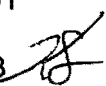


CALIFORNIA COASTAL COMMISSION

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

Item T12a

Filed: 08/20/01
 49th Day: 10/08/01
 180th Day: N/A
 Staff: KFS-LB 
 Staff Report: 10/25/01
 Hearing Date: November 13-17, 2001
 Commission Action:

**STAFF REPORT: APPEAL - SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: City of Dana Point

LOCAL DECISION: Approval with Conditions

APPEAL NUMBER: A-5-DPT-01-336

APPLICANT: Kirk Bell

APPELLANTS: Coastal Commissioners: Sara Wan & Shirley Dettloff

PROJECT LOCATION: 35405 Beach Road, Dana Point, Orange County

PROJECT DESCRIPTION: Demolition of an existing residence and construction of a new 3,530 square foot residence on a shorefront 4,526 square foot parcel.

RECORD PACKET COPY**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-01-336 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.

The project approved by the City of Dana Point is the demolition of an existing house and construction of a new house upon a shorefront lot. Capistrano Bay, where the subject site is located, is a private gated shorefront community with a private beach. Lateral public access along the beach is limited to the area seaward of the mean high tide line. Capistrano Bay has a history of beach erosion, flooding, and wave induced damage to structures. Revetments and other shoreline protective devices are commonly used in Capistrano Bay to protect against such hazards. The proposed development would result in seaward encroachment of development. In addition, the City's approval requires the property owner to retain and maintain an existing seawall located on the site. However, the City's approval did not address whether the proposed development is appropriately sited and whether or not the existing seawall is needed to protect the proposed residence. Appropriate technical analyses are necessary to determine the present shoreline erosion characteristics of the site and whether the proposed development is reliant upon a shoreline protective device. If the proposed design relies upon shoreline protection, alternative siting or other means must be analyzed to determine whether there is any feasible alternative which would avoid the need for shoreline protection. If there are no feasible alternatives that avoid the need for shoreline protection then the shoreline protection requirements need to be fully documented and analyzed. In addition, if shoreline protection is necessary, then the effects of such shoreline protection upon the beach seaward of the device must be analyzed. Any impacts, such as impacts upon visual resources and lateral public shoreline access, must be identified and mitigated.

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.

PROCEDURAL NOTE:

This appeal was opened and continued by the Commission on September 11, 2001. 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)
- Wave Runup Study by Skelly Engineering dated January 2001

I. STAFF RECOMMENDATION FOR SUBSTANTIAL ISSUE:

A. MOTION AND RESOLUTION FOR SUBSTANTIAL ISSUE WITH REGARD TO APPEAL NO. A-5-DPT-01-336

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-01-336 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-01-336** 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

1. 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).

2. 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.*

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. 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.

3. Qualifications to Testify before the Commission
(a)

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. As noted in Section 13117 of the California Code of Regulations, 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. 01-10

On July 18, 2001, 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. 01-07-18-39 (Exhibit 4), which approved with conditions local Coastal Development Permit CDP No. 01-10 and Site Development Plan SDP 01-27 for *“the demolition of an existing structure and the construction of a new 3,530 square-foot single-family residence, and a Site Development Permit to review the FP-3 Flood Overlay Zone...”* (Only Coastal Development Permit CDP 01-10 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 01-10 on August 6, 2001 (Exhibit 4). As stated previously, CDP 01-10 (assigned appeal no. A-5-DPT-01-336) approved the demolition of an existing residence and construction of a new 3,530 square foot residence on a shorefront 4,526 square foot parcel.

On August 20, 2001, 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 3). The appeal contends that the proposed project, which results in re-development of the site and seaward encroachment of new development, is potentially reliant upon an existing shoreline protective structure. The appellants contend that technical analyses are necessary to determine whether the development is appropriately sited and whether shoreline protective works are necessary. If shoreline protective works are unavoidably necessary then the impact of such devices on the beach seaward of the

development must be identified. Furthermore, any visual resource and public access impacts associated with the development must be mitigated.

D. SUBSTANTIAL ISSUE ANALYSIS

1. Project Location, Description and Background

a. Project Location

The subject site is located at 35405 Beach Road seaward of Pacific Coast Highway in the southern portion of the City of Dana Point, County of Orange (Exhibit 1). The site is located within the Capistrano Beach area of the City, which has a certified Local Coastal Program (LCP). The site is located within the private, gated residential enclave known as the Capistrano Bay Community. Capistrano Bay Community consists of an approximately 1.5 mile long row of approximately 200 single family lots which face onto a privately owned beach. Beach Road, which is a privately maintained roadway, parallels the beach on the landward side of single family lots. The subject site is bordered to the north and south by single family residences, to the west by the beach and open coastal waters, and to the east by Beach Road and railroad tracks.

b. Project Description

The local government's record indicates that the proposed project is the demolition of an existing residence and construction of a new 3,530 square foot residence on a shorefront 4,526 square foot parcel (Exhibit 2). The existing residence is single story and has 1,335 square feet of living space plus a detached 540 square foot garage (Exhibit 2, page 1). There is also an existing low wall located seaward of the residence (Exhibit 2, page 2).

The local government's approval indicates that there is a shoreline protective device on the site, however, the location of the device is not clear. For instance, it is not clear if the low wall described above which is shown on the plans provides shoreline protection and/or whether there is another structure which provides shoreline protection. The Commission's records indicate there is a rock revetment -which is occasionally exposed and occasionally buried below the sandy beach- that protects other single family homes flanking the subject site. This rock revetment may traverse the subject site.

Under the proposed project the existing residence would be demolished and a new two story 3,530 square foot residence would be constructed (Exhibit 2, pages 3-5). The new residence includes an attached two car garage on the landward side of the site. In addition, a new patio would be constructed on the seaward side of the residence. The new patio would extend further seaward than the existing patio. The patio and residence would be consistent with the stringline setback requirements established in the certified LCP.

c. Past Commission Actions at Subject Site and within the Capistrano Bay community

A review of records available to Commission staff at the time of this staff report indicate that there are no prior Commission actions at the site. However, the Commission has issued many coastal development permits for development within the Capistrano Bay Community for remodels to existing structures, demolition and reconstruction of residential structures, new residential

structures, repair and installation of seawalls and revetments, among other development. Since certification of the local coastal program for the area, the County of Orange followed by the City of Dana Point (upon municipal incorporation of the area) has also issued many coastal development permits for similar development. The Commission's records indicate that approximately 37 of the Commission's approvals required a lateral public access easement (Exhibit 8). Local government approvals have also required lateral public access easements. However, the total has not yet been quantified and is under investigation by Commission staff.

d. Local Coastal Program Certification

Prior to the City of Dana Point's incorporation in 1989, the Commission approved the segmentation of formerly unincorporated Orange County's coastal zone into the Capistrano Beach, Dana Point, Laguna Niguel, and South Laguna segments. The Capistrano Beach area was effectively certified in two steps, the first on August 14, 1986 and the second on April 23, 1987.

The City of Dana Point incorporated in 1989. All of the former Orange County LCP segments of Capistrano Beach, Dana Point, and Laguna Niguel were included within the city limits of the new City of Dana Point. The City combined the Capistrano Beach and Dana Point segments, and the portion of the South Laguna segment within its jurisdiction, into one certified LCP segment. After some minor modifications, the City then adopted the County's LCP documents as its first post-incorporation LCP. On September 13, 1989, the Commission approved the City's post-incorporation LCP.

Since initial certification of the City's LCP, the City has taken steps to consolidate the LCP documents and update those documents to reflect the current needs of the City. The first step involved certification of a new land use plan (LUP) and implementation plan (IP) for the Monarch Beach area of the City under LCP Amendment 1-96. This action adopted, with modifications, a new Land Use Plan ("LUP") component consisting of three elements of the City's General Plan: Land Use, Urban Design, and Conservation/Open Space. The implementing actions component of the LCP for the Monarch Beach area is the City's Zoning Code (as changed according to modifications suggested by the Commission).

The second step involved the subject area, Capistrano Beach. Similar to LCPA 1-96, LCPA 1-98 adopted a new LUP for the area consisted of the three elements of the City's General Plan and a new IP consisting of the City's zoning code. Modifications to the LUP and IP suggested by the Commission were adopted by the City. The modified LCP for Capistrano Beach was effectively certified on July 13, 1999. Additional local coastal program amendments are pending or are forthcoming which would complete the City's LCP consolidation effort.

2. 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 appeal of the proposed project, 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 appellants state that the project would allow the construction of a single family residence upon a shorefront lot where development would be subject to hazards such as wave attack and erosion. Based on the City's record, it is unclear whether this new development may require the retention of protective devices or whether the removal of existing protective devices may be warranted. Protection of the proposed development from hazards using shoreline protective works may cause the beach seaward of the site to erode. This erosion may have adverse impacts upon the ability of the public to utilize the beach seaward of the mean high tide line for public access and recreation. The mitigation of hazards using shoreline protective devices may also result in adverse impacts to views to and along the shoreline. The appellants contend that, based on the information presented to the City by the applicant for the local CDP, it cannot be concluded that the project is consistent with Sections 30210 and 30211 of the Coastal Act and Local Coastal Program Land Use Element (LUE) Policies 1.4, 1.8, 2.1, 2.10, 2.12, 3.1, 3.7, 3.11, 3.12, 4.2, 4.3, 4.10, Urban Design Element (UDE) Policies 1.4, 4.3, 4.5, and 4.6, and Conservation and Open Space Element (COSE) Policies 2.1, 2.2, 2.5, 2.8, 2.9, 2.14, 2.15, 2.16, 3.8, 6.4 and 6.8. In addition, the appellants contend that approval of the project did not comply with the requirements of Section 9.27.030 (a)(5) of the City's Implementation Plan (a.k.a. zoning code) which require the submittal of shoreline hazards analyses.

As provided below, the City of Dana Point certified LCP contains policies that protect public access and recreation opportunities and encourage improvement of such access and recreation opportunities in the coastal zone. 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 D.2.c. of this staff report.

a. Local Coastal Program (LCP) Policies

Land Use Plan - Land Use Element

- Policy 1.4: *Assure that adequate recreational areas and open space are provided as a part of new residential development to assure that the recreational needs of new residents will not overload nearby coastal recreation areas. (Coastal Act/30252)*
- 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 2.1: *Consider the impacts on surrounding land uses and infrastructure when reviewing proposals for new development. (Coastal Act/30250)*

- Policy 2.10: *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area. (Coastal Act/30221)*
- Policy 2.12: *The location and amount of new development should maintain and enhance public access to the coast by assuring that the recreational needs of new residents will not overload nearby coastal recreation areas through the correlation of the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development (Coastal Act/30252(6))*
- Policy 3.1: *Require new development to contribute its share of the cost of providing necessary public services and facilities through equitable development fees and exactions. (Coastal Act/30250)*
- Policy 3.7: *Encourage safe and convenient bicycle and pedestrian access throughout the community. (Coastal Act/30210-212.5, 30250, 30252)*
- Policy 3.11: *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. (Coastal Act/30211)*
- Policy 3.12: *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, or where adequate access exists nearby, including access as identified on Figures UD-2 and COS-4. (Coastal Act/30212)*
- Policy 4.2: *Consider the constraints of natural and man-made hazards in determining the location, type and intensities of new development. (Coastal Act/30240, 30253)*
- Policy 4.3: *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 4.10: *Regulate the construction of non-recreational uses on coastal stretches with high predicted storm wave run-up to minimize risk of life and property damage. (Coastal Act/30253)*

Land Use Plan - Urban Design Element

- Policy 1.4: *Preserve public views from streets and public places. (Coastal Act/30251)*
- Policy 4.3: *Develop stronger pedestrian, bicycle and visual linkages between public spaces and to and along the shoreline and bluffs. (Coastal Act/30210, 30212)*

- Policy 4.5: *Protect and enhance existing public views to the ocean through open space designations and innovative design techniques. (Coastal Act/30251)*
- Policy 4.6: *Preserve and maintain existing public accessways, and existing areas open to the public, located within visitor-serving development in the coastal zone.*

Land Use Plan - Conservation/Open Space Element

- Policy 2.1: *Place restrictions on the development of floodplain areas, beaches, sea cliffs, ecologically sensitive areas and potentially hazardous areas. (Coastal Act/30235, 30236, 30240, 30253)*
- Policy 2.2: *Site and architectural design shall respond to the natural landform whenever possible to minimize grading and visual impact. (Coastal Act/30250)*
- Policy 2.5: *Lessen beach erosion by minimizing any natural changes or man-caused activities which would reduce the replenishment of sand to the beaches. (Coastal Act/30235)*
- Policy 2.8: *Minimize risks to life and property, and preserve the natural environment, by siting and clustering new development away from areas which have physical constraints associated with steep topography and unstable slopes; and where such areas are designated as Recreation/Open Space or include bluffs, beaches, or wetlands, exclude such areas from the calculation of net acreage available for determining development intensity or density potential. (Coastal Act/30233, 30253)*
- Policy 2.9: *Preserve significant natural features as part of new development. Permitted development shall be sited and designed to minimize the alteration of natural land forms. Improvements adjacent to beaches shall protect existing natural features and be carefully integrated with land forms. (Coastal Act/30240, 30250, 30251, 30253)*
- Policy 2.14: *Shoreline or ocean protective devices such as revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply and minimize adverse impacts on public use of sandy beach areas. (Coastal Act/30210-12, 30235)*
- Policy 2.15: *Assure that public safety is provided for in all new seaward construction or seaward additions to existing beachfront single family structures in a manner that does not interfere, to the maximum extent feasible, with public access along the beach. (Coastal Act/30210-212, 30214, 30253).*

- Policy 2.16: *Identify flood hazard areas and provide appropriate land use regulations, such as but not limited to the requirement that new development shall have the lowest floor, including basement, elevated to or above the base flood elevation, for areas subject to flooding in order to minimize risks to life and property. (Coastal Act/30235, 30253)*
- Policy 3.8: *Development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas through, among other methods, creative site planning and minimizing visual impacts, and shall be compatible with the continuance of those parks and recreation areas. (Coastal Act 30240)*
- Policy 6.4: *Preserve and protect the scenic and visual quality of the coastal areas as a resource of public importance as depicted in Figure COS-5, "Scenic Overlooks from Public Lands", of this Element. Permitted development shall be sited and designed to protect public views from identified scenic overlooks on public lands to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. (Coastal Act/30251)*
- Policy 6.8: *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.*

Implementation Plan - Chapter 9.27 - Coastal Overlay District

9.27.030 (a)(5) states, in pertinent part:

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

(a) Coastal Access...

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

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

- 1. A statement of the individual and cumulative burdens imposed on public access and recreation opportunities based on applicable factors identified pursuant to Section 9.27.030(a)(5)(B). The type of affected public access and recreation opportunities shall be clearly described.*
- 2. An analysis based on applicable factors identified in Section 9.27.030(a)(5)(B) and 9.27.030(a)(5)(C) of the necessity for requiring public access conditions to find the project consistent with the public access provisions of the Coastal Act.*
- 3. A description of the legitimate governmental interest furthered by any access condition required.*

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

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

1. *Project Effects On Demand For Access And Recreation:*
 - a. *Identification of existing and open public access and coastal recreation areas and facilities in the regional and local vicinity of the development.*
 - b. *Analysis of the project's effects upon existing public access and recreation opportunities.*
 - c. *Analysis of the project's cumulative effects upon the use and capacity of the identified public access and recreation opportunities, including public tidelands and beach resources, and upon the capacity of major coastal roads from subdivision, intensification or cumulative buildout.*
 - d. *Projection of the anticipated demand and need for increased coastal access and recreation opportunities for the public.*
 - e. *Analysis of the contribution of the project's cumulative effects to any such projected increase.*
 - f. *Description of the physical characteristics of the site and its proximity to the sea, tideland viewing points, upland recreation areas, and trail linkages to tidelands or recreation areas.*
 - g. *Analysis of the importance and potential of the site, because of its location or other characteristics, for creating, preserving or enhancing public access to tidelands or public recreation opportunities.*
2. *Shoreline Processes (for accessways on sites subject to wave action, such as beachfront and coastal blufftop accessways):*
 - a. *Description of the existing shoreline conditions, including beach profile, accessibility and usability of the beach, history of erosion or accretion, character and sources of sand, wave and sand movement, presence of shoreline protective structures, location of the line of mean high tide during the season when the beach is at its narrowest (generally during the late winter) and the proximity of that line to existing structures, and any other factors which substantially characterize or affect the shoreline processes at the site.*
 - b. *Identification of anticipated changes to shoreline processes and beach profile unrelated to the proposed development.*
 - c. *Description and analysis of any reasonably likely changes, attributable to the primary and cumulative effects of the project, to wave and sand movement*

- affecting beaches in the vicinity of the project; the profile of the beach; the character, extent, accessibility and usability of the beach; and any other factors which characterize or affect beaches in the vicinity.*
- d. Analysis of the effect of any identified changes of the project - alone or in combination with other anticipated changes - will have upon the ability of the public to use public tidelands and shoreline recreation areas.*
 - e. The rate of blufftop erosion due to wave action as the base of the bluff.*
4. *Physical Obstructions: Description of any physical aspects of the development which block or impede the ability of the public to get to or along the tidelands, public recreation areas, or other public coastal resources or to see the shoreline.*
5. *Other Adverse Impacts On Access And Recreation:*
- a. Description of the development's physical proximity and relationship to the shoreline and any public recreation area.*
 - b. Analysis of the extent to which buildings, walls, signs, streets or other aspects of the development, individually or cumulatively, are likely to diminish the public's use of tidelands or lands committed to public recreation.*
 - c. Description of any alteration of the aesthetic, visual or recreational value of public use areas, and of any diminution of the quality or amount of recreational use of public lands which may be attributable to the individual or cumulative effects of the development.*

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 issue raised by this appeal relates to whether or not the proposed development is sited in a manner which avoids the need for shoreline protective works. If shoreline protective works are unavoidably necessary in order to utilize the existing legal lot, then analysis of the impacts such protective works have upon the beach and subsequently upon public access and visual resources are necessary. Adverse impacts upon public access and visual resources would need to be mitigated. The technical analyses needed to make these determinations were not before the City at the time approval. Therefore, the City may have erroneously concluded that the proposed project was consistent with Local Coastal Program (LCP) policies regarding hazards, public access, and visual impacts (i.e. associated with shoreline protective works).

The City of Dana Point certified Local Coastal Program (LCP) contains policies which protect 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 1.4, 1.8, 2.1, 2.10, 2.12, 3.1, 3.7, 3.11, 3.12, and 4.3 of the Land Use Element, Policies 4.3 and 4.6 of the Urban Design Element, and Policies 2.15 and 6.8 of the Conservation/Open Space Element of the City's certified Local Coastal Program. Also, Section 30211 of the Coastal Act states that development shall not interfere with the public's right of access to the sea and Section 30210 of the Coastal Act requires that access opportunities be maximized. The LCP also contains policies regarding the minimization of exposure of new development to hazards in Land Use Element Policies 4.2 and 4.10 and Conservation/Open Space Element Policies 2.1, 2.5, 2.8, 2.14, and 2.16. Finally, the LCP contains policies regarding the protection of visual resources in Policies 1.4 and 4.5 of Urban Design Element and Policies 2.1, 2.2, 2.9, 3.8, and 6.4 of the Conservation/Open Space Element.

The proposed development is the demolition of an existing single story, 1,335 square foot single family residence with 540 square foot garage and construction of a new 3,530 square foot, two story residence with a 558 square foot garage and 463 square foot beach patio. The approved project would result in the seaward encroachment of development at the site. In this case, the patio would extend further seaward than present conditions. The subject site is between the first public road and the sea. In addition, the beach landward of the mean high tide line in the Capistrano Bay community is privately owned. Public access is restricted to that part of the beach seaward of the mean high tide line. Prior coastal development permit approvals along this private beach have required the dedication of a public access easement over a portion of the beach seaward of the proposed development. These easements were required to mitigate for adverse impacts the development would have upon public access along the shoreline. However, CDP01-10 was approved without the requirement for a public access easement because the City found that the proposed development would not have any adverse impact upon public access. The appellants contend that there is an issue as to whether the City's finding is supportable by appropriate engineering studies and analysis.

Adequate technical analysis is necessary to identify the flooding and erosion hazards present at the site. This information is necessary to analyze whether the proposed project is appropriately sited on the lot, whether the project would be subject to hazards necessitating the retention or addition of shoreline protective works, and subsequently whether the new development and/or any needed protective works would have any adverse impact upon the public's ability to traverse the public portion of the beach located seaward of the mean high tide line. If unavoidable impacts would occur from development of the site, mitigation would be appropriate.

Adequacy of Technical Study and Support for City Findings

Implementation Plan (IP) Section 9.27.030(a)(5) of the LCP identifies the findings and analysis that are necessary for approval of projects located between the first public road and the sea. The findings adopted by the City are contained within Resolution 01-07-18-39 (Exhibit 4). The findings generally state that the project is consistent with the requirements of the certified LCP particularly with respect to the avoidance of erosion and flood hazards, visual impacts, public access impacts and minimization of effects upon shoreline processes. More specific conclusions are found within the *Agenda Report* prepared by City staff for the Planning Commission dated July 18, 2001 (Exhibit 4, pages 13-25). The analysis of consistency with LCP policies contained in the *Agenda Report* generally follows the outline prescribed in Section 9.27.030(a)(5) of the IP. However, the statements contained within the *Agenda Report* regarding the effects of the project upon shoreline

processes, physical obstructions, and effects upon public access are unsupported by relevant technical analyses.

The record submitted by the City includes a *Wave Runup Study* that indicates the site is subject to periodic wave attack and high sediment transport rates. This *Wave Runup Study* and information submitted upon a *Flood Plain Application and Elevation/Construction Certification* appear to be the sole technical basis upon which it has been determined that the project would not have any effects upon shoreline processes and not create any physical obstruction which may interfere with the ability of the public to traverse the shoreline. The introduction to the *Wave Runup Study* prepared by Skelly Engineering dated January 2001 states that the "...shoreline and homes located along this stretch of coast are subject to periodic wave attack from extreme storms. This area is also subject to occasional high sediment transport rates." The stated purpose of the report is to provide "...the necessary information for the FP-3 Floodplain Certification as required by the City of Dana Point...". The *Flood Plain Application and Elevation/Construction Certification* organizes and conveys the information presented in the *Wave Runup Study* for use by the City. The information presented in these technical documents does not provide the information regarding shoreline processes, the effects of the project upon the beach, and the potential need to retain or install shoreline protective devices as required in Section 9.27.030(a)(5). In absence of this information, the findings required by the LCP regarding impacts upon public access, visual resources, and the exposure of the development to hazards cannot be made.

Conservation and Open Space Element (COSE) Policy 2.14 of the certified LCP permits the installation of shoreline protective works to protect existing development. However, the proposed project constitutes new development which should be designed to avoid the need for shoreline protective works. In addition, COSE Policies 2.1, 2.8, and 2.16 require that new development be designed to avoid physical site hazards. The analysis required under Section 9.27.030(a)(5) of the certified LCP is particularly important in this case because the City's approval indicates that the existing single family residence is protected by an ocean protective device. In addition, the City's special conditions require that the protective device remain in place and be preserved and maintained until such time that the device is no longer needed. This requirements suggests that the new development is reliant upon shoreline protection and is not designed to avoid hazards. The special condition requires the property owner to remove the protective device at the time it is deemed by the City to no longer be necessary. However, criteria by which the City will determine that the protective device is no longer necessary are not specified. The information required by Section 9.27.030(a)(5) would: identify whether shoreline protection is needed, identify mitigation measures, and establish the conditions under which development would not rely upon the existing seawall and the conditions under which the seawall could be removed.

Local Coastal Program LUE Policies 2.1, 2.10, 3.7, 3.11, 4.2, 4.10 and COSE Policies 2.1, 2.5, 2.8, 2.9, 2.15, and 2.16 discourage development that would: have adverse impacts upon adjacent land uses; restrict recreational use of beaches; impede pedestrian access to or across a beach; locate development in a manner in which it is exposed to hazards; induce beach erosion. The construction of new development which would rely upon an existing shoreline protective device or require a new shoreline protective device suggests that such development is exposed to a hazard. Furthermore, reliance upon an existing or new shoreline protective device can perpetuate or induce beach erosion seaward of the device. Eroded beaches are often difficult to traverse. Thus, shoreline protective devices can have an adverse impact upon public access to or across a beach. Therefore, essentially the above cited policies require that new development be designed to avoid or minimize the need for ocean protective devices. Therefore, technical information submitted for shoreline development must address whether the proposed project relies upon any existing or new

shoreline protective devices and whether existing protective devices are necessary to protect any other existing development, such as adjacent structures. Such information must be prepared to address the function of the existing protective device and the potential to remove the existing protective devices. The information is also needed to determine whether any new or expanded shoreline protective device may be necessary. If it is concluded that the proposed development would require a shoreline protective device, alternative project siting and design for the new development must be investigated which would identify feasible ways of avoiding the need for protective devices.

Commission staff's Coastal Engineer has reviewed the technical information available in the City's record and concluded that there are several deficiencies which need to be remedied in order to accurately draw conclusions regarding the project's consistency with the certified LCP and the public access policies of Chapter 3 of the Coastal Act. For instance, the record lacks a complete site plan showing the entire property including the beach area seaward of the proposed development. Part of the basis for the City's determination regarding public access impacts relates to site conditions including the distance of the proposed development from the mean high tide (MHT) line. The materials submitted state that the proposed dwelling and site improvements are more than 88' from the MHT line. Since the site presently has a shoreline protective device and the new development could perpetuate the need for this device, it should be shown on all site plans and included in the site improvements that are listed. There should be full site plan that shows all the critical features.

In addition, the basis for the location of MHT line is unclear. In most coastal locations, the MHT line is an ambulatory feature that varies with changes to the beach area. In general, as the beach erodes, the mean high tide line will move landward, and as the beach accretes, the mean high tide line will move seaward. In the subject approval, the City of Dana Point seems to be using a fixed line for the MHT line. Use of a fixed MHT line would be appropriate for an adjudicated boundary. In other situations, it is more appropriate to provide information on all available surveyed MHT lines. Either the recorded, adjudicated boundary determination should be provided, or a record of all MHT line surveys should be provided. It is also usual to obtain seasonal profiles of the subject beach (a storm season profile and a more mild wave season profile). Neither of these beach profiles were provided for this project.

In addition, the material provided from the City indicates that there is normally adequate public access seaward of the MHT line since, according to their analysis, the MHT line is the mean of the highest tides and the water level rarely exceeds this level. However, according to current professional coastal engineering practice, the MHT line is the average (mean) of all the high tides (both the higher high and the lower high). Accordingly, tides often exceed the MHT line. This is shown on tide records for January and June of 2002 which provide a general sense of how regularly the still water level will exceed the MHT line elevation. January is a month with extreme tides, but there will be 22 days when the still water level exceeds the MHT line for some part of the day (Exhibit 7, page 1). In June there will be 23 days when the still water level will exceed the MHT elevation (Exhibit 7, page 2). The fact that still water levels regularly exceed the MHT line is particularly important when considering that the Mean Higher High Water is 0.75 feet higher than Mean High Water. On a gentle beach slope, this 0.75' vertical difference could translate to a 20 or 25 foot horizontal difference. This difference is important because the tide line could intersect the proposed development and/or existing or future needed protective devices, causing the beach to be impassible by the public upon the public trust easement which exists seaward of the MHT line. This possible confusion regarding the location of the MHT line compared with the proposed development and the availability of passable public trust easement area would be clarified by the

provision of a project plan that shows all surveyed MHT Lines, the seasonal profiles that show changes in beach conditions, and a table showing elevations used to locate the MHT lines and elevations of Mean Higher High Water, referenced to a recognized tidal datum (MSL, NGVD, MLLW, etc.).

The City's *Agenda Report* states that a shoreline protective device exists on site. The City has conditioned the permit to require removal of the protective device at some point in the future. However, the time and conditions for removal have not been provided. Further, it is not clear that the proposed development, without the shoreline protective device, minimizes risks to life and property in areas of high geologic and flood hazard areas and assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms as required in LUE Policies 4.2 and 4.10 and COSE Policies 2.1, 2.8, 2.9, 2.15, and 2.16. If the intent of the City is to eventually remove the shoreline protective device, it seems counter-productive to approve new development that would perpetuate the need for the shoreline protection. Therefore, a coastal processes analysis is required for the site which addresses any need for shoreline protective devices.

Finally, shoreline protective devices are commonly needed to protect improperly sited development from shoreline erosion. The subject beach is known to be subject to severe erosion^{1, 2} (Exhibits 5 & 6). However, the extent of erosion and loss of beach during typical storms and from future conditions for the site was not provided. There is no information in the material provided as part of the local CDP application about shoreline or beach erosion. The applicant should provide information about long-term shoreline and beach change. If this is an eroding beach, the new development may need to be sited far enough landward that it can be shown to have no risk from erosion over its proposed life. Since this is an active beach area, the analysis of beach and shoreline change should consider, discuss, and, if possible, quantify both reversible seasonal shoreline changes and longer-term trends and rates of change. The *Wave Runup Analysis* considered an eroded beach condition to determine wave runup and inundation at the site. However, more specific information regarding erosion and the need for shoreline protective devices is not provided in the *Wave Runup Analysis* or any other documentation provided by the City to the Commission regarding this appeal.

Approval of development reliant upon shoreline protective works can adversely impact public access because shoreline protective works can cause the beach seaward of the device to erode. Eroded beaches are difficult to use for public access and recreation and may be impassible resulting in the blockage of public access. Section 30211 of the Coastal Act states that development shall not interfere with the public's right of access to the sea. Section 30210 of the Coastal Act requires that access opportunities be maximized. Furthermore, Policies 1.4, 1.8, 2.1, 2.10, 2.12, 3.1, 3.7, 3.11, 3.12, 4.2, 4.3, 4.10 of the Land Use Element, Policies 1.4, 4.3, 4.5, and 4.6 of the Urban Design Element, and Policies 2.1, 2.2, 2.5, 2.8, 2.9, 2.14, 2.15, 2.16, 3.8, 6.4 and 6.8 of the Conservation/Open Space Element of the City's certified Local Coastal Program address the need to avoid hazards, maintain and improve access along the shoreline and maintain and improve views to and along the shoreline. CDP01-10 approves development that encroaches seaward of existing development on a site that is subject to wave attack along a beach which may

¹ Griggs, Gary and Lauret Savoy, eds. 1985. *Living with the California coast*. Duke University Press: Durham, North Carolina.

² State of California, Dept. of Navigation and Ocean Development. 1977. *Assessment and Atlas of Shoreline Erosion Along the California Coast*.

be subject to erosion. This new development may also require the retention of protective devices. Such protective devices may contribute to erosion of the beach and adversely impact the ability of the public to traverse the beach. Seawalls and beach erosion also have negative visual impacts. Approval of new development reliant upon shoreline protective devices which adversely impact the beach -without mitigation of identified impacts- would be inconsistent with Coastal Act and LCP policies regarding public access and recreation and LCP policies regarding hazards and public views. Accordingly, the Commission finds that the appeal raises a substantial issue as to the conformity of the project with the certified Dana Point Local Coastal Program and the public access policies of the Coastal Act.

d. Significance of Issues Raised by Appeal

The appellants contentions raise significant concerns in terms of the project being precedent setting, that a significant coastal resource would be adversely affected, and that the appeal has statewide significance. The subject approval is perhaps the first approval by the City of Dana Point of the demolition of a single family residence and construction of a new single family residence along Beach Road where the City has found that such development would not have a significant adverse impact upon lateral public access along the shoreline. Similar prior approvals by the City and by the Commission have required that the applicant offer to dedicate an easement for lateral public access over a portion of the sandy beach located seaward of the planned development. The Commission's records indicate that approximately 37 lateral access easements have been required under Coastal Commission-granted coastal development permits for projects along Beach Road. Additional easements have been required under City-granted permits. The subject approval would be precedent setting from the standpoint that it would not require a public access easement even though technical documentation which was required under the LCP but not developed for the project may demonstrate that the project may have an adverse impact upon the public's ability to traverse the beach.

Public access to the coast is a significant coastal resource both locally and statewide. As noted previously, the 1.5 mile long stretch of beach located between Capistrano Beach Park and Poche Beach is privately owned in this area. Public vertical access to the beach in this area may occur at Doheny Beach State Park and Capistrano Beach Park located upcoast of the subject site and Poche Beach downcoast of the subject site. Lateral public access along the beach between Capistrano Beach Park and Poche Beach is restricted to the area located seaward of the mean high tide line and upon those lateral public access easements which have been offered by Beach Road property owners and accepted and opened by the County of Orange or other public entities. If the proposed project were to have an adverse impact upon the public's ability to laterally access the beach in this area, the continuous lateral access along this beach available seaward of the mean high tide line presently enjoyed by the public would be blocked or significantly restricted. The significance of this possible impact would be compounded by the fact that there is no vertical public access within the vicinity of the subject site which could be used as an inland bypass if lateral access was restricted or blocked. Given that one primary tenet of the Coastal Act is the preservation and improvement of public access to the coast, the potential restriction of such access by this project raises the issue to statewide significance.

e. 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.

CAPISTRANO BEACH DANA POINT

Site

- SEE V F2
- 1 OCEAN DR
 - 2 PACIFIC DR
 - 3 SURF DR
 - 4 SANDY DR
 - 5 BREAKER DR
 - 6 BEACH DR
 - 7 TIDE TIDE DR
 - 8 SEA BREEZE DR
 - 9 DOLPHIN DR

SAN CLEMENTE

OCEAN

- 1 CORONADO LN
- 2 S ALAMEDA LN
- 3 SANTA ANA LN
- 4 CAPISTRANO LN
- 5 CORONA LN

MUNICIPAL PIER

1 AVD PRINCESA

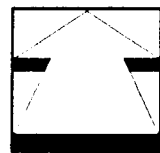
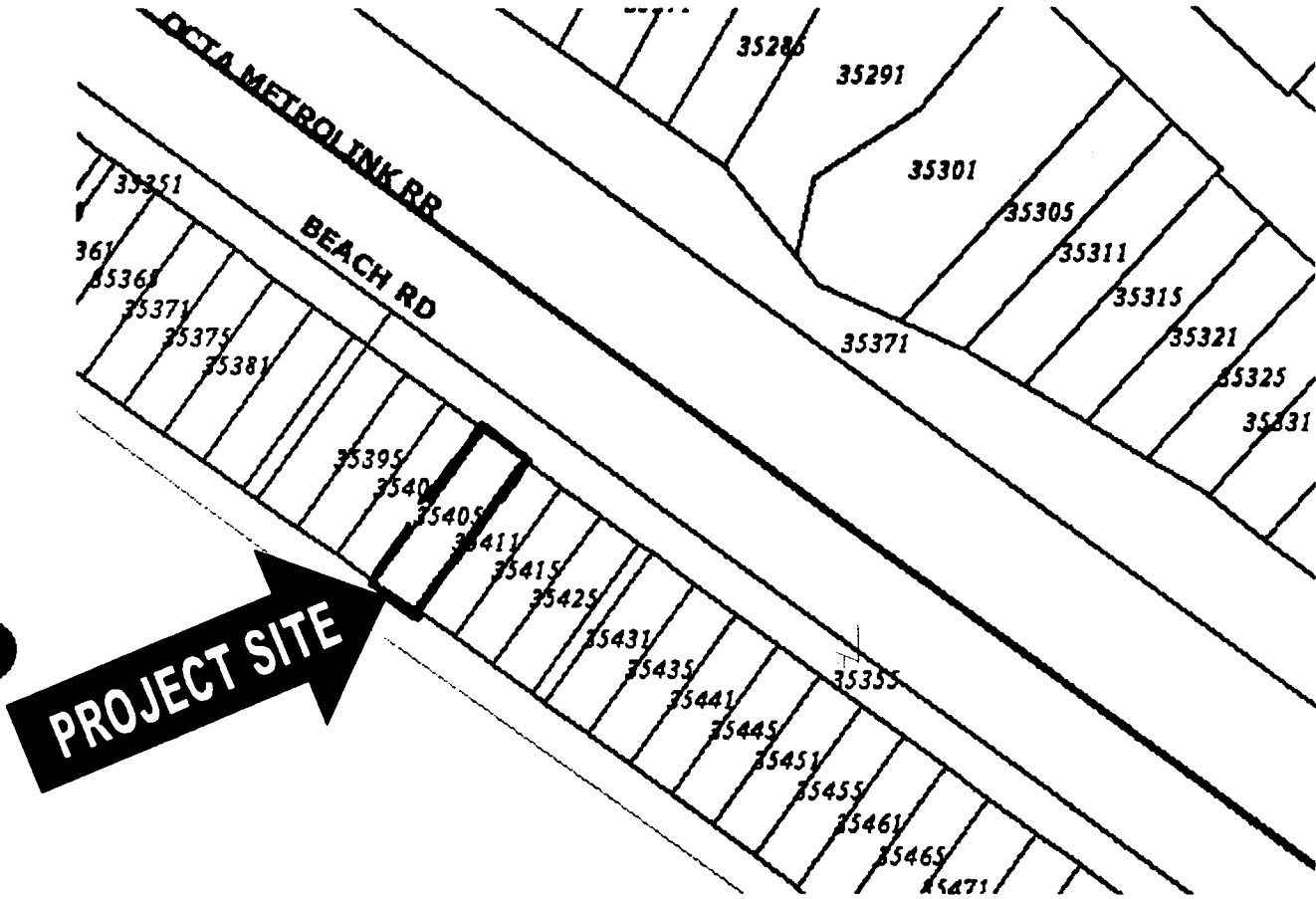
ORANGES CITY

MAP

DETAIL

COASTAL COMMISSION
 A-5-DP-01-336
 EXHIBIT # 1
 PAGE 1 OF 2

CITY OF DANA POINT
PLANNING COMMISSION



NORTH
COASTAL COMMISSION
01-336

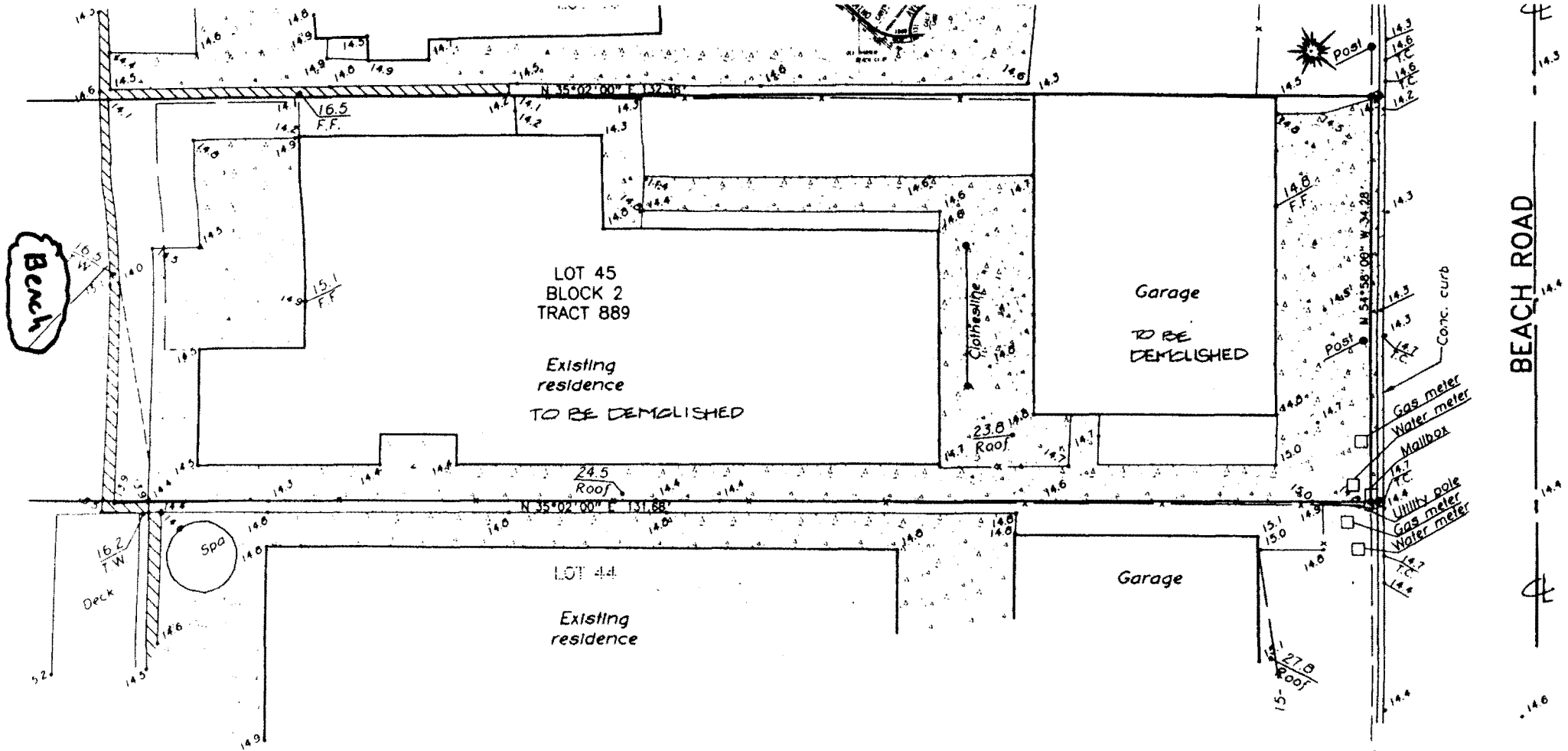
LOCATION MAP

APPLICANT: Ricardo Nicol (Bell Residence)

FILE NUMBER: CDP 01-10/ SDP 01-27: 35405 Beach Road

EXHIBIT # 1
PAGE 2 OF 2

ATTACHMENT 2



Beach

LOT 45
BLOCK 2
TRACT 889

Existing
residence
TO BE DEMOLISHED

Garage
TO BE
DEMOLISHED

LOT 44

Existing
residence

Garage



Olav S. Meum
Olav S. Meum LS 4384

SITE SURVEY AND DEMOLITION PLAN

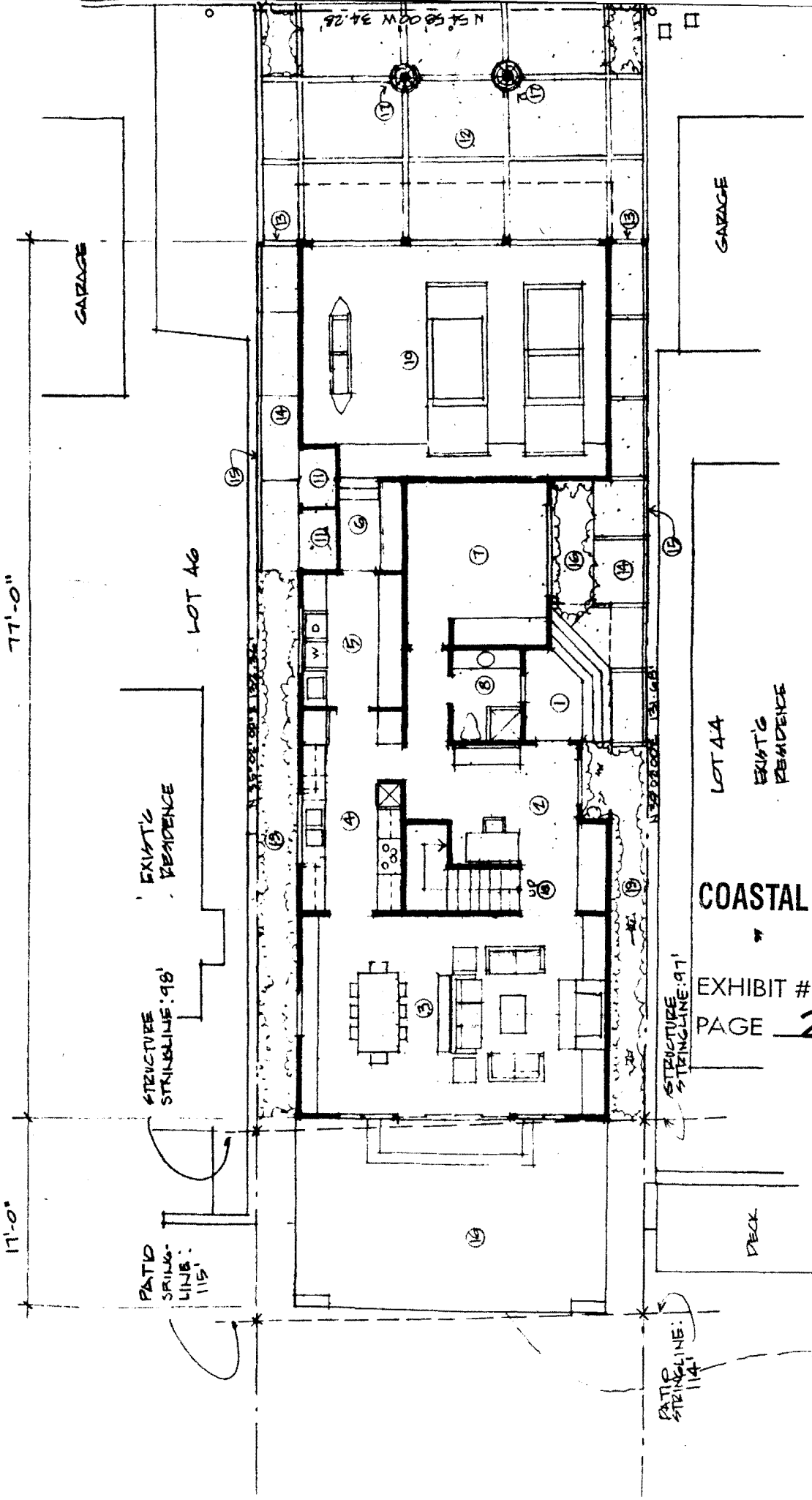
COASTAL COMMISSION
A-5 OFT-01-336

EXHIBIT # 2
PAGE 1 OF 5

N



SITE & FIRST FLOOR PLAN 1/8" = 1'-0"
77'-0"



COASTAL COMMISSION
01-336

EXHIBIT # 2
PAGE 2 OF 5

LOT 4A
EXIST'G
RESIDENCE

GARAGE

GARAGE

LOT 4A

EXIST'G
RESIDENCE

STRUCTURE
STRINGLINE: 98'

PATIO
STRING-
LINE:
115'

17'-0"

STRUCTURE
STRINGLINE: 97'

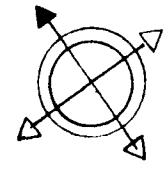
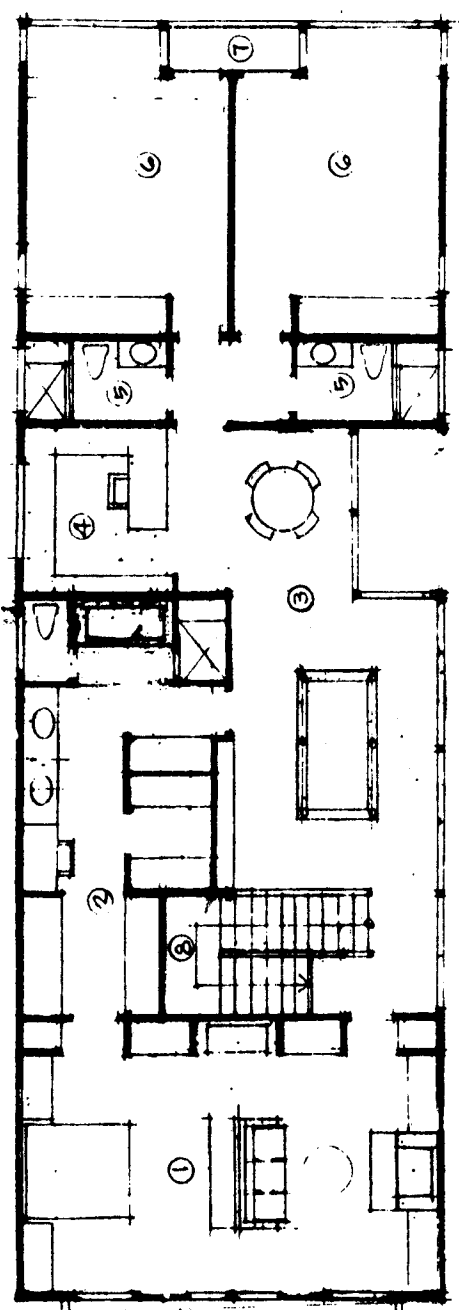
PATIO
STRINGLINE:
114'

DECK

N 54° 50' 00" W 34.28'

N 52° 00' 00" E 34.48'

51



82'-0"

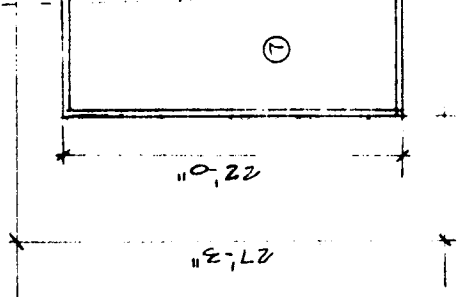
1/8" = 1'-0"

SECOND FLOOR PLAN

1/8" = 1'-0"

77'-0"

SITE & FIRST FLOOR PLAN



8'-0"

22'-0"

27'-3"

COASTAL COMMISSION

01-336

EXHIBIT # 2

PAGE 3 OF 5

11'-0"

PATIO
SPRING-
LINE: 115'

STRUCTURE
STAIRS: 98'

EXIST'G
RESIDENCE

LOT 46

GARAGE

44.5' N.L.Y. POOR FL. ↓
44.5' MAX. ALLOWED

28.0' FIN. FLR.

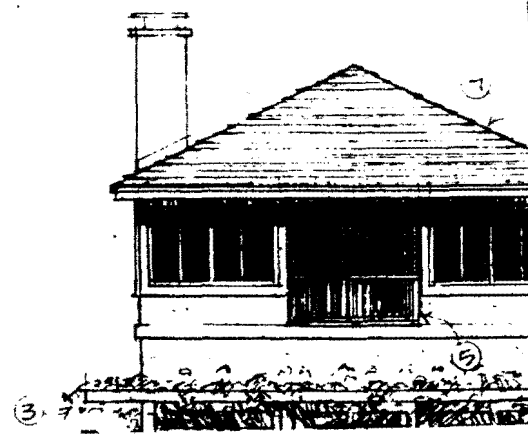
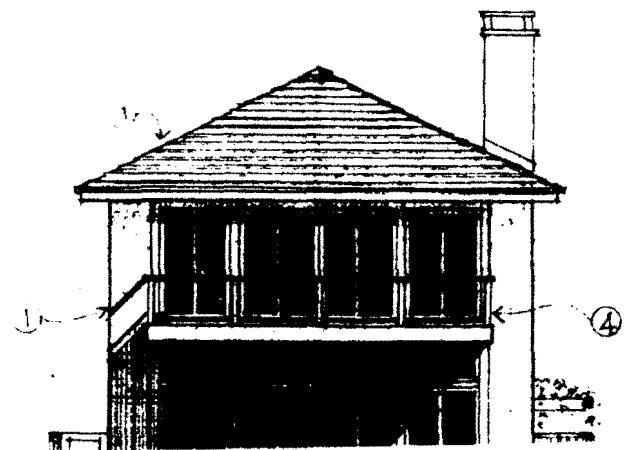
17.0' FIN. FLR. ↓
15.0' EP 3 ↓



①
EAST ELEVATION 1/8" = 1'-0"

Exterior Elevations Legend

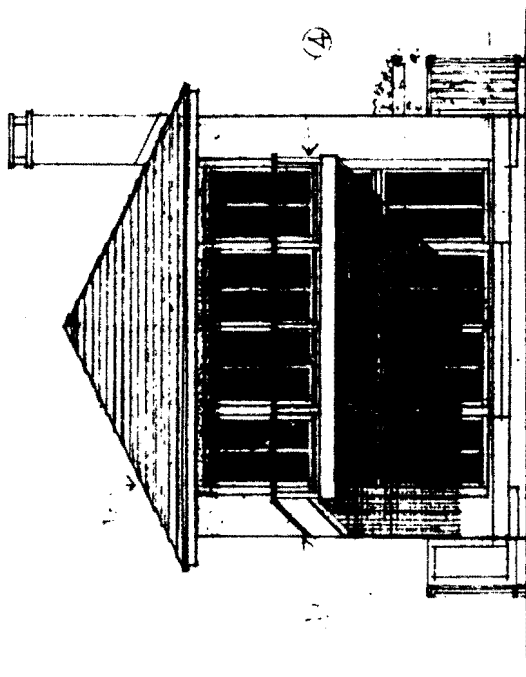
- 1. Plaster
- 2. Wood Trim
- 3. Wood Trellis
- 4. Wood & Glass Guard Rail
- 5. Wood Guard Rail
- 6. Wood Garage Doors
- 7. Concrete Tile Roofing



COASTAL COMMISSION
EXHIBIT # 01-336
PAGE 4 OF 5

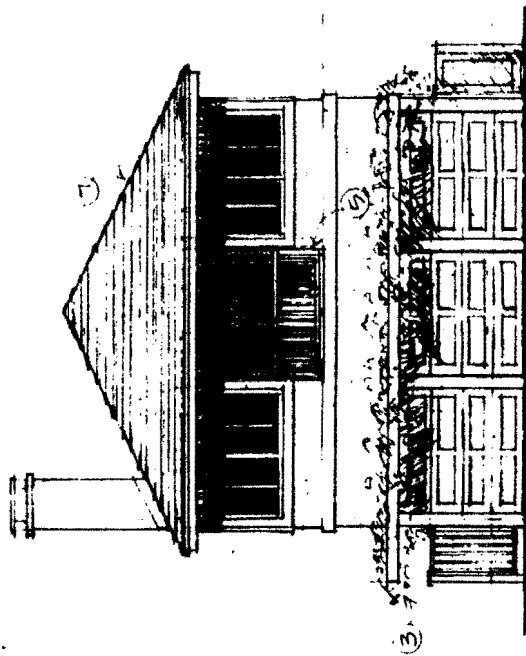
Exterior Elevations Legend

- 1. Plaster
- 2. Wood Trim
- 3. Wood Trellis
- 4. Wood & Glass Guard Rail
- 5. Wood Guard Rail
- 6. Wood Garage Doors
- 7. Concrete Tile Roofing



1/8" = 1'-0"

SOUTH ELEVATION



1/8" = 1'-0"

NORTH ELEVATION

COASTAL COMMISSION

01-33

EXHIBIT # 2

PAGE 5 OF 5

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 an existing residence and construction of a new 3,530 square foot residence on a shorefront 4,526 square foot parcel.
3. Development's location (street address, assessor's parcel no., cross street, etc.): 35405 Beach Road, City of Dana Point, Orange County. APN# 691-152-04
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-01-336
DATE FILED: August 20, 2001
DISTRICT: South Coast

COASTAL COMMISSION
A-5-DPT-01-336

EXHIBIT # 3
PAGE 1 OF 7

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: July 18, 2001
7. Local government's file number: CDP01-10, SDP01-27

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:
Kirk Bell
35405 Beach Road
Dana Point, CA 92629
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. _____

COASTAL COMMISSION
01-336

EXHIBIT # 3
 PAGE 2 OF 7

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.)

The City of Dana Point through CDP01-10, SDP01-27 would allow the construction of a single family residence upon a shorefront lot where development would be subject to hazards such as wave attack and erosion. Protection of the proposed development from hazards may cause the beach seaward of the site to erode. This erosion may have adverse impacts upon the ability of the public to utilize the beach seaward of the mean high tide line for public access and recreation. The mitigation of hazards using shoreline protective devices may also result in adverse impacts to views to and along the shoreline. The proposed development is located in the Capistrano Beach area of the City of Dana Point which has a certified Local Coastal Program (LCP). The proposed project is inconsistent 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.

The City of Dana Point certified Local Coastal Program (LCP) contains policies which protect 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 1.4, 1.8, 2.1, 2.10, 2.12, 3.1, 3.7, 3.11, 3.12, and 4.3 of the Land Use Element (LUE), Policies 4.3 and 4.6 of the Urban Design Element (UDE), and Policies 2.15 and 6.8 of the Conservation/Open Space Element (COSE) of the City's certified Local Coastal Program. Also, Section 30211 of the Coastal Act states that development shall not interfere with the public's right of access to the sea and Section 30210 of the Coastal Act requires that access opportunities be maximized. The LCP also contains policies regarding the minimization of exposure of new development to hazards in LUE Policies 4.2 and 4.10 and COSE Policies 2.1, 2.5, 2.8, 2.14, and 2.16. Finally, the LCP contains policies regarding the protection of visual resources in Policies 1.4 and 4.5 of UDE and Policies 2.1, 2.2, 2.9, 3.8, and 6.4 of the COSE. The City's approval of Coastal Development Permit CDP01-10 raises issues with respect to conformity with the certified Local Coastal Program and the public access and recreation policies of the Coastal Act because it has not been demonstrated that adequate technical study and analysis have been prepared which shows that the proposed development minimizes and/or avoids hazards and the need for protective works and minimizes or avoids adverse impacts upon public access and visual resources along the shoreline.

The proposed development is the demolition of an existing single story, 1,335 square foot single family residence with 540 square foot garage and construction of a new, 3,530 square foot, two story residence with a 558 square foot garage and 463 square

foot beach patio. The approved project would result in the seaward encroachment of development at the site. The subject site is between the first public road and the sea. In addition, the beach landward of the mean high tide line in the Capistrano Beach community is privately owned. Public access is restricted to that part of the beach seaward of the mean high tide line. Prior coastal development permit approvals along this private beach have required the dedication of a public access easement over a portion of the beach seaward of the proposed development. These easements were required to mitigate for adverse impacts the development would have upon public access along the shoreline. However, CDP01-10 was approved without the requirement for a public access easement because the City found that the proposed development would not have any adverse impact upon public access. There is an issue as to whether the City's finding is supportable by appropriate engineering study and analysis.

A *Wave Runup Study* indicates that the site is subject to periodic wave attack and high sediment transport rates. Therefore, the information suggests that the proposed development may require shoreline protective devices to protect the development from wave attack and erosion hazards. Although required by LUE Policies 3.11 and 4.2, COSE Policy 2.15 and 3.8 and Implementation Plan (IP) Section 9.27.030(a)(5) of the LCP, a *Wave Runup Study* prepared for the site does not document that the proposed caisson foundation system will avoid impacts upon the beach. Furthermore, the City's approval indicates that the existing single family residence is protected by an ocean protective device. The special conditions require that the protective device remain in place and be preserved and maintained until such time that the device is no longer needed. The special condition requires the property owner to remove the protective device at the time it is deemed by the City to no longer be necessary. Criteria by which the City will determine that the protective device is no longer necessary are not specified.

Although required by COSE Policy 2.14 and IP Section 9.27.030 (a)(5) of the LCP, the *Wave Runup Study* for the subject site does not address the presence of the existing protective device and/or the need for retaining and maintaining the existing protective device. In addition, as required by LUE Policies 4.2 and 4.10 and COSE Policies 2.1, 2.5, 2.8, and 2.9, new development should be designed to avoid or minimize the need for ocean protective devices. The removal of ocean protective devices which may be causing erosion at the site would improve views to and along the shoreline and improve lateral public access along the shoreline by restoring beach width and providing additional area for the public to traverse the beach. The preservation and improvement of public views is required under UDE Policies 1.4, 4.3, 4.5 and COSE Policy 6.4. The preservation and enhancement of public access is required by LUE Policies 1.4, 1.8, 2.1, 2.10, 2.12, 3.1, 3.7, 3.11, 3.12, and 4.3, UDE Policies 4.3 and 4.6, and COSE Policies 2.15 and 6.8.

Section 30211 of the Coastal Act states that development shall not interfere with the public's right of access to the sea. Section 30210 of the Coastal Act requires that access opportunities be maximized. Furthermore, LUE Policies 1.4, 1.8, 2.1, 2.10, 2.12, 3.1, 3.7, 3.11, 3.12, 4.2, 4.3, 4.10, UDE Policies 1.4, 4.3, 4.5, and 4.6, and COSE Policies 2.1, 2.2, 2.5, 2.8, 2.9, 2.14, 2.15, 2.16, 3.8, 6.4 and 6.8 of the City's certified

Local Coastal Program address the need to avoid hazards, maintain and improve access along the shoreline and maintain and improve views to and along the shoreline. CDP01-10 approves development that encroaches seaward of existing development on the site which would be subject to wave attack along a beach which may be subject to erosion. It is unclear whether this new development may require the retention of protective devices or whether the removal of existing protective devices may be warranted. Such protective devices may contribute to erosion of the beach and adversely impact the ability of the public to traverse the beach. Seawalls and beach erosion also have negative visual impacts. Approval of such development without mitigation would be inconsistent with Coastal Act and LCP policies regarding public access and recreation and LCP policies regarding hazards and public views. 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.

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: AUG 20 2001

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
01-336
EXHIBIT # 3
PAGE 6 OF 7

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: AUG 20 2001

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

Signed: _____

Date: _____

COASTAL COMMISSION
01-336
EXHIBIT # 3
PAGE 7 OF 7



AUG 6 2001

DATE: August 3, 2001

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: Kirk Bell
Address: 35405 Beach Road
Telephone: (949) 240-4065

Project Address: 35405 Beach Road **Assessor's Parcel No.:** 691-152-04
Application File No.: Coastal Development Permit CDP01-10/ Site Development Permit SDP01-27

Project Description: To authorize the demolition of an existing residence and construction of a new 3,530 square foot residence on a 4,526 square foot parcel. A Site Development Permit is required to permit construction within the Floodplain Overlay District.

Filing Date: May 4, 2001 – Application Deemed Complete on June 5, 2001
Action Date: July 18, 2001
Action became final on: August 2, 2001

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: Sara Pashalides, Consultant – Project Manager
Phone: (949) 248-3570

sara\PROJECTS\CDP01-10 Bell NOFA
FF#0610-70\35405 Beach Road

COASTAL COMMISSION
A-5-DPT 01-336

EXHIBIT # 4
PAGE 1 OF 25

FILE COPY

RESOLUTION NO. 01-07-18-39

RECEIVED

SEP 24 2001

CALIFORNIA
COASTAL COMMISSION

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT CDP01-10/SITE DEVELOPMENT PERMIT SDP01-27 TO PERMIT THE DEMOLITION OF AN EXISTING RESIDENCE AND AUTHORIZE THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE IN THE FP-3 OVERLAY ZONE AT 35405 BEACH ROAD

Applicant: Ricardo Nicol / Kirk Bell
Case No.: FF#610-70/CDP01-10/SDP01-27/ Beach Road, 35405

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:

35405 Beach Road (AP# 691-162-06)

WHEREAS, the Applicant has made an application for a Coastal Development Permit for the demolition of an existing structure and the construction of a new 3,530 square-foot single-family residence, and a Site Development Permit to review the FP-3 Flood Overlay Zone; 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 July, 2001, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission considered all factors relating to CDP01-10/SDP01-27.

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 Commission adopts the following findings and approves Coastal Development Permit CDP01-10/Site Development Permit SDP01-27 for the property located at 35405 Beach Road subject to the following conditions:

COASTAL COMMISSION

01-336

EXHIBIT # 4

PAGE 2 OF 25

Findings:

1. That the action proposed is consistent with the Dana Point General Plan because the proposal will comply with the Land Use Element's Residential 7-14 DU/AC Land Use Designation; and, will be consistent with Goal 1 of the Public Safety Element, to reduce the risk from coastal erosion. Policy 1.19 requires an assurance that public safety is provided for in all new seaward construction within the Capistrano Bay District private community.
2. That the proposed project is consistent with the Dana Point Zoning Code RBR 12 designation (Residential Beach Road 12 DU/AC) and complies with all applicable provisions of the Dana Point Zoning Code and Local Coastal Program.
3. That the proposed use or action complies with all other applicable requirements of state law and local ordinances.
4. That this project is categorically exempt (Class 3 - Section 15303 - New Construction) from the provisions of the California Environmental Quality Act (CEQA) because it consists of the construction of a new residential dwelling.
5. That the project is located above the established minimum FP-3 elevation in accordance with the flood zone regulations.
6. That the proposed development will not encroach upon any existing physical accessway legally utilized by the public or any proposed public accessway identified in an adopted Local Coastal Program Land Use Plan; nor will it obstruct any existing public views from any public road or from a recreational area to and along the coast.
7. That the proposed development will not adversely affect marine resources, environmentally sensitive areas, or archaeological or paleontological resources.
8. That the proposed development will not adversely affect recreational or visitor-serving facilities or coastal scenic resources.
9. 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.
10. 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.
11. 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.

COASTAL COMMISSION
01-336

EXHIBIT # 4
PAGE 3 OF 25

12. 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 design and building mass of the structure is consistent with other structures in the neighborhood.
13. The proposed development will not adversely affect, either individually or cumulatively, the ability of the public to reach and use the public tidelands and coastal resources. Furthermore, there are no current access burdens in the vicinity that could be alleviated by an access dedication requirement on this proposed development.
14. That the proposed development will not have a significant negative effect on demand for access and recreation in that the surrounding area provides a variety of public use facilities that can accommodate a large population. In addition, the proposed replacement of an existing dwelling with a new single-family residence does not significantly affect the existing public facilities or cause these facilities to be diminished. Furthermore, due to the location of public facilities on both sides of the Capistrano Bay Community, public tidal areas located along the Capistrano Bay Beach can be accessed from the existing public facilities within the public lands. Since the public tidelands extend to the mean high tide line, the public tidelands are dry most of the time to allow for easy passage.
15. The proposed development will not have a significant negative effect on the shoreline process nor will it affect the public's ability to use the tidelands in that the proposed project has been designed on caissons to comply with the Floodplain Overlay District requirements in order to minimize negative impacts to the shoreline. The caissons prevent erosion of the beach and minimize impacts to sources of sand or sand transport.
16. The proposed development will not create any physical obstructions that would preclude public access to the tidelands in that the proposed development area is located within the setbacks established by the code and situated more than 88 feet from the mean high tide line.
17. The proposed development will not have any other significant negative effect on coastal access due to the distance separation between this development and the existing public recreation area. The project will not have a cumulative negative effect on public access to the tidelands since the development is located more than 88-feet from the mean high tide line and will not physically block access.

Conditions:

A. General:

1. Approval of this application is for a Coastal Development Permit that will allow the demolition of an existing dwelling and the construction of a new single-family residence and site improvements that are designed in conformance with the requirements of the Floodplain Overlay District and all

COASTAL COMMISSION
01-336

EXHIBIT # 4
PAGE 4 OF 25

applicable standards of construction of Section 9.31.060. Subsequent submittals for this project shall be in substantial compliance with the plans (Exhibit A) presented to the Planning Commission, and in compliance with the Dana Point General Plan and Zoning Code.

2. Approval of this application is valid for a period of twenty-four (24) months from the date of determination. If the use approved by this action is not established within such period of time, the application shall be terminated 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, will nullify this approving action. If any changes are proposed regarding the location or alteration of a use or structure, an amendment to this permit shall be submitted for approval of 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 owner, and their successors, heirs, and assigns, shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any claim, action, or proceeding against the City, its agents, officers, or employees 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 owner, and their successors, heirs, and assigns, shall further defend, indemnify and hold harmless the City, its officers, agents, and employees from any and all claims, actions, or proceedings against the City, its agents, officers, or employees arising out of or resulting from the negligence of the applicant or the applicant's agents, employees, or contractors.

6. The applicant and owner, and their 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 owner, and their successors in interest shall be responsible for payment of all applicable fees.

COASTAL COMMISSION
01-333

EXHIBIT # 4
PAGE 5 OF 25

8. The Applicant shall obtain a building permit and/or grading permit for the proposed improvements.
9. The applicant, property owner or successor in interest shall prepare a waste management plan, which shows how demolition and construction materials will be recycled. The site plan shall show the location of receptacle(s) to accumulate on-site generated solid waste for recycling purposes as a result of construction. Said plan shall be reviewed and approved by the City prior to the issuance of any permits.

B. Prior to Issuance of a Grading Permit, or Building Permit if no grading permit is required, the applicant shall meet the following conditions:

Planning

10. Any and all existing ocean protective devices shall be protected in place, preserved and maintained until such time that they are no longer needed. The applicant shall provide a deed restriction to be recorded against the property stating that the property owner shall be responsible for the removal of any and all existing ocean protective devices on their property at the time it is deemed by the City to no longer be necessary. The property owner shall assume all costs and responsibilities associated with the removal.

Engineering

11. 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.
12. 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.
13. A drainage plan shall be approved by the Engineering Department. Roof drains and site drains shall be designed to drain to Beach Road. All paved sideyard areas, courtyard areas, and roof drains shall drain to Beach Road, except as otherwise approved by the Engineering Department. All site improvements shall be designed and constructed in compliance with the Floodplain Overlay requirements of the zoning code.
14. The grading/drainage plan shall include the following notes:
 - 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 Orange County Codified Ordinance Division 6 (Noise Control).
 - c. Stockpiling and/or vehicle staging areas shall be located as far as practicable from dwellings.

COASTAL COMMISSION
01-336

EXHIBIT # 4
PAGE 6 OF 25

15. The applicant shall submit a Hazardous Material Disclosure Statement.
16. The applicant shall submit a soils and geological report, including the following, for review and approval by the Building Official:
 - a. Provide borings to bedrock
 - b. Address the depth of caisson/piling embedment as it relates to scour elevation, wave impact and structural design.

C. Prior to Issuance of Building Permits the applicant shall meet the following conditions:

Planning

17. The plans shall clearly identify the FP-3 elevation, the location of the finish floor and the overall height of the structure. The maximum height of the structure shall comply with the provisions of the Zoning Code.
18. The applicant and/or owner shall prepare a deed restriction for review and approval by the City Attorney. The deed restriction shall provide that; (1) the owner understands that the project site is subject to coastal wave action and that the owner(s) assumes the liability from these hazards; (2) the owner(s) unconditionally waive any claim of liability on the part of the City or any other public agency from any damage from such hazards; and (3) the owner(s) assume all liability for damages incurred as a result of any required off-site grading. The deed restriction shall be recorded, free of prior liens, to bind the owner(s) and any successors in interest or otherwise recorded to the satisfaction of the City Attorney and Community Development Department.
19. 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, 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 plans approved by the Planning Commission and further, recognize the principles of drought tolerant landscaping. All trees and shrubs proposed within rear yard, beyond the structural stringline shall be a maximum of 42-inches in height.

Building

20. - The applicant shall submit two (2) sets of construction documents for building plan check, including structural and energy calculations, a soils/geology report and a drainage plan. 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. All documents shall be signed by the licensed

COASTAL COMMISSION

01-333

EXHIBIT # 4

PAGE 7 OF 25

- professional that prepared them.
22. A rough grade certification is required from the Director of Public Works by separate submittal.
 23. Conditions of approval shall appear on the drawings as the first or second sheet.
 24. The design and construction of the structure 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 code regulations that may apply.
 25. The minimum roof classification is B.
 26. Undergrounding of all on-site utilities is required.
 27. A fire sprinkler system is required.
 28. Fire Department review is required. Submit three (3) separate sets of building plans to the Building Department for review by the Fire Department.
 29. Verification of all conditions of approval is required.
 30. All approvals from outside departments and agencies are required.
 31. The dwelling shall be designed to be sound attenuated against present and project noise, which shall be the sum of all the noise impacting the project, so as not to exceed an exterior standard 65db CNEL in outdoor living areas, and an interior standard of 45db CNEL in all habitable rooms. Evidence prepared under the supervision of an acoustical engineer that these standards will be satisfied in a manner consistent with the applicable zoning and building regulations shall be submitted as follows:
 - Prior to issuance of a building permit, an Acoustical Analysis Report describing the acoustical design features of the structure required to satisfy the exterior and interior noise standards shall be submitted to the Director of Community Development for approval along with satisfactory evidence which indicates that the sound attenuation measures specified in the approved acoustical report(s) have been incorporated into the design of the project.
 32. The applicant shall submit payment for all supplemental fees, including school, park, water and sewer fees.

COASTAL COMMISSION
01-336

EXHIBIT # 4
PAGE 8 OF 25

33. The applicant shall submit payment of all supplemental fees as prescribed in the Coastal Area Roadway Improvement and Traffic Signal (CARITS) Fee Program and the San Joaquin Hills Transportation Corridor Fee program.
34. Prior to 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 on plans and Exhibit "A", and in compliance with the setbacks of the applicable zoning district. A written report shall be prepared by the applicant and delivered to the City of Dana Point Building Division certifying to the above.
35. Prior to release of the roof sheathing inspection, the applicant shall certify by a survey or other appropriate method that the height of the structure is in compliance with Exhibit "A" and the height requirements of the applicable zoning district. A written report shall be prepared by the applicant and delivered to the City of Dana Point Building Division certifying to the above.

Engineering

36. Applicant shall show on site plans and elevations all FP-3 zone reference.
37. Provide engineering certifications as required by the Site Development permit application for Flood Plain Zones.
38. Submit a sanitary sewer plan for approval by the Engineering Department. The plans shall show line size, flow line elevations, and connection to existing lines.
39. The applicant shall submit a report by an engineering geologist indicating that all structures within this development shall be constructed in compliance with the g-factors as indicated by the geologist's report. Calculations for footings and structural members to withstand anticipated g-factors shall be submitted for review and approval by the Director of Public Works.
40. Exterior deck/patio areas shall be constructed on caissons and designed to withstand wave impact to the satisfaction of the Director of Public Works and the Building Official.
41. The final approved building plan, site plan, structural calculations and drainage plan shall conform to all applicable provisions of the Dana Point Municipal Code regarding flood damage prevention information and certifications previously submitted with the Coastal Development Permit.
42. A site plan shall be submitted with the building plans, which show all street improvements to be installed along the property frontage of Beach Road.

COASTAL COMMISSION
01-333

EXHIBIT # 4

PAGE 9 OF 25

The improvements shall be in accordance with the City standards and shall be subject to review and approval by the City Engineer prior to issuance of a building permit.

43. The applicant shall show the location of all existing easements on the site plan. Any proposed construction within an easement shall be reviewed and approved by said easement holder, to the satisfaction of the Public Works and Community Development Departments.

Fire Department

44. The applicant shall submit to the Fire Chief evidence of the 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 building permits. Provisions shall be made by the applicant for the repair and maintenance of the system, in a manner meeting approval of the Fire Chief.
45. Plans for the automatic fire sprinkler system shall be submitted to and approved by the Fire Chief prior to installation. This system shall be operational prior to the issuance of a Certificate of Use and Occupancy.
46. Plans shall be submitted for the review and approval of the Fire Chief. The applicant shall include information on the Plans required by the Fire Chief. Contact the Orange County Fire Authority Plans Review Section at (714) 744-0403 for the Fire Safety Site/Architectural Notes to be placed on the plans.

SDG&E

47. Contact Beamon Howell at (714) 361-8038 prior to start of construction.

D. Prior to issuance of a Certificate of Occupancy:

Planning

48. 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 plan. Landscaping and irrigation shall be kept in a neat, clean, and thriving condition.
49. The applicant shall submit the appropriate payment for the General Government Facilities Impact Fee.

COASTAL COMMISSION
01-336

EXHIBIT # 04

PAGE 10 OF 25

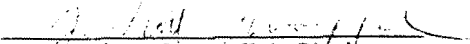
Building

50. The final approved Grading, Building, and Site Plans shall conform to the information and certifications previously submitted with the Coastal Development Permit and Site Development Permit approved by the City's Building Official. Upon completion of the structure, a registered Civil Engineer and Land Surveyor shall certify that the elevation of the lowest floor matches the elevation specified in the approved building plans and said certification shall be submitted to the Building Official.
51. Field testing in accordance with Title 25 regulations may be required by the Building Inspector to verify compliance with STC and IIC design standards.
52. Building addresses shall be located facing the street fronting the property. Addresses shall be 4 inches high with 1-inch stroke and of noncombustible, contrasting materials.

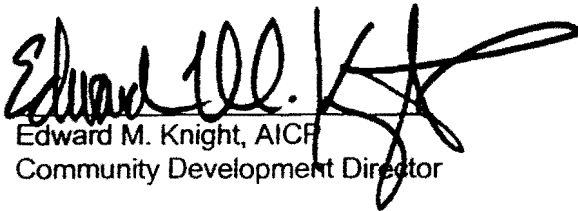
COASTAL COMMISSION
01-333
EXHIBIT # 4
PAGE 11 OF 25

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 July, 2001, by the following vote, to wit:

AYES: Chilton, Denton, Goodking, Lacy, Schoeffel,
NOES: None
ABSENT: None
ABSTAIN: None


J. Scott Schoeffel, Chairman
Planning Commission

ATTEST:


Edward M. Knight, AICP
Community Development Director

COASTAL COMMISSION

01-335

EXHIBIT # 04

PAGE 12 OF 25

CITY OF DANA POINT
AGENDA REPORT

DATE: JULY 18, 2001
TO: DANA POINT PLANNING COMMISSION
FROM: COMMUNITY DEVELOPMENT DEPARTMENT
SUBJECT: A REQUEST FOR A COASTAL DEVELOPMENT PERMIT AND SITE DEVELOPMENT PERMIT TO ALLOW THE DEMOLITION OF A SINGLE-FAMILY RESIDENCE AND THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE LOCATED WITHIN THE FP-3 FLOOD OVERLAY ZONE; COASTAL DEVELOPMENT PERMIT CDP01-10/SITE DEVELOPMENT PERMIT SDP01-27. FF # 0610-70/CDP01-10/SDP01-27; BEACH ROAD, 35405 [SP]

RECOMMENDATION: That the Planning Commission adopt the attached Draft Resolution (Attachment 1) approving Coastal Development Permit CDP00-14/Site Development Permit SDP00-34.

APPLICANT: Ricardo Nicol
OWNER: Kirk Bell

REQUEST: Approval of a Coastal Development Permit and Site Development Permit to review proposed demolition of an existing dwelling and construction of a new single-family residence within the FP-3 Flood Overlay Zone.

LOCATION: 35405 Beach Road, (APN #691-162-06)
ZONING: RBR 12, Coastal Overlay and Floodplain Overlay Districts

NOTICES: Notice for the proposed project was sent on July 3, 2001 to property owners within a five-hundred (500) foot radius and occupants within a one-hundred (100) foot radius, and was published in the Dana Point News on July 5, 2001. Notices were also posted on July 6, 2001 at the Dana Point City Hall, the Dana Point post office, the Capistrano Beach post office, and the Dana Point Library.

ENVIRONMENTAL: This project is categorically exempt (Class 3 - Section 15303 - New Construction) from the provisions of the California Environmental Quality Act (CEQA) because it consists of the construction of a new residential unit.

ISSUES: 1. Is the proposal consistent with the Dana Point General Plan, Zoning

COASTAL COMMISSION
01-336
EXHIBIT # 4
PAGE 13 OF 25

Code, and LCP?

2. Does the project comply with the floodplain regulations of the City?
3. Is the proposed project compatible and an enhancement to the site and surrounding neighborhood?

BACKGROUND:

On July 10, 2001, the Dana Point City Council considered a request by the Capistrano Bay District to establish a policy that there is currently adequate access to the public tidelands along Capistrano Bay Beach and that new developments along Beach Road that comply with Zoning Code regulations will not reduce public access to the tidelands. After some discussion, the Council adopted a resolution setting policies and making findings regarding the imposition of lateral access easement dedications and provided direction to staff regarding the required analysis to be conducted for each Coastal Development Permit within the Capistrano Bay Community relating to public access. Staff has prepared the required analysis which is included in this report and has determined that the proposed development will not adversely affect, either individually or cumulatively, the ability of the public to reach and use the public tidelands and coastal resources or that the access dedication requirement will not alleviate the access burdens identified. Therefore, the attached resolution of approval for CDP01-10/ SDP01-27 does not include a requirement for the dedication of a lateral access easement.

DISCUSSION:

As shown in Exhibit A, the Applicant is proposing to construct a 3,530 square-foot single-family residence on an existing parcel that contains a total of 4,526 square-feet of land area. The site is located at the narrower portion of the Capistrano Bay Community, near the middle. The subject property is located in the RBR 12 (Residential Beach Road) district, which permits single-family dwellings subject to satisfying the required parking and development standards. The site is located in the Coastal Overlay Zone and within the FP-3 Floodplain Overlay district. The FP-3 district identifies the area of potential wave inundation. A Coastal Development Permit is required for construction within the Coastal Overlay District and a Site Development Permit is also needed for new construction within the Floodplain Overlay District.

Coastal Development Permit/Site Development Permit

The proposed new dwelling has been designed to meet all setback requirements, height limitations, and rear yard structure and patio stringline requirements of the Dana Point Zoning Code and LCP. The residence is of a traditional style, with a 6:12 roof pitch and extensive use of wood trim around the windows and doors. The side elevations include similar architectural details to create a unified appearance. There is a landscaped planter area near the street edge as well as along the sides of the house. In addition, decorative pavers are proposed to finish the driveway and the side walkways.

The Code requires a minimum 3.5-foot sideyard setback and a 20-foot front yard setback from Beach Road. The plans show the minimum 3.5-foot side yard setback and 20-foot front setback for the garage with adequate driveway width to accommodate

COASTAL COMMISSION
01-336

EXHIBIT # 4
PAGE 14 OF 25

three parking spaces on the driveway. The zoning code also permits the second floor to cantilever 5-feet into the front setback, however no closer than 5 to the front property line. In this case, a 5-foot cantilever is proposed. The plans indicate that a decorative arbor is proposed along the front of the garage and into the side yard at the second floor level and decorative awnings over the windows on the west side of the structure. These projections are permitted, however they are limited to a maximum of 2.5-feet into the front setback and no closer than 2-feet to the side property lines. A condition of approval has been included in the resolution. The setbacks for the dwelling and parking requirements are in compliance with the zoning code requirements. The horizontal length of the rear deck on the second floor meets the maximum of 80% of the rear elevation and the minimum 6-foot side-yard setback. The code also requires a minimum 10% of the lot area up to the patio stringline to be landscaped. The plans provide 390 square feet of landscaping, in excess of the minimum required.

The dwelling is proposed to be 28 feet in height with a 6:12 roof pitch. The structure is within the allowable height limit as determined by the established FP-3 line. The code permits the structure height to be measured from a point 18-inches above the FP-3 elevation or Beach Road, whichever is higher. In this case, the FP-3 is the higher elevation. The FP-3 line has been determined at 15.0 feet above mean sea level by a certified structural engineer and confirmed by the City Building Department. The height of the structure is measured from a point 1.5-feet above the FP-3 elevation to allow for structural grade beam widths. Caisson supports will be used to elevate the structure so that all living spaces are at or above this elevation. This elevation is approximately 1 foot above the curb on Beach Road. The final construction plans need to be clarified to show that the deck/patio area on the first floor is constructed in compliance with the floodplain Overlay requirements, which may require the use of caissons. There is an existing ocean protective device located along the seaward side of the existing dwelling that connects to walls on the two adjacent parcels. This will need to be preserved in place. A condition has been included to require the applicant to remove the seawall at a future date when it is determined by the City that the wall is no longer needed.

The project has been reviewed for compliance with City standards. The necessary conditions of approval are included in the draft resolution. In accordance with the goals of the Coastal Overlay District, roof drains will be required and all on-site drainage will be diverted to Beach Road.

The project land use and density is consistent with the General Plan Land Use Designation of 7-14 DU/AC. The project is also consistent with Goal 1 of the Public Safety Element, because the proposed structure will reduce the risk from coastal erosion. The project meets the Public Safety Element Policy 1.19 by assuring that public safety is provided for in all new seaward construction within the Capistrano Bay District private community. Similarly, Public Safety Element Goal 2 is met by reducing the risk to the community's inhabitants from flood hazards.

Lateral Access Findings

The code requires that written analysis, findings of facts and conclusions addressing public access be included for all new development projects within the Coastal Overlay

COASTAL COMMISSION

01-336

EXHIBIT # 4

PAGE 15 OF 25

Zone. Below is a discussion of the required analysis. The existing baseline conditions used in the analysis to determine the project effects and public access needs are included as Attachment 5.

Project effects on demand for access and recreation. This project is located within the Capistrano Bay Community, which is a private walled and gated community that currently provides no public parking, no public pedestrian or vehicular access through the community, and no access from Coast Highway. The subject site is approximately 200 feet in depth, with the southwestern edge located at the mean high tide line.

As noted in Attachment 5, the Capistrano Bay Community is surrounded on both sides by facilities that are open and accessible to the general public. These facilities provide parking, overnight and day use and active and passive recreation areas on the beach. The surrounding area supports numerous public facilities that are essential to residents and visitors of California that do not live on the coast or have access through private communities. The three facilities have an estimated combined attendance of 1.6 million visitors each year. The surrounding area provides a variety of public use facilities that can accommodate a large population. Since the proposed development involves the replacement of an existing single-family dwelling with a new single-family residence, the future demand on public facilities will not be affected nor will this project cause these facilities to be diminished. The demand will remain the same as it is today with no impact from this new construction.

With respect to shoreline access, the proposed development of a new dwelling in compliance with the Residential Beach Road 12 (RBR-12) zoning regulations will not create a significant impact to the general public's ability to access the public tidelands. The dwelling and site improvements are located more than 88-feet from the mean high tide line and will not create a physical barrier along the shoreline. The public currently has access to two public beaches on both the west and east sides of the private Capistrano Bay Community. Public parking is provided within the 140-space facility that is accessible from Coast Highway. There are no physical barriers, manmade features or natural rock formations that currently hinder the public's ability to walk along the public tidelands adjacent to the private Capistrano Bay Beach. The public shoreline extends seaward of the mean high tide line. Most of the time this area would be on dry sand since it is the mean of the highest tides. On many days the high tide would never reach the mean high tide line. Due to the location of public facilities on both sides of this community, public tidal areas located along the Capistrano Bay Beach can be accessed laterally from the existing public facilities within the existing public tidelands, which can be easily passed even during a high tide condition. The proposed development does not negatively affect the public access to the shoreline or use of tidal waters.

The Capistrano Bay Community is substantially built out, with the exception of a few vacant lots. Some of these parcels have been incorporated into the adjoining residential developments and may never be individually developed. However, since this is an established built-out community, the proposed development will not cumulatively affect the demand for access to the shoreline.

COASTAL COMMISSION

01-336

EXHIBIT # 4

PAGE 16 OF 25

Project effects on Shoreline Process. This project site is located in a flood prone area and subject to wave inundation and potential erosion. The project has been designed with the structure elevated above the sand on caissons, in order to minimize potential impacts on the shoreline process. Although there is an existing seawall it is not required for the protection of the new development on this site though it may provide protection to the adjacent dwellings. A condition has been included in the project to require the removal of the seawall at a future date. There are no new revetments, rock riprap or ocean protective devices proposed as part of this project. The caisson-type of construction minimizes the potential for erosion of beach area. Development of the project will not have a significant effect on sources of sand or sand transport since there will be minimal erosion resulting from the caisson-type construction. Since the project has little potential to create beach erosion, there will be no significant effect upon the shoreline process in this area nor will it affect the public's ability to utilize the tidelands within the vicinity.

Physical Obstructions. A finding is required to address whether or not the project will block or impede the ability of the public to access the tidelands. Since the Capistrano Bay Community is private and does not provide for public parking or pedestrian access on Beach Road, there is no existing vertical access to the beach in the vicinity. The construction of the project will not block or eliminate any existing vertical access. The project is designed within the development area of the site in compliance with setback requirements and will not block or impede the ability of the public to gain access to the tidelands at the shoreline. The public tidelands will not be affected by the project.

Project effects on other adverse impacts to public access. A finding is also required that describes where the new development occurs in relation to the shoreline and any recreation area and to what extent the project may individually or cumulatively diminish the public's access to tidelands. The proposed project is located near the middle of the Capistrano Bay Community more than a half a mile from the public beach at Capistrano Beach Park. There is public parking at this location and other limited recreational facilities as part of this beach park. The project site fronts onto Beach Road and the rear property line is the mean high tide line. The proposed development is located more than 88 feet from the mean high tide. The development will not affect public access to recreation areas in the vicinity or the tidelands adjacent to this project.

Required Findings for Access:

Section 9.27.030(a)(5) of the Dana Point Zoning Code establishes the findings related to public access. These findings have been listed in **boldface** type for your consideration followed by a Staff analysis of the consistency of this project with the requisite findings in *italics*. The facts regarding the individual and cumulative effects of the project on the provision of coastal access are included in Attachment 5.

1. Will the proposed development have a significant negative effect on demand for access and recreation?

The proposed project is a demolition of an existing dwelling and the construction of a new single-family residence located in a portion of a private community through which

COASTAL COMMISSION

01-336

EXHIBIT # 4

PAGE 17 OF 25

the general public does not currently have access. Since the surrounding area provides a variety of public use facilities that can accommodate a large population, the proposed replacement of an existing dwelling does not significantly affect the existing public facilities or cause these facilities to be diminished. Due to the location of public facilities on both sides of this community, public tidal areas located along the Capistrano Bay Beach can be accessed laterally from the existing public facilities within the current public lands.

The public shoreline extends seaward of the mean high tide line. Most of the time this area would be on dry sand since it is the mean of the highest tides. On many days the high tide would never reach the mean high tide line. Due to the location of public facilities on both sides of this community, public tidal areas located along the Capistrano Bay Beach can be accessed laterally from the existing public facilities within the existing public tidelands, which can be easily passed even during a high tide condition.

2. Will the proposed development have a significant negative effect on the shoreline process?

The proposed project has been designed on caissons to comply with the Floodplain Overlay District requirements in order to minimize negative impacts to the shoreline. The caissons prevent erosion of the beach and minimize impacts to sources of sand or sand transport. The proposed design of the structure will not have a negative effect on the shoreline process and will not affect the public's ability to use the tidelands.

3. Will the proposed development create any physical obstructions that would preclude public access to the tidelands?

The proposed development area is located within the setbacks established by the code and situated more than 88 feet from the mean high tide line. The residence and deck will not obstruct public access to the tidelands.

4. Will the proposed development have any other significant negative effect on coastal access?

Due to the distance separation between this development and the existing public recreation area, the project will not impact public access to the shore or contribute to a cumulative negative effect. Since the development is located more than 88 feet from the mean high tide it will not affect public access to the tidelands.

Required Findings for Coastal Development Permit:

Section 9.69.060 of the Dana Point Zoning Code establishes the findings required to approve a Coastal Development Permit. These findings have been listed in **boldface** type for your consideration followed by a Staff analysis of the consistency of this project with the requisite findings in *italics*.

COASTAL COMMISSION
01-336

EXHIBIT # 4

PAGE 18 OF 25

1. The proposed development will not encroach upon any existing physical accessway legally utilized by the public or any proposed public accessway identified in an adopted Local Coastal Program Land Use Plan, nor will it obstruct any existing public views to and along the coast from any public road or from a recreational area.

The proposed project is a new single-family residence located in a portion of a private community of which the general public does not currently have access to or views to and therefore this project would have no affect.

2. The proposed development will not adversely affect marine resources, environmentally sensitive areas, or archaeological or paleontological resources.

The proposed project site is located within a private community adjacent to the ocean, which is considered to be a marine resource and an environmentally sensitive area. However, the project scope is such that there would be no adverse impact to this marine resource. The private community in which the project is located is fully developed and would not have any affect on any archaeological/paleontological resources.

3. The proposed development will not adversely affect recreational or visitor-serving facilities or coastal scenic resources.

The proposed project site is located within a private community that provides visitor-serving facilities to residents and their guests. The demolition of an existing structure and construction of a new single-family residence would have neither impact upon the use of these facilities nor any coastal scenic resource.

4. The proposed development will be sited and designed to prevent adverse impacts to environmentally sensitive habitats and scenic resources located in adjacent parks and recreational areas, and will provide adequate buffer areas to protect such resources.

The proposed project site does not contain any known environmentally sensitive habitats nor scenic resources therefore no buffer area is required to protect such resources.

5. 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.

The proposed project has been designed to meet the FP-3 requirements and does not require any grading or alterations to landforms and would therefore not result in any undue risks from such hazards.

6. The proposed development will be visually compatible with the character of surrounding areas, and, where feasible, will restore and enhance visual quality

COASTAL COMMISSION

01-336

EXHIBIT # 4

PAGE 19 OF 25

in visually degraded areas.

The proposed single-family residence contains a mixture of materials including stucco and stone veneers that will be compatible with the residential neighborhood. As proposed, the building mass and bulk of the structure is consistent with other structures in the area and are within the allowable development standards for the site.

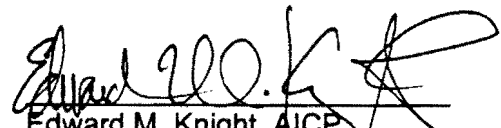
7. The proposed development will conform to the General Plan, Zoning Code, applicable Specific Plan, Local Coastal Program, or other applicable adopted plans and programs.

The proposed project conforms to the City's regulations regarding the development of a single-family residence and the project does not involve any other discretionary approvals. The structure is consistent with the allowable development standards for the site. The project meets the requirements of the Coastal and Floodplain Overlay District.

CONCLUSION:

Because the proposed project is consistent with the City of Dana Point General Plan, Zoning Code and Local Coastal Program and the required findings for approval can be made, staff recommends that the Planning Commission adopt the attached draft Resolution approving CDP01-10/SDP01-27.


Sara J. Pashalides
Project Manager/Consultant


Edward M. Knight, AICP
Director Community Development

ACTION DOCUMENTS:

1. Draft PC Resolution #01-07-18-XX

SUPPORTING DOCUMENTS:

2. Location Map
3. Notice of Exemption
4. Letter of Justification
5. Findings of Facts and Existing Baseline Conditions

EXHIBITS:

- A. Building Plans and Elevations

COASTAL COMMISSION

01-336

EXHIBIT # 4

PAGE 20 OF 25

Existing Baseline Conditions

The following are the existing baseline conditions to be used in the analysis to determine the project effects and public access needs associated with applications for Coastal Development Permits proposed within the Capistrano Bay Community. The existing baseline conditions address coastal recreation facilities, coastal access ways, circulation network, parking facilities and sensitive marine resources. To assist in the identification of potential project related effects; a Project Effect Check List is provided in Appendix A.

A. COASTAL RECREATION FACILITIES/COASTAL ACCESS

Doheny Beach State Park

Doheny Beach State Park is located at the corner of Pacific Coast Highway and Del Obispo Street. The Beach Park extends 1.5 miles along the coast and encompasses approximately 64-acres. Existing facilities within Doheny Beach State Park include 1,108 parking spaces, 102 overnight campsites, a 20-acre picnic area, volleyball/badminton courts, bicycle and raft rentals, fire rings, showers, snack bar, lifeguard towers, and instructional programs. The primary activities at the Beach Park include surfing, fishing, swimming, scuba diving, picnicking and camping.

The primary vehicle entrance to Doheny Beach State Park is provided at Dana Point Harbor Drive. Pedestrian access is also provided off of Dana Point Harbor Drive at Puerto Place, at the intersection of Pacific Coast Highway and Palisade Drive and along a pedestrian bridge near the Riviera time-shares. Lateral pedestrian access is provided to Doheny State Beach from the Capistrano Beach Park. Along Doheny State Beach a Class I Bikeway extends along the shore.

Doheny State Beach has an attendance figure of approximately 1,000,000 visitors per year. This figure includes day use of the beach and overnight use of the campground facilities. The maximum vehicle carrying capacity of Doheny State Beach is limited to the number of available parking spaces and campground sites. There is no limit on the amount of pedestrians who can visit Doheny State Beach. At this time, Doheny State Beach is built out. There are no plans to increase the number of parking spaces, campground areas or any other recreational facilities at Doheny State Beach.

Capistrano Beach Park

Capistrano Beach Park is located between Doheny Beach State Park and the Capistrano Bay Community. The Beach Park extends 1,600 feet along the coast and encompasses approximately 7.7 acres. Existing facilities within the Capistrano Beach Park include a 140 car parking facility, landscaping, outdoor showers, restroom, benches, fire rings, picnic tables, volleyball poles and nets, basketball court, pedestrian and bike paths joining with the existing regional trail system and bicycle storage area.

The primary vehicle and pedestrian entrance to Capistrano Beach Park is provided at Pacific Coast Highway and Palisade Drive. Lateral pedestrian access to the Capistrano Beach Park is provided from Doheny State Beach. Capistrano Beach Park has attendance figures of approximately 550,500 visitors per year. The maximum vehicle carrying capacity is limited to the amount of available parking. At this time, there are no plans to expand the parking or recreational facilities at Capistrano Beach.

Capistrano Bay Beach

Capistrano Bay Beach is a private beach located between Capistrano Beach Park and Poche Beach. The beach extends 1.5 miles along the coast. Capistrano Bay is a private community that encompasses the area seaward of Pacific Coast Highway to the mean high tide line and

COASTAL COMMISSION
ATTACHMENT 5-33

EXHIBIT # 4

PAGE 21 OF 25

extends from the Capistrano Beach Park to Poche Beach. The vehicle entrance to the Capistrano Bay Community is provided at Beach Road. However, Beach Road is a private road with a manned security entrance. A 6-foot wall parallels the road on the inland side of the community that prevents public access to the community. Public access to Capistrano Bay Beach is limited to lateral access from Capistrano Beach Park and Poche Beach within the public tidelands area.

There are no attendance figures for Capistrano Bay Beach. The majority of the attendance at Capistrano Bay Beach is from the Capistrano Bay Community. There are no plans to provide any public parking areas or recreational facilities at Capistrano Bay Beach.

The community of Capistrano Bay was established in the early 1930's and has always been a private community that limited public access through their streets and walkways. As a result, there have been some limitations on vertical and lateral access to the public tidelands in this area that have been in place for decades. There is a manned security entrance with limitations on no public parking within the community and no public pedestrian access along Beach Road. Due to block walls adjoining Coast Highway, the public cannot access the public tidal areas from Coast Highway through the community. There is no public pedestrian access from Coast Highway to the public tidal areas. The point of access is through the adjacent Capistrano Beach Park discussed above.

Poche Beach

Poche Beach is located adjacent to the southern end of the Capistrano Bay Community. Poche Beach extends approximately 259 feet along the coast and encompasses 0.95 acre. There are no onsite parking areas or public recreational facilities at Poche Beach.

Pedestrian access to Poche Beach is provided from underground stairway inland of Pacific Coast Highway that leads to an elevated boardwalk along a flood control channel, which runs under the highway and railroad tracks to a fenced walkway leading to the beach.

Poche Beach as an attendance figure of approximately 112,000 visitors per year. Because there are no onsite parking areas at Poche Beach, the carrying capacity of Poche Beach is not limited to the amount of available parking. At this time, there are no plans to provide any public parking facilities at Poche Beach.

B. CIRCULATION NETWORK

- San Diego Freeway - The San Diego Freeway is a major north/south route providing regional access to Doheny State Beach, Capistrano Beach Park, Capistrano Bay Beach, and Poche Beach. The Post 2010 traffic volumes along the segment of the San Diego Freeway in the vicinity of Dana Point are projected to range from 232,000 to 272,000 average trips per day.
- Pacific Coast Highway - Pacific Coast Highway is a major arterial providing access to the Doheny State Beach, Capistrano Beach Park, Capistrano Bay Beach and Poche Beach. The Post 2010 traffic volumes along Pacific Coast Highway are projected to range from 21,000 to 23,000 vehicle trips per day.
- Dana Point Harbor Drive - Dana Point Harbor Drive is local roadway providing access to Doheny State Beach. The Post 2010 traffic volumes along Dana Point Harbor Drive are projected to range from 3,000 to 28,000 vehicle trips per day.
- Beach Road - Beach Road is private road providing access to the Capistrano Bay Community. There are no public parking areas provided along Beach Road.

COASTAL COMMISSION
01-336

EXHIBIT # 4

PAGE 22 OF 25

C. PARKING FACILITIES

Coastal Recreation Facility	Existing Public Parking Facilities	Planned Public Parking Facilities
Doheny State Beach	1,108 Parking Spaces	0
Capistrano Beach Park	140 Parking Spaces	0
Capistrano Bay Beach	0	0
Poche County Beach	0	0

D. SENSITIVE MARINE RESOURCES

Doheny Beach Marine Refuge/Under Water Park

Doheny Beach Marine Life Refuge is located between Dana Point Harbor and Palisades Drive. The refuge consists of 1.2 miles of coastline and extends some 600 feet offshore. The Doheny Beach Under Water Park overlaps the marine life refuge, except that it extends 1,500 feet offshore. Most of the shoreline of the marine life refuge and the under water park consists of sandy habitat. Additionally, there is some rocky intertidal habitat at the northern edge of the refuge, as well as fragmented wetland habitat at the mouth of San Juan Creek.

San Juan Creek

San Juan Creek flows for a distance of approximately 27-miles from its headwaters to the Pacific Ocean. Reach 6 of San Juan Creek extends through Dana Point from the Camino Capistrano to the mouth of the creek at Doheny State Beach. Presently, 80 percent of the land adjacent to the channel has been developed with urbanized land uses. The mouth of San Juan Creek has been identified as a source of degraded water quality.

All of Reach 6 of San Juan Creek has been channelized since 1962. The channel has an earthen bottom with concrete-lined banks. At its confluence with Doheny Beach, the channel for San Juan Creek widens to nearly 500 feet. The channel banks are completely lined with concrete side-slopes, devoid of any vegetation. The channel exhibits a spotty cover of usually short-lived herbaceous riparian cover, which disappears with each flood event. There are no known sensitive plant or animal species within this reach of San Juan Creek.

A bike trail is provided along the banks of the San Juan Creek Channel, providing pedestrian access to Doheny State Beach. Other than the trail, the San Juan Creek does not provide any other recreational facilities.

COASTAL COMMISSION
01-336

EXHIBIT # 4

PAGE 23 OF 25

APPENDIX A
Coastal Resource Project &
Cumulative Effect Check List

	SIGNIFICANT PROJECT EFFECT	SIGNIFICANT CUMULATIVE EFFECT	DE MINIMIS PROJECT EFFECT	DE MINIMIS CUMULATIVE EFFECT	NO PROJECT EFFECT	NO CUMULATIVE EFFECT
1. EFFECT ON CARRYING CAPACITY OF RECREATION FACILITIES						
a. Doheny State Beach					X	X
b. Capistrano Beach Park					X	X
c. Capistrano Bay Beach					X	X
d. Poche Beach					X	X
2. EFFECT ON CARRYING CAPACITY OF PUBLIC ACCESS						
a. Doheny State Beach					X	X
b. Capistrano Beach Park					X	X
c. Capistrano Bay Beach					X	X
d. Poche Beach					X	X
3. EFFECT ON MARINE RESOURCES						
a. Doheny Marine Refuge					X	X
b. San Juan Creek					X	X
4. EFFECT ON COASTAL ROADWAYS						
a. San Diego Freeway					X	X
b. Pacific Coast Highway					X	X
c. Dana Point Harbor Drive					X	X
d. Palisades Drive					X	X
5. EFFECT ON COASTAL PARKING FACILITIES						
a. Doheny State Beach					X	X
b. Capistrano Beach Park					X	X
c. Capistrano Bay Beach					X	X
d. Poche Beach					X	X
6. EFFECT ON AESTHETIC VALUE OF COASTAL RESOURCES						
a. Doheny State Beach					X	X
b. Capistrano Beach Park					X	X
c. Capistrano Bay Beach					X	X
d. Poche Beach					X	X
e. Doheny Marine Refuge					X	X
f. San Juan Creek					X	X
7. EFFECT ON DEMAND FOR NEW COASTAL FACILITIES						
a. Doheny State Beach					X	X
b. Capistrano Beach Park					X	X
c. Capistrano Bay Beach					X	X
d. Poche Beach					X	X

- Significant Adverse Effect = a potentially adverse change that substantially effects the value of the coastal resource being evaluated.
- De Minimis Effect = an incremental effect that results in a condition that would essentially be the same whether or not the proposed project is implemented.
- No Effect = proposed project would not result in any effects to coastal resources.

COASTAL COMMISSION
01-336

EXHIBIT # **4**
PAGE **24** OF **25**

FINDINGS OF FACTS

1. The proposed project would have no effect on the carrying capacity on existing and planned recreational facilities in the vicinity of the project site in that the proposed project replaces an existing residential structure.
2. The proposed development would have no effect on existing and planned coastal access ways in the vicinity of the project in that the project is not part of or adjacent to proposed or existing coastal access. The existing development provides no public coastal access and there is none proposed.
3. The proposed project would have a positive effect on existing and planned parking facilities in the vicinity of the project site in that the proposed project would provide a total of 6 off-street parking spaces.
4. The proposed project would have no effect on local circulation system in the vicinity of the project site, in that there would be no additional traffic generated by the project since it is a replacement of an existing dwelling.
5. The proposed project would have no effect on sensitive marine resources in the vicinity of the project site in that the proposed dwelling extends no closer to the tidelands than the existing dwelling, which does not presently encroach upon any marine resources.
6. The proposed project would have a positive aesthetic effect on coastal resource in the vicinity of the project site, in that the proposed new dwelling will replace an old structure that is outdated and in need of rehabilitation. In addition, the new dwelling will be constructed outside of the floodplain on caissons to reduce impacts to coastal resources.
7. The proposed project would have no effect on the demand for coastal resources in the vicinity of the project site, in that there will be the same number of dwellings as currently existing on the site, thereby maintaining the same demand for coastal resources. The project is located within a private gated community that does not currently permit public access.
8. The proposed project would have no effect on creating opportunities to enhance public access to tidelands or public recreational opportunities in the vicinity of the project site, in that the site is located in the middle of the Capistrano Bay Community, with approximately $\frac{3}{4}$ of a mile of beach between the site and the closest public beach.
9. The proposed project would have no effect on the ability of the public to utilize public tidelands and shoreline recreation areas since the proposed dwelling and exterior patio improvements are located more than 85-feet from the mean high tide line. The project will not reduce or block the existing public access within the public tidelands which will remain in a dry condition most of the time since the public lands are extend to the mean high tide line.

COASTAL COMMISSION
01-336

EXHIBIT # 4

PAGE 25 OF 25

Sandy beach confined by Dana Point and upcoast groin backed by benched bluff. Rock toe protection along base of bench.

Rocky point with reef and offshore rocks backed by high rocky cliff with undercutting along toe and erosion along top. Many slides along base and top of cliff.

Dana Point Harbor breakwater.

Wide sandy beach with offshore rocks confined between harbor jetty and groin at edge of San Juan Creek backed by park facilities within flood plain.

Wide sandy beach backed by park facilities on low dunes, railroad tracks, highway, and high cliff. Beach periodically nourished downcoast of San Juan Creek.

Narrow sandy beach backed by houses at beach level (some on piles), road, railroad, and highway at base of high coastal bluff. Many homes have low timber or concrete block seawalls. Seawalls overtopped and outflanked. Houses subject to severe damage during high wave conditions.

Narrow sandy beach backed by low timber seawall, mobile home park, railroad, highway, and high coastal bluff. Seawall overtopped and mobile homes sustain severe damage during high wave conditions.

Narrow sandy beach backed by park facilities, railroad, and high coastal bluff with houses and apartments along rim. Railroad protected by rock seawall at numerous locations but is overtopped and frequently sustains damage during high wave conditions.

Narrow sandy beach backed by park facilities, railroad, and high coastal bluff with houses and apartments built along rim. Railroad protected by rock seawall at numerous locations but overtopped and sustains damage during high wave conditions.



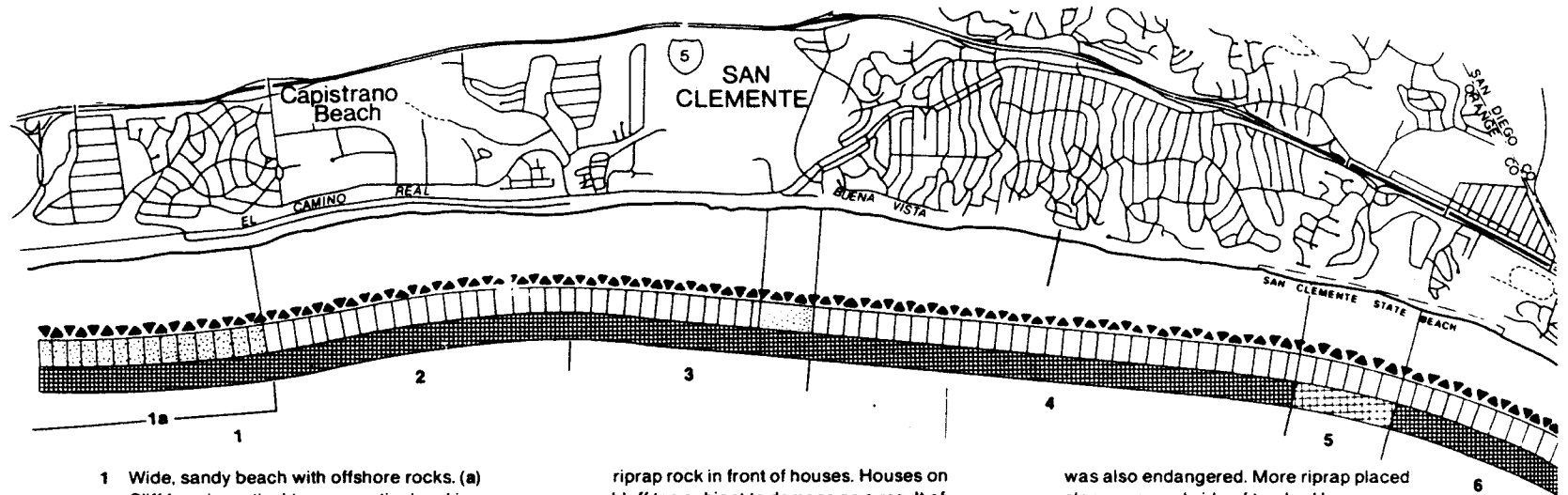
• SHORELINE CONDITION •			
	PRESENT DEVELOPMENT CRITICAL		ARTIFICIAL PROTECTION
	PRESENT DEVELOPMENT NON-CRITICAL		PROTECTIVE BEACH
	FUTURE DEVELOPMENT CRITICAL		STABLE ROCK

ORANGE CO. — MI. 32-39

MAP NUMBER
119

STATE OF CALIFORNIA THE RESOURCES AGENCY
DEPARTMENT OF NAVIGATION & OCEAN DEVELOPMENT

1977



- 1 Wide, sandy beach with offshore rocks. (a) Cliff face is vertical to near vertical and is eroding at numerous sites as a result of groundwater flow. Buildings are subject to danger as a result of cliff collapse.
- 2 Narrow sandy beach backed by houses at beach level (fronted by riprap rock revetment) backed by high coastal bluffs. Many homes have low wooden or concrete block seawalls. Houses on beach road and railroad subject to damage during high wave conditions as waves break directly on

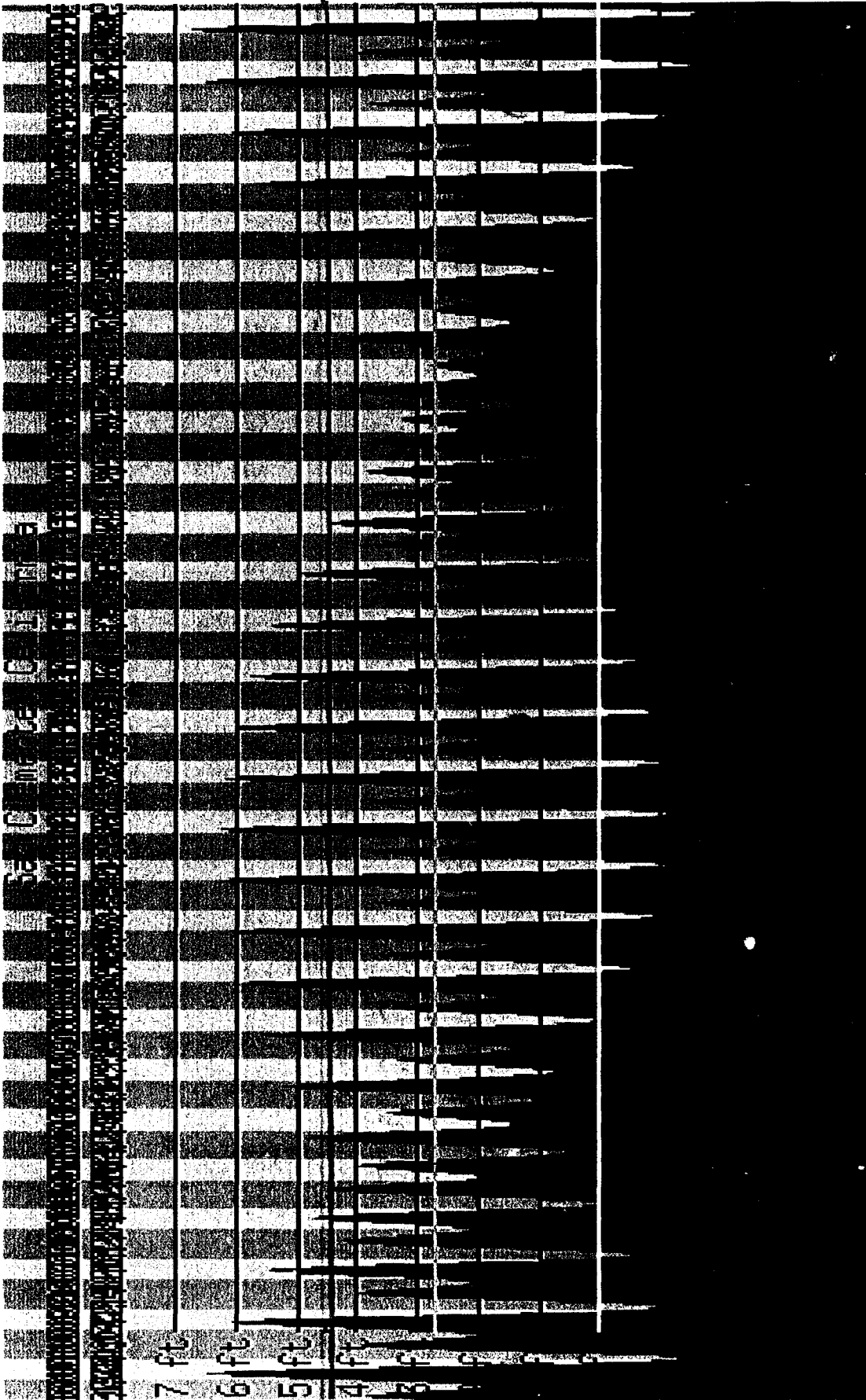
- 3 Narrow sandy beach backed by low wooden seawall, mobile home park, railroad, highway, and high eroding coastal bluff. Three sand-filled Longard tubes placed in front of timber wall collapsed. Seawall overtopped and mobile homes sustained severe damage during winter storms of January-March 1983. Railroad

- 4 was also endangered. More riprap placed along seaward side of tracks. Houses constructed along bluff face; many recent slides and groundwater seepage visible at many sites.
- 4 Narrow sandy beach backed by park facilities, railroad, and high coastal bluffs with houses and apartments built along rim. Groundwater seepage, storm drain collapse, recent cliff failure visible along bluff face. Rock riprap seawall semi-protects railroad. Winter storms of 1983 damaged park facilities. Houses located along bluff top subject to damage as a result of landslides and cliff collapse.

Figure 18.2. Site analysis: Capistrano Beach through San Onofre State Park.

EXHIBIT # 6
PAGE 1 OF 1

COASTAL COMMISSION
V L - 336



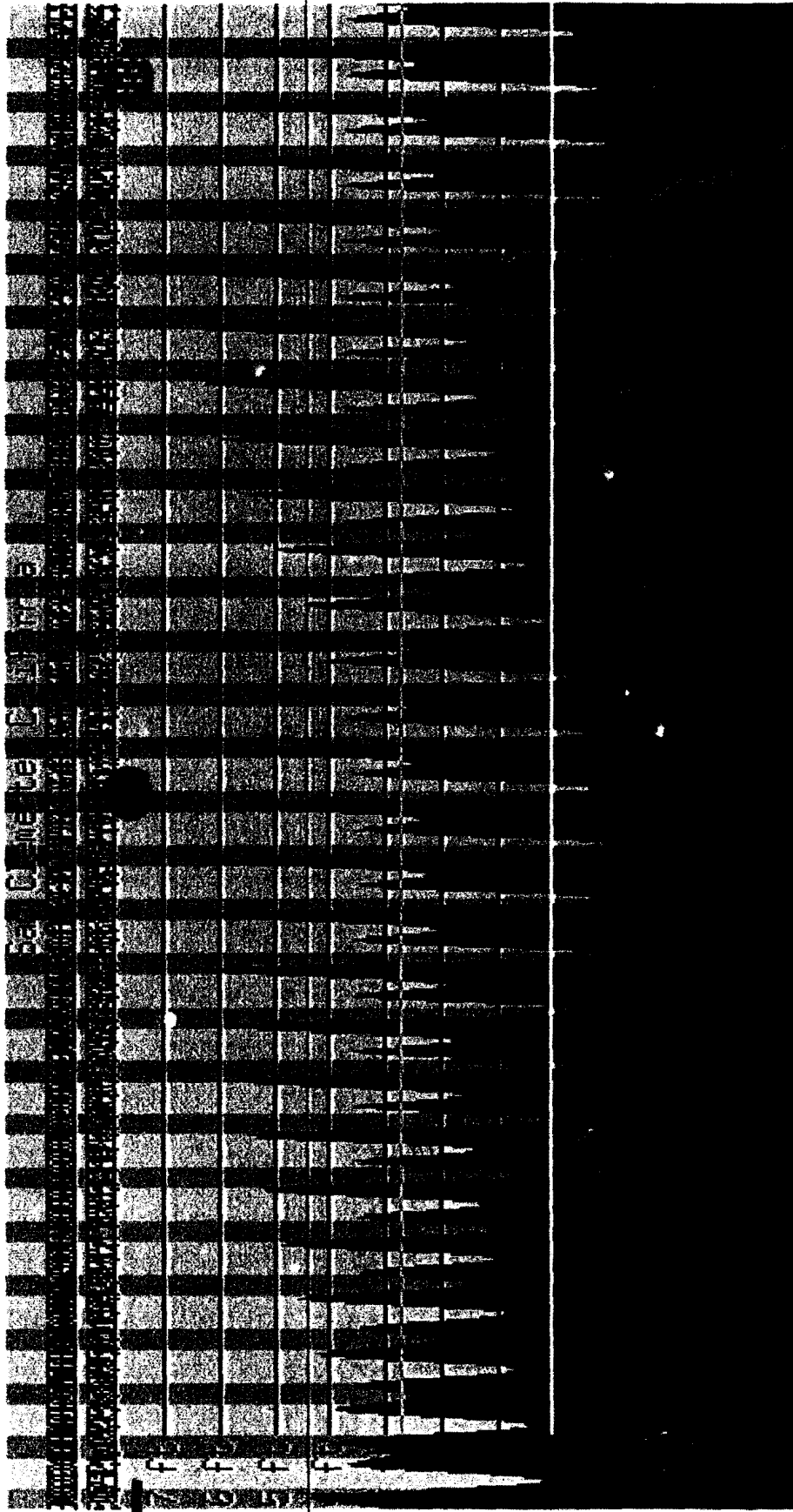
MHW

11/21

COMMISSION
1-336

EXHIBIT # 7
PAGE 1 OF 3

For Illustrative Purposes Only
Tide Predictions January 2002 (110102 - 1/29/02)



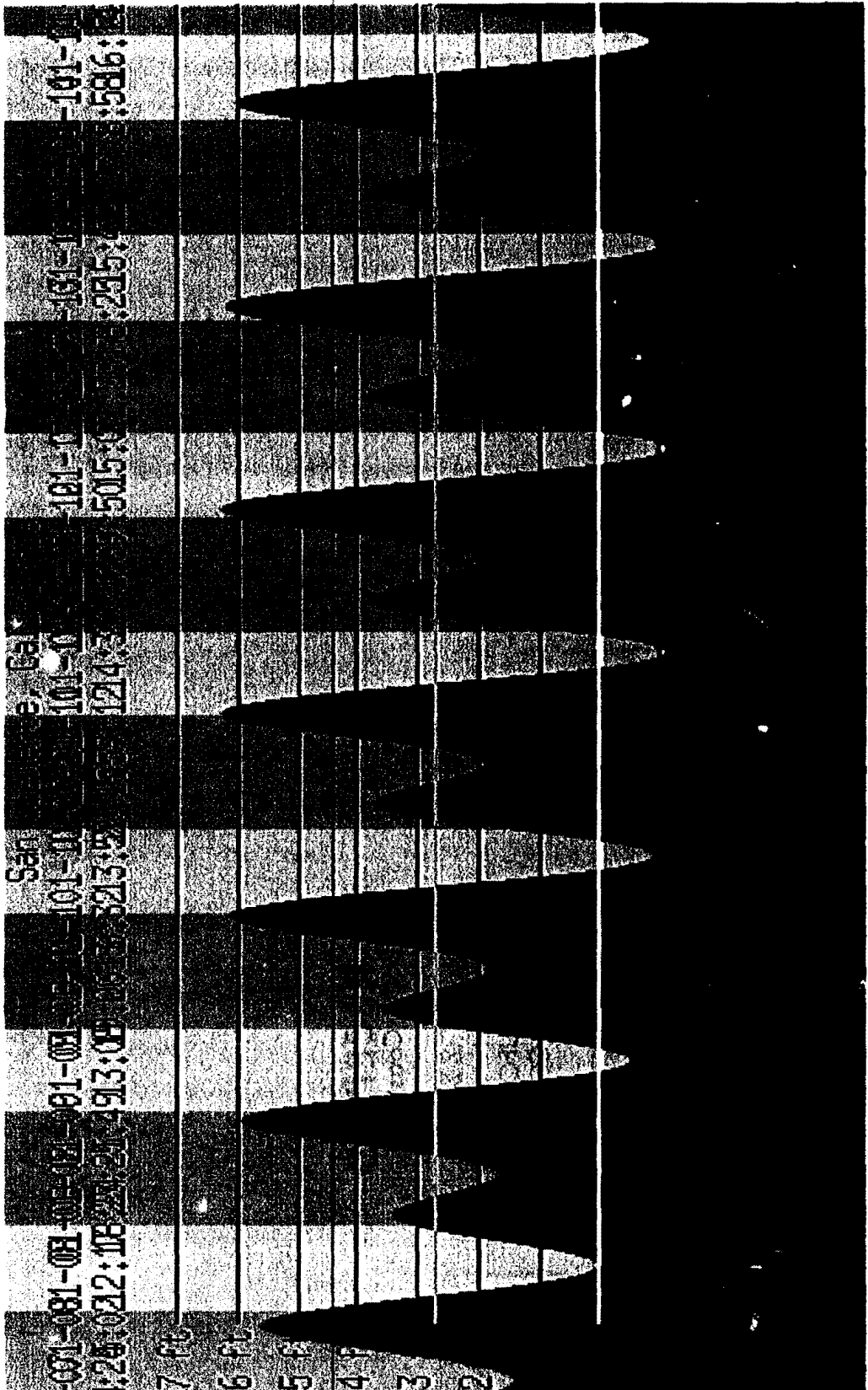
File
1

FOR ILLUSTRATIVE PURPOSES ONLY

← Tide Predictions June 2002 - (6101102 - 6/29/02)

OCEANOGRAPHIC COMMISSION
01-336

EXHIBIT # 7
PAGE 2 OF 3



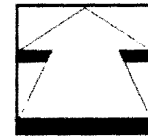
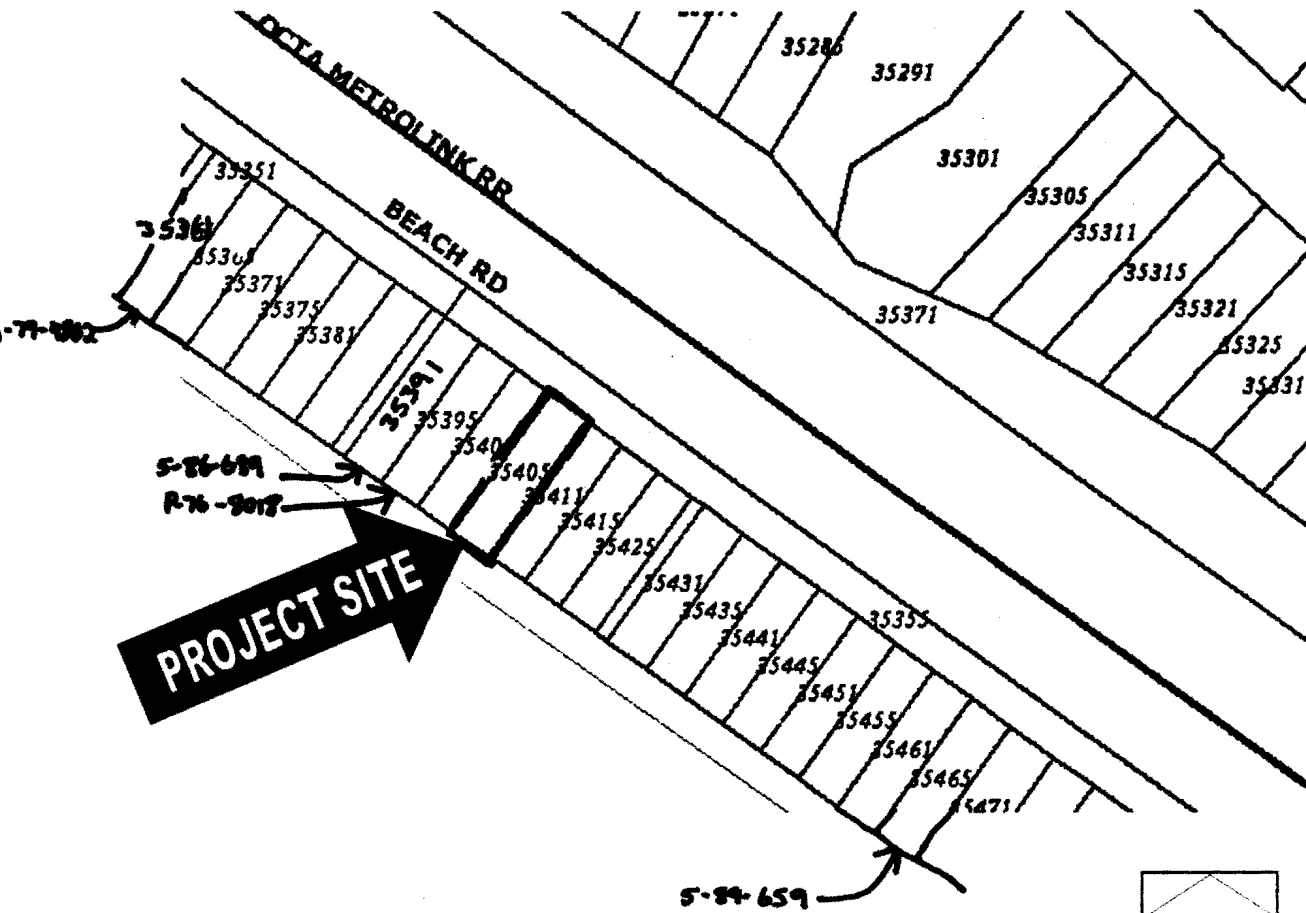
For Illustrative Purposes Only
 Tide Predictions ~~June 2002~~ (~~6/10/02 - 6/29/02~~)
 January 08 - 15 / 2002

TAL COMMISSION
 01-336

EXHIBIT # 7
 PAGE 3 OF 3

Much
 19

CITY OF DANA POINT
PLANNING COMMISSION



NORTH

LOCATION MAP

APPLICANT: Ricardo Nicol (Bell Residence)

FILE NUMBER: CDP 01-10/ SDP 01-27: 35405 Beach Road

ATTACHMENT 2

Nearby Sites with Lateral Access OROs

Exhibit 8
p. 1 of 2

A-5-DPT-01-336 (Bell)

Beach Road Lateral Access OTDs Required by Coastal Commission-granted CDPs

PermitNumber	ApplicantName	Street#	StreetName	AcceptanceDate	RecordationDate	AcceptedManaged	BasicStatus
A-77-367	Becker, Donald	35077	Beach Road		5/25/1977		DR recorded
P-77-389	Wible & Keysor	35097	Beach Road		6/1/1977		DR recorded
P-76-8620	Woodard, Stewart	35105 & 35107	Beach Road				DR NOT recorded
P-78-3760	Herrmann, Morton & Linda	35107	Beach Road				DR NOT recorded
P-76-9077	Hales, John	35111	Beach Road				DR NOT recorded
SF-79-5105	Miller, Earl	35129	Beach Road		5/1/1979		DR recorded
5-82-243	Bennett, Richard	35135	Beach Road		11/8/1983		accepted
P-80-7387	Prietto, Pablo	35155	Beach Road	8/26/1996	3/6/1981	Orange County	Offer Accepted
5-82-417	Cumins, Mr & Mrs Robert	35185	Beach Road	8/26/1996	10/14/1982	Orange County	Offer Accepted
P-77-2227	Crowell, James	35197	Beach Road		1/24/1978		DR recorded
5-82-483	Four "K" Investment	35251	Beach Road		5/23/1983		accepted
A-79-4802	Phelan, Mervin	35361	Beach Road		6/8/1979		DR recorded
5-86-689	Gregory, George & Barbara	35391	Beach Road	12/20/1988	11/18/1986	Orange County	Offer Accepted
P-76-8018	Trindle	35395	Beach Road		9/2/1976		DR recorded
5-89-659	Walters, William & Ardis	35465	Beach Road		11/13/1989		accepted
5-85-864	Hoffman, Walter	35525	Beach Road		1/13/1987		accepted
P-75-6445	Clark, G	35537	Beach Road		1/9/1976		DR recorded
A-81-7607	McDonough, Robert	35557	Beach Road	8/26/1996	5/8/1981	Orange County	Offer Accepted
P-80-6987	Hoose, Charles	35565	Beach Road	8/26/1996	10/6/1980	Orange County	Offer Accepted
5-83-862	Siracusa, Louis	35571	Beach Road	5/31/1989	6/28/1984	Orange County	Offer Accepted
P-75-5329	Siracusa, Louis	35571	Beach Road		9/8/1975		DR recorded
SF-80-6932	Partridge, Jo	35615	Beach Road	8/26/1996	10/10/1980	Orange County	Offer Accepted
5-84-753	Randol, Howard & Betty	35655	Beach Road		5/7/1985		accepted
5-84-840	Jahnke, Mr & Mrs Fred	35671	Beach Road		6/27/1985		accepted
5-86-359	Austin, Henry	35685	Beach Road		10/29/1986		accepted
5-86-904	Hipp, William & Karen	35687	Beach Road		2/3/1987		accepted
P-80-6789	Schanche, Arthur & Mary Lou	35691	Beach Road	8/26/1996	1/12/1981	Orange County	Offer Accepted
A-79-4841	Johnson	35705	Beach Road				DR NOT recorded
P-75-5677	Thomas	35730	Beach Road	8/26/1996	4/28/1981	Orange County	Offer Accepted
5-84-009	Short & Bullock	35735	Beach Road	12/29/1988	4/2/1985	Orange County	Offer Accepted
SF-79-4889	Wootan, Wolford	35771	Beach Road		5/2/1979		DR recorded
SF-80-7370	Colby, Fred & Daisy	35777	Beach Road	8/26/1996	2/27/1981	Orange County	Offer Accepted
5-82-182	Anzel, Sanford	35791	Beach Road	8/26/1996	11/5/1982	Orange County	Offer Accepted
P-75-5259	Parker, William	35837	Beach Road		10/28/1975		DR recorded
P-76-9284	Gray	35841	Beach Road		1/7/1977		DR recorded
P-78-3684	Higson, James	35851	Beach Road		9/15/1978		DR recorded
5-86-489	Bryan, Greyson	35857	Beach Road		10/31/1986		accepted

Exhibit 8
Page 2

RUTAN & TUCKER

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
 611 ANTON BOULEVARD FOURTEENTH FLOOR
 COSTA MESA CALIFORNIA 92626-1971
 GIVE US A CALL TO POST OFFICE BOX 1950
 COSTA MESA CALIFORNIA 92626-1950
 TELEPHONE 714-441-3100 FACSIMILE 714-540-9035
 INTERNET ADDRESS WWW.RUTAN.COM

Direct Dial (714) 641-3488
 E-mail: jgoldfarb@rutan.com

July 17, 2001

Chairman and Honorable Members
 of the Planning Commission
 City of Dana Point
 33282 Golden Lantern, Suite 210
 Dana Point, CA 92629

Re: CDP 01-10/Site Development Permit SDP 01-27

Dear Chairman and Honorable Members of the Planning Commission:

Rutan & Tucker, LLP represents Kirk A. Bell, trustee of the Garnet C. Bryan and Mary Bryan an A-B Exempt Trust U/D/T dated May 17, 1973, the owner of the property on whose behalf Coastal Development Permit CDP 01-10 and Site Development Permit SDP 01-27 have been filed. On behalf of Mr. Bell, we would like to express our agreement with the staff's conclusions and our appreciation to the Dana Point Community Development staff in its processing of this application. While we agree with the staff's conclusion, we feel compelled to provide some additional information which further supports the staff's conclusion that, given the facts of this particular case, it would be inappropriate (and unconstitutional) to impose a lateral public access dedication requirement as a condition to Mr. Bell's permit approvals.

Dana Point Municipal Code Section 9.27.030 only requires a property owner to dedicate a lateral public access easement if it can be determined that the proposed development (in this case, the redevelopment of Mr. Bell's previously existing home) adversely affects the ability of the public to reach and use public tidelands and coastal resources located on his or her property. As previously noted, we concur with the staff's unequivocal conclusion that the Mr. Bell's redevelopment of his existing home does not adversely affect the ability of the public to reach and use public tidelands and/or coastal resources located on Mr. Bell's property. We wish, however, to both amplify upon and supplement the staff's analysis supporting this conclusion

In *Nollan v. California Coastal Commission* (1987) 107 S.Ct. 3141, the United States Supreme Court considered whether the California Coastal Commission violated a property owner's Fifth Amendment rights by forcing a property owner to dedicate a lateral public access easement in exchange for issuing to the property owner a coastal development permit to

2001022-0002
 20010717.01

Agenda Item #3

- DISTRIBUTION:**
- _____ CARLTON
 - _____ DEVLIN
 - _____ GOODKIND
 - _____ LACY
 - _____ SCHOEFFEL
 - _____ KNIGHT
 - _____ STAFF *SP*
 - _____ PLNG SECY
 - _____ ATTORNEY
 - _____ PUBLIC/PRESS
 - _____ OTHERS
 - _____ FFF
- COMPLETED 7-18 BY *PD*

COASTAL COMMISSION
 A-5-DPT-01-336

EXHIBIT # 9
 PAGE 1 OF 4

July 17, 2001
Page 2

redevelop his existing beach home. In analyzing the case, the Supreme Court established the rule that a requirement to dedicate a lateral public access easement can only be imposed if there is a "nexus" or "close relationship" between the need for the public access easement and the project being approved. Applying the rule to the *Nollan* case, the Supreme Court concluded that the obligation to dedicate a lateral access easement would constitute a taking unless the reconstruction of Mr. Nollan's house somehow interfered with pre-existing public access to the shoreline, and thus necessitated the dedication of an easement to correct the problem. In the *Nollan* case, the Court found no such nexus existed because the redevelopment of Mr. Nollan's home did not in any way interfere with public access to the public tidelands or coastal resources.

In the present case, staff has correctly concluded that no such nexus exists between the Project (redevelopment of Mr. Bell's home) and public access to the public tidelands or coastal resources. This is because the Project has absolutely no impact on public access to public tidelands or coastal resources. The public has an existing lateral access easement on and below the mean high tide line across Mr. Bell's property (the "Public Trust Easement"). As the staff report correctly notes, the Project is at least 88 feet inland of the mean high tide line. Accordingly, the Project will not in any way interfere with existing public access to public tidelands or coastal resources. Moreover, because Mr. Bell's property is located on a private beach, there has been no public access above the Public Trust Easement with which to interfere since at least the early 1920's. Because there has been no public access above the Public Trust Easement, and because Mr. Bell's Project does not in any way affect the Public Trust Easement, the Project has absolutely no impact on the public access to reach and use the public tidelands and/or coastal resources. Accordingly, as Mr. Bell's Project does not interfere with beach access, there is no beach access impact to redress through the dedication of a public access easement. Staff is therefore correct in its conclusion that requiring such a public access easement, given the individualized facts in the present case, would constitute an unconstitutional taking of Mr. Bell's property.

It is also relevant to note that requiring a dedication of an additional easement would not in any way provide for additional public access, and thus would not serve any governmental purpose. The public can only access coastal resources on or adjacent to Mr. Bell's property by using the existing Public Trust Easement. This is because Mr. Bell's property is separated from the closest public roadway (Pacific Coast Highway) by the railroad tracks and right-of-way which pre-existed the development of the Beach Road community and is currently operated by the Orange County Transportation Authority, a six foot high safety barrier adjoining the railroad tracks, and a private road. Mr. Bell does not own any of these improvements and therefore lacks the legal ability to grant to the public the right to traverse any of these improvements. As a result, requiring Mr. Bell to dedicate a lateral public access easement would not enhance public access to the public tidelands or coastal resources because the only way the public could reach the lateral access easement would be across the existing easement on public trust land. Therefore, in those extremely rare situations when the highest of the high tides inundates that

COASTAL COMMISSION
01-336

EXHIBIT # 9
PAGE 2 OF 4

July 17, 2001
Page 3

Public Trust Easement, the public would equally be unable to reach any additional lateral public access easement dedicated by Mr. Bell.

Although not specifically noted in the staff report, it is worth noting that the above individualized facts also preclude requiring Mr. Bell from dedicating a *vertical* public access easement (an access easement extending from the closest public street down to the Public Trust Easement). Section 9.27.030 specifically exempts coastal development from the requirement to provide vertical access easements when such access is inconsistent with public safety, or when such access will not alleviate the access burdens created by the project. As previously noted, Mr. Bell property is separated from the nearest public street by the railroad tracks and right-of-way currently operated by the Orange County Transportation Authority, a six foot high safety barrier adjoining the railroad tracks, and a private road. Accordingly, access to any vertical easement on Mr. Bell's property would require the public to trespass across railroad tracks frequently used by both freight and passenger train services. Once they have darted across the train tracks, they would then have to scale a six foot cinder block safety barrier. Assuming they have not been hit by one of the many trains using the tracks or otherwise injured themselves by falling off the safety wall, they would then have to trespass a third time by crossing the private street abutting Mr. Bell's property. Only once the public has thrice violated the State's trespass laws and successfully navigated this labyrinth could they obtain access to a vertical access easement. Given both the safety factors involved and the fact that the law would absolutely forbid the public's use of the vertical access easement, Mr. Bell's property squarely falls within the exemption from the dedication requirement by Section 9.27.030.

Finally, although unnecessary for the legal analysis associated with any proposed lateral access easement, staff is nonetheless correct in its assertion that lateral public beach access does exist on the public trust portion of Mr. Bell's lot (oceanward of the mean high tide line) and that Mr. Bell's Project does not, in any way, interfere with that access. Mr. Bell's property is located on Capistrano Bay Beach, a 1½ mile private beach between the public beach at Capistrano Beach Park and the public beach at Poche Beach. As a result, should any member of the public desire to walk 1½ miles in the sand from Capistrano Beach to Poche Beach (or vice versa) they can do so under most conditions on the existing lateral public access easement provided through the public trust doctrine.

COASTAL COMMISSION
01-336

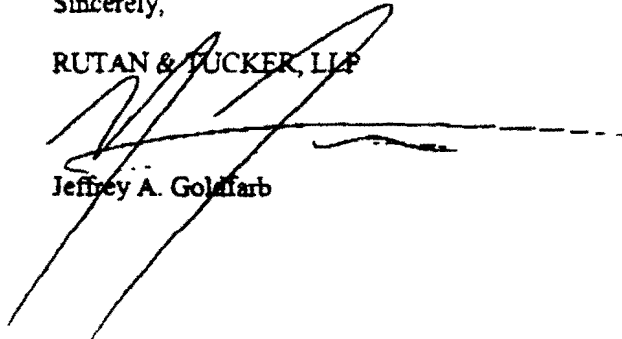
EXHIBIT # 9
PAGE 3 OF 4

July 17, 2001
Page 4

Please feel free to call me should you have any questions.

Sincerely,

RUTAN & TUCKER, LLP



Jeffrey A. Goldfarb

cc: Kirk A. Bell

COASTAL COMMISSION
01-335

EXHIBIT # 9
PAGE 4 OF 4

