving the Capistrano Beach area of the City. As a result, the proposed IP amendment must be further modified to address the Capistrano Beach area. In addition, since effective certification of LCP Amendment 1-96, the City has further amended its IP. These IP amendments must be reviewed by the Commission and modified in order to be found consistent with and adequate to carry out the LUP. The modifications are discussed in the following sections.

2. Public Access

Certified LUP Land Use Element Policy 3.11 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. (Coastal Act/30211)

Certified LUP LUE Policy 3.12 states:

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)

Certified LUP LUE Policy 4.3 states:

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)

City Of Dana Point LCP Amendment 1-98

Certified LUP COS Policy 2.15 states:

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)

In certifying the existing LCP in 1986 for the County of Orange and recertifying it in 1989 for the City, the Commission approved the County's original provision for public access along the private Capistrano Bay District community along Beach Road. As certified, the LCP included a lateral access stringline as part of the access provisions for this area. The lateral access stringline identifies the area subject to lateral access according to a generalized formula for all parcels. However, this generalized formula was certified by the Commission prior to the several U.S. Supreme Court rulings which require access dedications to be supported by individualized findings substantiating how an access dedication would be related in nature and extent to the impacts of the specifically proposed development. The City's proposed IP amendment carries over the generalized stringline lateral access provision in proposed Section 9.09.040(a)(1). (see Exhibit 14)

As proposed, the IP amendment also contains the Commission's suggested coastal access ordinance which was developed in response to those court rulings. In certifying City of Dana Point LCP 1-96, the Commission included, as a suggested modification, the incorporation of the Commission's suggested public access ordinance into the City's Zoning Code as Section 9.27.030(a). The Commission's findings for certification of Dana Point LCP 1-96 relative to the access ordinance in Section 9.27.030(a) are hereby incorporated by referenced.

The Commission finds that the proposed IP amendment access provisions in Section 9.09.040(a)(1) and all references to the lateral access stringline throughout the Zoning Code must be deleted. The lateral access stringline provisions must be deleted because they would not ensure that access dedications are related in nature and extent to the impacts of each specifically proposed development. However, the Commission's suggested access ordinance contained in proposed Section 9.27.030(a) is adequate to address the issue of lateral public access in the private Capistrano Bay District community consistent with rulings of the U.S. Supreme Court and the access policies of the certified LUP. Therefore, as modified to delete the proposed lateral access provisions of Section 9.09.040(a)(1) and references to the lateral access stringline, the Commission finds that the proposed IP amendment is consistent with and adequate to carry out the certified LUP.

City Of Dana Point LCP Amendment 1-98

3. Hazards

a) Geologic Hazards/Blufftop Development

Certified LUP COS Policy 2.8 states:

Minimize risks to life and property, and preserve the natural environment, by siting and clustering new development away from 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)

Certified LUP COS Policy 2.10 states:

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)

Certified LUP COS Policy 2.11 states:

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)

Certified LUP COS Policy 2.12 states:

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)

As submitted, Zoning Code Sections 9.05.080 and 9.05.270 of the proposed IP amendment contains provisions which could allow development within the blufftop setback area. Such development could contribute to geological instability. The proposed provisions relate to decks which project over slopes, as well as the placement of pool equipment along rear property lines

City Of Dana Point LCP Amendment 1-98

which could be coastal bluffs. Therefore, the Commission finds that the proposed IP amendment must be rejected.

The Commission finds that the proposed IP amendment must be modified to make clear that the blufftop setback requirements contained in Chapter 9.27 of the Zoning Code (Coastal Overlay District) take precedence over the proposed standards contained in proposed Zoning Code Sections 9.05.080 and 9.05.270 when it comes to development on coastal blufftop lots. 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/Seawalls/Beach Erosion

Certified LUP LUE Policy 4.10 states:

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)

Certified LUP COS Policy 2.1:

Place restrictions on the development of floodplain areas, beaches, sea cliffs, ecologically sensitive areas and potentially hazardous areas. (Coastal Act/30210-12, 30235)

Certified LUP COS Policy 2.5 states:

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

Certified LUP COS 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)

Certified LUP COS Policy 2.15 states:

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).

City Of Dana Point LCP Amendment 1-98

Certified LUP COS Policy 2.16 states:

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)

Certified LUP COS Policy 2.18 states:

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)

Certified LUP COS Policy 2.19 states:

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)

The private beachfront Capistrano Bay District residential community along Beach Road contains many structures which are located below floodplain elevation (i.e., they are not elevated above the level of wave uprush and thus are exposed to potential damage from wave hazards).

As proposed, the IP amendment would weaken the existing IP floodplain regulations. The existing floodplain regulations contain provisions regarding nonconforming uses and structures. By definition, nonconforming structures do not meet floodplain regulations which require structures to be elevated above floodplain level. The existing regulations allow only very minor improvements to nonconforming structures. These improvements are limited to 10% of the market value of the structure per year, and the improvements cannot increase the cubical contents of the structure. (see Exhibits 4 through 13) Thus, additions of enclosed living area are essentially prohibited by the existing LCP. Also, the existing regulations require damaged non-conforming structures to be repaired so as to conform to the floodplain regulations (i.e., be elevated).

As proposed, the IP amendment would allow improvements to existing nonconforming, non-elevated structures up to 50% of the market value of the structure. Also, damaged nonconforming structures would not have to be elevated unless the repair cost exceed 50% of the market value. Thus, the proposed IP amendment would allow for greater additions to

City Of Dana Point LCP Amendment 1-98

nonconforming structures subject to flood hazard because they are not elevated above floodplain elevation.

The proposed IP amendment would allow additional improvements to a nonconforming structure that would both extend the economic life of the structure and continue to expose it to risk of flood hazards. Further, the proposed IP amendment would result in the potential need for larger seawalls than necessary to protect these improved homes. A larger nonconforming structure would need a larger seawall. A larger seawall would have greater adverse impacts to shoreline sand supply than would a smaller seawall. As described below, the City's coastal engineering report discourages the use of seawalls as protective devices, describing as a last resort option.

The final environmental impact report ("EIR") for the General Plan, Local Coastal Program, and Zoning Code (SCH # 91021054 dated June 12, 1991) points out the dangers that the Capistrano Bay District private community faces from wave damage. The EIR (Page 5.9-2) indicates that ". . . residential development along Beach Road could incur significant damage in the event that a tsunami generated from the southern Pacific Ocean struck Dana Point."

Further, the City's General Plan Coastal Erosion Technical Report ("Report"), prepared by Zeiser Geotechnical Inc. (Project No. 89312-2 dated July 11, 1990), also documents the wave hazards faced by the Capistrano Bay District private community. For example, Pages 14-15 of the Report states:

I. Capistrano Beach/Doheny Beach Sub[unit]

The historical record of beach erosion and property damage due to storm waves is significant within this subunit . . . , specifically the records of elevated storm wave heights during the 1939 through 1941, 1958, 1974, 1983, and 1988 storms, associated with the southerly El Nino Southern-Oscillation-Even (ENSO) . . . It is strongly recommended that any new development or construction within the single-family-residential district of Capistrano Beach Private Community should be restricted to construction of coastal erosion protection devices, or modifications to existing structures which serve dual purposes as erosion-protection devices. Seaward construction or additions to existing structures are not encouraged. Permits should not be granted for removal of existing structures where the intent exists to develop new homes along Beach Road. As stated by a previous consultant, residential subdivisions and zoning should never have occurred along Capistrano Beach (R and M Consultants, 1982). The US Army Corps of Engineer's Beach Erosion Control Board noted in 1959 that marine erosion had the eventual potential to destroy the entire development seaward of the Santa Fe railroad easement.

As the Report further points out (page 38):

The two most important facts which coastal residents and planners must remember about beaches are, (1) they are temporary features that undergo regular and sometimes dramatic seasonal changes; the beach and the ocean are in a dynamic equilibrium, such that when

City Of Dana Point LCP Amendment 1-98

one changes, the other must adjust. So if a house is built on a wide beach during the summer, it should be no surprise to the owner to find the ocean in the living room during a winter storm: (2) where fronting a bluff or sea cliff, beaches act as effective buffers or shock absorbers against wave attack.

Pages 4-6 of the Report contain mitigation alternatives, planning options, and policy recommendations regarding this matter. This section of the Report indicates that, after the bluffs in Capistrano Beach, the southern part of the Capistrano Bay District private community is ranked second in severity level of hazards. The Report also cautions that qualitative data indicates that historic storm events in the first half of the 19th century (prior to the start of official records) may have produced considerable coastal damage. In addition, Table 1 of the Report indicates that the Capistrano and Doheny Beaches are subject to severe beach erosion. Thus, the proposed IP amendment to weaken floodplain regulations, resulting in exposure nonconforming structures to flood hazards, must be rejected.

The Report contains recommended measures to mitigate coastal erosion (Page 5). The Report indicates that sea walls are self-cannibalizing by nature, tend to produce dangerous increases in wave run-up elevations, and should be employed as a last resort protective devices for beaches in the Doheny Beach/Capistrano Beach subunit. The Report also states that coastal protection should account for the possible superposition of elevated storm surges and predictable perigean/proxigean spring tides that would cause significant wave uprush and result in flood hazards. The Report also recommends the establishment of Geologic Hazard Abatement Districts for Capistrano Beach to establish cooperation in preventing coastal hazards and to provide state and local subsidies for mitigative measures.

Regarding specific shoreline protection measures for Capistrano Beach, the Report indicates that [s]tructural underpinning of existing structures not currently on deep pile foundations (caisson-and-grade-beam systems) is recommended for the southernmost segment of Capistrano Beach." The report indicates that seawalls and slope stone revetments are not recommended in this area, given their self-cannibalizing nature. The Report does acknowledge that for the northern part of Capistrano Bay Community (north of Pines Park located on the inland bluffs above the community), seawalls produce lower calculated run-up elevations (and thus less beach erosion, consistent with LUP COS Policy 2.14) and thus are favored over revetments.

Since the Report discourages the use of seawalls in southern Capistrano Bay District, the only option in this area for flood protection is to elevate structures above floodplain level, or at least extensive structural underpinnings. As described above, throughout this area, the Report states that "[S]eaward construction or additions to existing structures are not encouraged." Thus, allowing more additions to existing structures, as proposed by the IP amendment, is actually discouraged by the City's Report. The Report also encourages that new development in the private Capistrano Bay District be restricted only to coastal erosion protection devices or modifications to existing structures which serve dual purposes as erosion-protection devices. Thus, the report further discourages modifications to existing structures unless they result in coastal protection, such as the elevation of the structures.

City Of Dana Point LCP Amendment 1-98

The Report also discourages the construction of new homes on Beach Road. It notes a 1959 Army Corps of Engineers report which states that the Capistrano Bay District private community, which dates back to the early part of the 20th century, should not have been subdivided. However, the District is mostly built out. Further, development in existing, legal subdivisions cannot be completed prohibited. For example, if an existing structure were damaged beyond repair, due to flood hazards or other reasons such as a fire, a replacement structure would have to be allowed to meet constitutional mandates. Therefore, the IP must contain regulations, such as contained in the existing LCP, that ensure that this type of new development is constructed above floodplain elevation to minimize wave hazards.

The Report also encourages the use of beach nourishment as a protection option against beach erosion. The LUP submitted contains policies, cited above, encouraging beach nourishment. Beach nourishment is a first line defense against wave hazards, since a wide beach reduces the possibility of wave uprush reaching development along the beach. However, as the Report indicates, beaches constantly erode. Thus, beach nourishment is not a permanent protection option. Thus, beachfront development must be designed to be elevated above floodplain elevation to minimize risks to life and property from wave hazards.

As modified to reinsert the existing floodplain regulations, the Commission finds that the proposed IP amendment would result in safer beachfront development which minimizes risks from flood hazards due to wave uprush. Further, while other jurisdictions in Southern California have adopted floodplain regulations similar to those in the proposed IP amendment, these regulations typically have not been certified for inclusion in those jurisdictions' LCPs. Thus, as modified, the Commission finds that the proposed IP amendment will be consistent with and be adequate to carry out the certified LUP policies regarding flood hazards.

Finally, as submitted, the Amendment to the City of Dana Point's certified implementing actions does not contain standards for the design of shoreline protective devices. Thus, the Commission finds that the Proposed amendment to the City of Dana Point's certified implementing actions as submitted is not adequate to carry out, nor is it in conformance with, the LUP policies regarding shoreline protective devices. The Report contains a specific design requirement for seawalls in the private Capistrano Bay District. Thus, as modified for the inclusion of this standard, the Commission finds that the Proposed amendment to the City of Dana Point's certified implementing actions is consistent with, and adequate to carry out, the policies of the Land Use Plan Amendment.

4. Visual Impacts

Certified LUP UD Policy 2.1 states:

Consider the distinct architectural and landscape character of each community. To the maximum extent feasible, protect special communities and neighborhoods which, because of

City Of Dana Point LCP Amendment 1-98

their unique characteristics, are popular visitor destination points for recreational uses. (Coastal Act/30251)

Certified LUP COS Policy 6.4 states:

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)

The Commission's suggested modifications to delete the proposed floodplain regulations and retain the existing certified floodplain regulations, as discussed above, would not result in the blockage of public views to and along the shoreline. While the existing floodplain regulations encourage the elevation of buildings onto pilings, this would not result in public view blockage. The view from the first public road is already blocked by the existing homes along Beach Road in the Capistrano Bay District private community as well as the wall separating the community from the Amtrak/Metrolink railroad tracks. Further, the LCP structural stringlines prevent seaward encroachment of structures which would block lateral public views along the beach. Since the approximately 1 ½ mile long beach is private and only accessible to the public from the northernmost and southernmost end, the public does not regularly use this beach anyway.

In addition, many homes in the District have already been elevated to protect them from flood hazards. Thus, the architectural character of the District has already been altered, and elevated homes are already consistent with the community character. More importantly, because the community is private and generally inaccessible to the public, it is not a neighborhood which, because of its unique characteristics, is a popular visitor destination point for recreational uses. Thus, the Commission finds that the proposed IP amendment, as modified, is consistent with the certified LUP policies regarding visual impacts and community character.

5. Landform Alteration

Certified LUP COS Policy 2.11 states:

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)

City Of Dana Point LCP Amendment 1-98

As submitted, Zoning Code Sections 9.05.080 and 9.05.270 of the proposed IP amendment contains provisions which would allow decks which project out over slopes. If these slopes are coastal blufftop lots, then the types of projections allowed would result in visual blight which does not preserve the City's bluffs as a natural and scenic resource. Therefore, the Commission finds that the proposed IP amendment must be rejected.

The Commission finds that the proposed IP amendment must be modified to make clear that the blufftop setback requirements contained in Chapter 9.27 of the Zoning Code (Coastal Overlay District) take precedence over the proposed standards in Zoning Code Sections 9.05.080 and 9.05.270 when it comes to development on coastal blufftop lots. This would ensure that these types of decks are not allowed on coastal blufftop lots, thus preserving the natural character of the bluffs. Therefore, as modified, the Commission finds that the Proposed amendment to the City of Dana Point's certified implementing actions would be adequate to carry out, and be in conformance with, the policies of the Land Use Plan Amendment.

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.

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 implementing actions 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.

City Of Dana Point LCP Amendment 1-98

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

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.

1. Incorporation of Previous Findings

The City of Dana Point Zoning Code has been submitted for certification as the revised implementation plan ("IP") for the Capistrano Beach subarea. The existing CPD ordinance for the Capistrano Beach area, prepared by the County of Orange, has not been updated since it was effectively certified in 1987. Thus, the Commission finds that its replacement by the City's Zoning Code, as proposed under LCP Amendment 1-98, would be a significant improvement since the City's Zoning Code was previously found by the Commission to be adequate to transfer permitting authority under Dana Point LCP Amendment 1-96.

In its review of the coastal development permitting procedures contained in the Zoning Code as the IP portion of Dana Point LCP amendment 1-96 for the Monarch Beach subarea of the City, the Commission rejected the IP as submitted and certified the IP with suggested modifications on May 13, 1997. The suggested modifications were necessary to ensure the LCP was adequate to transfer coastal development permitting authority. The City's incorporation of the suggested modifications into the IP was found legally adequate by the Executive Director. On November 5, 1997, the Commission concurred with the Executive Director's determination, thus resulting in the effective certification of Dana Point LCP 1-96.

The City's Zoning Code, as submitted for proposed LCP Amendment 1-98, contains the IP suggested modifications as certified under LCP amendment 1-96. As discussed above, the Commission found that the suggested modifications were required to allow permitting authority to be transferred to the City. Thus, the Commission finds that the findings for the certification with suggested modifications of the IP portion of Dana Point LCP 1-96 shall be incorporated herein by reference.

City Of Dana Point LCP Amendment 1-98

However, as described below, additional modifications must be made, in response to requests by the City, subsequent statutory changes, and to clarify existing procedures that have proven to be confusing in practice over the last year.

2. Additional Modifications

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.

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 Implementing actions 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 The implementing actions 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.

3. Permit Authority Which Passes To Local Government

a) Emergency Permits

A procedure to allow the City to issue Section 30624 emergency permits in non-appealable areas is contained in the Implementing actions as proposed. However, the implementing ordinance does not make clear that, consistent with Section 30519 of the Coastal Act, the authority for reviewing follow-up regular coastal development permits to emergency permits issued by the Commission in the appeals area transfers to the City of Dana Point upon certification. Therefore, the Commission finds that the proposed IP amendment must be rejected as submitted. As modified, the proposed amendment to the City of Dana Point's certified implementing actions would make this clear. Thus, as modified, the proposed Amendment to the City of Dana Point's

City Of Dana Point LCP Amendment 1-98

certified implementing actions would be adequate to transfer Coastal Act authority to the City. (See Suggested Modifications to Proposed Section 9.69.150)

b) Amendments to Coastal Development Permits

As submitted, the Proposed amendment to the City of Dana Point's certified implementing actions allows for amendments to coastal development permits, including the applicable requirements of the Coastal Act and Section 13166 of Title 14 of the California Code of Regulations. However, the IP amendment as submitted must clarify that the City does not have the ability to process amendments to coastal development permits approved by the Coastal Commission prior to LCP certification. Section 30519(a) of the Coastal Act, as stated above, provides that Coastal Act Chapter 7 development review authority passes to local governments after LCP certification only for "new development". Any proposal which amends development previously approved by the Commission does not constitute new development. Therefore, the authority to approve development which would amend a previous permit approved by the Commission before certification does not transfer to local governments.

If the Proposed amendment to the City of Dana Point's certified implementing actions is modified to clarify this point, then it would be adequate to transfer coastal development permitting authority to the City (see suggested modifications to Zoning Code Section 9.69.130).

c) Administrative Coastal Development Permits

As submitted, the IP amendment proposes administrative permit procedures contained in Sections 9.69.030 and 9.69.110 of the Zoning Code that: (1) do not provide for notice of final action to the Coastal Commission, (2) do not make clear that administrative permits cannot be issued by the Director of Community Development in appealable areas, and 3) do not make clear that the Director of Community Development cannot amend administrative permits issued by the Executive Director, and therefore must be rejected. Therefore, Section 9.69.110 must be modified to include requirements for the provision of notice of final action to the Coastal Commission.

Further, Section 9.69.110 must be modified to make clear that the City only has the ability to amend administrative permits it issues, and not administrative permits issued by the Executive Director of the Coastal Commission prior to LCP certification. This is because, as described under subsection c) above regarding amendments, the delegation of permitting authority pursuant to Section 30519(a) only extends to "new development" and not amendments to previously approved development.

In addition, Section 9.69.030 must be modified to make clear that the Director of Community Development cannot issue administrative permits for appealable development. As stated in Sections 9.61.050 and 9.69.060 of the Zoning Code, and consistent with Section 13566 of the Commission's regulations, at least one public hearing shall be held on each application for

City Of Dana Point LCP Amendment 1-98

appealable development. However, the provisions for the issuance of administrative permits by the Director of Community Development do not involve public hearings, as specified in Section 9.69.060(d) of the Zoning Code. Therefore, the Commission finds that Section 9.69.030 must be denied as submitted and modified to clarify this point.

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.

4. 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.

The Commission finds that it is necessary to modify Section 9.69.100 of the Zoning Code to clarify noticing procedures after City action. Modifications include formatting the requirements in the form of a list, to the extent possible, rather than having them lumped in a paragraph so that the different requirements are easier to see for all involved. Further, the modifications include provisions describing what the City must do if its notices of final action are deficient.

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. The City of Dana Point Proposed amendment to the City of Dana Point's certified implementing actions as submitted contains adequate provisions for amendments of the Local Coastal Program. The submitted IP provisions were found by the Commission to be adequate to transfer coastal development permit authority when it certified LCP amendment 1-96.

However, as submitted, the IP amendment can be interpreted to mean that amendments to the General Plan and Zoning Code are not effective Citywide, including the portions of the City outside the coastal zone, until effectively certified by the Commission. Therefore, the Commission suggests a modification which would clarify that amendments to the General Plan and Zoning Code would not be effective in the coastal zone until they are effectively certified. In

City Of Dana Point LCP Amendment 1-98

this way, the City could use General Plan and Zoning Code amendments for development outside the coastal zone as soon as the amendments are effective at the City level. However, the Commission finds that in the coastal zone, it must first effectively certify General Plan and Zoning Code amendments before the amendments can be used for local coastal program purposes.

In addition, the IP amendment is being modified to provide additional guidance regarding the requirements necessary for an LCP submittal.

6. Conclusion (Coastal Development Permit Processing Procedures)

With the modifications to Chapters 9.61 and 9.69 of the proposed Zoning Code, the Commission finds that the City of Dana Point LCP Amendment 1-98 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 1-98 consists of a Land Use Plan (LUP) amendment and an Implementation Plan (IP) amendment.

As currently proposed, 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. 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.

City Of Dana Point LCP Amendment 1-98

Given the proposed mitigation measures, the Commission finds that the City of Dana Point Local Coastal Program Land Use Plan and Proposed amendment to the City of Dana Point's certified implementing actions, 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 coastal development permit 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.

City Of Dana Point LCP Amendment 1-98

LIST OF EXHIBITS

- Exhibit 1: Map of the City of Dana Point
Exhibit 2: LCP submittal resolution (City Council Resolution 98-02-10-02)
Exhibit 3: LCP submittal letter (April 24, 1998 letter from the City to the Commission)

Floodplain Regulations

- Exhibit 4: May 13, 1998 letter from the City to the Commission re: floodplain issue
Exhibit 5: Proposed Zoning Code Chapter 9.31 – Floodplain Overlay District
Exhibit 6: Proposed definitions of “Substantial Damage” and “Substantial Improvement” in proposed Zoning Code Section 9.75.190 (“S” Definitions)
Exhibit 7: Existing IP reference to existing LCP floodplain regulations
Exhibit 8: Existing LCP floodplain regulations re: non-conforming structures
Exhibit 9: September 22, 1993 letter from the attorneys for the Capistrano Bay District to the City of Dana Point re: floodplain regulations
Exhibit 10: July 2, 1993 letter from the attorneys for the Capistrano Bay District to the City of Dana Point re: floodplain regulations
Exhibit 11: June 1, 1993 letter from the attorneys for the Capistrano Bay District to the City of Dana Point re: floodplain regulations
Exhibit 12: May 4, 1993 letter from the attorneys for the Capistrano Bay District to the City of Dana Point re: floodplain regulations
Exhibit 13: Letter from Mr. and Mrs. Ralph Mardsen to the Commission received October 1, 1998 re: floodplain regulations

Lateral Access Stringline

- Exhibit 14: Proposed Zoning Code Section 9.09.040(a) re: development in the Residential Beach Road 12 (RBR 12) and Residential Beach Road Duplex 18 (RBRD 18) districts, and lateral access stringline table

{The following exhibits will be sent under separate cover at a later date}

Land Use Plan (“LUP”) Amendment Submittal

- Exhibit 15: Policies of the General Plan Land Use, Urban Design, and Conservation/Open Spaces Elements as first proposed for the LUP (under Dana Point LCP 1-96)
Exhibit 16: Suggested modifications for the LUP as effectively certified under Dana Point LCP 1-96 and incorporated into the submittal for proposed Dana Point LCP 1-98

Implementing Actions Plan Amendment Submittal

- Exhibit 17: Ordinance 96-13
Exhibit 18: Ordinance 97-02
Exhibit 19: Ordinance 97-12
Exhibit 20: Chapter 9.27 of the Zoning Code
Exhibit 21: Chapter 9.61 of the Zoning Code
Exhibit 22: Chapter 9.69 of the Zoning Code

Dana Point LCP 1-98 for the November 1998 hearing

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
1000 Ocean Gate, Suite 1000
Dana Point, CA 90902-4302
(714) 590-5071

Fr. 11.C.

October 15, 1998

City of Dana Point LCP 1-98

For the November 1998 hearing

Exhibits 1 through 14

- Exhibit 1: Map of the City of Dana Point
- Exhibit 2: LCP submittal resolution (City Council Resolution 98-02-10-02)
- Exhibit 3: LCP submittal letter (April 24, 1998 letter from the City to the Commission)
- Exhibit 4: May 13, 1998 letter from the City to the Commission re: floodplain issue
- Exhibit 5: Proposed Zoning Code Chapter 9.31 – Floodplain Overlay District
- Exhibit 6: Proposed definitions of "Substantial Damage" and "Substantial Improvement" in proposed Zoning Code Section 9.75.190 ("S" Definitions)
- Exhibit 7: Existing IP reference to existing LCP floodplain regulations
- Exhibit 8: Existing LCP floodplain regulations re: non-conforming structures
- Exhibit 9: September 22, 1993 letter from the attorneys for the Capistrano Bay District to the City of Dana Point re: floodplain regulations
- Exhibit 10: July 2, 1993 letter from the attorneys for the Capistrano Bay District to the City of Dana Point re: floodplain regulations
- Exhibit 11: June 1, 1993 letter from the attorneys for the Capistrano Bay District to the City of Dana Point re: floodplain regulations
- Exhibit 12: May 4, 1993 letter from the attorneys for the Capistrano Bay District to the City of Dana Point re: floodplain regulations
- Exhibit 13: Letter from Mr. and Mrs. Ralph Mardsen to the Commission received October 1, 1998 re: floodplain regulations
- Exhibit 14: Proposed Zoning Code Section 9.09.040(a) re: development in the Residential Beach Road 12 (RBR 12) and Residential Beach Road Duplex 18 (RBRD 18) districts, and lateral access stringline table

City of Laguna Beach

SECTION 9.01.060(b)

EXISTING SPECIFIC PLANS, PLANNED COMMUNITIES, AND LOCAL COASTAL PROGRAM INDEX MAP

Replaced by 3 G.P. Elements and Zoning Code as a result of LCP Am. 1-96

City of Laguna Niguel

Bear Brand Hill Planned Community

Bear Brand Planned Community

City of San Juan Capistrano

COASTAL COMMISSION Dana Point LCP 1-98

EXHIBIT # 1 PAGE 1 OF 1

Orange County Zoning Code

South Laguna Specific Plan/LCP

Laguna Niguel Planned Community

Dana Strands Orange County Zoning Code not certified

Dana Point Specific Plan/LCP

not part of this LCP Amendment 1-98

Dana Point Harbor Planned Community

Capistrano Beach Specific Plan/LCP

proposed to be replaced by 3 G.P. elements and Zoning Code



Monarch Beach



Capistrano Beach

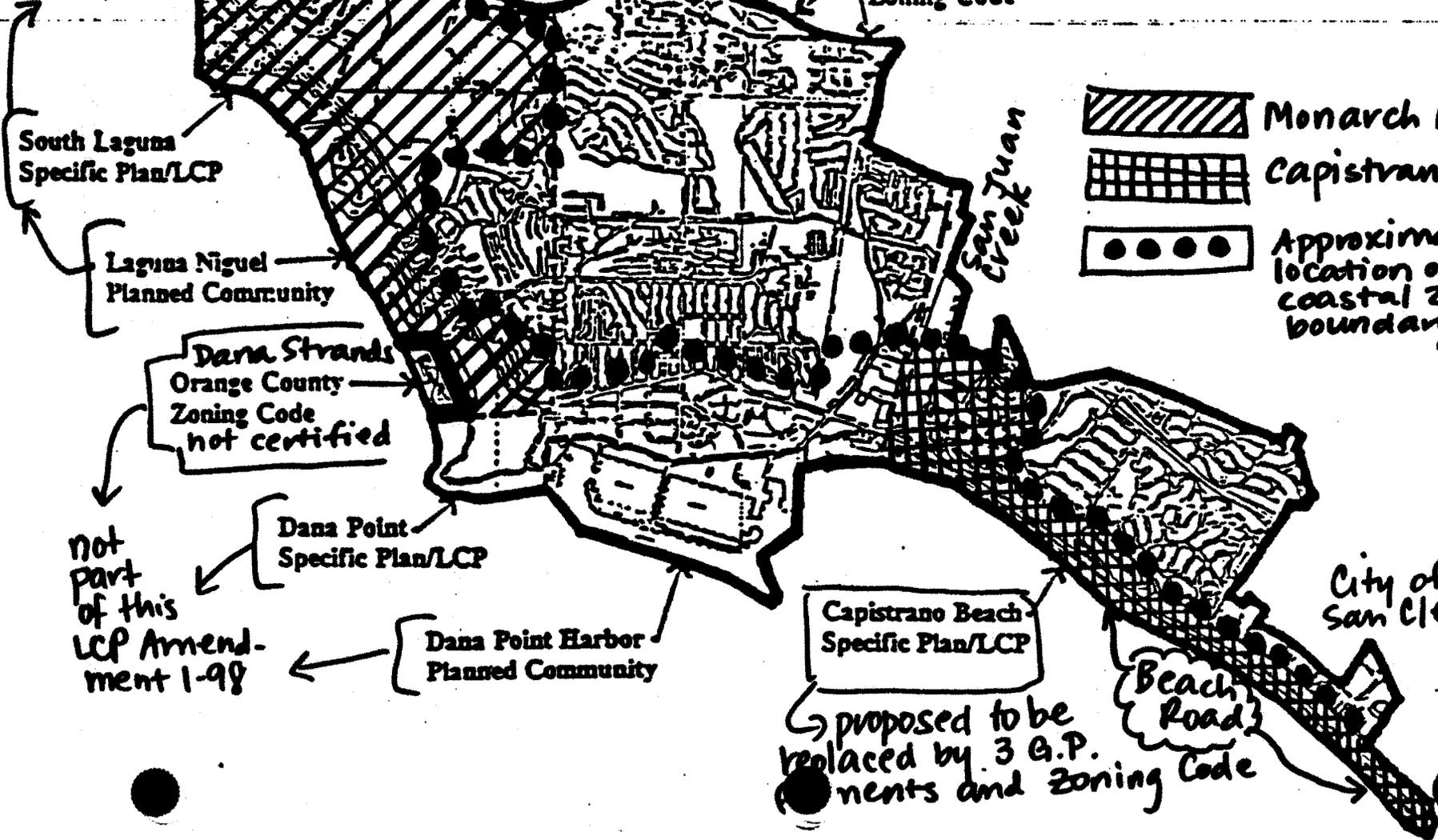


Approximate location of coastal zone boundary

San Juan Creek

City of San Clemente

Beach Road



RESOLUTION NO. 98-02-10-02

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DIRECTING STAFF TO PREPARE AND SUBMIT AN APPLICATION TO THE CALIFORNIA COASTAL COMMISSION FOR CERTIFICATION OF LOCAL COASTAL PROGRAM AMENDMENT LCPA98-01, AMENDING THE CITY'S LOCAL COASTAL PROGRAM TO REPLACE THE CAPISTRANO BEACH SPECIFIC PLAN/LOCAL COASTAL PROGRAM WITH THE LAND USE, CONSERVATION/OPEN SPACE, AND URBAN DESIGN ELEMENTS OF THE DANA POINT GENERAL PLAN (EXCEPT FOR THOSE SECTIONS WHICH APPLY SOLELY TO THE DANA POINT HEADLANDS, TOWN CENTER, OR DANA POINT HARBOR, AS AMENDED AND THE DANA POINT ZONING CODE (EXCEPT FOR CHAPTER 9.25), AS AMENDED

**Applicant: City of Dana Point
File No.: FF# 0630-30/LCPA98-01**

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 replace the Capistrano Beach Specific Plan/Local Coastal Program; 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 replace the Capistrano Beach Specific Plan/Local Coastal Program; 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 the Chapter 3 policies of the Coastal Act; and

WHEREAS, the Dana Point Zoning Code and Map, as amended, are consistent with the General Plan as amended and the Local Coastal Program Land Use Plan; 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 June 18, 1991, hold a duly noticed public hearing and, after consideration, adopted Resolution 91-06-18-31 recommending City Council approval of the Dana Point General Plan; and

WHEREAS, the Planning Commission did on July 16, 1997, hold a duly noticed public hearing and, after consideration, adopted Resolution 97-07-16-30 recommending City Council approval of the Coastal Commission's suggested modifications to the Land Use, Conservation/Open Space and Urban Design Elements of the Dana Point General Plan; and

**COASTAL COMMISSION
Dana Point LCP1-98**

**CITY COUNCIL RESOLUTION NO. 98-02-10-02
LOCAL COASTAL PROGRAM AMENDMENT LCPA98-01
PAGE 2**

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, on July 25, 1995 by Zoning Text Amendment ZTA95-07, on July 22, 1997 by Zone Text Amendment 97-01, and on August 26, 1997 by Zone Text Amendment ZTA97-02 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, Local Coastal Program Amendment LCPA98-01 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

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

WHEREAS, Local Coastal Program Amendment LCPA98-01 shall not include Chapter 9.25 (Harbor District) of the Zoning Code; and

WHEREAS, Local Coastal Program Amendment LCPA98-01, 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

*Dana Point LCP 1-98
Exhibit 2, p. 2 of 5*

**CITY COUNCIL RESOLUTION NO. 98-02-10-02
LOCAL COASTAL PROGRAM AMENDMENT LCPA98-01
PAGE 3**

Capistrano Beach Specific Plan/Local Coastal Program; and

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Dana Point hereby directs staff to prepare and submit an application to the California Coastal Commission for certification of Local Coastal Program Amendment LCPA98-01 to the City's Local Coastal Program with the sections of the Land Use, Conservation/Open Space, and Urban Design Elements of the Dana Point General Plan specified above, as amended, and the Dana Point Zoning Code (except Chapter 9.25), as amended.

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 (LCPA98-01) would replace the Capistrano Beach 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 Capistrano Beach Specific Plan/Local Coastal Program.**
- 5. That until such effective certification, the existing certified Capistrano Beach 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 Capistrano Beach Specific Plan/Local Coastal Program.**
- 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.**

COASTAL COMMISSION
Dana Point LCP 1-98

**CITY COUNCIL RESOLUTION NO. 98-02-10-02
LOCAL COASTAL PROGRAM AMENDMENT LCPA98-01
PAGE 4**

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 LCPA98-01 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 LCPA98-01 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.

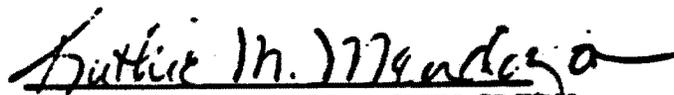
BE IT FURTHER RESOLVED that Local Coastal Program Amendment LCPA98-01 shall be submitted to the California Coastal Commission for approval and certification.

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 10th day of February, 1998.


WILLIAM OSSENMACHER, MAYOR

ATTEST:


KATHIE M. MENDOZA, CITY CLERK

RE:\Mick\lcpa9801.FIL\CC980210.RES

**COASTAL COMMISSION
Dana Point LCP 1-98**

EXHIBIT # 2
PAGE 4 OF 5

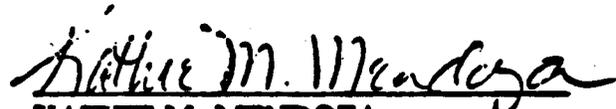
STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF DANA POINT)

ss AFFIDAVIT OF POSTING

I, **KATHIE M. MENDOZA**, City Clerk of the City of Dana Point, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 98-02-10-02 adopted by the City Council of the City of Dana Point, California, at a regular meeting thereof held on the 10th day of February, 1998, by the following vote:

AYES: COUNCIL MEMBERS KAUFMAN, LLOREDA, NETZLEY AND MAYOR
OSSENMACHER
NOES: NONE
ABSENT: MAYOR PRO TEM GALLAGHER
ABSTAIN: NONE

(SEAL)


KATHIE M. MENDOZA,
CITY CLERK

COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 2
PAGE 5 OF 5



April 24, 1998

RECEIVED
MAY 1 1998

Chuck Damm, District Director
California Coastal Commission, South Coast Area
200 Oceangate, 10th Floor
Long Beach, California 90802-4416

CALIFORNIA
COASTAL COMMISSION

**SUBJECT: SUBMITTAL FOR LOCAL COASTAL PROGRAM CERTIFICATION ON
THE CAPISTRANO BEACH SPECIFIC PLAN SEGMENT**

Dear Chuck:

The City of Dana Point is pleased to submit the attached materials required to initiate, review and process the City's application for Local Coastal Program Certification for the Capistrano Beach Specific Plan segment. The information included in this submittal is provided based on my conversations with John Auyong of your office and I believe that all the required information is included. The City appreciates your efforts to assist us in coordinating this application and understands that additional materials may be requested upon completion of the review of this submittal. Please advise me at your earliest convenience of any deficiencies.

This submittal includes three (3) copies of the Dana Point Zoning Code which have been updated to reflect the changes adopted by the Dana Point City Council last August in response to the Coastal Commission's action to certify the LCP for the South Laguna and Laguna Niguel segments. In addition, there are three copies of the City Council's August 26 resolution representing the revisions made to the City's General Plan as it has not yet been updated. Also included are public meeting notices, a mailing list, a list of public speakers and the City Council Resolution from a meeting on February 10 where the Council authorized the submittal for certification of the Capistrano Beach segment. This submittal is made in compliance with all applicable provisions and procedural requirements of the California Coastal Act.

I have also submitted three copies of each ordinance adopted since November 1996 which affected the text of the Zoning Code. There are three ordinances in this category and they affected three minor changes in development standards. The first established a graduated height limit for residential structures based on roof pitch, the second redefined the term basement and the third prohibited "Minor Automotive Uses" in the Community Commercial/Pedestrian (CC/P) district and modified the setbacks for pool equipment in residential rear yards.

One additional issue I would like to have considered as part of this certification process is an amendment to Section 9.69.150(g) of the Dana Point Zoning Code which prohibits the City from issuing emergency permits in the appeal jurisdiction area. Based on recent experience, we have found this provision to be somewhat confusing and contrary to the intent of emergency permits,

Dana Point LCP 1-98 Exhibit 3 p. 1 of 2

Chuck Damm
April 24, 1998
Page 2

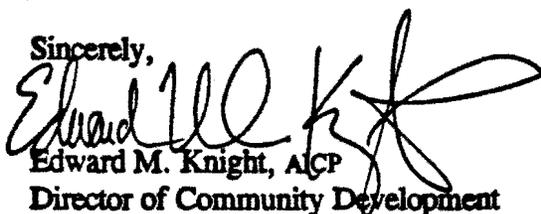
which is to issue such permits in an expedient manner proportionate to the nature of the emergency. Having one agency issue the emergency permit while a different agency issues the permanent permit can cause a great deal of redundant effort and tends to function as a hindrance for the applicants. We respectfully request that you consider this change as a recommended modification during your certification review.

While we are confident that this submittal is entirely complete, the City is eager to assist your office in whatever way it can in the processing of this application. If any additional information is needed, the City will be prepared to provide supplements to the application at your request and will be available to discuss the submittal by phone or in person at your convenience.

Michael Philbrick has been coordinating this application for me over the past few months with Mr. Auyong. With respect to scheduling, Michael indicated to me that John suggested that it would be possible to have this item on the August agenda, which is currently slated for Huntington Beach. As we anticipate a significant amount of public comment with respect to the Beach Road concerns, this meeting would provide a convenient venue for our residents and we would appreciate it if that schedule could be retained.

Please feel free to contact me directly at (714) 248-3572 should you have any questions regarding our submittal.

Sincerely,


Edward M. Knight, AICP
Director of Community Development

c: John Bahorski

Attachments: City Council Ordinance No. 96-13 (residential building height)
City Council Ordinance No. 97-02 (basement definition)
City Council Ordinance No. 97-12 (minor automotive uses/pool equipment)

COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 3
PAGE 2 OF 2



May 13, 1998

RECEIVED
MAY 20 1998
CALIFORNIA
COASTAL COMMISSION

Mr. John Auyong, Staff Analyst
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA. 90802-4302

Re: Dana Point Local Coastal Program Amendment 1-98.

Dear Mr. Auyong:

Thank you for the response to our recent Local Coastal Program Amendment for the Capistrano Beach Segment. The City will begin to put together the items you requested. Since Mike Philbrick has left the City, a longer time line may be necessary, or at least until the new Staff member can become familiar with the City's submittal. I wanted to also comment on some of the points that you raised in your letter.

In regard to the applicability of recent Zone Text Amendments (96-13,97-02,97-12) that were included in the Capistrano Beach Segment, of course the City would like these changes to apply to the Monarch Beach Segment. The proposed zone text changes are relatively minor in nature; perhaps it would be better to treat these as a separate application for that segment. It would seem the best approach would be to integrate the Capistrano Beach and Monarch Beach Segments into one segment. In that way, the City would have only one segment left to amend (Dana Point segment) and the number of current segments would also be reduced to only one.

You mentioned that the Huntington Beach meeting of August 11-14, 1998 would be the preferred choice. I would agree and would also agree to the one year extension if we can meet the August meeting. If there were unavoidable delays in the processing of this application, then the Oceanside meeting would still be acceptable, since they are relatively the same distance from Dana Point.

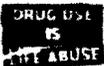
Per your request, City Staff will begin the process to locate and submit the information related to the adoption of the flood regulations regarding Beach Road non-conforming dwellings. This was done in conjunction with the adoption of the Zoning Code, so those records date from 1993. You mentioned that new studies might be needed for changes related to seawall construction. I don't recall any changes to seawall regulations beyond the current LCP regulations, so I would like some further description of the proposed changes that may create the need for these studies.

You mentioned three specific policies in the City's General Plan/Land Use Plan and their relationship to the flood regulations. The flood regulations are consistent with the City's General Plan/Land Use Plan and do not create an inconsistency with the Coastal Land Use Policy document.

COASTAL COMMISSION
Dana Point LCP 1-98

4

EXHIBIT # _____



Mr. John Auyong

May 13, 1998

Page 2

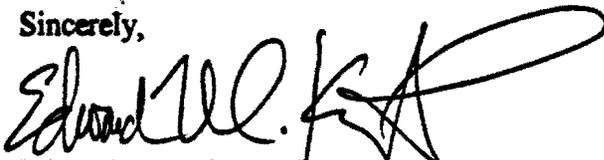
Proposed Policy 4.10 states: *Regulate the construction of non-residential uses on coastal stretches with high predicated storm wave run-up to minimize risk of life and property damage.* The City accomplishes this policy through the adoption of the flood regulations. New constructions as well as existing structures are regulated to keep the risk of flood damage to a minimum. The proposed changes that permit minor additions to existing structures are within the FEMA approved regulations for non-conforming residential structures. They do not change the character or type of use, but permit minor expansions. While this increases the amount of potential loss as the result of a storm, the owners will be aware of that potential and any improvements will be within established and approved Federal regulations.

Proposed Policy 2.15 states: *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.* The intent of this policy is to protect public access and ensure that new construction or additions do not create a situation where the public's safety is compromised as a result of that construction. The City's Zoning Ordinance does not permit additions that violate the current development standards. A property owner can not make additions that would increase the non-conformance or be inconsistent with a current zoning standard. In this way, no addition would encroach into string-line setbacks or permit construction in areas reserved for coastal access easements. So, current standards have been adopted that meet the intent of policy 2.15.

Proposed Policy 2.16 states: *Identify flood hazard areas and provide appropriate land use regulations, such as, but not limited to, the requirement that new construction 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.* The flood regulations clearly accomplish this policy. All new construction must be elevated above the base flood level. The flood regulations also step beyond new construction and regulate additions. Any addition, which is deemed to be a substantial improvement, must also be elevated above flood base level. The flood regulations clearly address not only new construction but also additions, and are consistent with Policy 2.16

I hope that these follow-up discussions help to clarify the intent of these policies and that the City meets the policy language. If you have any further questions or concerns, please do not hesitate to contact me at (714) 248-3567.

Sincerely,


Edward M. Knight, AICP
Director of Community Development

c: Anne Fox, Project Manager

COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 4
PAGE 2 OF 2

Chapter 9.31

FLOODPLAIN OVERLAY DISTRICT

Sections:

9.31.010	Intent and Purpose.
9.31.020	General Provisions.
9.31.030	Permitted, Accessory, Temporary, and Conditional Uses.
9.31.040	Prohibited Uses and Structures.
9.31.050	Administration.
9.31.060	Provisions for Flood Hazard Reduction.
9.31.070	Exception Procedure.

9.31.010 Intent and Purpose.

The three (3) Floodplain Overlay (FP) districts protect the public health, safety, and general welfare from flood hazards by assuring proper use and development.

The FP-1 district is applied to areas shown as "floodway" areas on the FEMA Flood Insurance Rate Map (FIRM), as "floodway" on the other areas in which the City has determined that a floodway exists.

The FP-2 district is applied to "areas inundated by 100 year flood" which are shown as "A," "A1" through "A30," "AO," "AH," "A99," and "M" on FEMA Flood Insurance Rate Maps and areas in which the City has determined to be a special flood hazard area.

The FP-3 district is applied to coastal areas subject to wave action, which are specifically shown as "AE," "E," "VE," "V," and "V1" through "V30" on the FEMA Flood Insurance Rate Maps and areas in which the City has determined to be a coastal high hazard area.

The Floodplain Overlay districts are overlay districts which may be combined with any other zoning district. The floodplain overlay districts provide use, development, and permit requirements that are applied in addition to the underlying zoning district and the requirements of other overlay districts. In the event of conflicting provisions between the underlying district and the overlay districts, the more restrictive requirements shall prevail.

The purposes of the Floodplain Overlay Districts include:

- (a) The Floodplain Overlay districts and the flood hazard areas of the City of Dana Point are subject to periodic inundation which may result in loss of life and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (b) These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities and when inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.
- (c) It is the purpose of this Chapter to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- (1) To protect human life and health;

9.31-1

COASTAL COMMISSION

DANA POINT LCP 1-98

(Dana Point Zoning Code 9-96)

EXHIBIT # 5

PAGE 1 OF 13

9.31.010

- (2) To minimize expenditure of public money for costly flood control projects;
 - (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
 - (4) To minimize prolonged business interruptions;
 - (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets and bridges located in areas of special flood hazard;
 - (6) To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;
 - (7) To ensure that potential buyers are notified that property is in an area of special flood hazard; and
 - (8) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions on the property.
- (d) In order to accomplish its purposes, this Chapter includes methods and provisions for:
- (1) Restricting or prohibiting uses within the Floodplain Overlay Districts which are dangerous to health, safety, and property due to water or erosion hazards or which result in damaging increases in erosion or flood heights or velocities;
 - (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
 - (3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
 - (4) Controlling filling, grading, dredging, and other development which may increase flood damage; and,
 - (5) Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

(Added by Ord. 93-16, 11/23/93)

9.31.020 General Provisions.

- (a) **Lands to Which this Chapter Applies.** This Chapter shall apply to all areas of special flood hazards, areas of flood-related erosion hazards, and areas of mudslide (i.e., mudflow) hazards within the jurisdiction of the City of Dana Point.
- (b) **Basis for Establishing the Areas of Special Flood Hazard.** The areas of special flood hazards, areas of flood-related erosion hazards, and areas of mudslide (i.e., mudflow) hazards identified by the Federal Emergency Management Agency (FEMA) or the Federal Insurance Administration in a scientific and engineering report entitled "Flood Insurance Study" for Orange County, California, and incorporated areas dated September 15, 1989, and February 5, 1992, with accompanying Flood Insurance Rate Map (FIRM) and all subsequent revisions are hereby adopted by reference and incorporated in this Chapter. This Flood Insurance Study is on file at the City of Dana Point. This Flood Insurance Study is the minimum area of applicability of this Chapter and may be supplemented by studies for other areas which allow implementation of this Chapter and which are recommended to the City Council by the Floodplain Administrator.

- (c) **Compliance.** No structure or land shall be constructed, located, extended, converted, or altered without full compliance with the terms of this Chapter and other applicable regulations. Violation of the provisions of this Chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Nothing herein shall prevent the City Council from taking such lawful action as is necessary to prevent or remedy any violation.
- (d) **Abrogation and Greater Restrictions.** This Chapter is not intended to repeal, abrogate, or impair any existing easements, covenants or deed restrictions. However, where this Chapter and another Ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (e) **Interpretation.** In the interpretation and application of this Chapter, all provisions shall be:
 - (1) Considered as minimum requirements;
 - (2) Liberally construed in favor of the governing body; and
 - (3) Deemed neither to limit nor repeal any other powers granted under State Law.
- (f) **Warning and Disclaimer of Liability.** The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Chapter does not imply that land outside the areas of special flood hazards, areas of flood-rated erosion hazards, and areas of mudslide (i.e., mudflow) hazards, or uses permitted within such areas will be free from flooding or flood damages. This Chapter shall not create liability on the part of the City of Dana Point, any officer or employee thereof, for any flood damages that result from reliance on this Chapter or any administrative decision lawfully made thereunder.

(Added by Ord. 93-16, 11/23/93)

9.31.030 Permitted, Accessory, Temporary, and Conditional Uses.

- (a) The following uses are permitted in the Floodplain Overlay districts provided they are in compliance with the applicable provisions of this Chapter:
 - (1) Public flood control and utility facilities;
 - (2) Commercial extraction related to flood control purposes;
 - (3) Accessory uses and structures which may be required by this Chapter.
- (b) Other permitted, accessory, temporary and conditional uses shall be allowed as set forth in the underlying base zoning district, except as specifically prohibited or regulated by this Chapter.

(Added by Ord. 93-16, 11/23/93)

9.31.040 Prohibited Uses and Structures.

The following uses and structures are specifically prohibited in the Floodplain Overlay Districts:

- (a) Structures and uses which would increase flood elevations during the occurrence of a base flood.
- (b) Landfills, excavations, and grading or the storage of materials and equipment that would result in any diversion or increase in erosion, flood levels, or hazards to people or property.

9.31-3

COASTAL COMMISSION

Dana Point LCP 1-98 (Dana Point Zoning Code 2-98)

EXHIBIT # 5

PAGE 3 OF 13

9.31.040

except as may be necessary for the periodic clearing of the mouth of San Juan Creek which incorporate appropriate protections for coastal resources.

- (c) Storage or disposal of floatable substances or materials, or of chemicals, explosives, or toxic materials.
- (d) FP-3 District only:
 - (1) The use of fill for structural support of structures or decks.
 - (2) The placement of mobilehomes, except in an approved mobilehome park or subdivision.
 - (3) Seawalls, 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, 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.
 - (4) Swimming pools and spas below the base flood elevation.

(Added by Ord. 93-16, 11/23/93; amended by Ord. 97-05, 9/9/97)

9.31.050 Administration.

- (a) Site Development Permit Required. A Site Development Permit according to Chapter 9.71 of this Code shall be obtained before construction or development begins within any area of special flood hazards, areas of flood-related erosion hazards, or areas of mudslide (i.e., mudflow) hazards established in or pursuant to Section 9.31.020. Application for a Site Development Permit shall be made on forms furnished by the Director of Community Development and may include, but not be limited to:
 - (1) Plans in duplicate drawn to scale showing the nature, location, dimensions, and elevation of the area in question; existing and proposed structures; structure occupancy, topography, landscape and hardscape, drainage and utility facilities, and the storage of materials;
 - (2) A certificate from a registered civil engineer stating that the information in the application is correct;
 - (3) Proposed elevation in relation to mean sea level of the lowest floor including the basement of all structures; in Zone AO, AE, or VE, V, and V1 through V30, elevation of highest adjacent grade and proposed elevation of lowest floor of all structures;
 - (4) Proposed elevation in relation to mean sea level to which any structure will be floodproofed;
 - (5) All appropriate certifications listed in Section 9.31.050 of this Chapter;
 - (6) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development; and
 - (7) A statement that the standards in Section 9.31.060 have been satisfied.

(b) **Director of Community Development.** The Director of Community Development is hereby appointed to administer and implement this Chapter by granting or denying Site Development Permits in accordance with this Code. Appeals are covered in Section 9.31.070(a). The duties and responsibilities of the Director of Community Development shall include, but not be limited to:

- (1) **Permit Review.** Review all development permits to determine that:
 - (A) The permit requirements of this Chapter have been satisfied;
 - (B) All other required State and Federal permits have been obtained;
 - (C) The site is reasonably safe from flooding;
 - (D) The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this Chapter, "adversely affects" means that the cumulative effect of the proposed development when combined with all other existing and anticipated development which will not increase the water surface elevation of the base flood more than one (1) foot at any point.
 - (E) For the FP-3 District, the development satisfies the design criteria of the Coastal Floodplain Development Study.
- (2) **Use of Other Base Flood Data.** When base flood elevation data has not been provided in accordance with Section 9.31.020, the Director of Community Development shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source, in order to administer this Chapter. Any such information shall first be submitted to the City Council for adoption.
- (3) **Alteration or Relocation of Watercourses.** Whenever a watercourse is to be altered or relocated, the Director of Community Development shall:
 - (A) Notify adjacent communities and the California Department of Water Resources prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration;
 - (B) Require that the flood carrying capacity of the altered or relocated portion of said watercourse is maintained.
- (4) **Maintain Certifications.** Obtain and maintain for public inspection and make available as needed:
 - (A) The certification required in Section 9.31.060(a)(3)(A) (floor elevations);
 - (B) The certification required in Section 9.31.060(a)(3)(B) (elevations in areas of shallow flooding);
 - (C) The certification required in Section 9.31.060(a)(3)(C)3 (elevation or floodproofing of non-residential structures);
 - (D) The certification required in Section 9.31.060(a)(3)(D) or 9.31.060 (a)(3)(D)2 (wet floodproofing standard);
 - (E) The certified elevation required in Section 9.31.060(c)(2) (subdivision standards);
 - (F) The certification required in Section 9.31.060 (e)(1) (floodway encroachments);
 and

9.31.050

- (G) The information required in Section 9.31.060(f)(6) (coastal high hazard construction standards).
- (5) Interpretations. Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards, areas of flood-related erosion hazards, or areas of mudslide (i.e., mudflow) hazards, for example, where there appears to be a conflict between a mapped boundary and actual field conditions. Any person contesting such interpretation may appeal as provided in Section 9.31.070.
 - (6) Remedy Violations. Take action to remedy violations of this Chapter as specified in Section 9.31.020 (c) herein.
 - (7) Act on Site Development Permits. Approve, conditionally approve, or deny Site Development Permits.
- (c) Nonconforming Uses and Structures in the Floodplain Overlay Districts. Any use or structure lawfully existing on any premises that is made nonconforming by the application of this Chapter, or by any amendment of this Chapter, shall be subject to the provisions of Chapter 9.63, Nonconforming Uses and Structures, except as follows:
- (1) Any nonconforming structure may be expanded, enlarged, reconstructed or structurally altered without conforming with the standards of this Chapter, provided that such expansion, enlargement, reconstruction or structural alteration does not constitute a substantial improvement. Any substantial improvement to a nonconforming structure shall be subject to all the regulations of this Chapter.
 - (2) Any nonconforming structure which sustains substantial damage shall be subject to all the regulations of this Chapter.
 - (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.

(Added by Ord. 93-16, 11/23/93; amended by Ord. 97-05, 9/9/97)

9.31.060 Provisions for Flood Hazard Reduction.

- (a) Standards of Construction. In all areas of special flood hazards, the following standards are required:
- (1) Anchoring.
 - (A) All new constructions and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
 - (B) All manufactured homes shall meet the anchoring standards of Section 9.31.060(d).
 - (2) Constructions Materials and Methods.
 - (A) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
 - (B) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

- (C) All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
 - (D) Within Zones A, AH, AO, AE, or VE, adequate drainage paths around structures on slopes shall be installed to guide flood waters around and away from proposed structures.
- (3) Elevation and Floodproofing.
- (A) New construction and substantial improvement of any structure shall have the lowest floor, including basement, elevated to or above the base flood elevation. Nonresidential structures may meet the standards in Section 9.31.060(a)(3)(C). Upon the completion of the structure of the elevation of the lowest floor, including

COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 5

PAGE 7 OF 13

- basement, such structure shall be certified by a registered professional engineer or surveyor and verified by the City Building Inspector to be properly elevated. Such certification shall be provided to the Director of Community Development.
- (B) New construction and substantial improvement of any structure in Zone AO or A shall have the lowest floor, including basement, elevated about the highest adjacent grade at least as high as the depth number specified in feet on the FIRM, or at least two (2) feet if no depth number is specified. Nonresidential structures may meet the standards in Section 9.31.060(a)(3)(C). Upon the completion of the structure, the elevation of the lowest floor, including basement, such structure shall be certified by a registered professional engineer or surveyor and verified by the City Building Inspector to be properly elevated. Such certification shall be provided to the Director of Community Development.
- (C) Nonresidential construction shall either be elevated in conformance with Section 9.31.060 (a)(3)(A) or 9.31.060(a)(3)(B) or shall conform to the following requirements together with attendant utility and sanitary facilities:
1. Be floodproofed so that below the base flood level the structure is watertight with walls substantial impermeable to the passage of water;
 2. Have structural components capable of resisting hydrostatic and hydronamic loads and effects of buoyancy; and
 3. Be certified by a registered professional engineer or architect that the standards of this Subsection are satisfied. Such certification shall be provided to the Director of Community Development.
- (D) New construction and substantial improvements of any structure with fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
1. Either a minimum of two openings having a total net area of not less than one (1) square inch for every square foot enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screen louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters; or
 2. Be certified to comply with a local floodproofing standard approved by the Federal Insurance Administration.
- (E) Manufactured homes shall also meet the standards in Section 9.31.060 (d).
- (b) Standards for Utilities.
- (1) All new and replacement water supply and sanitary sewage systems shall be designed to eliminate or minimize infiltration of flood water into the system and discharge from systems into flood waters.

- (2) On-site waste disposal systems shall be located to avoid impairment or contamination during flooding.
- (c) Standards for Subdivisions.
 - (1) All preliminary subdivision proposals shall identify the flood hazard area and the elevation of the base flood.
 - (2) All final subdivision plans shall provide the elevation of proposed structure(s) and pads. If the site is filled above the base flood, the final pad elevation shall be certified by a registered professional engineer or surveyor and provided to the Director of Community Development.
 - (3) All subdivision proposals shall be consistent with the need to minimize flood damage.
 - (4) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
 - (5) All subdivisions shall provide adequate drainage to reduce exposure to flood hazards.
- (d) Standards for Manufactured Homes. All new and replacement manufactured homes and additions to manufactured homes shall:
 - (1) Be elevated so that the lowest floor is at or above the base flood elevation; and
 - (2) Be securely anchored to a permanent foundation system to resist flotation, collapse, or lateral movement.
- (e) Floodways. Lands located within an Area of Special Flood Hazard established in Section 9.31.020(b) are designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions shall apply:
 - (1) Encroachments, including fill, new construction, substantial improvements, and other development shall be prohibited unless certification by a registered professional engineer or architect is provided demonstrating that the encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
 - (2) If Section 9.31.060(e)(1) is satisfied, all new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of Section 9.31.060.
- (f) Coastal High Hazard Areas. Within coastal high hazard areas established in Section 9.31.020(b), the following standards shall apply:
 - (1) All new construction and substantial improvements shall be elevated on adequately anchored pilings or columns and securely anchored to such pilings or columns so that the lowest horizontal portion of the structural members of the lowest floor excluding the pilings or columns is elevated to or above the base flood elevation.
 - (2) All new construction shall be located on the landward side of the reach of mean high tide.
 - (3) All new construction and substantial improvements shall have the space below the lowest floor free of obstructions or constructed with breakaway walls. Such temporarily enclosed space shall not be used for human habitation.
 - (4) Fill shall not be used for structural support of structures or decks.

- (5) Man-made alteration of sand dunes which would increase potential flood damage is prohibited.
- (6) The Director of Community Development shall obtain and maintain the following records:
 - (A) Certification by a registered engineer or architect that the proposed structure complies with Section 9.31.060(f)(1).
 - (B) The elevation (relation to mean sea level) of the bottom of the lowest structural member of the lower floor (excluding pilings or columns) of all new and substantially improved structures and whether such structures contain a basement.
- (7) Satisfy the design criteria of the Coastal Floodplain Development Study and provide the required wave calculations prepared by a qualified registered Civil Engineer experienced in coastal engineering.
- (8) Decks shall be constructed to meet the following criteria:
 - (A) Wood and raised concrete decks shall be constructed and adequately anchored on caissons or piles installed below the scour elevation and shall be designed by a structural Civil Engineer to withstand the forces of breaking waves and uplift forces to the satisfaction of the Building Official.
 - (B) Concrete decks constructed on existing ground do not require caissons or pile systems.
 - (C) All decks shall be designed to allow wave run-up to go over and under the deck without obstructions.
- (9) Accessories, such as awnings, patio covers, or trellises, shall be adequately anchored and constructed on caisson or pile footing installed below the scour elevation.
- (10) Spas shall be constructed to allow wave run-up under the spa without obstructions. Swimming pools and spas located below the base flood elevation are prohibited.
- (11) The standards for seawalls, revetments, and other shoreline protective devices or construction that alters natural shoreline processes are contained in Section 9.31.040(d)(3) and in Section 9.27.030(f)
- (12) Garages may be constructed at the existing beach elevation and below the base flood elevation if they are anchored on pilings or columns and designed with breakaway panel walls. Subterranean garages are prohibited.
- (g) Mudslide (i.e., Mudflow)-Prone Areas.
 - (1) The Director of Community Development shall review permits for proposed construction or other development to determine if it is located within a mudslide area.
 - (2) Permits shall be reviewed to determine whether the proposed development is reasonably safe from mudslide hazards. Factors to be considered in making this determination include, but are not limited to:
 - (A) The type and quality of soils;
 - (B) Evidence of ground water or surface water problems;
 - (C) The depth and quality of any fill;
 - (D) The overall slope of the site; and
 - (E) The weight that any proposed development will impose on the slope.

- (3) Within areas which have mudslide hazards, the following requirements shall apply:
 - (A) A site investigation and further review shall be made by persons qualified in geology and soils engineering;
 - (B) The proposed grading, excavation, new construction, and substantial improvements shall be adequately designed and protected against mudslide damages;
 - (C) The proposed grading excavation, new constructions, and substantial improvements do not aggravate the existing hazard by creating either on-site or off-site disturbances; and
 - (D) Drainage planting, watering, and maintenance shall not endanger slope stability.
- (h) Flood-Related Erosion-Prone Areas.
 - (1) The Director of Community Development shall require permits for proposed construction and other development within all flood-related erosion-prone areas as known to the City.
 - (2) Such permits shall be reviewed to determine whether the proposed site alterations and improvements will be reasonable safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing hazard.
 - (3) If a proposed construction or development is found to be in the path of flood-related erosion or would increase the erosion hazard, such construction or development shall be relocated or adequate protective measures shall be taken to avoid aggravating the existing erosion hazard.
 - (4) Within Zone "E" on the Flood Insurance Rate Maps, a setback is required for all new development from the ocean, lake, bay, riverfront, or other body of water to create a safety buffer consisting of a natural vegetative or contour strip. This buffer shall be designated according to the flood-related erosion hazard and erosion rate, in relation to the anticipated "useful life" of structures, and depending upon the geologic, hydrologic, topographic, and climatic characteristic of the land. The buffer may be used for suitable open space purposes such as for agricultural, forestry, outdoor recreation, and wildlife habitat areas, and for other activities using temporary and portable structures only.

(Added by Ord. 93-16, 11/23/93; amended by Ord. 97-05, 9/9/97)

9.31.070 Exception Procedure.

(a) Appeal Board.

- (1) The City Council of the City of Dana Point shall hear and decide appeals from the requirements of this Chapter.
- (2) The City Council shall hear and decide appeals when it is alleged there is an error in any requirements, decision, or determination made by the Director of Community Development in the enforcement and administration of this Chapter.
- (3) In acting upon such appeals, the City Council shall consider all technical evaluations, all relevant factors, standards specified in this Chapter, and:
 - (A) The danger that materials may be swept onto other lands to the injury of others;
 - (B) The danger of life and property due to flooding or erosion damage;
 - (C) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

- (D) The importance of the services provided by the proposed facility to the City;
 - (E) The necessity to the facility of a waterfront location, where applicable;
 - (F) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - (G) The compatibility of the proposed use with existing and anticipated development;
 - (H) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (I) The safety of access to the property in time of flood for ordinary and emergency vehicles;
 - (J) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and
 - (K) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems and streets and bridges.
- (4) Generally, exemptions may be issued for new constructions and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided Sections 9.31.070(a)(3)(A) through 9.31.070(a)(3)(K) have been fully covered. As the lot size increases beyond one-half acre, the technical justification required for issuing the exemption increases.
- (5) Upon consideration of the factors of Section 9.31.070(a)(3) and the purposes of this Chapter, the City Council may attach such conditions to the granting of exemptions as it deems necessary to further the purposes of this Chapter.
- (6) The Director of Community Development shall maintain the records of all appeal actions and report any exemptions to the Federal Insurance Administration upon request.
- (b) Conditions for Exemption.
- (1) Exemptions may be issued for the reconstruction, rehabilitation, or restoration of structures listed in the National Register of Historic Places or the State Inventory of Historic Places, without regard to other conditions set forth herein.
 - (2) Exemptions shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
 - (3) Exemptions shall only be issued upon a determination that the exemption is the minimum necessary, considering the flood hazard, to afford relief.
 - (4) Exemptions shall only be issued if the Zoning Map includes property within a Floodplain Overlay District of that property does not meet the purpose and intent for that district. The determination to exempt a property shall be based on a study of topographic and design flood elevation contours on the subject property and on such additional information as he finds necessary or appropriate.
 - (5) Exemptions shall only be issued if flood protection or floodproofing work adequate to protect against the design flood, and in compliance with City and other applicable flood control and flood protection standards and policies, has been completed. The finding of exemption shall confirm that any stream, channel, storm drain, or landfill

9.31.070

improvements fully offset flood surface elevations established by the applicable map and that, if the property is included on a Flood Insurance Rate Map or a Flood Boundary and Floodway Map, all such flood protection or flood control work has been approved by the appropriate Federal agency and the property removed from the floodplain designation on such maps.

- (6) Exemptions shall only be issued upon:
- (A) A showing of good and sufficient cause;
 - (B) A determination that failure to grant the exemption would result in exceptional hardship to the applicant; and
 - (C) A determination that the granting of an exemption will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- (7) Exemptions may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the provisions of Sections 9.31.070(b)(1) through 9.31.070(b)(4) are satisfied and that the structure or other development is protected by methods that minimize flood damage during the base flood and create no additional threats to public safety.
- (8) Any applicant to whom an exemption is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the regulatory flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. A copy of the notice shall be recorded by the Floodplain Board in the Office of the County of Orange County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

(Added by Ord. 93-16, 11/23/93)

COASTAL COMMISSION
Dana Point LCP 1-98
EXHIBIT # 5
PAGE 13 OF 13

9.75.190

Subdivision, Tract — a subdivision which creates five or more parcels to be developed as a whole by an owner or builder.

Submerged Lands — lands which lie below the line of mean low tide. (Coastal)

→ **Substantial Damage** — damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

→ **Substantial Improvement in the Floodplain Overlay Districts** — any reconstruction, rehabilitation, addition, enlargement, expansion, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

- (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living condition; or
- (b) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places, provided that the alteration will not preclude the structure's continued designation as a historic structure.

For the purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

- (a) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or
- (b) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

(Added by Ord. 93-16, 11/23/93; amended by Ord. 94-09, 5/24/94; Ord. 94-21, 12/13/94; Ord. 96-13, 11/26/96; Ord. 97-05, 9/9/97)

9.75.200 "T" Definitions and Illustrations.

Temporary Structure — a structure without any permanent foundation or footings which will be removed when the designated time period, activity, or use for which the temporary structure was erected has ceased.

Temporary Use — a use established for a fixed period of time with the intent to discontinue such use upon the expiration of the time period, which is permitted through the provisions of Chapter 9.39.

Tenant — the lessee of facility space in a development project.

Terracing — an erosion control method that uses small hills and contours on the land surface to control flooding and runoff.

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)).

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2) Amortization Requirements

Any sign, existing at the time of the passage and adoption of this section that does not conform in area, illumination, type and/or height location with the regulations contained in this article for the district in which the sign is located, is a non-conforming sign and may remain in use in its present location for five (5) years. After the amortization period expires all non-conforming signs must be removed by the owner.

16. FP-2 Floodplain Two

See Section 7-9-113 of the Orange County Zoning Code.

FP-3 Floodplain Three

See Section 7-9-113 of the Orange County Zoning Code.

17. CD Coastal Development

See Section 7-9-110 of the Orange County Zoning Code.

18. Procedures

a. Discretionary Actions

The Capistrano Beach Specific Plan Land Use Regulations include three different types of discretionary permits in addition to variances. They are:

- 1) Site Plan/Architectural Review Permit
- 2) Site Development Permit
- 3) Coastal Development Permit

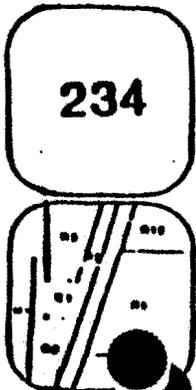
b. Permit Description

1) Site Plan/Architectural Review Permit

a) This permit will ensure conformance of major new construction or redevelopment with site development standards and architectural guidelines set forth in the Design Guidelines and Land Use Regulations chapters of this Specific Plan. The permit is a Site Development Permit with an additional review procedure. After being submitted and accepted by the Director, EMA or his designee, the review will begin with the Capistrano Beach Design Advisory Committee (CBDAC). If the CBDAC recommends an approval action of said application, the application shall proceed under the Administrative Action process (Section 7-9-150.2(d) of the Orange County Zoning Code) with the Director, EMA, or his designee as the approving authority (unless said application is processed in combination with a Coastal Development Permit). If the CBDAC recommends denial or submits conditions of approval which are not acceptable to the applicant, said application shall proceed under the Public Meeting process for discretionary actions (Section 7-9-150.2(c) of the Orange County Zoning Code) with the Planning Commission

COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 7
PAGE 1 OF 1



- (3) Alteration of sand dunes and mangrove stands which would increase potential flood damage.

Sec. 7-9-113.8. Site development permit procedures.

In addition to the requirements of section 7-9-150, site development permits shall be in compliance with the following procedures:

- (a) Applications shall include submittal of detailed drainage studies and plans indicating how site grading, in conjunction with any necessary drainage conveyance systems including applicable swales, watercourses, erosion protection devices, channels, street flows, catch basins, storm drains and floodwater retarding, will provide structures that are safe from flood flows which may be expected from floods up to and including the design flood. The grading plan shall include identified on-site finished grade elevations and the "design flood" elevations, both related to mean sea level. Building plans shall show the height of the first floor as related to the mean sea level.

A registered civil engineer shall certify in the application that any floodproofing methods are adequate to withstand the flood depths, velocities, hydrostatic and hydrodynamic loads, and effects of buoyancy and other factors associated with the design flood. In the FP-3 area, the certification shall be that the structural design is adequate to resist the force of abnormally high waves and tidewaters and that the design criteria of the Coastal Flood Plain Development Study has been satisfied.

All of the above, if approved per section 7-9-150, shall be maintained on file by EMA for flood insurance reference purposes.

- (b) The Director, EMA, shall notify or cause to be notified adjacent communities prior to approval of any project which would alter or relocate a watercourse having an effect on the flood hazard areas shown on the Flood Insurance Rate Maps and submit evidence of such notification to the appropriate federal and state agencies as appropriate. Any approval action for such project shall require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity of the watercourse is not diminished.

Sec. 7-9-113.9. Nonconforming uses and structures in FP Districts.

Any use or structure lawfully existing on any premises that is made nonconforming by the application of the FP District regulations, or by any amendment of the FP District regulations, shall be subject to the provisions of section 7-9-151, Nonconforming Uses, except as follows:

No structure shall be enlarged, expanded, reconstructed or structurally altered unless the entire structure is made to conform with existing regulations. However, that work done in any period of twelve (12) months on ordinary alterations or replacement of walls, fixtures or plumbing not exceeding ten (10) percent of the value of the building, as determined by the Director, EMA, shall be permitted provided that the cubical contents of the building, as it existed at the time this article or amendments thereto take effect, are not increased.

Dana Point LCP 1-98 Exhibit 8 p. 1 of 2

If any building shall be destroyed or damaged to any extent by flood or wave action, then said building and the land on which said building was located or maintained shall be subject to all the regulations of the FP District.

Sec. 7-9-113.10. Exceptions to FP District regulations.

The Director, EMA, may determine that certain properties within an FP District are not required to comply with the provisions of the FP District Regulations, when he finds that any of the following circumstances or conditions are present:

- (a) The zoning map includes property within an FP District that does not meet the purpose and intent for that district. The Director's determination shall be based on a study of topographic and design flood elevation contours on the subject property and on such additional information as he finds necessary or appropriate.
- (b) Flood protection or floodproofing work adequate to protect against the design flood, and in compliance with County flood control and flood protection standards and policies, has been completed. The Director's finding shall confirm that any stream, channel, storm drain or landfill improvements fully offset flood surface elevations established by the applicable map and that, if the property is included on a Flood Insurance Rate Map or a Flood Boundary and Floodway Map, all such flood protection or flood control work has been approved by the appropriate federal agency and the property removed from the floodplain designation on such maps.

COASTAL COMMISSION
DANA POINT LCP 1-98

EXHIBIT # 8
PAGE 2 OF 2

20-491

COPY

CARLSMITH BALL WICHMAN MURRAY CASE MUKAI & ICHIKI

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September 22, 1993

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JUN 4 1998

**CALIFORNIA
COASTAL COMMISSION**

Mayor and City Council of the
City of Dana Point
33282 Golden Lantern
Dana Point, California 92629

Re: Adoption of FEMA Rules as Part of the Zoning
Text Amendments Before You on September 28, 1993

Dear Mayor and Councilmembers:

This office represents the Capistrano Bay District, a mutual benefit special purpose government agency serving the Capistrano Bay Community. As you are aware, the District and its and your constituents are concerned with the FEMA rules to be adopted as a part of the zoning text amendments before you for decision on September 28. Because oral testimony at your public hearing was limited to three minutes, we feel it important to give you our written input in more depth before you make your decision.

WHY SHOULD DANA POINT ADOPT ANY FEMA REGULATIONS?

The United States government requires that a local government adopt FEMA regulations meeting federal standards before its citizens can qualify for the national flood insurance program. It is important that local government take the steps required for its citizens to qualify for this important protection.

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COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 9
PAGE 1 OF 5

WHAT IS THE PARTICULAR FEMA REGULATION AT ISSUE HERE?

FEMA regulations require that when it would cost more than 50 percent of the value of a damaged structure to repair it, the structure must be raised above the flood plain level. Likewise, FEMA regulations require that when an addition is made to an existing structure that costs more than 50 percent of its value, the structure must also be raised.

It is extremely expensive to jack up an existing structure above the flood plain. The practical consequence of the rule is that all structures required to be jacked up will be demolished and new structures built in their place.

WHY DO THE CITIZENS OF CAPISTRANO BAY CARE SO PASSIONATELY ABOUT THIS PROBLEM?

The Capistrano Bay Community is one of the few remaining historic California beach front areas. It is composed of a mixture of beach cottages, smaller older homes and large box-like newer homes. It is an eclectic mix of architectural styles and configurations. The residents want to keep the relatively unpretentious character of their community as long as possible.

When an old house is demolished it seems inevitable that it is replaced with the largest possible box-like structure maximizing the building envelope. The citizens of Capistrano Bay do not want this to happen to their community.

Many property owners at Capistrano Bay have lived in their relatively modest homes for many years. Most could not afford to buy property at Capistrano Bay at today's prices. They cannot qualify for a loan to build a large expensive home. The result is that if FEMA rules require their homes to be demolished and a new structure built, most present owners who need a modest addition or whose home is damaged and must be repaired would have to sell their property to a wealthier family who could afford the cost of such a project.

This problem has invoked the same emotions in the homeowners of Capistrano Beach as did exploding property taxes just prior to the adoption of Proposition 13. They

September 22, 1993
Page 3

are worried that the slightest damage would force them out of their family home. They are also worried, for instance, that if they own a 2,000 square foot home they could not add a bedroom for a grandchild without destroying their house.

HOW DID THE 10 PERCENT RULE TO WHICH THE RESIDENTS OBJECT FIND ITS WAY INTO THE ORIGINAL STAFF REPORT TO THE PLANNING COMMISSION?

When Dana Point was incorporated, it inherited the 10 percent rule from the County of Orange. That rule was automatically continued into the present proposed zoning without change.

The County of Orange, however, had never enforced the 10 percent rule. It approved very major additions to existing homes without requiring the homes to be raised.

Because the rule was never enforced by the County it never came to the attention of the residents of Capistrano Bay until they studied the proposed zoning amendments before you.

HAVE OTHER GOVERNMENTS IN CALIFORNIA ADOPTED THE 10 PERCENT OR 50 PERCENT RULE?

The federal government has delegated California FEMA program management to the State of California. The State in turn has produced a model ordinance and distributed it to all California local governments. The State model ordinance uses the 50 percent rule as supported by your Planning Commission, the District and the homeowners of Capistrano Bay.

To our knowledge five southern California cities have adopted FEMA rules to date. These cities are Long Beach, Newport, Oceanside, Del Mar and San Diego. All five cities have adopted the 50 percent rule as supported by your Planning Commission, the District, and the homeowners of Capistrano Bay.

Thus, the United States government, the State of California and all cities in California who have faced the problem have utilized the 50 percent rule. To our knowledge no government has adopted the 10 percent rule.

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COASTAL COMMISSION
Dana Point LCP 1-98
EXHIBIT # 9
PAGE 3 OF 5

**AN ANALYSIS OF THE TWO CONCERNS WITH THE 50 PERCENT RULE
RAISED BY PLANNING STAFF.**

Your Planning Staff raised two concerns with the 50 percent rule to the Planning Commission and has again raised them in the Staff Report to you.

First, Staff says that none of the five cities who have adopted the 50 percent rule have an analogous area to Capistrano Beach, i.e., an area of homes directly abutting an open beach. Staff suggests that the 10 percent rule may be more appropriate here because the Capistrano Bay Community faces more danger from the ocean than areas in the five cities who have adopted the 50 percent rule.

Research does not substantiate this argument. Oceanside contains an area of homes facing an open beach yet adopted the 50 percent rule.

The Peninsula area of Long Beach is partially protected by a breakwater, but at one end is an open beach area. In fact, the open Peninsula area of Long Beach has experienced substantially greater damage from the ocean than has Capistrano Bay. Capistrano Bay has suffered no damage to structures for over a decade and had no trouble during last winter's extraordinary storm season. The Peninsula in Long Beach suffered damage at least twice during that same period. Nevertheless, Long Beach adopted the 50 percent rule.

Staff also raised the concern of City liability for granting permits using the 50 percent rule. Your City Attorney, in essence, stated to the Planning Commission, that while the City could successfully defend any litigation brought on this basis, people file all sorts of invalid lawsuits and the City could incur the expense and effort to defend such claims.

We furnished the Planning Commission a copy of the documents used by the California Coastal Commission to protect itself against claims it has issued permits in an hazardous area. The Attorney General's office has drawn documents requiring the permit applicant to acknowledge the area is hazardous and waive any claim of liability against the government. These documents are then ..

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COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 9
PAGE 4 OF 5

September 22, 1993
Page 5

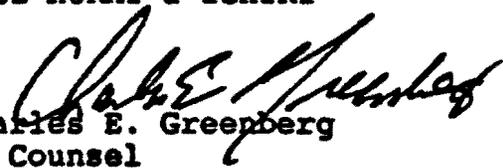
recorded, run with the land, and bind all future purchasers of the property.

To my knowledge, faced with having executed such waivers, no lawsuit has ever been filed against the State raising such a claim in the over 20 year history of the Coastal Commission.

After thorough analysis and debate of these issues your Planning Commission adopted the 50 percent rule. We respectfully request that your honorable body sustain the decision of the Planning Commission and incorporate the 50 percent rule into your zoning.

Respectfully submitted,

CARLSMITH BALL WICHMAN MURRAY
CASE MUKAI & ICHIKI


Charles E. Greenberg
Of Counsel

Attorneys for CAPISTRANO BAY
DISTRICT

CEG/pg

cc: Mr. Michael D. Farrier
Executive Director
Capistrano Bay District

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COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 9
PAGE 5 OF 5

Ed-

SEVEN COPIES HAND DELIVERED
TO STAFF JULY 2, 1992

CARLSMITH BALL WICHMAN MURRAY CASE MUKAI & ICHIKI

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JUN 4 1998**

July 2, 1992

**CALIFORNIA
COASTAL COMMISSION**

**Planning Commission
City of Dana Point
33282 Golden Lantern
Dana Point, California 92629**

Re: Proposed City Zoning Ordinance

Ladies and Gentlemen:

As you will recall this office represents the Capistrano Bay District. The District apologizes once again for providing you materials at the last minute. We can only say that we tried our best without success to work with your staff to avoid this problem. Originally, I had an agreement with staff that it would contact me and set up a staff meeting with the District prior to the staff report being finalized. Staff never contacted me.

About two weeks ago the District's Executive Director contacted staff to see what was happening and was informed that because of staff vacations a meeting was not possible. He was assured, however, that we could obtain a copy of the staff report on June 22. Subsequent telephone calls put off that date first to Friday, June 25, then to Monday, June 28, then to Wednesday, June 30, and then Thursday, July 1. In fact, the Executive Director was not able to obtain a copy of the staff report until this morning, July 2. He personally immediately drove to my office

**COASTAL COMMISSION
Dana Point WP 1-98**

EXHIBIT # 10

PAGE 1 OF 4

Re: Proposed City Zoning Ordinance
July 2, 1993
Page 2

arriving at 11:00 a.m. Thus, I did not see the staff report until this morning, Friday, June 2, at 11:00 a.m.. Given the July 4 weekend this is one working day prior to your July 6 hearing date.

The Executive Director also asked staff for the addresses of members of the Planning Commission so we could messenger copies of this letter directly to you today. Staff would not furnish us this information and stated that we should furnish the letter to staff and it would distribute it to the members of the Commission. We are, therefore, hand delivering this letter to Planning staff today, Friday, by messenger in the hope you will receive it before the hearing next Tuesday.

We do not recite these facts to criticize your staff. Vacations and production problems have made your staff schedule difficult. We recite them so that you will understand why once again we are transmitting information to you at the last minute. We think it unfortunate that your staff and the District were not able to meet and share information and approaches prior to your July 6 meeting. This will result in some chaos at your meeting, but I know of no way to avoid this result.

At your last hearing two questions were raised that required research and response. These questions were:

- 1) How can the City protect itself against liability if it allows homeowners at Capistrano Bay to rebuild or make additions to their structures without requiring their structures to be lifted above the floodplain level, and
- 2) What have other jurisdictions done to conform to FEMA regulations? Have they adopted the 10 percent rule, the 50 percent rule or other approaches to define when homeowners must rebuild their homes above the floodplain level?

Attachment 5 to your staff report addresses these issues in some depth. It will take at least a day for me to

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COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 10

PAGE 2 OF 4

Re: Proposed City Zoning Ordinance
July 2, 1993
Page 3

analyze and respond. Unfortunately, this means I will not be able to respond in depth until the hearing.

We have researched these issues ourselves, however, and I think it important for you to have the results of that research as soon as possible. Hence this letter. We will address each question in turn.

The City can protect itself from liability in the same fashion as does the California Coastal Commission. The Coastal Commission, on the advice of the Attorney General, requires that all permits granted in areas subject to ocean flooding or other hazards contain a permit condition on this subject. The condition requires the applicant to assume all risks from the development, waive any claim of liability against the Commission, and to record a document that runs with the land and binds all future purchasers to the condition. The permit is not physically issued until the document is recorded.

Enclosed is a copy of the permit condition, the document to be recorded and an explanation given to applicants by the Coastal Commission of what must be done to record the appropriate document.

We have also attempted to survey local governments on the Southern California coast to determine whether they use the 10 percent, 50 percent or other standard to define when homes must be raised above the floodplain. We found that most local governments have not yet adopted regulations complying with FEMA. We were, however, able to find five Southern California coastal local governments who have adopted such rules. These governments are Long Beach, Del Mar, Oceanside, San Diego and Newport Beach.

We know from personal knowledge that four of these jurisdictions -- Long Beach, Del Mar, Oceanside and San Diego use the 50 percent rule. We have hearsay information, but not direct knowledge, that Newport also has adopted the 50 percent rule. Although we have not contacted every Southern California jurisdiction, we have not found a single jurisdiction that uses the 10 percent rule or any approach other than the 50 percent rule.

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COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 10
PAGE 3 OF 4

Re: Proposed City Zoning Ordinance
July 2, 1993
Page 4

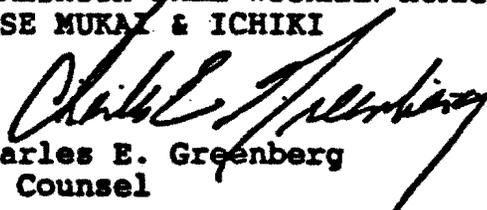
The typical way that local governments appear to handle this problem is to provide that any "substantial improvement" requires a permit in compliance with FEMA rules. The jurisdiction then defines a "substantial improvement" to be any repair, reconstruction or improvement the cost of which equals or exceeds 50 percent of the market value of the structure. A copy of the relevant portions of the Del Mar Code utilizing this concept, with pertinent parts underlined and tabbed, is also enclosed with this letter.

As Commissioners pointed out at the last hearing, the 10 percent rule seems fair when applied to normal Code requirements such as electrical, plumbing, parking requirements, etc. It seems most unfair, however, to require that if 10 percent of a home is damaged by natural disaster, or if a 10 percent addition is planned, the homeowner must undertake the Herculean effort of raising the structure in the air above the floodplain.

Once again, we apologize for presenting you with this material on Friday when the hearing is next Tuesday, the first working day after the July 4 weekend. We hope this information is helpful even at this late date.

Sincerely yours,

CARLSMITH BALL WICHMAN MURRAY
CASE MUKAI & ICHIKI


Charles E. Greenberg
Of Counsel

Attorneys for CAPISTRANO BAY
DISTRICT

CEG/pg

Enclosures

cc: Mr. Michael D. Farrier
Executive Director
Capistrano Bay District

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COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 10
PAGE 4 OF 4

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June 1, 1993

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VIA TELECOPIER

**Mr. Ed Knight
Director of Community Development
City of Dana Point
33282 Golden Lantern
Dana Point, California 92629**

**Re: Zoning Amendments for the Capistrano Bay F.P. 3
District**

Dear Mr. Knight:

Our meeting Thursday was very helpful to my understanding of your thought process with respect to the above-referenced zoning changes.

I now understand why you are determined to complete the zoning amendment process this summer.

I also understand that some if not most of our problems with City zoning are found, not in the proposed new amendments, but exist in carry-over language from former County zoning. This language was adopted without change by the City after its incorporation.

I hope you understand the surprise of District officials in discovering that this language existed in County zoning. The County never enforced these objectionable zoning

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COASTAL COMMISSION

Dana Point LCP 1-98

EXHIBIT # 11
PAGE 1 OF 5

Mr. Ed Knight
June 1, 1993
Page 2

provisions when extensive remodel projects of existing homes came before it.

I am also pleased that you agree that many of the problems identified in my previous letter warrant use of the EIR process. Further, upon reflection, I agree with you that it would not be possible to complete the EIR process in time for the City to finalize the new zoning amendments this summer.

Given the above problems, how can the City and District effectively work together to best accomplish their mutual needs in serving the residents of the Capistrano Bay District? It seems to me the following two-step process will accomplish this end.

In step one, the City and District will narrow their focus to the two provisions of the proposed zoning where change from their present working is required to bring zoning into compliance with the provisions of and the EIR for the City's General Plan and LCP and the Coastal Act. These changes should be adopted now. Failing to now bring City zoning into compliance with planning is poor policy and a probable violation of State law.

In step two, the City, with the District acting either as a responsible or co-lead agency, should prepare an EIR for the remainder of the issues. This process would be put off until the next series of zoning amendments are proposed.

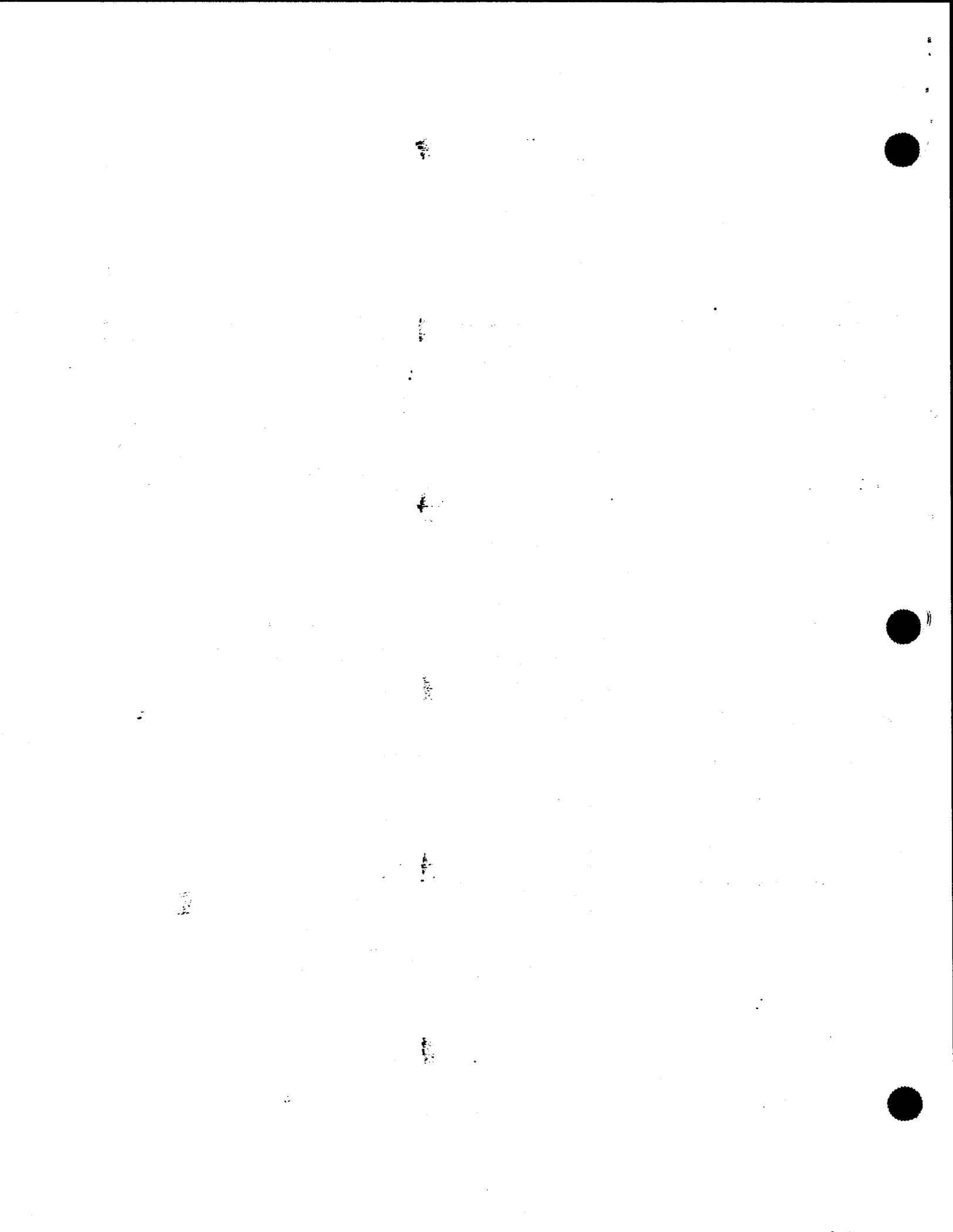
To enable this two-step process to be acceptable two issues crucial to the parties need to be addressed in step one in the manner outlined below:

1. The zoning amendments now being processed should not forbid all seawalls. Instead, City zoning should be brought into compliance with the Coastal Act and common sense by amending the presently proposed language of section 9.31.040(d)(3) as follows:

"9.31.040(d)(3). Seawalls, unless required to protect existing structures."

COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 11
PAGE 2 OF 8



Mr. Ed Knight
June 1, 1993
Page 3

This change brings City zoning into compliance with Coastal Act section 30235 and your planning policy 37, at page 24. In our Thursday meeting you indicated that in any case your administrative policy would be to allow a seawall when required to protect an existing structure from damage. It makes sense to provide you with specific authority to do so in the zoning code.

- 2. As we discussed Thursday, FEMA regulations and most cities apparently require a structure to be brought up to code or destroyed only when there is an addition of more than 50 percent of its value or when more than 50 percent of its value has been damaged.

Your proposed zoning regulations, however, use a 10 percent rather than 50 percent rule. As you explained Thursday, you did so because the 10 percent rule is carried over from prior County zoning for the area. The District was shocked to learn that you inherited the 10 percent rule because the county had never applied it to deny very extensive remodeling projects. Thus, this issue never arose with the County.

In any case, as pointed out in my previous letter, the existing EIR for your General Plan, Local Coastal Program and Zoning adopts the mitigation measures discussed in the Zeiser Geotechnical Report. These measures favor remodeling homes and discourage destroying them to build new structures. The 10 percent rule virtually prohibits meaningful remodeling and mandates the building of new structures.

State law and common sense require that zoning be brought into conformance with planning rather than making policy by zoning and later conforming planning to the new zoning.

The legal issue here, however, is somewhat more complicated. You inherited the 10 percent zoning rule but later produced an inconsistent

Mr. Ed Knight
June 1, 1993
Page 4

plan in 1991 when the General Plan and LCP and their EIR were adopted.

The law under these facts provides the City a reasonable time to bring its zoning into conformity with its 1991 plan. Two years has already pushed the envelope of reasonable time. Further delay seems unreasonable, particularly because the City is now updating its zoning code. Failure to address the problem now does not appear reasonable.

The change in zoning from 10 percent to 50 percent requires no further CEQA review. Your 1991 EIR specifically recommends remodeling structures rather than allowing their destruction for a new home to be built.

To accomplish this change the language of proposed section 9.31.050(c) should be changed to read 50 percent rather than 10 percent. If other textual changes are required, a clear direction from the Commission to do so should be sufficient.

If the above two changes are now made, the District would be pleased to join in expediting the zoning amendments into law. The remaining issues can be put off to later resolution.

Friday, I also received a copy of your initial assessment for CEQA compliance for this project. Without the two changes suggested in this letter, it does not appear appropriate to check the "no" box for at least policies 8, 13(f), and 14(e), that the language of section 21(b) and (g) is not accurate, that finding 22(b) is incorrect, that the language of Environmental Impacts 8 and 17 are incorrect, that mitigation measure (7) is incongruous, and that determination 2 is not appropriate.

With only one day notice of the CEQA assessment it is not possible to respond in detail at this time. The issue becomes moot if the recommendations here discussed are adopted.

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COASTAL COMMISSION

Dana Point LCP 1-98

EXHIBIT # 11

PAGE 4 OF 5

Mr. Ed Knight
June 1, 1993
Page 5

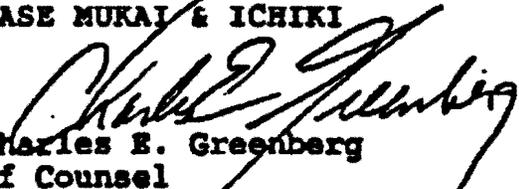
If they are not adopted, there is time before the Council hearing to address these issues in depth.

I am sorry to have to fax this letter to you on the date of the Planning Commission hearing. Our conference was last Thursday and we received a copy of your staff report on Friday, one working day before this hearing. I will do my best to avoid last minute correspondence in the future.

It would be most appreciated if you pass out copies of this faxed letter to the Planning Commissioners before or at the start of the hearing. I will bring extra copies should you not be able to do so, but I was impressed at the first hearing with the Commissioners' ability to read correspondence and listen to input at the same time.

Sincerely yours,

CARLSMITH BALL WICHMAN MURRAY
CASE MUKAI & ICHIKI



Charles E. Greenberg
Of Counsel

CEG/pg

CARLSMITH BALL WICHMAN MURRAY CASE MUKAI & ICHIKI

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May 4, 1993

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COASTAL COMMISSION**

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**Planning Commission
City of Dana Point
33282 Golden Lantern
Dana Point, California 92629**

Re: Proposed City Zoning Ordinance

Ladies and Gentlemen:

This office represents the Capistrano Bay District, a mutual benefit district government agency serving the Capistrano Bay residential community (the District). This letter sets out the District's response to the zoning amendments to be heard on May 4th and 18th before your honorable body. I will also appear at your May 4th hearing to make a statement and respond to any questions.

Overview of the Effects of the Proposed Zoning Amendments.

The zoning amendments before you constitute a basic change in land use policy applicable to the area of Dana Point served by the District. At present, the policies of your Local Coastal Plan, General Plan and implementing zoning protect this beach community from beach erosion and storm damage by a combination of a sand replenishment policy and existing ocean protective devices. These policies proved successful during last winters' extraordinary storm season. Unlike many beach communities throughout California, the

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**COASTAL COMMISSION
Dana Point LCP 1-98**

**EXHIBIT # 12
PAGE 1 OF 14**

Re: Proposed City Zoning Ordinance
May 4, 1993
Page 2

Capistrano Bay residential community suffered no damages and the beach is now rapidly returning to its normal profile.

The zoning amendments before you fundamentally alter these policies. They propose that the residential community be protected by forcing, as soon as feasible, all homes in the community to be demolished and the new homes built in their place to be elevated on pilings or stilts. The theory is that ocean storm waters would then flow under the homes without causing damage. Existing ocean protective devices would be rendered unnecessary and could not be rebuilt when damaged. The sooner these devices fail resulting in damage to existing structures, the sooner replacement homes meeting the new standards will be built.

These changes in your zoning would also alter the basic character of this unique beach community. Historically, and at present, the community consists of a mix of housing types ranging from classic simple beach cottages to large splendid homes. Many of the simpler homes are available as summer rentals. The community has not yet developed the syndrome found in other beach areas of wall-to-wall, large box-like homes that maximize the allowable building envelope. The suggested zoning amendments would dramatically accelerate the tearing down of the older, simpler homes in the community and result in their replacement with large houses constructed on stilts that maximize the building envelope. Availability of summer rentals and less expensive home ownership would be curtailed.

Because the proposed changes to your Zoning Code constitute a fundamental change in direction for the Capistrano Bay community we urge you to give the matter serious and careful thought.

We believe that before adopting this project, both California law and common sense dictate that you require a supplemental or tiered E.I.R. to be prepared. We also urge you to conform the content of your new policies to the provisions of the California Coastal Act. Ultimately, these amendments require approval of the Coastal Commission. As presently worded, they are contrary to the Coastal Act in at least two aspects.

Re: Proposed City Zoning Ordinance
May 4, 1993
Page 3

Finally, we urge you to give serious thought to whether you can or should so drastically limit the normal rights of property owners to continue "non-conforming" uses. The heart of the proposed amendments is that homeowners will be forced to tear down their existing homes as soon as possible so that new homes can be built on stilts. To accomplish this end, homeowners are forbidden from making any meaningful improvements to their existing structures without raising their home. This forces demolition of existing structures as soon as possible. In 30 years of practice as a municipal and private lawyer I have never experienced a local government adopting such a sweeping change while at the same time so severely limiting the non-conforming use rights of its citizens created by the adoption of the changes.

A Physical Description of the Capistrano Bay Community.

The following physical description of the Capistrano Bay Community (Community) may be helpful to your evaluation of the proposed changes.

The Community consists of a single row of approximately 200 home sites stretching 1 1/2 miles between the beach and Beach Road, a narrow service road operated by the District to service the homes.

The beach is very wide at the north end of the Community and gradually narrows proceeding southward. At the south end of the Community, the beach is very narrow.

Over the years, ocean protective devices in the nature of seawalls and rock revetments have been constructed to protect approximately 150 of the 200 home sites. These devices lie buried in the sand and out of sight for years at a time between extraordinary storms. They have been successful in protecting homes and have not caused any permanent alteration of natural beach processes.

Re: Proposed City Zoning Ordinance
May 4, 1993
Page 4

Existing Policies Protecting the Community
From Ocean Storm Damage.

At present, a consistent web of policies provide how the Community should be protected from ocean storm damage.

In March of 1988, the Capistrano Beach Specific Plan/Local Coastal Program (Plan) as approved by the California Coastal Commission was adopted by the then local government, the County of Orange. It is my understanding that this document later was re-adopted by the City of Dana Point.

The Plan discusses beach erosion at page 17. It notes, according to a Corps of Engineers Study performed in 1959 that the shoreline from the "vicinity" of Dana Point to the southerly County line is subject to erosion and that unless adequate remedial measures are undertaken, erosion and periodic wave damage should be anticipated in the future. It details proposed County efforts to modify the San Juan Creek Channel to provide sand replenishment to the beaches in the area. It concludes that measures necessary to prevent beach erosion and periodic damage from wave action within Capistrano Beach must be established.

At page 24, Policy 37 of the Plan limits ocean protective devices to certain uses, including specifically, the protection of existing structures. Note, that the proposed amendments before your body eliminate the use of ocean protective devices to protect existing structures. In fact, the thrust of your new policies would be the opposite: to encourage the destruction of existing structures from storms at sea so that new structures can be elevated on caissons, piles or stilts.

Also at page 24, Policy 39 calls for preventing beach erosion by periodically evaluating activities that reduce sand replenishment. Policy 38 mandates floodplain programs that promote sand replenishment.

This emphasis on using sand replenishment programs to eliminate beach erosion is the capstone of your present

Re: Proposed City Zoning Ordinance
May 4, 1993
Page 5

policies. The E.I.R. for the General Plan, Local Coastal Program and Zoning Ordinance adopted by the City of Dana Point in 1991 makes this clear. The E.I.R. at Section 5.1-8 adopts as its first mitigation measure to avoid flood hazard the following:

"1. The City shall adopt and implement detailed coastal erosion standards as discussed in the Coastal Erosion Technical Report by Zeiser Geotechnical, Inc."

The Zeiser Report in turn, at page 5, sets out the mitigation measure that a periodic sand nourishment program for the beach immediately downcoast from Doheney Beach State Park (the Capistrano Bay Beach) be adopted to replenish, widen and stabilize the Capistrano Beach area.

Further, at page 19 the Zeiser Report recommends that the sand replenishment program commence immediately without waiting for further data collection or monitoring.

These mitigation measures involving sand replenishment were adopted by the City through its 1991 actions.

The Zeiser Report also recommends that certain structural changes be made to the homes in the Community, but they are different changes than now recommended in your proposed zoning. At page 16 the Zeiser Report says that in the southmost segment of the Community (where the beach is narrow) structural underpinning of existing structures not currently on deep pile foundation (caisson-and-grade-beam system) is recommended.

Reinforcing foundations is a diametrically opposed solution to that proposed in the present zoning amendments now before you. Those zoning amendments recommend that new structures throughout the Community, not just where the beach is narrow, be raised into the air so that water can flow underneath without causing damage. Thus, Zeiser says strengthen foundations to reflect storm waves where the beach is narrow while your zoning amendments say raise all structures throughout the Community to allow water to flow underneath.

Re: Proposed City Zoning Ordinance
May 4, 1993
Page 6

The zoning amendments before you prohibit new erosion control devices such as seawalls or revetments and severely limit the rebuilding or improvement of existing devices. They also encourage and even mandate the construction of new elevated dwellings. The Zeiser Report takes the opposite tack. The report, at page 14, states that:

"It is strongly recommended that any new development or construction within the single-family-residential district of Capistrano Beach private community should be restricted to construction of coastal erosion protective devices, or modification to existing structures which serve dual purposes as erosion-protection devices."

At page 15, Zeiser goes even further. The report states that "Permits should not be granted for removal of existing structures where the intent exists to develop new homes along Beach Road."

Thus, you are now being asked to require new homes and forbid modifications to existing erosion control devices and homes. Yet, the only scientific report you have before you strongly recommends the exact opposite: forbid new homes and allow construction of erosion protective devices and modifications to existing homes.

Given the present state of your record, we ask that you give serious thought to not considering adopting the suggested zoning amendments until you have more scientific information.

The problem of how to control beach erosion and avoid storm damage to existing structures is of great interest to the District as well as the City. The role of ocean protective devices has long been central to these issues.

In 1984 when Coastal staff used its general criteria that such devices cause erosion without studying the situation at this particular beach, the District and long-term Community residents were puzzled. They had long observed Capistrano

Re: Proposed City Zoning Ordinance
May 4, 1993
Page 7

Beach and Coastal staff's generalization did not appear to be applicable to this specific beach.

Dr. Craig Everts of Moffatt & Nichol Engineers was retained to study this specific problem. I understand that the City is now utilizing these same experts to determine the height to which homes should be raised should the zoning changes be adopted. Dr. Everts is a coastal scientist intimately familiar with California beaches in general, and this beach in particular.

Dr. Everts' conclusions were that the ocean protective devices at Capistrano Beach during storms may have no more propensity to cause sand to move seaward than a natural beach, that post-storm recovery of sand is unaffected by the revetments except under very unusual circumstances and that a permanent net loss of sand for which the revetment is responsible is probably negligible.

His ultimate conclusion was that the revetments are probably not responsible for a significant net loss of sand, but that sand volume changes are caused by other factors, i.e., Dana Point Harbor, changing wave conditions, changes in sand supply from San Juan Creek, and beach replenishment, among others.

A copy of Dr. Everts' report is attached. So far as I am aware, it is the only study of the ocean processes at this particular beach analyzing the effect of ocean protective devices.

In addition to the report, Dr. Everts and I participated in an effort in the mid-1980's to convince all concerned agencies, Federal, State, County and District to embark upon an aggressive sand replenishment strategy for the beach. The best defense against ocean storms is as wide a beach as possible. The best way to achieve this and generally is through sand replenishment.

The Everets Report is significant for two reasons. It validates the strategy set out in the existing Specific Plan and Local Coastal Program, Zeiser Report, existing E.I.R., and existing zoning to combine sand replenishment with ocean protective devices to best preserve this beach.

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COASTAL COMMISSION
Dana Point LCP 1-93

EXHIBIT # 12
PAGE 7 OF 14

Re: Proposed City Zoning Ordinance
May 4, 1993
Page 8

It also calls into question the wisdom of replacing that strategy with the concepts set out in the proposed new zoning amendments of elevating houses and requiring ocean protective devices to decay and crumble.

The Proposed Zoning Amendments May Change the Character of the Community.

At present, the Capistrano Bay Community is a mixture of structures ranging from beach cottages to large homes with great variety in style, size, footprint and materials. Many of the smaller homes are available for rental. Although the homes are generally of high quality, the overall ambience of the Community is reminiscent of fast disappearing unpretentious California beach towns.

Because land prices are high, the Community shares the pressure experienced by other beach communities to replace smaller, older structures with large box-like homes. Present zoning regulations, however, help maintain the basic characteristics of the Community by favoring additions to existing structures over tearing them down to build new homes.

The proposed zoning amendments reverse this situation by severely limiting additions that can be accomplished without tearing down the home and constructing an elevated new structure. For instance, section 9.31.050(C) at page 8 states that:

"No structure shall be enlarged, expanded, reconstructed or structurally altered unless the entire structure is made to conform to the standards set in the proposed ordinance."

Even more startling is the final paragraph of the section found at page 9 stating that:

"To the extent any structure is destroyed or damaged by flood or wave action, then said structure and the land on which such structure

is located or maintained shall be subject to all the regulations of the Floodplain Overlay District."

In other words, as a practical matter, if a structure is damaged or destroyed, or if the owner wishes to enlarge or alter it, the structure must be demolished so a new elevated structure meeting the new zoning requirements can be built. These and other provisions are calculated to hasten the day when there will be all new elevated homes in the Community. Such homes, as a matter of economics, will constitute a wall of large box-like structures that use every square foot of the allowable building envelope.

Before adopting policies that dramatically accelerate a basic change to the character of the neighborhood, we urge the Commission to give the matter very serious study.

The New Zoning Amendments May Adversely Affect The View Corridor From the First Public Highway to the Sea and From Public View Locations on the Bluff to the Sea. All in Violation of the Specific Plan and Coastal Policies.

The Specific Plan for the area declares Pacific Coast Highway, the first public highway to the sea, as a scenic highway. It further provides at page 24, Policy 42 that:

"Existing views to ocean from Coast Highway and selected sites along the blufftop will be protected and improved through open space designation and innovative design techniques."

Policy 47, at page 25 declares a policy to:

"Preserve and enhance the skyline of the area and blend development into the topography."

Re: Proposed City Zoning Ordinance
May 4, 1993
Page 10

The proposed zoning amendments would raise the height of structures along Beach Road by requiring their floor to be elevated above the floodplain. Such elevation may or may not offend Policies 42 and 47 depending on how high the floor will have to be raised.

Unfortunately, the Moffat & Nichol study that will supply this information has not yet been finished. Your Director, Mr. Knight, tells me this study may not be completed for another 90 days.

It seems inappropriate for this honorable body to adopt the zoning amendments until it receives the Moffat & Nichol report. For instance, if homes need to be elevated a foot there probably would be no violation of the view corridor. If they must be elevated five or more feet it seems clear a site line study needs to be done to determine this issue.

The Proposed Zoning Amendments Violate
The Specific Plan and the Coastal Act
By Prohibiting All New Seawalls.

Section 30235 of the Coastal Act, in pertinent part, provides as follows:

"Revetments . . . seawalls . . . and other such construction that alters natural shoreline processes shall be permitted when required . . . to protect existing structures."

The existing Specific Plan conforms to this policy.

The proposed zoning amendments, on the other hand, directly violate this policy.

Section 9.31.0400(d)(3) specifically prohibits seawalls.

From 1973 to 1976 the Coastal Commission from time-to-time refused to allow a homeowner whose dwelling was threatened by destruction from the sea to protect his property

Re: Proposed City Zoning Ordinance
May 4, 1993
Page 11

with a seawall. Adverse public reaction ran high against a government policy that required a family to risk losing its home to a natural disaster. As a result, when the present Coastal Act was adopted in 1976, the Legislature specifically prohibited the Coastal Commission from so doing. This prohibition was then written into Local Coastal Plans as they were approved by the Commission.

Ever since, the Coastal Commission and local governments have allowed seawalls and revetments to protect existing structures, even under circumstances when they would not approve a seawall as part of an application to build a new house. The zoning amendments now before you seek to reverse this policy and return to the mid-1970's when governments did not allow a family to save its home.

Zoning of the City of Dana Point for this area must be consistent with both the Specific Plan and the Coastal Act. The proposed zoning amendments are consistent with neither.

The Preparation of a Tiered, Supplemental
Or Subsequent E.I.R. is Required by Law
And Provides the City and Community with
A Reasonably Prompt Procedure to Obtain,
Digest and Comment upon the Information
Required to Make an Informed Decision on
The Proposed Zoning Amendments Before It.

Thus far, this letter has discussed some of the substantive problems the City faces in making an informed decision to adopt all or a portion of the proposed zoning amendments applicable to the Capistrano Bay Community. A catalog of such problems tends to give this letter an unduly negative tone.

Actually, the District and the Community have not determined ultimately to support or oppose most of the issues raised in this letter. There is too little information available on these issues to make an informed judgment. The

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COASTAL COMMISSION

Dana Point Lep 1-9

EXHIBIT # 12

PAGE 11 OF 14

Re: Proposed City Zoning Ordinance
May 4, 1993
Page 12

District has raised its serious concerns and desires to work with the City to resolve them. The District believes the law requires, and common sense dictates, that the E.I.R. process be used for this purpose.

The provisions of CEQA itself set forth the reasons why this is true. Section 21002.1 states that the purpose of an E.I.R. is to identify significant effects of a project on the environment, to identify alternatives to the project and to indicate the manner in which these significant effects can be mitigated or avoided. Case law states that public circulation of CEQA documents and the public's opportunity to analyze and comment upon them is the heart of the E.I.R. process. Thus, the CEQA process is tailored to provide the answers to the problems posed in this letter, to produce an informed citizenry, and, hopefully, to forge a consensus on policy issues.

Section 21003(a) of CEQA sets out how these objectives should be attained. This section states it to be the policy of the State that local agencies integrate the requirements of CEQA with planning and environmental review procedures otherwise required by law or local practice. The object, says the section, is to ensure that all such procedures, to the maximum feasible extent, run concurrently, rather than consecutively.

In a discussion with Mr. Knight, he indicated that the City's 1991 E.I.R. for the General Plan, Local Coastal Program and Zoning Ordinance, presently serves as CEQA compliance for these amendments.

The 1991 document does provide a wealth of material useful in now fashioning a legally adequate E.I.R. for the present project. Section 21003(e) provides that information developed in E.I.R.'s covering larger geographic areas can be used to contribute information required in specific E.I.R.'s. Section 21003(d) allows incorporation of such material into a data base which can be used to reduce delay and duplication in preparation of subsequent E.I.R.'s.

Finally, section 20168.5 is very helpful in reducing the scope of and the time required to research and produce an E.I.R. in this case. The section specifically allows "tiered"

Re: Proposed City Zoning Ordinance
May 4, 1993
Page 13

E.I.R.'s. It allows the use of a general E.I.R. such as the 1991 City document to be followed by a narrower or site specific E.I.R. which incorporates by reference the discussion in any prior E.I.R.

The 1991 E.I.R., however, cannot by itself stand as CEQA compliance for the zoning changes project now before you. The project now before you is substantially changed from the project the 1991 E.I.R. analyzed.

The 1991 E.I.R. analyzed a project designed to protect the Community from ocean storms by the use of sand replenishment, use of ocean protective devices and use of stronger foundations at the southern end of the Community. The project now before you is designed to do so by forbidding ocean protective devices and stronger foundations. Instead, it adopts a series of measures designed to produce new homes raised above the floodplain as soon as possible.

The 1991 E.I.R. analyzed a project designed to reward maintenance of the existing character of the Community by encouraging the maintenance and improvement of existing structures. The project now before you is designed to discourage the maintenance and improvement of existing structures and reward the building of new ones.

The 1991 E.I.R. does not analyze any of the environmental effects of this diametrically changed project. Nor does it discuss any mitigating measure applicable to it. Finally, it does not even present such a project as an "alternative" to the project that was then adopted.

Under these circumstances, a "tiered" E.I.R. is required before the project presently before you can be adopted.

It may or may not be that once understood a majority of the Community will support the changes now being proposed. The point is that we can now only speculate as to the Community will and only the E.I.R. process with its provisions for public circulation and comment can answer these questions.

Finally, these are provisions in CEQA that encourage the use of joint lead agencies to prepare an E.I.R. for a

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COASTAL COMMISSION
Dana Point LCP
EXHIBIT # 12
PAGE 13 OF 14

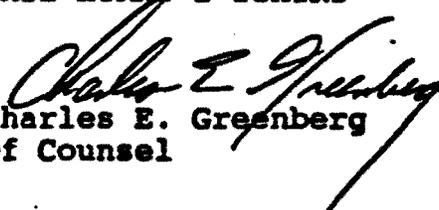
Re: Proposed City Zoning Ordinance
May 4, 1993
Page 14

project carried out by two governments. If the City is receptive to the District serving as a joint lead agency, I would recommend to my client that it agree to do so. I cannot speak for my client on this issue, however, because the issue has not been discussed with the District.

I apologize for the length of this letter but feel it important for you to have this analysis as early as possible in the decision process. I and the District look forward to working with the City of Dana Point to arrive at a fair set of policies acceptable to the City, the District, and a majority of the Community served by both of these government agencies.

Respectfully submitted,

CARLSMITH BALL WICHMAN MURRAY
CASE MUKAI & ICHIKI


Charles E. Greenberg
Of Counsel

CEG/pg

Enclosure

cc: Michael D. Farrier
Capistrano Bay District
Board of Directors

RECEIVED
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CALIFORNIA
COASTAL COMMISSION

Mr. & Mrs. Ralph A. Marsden
35261 Beach Road
Capistrano Beach, CA. 926

The California Coastal Commission.
45 Fremont Street
San Francisco, Ca. 94105-2219

Ladies and Gentlemen

We are longtime residents of the seaside residential Community Services District known known as "Capistrano Bay", located in the City of Dana Point in southern California. As you must be aware the City which was formed almost ten years ago, has never had its local coastal plan approved by the commission. Since the county regulations in effect when we were unincorporated no longer are in force, and no new guidelines have been adopted we are completely unable to alter, expand or otherwise improve our homes.

The requirements for building new homes here involve huge caisson foundations costing as much as \$200,000 (two hundred thousand dollars plus) and numerous examples of this are visible up and down the beach road. These foundations are mandated by FEMA and maybe other Federal laws.

Now consider our situation. Our home is a relatively modern up to code home adhering to the the stringline boundaries, height limits, etc. of our community. The home was constructed at two-story strength but with the second story not to be built until a later date. There remains a large area that is still one story and we would like to use about 125 square feet of that space to enlarge a bath-dressing room complex. Due to the fact that we are located on the sand beach and in the coastal zone we are forbidden to add one square inch of roofed space to this home. We may not even apply for a permit, unless of course we tear down our home and build the huge caissonned underpinnings required of a new building.

People have bootlegged projects here and have suggested we do the same. However, having helped enforce adherence to stringline restrictions in cases of some others in the area, we have elected not to take that route.

We implore you to prove that this is still a free country and in your October conference develop some reasonable formula for the use of our personal property. We have postponed the refurbishment of our home for this whole 9 or 10 years which is a very long time!!!

Sincerely,

Ralph Marsden

COASTAL COMMISSION
Dana Point 10/1/98 *Green Marsden*

EXHIBIT # 13
PAGE 1 OF 1

9.09.030

Footnotes for Section 9.09.030:

- (1) See Chapter 9.75 for definitions and illustrations of development standards.
- (2) Development standard applies to any proposed subdivision of land. These standards do not apply to existing lots where no subdivision is proposed nor to proposed condominiums or other common lot subdivisions.
- (3) Land Area per Dwelling Unit may not be rounded up. (Example: 14,250 square feet/2,500 square feet of land per dwelling unit = 5.7 dwelling units which equals 5 dwelling units, not 6 dwelling units.)
- (4) Subject to the measurement and design criteria in Section 9.05.110(a).
- (5) For existing lots less than fifty (50) feet wide and/or less than one hundred (100) feet deep, see Section 9.05.190 for reduced front, side and rear building setbacks.
- (6) If the side yard of a flag lot is adjacent to the rear yard of a residentially zoned lot, that side yard setback shall be a minimum of ten (10) feet.
- (7) Additional rear yard building setback from a bluff top may be required by Section 9.27.030.
- (8) For RBR 12 and RBRD 18, maximum building height is twenty-eight (28) feet as measured eighteen (18) inches above the Flood Plain Overlay 3 (FP-3) requirement or Beach Road which ever is higher. Mezzanines may be allowed subject to compliance with the applicable provisions of the Uniform Building Code.
- (9) See Section 9.09.040(a) for special building setbacks, lateral public access stringline standards and standards for maximum projections into required yards applicable to properties on Beach Road.
- (10) Setback for the first floor as measured from the right-of-way line of Beach Road. The second floor may project a maximum of five (5) feet into the required front yard setback.
- (11) A minimum of ten (10) percent of that portion of the lot area bounded by the side property lines, the Beach Road property line and the structure stringline.

(Added by Ord. 93-16, 11/23/93; amended by Ord. 94-09, 5/24/94; Ord. 94-21, 12/13/94; Ord. 96-10, 8/13/96; Ord. 96-13, 11/26/96)

9.09.040 Special Development Standards.

- (a) Development in the Residential Beach Road 12 (RBR 12) and Residential Beach Road Duplex 18 (RBRD 18) Zoning Districts shall comply with the following standards..
 - (1) The following Table provides the requirements for structural stringlines, patio stringlines, lateral access lines and front yard setbacks for properties in the Residential Beach Road 12 (RBR 12) and Residential Beach Road Duplex 18 (RBRD 18) Districts.

SECTION 9.09.040(a)(1)

Beach Road Address	Tract 889 Lot Number	Measurement from roadside property line to structure stringline along: west property line/ east property line (a)	Measurement from roadside property line to patio stringline along: west property line/ east property line (b)	Measurement from roadside property line to lateral public access stringline along: west property line/ east property line (c)
35051	Block 2, Lot 133	102/102	120/120	238/238
35055	132	102/102	120/120	238/238
35057	131	102/101	120/118	238/238
35061	130	101/101	118/116	238/238
35065	129	101/101	116/116	238/238
35067	128	101/105	116/120	238/239
walkway (d)				
35071	Block 2, 127	107/112	121/126	239/239
35075	126	112/116	126/131	240/240
35077	125	116/116	131/131	240/244
35081	124	116/116	131/128	244/246
35083	123	116/116	128/128	246/252
35087	122	116/115	128/125	252/257
35091	121	115/114	125/122	257/263
35093	120	114/114	122/119	263/268
35095	119	114/113	119/120	268/274
35097	118	113/112	120/123	274/273
35099	117	112/112	123/126	273/272
35101	116	112/111	126/130	272/272
35105	115	111/111	130/129	272/269
35107	114	111/111	129/129	269/267
35111	113	111/111	129/129	267/264
35115	112	111/111	129/129	264/263
35119	111	111/111	129/129	263/262
35121	110	111/112	129/129	262/261
walkway (d)				
35125	Block 2, 109	112/112	129/128	260/259
35127	108	112/113	128/128	259/255
35131	107	113/113	128/128	255/254
35135	106	113/113	128/128	254/253
35141	105,			
	NWLY 1/2 104	113/114	128/128	253/251
35145	103,			
	SELY 1/2 104	114/115	128/128	251/249
35147	102,			
	NWLY 1/2 101	115/115	128/127	249/247
35155	100,			
	SELY 1/2 101	115/116	127/127	247/245
35157	99	116/116	127/127	245/244
35161	98	116/117	127/125	244/245
35165	97	117/116	125/124	245/246
35167	96	116/115	124/123	246/247
35171	95	115/115	123/122	247/248
35175	94	115/114	122/121	248/249
35177	93	114/113	121/120	249/251
35181	92	113/113	120/119	251/252
35185	91	113/112	119/118	252/253
35189	90	112/112	118/118	253/254
35191	89	112/111	118/118	254/255
35195	88	111/110	118/118	255/255

* See footnotes on Page 9.09-19

9.09-15

COASTAL COMMISSION

Dana Point LCP 1-98
(Dana Point Zoning Code 9-96)

EXHIBIT # 14

PAGE 2 OF 10

SECTION 9.09.040(a)(1)
(continued)

Beach Road Address	Tract 889 Lot Number	Measurement from roadside property line to structure stringline along: west property line/ east property line (a)	Measurement from roadside property line to patio stringline along: west property line/ east property line (b)	Measurement from roadside property line to lateral public access stringline along: west property line/ east property line (c)	From Setback (Ground Floor) (e)(f)
35197	Block 2, 87	110/109	118/117	255/256	20
35201	86	109/108	117/117	256/256	20
35205	85	108/107	117/116	256/257	20
35211	84	107/106	116/116	257/258	20
35215	83	106/105	116/115	258/258	20
35221	82	105/104	115/115	258/259	20
35225	81 and 80	104/102	115/114	259/261	20
35235	79	102/103	114/113	261/258	20
35241	78	103/104	113/115	258/256	20
walkway (d)					
35245	Block 2, 77	104/106	115/116	256/253	20
35251	76	106/107	116/117	253/251	20
35255	75	107/108	117/118	251/249	20
35261	74	108/110	118/119	249/247	20
35265	73	110/109	119/118	247/244	20
walkway (d)					
35271	Block 2, 72	108/103	118/115	244/245	20
35275	71	103/ 99	115/113	245/242	20
35283	70	99/ 99	113/113	242/239	20
35285	69	99/ 98	113/111	239/236	20
35291	68	98/ 97	111/110	236/233	20
35295	67	97/ 96	110/108	233/230	20
35301	66	96/ 95	108/106	230/227	20
35305	65	95/ 93	106/104	227/222	20
35311	64	93/ 93	104/104	222/217	20
35315	63	93/ 94	104/106	217/215	20
35321	62	94/ 96	106/107	215/212	20
35325	61	96/ 97	107/108	212/210	20
35331	60	97/ 98	108/110	210/208	20
35335	59	98/ 99	110/111	208/205	20
34341	58	99/100	111/112	205/203	20
35345	57	100/101	112/114	203/201	20
35351	56	101/103	114/115	201/198	20
35355	55	103/104	115/116	198/196	20
walkway (d)					
35361	Block 2, 54	104/104	117/117	195/193	20
35365	53	104/103	117/117	193/190	20
35371	52	103/102	117/117	190/188	20
35375	51	102/101	117/116	188/186	20
35381	50	101/100	116/116	186/183	20
35385	49	100/ 99	116/116	183/181	20
walkway (d)					
35391	Block 2, 48	99/ 98	116/116	180/178	20
35395	47	98/ 98	116/116	178/178	20
35401	46	98/ 98	116/115	178/178	20
35405	45	98/ 97	115/114	178/178	20
35411	44	97/ 97	114/113	178/178	20
35415	43	97/ 97	113/112	178/178	20
35425	42	97/ 97	112/111	178/178	20
walkway (d)					

* See footnotes on Page 9.09-19

SECTION 9.09.040(a)(1)
(continued)

Beach Road Address	Tract 889 Lot Number	Measurement from roadside property line to structure stringline along: west property line/ east property line (a)	Measurement from roadside property line to patio stringline along: west property line/ east property line (b)	Measurement from roadside property line to lateral public access stringline along: west property line/ east property line (c)	Front Setback (Ground Floor) (e)(f)
35431	Block 2, 41	97/ 97	111/110	178/178	20
35435	40	97/ 96	110/109	178/178	20
35441	39	96/ 96	109/108	178/177	20
35445	38	96/ 96	108/107	177/177	20
35451	37	96/ 96	107/106	177/177	20
35455	36	96/ 96	106/106	177/178	20
35461	35	96/ 98	106/108	178/178	20
35465	34	98/ 99	108/110	178/179	20
35471	33	99/101	110/113	179/179	20
35475	32	101/102	113/115	179/180	20
35481	31	102/104	115/117	180/180	20
35485	30	104/106	117/120	180/181	20
35491	29	106/107	120/122	181/182	20
35495	28,				
	NWLY 1/3 27	107/109	122/125	182/182	20
35505	26,				
	SELY 2/3 27	109/112	125/129	182/183	20
walkway (d)					
35507	Block 2, 25	112/114	129/131	183/184	20
35511	24	114/115	131/134	184/184	20
35515	23	115/116	134/136	184/185	20
35521	22	116/116	136/137	185/185	20
35525	21	116/116	137/139	185/185	20
35527	20	116/116	139/141	185/183	20
35531	19	116/116	141/142	183/132	20
walkway (d)					
35535	Block 2, 18	115/115	143/144	132/130	20
35537	17	115/114	144/143	130/129	20
(g)					
35541	16	119/115	147/145	188/185	20
35545	15	115/112	145/143	185/181	20
35551	14	112/109	143/140	181/178	20
35555	13	109/106	140/138	178/174	20
35557	12	106/106	138/134	174/169	20
35561	11	106/101 (h)	134/132	169/164	20
35565	10	101/101 (h)	132/131	164/160	20
35567	9	101/104 (h)	131/128	160/155	20
35571	8	104/103	128/124	155/151	20
35575	7	103/ 98	124/121	151/146	20
35577	6	98/ 93	121/118	146/142	20
walkway (d)					
35581	Block 2, 5	91/ 85	117/113	140/137	18 (g)
35585	4	85/ 80	113/110	137/134	18 (g)
35587	3	80/ 78	110/107	134/131	18 (g)
35591	2	78/ 77	107/103	131/129	18 (g)
35595	1	77/ 77	103/100	129/126	18 (g)
walkway (d)					

* See footnotes on Page 9.09-19

9.09-17

COASTAL COMMISSION
Dana Point LCP 1-9
(Dana Point Zoning Code 9-96)

EXHIBIT # 14
PAGE 4 OF 10

SECTION 9.09.040(a)(1)

(continued)

Beach Road Address	Tract 889 Lot Number	Measurement from roadside property line to structure stringline along: west property line/ east property line (a)	Measurement from roadside property line to patio stringline along: west property line/ east property line (b)	Measurement from roadside property line to lateral public access stringline along: west property line/ east property line (c)	Front Setback (Ground Floor) (e)(f)
35601	Block 1, 69	76/ 70	99/ 95	125/121	18 (9)
35605	68	70/ 69	95/ 91	121/118	18 (8)
35611	67	69/ 66	91/ 90	118/115	18 (8)
35615	66	66/ 64	90/ 89	115/112	18 (8)
35621	65	64/ 62	89/ 87	112/108	18 (8)
35625	64	62/ 59	87/ 86	108/105	18 (8)
35631	63	59/ 57	86/ 84	105/102	18 (8)
35635	62	57/ 55	84/ 83	102/ 99	18 (8)
35641	61	55/ 52	83/ 81	99/ 95	18 (8)
35645	60	52/ 50	81/ 80	95/ 92	18 (7)
35651	59	50/ 47	80/ 78	92/ 90	18 (6)
walkway (d)					
35655	Block 1, 58	48/ 50	78/ 76	90/ 90	18 (6)
35657	57	50/ 51	76/ 74	90/ 90	18 (7)
35661	56	51/ 50	74/ 73	90/ 90	18 (7)
35665	55	50/ 51	73/ 73	90/ 88	18 (7)
35667	54	51/ 51	73/ 72	88/ 87	18 (7)
35671	53	51/ 51	72/ 71	87/ 86	18 (7)
35675	52	51/ 50	71/ 69	86/ 84	18 (7)
35677	51	50/ 49	69/ 71	84/ 81	18 (6)
35679	50	49/ 49	67/ 65	81/ 78	18 (6)
35685	49	49/ 48	65/ 63	78/ 76	18 (6)
35687	48	48/ 47	63/ 61	76/ 73	18 (6)
walkway (d)					
35691	Block 1, 47	47/ 47	60/ 60	73/ 70	18 (6)
35695	46	47/ 47	60/ 60	70/ 70	18 (6)
35697	45	47/ 48	60/ 60	70/ 70	18 (6)
35701	44	48/ 48	60/ 61	70/ 70	18 (6)
35705	43	48/ 49	61/ 61	70/ 70	18 (6)
walkway (d)					
35707	Block 1, 42	49/ 50	61/ 62	70/ 70	18 (6)
35711	41	50/ 50	62/ 62	70/ 70	18 (7)
35715	40	50/ 51	62/ 62	70/ 71	18 (7)
35721	39	51/ 51	62/ 63	71/ 71	18 (7)
35725	38	51/ 52	63/ 63	71/ 71	18 (7)
35731	37	52/ 51	63/ 62	71/ 72	18 (7)
35735	36	51/ 55	62/ 64	72/ 73	18 (8)
35737	35	55/ 55	64/ 65	73/ 74	18 (8)
35741	34	55/ 54	65/ 67	74/ 76	18 (8)
walkway (d)					
35745	Block 1, 33	54/ 53	67/ 68	77/ 78	18 (8)
35747	32	53/ 52	68/ 70	78/ 80	18 (7)
35751	31	52/ 51	70/ 71	80/ 82	18 (7)
35755	30	51/ 51	71/ 73	82/ 84	18 (7)
35757	29	51/ 51	73/ 74	84/ 86	18 (7)
35761	28	51/ 58	74/ 74	86/ 86	18 (8)
35765	27	58/ 56	74/ 74	86/ 87	18 (8)
35767	26	56/ 58	74/ 74	87/ 88	18 (8)
35771	25	58/ 60	74/ 74	88/ 89	18 (8)
35775	24	60/ 62	74/ 74	89/ 90	18 (8)
35777	23	62/ 64	74/ 74	90/ 91	18 (8)
35781	22	64/ 64	74/ 78	91/ 94	18 (8)
35785	21	64/ 66	78/ 82	94/ 97	18 (8)

* See footnotes on Page 9.09-19

SECTION 9.09.040(a)(1)
(continued)

Beach Road Address	Tract 889 Lot Number	Measurement from roadside property line to structure stringline along: west property line/ east property line (a)	Measurement from roadside property line to patio stringline along: west property line/ east property line (b)	Measurement from roadside property line to lateral public access stringline along: west property line/ east property line (c)	Front Setback (Ground Floor) (e)(f)
walkway (d)					
35787	Block 1, 20	67/ 69	83/ 87	98/100	18 (8)
35791	19	69/ 72	87/ 90	100/103	18 (9)
35795	18	72/ 74	90/ 94	103/106	18 (9)
35797	17	74/ 76	94/ 97	106/108	18 (9)
35801	16	76/ 78	97/101	108/111	18 (9)
35805	15	78/ 80	101/104	111/114	18 (9)
35807	14	80/ 80	104/106	114/115	18 (9)
35811	13	80/ 83	106/107	115/116	18 (9)
walkway (d)					
35815	Block 1, 12	84/ 88	107/107	117/118	18 (9)
35817	11	88/ 91	107/107	118/119	18 (9)
35821	10	91/ 94	107/109	119/120	20
35825	9	94/ 97	109/110	120/122	20
35827	8	97/101	110/111	122/123	20
35831	7	101/104	111/113	123/124	20
35835	6	104/107	113/114	124/125	20
35837	5	107/108	114/115	125/125	20
35841	4	108/106	115/115	125/126	20
35845	3	106/104	115/116	126/126	20
35845	2	104/103	116/116	126/126	20
35851	1	103/102	116/116	126/126	20
35855	P.M. 142-10				
	Parcel 1 (f)	102/102	116/116	126/125	20
35857	P.M. 142-10				
	Parcel 2 (f)	102/102	116/116	125/125	20

Footnotes for Section 9.09.040(a)(1):

- (a) No enclosed portion of any structure shall extend seaward of a straight line drawn between the structure stringline measurements set forth in this section for the east and west property lines of the subject property.
- (b) No patio or unenclosed portion of any structure shall extend seaward of a straight line drawn between the patio stringline measurements set forth in this section for the east and west property lines of the subject property. Where vertical displacement exists between the patio and sandy beach, a stairway may encroach seaward of the patio stringline no more than three (3) feet. Where the patio stringline lies inland of an ocean protective device (OPD), an accessway from the patio to the OPD may be constructed as necessary to link the patio with a stairway to the beach.
- (c) The lateral public access stringline is subject to periodic review.
- (d) Location of a twelve (12) foot wide walkway extending from Beach Road to the beach. According to Tract Map No. 889, walkways are for the use of the property owners within the Capistrano Bay Community.
- (e) May be reduced to the figure shown in parenthesis. If the setback on the ground floor is less than eighteen (18) feet, three parking spaces must be provided perpendicular to Beach Road.
- (f) The second floor of any structure may project a maximum of five (5) feet into the required front setback for the first floor, but no closer than five (5) feet to the ultimate right-of-way line for Beach Road.
- (g) The roadside line from which measurements are taken juts five (5) feet inland at this turnaround point. For properties directly seaward of the turnaround, the roadside measurement line is not necessarily their property line.

9.09-19

COASTAL COMMISSION
Dana Point **CP 1-90**
(Dana Point Zoning Code 9-95)

EXHIBIT # 14
 PAGE 6 OF 10

9.09.040

Footnotes for Section 9.09.040(a)(1) (continued):

- (h) A modification has been made that applies to the three indicated lots only. A control value of 101 feet shall extend from the midpoint of the lot a 35561 across 35565 to the midpoint of the lot at 35567. Therefore, any construction on the eastern half of 35561, on any portion of 35565 or on the western half of 35567 may extend no further than 101 feet. Any construction on the western half of 35561 or the eastern half of 35567 may extend no further than the control values established for their western and eastern property lines respectively.
- (i) This parcel is not a part of Tract No. 889. The stringline measurements set forth in this section for this parcel are based upon a line twenty (20) feet seaward of and parallel to the inland property line.

(2) Maximum Projections into Required Yards. The following Table provides the requirements for allowable projections into required yards for properties in the Residential Beach Road 12 (RBR 12) and Residential Beach Road Duplex 18 (RBRD 18) Districts.

SECTION 9.09.040 (a)(2)
MAXIMUM PROJECTION INTO REQUIRED YARDS

Item	Maximum Projection			Minimum Distance From Property Lines (B)	Maximum Projection Above District Height Limit	Other Limitations
	Front Yard Area	Seaward Of Structure Stringline	Side Yard Area (A)			
(a) Antennas (C)	NP	NP	NP	N/A	Not Permitted (D)	2 maximum
(b) Architectural Projections: (i.e. Eaves, Cornices and Roof Overhangs)	2'6"	2'6"	2'6"	2'0"	NP	None
(c) Balconies	5'0"	8'0"	NP	6'0"	NP	(E)(F)
(d) Barbecues and Other Appliances	N/A	To patio stringline	To PL	0'0"	N/A	(G)(H)
(e) Basements	NP	NP	NP	N/A	N/A	None
(f) Bay Windows	2'6"	NP	NP	3'0"	NP	(I)
(g) Chimneys (J)	2'0"	NP	6"	3'0"	3'0"	(E)(K)
(h) Decks, Patios and Walks (between Front Yard Setback and Structure Stringline)	N/A	N/A	To PL	0'0"	N/A	Horizontal surface to a maximum height of 18" above FP-3 elevation for the site. (L)(M)

* See Footnotes on Page 9.09-22

SECTION 9.09.040(a)(2)
MAXIMUM PROJECTION INTO REQUIRED YARDS
 (continued)

Item	Maximum Projection			Minimum Distance From Property Lines (B)	Maximum Projection Above District Height Limit	Other Limitations
	Front Yard Area	Seaward Of Structure Stringline	Side Yard Area (A)			
(i) Decks, Patios and Walks (between Structure Stringline and Patio Stringline)	N/A	To patio stringline (Except as provided in Section 9.09.040(a)(1), Footnote (b))	To PL	0'0"	N/A	The surface must be the lower of: 1) 18" above FP-3 elevation for the site; or 2) 30" above the average pre-graded/existing elevation at the structure stringline; or 3) 4 feet above Beach Road at the centerline of the site. (I)(L)(M)
(j) Detached Accessory Structures	NP	To patio stringline (N)	None	None (N)	None	(O)
(k) HVAC, Mech. Equip. and Window Mounted Air Conditioners	NP	NP	1'6"	2'0"	NP	(P)
(l) Patio Covers	NP	8'0"	NP	6'0"	NP	(Q)
(m) Planter Boxes	2'0"	2'0"	NP	10'0"	N/A	(R)
(n) Pool Equipment	NP	N/A	2'6"	2'0"	N/A	(P)(S)
(o) Roof Decks	NP	NP	NP	3'0"	NP	None
(p) Second Stories	5'0"	NP	NP	N/A	NP	(T)
(q) Stairways and Stairway Landings	2'6"	NP	NP	5'0"	NP	(E)
(r) Swimming Pools and Spas	NP	NP	NA	3'0" (U)	N/A	(V)

NP = Not Permitted N/A = Not Applicable PL = Property Line
 * See Footnotes on Page 9.09-22

9.09-21

COASTAL COMMISSION
Dana Point LCP 1-98
 EXHIBIT # 11 (Dana Point Zoning Code 2-98)
 PAGE 8 OF 10

9.09.040

Footnotes for Section 9.09.040(a)(3):

- (A) On a corner lot, projections permitted in a front yard setback also apply to a street side yard.
- (B) In any instance where there is a conflict between the allowable maximum projection and the minimum distance from property line standard, the minimum distance from property line standard shall rule.
- (C) For radio antennas, only see Section 9.07.020 for satellite dish antennas.
- (D) This provision shall not apply to television and radio antennas used to receive UHF, VHF, FM and AM signals. Such antennas may exceed the district height limit by up to ten (10) feet. FCC licensed amateur ham radio operators may apply for a Conditional Use Permit for a radio tower greater than the maximum height limit, but not exceeding seventy (70) feet.
- (E) The total horizontal length of all projections (marked by this footnote) on a given building elevation shall not exceed the maximum percentage of building elevation length as specified below: (Note: Building elevation length is measured at the first floor and not adjusted for multiple storied buildings.)

<u>BUILDING ELEVATION:</u>	<u>Front:</u>	<u>Side:</u>	<u>Rear:</u>
<u>MAXIMUM PERCENTAGE OF</u>			
<u>BUILDING ELEVATION LENGTH:</u>	60%	40%	80%

The above stated maximum percentages have been established as a measure to control the overuse or abuse of the projection provisions in this Table. The maximum percentages will help prevent aesthetically inappropriate architectural facades or features that would pose a detriment to adjacent properties. At the discretion of the Director of Community Development, the total length of all projections on a given elevation may be reduced to below the indicated maximums in order to implement this intent.

- (F) Column supports for balconies may be a maximum of twelve (12) inches square, and may be no closer than six (6) feet from a side property line. Balcony guard rails may be three (3) feet above the 2nd floor, or as required by the Uniform Building Code.
- (G) Outdoor appliances or permanent deck structures along side property lines or the rear stringline limit cannot exceed forty-two (42) inches above the lowest patio elevation permitted by Chapter 9.31 "Floodplain Overlay Districts."
- (H) Outdoor appliances or permanent deck structures may utilize tempered glass for wind deterrence, as permitted by Section 9.09.040(a)(3), to a maximum of five (5) feet above the lowest permitted patio elevation, or two (2) feet above the outdoor appliance.
- (I) Including deck railings or deck structures.
- (J) A maximum of two chimneys may project into required yards or above the height limit.
- (K) Maximum horizontal dimension of three (3) feet when above the height limit.
- (L) Provided district landscape requirements are met.
- (M) Those portions of deck, patios, or walks that are attached to the main structure and within three (3) feet of the side property line must meet UBC requirements for fire resistance.
- (N) Subject to the applicable provisions of the Uniform Building Code and Uniform Fire Code.
- (O) Maximum Height: Twelve (12) feet.
- (P) Pool equipment may be placed adjacent to the rear or side property line subject to a minor Site Development Permit which shall include, but not be limited to, an acoustics report demonstrating compliance with the City's Noise Ordinance. (Amended per city's instructions, based on Ord. 97-12, 11/12/97 and Ord. 97-13, 11/25/97)

Footnotes for Section 9.09.040(a)(2) (continued):

- (Q) The height of a patio cover in the patio stringline area may not exceed ten (10) feet above the lowest permitted deck elevation.
- (R) Only allowed on the 2nd floor as an extension of second floor framing; and may be a maximum of three (3) feet in height.
- (S) No higher than the height of the deck, patio, or walk.
- (T) No support columns permitted.
- (U) As measured from the edge of the water within the swimming pool or spa.
- (V) See Section 9.31.060(f)(10) regarding the construction of pools and spas in floodplain zones.

(3) Walls, Fences, Windscreens, and Railings. The following standards shall apply to the construction of:

(A) Walls, fences, windscreens and railing between the front setback and the structure stringline:

Materials — any material that conforms with local ordinance, including UBC requirements for fire resistive construction, as applicable.

Height — a maximum of six (6) feet higher than the finished floor of the adjacent walk, deck, balcony, or patio allowed in Section 9.09.040(a)(2).

In the case of elevated sideyard decks, walks, or patios, the railing may extend down to the finished grade forming a fence. This fence may be higher than eight (8) feet above the finished grade of the adjoining property in cases where the structure on the subject property has been appropriately elevated to the FP-3 level and the structure on the adjacent property has not been so elevated.

(B) Walls, fences, windscreens and railings between the structure stringline and the patio stringline:

Material — clear tempered glass with uprights and railings as required by City Code and not exceeding the following maximum finished dimensions:

Vertical posts: 6" x 6"
Horizontal railings: 3" x 6"

Height — a maximum of six (6) feet higher than the finished floor of the adjacent deck, balcony, or patio allowed in Section 9.09.040 (a)(2).

- (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.
- (b) Condominium, Stock Cooperative, and Community Apartment Conversions.
 - (1) Purpose and Intent. This Section provides standards and criteria for converting multiple family dwellings, including dwelling units in a rental mobilehome park to residential condominium, stock cooperative and community apartment types of ownership. The

9.09-23

COASTAL COMMISSION
DANA POINT LCP 1-98
C.M. 98-99

EXHIBIT # 14
PAGE 10 OF 10

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
 1000 Ocean Gate, Suite 1000
 Dana Point, CA 90802-4302
 (562) 590-5071



October 20, 1998

Fr. 11.c**City of Dana Point LCP 1-98**

For the November 1998 hearing

Exhibits 15 through 22

Land Use Plan ("LUP") Amendment Submittal

Exhibit 15: Policies of the General Plan Land Use, Urban Design, and Conservation/Open Spaces Elements as first proposed for the LUP (under Dana Point LCP 1-96)

Land Use Element:	Page 1
Urban Design Element:	Page 14
Conservation/Open Space Element:	Page 21

Exhibit 16: Suggested modifications for the LUP as effectively certified under Dana Point LCP 1-96 and incorporated into the submittal for proposed Dana Point LCP 1-98

Land Use Element:	Page 6
Urban Design Element:	Page 13
Conservation/Open Space Element:	Page 14

Implementing Actions Plan Amendment Submittal

Exhibit 17: Ordinance 96-13 (Building height, Projecting decks, etc.)

Exhibit 18: Ordinance 97-02 (Definition of "Basement")

Exhibit 19: Ordinance 97-12 (Pool equipment setbacks, Minor automotive uses, etc.)

Exhibit 20: Chapter 9.27 of the Zoning Code (Coastal Overlay District)

Exhibit 21: Chapter 9.61 of the Zoning Code (Administration of Zoning)

Exhibit 22: Chapter 9.69 of the Zoning Code (Coastal development permit ordinance)

BALANCED DEVELOPMENT IN DANA POINT

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.

COASTAL COMMISSION

Dana Point LCP 1-98

LAND USE ELEMENT

JULY 9, 1991

EXHIBIT 15
PAGE 2 OF 28

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)

COASTAL COMMISSION
Dana Point LCP 1-98

LAND USE ELEMENT
JULY 9, 1991

EXHIBIT # 15
PAGE 4 OF 28

PRESERVATION OF NATURAL RESOURCES

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)

COASTAL COMMISSION

Dana Point LCP 1-98

EXHIBIT # 15
PAGE 6 OF 28

Policy 5.4: Assure that the height and scale of the development in the Headlands are compatible with the development in the community and that the visual impact of the development from coastal areas below the project be minimized. (Coastal Act/30251)

Policy 5.5: Promote the development of a mixture of land uses which may include residential, visitor-serving commercial, recreational, open space, and community facilities. (Coastal Act/30213, 30250)

Policy 5.6: Require that the scenic walkway be extended throughout the Headlands and connect to the existing or proposed walkways. (Coastal Act/30210-212)

Policy 5.7: Provide vehicular access that does not adversely impact adjoining neighborhoods or create congestion on the Pacific Coast Highway.

Policy 5.8: Provide patterns of land use and circulation in the Headlands that enhance public and private pedestrian access and circulation within the area. (Coastal Act/30250)

Policy 5.9: Provide extensive public trails within the Headlands area. The system shall include access to the existing sandy beach areas and to the visitor-serving and public places within the Headlands.

Policy 5.10: Encourage visitor-serving resort facilities and land uses of a world-class stature.

Policy 5.11: Assure the Specific Plan for the Headlands provides buffers to achieve a compatible and enhanced relationship to existing surrounding land uses.

DEVELOPMENT OF THE TOWN CENTER

The Town Center area is one of the primary business districts in the City, and is the focus of activity for visitors traveling along the Pacific Coast Highway (PCH). Although the area is segmented by the PCH couplet street system and impacted by its vehicular traffic, the mixture of commercial retail and service, office, and residential uses coupled with a pedestrian character and scale can be enhanced through proper planning

COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 15
PAGE 8 OF 28

Revitalization efforts include pedestrian-oriented streetscape and landscaping improvements designed to unify and connect the Village's various areas. The 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: Through revitalization activities improve the appearance of the area through 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)

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 standards. The Ritz Carlton Resort Hotel and an additional

COUNCIL COMMISSION

Dana Point LCP 1-98

EMEND # 13

PAGE 10 OF 28

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 include the desire to protect and maintain those land uses which serve the residents of the area. This involves the encouragement of local-serving commercial activity which meets local demands for goods and services, as well as locations for offices and business uses which employ City residents.

GOAL 9: Protect the resident-serving land uses throughout the City.

COASTAL COMMISSION
Dana Point LCP 1-98

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.

COASTAL COMMISSION

Dana Point LCP 1-98

3

URBAN DESIGN ELEMENT
JULY 9, 1991

EXHIBIT # 15
PAGE 14 OF 28

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 one-way 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 Street 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: 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)

COASTAL COMMISSION

Dana Point LCP 1-98

EXHIBIT # 15

PAGE 16 OF 28

URBAN DESIGN ELEMENT
JULY 9, 1991

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 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)

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: Provide 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.

COASTAL COMMISSION

Dana Point LCP 1-98

EXHIBIT # 15

PAGE 18 OF 28

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.

COASTAL COMMISSION
Dana Point LCP 1-98

LEMENT # 15
PAGE 20 OF 28

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.

COUNTY COMMISSION

Dana Point LCP 1-98

EXHIBIT # 15
PAGE 22 OF 28

CONSERVATION/OPEN SPACE ELEMENT

JULY 9, 1991

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)

COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 15
PAGE 24 OF 28

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 landform 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)

COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 15
PAGE 26 OF 28

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 paleontological 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.

COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 15
PAGE 28 OF 28

RESOLUTION NO. 97-08-26-03

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING GENERAL PLAN AMENDMENT GPA97-02 AND LOCAL COASTAL PROGRAM LCPA97-02, TO AMEND THE TEXT AND MAPS OF THE DANA POINT GENERAL PLAN IN ACCORDANCE WITH THE ACTION OF THE CALIFORNIA COASTAL COMMISSION CERTIFYING THE CITY'S LOCAL COASTAL PROGRAM FOR THE SOUTH LAGUNA AND LAGUNA NIGUEL SEGMENTS OF THE DANA POINT COASTAL ZONE

RECEIVED
APR 24 1998

CALIFORNIA
COASTAL COMMISSION

Applicant: City of Dana Point
File Number: FF# 0630-30/GPA97-02/LCPA97-02

WHEREAS, the applicant has made an application to amend the text and maps of the City of Dana Point General Plan in accordance with the action of the California Coastal Commission (CCC) to certify the South Laguna and Laguna Niguel segments of the City's Coastal Zone as detailed in Exhibit "A" attached hereto and incorporated herein by this reference; and

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

WHEREAS, the Planning Commission did, on the 16th day of July, 1997, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission considered all factors relating to General Plan Amendment GPA97-02 and Local Coastal Program Amendment LCPA97-02.

WHEREAS, the City Council did, on the 26th day of August, 1997, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Council considered all factors relating to General Plan Amendment GPA97-02 and Local Coastal Program Amendment LCPA97-02.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

- A) The above recitations are true and correct.
- B) Based on the evidence presented at the public hearing, the City Council adopts the following findings and approves General Plan Amendment GPA97-02:

COASTAL COMMISSION

Dana Point LCP 1-98

EXHIBIT # 16

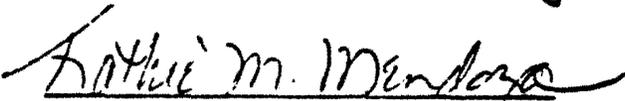
PAGE 1 OF 23

PASSED, APPROVED, AND ADOPTED this 26th day of August, 1997.



WILLIAM L. OSSENMACHER, MAYOR

ATTEST:



KATHIE M. MENDOZA, CITY CLERK

COASTAL COMMISSION
Dana Point LCP 1-98
EXHIBIT # 16
PAGE 3 OF 23

Exhibit "A"
City Council Resolution 97-08-26-03
General Plan Amendment GPA97-02/Local Coastal Program Amendment LCPA97-02

A. Introduction

1. Page 4/Purpose of the General Plan - Rewrite the second paragraph to read as follows:

"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."

2. Page 7/Local Coastal Program Components - Rewrite this paragraph to read as follows:

"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."

Dana Point LCP 1-98
Exhibit 16
p. 5 of 23

3. Page 10/Policy 1.6 - Rewrite this Policy to read as follows:

"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)"

4. Page 10 - Add a new Policy 1.8 to read as follows:

"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)"

5. Page 10 - Add a new Policy 1.9 to read as follows:

"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)"

6. Page 11 - Delete Policy 2.2:

Policy 2.2: Prohibit onshore support facilities for oil drilling. (Coastal Act/30260-264)

7. Page 11 - Rewrite this Policy to read as follows:

"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."

COASTAL COMMISSION
Dana Point LCP 1-98
EXHIBIT # 16
PAGE 7 OF 23

14. Page 11 - Add a new Policy 2.11 to read as follows:

"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)"

15. Page 11 - Add a new Policy 2.12 to read as follows:

"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))"

16. Page 11 - Add a new Policy 2.13 to read as follows:

"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)"

17. Page 12/Policy 3.3 - Rewrite this Policy to read as follows:

"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)"

18. Page 12/Policy 3.5 - Rewrite this Policy to read as follows:

"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)"

COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 16

PAGE 9 OF 23

24. Page 14 - Add a new Policy 4.10 to read as follows:

"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)"

25. Page 18/Policy 8.2 - Rewrite this Policy to read as follows:

"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)"

26. Page 18/Policy 8.6 - Rewrite this Policy to read as follows:

"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)"

27. Page 18/Policy 8.8 - Rewrite this Policy to read as follows:

"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)"

28. Page 19/Policy 8.9 - Rewrite this Policy to read as follows:

"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)"

29. Page 19/Policy 8.12 - Rewrite this Policy to read as follows:

"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)"

Dana Point LCP 1-98

p. 11. of 23

35. Page 31/Open Space - Rewrite this Section to read as follows:

"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."

C. Urban Design Element

1. Page 3/Policy 1.5 - Rewrite this Policy to read as follows:

"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)"

2. Page 4/Policy 2.1 - Rewrite this Policy to read as follows:

"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)"

3. Page 7/Policy 4.3 - Rewrite this Policy to read as follows:

"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)"

4. Page 7/Policy 4.5 - Rewrite this Policy to read as follows:

"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)"

COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 16

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)"

4. Page 7 - Add a new Policy 1.7 to read as follows:

"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)"

5. Page 7 - Add a new Policy 1.8 to read as follows:

"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)"

6. Page 7/Policy 2.5 - Rewrite this Policy to read as follows:

"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)"

7. Page 8/Policy 2.6 - Rewrite this Policy to read as follows:

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

8. Page 8/Policy 2.7 - Rewrite this Policy to read as follows:

"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 bluffs, and where geological instability may be suspected. (Coastal Act/30253)"

COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 16

PAGE 15 OF 23

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)"

14. Page 8 - Add a new Policy 2.13 to read as follows:

"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)"

15. Page 8 - Add a new Policy 2.14 to read as follows:

"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)"

16. Page 8 - Add a new Policy 2.15 to read as follows:

"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)."

17. Page 8 - Add a new Policy 2.16 to read as follows:

"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)"

18. Page 8 - Add a new Policy 2.17 to read as follows:

"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)"

Dana Point
LCP 1-98

COASTAL COMMISSION
Exhibit 16

EXHIBIT # 16

23. Page 9/Policy 3.4 - Rewrite this Policy to read as follows:

"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)"

24. Page 9/Policy 3.5 - Rewrite this Policy to read as follows:

"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)"

25. Page 9 - Add a new Policy 3.6 to read as follows:

"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)"

26. Page 9 - Add a new Policy 3.7 to read as follows:

"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)"

27. Page 9 - Add a new Policy 3.8 to read as follows:

"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)"

28. Page 9 - Add a new Policy 3.9 to read as follows:

"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)"

COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 16

19 23

E. 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.

COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 16
PAGE 21 OF 23

F. MISCELLANEOUS

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.

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.

HAUSERS\MICHAEL\ZTA97-02.FIL\CC970826.GPA

COASTAL COMMISSION

Dana Point LCP 1-98

EXHIBIT # 16

PAGE 23 OF 23

ORDINANCE NO. 96- 13

RECEIVED
MAY 1 1998

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALIFORNIA
DANA POINT, CALIFORNIA, APPROVING ZONE TEXT COASTAL COMMISSION
AMENDMENT ZTA96-04 AND LOCAL COASTAL PROGRAM
AMENDMENT LCPA96-04, AMENDING THE DANA POINT
ZONING CODE TO INCORPORATE REVISED
REGULATIONS FOR RESIDENTIAL BUILDING HEIGHT
AND TO AMEND OR CLARIFY OTHER VARIOUS
DEVELOPMENT PROVISIONS CITYWIDE

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

Section 1 Findings:

- a) That the proposed action is consistent with the Dana Point General Plan and Local Coastal Program in that all the proposed revisions are intended to promote and enhance compatibility between land uses which is consistent with Land Use Element Goal 2, "Achieve compatibility and enhance relationships among land uses in the community."
- b) That the proposed action is consistent with the Dana Point Zoning Code in that the proposed amendments update or clarify existing provisions of the Zoning Code or introduce new provisions to the Zoning Code which further, clarify or serve to implement the goals and policies of the General Plan.
- c) That the proposed action complies with all other applicable requirements of state law and local ordinances.
- d) The proposed action has no potential for any adverse impact on the environment and a Negative Declaration was prepared for this project. The Negative Declaration was circulated to the County Clerk and State Clearinghouse for a thirty (30) day review period. That review period ended on September 6, 1996.

Section 2 Enactment:

The Dana Point Zoning Code is hereby amended in accordance with Exhibit "A", attached hereto, and incorporated herein by this reference.

COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 17

PAGE 1 OF 11

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

I, SHARON L. DAWSON, City Clerk of the City of Dana Point, California, do hereby certify that the foregoing Ordinance No. 96-13 was duly introduced at a regular meeting of the City Council on the 12th day of November, 1996, and was duly adopted and passed at a regular meeting of the City Council on the 26th day of November, 1996, by the following vote, to wit:

AYES: COUNCIL MEMBERS CURRERI AND
OSSENMACHER, MAYOR PRO TEM KAUFMAN²,
AND MAYOR LLOREDA²

NOES: COUNCIL MEMBER GALLAGHER²

ABSENT: NONE

Sharon L. Dawson
SHARON L. DAWSON, CMC
CITY CLERK

- * 1. Voted NO on Section 9.05.110(a)(2) only.
- * 2. Voted NO on Section 9.05.110(a)(6) only.
- * 3. Voted YE² on Section 9.05.110(a)(2) and (6) only.

COASTAL COMMISSION
Dana Point LCP 1-98
EXHIBIT # 17
PAGE 3 OF 11

EXHIBIT "A"
CITY COUNCIL ORDINANCE 96-13
ZONE TEXT AMENDMENT ZTA96-04 AND
LOCAL COASTAL PROGRAM AMENDMENT LCPA96-04

CHAPTER 9.01/GENERAL PROVISIONS

No changes noted.

CHAPTER 9.03/ESTABLISHMENT OF ZONING DISTRICTS

No changes noted.

CHAPTER 9.05/GENERAL DEVELOPMENT STANDARDS

1. Page 9.05-6/Section 9.05.080(h) and (i) - Insert a new footnote (I) under the "Other Limitations" column and recodify the following footnotes accordingly.
2. Page 9.05-8/Section 9.05.080 (footnotes) - Insert a new footnote (I) to read as follows:

"No deck may be constructed so as to extend beyond the top of slope with a grade of more than fifteen (15) percent, except as may be permitted through a minor Site Development Permit subject to the provisions of Section 9.05.270."

Recodify the following footnotes accordingly.

3. Page 9.05-12/Section 9.05.110(a)(2) - Rewrite this section to read as follows:

"(2) For residential structures, building height is defined as the vertical distance, ~~measured from the interior of the building, by which the uppermost portion of the roof of a structure a building~~ extends above the existing grade, finished pad elevation, (excluding the basement finished pad elevation), ceiling of a maximum 10'0" high basement, or eighteen (18) inches above the flood protection level, whichever is lower, as measured from the lowest portion of the structure to the top of the roof. In no case may this vertical distance exceed the maximum height limit specified in Section 9.05.110(a)(6). For residential structures on Beach Road, building heights shall be measured at eighteen (18) inches above the FP-3 elevation, or the elevation of Beach Road, whichever is higher."

4. Page 9.05-14/Section 9.05.110(a)(3) - Rewrite this section to read as follows:

"Subject to the approval of a minor Site Development Permit, non-residential or residential building height may be measured from the top of not more than thirty (30) inches of fill. Approval of such a minor Site Development Permit, by the Director of Community Development, may only be granted if the applicant can demonstrate compliance with the following criteria:

CITY OF DANA POINT

Dana Point 10/1-98

REVISION 17

PAGE 5 OF 11

7. Page 9.05-37/Section 9.05.270 - Add a new Section 9.05.270 to read as follows:

9.05.270 Decks Extension Over Slope Areas

"Where a deck is proposed to extend over a slope area, the following regulations shall apply.

- (a) For purposes of this section only, areas with less than a five (5) percent grade shall not be considered a slope area and decks may be extended pursuant to the applicable setback requirements.
- (b) If the slope has a grade of more than five (5) percent but less than fifteen (15) percent, the deck may be extended to a maximum of eight (8) feet beyond the top of the slope.
- (c) If the slope has a grade of fifteen (15) percent or greater, at-grade or above-grade decks are not permitted to extend beyond the top of any slope, except as may be permitted by a minor Site Development Permit subject to the approval of the Director of Community Development and pursuant to the applicable provisions of Chapter 9.71. Such extension shall be subject to the required yard setbacks and to the following requirements:
 - (1) The applicant shall submit a site plan detailing the location of the top of the subject slope.
 - (2) The applicant shall submit evidence which details the gradient of the slope.
 - (3) The applicant shall submit a soils report substantiating the ability of the slope geology to support the proposed deck extension.
 - (4) The applicant shall provide a letter detailing how the proposed deck extension would not pose any detrimental aesthetic impact to any surrounding properties or to any public views or vistas.
 - (5) In no case may the minor Site Development Permit allow an extension of the deck beyond four (4) feet from the top of the slope."

COUNCIL COMMISSION

Dana Point LCP 1-98

PROJECT # 17

PAGE 7 OF 11

CHAPTER 9.25/HARBOR DISTRICT

No changes noted.

CHAPTER 9.27/COASTAL RESOURCE OVERLAY DISTRICT

No changes noted.

CHAPTER 9.29/PLANNED RESIDENTIAL DEVELOPMENT OVERLAY DISTRICT

No changes noted.

CHAPTER 9.31/FLOODPLAIN OVERLAY DISTRICTS

No changes noted.

CHAPTER 9.33/SPECIFIC PLAN DISTRICT

No changes noted.

CHAPTER 9.35/ACCESS, PARKING AND LOADING

No changes noted.

CHAPTER 9.37/SIGNS AND ADVERTISING DEVICES

No changes noted.

CHAPTER 9.39/TEMPORARY USES AND STRUCTURES

No changes noted.

CHAPTER 9.41/HAZARDOUS WASTE FACILITIES

No changes noted.

CHAPTER 9.43/TRANSPORTATION DEMAND MANAGEMENT

No changes noted.

CHAPTER 9.45/COVENANTS FOR EASEMENTS

No changes noted.

COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 17
PAGE 9 OF 11

APPENDIX A

No changes noted.

APPENDIX B

1. Page 1/Footnote (1) - Revise the text of this footnote to include the following text.

"Where the garage has been built with a front setback of between five (5) and twenty (20) feet, a second story area may be built above the garage area with a minimum setback equal to the existing front garage setback plus five (5) feet."

2. Page 5/Underlying Zoning - Correct Page 5 to indicate underlying zoning for PRD 3 and PRD 4.

APPENDIX C

No changes noted.

APPENDIX D

No changes noted.

APPENDIX E

Revise the table in Appendix E to add ZTA96-04, the Ordinance Number and the adoption date.

COASTAL COMMISSION
Dana Point LCP 1-98
EXHIBIT # 17
PAGE 11 OF 11

SECTION 1. That the above recitations are true and correct.

SECTION 2. That based on the evidence presented at the public hearing, the City Council adopts the following findings in the approval of Zone Text Amendment ZTA97-01 and Local Coastal Program Amendment LCPA97-01 subject to the following conditions:

Findings:

- 1) That the proposed project is consistent with the Dana Point General Plan and Local Coastal Program in that the amendment will allow for adequate residential parking without appreciable increasing residential building height and by reducing the visibility of garage doors which is in accordance with Urban Design Element Goal 5, *"Achieve design excellence in site planning, architecture, landscape architecture and signage in new development and modifications to existing development."* and Land Use Element 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."*
- 2) That the proposed project does not conflict with any applicable provisions of the Dana Point Specific Plan/Local Coastal Program, the Capistrano Beach Specific Plan/Local Coastal Program and the South Laguna Specific Plan/Local Coastal Program.
- 3) That the proposed project complies with all applicable provisions of the Dana Point Zoning Code.
- 4) That the proposed project complies with all other applicable requirements of state law and local ordinances.
- 5) That a Negative Declaration was prepared for the project for the Commission's review and approval. The Negative Declaration was circulated on June 5, 1997, to the County Clerk for a twenty-one (21) day review period. That review ended on June 26, 1997. No comments or suggested mitigations were received during that review period.

Conditions:

COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 18
PAGE 2 OF 6

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

I, KATHIE M. MENDOZA, City Clerk of the City of Dana Point, California, do hereby certify that the foregoing Ordinance No. 97-02 was duly introduced at a regular meeting of the City Council on the 22nd day of July, 1997, and was duly adopted and passed at a regular meeting of the City Council on the 12th day of August, 1997, by the following vote, to wit:

- AYES: COUNCIL MEMBERS LLOREDA, NETZLEY, MAYOR PRO TEM GALLAGHER AND MAYOR OSSENMACHER
- NOES: NONE
- ABSTAIN: COUNCIL MEMBER KAUFMAN
- ABSENT: NONE

Kathie M. Mendoza
KATHIE M. MENDOZA, CITY CLERK

COASTAL COMMISSION
Dana Point LCP 1-98
EXHIBIT # 18
PAGE 4 OF 6

**EXHIBIT "A" TO
CITY COUNCIL ORDINANCE 97.**

CHAPTER 9.75/DEFINITIONS AND ILLUSTRATIONS OF TERMS

1. Page 9.75-6/Section 9.75.020 - Rewrite the definition of "Basement" to read as follows:

"Basement - living or storage area which is constructed wholly underground, meaning below the exterior finished grade on all sides, with no more the 20% of the lineal footage of the exterior wall broken by light wells, no light well wider than four feet and no light well within six feet of another light well. An exception to these provisions, subject to a Minor Site Development Permit, would allow adequate daylighting of one wall to provide vehicular ingress and egress, would permit subterranean residential garages to be considered as a basement for the Ritz Cove (PRD 4) area only. A basement Any structural area meeting this definition shall not be considered a story."

APPENDIX B/PLANNED RESIDENTIAL DEVELOPMENT REGULATIONS

1. Page 1 - Add a new Footnote 9 to read as follows:

"9/Ritz Cove Subterranean residential garages consistent with the definition of a "Basement" as set forth in Chapter 9.75, and subject to a minor Site Development Permit pursuant to Section 9.71, shall be considered a basement and shall not be considered in the calculation of building height or stories."

COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 18
PAGE 6 OF 6

**CITY COUNCIL ORDINANCE NO. 97-12
ZONE TEXT AMENDMENT ZTA97-03/LCPA97-03
PAGE 2**

WHEREAS, upon consideration, the Planning Commission recommends that the City Council approve Zone Text Amendment ZTA97-03 and Local Coastal Program Amendment LCPA97-03 because of the need to prevent incompatible land uses in a pedestrian-oriented commercial district and assure complementary uses, and to allow more flexibility in the siting of pool equipment in smaller rear yard areas; and

WHEREAS, the City Council did, on the 12th day of November, 1997, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, at said public hearing, upon bearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Council considered all factors relating to Zone Text Amendment ZTA97-03 and Local Coastal Program Amendment LCPA97-03; and

WHEREAS, as recognized by the Planning Commission, the proposed Zone Text Amendment and Local Coastal Program Amendment are consistent with the Dana Point General Plan by implementing the applicable goals and policies of the Land Use Element relating to land use compatibility; and

WHEREAS, the proposed action complies with all other applicable requirements of State law and local ordinances; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA), the environmental impacts of the proposed action have been addressed by a Negative Declaration which was circulated to the County Clerk for a public review period of twenty-one (21) days from October 3, to October 24, 1997, and was published in the Dana Point News on October 9, 1997; and

WHEREAS, the City Council finds that unless this Ordinance is adopted by immediate action, inconsistent uses in the CC/P district will jeopardize the purpose and intent of a pedestrian-oriented commercial district and hinder pending applications for the placement of pool equipment; and

WHEREAS, the City Council finds that there is a public urgency and determines that this Ordinance shall be effective immediately so that City regulations regarding the subject amendments will maintain consistency between land uses in the CC/P district and allow more flexible siting criteria for pool equipment, promoting compatibility with, and an enhancement with the City of Dana Point as a whole; and

WHEREAS, the City Council finds, declares and determines that the immediate preservation of public peace, safety, health, and general welfare require the adoption of this Ordinance.

COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 19

PAGE 2 OF 7

NOW, THEREFORE, BE IT ORDAINED THAT the City Council of the City of Dana Point does hereby amend Section 9.05.080(p) and 9.11.020(b) of the Dana Point Zoning Code.

PASSED, APPROVED AND ADOPTED this 12th day of November, 1997.



WILLIAM OSSENMACHER, MAYOR

ATTEST:



KATHIE M. MENDOZA
CITY CLERK

H:\MichaeR\ZTA97-03.FL\CC971112.ORD
FF# 0610-15/Minor Automotive Uses Prohibited in CC/P/Citywide

COASTAL COMMISSION
Dana Point LCP 1-98
EXHIBIT # 19
PAGE 4 OF 7

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

AFFIDAVIT OF POSTING
AND PUBLISHING

KATHIE M. MENDOZA, being first duly sworn, deposes, and says:

That she is the duly appointed and qualified City Clerk of the City of Dana Point;

That in compliance with State Laws of the State of California, Urgency ORDINANCE NO. 97-12, being:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA97-03 AND LOCAL COASTAL PROGRAM AMENDMENT LCPA97-03 TO PROHIBIT MINOR AUTOMOTIVE USES IN THE COMMUNITY COMMERCIAL/PEDESTRIAN (CC/P) DISTRICT AND TO REDUCE THE REQUIRED SETBACK FOR POOL EQUIPMENT, CITYWIDE, DECLARING THE URGENCY THEREOF, AND FOR OTHER PURPOSES

was published in the Dana Point News newspaper on the 20th day of November, 1997, and in further compliance with City Resolution No. 91-10-08-1 on the 21st day of November, 1997, was caused to be posted in four (4) public places in the City of Dana Point, to wit:

- Dana Point City Hall
- Capistrano Beach Post Office
- Dana Point Post Office
- Dana Niguel Library

Kathie M. Mendoza

KATHIE M. MENDOZA
CITY CLERK
Dana Point, California

COASTAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 19
PAGE 6 OF 7

Chapter 9.27

COASTAL OVERLAY DISTRICT

Sections:

- 9.27.010 Intent and Purpose.
 9.27.020 Permitted, Accessory and Conditional Uses.
 9.27.030 Development Standards.

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 shall be combined with any other zoning district that lies within the Coastal Zone of the City of Dana Point. 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. (Added by Ord. 93-16, 11/23/93; amended by Ord. 97-05, 9/9/97)

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) 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

COASTAL OVERLAY DISTRICT

Dana Point LCP 1-98

(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

CITY OF DANA POINT

Dana Point LUP 1-98

EXHIBIT # 20

PAGE 3 OF 20

- 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)

COASTAL COMMISSION
 Dana Point LCP 1-98

EXHIBIT # 20
 PAGE 5 OF 20

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

COASTAL COMMISSION

Dana Point LCP 1-98

EXHIBIT # 20

PAGE 7 OF 20

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.

COASTAL COMMISSION

Dana Point LUP 1-98

EXHIBIT # 20
PAGE 9 OF 20

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

COUNCIL COMMISSION

Dana Point LAP 1-98

EXHIBIT # 20

PAGE 11 OF 20

- 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.

COASTAL COMMISSION

Dana Point LCP 198

EXHIBIT # 20

PAGE 13 OF 20

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; 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.

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 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.

GENERAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 20

9.27-15

(Dana Point Zoning Code 2-98)

PAGE 15 OF 20

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.
 10. Any other information as deemed necessary by the Director of Community Development or Director of Public Works.
 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. All landscaping shall be native or drought tolerant which minimizes 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:
- (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) 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 or less than 50 years of bluff erosion, whichever is most restrictive, be permitted.

PLANNING COMMISSION

Dana Point LCP 1-98

EXHIBIT # 20

9.27-17

(Dana Point Zoning Code 2-98)

PAGE 17 OF 20

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.

COUNCIL COMMISSION

Dana Point LCP 1-98

9.27-19

(Dana Point Zoning Code 2-98)

EXHIBIT # 20

PAGE 19 OF 20

Chapter 9.61

ADMINISTRATION OF ZONING

Sections:

9.61.010	Intent and Purpose.
9.61.020	Interpretation, Administration and Enforcement.
9.61.030	Penalty for Violation of the Code.
9.61.040	Procedures for Applications Requiring Discretionary Action.
9.61.050	Notice and Conduct of Public Hearings.
9.61.060	Fees and Deposits.
9.61.070	Procedure for Withdrawal of an Application.
9.61.080	Amendments.
9.61.090	Administrative Modification of Standards.
9.61.100	Preliminary Review.
9.61.110	Appeal Procedures.
9.61.120	Revocations and Modifications.
9.61.130	Expiration and Extensions.
9.61.140	General Plan Consistency Requirements.

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. 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. (Added by Ord. 93-16, 11/23/93; amended by Ord. 97-05, 9/9/97)

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.

COMMUNITY DEVELOPMENT

Dana Point LCP 1-98

DATE # 21

PAGE 1 OF 23

- 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.
 - (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 complete application unless the applicant requests, or consents to, an extension of time.
 - (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.

COASTAL COMMISSION

Dana Point LCP 1-98

EXHIBIT # 21

PAGE 3 OF 23

- (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 (50) feet 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).
- (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 (50) feet of the subject site. Applications which propose access from a Circulation Element roadway shall provide plans showing all access features within one hundred fifty (150) feet 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.

CITY OF DANA POINT COMMUNITY DEVELOPMENT

Dana Point LCP 1-98

FIGURE # 21
PAGE 5 OF 23

- (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.
- (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.

(Added by Ord. 93-16, 11/23/93; amended by Ord. 94-09, 5/24/94; Ord. 94-21, 12/13/94; Ord. 97-05, 9/9/97)

9.61.050 Notice and Conduct of Public Hearings.

- (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:
- (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.

Dana Point LOP 1-98

9.61-7

(Dana Point Zoning Code 2-98)

21
7 OF 23

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.
 - (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.

(Added by Ord. 93-16, 11/23/93; amended by Ord. 94-21, 12/13/94; Ord. 97-05, 9/9/97)

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

COUNCIL COMMISSION
Dana Point LCP 1-98

initiation of the amendment, the procedural steps identified in Sections 9.61.080(g) and 9.61.050 will be followed.

(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 (25) percent 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.

(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.

COASTAL COMMISSION

Dana Point LCP 1-98

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.

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)

(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

COASTAL COMMISSION

Dana Point LCP 1-98

EXHIBIT # 21

PAGE 13 OF 23

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 of LCPAs must be mailed free of charge by first class mail to:

1. Members of the public requesting such notices, including those on a list for all coastal decisions in the City;
2. Contiguous and affected local governments and special districts;
3. State and Federal agencies specified in Appendix A of Local Coastal Program Manual of the California Coastal Commission 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
4. Local libraries and media. (14 Cal. Code of Regulations/13515).

(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.

(6) **City Council Resolution.**

(A) 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

(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.
 - (3) The Planning Commission shall transmit 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.

COASTAL COMMISSION

Dana Point LCP 1-98

9.61-17

(Dana Point Zoning Code 2-98)

EXHIBIT # 21

PAGE 17 OF 23

- (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 compliance with the provisions and standards included in this Zoning Code.
 - (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.
 - (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.
 - (e) Notice of Action. The Director of Community Development shall transmit a written Notice of Action to the applicant by first class mail.
- (Added by Ord. 93-16, 11/23/93; amended by Ord. 97-05, 9/9/97)

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.

- (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.

COASTAL COMMISSION

Dana Point LCP 1-98

- (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 Permit.** 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.
- (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.

(Added by Ord. 93-16, 11/23/93; amended by Ord. 94-21, 12/13/94; Ord. 96-10, 8/13/96; Ord. 97-05, 9/9/97)

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.

COASTAL COMMISSION

Dana Point LCP 1-98

9.61-21

(Dana Point Zoning Code 2-98)

EXHIBIT # 21

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
 - (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.

(Added by Ord. 93-16, 11/23/93)

COSTAL COMMISSION
Dana Point LCP 1-98
EXHIBIT # 21
PAGE 23 OF 23

Chapter 9.69

COASTAL DEVELOPMENT PERMIT

Sections:

- 9.69.010 Intent and Purpose.
 9.69.020 Coastal Development Permit Required.
 9.69.030 Authority to Grant Permit.
 9.69.040 Exemptions.
 9.69.050 Application for Coastal Development Permit.
 9.69.060 Notice and Public Hearing.
 9.69.070 Basis For Action on Coastal Development Permit Applications.
 9.69.080 Decision by the Director of Community Development or Planning Commission.
 9.69.090 Appeals to the Coastal Commission.
 9.69.100 Notice of Final Action to Coastal Commission.
 9.69.110 Administrative Coastal Development Permit.
 9.69.120 Expiration of Coastal Development Permits.
 9.69.130 Amendments to Coastal Development Permits.
 9.69.140 Extension of Time.
 9.69.150 Emergency Permits.
 9.69.160 De Minimis Project Waivers From Coastal Development Permit Requirements.
 9.69.170 Enforcement.
 9.69.180 Format and Content of Coastal Development Permits.

9.69.010 Intent and Purpose.

The intent and purpose of this Chapter is to establish 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 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.

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. (Added by Ord. 93-16, 11/23/93; amended by Ord. 97-05, 9/9/97)

COASTAL COMMISSION
 Dana Point LCP 1-98

PERMIT # 22
 PAGE 1 OF 29

- (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.

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.
 - (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 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.

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 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)).

COASTAL COMMISSION

Dana Point LCP 1-98

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.

COASTAL COMMISSION

Dana Point LCP 1-98

EXHIBIT # 22
PAGE 5 OF 29

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;
 - (B) An increase in the floor area in any amount when improvements to the structure have previously been exempted in compliance with 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);
 - (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 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, for structures other than single-family residences, within one hundred (100) feet of streams.
 - (4) Expansion or construction of a water well or septic system.
 - (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 using development (not essential to residential use if for a single-family or multiple-family residence) including, but not limited to, swimming pools 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 a change 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 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

COASTAL COMMISSION

Dana Point LCP 1-98

9.69-7

(Dana Point Zoning Code 2-98)

EXHIBIT # 22

PAGE 7 OF 29

- (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)).
- (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 (10) percent; and is sited in the same location on the same building site as the destroyed structure. 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)).
- (g) Notwithstanding the above provisions, the Director of Community Development shall have the discretion to exempt 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)).
- (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.
- (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.

(Added by Ord. 93-16, 11/23/93; amended by Ord. 94-09, 5/24/94; Ord. 96-10, 8/13/96; Ord. 97-05, 9/9/97)

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 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, the owner's authorized agent, or any person with a legal right, interest or other entitlement to use the property

COASTAL COMMISSION

Dana Point LCP 1-98

- (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.

GENERAL COMMISSION
Dana Point LCP 1-98

EXHIBIT # 22
PAGE 11 OF 29

- (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).

(Added by Ord. 93-16, 11/23/93; amended by Ord. 97-05, 9/9/97)

9.69.060 Notice and Public Hearing.

For 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).

COASTAL COMMISSION

Dana Point LCP 1-98

- (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).

(Added by Ord. 93-16, 11/23/93; amended by Ord. 97-05, 9/9/97)

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 certified Dana Point Local Coastal 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.

- (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:
 - (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

COASTAL COMMISSION

Dana Point LCP 1-98

- (1) A copy of the coastal development permit conditions, findings of approval, and drafts of any legal documents 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 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 the date of receipt of such documents 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 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 have been resolved to the satisfaction of the Executive Director.
- (4) The Coastal Development Permit shall not be issued to the applicant until the 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).

(Added by Ord. 93-16, 11/23/93; amended by Ord. 97-05, 9/9/97)

- (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

COASTAL COMMISSION

Dana Point LCP 1-98

9.69-19

(Dana Point Zoning Code 2-98)

EXHIBIT # 22

10 20

the development has been approved by operation of law. (Coastal Act/30333; 30620; 14. Cal Code of Regulations/13571(b)(2)).

(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).

(Added by Ord. 93-16, 11/23/93; amended by Ord. 97-05, 9/9/97)

9.69.110 Administrative Coastal Development Permit.

- (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.
- (d) 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.

Dana Point LCP 1-98

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, 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.

(Added by Ord. 93-16, 11/23/93; amended by Ord. 97-05, 9/9/97)

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

(Added by Ord. 93-16, 11/23/93; amended by Ord. 97-05, 9/9/97)

COASTAL COMMISSION

Dana Point LCP 1-98

9.69-23

(Dana Point Zoning Code 2-98)

EXHIBIT # 22

PAGE 23 OF 29

- (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 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

COASTAL COMMISSION

Dana Point LCP 1-98

9.69-25

(Dana Point Zoning Code 2-98)

PAGE 22

PAGE 25 OF 29

- (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

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.

(Added by Ord. 97-05, 9/9/97)

COASTAL COMMISSION
Dana Point LCP 1-98
PAGE # 22
PAGE 29 OF 29