

**CALIFORNIA COASTAL COMMISSION**

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Staff Report: October 17, 2002  
Hearing Date: November 5-8, 2002  
Commission Action: No Substantial Issue

**TU17a**  
**TU17b**

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**STAFF REPORT: REVISED FINDINGS**

**APPLICATION NUMBER:** A-5-DPT-02-057 and A-5-DPT-02-100

**APPLICANT:** Dr. and Mrs. Lewis Bruggeman

**PROJECT LOCATION:** 34525 Scenic Drive, City of Dana Point, Orange County

**PROJECT DESCRIPTION:** Construction of an 8,620 square foot single family dwelling with an attached 1,125 square foot 4-car garage and basement including retention of a portion of the dwelling that currently encroaches into the bluff top setback; construction of retaining walls that will exceed the permitted 30 inches in height; construction of combination retaining/windscreen walls to exceed the permitted 6 feet in height; construction of right-of-way improvements including a new cul-de-sac, curb and gutter; and implementation of a fuel modification program for fire safety purposes.

**DATE OF COMMISSION ACTION:** July 8, 2002

**COMMISSIONERS ON PREVAILING SIDE:** Commissioners Burke, Dettloff, Hart, McClain-Hill, Peters, and Potter.

**SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends that the Commission adopt the following revised findings in support of the Commission's action of July 8, 2002 which was to find that the subject appeals (A-5-DPT-02-057 and A-5-DPT-02-100) raised **NO** Substantial Issue with respect to the grounds on which they were appealed. Consequently, the decisions of the City of Dana Point (City) in approving local CDP 01-11 and its amendment stand. The motions to carry out the staff recommendation begin on Page 4.

The City's decision on local CDP 01-11 was appealed by two Commissioners because the locally approved development potentially raised issues of consistency with the City of Dana Point Local Coastal Program. The project approved by the City of Dana Point (City)

is the substantial demolition<sup>828)</sup> of an existing house and construction of a "new" house upon a bluff top lot located on the Headlands. The Headlands is an approximate 120+ acre coastal promontory, portions of which constitute environmentally sensitive habitat, and is a significant landmark that gives the promontory its name. The Headland bluffs, which are approximately 200 feet high at the project location, are visible for several miles up and down the coast. The project site is between the first public road and the sea.

The project, as approved by the City, involved: (1) the retention of the nonconforming portion of the house that encroaches into the twenty-five (25) foot bluff top setback required by the City's LCP for new development, (2) development, based on the approval, could have been sited and designed in a manner that would avoid significant adverse impacts to an adjacent environmentally sensitive habitat area, based on a required fuel modification plan, and (3) development that potentially frustrated the dedication of a usable public access easement.

The standard of review for this appeal is the Dana Point Local Coastal Program and the public access policies of the Coastal Act. Consequently, the major issues before the Commission were:

- 1). Does the substantial demolition (87%) of the existing residence require that the Commission treat the entire structure (both the remaining 13% and the proposed addition) as "new" development, so as to mandate that the nonconforming portion be removed?
- 2). Has the proposed development been sited and designed to be compatible with the adjacent environmentally sensitive habitat area?
- 3). Did the City of Dana Point, through its conditions attached to the CDP, appropriately condition the development to provide a usable public access easement?

On the June 20, 2002 staff report, Commission staff had recommended that the Commission find substantial issue on concerns #1 and #2 above, and that the Commission find no substantial issue on concern #3 relative to public access. At the July 8, 2002 Commission meeting, the Commission found no substantial on all three points.

In terms of concern #1, the Commission found, at its July 8, 2002 meeting, that the City's LCP permitted the retention of the nonconforming portion of the existing structure. In addition, in this case, the Commission found that the addition to the nonconforming portion would not increase or expand the area or amount of nonconformity. Though the Commission concluded that the proposed development was consistent with the City's certified LCP, the retention of nonconforming development in hazardous areas is a growing concern statewide. To resolve the issue of perpetuating nonconforming development in hazardous areas, the Commission recommended that the specifics of defining when and how nonconforming development would be corrected be determined through the LCP process. Based on the City's certified LCP, the Commission concluded that the proposed

development did not raise a substantial issue with the City's LCP. The findings for concern #1 have been revised (beginning with the third paragraph on Page 10 and ending with the second paragraph on Page 11) to reflect the Commission's decision.

In terms of concern #2, the Commission found that even though the City's conditions of approval referenced the submission of a future fire management plan, the subsequent submission of information by the City to the Commission (including the City's testimony before the Commission) demonstrated that the applicant had complied with the City's conditions of approval prior to the City's action on CDP 01-11. This information confirmed to the Commission that the proposed development had been sited and designed to minimize adverse impacts to adjacent ESHA areas consistent with the City's LCP. Therefore, the Commission concluded that development as approved by the City did not raise a substantial issue with the City's LCP. The findings for concern #2 have been revised (beginning with the second paragraph on Page 13 and ending with the second paragraph on Page 15) to reflect the Commission's decision.

This staff report is a consolidated set of revised findings for both appeals. Based on the Commission finding of no substantial issue, the City's decisions on local CDP 01-11 and its amendment stand.

**SUBSTANTIVE FILE DOCUMENTS:**

- City of Dana Point Local Coastal Program (LCP)
- City of Dana Point file for City coastal development permit CDP01-11
- Draft Environmental Impact Report, Volume 1, Headlands Development and Conservation Plan, Dana Point, California (SCH#2001071015)
- Commission appeal A-6-LJS-99-160 (Summit Resources, L.P.)
- Commission CDP 5-01-240 (De La Pena)
- Commission CDP 5-99-376-A1 (Langley)

**LIST OF EXHIBITS:**

1. Location Map
2. Proposed Headlands Land Use Plan
3. Existing LCP Land Use Plan
4. Footprint of Existing Residence
5. Site Plan of Project as Approved by the City
6. Fuel Modification Plan
7. U.S. Fish and Wildlife Service Letter, January 16, 2002
8. Orange County Fire Authority letter of May 21, 2002
9. Department of Fish and Game letter of June 4, 2002

## STAFF RECOMMENDATION:

### A. MOTION #1

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

**MOTION #1:**     *"I move that the Commission adopt the revised findings in support of the Commission's action of July 8, 2002 in finding that appeal A-5-DPT-02-057 raised NO substantial issue."*

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the July 8, 2002 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

### **RESOLUTION TO ADOPT REVISED FINDINGS:**

The Commission hereby adopts the findings set forth below for a finding of NO substantial issue on appeal A-5-DPT-02-057 on the grounds that the findings support the Commission's decision made on July 8, 2000 and accurately reflect the reasons for it.

### B. MOTION #2

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

**MOTION #2:**     *"I move that the Commission adopt the revised findings in support of the Commission's action of July 8, 2002 in finding that appeal A-5-DPT-02-100 raised NO substantial issue."*

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the July 8, 2002 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

**RESOLUTION TO ADOPT REVISED FINDINGS:**

The Commission hereby adopts the findings set forth below for a finding of NO substantial issue on appeal A-5-DPT-02-100 on the grounds that the findings support the Commission's decision made on July 8, 2000 and accurately reflect

**I. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

**A. LOCAL GOVERNMENT ACTION**

**CDP No. 01-11**

On January 16, 2002, 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. 02-01-15-05, which approved with conditions local Coastal Development Permit CDP No. 01-11 and Site Development Plan SDP 01-81, Variance V01-22, and Conditional Use Permit CUP 01-35 *"...to permit the construction of an 8,620 square foot single family dwelling with an attached 1,125 square foot 4-car garage and basement. A site development permit is requested to retain a portion of the dwelling that currently encroaches into the bluff top setback and retaining walls that will exceed the permitted 30 inches in height. A conditional use permit is requested to construct combination retaining/windscreen walls to exceed the permitted 6 feet in height. Also included in the proposed project is an alternative fuel modification and public right-of-way improvements that include a new cul-de-sac, curb and gutter."* The action by the Planning Commission was not appealed to the City Council. The local appeal process expired on January 31, 2002. The City's action was then final for purposes of local procedures, and the Commission received the City's Notice of Final Action on February 20, 2002. Two Coastal Commissioners filed an appeal on March 6, 2002 during the Coastal Commission's ten (10) working day appeal period. Although the City had received notice that the Commission's appeal period was running, the City was unaware of the Commission's pending appeal when it acted on an amendment to CDP 01-11 on February 20, 2002 as the appeal was not filed until March 6, 2002.

On February 20, 2002, the City of Dana Point Planning Commission held a public hearing on an amendment to the project as approved by the City on January 16, 2002. At the conclusion of the public hearing, the Planning Commission adopted Resolution No. 02-02-20-10. This resolution amended the conditions to local Coastal Development Permit CDP No. 01-11 and Site Development Plan SDP 01-81, Variance V01-22, and Conditional Use Permit CUP 01-35 to amend conditions principally relating to the type of construction material to be used for certain retaining walls plus other clarifying language. The affected conditions are #13, #18, #27, and #28. The action by the Planning Commission was not appealed to the City Council. The local appeal process expired on

March 7, 2002. The Commission on March 18, 2002 received the City's Notice of Final Action. The City's action was then final for purposes of local procedures, and two Coastal Commissioners filed an appeal during the Coastal Commission's ten (10) working day appeal period.

Analysis of both of these City actions and subsequent Commission appeals has been combined into this one staff report.

## **B. PROCEDURAL HISTORY OF APPEALS AND APPELLANTS' CONTENTIONS**

The Commission received a Notice Of Final Local Action on City CDP 01-11 on February 20, 2002. The Commission on March 18, 2002 received the Notice Of Final Action from the City of Dana Point for an amendment to CDP 01-11.

CDP 01-11, as initially adopted by the City, approved the partial demolition of an existing residence and construction of a new 8,620 sq. ft. single-family residence plus associated improvements. On March 6, 2002, within ten working days of receipt of the Notice Of Final Action and prior to learning of the City's amendment to its January 16, 2001 action, Commissioners Wan and Dettloff appealed the original local action on the grounds that the approved project did not conform to the requirements of the certified LCP. This appeal has been assigned Commission appeal number A-5-DPT-02-057.

On March 29, 2002, within ten working days of receipt of the Notice Of Final Action for the amendment, Commissioners Wan and Dettloff appealed that local action on the grounds that the approved project does not conform to the requirements of the certified LCP or with the public access policies of Chapter 3 of the Coastal Act. The appeal of CDP 01-11 as amended by the City of Dana Point has been assigned Commission appeal number A-5-DPT-02-100.

The appellants, in summary, raise the following three issues. First, they contend that the substantial demolition of eighty-seven percent of the existing structure (based on square footage) qualifies the proposed redevelopment as new development. Consequently, the existing nonconforming development that encroaches into the required bluff top setback should also be removed. Next, they argue that the proposed development is adjacent to environmentally sensitive habitat and requires a fuel modification plan. The City's Notice Of Final Action did not contain sufficient information to determine whether the fuel modification would or would not have an adverse effect on the adjacent environmentally sensitive habitat area. Consequently, based on the lack of information, they argue that the project as approved by the City raises a substantial issue regarding compliance with the LCP and warrants Commission review to evaluate the potential impact of the project to adversely affect ESHA areas. Finally, the project plans (Exhibit 5) do not identify a lateral public access easement for a potential bluff-top trail as required by condition #45 of the Planning Commission's resolution. Development identified by the site plan would obstruct the ability of the public to utilize this trail should it become available.

## **C. SUBSTANTIAL ISSUE ANALYSIS**

### **1. Project Location, Description And Background**

The subject site is located at 34525 Scenic Drive in the City of Dana Point, Orange County (Exhibits 1-3). The project site is located between the first public road and the sea. Of special note is the project site's location on a coastal bluff in an area commonly referred to as the Headlands. The Headlands is an approximate 120+ acre coastal promontory, portions of which constitute environmentally sensitive habitat, and is a significant landmark that gives the promontory its name. The Headland bluffs, which are approximately 200 feet high at the project location, are visible for several miles up and down the coast.

The local government's administrative record indicates that the proposed project is the construction of an 8,620 square foot single family dwelling with an attached 1,125 square foot 4-car garage and basement. A site development permit has been requested from the City to retain a portion of the dwelling that currently encroaches into the bluff top setback required by the City's LCP and for retaining walls that will exceed the permitted 30 inches in height. A conditional use permit has been requested from the City to construct combination retaining/windscreen walls to exceed the permitted 6 feet in height. Also included as part of the proposed project, as approved by the City, is the submission of a fuel modification plan and public right-of-way improvements that include a new cul-de-sac, curb and gutter.

### **2. 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 project site is within the original Orange County Dana Point LCP segment. The LCP for this area was adopted by the Commission in 1986. This document along with the Orange County Zoning Code as it existed at the time of certification constitutes the City's certified LCP at the project site.

### **3. Analysis of Consistency with Certified LCP and Public Access Policies of the Coastal Act**

Pursuant to Section 30603 of the Coastal Act, 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 appeals at issue raise both grounds. Thus, the

Commission must assess whether the appeals raise a substantial issue as to the project's consistency with the certified LCP or the access policies of the Coastal Act.

In making the substantial issue assessment, the Commission typically considers whether the appellants' contentions regarding the inconsistency of the local government action with the certified LCP or the Coastal Act 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 (A-5-LGB-98-141 (Trudeau)).

In the current appeal of the project as approved by the City, 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. First, the appellants state that the proposed development as approved by the City of Dana Point qualifies as new development and that the existing nonconforming structure, which encroaches into a required bluff top setback, should not have been allowed to remain. The applicant through two letters prepared by engineering consultants provided a response to the staff report of April 18, 2002 which was not acted on as the applicant requested a postponement. The issue of new development will be discussed in subsection "a." (Page 9).

Next, appellants contend that the fuel modification plan has potentially adverse impacts on adjacent ESHA areas, which requires further review, as the City's administrative record is unclear regarding this issue. The appeal was filed based on conditions #41 and #64 attached to the Notice Of Final Action, which implied that the fuel modification program approval from the Orange County Fire Authority would be subsequent to the issuance of the City's CDP. This would leave the potential that the fuel modification program could have an unevaluated impact through the City's CDP process on adjacent ESHA through the clearing of native vegetation to eliminate combustible materials adjacent to the residence. Since the filing of the appeals, the Commission has received the City's administrative record and a copy of the OCFA's approved fuel modification plan (Exhibit 6). Additionally, Commission staff met with OCFA on May 10, 2002 and received a letter from OCFA on May 28, 2002 (Exhibit 8). The Department of Fish and Game submitted comments on the fuel modification plan on June 6, 2002 (Exhibit 9). The effect of this most recent fuel modification information on the appeal will be discussed in subsection "b." (Page 11).

In the final assertion, appellants contend, based upon review of the administrative record submitted by the City on March 15, 2002, that the project involves a potential future adverse effect on public access. As approved by the City, condition #45 of the Planning Commission's resolution requires the irrevocable dedication of a public lateral access easement as required by the City's LCP. No such easement is identified on the site plans submitted for the development as approved by the City. Consequently, the ability to accept and use the public access easement would be obstructed. The analysis of the public access policies on the project as approved by the City will be discussed in subsection "c." (Page 15).



The application of the City's LCP policies on the project as approved by the City is evaluated below.

**a. Bluff Top Development**

The coastal bluffs of Dana Point are a natural scenic resource. Beautiful in themselves, the bluffs provide magnificent vistas of the ocean and shoreline. Understandably, these same qualities provide a tremendous incentive to develop bluff top property. Development on coastal bluffs, however, is inherently dangerous. Consequently, development must be set back from the bluff edge a sufficient distance to assure that it will not damage the structural integrity of the bluff or require that the development be protected through the use of protective devices. To address these concerns, the City's certified LCP for this area contains the following policies to guide development in hazardous areas.

Policy #18 of the Geologic Hazards Section states:

*In areas of new development, above ground structures will be setback a sufficient distance from the bluff edge to be safe from the threat of bluff erosion for a minimum of 50 years. The City will determine the required setback in order to make this determination.*

Moreover, the Headlands High Density Residential development standards section (D1g) of the LCP states:

*Rear setback: all structures shall be set back a minimum of 25 feet from the edge of the bluff.*

Policy #19 of the Geologic Hazards Section states:

*The setback area mentioned in Policy 18 will be dedicated as an open space easement as a condition of the approval of new development. Further setback requirements are specified in the Access Component.*

Policy #20 of the Geologic Hazards Section states:

*Within the required bluff top setback, drought-tolerant vegetation will be maintained. Grading, as may be required to establish proper drainage or to install landscaping, and minor improvements that do not impact public views or bluff stability, may be permitted.*

Section 7-9-151 of the Zoning Code states:

*A nonconforming building or structure which conforms as to use but which does not conform to the development standards for the district within which it is located, and which was not established in compliance with an approved variance or use variance, may be altered, added to or enlarged to the extent that such alteration, addition or enlargement complies with the applicable development standards for the district within which it is located and with all other applicable regulations and provided such alteration, addition or enlargement does not increase or expand the area or amount of nonconformity with the existing applicable district regulations.*

The development as approved by the City is the substantial demolition (87% based on square footage) of an existing 3,300 square foot pre-coastal residence that was built in approximately 1926 and the construction of an 8,620 square foot residence on a bluff top lot. The applicant is proposing to retain the seaward most portion of the existing residence, which is approximately 427 sq. ft. The portion of the residence to be retained is the portion that encroaches into the minimum 25 setback from the bluff edge. Consequently, one of the issues before the Commission is whether the proposed development as approved by the City qualifies as "new" development or as an "improvement" to an existing residence.

**"NEW" DEVELOPMENT VERSUS "IMPROVEMENTS" TO AN EXISTING STRUCTURE:**

The City of Dana Point agenda report of January 16, 2002 notes that the proposed development would retain the 427 sq. ft. of the existing residence that is within the required 25' bluff top setback. The City's agenda report states: *"This portion of the residence is considered non-conforming; however, if this area is retained in this manner, the City has permitted new structures to be built connecting to these areas so long as they are not entirely demolished and replaced."*

Section 7-9-151 of the Orange County Zoning Code would allow the nonconforming portion to be retained, and the new development to proceed around it, provided that such alteration, addition, or enlargement complies with all applicable development standards and other regulations and does not increase or expand the area or amount of nonconformity. Consequently, the first of several issues before the Commission is whether the development as approved by the City based on the City's LCP should be classified as an "improvement" to an existing structure, which would allow the encroachment to remain **OR** as "new" development, which would have mandated that the encroaching development be removed.

The City's certified LCP, unfortunately, does not specify at what point the extent of an "improvement" would qualify as "new" development. The Commission recognizes that only 427 sq. ft. of an existing 3,300 sq. ft. residence are to be retained. This amounts to demolition of 87% of the existing structure based on square footage. Realistically, this is not simply an "addition" to an existing structure, but the demolition and reconstruction of

an existing residence where the retention of the 427 sq. ft. is for the purpose of maintaining only the nonconforming development to maximize coastal views. The retention of only the nonconforming portion of a structure when a site is redeveloped has been a growing concern statewide since it would perpetuate nonconforming development in hazardous areas. Though this project would perpetuate 427 sq. ft. of nonconforming development, the Commission is bound by the standards of the City's certified LCP in making its decision. Section 7-9-151 of the Zoning Code, which is part of the City's certified LCP states that a nonconforming portion can remain and be supplemented provided, among other things, that the addition to it would *"not increase or expand the area or amount of nonconformity"*. In this case, the addition (to the nonconforming portion) is being constructed consistent with current setback standards and the footprint and height of the nonconforming portion is being left unchanged. In this case, as well, the Commission found that the addition did not increase or expand the area or amount of nonconformity based on the facts presented. Additionally, Section 7-9-151 of the Zoning Code does not contain any language explicitly limiting the duration that the nonconforming portion can remain.

Though Section 7-9-151 of the Zoning Code allows retention of the nonconforming portion of the existing structure, the Commission recognizes that perpetuating nonconforming development, anywhere in the coastal zone, is not desirable. The appropriate forum for defining the particulars of when to eliminate nonconforming development in certified areas of the coastal zone would be through the LCP amendment process. Allowing nonconforming uses which have reached the end of their economic life to continue indefinitely into the future would never resolve the nonconformity. Through the incorporation of standards which define the circumstances for when nonconforming development should be removed into an LCP, the perpetuation of nonconforming development in hazardous areas can be resolved. Based on the discussion above, the Commission finds that the development as approved by the City does NOT raise a substantial issue with the City's certified LCP within the meaning of Coastal Act Section 30625(b).

#### **b. The Siting and Design of Development Adjacent to an ESHA**

The project site is immediately adjacent to an area believed to constitute environmentally sensitive habitat area. The City's agenda report of January 16, 2002 notes that the subject property is next to a pocket mouse preserve on the Headlands property. The certified LCP notes the environmental importance of the Headlands area. Under the certified LCP 18.3 acres are designated as "Open Space" and 22.3 acres as "Conservation" to ensure protection of the remaining biotic communities. The relevant LCP policies for evaluating development adjacent to an ESHA area are cited below.

Policy #7 of LCP Resource Component states:

*Development adjacent to significant and sensitive natural areas should be designed to minimize human encroachment.*

Policy #13 of LCP Resource Component states:

*Development shall be prohibited in areas with high habitat value, except for uses dependent on such resources and shall not significantly disrupt habitat values of such areas. This policy applies only to areas designated as 5.41 (Conservation)*

The project site is immediately adjacent to an area designated as Conservation (5.41) (Exhibit 3). Section 7-9-118.3 of the Orange County Zoning Code, which is used as the LCP's implementation program, contains the definition for "development". Under the LCP the definition of "development" essentially duplicates Section 30106 of the Coastal Act and includes the removal of significant vegetation as meeting the definition of "development". Neither the Land Use Plan nor the Zoning Code contains a definition for "environmentally sensitive habitat area (ESHA)". Though the LCP lacks a formal definition for ESHA, the LCP acknowledges that the purpose and intent of the Conservation district (5.41 on the Land Use Plan) is to protect and preserve certain bluff areas in a natural state because of unique and sensitive environmental features. Furthermore, under the discussion of Environmentally Sensitive Habitat Areas, the LCP background narrative notes that "Environmentally sensitive habitat areas are defined as any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in the ecosystem and which could easily be disturbed or degraded by human activities and developments." The City's LCP background narrative then goes on to note that the Headlands area contains several rare plant species such as the Blochman's dudleya and contains remnants of coastal sage scrub community. The U.S. Fish and Wildlife service also notes that the project site borders the temporary preserve which supports two Federally listed species, the endangered Pacific Pocket Mouse and the California gnatcatcher. Additionally, the LCP notes that the purpose of the Open Space district (5.40 on the Land Use Plan) is to provide outdoor recreational opportunities while protecting notable natural resources. The project site is adjacent to areas designated as Open Space (5.4 on the Land Use Plan) and Conservation (5.41 on the Land Use Plan). Exhibit 3 shows the adjacent land use designations.

Development as defined by the City's LCP includes the removal of major vegetation. Fuel modification plans, when they involve the removal of major vegetation qualify as development subject to review through the coastal development review process. Consequently the interrelationship of the project to fuel modification must be evaluated to determine if the project has been designed to minimize adverse impacts on ESHA areas. Policy #13 of the Resource Component of the LCP states that development shall be prohibited in areas with high habitat value. Policy #7 states that development adjacent to environmentally sensitive areas should be designed to minimize human encroachment.

The implementation of these LCP policies is acknowledged in finding #8 of the local CDP, which states that the proposed development will be sited and designed to prevent adverse

impacts to environmentally sensitive habitat areas. The City's Notice of Final Action (dated February 11, 2002) identified that the project would be subject to a fuel modification program. The fuel modification plan could constitute development if it were result in the removal of sensitive vegetation, which could adversely impacts habitat values. A fuel modification plan that would have an adverse impact on habitat value would be inconsistent with Policies #7 and #13 of the LCP.

Additionally, Section 4291 of the Public Resources Code requires that a 30 foot minimum firebreak be provided around structures located in or adjoining any mountainous area, brush covered lands, or grass covered lands. Consequently, the proposed addition must be sited and designed so that any required firebreak would not adversely affect native vegetation. Section 4291(g) of the Public Resources Code, however, allows the development of regulations exempting structures with exteriors constructed entirely of nonflammable materials. Consequently, a review of the project plans would be essential for evaluating if the proposed development has been designed and sited to minimize impacts to adjacent ESHA.

A review of the City's findings and conditions of approval attached to the City's Notice of Final Action disclosed that the project as approved by the City was determined to be sited and designed to prevent adverse impacts to environmentally sensitive habitats and scenic resources located in adjacent parks and recreations areas and will provide an adequate buffer. Though the City's findings make the assertion that the project has been sited and designed to prevent adverse impacts to adjacent ESHA areas, Conditions #41 and #64 require that the Orange County Fire Authority (OCFA) approve a fuel modification plan. The implication of Conditions #41 and #64 is that the approval of a fuel modification plan by the Orange County Fire Authority would be occurring subsequent to the City's action approving the coastal development permit. This raises the possibility that the Orange County Fire Authority could require a fuel modification plan that has the potential for onsite and offsite removal of native vegetation that could be considered part of an ESHA without any additional City review under the coastal development permit process. Based on the limited information available in the City's Notice of Final Action, an appeal was filed by two Commissioners.

In response to the filing of this appeal, the City submitted its administrative record, which was received by the Commission on March 15, 2002. This administrative record addressed many of the concerns implied by the absence of detail in the City's Notice of Final Action. For example, the City's administrative record included two letters from the U.S. Fish and Wildlife Service concerning their review of the fuel modification plan, which had by then been submitted and approved. Additionally, the Commission received on April 12, 2002, a copy of the OCFA approved fuel modification plan (Exhibit 6).

In terms of the U.S. Fish and Wildlife Service letters, which evaluated the effects of the proposed fuel modification plan on the adjacent ESHA, the USFWS concluded that implementation of the fuel modification plan would not have a significant adverse impact. One letter is dated January 16, 2002 and is in response to a December 5, 2001 letter from the City. The other U.S. Fish and Wildlife Service letter is dated October 2, 2001.

The October 2, 2001 U.S. Fish and Wildlife Service letter is "obsolete" as the January 16, 2002 letter is most current. Both letters note that the project site borders the temporary preserve which supports two Federally listed species, the endangered Pacific Pocket Mouse and the California gnatcatcher. Both letters state that the *"fuel modification plan includes a proposal to remove vegetation within the Preserve."* Both letters go on to state that the fuel modification plan would involve the removal on the preserve of non-native vegetation, dead brush, and debris within fifty feet of the applicant's property. Following removal, the affected area would be replanted with native fire-resistant plants. This would impact approximately 0.14 acres of the preserve. The U.S. Fish and Wildlife letters conclude that if the Service's recommendations were followed, the fuel modification plan would not result in a take of the pocket mouse. The OCFA approved fuel modification plan substantially incorporated the recommendations of the U.S. Fish and Wildlife Service into the plan. To confirm the conclusions of the U.S. Fish and Wildlife Service, Commission staff requested a review by the California Department of Fish and Game. The Department of Fish and Game response was received on June 6, 2002 (Exhibit 9) and concurred with the findings of the U.S. Fish and Wildlife Service.

In terms of the fuel modification plan itself, the Orange County Fire Authority (OCFA) in approving a fuel modification plan, based on its "Fuel Modification Plans and Maintenance" brochure, typically requires the following. Zone A is typically 20' deep and involves, but is not limited to, the total removal of fire prone plants, pruning of foliage to reduce fuel loads, the use of "high moisture" plants, the removal of plant litter, and the use of irrigation. Zone B is typically a 50' deep irrigated zone, which is less restrictive than Zone A. Zones C & D combined are 100' deep and consist of thinned vegetation. Zones A through D, when combined constitute a fuel modification zone, which is approximately 170' deep.

Based on the project plans, the structure as approved by the City is approximately 33 feet from the Headlands property line, which implies the potential use of the Headlands ESHA to achieve the fuel modification plan objectives. Additionally, the project as approved by the City would be sited to within 8' of the bluff edge, which implies that fuel modification would have to be undertaken on the bluff face (Exhibit 5). Potentially this negates the findings of the City that the project has been sited and designed to prevent adverse impacts to adjacent ESHA areas.

To gain a better understanding of how fuel modification plans are approved by OCFA, Commission staff met with the OCFA on May 10, 2002. As a result of that meeting, OCFA mailed a letter (Exhibit 8) to Commission describing the agency's decision making process to the Commission. The OCFA approval was granted through their "Alternate Methods and Materials" procedures. The use of the "Alternate Methods and Materials" procedures allows the fuel modification requirements to be modified by OCFA based on the use on non-combustible construction and the fact that the project is not located within a "Special Fire Protection Area". Other factors considered by OCFA in their approval included: the presence of difficult terrain, the potential that clearance could result in erosion, and the necessity to minimize impacts to native vegetation.

Though the fuel modification plan has been approved by OCFA and reviewed by the Department of Fish and Game and found not to have an adverse impact, much of this information was derived through investigative work following the filing of the appeal and subsequent to the arrival of the City's administrative record.

What was before the Commission on July 8, 2002 was the determination of "Substantial Issue". The determination of "Substantial Issue", if such a determination is appropriate, is based on the analysis and findings of the City when it made its initial decision on January 16, 2002 and its amended decision on February 20, 2002. Though the City's conditions of approval were worded in the future tense, the City testified at the Commission hearing that the issues raised by the appeal were considered by the City at the time the City issued its coastal development permit on January 16, 2002. For example, approval of the fuel modification plan by OCFA occurred on December 13, 2001 and the U.S. Fish and Wildlife Service approval of the fuel modification plan is dated January 16, 2002. Additionally, in response to a request from Commission staff, the California Department of Fish and Game submitted its review of the proposed development's impact on ESHA on June 6, 2002 confirming that the fuel modification plan would not have an adverse impact. Based on the City's testimony at the hearing on July 8, 2002 and the City's administrative record which was received on March 15, 2002, the Commission finds that the City had appropriately evaluated the development's potential to affect adjacent ESHA areas consistent with the City's LCP at the time the City made its decisions of January 16, 2002 and February 20, 2002. Based on the discussion above, the Commission finds that the development as approved by the City does NOT raise a substantial issue with the City's certified LCP within the meaning of Coastal Act Section 30625(b).

**c. Public Lateral Access Dedication**

One of the basic goals of the Coastal Act is the maximization of public access to and along the coast to promote public recreational opportunities. For example, Section 30212 of the Coastal Act states that public access shall be provided in new development. The City's certified LCP recognizes the public access mandate and has incorporated policies to promote public access and recreational opportunities. These requirements have been incorporated into the City's LCP in a variety of ways. Policy #19 of the Environmental Hazards section requires that the setback area specified by Policy #18 of the Environmental Hazards section be dedicated as an open space easement. Policy #10 of the Public Access section requires that adequate provision for safe public access will be required for each development permit along the shoreline. Policy #18 of the Public Access section requires that the Headlands bluff edge be permanently available for the public as implemented by an open space management system. Policies #23 through #38 of the Public Access section promote the creation of a bluff top trail, portions of which would be on the Headlands.

Consistent with the public access policies of the Coastal Act and the City's LCP, the City through Condition #45 required that, in connection with this permit, that the Bruggeman's irrevocably offer a lateral public access easement for dedication to ensure implementation

of the bluff top trail system. Condition #45 requires that the easement be ten (10) feet wide and setback a sufficient distance from the bluff edge to assure safety from the threat of erosion for a period of fifty years. However, a review of the project site plans (Exhibit 5) does not disclose the presence of the easement required by Condition #45. Moreover, the project plans, as approved by the City, show development in the form of hardscape improvements that would obstruct the ability of the public to utilize such an easement should it be obtained (Exhibit 5). To be usable as an easement, the project plans must show the location of the easement and that it is clear of any obstructions.

As to why the site plan does not show a proposed public access easement, the administrative record is unclear. The City's agenda report for January 16, 2002 states *"The property owner is also required to enter into an Irrevocable Offer to Dedicate (IOD) an easement for connection to a public bluff-top trail in accordance with the currently adopted 1986 Dana point Local Coastal Program. It is anticipated that the Local Coastal Program Amendment currently under review by the Costal Commission will eliminate this requirement. Until that occurs, the IOD is required as a part of the current adopted LCP."* Since the City's LCP requires an offer of dedication and the City's permit through Condition #45 requires the IOD, the project plans must be consistent with the future, projected easement. Clearly, the project as approved by the City is inconsistent with the City's LCP since it would result in a public access dedication that would be very difficult to implement.

Though the City's action is clearly inconsistent with its LCP, the U.S. Supreme Court, in 1987 issued its *"Nollan v. California Coastal Commission"* decision, which precludes the exaction of a public access easement unless a nexus can be established. Under the nexus test a dedication for public access can only be imposed if it can be demonstrated that the proposed development would have an adverse impact on public access. Basically there has to be a reasonable relationship between the need for the public access dedication based on the adverse effects of the proposed development on public access. Though, the City's LCP requires that a public access dedication be made, the City's administrative record does not disclose that the proposed development would have an adverse impact on public access. The City's agenda report of January 16, 2001 notes that the project *"will not result in changes to public access and view ..."* The proposed project is the reconstruction of a single family dwelling, as such the use of the land will remain the same and there will be no change in the intensity of use of the site. Based on the lack of nexus for imposing a public access dedication, the Commission concludes that the City's action, though flawed, does **NOT** raise a substantial issue on the public access question.



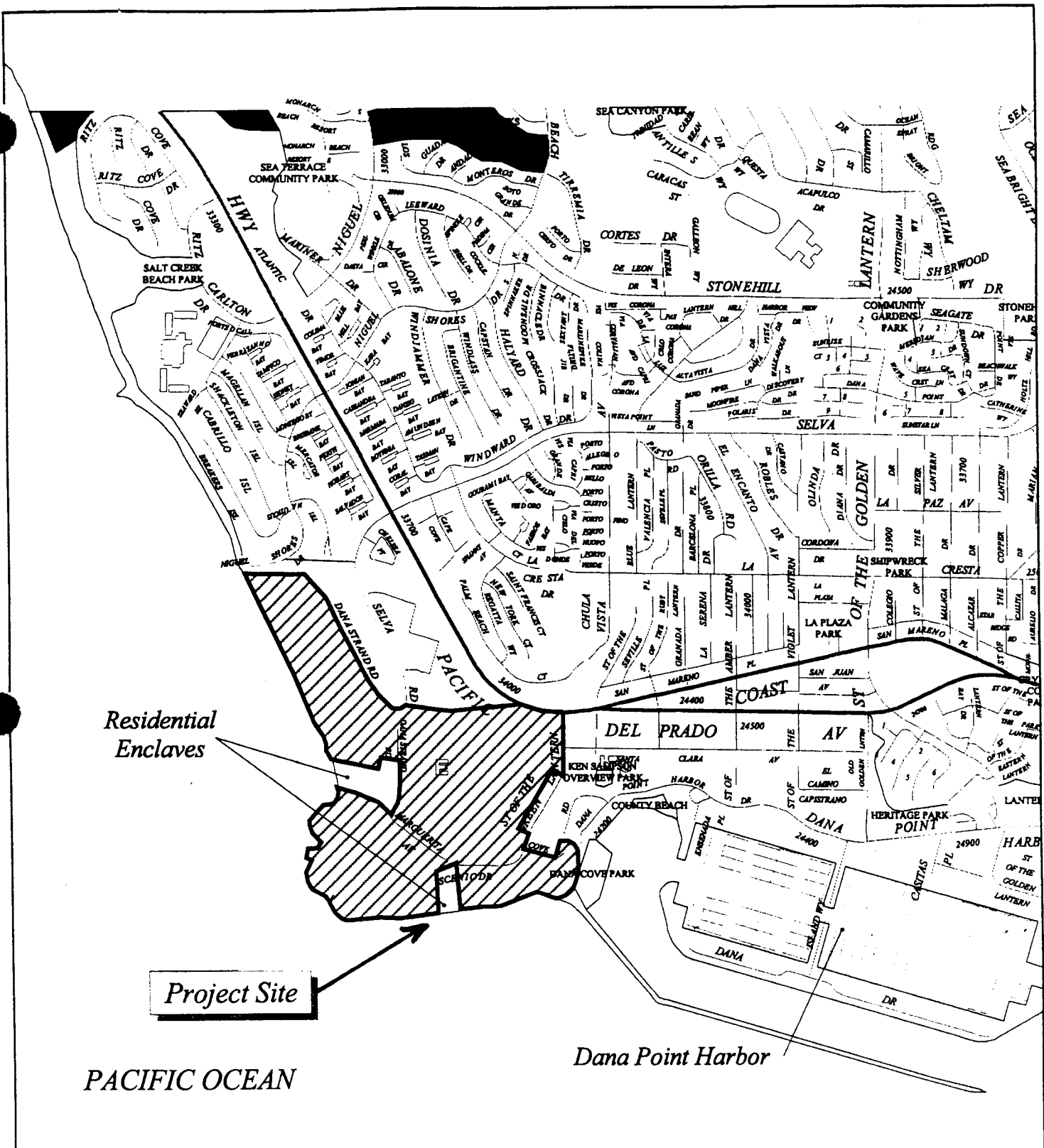
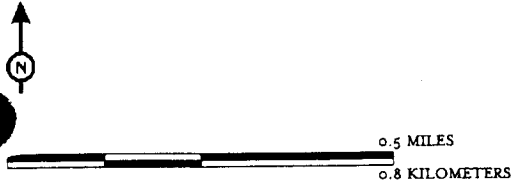


FIGURE 3.2

LSA



<b>EXHIBIT No. 1</b>
Application Number: <b>A-5-DPT-02-057</b>
<b>Location Map</b>
California Coastal Commission

HDCP EIR  
Local Vicinity

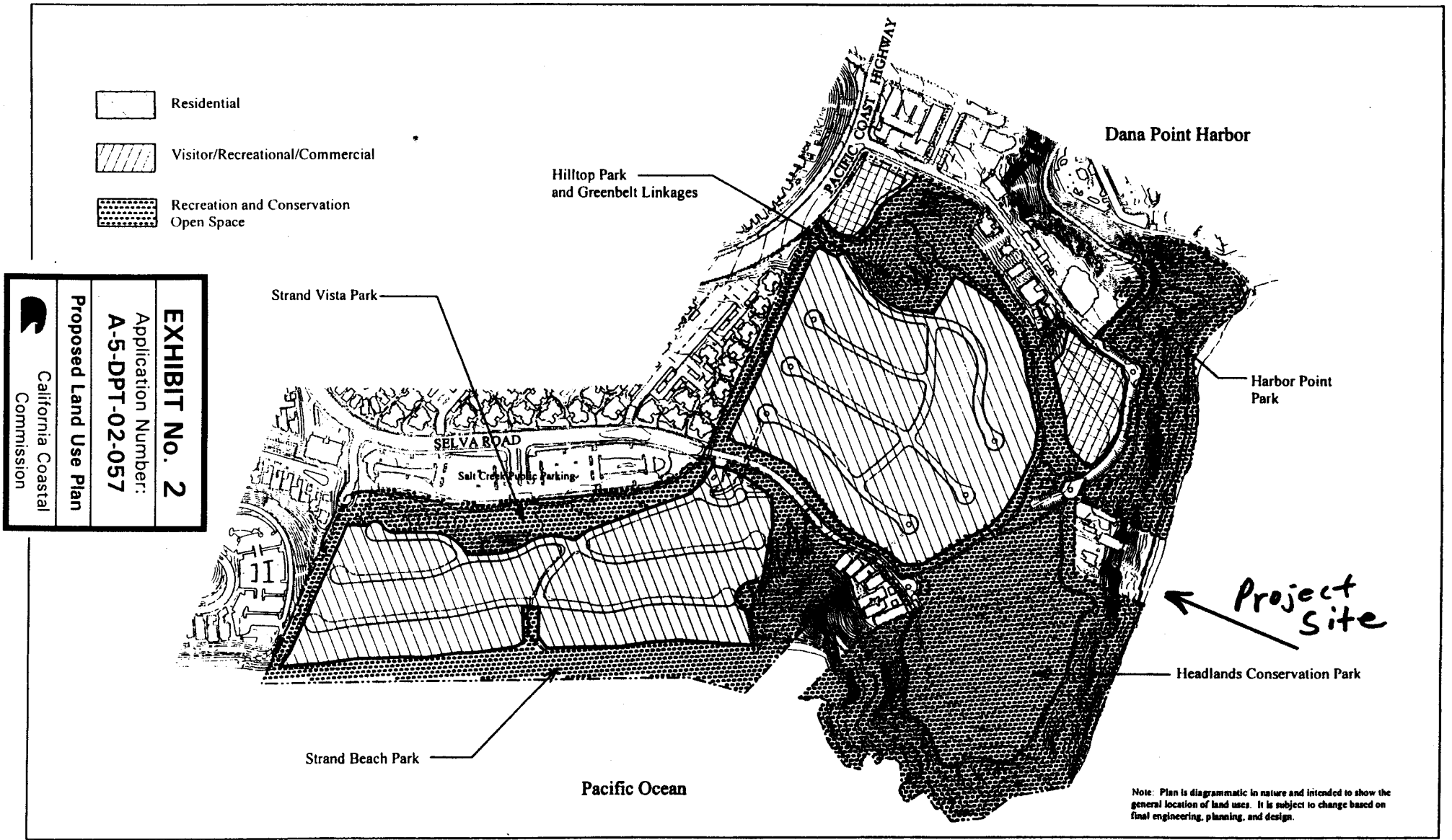
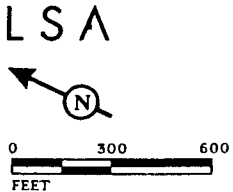
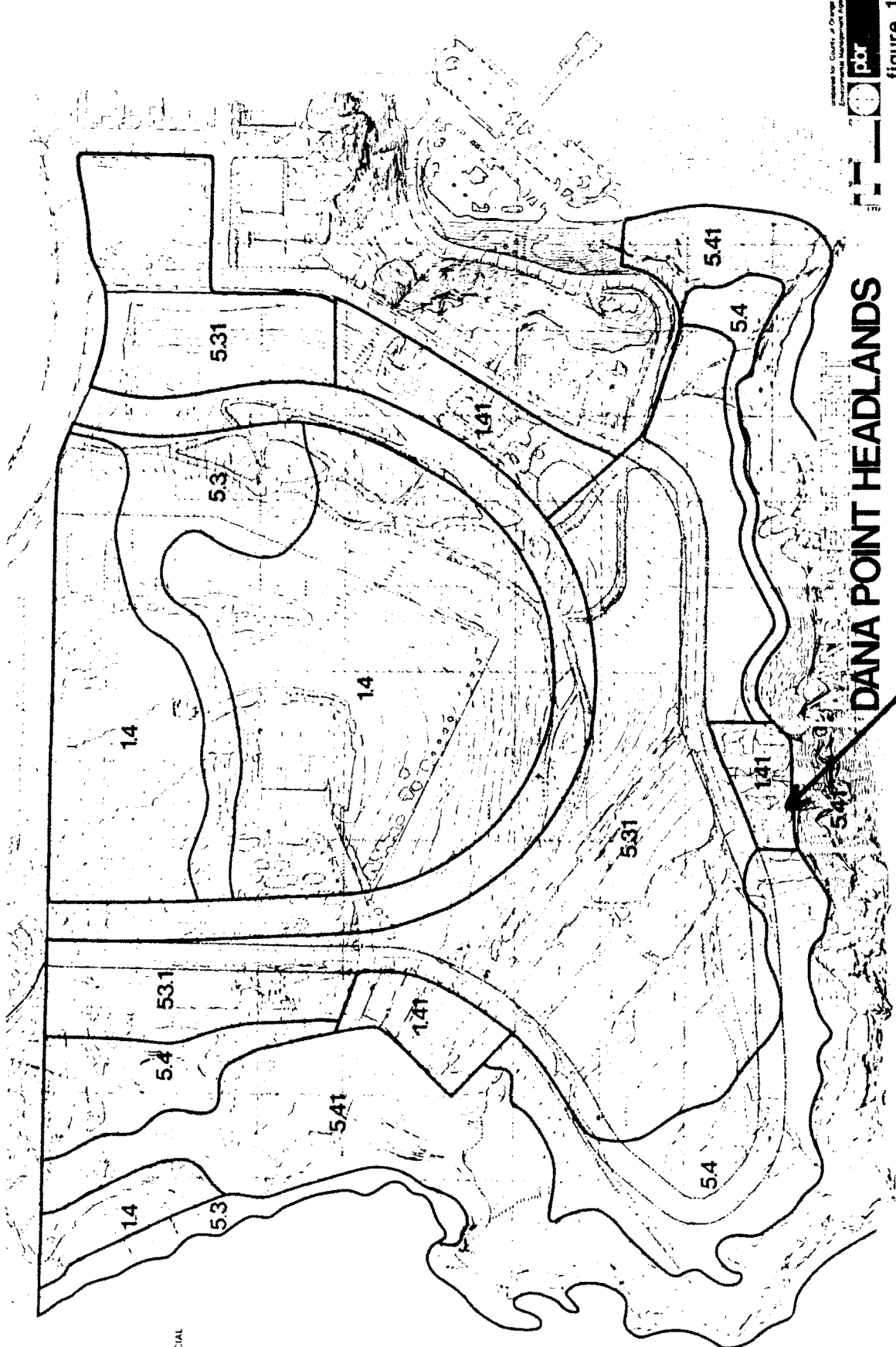


FIGURE 3.3

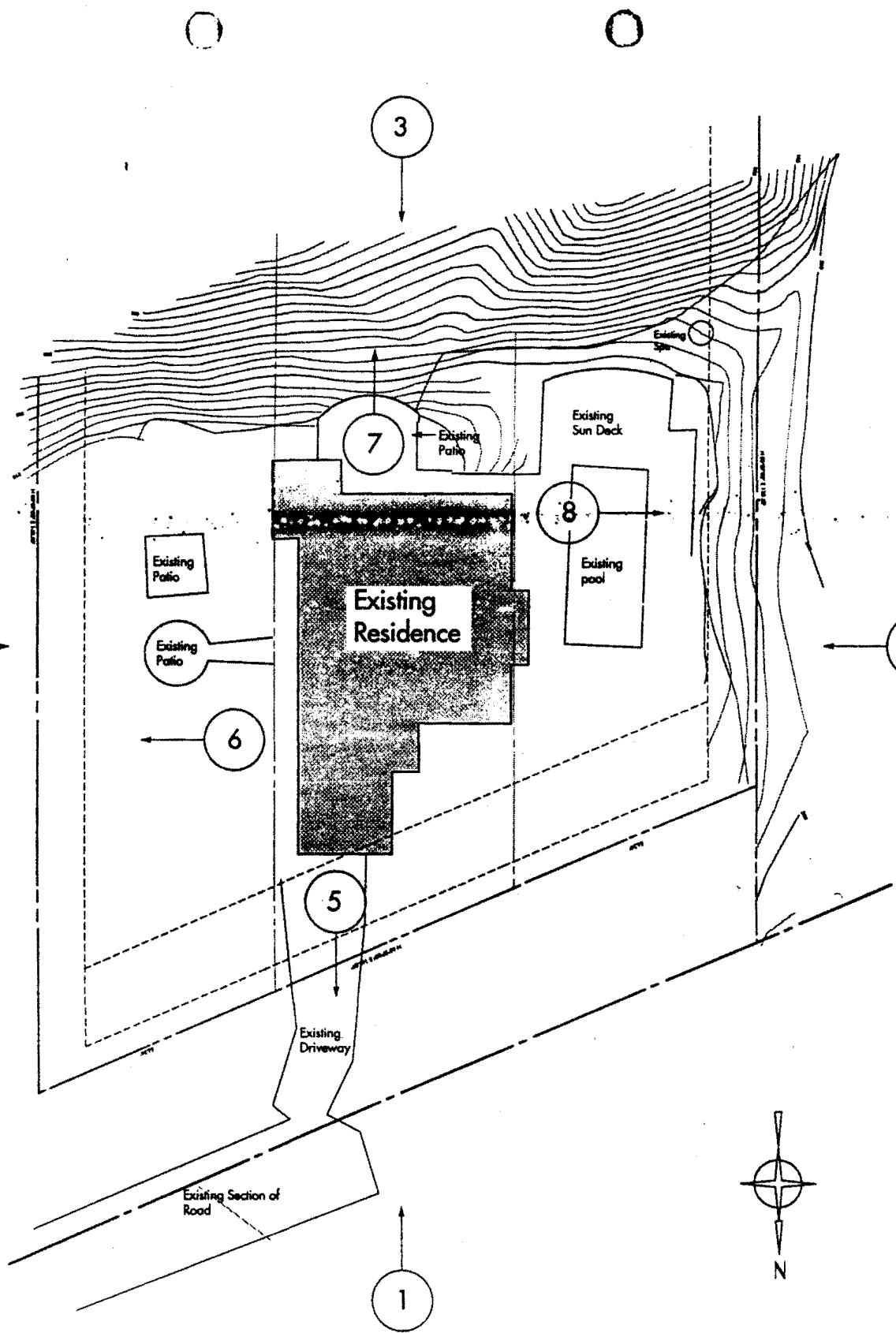


# Land Use Plan for the Headlands Area

- LAND USES**
- 1.4 HIGH DENSITY RESIDENTIAL
  - 1.41 HIGH DENSITY RESIDENTIAL
  - 5.3 RECREATIONAL
  - 5.31 TOURIST RECREATIONAL COMMERCIAL
  - 5.4 OTHER OPEN SPACE
  - 5.41 CONSERVATION



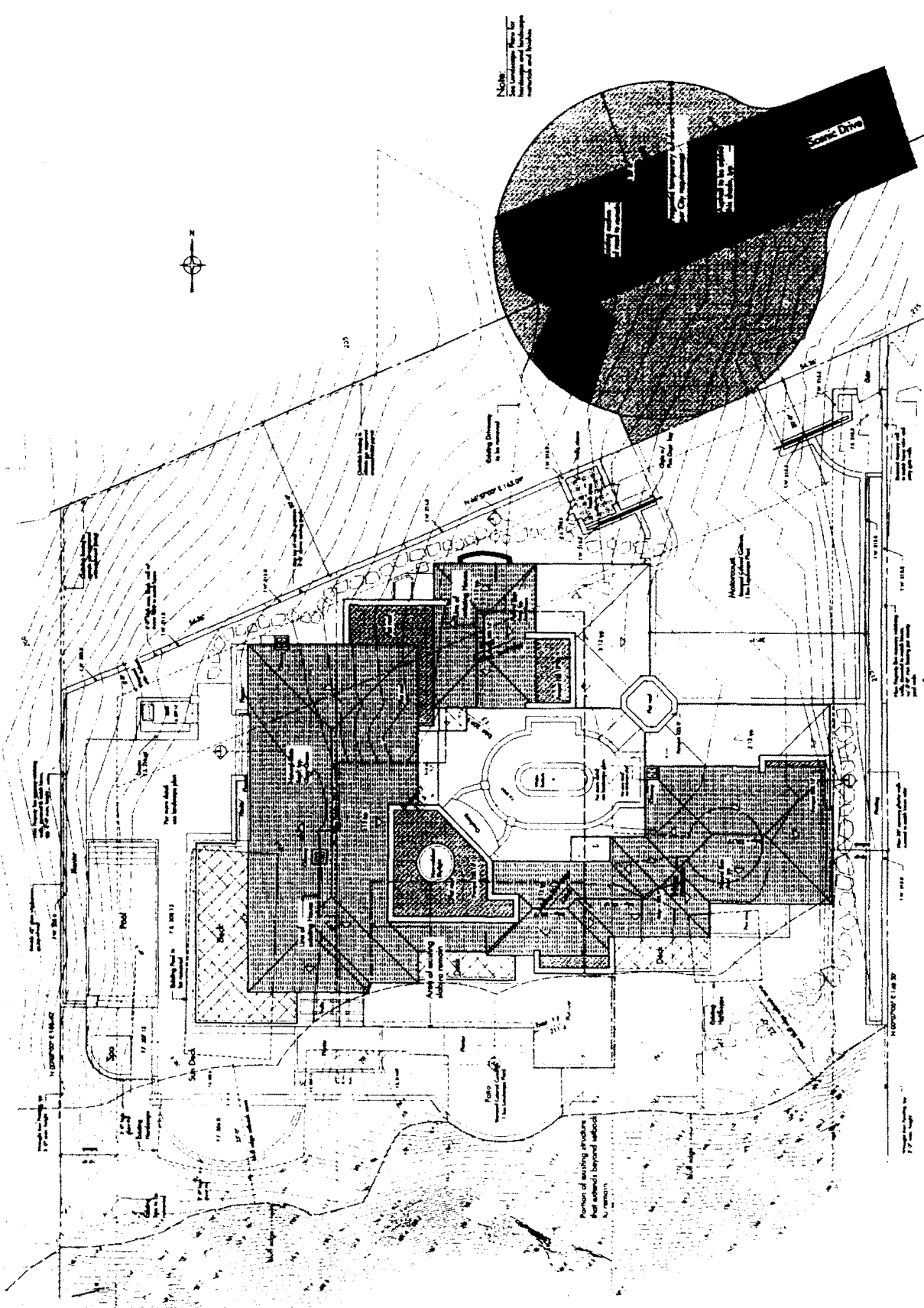
<b>EXHIBIT No. 3</b>
Application Number: <b>A-5-DPT-02-057</b>
<b>Existing Land Use Plan</b>
 California Coastal Commission



**Bruggeman Residence**  
 34525 Scenic Drive • Dana Point • California

Pl

<b>EXHIBIT No. 4</b>
Application Number: <b>A-5-DPT-02-057</b>
<b>Existing Footprint</b>
California Coastal Commission



Note:  
 See Landscape Plan for  
 the Location, Size, and  
 Materials of Landscaping  
 to be Installed.

Site / Roof Plan  
 January 4, 2012  
 Scale: 1/8" = 1'-0"

**Bruggeman Residence**

34525 Scenic Drive • Dana Point • California

<b>EXHIBIT No. 5</b>	
Application Number: <b>A-5-DPT-02-057</b>	
<b>Site Plan</b>	
	California Coastal Commission





RUCOGRAM REFERENCE  
34525 SCIENCE DRIVE  
DANA POINT, 92629

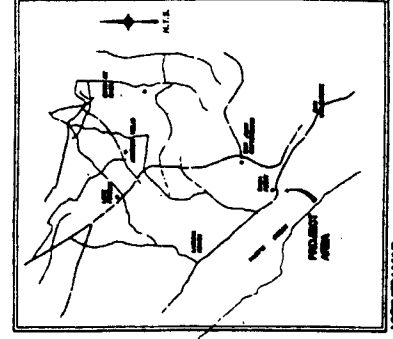
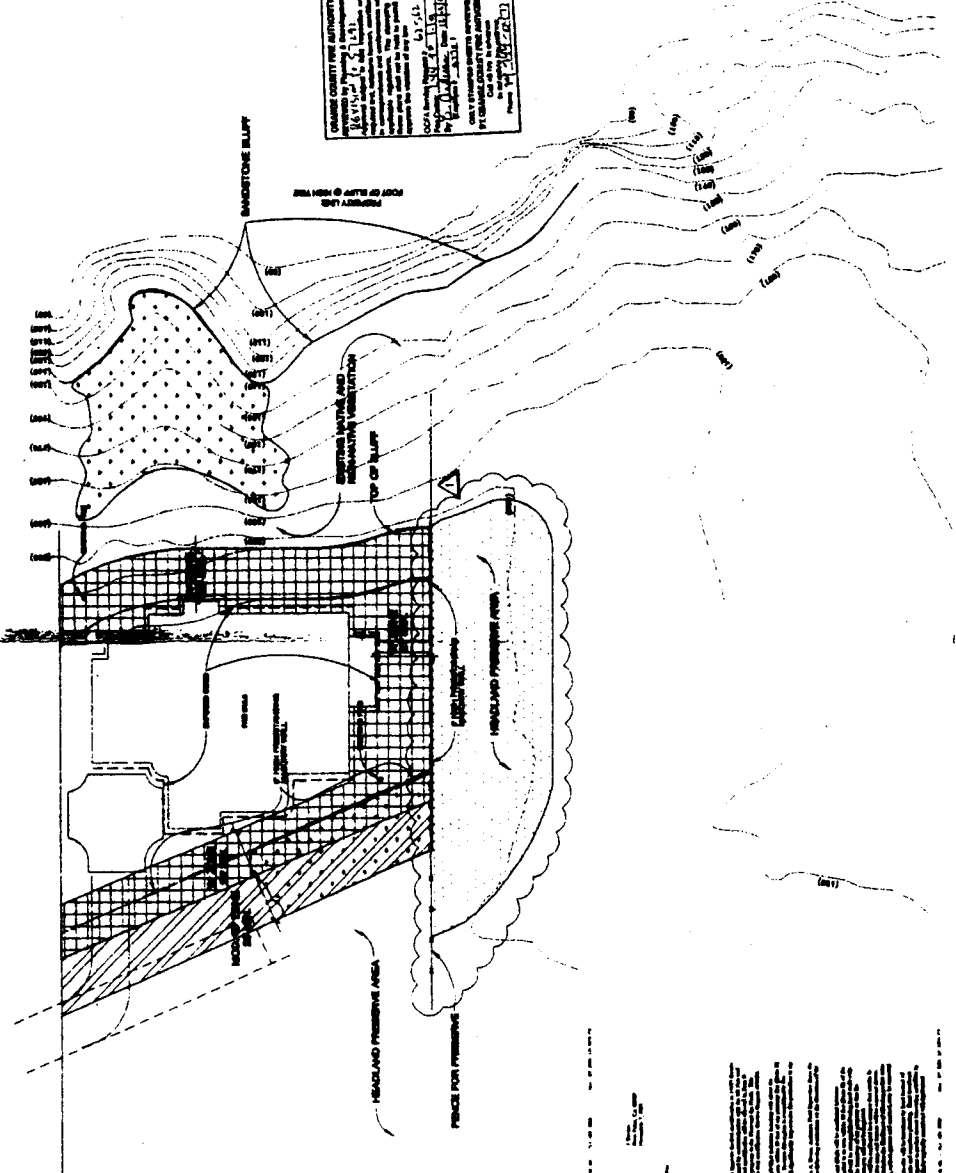
ALTERNATE MEANS AND METHODS  
FUEL MODIFICATION PLAN

1	Sheet 1 of 2
2	Sheet 2 of 2

**FUEL MODIFICATION LEGEND**

**JOB A. REMEDIATED LANDFILL/ADJACENT MARSHAL COMPLETION DATE MUST BE OF CHANGED TO NOT NON-COMPLIANT COMPLETION DATE. TO BE PROVIDED BY CONTRACTOR.**

**JOB B. FURNISHED BY CONTRACTOR REMEDIATION DISTRICT**  
 1. TO BE PROVIDED BY CONTRACTOR  
 2. TO BE PROVIDED BY CONTRACTOR  
 3. TO BE PROVIDED BY CONTRACTOR  
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 17. TO BE PROVIDED BY CONTRACTOR  
 18. TO BE PROVIDED BY CONTRACTOR  
 19. TO BE PROVIDED BY CONTRACTOR  
 20. TO BE PROVIDED BY CONTRACTOR



**EXHIBIT No. 6**

Application Number:  
**A-5-DPT-02-057**

Fuel Modification Plan  
Page 1 of 2

California Coastal Commission

PROJECT NUMBER: A-5-DPT-02-057  
 SHEET: 1 OF 2  
 DATE: 12/15/05  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]

1. The fuel modification plan shall be prepared in accordance with the requirements of the California Fuel Modification Act and the California Fuel Modification Regulations. The plan shall be prepared in accordance with the requirements of the California Fuel Modification Act and the California Fuel Modification Regulations.

2. The fuel modification plan shall be prepared in accordance with the requirements of the California Fuel Modification Act and the California Fuel Modification Regulations. The plan shall be prepared in accordance with the requirements of the California Fuel Modification Act and the California Fuel Modification Regulations.

3. The fuel modification plan shall be prepared in accordance with the requirements of the California Fuel Modification Act and the California Fuel Modification Regulations. The plan shall be prepared in accordance with the requirements of the California Fuel Modification Act and the California Fuel Modification Regulations.

4. The fuel modification plan shall be prepared in accordance with the requirements of the California Fuel Modification Act and the California Fuel Modification Regulations. The plan shall be prepared in accordance with the requirements of the California Fuel Modification Act and the California Fuel Modification Regulations.



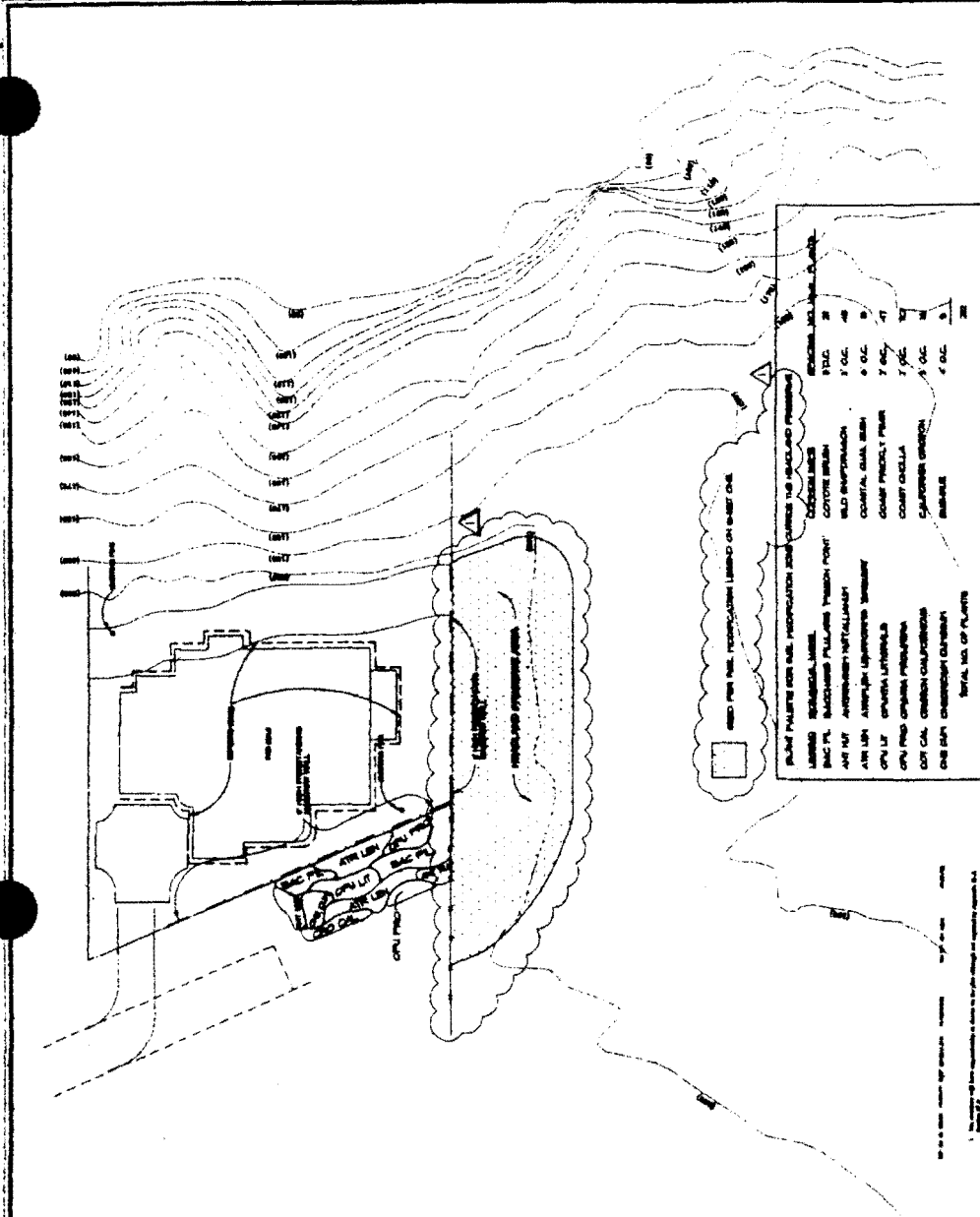
PROJECT NO. 20  
 DATE: 1/11/02  
 DRAWN BY: J. J. [illegible]  
 CHECKED BY: [illegible]

NO.	REVISION
1	
2	
3	
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5	

BRIDGESMAN RESIDENCE  
 34355 SCORC DRIVE  
 DANA POINT, 92629

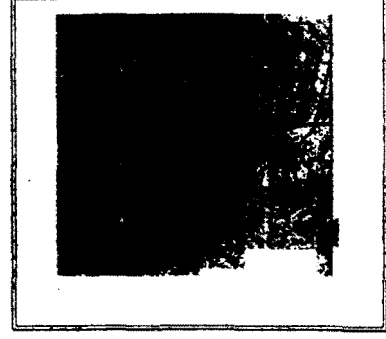
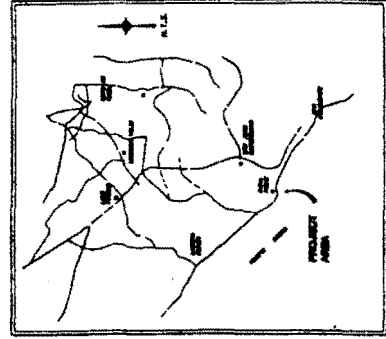
FUEL MODIFICATION  
 PLANNING PLAN

Scale  
 1" = 10' - 0"



ALL FUEL LINE CONNECTIONS BASED ON 1/2" DIE

FUEL MODIFICATION PLAN FOR THE BRIDGESMAN RESIDENCE	
DATE	SERIAL NO. OF PLUMBS
10/15/01	1
11/15/01	2
12/15/01	3
1/15/02	4
2/15/02	5
3/15/02	6
4/15/02	7
5/15/02	8
6/15/02	9
7/15/02	10
8/15/02	11
9/15/02	12
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8/15/09	95
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10/15/09	97
11/15/09	98
12/15/09	99
1/15/10	100



*[This section contains dense, small-scale text, likely technical specifications or a detailed code book, which is difficult to read.]*

<b>EXHIBIT No. 6</b>
Application Number: <b>A-5-DPT-02-057</b>
Fuel Modification Plan Page 2 of 2
California Coastal Commission



# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
Ecological Services  
Carlsbad Fish and Wildlife Office  
2730 Loker Avenue West  
Carlsbad, California 92008

In Reply Refer To:  
FWS-OR-1927.3

Eugenia Garcia  
Community Development Department  
City of Dana Point  
33282 Golden Lantern  
Dana Point, California 92629-1805

JAN 16 2002

Re: Fuel Modification Plan for 34525 Scenic Drive, City of Dana Point, Orange County, California

Dear Ms. Garcia:

This letter responds to your letter dated December 5, 2001, regarding a proposed fuel modification plan for the property at 34525 Scenic Drive in Dana Point, Orange County, California. This property shares a border with the Dana Point Headlands Temporary Preserve (Preserve), an area that is known to support two federally listed species, the endangered Pacific pocket mouse (*Perognathus longimembris pacificus*, "pocket mouse") and threatened coastal California gnatcatcher (*Polioptila californica californica*, "gnatcatcher"). The Preserve was created under the terms of the Orange County Central/Coastal Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP), which was adopted in 1996 to provide for regional protection and perpetuation of natural wildlife diversity while allowing compatible land use and appropriate development growth. The fuel modification plan includes a proposal to remove vegetation within the Preserve.

We provide these comments in keeping with our agency's mission to work "with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people." Specifically, we administer the Endangered Species Act (Act) of 1973, as amended. Section 9 of the Act prohibits the "take" (e.g., harm, harassment, pursuit, injury, kill) of federally listed wildlife. "Harm" is further defined to include habitat modification or degradation where it kills or injures wildlife by impairing essential behavioral patterns including breeding, feeding, or sheltering. Take incidental to otherwise lawful activities can be permitted under the provisions of sections 7 (Federal consultations) and 10 of the Act.

The fuel modification proposal included with your December 5, 2001, letter involves removing non-native vegetation, dead brush, and debris within 50 feet of your property boundary. No native vegetation would be removed. Approximately 0.14 acres of non-native vegetation would be removed using hand tools only. Access to the fuel modification zone would be provided through the residential lot at 34525 Scenic Drive, thus avoiding access-related impacts to

EXHIBIT No. 7

Application Number:  
A-5-DPT-02-057

U.S. Fish and Wildlife  
Page 1 of 3



vegetation on the Preserve. The fuel modification plan proposes to replant the affected area following the first fall rains with a variety of native, fire-resistant plants. Work would be conducted by Clark and Green, landscape architects.

In our October 2, 2001, letter to Dr. Lewis Bruggeman, the owner of the property, we recommended that the following measures be incorporated into the final fuel management plan to avoid potential "take" (e.g., harm, harassment, pursuit, injury, kill) of the pocket mouse or gnatcatcher:

1. The removal of vegetation, brush, and debris will be conducted between November and January, when the pocket mouse is least likely to be active above ground. This time period is also outside the gnatcatcher breeding season.
2. ~~Removal of vegetation and debris will be conducted in a manner that results in minimal soil disturbance.~~ Non-native trees and bushes will be removed above-ground only (e.g., stump-cut) to minimize the likelihood of affecting pocket mice underground. Non-native annuals, such as grasses and mustard, may be removed by the roots.
3. Seed collected from native plants on-site will be broadcast by hand instead of using a combination of hydroseed mix and container planting. Hand broadcast seeding is intended to minimize impacts to pocket mouse burrowing activities by eliminating the use of an organic binder typically associated with hydroseed mixes that could alter soil surface properties and by avoiding direct disturbance to the soil through the use of container plants.
4. Broadcast seed will only include seed from plants native to the Dana Point Headlands that have been approved by the local fire authority and the U.S. Fish and Wildlife Service (Service). Some of the plant species presently proposed for use in the draft fire management plan are not known from the Dana Point Headlands and, therefore, are not appropriate for use. Acceptable species include California croton (*Croton californicus*), cliff spurge (*Euphorbia misera*), and bush sunflower (*Encelia californica*). Additional native plant species should be added to this list subject to the review and approval of the fire authority and the Service. ✓
5. Vegetation removal and seed broadcasting will be monitored by a qualified biological monitor. The biologist should have a minimum of 50 hours of experience trapping Pacific pocket mice and have handled a minimum of 15 individuals in the field. Biologists who have trapped the Pacific pocket mouse must have a valid recovery permit issued under section 10(a)(1)(A) of the Endangered Species Act. The biologist will also be able to identify the coastal California gnatcatcher by sight and sound and be able to identify coastal sage scrub species. The biological monitor will supervise activities to minimize the likelihood of impacting the pocket mouse or gnatcatcher and to ensure that only non-native plants are removed.


**EXHIBIT No. 7**Application Number:  
**A-5-DPT-02-057**U.S. Fish and Wildlife  
Page 2 of 3California Coastal  
Commission

6. The revegetated area will not be watered to minimize the likelihood of non-native vegetation becoming established in the area.
7. A three-year non-native plant removal program will be implemented. Non-native plant removal will be conducted twice per year, in March and October, before many of the spring and fall blooming annuals have gone to seed and when the pocket mouse is less likely to be active. Plant removal will be conducted in a manner that results in minimal soil disturbance. Non-native trees and shrubs will be removed above-ground only, but non-native annuals may be removed by their roots. Removal activities will be supervised by a qualified biological monitor. This program will be coordinated with the future Preserve manager and the Service.
8. No thinning or removal of native vegetation in the fuel management zone is anticipated now or in the future. However, should the fire department ever conclude that native vegetation adjacent to 34525 Scenic Drive, Dana Point, must be thinned or removed to minimize the threat of fire, these impacts will be the responsibility of the property owner of 34525 Scenic Drive, and proposed conservation measures to avoid and minimize impacts will be subject to approval by the Service.


All of the suggested measures have been incorporated into the final fuel modification plan included with your December 5, 2001, letter. Therefore, based on our knowledge of the biology and distribution of the pocket mouse and gnatcatcher on the Dana Point Headlands, we believe that the fuel modification, as proposed, will not result in take of the pocket mouse. Should any changes be made to the proposed fuel modification plan, we request an opportunity to review the modified proposal to ensure that it is consistent with the Act.

We appreciate your efforts to avoid impacts to federally listed species. If you have further questions, please contact Jonathan Snyder of my staff at (760) 431-9440.

Sincerely,

  
Karen A. Evans  
Assistant Field Supervisor

cc: Dr. Lewis Bruggeman  
Brett Anderson, Orange County Fire Authority

<b>EXHIBIT No. 7</b>
Application Number: <b>A-5-DPT-02-057</b>
U.S. Fish and Wildlife Page 3 of 3
 California Coastal Commission



# Orange County Fire Authority

180 S. Water St. • Orange, CA 92866-2123 • (714) 744-0400


*Planning and Development Services Section*

May 21, 2002

California Coastal Commission  
200 Oceangate, 10<sup>th</sup> Floor  
Long Beach

**SUBJECT: OCFA SR# 62562 (1.10 Precise Fuel Modification Plan)<sup>COF</sup>  
Bruggeman Residence  
34525 Scenic Dr.  
Dana Point**

Sc

<b>EXHIBIT No. 8</b>
Application Number: <b>A-5-DPT-02-057</b>
<b>Orange County Fire</b> Page 1 of 2
 California Coastal Commission

Stephen Rynas:

Thank you for meeting with Orange County Fire Authority (OCFA) on Friday May 10<sup>th</sup>, 2002 regarding the property stated above. OCFA has approved a fuel modification plan in accordance with the 1998 California Fire Code. California Coastal Commission requests justification regarding the fuel modification approval process.

OCFA fuel modification requirements are stated in a guideline titled, "The OCFA Guideline for fuel modification and maintenance" dated March 1, 2000. OCFA approved the applicants request for Alternate Methods and Materials (AM and M) allowed by 1998 CFC Section 103.1.2. The following were issues discussed in the May 10<sup>th</sup> meeting:

1. The "A" zone as stated in the OCFA Guideline requires a flat area and a width of 20 feet. The total fuel modification zone widths do not total a minimum width of 170 feet.
2. The applicant is re-constructing more than 75% of the existing structure square footage.
3. The applicant's property is directly adjacent to the Dana Headlands Preserve with protected habitat as described in the U.S. Fish and Wildlife letter dated October 2<sup>nd</sup>, 2001. (On file with OCFA.)
4. The applicant proposed vegetation maintenance in a 50-foot area shown on the most recent plan as the "Headlands Preserve Area."

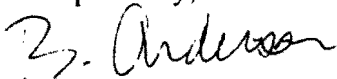
Justification:

1. Previous OCFA Guidelines prior to the latest revision, allowed for portions of "A" zones to be partially located on slopes. The area is adjacent to a 200-foot sandstone vertical bluff down to the ocean. Vegetation on steep bluffs is needed for slope stability and in this case, not viewed as a fire hazard. The area was designated as fuel modification zone to create separation between any existing vegetation on the vertical slope and to restrict future construction type. (See below for accessory structure restriction)


2. The lot is not located within a "Special Fire Protection Area" as shown on maps held by OCFA. The construction of the home is complying with requirements stated in the, "OCFA Guideline for Construction in Special Fire Protection Areas." Construction sides of homes are upgraded equivalent to 1-hour fire resistive construction. See the OCFA Guideline and the plan for a complete description of requirements.
3. OCFA did not review the issues related to re-construction. OCFA reviewed the structure as a new structure.
4. The combustible vegetative areas adjacent to the lot are not contiguous to large canyons or highly vegetative areas with continuous vegetation exceeding 5 feet in height. Future tract development on the Dana Headlands bluff adjacent to the lot in question will further mitigate the size of the vegetative area.
5. A non-combustible cinder block wall is proposed as a fire safety measure. Although not required by the OCFA Guideline for fuel modification and maintenance dated March 1, 2000, it helps from fire transmitting from low-lying shrubs to the structure.
6. The fuel modification zones create a construction type restriction for proposed un-enclosed accessory structures. Patio covers, gazebos, and decks will have to have special construction features that are equivalent to non-combustible construction and approved by OCFA.
7. OCFA had previously approved a fuel modification plan for the home on 10/16/01. This previous plan was the same proposal as the most recently approved plan except the "Headlands Preserve Area" was not included. OCFA did not request the applicant to propose this latest maintenance proposal. The applicants volunteered to revise the previous plan to provide additional fire safety. OCFA could revert to the previously approved plan without the Headlands Preserve Area shown as a maintenance area.

We hope this provides clarification on our approval process for this project. OCFA looks forward to working the Coastal Commission in the future. If clarification or additional information is desired, please contact me at (714) 744-0477.

Respectfully,



Bret Anderson  
Senior Fire Safety Specialist  
bretanderson@ocfa.

<b>EXHIBIT No. 8</b>
Application Number: <b>A-5-DPT-02-057</b>
Orange County Fire Page 2 of 2
 California Coastal Commission

**DEPARTMENT OF FISH AND GAME**

South Coast Region  
4949 Viewridge Avenue  
San Diego, California 92123  
467-4201  
FAX (858) 467-4235



June 4, 2002

**RECEIVED**  
South Coast Region

JUN 6 2002

CALIFORNIA  
COASTAL COMMISSION

Steve Rynas  
California Coastal Commission  
200 Oceangate, Suite 1000  
Long Beach, California 90802-4302

**Comments on the Bruggeman Residence Fuel Modification Plan in the City of Dana Point,  
Orange County California**

Dear Mr. Rynas:

The Department of Fish and Game (Department) has reviewed the fuel modification plans and associated correspondence concerning the Bruggeman residence, located at 34525 Scenic Drive in the City of Dana Point. The property abuts the Dana Point Headlands Preserve, which was established following the adoption of the Orange County Coastal Subregion Natural Community Conservation Plan/Habitat Conservation Plan in 1996.

After reviewing the fuel modification plans for the Bruggeman residence, we concur with the recommendations of the Service and believe that implementation of the measures outlined in their January 16, 2002 correspondence (attached) will allow appropriate fuel modification while minimizing impacts to the Dana Point Headlands Preserve, Pacific pocket mouse (*Perognathus longimembris pacificus*) and coastal California gnatcatcher (*Poliptila californica californica*).

The Department appreciates the opportunity to comment. If you have any questions, please contact Warren Wong at (858) 467-4249.

Sincerely,

William E. Tippetts  
Environmental Program Manager  
California Department of Fish and Game

Attachment  
cc: U.S. Fish and Wildlife Service, Jonathan Snyder

**EXHIBIT No. 9**Application Number:  
**A-5-DPT-02-057****California Department of  
Fish and Game Letter**California Coastal  
Commission

