

CALIFORNIA COASTAL COMMISSION

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Filed: November 20, 2000
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Staff: ALK-LB **ALK**
Staff Report: December 21, 2000
Hearing Date: January 9-12, 2001
Commission Action:

**Item Th 7c**

STAFF REPORT AND RECOMMENDATION ON APPEAL
SUBSTANTIAL ISSUE

APPEAL NUMBERS: A-5-DPT-00-467

LOCAL GOVERNMENT: City of Dana Point

DECISIONS: Approval with Conditions

APPLICANT: The PRS Group

PROJECT LOCATION: 1 Ritz Carlton Drive, Dana Point (Orange County)

PROJECT DESCRIPTION: Demolition of two tennis courts and construction of a three-story 32,276 square foot addition to the Ritz Carlton Hotel for use as a spa facility.

APPELLANTS: Coastal Commissioners Sara Wan and Shirley Dettloff

SUMMARY OF STAFF RECOMMENDATION & ISSUES TO BE RESOLVED:

The staff recommends that the Commission, after a public hearing, determine that **A SUBSTANTIAL ISSUE EXISTS** with respect to the grounds on which appeal number A-5-DPT-00-467 has been filed because the locally approved development raises issues of consistency with the City of Dana Point Local Coastal Program and the public access and recreation policies of Chapter Three of the Coastal Act. Additionally, the development approved by the local government qualifies as an amendment to a Coastal Commission-issued coastal development permit, inconsistent with the permit processing requirements of the certified LCP.

Specifically, the development approved by the City of Dana Point Coastal Development Permit CDP 97-25(II) obstructs an existing public accessway and encroaches into publicly available common areas within an existing visitor-serving development. While the proposed and City-approved development does contain elements to minimize the impacts of the public accessway obstruction, the approval contains no measures to assure that those measures are implemented and maintained. In addition, the City's approval does not address the encroachment of the development into publicly available common areas and the potential reduction of public access and recreational opportunities resulting from the encroachment. At this time, all that is before the Commission is the question of substantial issue. If the Commission determines that a substantial issue exists, a de novo hearing will be held at a subsequent meeting.

At the time of this staff report, the applicant and the City of Dana Point have indicated disagreement with the staff recommendation, asserting that the approved project is in full compliance with the certified LCP and maintaining that the project is under the permit issuance jurisdiction of the local government.

PROCEDURAL NOTE:

This appeal was opened and continued by the Commission on December 11, 2000. This staff report addresses only the question of substantial issue. If the Commission determines that a substantial issue exists, a staff report for a de novo permit will be prepared.

SUBSTANTIVE FILE DOCUMENTS:

- City of Dana Point Local Coastal Program (LCP)
- Coastal Development Permit 5-82-291
- Coastal Development Permit 5-87-220

LIST OF EXHIBITS:

1. Vicinity Map
2. Site Map
3. Project Plans and Elevations
4. Copy of City of Dana Point "Notice of Final Local Action" for CDP No. 97-25 (II)
5. Copy of the Appeal by Commissioners Wan and Dettloff
6. Coastal Development Permit 5-82-291
7. Correspondence from Edward Knight, City of Dana Point, to Teresa Henry, California Coastal Commission, dated January 12, 2000
8. Correspondence from Teresa Henry, California Coastal Commission, to Edward Knight, City of Dana Point, dated January 19, 2000
9. Correspondence from Teresa Henry, California Coastal Commission, to Edward Knight, City of Dana Point, dated October 18, 2000
10. Correspondence from Edward Knight, City of Dana Point, to Teresa Henry, California Coastal Commission, dated October 30, 2000

I. STAFF RECOMMENDATION FOR SUBSTANTIAL ISSUE:

A. MOTION AND RESOLUTION FOR SUBSTANTIAL ISSUE WITH REGARD TO APPEAL NO. A-5-DPT-00-467

The staff recommends that the Commission make the following motion and adopt the following resolution:

Motion: *I move that the Commission determine that Appeal No. A-5-DPT-00-467 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

Staff Recommendation:

Staff recommends a NO vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the Commissioners present.

Resolution to Find Substantial Issue:

The Commission hereby finds that Appeal No. A-5-DPT-00-467 presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. SUBSTANTIAL ISSUE FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. APPEAL PROCEDURES

i. Appealable Development

Section 30603 of the Coastal Act states:

- (a) *After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:*
- (1) *Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.*
 - (2) *Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100*

feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

Sections 30603(a)(1) and (2) of the Coastal Act establishes the project site as being appealable by its location between the sea and first public road (Exhibit 1).

ii. Grounds for Appeal

The grounds for appeal of an approved local CDP in the appealable area are stated in Section 30603(b)(1), which states:

(b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal. If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the de novo public hearing on the merits of the project. The de novo hearing will be scheduled at a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

The grounds for the current appeal include contentions that the approved development does not conform to the standards set forth in the certified LCP regarding public access and the public access and recreation policies set forth in the Coastal Act.

iii. Qualifications to Testify before the Commission

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

Upon the close of the public hearing, the Commission will vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project.

At the de novo hearing, the Commission will hear the proposed project de novo and all interested persons may speak. The de novo hearing will occur at a subsequent meeting date. All that is before the Commission at this time is the question of substantial issue.

B. LOCAL GOVERNMENT ACTION

CDP No. 97-25 (II)

On October 18, 2000, the City of Dana Point Planning Commission held a public hearing on the proposed project. At the conclusion of the public hearing, the Planning Commission adopted Resolution No. 00-10-18-77, which approved with conditions local Coastal Development Permit CDP No. 97-25(II), Site Development Plan SDP 00-16 and Variance V 99-13 for *"the demolition of two tennis courts in order to construct a three story, 32,276 square foot addition to an existing hotel, Ritz Carlton, for use as a spa amenity to hotel guests."* (Only Coastal Development Permit CDP 97-25 (II) is before the Commission at this time.) The action by the City did not involve a local appeal. The local appeal process has now been exhausted. The City's action was then final and an appeal was filed by two Coastal Commissioners during the Coastal Commission's ten- (10) working day appeal period.

C. APPELLANTS' CONTENTIONS

The Commission received a notice of final local action on CDP 97-25(II) on November 3, 2000 (Exhibit 4). As stated previously, CDP 97-25(II) (assigned appeal no. A-5-DPT-00-467) approved the demolition of two tennis courts and the construction of a 32,276 square foot addition to the Ritz Carlton for use as a spa.

By November 20, 2000, within ten working days of receipt of the notices of final action, Commissioners Wan and Dettloff appealed the local actions on the grounds that the approved project does not conform to the requirements of the certified LCP and the public access and recreation requirements of the Coastal Act (Exhibit 5).

D. SUBSTANTIAL ISSUE ANALYSIS

i. Project Location, Description and Background

a. Project Location

The subject site is located at 1 Ritz Carlton Drive seaward of Pacific Coast Highway in the northern portion of the City of Dana Point, County of Orange (Exhibits 1 & 2). The site is located within the Monarch Beach area of the City, which has a certified Local Coastal Program (LCP). The site is bordered to the north by the Salt Creek Beach Park and a portion of the public parking lot area, to the south and west by Salt Creek Beach, and to the east by the residential community of Niguel Shores. The project site is located at the approximately 17.58-acre Ritz Carlton Hotel property, developed with 333,840 square feet of building area, which is comprised of guestrooms, conference facilities, banquet rooms, various guest accommodations, a banquet facility and a separate parking structure. A public accessway also traverses the hotel property, leading to a blufftop trail, view points and the Vista Point Park on the seaward portion of the site. (The hotel was previously approved under Coastal Commission CDP 5-82-291, as will be discussed in subsection (c) of the current report.). The new development approved by the City would occur along the easternmost portion of the property. The site of the new spa expansion is currently developed with two tennis courts, a landscaped common area and a paved public walkway.

b. Project Description

The City's approval of Coastal Development Permit 97-25(II) allows demolition of two (of four) existing tennis courts located along the eastern boundary of the property in order to accommodate the construction of a three-story, 32,276 square foot addition to the hotel for use as a spa (Exhibit 3). The new spa structure would measure 47 feet 8 inches high from the lowest adjacent elevation (facing the pool deck area) and 33 feet 2 inches high from the higher elevation (facing Niguel Shores). The deck level (first floor) of the approved structure would be approximately 12,000 square feet and would be connected to the main level of the hotel through an adjoining corridor. The lower level (second floor) would house the lobby/reception area, restroom/shower facilities, dressing rooms, a hair and nail salon, a small retail boutique, and steam/sauna and whirlpool facilities. The lower level is intended to provide access to a new outdoor lap pool and sun deck on the southern side of the structure. The upper level (third floor) of the structure would be approximately 11,500 square feet, housing 26 spa treatment rooms, retreat rooms and sun decks. As approved by the local government, the project requires relocation of the existing public accessway that runs along the eastern property boundary. The accessway would be realigned approximately 10 feet southeast in order to mitigate obstruction into the accessway and common areas by the new spa facility. The project also involves landscaping of the remaining common areas to match the grounds in the subject area.

c. Past Commission Actions at Subject Site

P-79-5539

On November 28, 1979, the concept of the Ritz Carlton Hotel was initially approved under Coastal Development Permit (CDP) P-79-5539 with specific approval of the hotel being granted under CDP 5-82-291, discussed below.

5-82-291 (AVCO)

On June 16, 1982, the Commission approved Coastal Development Permit 5-82-291 (AVCO), which allowed the construction of a 397 room resort hotel with two restaurants, meeting rooms, ballroom, pool and deck, public beach access trail, 672 off-street parking spaces, landscaping and other improvements on a vacant 18.55 acre blufftop parcel (Exhibit 6). One condition of project approval required the recordation of a deed restriction which insures that the bluff trail, including view points and rest areas, and the Vista Point Park are opened and maintained for permanent access and recreational use by the general public. The deed restriction was also intended to insure that the development would be dedicated to hotel use, available in accordance with standard hotel/motel practice for use by the general public, and that *"under no circumstances will the development be used for private resort or time-share use which could inhibit or exclude casual use by the general public."* In addition, the permit was conditioned to require the recordation of a deed restriction which insures that public access is maintained to all common areas of the development. These areas were to include, but not be limited to, *"the lobby, restaurants, coffeeshops, grounds and sundeck."*

5-87-220 (Prutel Joint Venture)

On May 12, 1987, the Commission approved Coastal Development Permit 5-87-220 (Prutel Joint Venture), which allowed the construction of a 5400 square foot storage and engineering building as an addition to the existing parking structure serving the hotel. The approval was conditioned to require the applicant to submit, for the review and approval of the Executive Director, a plan for the continued implementation of the public access requirements established

in Coastal Development Permit 5-82-291. As such, the trail and grounds of the resort were to remain open to use by the general public.

d. Local Coastal Program Certification

The City of Dana Point Local Coastal Program (LCP) was effectively certified for the subject area by the Commission under City of Dana Point LCP Amendment 1-96 on November 5, 1997. The LCP amendment certified most of the existing uncertified Monarch Beach LCP segment, with the exception of the Dana Strands area, which is deferred. The portions of the Land Use, Urban Design, and conservation/Open Space Elements of the General Plan applicable to Monarch Beach now serve as the LUP for Monarch Beach. The portions of the City's Zoning Code applicable to Monarch Beach now serve as the Monarch Beach IP. As such, the City now has authority to issue coastal development permits for new projects in the Monarch Beach area. However, the approved expansion project affects the project description and special conditions of a Commission-issued permit (5-82-291), thereby requiring an amendment to the original permit. This procedural issue will be discussed further in Section (ii) of the current staff report.

e. Correspondence Regarding Project

On January 13, 2000, Commission staff received a letter from Edward Knight, Community Development Director for the City of Dana Point, requesting a determination as to whether a coastal development permit for the spa expansion project could be processed by the City or whether such development required an amendment from the Coastal Commission (Exhibit 7). Commission staff responded with a letter dated January 19, 2000 stating that the development did, in fact, require an amendment to Coastal Commission-issued Coastal Development Permit 5-82-291 (Exhibit 8). The letter states,

"As specified in Section 9.69.030 (c)(3)(B) and (D) of the certified LCP, for any development approved by the Coastal Commission, the Commission retains jurisdiction for purposes of condition compliance, amendment, extension, reconsideration and revocation."

The Commission's letter of January 19, 2000 provided additional background on past Commission action at the subject site and went on to state that the *"proposed development would eliminate tennis courts that are specially shown on plans approved by the Coastal Commission. Since the approved plans describe the project, the proposed replacement of tennis courts with a spa affects the project description of CDP 5-82-291. In addition, the proposed project may require the realignment of a public accessway. Since the public accessway is described in the deed restriction required by the special conditions of approval, the proposed realignment affects a previously imposed special condition."* The letter concludes that the spa expansion project affects a previously imposed special condition of CDP 5-82-291, as well as the project description, thereby necessitating an amendment to CDP 5-82-291.

The City of Dana Point proceeded to process a coastal development permit at the local level despite the determination provided by Commission staff in the above-referenced letter. When learning of the City's intention to proceed in this manner, Commission staff issued a subsequent letter on October 18, 2000 reiterating the position that the project required an amendment to CDP 5-82-291 (Exhibit 9). Also on October 18, 2000, the City's Planning Commission approved local CDP 97-25 (II) for the spa addition. The City's Community Development Director provided a letter to Commission staff dated October 30, 2000 explaining the Planning Commission's

action and expressing the opinion that the City of Dana Point holds the permitting authority for the approved project (Exhibit 10).

ii. Analysis of Consistency with Certified LCP and Public Access Section of the Coastal Act

As stated in Section A (iii) of this report, the local CDP may be appealed to the Commission on the grounds that the proposed development does not conform to the standards set forth in the certified Local Coastal Program (LCP) or the public access policies of the Coastal Act. The Commission must assess whether the appeal raises a substantial issue as to the project's consistency with the certified LCP or the access policies of the Coastal Act.

In making that assessment, the Commission considers whether the appellants' contentions regarding the inconsistency of the local government action with the certified LCP raise significant issues in terms of the extent and scope of the approved development, the support for the local action, the precedential nature of the project, whether a significant coastal resource would be affected, and whether the appeal has statewide significance.

In the current appeals of the Ritz Carlton expansion, the appellants contend that the City's approval of the project does not conform to various provisions of the certified LCP and the public access requirements set forth in the Coastal Act. The original approval for the hotel included special conditions requiring recordation of deed restrictions to guarantee permanent public access at the subject site. As public access is a significant coastal resource that would be affected by the City's approval of the spa expansion project, the approval raises a substantial issue of consistency with both the LCP and the public access policies of the Coastal Act. In cases where the new project affects the special conditions of a previously issued permit, the Commission typically retains authority for purposes of amendments. Consequently, the project currently under consideration must come back to the Commission for review in order to insure that the existing public access areas are maintained.

As provided below, the City of Dana Point certified LCP contains policies that protect existing public access and recreation opportunities and encourage improvement of such access and recreation opportunities in the coastal zone. The LCP also establishes procedures for the processing of coastal development permits. Additionally, Section 30211 of the Coastal Act states that development shall not interfere with the public's right of access and Section 30210 of the Coastal Act requires that access opportunities be maximized. These policies are also provided below and will be discussed in Subsection (c), beginning on page 10 of the current staff report.

a. Local Coastal Program (LCP) Policies

Land Use Element

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

- Policy 4.3: *Public access, which shall be conspicuously posted, and public recreational opportunities, shall be provided to the maximum extent feasible for all the people to the coastal zone area and shoreline consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*
- Policy 8.2: *Assure that adequate public recreational areas and public open space are provided and maintained by the developer as part of a new development.*
- Policy 8.6: *Maximize the provision of public trail and transit loop systems within the Monarch Beach area. The systems shall include access to and along the shoreline and to the visitor-serving and public places within Monarch Beach.*
- Policy 8.9: *Avoid expansion of the golf course or any other land use that occurs at expense of environmentally sensitive habitat, public park or public areas.*

Urban Design Element

- Policy 4.6: *Preserve and maintain existing public accessways, and existing areas open to the public, located within visitor-serving development in the coastal zone.*

Conservation/Open Space Element

- Policy 6.8: *Preserve public access to the coastal areas through easement dedications thereby providing marine-oriented recreational uses so that transportation corridors may augment the City's opens space system.*

Chapter 9.69—Coastal Development Permit

9.69.030 (c)(3)(B) and (D) state, in pertinent part:

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

(D) *Coastal Development Permit P-79-5539*

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

Coastal Development Permit P-79-5539 shall be obtained from the California Coastal Commission.

b. Coastal Act Policies

Section 30210 states:

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

Section 30211 states:

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

c. Analysis of Consistency

The project approved by the City of Dana Point involves the demolition of two existing tennis courts and the construction of a new spa facility at the Ritz Carlton Hotel. The City of Dana Point, through CDP97-25(II), SDP00-16 & V99-13, would allow the new spa facility to encroach into this public accessway and common landscaped area. To mitigate the obstruction into the accessway and common area, the public walkway would be realigned. As discussed previously, the Commission's approval of Coastal Development Permit 5-82-291 on 1982 allowed construction of the existing Ritz Carlton Hotel and associated improvements subject to special conditions that required a public accessway from Shoreline Drive (now Ritz Carlton Drive) to a public vista park located on the south side of the hotel, and required that public areas not be converted to private use.

The development currently under consideration is located in the Monarch Beach area of the City of Dana Point, which has a certified Local Coastal Program (LCP). However, the project would affect special conditions of a Commission-issued coastal development permit. Consequently, the approved project raises a substantial issue with the City of Dana Point Local Coastal Program and the public access and recreation policies of Chapter 3 of the Coastal Act for the reasons described below.

Obstruction of Public Accessway and Encroachment into Publicly Available Common Areas

The City of Dana Point certified LCP contains policies which protect existing public access and recreation opportunities and encourage improvement of such access and recreation opportunities in the coastal zone. Such policies include, but are not limited to, Policies 1.8, 4.3, 8.2, 8.6 and 8.9 of the Land Use Element, Policy 4.6 of the Urban Design Element, and Policy 6.8 of the Conservation/Open Space Element. The LCP also provides policies regarding the processing of coastal development permits. Additionally, Section 30211 of the Coastal Act states that development shall not interfere with the public's right of access and Section 30210 of the Coastal Act requires that access opportunities be maximized. The development approved by City of Dana Point Coastal Development Permit CDP97-25(II) obstructs an existing public accessway and encroaches into publicly available common areas within an existing visitor

servicing development. While the proposed and City-approved development does contain elements to minimize the impacts of the public accessway obstruction (realignment of the walkway), the approval contains no measures to assure that those measures are implemented and maintained (such as a deed restriction that requires the newly aligned walkway to be maintained open to the public in perpetuity). In addition, the City's approval does not address the encroachment of the development into publicly available common areas and the potential reduction of public access and recreational opportunities resulting from the encroachment. Therefore, the City's approval of Coastal Development Permit CDP97-25(II) raises a substantial issue with respect to conformity with the certified Local Coastal Program and the public access and recreation policies of the Coastal Act.

As noted previously, Coastal Commission-issued Coastal Development Permit 5-82-291 approved construction of the existing hotel subject to several special conditions. Special Condition 3 required that a public accessway be provided from Shoreline Drive (now Ritz Carlton Drive) to a public vista park located on the south side of the hotel. Accordingly, the trail provides public access from the nearest public roadway to a bluff top view park, along the bluff, and ultimately to Salt Creek Beach. Special Condition 1 required that a deed restriction be recorded over the trail required in Special Condition 3 (among other trails and open space areas on the project site). The deed restriction required that the trails and park/open space areas in the project be opened and maintained for permanent access and recreational use by the general public. The proposed 32,276 square foot spa facility would be constructed over a portion of the trail required by the Coastal Commission's previous approval, rendering the trail, in its deed restricted alignment, impassible.

The development approved by City of Dana Point Coastal Development Permit CDP 97-25(II) includes a replacement to the trail segment which is being obstructed by the proposed spa. The City's approval refers to obstruction of the existing trail and provision of the replacement trail segment as a trail "realignment". The realigned trail would be located approximately 10 feet easterly and southerly of the existing alignment. The City's approval includes Special Condition 19 which requires the applicant to "...seek the approval of the Executive Director of the California Coastal Commission for the realignment..." of the trail "...in the form of a modification to the recorded deed if necessary, or in a letter of acknowledgement of acceptance." However, the Executive Director of the Coastal Commission may not approve material amendments to permits issued by the Commission.

Other than Special Condition 19, the City's approval of Coastal Development Permit CDP97-25(II) does not contain any mechanism to assure that public access is maintained during project construction and that the re-aligned trail is opened and maintained for public access. For instance, there is no requirement in the special conditions of local approval which address temporary construction phase impacts upon public access. In addition, there is no special condition in the City's approval which requires that the trail be re-aligned, opened, and maintained for public access. Furthermore, there is no requirement regarding the timing of construction of the re-aligned trail to assure the trail is opened in a timely manner. Finally, there is no mechanism, such as a deed restriction, to assure that the existing and all future land owners are aware of the requirement to maintain the trail, in its new alignment, for permanent public access and recreational use by the general public. Therefore, the City's approval of CDP 97-25(II) raises a substantial issue as to the conformity of the approval with the public access policies of the certified Local Coastal Program and of Chapter 3 of the Coastal Act.

Also, Special Condition 2 of Coastal Commission-issued Coastal Development Permit 5-82-291 imposed a deed restriction which assured that public access is maintained to all common areas of the development. Common areas included the grounds of the hotel and certain interior areas of the hotel, but not including specified guest-only areas. The proposed development would result in the conversion of hotel grounds, which are presently deed restricted as areas open to the general public, to spa area which is only open to hotel guests. Policy 8.9 of the Land Use Element of the certified Local Coastal Program requires the avoidance of expansion of any land use that occurs at the expense of public areas. Since the proposed development is expanding a guest-only use at the expense of an area open to the general public, the proposed project raises a substantial issue as to conformity with the certified Local Coastal Program.

Section 30211 of the Coastal Act states that development shall not interfere with the public's right of access. Section 30210 of the Coastal Act requires that access opportunities be maximized. Furthermore, Policies 1.8, 4.3, 8.2, 8.6 and 8.9 of the Land Use Element, Policy 4.6 of the Urban Design Element, and Policy 6.8 of the Conservation/Open Space Element of the City's certified LCP require that existing public accessways shall be maintained and improved. In addition, the policies of the certified local coastal program discourage the expansion of land uses which occur at the expense of a public use. Accordingly, the Commission finds that the proposed development raises substantial issues as to conformity with the public access requirements of the certified Local Coastal Program and Chapter 3 of the Coastal Act.

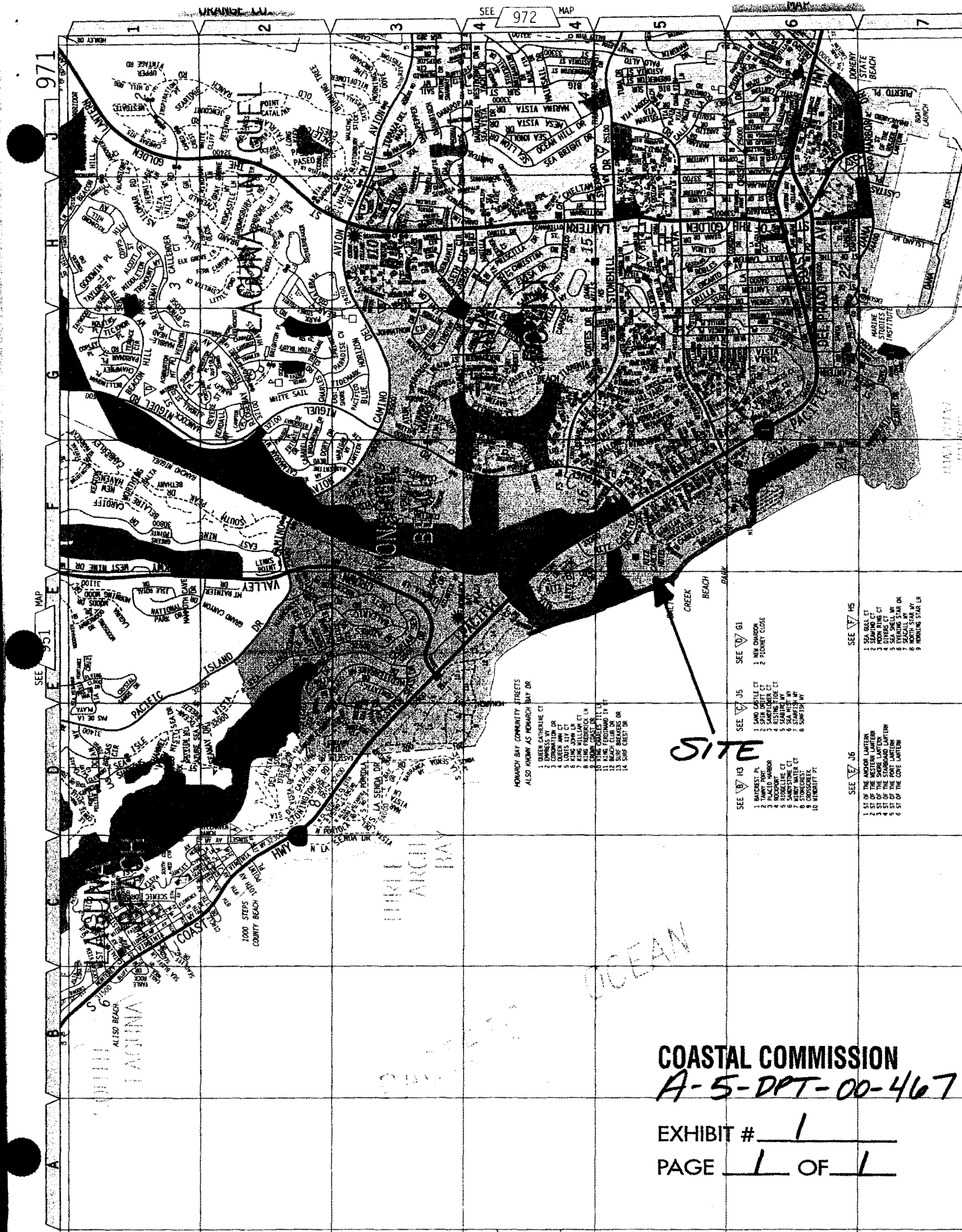
Potential for Conversion of Spa to Private Facility

Policy 4.7 of the Urban Design Element of the certified Local Coastal Program prohibits the conversion of existing visitor-serving developments open to the public to exclusive private use. In addition, Special Condition 1 of Coastal Commission-issued Coastal Development Permit 5-82-291 states that under no circumstances will the development be used for private resort which could inhibit or exclude casual use by the general public.

The proposed development consists of a spa designed as an amenity for guests of the hotel. Special Condition 11 of the City's approval affirms that the spa is exclusively for the use of hotel guests and potentially their visitors and precludes the sale of memberships to the spa. However, Special Condition 11 includes a caveat that memberships could be sold if it were demonstrated that adequate parking was available. This caveat suggests that private memberships to the proposed spa could be authorized by the City. Such authorization would clearly be inconsistent with Policy 4.7 of the Urban Design Element of the certified Local Coastal Program, which prohibits conversion to exclusive private use. In addition, such authorization would lessen or avoid the intended effect of Special Condition 1 of Coastal Commission-issued Coastal Development Permit 5-82-291. Therefore, the City's approval of Coastal Development Permit CDP97-25(II) raises a substantial issue as to conformity of the approval with the certified Local Coastal Program.

d. Conclusion

For the reasons stated above, the appeal raises a substantial issue of consistency with the regulations and standards set forth in the certified City of Dana Point LCP and the public access policies of the Coastal Act.



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ALSO KNOWN AS MONARCH BAY DR
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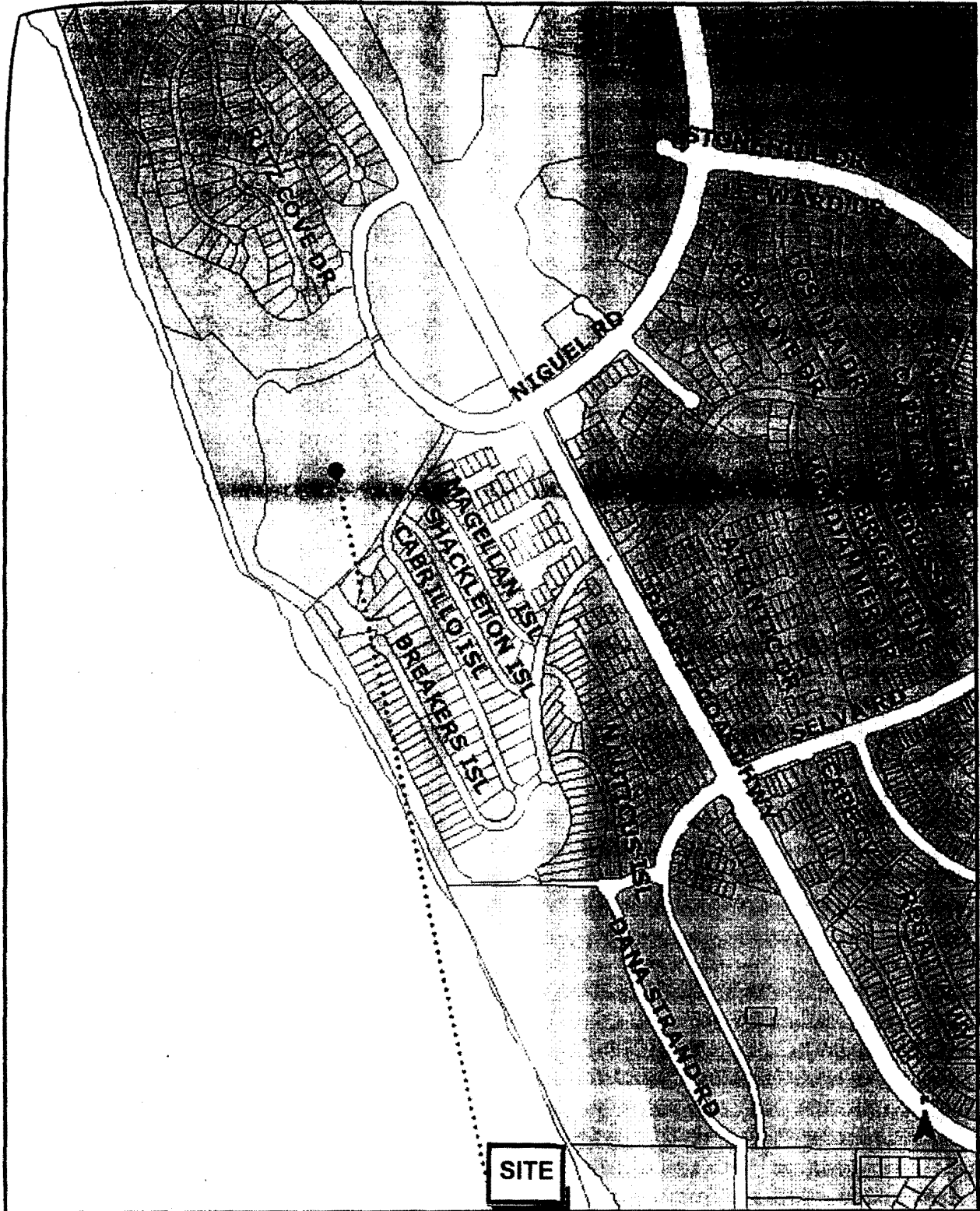
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 10. MONARCH YR

- SEE ∇ J6
1. MONARCH CT
 2. MONARCH DR
 3. MONARCH LN
 4. MONARCH PL
 5. MONARCH RD
 6. MONARCH ST
 7. MONARCH TRL
 8. MONARCH WAY
 9. MONARCH YARD
 10. MONARCH YR

COASTAL COMMISSION
A-5-DPT-00-467

EXHIBIT # 1
PAGE 1 OF 1

CITY OF DANA POINT
PLANNING COMMISSION



LOCATION MAP

APPLICANT: The PRS Group
FILE NUMBER: CDP97-25 (II), SDP00-16 & V99-13
PLANNING COMMISSION MEETING DATE: Oct 18, 2000

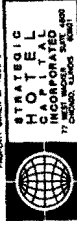
COASTAL COMMISSION
A-5-DPT-00-467

EXHIBIT # 2
PAGE 1 OF 1
ITEM NO: _____

ATTACHMENT #3

SMP-SHG
 ARCHITECTS INCORPORATED
 1917 Santa Monica Boulevard
 Fourth Floor
 Santa Monica, California 90404
 Telephone (310) 316-1091

Sustainable
 Solutions for the natural
 and built environment

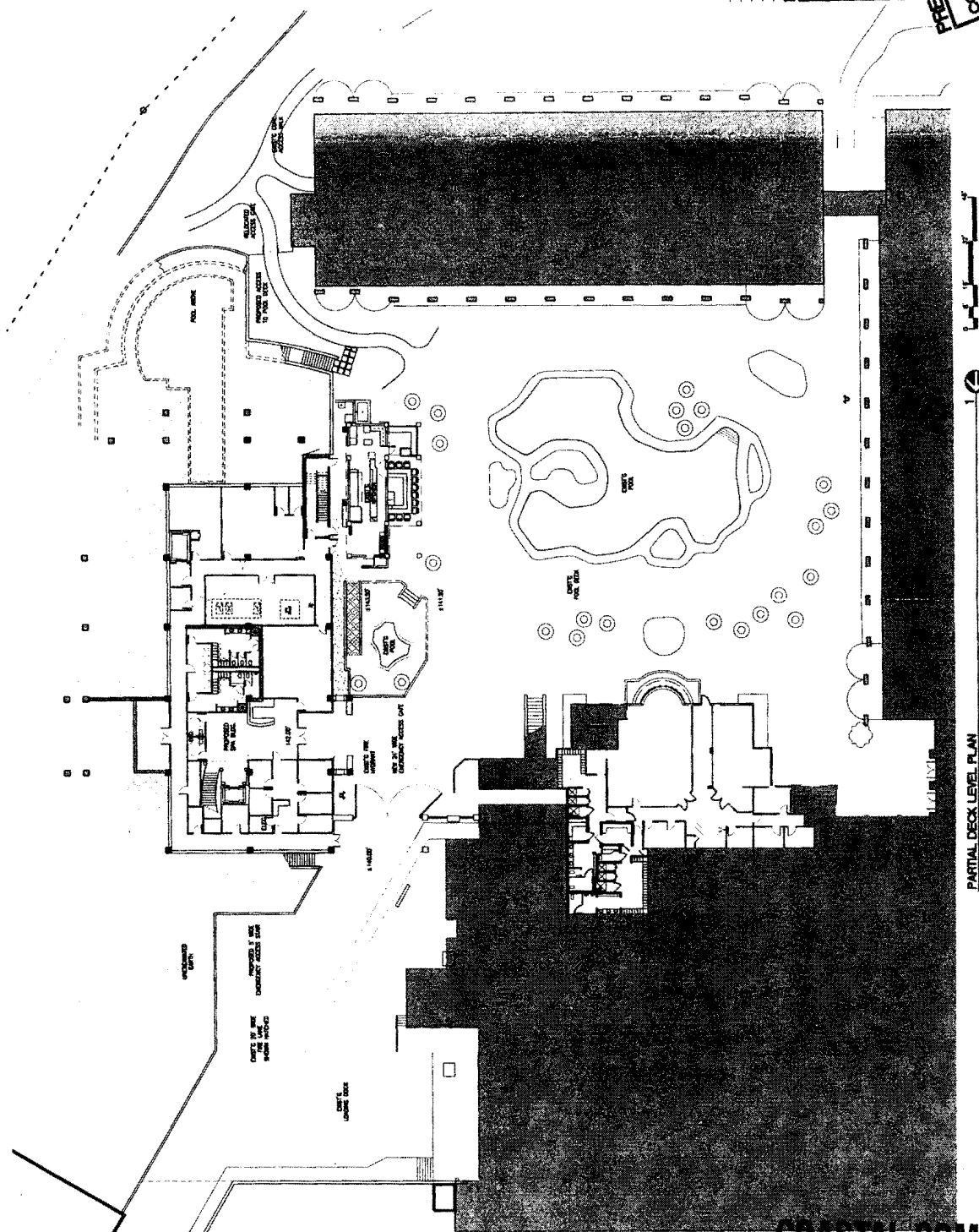


NO.	DATE	PLANNING COMMISSION REVIEW	DESCRIPTION
1	10/11/06		
2	12/17/06		
3	1/18/07		

FMSM
 THE FITZ-CARLTON
 LAGUNA NGUEL
 SPA ADDITION
 Dana Point, California

Rolan Moore Shaffer, AIA
 Architects Interior Designers
 10000 Wilshire Blvd., Suite 1000
 Los Angeles, CA 90024
 Telephone: (310) 206-1100
 Fax: (310) 206-1101
 www.rolanmoore.com

COASTAL COMMISSION
FILE NO. 06-11-101
DECK LEVEL SITE PLAN (R462)



PARTIAL DECK LEVEL PLAN
 Scale: 1/16" = 1'-0"

COASTAL COMMISSION
A-5-DPT-00-467

EXHIBIT # 3
 PAGE 1 OF 7

SMP-SHG
 Strategic Planning Commission
 10011/00 PLANNING COMMISSION
 07/27/00 EMERGENCY ACCESS

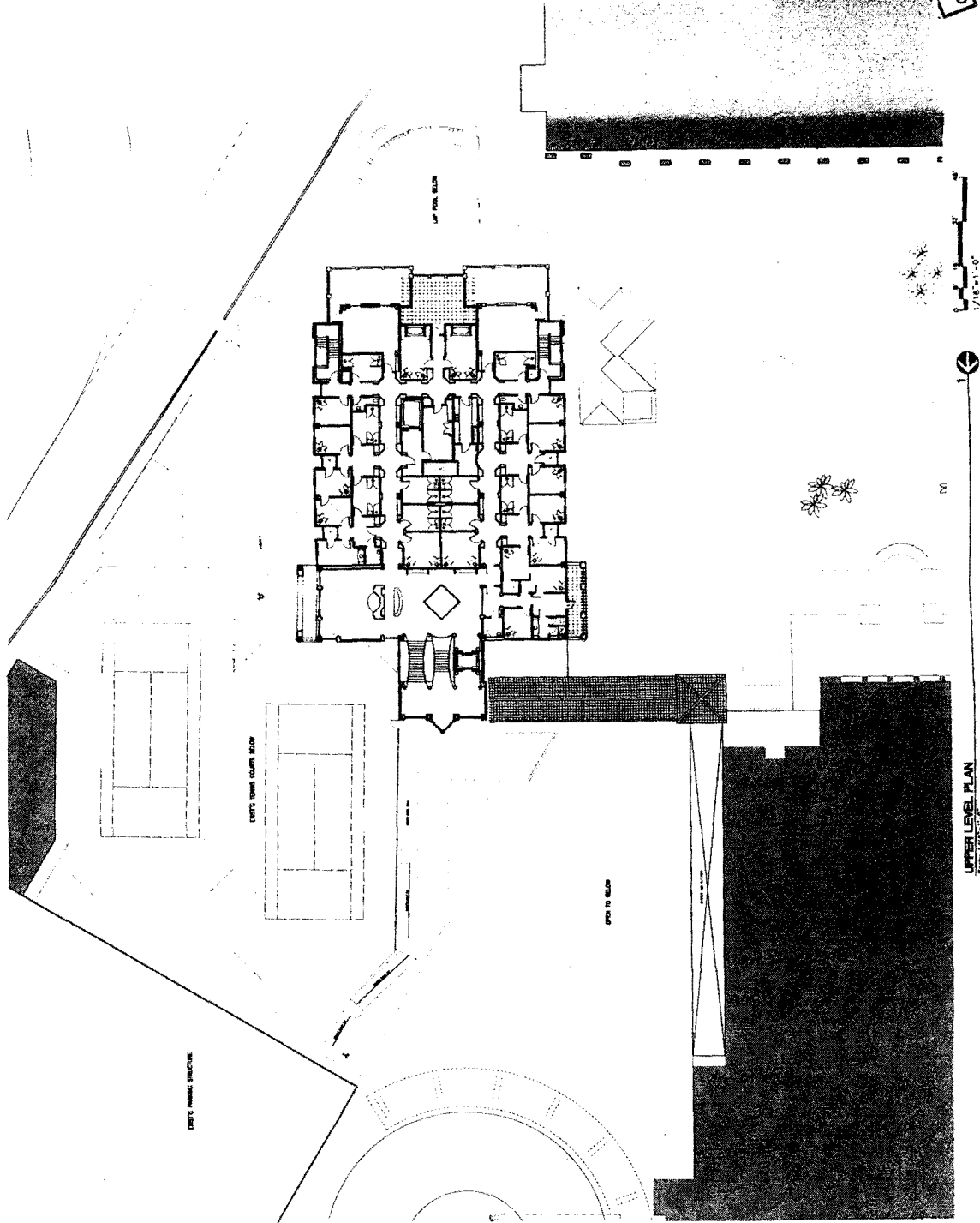
STRATEGIC CAPITAL CORPORATION
 INCORPORATED
 10011/00 PLANNING COMMISSION
 07/27/00 EMERGENCY ACCESS



10011/00 PLANNING COMMISSION
 07/27/00 EMERGENCY ACCESS

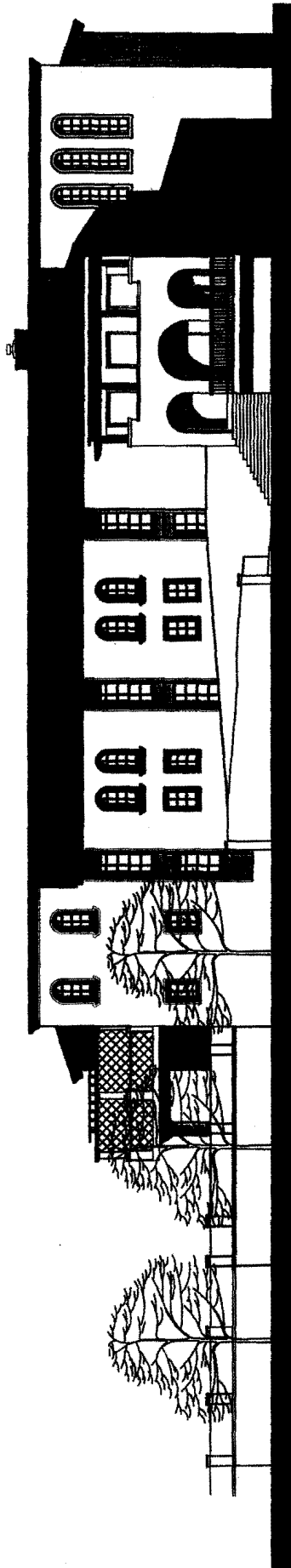
FMSM
 THE RITZ-CARLTON
 LAGUNA NIGUEL
 SPA ADDITION
 Dana Point, California
 Project Name: Ritz-Carlton
 Project No.: 10011/00
 Date: 07/27/00
 Scale: 1/16" = 1'-0"

REFERENCE
 A1.03 UPPER LEVEL
 SITE PLAN (1997)



COASTAL COMMISSION
A-5-DPT-00-46

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RITZ CARLTON SPA ADDITION
DANA POINT, CALIFORNIA

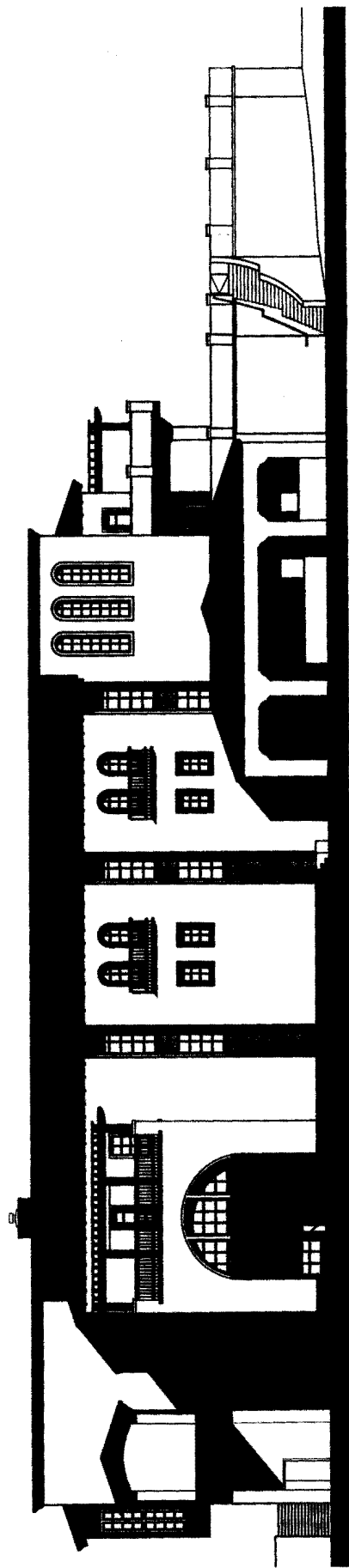
REVISED EAST ELEVATION
11 OCTOBER 2000

SNIP&C
ARCHITECTS
1100 S. GARDEN ST.
DANA POINT, CA 92629
TEL: 949.441.1100
WWW.SNIP&C.COM

COASTAL COMMISSION
A-5-DPT-00-467

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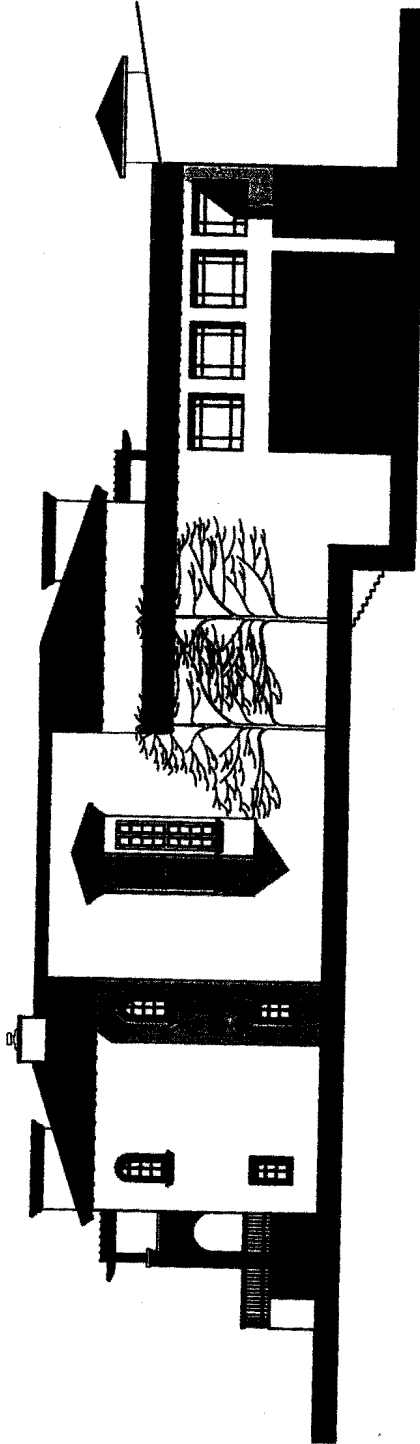
RITZ CARLTON SPA ADDITION
DANA POINT, CALIFORNIA

SUREK
ARCHITECTS
11111
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REVISED WEST ELEVATION
11 OCTOBER 2000

COASTAL COMMISSION
A-5-DPT-00-467

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PAGE 5 OF 7

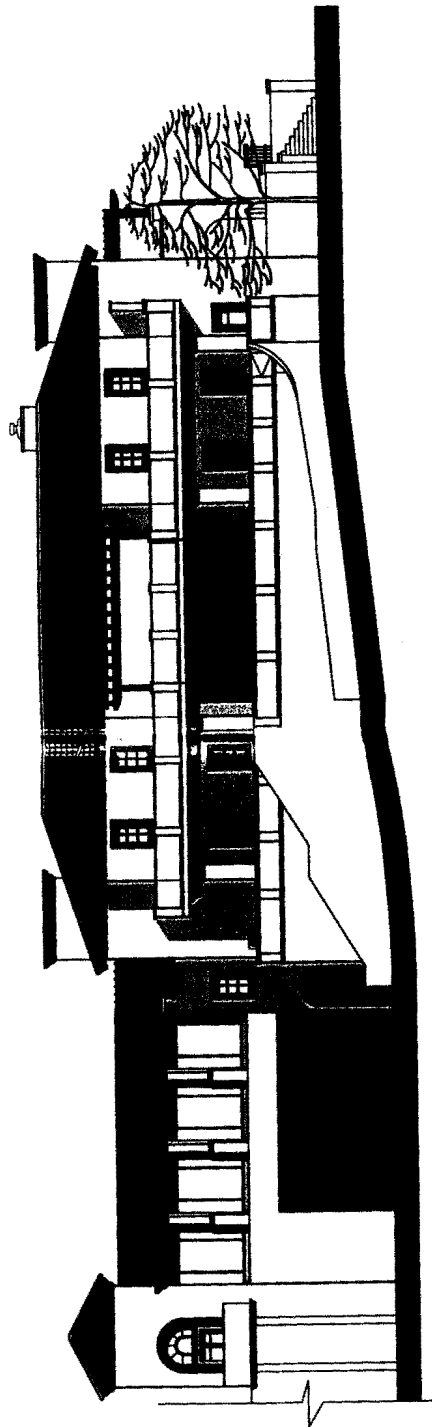


RITZ CARLTON SPA ADDITION
DANA POINT, CALIFORNIA

REVISED NORTH ELEVATION
11 OCTOBER 2000

SHREVE
LEITCH
KURTZ
SMITH

COASTAL COMMISSION
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RITZ CARLTON SPA ADDITION
DANA POINT, CALIFORNIA

REVISED SOUTH ELEVATION
11 OCTOBER 2000

SMPB&G
ARCHITECTS
10000 WILSON BLVD
DANA POINT, CA 92629
(714) 261-1234

COASTAL COMMISSION
A-5-DPT-00-467

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RECEIVED
NOV 3 2000

SENT VIA CERTIFIED MAIL

DATE: November 2, 2000
CALIFORNIA
COASTAL COMMISSION

TO: South California District Office
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, California 90802

FROM: City of Dana Point
Community Development Department
33282 Golden Lantern, Suite 212
Dana Point, California 92629

COASTAL DEVELOPMENT PERMIT APPLICATION
NOTICE OF FINAL ACTION

The following project is located within the City of Dana Point's Coastal Zone. A Coastal Development Permit application for the project has been acted upon.

Applicant: Phillip R. Schwartze, The PRS Group
Address: 31682 El Camino Real, San Juan Capistrano, CA 92675
Telephone: (949) 240-1322

Project Address: 1 Ritz Carlton Drive Assessor's Parcel No.: 672-171-03
Application File No.: CDP97-25 (II), SDP00-16 & V99-13
Project Description: Allow for the demolition of two tennis courts and the construction of a 32,276 square foot addition to the Ritz Carlton for use as a spa that exceeds the maximum height limit.

Filing Date: September 27, 1999 – Application Deemed Complete September 12, 2000
Action Date: October 18, 2000
Action became final on: November 2, 2000

Action: Approved
 Approved with conditions
 Denied

Draft Findings and Conditions are attached.

Appealable to the Coastal Commission.
Reason: Appeals Jurisdiction per the Post LCP Certification Map 2/6/91

City of Dana Point Contact: Anne E. Fox, Consultant – Project Manager
Phone: (949) 248-3572

E:\CDP97-25(II) V99-13.f\CDP\FNACT.rtf
FF#0610-70/1 Ritz Carlton Drive/Spa

COASTAL COMMISSION
A-5-DPT-00-407

EXHIBIT # 4

RESOLUTION NO. 00-10-18-76

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DANA POINT, CALIFORNIA, ADOPTING A NEGATIVE DECLARATION FOR COASTAL DEVELOPMENT PERMIT CDP97-25 (II), SITE DEVELOPMENT PERMIT SDP00-16 AND VARIANCE V99-13

APPLICANT: The PRS Group

FILE NO.: FF# 0610-70/CDP97-25 (II)/SDP00-16/V99-13/Spa

The Planning Commission for the City of Dana Point does hereby resolve as follows:

WHEREAS, the applicant has made an application for an amendment to a Coastal Development Permit and a Site Development Permit to allow for the demolition of two existing tennis courts in order to construct a three-story, 32,276 square foot addition to an existing hotel, Ritz Carlton, for use as a spa amenity to hotel guests. The application also includes a Variance to exceed the maximum height limit by an additional 12 feet, 8 inches; and

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

WHEREAS, the Planning Commission did, on the 18th day of October, 2000, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, examining the attached initial study, analyzing the information submitted by staff, and considering any written comments received, said Commission considered all factors relating to the Negative Declaration for Coastal Development Permit CDP97-25 (II), Site Development Permit SDP00-16 and Variance V99-13.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning Commission of the City of Dana Point as follows:

- A) That the above recitations are true and correct.
- B) That based on the evidence presented at the public hearing, the Planning Commission hereby adopts a Negative Declaration for Coastal Development Permit CDP97-25 (II), Site Development Permit SDP00-16 and Variance V99-13.

COASTAL COMMISSION

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Findings:

- 1) That a Notice of Intent to adopt a Negative Declaration was circulated for a thirty (30) day review period effective April 20, 2000 to the County Clerk and the State Clearinghouse, was published in the Dana Point News, and was mailed to contiguous property owners.
- 2) That comments were received from that review, which ended May 22, 2000, and have been attached as an appendix to the Initial Study.
- 3) That the attached Initial Study (City of Dana Point Environmental Checklist Form) shows that the project will not have a significant impact on the environment.
- 4) That there was no evidence before the City that the proposed project would have any potential adverse affect on wildlife. As a result, the proposed project qualifies for the De Minimis impact exemption from the Department of Fish and Game environmental review fees. The Director of Community Development is hereby authorized to declare the same on behalf of the City and Planning Commission.

RESOLUTION NO. 00-10-18-76
NEGATIVE DECLARATION FOR CDP97-25 (II), SDP00-16 & V99-13
PAGE 3


PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Dana Point, California, held on this 18th day of October, 2000, by the following vote, to wit:

AYES: Denton, Lacy, Nichols, Orlandella, Schoeffel

NOES: None

ABSENT: None

ABSTAIN: None


James V. Lacy, Chairman
Planning Commission

ATTEST:


Edward M. Knight, AICP
Director of Community Development

E:\CDP97-25(II) V99-13.fil\PC001018.RES ND.doc

FF#0610-70/1 Ritz Carlton Dr/Spa

COASTAL COMMISSION
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EXHIBIT # 4
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A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT CDP97-25 (II), SITE DEVELOPMENT PERMIT SDP00-16 AND VARIANCE V99-13 TO ALLOW FOR THE DEMOLITION OF TWO TENNIS COURTS AND THE CONSTRUCTION OF A 32,276 SQUARE FOOT ADDITION TO THE RITZ CARLTON FOR USE AS A SPA THAT EXCEEDS THE MAXIMUM HEIGHT LIMIT AT 1 RITZ CARLTON DRIVE

Applicant: The PRS Group
File No.: FF# 0610-70/CDP97-25 (II)/SDP00-16/V99-13/Spa

The Planning Commission for the City of Dana Point does hereby resolve as follows:

WHEREAS, the applicant filed a verified application for certain property, to wit:

1 Ritz Carlton Drive (APN 672-171-03); and

WHEREAS, the applicant has made an application to allow for an amendment to a Coastal Development Permit and a Site Development Permit to allow for the demolition of two existing tennis courts in order to construct a three-story, 32,276 square foot addition to an existing hotel, Ritz Carlton, for use as a spa amenity to hotel guests. The application also includes a Variance to exceed the maximum height limit by an additional 12 feet, 8 inches; and

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

WHEREAS, the Planning Commission did, on the 18th day of October, 2000, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, at said public hearings, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission considered all factors relating to Coastal Development Permit CDP97-25 (II), Site Development Permit SDP00-16 and Variance V99-13.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning Commission of the City of Dana Point as follows:

- A) The above recitations are true and correct.

Findings:

- B) Based on the evidence presented at the public hearing, the Planning Commission adopts the following findings and approves an Coastal Development Permit CDP97-25 (II), subject to conditions:

- 1) That the proposed development is in conformity with the Dana Point Zoning Code/Local Coastal Program in that it is consistent with Urban Design Element Policy 5.2, Encourage

COASTAL COMMISSION
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site and building design that takes advantage of the City's excellent climate to maximize indoor-outdoor spatial relationships."

- 2) That the proposed development is located between the nearest public roadway and the sea or shoreline of any body of water, and is therefore subject to conformity with the public access and public recreation policies of Chapter Three of the Coastal Act; however, provisions were made in the previous California Coastal Commission approvals for the existing development on the subject site and any requirements under Chapter Three were met and no additional provisions are required.
- 3) That the proposed development conforms with Public Resources Code Section 21000 (the California Environmental Quality Act) and following and that there are no feasible mitigation measures or feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment in that a Negative Declaration was prepared for the project and will be acted on in conjunction with the approval of the project.
- 4) That the proposed development will encroach upon an existing physical accessway legally utilized by the public which is identified in the City's General Plan Conservation/Open Space Element, but it will not obstruct any existing public views to and along the coast from any public road or from a recreational area in that the addition is located primarily where the site was improved with tennis courts used by hotel guests as an amenity not available to the general public, and the existing public coastal access trail (bluff trail) is being realigned with a condition included to ensure that public's access is not compromised but maintained in substantially the same manner.
- 5) That the proposed development will be sited and designed to prevent adverse impacts to environmentally sensitive habitats and scenic resources located in adjacent parks and recreation areas, and will provide adequate buffer areas to protect such resources in that the proposed addition will be located primarily on the portion of the property that had been developed with tennis courts where any necessary buffer area to such resources will not be altered.

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- 6) That the proposed development will minimize the alterations of natural landforms and will not result in undue risks from geologic and erosional forces and/or flood and fire hazards in that the proposed development involves minimal grading in an area previously graded without altering any natural landform and is proposed in conformance with City regulations concerning grading, drainage and fire hazards.
 - 7) That the proposed development will be visually compatible with the character of surrounding areas, and, where feasible, will restore and enhance visual quality in visually degraded areas in that the proposed development will match the existing hotel buildings and add landscaping along its border shared with a private residential community.
- C) Based on the evidence presented at the public hearing, the Planning Commission adopts the following findings and approves Site Development Permit SDP00-16, subject to conditions:
- 1) That the site design is in compliance with the development standards of the Dana Point Zoning Code in that all such standards have been incorporated into the submitted plans with the exception to building height for which a Variance approval is being sought.
 - 2) That the site is suitable for the proposed use and development in that the Floor Area Ratio is less than what is allowed and all required parking can be accommodated on site through the approved Managed Parking Program previously considered as Minor Conditional Use Permit CUP98-14M.
 - 3) That the project is in compliance with all elements of the General Plan and all applicable provision of the Urban Design Guidelines in that the proposal is consistent with the overall goal of *"Achieving design excellence in site planning, architecture, landscape architecture and signage in new development and modifications to existing development."*
 - 4) That the site and structural design is appropriate for the site and function of the proposed use, without requiring a particular style or type of architecture, in that the addition has been "tied into" the existing hotel by a connecting corridor matching grade levels and by utilizing complimentary architecture and finish materials.

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D) Based on the evidence presented at the public hearing, the Planning Commission adopts the following findings and approves Variance V99-13, subject to conditions:

- 1) That strict or literal interpretation and enforcement of the specified regulation(s) would result in practical difficulty or unnecessary physical hardships inconsistent with the objectives of this Chapter in that the addition has been designed to blend in with the existing development's grade levels and building heights, which were originally permitted to be built up to 50 feet in height.
- 2) That there are exceptional or extraordinary circumstances or conditions applicable to the subject property or to the intended use of the property which do not apply generally to other properties in the same zoning district in that the view of the greatest height of the building is only visible from within the hotel grounds, while the addition will appear two-story and below the 35 foot height limit from the private residential community most adjacent.
- 3) That the strict or literal interpretation and enforcement of the specified regulation(s) would deprive the applicant of privileges enjoyed by the owners of other properties in the same zoning district with similar constraints in that there are not any properties in the general vicinity with similar constraints in the same zoning district designation.
- 4) That the Variance request is made on the basis of a hardship condition and not as a matter of convenience in that the pool deck level is set at a lower elevation than the surrounding pad area being used for the spa addition and strict interpretation of the Zoning Code requires the measurement of building height to be taken from this grade, rather than from the view of the structure from the higher grade elevations, where it appears as a two-story structure.
- 5) That the granting of the Variance will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity in that the project is required to be built in conformance with all applicable codes regarding such and conditions have been included.
- 6) That the Variance approval places suitable conditions on the

COASTAL COMMISSION

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property to protect surrounding properties and does not permit uses which are not otherwise allowed in the zone in that additional landscaping will be provided along the eastern portion of the proposed spa addition, providing a buffer between the adjacent private residential community.

- 7) That granting of the Variance will not result in adverse impacts, either individually or cumulatively, to coastal access, public recreation opportunities, or coastal resources, and the development would be consistent with the policies of the Local Coastal Program certified land use plan in that the Variance request is for height and does not affect coastal access, public recreation or coastal resources.

Conditions:

A. General:

1. Approval of this application is to allow for the demolition of two existing tennis courts in order to construct a three-story, 32, 276 square foot addition, exceeding the maximum height limit by 12 feet, 8 inches, to an existing hotel, for use as a spa amenity to hotel guests located at 1 Ritz Carlton Drive. Subsequent submittals for this project shall be in substantial compliance with the plans presented to the City Council, and in compliance with the applicable provisions of the Dana Point General Plan/Local Coastal Program and the Dana Point Zoning Code. Approval of this application will serve as an Approval In Concept, as applicable.
2. Approval of this application is valid for a period of twenty-four (24) months from the date of determination. If the development approved by this action is not established, or a building permit for the project is not issued within such period of time, the approval shall expire and shall thereafter be null and void.
3. The application is approved as a precise plan for the location and design of the uses, structures, features, and materials, shown on the approved plans. Any relocation, alteration, or addition to any use, structure, feature, or material, not specifically approved by this application, will nullify this approving action. If any changes are proposed regarding the location or alteration to the appearance or use of any structure, an amendment to this permit shall be submitted for approval by the Director of Community Development. If the Director of Community Development determines that the proposed change complies with the provisions and the spirit and intent of this

approval action, and that the action would have been the same for the amendment as for the approved plot plan, he may approve the amendment without requiring a new public hearing.

4. Failure to abide by and faithfully comply with any and all conditions attached to the granting of this permit shall constitute grounds for revocation of said permit.
5. The applicant, and applicant's successors, heirs, and assigns, shall protect, defend, indemnify, and hold harmless the City, its officers, employees, and agents from any claim, action, or proceeding against the City, its officers, employees, or agents to attack, set aside, void, or annul the approval granted by this Resolution, which action is brought within the appropriate statute of limitations period.

The applicant, and the applicant's successors, heirs, and assigns, shall further protect, defend, indemnify and hold harmless the City, its officers, employees, and agents from any and all claims, actions, or proceedings against the City, its officers, employees, or agents arising out of or resulting from the negligence of the applicant or the applicant's agents employees, or contractors.

6. The applicant and applicant's successors in interest shall be fully responsible for knowing and complying with all conditions of approval, including making known the conditions to City staff for future governmental permits or actions on the project site.
7. The applicant and applicant's successors in interest shall be responsible for payment of all applicable fees along with reimbursement for all City expense in ensuring compliance with these conditions.
8. The construction site shall be posted with signage indicating that construction may not commence before 7 a.m. and must cease by 8 p.m., Monday through Saturday, and no construction activity is permitted on Sundays or Federal holidays.
9. The applicant shall obtain all applicable permits for the proposed improvements.
10. Use of the spa is limited to the assumptions made in the Parking Demand Study approved as a Managed Parking Program by the Planning Commission's approval of Minor Conditional Use Permit CUP98-14M, where it was anticipated that users would be 75% hotel guests and 25% non-guests.

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11. The use of the spa is exclusively for the use of hotel guests and potentially their visitors, and the operator of the Ritz Carlton is precluded from selling any form of membership to the spa unless modifications to the Managed Parking Program are submitted and approved through an amendment to Minor Conditional Use Permit CUP98-14M.

B. Prior to the issuance of a grading permit, the applicant shall meet the following conditions:

12. All grading and improvements on the subject property shall be made in accordance with the Grading Ordinance and to the satisfaction of the Director of Public Works. Grading plans shall be in substantial conformance with the approved conceptual plans and tentative parcel map. Surety to guarantee the completion of the project grading and drainage improvements, including erosion control, shall be posted to the satisfaction of the Director of Public Works and City Attorney.

13. The applicant shall submit a grading plan, in compliance with City standards, for review and approval by the Director of Public Works. All grading work must be in compliance with the approved plan and completed to the satisfaction of the Director of Public Works. All slopes within this project shall be graded no steeper than 2:1, unless otherwise approved by the Director of Public Works.

14. The applicant shall submit a grading, drainage and retaining wall plan with a geotechnical soils report for review and approval by the Director of Public Works. Retaining walls over 30 inches in height are required to be provided with a 42-inch "guard-rail." The following notes shall be included:

- a. All construction vehicles or equipment, fixed or mobile operated within 1,000 feet of a dwelling shall be equipped with properly operating and maintained mufflers.
- b. All operations shall comply with the City's Noise Ordinance.
- c. Stockpiling and/or vehicle staging areas shall be located as far as practicable from dwellings.

15. The applicant shall submit a geotechnical report for review and approval by the Director of Public Works. This report shall involve the assessment of potential soil related constraints and hazards such as slope instability, settlement, liquefaction, or related secondary seismic impacts, where determined to be appropriate by

COASTAL COMMISSION
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the Director of Public Works. The report shall also include an evaluation of potentially expansive soils and recommend construction procedures and/or design criteria to minimize the effect of these soils on the proposed development. All reports shall recommend appropriate mitigation measures and be completed in the manner specified by the Grading Manual and Grading Ordinance.

16. The applicant shall exercise special care during the construction phase of this project to prevent any off-site siltation. The applicant shall provide erosion control measures and shall construct temporary desiltation/detention basins of a type, size and location as approved by the Director of Public Works. The basins and erosion control measures shall be shown and specified on the grading plan and shall be constructed to the satisfaction of the Director of Public Works prior to the start of any other grading operations. Prior to the removal of any basins or erosion control devices so constructed, the area served shall be protected by additional drainage facilities, slope erosion control measures and other methods as may be required by the Director of Public Works. The applicant shall maintain the temporary basins and erosion control devices until the Director of Public Works approves the removal of said facilities.
17. The applicant shall submit a final landscape and irrigation plan for review and approval by the Engineering Department and Community Development Department. The plan shall be prepared by a State licensed landscape architect and shall include all proposed and existing plant materials (location, type, size, quantity), an irrigation plan, a grading plan, fences and walls, parking lot lighting, parking lot striping details, ground-mounted signs, an approved site plan, and a copy of the entitlement conditions of approval. The plan shall be in substantial compliance with the applicable provisions of the Zoning Code; the preliminary plan approved by the Planning Commission including a more extensive use, placement and size of Canary Island Date Palms that will achieve a screening and canopy affect that closely matches the exhibit submitted during public testimony and further, recognizes the principles of drought tolerant landscaping.
18. The applicant shall submit grading plan to the Building Department for verification of site handicapped accessibility to structures.
19. The applicant seek the approval of the Executive Director of the California Coastal Commission for the realignment of the access trail stipulated in special conditions of Coastal Development Permit No. 5-82-291 in the form of a modification to the recorded

deed if necessary, or in a letter of acknowledgement of acceptance.

C. Prior to issuance of a building permit or release on certain related inspections, the applicant shall meet the following conditions:

20. The applicant shall obtain grading plan approval from the Public Works/Engineering Department.
21. The applicant shall submit two (2) sets of construction plans for building plan check, including structural and energy calculations and a soils/geology report. A third set of plans containing only the site plan, floor plans and elevations is required to be submitted at the time of final approval. The licensed professional that prepared them shall sign all documents.
22. Improvements shall comply with the most recently adopted local and State building code regulations, which may include the 1998 CBC, CMC, CPC and CEC with State amendments for disabled accessibility and energy conservation, and all other 1997 code regulations that may apply.
23. Proof of all approvals from applicable outside departments and agencies is required, including the Orange County Fire Authority (OCFA), which shall include the following:
 - a) The applicant shall submit the Fire Chief evidence of the on-site fire hydrant system and indicate whether it is public or private. If the system is private the system shall be reviewed and approved by the Fire Chief prior to issuance of a building permit. The applicant shall make provisions for the repair and maintenance of the system, in a manner meeting the approval of the Fire Chief.
 - b) The applicant shall provide evidence of adequate fire flow. The OCFA Availability for Fire Protection form shall be signed by the applicable water district and submitted for approval to the OCFA. If sufficient water to meet fire flow requirements is not available, an automatic fire extinguishing system may be required in each structure affected by insufficient fire flow.
 - c) The applicant shall submit plans for any required automatic fire sprinkler system in any structure to the OCFA for review and approval.
 - d) The applicant shall obtain approval of the Fire Chief for all fire

COASTAL COMMISSION

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protection access roads and/or emergency access pathways to within 150 feet of all portions of the exterior of every structure on site. The applicant shall be required to look at other alternatives to the emergency access that is currently being proposed as a breach in the wall with a staircase adjacent to property owned by Niguel Shores, where OCFA vehicles responding would be required to enter and park on the private street, Cabrillo Isle. Once all available alternatives are exhausted, the applicant shall be required to relocate the breach in the wall and any necessary connecting pathway to a location more northerly on the landscape slope area. As necessary, the applicant shall obtain and record reciprocal access agreements to the satisfaction of the Fire Chief.

- e) A note shall be placed on the fire protection access plan indicating that all street/road signs shall be designed and maintained to be either internally or externally illuminated in a manner meeting approval of the Fire Chief.
- f) The applicant shall submit plans and obtain approval from the Fire Chief for fire lanes on required fire access roads less than 36 feet in width. The plans shall indicate the locations of red curbing and signage, both existing and proposed. A drawing of the proposed signage with the height, stroke and color of lettering and the contrasting background color shall be submitted to and approved by the Fire Chief.
- g) The applicant shall submit and obtain the Fire Chief's approval for the construction of any gate across required fire authority access roads/drives. Contact the OCFA at (714) 744-0499 for a copy of the "Guidelines for Fire Authority Emergency Access."
- h) The builder shall submit a letter on company letterhead stating that water for fire-fighting purposes and the all weather fire protection access roads shall be in place and operational before any combustible materials is placed on site. Approval shall be subject to an on-site inspection prior to issuance of a building permit.
- i) The applicant shall submit to the Fire Chief a list of the quantities of all hazardous, flammable and combustible materials, liquids, gases to be stored on site. These liquids and materials shall be classified according to the Uniform Fire Code using the OCFA Chemical

Classification Handout. The submittal shall provide a summary sheet listing each hazard class, the total quantity of chemicals stored per class and the total quantity of chemicals used in that class. All forms of materials are to be converted to units of measure in pounds, gallons and cubic feet.

- j) The applicant shall contact the OCFA Hazardous Materials Disclosure Office at (714) 744-0463 to obtain a "Hazardous Materials Business Information and Chemical Inventory Packet." This shall be completed and submitted to the Fire Chief.
 - k) The applicant shall submit a detailed letter of intended use for each building on site to the Fire Chief for review and approval.
 - l) The applicant shall submit plans for the review and approval of the Fire Chief as indicated on the OCFA Plan Submittal Criteria form. Contact the OCFA at (714) 744-0499 for a copy of the Fire Safety Site/Architectural Notes to be placed on the plans prior to submittal.
 - m) Plans for an approved fire-suppression system for the protection of commercial-type cooking equipment shall be submitted to the Fire Chief for review and approval.
 - n) Plans for the fire alarm system shall be submitted to the Fire Chief for review and approval.
 - o) Plans shall be submitted for any aboveground or underground tank for review and approval by the Fire Chief.
24. The cover sheet of the building construction documents shall contain a blue-line print of the City's conditions of approval and it shall be attached to each set of plans submitted for City approval or shall be printed on the title sheet verbatim.
25. Building address shall be located facing street fronting property. Addresses shall be 6" high with 1" stroke and of noncombustible, contrasting materials.
26. A minimum roofing classification of type "E" is required.
27. A rough grade certification is required from Coastal Commission Works by separate submittal.

28. Prior to the release of the footing inspection, the applicant shall submit certification, by survey or other appropriate method, that the structure will be constructed in compliance with the dimensions shown and in compliance with the setbacks of the applicable zoning district.
29. Prior to the release of the roof sheathing inspection, the applicant shall submit certification, by a survey or other appropriate method, that the height of the structure is in compliance with the dimensions shown, and the height limitations of the applicable zoning district. A written report certifying the above shall be prepared by the applicant and submitted to the Building Department.
30. The applicant shall submit payment for any and all applicable school, park, water, sewer, Transportation Corridor, and Coastal Area Road Improvement and Traffic Signal fees.
31. All plan check and building permit fees shall be paid to the City of Dana Point.
32. The applicant shall submit a lighting plan for review and approval by the Director of Community Development. The lighting plan submitted shall include a detailed study of the project's intrusion of light into the neighboring residential community and be sensitive to the privacy of the neighboring residential community. All lighting elements shall be installed and directed so as to contain light and glare on the subject site.

D. Prior to the issuance of a certificate of occupancy, the applicant shall meet the following:

33. All landscaping and irrigation shall be installed per the approved final landscape and irrigation plan. A State licensed landscape architect shall certify that all plant and irrigation materials have been installed in accordance with the specifications of the final plan and shall submit said certification in writing to the Director of Community Development. The Community Development Department shall inspect the site to ensure that the landscaping has been installed in accordance with the approved plans.
34. The applicant shall be responsible for payment of applicable development impact fees including General Government, Fire Protection and Transportation.
35. All proposed utilities within the project shall be installed underground.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 16 OF 18

36. All ground mounted utility and mechanical equipment shall be screened and sound buffered as shown on the landscape plans to the satisfaction of the Director of Community Development.
37. No equipment shall be located on the sloped, externally visible portions of the roof of the structure.
38. All roof mounted equipment, including air conditioners, shall be properly screened from view and the sound buffered from adjacent properties and streets, as shown on the construction drawings, to the satisfaction of the Director of Community Development. All screening materials shall be designed as integral components of the project architecture.
39. Approval from the Orange County Fire Authority (OCFA) for the following:
 - a) All fire hydrants shall have a blue reflective pavement marker indicating the hydrant location on the street or drive per the OCFA Standard as approved by the Fire Chief. These markers are to be maintained in good condition by the property owner.
 - b) The automatic fire sprinkler system shall be operational in a manner meeting the approval of the Fire Chief.
 - c) The fire lanes shall be installed in accordance with the approved fire lane plan. Approved documents shall contain a fire lane map and provisions which prohibit parking in the fire lanes. The method of enforcement shall be documented.
 - d) The fire suppression system shall be operational.
 - e) The fire alarm system shall be operational.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 17 OF 18

CITY COUNCIL RESOLUTION NO. 00-10-18- 77
COASTAL DEVELOPMENT PERMIT CDP97-25 (II), SITE DEVELOPMENT PERMIT
SDP00-16 AND VARIANCE V99-13
PAGE 14

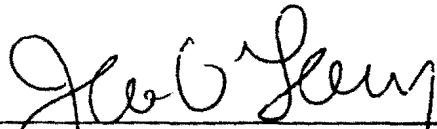
PASSED, APPROVED, AND ADOPTED at a regular meeting of the
Planning Commission of the City of Dana Point, California, held on this 18th day of
October, 2000, by the following vote, to wit:

AYES: Denton, Lacy, Nichols, Orlandella, Schoeffel

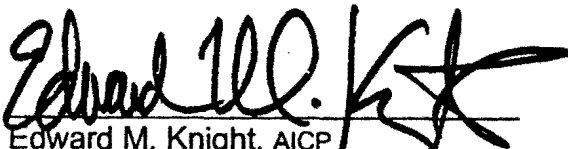
NOES: None

ABSENT: None

ABSTAIN: None


James V. Lacy, Chairman
Planning Commission

ATTEST:


Edward M. Knight, AICP
Director of Community Development

E:\CDP97-25(II) V99-13.f\PC001018.RES.doc
FF#0610-70/1 Ritz Carlton Drive/Spa

COASTAL COMMISSION

EXHIBIT # 4
PAGE 18 OF 18

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



**APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT**

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Coastal Commissioners: Sara Wan and Shirley Dettloff
200 Oceangate, Suite 1000
Long Beach, CA 90802 (562) 590-5071

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Dana Point
2. Brief description of development being appealed: Demolition of two tennis courts and the construction of a 32,276 square foot addition to the Ritz Carlton for use as a spa.
3. Development's location (street address, assessor's parcel no., cross street, etc.): 1 Ritz Carlton Drive, City of Dana Point, Orange County. APN# 672-171-03
4. Description of decision being appealed:
 - a. Approval; no special conditions: _____
 - b. Approval with special conditions: XX
 - c. Denial: _____

NOTE: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-5-DPT-00-467

DATE FILED: NOV 20 2000

DISTRICT: South Coast

COASTAL COMMISSION
A-5-DPT-00-46

EXHIBIT # 5

PAGE 1 OF 8

5. Decision being appealed was made by (check one):
- a. Planning Director/Zoning Administrator: _____
 - b. City Council/Board of Supervisors: _____
 - c. Planning Commission: _____ XXX _____
 - d. Other: _____
6. Date of local government's decision: October 18, 2000
7. Local government's file number: CDP97-25(II), SDP00-16 & V99-13

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties.
(Use additional paper as necessary.)

1. Name and mailing address of permit applicant:
Phillip R. Schwartze
The PRS Group
31682 El Camino Real
San Juan Capistrano, CA 92675
2. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.
- a. _____

 - b. _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government Coastal Permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page. Please state briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Coastal Commission-issued Coastal Development Permit 5-82-291 approved construction of the existing Ritz Carlton hotel subject to special conditions that required a public accessway from Shoreline Drive (now Ritz Carlton Drive) to a public vista park located on the south side of the hotel. The City of Dana Point through CDP97-25(II), SDP00-16 & V99-13 would allow the construction of a hotel facility within the public accessway required as a condition of approval of Coastal Commission-issued Coastal Development Permit 5-82-291. The proposed development is located in the Monarch Beach area of the City of Dana Point which has a certified Local Coastal Program (LCP). The proposed project raises a substantial issue with the City of Dana Point Local Coastal Program and the public access and recreation policies of Chapter 3 of the Coastal Act for the reasons described below.

Obstruction of Public Accessway and Encroachment into Publicly Available Common Areas:

The City of Dana Point certified Local Coastal Program contains policies which protect existing public access and recreation opportunities and encourage improvement of such access and recreation opportunities in the coastal zone. Such policies include, but are not limited to, Policies 1.8, 4.3, 8.2, 8.6 and 8.9 of the Land Use Element, Policy 4.6 of the Urban Design Element, and Policy 6.8 of the Conservation/Open Space Element of the City's certified Local Coastal Program. In addition, Section 30211 of the Coastal Act states that development shall not interfere with the public's right of access and Section 30210 of the Coastal Act requires that access opportunities be maximized. The development approved by City of Dana Point Coastal Development Permit CDP97-25(II) obstructs an existing public accessway and encroaches into publicly available common areas within an existing visitor serving development. While the proposed and City-approved development does contain elements to minimize the impacts of the public accessway obstruction, the approval contains no measures to assure that those measures are implemented and maintained. In addition, the City's approval does not address the developments encroachment into publicly available common areas and the potential reduction of public access and recreational opportunities resulting from the encroachment. Therefore, the City's approval of Coastal Development Permit CDP97-25(II) raises a substantial issue with respect to coastal development.

COASTAL COMMISSION
A-5-DPT-00-907

EXHIBIT # 5
PAGE 3 OF 8

certified Local Coastal Program and the public access and recreation policies of the Coastal Act.

As noted above, Coastal Commission-issued Coastal Development Permit 5-82-291 approved construction of the existing hotel subject to several special conditions. Special Condition 3 required that a public accessway be provided from Shoreline Drive (now Ritz Carlton Drive) to a public vista park located on the south side of the hotel. Accordingly, the trail provides public access from the nearest public roadway to a bluff top view park, along the bluff, and ultimately to Salt Creek Beach. Special Condition 1 required that a deed restriction be recorded over the trail required in Special Condition 3 (among other trails and open space areas on the project site). The deed restriction required that the trails and park/open space areas in the project be opened and maintained for permanent access and recreational use by the general public. The proposed 32,276 square foot spa would be constructed over a portion of the trail required by the Coastal Commission's previous approval, rendering the trail, in its deed restricted alignment, impassible.

The development approved by City of Dana Point Coastal Development Permit CDP 97-25(II) includes a replacement to the trail segment which is being obstructed by the proposed spa. The City's approval refers to obstruction of the existing trail and provision of the replacement trail segment as a trail "realignment". The realigned trail would be located approximately 10 feet easterly and southerly of the existing alignment. The City's approval includes Special Condition 19 which requires the applicant to "...seek the approval of the Executive Director of the California Coastal Commission for the realignment..." of the trail "...in the form of a modification to the recorded deed if necessary, or in a letter of acknowledgement of acceptance." However, the Executive Director of the Coastal Commission cannot grant approval of the trail realignment. Rather, the Coastal Commission itself, not the Executive Director, must authorize the change to the location of the trail which must be sought via a request for amendment to Coastal Commission-issued Coastal Development Permit 5-82-291. Since the Executive Director of the Coastal Commission cannot grant approval of the trail realignment, the applicant cannot comply with Special Condition 19 of the City's approval.

Other than Special Condition 19 (with which the applicant cannot comply), the City's approval of Coastal Development Permit CDP97-25(II) does not contain any mechanism to assure that public access is maintained during project construction and that the re-aligned trail is opened and maintained for public access. For instance, there is no requirement in the special conditions of approval which address temporary construction phase impacts upon public access. In addition, there is no special condition which requires that the trail be re-aligned, opened, and maintained for public access. Furthermore, there is no requirement regarding the timing of construction of the re-aligned trail to assure the trail is opened in a timely manner. Finally, there is no mechanism, such as a deed restriction, to assure that the existing and all future land owners are aware of the requirements.

COASTAL COMMISSION
A-5-DPT-00-467

EXHIBIT # 5
PAGE 4 OF 8

trail, in its new alignment, for permanent public access and recreational use by the general public.

Also, Special Condition 2 of Coastal Commission-issued Coastal Development Permit 5-82-291 imposed a deed restriction which assured that public access is maintained to all common areas of the development. Common areas included the grounds of the hotel and certain interior areas of the hotel, but not including specified guest-only areas. The proposed development would result in the conversion of hotel grounds, which are presently deed restricted as areas open to the general public, to spa area which is only open to hotel guests. Policy 8.9 of the Land Use Element of the certified Local Coastal Program requires the avoidance of expansion of any land use that occurs at the expense of public areas. Since the proposed development is expanding a private guest-only use at the expense of an area open to the general public, the proposed project raises a substantial issue as to conformity with the certified local coastal program.

Section 30211 of the Coastal Act states that development shall not interfere with the public's right of access. Section 30210 of the Coastal Act requires that access opportunities be maximized. Furthermore, Policies 1.8, 4.3, 8.2, 8.6 and 8.9 of the Land Use Element, Policy 4.6 of the Urban Design Element, and Policy 6.8 of the Conservation/Open Space Element of the City's certified Local Coastal Program require that existing public accessways shall be maintained and improved. In addition, the policies of the certified local coastal program discourage the expansion of land uses which occur at the expense of a public use. Accordingly, an appeal of the local action must be made to assure that any approved development is consistent with the requirements of the certified Dana Point Local Coastal Program and the public access policies of the Coastal Act.

Potential for Conversion of Spa to Private Facility:

Policy 4.7 of the Urban Design Element of the certified local coastal program prohibits the conversion of existing visitor serving developments open to the public to exclusive private use. In addition, Special Condition 1 of Coastal Commission-issued Coastal Development Permit 5-82-291 states that under no circumstances will the development be used for private resort which could inhibit or exclude casual use by the general public.

The proposed development consists of a spa designed as an amenity for guests of the hotel. Special Condition 11 of the City's approval affirms that the spa is exclusively for the use of hotel guests and potentially their visitors and precludes the sale of memberships to the spa. However, Special Condition 11 includes a caveat that memberships could be sold if it were demonstrated that adequate parking was available. This caveat suggests that private memberships to the proposed spa could be authorized by the City. Such authorization would clearly be inconsistent with Policy 4.7 of the Urban Design Element of the certified Local Coastal Program. In addition, such authorization would lessen or avoid the

intended effect of Special Condition 1 of Coastal Commission-issued Coastal Development Permit 5-82-291. Therefore, the City's approval of Coastal Development Permit CDP97-25(II) raises an issue as to conformity of the approval with the certified Local Coastal Program.

Coastal Commission Jurisdiction:

Section 9.69.030 of the City's certified Local Coastal Program states that the Coastal Commission retains jurisdiction over amendments to permits it has issued. The City of Dana Point Coastal Development Permit CDP97-25(II) granted approval of development that affects Special Conditions 1, 2 and 3 of Coastal Commission-issued Coastal Development Permit 5-82-291. As noted above, the proposed development obstructs a public accessway and encroaches into publicly available common areas required by Special Conditions 1 through 3 of Coastal Development Permit 5-82-291. This development which affects the previously imposed special conditions constitutes an amendment to Coastal Development Permit 5-82-291. In granting approval of Coastal Development Permit CDP97-25(II), the City of Dana Point, in effect, issued an amendment to Coastal Commission-issued Coastal Development Permit 5-82-291. This approval of an amendment to Coastal Development Permit 5-82-291 by the City of Dana Point is inconsistent with Section 9.69.030 of the City's certified Local Coastal Program which states that the Coastal Commission, not the City, has jurisdiction over amendments to permits issued by the Coastal Commission. Therefore, the City's approval of Coastal Development Permit CDP97-25(II) raises a substantial issue as to conformity with Section 9.69.030 of the City's certified Local Coastal Program.

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: *[Signature]*
Appellant or Agent

Date: NOV 20 2000

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document 2)

COASTAL COMMISSION
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PAGE 7 OF 8

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: *Sara Johnson*
Appellant or Agent

Date: NOV 20 2000

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document2)

COASTAL COMMISSION
A-5-DPT-00-467
EXHIBIT # 5
PAGE 8 OF 8

September 15, 1982

State of California, Edmund G. Brown Jr., Governor

California Coastal Commission
SOUTH COAST DISTRICT
666 E. Ocean Blvd., Suite 310/
Long Beach, CA 90801
(213) 590-5071

COASTAL DEVELOPMENT PERMIT NO. 5-82-291

Page 1 of 4

FILE COPY

On June 16, 1982, The California Coastal Commission granted to Avco Community Developers, Inc.

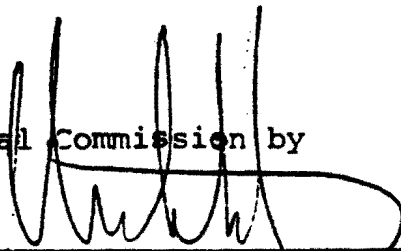
this permit for the development described below, subject to the attached Standard and Special conditions.

Construction of a 397 room resort hotel with two restaurants, meeting rooms, ballroom, pool and deck, public beach access trail, 672 off-street parking spaces, landscaping and other improvements on a vacant 18.55 acre blufftop parcel.

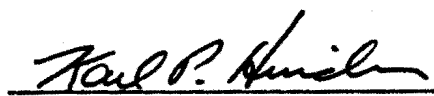
SITE: 33551 Shoreline Drive (now known as 1 Ritz Carlton Drive)
Laguna Niguel, CA

Ritz Carlton Laguna Niguel Hotel

Issued on behalf of the California Coastal Commission by



MICHAEL L. FISCHER
Executive Director
and



KPH/rm

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE.

ACKNOWLEDGEMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

COASTAL COMMISSION

A-5-DPT-00-467

Date

Signature of Permittee

EXHIBIT # 6

5/81

PAGE 1 OF 3



*PAGE 2 IS MISSING***III. Special Conditions**

This permit is subject to the following special conditions:

1. Prior to issuance of the permit, the applicant shall submit a deed restriction for recording which will insure that the bluff trail, including viewpoints and rest areas, and the Vista Point Park, as all are indicated on applicant's Exhibit 16 and as amended by Special Conditions 3 and 4 below, are opened and maintained for permanent access and recreational use by the general public.

Said deed restriction shall also insure that the development will be dedicated to hotel use, available in accordance with standard hotel/motel practice for use by the general public, and that under no circumstances will the development be used for private resort or time-share use which could inhibit or exclude casual use by the general public.

The form and content of said deed restriction shall be subject to the review and approval of the Executive Director.

2. Prior to issuance of the permit, the applicant shall submit for recording a deed restriction which insures that public access is 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, coffeshops, grounds and sundeck. The form and content of said deed restriction shall be subject to the review and approval of the Executive Director.
3. Prior to issuance of the permit, the applicant shall submit, for the review and approval of the Executive Director, both of the following:
 - a. A signing program consistent with the special conditions of Coastal Development Permit No. P-79-5539; and
 - b. Revised plans providing for a public vista park and a public access way from Shoreline Drive to the park. Said park shall be of the same (or larger) size and orientation as proposed in Coastal Development Permit No. P-79-5539 such that views both up-coast and down-coast are readily obtained.
4. Prior to issuance of the permit, the applicant shall submit detailed plans, subject to the review and approval of the Executive Director, illustrating a public rest and viewing area in conjunction with the public access trail where it passes under the sundeck (refer to Exhibit 2). Said public rest area shall include benches, signs, and interpretive exhibits, and shall incorporate an entry design that invites and encourages public access and use.

COASTAL COMMISSION
A-5-DPT-00-467

EXHIBIT # 6

PAGE 2 OF 3

5. Lower Cost Visitor Accommodations. a) Prior to issuance of the permit, the applicant shall execute a binding agreement wherein the applicant agrees to construct 132 units of lower cost visitor accommodations consisting of at a minimum a 66-bed youth hostel built to the standards of the American Youth Hostel Association; the balance in moderate priced motel units. (e.g. a 70 bed hostel with a 62 unit motel, a 100 bed hostel with a 32 unit motel, etc.). Said agreement shall provide:
- (1) that the hostel and motel units shall be completed within 3 years of commencement of construction on the subject hotel project;
 - (2) that said hostel and motel units shall be situated on the site designated as Commercial Center (3) in Coastal Development Permit No. P-79-5539; and;
 - (3) that development of said hostel and motel units shall require a separate coastal development permit and shall comply with all relevant special conditions approved on Coastal Development Permit No. P-79-5539.

The parties to said agreement shall be the California Coastal Commission and AVCO. Said agreement shall be recorded free of prior liens (i.e. if liens are in existence, the existing liens shall be subordinated), as a covenant running with all parcels of issue in this condition and shall be binding on all successors and assigns. Said agreement shall be subject to the review and approval of the Executive Director.

- b) Prior to issuance of permit, the applicant shall execute an irrevocable letter of credit in the amount of \$500,000. Said letter of credit shall be issued by a national banking association licensed to do business in California, in favor of the California Coastal Commission or its designee, and shall be payable for constructing the lower cost visitor accommodations required herein upon the determination of the Executive Director that the developers have failed to meet condition No. 5 of Permit No. 5-82-291.

COASTAL COMMISSION

A-5-DPT-00-46

EXHIBIT # 6

PAGE 3 OF 3



January 12, 2000

Teresa Henry, District Manager
South Coast Area
California Coastal Commission
P O Box 1450
Long Beach, CA 90802-4416

SUBJECT: RITZ CARLTON HOTEL - 1 RITZ CARLTON DRIVE, DANA POINT

Dear Ms. Henry:

I am requesting your concurrence regarding the City's authority to process and issue a Coastal Development Permit (CDP) for an addition (30,000+ square feet) to the existing Ritz Carlton Hotel. It is my belief that the City retains the purview for the CDP because a majority of the proposed project affects an area of the site currently developed with tennis court facilities, which are only available to hotel guests as an amenity. Two of the existing four tennis courts would be replaced by a three-story structure, which will house extensive spa facilities that will be available only to hotel guests as amenity. The addition of the new structure constitutes new development and therefore requires the consideration of a CDP; however, because the use of the specific area of the property will remain unchanged, changing the type of hotel guest amenity from one type to another, issuance of the CDP should be processed by the City.

As a component of the City's review process, copies of the plans had been forwarded to the Coastal Commission for review and comment. Most recently, plans were transmitted on December 16, 1999, requesting that any conditions, comments or information be returned to our offices by January 3, 2000. We recognize that Commission Staff is as busy as City Staff, but in order to continue with this process we need a reading from the Commission that it is appropriate for the City to continue processing this CDP. The project proponent has indicated that they have been in conversation with your offices regarding their project, particularly as it may affect the "Special Conditions," and corresponding deed restriction, placed on the development originally by the Commission. The pertinent special condition relates to the public's access to portions of the hotel property. In this case, it is related to a walkway that runs southerly, parallel to the property's east boundary. A relatively minor alteration to this walkway is being proposed; however, the end result retains the public's accessibility to the site, improves disabled accessibility by reducing an incline along the walkway, and an enhancement due to the extensive landscape treatment within the area separating this walkway from the proposed structure.

Further, on November 14, 1997, John Auyong of your offices provided correspondence to the City regarding the authority to issue CDPs where the Ritz Carlton Hotel is concerned. His letter stated that unless proposed development would affect any conditions of CDPs previously approved by the Coastal Commission, the City would have authority to consider new CDPs if it has a certified Local Coastal Program for this area.

COASTAL COMMISSION
A-5-DPT-00-467

EXHIBIT # 7

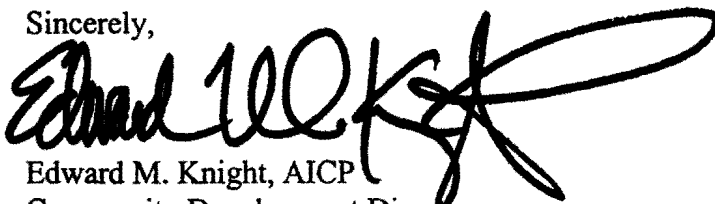
PAGE 1 OF 2

Teresa Henry
January 12, 2000
Page Two

As you know, the City is committed to retaining the public's access to the coast. I believe that the relatively minor realignment of the walkway being proposed as part of the larger development project should not result in a need for any further consideration or formal action by your office or the Coastal Commission. In order to continue timely processing of the proposal in accordance with State law, I respectfully request your written confirmation of the same.

Thank you for your timely attention to this matter.

Sincerely,



Edward M. Knight, AICP
Community Development Director

cc: Anne E. Fox, Consultant – Project Manager

E:\CDP97-25(II) V99-13.f\CCCCtr.doc

FF#0610-70/1 Ritz Carlton Drive/Spa

COASTAL COMMISSION
A-5-DPT-00-467
EXHIBIT # 7
PAGE 2 OF 2

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



January 19, 2000

Mr. Edward M. Knight
Community Development Department
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

Subject: **NOTICE OF REQUIREMENT FOR COASTAL COMMISSION APPROVAL**
City of Dana Point File No. CDP97-25 (III)/V99-13
Coastal Development Permit 5-82-291

Dear Mr. Knight:

On January 13, 2000, Commission staff received your request for a determination of whether a coastal development permit for proposed development at the Ritz Carlton Hotel may be processed by the City of Dana Point or whether such development requires an amendment from the Coastal Commission. The proposed development is the demolition of two existing tennis courts and a loading dock for the hotel and construction of a new 32,276 square foot, three story resort spa to be attached to the existing hotel. Commission staff have reviewed the information submitted and determined that the proposed development requires an amendment to Coastal Commission-issued Coastal Development Permit 5-82-291.

As specified in Section 9.69.030 (c)(3)(B) and (D) of the certified LCP, for any development approved by the Coastal Commission, the Commission retains jurisdiction for purposes of condition compliance, amendment, extension, reconsideration and revocation. In this case, Commission staff have determined that the proposed development constitutes an amendment to Coastal Commission-issued Coastal Development Permit 5-82-291 and therefore, the Commission retains jurisdiction over the proposed development.

The concept of the Ritz Carlton hotel was initially approved under Coastal Development Permit P-79-5539 and specific approval of the hotel was approved under Coastal Development Permit 5-82-291. Coastal Development Permit 5-82-291, as amended, is a specific approval for structures as described in the permit and shown on the approved plans contained within the permit file. In addition, there are several conditions which have been imposed by the Commission with which the applicant must comply. Among the conditions is a deed restriction which specifically describes the areas dedicated for public access on the site. The proposed development would eliminate tennis courts that are specifically shown on plans approved by the Coastal Commission. Since the approved plans describe the project, the proposed replacement of tennis courts with a spa affects the project description of CDP 5-82-291. In addition, the proposed project may require the realignment of a public accessway. Since the public accessway is described in the deed restriction required by the special conditions of approval, the proposed realignment affects a previously imposed special condition. Since the proposed project affects the project description of CDP 5-82-291 and affects a previously imposed special condition of CDP 5-82-291, the proposed development requires an amendment to CDP 5-82-291.

Commission staff note your comments that the proposed realignment of the public walkway is minor in nature. Unfortunately, the degree of change is not a criteria for whether or not development at the site requires an amendment to CDP 5-82-291. The proposed development affects either the project description and/or any conditions of approval. In this case, both the project description and the conditions of approval are affected by the proposed development. Therefore, the proposed development requires an amendment to CDP 5-82-291.

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Notice of Permit Amendment Requirement
5-82-291/CDP97-25
Page 2 of 2

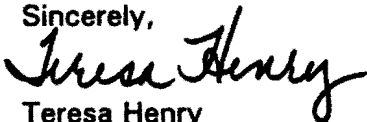
Commission staff also note your comment regarding a letter written by Mr. John Auyong, a former member of Commission staff. While you did not specify the letter you were referencing, Commission staff have performed some research and identified a letter written by Mr. Auyong dated November 14, 1997, to which you may be referring. A copy is attached for your reference. The comments regarding City authority to issue coastal development permits provided in the attached letter are general in nature, and were not meant to be a blanket determination regarding all future development proposals at the Ritz Carlton site, nor to supercede the language of the City's certified Local Coastal Program or the Executive Director of the Coastal Commission's ability to make determinations regarding permit issuing jurisdiction on a case by case basis. The letter refers to a question regarding a specific project, the tent structure, proposed to be placed on the grounds of the Ritz Carlton hotel. Commission staff did not object to the City processing the coastal development permit for this tent structure, nor to the subsequent amendment which replaced the tent structure with a permanent one. In this case, the proposed project did not affect the project description of CDP 5-82-291 because the development was occurring within an area where no structures were present based upon the plans in the file for CDP 5-82-291. In addition, the project did not affect any previously imposed special conditions. Therefore, the City clearly had the authority to issue the coastal development permit for the tent and subsequent permanent structure.

The structure of coastal development permit approvals in the Monarch Beach area is complex. Unfortunately, there appears to be no simple way of succinctly describing whether a coastal development permit for development in the Monarch Beach area may be processed by the City or whether the work requires a Coastal Commission-issued permit or permit amendment. Often times, Commission staff must review the permit file to make the correct determination. Therefore, determinations must continue to be made on a case by case basis. We appreciate your patience and the City's consultation in this case.

Please note, Commission staff did meet with several representatives of the applicant regarding this matter on October 29, 1999. The applicant's representatives were insistent that the coastal development approval should come from the City of Dana Point and not the Coastal Commission. Commission staff reserved their final determination and requested that the applicant provide a formal written argument describing their assertions that the proposed development did not affect the project description nor any previously imposed special conditions. However, Commission staff never received the formal request from the applicant. Therefore, no final determination was made at that time. Once again, Commission staff appreciate the City's direct request for a determination, on behalf of the applicant.

If you have any questions, please call me at (562) 590-5071.

Sincerely,



Teresa Henry
District Manager

Attachments: Letter from Commission staff to City of Dana Point dated November 14, 1997

Cc: The PRS Group

COASTAL COMMISSION

EXHIBIT # 8
PAGE 2 OF 4

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
 200 OceanGate, 10th Floor
 Long Beach, CA 90802-4302
 (562) 590-5071



RR
 November 14, 1997

Doug Darnell
 City of Dana Point
 Community Development Department
 33282 Golden Lantern, Suite 212
 Dana Point, CA 92629

SUBJECT: Ritz Carlton coastal development permits

Dear Doug:

Enclosed please find copies of coastal development permits which relate to the Ritz Carlton Laguna Niguel Resort hotel. The following permits are enclosed:

1. Permit P-79-5539 (Avco Community Developers, Inc.)
2. Permit 5-82-291 (Avco Community Developers, Inc.)
3. Amendment 5-82-291A (AVCO Community Developers, Inc.)
4. Amendment 5-82-291A2 (AVCO Community Developers, Inc.)
5. Amendment 5-82-291A3 (AVCO Community Developers, Inc.)
6. Amendment 5-82-291A4 (Stein-Brief Group)
7. Staff report for permit 5-87-220 (Prutel Joint Venture)
8. De Minimis Waiver 5-96-206 (The Ritz Carlton Hotel)

Coastal development permit ("CDP") P-79-5539 approved the concept of the hotel with specific provisions requiring public access through the hotel and ensuring that the hotel would remain a public, general hotel and not be converted to a time-share or a private facility.

CDP 5-82-291 approved the actual construction of the hotel. The package I've included contains the actual CDP, the staff report, and selected supporting documents. The CDP is missing page 2, but that page would likely contain the standard conditions imposed on all CDPs and thus should not contain project-specific information. Pages 3 and 4 of the CDP contain the special conditions specific to the hotel with which the hotel needs to comply. Similar to CDP P-79-5539, these special conditions require the provision of public access to non-hotel guests through certain portions of the hotel grounds and prohibit the conversion of the hotel to a time-share or private facility.

The second amendment to CDP 5-82-291 deals with revisions to the hotel design. No conditions were imposed. The first and fourth amendments to CDP 5-82-291 deal with the original requirement for providing a youth hostel. The third amendment to CDP 5-82-291 deals with erosion of the beach in front of the hotel.

COASTAL COMMISSION

EXHIBIT # 8

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Doug Darnell
Ritz Carlton permits
11-14-97; Page 2

I do not have the actual permit for CDP application 5-87-220, so I do not know the outcome of that application. However, parking was definitely an issue with this application for a building containing storage, engineering work area, and offices.

Also enclosed is De Minimis Waiver 5-96-206 for a restroom and storage building. Since that project did not contain office or work areas, we were not concerned with parking.

Since I have not seen plans for the tent structure in question, I cannot comment on it. However, issues to consider include:

1. Would the tent physically encroach on any of the public accessways through the hotel?
2. Would use of the tent require any of the public accessways to be closed off while the tent is in use?
3. Would the tent give the hotel additional capacity to increase the number of people it can accommodate on-site for special events?
4. A coastal development permit must be obtained for any proposal by the hotel to use the parking spaces in the public Salt Creek County Beach parking lot.

CDPs P-79-5539, 5-82-291, and 5-87-220 appear to have the special conditions most likely to be affected by the proposed tent. I will try and obtain written evidence of the Coastal Commission's final action on CDP 5-87-220. If the proposed tent would affect any conditions of CDPs previously approved by the Coastal Commission, the proposed tent must be acted on by the Coastal Commission through an amendment to the affected CDP(s).

Otherwise, the proposed tent can be acted on as a new CDP by the City. Since the Coastal Commission effectively certified those portions of the Dana Point General Plan and Zoning Code as the local coastal program ("LCP") for the area, the City now has the authority to issue CDPs for new projects in the Monarch Beach area. The CDP application would have to be acted on in compliance with the newly adopted LCP.

Please do not hesitate to contact me with any questions you may have regarding these permits.

Sincerely,

John T. Auyong

John T. Auyong
Staff Analyst

Enclosure

9607F:jta

COASTAL COMMISSION

EXHIBIT # 8
PAGE 4 OF 4

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



October 18, 2000

Mr. Edward M. Knight
Community Development Department
City of Dana Point
33282 Golden Lantern
Dana Point, Ca 92629

Subject: **ADDITION OF SPA TO RITZ CARLTON HOTEL**
Pending City of Dana Point Coastal Development Permit CDP97-25(II)

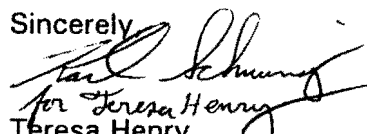
Dear Mr. Knight:

Commission staff have received a public notice indicating that the City of Dana Point is proceeding with action on a coastal development permit for the demolition of two tennis courts and construction of a 32,276 square foot spa. This spa will be an addition to the existing Ritz Carlton Hotel which was approved under Coastal Commission-issued Coastal Development Permit 5-82-291. In a letter to you dated January 19, 2000, Commission staff previously advised the City that the proposed development would require an amendment to Coastal Development Permit 5-82-291. The amendment to Coastal Development Permit 5-82-291 must be obtained directly from the Coastal Commission.

Attached for your reference is a copy of staff's previous letter dated January 19, 2000. Please be advised that Commission staff's opinion remains unchanged that the proposed development requires an amendment to Coastal Development Permit 5-82-291 which must be obtained directly from the Coastal Commission.

Thank you for the opportunity to comment.

Sincerely,


for Teresa Henry
Teresa Henry
District Manager

Cc: The PRS Group

Attachment: Letter to the City of Dana Point from Coastal Commission staff dated January 19, 2000

COASTAL COMMISSION

EXHIBIT # 9
PAGE 1 OF 1



October 30, 2000

Teresa Henry, District Manager
 South Coast Area
 California Coastal Commission
 P O Box 1450
 Long Beach, CA 90802-4416

RECEIVED
 1 2000
 CALIFORNIA
 COASTAL COMMISSION
 OCT 21 2000
 CALIFORNIA
 COASTAL COMMISSION

**SUBJECT: COASTAL DEVELOPMENT PERMIT CDP97-25 (II), SITE
 DEVELOPMENT PERMIT SDP00-16 & VARIANCE V99-13**

Dear Ms. Henry:

I am in receipt of your letter dated October 18, 2000 regarding the subject project located within the City at 1 Ritz Carlton Drive and I feel that an explanation of the City's actions would be appropriate concerning the 32,276 square foot addition for the establishment of a spa amenity to the Ritz Carlton. As you may recall, I originally sought affirmation of the City's authority over the permitting for the spa proposal from your offices in January of this year in order to ensure that any concerns from the Commission were included in the City's process. Generally, your Staff's opinion was that the proposal seemed to warrant an amendment to the Coastal Permit (5-82-291) that was issued by your office prior to the City's certification of a Local Coastal Program (LCP) for the Monarch Beach segment. However, the last paragraph of your letter also stated that your Staff "reserved their final determination" on the matter and stated that "no final determination was made." Since your letter was not conclusive, we interpreted that to mean that you and your Staff were leaving room for further discussion of the matter. Therefore, the City continued processing the application and continued to encourage the applicant to consult with your offices, particularly as the project related to a realignment of a public access trail.

On October 18, 2000, the City's Planning Commission held a public hearing for the subject application and after considering all of the testimony, adopted the Negative Declaration and approved the Coastal Development Permit (CDP), including the associated applications, for the spa addition. Although I received your letter by facsimile in the late afternoon that same day, I do not wish it to appear as if I allowed our Planning Commission to usurp the authority of the Coastal Commission or your offices by taking action on the project. I truly believe that the City retains the permitting authority for this project and hope that we can arrive at some form of agreement on the matter.

As you know, your previous Staff member John Auyong, had already provided the City with some guidance regarding matters concerning the Ritz Carlton development and the corresponding permitting authority. His letter of November

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Teresa Henry, District Manager
October 30, 2000
Page Two

14, 1997, was in response to an inquiry regarding the installation of a tent structure on a two-year basis on the grounds of the Ritz Carlton, the first instance in which the City would be considering its own approval of a CDP for the subject property. Although he did not have a set of plans for that proposal in front of him, he did provide my Staff with four issues to evaluate in order for them to make a determination concerning the permitting authority. My Staff has always relied upon this information in reviewing that original and the subsequent amendments to the City approved CDP for development at the Ritz Carlton. Further, the concluding remarks in that letter state that "Since the Coastal Commission effectively certified those portions of the Dana Point General Plan and Zoning Code as the LCP for the area, the City now has the authority to issue CDPs for new projects in the Monarch Beach area."

As I am sure you will agree, development activity in general has increased to the point where both Commission Staff and City Staff are busier than they have been in a long time. Bearing that in mind, I felt that it was important to review and approve such a "localized" project at the local level, but that it was just as important to ensure that the integrity of the Commission's original approval and conditions were kept in tact. In reviewing the spa project within this framework and in consideration of the four issues identified earlier by your office, the City determined the following:

1. That the improvements would encroach on a required public accessway (bluff trail); however, the proposal included a relatively minor realignment to correct for this encroachment, which when implemented would upgrade this pathway to a disability compliant standard. In reviewing the special conditions placed on your office's permit number 5-82-291, authority concerning the location of (an exhibit) and the corresponding deed restriction for the various public portions of the hotel property, which included the bluff trail, was delegated to the review and approval by the Executive Director. Since the Commission delegated the ultimate approval, the City does not feel that the spa project actually results in any change or affect to the special conditions, since the specific location and deed restriction were not acted on by the Commission directly. Additionally, to ensure that the existing public accessway is not compromised in any way, the City has included in its approval resolution a condition requiring the applicant to obtain approval from the Executive Director of the realignment. The City has left it to your discretion as to whether approval needs to be in the form of a modified deed restriction or a written acknowledgement that the location is found to still be in substantial conformance with the existing recorded deed.

COASTAL COMMISSION

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PAGE 2 OF 3

Teresa Henry, District Manager
October 30, 2000
Page Three

2. The improvements do not require any of the public accessways (bluff trail) to be closed off while the spa is in use or while under construction.
3. The improvements do not increase the capacity or intensify the use of the hotel property because the spa amenity is limited to use by hotel guests and their guests, just as other hotel amenities currently operate. Further the improvements are located in an area where two of four tennis courts are and these courts are also limited to use by hotel guests and their guests. When the City approved CDP97-25 (I) (the permanent banquet facility replacing the tent structure), the Planning Commission also reviewed and approved a Managed Parking Program, which was based upon a Parking Demand Study, and addressed the banquet facility, the spa, and interior wall changes for the Club Level. The Study anticipated that the spa would be approximately 30,000 square feet in size and that it would have 26 treatment rooms. The City's Zoning Code allows for the Director to determine parking requirements for uses not specifically listed, and a ratio of three spaces per treatment room was used. Using the approved Managed Parking Program and then factoring the spa project in, which was consistent with the previously approved study, did not result in an increased need for parking spaces.
4. The spa project did not propose to specifically utilize or count parking spaces within the public parking lot for Salt Creek County Beach to support its development.

I am hopeful that you will agree that in taking the action to approve this project, the City acted within its authority pursuant to the certified LCP while at the same time respecting the Commission's authority over the public accessway (bluff trail) portion of the project by including a condition that is required to be completed prior to release of any type of construction permit.

Please do not hesitate to contact me regarding this project at (949) 248-3567.

Sincerely,



Edward M. Knight
Community Development Director, AICP

COASTAL COMMISSION

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