

CALIFORNIA COASTAL COMMISSION

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**RECORD PACKET COPY**

Received: July 15, 1998
Staff: KFS-LB
Staff Report: April 22, 1999
Hearing Date: May 11-14, 1999
Commission Action:

STAFF REPORT: PERMIT EXTENSION REQUEST

APPLICATION NUMBER: 5-92-188-E5

APPLICANT: CPH Resorts I, LLC

AGENT: Culbertson, Adams, and Associates

PROJECT LOCATION: Northeast of the intersection of Pacific Coast Highway and Crown Valley Parkway, and west of the Salt Creek Regional Trail, City of Dana Point, County of Orange

PROJECT DESCRIPTION: The construction of 111 attached residential units on 14.3 acres. Units will be clustered into 16 two-story buildings and 4 three-story buildings. For 57 of the units, the floor area ranges from 1400 to 2700 square feet. The floor area of 40 units ranges from 2300 to 2900 square feet. Building height of the 3 story buildings is 41 feet. The floor areas of the remaining 14 units would range from 2750 to 3200 square feet. Height for the 2 story buildings will be 28 feet. The 2 story units are located on the south side of the site near Pacific Coast Highway. The 3 story units are located on the north side of the site. The architectural theme will mimic the character of the Tuscan area of Italy. Grading will consist of approximately 85,000 cubic yards of cut and 33,000 cubic yards of fill.

SUMMARY OF STAFF RECOMMENDATION: Staff recommends that the extension **NOT** be granted for the following reasons: The Executive Director has determined that changed circumstances exist which affect the development's consistency with the wetland policies of the Coastal Act. The Executive Director has determined that a changed circumstance exists because a wetland has emerged on the project site that will be partially or wholly eliminated if the proposed project is constructed. Staff recommends that the Commission object to the extension request and make a finding of changed circumstance. This finding will result in the application being heard as if it were a new application at a subsequent Commission meeting. In order to deny the extension request, at least three Commissioners must object to the extension request.

STAFF NOTE: The subject extension request, 5-92-188-E5, was received July 15, 1998. No changed circumstances were known to the Executive Director and a *Notice of Extension Request for Coastal Development Permit*, dated August 6, 1998, was issued (Exhibit D). A written objection to the permit extension request was received within the 10 day objection period (Exhibit H). Pursuant to section 13169(a)(2) of the California Code of Regulations, the subject extension request was scheduled to be reported at the October 13-16, 1998, Commission hearing. The extension request was scheduled concurrently with extension requests 5-92-168-E5 and 5-92-186-E5, which are permits for development related to the larger overall project approved in concept by CDP P-79-5539. Commission staff's report dated September 24, 1998, which addressed extension requests 5-92-168-E5, 5-92-186-E5, and the subject request 5-92-188-E5, recommended that the Commission grant the extension

5-92-188-E5
Extension Request
Staff Report
Page 2 of 12

request as there were no changed circumstances. However, prior to the hearing it was brought to Commission staff's attention that wetlands may be present on the site of 5-92-188, and that therefore there may be changed circumstances. If wetlands exist on the site, construction of the proposed project would result in fill of the wetlands for a use, a housing development, which is not allowable under the City's certified local coastal program and section 30233 of the Coastal Act. Accordingly, Commission staff postponed extension request 5-92-188-E5 to evaluate whether there were changed circumstances. Meanwhile, the Commission concurred with the Executive Director's determination of no changed circumstances and granted the extensions on 5-92-168-E5 and 5-92-186-E5. This staff report addresses both the presence of changed circumstances and the written objection on extension request 5-92-188-E5. The one year period for this fifth extension request will expire August 11, 1999.

PROCEDURAL NOTES:

1. **Report of Extension Requests.** Section 13169(a)(1) of Title 14 of the California Code of Regulations ("regulations") provides that permit extension requests shall be reported to the Commission if objection is made to the Executive Director's determination that there are no changed circumstances that may affect the permit's consistency with the Coastal Act. Prior to knowledge of the presence of wetland habitat at the subject site and pursuant to Section 13169(a)(1) of the regulations, the Executive Director published notice of the determination that there were no changed circumstances affecting the proposed development's consistency with the Coastal Act (Exhibit D). Section 13169(a)(1) of the regulations sets forth an objection period of ten (10) working days after the Executive Director's notice is published. Within this period a letter of objection was received (Exhibit H).

In addition, Section 13169(a)(2) of Title 14 of the California Code of Regulations ("regulations") provides that permit extension requests shall be reported to the Commission if the Executive Director determines that due to changed circumstances the proposed development may not be consistent with the Coastal Act.

2. **Commission Action on Permit Extension Requests.** A letter of objection was received within the 10 day objection period. In addition, the Executive Director has determined that due to changed circumstances the proposed development may not be consistent with the Coastal Act. Accordingly, the application is being reported to the Commission pursuant to Section 13169(a)(2) of the regulations. Pursuant to Section 13169(a)(2) of the regulations, if three (3) commissioner's object to an extension request on the grounds that the proposed development may not be consistent with the Coastal Act, the application shall be set for a full public hearing as though it were a new application. If three objections are not made, the permit will be extended for an additional one-year period from the most recent expiration date.

SUBSTANTIVE FILE DOCUMENTS:

Coastal development permits P-79-5539 (AVCO); 5-92-168, 5-92-186, 5-92-188, and 5-96-006 (Monarch Bay Resort, Inc.); City of Dana Point certified local coastal program; *Biological Assessment of the Disturbed/Freshwater Marsh Habitat on Monarch Beach Resort Project, City of Dana Point, Orange County, California*, dated October 28, 1998, by Bonterra

Consulting of Costa Mesa, California; *Wetlands Determination, Biological Assessment and Jurisdictional Delineation of Artificially-Created Freshwater Marsh on Monarch Beach Resort Site, Dana Point, California* dated December 22, 1998 by Glenn Lukos Associates of Laguna Hills.

STAFF RECOMMENDATION

I. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

A. Project Description, Location, and Permit History

The applicant has proposed and partially constructed a master-planned resort that will encompass a variety of development components, including the development proposed, a 111 unit residential community, under the subject permit (Exhibit A). The proposed master-planned resort is a portion of the larger development approved under coastal development permit P-79-5539 (Exhibit G). The proposed master plan is contemplated under the City's Monarch Beach Resort Specific Plan. In addition to the 111 unit residential community, the Commission has approved coastal development permits for the expansion of a previously approved public community park (5-92-157, since expired), a golf course and clubhouse (5-96-006, which has been built), a 400-key resort with related visitor serving facilities (5-92-168 and 5-92-168A, which has not been built but the permit was extended), and 55 residential units (5-92-186, which has not been built but the permit was extended) as part of the proposed resort. The proposed developments are part of the Monarch Bay Resort project, located northwest of the intersection of Niguel Road and Pacific Coast Highway (State Route One) in the City of Dana Point in the County of Orange. The subject site (5-92-188) is not located between the first public road and the sea.

The development approved under coastal development permit 5-92-188 consists of the construction of 111 attached residential units on 14.3 acres located west of Salt Creek and the existing golf course. Units will be clustered into 16 two-story buildings and 4 three-story buildings. For 57 of these units, the floor area ranges from 1400 to 2700 square feet. The floor area of 40 units ranges from 2300 to 2900 square feet. Building height of the 3 story buildings is 41 feet. The floor areas of the remaining 14 units would range from 2750 to 3200 square feet. Height for the 2 story buildings will be 28 feet. The 2 story units are located on the south side of the site near Pacific Coast Highway. The 3 story units are located on the north side of the site. The architectural theme will mimic the character of the Tuscan area of Italy. Grading will consist of approximately 85,000 cubic yards of cut and 33,000 cubic yards of fill.

An amendment to permit 5-92-188 was approved by the Coastal Commission on March 14, 1996 (Exhibit E). As originally proposed, the existing golf clubhouse was to be located on the site covered by permit 5-92-188 (Exhibit F), on the west side of the golf course. However, the applicant decided to relocate the golf clubhouse to the site covered by permit 5-92-168, which would contain the proposed hotel, on the east side of the golf course. As a result, 14

residential units located at the hotel site's northwest corner had to be deleted in order to make room for the relocated golf clubhouse. These 14 residential units were relocated to the site covered under permit 5-92-188 where the golf clubhouse originally was proposed, on the west side of the golf clubhouse (Exhibit A, page 3). The golf clubhouse itself was approved by separate coastal development permit 5-96-006 and has since been built.

The subject permit was originally approved when the property was under the ownership of Monarch Bay Resorts, Inc. Upon change of ownership, the subject permit was transferred to CPH Resorts I, LLC on September 16, 1998 (Exhibit C).

B. Evaluation of Changed Circumstances

1. Standard of Review

Section 13169(a)(2) of Title 14 of the California Code of Regulations provides that if three Commissioners object to the extension on the grounds that the approved project is not consistent with the Coastal Act, the application shall be set for a full hearing as though it were a new application. The local coastal program ("LCP") for this area of the City of Dana Point was effectively certified on November 5, 1997. The Commission, in certifying the LCP, found the LCP to be in conformity with and adequate to carry out the Coastal Act. Although, review of extensions of coastal development permits approved by the Commission is not delegated to the local government after certification of the LCP, pursuant to section 30604(b) of the Coastal Act, the Commission must act on requests to extend the subject permits utilizing the standards of the certified LCP.

2. Description of Changed Circumstances

The subject site is an upland area roughly bounded by Pacific Coast Highway on the southwest, a shopping center to the northwest, a vacant uphill parcel to the northeast, and Salt Creek to the southeast (Exhibit A). A wet vegetated area, confirmed by staff in October 1998 and April 1999, occurs near the northern property boundary at the northwest portion of the site at an elevation of approximately 113 feet above sea level. Topography in the immediate vicinity of the wet vegetated area is relatively flat. Overall, the site consists of at least two graded pads separated by a sharp, graded elevation change. The topography is oriented and drops toward Pacific Coast Highway. Topographic conditions at the site have been altered from their natural state by mass grading activity reported to have occurred in 1973, 1980, and 1983.

No wet vegetated area was identified nor analyzed in the approval of coastal development permit 5-92-188. The applicant's agent has affirmed that wetlands were not present at the time of approval by submitting an aerial photograph dated January 8, 1992, which was prior to the Commission taking action on the permit in August 1992. This photograph was accompanied by an interpretation which states that wetland vegetation is not visible on the photograph within the boundary of the subject area.

Commission staff requested an assessment of the wet vegetated area observed in October 1998 to evaluate whether biological conditions had changed at the site since approval of the

proposed project. Two assessments were submitted. The first, dated October 28, 1998, was performed by Bonterra Consulting of Costa Mesa, California, and titled *Biological Assessment of the Disturbed/Freshwater Marsh Habitat on Monarch Beach Resort Project, City of Dana Point, Orange County, California* (herein referred to as 'Biological Assessment') (Exhibit J). A second assessment was also submitted in *Wetlands Determination, Biological Assessment and Jurisdictional Delineation of Artificially-Created Freshwater Marsh on Monarch Beach Resort Site, Dana Point, California* dated December 22, 1998 by Glenn Lukos Associates of Laguna Hills (herein referred to as 'Wetlands Determination') (Exhibit K).

Results from the Biological Assessment are that an approximately 0.18 acre disturbed freshwater marsh is present on the subject site. This freshwater marsh contains several freshwater marsh plant species including cattails (*Typha* sp.), bulrushes (*Scirpus* sp., *Cyperus* sp.), and wild celery (*Apium graveolens*). The source of water for the marsh is urban/landscape runoff discharged onto the site from a v-ditch.

The results from the Biological Assessment are corroborated by similar results from the Wetlands Determination. This study states that a 0.24 acre wetland is present on the subject site. This evaluation reports the presence of several hydrophytic plant species including cattail (*Typha domingensis*), common celery (*Apium graveolens*), rabbitsfoot grass (*Polypogon monspeliensis*), brass buttons (*Cotula coronopifolia*), white watercress (*Rorippa nasturtium-aquaticum*), bristly ox-tongue (*Picris echioides*), and prickly sow thistle (*Sonchus asper*). Invasive non-native plant species were also present including pampas grass (*Cortaderia selloana*) and African umbrella sedge (*Cyperus involucratus*). The study also states that hydric indications were present in those soils in the wet vegetated areas. Finally, the source of water for the wetland is reported as near constant flows from a v-ditch which discharges on the site. Water in the v-ditch is reported as originating from landscape and urban runoff from a nearby condominium complex.

3. Consistency of Approved Development with the Wetland Resource Policies of the City of Dana Point Certified Local Coastal Program and Chapter 3 of the Coastal Act

Wetlands are defined in the City of Dana Point certified Local Coastal Program as follows:

Wetlands – any land area which may be covered periodically or permanently with shallow water including, but not limited to, saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps and mudflats.

The definition of wetlands contained in the certified LCP is consistent with section 30121 of the Coastal Act which defines wetlands as:

"Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

According to the Biological Assessment and Wetlands Determination, the 0.18 to 0.24 acre wetland receives water via near constant flows from a v-ditch which discharges onto the

subject site. This water ponds on the site which has caused soils with hydric indicators to develop and hydrophytic vegetation to grow. Furthermore, the assessments identify this wetland area as a freshwater marsh, based upon the presence of one or more wetland indicators (i.e. presence of hydrophytes, presence of hydric soils, periodic soil saturation).

To accurately delineate the extent of wetlands consistent with the Coastal Act and LCP definition, the Commission relies upon section 13577(b) of the Commission's regulations. That section states:

For purposes of Public Resources Code Sections 30519, 30600.5, 30601, 30603, and all other applicable provisions of the Coastal Act of 1976, the precise boundaries of the jurisdictional areas described therein shall be determined using the following criteria:

(b) Wetlands.

(1) Measure 100 feet landward from the upland limit of the wetland. Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. For purposes of this section, the upland limit of a wetland shall be defined as:

(A) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover;

(B) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or

(C) in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation, and land that is not.

(2) For the purposes of this section, the term "wetland" shall not include wetland habitat created by the presence of and associated with agricultural ponds and reservoirs where:

(A) the pond or reservoir was in fact constructed by a farmer or rancher for agricultural purposes; and

(B) there is no evidence (e.g., aerial photographs, historical survey, etc.) showing that wetland habitat pre-dated the existence of the pond or reservoir. Areas with drained

hydric soils that are no longer capable of supporting hydrophytes shall not be considered wetlands.

The rationale for using hydrophytes and hydric soils as wetland indicators, is that wetlands are lands where saturation with water is the dominant factor determining the nature of soil development and the types of plant and animal communities living in the soil and on its surface. The single feature that most wetlands share is water. Thus the presence or absence of hydrophytes and hydric soils make excellent physical parameters upon which to delineate existence of wetland habitat areas for purposes of the Coastal Act. Thus, the Commission identifies a wetland by the presence of at least one wetland indicator.

Accordingly, the 0.18 to 0.24 acre wet vegetated area is a wetland as defined by the certified LCP and the Coastal Act because the land area is a freshwater marsh that is periodically or permanently covered with shallow water, has hydrophytic vegetation, and contains soil with hydric indicators.

The diking, filling, or dredging of wetlands is addressed in policy 3.6 of the Conservation/Open Space Element of the City of Dana Point certified Local Coastal Program, as follows:

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)

Section 30233(a) of the Coastal Act states:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

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

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

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

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

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

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

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

The 0.18 to 0.24 acre wetland would be partially or wholly eliminated by the construction of the private roadway and appurtenant structures approved by CDP 5-92-188, as amended (Exhibit B). Construction of private roadways and appurtenant structures in a wetland is not one of the eight uses for which diking, filling, or dredging of a wetland is allowable under section 30233(a) of the Coastal Act. The certified LCP incorporates the provisions of section 30233 by reference. Therefore, the Commission finds that circumstances have changed at the subject site which would cause the proposed project to be inconsistent with the wetland policies of the City of Dana Point certified local coastal program.

4. Objections

a. *Objection Received During the Objection Period*

In response to the Executive Director's initial determination of no changed circumstances (i.e. prior to the knowledge of the presence of wetlands at the subject site), a letter of objection was received. The objections are outlined in the following discussion. Exhibit H is the letter transmitted to Commission staff which outlines the objections raised by the primary objector. A second letter was also received, after expiration of the objection period, and is discussed in section 4.b. of this staff report.

Objection 1): *traffic circulation was not addressed when the golf clubhouse was relocated from the west side of the golf course to the east side (and 14 residential units were correspondingly relocated from the east side of the golf course to the west side.*

Response to Objection 1): This objection is relevant to 5-92-188-E5 because as originally proposed, the existing golf clubhouse was to be located on the site covered by permit 5-92-188 (Exhibit F), on the west side of the golf course. However, the applicant decided to relocate the golf clubhouse to the site covered by permit 5-92-168, which would contain the proposed hotel, on the east side of the golf course. As a result, 14 residential units located at the hotel site's northwest corner had to be deleted in order to make room for the relocated golf clubhouse. These 14 residential units were relocated to the site covered under permit 5-92-188 where the golf clubhouse originally was proposed, on the west side of the golf clubhouse (Exhibit A, page 3).

The golf clubhouse relocation also involved the relocation of the access driveways to the golf clubhouse. At the previous location on the west side of the golf course, the access would have been taken off Pacific Coast Highway (State Route One). At the current location, access is taken off of Niguel Road, which intersects Pacific Coast Highway ("PCH"). The current access is in the same general location as the access, which will be built for the proposed hotel.

The issue of traffic generation was not directly addressed in either the original approval of the permit or the approval of the 1996 amendment and new permit for the golf clubhouse relocation. The primary issue regarding public access remains the adequacy of on-site parking. In regards to traffic, however, the 1996 amendment and new permit for the relocated golf clubhouse would have a slightly beneficial effect.

First, the relocated golf clubhouse is about half the size of the previously proposed clubhouse (30,000 square feet versus 14,030 square feet). Therefore, the existing clubhouse will generate less traffic than the previously proposed clubhouse. Second, relocating the access from PCH to Niguel Road would benefit coastal access in general. PCH is the only road which parallels the shoreline in the City's coastal zone and which provides through-access to upcoast and downcoast areas. It is the major access road to Interstate 5 and the only access to the adjacent City of Laguna Beach. Thus, it is the only option for upcoast travel. Niguel Road, on the other hand, runs perpendicular to the shoreline and provides access to inland areas. While the LCP designates Niguel Road as a primary coastal access road (as it does for PCH and Crown Valley Parkway), major roads such as Crown Valley Parkway, Street of the Golden Lantern, and Del Obispo exist as alternatives to Niguel Road (Exhibit A).

Thus, the relocation of the golf clubhouse access from PCH to Niguel Road benefits coastal access overall by removing some traffic from PCH, the only parallel coastal road. As a result, traffic on Niguel Road will increase. However, alternative roads to Niguel Road exist, mitigating the increased traffic on Niguel Road. Further, the increased traffic on Niguel Road will not be as great as the traffic would have been on PCH, since the existing golf clubhouse is smaller than when it was previously proposed at its old location.

The Commission approved this relocation and found it to be consistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that the objections raised in the objection letter do not identify any changed circumstances that would cause the proposed development to be inconsistent with the public access policies of the certified LCP.

Objection 2): *The objector contends that the issue of parking was not addressed when the golf clubhouse, and corresponding 14 residential units, were relocated.*

Response to Objection 2): This objection is also relevant to 5-92-188-E5 for the reasons stated above in the response to Objection 1. In contrast to the issue of traffic, the issue of parking was extensively addressed in both the original approval of the permit and the 1996 approval of the amendment and new golf clubhouse permit. The Notice of Intent for the subject permit, attached as an exhibit to this report, contains a special condition addressing the issue of parking. Special condition four requires the applicant conduct a parking

monitoring program to evaluate parking at the golf clubhouse and hotel for a two year period upon completion of the development. If the parking study shows that parking is deficient the applicant is required to provide additional on-site parking. In addition, at the subject site, a minimum of two parking spaces per residential unit will be provided. Two parking spaces per residential unit is consistent with the parking standards established in the City's certified local coastal program and the Commission's regularly used parking guidelines. Therefore, the Commission finds that there are no changed circumstances that would cause the proposed development to be inconsistent with the parking provisions of the certified LCP.

Objection 3): *The Ritz Carlton hotel has a parking problem and uses on-street public parking on Niguel Road.*

Response to Objection 3): This objection is not relevant to 5-92-188-E5. The Ritz Carlton is not on the subject site, nor is it part of the proposed Monarch Beach Resort Specific Plan area. It was approved by coastal development permit 5-82-291 and has since been built. It is not clear if the objector is implying that the proposed Monarch Beach Resort hotel and clubhouse would also have a parking problem similar to the Ritz Carlton. As discussed above under Objection 2, the subject permit has been conditioned to address the issue of parking. Therefore, the Commission finds that there are no changed circumstances that have changed the parking situation or that would cause the proposed development to be inconsistent with the parking provisions of the certified LCP.

Objection 4): *The objector raises the issue of affordable housing, assert that: 1) affordable housing was not mitigated, other than through payment of an in-lieu fee, 2) housing facilities for lower income employees of the proposed resort has not been provided, and 3) there is no affordable housing at Niguel Beach Terrace*

Response to Objection 4): This objection is relevant to 5-92-188-E5. The subject permit contains conditions regarding the provision of affordable housing consistent with the provisions of master coastal permit P-79-5539 (see Exhibits E, Page 3; Exhibit F, Page 4; Exhibit G, Pages 7-10). The affordable housing special condition of the subject permit has not yet been met. It is possible that low and moderate income-employees of the proposed resort may qualify for affordable housing that may become available due to the special condition. However, low and moderate income housing for employees of the proposed resort is not specifically required. Further, the certified LCP contains affordable housing provisions, which apply specifically to the proposed developments.

Regarding the in-lieu fees for affordable housing, it is not clear to what the objector is referring. Special condition two of CDP 5-92-188 requires that affordable housing be provided, while the City of Dana Point has an in-lieu fee program. The two affordable housing requirements are separate and apart from each other. The City's affordable housing requirement is a separate requirement from special condition two (affordable housing) of the subject permit and is not an issue related to issuance of the subject permit. Meanwhile, the affordable housing requirement on the subject permit requires physical provision of affordable housing units, not in-lieu fees. The required units may be provided off-site, but evidence of construction or acquisition and provision of the affordable units is required prior to issuance of the subject permit.

Therefore, the Commission finds that there are no changed circumstances regarding the issue of affordable housing that would cause the proposed development to be inconsistent with the affordable housing provisions of the certified LCP.

Objection 5): *The objector claims that notices of the extension request were not sent to owners/occupants of the Niguel Shores neighborhood.*

Response to Objection 5: This objection is relevant to 5-92-188-E5. However, notice of the Executive Director's initial determination of no changed circumstance was sent to several hundred owners and occupants located within 100 feet of the edge of the subject site. The objector responded as a result of this mailing. The Niguel Shores neighborhood is not within 100 feet of the edge of the subject site. Further, the portion of Niguel Shores inland of PCH is not in the coastal zone. Therefore, the Commission finds that this objection does not raise any issue of changed circumstances and the development's consistency with the certified LCP.

b. Additional Letter of Concern

Exhibit I contains an additional letter, received after the objection period was over, expressing concern that the proposed residences would be built before the proposed hotel and other visitor-serving commercial and recreation development. The subject permit has been conditioned for a phasing plan, which requires public recreation facilities to be built first, the hotel second, and the residences last. The certified LCP also includes this phasing plan. Therefore, the Commission finds that there are no changed circumstances regarding the phasing plan that would cause the proposed development to be inconsistent with the phasing requirements in the certified LCP.

5. Conclusion

The objections raised by the objector do not establish any changed circumstances. However, wetland habitat, which will be filled by the proposed project, has emerged on the subject site and does represent a changed circumstance. Therefore, the Commission concurs with the Executive Director's determination that there are changed circumstances that would cause the proposed development to be inconsistent with the wetland policies of the certified local coastal program. Therefore, the Commission finds that the extension request must be denied.

LIST OF EXHIBITS

- Exhibit A:** Project Location Maps
- Exhibit B:** Wetland Location Maps
- Exhibit C:** Assignment of Permit
- Exhibit D:** Notice of Extension Request for Coastal Development Permit
- Exhibit E:** 5-92-188A Notice of Intent to Issue Amendment
- Exhibit F:** 5-92-188 Notice of Intent to Issue Permit
- Exhibit G:** Coastal development permit P-79-5539
- Exhibit H:** Objection letter
- Exhibit I:** Additional letter of concern
- Exhibit J:** *Biological Assessment of the Disturbed/Freshwater Marsh Habitat on Monarch Beach Resort Project, City of Dana Point, Orange County, California, dated October 28, 1998, by Bonterra Consulting of Costa Mesa, California*
- Exhibit K:** *Wetlands Determination, Biological Assessment and Jurisdictional Delineation of Artificially-Created Freshwater Marsh on Monarch Beach Resort Site, Dana Point, California dated December 22, 1998 by Glenn Lukos Associates of Laguna Hills.*

SOUTH LAGUNA

PACIFIC OCEAN

THREE ARCH BAY

MONARCH BAY COMMUNITY STREETS
ALSO KNOWN AS MONARCH BAY DR

- 1 QUEEN CATHERINE CT
- 2 DRESSING WAY
- 3 CORONATION DR
- 4 QUEEN ANN CT
- 5 LOUIS XIV CT
- 6 KING JOHN LN
- 7 KING WILLIAM CT
- 8 KING FREDERICK LN
- 9 CHURCH COAST DR
- 10 KING CHARLES TIT LN
- 11 KING FREDERICK IV CT
- 12 BEACH CLUB DR
- 13 SUNSHINE DR
- 14 SUN CREST DR

Subject Site

SALT CREEK BEACH PARK

SEE V H3

- 1 BAYCREST PL
- 2 FAIRY PORT
- 3 PLACID HARBOR
- 4 WICKFORD
- 5 RIDGELINE CT
- 6 SANDSTONE CT
- 7 WINDY WATER CT
- 8 STONECREST
- 9 CROSSCREEK
- 10 WINDMILL PT

SEE V J5

- 1 SAND CASTLE CT
- 2 SPIN DRIFT CT
- 3 SAND LOVER CT
- 4 RISING TIDE CT
- 5 SEABIRD WAY
- 6 SEA HILL WAY
- 7 STARR LN
- 8 SUNFISH WAY

SEE V G1

- 1 NEW CHANDON
- 2 PICKNEY CLOSE

SEE V J6

- 1 ST OF THE ANCHOR LANTERN
- 2 ST OF THE WESTERN LANTERN
- 3 ST OF THE SHORE LANTERN
- 4 ST OF THE STANDARD LANTERN
- 5 ST OF THE PORT LANTERN
- 6 ST OF THE COVE LANTERN

SEE V H5

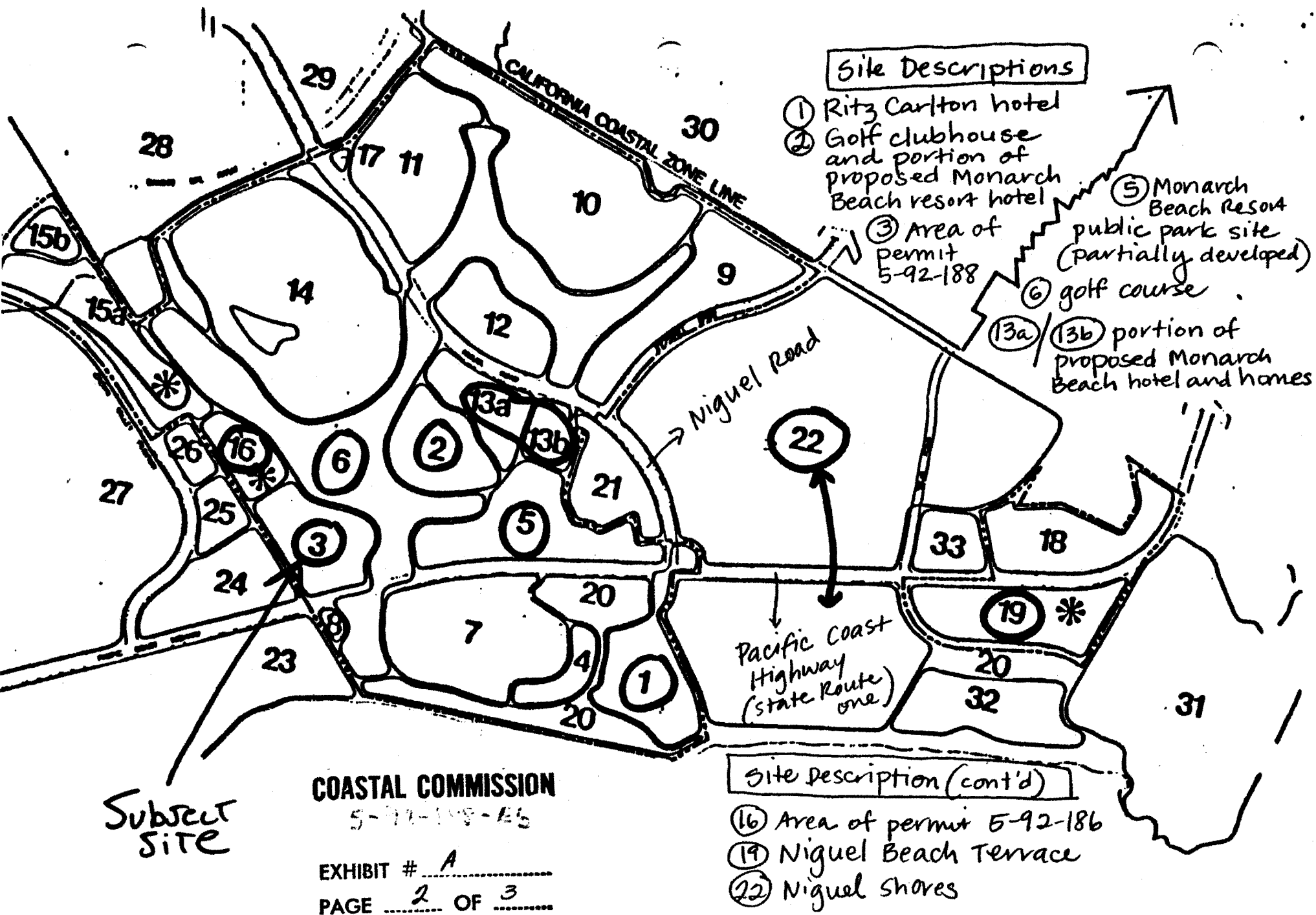
- 1 SEA GAIL CT
- 2 SEAWIND CT
- 3 MOON RING CT
- 4 DIVERS CT
- 5 SEA SHELL WAY
- 6 EVENING STAR DR
- 7 SEAGULL WAY
- 8 NORTH STAR WAY
- 9 MORNING STAR LN

DANA POINT HARBOR

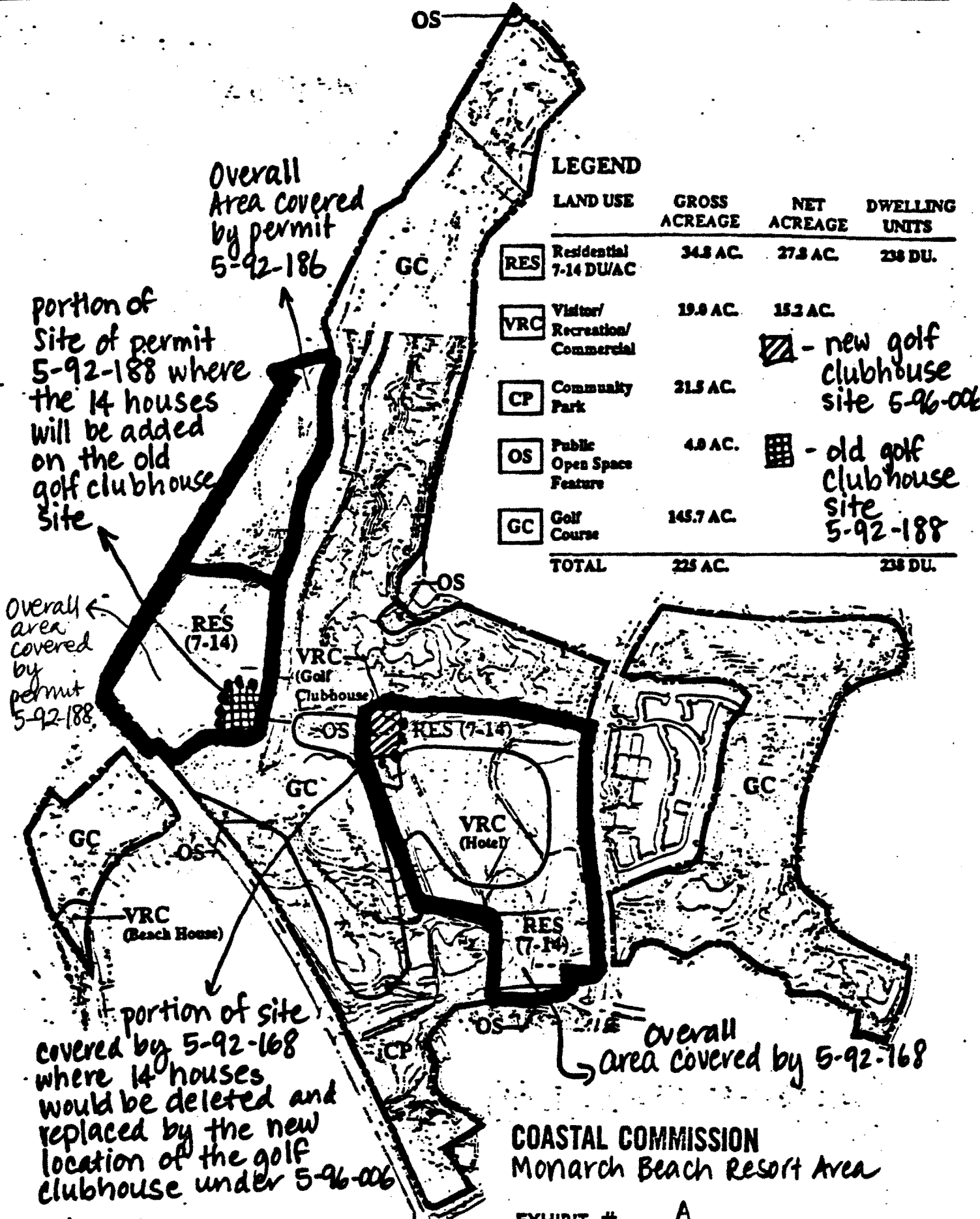
MARINE STUDIES INSTITUTE

DOHERY STATE BEACH

COASTAL COMMISSION
5-92-188-ES
EXHIBIT # A
PAGE 1 OF 3



LAGUNA NIGUEL COASTAL AREA PLAN



COASTAL COMMISSION
Monarch Beach Resort Area

EXHIBIT # A

PAGE 3 OF 3

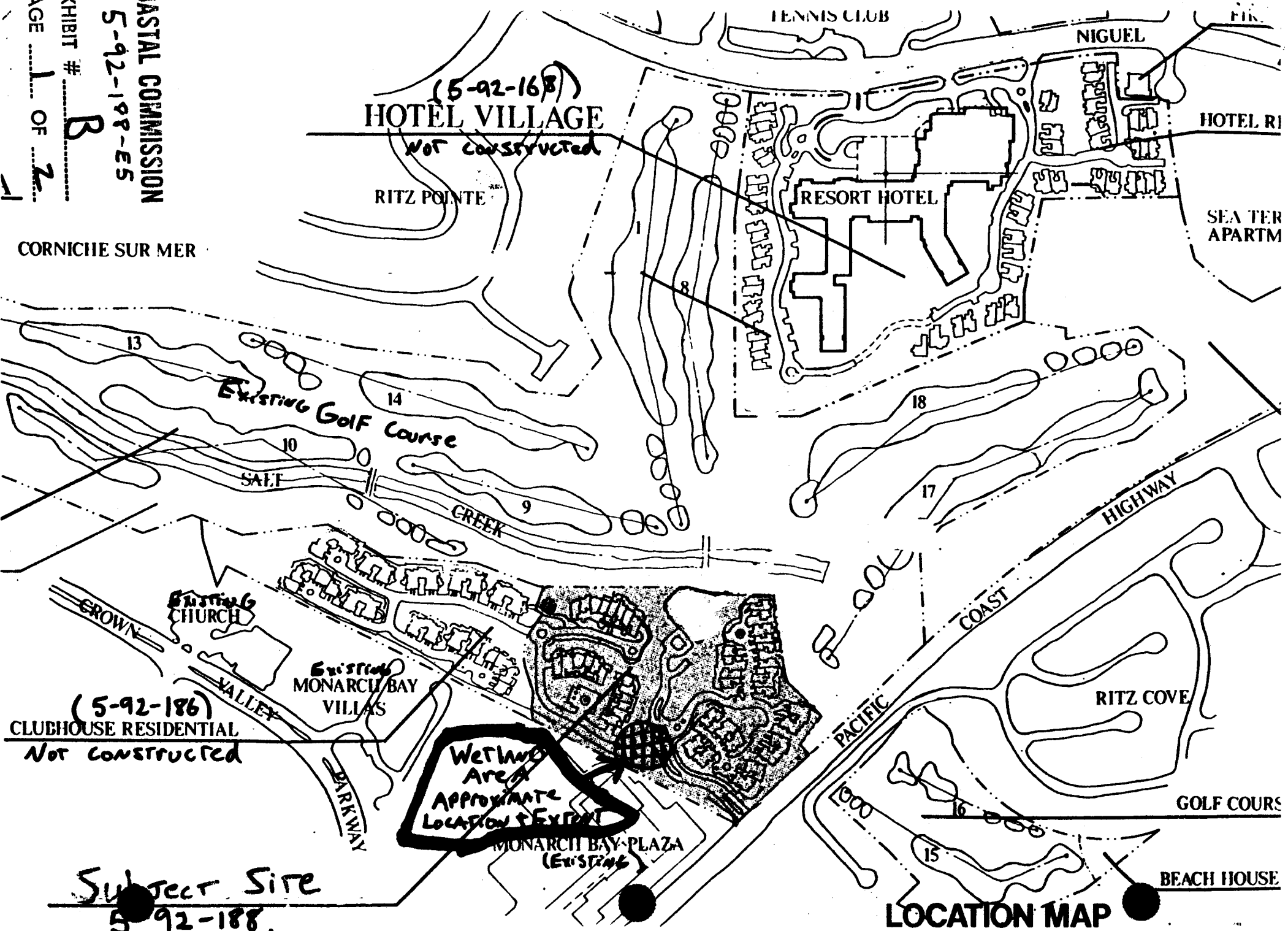
5-92-188-E5

EXHIBIT 2.1

LAND USE PLAN

MONARCH BEACH RESORT
SPECIFIC PLAN

CORNICIE SUR MER



(5-92-186)
CLUBHOUSE RESIDENTIAL
NOT CONSTRUCTED

Subject Site
5-92-188
NOT CONSTRUCTED

LOCATION MAP

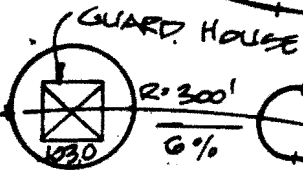
PLAZA CENTER R.S. 69/19

JOIN EXIST. ALLEY

N 26° 47' 58" E

15' MAX HT.

745



ENTRY GATE

DRIVE "A"

R=250'

APPROXIMATE EXTENT OF WETLAND AS IDENTIFIED BY COASTAL COMMISSION

LOT 6

DRIVE "C"

LOT 7

POOL

COASTAL COMMISSION

5-92-1892-5

EXHIBIT #

PAGE 2

FF=100

47 48

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
PO Box 1450
200 Oceanside, 10th Floor
LONG BEACH, CA 90802-4416
(562) 590-5071



September 16, 1998

ASSIGNMENT OF PERMIT

Dear Monarch Bay Resort, Inc.,

We have received your request to assign to C.P.H. Reports I, L.L.C., Attn: Oliver Cagle
Coastal Permt No: 5-92-188

for The construction of 97 attached residential units and a 30,000 square foot golf clubhouse including grill and lounge on 14.3 acres. This development is part of the Monarch Bay Resort project. The units will be clustered into 20 two story buildings and 4 three story buildings. For 57 of the units, the floor area ranges from 1,400 to 2,700 square feet. The floor area of the remaining 40 units ranges from 2,300 to 29,000 square feet. Overall building height of the three story building is 41 feet. For the two story structures overall height will be 28 feet. The two story units are located on the southern portion of the site near the Pacific Coast Highway. The four story projects are located in the northern portion of the site. The architectural theme will mimic the character of the Tuscan region of Italy. Grading will consist of approximately 85,000 cubic yards of cut - and 33,000 cubic yards of fill. Application 5-92-168 is for a similar project, Clubhouse Village North.

at East of Crown Valley Pkwy, Salt Creek, Dana Point

The materials submitted are complete and your application meets the requirements of Section 13170 of the California Administrative Code. Please be advised that the assignment of the above permit is effective immediately.

Sincerely,
PETER M. DOUGLAS
Executive Director

By: JOHN T. AUYONG
Coastal Program Analyst

cc: Assignee

COASTAL COMMISSION
5-92-188-ES

EXHIBIT # CPAGE 1 OF 1

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA

PO Box 1450

900 Oceanstate, 10th Floor

DANA POINT BEACH, CA 90802-4416

(562) 890-8071

5-92-188-E5

August 6, 1998

**NOTICE OF EXTENSION REQUEST
FOR COASTAL DEVELOPMENT PERMIT**

Notice is hereby given that: **Monarch Bay Resort, Inc.**
has applied for a one year extension of Permit No **5-92-188**
granted by the California Coastal Commission on:

for **Construction of 111 attached residential units on 14.3 acres. Units will be clustered into 16 - 2 story buildings and 4 - 3 story buildings. For 57 of the units the floor area ranges from 1400 to 2700 sq. ft. The floor area of 40 units ranges from 2300 to 2900 sq. ft. Building height of the 3 story buildings is 41 feet. The floor areas of the remaining 14 units would range from 2,750 to 3,200 sq. ft. Height for the 2 story buildings will be 28 feet. The 2 story units are located on the south side of the site near Pacific Coast Hwy. The 3 story units are located on the north side of the site. The architectural theme will mimic the character of the Tuscan area of Italy. Grading will consist of approximately 85,000 cu. yds. of cut and 33,000 cu. yds. of fill.**

at **Northeast of the intersection of Pacific Coast Hwy. & Crown Valley Parkway, and west of the Salt Creek Regional Trail, Dana Point (Orange County)**

Pursuant to Section 13169 of the Commission Regulations the Executive Director has determined that there are no changed circumstances affecting the proposed development's consistency with the Coastal Act. The Commission Regulations state that "if no objection is received at the Commission office within ten (10) working days of publishing notice, this determination of consistency shall be conclusive. . . and the Executive Director shall issue the extension." If an objection is received, the extension application shall be reported to the Commission for possible hearing.

Persons wishing to object or having questions concerning this extension application should contact the district office of the Commission at the above address or phone number.

COASTAL COMMISSION

Sincerely,
PETER M. DOUGLAS
Executive Director

EXHIBIT # DPAGE 1 OF 1

By: **STEVE RYNAS**
Orange County Area Supervisor

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA

245 W. BROADWAY, STE. 380

P.O. BOX 1450

LONG BEACH, CA 90802-4416

(310) 590-3071

Page 1 of 5



NOTICE OF INTENT TO ISSUE AMENDMENT
TO COASTAL DEVELOPMENT PERMIT

On 14 March 1996, the California Coastal Commission granted to Monarch Bay Resort, Inc. an amendment to Permit No. 5-92-188, subject to the conditions attached, for changes to the development or conditions imposed on the existing permit. The development originally approved by the permit consisted of the construction of 97 attached residential units and a 30,000 square foot golf clubhouse including grill and lounge on 14.3 acres. This development is part of the Monarch Bay Resort project. The units will be clustered into 20 two story building and 4 three story buildings. For 57 of the units, the floor area ranges from 1,400 to 2,700 square feet. Overall building height of the three story building is 41 feet. For the two story structures, overall height will be 28 feet. The two story units are located on the southern portion of the site near the Pacific Coast Highway. The four story projects are located in the norther portion of the site. The architectural theme will mimic the character of the Tuscan region of Italy. Grading will consist of approximately 85,000 cubic yards of cut and 33,000 cubic yards of fill.

located immediately northeast of the intersection of the Pacific Coast Highway and Crown Valley Parkway, and west of the Salt Creek Regional Trail.

Changes approved by this amendment consist of

The proposed amendment would delete construction of the golf clubhouse on the site and replace it with 14 two-story residential units, similar to the other two-story residential units proposed.

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

Unless changed by the amendment, all conditions attached to the existing permit remain in effect.

The amendment is being held in the Commission office until fulfillment of the Special Conditions of the underlying permit and/or conditions of previous amendments imposed by the Commission. Once these conditions have been fulfilled, the amendment will be issued. For your information, all the imposed conditions are attached.

Issued on behalf of the California Commission on 26 March 1996.

COASTAL COMMISSION

5-92-188-55

EXHIBIT # EPAGE 1 OF 5

PETER M. DOUGLAS
Executive Director

By: John T. Auyang
Title: Coastal Program Analyst

(cont'd)

"Notice of Intent to Issue First Amendment to Permit"
Amendment No. 5-92-188A; Page 2 of 5

Please sign and return a copy of this form to the Commission office.

ACKNOWLEDGMENT

I have read and understand the above Notice of Intent to amend Permit
5-92-188, including all conditions imposed.

Signature _____

Date _____

II. STANDARD CONDITIONS

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

COASTAL COMMISSION

5-92-188-E5

EXHIBIT # E

PAGE 2 OF 5

SPECIAL CONDITIONS: (Previously Imposed -- Not Changed by this Amendment)

1. Coastal Access Fund

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

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

2. Affordable Housing.

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

3. Phased Development.

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

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

COASTAL COMMISSION

E5, 5-92-188-

EXHIBIT # E
PAGE 3 OF 5

"Notice of Intent to Issue First Amendment to Permit"
Amendment No. 5-92-188A; Page 4 of 5

4. Parking

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

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

5. Public Access

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

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

COASTAL COMMISSION

5-92-188-ES

EXHIBIT # E

PAGE 4 OF 5

"Notice of Intent to Issue First Amendment to Permit"
Amendment No. 5-92-188A; Page 5 of 5

6. Signage Plans.

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

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

7. Future Development.

Prior to the issuance of the coastal development permit, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, stating that the subject permit is only for the development described in the Coastal Development Permit No. 5-92-188; and that any future improvements to the property or changes to the development plan approved herein will require a new permit or permit amendment from the Coastal Commission or its successor agency. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.

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

JTA:b11

6599F

COASTAL COMMISSION

592-188-ES

EXHIBIT # E

PAGE 5 OF 5

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA

245 W. BROADWAY, STE. 380

P.O. BOX 1480

LONG BEACH, CA 90802-4416

(310) 590-5071

Page 1 of 6

Date: August 19, 1992

Permit Application No. 5-92-188

NOTICE OF INTENT TO ISSUE PERMIT

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

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

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

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

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

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

PETER DOUGLAS
Executive Director

[REDACTED]
COASTAL COMMISSION

[REDACTED] 5-92-188-ES

EXHIBIT # X F
PAGE 1 OF 6

By: [Signature]Title: Staff Analyst

ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this notice of the California Coastal Commission determination on Permit No. 5-92-188, and fully understands its contents, including all conditions imposed.

Date

Permittee

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


COASTAL COMMISSION

5-92-188-E5

EXHIBIT # X F

PAGE 2 OF 6

NOTICE OF INTENT TO ISSUE PERMIT

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

STANDARD CONDITIONS:

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

SPECIAL CONDITIONS:

1. Coastal Access Fund

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

COASTAL COMMISSION

5-92-188-ES

EXHIBIT # **X F**

PAGE **3** OF **6**

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

2. Affordable Housing

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

3. Phased Development.

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

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

4. Parking.

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

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

5. Public Access.

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

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

6. Signage Plans.

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

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

COASTAL COMMISSION

5-92-188-ES

EXHIBIT # X F

PAGE 5 OF 6

7. Future Development.

Prior to the issuance of the coastal development permit, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, stating that the subject permit is only for the development described in the Coastal Development Permit No. 5-92-188; and that any future improvements to the property or changes to the development plan approved herein will require a new permit or permit amendment from the Coastal Commission or its successor agency. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.

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

SR:tn
5824E


COASTAL COMMISSION
5-92-188-ES

EXHIBIT # X F

PAGE 6 OF 6

CALIFORNIA COASTAL COMMISSION
SOUTH COAST REGIONAL COMMISSION
644 E. OCEAN BOULEVARD, SUITE 2187
P.O. BOX 1430
LONG BEACH, CALIFORNIA 90801
(313) 570-3371 (714) 844-8648

P79-5539
COASTAL DEVELOPMENT PERMIT

RECEIVED

AUG 30 1983

CA Coastal Commission

Application Number: P-79-5539

Name of Applicant: Avco Community Developers, Inc.

Three Monarch Bay Plaza, Laguna Niguel, CA 92677

Permit Type: ☐ Emergency
☒ Standard
☐ AdministrativeDevelopment Location: Pacific Coast Highway between Crown Valley and
Niguel Road and Pacific Coast Highway, at Solva Road, Laguna Niguel, CADevelopment Description: Development of Avco Laguna Niguel Coast Segment
including hotel, recreation/conference center, expansion of Monarch Bay
Plaza commercial development, golf course, parks, 3000 residential units,
and associated grading, road, and utility development on both sides of
Coast Highway.I. The proposed development is subject to the following conditions imposed
pursuant to the California Coastal Act of 1976:

See attached Page 3 for conditions.

COASTAL COMMISSION
5-92-188-E5

EXHIBIT # 6

PAGE 1 OF 10

Condition/s Met On

By

eb

I. The South Coast Commission finds that:

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

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

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

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

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

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

VII. Issued on behalf of the South Coast Regional Commission on November 28, 1979.

COASTAL COMMISSION

5-92-188-ES

EXHIBIT # 6

PAGE 2 OF 10

M. J. Carpenter
Executive Director

I. Ram E. Page, permittee/agent, hereby acknowledge receipt of Permit Number P-79-5539 and have accepted its contents

November 28, 1979

(signature)

Prior to issuance of a permit, applicant shall submit/agree to conditions outlined in the LNCDP application, including:

HOTEL (1):

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

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

RECREATION/CONFERENCE CENTER (2):

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

2. Prior to issuance of the above mentioned site plan approval, the applicant shall submit a deed restriction agreeing that the recreation and club facilities shall be open to the public on a daily or hourly fee basis as well as to members. At least 50% of the use of the recreation center facilities will be designated for public use by the general fee-paying public; if time/facilities set aside for non-members are not reserved 24 hours in advance of play/start time, they may be reserved by members. Said deed restriction shall allow public use (rental) of the conference facilities.

COMMERCIAL CENTER (3):

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

EXHIBIT # 6

5-92-189-65

PAGE 3 OF 10

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

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

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

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

COASTAL PARK (4):

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

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

COASTAL COMMISSION
5-92-188-E5

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

COMMUNITY PARK (5):

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

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

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

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

GOLF COURSE (6):

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

COASTAL COMMISSION
5-92-188-ES

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

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

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

TRAILS:

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

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

COASTAL RESIDENTIAL (7 & 8):

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

COASTAL COMMISSION
5-92-188-E5

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

INLAND RESIDENTIAL (9 through 16 & 18):

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

SEAWARD SELVA RESIDENTIAL (19):

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

LOW- AND MODERATE-COST HOUSING:

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

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

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

- 50% of median income 10% of low/moderate units (93 units)
- 60% of median income 10% of low/moderate units (93 units)
- 70% of median income 10% of low/moderate units (93 units)
- 80% of median income 10% of low/moderate units (93 units)
- 90% of median income 15% of low/moderate units (140 units)
- 100% of median income 15% of low/moderate units (140 units)
- 110% of median income 15% of low/moderate units (140 units)
- 120% of median income 15% of low/moderate units (140 units)

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

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

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

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

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

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

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

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

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

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

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

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

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

COASTAL COMMISSION
5-92-188-E5

f) Note: Units provided under the requirements of this permit shall not be counted as the required "affordable" units in any other permit.

COASTAL ACCESS PROGRAM:

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

GRADING AND RUNOFF CONTROL:

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

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

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

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

August 3, 1998

California Coastal Commission
Mr. John Auyong
200 Oceangate #1000
Long Beach, Ca 90802

Re: Monarch Beach Resort
Tentative Map Extension(s)
I REQUEST BE DENIED

MARY JEFFRIES
NIGUEL SHORES RESIDENT
33521 Atlantic Avenue
Monarch Beach, Ca 92629

714 493-2425

RECEIVED

AUG 5 1998

CALIFORNIA
COASTAL COMMISSION

Dear John,


After our conversation, I did come down to your offices, and review the extensive files. I would like to set out some of my reservations in this letter regarding the Tentative Map extension:

- 1) The traffic circulation was not addressed when the clubhouse was relocated;
- 2) The parking, likewise;
- 3) The Ritz Carlton always has a parking problem even with +800 private spaces;
 - a) The Ritz Carlton has to use the street parking on Niguel Road, plus it buys "metered" parking from the county for its use, taking it away from beachgoers..
- 4) The affordable housing was not mitigated, except some time early on, someone paid an "in-lieu" fee
 - a) No real living facilities for the staff at the resorts;
 - b) What affordable housing that Avco was forced to give "Niguel Beach Terrace on Selva" is not now "affordable"
- 5) The residential housing at Niguel Shores, some 1000 homes strong was not sent notices of the hearing

It seems the developers and the City of Dana Point have bifurcated the issues and I am sure they hope to continue doing so, not looking out for the welfare of the public and private homeowners. It is time the City had some big brother over-the-shoulder to make certain the area does not become a Coney Island.

Please put my name on a list to receive notices of public hearings in the future, AND DOCKET MY OBJECTIONS TO EXTENSION

Thank you,


MARY JEFFRIES

(714) 493-2425 soon to be (949) 493-2425

COASTAL COMMISSION

5 12 182-CE

EXHIBIT # H

PAGE 1 OF 1

Diana Van Deusen
23294 Pompeii
Dana Point, Ca 92629

Pho. 714 661-6687

John Auyong
Coastal Commission
South Coast Area
P.O. Box 1450
200 Oceangate, 10th Floor
Long Beach, Ca. 90802-4416

RECEIVED
AUG 21 1998
CALIFORNIA
COASTAL COMMISSION

August 18, 1998

Dear Mr. Auyong:

Per our phone conversation yesterday, I am writing this letter of concern.

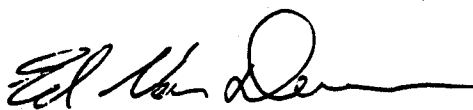
Under the previous ownership of the Monarch Bay Resort, my husband and I understood that the hotel would be built *completely* before any townhouses or like structures would be *started*. We expect this to be true under the new ownership, and if not, we wish to have it on record that we object.

We wish to be informed of any changes in the Resort plan.

Thank you.

Sincerely,


Diana Van Deusen


Ed VanDeusen

COASTAL COMMISSION

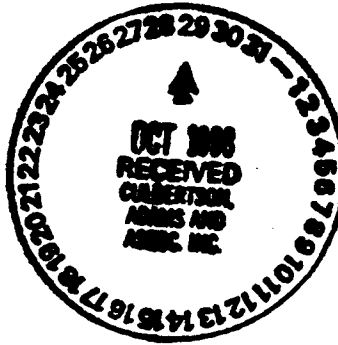
2nd objection letter
5-92-188-55

EXHIBIT # *1*

PAGE *1* OF *1*

Bonterra
CONSULTING

Environmental Planning/Resource
Management Corporation



October 28, 1998

Ms. Andi Culbertson
Culbertson, Adams & Associates
85 Argonaut, Suite 220
Aliso Viejo, CA 92656

Subject: Biological Assessment of the Disturbed/Freshwater Marsh Habitat on the
Monarch Beach Resort Project, City of Dana Point, Orange County, California

Dear Ms. Culbertson:

Enclosed is a copy of the Biological Resources map for the Monarch Beach Resort project. The 0.18 acre of disturbed/freshwater marsh habitat shown on the map appears to have been created by urban/landscape runoff from the residences and parking lots adjacent to and west of the site that have been allowed to pond on the site. The lack of routine, scheduled maintenance has allowed freshwater plants to become established. Over the long-term, regular routine maintenance will eliminate the plant species currently growing in the wet areas.

The larger area where the freshwater plant species occur is rough-graded and contains limited plant species due to maintenance activities. The limited freshwater plant species that are present include: cattails (*Typha* sp.), bulrushes (*Scirpus* sp., *Cyperus* sp.), and wild celery (*Apium graveolens*). This area has been disturbed by grubbing approximately two months ago. These plant species onsite are not listed as threatened or endangered by state or federal resource agencies and the biological value they provide to the site is limited.

It is not anticipated that the freshwater marsh would be subject to regulation by the U.S. Army Corps of Engineers (ACOE), pursuant to Section 404 of the Clean Water Act, because it can be shown that the site is actively maintained or under construction and moving through the development process (site has approved tract map). The CDFG is also not expected to take jurisdiction of this area under Section 1601 of the California Fish and Game Code, because this area is not within an established streambed.

Because the area is routinely cleared and grubbed for fuel modification and weed control, the existing plants in the ponding area have limited biological value. The continuation of regular maintenance will prevent these plants from growing in the future.

If you have any questions, please call me.

Sincerely,

BONTERRA CONSULTING


Ann M. Johnston
Senior Ecologist/Project Manager

R:\Projects\CPHJ005-102886

cc: Oliver Cagle
Adam Relin

COASTAL COMMISSION
5-92-188-E5

EXHIBIT # J
PAGE 1 OF 1

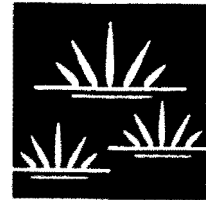
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South Coast Region

NOV 6 1998

CALIFORNIA
COASTAL COMMISSION

GLENN LUKOS ASSOCIATES

Regulatory Services



December 22, 1998

C. Ellis Delameter
Culbertson, Adams & Associates
Argonaut, Suite 220
Aliso Viejo, California 92656

Subject: Wetlands Determination, Biological Assessment and Jurisdictional Delineation of Artificially-Created Freshwater Marsh on Monarch Beach Resort Site, Dana Point, California (CDP # 5-92-188-E5)

This letter report summarizes our preliminary findings of U.S. Army Corps of Engineers (Corps), California Department of Fish and Game (CDFG), and California Coastal Commission (CCC) jurisdiction for the above-referenced property.¹ The Monarch Beach Resorts in Dana Point, Orange County [Exhibit 1], contains no blue-line drainages (as depicted on the U.S. Geological Survey (USGS) topographic map Dana Point, California [dated 1968 and photorevised in 1975]) [Exhibit 2]. On December 19, 1998 a regulatory specialist of Glenn Lukos Associates, Inc. (GLA) examined the project site to determine the limits of (1) Corps jurisdiction pursuant to Section 404 of the Clean Water Act, (2) CDFG jurisdiction pursuant to Division 2, Chapter 6, Section 1603 of the Fish and Game Code and (3) CCC jurisdiction pursuant to the California Coastal Act. Enclosed is a 20-scale map [Exhibit 2] which depicts the boundary of the artificially-created and -maintained wetland. Photographs to document the conditions on the site are provided as Exhibit 3.

METHODOLOGY

Prior to beginning the field delineation a vegetation map of the site, prepared by Bon Terra Consulting, and the previously cited USGS topographic map were examined to determine the location of potential areas of Corps/CDFG/CCC jurisdiction. Suspected jurisdictional areas were field checked for the presence of definable channels and/or wetland vegetation, soils and hydrology. Suspected wetland areas on the site were evaluated using the methodology set forth

¹ This report presents our best effort at estimating the subject jurisdictional boundaries using the most up-to-date regulations and written policy and guidance from the regulatory agencies. Only the regulatory agencies can make a final determination of jurisdictional boundaries. If a final jurisdictional determination is required, GLA can assist in getting written confirmation of jurisdictional boundaries from the agencies.

23441 South Pointe Drive
Telephone: (714) 837-0404

Suite 150

Laguna Hills, California 92653
Facsimile: (714) 837-5834

EXHIBIT #

COASTAL COMMISSION

5-92-188-E5

K

PAGE 1 OF 11

in the U.S. Army Corps of Engineers Wetland Delineation Manual² (Wetland Manual). Because the CCC requires that only a single wetland parameter (wetland vegetation, soils, or hydrology) be present for an area to be CCC criteria as a wetland, the extent of each parameter was determined separately and the boundary depicted on Exhibit 2 is based upon a single parameter delineation.³ While in the field the jurisdictional area was recorded onto a 20-scale site topographic map. Other data were recorded onto wetland data sheets.

RESULTS

Site Description

The site is located in Dana Point, adjacent to the Monarch Bay Shopping Center [Exhibit 1, Photograph A]. The northwest corner of the site, which consists of a graded pad [Exhibit 3, Photographs A and B] receives nuisance flows through a concrete V-ditch that currently discharges onto the site [Exhibit 3, Photograph C]. The nuisance flows originate in a condominium complex located adjacent to the site [Exhibit 3, Photograph D depicts the condominium complex immediately to the east of the site]. The nuisance water supplied by the V-ditch sustains a number of opportunistic hydrophytic plant species which, at the time of the field visit, covered approximately 0.24-acre.⁴ Exhibit 2 depicts the boundaries of hydrophytic vegetation, standing water or saturated soil, or hydric soils on the site.

Vegetation

As noted above, the vegetation on the site consists of opportunistic wetland species, many of which are non-native. Dominant hydrophytic plant species included southern cattail (*Typha domingensis*, OBL), common celery (*Apium graveolens*, OBL), rabbitsfoot grass (*Polypogon monspeliensis*, FACW+) [Exhibit 3, Photograph E], brass buttons (*Cotula coronopifolia*, FACW) [Exhibit 3, Photograph F], white watercress (*Rorippa nasturtium-aquaticum*, OBL), bristly ox-tongue (*Picris echioides*, FAC*), and prickly sow thistle (*Sonchus asper*, FACW). Other species include invasive exotics such as pampas grass (*Cortaderia selloana*, FAC) [Exhibit 3, Photograph G] and African umbrella sedge (*Cyperus involucratus*, FACW).

² Environmental Laboratory. 1987. Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, U.S. Army Engineer Waterways Experimental Station, Vicksburg, Mississippi.

³ For example, areas that supported wetland vegetation that did not exhibit hydric soils were included in the boundary of the artificially-created wetland based upon the presence of the wetland vegetation alone.

⁴ BonTerra Consulting identified approximately 0.18 acre of freshwater marsh habitat on the site in early 1998.

COASTAL COMMISSION
5-92-188-E5

EXHIBIT # K

Hydrology

Because of near-constant flows discharging onto the site from the V-ditch, ponded water was evident, particularly in areas nearest the V-ditch and along the adjacent slope.

Soils

Hydric indicators were noted in the soils including sulfidic odor and low chroma matrix with high chroma mottles (redoxymorphic features).

DISCUSSION

Corps Jurisdiction

Although the area supports hydrophytic vegetation and exhibits indicators for wetland hydrology and hydric soils, the Corps would not be expected to assert jurisdiction over the site for two specific reasons. First, the site is artificially irrigated (via the V-ditch) and the "irrigation" would cease once the water in the V-ditch is diverted to an appropriate storm-drain system. Second, the site has been entitled and the area of hydrophytic vegetation has developed following mass grading of the site which resulted in the creation of areas of flat topography that prevent drainage and allows ponding on the site. Because the site has been maintained throughout the entitlement process (as can be noted on site Photographs A and B), the Corps would not assert jurisdiction as set forth in the Preamble to 328.3d(e) where the Corps provides additional guidance regarding the jurisdictional status of areas such as the artificially maintained "wetland" on the subject site:

For clarification it should be noted that we generally do not consider the following waters to be "Waters of the United States." However the Corps reserves the right on a case-by-case basis to determine that a particular waterbody within these categories is a water of the United States. EPA also has the right on a case-by-case basis if any of these waters are "waters of the United States."

- (a) Non-tidal drainage and irrigation ditches excavated on dry land.*
- (b) Artificially irrigated areas which would revert to dry land if irrigation ceased*
- (c) Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing*

COASTAL COMMISSION
5-92-188-E5

EXHIBIT # 3
PAGE 3 OF 11

(d) Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water primarily for aesthetic reasons

(e) Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless or until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States. (Emphasis added)

CDFG Jurisdiction

CDFG does not assert jurisdiction over isolated wetlands or wetlands that are not associated with a stream or lake. Therefore CDFG jurisdiction would not be associated with the site.

California Coastal Act Analysis

Wetlands are defined in Section 30121 of the Coastal Act as follows:

"Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

The 0.24-acre wetland area has clearly been artificially-created, is of recent origin, and is artificially sustained by nuisance flow. Mass grading of the site for the purpose of creating level pads resulted in the creation of localized depressions and poor drainage. Prior to mass grading of the site, the topography would not allow such ponding to occur. Although grading of the site created topography conducive to ponding, it is the presence of nuisance flows from the adjacent condominium complex (and to a lesser extent from the parking lot of the adjacent shopping center) that provides the water which sustains the opportunistic wetland species now present on the site. Diversion of the nuisance flows, at their source in the condominium complex, would result in a rapid conversion of the wetland to upland as the wetland vegetation could not persist in the absence of the regular runoff carried to the site by the V-ditch.

It should also be noted that the artificially-created and -sustained wetland exhibits low biological value due to its small size (less than 0.25 acre), isolated location, and high component of non-native species.⁵ The site does not provide suitable habitat for waterfowl because ponding depths

⁵ Sixteen plant species were noted during the field visit and of those, nine were non-native (60 percent).

C. Ellis Delameter
Culbertson, Adams & Associates
December 22, 1998
Page 5

are only a few inches. Birds observed during the biological assessment/wetland determination included common species and/or species typically associated with urban interface areas. Species observed included European starling (*Sturnis vulgaris*), house sparrow (*Passer domesticus*), white-crowned sparrow (*Zonotrichia leucophrys*), house finch (*Carpodacus mexicanus*), yellow-rumped warbler (*Dendroica coronata*), and lesser goldfinch (*Carduelis psaltria*). One species typically associated with wetland areas, the virginia rail (*Rallus limicola*) was observed foraging in the cattails.

CONCLUSIONS

The 0.24-acre wetland is artificial, having been created by mass grading of the site which created topography capable of ponding water coupled with the addition of nuisance flows carried to the site via a V-ditch from the adjacent condominium complex. Diversion of the nuisance flows would cause the wetlands to dry out rather quickly with the site converting to uplands.

If you have any questions regarding this report please contact me at (949) 837-0404.

Sincerely,

GLENN LUKOS ASSOCIATES

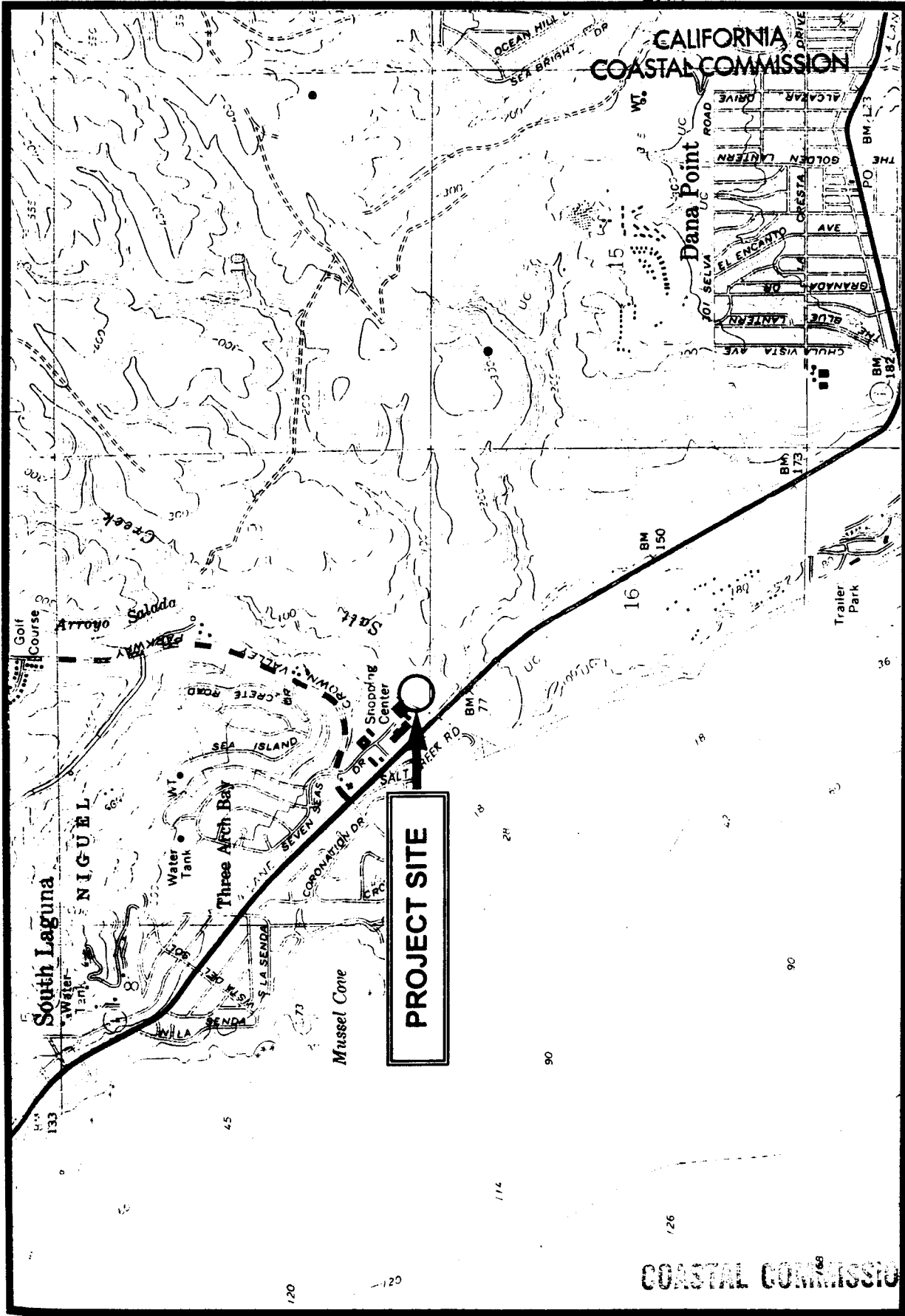
Tony Bomkamp

Tony Bomkamp
Regulatory Specialist

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COASTAL COMMISSION
5-92-188-ES
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PAGE 5 OF 11

JAN - 7 1993



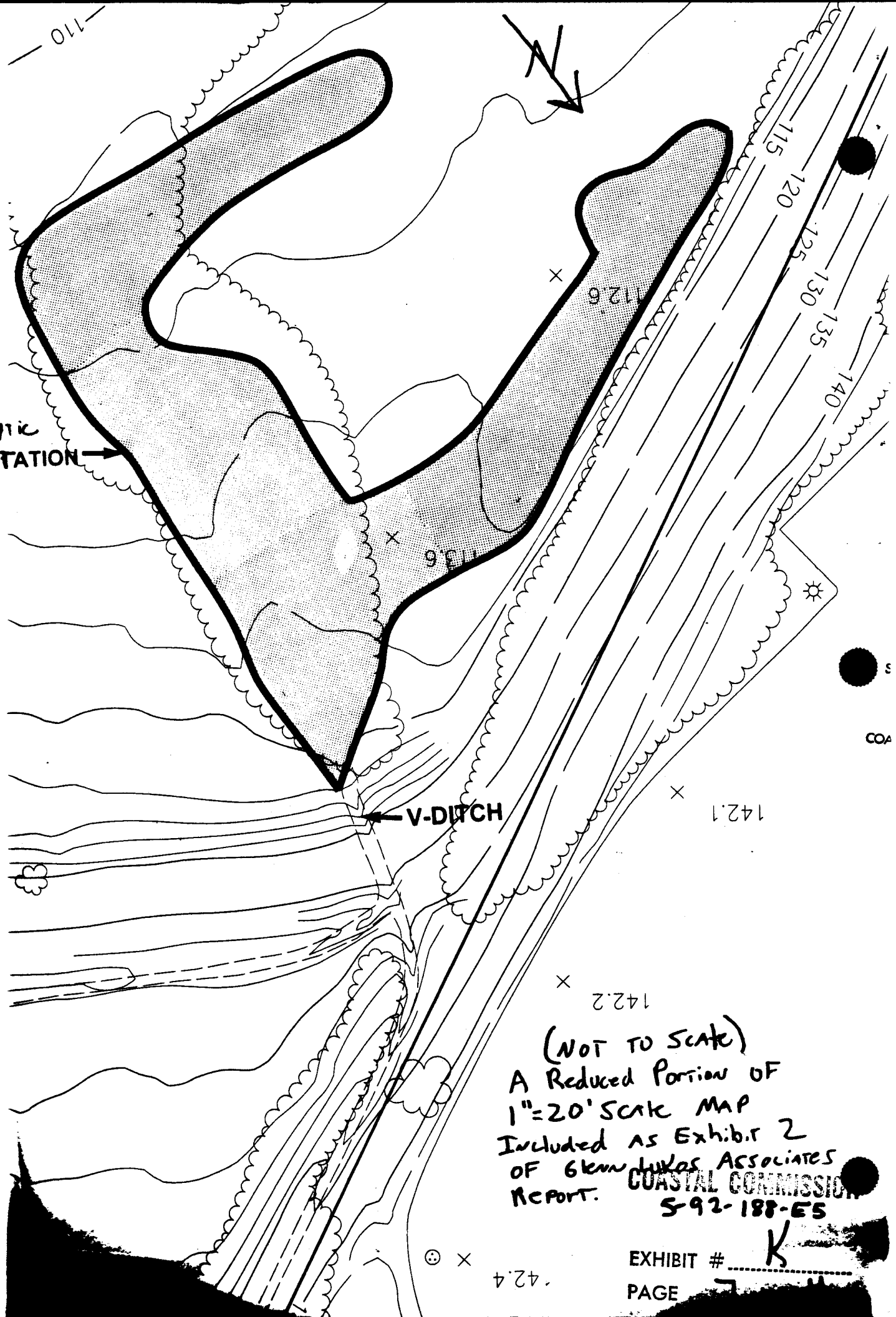
GLLENN LUKOS ASSOCIATES

EXHIBIT 1

MONARCH BEACH RESORT

Site Location Map

COASTAL COMMISSION



Hydrophytic
Vegetation →

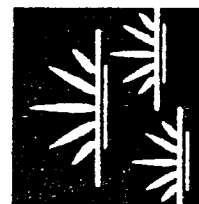
→ V-DITCH

(NOT TO SCALE)
A Reduced Portion OF
1"=20' SCALE MAP
Included AS Exhibit 2
OF 6km by 6km Associates
REPORT. COASTAL COMMISSION
5-92-188-E5

EXHIBIT #

PAGE

K



GLEN LUKOS ASSOCIATES

EXHIBIT 3

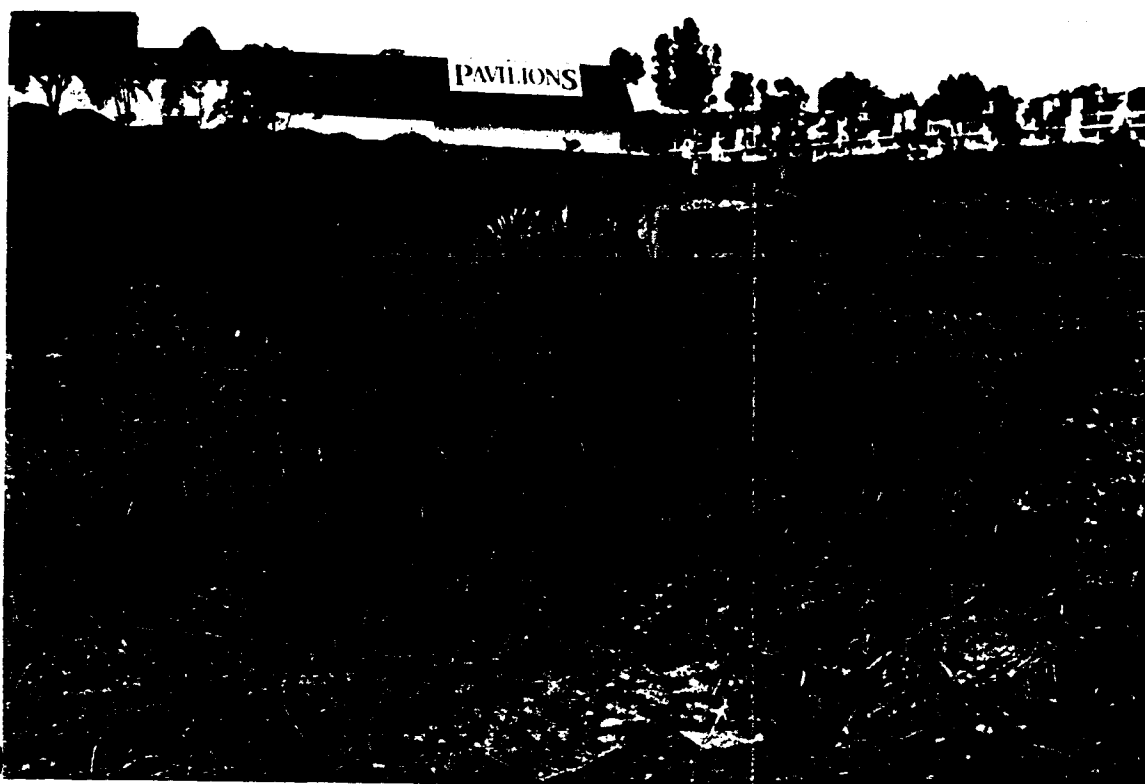
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South Coast Region

JAN - 7 1999

CALIFORNIA
COASTAL COMMISSION



Photograph B - View of site from shopping center looking to southwest. V-ditches which discharge onto site from adjacent condominiums are in foreground.



Photograph D - View of cattails and other hydrophytic vegetation supported by nuisance flow from condominiums which are depicted in upper right of photograph. Also note V-ditch in upper center of photograph.

MONARCH BEACH RESORT

Site Photographs

COASTAL

5-92-188-ES

EXHIBIT #

PAGE 8

OF 11



Photograph A - View of site looking northeast, depicting graded pads.



Photograph C - View of V-ditch which currently discharges onto site.

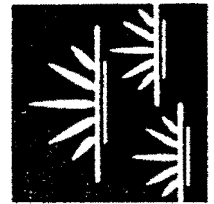
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5-12-1988-ES

EXHIBIT # K
PAGE 9 OF 11



Photograph F- Areas of dense brass buttons, a non-native opportunistic wetland species commonly associated with disturbed wetlands.



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EXHIBIT 3

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Photograph H - Scattered individuals of African umbrella sedge, a non-native invasive exotic wetland species commonly associated with disturbed wetlands.

MONARCH BEACH RESORT

Site Photographs

EXHIBIT # K

PAGE 10 OF 11

5-92-188-E5



Photograph E - Areas of dense rabbitsfoot grass, a non-native opportunistic wetland species commonly associated with disturbed wetlands.



Photograph G - Areas of pampas grass, a non-native invasive exotic species that is sometimes associated with disturbed wetlands. Foreground area is dominated by watercress which is also a non-native species.